EXPLANATORY STATEMENT

Ozone Protection and Synthetic Greenhouse Gas Management Act 1989

Ozone Protection and Synthetic Greenhouse Gas Management Amendment (2019 Measures No. 1) Regulations 2019.

Issued by authority of the Minister for the Environment

Purpose and operation

The *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* (the Act) implements Australia's obligations under the Vienna Convention for the Protection of the Ozone Layer and its associated Montreal Protocol on Substances that Deplete the Ozone Layer (the Montreal Protocol), as well as the United Nations Framework Convention on Climate Change and its associated Kyoto Protocol.

Section 70 of the Act provides that the Governor-General may make regulations required or permitted by the Act or that are necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The Review of the Ozone Protection and Synthetic Greenhouse Gas legislation (the Review) completed in 2016, identified measures to further reduce emissions of ozone depleting substances and synthetic greenhouse gases and improve and streamline the operation of the legislation, including reducing regulatory compliance costs and burden on business. The Australian Government agreed to all the measures recommended by the Review on 5 May 2016. The Minister for the Environment agreed to additional minor amendments on 19 September 2019.

The *Ozone Protection and Synthetic Greenhouse Gas Management Amendment (2019 Measures No. 1) Regulations 2019* (the Amendment Regulations) amend the *Ozone Protection and Synthetic Greenhouse Gas Management Regulations 1995* (the Principal Regulations) to implement recommendations of the Review and make minor amendments to:

- Allow refund of application fees for the refrigeration and air conditioning industry and fire protection industry permit schemes;
- Allow the cancellation or suspension of a fire protection industry permit where a permit holder does not have the necessary knowledge, ability and experience to competently carry out work;
- Prohibit the use of a scheduled substance in fire protection equipment or refrigeration and air conditioning equipment that has a higher global warming potential than the substance the equipment was designed to use;
- Facilitate the implementation of the ban commencing under the Act on 1 January 2020 on the import and manufacture of bulk hydrochlorofluorocarbon (HCFC) and equipment containing or using HCFCs by:
  - Allowing for a licence to be granted to import equipment using HCFCs for test, monitoring, laboratory and analytical purposes where no practical alternative exists;

  - Allowing for bulk HCFC manufactured or imported on or after 1 January 2020 to be used for servicing existing refrigeration and air conditioning equipment, or maintaining existing fire protection equipment, in line with the Montreal Protocol;
- Extend the circumstances where licence application fees can be waived by;
  - Allowing for the waiver of an HCFC equipment import licence application fee;
  - Allowing for the waiver of controlled substances and used substances licence application fees where the manufacture, import or export is for monitoring, laboratory or analytical purposes;
- Reduce the reporting requirements for suppliers of methyl bromide by;
  - Reducing reporting frequency from quarterly to twice yearly;
  - Removing the requirement to report on sales where the whole amount of methyl bromide sold is for quarantine and pre-shipment (QPS) uses, or where no methyl bromide is sold in a reporting period; and
- Establish a process to enable non-quarantine and pre-shipment (non-QPS) permits to be granted for use of methyl bromide in emergency circumstances, for example, use in an unusual disease outbreak in a crop or production facility where no other fumigant is suitable, consistent with the Montreal Protocol, and an associated reporting regime.

Consultation

Consultation on the prohibition of the use of a scheduled substance with a higher GWP in refrigeration, air conditioning and fire protection equipment, was undertaken as part of the Review. Review consultation involved public meetings, invitations for public comment, a technical working group of stakeholders, and meetings with importers, equipment manufacturers, and end users. Industry was supportive of the measure as it supports the transition to new technology and provides business certainty.

Consultation on the amendment to allow bulk HCFC manufactured or imported from 1 January 2020 to be used for servicing refrigeration, air conditioning or fire protection equipment, was also undertaken during the review. Industry was supportive of this amendment as it will ensure that equipment already in use in Australia can be maintained through its normal operating lifespan.

Targeted consultation was conducted with the fire protection industry through the Fire Protection Industry (ODS and SGG) Board, and directly with industry experts, in relation to suspending or cancelling a fire protection industry permit where a permit holder does not have the necessary knowledge, ability and experience to competently carry out work. Industry acknowledged this as a potential regulatory gap and supported the measure which aims to ensure that only competent persons handle ozone depleting substances and synthetic greenhouse gases.

Consultation on the changes to allow refund of application fees for the refrigeration, air conditioning and fire protection industry permit schemes was undertaken with two Industry Boards who administer the schemes, and directly with refund applicants. A refund policy was adopted in July 2019, and communicated directly to refund applicants and on the Industry Boards' websites. Stakeholders were supportive of the changes as, consistent with the administrative policy, they clarify the circumstances where refunds are permitted.

The changes to the import, export and manufacture licensing regulations were developed with regard to direct communication from industry on their needs. Importers and users of specialised HCFC equipment have advised of their continuing need to access this type of equipment in Australia as equipment using other, non-ozone depleting substances, is not always available for specialised uses. The ability to licence import of this equipment, along with the ability to waive equipment licence fees for small scale or one-off imports containing smaller amounts of HCFC, provides a cost effective mechanism for industry to continue to import specialised and essential equipment during the final stages of the HCFC phase out.

Similarly, the amendment to allow for the waiver of controlled substances and used substances licence application fees where the manufacture, import or export is for monitoring, laboratory or analytical purposes, meets a communicated industry need to import small quantities of particular types of scheduled substances, for example, of very high purity or uncommonly used blends, for these purposes, as they may not be available within Australia.

The amendment to enable non-quarantine and pre-shipment (non-QPS) permits to be granted for use of methyl bromide in emergency circumstances establishes a clear process for stakeholders. The restrictive conditions set by the Montreal Protocol for this use make such circumstances rare, however it is important to provide a clear process for industry stakeholders who may need to apply for such a permit. The process is based on that for regular non-QPS permit use applications which was developed with close stakeholder consultation.

The changes to methyl bromide reporting were identified as opportunities to reduce the burden of reporting. Industry has communicated their preference for flexibility to report either quarterly or six monthly to suit their business purposes and this is allowed for in the amended reporting regulations.

Regulatory impact analysis

At the time of the Review the Office of Best Practice Regulation advised that a Regulatory Impact Statement was not required for the minor program changes covered by these Amendment Regulations.

The Office of Best Practice Regulation advised that the rest of the regulatory amendments are likely to have a minor regulatory impact and that a Regulatory Impact Statement is not required.

Other Matters

The Amendment Regulations do not include any incorporations by reference.

Details of the Amendment Regulations are set out in Attachment A. A Statement of Compatibility with Human Rights has been completed and is at Attachment B.

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

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

The Amendment Regulations commence on 1 January 2020.

ATTACHMENT A

Details of the *Ozone Protection and Synthetic Greenhouse Gas Management Amendment (2019 Measures No. 1) Regulations 2019*

Section 1 – Name

1. This section specifies that the title of the Regulations is the *Ozone Protection and Synthetic Greenhouse Gas Management Amendment (2019 Measures No. 1) Regulations 2019*.

Section 2 – Commencement

2. The table in this section provides that the *Ozone Protection and Synthetic Greenhouse Gas Management Amendment (2019 Measures No. 1) Regulations 2019*, including all Schedules, commence immediately after the commencement of Schedule 3 of the *Ozone Protection and Synthetic Greenhouse Gas Management Legislation Amendment (2017 Measures No. 1) Regulations 2017*.

