

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 (2023 Measures No.1) Regulations 2023

Purpose

The purpose of the *Ozone Protection and Synthetic Greenhouse Gas Management Amendment (2023 Measures No.1) Regulations 2023* (the Amendment Regulations) is to make necessary consequential amendments to the *Ozone Protection and Synthetic Greenhouse Gas Management Regulations 1995* (the Principal Regulations) as a result of the changes that the *Ozone Protection and Synthetic Greenhouse Gas Management Reform (Closing the hole in the Ozone Layer) Act 2022* (OPSGGM Amendment Act) made to the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* (OPSGGM Act). The changes primarily relate to licensing and reporting requirements for the import, export and manufacture of scheduled substances and associated equipment.

Legislative authority

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

The OPSGGM Act provides for certain matters to be set by regulations. This includes the power to:

- clarify when a scheduled substance is a bulk substance and when it is equipment (section 9);
- provide exemptions from licensing requirements relating to the import, export or manufacture of scheduled substances or equipment (sections 13, 13AA and 13AB);
- extend the prohibition on unlicensed manufacture or import of equipment to equipment that uses a scheduled substance in its operation (sections 13 and 13AA);
- prescribe additional requirements to grant an equipment licence (section 16);
- publish information (section 22);
- prohibit or regulate the distribution, purchase, acquisition, or disposal of scheduled substances (section 45A);
- set reporting requirements relating to the import, export or manufacture of scheduled substances or equipment (section 46);

- set record keeping requirements relating to the import, export or manufacture of scheduled substances or equipment (section 48);
- waive application fees (section 70);

The Amendment Regulations are made under section 70 of the OPSGGM Act and are made for the purposes of the relevant provisions in sections 9, 13, 13AA, 13AB, 16, 22, 45A, 46, 48 and 70 of the OPSGGM Act.

The amendment of the Principal Regulations is made in reliance on subsection 33(3) of the *Acts Interpretation Act 1901*.

Background

The OPSGGM Act the Principal Regulations implement 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*.

The OPSGGM Amendment Act amends the relevant provisions of the OPSGGM Act dealing with:

- import, export and manufacture prohibitions. The amendments consolidate, streamline and modernise those prohibitions provisions, as well as the exemptions to those prohibitions; and
- reporting requirements relating to the import, export and manufacture of scheduled substances and equipment; and
- compliance, enforcement and delegations.

These changes necessitated consequential amendments to the Principal Regulations.

Impact and effect

The Amendment Regulations make consequential amendments to the Principal Regulations as a result of the changes to the OPSGGM Act made by the OPSGGM Amendment Act.

The Amendment Regulations:

- align the section cross references in the Principal Regulations to the amended OPSGGM Act ;
- impose a requirement to obtain a licence to import or manufacture equipment that uses an ozone depleting substance (ODS) in its operation;
- set out the exemptions from requiring a licence to import, export or manufacture scheduled substances or equipment, including new exemptions for temporary imports and returning Australian equipment;

- provide for additional circumstances where licence fees can be waived;
- provide for information relating to the suspension of licences to be published;
- update the fit and proper test and reporting requirements to align with changes to the OPSGGM Act;
- simplify reporting and record keeping requirements for the use of methyl bromide to reduce unnecessary burdens and duplications;
- repeal the existing compliance, enforcement and delegations provisions in the Principal Regulations, as these matters are now provided for in the OPSGGM Act.

Pre-conditions to making the Amendment Regulations

The OPSGGM Act does not specify any conditions that need to be satisfied before the power to make the Amendment Regulations may be exercised.

Consultation

No consultation on the Amendment Regulations was undertaken due to the minor and machinery nature of the proposed amendments. Consultation was undertaken in relation to the review of the Ozone Protection and Synthetic Greenhouse Gas Program, which formed the basis of the changes made to the OPSGGM Act by the OPSGGM Amendment Act.

Details and operation

The Amendment Regulations commence on the later of the start of the day after the Proposed Regulations are registered and immediately after the commencement of Schedule 1 to the OPSGGM Amendment Act. However, the Amendment Regulations do not commence at all if Schedule 1 to the OPSGGM Amendment Act does not commence.

Details of the Amendment Regulations are set out in [Attachment A](#).

Other

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

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 (2023 Measures No. 1) Regulations 2023*

Section 1 – Name

1. This section provides that the name of the instrument is the *Ozone Protection and Synthetic Greenhouse Gas Management Amendment (2023 Measures No. 1) Regulations 2023* (the Amendment Regulations).

Section 2 – Commencement

2. This section has the effect that the Amendment Regulations commence on the later of the start of the day after the Amendment Regulations are registered and immediately after the commencement of Schedule 1 to the *Ozone Protection and Synthetic Greenhouse Gas Management Reform (Closing the Hole in the Ozone Layer) Amendment Act 2022* (OPSGGM Amendment Act). However, the Amendment Regulations do not commence at all if Schedule 1 to the OPSGGM Amendment Act does not commence.
3. The OPSGGM Amendment Act commences on a single day to be fixed by Proclamation. However, if it does not commence within the period of 6 months beginning on the day receiving the Royal Assent (being 13 December 2022), it commences on the day after the end of that period.

Section 3 – Authority

4. This section provide that the Amendment Regulations are made under the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* (the OPSGGM Act).

Section 4 – Schedules

5. 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.
6. This enables the amendment of the *Ozone Protection and Synthetic Greenhouse Gas Management Regulations 1995* (the Principal Regulations).

Schedule 1 – Amendments

Ozone Protection and Synthetic Greenhouse Gas Management Regulations 1995

Item [1] – Regulation 2 (definition of scheduled kind)

7. Regulation 2 of the Principal Regulations defines key terms for the purposes of the Principal Regulations.

8. Item 1 of Schedule 1 to the Amendment Regulations amend existing regulation 2 of the Principal Regulations to repeal the definition for *scheduled kind*. The amendment made by this item is consequential to the amendment made by item 43, which removes the term *scheduled kind* from the Principal Regulations.

Item [2] – Regulation 2A

9. Prior to the amendments made by the OPSGGM Amendment Act, section 8D of the OPSGGM Act defined *SGG equipment* for the purposes of that Act to mean equipment that contained a substance that is a hydrofluorocarbon (HFC), perfluorocarbon (PFC), nitrogen trifluoride or sulfur hexafluoride, but not (relevantly) equipment prescribed by the regulations.
10. Existing regulation 2A of the Principal Regulations was made for the purposes of section 8D of the OPSGGM Act and has the effect of excluding the following kinds of equipment from being SGG equipment for the purposes of the OPSGGM Act:
 - imported foam equipment (other than expanding polyurethane foam aerosols);
 - foam equipment (other than expanding polyurethane foam aerosols) included in other imported equipment;
 - a medical device or medicines;
 - a veterinary device or veterinary medicine.
11. The practical effect of existing regulation 2A was to exclude the prescribed equipment from being SGG equipment – and therefore exclude such equipment from the scope of the regulatory system established by the OPSGGM Act. This meant that, for example, a person would not require a licence to import such equipment into Australia.
12. The OPSGGM Amendment Act amended the OPSGGM Act to (relevantly):
 - repeal existing section 8D of that Act and to instead define *SGG equipment* in section 7 as meaning equipment that:
 - contains an SGG and does not contain any scheduled substance that is not an SGG; or
 - uses an SGG in its operation and does not use any scheduled substances in its operation; and
 - provide for the regulations to exclude certain kinds of equipment from the prohibitions against importing (and, where relevant, manufacturing and exporting) without a licence – rather than excluding such equipment from being SGG equipment itself.

13. The new provisions would streamline and improve the clarity of the Act and would adopt modern drafting practices.
14. Item 2 of Schedule 1 to the Amendment Regulations repeals existing regulation 2A of the Principal Regulations. This is appropriate, as its enabling provision (former section 8D of the OPSGGM Act) no longer exists. The content of existing regulation 2A is moved to new regulations 3 and 3A (made under new sections 13 and 13AA of the OPSGGM Act) by the amendment made by item 4, with the effect that the manufacture or import of such equipment would continue to not require a licence.

