

## **EXPLANATORY STATEMENT**

Issued by the authority of the Minister for the Environment and Water

*Ozone Protection and Synthetic Greenhouse Gas Management Act 1989*

*Ozone Protection and Synthetic Greenhouse Gas Management Amendment (2022 Measures No.1) Regulations 2022*

### **Legislative Authority**

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 *Kyoto Protocol* and *Paris Agreement*.

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.

Section 36G of the Act provides that the regulations may prescribe certain matters in relation to reserve hydrofluorocarbon (HFC) quotas. These matters include the process for applying for reserve HFC quotas, the process and circumstances for the Minister to allocate reserve HFC quotas, and the size of the reserve HFC quota limit for a calendar year.

Section 45A of the Act provides that the regulations may make provision for the regulation of scheduled substances, including the sale, purchase and disposal of scheduled substances; storage, use and handling of scheduled substances; labelling requirements for scheduled substances and for equipment containing or using such substances; conferring certain functions on persons or bodies; and other incidental matters.

The *Ozone Protection and Synthetic Greenhouse Gas Management Amendment (2022 Measures No. 1) Regulations 2022* (the Amendment Regulations) are made under section 70 of the Act and are made for the purposes of sections 36G and 45A of the Act. The Amendment Regulations rely on subsection 33(3) of the *Acts Interpretation Act 1901* to amend the *Ozone Protection and Synthetic Greenhouse Gas Management Regulations 1995* (the Principal Regulations).

### **Purpose**

The Amendment Regulations amend the Principal Regulations to:

- expand the existing reserve HFC quota provisions in the Principal Regulations so they apply on an ongoing basis, rather than just for the 2022 calendar year. This would provide appropriate flexibility in the long term to manage shipping and freight delays caused by events outside the importer's control. This includes amendments to:
  - enable the allocation of reserve HFC quota for a relevant calendar year to importers to hold a licence and quota to import HFCs in the previous year and have ordered before 1 October of the previous year for arrival in Australia in

that year, but the import is delayed until the relevant calendar year due to delays outside of the importer's control; and

- ensure that imports made under a reserve HFC quota in a calendar year count towards the importer's HFC imports for the previous year for the purposes of calculating the importer's future quota entitlement; and
- prescribe the method for working out the reserve HFC quota limit for a calendar year. The total amount of reserve HFC quota allocated to importers must not exceed the reserve quota limit; and
- enable a person to apply for, and the relevant authority to grant, a special circumstances exemption for activities relating to the end use of refrigerant in relation to refrigeration and air-conditioning (RAC) equipment in specified circumstances. This would allow suitable persons and organisations to apply for a special circumstances exemption to carry out RAC activities in certain limited circumstances where it is not appropriate or practicable to apply for the relevant licence, authorisation or permit. Conditions would be able to be imposed on the special circumstances exemption to maintain oversight of persons and organisations covered by the exemption; and

The Amendment Regulations also make minor amendments (including to relevant offence provisions) to align the existing special circumstances exemption in the fire protection context with the new special circumstances exemption in the RAC context.

## **Background**

### *Reserve HFC quota measure*

Consistent with Australia's obligations under the Montreal Protocol, the import and manufacture of HFCs is subject to a phasedown under the Act and the Principal Regulations. The phase-down is implemented by capping the overall amount of HFCs allowed to be imported into, or manufactured in, Australia in a calendar year (known in the Act as the 'HFC industry limit') and by allocating shares of the HFC industry limit to individual importers via a quota and reserve quota system. No HFCs are currently manufactured in Australia.

Delays to manufacture, freight and shipping are becoming increasingly frequent, caused in part by global events. To ensure sufficient supply of HFCs in Australia into the future, it is important that HFC that was intended to be imported into Australia in a previous calendar year, but is not imported until the relevant calendar year due to factors outside the importer's control, is:

- covered by a quota that is in force at the actual time of the import so that the importer is not breaching their licence conditions; and
- does not count against the importer's quota for that calendar year because that would unfairly reduce the quota the importer has available for the rest of that year; and
- counts as part of the regulated HFC activities the importer engaged in for the previous calendar year, for the purpose of calculating the importer's future quota entitlements,

so importers do not have future quota entitlements reduced due to factors outside their control.

Australia has implemented an accelerated HFC phase-down when compared to Australia's limit under the Montreal Protocol. The HFC industry limit is in the most part well below the annual limits set by the Montreal Protocol. As such, there is space for reserve HFC quota to be allocated each year, being the difference between the HFC industry limit and the Montreal Protocol limit, while also ensuring that Australia's international obligations under the Montreal Protocol continue to be met.

#### *Special circumstances exemption measure*

Under the Principal Regulations, a person or organisation must hold a RAC industry permit (such as a refrigerant handling licence or a refrigerant trading authorisation) to handle, acquire, possess or dispose of controlled refrigerant and to work on RAC equipment that uses a controlled refrigerant.

However, in some limited circumstances it may be inappropriate or impracticable for a person to obtain the required permit to carry out RAC activities. For instance, foreign military persons temporarily operating in Australia may not have the required qualifications (as set out in the Principal Regulations) to obtain a handling licence, but may have equivalent qualifications or experience which makes them suitable to carry out the relevant activities.

The special circumstances exemption would allow suitably qualified and experienced persons and organisations to carry out RAC activities where it is not practicable to apply for a permit, and in only certain circumstances. Conditions would be able to be imposed on the special circumstances exemption to maintain oversight of persons and organisations covered by the exemption and to ensure compliance with practices that minimise emissions and contribute to the Act's emissions reduction objectives.

#### **Consultation**

Consultation in relation to the reserve HFC quota measure was undertaken in 2021 with industry through Refrigerants Australia, the peak industry group representing the refrigerant supply chain, which is the user of the majority of HFCs and interacts directly with HFC import permit holders. Advice from industry indicated that there is a significant risk of ongoing delays to shipping of imports into Australia. Consultation feedback was broadly supportive of the reserve HFC quota measure in the Amendment Regulations.

Consultation in relation to the special circumstances exemption measure was undertaken with the Department of Defence, as defence-related activities are considered most likely to be affected by special circumstances exemptions. Consultation was also undertaken with the Australian Refrigeration Council which administers the RAC industry permit scheme as the relevant Board. Consultation feedback was broadly supportive of the special circumstances exemption measure in the Amendment Regulations.

The Attorney-General's Department was consulted in the development of the Amendment Regulations. The Office of Best Practice Regulation advised that a Regulatory Impact Statement is not required.

No consultation was conducted in relation to the specific instrument.

## **Details and Operation**

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

The Amendment Regulations commence on the day after registration on the Federal Register of Legislation.

Details of the Amendment Regulations are set out in Attachment A.

The Amendment Regulations are compatible with the human rights and freedoms recognised or declared under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A full statement of compatibility is set out in Attachment B.

**Details of the *Ozone Protection and Synthetic Greenhouse Gas Management Amendment (2022 Measures No. 1) Regulations 2022***

**Section 1 – Name**

1. This section provides that the name of the instrument is the *Ozone Protection and Synthetic Greenhouse Gas Management Amendment (2022 Measures No. 1) Regulations 2022* (the Amendment Regulations).

**Section 2 – Commencement**

2. This section provides that the Amendment Regulations commence on the day after they are registered on the Federal Register of Legislation.

**Section 3 – Authority**

3. This section provides that the Amendment Regulations 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 the Amendment Regulations 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.
5. This enables the amendment of the *Ozone Protection and Synthetic Greenhouse Gas Management Regulations 1995* (the Principal Regulations).

**Schedule 1 – Amendments**

**Part 1 – Amendments to reserve HFC quotas**

***Ozone Protection and Synthetic Greenhouse Gas Management Regulations 1995***

6. The Montreal Protocol limits the amount of hydrofluorocarbons (HFCs) that can be consumed by Australia each calendar year. Consumed for this purpose means the amount of HFCs produced and imported minus the amount of HFCs exported. The Montreal Protocol HFC phase-down schedule requires Australia to achieve an 85% phase-down of HFC imports by 31 December 2036. To do this, Australia has implemented a system of quota and reserve quota. HFC quota and reserve HFC quota (if used) combined in any calendar year must not exceed Australia's HFC limit under the Montreal Protocol for that year.
7. Australia has implemented an accelerated HFC phase-down when compared to Australia's annual limits under the Montreal Protocol. The HFC industry limit set out in regulation 42 of the Principal Regulations is in the most part well below the annual limits set by the Montreal Protocol. As such, there is space for reserve quota to be allocated each year, being the difference between the industry limit in regulation 42 and the Montreal Protocol limit. This provides flexibility in the administration of the

HFC phase-down where required, such as international shipping and freight delays caused by global events.

8. Where delays outside the importer's control cause HFC that was intended to be imported into Australia in a certain calendar year, to not be imported until the next calendar year, it is important that the HFC:
  - be covered by a quota that is in force at the time of the actual import so that the importer is not breaching their licence conditions;
  - does not count against the importer's quota at the time of the actual import because that would unfairly reduce the quota the importer has available for the rest of that calendar year and unnecessarily reduces the amount of HFCs available in the Australian market; and
  - count as part of the regulated HFC activities the importer engaged in for the calendar year the import was intended for, for the purpose of calculating the importer's future quota entitlements, so importers do not have future quota entitlements reduced due to factors outside their control.
9. Division 4A.4 of the Principal Regulations already allows the Minister to allocate reserve HFC quota to importers for the 2022 calendar year. Reserve HFC quota could be allocated that would cover an amount of HFC equivalent to the amount of a consignment that the importer could show was ordered at least 3 months before the end of 2021 and where delivery to Australia was delayed until 2022 due to manufacture, transport or shipping delays outside the importer's control. This would put the person back in the same position as they would have been if their shipments had not been delayed due to factors outside of their control.
10. The amendments in Part 1 of Schedule 1 to the Amendment Regulations allow for the ongoing allocation of reserve HFC quota on an annual basis by removing the limitation of the Minister to allocate reserve HFC quota for the 2022 calendar year only. This provides appropriate flexibility to manage unavoidable delays, particularly in international manufacture and freight over the long-term.

#### **Item [1] – Regulation 40**

11. Regulation 40 of the Principal Regulations sets out a simplified outline of Part 4A of the Principal Regulations. Part 4A deals with HFC quotas.
12. The purpose of the simplified outline is to assist readers to understand the substantive provisions of Part 4A of the Principal Regulations. It is not intended to be comprehensive, nor to replace those provisions. It is intended that readers should rely on the substantive provisions in Part 4A of the Principal Regulations.
13. Item 1 of Schedule 1 to the Amendment Regulations amends the simplified outline in regulation 40 of the Principal Regulations to update the simplified outline of Part 4A

so as to reflect the amendments made by Part 1 of Schedule 1 to the Amendment Regulations.

**Item [2] – Subregulation 50(5)**

14. Consistent with Australia's international obligations under the Kigali Amendment to the Montreal Protocol, Part IVA of the Act and Part 4A of the Principal Regulations provide for the phase-down of HFCs through a reducing quota system over 18 years. A person must have been allocated an HFC quota to be able to import bulk HFC gas into Australia or to manufacture bulk HFCs.
15. Only persons with a synthetic greenhouse gas (SGG) licence and who have been allocated quota for the relevant period can engage in a *regulated HFC activity*. Under section 36B of the Act, a regulated HFC activity is the manufacture of HFCs or import of HFCs into Australia. There are currently no HFCs manufactured in Australia.
16. Section 36C of the Act allows the regulations to prescribe, among other things, the size of HFC quotas or the method for calculating the size of HFC quotas. HFC quota is divided into grandfathered and non-grandfathered quota for a 2-year quota allocation period. Quota is issued for each calendar year of the 2-year quota allocation.
17. Grandfathered quota is reserved for past importers and is allocated based on their market share. Grandfathered quota for the first quota allocation period (2018 and 2019) was available to licensees who had imported or manufactured HFCs (and HCFCs) during the period 2009 to 2014. Grandfathered quota for the second and later allocation periods is only available to those who already held grandfathered quota for an earlier quota allocation period. Grandfathered quota makes up most of the quota allocation (90% for the first quota allocation period and 95% for all other quota allocation periods (see regulation 46 of the Principal Regulations).
18. The amount of grandfathered quota a person is entitled to for a particular quota allocation period is worked out by the method in regulation 50 of the Principal Regulations and is based on the person's previous regulated HFC activities.
19. While a quota allocation period is 2 years, the quota is allocated on a per calendar year basis. Under the method in subregulation 50(4), if a person's regulated HFC activities in a calendar year do not equal at least 90% of their quota for that calendar year, their quota for future years will be lower than the maximum possible for that person. This was intended to encourage quota holders to use as much of their quota as possible, consistent with the phase-down approach of having the available amount of HFC approximately match the demand in the market throughout the phase-down period, without sharper, unexpected drops in availability.

