

EXPLANATORY STATEMENT

Product Emissions Standards (Excise) Charges Act 2017

Product Emissions Standards (Excise) Charges Regulations 2018

(Issued by authority of the Assistant Minister for the Environment
Parliamentary Secretary to the Minister of the Environment and Energy)

The *Product Emissions Standards Act 2017* (the PES Act) establishes a national framework to address the adverse impacts of air pollution from certain products on human and environmental health. The PES Act and the *Product Emissions Standards Rules 2017* (the PES Rules) implement a key aspect of the *National Clean Air Agreement* established by Australia's Environment Ministers on 15 December 2015 and regulate 'emissions-controlled products'. Under that Agreement, a key initial action was the introduction of national emission standards for new non-road spark ignition engines and equipment. The PES Rules prescribes certain propulsion marine engines and non-road engines as 'emissions-controlled products' which must be certified as meeting the Australian emissions standard, or a recognised foreign standard, in order to be imported or supplied in Australia.

The *Product Emissions Standard (Excise) Charges Act 2017* (the Act) imposes a charge on the manufacture of emissions-controlled products to assist with the recovery of the costs of implementation, compliance and enforcement, and other activities that support the delivery of the regulatory scheme.

Section 8 of the Act provides for the Governor-General to make regulations prescribing matters required or permitted by the Act to be prescribed; or necessary or convenient to be prescribed for carrying out or giving effect to the Act. Section 6 of the Act provides that the Governor-General may make regulations prescribing the amount of the charge.

The purpose of *Product Emissions Standards (Excise) Charges Regulations 2018* (the Regulations) is to prescribe the amount of charge to be imposed on the manufacture of emissions-controlled products. The charge is set at 0.45% of the price of the product, subject to the operation of a high item value threshold and a manufacture threshold. The high item value threshold limits the amount of charge on any one item to ensure that manufacturers of high value products do not face a disproportionate share of the costs of the scheme. The manufacture threshold is based on the sum of the product values of emissions-controlled products manufactured by a person each financial year and will reduce the overall administrative costs of the scheme by ensuring that the cost of recovering a charge from a manufacturer is not greater than the charge itself.

Section 22 of the PES Act requires a person who first supplies an emissions-controlled product manufactured in Australia to provide a report to the Secretary relating to the emissions-controlled products supplied in a reporting period (subsection 41(1) of the Rules prescribes a reporting period as a financial year). Information supplied in these reports will be used by the Department to calculate a manufacturer's liability to pay the excise charge. The collection and recovery of the excise charge is set out in Part 9 of the PES Rules.

The Department of the Environment and Energy (the Department) undertook consultation with industry on cost recovery arrangements at two roundtables in September and November 2017. Industry and the public were invited to submit comments on the Cost Recovery Implementation Statement (CRIS) which was released on 13 October 2017 for a four week consultation period. Following stakeholder consultation, the levy rate was reduced from 0.5% to 0.45% as a result

of additional information on the size of the industry and the future impact of technology on the sector. The high item value threshold was reduced from \$40,000 to \$20,000 to better reflect the costs of administration. Industry representatives indicated their general acceptance of the cost recovery arrangements and willingness to continue working co-operatively with the Department.

Details of the Regulations are set out in the Attachment.

The Act specifies no conditions that need to be satisfied before the power to make the Regulations may be exercised.

The Regulations are a legislative instrument for the purposes of the *Legislation Instruments Act 2003*.

The Regulations commence on 1 July 2018 to coincide with the commencement of the relevant supply offence pursuant to section 51 of the PES Rules.

Authority: Section 6 of the *Product Emissions Standards (Excise) Charges Act 2017*

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Product Emissions Standards (Excise) Charges Regulation 2018

The Regulations are compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The *Product Emissions Standards Act 2017* (PES Act) establishes a national framework to address the adverse impacts of air pollution from certain products on human and environmental health.

The PES Act and the *Product Emissions Standards Rules 2017* (PES Rules) implement a key aspect of the *National Clean Air Agreement* established by Australia's Environment Ministers on 15 December 2015 and regulate 'emissions-controlled products'. Under that Agreement, a key initial action was the introduction of national emission standards for new non-road spark ignition engines and equipment. The PES Rules prescribes certain propulsion marine engines and non-road engines as 'emissions-controlled products' which must be certified as meeting the Australian emissions standard, or a recognised foreign standard, in order to be imported or supplied in Australia.