Item [3] – Regulation 2B

15. Section 9 of the OPSGGM Act clarifies when a scheduled substance is a bulk substance and when a scheduled substance is either contained in, or used in the operation of, equipment.
16. Prior to the amendments made by the OPSGGM Amendment Act, subsection 9(6) of the OPSGGM Act allowed the regulations provide that, in prescribed circumstances, a scheduled substance:
 - is a bulk scheduled substance, or is not a bulk scheduled substance; or
 - is taken to be contained in equipment, or is taken not to be contained in equipment; or
 - is taken to be used in the operation of equipment, or is taken not to be used in the operation of equipment.
17. Regulation 2B of the Principal Regulations is made for the purpose of subsection 9(6) of the OPSGGM Act and provides that an hydrochlorofluorocarbon (HCFC) or HFC that is in a polyol blend:
 - is taken to be a bulk scheduled substance; and
 - is taken not to be contained in equipment; and
 - is taken not to be used in the operation of equipment.
18. The OPSGGM Amendment Act amended section 9 of the OPSGGM to improve the clarity of the provision and adopt modern drafting practices. Relevantly, the regulation-making power in subsection 9(6) was moved to subsection 9(5).
19. New subsection 9(5) of the OPSGGM Act provides that the regulations may provide that, in prescribed circumstances, a scheduled substance:
 - is taken to be, or not to be, a bulk scheduled substance; or

- is taken to be, or not to be, contained in equipment; or
 - is taken to be, or not to be, used in the operation of equipment; or
 - is taken to be, or not to be, contained in equipment for the sole purpose of storing or transporting the substance; or
 - is taken to be, or not to be, contained in equipment only because the substance was used in the process of manufacturing the equipment.
20. Subsection 9(6) of the OPSGGM Act was repealed.
21. Item 3 of Schedule 1 to the Amendment Regulations amends existing regulation 2B of the Principal Regulations to omit the reference to ‘subsection 9(6)’ and substitute a reference to ‘subsection 9(5)’. This is appropriate, as the enabling provision for regulation 2B would now be new subsection 9(5). There is no change to the content or substantive effect of existing regulation 2B.

Item [4] – Regulations 3, 3A, 3AA and 3B

22. Item 4 of Schedule 1 to the Amendment Regulations repeals existing regulations 3, 3A, 3AA and 3B of the Principal Regulations and substitutes new regulations 3 and 3A.
23. Existing regulation 3 is made for the purpose of former section 13 of the OPSGGM Act and prescribes circumstances and conditions for the unlicensed manufacture and import of scheduled substances and equipment. The OPSGGM Amendment Act repealed section 13 of the OPSGGM Act and substituted new sections 13 (concerning the manufacture of scheduled substances and equipment), 13AA (concerning the import of scheduled substances and equipment), 13AB (concerning the export of scheduled substances and equipment) and 13AC (penalties for unlicensed manufacture, import or export of scheduled substances and equipment).
24. The intention is that the substantive requirements in existing regulations 3A, 3AA and 3B would be moved into licence conditions.
25. The purpose of these changes was to streamline and consolidate all licensing prohibitions and requirements into the same part of the Act, as well as improve the clarity of the provisions and adopt modernised drafting practices.
26. Consequential changes are required to the Principal Regulations to reflect the new enabling provisions and additional exemptions in relation to import of equipment. New regulations 3 and 3A make these consequential changes.

New regulation 3 – Unlicensed manufacture of scheduled substances or equipment

Unlicensed manufacture of a scheduled substance

27. New subsection 13(1) of the OPSGGM Act has the effect of prohibiting the unlicensed manufacture of a scheduled substance.
28. New subsection 13(2) of the OPSGGM Act has the effect that the prohibition in subsection 13(1) does not apply to a person manufacturing an SGG in circumstances, or for a purpose, prescribed by the regulations. Any regulations made for the purpose of subsection 13(2) of the OPSGGM Act are required to be consistent with Australia's international obligations.
29. New subregulation 3(1) of the Principal Regulations is made for the purpose of new subsection 13(2) of the OPSGGM Act and prescribes circumstances in which the unlicensed manufacture of an SGG is permitted under that Act. These circumstances are:
 - where the SGG is not a HFC and the whole amount of the SGG is used in a medical device, medicine, a veterinary device or veterinary medicine;
 - where the manufacture of the SGG consists of the formation of the SGG as a by-product of the manufacture of aluminium.
30. The circumstances prescribed by new subregulation 3(1) reflect the content of existing subregulation 3(1) (made for the purpose of former subsection 13(3) of the OPSGGM Act). As such, there is no change in the circumstances in which the unlicensed manufacture of an SGG would be permitted.

Unlicensed manufacture of equipment using a scheduled substance in its operation

31. New subsection 13(5) of the OPSGGM Act has the effect of prohibiting the unlicensed manufacture of equipment that uses a scheduled substance in its operation, but only if the equipment or substance (or both) is prescribed by the regulations. The purpose of this provision is to allow the regulations to set the kinds of equipment that are covered by the prohibition, based on the risk to the environment of the particular equipment.
32. New subregulation 3(2) of the Principal Regulations prescribe, for the purpose of new paragraph 13(5)(d) of the Act, a scheduled substance other than an SGG. The effect of this provision is to prohibit the unlicensed manufacture of equipment that uses an ODS in its operation.
33. This is consistent with the effect of new subsection 13(3) of the OPSGGM Act, which prohibits the unlicensed manufacture of equipment that contains an ODS.
34. Previously, Schedule 4 of the OPSGGM Act prohibited the unlicensed manufacture of certain kinds of ODS equipment. The combined effect of new subsections 13(3) and (5) of the OPSGGM Act, and new subregulation 3(2), is that the unlicensed

manufacture of all ODS equipment is prohibited under the OPSGGM Act. This is appropriate, as ODS have been phased out under the Montreal Protocol other than for essential uses.

New regulation 3A – Unlicensed import of scheduled substances or equipment

Unlicensed import of scheduled substances

35. New subsection 13AA(1) of the OPSGGM Act has the effect of prohibiting the unlicensed import of a scheduled substance.
36. New subsection 13AA(2) of the OPSGGM Act has the effect that the prohibition in subsection 13AA(1) does not apply to a person importing an SGG (other than an SGG that is a used substance) in circumstances, or for a purpose, prescribed by the regulations. Any regulations made for the purpose of subsection 13AA(2) of the OPSGGM Act are required to be consistent with Australia's international obligations.
37. New subregulation 3A(1) of the Principal Regulations is made for the purpose of new subsection 13AA(2) of the OPSGGM Act and prescribes circumstances in which the unlicensed import of an SGG is permitted under that Act. The prescribed circumstance is where the SGG is not a HFC and the whole amount of the SGG is used in a medical device, medicine, a veterinary device or veterinary medicine.
38. The circumstances prescribed by new subregulation 3A(1) reflect the content of existing subregulation 3(1) (made for the purpose of former subsection 13(3) of the OPSGGM Act). As such, there would be no change in the circumstances in which the unlicensed import of an SGG would be permitted.

Unlicensed import of equipment – low volume imports exemption

39. New subsection 13AA(3) of the OPSGGM Act has the effect that the unlicensed import of equipment containing a scheduled substance is prohibited. This prohibition covers both equipment that contains an SGG and equipment that contains an ODS.
40. However, the combined effect of paragraph 13(AA)(3)(e) is that the import of equipment containing an SGG that is subject to the low volume imports exemption (in new subsection 13AA(4)) does not require a licence. New subsection 13AA(4) of the OPSGGM Act provides that a person's importation of equipment is covered by the low volume imports exemption if:
 - a. the total amount of SGGs contained in the equipment is not greater than an amount prescribed by the regulations; and
 - b. any other conditions prescribed by the regulations in relation to the person, the equipment or the importation are satisfied.
41. New subregulation 3A(2) of the Principal Regulations is made for the purpose of new paragraph 13AA(4)(a) of the OPSGGM Act and prescribes 25kg as the total

amount of SGGs that can be contained in equipment imported without a licence under the low volume imports exemption.

42. New subregulation 3A(3) of the Principal Regulations is made for the purpose of new paragraph 13AA(4)(b) of the OPSGGM Act and has the effect that the 25kg limit under new subregulation 3A(2) applies to a calendar year. This means that a person can only import equipment containing a total of 25kg of SGGs in a calendar year, whether that be in one or multiple shipments, one or multiple kinds of equipment or one or multiple kinds of SGG. Put another way, if a person imports equipment containing 15 kg of SGG in one shipment, that person can only import further equipment containing a total of 10 kg of any SGG in the same calendar year under the low volume imports exemption.

Unlicensed import of equipment using a scheduled substance in its operation

43. New subsection 13AA(5) of the OPSGGM Act has the effect that the unlicensed import of equipment that uses a scheduled substance in its operation is prohibited, but only if the equipment or substance (or both) is prescribed by the regulations. The purpose of this provision is to allow the regulations to set the kinds of equipment that are covered by the prohibition, based on the risk to the environment of the particular equipment.
44. New subregulation 3A(4) of the Principal Regulations prescribe, for the purpose of new paragraph 13AA(5)(d) of the Act, a scheduled substance other than an SGG. The effect of this provision is to prohibit the unlicensed import of equipment that uses an ODS in its operation.
45. This is consistent with the effect of new subsection 13AA(3) of the OPSGGM Act, which (relevantly) prohibits the unlicensed import of equipment that contains an ODS.
46. Previously, Schedule 4 of the OPSGGM Act prohibited the unlicensed import of certain kinds of ODS equipment. The combined effect of new subsections 13AA(3) and (5) of the OPSGGM Act, and proposed new subregulation 3A(4), would be that the unlicensed import of all ODS equipment is prohibited under the OPSGGM Act. This is appropriate, as ODS have been phased out under the Montreal Protocol other than for essential uses.