Section 3 – Authority

3. This section provides that *Ozone Protection and Synthetic Greenhouse Gas Management Amendment (2019 Measures No. 1) Regulations 2019* are made under the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* (the Act).

Section 4 – Schedules

4. This section provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1 – Amendments

Part 1 – Refrigeration and air conditioning equipment and fire protection equipment

Division 1 – Prohibited refrigerant and charging and prohibited extinguishing agent charging

During maintenance or repair of refrigeration and air conditioning equipment or fire protection equipment some technicians might consider using a refrigerant or extinguishing agent with a higher global warming potential (GWP) than that used when the equipment was manufactured. For instance, because of price, availability or the equipment owner or technician's familiarity with the higher GWP substance. This is undesirable as it means unnecessary additional use and emissions of the higher GWP substances that are being phased out or phased down in Australia. It is also undesirable for refrigeration and air conditioning equipment because it may lead to inefficient equipment operation and resulting increased electricity use, reduced equipment life and higher indirect emissions of greenhouse gases from electricity generation.

To address these concerns, Item 4 and 7 insert new strict liability offences into the Principal Regulations for a person to engage in prohibited refrigerant charging (regulation 111A inserted by Item 4) or for a person to engage in prohibited extinguishing agent charging (regulation 303A inserted by Item 7).

Prohibited refrigerant charging

Item 3 inserts new regulation 2AAA which defines the term ***prohibited refrigerant charging***. Subregulation 2AAA(1) clarifies that new regulation 2AAA applies in relation to equipment that is designed to be used for the heating or cooling of anything (paragraph 2AAA(1)(a)) and to operate solely by using a particular refrigerant (the ***design refrigerant***) other than an HCFC refrigerant (paragraph 2AAA(1)(b)). HCFCs are ozone depleting substances and are being phased out globally. Refrigeration and air conditioning equipment designed to operate using an HCFC refrigerant is exempt from prohibited refrigerant charging because of the importance of eliminating the use of ozone depleting substances. It is necessary to allow for scenarios where equipment designed to operate using an HCFC is modified to operate on a newer type GWP refrigerant that is a synthetic greenhouse gas but does not damage the ozone layer, so as not to impede Australia's transition away from the use of HCFCs.

The reference to equipment that is designed for the heating or cooling of *anything* in paragraph 2AAA(1)(a) is intended to capture the full range of heating and cooling equipment that uses the relevant refrigerants in its operation, not only to more traditional refrigeration and air conditioning equipment. For example, the measure is intended to cover heat-pump hot water heaters.

Subregulation 2AAA(2) clarifies the circumstances in which equipment is designed to operate solely by using a particular refrigerant for the purposes of paragraph 2AAA(1)(b). These circumstances include where the equipment has a compliance plate that specifies a particular refrigerant or, if there is no compliance plate that specifies any particular refrigerant, a manual issued by the manufacturer relating to the equipment states that the equipment is designed to operate solely by using that particular refrigerant.

Subregulation 2AAA(3) also specifies the circumstances in which a person engages in ***prohibited refrigerant charging***. This includes where a person charges equipment, either by complete replacement or topping up, with a GWP refrigerant (defined in subregulation 2AAA(5)) other than the design refrigerant and the design refrigerant is not a scheduled substance or the design refrigerant is a GWP refrigerant and the new refrigerant has a higher 100-year global warming potential than the design refrigerant. A person does not engage in prohibited refrigerant charging if subsection 2AAA(4) applies. Subregulation 2AAA(4) allows for an exception where the continued functioning of the equipment is essential for health or public safety purposes, and no refrigerant that is the design refrigerant, a lower GWP refrigerant or a refrigerant that is not a GWP refrigerant, is available. In these circumstances, prohibited refrigerant charging will be taken not to have occurred.

Item 2 inserts references to the terms ***GWP refrigerant*** and ***prohibited refrigerant charging*** in regulation 2 of the Principal Regulations. These references direct readers to the definition of these terms elsewhere in the Principal Regulations.

As stated above, Item 4 inserts a new strict liability offence into the Principal Regulation if a person engages in prohibited refrigerant charging (see new subregulation 111A(1)). A contravention of this offence has a maximum penalty of 10 penalty units for an individual or 50 penalty units for a body corporate. Application of strict liability to this offence has been set with consideration given to the guidelines regarding the circumstances in which strict liability is appropriate set out in *A Guide to Framing Commonwealth Offences, Civil Penalties and Enforcement Powers*. This offence is necessary to ensure compliance with Australia's obligations under the Montreal Protocol on Substances that Deplete the Ozone Layer (the Montreal Protocol). The use of strict liability for this offence is necessary to ensure the integrity of the established regulatory regime to prevent environmental harm.

Subregulation 111A(2) clarifies that, for the purposes of the offence in subregulation 111A(1), the exception outlined in subregulation 2AAA(4), where the continued functioning of equipment is essential for health or public safety purposes, will not be taken to apply unless the evidence is adduced to the contrary.

Items 5, 6 and 10 are required as a consequence of Item 4. Subregulation 135(1) and subregulation 141(1) set out a number of conditions which the holder of a refrigerant handling licence or a refrigerant trading authorisation must not contravene. Items 5 and 6 amend those subsections to impose an additional condition that the licensee or holder of the authorisation does not engage in prohibited refrigerant charging. A refrigerant trading authorisation holder will be considered to have engaged in prohibited refrigerant charging if they directed a contractor or employee (whether or not that person holds a refrigerant handling licence) working under the refrigerant trading authorisation to perform prohibited refrigerant charging.

Item 10 amends regulation 906A to specify the new offence at subregulation 111A(1) as an infringement notice offence.

Prohibited extinguishing agent charging

Item 3 inserts new regulation 2AAB which defines the term ***prohibited extinguishing agent charging***. Subregulation 2AAB(1) clarifies that new regulation 2AAB applies in relation to fire protection equipment that is designed to operate solely by using a particular extinguishing agent (the ***design extinguishing agent***), other than an HCFC extinguishing agent. HCFCs are ozone depleting substances and are being phased out globally. Fire protection equipment designed to operate using an HCFC extinguishing agent is exempt from prohibited extinguishing agent charging because of the importance of eliminating the use of ozone depleting substances. It is necessary to allow for scenarios where equipment designed to operate using an HCFC is modified to use a newer type GWP extinguishing agent that is a synthetic greenhouse gas but does not damage the ozone layer, so as not to impede Australia's transition away from the use of HCFCs.

Subregulation 2AAB(2) clarifies the circumstance in which equipment will be deemed to be designed to operate solely by using a particular extinguishing agent for the purposes of subregulation 2AAB(1). This includes where documentation, issued by the manufacturer, that relates to the operation of the equipment states that the equipment is designed to operate solely by using a particular extinguishing agent.

Subregulation 2AAB(3) specifies the circumstances in which a person engages in ***prohibited extinguishing agent charging***. This includes where a person charges equipment, either by complete replacement or topping up, with a GWP extinguishing agent (defined in new subregulation 2AAB(5)) other than the design extinguishing agent and the design extinguishing agent is not a scheduled substance or the design extinguishing agent is a GWP extinguishing agent and the new extinguishing agent has a higher 100-year global warming potential than the design extinguishing agent. A person does not engage in prohibited extinguishing agent charging if subsection 2AAB(4) applies.