The *Product Emissions Standard (Excise) Charges Act 2017* (Excise Charges Act) imposes a charge on the manufacture of emissions-controlled products to assist with the recovery of the costs of implementation, compliance and enforcement, and other activities that support the delivery of the regulatory scheme.

The purpose of the Regulations is to prescribe the amount of charge to be imposed on the manufacture of emissions-controlled products. The charge is set at 0.45% of the price of the product, subject to the operation of a high item value threshold and a manufacture threshold. The high item value threshold limits the amount of charge on any one item to ensure that manufacturers of high value products do not face a disproportionate share of the costs of the scheme. The manufacture threshold is based on the sum of the product values of emissions-controlled products manufactured by a person each financial year and will reduce the overall administrative costs of the scheme by ensuring that the cost of recovering a charge from a manufacturer is not greater than the charge itself.

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Human rights implications

The Regulations do not engage with any of the applicable rights or freedoms. Human rights implications associated with the PES Rules, PES Act and Excise Charges Act were considered and outlined in the relevant Statement of Compatibility with Human Rights included with both the Explanatory Memorandum for the Product Emissions Standards Act 2017 and the Explanatory Statement for the Product Emissions Standards Rules 2017. The Regulations

prescribe the charges amount and therefore do not change the operation of the PES Act or Rules in a way which would affect the previous analysis of human rights implications.

Conclusion

The Regulations are compatible with human rights as they do not raise any human rights issues.

The Hon Melissa Price MP
Assistant Minister for the Environment
Parliamentary Secretary to the Minister for the Environment and Energy

Details of the *Product Emissions Standards (Excise) Charges Regulations 2018*

Section 1 – Name

1. This section provides that the title of the Regulations is the *Product Emissions Standards (Excise) Charges Regulations 2018* (the Regulations).

Section 2 – Commencement

2. The table in this section provides for the commencement of the Regulations.
3. The whole instrument commences on 1 July 2018.

Section 3 – Authority

4. This section provides that the Regulations are made under the *Product Emissions Standards (Excise) Charges Act 2017* (the Excise Charges Act).

Section 4 – Definitions

5. This section defines the key terms used in the Regulations. A number of expressions used in the Regulations are defined in the Excise Charges Act, including ‘emissions-controlled product’ and ‘manufacture’, and so are not redefined in the Regulations.
6. A key term used in the calculation of the excise charge is ‘product price’. Product price is defined with reference to the price of the product when a manufacturer first supplies that product. Price is defined as the consideration for the supply exclusive of the Goods and Services Tax (GST). Excluding GST from the product price ensures that the charge is not calculated based on a GST inclusive price but is based on the value of the product itself. This definition of price is consistent with the reporting requirements for products manufactured in Australia prescribed in section 41 of the *Product Emissions Standards Rules 2017* (PES Rules).
7. The ‘product price’ definition sets the maximum product price at \$20,000. This operates as a ‘high item value threshold’ where the charge amount is calculated using a product price of \$20,000 if the price of a product is greater than \$20,000. This threshold ensures that the amount charged closely matches the estimated administrative costs of the scheme as analysis of supply data shows there will be no extra administrative costs to the Department in administering the scheme for higher value products.

Section 5 – Amount of charge imposed on the manufacture of emissions-controlled products

8. Section 5, which is made for the purposes of section 6 of the Excise Charges Act, prescribes the amount of charge to be imposed on the manufacture of emissions-controlled products.
9. This section prescribes formulas to be used to calculate the charge for each manufactured emissions-controlled product. The charge is specified at a rate of 0.45% of the price of the product, subject to the operation of a high item value threshold and a manufacture threshold.