Unlicensed import of equipment - exemptions

47. New subsections 13AA(6) to (9) of the OPSGGM Act contain exemptions from the general prohibitions on the import of equipment containing a scheduled substance (in new subsections 13AA(3)) and the prohibition on the import of equipment that uses a scheduled substance in its operation (in new subsection 13AA(5)).

Exemptions for kinds of equipment

48. New subsection 13AA(6) of the OPSGGM Act has the effect that the prohibition in subsections 13AA(3) or (5) do not apply to a person importing equipment of a kind

prescribed in the regulations (paragraph 13AA(6)(a)), or in circumstances, or for a purpose, prescribed by the regulations (paragraph 13AA(6)(b)).

49. New subregulation 3A(5) of the Principal Regulations is made for the purpose of new paragraph 13AA(6)(a) of the OPSGGM Act and prescribes kinds of equipment containing a scheduled substance, or (where relevant) that use a scheduled substance in its operation, that can be imported without a licence. These kinds of equipment are:
- imported foam equipment (other than expanding polyurethane foam aerosols);
 - foam equipment (other than expanding polyurethane foam aerosols) included in other imported equipment;
 - a medical device or medicine;
 - a veterinary device or veterinary medicine.
50. The content of new subregulation 3A(5) reflects the content of existing regulation 2A in respect of imports. There is no change in the substantive operation of this exemption.

Exemptions for private or domestic use

51. New subsection 13AA(7) of the OPSGGM Act has the effect that the prohibition in subsections 13AA(3) or (5) do not apply to a person importing equipment if:
- a. the equipment is kept by the person, or by a member of the person's household, wholly or principally for private or domestic use; and
 - b. the equipment is prescribed by the regulations; and
 - c. any other conditions prescribed by the regulations are satisfied.
52. New subregulation 3A(6) of the Principal Regulations prescribes, for the purposes of new paragraph 13AA(7)(b) of the OPSGGM Act, the kinds of equipment that do not require a licence to import for private or domestic use. These kinds of equipment are:
- air conditioning equipment, including air conditioning equipment contained in something else (for example, in a motor vehicle, watercraft or aircraft);
 - a heat pump;
 - medical equipment;

- a part or component that contains a scheduled substance, other than a motor vehicle part or component;
 - personal, household or food equipment;
 - refrigeration equipment;
 - safety equipment.
53. New subregulation 3A(7) of the Principal Regulations prescribes, for the purposes of new paragraph 13AA(7)(c) of the OPSGGM Act, the conditions that must be satisfied for the unlicensed import of the equipment prescribed in new subregulation 3A(6) to be permitted. These conditions require the importer to comply, within 30 days, with any notice from the Secretary requesting evidence that:
- the equipment (other than medical equipment) has been owned for more than 12 months wholly or principally for private or domestic use before importation; or
 - the equipment is imported wholly or principally for private or domestic use.
54. The content of new subregulation 3A(7) reflects the content of existing regulations 3(2) and 3(3). There would be no change in the substantive operation of the private and domestic use exemption.

Exemptions for temporary imports

55. New subsection 13AA(8) of the OPSGGM Act has the effect that the prohibition in subsections 13AA(3) or (5) do not apply to a person importing equipment if:
- a. the equipment is imported:
 - a. for a purpose, or in circumstances, (if any) prescribed by the regulations, and
 - b. with the intention of later exporting the equipment within a period not exceeding 12 months, or a longer period prescribed by the regulations; and
 - b. any other conditions prescribed by the regulations in relation to the person, the equipment or the importation are satisfied.
56. New subregulation 3A(8) of the Principal Regulations prescribes, for the purpose of new subparagraph 13AA(8)(a)(i) of the OPSGGM Act, the purposes for which equipment containing a scheduled substance or (where relevant) equipment that uses a scheduled substance in its operation, can be imported without a licence, provided that the import is intended to be temporary. The prescribed purposes are:

- a research purpose;
 - if the equipment is a shipping container – the purpose of refrigerating goods during shipping;
 - the purpose of repairing or exchanging the equipment;
 - the purpose of carrying out dredging activities, or activities relating to operating offshore platforms;
 - the purpose of displaying or demonstrating the equipment to promote or advertise the equipment;
 - the purpose of competing in a race or other event using the equipment.
57. The note after new subregulation 3A(8) refers the reader to the condition in new subregulation 3A(11) that would apply to equipment imported for the purpose of repairing or exchanging the equipment.
58. New subregulation 3A(9) of the Principal Regulations prescribes, for the purpose of new subparagraph 13AA(8)(a)(i) of the OPSGGM Act, the circumstances in which equipment containing a scheduled substance or (where relevant) equipment that uses a scheduled substance in its operation, can be imported without a licence, provided that the import is intended to be temporary. The prescribed circumstances are:
- that the equipment is not intended to remain in Australia and does not change ownership in Australia;
 - that the equipment is imported in accordance with an international agreement relating to temporary imports of scheduled substances to which Australia is a party;
 - that the equipment is on either a vessel or aircraft (other than an Australian vessel or aircraft) that is temporarily operating in Australia.
59. New subregulation 3A(10) prescribes, for the purposes of new subparagraph 13AA(8)(a)(ii) of the OPSGGM Act, the period within which equipment temporarily imported into Australia can stay in Australia. The prescribed period is 2 years. This means that the temporary imports exemption in new subsection 13AA(8) of the OPSGGM Act applies to equipment imported for the purposes or circumstances set out above at new subregulations 3A(8) and (9), provided the equipment is intended to be re-exported within 2 years of being imported.
60. New subregulation 3A(11) prescribes, for the purposes of new paragraph 13AA(8)(b) of the OPSGGM Act, that it is a condition of the temporary imports

exemption that, if equipment is imported for the purpose of repairing or exchanging the equipment, the equipment is imported only for that purpose.

61. This condition ensures that, for example, equipment imported for the purpose of both repairs and resale is covered by the exemption and requires a licence.

Exemption for returning Australian equipment

62. New subsection 13AA(9) of the OPSGGM Act has the effect that the prohibition in subsections 13AA(3) or (5) do not apply to a person importing equipment if:
 - a. the equipment is of a kind prescribed by the regulations; and
 - b. the person had previously exported the equipment for a purpose, or in circumstances, (if any) prescribed by the regulations; and
 - c. while the equipment was outside Australia, no change was made to the type and quantity of scheduled substances contained in or used in the operation of the equipment, except in circumstances, or for purposes, (if any) prescribed by the regulations; and
 - d. title to the equipment remains unchanged between the time of export and time of import of the equipment.
63. New subregulation 3A(12) of the Principal Regulations prescribes, for the purposes of paragraph 13AA(9)(a) of the OPSGGM Act, ODS equipment and SGG equipment.
64. This has the effect that the exemption in new subsection 13AA(9) of the OPSGGM Act applies to all equipment containing a scheduled substance and all equipment that uses a scheduled substance in its operation. In other words, a licence is not required to re-import ODS equipment or SGG equipment that was previously exported, provided that while outside Australia no change was made to the type and quantity of scheduled substances and there was no change in the title to the equipment.
65. This exemption is intended to cover situations where, for example, Australian equipment, such as a vehicle or vessel, is returning after being exported for a temporary purpose such as repairs.