Subregulation 2AAB(4) allows for an exception where the continued functioning of the equipment is essential for public safety purposes or to protect critical data or infrastructure that primarily serves the public good, and no extinguishing agent that is the design extinguishing agent, a lower GWP extinguishing agent or an extinguishing agent that is not a GWP extinguishing agent, is available. In these circumstances, prohibited extinguishing agent charging will be taken not to have occurred.

Item 2 inserts references to the terms ***GWP extinguishing agent*** and ***prohibited extinguishing agent charging*** in regulation 2 of the Principal Regulations. These references direct readers to the definition of these terms elsewhere in the Principal Regulations.

As stated above, Item 7 inserts a new strict liability offence into the Principal Regulation if a person engages in prohibited extinguishing agent charging (see new subregulation 303A(1)). A contravention of this offence has a maximum penalty of 10 penalty units for an individual or 50 penalty units for a body corporate. Application of strict liability to this offence has been set with consideration given to the guidelines regarding the circumstances in which strict liability is appropriate set out in *A Guide to Framing Commonwealth Offences, Civil Penalties and Enforcement Powers*. This offence is necessary to ensure compliance with Australia's obligations under the Montreal Protocol. The use of strict liability for this offence is necessary to ensure the integrity of the established regulatory regime to prevent environmental harm.

New subregulation 303A(2) clarifies that, for the purposes of the offence in subregulation 303A(1), the exception outlined in subregulation 2AAB(4), where the continued functioning of equipment is essential for public safety purposes or to protect critical data or infrastructure that primarily serves the public good, will not be taken to apply unless the evidence is adduced to the contrary.

Items 8, 9 and 11 are required as a consequence of Item 4. Subregulation 326(1) and subregulation 332(1) of the Principal Regulations set out a number of conditions which the holder of an extinguishing agent handling licence or an extinguishing agent trading authorisation, respectively, must not contravene. Items 8 and 9 amend those subsections to impose an additional condition that the licensee or holder of the authorisation does not engage in prohibited extinguishing agent charging. An extinguishing agent trading authorisation holder will be considered to have engaged in prohibited extinguishing agent charging if they directed a contractor or employee (whether or not that person holds an extinguishing agent handling licence) working under the extinguishing agent trading authorisation to perform prohibited extinguishing agent charging.

Item 11 amends regulation 906A to specify the new offence at subregulation 303A(1) as an infringement notice offence.

Item 1 inserts a note after the heading to regulation 2 to clarify that a number of expressions used in the Regulations are defined in the Act, including 100-year global warming potential.

Item 2 also includes references to the terms ***extinguishing agent*** and ***fire protection equipment*** in regulation 2 of the Principal Regulations. These references direct readers to the definition of these terms elsewhere in the Principal Regulations.

Division 2 – Other amendments

Item 12 amends the definition of RAC equipment (or refrigeration and air conditioning equipment) in regulation 110 of the Principal Regulations to make it clear that references in Division 6A.2 of the Principal Regulations to RAC equipment includes references to equipment that uses any or all of CFC, HCFC, HFC, PFC and halon. This will make it clear that Division 6A.2 applies only to equipment that contains or uses those particular scheduled substances, and that equipment that does not contain or use those scheduled substances is not considered to be RAC equipment for the purposes of Division 6A.2.

Item 13 corrects the reference in subparagraph 123(a)(c) to refer to work covered by the "permit" rather than work covered by the "licence".

Item 14 amends paragraphs 140(3)(b)(ii) and 141(1)(i)(ii) to reflect updated drafting practices.

Part 2 – Use of HCFC manufactured or imported on or after 1 January 2020

Part 2 makes a number of amendments to the Principal Regulations in relation to the use of HCFC manufactured or imported on or after 1 January 2020.

Use of HCFC manufactured or imported on or after 1 January 2020

From 1 January 2020, the Montreal Protocol restricts the use of new hydrochlorofluorocarbons (HCFCs). Article 2F paragraph 6 of the Montreal Protocol allows HCFCs imported or manufactured from 1 January 2020 to be used for the servicing of refrigeration and air conditioning equipment and fire protection equipment, existing before 1 January 2020.

Section 45C of the Act, which will commence on 1 January 2020, will implement Australia's obligations under the Montreal Protocol by prohibiting the use of HCFCs that are manufactured or imported on or after 1 January 2020. Subsection 45C(2) provides an exemption to this prohibition if the use of the HCFC manufactured or imported after 1 January 2020 is for a purpose prescribed in the Regulations.

Allowing HCFCs imported or manufactured from 1 January 2020 to be used to service existing refrigeration and air conditioning equipment and existing fire protection equipment is necessary to ensure that equipment already in use in Australia can be maintained through its normal operating lifespan.

<u>Item 15 and 16</u>

Items 15 and 16 prescribe, for the purpose of subsection 45C(2) of the Act, the purposes for which a HCFC manufactured or imported on or after 1 January 2020 may be used. HCFC's

manufactured or imported on or after 1 January 2020 may be used for the purpose of maintaining RAC equipment (subregulation 113B(1)) or for the purpose of maintaining fire protection equipment (subregulation 305A(1)).

To ensure HCFC's are used to maintain only existing RAC equipment or fire protection equipment, the prescribed use only applies in relation to RAC equipment or fire protection equipment manufactured or imported before 1 January 2020 (subsections 113B(2) and 305A(2)).

Part 3 – Methyl bromide

Methyl bromide is a controlled substance listed in Part VII of Schedule 1 to the Act. Methyl bromide contributes to the depletion of the ozone layer when released into the atmosphere, and as methyl bromide is primarily used as a fumigant, most uses are emissive by nature. The Principal Regulations regulate the supply and use of methyl bromide through record keeping and reporting requirements and regulate the use of methyl bromide for non-quarantine and pre-shipment (non-QPS) purposes in particular through a permit process.

Reducing reporting requirements for suppliers of methyl bromide

Regulation 230 of the Principal Regulations requires suppliers of methyl bromide to provide quarterly reports on their sales of methyl bromide, specifying how much methyl bromide was sold for each type of allowed use (regulation 201 sets out the uses of methyl bromide as QPS (quarantine and pre-shipment) uses, non-QPS uses, feedstock uses and for laboratory and analytical uses).

To reduce the reporting burden on suppliers and permit holders, Items 19 – 21 replace the references to "a quarter" and instead insert a reference to the "reporting period" or "period". The term ***reporting period*** is defined in section 7 of the Act to mean a period of 6 months starting on 1 January or 1 July. Item 24 inserts a note into subregulation 230(1) to cross-reference this definition. Item 25 is required as a consequence of Item 24.

The amendments also provide suppliers of methyl bromide with the flexibility to continue to provide quarterly reports to align with other reporting requirements (such as business activity statements for the Australian Taxation Office). Subregulation 230(1B), inserted by Item 26, allows suppliers of methyl bromide to continue to provide quarterly reports, by giving a separate report for each half of the reporting period.

If a supplier of methyl bromide sold no methyl bromide in a quarter, paragraph 230(1)(c) of the Principal Regulations requires a supplier to include a statement to that effect in their report. Item 23 removes this requirement. Item 22 is required as a consequence of Item 23.