20. Item 2 of Schedule 1 to the Amendment Regulations amends subregulation 50(5) of the Principal Regulations by repealing the existing subregulation (including the note) and substituting a new subregulation 50(5).
21. New subregulation 50(5) has the effect that, for the purposes of calculating the *annual amount of licensed activities* (that is, the amount of regulated HFC activities) a person engaged in for a calendar year, consignments of HFCs that are imported into Australia for a calendar year under allocated reserve HFC quota are taken to have been imported into Australia in the previous year, rather than the current year.
22. This means that, when calculating the person's grandfathered quota entitlement for a quota allocation period (which is based on the person's imports versus quota for previous calendar years), the HFC that was intended to be imported into Australia in a particular calendar year, but was not imported until the next year, due to factors outside the importer's control, is counted as part of the regulated HFC activities the person engaged in for that particular calendar year.
23. This puts the person back in the same position as they would have been if their shipments had not been delayed and ensures the person's future quota entitlements would not be unfairly affected due to factors outside their control.

**Item [3] – Paragraph 60(1)(a)**

24. Regulation 60 of the Principal Regulations outlines the purpose of Division 4A.4, which prescribes matters relating to reserve HFC quota.
25. Subsection 36G(1) of the Act provides that the Minister must not allocate a reserve HFC quota unless satisfied that circumstances prescribed by the regulations exist.
26. Subsection 36G(2) of the Act allows the regulations to make provision in relation to, among other things, processes for applying for reserve HFC quotas, processes for the Minister to allocate reserve HFC quota, the size of reserve HFC quotas or the method for calculating reserve HFC quotas, and the period (no longer than 12 months) during which each reserve HFC quota is in force.
27. Regulation 60 of the Principal Regulations has the effect that, for the purposes of subsection 36G(2) of the Act, Division 4A.4 of the Principal Regulations provides for and in relation to:
  - a process for applying for reserve HFC quotas, including who may apply; and
  - a process for the Minister to allocate reserve HFC quotas to SGG licensees; and
  - a process for the Minister to vary the size of reserve HFC quotas, or cancel reserve HFC quotas, that have been allocated; and



- the method for working out the size of reserve HFC quotas.
28. Subsection 36G(3) of the Act allows the regulations to prescribe the reserve HFC quota limit or the method for working out the reserve HFC quota limit. Regulation 60 of the Principal Regulations also provides that, for the purposes of subsection 36G(3) of the Act, Division 4A.4 of the Principal Regulations prescribes the reserve HFC quota limit.
  29. Item 3 of Schedule 1 to the Amendment Regulations amends paragraph 60(1)(a) of the Principal Regulations to remove the reference to ‘the 2022’ calendar year, and substitute a reference to ‘a’ calendar year. This amendment clarifies that one of the purposes of Division 4A.4 of the Principal Regulations is to provide a process for applying for reserve HFC quotas for any calendar year.
  30. This amendment is consequential to the amendments to regulation 61 (see items 5 to 9), which have the combined effect of allowing a person to apply for reserve HFC quota for any calendar year, rather than the 2022 calendar year only.

**Item [4] – Paragraphs 60(1)(b) and (d)**

31. Item 4 of Schedule 1 to the Amendment Regulations amends paragraphs 60(1)(b) and (d) of the Principal Regulations to clarify that references to that ‘year’ are references to that ‘calendar’ year. This amendment would help clarify that the purposes of Division 4A.4 of the Principal Regulations include providing a process for the Minister to allocate reserve HFC quotas for a particular calendar year (that a person has applied for), and the method for working out the size of reserve HFC quotas for that same calendar year.
32. This amendment is consequential to the amendments to regulation 62 (see items 10 to 17), which have the combined effect of allowing the Minister to allocate reserve HFC quota for any calendar year, rather than the 2022 calendar year only.

**Item [5] – Subregulation 61(1)**

33. Regulation 61 of the Principal Regulations provides the process for a person to apply for reserve HFC quota. It sets out who may apply for reserve HFC quota and the requirements for that application.
34. Item 5 of Schedule 1 to the Amendment Regulations amends subregulation 61(1) of the Principal Regulations to omit the reference to ‘the 2022’ calendar year and substitute a reference to ‘a’ calendar year.

**Item [6] – Paragraph 61(1)(a)**

35. Item 6 of Schedule 1 to the Amendment Regulations amends paragraph 61(1)(a) of the Principal Regulations to omit the references to the ‘2021 and 2022 calendar years’ and substitute a reference to the ‘calendar year and the previous calendar year’.

### **Item [7] – Paragraph 61(1)(b)**

36. Item 7 of Schedule 1 to the Amendment Regulations amends paragraph 61(1)(b) of the Principal Regulations to omit the reference to the ‘2021’ calendar year and substitute a reference to the ‘previous’ calendar year.
37. The combined effect of the amendments in items 5 to 7 is to allow a person to apply for reserve HFC quota for any calendar year, not just 2022. The person may only apply for reserve HFC quota for a calendar year if:
  - the person holds an SGG licence that covers the calendar year and the previous calendar year; and
  - the person has been allocated an HFC quota for the previous year.
38. These requirements are intended to ensure that only persons who hold the appropriate licences and have been allocated HFC quota for the relevant years are able to apply for reserve HFC quota for a calendar year.

### **Item [8] – Subparagraph 61(2)(b)(i)**

39. Item 8 of Schedule 1 to the Amendment Regulations amends subparagraph 61(2)(b)(i) of the Principal Regulations to omit ‘2022 calendar year—1 December 2021’ and substitute ‘calendar year—1 December of the previous calendar year’.

### **Item [9] – Subparagraph 61(2)(b)(ii)**

40. Item 9 of Schedule 1 to the Amendment Regulations amends subparagraph 61(2)(b)(ii) of the Principal Regulations to omit the reference to the ‘2022’ calendar year and substitute a reference to ‘of the calendar year’.
41. The combined effect of the amendments in items 8 and 9 are to require that an application for reserve HFC quota must be given to the Minister on or before:
  - if, at the time the application is made, the person has not been allocated an HFC quota for the calendar year – 1 December of the previous year; or
  - otherwise – 31 January of the relevant calendar year.
42. This requirement is in addition to the existing requirement at paragraph 61(2)(a) of the Principal Regulations that the application must be in the approved form.
43. As the HFC quotas for 2023 have already been allocated, applications for reserve HFC quota for the 2023 calendar year will need to be made before 31 January 2023.

#### **Item [10] – Subregulation 62(1)**

44. Regulation 62 of the Principal Regulations provides the process for the allocation of reserve HFC quotas. It provides the Minister with the ability to allocate reserve HFC quota, including the circumstances in which reserve HFC quota may be allocated and limits on the size of the reserve HFC quota that may be allocated.
45. Item 10 of Schedule 1 to the Amendment Regulations amends subregulation 62(1) of the Principal Regulations to omit the reference to the first occurring ‘2022’ and substitute a reference to ‘a’ calendar year.

#### **Item [11] – Paragraph 62(1)(a)**

46. Item 11 of Schedule 1 to the Amendment Regulations amends paragraph 62(1)(a) of the Principal Regulations to omit a reference to ‘that year’ and substitute a reference to ‘the calendar year’.

#### **Item [12] – Subparagraph 62(1)(b)(i)**

47. Item 12 of Schedule 1 to the Amendment Regulations amends subparagraph 62(1)(b)(i) of the Principal Regulations to omit the reference to the ‘2021’ calendar year and substitute a reference to the ‘of the previous calendar year’.

#### **Item [13] – Subparagraph 62(1)(b)(ii)**

48. Item 13 of Schedule 1 to the Amendment Regulations amends subparagraph 62(1)(b)(ii) of the Principal Regulations to omit the reference to the ‘2021’ calendar year and substitute a reference to the ‘previous’ calendar year.

#### **Item [14] – Subparagraph 62(1)(b)(iii)**

49. Item 14 of Schedule 1 to the Amendment Regulations amends subparagraph 62(1)(b)(iii) of the Principal Regulations to omit the reference to ‘2022’.

#### **Item [15] – Paragraph 62(1)(c)**

50. Item 15 of Schedule 1 to the Amendment Regulations amends paragraph 62(1)(c) of the Principal Regulations to omit the reference to the ‘2021’ calendar year, wherever occurring, and substitute a reference to the ‘previous’ calendar year.
51. The combined effect of the amendments in items 10 to 15 is to allow the Minister to allocate reserve HFC quota in the specified circumstances for any calendar year, not just 2022. The Minister would be able to allocate a reserve HFC quota to a person for a calendar year if the person applies for reserve HFC quota in accordance with regulation 61, and the Minister is satisfied that there are one or more consignments of HFCs in relation to which the following conditions are satisfied:

- the person ordered the consignments before 1 October of the previous calendar year;

- at the time the order was placed, it was reasonable to expect that the consignment would be imported before the end of the previous calendar year;
  - the importation of the consignment was, or is likely to be, delayed until the relevant calendar year, for reasons outside of the person's control;
  - the sum of the total quantity of the HFCs (expressed in carbon dioxide equivalent (CO<sub>2</sub>e) megatonnes) involved in regulated HFC activities engaged in by the person during the previous calendar year, and the total quantity of HFCs (expressed in CO<sub>2</sub>e megatonnes) in the relevant consignments will not be more than the person's HFC quota for the previous calendar year.
52. The total amount of bulk HFC in the consignments covered by a reserve HFC quota allocation in a calendar year would not be able to be so large as to exceed the person's total HFC quota for the previous year when added to the person's regulated HFC activities for the previous year. This ensures that an importer would not be able to import more HFCs in reliance on reserve HFC quota than they would have otherwise been entitled to import into Australia.

**Item [16] – Subregulation 62(2)**

53. Item 16 of Schedule 1 to the Amendment Regulations amends subregulation 62(2) of the Principal Regulations to omit the reference to '2022'.
54. The effect of this amendment is to clarify the size of a reserve HFC quota allocation to a person for a calendar year, not just 2022. The size of a reserve HFC quota allocated to a person for a calendar year is the amount determined by the Minister, which must not exceed the quantity of HFCs (expressed in CO<sub>2</sub>e megatonnes) in the consignments that are expected to be delayed until that calendar year.
55. It is anticipated that the Minister will generally allocate an amount of reserve HFC quota to a person that matches the amount of HFC in the person's delayed consignments (as long as this amount added to the imports that arrived in the previous calendar year would not exceed the person's HFC quota for the previous calendar year). However, if the sum of the applications for reserve HFC quota exceed the reserve HFC quota limit, importers may be allocated reduced amounts to ensure compliance with this limit. Compliance with the reserve HFC quota limit is necessary to meet Australia's international obligations under the Montreal Protocol.

**Item [17] – Paragraph 62(4)(b)**

56. Subregulation 62(3) of the Principal Regulations provides that a reserve HFC quota is allocated by written notice given to the person. The requirements of this notice are set out in subregulation 62(4).
57. Item 17 of Schedule 1 to the Amendment Regulations repeals paragraph 62(4)(b) of the Principal Regulations and substitutes new paragraph 62(4)(b). New paragraph 62(4)(b) requires the notice to specify the calendar year for which the quota is

allocated. This requirement is in addition to the existing requirement at paragraph 62(4)(a), which requires the notice to specify the size of the reserve HFC quota.

**Item [18] – Subregulation 63(1)**

58. Subregulations 63(1) and 63(2) of the Principal Regulations deal with varying the size of a reserve HFC quota.
59. Item 18 of Schedule 1 to the Amendment Regulations amends subregulation 63(1) of the Principal Regulations to omit the reference to ‘the 2022’ calendar year and substitute a reference to ‘a’ calendar year.