Item [5] – Subregulation 3C(5)

66. Regulation 3C of the Principal Regulations provides for application fees for licences under the OPSGGM Act, the power to waive such a fee and the circumstances that must be satisfied for such a waiver to occur.
67. Existing subregulation 3C(5) allows the Minister to waive an application fee for an equipment licence if:

- the purpose of the licence is to allow the import of equipment containing 25 kilograms or less of HCFC (paragraph 3C(5)(a)); and
 - in relation to such equipment:
 - the Minister is satisfied that subsection 16(6B) of the OPSGGM Act applies (subparagraph 3C(5)(b)(i)); or
 - paragraph 3E(1)(a) of the Principal Regulations applies (subparagraph 3C(5)(b)(ii)).
68. Subsection 16(6B) of the OPSGGM Act provided additional criteria to be satisfied for granting an equipment licence allowing a Schedule 4 activity or a section 69G activity. These activities related to the import or manufacture of ODS equipment in certain circumstances. Essentially, the effect of subsection 16(6B) was that such licences could only be granted in very limited circumstances, such as where the equipment is essential for medical, veterinary, defence, industrial safety, or public safety, purposes, and no practical alternative exists.
69. The OPSGGM Amendment Act amended the OPSGGM Act to remove the concepts of a Schedule 4 activity and a section 69G activity. Consequential to these amendments, subsection 16(6B) was also repealed, as it was redundant. Instead, all ODS equipment licences would be subject to additional criteria to ensure that they could only be granted in very limited circumstances (now set out in new subsection 16(6A)). This is appropriate as ODS, and ODS equipment, have been phased out under the Montreal Protocol (other than for essential uses) because of the harm such substances cause to the environment.
70. HCFC is an ODS. As an ODS equipment licence can only be granted if it meets the criteria in subsection 16(6A) of the OPSGGM Act, imposing the same criteria for a fee waiver for that licence is redundant and duplicative – the criteria will always be met.
71. This means that existing subparagraph 3C(5)(b)(i) of the Principal Regulations is now redundant and can be repealed.
72. Existing paragraph 3E(1)(a) of the Principal Regulations prescribes, for the purpose of former subparagraph 16(6A)(a)(ii) of the OPSGGM Act, certain section 69G activities for which an equipment licence does not need to meet the criteria in former subsection 16(6B) of the OPSGGM Act. As the OPSGGM Amendment Act repeals the concept of section 69G activities, and both subparagraph 16(6A)(a)(ii) and subsection 16(6B) of the OPSGGM Act, paragraph 3E(1)(a) is now redundant and can be repealed. (This is done by item 7).
73. This, in turn, means that existing subparagraph 3C(5)(b)(ii) is also redundant and can be repealed.

74. Item 5 of Schedule 1 to the Amendment Regulations repeals existing subregulation 3C(5) and substitutes a new subregulation 3C(5). The effect is to repeal existing subparagraphs 3C(5)(b)(i) and (ii) and provide the Minister may waive the application fee for an equipment licence if the purpose of the licence is to allow the import of equipment containing 25 kilograms or less of HCFC.
75. Item 5 of Schedule 1 to the Amendment Regulations also amends existing regulation 3C of the Principal Regulations to insert new subregulation 3C(6). New subregulation 3C(6) allows the Minister to waive an application fee for a licence if the Minister is satisfied that there are exceptional circumstances that justify waiving the fee.
76. The power in new subregulation 3C(6) applies to any kind of licence applied for under the OPSGGM Act. The purpose of this amendment is to allow the Minister to be able to respond appropriately to unexpected or unforeseen circumstances (such as the recent global pandemic or unusual licensing requirements).

Item [6] – Paragraph 3D(b)

77. Regulation 3D of the Principal Regulations has the effect that:
 - the application fee for the renewal of a licence is the same as the application fee (under regulation 3C) for the granting of that licence; and
 - the Minister may waive the application fee for the renewal of a licence in the same circumstances in which the Minister may waive the application fee for the granting of that licence.
78. Item 6 of Schedule 1 to the Amendment Regulations amends existing regulation 3D of the Principal Regulations to include a reference to new subsection 3C(6) (inserted by item 5).
79. This ensures the provision continues to allow the Minister to waive the application fee for the renewal of a licence in all the same circumstances as the Minister may waive the application fee for the granting of that licence.

Item [7] – Regulation 3E

80. Item 7 of Schedule 1 to the Amendment Regulations repeals existing regulation 3E of the Principal Regulations and substitutes new regulations 3E and 3F.

New Regulation 3E

81. Section 16 of the OPSGGM Act allows the Minister to grant a licence to a person who has applied for it in accordance with section 14. Under section 14 a person may apply to the Minister for all or any of a controlled substances licence, an essential uses licence, a used substances licence or an equipment licence. Section 16 also sets

out the requirements of which the Minister must be satisfied in order to grant a licence.

82. The OPSGGM Amendment Act amended section 16 of the OPSGGM Act to make changes to the requirements of which the Minister must be satisfied to grant an equipment licence. Relevantly, new subsection 16(6) of the OPSGGM Act provides that the Minister must not grant an equipment licence that allows the manufacture, import or export of ODS equipment unless:
 - for equipment that contains a scheduled substance – subsection (6A) applies in relation to the equipment (paragraph 16(6)(a)); and
 - in any case – the requirements (if any) prescribed by the regulations for the purposes of paragraph 16(6)(b) in relation to the activity, the equipment and the relevant type of scheduled substance are satisfied (paragraph 16(6)(b)).
83. ODS equipment is defined in the OPSGGM Act to cover both equipment that contains a substance other than an SGG, and equipment that uses a scheduled substance other than an SGG in its operation.
84. Subsection 16(6A) of the OPSGGM Act has the effect that the Minister can only grant a licence to import, export or manufacture ODS equipment that contains a scheduled substance in very limited circumstances.
85. New regulation 3E is made for the purposes of paragraph 16(6)(b) and prescribes the same limitations on the Minister’s power to grant an equipment licence to import, export or manufacture ODS equipment that uses a scheduled substance in its operation as paragraph 16(6)(a) and subsection 16(6A) of the OPSGGM Act already impose on the Minister’s power to grant an equipment licence to import, export or manufacture ODS equipment that contains a scheduled substance.
86. This means that the Minister is only able to grant an equipment licence to import, export or manufacture any kind of ODS equipment if the Minister is satisfied that any of the following apply:
 - both:
 - the equipment is essential for medical, veterinary, defence, industrial safety, public safety, scientific, testing or monitoring purposes or laboratory and analytical uses; and
 - no practical alternative exists to the use of scheduled substances in the operation of manufacture, as the case required, of the equipment if it is to continue to be effective for such a purpose; or
 - because of the requirements of a law concerning the manufacture or use of the equipment, there is no practical alternative to the use of scheduled

substances in the operation or manufacture, as the case requires, of the equipment; or

- in the case of the import or export of equipment – it would be impracticable to remove or retrofit the equipment because it is incidental to other equipment that is being imported or exported; or
- in any case – the equipment is for use in conjunction with the calibration of scientific, measuring or safety equipment; or
- in any case – both:
 - exceptional circumstances justify granting the licence; and
 - granting the licence would not be inconsistent with Australia’s international obligations under the Montreal Protocol; or
- in any case – the manufacture, import or export would occur in circumstances prescribed by the regulations.

87. These strict limitations for both kinds of ODS equipment are appropriate as ODS have been phased out (under the Montreal Protocol) other than for essential uses, due to the harm such substances cause to the environment.

New Regulation 3F

88. Section 18 of the OPSGGM Act sets the conditions to which licences granted under section 16 are subject.

89. The table in subsection 18(1) provides for mandatory licence conditions. The OPSGGM Amendment Act amended subsection 18(1) to insert new item 7 of the table in that subsection.

90. New item 7 would prescribe a new mandatory condition that applies to a licence (other than an equipment licence) that allows the licensee to import a scheduled substance. The new condition would be that the licensee must not import the substance in a non-refillable container, unless the conditions (if any) prescribed by the regulations in relation to the container and the import are satisfied.

91. Non-refillable cylinders containers are single use cylinders that are filled with ODS or SGGs. Being designed to be disposed of after a single use, non-refillable containers are environmentally wasteful and harmful. Most relevantly for the objectives of the Act, around 5% of the gas remains in the container once it reaches equal pressure. When the container is disposed of it is to be deliberately punctured, in accordance with pressure vessel regulations, and usually (unless particular procedures are followed to capture the escaping gas) this residual amount of ODS or SGG is emitted to the atmosphere, which results in further harm to the environment.

92. New regulation 3F is made for the purposes of new item 7 of the table in subsection 18(1) of the OPSGGM Act. It has the effect that a licensee would be able to import a scheduled substance in a non-refillable container without breaching the new licence condition in item 7 of the table in subsection 18(1) of the OPSGGM Act if either or both of the following are satisfied:

- the substance is imported for either of calibration or testing purposes, laboratory or analytical purposes;
- there is no practical alternative to importing the substance in a non-refillable container.

Item [8] – Subregulation 4(1)

93. Section 22 of the OPSGGM Act allows the regulations to make provision for the periodic publication of details of licences granted, applications for licences refused and licences suspended, cancelled or surrendered. The reference to ‘suspended’ in section 22 was inserted by the OPSGGM Amendment Act.

94. Regulation 4 of the Principal Regulations, made for the purpose of section 22 of the OPSGGM Act, allows the Secretary to publish, on the Department’s website, details of licences granted, cancelled and surrendered (subregulation 4(1)).

95. Item 8 of Schedule 1 to the Amendment Regulations amends existing subregulation 4(1) to insert ‘suspended’ after ‘granted’. The effect of this amendment is to allow the Secretary to publish, on the Department’s website, details of licences that have been suspended. This is consistent with the amendment made to section 22 of the OPSGGM Act by the OPSGGM Amendment Act.