Subregulation 230(1A), inserted by Item 26, removes a requirement for a supplier of methyl bromide to provide a report on sales where the whole amount of methyl bromide sold is for QPS uses. The requirement to provide these reports is considered duplicative and no longer necessary. Regulation 220 already imposes a requirement on suppliers to keep and maintain records of the amount of methyl bromide sold for QPS uses, and provide copies of those records to the Minister when requested.

Similarly to the reporting obligations on suppliers of methyl bromide imposed by regulation 230, regulation 231 of the Principal Regulations imposes an obligation on a non-QPS permit holder to provide six monthly reports on the use of methyl bromide by, or on behalf of, the non-QPS permit holder. Items 27 – 31 remove references to 'report period' in regulation 231 and insert references to 'reporting period' for consistency with the use and definition in the amendments to regulation 230. There is no change to the length of the reporting period used in existing regulation 231 as this is already a 6 month period.

It is a requirement for a report provided under regulation 230 and 231 to include, amongst other things, the name and ABN (if any) of the supplier (paragraphs 230(1)(a) and 231(2)(a)). The term ABN was not defined in the Principal Regulations. Item 17 inserts a definition of the term ***ABN*** (short for Australian Business Number) into regulation 2.

Emergency use of methyl bromide

Subdivision 6A.3.4A of the Principal Regulations allows for granting of non-QPS permits. Item 18 defines the term ***non-QPS permit*** as a permit granted under subregulation 235(1).

Before granting a non-QPS permit, the Minister must be satisfied that it is appropriate to do so after consulting with the parties to the Montreal Protocol and having regard to any advice received (subregulation 235(2)). As a result, the application and assessment process for non-QPS permits normally takes around 18 months.

The Montreal Protocol allows for non-QPS use of methyl bromide without first consulting with the parties in very limited emergency circumstances, such as an unusual disease outbreak in a crop or production facility where no other fumigant is suitable. These circumstances are not currently provided for in the Principal Regulations.

To enable a person to apply for a non-QPS permit in the emergency circumstances provided for in the Montreal Protocol, Item 33 amends subregulation 235(2) to enable the Minister to grant a non-QPS permit if the Minister is satisfied that an emergency situation exists and it is appropriate to grant the permit to deal with the emergency situation. Under existing subregulation 235(3), the Minister cannot grant the permit if the Minister is satisfied that to do so would be inconsistent with Australia's obligations under the Montreal Protocol.

To ensure the grant of a non-QPS permit for emergency circumstances (referred to as an emergency non-QPS permit) is consistent with the Montreal Protocol, Item 34 inserts subregulation 235(3A) clarifying that such a permit must not permit the use of more than 20 tonnes of methyl bromide. This is in line with Decision IX/7 of the Montreal Protocol.

Item 35 amends subparagraph 235(5)(b)(ii) to clarify an existing condition on non-QPS permits, making it clearer that the methyl bromide specified in the permit may only be used at the geographic location specified in the permit. The existing wording 'the use is to treat a geographic location specified in the permit' may unnecessarily restrict the use to treating the ground at a location. The Explanatory Statement for the *Ozone Protection and Synthetic Greenhouse Gas Management Amendment (Methyl Bromide, Fire Protection and Other Measures) Regulations 2018,* which introduced the process at regulation 235 for granting of non-QPS permits, made clear that "the permit holder will be prohibited from using … methyl

bromide for either a use not specified in the permit or in a different geographical location from that specified in the permit.”.

As the Minister is not required to consult the parties of the Montreal Protocol before granting an emergency non-QPS permit, Item 36 inserts a new subsection 235(7A) which requires the Minister to notify the parties to the Montreal Protocol as soon as practicable after the methyl bromide has been used. The notification must include the following information: the amount of methyl bromide used; the purpose for which the methyl bromide was used; the kind of produce the methyl bromide was applied to or for; details of the emergency situation that required the use of the methyl bromide; and, the reasons why alternative treatments were not suitable to deal with the emergency situation.

The information provided will need to be sufficient to show that allowing the emergency use was in accordance with the Montreal Protocol. The notification will be made through the Secretariat to the Montreal Protocol.

Item 37 inserts a new subregulation 237(1A) into the Principal Regulations to clarify that that an emergency non-QPS permit may not be transferred. The transfer provision is not applicable in emergency use circumstances which would allow methyl bromide use only for a very short timeframe. Item 38 is required as a consequence of Item 37 to clarify that as an emergency non-QPS permit cannot be transferred, review of a transfer decision by the Administrative Appeals Tribunal is not applicable.

Item 32 inserts regulation 232 into the Principal Regulations to set out the reporting requirements imposed on a person who is granted an emergency non-QPS permit. As the Minister will be required to report to the parties of the Montreal Protocol when a permit is granted to allow emergency non-QPS use of methyl bromide, including the date and amount of use, the permit holder will be required to provide a report to the Minister within 14 days after using the methyl bromide.

Subregulation 232(1) requires the report to be in an approved form, set out information listed in subregulation 232(2), be signed by the permit holder and by any contractor who carried out a fumigation under the emergency permit, and be provided to the Minister within 14 days after using the methyl bromide under the emergency non-QPS permit.

Regulation 232(2) lists the information to be provided in the report on the emergency use, including date of use, amount of methyl bromide used, the type of produce the use was for, application rates, the number of hectares or the number and volume or containers fumigated, and details of contractors, if any, who carried out the fumigation.

A contravention of subregulation 232(1) is an offence of strict liability (subregulation 232(3)) with a maximum penalty of 10 penalty units for an individual or 50 penalty units for a body corporate. The provision of these reports is important as it enables Australia to meet its obligations under the Montreal Protocol. The penalty aligns with existing penalties for comparable offences (a contravention of regulation 231, which imposes a requirement for a non-QPS permit holder to provide a report, is also an offence of strict liability with a maximum penalty of 10 penalty units). Application of strict liability to this offence has been set with consideration given to the guidelines regarding the circumstances in which strict

liability is appropriate set out in *A Guide to Framing Commonwealth Offences, Civil Penalties and Enforcement Powers*. As methyl bromide contributes to the depletion of the ozone layer when released into the atmosphere, and given that most uses of methyl bromide are emissive in nature, it is important that the reports of its use are accurate, up to date and given as soon as possible after its release. The use of strict liability for this offence is necessary to ensure the integrity of the established regulatory regime to prevent environmental harm.

Part 4 – Licences

Division 1 – Equipment licences

HCFCs are ozone depleting substances that are being phased out globally under the Montreal Protocol. To complement the phase out of the production of bulk gases, manufacture or import of all HCFC equipment (equipment that contains HCFCs or uses HCFCs in its operation) will be banned under Schedule 4 of the Act from 1 January 2020, except in certain specific circumstances when an equipment licence may be granted to allow the activity.

Under section 13 of the Act, it is an offence to import ODS (ozone depleting substance) equipment (which includes HCFC equipment) or SGG (synthetic greenhouse gas) equipment (other than by carrying out a Schedule 4 activity or a section 69G activity) or carry out a Schedule 4 activity unless the person holds a licence.

Subsection 13A(5) of the Act provides that an equipment licence allows the licensee to import ODS equipment or SGG equipment (other than by carrying out a Schedule 4 activity or section 69G activity) and any Schedule 4 activities or section 69G activities specified in the licence. A ***Schedule 4 activity*** is defined in section 7 of the Act as the manufacturing or importing of equipment if the equipment contains scheduled substances, or uses scheduled substances in its operation and the manufacturing or importing contravenes Schedule 4 (disregarding subsection 13(2) and (5)). A ***section 69G activity*** is defined as the manufacturing or importing of equipment in contravention of regulations made for the purposes of section 69G (disregarding subsection 69G(4) and (5)).