**Item [19] – Subregulation 63(2)**

60. Item 19 of Schedule 1 to the Amendment Regulations amends subregulation 63(2) of the Principal Regulations to omit the reference to ‘2022’.
61. The combined effect of the amendments in items 18 and 19 is to allow the Minister to vary a reserve HFC quota in the specified circumstances for any calendar year, not just 2022. These amendments are consequential to the amendments made to regulation 62 (see items 10 to 17) which allow the Minister to allocate reserve HFC quota on an ongoing basis each calendar year.
62. The Minister is required to vary reserve HFC quota that has been allocated to a person for the calendar year if the Minister becomes satisfied that the size of the quota is inappropriate. In such circumstances, the Minister must, by written notice given to the person, vary the size of the reserve HFC quota to the correct amount.
63. An example of where the Minister may become satisfied that the size of reserve HFC quota that has been allocated to a person is inappropriate is where the reserve HFC quota is intended to cover multiple consignments expected to be delayed until the relevant calendar year and one or more of the consignments arrives in Australia before the end of the previous calendar year. In those circumstances, the Minister may be satisfied that the size of the reserve HFC quota allocated to the person is inappropriate and reduce it by an amount equal to the HFC contained in the consignments that were not, in fact, delayed. This is appropriate as the person’s ordinary HFC quota for the previous calendar year would be able to cover those consignments, and the importer would not need reserve HFC quota to do so.
64. Another example of where the Minister may become satisfied that the size of reserve HFC quota that has been allocated to a person is inappropriate is if, having regard to the person’s regulated HFC activities in the previous year, the total amount of reserve HFC quota allocated to the person would, when added to their regulated HFC activities in the previous year, put them over their HFC quota (for instance, if they imported additional HFC after they were allocated reserve HFC quota for a different consignment). In such circumstances, the Minister may be satisfied that the size of the reserve HFC quota allocated to the person is inappropriate and reduce it by a sufficient amount so as to not exceed the person’s ordinary HFC quota.

### **Item [20] – Subregulation 63(3)**

65. Subregulations 63(3) and 63(4) of the Principal Regulations deal with the cancellation of reserve HFC quota.
66. Item 20 of Schedule 1 to the Amendment Regulations amends subregulation 63(3) of the Principal Regulations to omit the reference to ‘the 2022’ calendar year and substitute a reference to ‘a’ calendar year.

### **Item [21] – Paragraph 63(3)(a)**

67. Item 21 of Schedule 1 to the Amendment Regulations amends paragraph 63(3)(a) of the Principal Regulations to omit the reference to the ‘2021’ calendar year and substitute a reference to the ‘previous’ calendar year.

### **Item [22] – Paragraph 63(3)(b)**

68. Item 22 of Schedule 1 to the Amendment Regulations amends paragraph 63(3)(b) of the Principal Regulations to omit the first occurring reference to the ‘2021’ calendar year and substitute a reference to the ‘previous’ calendar year.

### **Item [23] – Paragraph 63(3)(b)**

69. Item 23 of Schedule 1 to the Amendment Regulations amends paragraph 63(3)(b) of the Principal Regulations to omit the second occurring reference to ‘the 2021’ calendar year and substitute a reference to ‘that previous’ calendar year.
70. The combined effect of the amendments in items 20 to 23 is to allow the Minister to cancel reserve HFC quota in the specified circumstances for any calendar year, not just 2022. These amendments are consequential to the amendments made to regulation 62 (see items 10 to 17) which allow the Minister to allocate reserve HFC quota on an ongoing basis each calendar year.
71. The Minister is able, by written notice given to a person, to cancel a reserve HFC quota allocated to the person in a calendar year in either of the following circumstances:
  - all of the consignments of HFCs in respect of which reserve HFC quota was allocated to the person were imported in the previous calendar year. In these circumstances, the person would not need reserve HFC quota as the imports would be covered by their ordinary HFC quota; or
  - the total quantity of HFCs, expressed in CO<sub>2</sub>e megatonnes, involved in regulated HFC activities engaged in by the person during the previous calendar year equals or exceeds the person’s HFC quota for that previous calendar year. In these circumstances, the person would have already used up all of their ordinary HFC quota before the reserve HFC quota is added to it.
72. An example of where the Minister may cancel reserve HFC quota is where a person who is allocated reserve HFC quota to cover a consignment from Supplier 1 that is

expected to be delayed until a calendar year but, before the end of the previous calendar year, imports a different consignment of HFCs from Supplier 2 that uses up all the person's remaining HFC quota for that previous year. In that circumstance, adding the Supplier 1 consignment to the person's regulated HFC activities for the previous calendar year would exceed their HFC quota for that year, so the Minister has the power to cancel the person's reserve HFC quota.

#### **Item [24] – Regulation 64**

73. Subsection 36G(4) of the Act provides that the sum of the amounts of all reserve HFC quotas allocated for a calendar year (including any part of that year) must not be more than the reserve HFC quota limit for that year.
74. Subsection 36G(3) defines the reserve HFC quota limit for a calendar year to be the quantity of HFCs, expressed in CO<sub>2</sub>e megatonnes, prescribed in the regulations or worked out by a method prescribed in the regulations.
75. Regulations made for the purposes of subsection 36G(3) must be consistent with Australia's international obligations (see subsection 36G(5) of the Act).
76. Item 24 of Schedule 1 to the Amendment Regulations repeals existing regulation 64 and substitutes a new regulation 64. New subregulation 64(1) provides that for the purposes of paragraph 36G(3)(b) of the Act, the *reserve HFC quota limit* for a calendar year is the amount worked out by reducing Australia's HFC consumption limit for the calendar year by the HFC industry limit (which is specified in regulation 42) for that calendar year.
77. New subregulation 64(2) provides that *Australia's HFC consumption limit* for a calendar year is the amount worked out for Australia for the calendar year using the method set out in Article 2J(1) of the Montreal Protocol, as that method is in force at the commencement of that subregulation. This amount reflects Australia's consumption limit for HFCs under the Montreal Protocol. The method can be freely accessed at <https://ozone.unep.org/treaties/montreal-protocol-substances-deplete-ozone-layer/text>.
78. Confining the *reserve HFC quota limit* to the amount worked out by the method outlined in new regulation 64 ensures that Australia's international obligations under the Montreal Protocol continue to be complied with. In accordance with subsection 36G(4) of the Act, the sum of the amounts of all reserve HFC quota allocated for a calendar year is not able to be more than this amount.

#### Part 2 – Amendments relating to special circumstances exemptions

#### ***Ozone Protection and Synthetic Greenhouse Gas Management Regulations 1995***

#### **Item [25] – Regulation 110 (at the end of the definition of *RAC industry permit*)**

79. Regulation 110 of the Principal Regulations defines key terms that are used in Division 6A.2 of the Principal Regulations (concerning refrigeration and air

conditioning). The term *RAC industry permit* is defined in regulation 110 to mean any of a refrigerant handling licence, a refrigerant trading authorisation, an RAC equipment manufacturing authorisation, a halon special permit, or a restricted refrigerant trading authorisation.

80. Item 25 of Schedule 1 to the Amendment Regulations amends the existing definition of *RAC industry permit* in regulation 110 to insert a new paragraph (f). New paragraph (f) has the effect of adding a new kind of RAC industry permit, being a special circumstances exemption.
81. The new special circumstances exemption is inserted into Division 6A.2 of the Principal Regulations by item 54 (see new regulation 151). The purpose of the amendment made by item 25 is to ensure that relevant requirements of the Principal Regulations that apply to RAC industry permits (including application requirements, duration of the permit and the power to suspend or cancel the permit) also apply to special circumstances exemptions.

#### **Item [26] – Regulation 110**

82. Regulation 110 of the Principal Regulations defines key terms that are used in Division 6A.2 of the Principal Regulations (concerning refrigeration and air conditioning).
83. Item 26 of Schedule 1 to the Amendment Regulations amends regulation 110 to insert a new signpost definition for *special circumstances exemption*. The term *special circumstances exemption* has the meaning in new regulation 151 (see item 54).

#### **Item [27] – After paragraph 111(1)(b)**

84. Regulation 111 of the Principal Regulations makes it an offence for a person to carry out work in relation to RAC equipment (refrigeration and air conditioning equipment) unless the person meets certain criteria (such as being the holder of a refrigerant handling licence and entitled to carry out the work under that licence). Subregulation 111(2) defines the phrase *carries out work in relation to RAC equipment* as meaning doing anything with a refrigerant, or a component of RAC equipment, that involves a risk of refrigerant being emitted, including decanting the refrigerant, manufacturing, installing, commissioning, servicing and maintaining RAC equipment (whether or not refrigerant is present), and decommissioning RAC equipment in which refrigerant is present.
85. Item 27 of Schedule 1 to the Amendment Regulations amends subregulation 111(1) of the Principal Regulations to include new paragraphs 111(1)(c) and 111(1)(ca).
86. The effect of new paragraph 111(1)(c) is to ensure that a person who holds a special circumstances exemption is able to carry out work that they are entitled to carry out under the exemption, without breaching the offence in regulation 111.



87. Similarly, the effect of new paragraph 111(1)(ca) is to ensure that a person who is an employee or contractor of the holder of a special circumstances exemption that entitles the holder of the exemption to carry out the work, and who holds the relevant qualifications or has the relevant experience that is specified in the exemption, is able to carry out work covered by the exemption without breaching the offence in regulation 111.
88. This amendment is consequential to the amendments made by item 54 (new regulations 151 to 155), which establish a special circumstances exemption relating to refrigeration and air conditioning.

**Item [28] – After paragraph 112(2)(c)**

89. Regulation 112 of the Principal Regulations makes it an offence for a person to acquire, possess or dispose of bulk refrigerant unless the person meets certain criteria (such as being the holder of a refrigerant trading authorisation). The term *bulk refrigerant* means refrigerant other than halon, but does not include refrigerant that is contained in RAC equipment (subregulation 112(1)).
90. Item 28 of Schedule 1 to the Amendment Regulations amends subregulation 112(2) of the Principal Regulations to include new paragraphs 112(2)(d) and 112(2)(e).
91. The effect of new paragraph 112(2)(d) is to ensure that a person who holds a special circumstances exemption is able to acquire, possess or dispose of bulk refrigerant where they are entitled to do so under the exemption, without breaching the offence in regulation 112.
92. Similarly, the effect of new paragraph 112(2)(e) is to ensure that a person who is an employee or contractor of the holder of a special circumstances exemption that entitles the holder of the exemption to acquire, possess or dispose of bulk refrigerant, and who holds the relevant qualifications or has the relevant experience that is specified in the exemption, is able to acquire, possess or dispose of bulk refrigerant as permitted by the exemption without breaching the offence in regulation 112.
93. This amendment is consequential to the amendments made by item 54 (new regulations 151 to 155), which establish a special circumstances exemption relating to refrigeration and air-conditioning.

**Item [29] – After paragraph 112(3)(b)**

94. Regulation 112 of the Principal Regulations makes it an offence for a person to acquire, possess or dispose of bulk refrigerant unless the person meets certain criteria (such as being the holder of a refrigerant trading authorisation). The term *bulk refrigerant* means refrigerant other than halon, but does not include refrigerant that is contained in RAC equipment (subregulation 112(1)).
95. Subregulation 112(3) of the Principal Regulations has the effect that it is a defence to the offence in regulation 112 if the person, as soon as practicable after becoming

aware that they possessed bulk refrigerant, gave it to the holder of a refrigerant trading authorisation or the operator of a refrigerant destruction facility.

96. Item 29 of Schedule 1 to the Amendment Regulations amends subregulation 112(3) of the Principal Regulations to insert a new paragraph 112(3)(c). New paragraph 112(3)(c) has the effect that it is also a defence to the offence in regulation 112 if the person, as soon as practicable after becoming aware that they possessed bulk refrigerant, gave it to the holder of a special circumstances exemption who is entitled under the exemption to acquire, possess or dispose of bulk refrigerant.
97. This amendment is consequential to the amendments made by item 54 (new regulations 151 to 155), which establish a special circumstances exemption relating to refrigeration and air-conditioning.

**Item [30] – After paragraph 113(1)(c)**

98. Regulation 113 of the Principal Regulations makes it an offence for a person to possess halon that is, or has been, for use in RAC equipment, unless the person meets certain criteria (such as being the holder of a halon special permit).
99. Item 30 of Schedule 1 to the Amendment Regulations amends subregulation 113(1) of the Principal Regulations to include new paragraphs 113(1)(d) and 113(1)(e).
100. The effect of new paragraph 113(1)(d) is to ensure that a person who holds a special circumstances exemption is able to possess halon where they are entitled to do so under the exemption, without breaching the offence in regulation 113.
101. Similarly, the effect of new paragraph 113(1)(e) is to ensure that a person who is an employee or contractor of the holder of a special circumstances exemption that entitles the holder of the exemption to possess halon, and who holds the relevant qualifications or has the relevant experience that is specified in the exemption, is able to possess halon as permitted by the exemption without breaching the offence in regulation 113.
102. This amendment is consequential to the amendments made by item 54 (new regulations 151 to 155), which establish a special circumstances exemption relating to refrigeration and air-conditioning.