Item [9] – Paragraph 4(2)(d)

96. Subregulation 4(2) of the Principal Regulations sets out the details of licences that the Secretary may publish on the Department’s website under subregulation 4(1).

97. Item 9 of Schedule 1 to the Amendment Regulations amends existing subregulation 4(2) to repeal existing paragraph 4(2)(d) and substitute new paragraphs 4(2)(d), (da) and (db). New paragraphs 4(2)(d), (da) and (db) have the effect that the Secretary is able to publish:

- the date on which the licence comes into force (new paragraph 4(2)(d));
- the date on which the suspension, cancellation or surrender of the licence takes effect (new paragraph 4(2)(da)); and
- for the suspension of a licence:

- if the licence is suspended for a fixed period – the end of the period; and
 - if the licensee must take actions for the suspension to end – the actions the licensee must take (new paragraph 4(2)(db)).
98. The purpose of this amendment is to both improve the clarity of the provision and to update it to include relevant information relating to the suspension of a licence (following the amendment to section 22 of the OPSGGM Act by the OPSGGM Amendment Act).

Item [10] – Subregulation 5(1)

99. Subregulation 5(1) of the Principal Regulations sets record keeping requirements for licensees under the OPSGGM Act.
100. Item 10 of Schedule 1 to the Amendment Regulations amends existing subsection 5(1) of the Principal Regulations to clarify that the requirements in that subregulation are prescribed for the purposes of subsection 48(1) of the OPSGGM Act.
101. Subsection 48(1) of the OPSGGM Act (as amended by the OPSGGM Amendment Act) allows the regulations to make provision as to the keeping by a licensee (including the licensee of a suspended licence) of records relating to the manufacture, import or export of scheduled substances by the licensee.

Item [11] – Subregulation 5(3) (note 1)

102. Item 11 of Schedule 1 to the Amendment Regulations amends the first note after subregulation 5(3) of the Principal Regulations to change the label from ‘note 1’ to just ‘note’.
103. This amendment is consequential to the amendment proposed by item 12, which repeals the second note following subregulation 5(3).

Item [12] – Subregulation 5(3) (note 2)

104. The second note after subregulation 5(3) of the Principal Regulations refers to former section 65 of the OPSGGM Act (which was relevant to how the conduct of directors, servants and agents applies to offences under the Principal Regulations).
105. The OPSGGM Amendment Act repealed section 65 of the OPSGGM Act. This is because it was considered appropriate to instead rely on the Part 2.5 of Schedule 1 to the *Criminal Code Act 1995* (Criminal Code) to govern executive officer liability in relation to offences under the OPSGGM Act and the Principal Regulations.
106. Item 12 of Schedule 1 to the Amendment Regulations repeals the second note following subregulation 5(3) of the Principal Regulations on the basis that, as former

section 65 of the OPSGGM Act has been repealed, the note is now redundant and can also be repealed.

Item [13] – After paragraph 6A(ca)

107. Regulation 6A of the Principal Regulations has the effect that certain decisions made under the regulations are subject to review by the Administrative Appeals Tribunal (AAT). These decisions relate to the refusal to waive application fees for a licence or renewal of a licence.
108. Item 13 of Schedule 1 to the Amendment Regulations amends existing regulation 6A to insert new paragraph 6A(ca). New paragraph 6A(ca) has the effect that a decision by the Minister to refuse to waive an application fee under new subregulation 3C(6) is added to the list of decisions subject to AAT review.
109. New subregulation 3C(6) (inserted by item 5) allows the Minister to waive an application fee for a licence if the Minister is satisfied that there are exceptional circumstances that justify waiving the fee.
110. The purpose of this amendment is to ensure that all decisions under the regulations relating to the refusal to waive licence application fees are subject to AAT review.

Item [14] – Subregulation 102(1)

111. Regulation 102 of the Principal Regulations sets out the requirements of the fit and proper person test that applies in relation to refrigeration and air conditioning (RAC) industry permits (under Division 6A.2), feedstock permits (under Division 6A.3) and fire protection industry permits (under Division 6A.4).
112. Item 14 of Schedule 1 to the Amendment Regulations amends existing subregulation 102(1) to omit ‘This regulation sets out matters a decision-maker must consider in deciding’ and substitute ‘This regulation applies for the purposes of a decision-maker deciding’.
113. This item is consequential to the amendments made by item 15, which (relevantly) have the effect of including both mandatory and discretionary considerations for the decision-maker when applying the fit and proper person test in regulation 102.

Item [15] – Subregulations 102(2) and (3)

114. The fit and proper person test in existing regulation 102 of the Principal Regulations picked up aspects of the fit and proper person test in former section 16 of the OPSGGM Act. The OPSGGM Amendment Act amended the OPSGGM Act to repeal the fit and proper person test in section 16 of that Act and to insert a new fit and proper person test in new section 13B. For this reason, the fit and proper person test in regulation 102 of the Principal Regulations is also required to be updated.

115. Item 15 of Schedule 1 to the Amendment Regulations amends existing regulation 102 of the Principal Regulation to repeal existing subregulations 102(2) and (3) and substitute new subregulations 102(2), (3) and (3A).

116. New subregulation 102(2) sets out the matters to which the decision-maker is required to have regard when deciding whether a person is a fit and proper person for the purposes of deciding whether to grant a permit. These matters are:

- the considerations described in column 2 of item 1 of the table in subsection 13B(1) of the OPSGGM Act in relation to the person; and
- any suspension or cancellation of another permit of the same kind held by the person; and
- any contravention of a condition of another permit of the same kind held by the person.

117. The considerations described in column 2 of item 1 of the table in subsection 13B(1) of the OPSGGM Act are:

- the person's history in relation to environmental matters; and
- whether the person is bankrupt, has applied to take the benefit of any law for the relief of bankrupt or insolvent debtors, has compounded with creditors or has made an assignment of remuneration for their benefit; and
- whether the person has made a statement in an application or report under the Act or regulations that was false or misleading in a material particular, and whether the person did so knowingly; and
- whether the person has complied with their levy obligations in relation to the import or manufacture of scheduled substances or equipment; and
- whether the person has complied with a requirement to give a report under the Act or regulations.

118. It is intended that these factors enable the decision-maker to gain a broader understanding of the compliance history of the person without being restricted to only considering those matters that resulted in a conviction or pecuniary penalty order. This allows the decision-maker to make an informed decision as to whether the person is a fit and proper person to hold a permit under the regulations.

119. Some of the matters listed above, particularly the person's history in relation to environmental matters, may involve the consideration of criminal record information. While criminal record information is sensitive information under the *Privacy Act 1988*, it is considered appropriate that the decision-maker have regard to

relevant convictions of the person when determining whether the person is a fit and proper person to hold a permit. This is because knowledge of a person's history of compliance with relevant Australian environmental laws assists in the decision-maker's assessment of whether the person is likely to comply, or is able to comply, with the requirements of the regulations.

120. New subregulation 102(3) sets out the matters to which the decision-maker is required to have regard when deciding whether a person is a fit and proper person for the purposes of deciding whether to suspend or cancel a permit. These matters are:

- the considerations described in column 2 of item 1 of the table in subsection 13B(1) of the OPSGGM Act in relation to the person; and
- any earlier suspension of the permit; and
- any contravention of a condition of the permit; and
- any suspension or cancellation of another permit of the same kind held by the person; and
- any contravention of a condition of another permit of the same kind held by the person.

121. New subregulation 102(3A) sets out additional considerations for the Minister where the person who is required to be a fit and proper person to hold a permit is a body corporate.

122. In these circumstances, the Minister is required to also have regard to:

- the considerations described in column 2 of item 1 of the table in subsection 13B(1) of the OPSGGM Act in relation to each person who is an executive officer of the body corporate (whether or not the person was an executive officer of the body corporate at the time a matter occurs that relates to the consideration); and
- any suspension or cancellation of another permit of the same kind held by each person who is an executive officer of the body corporate (whether or not the person was an executive officer of the body corporate at the time a matter occurs that relates to the consideration); and
- any contravention of a condition of another permit of the same kind held by each person who is an executive officer of the body corporate (whether or not the person was an executive officer of the body corporate at the time a matter occurs that relates to the consideration).

123. This is appropriate, as the executive officers will be controlling the actions of the body corporate under the relevant permit.
124. The Minister is also able to have regard to whether the body corporate is a Chapter 5 body corporate within the meaning of the *Corporations Act 2001*. This includes consideration of whether the company is being wound up, whether a receiver (or a receiver and manager) has been appointed; and whether the company is under administration, whether the company has executed a deed of company arrangement or has entered into a compromise or arrangement with another person. However, this is not a mandatory consideration.