Equipment licence application fee waivers

Under paragraph 14(1)(d) of the Act a person may apply to the Minister for an equipment licence. The application must be accompanied by the prescribed application fee, unless the fee has been waived in accordance with the regulations (paragraph 14(2)(aa)). Regulation 3C of the Principal Regulations prescribes, for the purposes of paragraph 14(2)(aa) of the Act, the application fee for each of the licence types referred to in subsection 14(1) of the Act and the circumstances in which an application fee may be waived.

Item 39 inserts subregulation 3C(5) into the Principal Regulations to allow the Minister to waive the application fee for an equipment licence if the purpose of the licence is to allow the import of equipment containing 25 kilograms or less of HCFC and the Minister is satisfied that either paragraph 16(6B) of the Act or subregulation 3E(1)(a) applies. This allows for an equipment licence application fee to be waived for HCFC equipment to be imported for test, monitoring, laboratory and analytical, medical, veterinary, defence, industrial safety, or public safety purposes, where no practical alternative exists. Item 40 is required as a consequence of Item 39.

Item 42 amends subregulation 6A to allow for an application to be made to the Administrative Appeals Tribunal to review a decision under new subregulation 3C(5) to refuse to waive the fee for an equipment licence. This ensures these decisions are treated in a similar way to other fee waiver decisions under regulation 3C.

Circumstances in which the Minister may grant equipment licences that allow section 69G activities

Subsection 16(6A) of the Act provides that the Minister must not grant an equipment licence that allows a Schedule 4 activity or section 69G activity in relation to equipment unless the activity is prescribed by the regulations for the purposes of subparagraph 16(6A)(a)(ii) of the Act.

Regulation 3E prescribes, for the purposes of subparagraph 16(6A)(a)(ii) of the Act, the import of HCFC pre-charged air conditioning and refrigeration equipment if the importation of the equipment satisfies the conditions mention in subsection 13(6) of the Act.

Item 41 repeals and replaces subregulation 3E. New regulation 3E prescribes, for the purposes of subparagraph 16(6A)(a)(ii) of the Act, the following section 69G activities:

- Manufacturing or importing equipment that contains HCFCs or uses HCFCs in its operation for test, monitoring or laboratory and analytical purpose where no practical alternative equipment exists to the use of HCFC in the equipment (paragraph 3E(1)(a) and subregulation 3E(2));

- Importing replacement parts for existing HCFC refrigeration or air conditioning equipment (paragraph 3E(1)(b));

- Importing equipment insulated with foam manufactured with HCFC (paragraph 3E(1)(c));

- Importing equipment if the Minister considers that it would be impracticable for the importer to comply with subsection 13(1) of the Act in relation to importing the equipment and it would be impracticable to remove or retrofit the equipment because it is incidental to other equipment that is being imported (or example, air conditioning equipment incorporated into a large boat) (paragraph 3E(1)(d)).

Prohibiting or regulating the manufacture, import, export, distribution or use of equipment

Subsection 69G(1) of the Act provides that the regulations may include provisions prohibiting or regulating the manufacture, import, export, distribution or use of equipment that contains scheduled substances or uses scheduled substances in its operation. Provisions that may be made for the regulations include, but are not limited to, provisions prohibiting or regulating the import of ODS equipment or SGG equipment (subsection 69G(3)). Subsection 69G(4) clarifies that a person does not contravene a regulation made for the purposes section 69G if the person holds an equipment licence that allows the activity. Subsection 69G(5) clarifies that subsection 13(5), which exempts the import of personal or household effects from the requirement to hold a licence, also applies in relation to a regulation made for the purposes of section 69G.

Item 43 inserts a new Division 9.1 (Control of manufacture etc. of equipment containing or using scheduled substances) into the Principal Regulations, and inserts new regulations 913, 914 and 915.

Regulation 913 states the purpose of Division 9.1 is to prohibit or restrict the manufacture, import, export, distribution or use of equipment that contains scheduled substances, or uses scheduled substances in its operation, for the purposes of section 69G of the Act.

Regulation 915 in Subdivision 9.1.2 (Section 69G activities) prohibits the manufacture or import of equipment that contains HCFCs or uses HCFCs in its operation. Regulation 914 makes it an offence of strict liability for a person to carry out an activity that contravenes Subdivision 9.1.2. A contravention of this offence has a maximum penalty of 50 penalty units for an individual. Application of strict liability to this offence has been set with consideration given to the guidelines regarding the circumstances in which strict liability is appropriate set out in *A Guide to Framing Commonwealth Offences, Civil Penalties and Enforcement Powers.* This offence is necessary to ensure compliance with Australia's obligations under the Montreal Protocol. The use of strict liability for this offence is necessary to ensure the integrity of the established regulatory regime to prevent environmental harm.

Note 1 to new regulation 914 makes it clear a person does not contravene Subdivision 9.1.2 if the person holds an equipment licence that allows the activity, in accordance with the exemption in subsection 69G(4) of the Act. Note 2 directs readers to subsection 69G(5), which applies subsection 13(5) to exempt the import of certain personal or household effects from the requirement to hold an equipment licence.

Item 43 also inserts a new heading Division 9.2 (Miscellaneous) before regulation 916 of the Principal Regulations.

Division 2 – Other amendments

Currently, subregulation 3C(2) enables the Minister to waive an application fee for a controlled substances licence or a used substances licence if the licence allows the manufacture, import or export of less than half a tonne of scheduled substances and the Minister is satisfied that the manufacture, import or export is for test purposes. Item 45 expands the circumstances in which an application for a controlled substances licence or a used substances licence may be waived to also include monitoring purposes or laboratory and analytical purposes. This provides a cost effective import mechanism or importers of bulk substances for specialist laboratory and analytical purposes, or monitoring purposes.

Item 44 ensures that subregulation 3C(1) refers to the provision in the Act which enables the application fees to be prescribed.

Fee waiver of licence application fees for controlled substances and used substances licences

The amendment expands the existing fee waiver provisions to include circumstances where the Minister or delegate is satisfied that the manufacture, import or export is for laboratory and analytical purposes, or monitoring purposes. Regulation 3C(2)(a) will apply so that the fee waiver will be available for these new purposes if the licence is to allow manufacture, import or export of less than half a tonne of scheduled substances. The Minister or delegate retains discretion in whether to grant the licence application fee waiver.

The intention is to provide, through the capacity to waive licence fees, a cost effective import mechanism for importers of bulk substances for specialist laboratory and analytical purposes, or monitoring purposes. This will align with the current capacity to waive licence fees for test purposes.

Item 45

Regulation 3C of the Principal Regulations sets out application fees for licences, and provides circumstances where the Minister may waive those application fees.

Existing subregulation 3C(2)(b) specifies that the Minister may waive the application fee for a controlled substance licence or a used substances licence if the manufacture, import or export is for test purposes. Item 45 repeals and replaces subregulation 3C(2)(b) to add monitoring purposes and laboratory and analytical purposes to the purposes for which the Minister may waive the application fee.