**Item [31] – Paragraph 113(2)(b)**

103. Regulation 113 of the Principal Regulations makes it an offence for a person to possess halon that is, or has been, for use in RAC equipment unless the person meets certain criteria (such as being the holder of a halon special permit).
104. Subregulation 113(2) of the Principal Regulations has the effect that it is a defence to the offence in regulation 113 if the person, as soon as practicable after becoming aware that they possessed halon that is, or has been, for use in RAC equipment, gave

it to the holder of a refrigerant trading authorisation or the operator of a refrigerant destruction facility.

105. Item 31 of Schedule 1 to the Amendment Regulations amends paragraph 113(2)(b) of the Principal Regulations so that it is also a defence to the offence in regulation 113 if the person, as soon as practicable after becoming aware that they possessed halon that is, or has been, for use in RAC equipment, gave it to the holder of a special circumstances exemption that entitles the person to possess halon.
106. This amendment is consequential to the amendments made by item 54 (new regulations 151 to 155), which establishes a special circumstances exemption relating to refrigeration and air-conditioning.

**Item [32] – After subregulation 113A(1A)**

107. Regulation 113A of the Principal Regulations deals with offences for making false representations. Subregulation 113A(1) makes it an offence for a person to make a representation that they can provide a service that involves the acquisition, disposal, storage, use or handling of refrigerant and, at the time of making the representation, the person does not hold a RAC industry permit that entitles them to provide the service and does not employ or engage a person who holds a refrigerant handling licence entitling them to provide the service.
108. Item 32 of Schedule 1 to the Amendment Regulations amends regulation 113A of the Principal Regulations to insert new subregulation 113A(1B). New subregulation 113A(1B) has the effect that the offence in subregulation 113A(1) does not apply if, at the time of making the representation, the person is an employee or contractor of the holder of a special circumstances exemption and the representation made by the person is for an activity covered by the exemption.
109. The purpose of this amendment is to ensure that if a person holds a special circumstances exemption that allows certain employees or contractors to provide a service involving refrigerant, that employee or contractor can do so without breaching the offence in regulation 113A.
110. The note following new subregulation 113A(1B) explains that a defendant bears the evidential burden in relation to the matters in this subregulation and references subsection 13.3(3) of Schedule 1 to the *Criminal Code Act 1995* (Criminal Code). This is because subsection 13.3(3) of the Criminal Code provides that if a defendant wishes to rely on an exception to an offence, the defendant bears an evidential burden of proof in relation to that matter. This is appropriate on the basis that knowledge of that matter would be peculiar to that person. Consistent with this, it is appropriate to reverse the evidential burden of proof in this matter, as a person's employment details are generally a matter that is peculiarly within the knowledge of that person.

### **Item [33] – Regulation 120 (heading)**

111. Regulation 120 of the Principal Regulations sets out the Minister’s powers and functions under Division 6A.2 of the Principal Regulations (concerning RAC industry permits). Regulation 120 also allows the Minister to appoint certain bodies as RAC Industry Boards and to authorise such Boards to exercise any or all of the Minister’s RAC Industry powers and functions in relation to the refrigeration and air conditioning industry or one or more specified sectors of the industry.
112. Item 33 of Schedule 1 to the Amendment Regulations amends the heading of regulation 120 of the Principal Regulations to omit the term ‘Relevant authority’s’ and substitute ‘Minister’s’. The purpose of the amendment is to update the drafting style of the heading and ensure it accurately reflects the content of regulation 120. There is no substantive change to regulation 120.

### **Item [34] – Paragraph 121(1)(c)**

113. Regulation 121 of the Principal Regulations sets out the requirements for applications for RAC industry permits. Paragraph 121(1)(c) requires the application to be accompanied by the fee prescribed for the particular kind of permit.
114. Item 34 of Schedule 1 to the Amendment Regulations amends paragraph 121(1)(c) of the Principal Regulations to insert ‘(if any)’ after ‘fee’. The purpose of this amendment is to clarify that there may not be a fee prescribed for all applications for RAC industry permits.

### **Item [35] – Paragraph 121(1)(c) (note)**

115. Regulation 121 of the Principal Regulations sets out the requirements for applications for RAC industry permits. Paragraph 121(1)(c) requires the application to be accompanied by the fee prescribed for the particular kind of permit. The note following paragraph 121(1)(c) refers the reader to Division 6A.4A of the Principal Regulations, which prescribes fee for RAC industry permit.
116. Item 35 of Schedule 1 to the Amendment Regulations repeals the existing note following paragraph 121(1)(c). This amendment is consequential to the amendment made by item 36, which moves the existing note following paragraph 121(1)(c) to instead be located after new paragraph 121(1)(d). The amendment made by item 35 does not result in a substantive change to regulation 121.

### **Item [36] – Paragraph 121(1)(d)**

117. Regulation 121 of the Principal Regulations sets out the application requirements for a RAC industry permit. Subregulation 121(1) requires the application to be made to an appropriate relevant authority (paragraph 121(1)(a)), be in the approved form (paragraph 121(1)(b)), be accompanied by the fee prescribed for the particular kind of permit (paragraph 121(1)(c)) and include the information needed by the authority to decide the application, including the information required by subregulations 121(1A) and (1B) (paragraph 121(1)(d)).

118. Item 36 of Schedule 1 to the Amendment Regulations amends subregulation 121(1) of the Principal Regulations to repeal existing paragraph 121(1)(d) and substitute a new paragraph 121(1)(d). New paragraph 121(1)(d) requires an application for a RAC industry permit to be accompanied by any information or documents required by the form. This provides additional flexibility and allows the approved form to include requirements that are specific for the different kinds of RAC industry permits. It also recognises the repeal of existing subregulation 121(1A) by item 37.
119. Item 36 also inserts two notes following new paragraph 121(1)(d). The first note (directing the reader to the part of the Principal Regulations where fees for RAC industry permits are prescribed) is moved from after existing paragraph 121(1)(c) to after 121(1)(d). The second note explains that the Minister is able to approve different forms for different kinds of RAC industry permits.

**Item [37] – Subregulation 121(1A)**

120. Regulation 121 of the Principal Regulations sets out the application requirements for a RAC industry permit. This includes a requirement that the application must be in the approved form (paragraph 121(1)(b)). Existing subregulation 121(1A) sets out specific information that an application for a RAC industry permit must include, such as details about the applicant’s relevant training and experience and evidence that the applicant is a fit and proper person.
121. Item 37 of Schedule 1 to the Amendment Regulations amends regulation 121 of the Principal Regulations to repeal existing subregulation 121(1A). It is no longer considered necessary for the Principal Regulations to set out the information that must be included in the application. Rather, it is intended that the approved form will include requirements to include specific information that is relevant to the particular kind of RAC industry permit being applied for. It is also intended that the approved form could require the application to be accompanied by particular information or documents (see item 36). This approach allows for tailored requirements that are appropriate for the different kinds of RAC industry permits.

**Item [38] – Subregulation 121(1B)**

122. Regulation 121 of the Principal Regulations sets out the application requirements for a RAC industry permit. Subregulation 121(1B) has the effect that if an applicant for a RAC industry permit already holds the same kind of permit and applies 30 days or more before their current permit is to cease being in force, the applicant is not required to provide the information listed in subregulation 121(1A).
123. Item 38 of Schedule 1 to the Amendment Regulations amends subregulation 121(1B) to remove the word ‘However’. This is a drafting style change only. It does not change the operation of subregulation 121(1B).

**Item [39] – Subregulation 121(1B)**

124. Regulation 121 of the Principal Regulations sets out the application requirements for a RAC industry permit. Subregulation 121(1B) has the effect that if the applicant for a

RAC industry permit already holds the same kind of permit and applies 30 days or more before their current permit is to cease being in force, the applicant is not required to provide the information listed in subregulation 121(1A). Instead, the applicant is only required to advise whether there has been a change in relation to a matter listed in subregulation 121(1A) and if so, to provide evidence of the change. The purpose of this provision is to reduce duplication, by preventing an applicant from having to provide the same information to the relevant authority on multiple occasions.

125. Item 39 of Schedule 1 to the Amendment Regulations amends subregulation 121(1B) of the Principal Regulations to omit the words ‘details or evidence required by a paragraph of subregulation (1A)’ and substitute ‘information or documents required to accompany the form’. This amendment is consequential to the amendments made by items 36 and 37 and recognises that subregulation 121(1A) has been repealed and replaced by a requirement for an application to be accompanied by information or documents required by the approved form.
126. The effect is that, if an applicant for a RAC industry permit already holds the same kind of permit and applies 30 days or more before their current permit is to cease being in force, the applicant is not required to provide any information or documents that would otherwise be required to accompany the form, unless there has been a change in a matter relating to such information or documents.

**Item [40] – Paragraph 121(1B)(d) and (e)**

127. Regulation 121 of the Principal Regulations sets out the application requirements for a RAC industry permit.
128. Item 40 of Schedule 1 to the Amendment Regulations amends paragraphs 121(1B)(d) and (e) of the Principal Regulations to omit ‘matter mentioned in the paragraph’ in both paragraphs and substitute ‘information or documents’.
129. The amendment is consequential to the amendments made by items 36, 37 and 39.

**Item [41] – After subregulation 121(1C)**

130. Regulation 121 of the Principal Regulations sets out the application requirements for a RAC industry permit.
131. Item 41 of Schedule 1 to the Amendment Regulations amends regulation 121 of the Principal Regulations to insert new subregulation 121(1D). New subregulation 121(1D) allows the relevant authority to ask the applicant, in writing, to give the relevant authority additional information or documents relevant to the application. This ensures that the relevant authority has access to the most up to date and relevant documents when deciding whether to grant the RAC industry permit.
132. If the relevant authority asks an applicant for additional information or documents and the applicant does not provide the requested information or documents within 120

days, the applicant is taken to have withdrawn the application (see new subregulation 121(5), inserted by item 47).

**Item [42] – Paragraph 121(2)(a)**

133. Regulation 121 of the Principal Regulations sets out the application requirements for a RAC industry permit. Subregulation 121(2) has the effect that if an applicant for a RAC industry permit has not provided all the information required under paragraph 121(1)(d) or any consents requested by the relevant authority, the relevant authority may ask the applicant for the outstanding information or consent and need not consider the application until the outstanding information or consents are provided.
134. Item 42 of Schedule 1 to the Amendment Regulations repeals paragraph 121(2)(a) of the Principal Regulations and substitutes a requirement that, if an applicant for a RAC industry permit has not provided all the information or documents required under subregulation 121(1), the relevant authority may ask the applicant for the outstanding information and need not consider the application until the outstanding information is provided.
135. This amendment is consequential to the amendment made by item 36, which substitutes a new paragraph 121(1)(d). It also recognises that the assessment of an application should be paused until all information or documents required under subregulation (1) have been provided, not just those required under paragraph 121(1)(d). This ensures that all necessary information is before the relevant authority when the authority is deciding whether to grant a RAC industry permit.

**Item [43] – Paragraph 121(2)(b)**

136. Regulation 121 of the Principal Regulations sets out the application requirements for a RAC industry permit. Subregulation 121(2) has the effect that if an applicant for a RAC industry permit has not provided all the information required under paragraph 121(1)(d) or any consents requested by the relevant authority, the relevant authority may ask the applicant for the outstanding information or consents and need not consider the application until the outstanding information or consents are provided.
137. Item 43 of Schedule 1 to the Amendments Regulations amends paragraph 121(2)(b) of the Principal Regulations to remove the reference to the Minister. This reference is being removed because it is unnecessary as ‘relevant authority’ already covers the Minister. It does not change the operation of subregulation 121(2).

**Item [44] – Paragraph 121(2)(c)**

138. Regulation 121 of the Principal Regulations sets out the application requirements for a RAC industry permit. Subregulation 121(2) has the effect that if an applicant for a RAC industry permit has not provided all the information required under paragraph 121(1)(d) or any consents requested by the relevant authority, the relevant authority may ask the applicant for the outstanding information or consents and need not consider the application until the outstanding information or consents are provided.

139. Item 44 of Schedule 1 to the Amendment Regulations amends paragraph 121(2)(c) of the Principal Regulations to make it clear that the relevant authority may also ask the applicants for outstanding documents that are required under subregulation 121(1), rather than just outstanding information and consents. This amendment is consequential to the amendment made by item 36, which substitutes a new paragraph 121(1)(d) that requires an application to include any information or documents required by the approved form.