Item [16] – At the end of regulation 102

125. Item 16 of Schedule 1 to the Amendment Regulations amends existing regulation 102 of the Principal Regulations to insert new subregulation 102(5).
126. New subregulation 102(5) clarify that regulation 102 does not affect the operation of Part VIIC of the *Crimes Act 1914* (which includes provisions that, in certain circumstances, relieve persons from the requirement to disclose spent convictions and require persons aware of such convictions to disregard them).
127. This amendment is consistent with the fit and proper person test under the OPSGGM Act (as amended by the OPSGGM Amendment Act) which contains a similar clarifying provision.

Item [17] – Subregulation 113B(1)

128. Subsection 45C(1) of the OPSGGM Act has the effect of prohibiting a person from using a HCFC that was manufactured or imported on or after 1 January 2020. Failure to comply with this prohibition is an offence and contravention of a civil penalty provision.
129. Prior to the amendments made by the OPSGGM Amendment Act, subsection 45C(2) of the OPSGGM Act had the effect that the prohibition in subsection 45C(1) did not apply if the use was for a purpose prescribed by the regulations.
130. Regulation 113B of the Principal Regulations is made for the purpose of subsection 45C(2) of the OPSGGM Act and provides an exception to the prohibition in subsection 45C(1) for a person who uses a HCFC that was manufactured or imported on or after 1 January 2020 for the purpose of servicing refrigeration and air conditioning equipment, provided the equipment itself was not manufactured or imported on or after 1 January 2020.
131. The OPSGGM Amendment Act amended section 45C of the OPSGGM Act to clarify the operation of the provision and to adopt modern drafting practices. One effect of these changes is that the power to provide exceptions to the prohibition for uses prescribed by the regulations was moved from subsection 45C(2) to paragraph 45C(1)(c). There was no substantive change to this regulation-making power.

132. Item 17 of Schedule 1 to the Amendment Regulations amends existing subregulation 113B(1) of the Principal Regulations to omit the reference to subsection 45C(2) and substitute a reference to new paragraph 45C(1)(c). This is appropriate, as paragraph 45C(1)(c) is the new enabling power for regulation 113B. There is no change to the substantive operation of regulation 113B.

Item [18] – Regulation 200

133. Division 6A.3 of the Principal Regulations deals with methyl bromide. Regulation 200 defines key terms for the purposes of Division 6A.3.
134. Item 18 of Schedule 1 to the Amendment Regulations amends existing regulation 200 to insert a new definition for *emergency permit*.
135. An *emergency permit* is a non-quarantine and pre-shipment (non-QPS) permit granted in accordance with paragraph 235(2)(b).
136. This amendment is consequential to the amendments made by items 24 to 32, which use this term to delineate between emergency permits and other non-QPS permits to use methyl bromide.

Item [19] – Regulation 202

137. Regulation 202 of the Principal Regulations provides that an inspector appointed under section 49 of the OPSGGM Act may exercise the powers given to him or her under Part VIII of that Act at premises used for the storage of records relating to the sale or use of methyl bromide, or the storage of methyl bromide.
138. The OPSGGM Amendment Act amended Part VIII of the OPSGGM Act to (relevantly) apply Parts 2 and 3 of the *Regulatory Powers (Standard Provisions) Act 2014* (Regulatory Powers Act) to the monitoring and investigation of contraventions of the OPSGGM Act and the Principal Regulations. Parts 2 and 3 of the Regulatory Powers Act allows inspectors to exercise the powers vested in them under that Act (as applied by the OPSGGM Act) at premises used for the storage of records relating to the sale or use of methyl bromide, or the storage of methyl bromide.
139. Accordingly, regulation 202 of the Principal Regulations is now redundant and can be repealed.
140. Item 19 of Schedule 1 to the Amendment Regulations amends the Principal Regulations to repeal existing regulation 202 of the Principal Regulations, for the reasons set out above.

Item [20] – Regulation 216

141. Prior to the amendments made by the OPSGGM Amendment Act, subsection 45B(1) had the effect that a person committed an offence if the person engaged in conduct that resulted in the discharge of a scheduled substance in circumstances where it is

likely that the scheduled substance will enter the atmosphere, and the use is not in accordance with the regulations. Paragraph 45B(1)(e) allowed the regulations to prescribe circumstances in which the discharge of a scheduled substance was permitted.

142. Subsection 45B(2A) contained an equivalent civil penalty provision that also included a power to prescribe circumstances in which the discharge of a scheduled substance was permitted.
143. Regulation 216 of the Principal Regulations, made for the purposes of both paragraph 45B(1)(e) and 45B(2A), prescribes circumstances in which a person is permitted to discharge methyl bromide without contravening the offence provision (in subsection 45B(1)) or the civil penalty provision (in subsection 45B(2A)).
144. The OPSGGM Amendment Act amended section 45B of the OPSGGM Act to clarify the operation of the provision and to adopt modern drafting practices. One effect of these changes is that the power to prescribe circumstances in which the discharge of a scheduled substance is permitted was moved from paragraph 45B(1)(e) and subsection 45B(2A) to paragraph 45B(1)(d) for the purposes of both the offence and civil penalty provisions. There was no substantive change to this regulation-making power.
145. Item 20 of Schedule 1 to the Amendment Regulations amends existing regulation 216 of the Principal Regulations to omit the references to paragraph 45B(1)(e) and subsection 45B(2A) and substitute a reference to new paragraph 45B(1)(d). This is appropriate, as paragraph 45C(1)(d) is the new enabling power for regulation 216 – for the purpose of both the offence and civil penalty provision in section 45B of the OPSGGM Act. There is no change to the substantive operation of regulation 216.

Item [21] – Subparagraph 221(2)(d)(iv)

146. Regulation 221 of the Principal Regulations sets record keeping requirements for a person who uses methyl bromide for a quarantine or pre-shipment (QPS) use or non-QPS use.
147. Methyl bromide is used for a *QPS use* if the methyl bromide is applied by, or with the authorisation of, a Commonwealth, State or Territory authority to prevent the introduction, establishment or spread of a pest or disease in Australia, a State or a Territory, or if the methyl bromide is applied to a commodity, before it is exported, to meet the requirements of the importing country or a law of the Commonwealth (see subregulation 201(2) of the Principal Regulations).
148. Methyl bromide is used for a *non-QPS use* if it is used for anything other than a QPS use, feedstock or laboratory and analytical uses (see subregulation 201(3) of the Principal Regulations).

149. Existing subparagraph 221(2)(d)(iv) has the effect that, for each non-QPS use of methyl bromide, the person using the methyl bromide must record the number of hectares fumigated or the number of containers, and the volume of each container, fumigated.
150. This existing requirement does not appropriately account for the different kinds or methods of fumigation. Not all fumigation will be measured in hectares or containers.
151. For this reason, item 21 of Schedule 1 to the Amendment Regulations amends existing paragraph 221(2)(d) of the Principal Regulations to omit existing subparagraph (iv) and substitute new subparagraph (iv). New subparagraph 221(2)(d)(iv) has the effect that, for each non-QPS use of methyl bromide, the person using the methyl bromide must record information relating to the size of the area fumigated, the volume of the space fumigated or the amount of produce for which, or to which, the methyl bromide is applied.
152. This new requirement more appropriately accounts for the different kinds or methods of fumigation with methyl bromide that may occur.

Item [22] – At the end of subregulation 221(2)

153. Item 22 of Schedule 1 to the Amendment Regulations amends existing regulation 221 to insert a new note at the end of the regulation.
154. The new note explains that a non-QPS permit holder is also required to comply with any reporting requirements that are a condition of the permit and directs the reader to paragraph 212(2)(b) of the Principal Regulations where this requirement is located.

Item [23] – Regulation 231 (at the end of the heading)

155. Item 23 of Schedule 1 to the Amendment Regulations amends the heading to existing regulation 231 to add ‘other than emergency permit holders’ at the end.
156. This amendment is consequential to the amendment made by item 24, which would ensure that emergency permit holders are only required to comply with the reporting requirements in regulation 232, rather than both regulations 231 and 232.

Item [24] – Subregulation 231(1)

157. Regulation 231 of the Principal Regulations sets reporting requirements for persons who hold non-QPS permits to use methyl bromide.
158. Non-QPS uses of methyl bromide require a permit under regulation 235 of the Principal Regulations). There are two kinds of non-QPS permits granted under regulation 235: those granted under paragraph 235(2)(a) (for non-emergency situations) and those granted under paragraph 235(2)(b) (emergency permits).