Part 5 – Cancellation and suspension of fire protection permits

Subdivision 6A.4.2 of the Regulations sets out the process for the application, issuing and administration of fire protection permits. The award of permits under the fire protection permit scheme is, in large part, based on an assessment of competency, to ensure individuals handling scheduled substances do so with the least risk of emission. The scheme relies on the vocational education and training (VET) system to provide individuals with the knowledge, ability and experience necessary to carry out work in a way that minimises the risk of emission.

It is possible that a fire protection permit holder meets the requirements necessary to be granted a permit (i.e. they successfully completed the required units of competency delivered through the VET sector (see regulation 322)) and yet while holding that permit their competency is called into question; for example because the quality of the training used to support their application is found to be inadequate, or because their work practices or workmanship calls into question their knowledge, ability and experience.

There are a number of scenarios where a licence holder's competency may be questioned and subsequently the licensee found to not possess the relevant knowledge, ability and experience to competently carry out the work covered by one or more handling licences. These include but are not limited to:

a) Where the Australian Skills Quality Authority (ASQA), or other relevant state-based training quality authority, determines that a unit of competency, qualification or recognition of prior learning process, used to obtain a licence

under the fire protection permit scheme has not been delivered to required standards.

b) Where ASQA or other relevant state-based training quality authority has received complaints about a unit of competency, qualification or recognition of prior learning process a licensee has relied upon to obtain a licence under the fire protection permit scheme.

c) Where there is a credible claim from industry concerning the quality or content of a unit of competency, qualification or recognition of prior learning process, delivered through a training organisation to obtain a licence under the fire protection permit scheme.

d) Where compelling evidence emerges to indicate a licensee does not have the knowledge, ability and experience needed to competently carry out the work covered by the licence.

e) Where a licensee has been the subject of substantiated complaints about his/her work and/or it is suspected he/she has caused avoidable emissions.

In these circumstances it may be appropriate for the Minister to suspend the fire protection permit while the permit holder undertakes further training or assessment. Where the Minister or relevant authority is not satisfied that the relevant skills, knowledge and experience has been obtained, the permit may be cancelled.

Item 46

Item 46 inserts paragraph 315(1)(ba) to provide for the suspension or cancellation of a fire protection permit by the Minister if the Minister is satisfied that a permit holder does not have the knowledge, ability and experience necessary to competently carry out the work covered by the permit.

Part 6 – Refund of fees

Application fees for refrigeration and air conditioning (RAC) and fire protection permits are set in the Regulations under regulations 343 and 344, respectively. Application fees are determined on a cost-recovery basis and are intended to address (among other things) the administrative cost of assessing applications. Application fees also cover costs of administering the permit over its duration, including monitoring, engagement and communication activities.

Applicants request application fee refunds for a range of reasons. In most cases it relates to the applicant making a mistake when submitting an online application and payment. The amendments to Part 6 will allow the Minister to refund application fees paid in error by applicants under the RAC and fire protection permit schemes.

Part 6 also streamlines processes relating to the administration of the RAC and fire protection permits to ensure both schemes operate consistently.

Refunding of application fees

The Principal Regulations set out the Minister's powers and functions in relation to RAC and fire protection industry permits (regulations 120 and 311). Items 47 and 52 add an additional power to these existing regulations to allow the Minister to refund application fees for the RAC and fire protection permit schemes.

Items 49 and 54 insert regulations 121B and 313A to specify the circumstances in which the Minister may refund whole or part of an application fee for the RAC and fire protection permit schemes. These circumstances will be when:

- The application fee is paid more than once. For example, an application (and payment) is duplicated by the applicant or by another individual on behalf of the applicant, such as a partner, employer, office assistant, or someone else, and consequently the applicant requests a refund of the duplicate payment.
- Payment was made for more than the fee required for the permit. For example, where an applicant pays more than the relevant application fee and consequently requests a refund of the excess amount.
- The payment was made for the wrong permit type. In this circumstance, the person must have also applied and paid the application fee for the correct type of permit.
- The payment was made for the renewal of a permit more than 6 months prior than the permit's expiry date and the application has not yet been decided. A 6 month renewal timeframe reduces the practical risks of assessing and deciding applications submitted far in advance of the permit expiry date. For instance, an applicant might pay the incorrect fee (as fees increase by CPI each calendar year) or be found to breach permit conditions in the period prior to the renewed permit coming into effect.
- Any other circumstances that the Minister deems appropriate to refund an application fee. For example, where an applicant has died in the period between the submission of their application and the relevant authority's decision, and therefore would not benefit from the permit application being considered.

In these circumstances, the Minister may refund the whole or part of an application fee paid under the RAC and fire protection permit schemes. The Minister will be able to refund an application fee on their own initiative or upon receiving a written application by the person who paid the fee in error. For clarity, the person who paid the fee could be the applicant or someone else who paid the fee on behalf of the applicant.

Regulations 124(1) and 316(1) of the Principal Regulations allow for applications to be made to a relevant authority for reconsideration of decisions on RAC and fire protection permits, respectively. Items 51 and 56 add to these regulations to allow for an application to be made for a reconsideration of a refusal to refund the whole or part of a fee paid for a permit. This will ensure these decisions are treated in a similar way to other permit decisions under regulations 124 and 316. Items 50 and 55 are required as a consequence of items 51 and 56.

Withdrawal of applications

Regulation 121A of the Principal Regulations sets out, inter alia, when an application fee for a RAC industry permit may be withdrawn or be considered to be withdrawn, and that fees are not refundable for a withdrawn application. The amendments clarify that a withdrawn application for a RAC industry permit may be eligible for a refund if the circumstances at regulation 121B apply.

The Principal Regulations do not currently contain withdrawal provisions for applications for fire protection industry permits. The amendments add to Subdivision 6A.4.2 (Fire protection industry permits) regulations governing when an applicant may withdraw an application, the circumstances for when an application is taken to be withdrawn and that a withdrawn application for a fire protection industry permit may only be eligible for a refund if the circumstances at regulation 313A apply. This will ensure consistency of operation between the RAC and fire protection permit schemes.

Item 48

Regulation 121A of the Principal Regulations sets out when an applicant is taken to have withdrawn an application (121A(4)), that an applicant may withdraw an application at any time before the relevant authority decides the application (121A(5)) and that the application fee is not refundable if the applicant withdraws the application or the application is taken to be withdrawn (121A(6)). Item 48 amends regulation 121A(6) to allow for an application fee to be refundable if the circumstances in item 49 apply.

Item 53

Regulation 313 of the Principal Regulations sets out the general process and requirements for a fire protection industry permit application, which currently makes no allowance for an application to be withdrawn or be taken to be withdrawn. Item 53 adds the ability for an applicant to withdraw an application and clarify circumstances for when an application is taken to be withdrawn. This ensures consistency of operation between the RAC and fire protection permit schemes.

An applicant will be able to withdraw an application under the fire protection permit scheme at any time before the relevant authority decides the application (subregulation 313(4)). An application will be considered to have been decided by the relevant authority once the authority issues the instrument for the permit.

An application will be taken to be withdrawn by the applicant if the relevant authority asks the applicant for information or consent, and the application does not provide the information or consent within six months of the authority's request (subregulation 313(5)).

Subregulation 313(6) clarifies that an application fee is not refundable if the applicant withdraws the application, or the application is taken to have been withdrawn, unless the circumstances outlined in item 54 apply.

The provisions in Item 53 are equivalent to those existing and amended under regulation 121A, and will allow the fire protection permit scheme to operate consistently with the RAC permit scheme.