**Item [45] – Paragraph 121(2)(d)**

140. Regulation 121 of the Principal Regulations sets out the application requirements for a RAC industry permit. Subregulation 121(2) has the effect that if an applicant for a RAC industry permit has not provided all the information required under paragraph 121(1)(d) or any consents requested by the relevant authority, the relevant authority may ask the applicant for the outstanding information or consents and need not consider the application until the outstanding information or consents are provided.
141. Item 45 of Schedule 1 to the Amendment Regulations amends paragraph 121(2)(d) of the Principal Regulations to make it clear that the relevant authority need not consider the application until any outstanding documents that are required under subregulation 121(1) are provided, rather than just outstanding information or consents. This amendment is consequential to the amendment made by item 36, which substitutes a new paragraph 121(1)(d) that requires an application to include any information or documents required by the approved form.

**Item [46] – Paragraph 121(3)(b)**

142. Regulation 121 of the Principal Regulations sets out the application requirements for a RAC industry permit. Subregulation 121(3) has the effect that the relevant authority is taken to have refused an application for a RAC industry permit if the relevant authority has not made a decision on the application within 30 days after the application was made or, if a request for information or consent was made, within 30 days after the requested information or consent was provided.
143. Item 46 of Schedule 1 to the Amendment Regulations amends paragraph 121(3)(b) of the Principal Regulations to insert ‘documents’ after ‘information’, wherever occurring. The effect of this amendment is to ensure that if the relevant authority requests information, documents or consents from an applicant for a RAC industry permit, the relevant authority is taken to have refused the application if no decision has been made within 30 days after the requested information, documents or consent has been provided.
144. This amendment is consequential to the amendment made by item 36, which substitutes a new paragraph 121(1)(d) that requires an application to include any information or documents required by the approved form.



### **Item [47] – At the end of regulation 121**

145. Regulation 121 of the Principal Regulations sets out the application requirements for a RAC industry permit.
146. Item 47 of Schedule 1 to the Amendment Regulations amends regulation 121 of the Principal Regulations to insert new subregulations 121(4), (5) and (6).
147. New subregulation 121(4) allows an applicant to withdraw an application for a RAC industry permit at any time before the relevant authority decides the application.
148. New subregulation 121(5) has the effect that if the relevant authority asks an applicant for additional information, documents or consents and the applicant does not provide the requested information, documents or consents within 120 days, the applicant is taken to have withdrawn the application.
149. The period which must elapse before an application is taken to be withdrawn would be reduced from the 6 months in existing subregulation 121A(4)(b) to 120 days. This length of time would allow for better administration of the application process while giving applicants sufficient time to respond to a request.
150. New subregulation 121(6) clarifies that if an application for a RAC industry permit is withdrawn, any fee that has been paid in respect of the application is non-refundable (unless the relevant authority approves a refund under regulation 121B).
151. Other than reducing the period from 6 months to 120 days, new regulations 121(4) to (6) are substantively the same provisions as existing subregulations 121A(4) to (6). These provisions have been moved into regulation 121 as they relate to the requirements for an application for a RAC industry permit – and so are more appropriately located in regulation 121.

### **Item [48] – Subregulations 121A(4) to (6)**

152. Item 48 of Schedule 1 to the Amendment Regulations repeals subregulations 121A(4) to (6) of the Principal Regulations. These subregulations are no longer necessary, as item 47 moved their content into regulation 121 (see new subregulations 121(4), (5) and (6)).

### **Item [49] – Subregulation 121B(1)**

153. Regulation 121B of the Principal Regulations allows the Minister to refund application fees for RAC industry permits in certain circumstances.
154. Item 49 of Schedule 1 to the Amendment Regulations amends existing subregulation 121B(1) of the Principal Regulations to exclude special circumstances exemptions from the scope of regulation 121B. This means the Minister is not able to refund

application fees (if any are prescribed) for special circumstances exemptions in the refrigeration and air conditioning context.

155. The purpose of this provision is to align with the situation for special circumstances exemptions in the fire protection context (see regulation 313B, which does not apply to special circumstances exemptions).

**Item [50] – Regulation 122A (heading)**

156. Regulation 122A of the Principal Regulations sets out the period for which a RAC industry permit is in force.
157. Item 50 of Schedule 1 to the Amendment Regulations amends the heading of regulation 122A of the Principal Regulations to insert the term ‘RAC Industry’ before ‘permit’. The purpose of the amendment is to update the drafting style of the heading and ensure it accurately reflects the content of regulation 122A. There is no substantive change to regulation 122A.

**Item [51] – Regulation 123 (heading)**

158. Regulation 123 of the Principal Regulations allows the Minister to cancel or suspend a RAC industry permit if certain requirements are met.
159. Item 51 of Schedule 1 to the Amendment Regulations repeals the existing heading for regulation 123 of the Principal Regulations and substitutes a new heading of *Minister may cancel or suspend RAC industry permits*. The purpose of the amendment is to update the drafting style of the heading and ensure it accurately reflects the content of regulation 123. There is no substantive change to regulation 123.

**Item [52] – Paragraphs 124(1)(a) and (b)**

160. Regulation 124 of the Principal Regulations deals with the internal reconsideration of decisions made under Division 6A.2 (concerning refrigeration and air conditioning). A decision must be first internally reconsidered under regulation 124 before it can be externally reviewed by the AAT (see regulation 125).
161. Subregulation 124(1) sets out the decisions under Division 6A.2 that can be internally reconsidered. An application may be made to the relevant authority for reconsideration of the decisions listed in paragraph 124(1)(a). An application may be made to the Minister for reconsideration of the decisions listed in paragraph 124(1)(b).
162. Item 52 of Schedule 1 to the Amendment Regulations amends subregulation 124(1) of the Principal Regulations to repeal existing paragraphs 124(1)(a) and (b) and substitute new paragraphs 124(1)(a) and (b). The purpose of this amendment is to:
- update and modernise the drafting of these provisions; and

- provide that a decision to vary a condition of a special circumstances exemption (being a kind of RAC Industry permit) is able to be reconsidered;
- provide that a decision not to vary a special circumstances exemption is able to be reconsidered.

163. No other changes have been made to the substantive effect of subregulation 124(1). The decision to vary a condition of a special circumstances exemption, or to not vary a special circumstances exemption (see item 54) would be new administrative decisions under the Principal Regulations. This amendment would ensure that, consistent with Commonwealth policy, these new administrative decisions are merits reviewable.

#### **Item [53] – Regulation 150 (note at the end)**

164. Item 53 of Schedule 1 to the Amendment Regulations repeals the note following regulation 150 of the Principal Regulations.

165. This amendment is consequential to the amendments made by item 54, which inserts new regulations 151 to 155 into the Principal Regulations. An amended note is inserted after new regulation 155 that explains to the reader that regulation numbers 156 to 199 (inclusive) are reserved for future use.

#### **Item [54] – At the end of Division 6A.2**

166. Item 54 of Schedule 1 to the Amendment Regulations inserts subdivision 6A.2.5 into the Principal Regulations. New subdivision 6A.2.5 (new regulations 151 to 155) provides for a special circumstances exemption in the refrigeration and air conditioning context. This aligns with the fire protection provisions (Division 6A.4 of the Principal Regulations) which allow a person who does not hold a relevant fire protection industry permit under Division 6A.4 to, in certain limited circumstances, apply for a special circumstances exemption in order to carry out specific activities involving extinguishing agent.

#### **Regulation 151 – Application for special circumstances exemption**

167. New regulation 151 establishes the special circumstances exemption, allows for a person to apply for the exemption, sets out the requirements that must be satisfied for the relevant authority to grant a special circumstances exemption and sets out the required content for the exemption, if granted.

168. New subregulation 151(1) allows a relevant authority to, on application, grant a written exemption entitling the person to the privileges of one or more of a refrigerant handling licence, a refrigerant trading authorisation, a RAC equipment manufacturing authorisation or a halon special permit. The written exemption is known as a *special circumstances exemption*.

169. The holder of a special circumstances exemption is able to carry out the specific activities involving refrigerant that they would have been entitled to carry out if they

had obtained the relevant licence, authorisation or permit that the exemption is replacing. For instance, if a person applies for, and is granted, a special circumstances exemption entitling the person to the privileges of a refrigerant handling licence, the person is able to carry out the activities they would have been entitled to carry out had they successfully obtained a refrigerant handling licence. In contrast, they are not able to carry out the activities permitted by holders of a refrigerant trading authorisation, unless the special circumstances exemption they applied also relates to a refrigerant trading authorisation. The special circumstances exemption must specify the kind (or kinds) of licence, authorisation or permit it is entitling the holder to the privileges of.

170. The note following subregulation 151(1) explains that the application requirements in regulation 121 of the Principal Regulations apply to an application for a special circumstances exemption under new regulation 151. This is because the new special circumstances exemption is a kind of RAC industry permit (see item 25).
171. It is not intended to impose an application fee for a special circumstances exemption at this time. Any fee would only be imposed following a review of cost recovery arrangements including public consultation.
172. New subregulation 151(2) sets out the criteria for granting a special circumstances exemption. The relevant authority is only able to grant a special circumstances exemption if the authority is satisfied that five criteria are met.
173. The first criterion is that either special circumstances exist that justify the grant of the exemption, or the activities proposed to be covered by the exemption are to be undertaken by the Australian Defence Force or a military of a foreign country acting in cooperation with the Australian Defence Force. The second criterion is that it is inappropriate or impracticable for the applicant to obtain the required licences, authorisations or permits related to the relevant activities. These two criteria, read together, are intended to ensure that special circumstances exemptions are only granted in very limited circumstances and where the applicant, for particular reasons, is not able to obtain the requisite licence, authorisation or permit. As such, a special circumstances exemption is not generally available as an alternative to obtaining, for example, a handling licence or trading authorisation. The relevant licence, authorisation or permit continues to be the default requirement to carry out end use activities involving refrigerant.
174. The third, fourth and fifth criteria that must be satisfied relate to the applicant themselves. If the application is for an exemption from holding a refrigerant trading authorisation or a RAC equipment manufacturing authorisation, the applicant is required to demonstrate that it has business premises that are equipped and operating so as to be able to handle, and prevent avoidable emissions of, a refrigerant. If the applicant is an individual, the individual must demonstrate that they have suitable qualifications or experience to competently carry out the activities to be covered by the exemption. If the applicant is a person other than an individual (for example, a corporation or a government Department), the person must demonstrate that they have

suitably qualified employees or contractors and suitable equipment to carry out the activities to be covered by the exemption. These criteria are intended to ensure that the refrigerant is not misused, so as to reduce the risks to both human health and the environment.

175. New subregulation 151(3) requires a special circumstances exemption to be in writing, and to specify the activities to be covered by the exemption, the licence, authorisation or permit in relation to which the exemption is being granted, the period for which the exemption is in force and any conditions imposed on the exemption. If the holder of the exemption is a person other than an individual, the exemption is also required to set out the relevant qualifications or experience that an employee or contractor must have in order to carry out the activities covered by the exemption.
176. The note following subregulation 151(3) refers the reader to regulation 122A of the Principal Regulations, which deals with the period for which a RAC industry permit is in force. A special circumstances exemption is a kind of RAC industry permit (see amendment made by item 25).
177. New subregulation 151(4) requires the relevant authority to give the successful applicant a copy of the special circumstances exemption as soon as practicable.

#### Regulation 152

178. New regulation 152 allows the relevant authority to impose conditions on a special circumstances exemption. The relevant authority is able to impose any conditions it considers reasonably necessary to manage the risks posed by the activities covered by the exemption.
179. New subregulation 152(2) requires the relevant authority to impose a mandatory condition on a special circumstances exemption that is granted to a person other than an individual. Such exemptions are required to include a condition that the activities covered by the exemption can only be carried out by a person with the relevant qualifications or experience specified in the exemption. This is to ensure that refrigerant is not misused or handled by unqualified or inappropriate persons.

#### Regulation 153 – Application by holder to vary special circumstances exemption

180. New regulation 153 allows the holder of a special circumstances exemption to apply to the relevant authority to vary that exemption. This could include applying to vary the activities covered by the exemption, the conditions imposed on the exemption, or the licence, authorisation or permit in relation to which the exemption is in force.
181. New subregulation 153(2) requires an application to vary a special circumstances exemption to be made in the approved form, to be accompanied by the information or documents required by the approved form and to be accompanied by the prescribed fee (if any).

182. The note following subregulation 153(2) directs the reader to Division 6A.4A of the Principal Regulations, which prescribes fees for RAC industry permits. It is not intended to impose an application fee to vary a special circumstances exemption at this time. Any fee would only be imposed following a review of cost recovery arrangements including public consultation.
183. New subregulation 153(3) allows the relevant authority to request, in writing, that the applicant provide further specified information or documents relevant to the application. This ensures that the relevant authority is able to consider all relevant information when deciding whether to grant the application to vary a special circumstances exemption.
184. New subregulation 153(4) has the effect that if the relevant authority asks an applicant for additional information or documents and the applicant does not provide the requested information or documents within 60 days, the applicant is taken to have withdrawn the application.
185. New subregulation 153(5) requires the relevant authority to give the successful applicant a copy of the varied special circumstances exemption as soon as practicable.