159. The reporting requirements in existing regulation 231 apply to (relevantly) non-QPS uses of methyl bromide under both kinds of non-QPS permits. However, existing regulation 232 also provides specific reporting requirements for holders of emergency permits. This means that users of methyl bromide under an emergency permit are currently required to report under both regulations 231 and 232. This is unnecessarily burdensome and duplicative, without providing any environmental benefit.
160. For this reason, item 24 of Schedule 1 to the Amendment Regulations amends existing subregulation 231(1) of the Principal Regulations to omit ‘A non-QPS permit holder for the year’ and substitute ‘A person who is granted a non-QPS permit for a year (other than an emergency permit)’.
161. The effect of this amendment is to exclude emergency permit holders from having to comply with the reporting requirements under regulation 231, so as to reduce duplication and administrative burden. Emergency permit holders are still required to comply with the reporting requirements in regulation 232 of the Principal Regulations.

Item [25] – Paragraph 231(1)(c)

162. Item 25 of Schedule 1 to the Amendment Regulations amends existing paragraph 231(1)(c) of the Principal Regulations to omit ‘the permit holder’ and substitute ‘the non-QPS permit holder’.
163. This amendment is consequential to the amendment made by item 24.

Item [26] – Paragraph 231(2)(b)

164. Item 26 of Schedule 1 to the Amendment Regulations amends existing paragraph 231(2)(b) of the Principal Regulations to omit ‘on which methyl bromide is used (each fumigation) by, or on behalf of, the non-QPS permit holder for a non-QPS use in the reporting period’ and substitute ‘during the reporting period on which methyl bromide is used (each fumigation) by, or on behalf of, the permit holder for a non-QPS use in accordance with the permit’.
165. The purpose of this amendment is to clarify the requirements and to adopt a more modern drafting style. There are no substantive changes to the requirement in existing paragraph 231(2)(b).

Item [27] – Subparagraph 231(2)(b)(vi)

166. Existing subparagraph 231(2)(b)(vi) has the effect that the holder of a non-QPS permit for a year must report the number of hectares fumigated or the number of containers, and the volume of each container, fumigated.
167. This existing requirement does not appropriately account for the different kinds or methods of fumigation. Not all fumigation will be measured in hectares or containers.

168. For this reason, item 27 of Schedule 1 to the Amendment Regulations amends existing paragraph 231(2)(b) of the Principal Regulations to omit existing subparagraph (iv) and substitute new subparagraph (vi).
169. The combined effect of new subparagraph 231(2)(b)(vi) and the amendment made by item 24 is to require the holder of a non-QPS permit for a year (other than the holder of an emergency permit) to report information relating to the size of the area fumigated, the volume of the space fumigated or the amount of produce for which, or to which, the methyl bromide is applied.
170. This new requirement more appropriately accounts for the different kinds or methods of fumigation with methyl bromide that may occur.

Item [28] – Paragraph 231(2)(c)

171. Item 28 of Schedule 1 to the Amendment Regulations amend existing subregulation 231(2) to repeal existing paragraph (c) and substitute a new paragraph (c).
172. The combined effect of new paragraph (c) and the amendment proposed by item 24 is to require that, where no methyl bromide was under a non-QPS permit for a year, the holder of the non-QPS permit (other than the holder of an emergency permit) must include a statement to that effect.
173. The purpose of the amendment is to clarify the requirements and to adopt a more modern drafting style. There would be no substantive changes to the requirement in existing paragraph 231(2)(c).

Item [29] – At the end of subregulation 231(2)

174. Item 29 of Schedule 1 to the Amendment Regulations amends existing regulation 231 to insert a new note at the end of the regulation.
175. The new note explains that an non-QPS permit holder is also required to comply with any reporting requirements that are a condition of the permit and directs the reader to paragraph 212(2)(b) of the Principal Regulations where this requirement is located.

Item [30] – Subregulation 232(1)

176. Regulation 232 of the Principal Regulations sets the reporting requirements for non-QPS permits that are granted under paragraph 235(2)(b) of the Principal Regulations (emergency permits).
177. Item 30 of Schedule 1 to the Amendment Regulations amends existing regulation 232 of the Principal Regulations to repeal existing subregulation 232(1) and substitute new subregulations 232(1) and (1A).

178. New subregulations 232(1) and (1A) has the combined effect of requiring the holder of an emergency permit to give the Minister a report that is in the approved form, contains the information mentioned in subregulation 232(2) and that is signed by the permit holder and by any contractor who carried out a fumigation under the emergency permit. The report must be given to the Minister within 14 days of the earlier of the end of the period specified in the permit during which methyl bromide can be used under the permit, or the last use of methyl bromide under the permit.
179. There is a penalty of 10 penalty units for failure to comply with this requirement.
180. The note following new subregulation 232(1) refers the reader to the offences in sections 137.1 and 137.2 of the Schedule 1 to the *Criminal Code Act 1995* for providing false or misleading information, which may also be relevant.
181. This amendment is consequential to the amendment made by item 24. This amendment also clarifies that holders of emergency permits are not required to report after every use of methyl bromide under the permit; rather, they are only required to report after the last use of methyl bromide under the emergency permit.

Item [31] – Subparagraph 232(2)(b)(v)

182. Subparagraph 232(2)(b)(v) of the Principal Regulations has the effect that a person who is granted a non-QPS permit under paragraph 235(2)(b) of the Principal Regulations (an emergency permit) must report the number of hectares fumigated or the number of containers, and the volume of each container, fumigated, within 14 days after using methyl bromide under the emergency permit.
183. This existing requirement does not appropriately account for the different kinds or methods of fumigation. Not all fumigation will be measured in hectares or containers.
184. For this reason, item 31 of Schedule 1 to the Amendment Regulations amends existing paragraph 232(2)(b) of the Principal Regulations to omit existing subparagraph (v) and substitute new subparagraph (v). New subparagraph 232(2)(b)(v) has the effect that an emergency permit holder is required to record information relating to the size of the area fumigated, the volume of the space fumigated or the amount of produce for which, or to which, the methyl bromide is applied.
185. This new requirement more appropriately accounts for the different kinds or methods of fumigation with methyl bromide that may occur.

Item [32] – At the end of subregulation 232(2)

186. Item 32 of Schedule 1 to the Amendment Regulations amends existing regulation 232 to insert a new note at the end of the regulation.

187. The new note explains that an emergency permit holder is also required to comply with any reporting requirements that are a condition of the emergency permit and directs the reader to paragraph 212(2)(b) of the Principal Regulations where this requirement is located.

Item [33] – Subregulation 305(1)

188. Prior to the amendments made by the OPSGGM Amendment Act, subsection 45B(1) of the OPSGGM Act had the effect that a person committed an offence if the person engaged in conduct that resulted in the discharge of a scheduled substance in circumstances where it is likely that the scheduled substance will enter the atmosphere, and the use is not in accordance with the regulations. Paragraph 45B(1)(e) allowed the regulations to prescribe circumstances in which the discharge of a scheduled substance was permitted.

189. Subsection 45B(2A) contained an equivalent civil penalty provision that also included a power to prescribe circumstances in which the discharge of a scheduled substance was permitted.

190. Regulation 305 of the Principal Regulations, made for the purposes of both paragraph 45B(1)(e) and 45B(2A), prescribes circumstances in which a person is permitted to discharge a scheduled substance (relating to testing the design of a fire extinguishing system or a fire extinguisher, or calibrating equipment used to detect extinguishing agent leaks) without contravening the offence provision (in subsection 45B(1)) or the civil penalty provision (in subsection 45B(2A)).

191. The OPSGGM Amendment Act amended section 45B of the OPSGGM Act to clarify the operation of the provision and to adopt modern drafting practices. One effect of these changes is that the power to prescribe circumstances in which the discharge of a scheduled substance is permitted was moved from paragraph 45B(1)(e) and subsection 45B(2A) to paragraph 45B(1)(d) for the purposes of both the offence and civil penalty provisions. There was no substantive change to this regulation-making power.

192. Item 33 of Schedule 1 to the Amendment Regulations amends existing regulation 305 of the Principal Regulations to omit the references to paragraph 45B(1)(e) and subsection 45B(2A) and substitute a reference to new paragraph 45B(1)(d). This is appropriate, as paragraph 45C(1)(d) is the new enabling power for regulation 305 – for the purposes of both the offence and civil penalty provisions in section 45B of the OPSGGM Act. There is no change to the substantive operation of regulation 305.

Item [34] – Subregulation 305A(1)

193. Subsection 45C(1) of the OPSGGM Act has the effect of prohibiting a person from using a HCFC that was manufactured or imported on or after 1 January 2020. Failure to comply with this prohibition is an offence and contravention of a civil penalty provision.