Part 7 – Application and transitional provisions

Part 7 inserts application and transitional provisions.

Item 57

Item 57 inserts a new division -'Division 6—Amendments made by the Ozone Protection and Synthetic Greenhouse Gas Management Amendment (2019 Measures No. 1) Regulations 2019'

Regulation 968 sets out a definition of '***amending regulations***' for the purposes of the Division 6.

Prohibited refrigerant charging

Regulation 969(1) makes clear that regulation 111A (prohibited refrigerant charging) applies to prohibited refrigerant charging on or after 1 January 2020, irrespective of whether the equipment was manufactured before, on or after 1 January 2020. That is, the prohibited refrigerant charging offence applies to new or existing equipment.

Regulation 969(2) makes clear that the new condition on a refrigerant handling licence added by subregulation 135(1)(ba), that the licensee does not engage in prohibited refrigerant charging, applies on or after 1 January 2020 irrespective of whether the equipment was manufactured before, on or after 1 January 2020, or the relevant licence was granted before, on or after 1 January 2020. That is, the prohibited refrigerant charging licence condition applies to new or existing equipment and new or existing licences.

Regulation 969(3) makes clear that the new condition on a refrigerant trading authorisation added by subregulation 141(1)(ba), that the authorisation holder does not engage in prohibited refrigerant charging, applies on or after 1 January 2020 irrespective of whether the equipment was manufactured before, on or after 1 January 2020, or the relevant authorisation was granted before, on or after 1 January 2020. That is, the prohibited refrigerant charging authorisation condition applies to new or existing equipment and new or existing authorisations.

Prohibited refrigerant charging will apply to existing equipment as this type of equipment may have a life span of 20 years or more and application to existing equipment is necessary to protect the environment. This prohibition will assist to protect equipment owners from poor maintenance practices as well as protecting the environment, as charging refrigeration and air conditioning equipment with refrigerant other than the design refrigerant may lead to inefficient operation and the equipment not lasting its full design life. Existing refrigerant handling licence holders and refrigerant trading authorisation holders will be advised of this new prohibited conduct and change to the licence and trading authorisation conditions as required by the Principal Regulations. Licence and trading authorisation holders are required

to adhere to the relevant Australian Standards and best practice under these standards already largely excludes the type of charging covered by this prohibition.

Prohibited extinguishing agent charging

Regulation 970(1) makes clear that regulation 303A (prohibited refrigerant charging) applies to prohibited extinguishing agent charging on or after 1 January 2020, irrespective of whether the equipment was manufactured before, on or after 1 January 2020. That is, the prohibited extinguishing agent charging offence applies to new or existing equipment.

Regulation 970(2) makes clear that the new condition on a extinguishing agent handling licence added by subregulation 326(1)(aa), that the licensee does not engage in prohibited extinguishing agent charging, applies on or after 1 January 2020 irrespective of whether the equipment was manufactured before, on or after 1 January 2020, or the relevant licence was granted before, on or after 1 January 2020. That is, the prohibited extinguishing agent charging licence condition applies to new or existing equipment and new or existing licences.

Regulation 970(3) makes clear that the new condition on a extinguishing agent trading authorisation added by subregulation 332(1)(ba), that the authorisation holder does not engage in prohibited extinguishing agent charging, applies on or after 1 January 2020 irrespective of whether the equipment was manufactured before, on or after 1 January 2020, or the relevant authorisation was granted before, on or after 1 January 2020. That is, the prohibited extinguishing agent charging authorisation condition applies to new or existing equipment and new or existing authorisations.

Prohibited extinguishing agent charging will apply to existing equipment as fire protection equipment typically has an operational life of 20 years or more. Application of this prohibition to the existing fleet of equipment is necessary to protect the environment from this long-term emissions risk. The application of this prohibition to existing equipment also reduces incentive to delay or avoid the transition away from HFCs, or to continue to operate old, inefficient equipment which could pose an increased risk of emission. Existing extinguishing agent handling licence holders and extinguishing agent trading authorisation holders will be advised of this new prohibited conduct and change to the licence and trading authorisation conditions as required by the Principal Regulations.

Reporting sales of methyl bromide

Regulation 971 provides that the amendments to regulation 230 apply only in relation to reporting periods starting on or after 1 January 2020. That is, the reporting requirements in existing regulation 230 apply to sales made by methyl bromide suppliers until the end of the last quarter of 2019 and within 14 days after the end of that quarter, a supplier must provide a report in accordance with the requirements of existing regulation 230.

Equipment licences

Regulation 972(1) provides that subregulation 3C(5) applies to waiving an equipment licence application fee on or after 1 January 2020, whether the application was made before, on or after 1 January 2020.

Regulation 972(2) provides that amendments to regulation 3E apply in relation to equipment licence applications made on or after 1 January 2020, or to an equipment licence application made earlier but where a determination on the licence has not been made by 1 January 2020.

Miscellaneous - controlled substance or used substance licence

Regulation 972(3) provides that subregulation 3C(2)(b) applies to waiving application fees for controlled substance or used substance licences or after 1 January 2020, whether the application was made before, on or after 1 January 2020.

ATTACHMENT B

Statement of Compatibility with Human Rights

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

Ozone Protection and Synthetic Greenhouse Gas Management Amendment (2019 Measures No. 1) Regulations 2019

This Disallowable Legislative Instrument is 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 *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* (the Act) implements Australia's obligations under the Vienna Convention for the Protection of the Ozone Layer and its Montreal Protocol on Substances that Deplete the Ozone Layer and the United Nations Framework Convention on Climate Change and its Kyoto Protocol.

The Review of the Ozone Protection and Synthetic Greenhouse Gas legislation (the Review) completed in 2016, identified measures to further reduce emissions of ozone depleting substances and synthetic greenhouse gases and improve and streamline the operation of the legislation, including reducing regulatory compliance costs and burden on business. The Australian Government agreed to all the measures recommended by the Review on 5 May 2016. The Minister for the Environment agreed to the additional minor amendments on 19 September 2019.

The *Ozone Protection and Synthetic Greenhouse Gas Management Amendment (2019 Measures No. 1) Regulations 2019* (the Amendment Regulations) amend the *Ozone Protection and Synthetic Greenhouse Gas Management Regulations 1995* (the Principal Regulations) to implement recommendations of the Review and make minor amendments to:

- Allow refund of application fees for the refrigeration and air conditioning industry and fire protection industry permit schemes;
- Allow the cancellation or suspension of a fire protection industry permit where a permit holder does not have the necessary knowledge, ability and experience to competently carry out work;
- Prohibit the use of a scheduled substance in fire protection equipment or refrigeration and air conditioning equipment that has a higher global warming potential than the substance the equipment was designed to use;
- Facilitate the implementation of the ban commencing under the Act on 1 January 2020 on the import and manufacture of bulk hydrochlorofluorocarbon (HCFC) and equipment containing or using HCFCs by:
  - Allowing for a licence to be granted to import equipment using HCFCs for test, monitoring, laboratory and analytical purposes where no practical alternative exists;

  - Allowing for bulk HCFC manufactured or imported on or after 1 January 2020 to be used for servicing existing refrigeration and air conditioning equipment, or maintaining existing fire protection equipment, in line with the Montreal Protocol;
- Extend the circumstances where licence application fees can be waived by;
  - Allowing for the waiver of an HCFC equipment import licence application fee;
  - Allowing for the waiver of controlled substances and used substances licence application fees where the manufacture, import or export is for monitoring, laboratory or analytical purposes;
- Reduce the reporting requirements for suppliers of methyl bromide by;
  - Reducing reporting frequency from quarterly to twice yearly;
  - Removing the requirement to report on sales where the whole amount of methyl bromide sold is for quarantine and pre-shipment (QPS) uses, or where no methyl bromide is sold in a reporting period; and
- Establish a process to enable non-quarantine and pre-shipment (non-QPS) permits to be granted for use of methyl bromide in emergency circumstances, for example, use in an unusual disease outbreak in a crop or production facility where no other fumigant is suitable, consistent with the Montreal Protocol, and an associated reporting regime.