Regulation 154 – Relevant authority may impose additional conditions or vary or remove existing conditions

186. New regulation 154 allows the relevant authority to, at any time, unilaterally vary the conditions of a special circumstances exemption in order to impose additional conditions, or to vary or remove existing conditions. When imposing additional conditions on a special circumstances exemption, the relevant authority must consider that the new conditions are reasonably necessary to manage the risks posed by the activities covered by the exemption.
187. The variation of conditions must be done by written notice to the holder of the special circumstances exemption. The variation (whether to impose additional conditions or to remove or vary existing conditions) takes effect at the end of 60 days after the notice is provided to the holder of the special circumstances exemption. This is to ensure the holder has sufficient time to adjust their business practices to be able to meet the varied conditions. It also allows time for procedural fairness requirements to be satisfied. However, the relevant authority has the ability to specify a shorter period if the authority considers it necessary for the variation to take effect earlier.

Regulation 155 – Contravening conditions of special circumstances exemption

188. New regulation 155 provides for an offence relating to contravening conditions of a special circumstances exemption.
189. New subregulation 155(1) has the effect that it is an offence to hold a special circumstances exemption that is subject to a condition to be complied with by the person, and to do an act or omission that contravenes a condition of that exemption. The penalty for committing this offence is 10 penalty units.

190. New subregulation 155(2) provides that the offence in subregulation 155(1) is an offence of strict liability.
191. Having regard to the *Commonwealth Guide to Framing Offences* and the *Senate Scrutiny of Bills Committee Sixth Report of 2002: Application of Absolute and Strict Liability Offences in Commonwealth Legislation* (Scrutiny of Bills Committee 6th Report), strict liability is appropriate because:
- the offence is not punishable by imprisonment;
  - the offence is subject to a maximum penalty of 10 penalty units for an individual;
  - the actions which trigger the offence are simple, readily understood and easily defended. The offence is triggered if a condition of the special circumstances exemption is contravened;
  - offences relating to misuse of refrigerant need to be dealt with efficiently to ensure industry and community confidence in the regulatory regime;
  - the absence of strict liability may adversely affect the capacity to prosecute offenders. Whether or not a defendant intentionally, recklessly or negligently contravened a condition of a special circumstances exemption is generally a matter that is peculiarly within the knowledge of the defendant alone. Proving the contrary beyond reasonable doubt may require significant and difficult to obtain indirect and circumstantial evidence;
  - in addition, where it is an employee or contractor of the holder of the special circumstances exemption who contravened a condition of the exemption, it may not be possible to prove beyond reasonable doubt that the holder intentionally, recklessly or negligently committed the offence. However, given the holder's responsibility for the actions of their employees or contractors, it is appropriate that, in such circumstances, the holder is liable for the contravention;
  - the compliance with conditions of a special circumstances exemption is a necessary part of ensuring the Act and the Principal Regulations remain an effective and efficient mechanism to both implement Australia's obligations under the Montreal Protocol and other relevant international treaties, and to realise the intended environmental benefits. The contravention of a condition of an exemption may result in significant environmental harm;
  - the person affected is placed on notice to guard against the possibility of contravention, which is likely to significantly enhance the effectiveness of the enforcement regime in deterring the conduct in question.
192. The defence of honest and reasonable mistake of fact is available for strict liability offences (see sections 6.1 and 9.2 of the Criminal Code) and the existence of strict

liability does not make any other defence unavailable (see subsection 6.1(3) of Schedule 1 to the Criminal Code).

193. The note following new regulation 155 explains to the reader that regulation numbers 156 to 199 (inclusive) are reserved for future use.

**Item [55] – Regulation 301 (definition of *Fire Board*)**

194. Regulation 301 of the Principal Regulations defines key terms that are used in Division 6A.4 of the Principal Regulations (concerning fire protection). The term *Fire Board* is defined in regulation 301 as a body appointed as a Fire Protection Industry (Ozone Depleting Substances and Synthetic Greenhouse Gas) Board under paragraph 311(1)(a).

195. Item 55 of Schedule 1 to the Amendment Regulations amends the existing definition of *Fire Board* in regulation 301 of the Principal Regulations to correct the cross-reference from paragraph 311(1)(a) to paragraph 307A(1)(a). The purpose of this amendment is to correct a typographical error.

**Item [56] – Subregulation 302(1)**

196. Regulation 302 of the Principal Regulations deals with offences for handling extinguishing agent.

197. Item 56 of Schedule 1 to the Amendment Regulations repeals existing subregulation 302(1) and substitute a new subregulation 302(1). New subregulation 302(1) makes it an offence for a person to handle an extinguishing agent that is, or has been, for use in fire protection equipment unless the person:

- holds an extinguishing agent handling licence; or
- holds a special circumstances exemption that entitles the person to handle an extinguishing agent that is, or has been, for use in fire protection equipment; or
- is both:
  - an employee or contractor of a person who holds a special circumstances exemption that entitles the holder of the exemption to handle the extinguishing agent; and
  - a person who holds the relevant qualifications or has the relevant experience that is specified in the exemption as necessary to handle an extinguishing agent that is, or has been, for use in fire protection equipment.

198. The purpose of this amendment is to align with the changes to the equivalent offence for handling refrigerant in Division 6A.2 of the Principal Regulations (see item 27). It



also ensures that, if a person holds a special circumstances exemption that allows certain employees or contractors to handle an extinguishing agent that is, or has been, for use in fire protection equipment, that employee or contractor can do so without breaching the offence in regulation 302.

199. No other substantive changes have been made to the offence in existing subregulation 302(1), including the amount of the penalty being 10 penalty units.

**Item [57] – Paragraph 303(2)(c)**

200. Regulation 303 makes it an offence for a person to acquire, possess or dispose of bulk extinguishing agent unless the person meets certain criteria (such as being the holder of an extinguishing agent trading authorisation). The term *bulk extinguishing agent* means extinguishing agent, other than halon, that is, or has been, for use in fire protection equipment, but does not include extinguishing agent that is contained in fire protection equipment (subregulation 303(1)).
201. Item 57 of Schedule 1 to the Amendment Regulations amends subregulation 303(2) of the Principal Regulations to repeal paragraph 303(2)(c) and insert new paragraphs 303(2)(c) and 303(2)(ca).
202. The effect of new paragraph 303(2)(c) is to ensure that a person who holds a special circumstances exemption is able to acquire, possess or dispose of bulk extinguishing agent where they are entitled to do so under the exemption, without breaching the offence in regulation 303.
203. Similarly, the effect of new paragraph 303(2)(ca) is to ensure that a person who is an employee or contractor of the holder of a special circumstances exemption that entitles the holder of the exemption to acquire, possess or dispose of bulk extinguishing agent, and who holds the relevant qualifications or has the relevant experience that is specified in the exemption, is able to acquire, possess or dispose of bulk extinguishing agent as permitted by the exemption without breaching the offence in regulation 303.
204. The purpose of this amendment is to align with the changes to the equivalent offence for possessing refrigerant in Division 6A.2 of the Principal Regulations (see item 28). It also ensures that, if a person holds a special circumstances exemption that allows certain employees or contractors to acquire, possess or dispose of an extinguishing agent that is, or has been, for use in fire protection equipment, that employee or contractor can do so without breaching the offence in regulation 303.

**Item [58] – At the end of subregulation 303(3)**

205. Regulation 303 makes it an offence for a person to acquire, possess or dispose of bulk extinguishing agent unless the person meets certain criteria (such as being the holder of an extinguishing agent trading authorisation). The term *bulk extinguishing agent* means extinguishing agent, other than halon, that is, or has been, for use in fire

protection equipment, but does not include extinguishing agent that is contained in fire protection equipment (subregulation 303(1)).

206. Subregulation 303(3) of the Principal Regulations has the effect that it is a defence to the offence in regulation 303 if the person, as soon as practicable after becoming aware that they possessed bulk extinguishing agent, gave it to the holder of an extinguishing agent trading authorisation, the operator of an approved extinguishing agent destruction facility or the officer in charge of a fire station.
207. Item 58 of Schedule 1 to the Amendment Regulations amends subregulation 303(3) of the Principal Regulations to insert a new paragraph 303(3)(d). New paragraph 303(3)(d) has the effect that it is also a defence to the offence in regulation 303 if the person, as soon as practicable after becoming aware that they possessed bulk extinguishing agent, gave it to the holder of a special circumstances exemption who is entitled under the exemption to acquire, possess or dispose of bulk extinguishing agent.
208. The purpose of this amendment is to align the offences relating to acquiring, possessing or disposing extinguishing agent in Division 6A.4 of the Principal Regulations with the offences relating to acquiring, possessing or disposing refrigerant in Division 6A.2 of the Principal Regulations.

#### **Item [59] – Paragraph 304(1)(c)**

209. Regulation 304 makes it an offence for a person to possess halon that is, or has been, for use in fire protection equipment unless the person meets certain criteria (such as being the holder of a halon special permit).
210. Item 59 of Schedule 1 to the Amendment Regulations amends subregulation 304(1) of the Principal Regulations to repeal existing paragraph 304(1)(c) and substitute new paragraphs 304(1)(c) and 304(2)(ca).
211. The effect of new paragraph 304(1)(c) is to ensure that a person who holds a special circumstances exemption is able to possess halon where they are entitled to do so under the exemption, without breaching the offence in regulation 304.
212. Similarly, the effect of new paragraph 304(1)(ca) is to ensure that a person who is an employee or contractor of the holder of a special circumstances exemption, and who holds the relevant qualifications or has the relevant experience that is specified in the exemption, is able to possess halon as permitted by the exemption without breaching the offence in regulation 304.
213. The purpose of this amendment is to align with the changes to the equivalent offence for possessing halon in Division 6A.2 of the Principal Regulations (see item 30). It also ensures that, if a person holds a special circumstances exemption that allows certain employees or contractors to possess halon that is, or has been, for use in fire

protection equipment, that employee or contractor can do so without breaching the offence in regulation 304.

**Item [60] – At the end of subregulation 304(2)**

214. Regulation 304 makes it an offence for a person to possess halon that is, or has been, for use in fire protection equipment unless the person meets certain criteria (such as being the holder of a halon special permit).
215. Paragraph 304(2)(b) of the Principal Regulations has the effect that it is a defence to the offence in regulation 304 if the person, as soon as practicable after becoming aware that they possessed halon, gave it to the holder of an extinguishing agent trading authorisation, the operator of an approved extinguishing agent destruction facility or the officer in charge of a fire station.
216. Item 60 of Schedule 1 to the Amendment Regulations amends paragraph 304(2)(b) of the Principal Regulations to insert a new subparagraph 304(2)(b)(iv). New subparagraph 304(2)(b)(iv) has the effect that it is also a defence to the offence in regulation 304 if the person, as soon as practicable after becoming aware that they possessed halon, gave it to the holder of a special circumstances exemption who is entitled under the exemption to acquire, possess or dispose of halon.
217. The purpose of this amendment is to align the offences relating to acquiring, possessing or disposing extinguishing agent in Division 6A.4 of the Principal Regulations with the offences relating to acquiring, possessing or disposing refrigerant in Division 6A.2 of the Principal Regulations.

**Item [61] – After subregulation 304A(2)**

218. Regulation 304A of the Principal Regulations deals with offences for making false representations. Subregulation 304A(1) makes it an offence for a person to make a representation that they can provide a service that involves the acquisition, disposal, storage, use or handling of an extinguishing agent and, at the time of making the representation, the person does not hold a fire protection industry permit or special circumstances exemption that entitles them to provide the service and does not employ or engage a person who holds an extinguishing agent handling licence entitling them to provide the service.
219. Item 61 of Schedule 1 to the Amendment Regulations amends regulation 304A of the Principal Regulations to insert new subregulation 304A(2A). New subregulation 304A(2A) has the effect that the offence in subregulation 304A(1) does not apply if, at the time of making the representation, the person is an employee or contractor of the holder of a special circumstances exemption and the representation made by the person is for an activity covered by the exemption.
220. The purpose of this amendment is to ensure that if a person holds a special circumstances exemption that allows certain employees or contractors to provide a

service involving extinguishing agent, that employee or contractor can do so without breaching the offence in regulation 304A.