10. The rate of 0.45% was determined by using an estimate of the total volume of emissions-controlled products manufactured and imported in 2015 and 2016. The rate will be reviewed annually based on actual manufacturing and import figures and the actual costs of delivering the scheme. The first opportunity to review the levy rate will be following the first full year of the scheme's operation in July 2019.
11. As stated above, the excise charge is subject to a high item value threshold and a manufacture threshold (or 'low levy threshold'). The high item value threshold limits the amount of charge on any one item to ensure that manufacturers of high value products do not face a disproportionate share of the costs of the scheme. The manufacture threshold is based on the sum of the product values of emissions-controlled products manufactured by a person each financial year and reduces the overall administrative costs of the scheme by ensuring that the cost of recovering a charge from a manufacturer is not greater than the charge itself.
12. The high item value threshold is given effect through the definition of product price in section 4. The low levy threshold is given effect through the definition of manufacture threshold in subsection 5(5).
13. As the Excise Charges Act imposes a charge on the manufacture of each individual emissions-controlled product, the amount of the charge must be able to be determined for each product at the time of manufacture. This is despite the fact that the invoicing of the excise charge will not take place until the following financial year (as provided for by Part 9 of the Rules). For this reason, subsections 5(2) to 5(5) provides for the amount of the charge, or the formula to be used to determine this amount, for each manufactured product in relation to whether the manufacture threshold has been passed.
14. Subsection 5(2) provides that, if at the time of manufacture of a particular product, the manufacturer has not passed the manufacture threshold for the financial year, then the amount of the charge for that product is be nil.
15. Subsection 5(3) provides a formula to calculate the charge for a particular product where, at the time of manufacture of the particular product, the manufacturer passes the manufacture threshold for the financial year. The formula provides that this amount will be 0.45% of the sum of the product prices of manufactured emissions-controlled products at that point in time. This takes into account the product prices of emissions-controlled products which were manufactured in the same financial year prior to the manufacturer passing the manufacture threshold.
16. Subsection 5(4) provides a formula to calculate the charge for a particular product where, at the time of manufacture of the particular product, the manufacturer has passed the manufacture threshold for the financial year. The formula provides that this amount will be 0.45% of the product price of the emissions-controlled product being manufactured at that point in time. The practical effect of subsections 5(3) and 5(4) is that a manufacturer will be liable to the 0.45% levy charge for all products manufactured in a financial year once the manufacture threshold is passed.
17. Subsection 5(5) sets out when the manufacture threshold is passed. The manufacture threshold will be passed at the time when, on manufacturing a particular product, the product price of that product plus the product price of any products previously manufactured in that same financial year, is more than \$32,000. The manufacture threshold is calculated independently of the product price of any emissions-controlled products that the manufacturer is yet to manufacture in the same financial year.

18. It is not economical to recover charges from manufacturers where the sum of the product prices of manufactured products in a financial year is \$32,000 or less. This is because 0.45% of \$32,000 results in a charge of \$144 which is the approximate cost of the collection and recovery of the charge. The practical effect of the manufacture threshold is to set a low levy threshold of \$144 for each financial year. If manufacturer has not passed the manufacture threshold of \$32,000 (which corresponds to a total charge payable of \$144), then the charge payable by the manufacturer for that financial year is nil. The threshold amount has been set by determining the cost of administering the excise charge which includes calculating the liability, contacting the manufacturer to confirm the liability amount, sending an invoice and processing the payment. The manufacture threshold reduces the overall administrative costs of the scheme by ensuring that the cost of recovering the charge from the manufacturer is not greater than the charge itself.
19. Subsection 5(6) provides that the charge amount be rounded to the nearest cent. This provides clarity for manufacturers on the monetary amount they will be liable for under

Excise Charge Example

A manufacturer manufactures an emissions-controlled product in August 2018 with a product price of \$12,000. The excise charge for this first item is nil as the manufacture threshold of \$32,000 has not been passed.

The same manufacturer then manufactures an emissions-controlled product in December 2018 with product price of \$15,000. The manufacturer has now manufactured two products with product prices which add up to \$27,000 for the 2018 – 2019 financial year. The excise charges for this second item is also nil as the manufacture threshold of \$32,000 has not been passed.

The charges for these first two manufactured items are calculated according to subsection 5(2).

The same manufacturer then manufactures a third emissions-controlled product in February 2019 with product price of \$10,000. The manufacturer has now manufactured three products with product prices which add up to \$37,000 for the 2018 - 2019 financial year. The excise charge for this third item is \$166.50 ($\$37,000 \times 0.0045$) as the manufacture threshold has been passed.

The charge for this third item is calculated according to subsection 5(3).

The same manufacturer then manufactures two more emissions-controlled products before the end of the financial year – one with a price of \$24,000 (and so a product price of \$20,000 due to the high item value threshold) and one with a price (and product price) of \$1,000. The excise charges for the fourth item is \$90 ($\$20,000 \times 0.0045$) and the fifth item is \$4.50 ($\$1,000 \times 0.0045$).

The charges for these fourth and fifth items are calculated according to subsection 5(4).

The total excise charge that the manufacturer will be liable to pay at the end of the 2018 – 2019 financial year is:

$$\text{Item 1 charge (nil) + item 2 charge (nil) + item 3 charge (\$166.50) + item 4 charge (\$90.00) + item 5 charge (\$4.50) = \$261}$$

subsections 5(3) and 5(4).