Human rights implications

The Amendment Regulations engages the following human rights:

- The right to an effective remedy in Article 2(3) of the International Covenant on Civil and Political Rights (ICCPR);

- The right to a fair trial in Article 14(1) of the ICCPR;

- The right to the presumption of innocence in Article 14(2) of the ICCPR.

Right to an effective remedy

Article 2(3) of the ICCPR ensures that any person whose rights or freedoms are violated shall have an effective remedy, and that a person in claiming such a remedy shall have his rights determined by a competent judicial, administrative or legislative authority.

Cancellation and suspension of fire protection permits

Part 5 of the Amendment Regulations allows for the suspension or cancellation of a fire protection industry permit by the Minister if the Minister is satisfied that a permit holder does not have the knowledge, ability and experience necessary to competently carry out the work covered by the permit.

The Principal Regulations already provide that a decision to suspend or cancel a fire protection industry permit may be reconsidered upon application to the relevant authority using processes outlined in Regulation 316. The process involves the affected person applying directly to the relevant authority for a reconsideration of the decision, within 21 days of the day on which the notice of the decision was issued by the relevant authority.

If the person is not satisfied with the outcome of the reconsidered decision, existing Regulation 317 allows the affected person to apply to the AAT for review of the reconsidered decision. This two-stage process provides two mechanisms for affected persons to seek a review of decisions.

Granting of non-QPS permits

Part 3 of the Amendment Regulations enables the Minister to grant non-QPS permits for the use of methyl bromide in emergency circumstances. Such emergency circumstances could include an unusual disease outbreak in a crop or production facility where methyl bromide is the only suitable fumigant. To grant a permit, the Minister must be satisfied that an emergency situation exists and it is appropriate to grant the permit to deal with the emergency situation.

Regulation 238 of the Principal Regulations allows for an affected person to apply to the Administrative Appeals Tribunal (AAT) for review of decisions made in relation to non-QPS permits. Decisions by the Minister to refuse to grant or vary a non-QPS permit for emergency use will be covered by regulation 238 and therefore open to review by the AAT.

Waiver of licence fees

Part 4 of the Amendment Regulations enables the Minister to waive the application fee for an equipment licence in certain circumstances, including when granting an equipment licence that permits manufacture or import of HCFC equipment in certain test, monitoring, or laboratory and analytical circumstances.

The amendments prescribe that decisions by the Minister to refuse to waive application fees for an equipment licence, in circumstances described in Part 4 of the Amendment Regulations, may be reviewed by the AAT. This provides a mechanism for affected persons to seek a review of decisions.

Refund of fees

Part 6 of the Amendment Regulations sets out the circumstances in which the Minister may decide to refund application fees for refrigeration and air conditioning (RAC) and the fire protection permits.

The Amendment Regulations also provide that a refusal to refund application fees for RAC and fire protection permits may be reconsidered upon application to the relevant authority using existing processes outlined in Regulations 124 and 316. The process involves the affected person applying directly to the relevant authority for a reconsideration of the decision, within 21 days of the day on which the notice of the decision was issued by the relevant authority.

If the person is not satisfied with the outcome of the reconsidered decision, already existing Regulations 125 and 317 allows the affected person to apply to the AAT for review of the reconsidered decision. This two-stage process provides two mechanisms for affected persons to seek a review of decisions.

Right to a fair trial

Article 14(1) of the ICCPR guarantees the right to a fair trial and fair hearing in relation to both criminal and civil proceedings.

Infringement notices

Regulation 906A lists offences in the Regulations for which an infringement notice may be issued. The offences of prohibited refrigerant charging and prohibited extinguishing agent charging, created by the Amendment Regulations, have been included in the list at regulation 906A. These provisions will enable an appointed inspector to issue an infringement notice under Part 8 of the Regulations where the inspector believes, on reasonable grounds, that either offence has been contravened.

An infringement notice issued under Part 8 of the Regulations is a notice of a pecuniary penalty imposed on the person. It sets out the particulars of an alleged contravention the offence. An infringement notice gives the person to whom the notice is issued the option of paying the penalty set out in the notice, or electing to have the matter dealt by a court. If the person does not pay the amount in the notice, they may be prosecuted for the alleged contravention. This engages the right to a fair and public hearing and the other criminal process rights and minimum guarantees in Article 14 of the ICCPR. As the person may elect to have the matter heard by a court, rather than pay the penalty, the rights to a fair and public hearing are not limited. Therefore, the minimum guarantees in criminal proceedings or other process rights provided for by Article 14 of the ICCPR are not limited.

Right to the presumption of innocence

Article 14(2) of the ICCPR protects the right to be presumed innocent until proven guilty according to law.

Strict liability

Strict liability offences engage and limit the presumption of innocence as they allow for the imposition of criminal liability without the need to prove fault. However, the defence of mistake of fact is still available to the defendant. This ensures that a person cannot be held liable if he or she had an honest and reasonable belief that they were complying with relevant obligations.

The Amendment Regulations applies strict liability to a number of new offence provisions:

- Regulations 111A (Offence – prohibited refrigerant charging) and 303A (prohibited extinguishing agent charging). An offence is committed if a person engages in prohibited refrigerant charging or prohibited extinguishing agent charging respectively. Contravention of these regulations attracts a maximum penalty of 10 penalty units.
- Regulation 232 (Reports of use in emergency situations). It is an offence for a person not to report on the emergency methyl bromide use conducted under their non-QPS

emergency use permit. Contravention of this regulation attracts a maximum penalty of 10 penalty units.

- Regulation 914 (Offence – section 69G activities). It is an offence for a person to manufacture or import HCFC equipment. Contravention of this regulation attracts a maximum penalty of 50 penalty units.

Application of strict liability to these offences has been set with consideration given to the guidelines regarding the circumstances in which strict liability is appropriate as set out in *A Guide to Framing Commonwealth Offences, Civil Penalties and Enforcement Powers*. The penalties for the strict liability offences do not include imprisonment and do not exceed 50 penalty units for an individual.

Strict liability offences are used throughout the Act and Regulations and are necessary to ensure the integrity of the established regulatory regime to prevent environmental harm and to ensure compliance with Australia's obligations under the Montreal Protocol.

Conclusion

The Amendment Regulations is compatible with human rights because it promotes the right to an effective remedy under Article 2(3) of the ICCPR. To the extent that it engages and limits other human rights (including Article 14(1) and 14(2)), those limitations are reasonable, necessary and proportionate to achieve the legitimate aims and the ongoing efficient and effective operation of the Regulations.

The Hon Sussan Ley MP

Minister for the Environment