221. The note following new subregulation 304A(2A) explains that a defendant bears the evidential burden in relation to the matters in this subregulation and references subsection 13.3(3) of the Criminal Code. This is because subsection 13.3(3) of the Criminal Code provides that if a defendant wishes to rely on an exception to an offence, the defendant bears an evidential burden of proof in relation to that matter. This is appropriate on the basis that knowledge of that matter would be peculiar to that person. Consistent with this, it is appropriate to reverse the evidential burden of proof in this matter, as a person's employment details is generally a matter that is peculiarly within the knowledge of that person.

**Item [62] – Subparagraph 316(1)(a)(iii)**

222. Regulation 316 of the Principal Regulations deals with the internal reconsideration of decisions made under Division 6A.4 (concerning fire protection). A decision must be first internally reconsidered under regulation 316 before it can be externally reviewed by the AAT (see regulation 317).
223. Subregulation 316(1) sets out the decisions under Division 6A.4 that can be internally reconsidered. An application may be made to the relevant authority for reconsideration of the decisions listed in paragraph 316(1)(a). An application may be made to the Minister for reconsideration of the decisions listed in paragraph 316(1)(b).
224. Subparagraph 316(1)(a)(iii) of the Principal Regulations has the effect that an application may be made to the relevant authority for reconsideration of a decision imposing a condition on a Division 6A.4 permit.
225. Item 62 of Schedule 1 to the Amendment Regulations amends subparagraph 316(1)(a)(iii) of the Principal Regulations to insert 'or varying' after 'imposing'. This means that a decision to vary a condition of a special circumstances exemption (being a kind of Division 6A.4 permit) is able to be reconsidered.
226. The decision to vary a condition of a special circumstances exemption under Division 6A.4 (see item 67) is a new administrative decision under the Principal Regulations. The purpose of this amendment is to ensure that, consistent with Commonwealth policy, this new administrative decision is merits reviewable.

**Item [63] – After subparagraph 316(1)(a)(iii)**

227. Regulation 316 of the Principal Regulations deals with the internal reconsideration of decisions made under Division 6A.4 (concerning fire protection). A decision must be first internally reconsidered under regulation 316 before it can be externally reviewed by the AAT (see regulation 317).

228. Subregulation 316(1) sets out the decisions under Division 6A.4 that can be internally reconsidered. An application may be made to the relevant authority for reconsideration of the decisions listed in paragraph 316(1)(a). An application may be made to the Minister for reconsideration of the decisions listed in paragraph 316(1)(b).
229. Item 63 of Schedule 1 to the Amendment Regulations amends existing paragraph 316(1)(a) of the Principal Regulations to insert new subparagraph 316(1)(a)(iiia). New subparagraph 316(1)(a)(iiia) has the effect that an application may be made to the relevant authority to reconsider a decision not to vary a special circumstance exemption.
230. The decision to vary a special circumstances exemption under Division 6A.4 (see item 67) is a new administrative decision under the Principal Regulations. The purpose of this amendment is to ensure that, consistent with Commonwealth policy, this new administrative decision is merits reviewable.

**Item [64] – Subregulation 342(1)**

231. Regulation 342 of the Principal Regulations provides for a special circumstances exemption in the fire protection context (Division 6A.4).
232. Item 64 of Schedule 1 to the Amendment Regulations amends subregulation 342(1) of the Principal Regulations to insert the words ‘one or more of the following’ after ‘holder of’. The effect of this amendment is to clarify that a person who holds a special circumstances exemption granted under regulation 342 is entitled to the privileges of the holder of one or more of an extinguishing agent handling licence, an extinguishing agent trading authorisation or a halon special permit, as specified in the exemption. This means a single special circumstances exemption could replace multiple kinds of fire protection industry permits.

**Item [65] – Paragraphs 342(1)(a) and (b)**

233. Regulation 342 of the Principal Regulations provides for a special circumstances exemption in the fire protection context (Division 6A.4).
234. Item 65 of Schedule 1 to the Amendment Regulations amends paragraphs 342(1)(a) and (b) to remove the term ‘or’ wherever occurring. This amendment is consequential to the amendment made by item 64, which clarifies that a single special circumstances exemption could replace multiple kinds of fire protection industry permits.

**Item [66] – Subregulation 342(3) to (6)**

235. Regulation 342 of the Principal Regulations provides for a special circumstances exemption in the fire protection context (Division 6A.4). A person who holds a special circumstances exemption under regulation 342 is entitled to the privileges of the holder of one or more of an extinguishing agent handling licence, an extinguishing agent trading authorisation or a halon special permit, as specified in the exemption. This means that the holder of a special circumstances exemption granted under

existing regulation 342 is able to carry out the activities that they would have been permitted to had they obtained the relevant licence, authorisation or permit.

236. Item 66 of Schedule 1 to the Amendment Regulations amends regulation 342 of the Principal Regulations to repeal existing subregulations 342(3) to (6) and substitute new subregulations 342(3) to (5). The purpose of this amendment is to update the provisions relating to the criteria for granting a special circumstances exemption in the fire protection context to align, where appropriate, with the criteria for granting the new special circumstances exemption in the refrigeration and air-conditioning context (see new regulation 151, inserted by item 54).
237. New subregulation 342(3) sets out the criteria for granting a special circumstances exemption under existing subregulation 342(1). The relevant authority is only able to grant a special circumstances exemption if the authority is satisfied that four criteria are met.
238. The first criterion is that either special circumstances exist that justify the grant of the exemption, or the activities proposed to be covered by the exemption, are to be undertaken by the Australian Defence Force or a military of a foreign country acting in cooperation with the Australian Defence Force. The second criterion is that it is inappropriate or impracticable for the applicant to obtain the required licences, authorisations or permits related to the relevant activities. These two criteria, read together, are intended to ensure that special circumstances exemptions are only granted in very limited circumstances and where the applicant, for particular reasons, is not able to obtain the requisite licence, authorisation or permit. As such, a special circumstances exemption is not generally available as an alternative to obtaining, for example, a handling licence or trading authorisation. The relevant licence, authorisation or permit continues to be the default requirement to carry out end use activities involving extinguishing agent.
239. The third and fourth criteria that must be satisfied relate to the applicant themselves. If the applicant is an individual, the individual must demonstrate that they have suitable qualifications or experience to competently carry out the activities to be covered by the exemption. If the applicant is a person other than an individual (for example, a corporation or a government Department), the person must demonstrate that they have suitably qualified employees or contractors and suitable equipment to carry out the activities to be covered by the exemption. These criteria are intended to ensure that the extinguishing agent is not misused, so as to reduce the risks to both human health and the environment.
240. New subregulation 342(4) requires a special circumstances exemption to be in writing, and to specify the activities to be covered by the exemption, the licences, authorisations or permits in relation to which the exemption is being granted, the period for which the exemption is in force and any conditions imposed on the exemption. If the holder of the exemption is a person other than an individual, the exemption is also required to set out the relevant qualifications or experience that an

employee or contractor must have in order to carry out the activities covered by the exemption.

241. The note following subregulation 342(4) refers the reader to regulation 314A of the Principal Regulations, which deals with the maximum period for which a special circumstances exemption is in force.
242. New subregulation 342(5) requires the relevant authority to give the successful applicant a copy of the special circumstances exemption as soon as practicable.

#### **Item [67] – At the end of Subdivision 6A.4.6**

243. Item 67 of Schedule 1 to the Amendment Regulations amends the Principal Regulations to insert new regulations 342A, 342B, 342C and 342D. New regulations 342A, 342B, 342C and 342D provide for imposing conditions on a special circumstances exemption, varying a special circumstances exemption, varying conditions imposed on a special circumstances exemption and contravening conditions of a special circumstances exemption.
244. The purpose of these new regulations is to align the existing special circumstances exemption in Division 6A.4 of the Principal Regulations (relating to fire protection) with the new special circumstances exemption in Division 6A.2 of the Principal Regulations (relating to refrigeration and air-conditioning).

#### **Regulation 342A – Conditions on special circumstances exemption**

245. New regulation 342A allows the relevant authority to impose conditions on a special circumstances exemption granted under regulation 342 of the Principal Regulations. The relevant authority is able to impose any conditions it considers reasonably necessary to manage the risks posed by the activities covered by the exemption.
246. New subregulation 342A(2) requires the relevant authority to impose a mandatory condition on a special circumstances exemptions that is granted to a person other than an individual. Such exemptions are required to include a condition that the activities covered by the exemption can only be carried out by a person with the relevant qualifications or experience specified in the exemption. This is to ensure that extinguishing agent is not misused or handled by unqualified or inappropriate persons.

#### **Regulation 342B – Application by holder to vary special circumstances exemption**

247. New regulation 342B allows the holder of a special circumstances exemption granted under regulation 342 to apply to the relevant authority to vary that exemption. This could include applying to vary the activities covered by the exemption, the conditions imposed on the exemption, or the licence, authorisation or permit in relation to which the exemption is in force.
248. New subregulation 342B(2) requires an application to vary a special circumstances exemption to be made in the approved form, to be accompanied by the information or

documents required by the approved form and to be accompanied by the prescribed fee (if any).

249. The note following subregulation 342B(2) directs the reader to Division 6A.4A of the Principal Regulations, which prescribes fees for special circumstances exemptions granted under regulation 342. It is not intended to impose an application fee to vary a special circumstances exemption at this time. Any fee would only be imposed following a review of cost recovery arrangements including public consultation.
250. New subregulation 342B(3) allows the relevant authority to request, in writing, that the applicant provide further additional information or documents relevant to the application. This ensures that the relevant authority is able to consider all relevant information when deciding whether to grant the application to vary a special circumstances exemption.
251. New subregulation 342B(4) has the effect that if the relevant authority asks an applicant for additional information or documents and the applicant does not provide the requested information or documents within 60 days, the applicant is taken to have withdrawn the application.
252. New subregulation 342B(5) requires the relevant authority to give the successful applicant a copy of the varied special circumstances exemption as soon as practicable.

#### Regulation 342C – Relevant authority may impose additional conditions or vary or remove existing conditions

253. New regulation 342C allows the relevant authority to, at any time, unilaterally vary the conditions of a special circumstances exemption granted under regulation 342 in order to impose additional conditions, or to vary or remove existing conditions. When imposing additional conditions on a special circumstances exemption, the relevant authority must consider that the new conditions are reasonably necessary to manage the risks posed by the activities covered by the exemption.
254. The variation of conditions must be done by written notice to the holder of the special circumstances exemption. The variation (whether to impose additional conditions or to remove or vary existing conditions) takes effect at the end of 60 days after the notice is provided to the holder of the special circumstances exemption. This is to ensure the holder has sufficient time to adjust their business practices to be able to meet the varied conditions. It also allows time for procedural fairness requirements to be satisfied. However, the relevant authority has the ability to specify a shorter period if the authority considers it necessary for the variation to take effect earlier.

#### Regulation 342D – Contravening conditions of special circumstances exemption

255. New subregulation 342D(1) has the effect that it is an offence to hold a special circumstances exemption granted under regulation 342 that is subject to a condition to be complied with by the person, and doubtto do an act or omission that contravenes a



condition of that exemption. The penalty for committing this offence is 10 penalty units.

256. New subregulation 342D(2) provides that the offence in subregulation 342D(1) is an offence of strict liability.

257. Having regard to the *Commonwealth Guide to Framing Offences* and the *Senate Scrutiny of Bills Committee Sixth Report of 2002: Application of Absolute and Strict Liability Offences in Commonwealth Legislation (Scrutiny of Bills Committee 6th Report)*, strict liability is appropriate because:

- the offence is not punishable by imprisonment;
- the offence is subject to a maximum penalty of 10 penalty units for an individual;
- the actions which trigger the offence are simple, readily understood and easily defended. The offence is triggered if a condition of the special circumstances exemption is contravened;
- offences relating to misuse of extinguishing agent need to be dealt with efficiently to ensure industry and community confidence in the regulatory regime;
- the absence of strict liability may adversely affect the capacity to prosecute offenders. Whether or not a defendant intentionally, recklessly or negligently contravened a condition of a special circumstances exemption is generally a matter that is peculiarly within the knowledge of the defendant alone. Proving the contrary beyond reasonable doubt may require significant and difficult to obtain indirect and circumstantial evidence;
- in addition, where it is an employee or contractor of the holder of the special circumstances exemption who contravened a condition of the exemption, it may not be possible to prove beyond reasonable doubt that the holder intentionally, recklessly or negligently committed the offence. However, given the holder's responsibility for the actions of their employees or contractors, it is appropriate that, in such circumstances, the holder is liable for the contravention;
- the compliance with conditions of a special circumstances exemption is a necessary part of ensuring that the Act and the Principal Regulations remain an effective and efficient mechanism to both implement Australia's obligations under the Montreal Protocol and other relevant international treaties, and to realise the intended environmental benefits. The contravention of a condition of an exemption may result in significant environmental harm;

- the person affected is placed on notice to guard against the possibility of contravention, which is likely to significantly enhance the effectiveness of the enforcement regime in deterring the conduct in question.

258. The defence of honest and reasonable mistake of fact is available for strict liability offences (see sections 6.1 and 9.2 of the Criminal Code) and the existence of strict liability does not make any other defence unavailable (see subsection 6.1(3) of Schedule 1 to the Criminal Code).

### Part 3 – Application and transitional provisions

259. Part 3 of the Amendment Regulations sets out the application and transitional provisions that clarify how the amendments in Parts 1 and 2 of the Amendment Regulations apply.

### ***Ozone Protection and Synthetic Greenhouse Gas Management Regulations 1995***

#### **Item [68] – In the appropriate position in Part 10**

260. Item 68 of Schedule 1 to the Amendment Regulations inserts a new Division 8 (Regulations 974 to 978) into Part 10 of the Principal Regulations. The purpose of new Division 8 is set out the application of the Amendment Regulations.

#### Regulation 974 – Definitions for this Division

Regulation 974 defines the terms *amending regulations*, *commencement time* and *old regulations* for the purposes of new Division 8 of Part 10 of the Principal Regulations.

#### Regulation 975 – Reserve HFC quota amendments

Regulation 975 clarifies the application of amendments in Part 1 of Schedule 1 to the Amendment Regulations, which relate to reserve HFC quota. Those amendments apply in relation to a calendar year commencing on or after 1 January 2023.

This date is appropriate as the existing provisions of the Principal Regulations already allow for the allocation of reserve HFC quota for 2022. This application provision clarifies that the amendments apply from the 2023 calendar year on an ongoing basis.

#### Regulation 976 – Application for an RAC Industry permit

Regulation 976 has the effect that an application for a RAC industry permit that was made before the Amendment Regulations commenced is taken, following the commencement of the Amendment Regulations, to have been submitted under, and should be assessed against, the Principal Regulations as amended by the Amendment Regulations.

#### Regulation 977 – Application for a special circumstances exemption

Regulation 977 has the effect that any applications under regulation 342 for a special circumstances exemption relating to fire protection that have not been finalised prior to the Amendment Regulations commencing are taken, following the commencement of the Amendment Regulations, to have been submitted under, and should be assessed against, the Principal Regulations as amended by the Amendment Regulations.

### Regulation 978 – Existing special circumstances exemptions

Regulation 978 has the effect that the Principal Regulations, as currently existing, continue to apply to special circumstances exemptions that were granted under regulation 342 prior to the Amendment Regulations commencing.

**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 (2022 Measures No. 1) Regulations 2022*

This legislative instrument is compatible with the human rights and freedoms recognized 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 associated *Montreal Protocol on Substances that Deplete the Ozone Layer*, as well as the *United Nations Framework Convention on Climate Change* and its *Kyoto Protocol* and *Paris Agreement*.

The *Ozone Protection and Synthetic Greenhouse Gas Management Amendment (2022 Measures No. 1) Regulations 2022* (the Amendment Regulations) amend the *Ozone Protection and Synthetic Greenhouse Gas Management Regulations 1995* (the Principal Regulations) to:

- expand the existing reserve HFC quota provisions in the Principal Regulations so they apply on an ongoing basis, rather than just for the 2022 calendar year. This would provide appropriate flexibility in the long term to manage shipping and freight delays caused by events outside the importer's control. This includes amendments to:
  - enable the allocation of reserve HFC quota for a relevant calendar year to importers to hold a licence and quota to import HFCs in the previous year and have ordered before 1 October of the previous year for arrival in Australia in that year, but the import is delayed until the relevant calendar year due to delays outside of the importer's control; and
  - ensure that imports made under a reserve HFC quota in a calendar year count towards the importer's HFC imports for the previous year for the purposes of calculating the importer's future quota entitlement; and
  - prescribe the method for working out the reserve HFC quota limit for a calendar year. The total amount of reserve HFC quota allocated to importers must not exceed the reserve quota limit; and
- enable a person to apply for, and the relevant authority to grant, a special circumstances exemption for activities relating to the end use of refrigerant in relation to refrigeration and air-conditioning (RAC) equipment in specified circumstances. This would allow suitable persons and organisations to apply for a special circumstances exemption to carry out RAC activities where it is not practicable, and

in specified circumstances, to apply for the relevant licence, authorisation or permit. Conditions would be able to be imposed on the special circumstances exemption to maintain oversight of persons and organisations covered by the exemption and to ensure compliance with practices that minimise emissions and contribute to the Act's emissions reduction objectives; and

The Amendment Regulations also make minor amendments (including to relevant offence provisions) to align the existing special circumstances exemption in the fire protection context with the new special circumstances exemption in the RAC context.

## **Human Rights Implications**

The Amendment Regulations engages the following human rights:

- the right to health in Article 12(1) of the International Covenant on Economic, Social and Cultural Rights (the ICESCR);
- the right to privacy in Article 17 of the International Covenant on Civil and Political Rights (the ICCPR);
- the right to the presumption of innocence in Article 14(2) of the ICCPR.

### Right to health

Article 12(1) of the ICESCR makes provision in relation to the right to health, specifically the right to the enjoyment of the highest attainable standard of physical and mental health. Article 12(2)(b) includes the improvement of all aspects of environmental hygiene as a step to be taken to achieve the full realisation of the right to health. In its *General Comment No 14 (August 2000)*, the United Nations Committee on Economic, Social and Cultural Rights stated that this encompasses the prevention and reduction of human exposure to harmful substances (at [15]).

Items 1-24 of the Amendments Regulations have the combined effect of providing for the Minister to allocate reserve HFC quota for a calendar year to importers who:

- hold a licence and HFC quota to import HFCs in that calendar year and the previous calendar year; and
- have ordered before 1 October of the previous calendar year, but the import is delayed until the following year due to delays outside the importer's control (see new regulation 62).

The total amount of reserve HFC quota allocated by the Minister for a calendar year must not exceed the reserve HFC quota limit prescribed by regulation 64, which is the difference between Australia's consumption limit for the year under the Montreal Protocol and the HFC Industry limit (set out in regulation 42). This means:

- a reserve HFC quota holder will not be able to import more HFCs in reliance on reserve HFC quota than they would have otherwise been entitled to import into Australia in a calendar year; and

- if the sum of reserve HFC quota applied for exceeds the reserve HFC quota limit, importers may be allocated reduced amounts to ensure compliance with this limit.

By limiting the amount of reserve HFC quota that may be allocated to within Australia's Montreal Protocol allowance, and by setting reserve HFC quota rules so that Australia's overall HFCs imports will not be higher than the limits set by Australia's HFC phase-down, the Amendment Regulations ensure that the potential adverse impact of HFCs on human and environment health is minimised.

Therefore, the Amendment Regulations promote the right to health under Article 12 of the ICESCR. It positively engages this right by limiting the amount of reserve HFC quota that may be allocated, which subsequently limits the amount of HFC that may be imported to ensure this amount stays within Australia's annual limits set by the HFC phase-down. The HFC phase-down limits Australia's imports of HFCs each year which subsequently reduces HFC emissions and the damaging effect of HFCs on the climate system.

### Right to privacy

Article 17 of the ICCPR prohibits arbitrary or unlawful interferences with an individual's privacy, family, home or correspondence. The right to privacy can be limited to achieve a legitimate objective where the limitations are lawful and not arbitrary. In order for an interference with the right to privacy to be permissible, the interference must be authorised by law, be for a reason consistent with the ICCPR and be reasonable in the circumstances.

Items 5-9 and 36-48 of the Amendment Regulations sets out an application process which will require a person to provide information in an application for the purposes of being allocated reserve HFC quota for the 2022 calendar year (items 5-9) or a RAC industry permit (items 36-48).

Requiring a person to provide information may, in some cases, require the provision of personal information. The collection of information under this circumstance (and any subsequent storage, use or disclosure of this information) may therefore operate to limit the right to privacy. However, it is likely that only a limited amount of personal information will be collected, and most information will relate to a person's business.

Any personal information collected through the application process will be managed in an open and transparent way, consistent with the Department's Privacy Policy and the Australian Privacy Principles contained in Schedule 1 of the *Privacy Act 1988*. Under the Department's Privacy Policy, appropriate controls exist in relation to the use and storage of personal information. For example, only personal information necessary to effectively carry out the scheme will be collected.

Requiring information in relation to persons who wish to be allocated reserve HFC quota to import HFC is necessary for the legitimate objective of assessing the suitability of a person to be allocated reserve HFC quota. Similarly, requiring information in relation to a person who applies for a RAC industry permit is necessary for the legitimate objective of assessing the suitability of a person to be granted such a permit. A person who provides information in an application will do so as someone who has 'opted in' to the regulatory system, and should expect that some personal information may need to be provided in order to gain the benefits of that system.

Therefore, while the collection of information in this instance may limit the right to privacy, it is reasonable, necessary and proportionate to achieve legitimate objectives. Accordingly, the Amendment Regulations are consistent with the right to privacy in Article 17 of the ICCPR.

### Right to the presumption of innocence

#### *Strict liability offences*

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, strict liability offences will not necessarily be inconsistent with the presumption of innocence, provided that the removal of the presumption of innocence pursues a legitimate objective and is reasonable, necessary and proportionate to achieving that objective. It is also important to note that the defence of honest and reasonable mistake of fact is still available and the existence of strict liability does not make any other defence unavailable.

The Amendment Regulations insert strict liability offences into the Principal Regulations relating to contravention of a condition of a special circumstances exemption relating to refrigeration and air conditioning, or fire protection.

Application of strict liability to offences in the Amendment Regulations has been set out having regard to the *Commonwealth Guide to Framing Offences* and the *Senate Scrutiny of Bills Committee Sixth Report of 2002: Application of Absolute and Strict Liability Offences in Commonwealth Legislation*. Consistent with these documents, strict liability is considered appropriate as the penalties for the offences do not include imprisonment and do not exceed 10 penalty units for an individual.

Strict liability offences are necessary to ensure the integrity of the regulatory regime and effectively regulate the manufacture and import of scheduled substances and equipment containing such substances to prevent potential harm to the environment and human health. In addition, the actions that trigger the offences are simple, readily understood and easily defended. The continued inclusion of these strict liability offences (with appropriate penalties) would, therefore, ensure the Minister can deal with non-compliance efficiently to ensure public confidence in the regulatory regime and also ensure Australia continues to meet its international obligations under the Montreal Protocol and other international treaties. Therefore, to the extent that strict liability offences included or amended by the Amendment Regulations limit the right to the presumption of innocence, the limitations are reasonable, necessary and proportionate.

#### *Reversal of the burden of proof*

Laws that shift the burden of proof to a defendant can be considered a limitation of the presumption of innocence. Where a defendant bears an evidential burden in relation to an exception to an offence, it means the defendant bears the burden of adducing or pointing to evidence that suggests a reasonable possibility that the exception has been met. Reversing the burden of proof is not necessarily inconsistent with the presumption of innocence, provided that the reversal pursues a legitimate objective and is reasonable, necessary and proportionate to achieving that object. Whether the right to the presumption of innocence is limited will depend on the circumstances and justification for the reverse burden.

Items 31 and 54 of the Amendment Regulations insert into the Principal Regulations additional defences to existing offences relating to making false representations. Specifically, existing regulations 113A and 304A of the Principal Regulations make it an offence for a person to make a representation that they are entitled to provide certain services involving, respectively, refrigerant or an extinguishing agent if they are not the holder of a permit entitling them to provide the service. Items 31 and 54 provide that the offence does not apply if, at the time of making the representation, the person is an employee or contractor of the holder of a special circumstances exemption and the representation made by the person is for an activity covered by the exemption. The notes following these provisions explain that a defendant bears the evidential burden in relation to these matters.

The reversal is justified in these instances, as the matter to be proved is a matter that would be peculiarly in the knowledge of the defendant. This is because a person's employment details is generally a matter that is peculiarly within the knowledge of that person. Consequently, it is reasonable, necessary and proportionate to reverse the burden of proof in these circumstances and limit the right to the presumption of innocence.

### **Conclusion**

The Amendment Regulations is compatible with human rights because it promotes the right to health under Article 12(1) of the ICESCR. To the extent that it engages and limits the right to privacy under Article 17 of the ICCPR and the right to presumption of innocence under Article 14(2) of the ICCPR, those limitations are reasonable, necessary and proportionate to achieve the legitimate aims of the instrument.

**The Hon. Tanya Plibersek MP**  
**Minister for the Environment and Water**