194. Prior to the amendments made by the OPSGGM Amendment Act, subsection 45C(2) of the OPSGGM Act had the effect that the prohibition in subsection 45C(1) did not apply if the use is for a purpose prescribed by the regulations.
195. Regulation 305A of the Principal Regulations is made for the purpose of subsection 45C(2) of the OPSGGM Act and provides an exception to the prohibition in subsection 45C(1) for a person who uses a HCFC that was manufactured or imported on or after 1 January 2020 for the purpose of maintaining fire protection equipment, provided the fire protection equipment itself was not manufactured or imported on or after 1 January 2020.
196. The OPSGGM Amendment Act amended section 45C of the OPSGGM Act to clarify the operation of the provision and to adopt modern drafting practices. One effect of these changes is that the power to provide exceptions to the prohibition for uses prescribed by the regulations was moved from subsection 45C(2) to paragraph 45C(1)(c). There was no substantive change to this regulation-making power.
197. Item 34 of Schedule 1 to the Amendment Regulations amends existing subregulation 305A(1) of the Principal Regulations to omit the reference to subsection 45C(2) and substitute a reference to new paragraph 45C(1)(c). This is appropriate, as paragraph 45C(1)(c) is the new enabling power for regulation 305A. There is no change to the substantive operation of regulation 305A.

Item [35] – Subregulation 346(2)

198. Item 35 of Schedule 1 to the Proposed Regulations amends existing subregulation 346(2) of the Principal Regulations to insert ‘(subject to subregulation (2A))’ after ‘the fee is taken to increase’.
199. This amendment is consequential to the amendment made by item 36.

Item [36] – After subregulation 346(2)

200. Regulation 346 of the Principal Regulations has the effect of indexing on an annual basis the fees for permits set out in regulations 343 and 344. This ensures that fees increase each year that the annual wage price index (published by the Australian Statistician) increases.
201. Item 36 of Schedule 1 to the Amendment Regulations amends existing regulation 346 of the Principal Regulations to insert new subregulation 346(2A). New subregulation 346(2A) allows the Minister to, by legislative instrument, determine that the annual indexation for permit fees (imposed by existing subregulation 346(2)) does not apply in relation to one or more calendar years.
202. This purpose of this power is to allow the Minister to respond to unexpected and emergency situations that are likely to adversely affect the financial situations of applicants as a whole, such as the global covid-19 pandemic.

Item [37] – Subregulation 400(1) and (2)

203. Prior to the amendments made by the OPSGGM Amendment Act, subsection 45B(1) had the effect that a person committed an offence if the person engaged in conduct that resulted in the discharge of a scheduled substance in circumstances where it is likely that the scheduled substance will enter the atmosphere, and the use is not in accordance with the regulations. Paragraph 45B(1)(e) allowed the regulations to prescribe circumstances in which the discharge of a scheduled substance was permitted.
204. Subsection 45B(2A) contained an equivalent civil penalty provision that also included a power to prescribe circumstances in which the discharge of a scheduled substance was permitted.
205. Regulation 400 of the Principal Regulations, made for the purposes of both paragraph 45B(1)(e) and 45B(2A), prescribes circumstances in which a person is permitted to discharge a scheduled substance without contravening the offence provision (in subsection 45B(1)) or the civil penalty provision (in subsection 45B(2A)).
206. These circumstances, set out in subregulations 400(1) and (2) relate to how (or the purpose for which) the substance is being used, or whether the person is approved to operate, or conduct a trial of, a destruction facility under the Principal Regulations.
207. The OPSGGM Amendment Act amended section 45B of the OPSGGM Act to clarify the operation of the provision and to adopt modern drafting practices. One effect of these changes is that the power to prescribe circumstances in which the discharge of a scheduled substance is permitted was moved from paragraph 45B(1)(e) and subsection 45B(2A) to paragraph 45B(1)(d) for the purposes of both the offence and civil penalty provisions. There was no substantive change to this regulation-making power.
208. Item 37 of Schedule 1 to the Amendment Regulations amends existing subregulations 400(1) and (2) of the Principal Regulations to omit the references to paragraph 45B(1)(e) and subsection 45B(2A) and substitute a reference to new paragraph 45B(1)(d). This is appropriate, as paragraph 45C(1)(d) is the new enabling power for subregulations 400(1) and (2) – for the purpose of both the offence and civil penalty provisions in section 45B of the OPSGGM Act. There is no change to the substantive operation of subregulations 400(1) or (2).

Item [38] – Regulation 500

209. Prior to the amendments made by the OPSGGM Amendment Act, subsection 45B(1) had the effect that a person committed an offence if the person engaged in conduct that resulted in the discharge of a scheduled substance in circumstances where it is likely that the scheduled substance will enter the atmosphere, and the use is not in accordance with the regulations. Paragraph 45B(1)(e) allowed the regulations to

prescribe circumstances in which the discharge of a scheduled substance was permitted.

210. Subsection 45B(2A) contained an equivalent civil penalty provision that also included a power to prescribe circumstances in which the discharge of a scheduled substance was permitted.
211. Regulation 500 of the Principal Regulations, made for the purposes of both paragraph 45B(1)(e) and 45B(2A), prescribes circumstances in which a person is permitted to discharge a scheduled substance (other than methyl bromide) without contravening the offence provision (in subsection 45B(1)) or the civil penalty provision (in subsection 45B(2A)). These circumstances relate to using the scheduled substance as a feedstock.
212. The OPSGGM Amendment Act amended section 45B of the OPSGGM Act to clarify the operation of the provision and to adopt modern drafting practices. One effect of these changes is that the power to prescribe circumstances in which the discharge of a scheduled substance is permitted was moved from paragraph 45B(1)(e) and subsection 45B(2A) to paragraph 45B(1)(d) for the purposes of both the offence and civil penalty provision. There was no substantive change to this regulation-making power.
213. Item 38 of Schedule 1 to the Amendment Regulations amends existing regulation 500 of the Principal Regulations to omit the references to paragraph 45B(1)(e) and subsection 45B(2A) and substitute a reference to new paragraph 45B(1)(d). This is appropriate, as paragraph 45C(1)(d) is the new enabling power for regulation 500 – for the purpose of both the offence and civil penalty provision in section 45B of the OPSGGM Act. There is no change to the substantive operation of regulation 500.

Item [39] – Regulation 600

214. Subsection 45C(1) of the OPSGGM Act has the effect of prohibiting a person from using a HCFC that was manufactured or imported on or after 1 January 2020. Failure to comply with this prohibition is an offence and contravention of a civil penalty provision.
215. Prior to the amendments made by the OPSGGM Amendment Act, subsection 45C(2) of the OPSGGM Act had the effect that the prohibition in subsection 45C(1) did not apply if the use is for a purpose prescribed by the regulations.
216. Regulation 600 of the Principal Regulations is made for the purpose of subsection 45C(2) of the OPSGGM Act and provides an exception to the prohibition in subsection 45C(1) for a person who uses a HCFC that was manufactured or imported on or after 1 January 2020 for laboratory and analytical purposes – provided the use is not excluded, under any decision made by the parties to the Montreal Protocol that applies to Australia, from being exempt by virtue of being laboratory and analytical uses from a provision of the Montreal Protocol.

217. The OPSGGM Amendment Act amended section 45C of the OPSGGM Act to clarify the operation of the provision and to adopt modern drafting practices. One effect of these changes is that the power to provide exceptions to the prohibition for uses prescribed by the regulations was moved from subsection 45C(2) to paragraph 45C(1)(c). There was no substantive change to this regulation-making power.
218. Item 39 of Schedule 1 to the Amendment Regulations amends existing regulation 600 of the Principal Regulations to omit the reference to subsection 45C(2) and substitute a reference to new paragraph 45C(1)(c). This is appropriate, as paragraph 45C(1)(c) is the new enabling power for regulation 600. There is no change to the substantive operation of regulation 600.

Item [40] – Regulation 900 (heading)

219. Regulation 900 of the Principal Regulations is made under subsection 46(1) of the OPSGGM Act and sets the requirements for periodic reports.
220. Item 40 of Schedule 1 to the Amendment Regulations amends the heading for existing regulation 900 of the Principal Regulations to omit the existing reference to ‘destroyers’. This amendment is consequential to the amendments made by item 42 which, among other things, removes the reporting requirements relating to the destruction of scheduled substances.
221. Consistent with the changes to section 46 of the OPSGGM Act by the OPSGGM Amendment Act (which no longer references destruction of scheduled substances), any reporting requirements relating to destruction of scheduled substances are intended to be covered separately in regulations made for the purposes of section 45A of the OPSGGM Act.

Item [41] – Subregulation 900(1)

222. Item 41 of Schedule 1 to the Amendment Regulations amends existing subregulation 900(1) of the Principal Regulations to omit ‘For subsection 46(1) of the Act’ and substitute ‘For the purposes of subsection 46(1) of the Act’.
223. The purpose of this amendment is to improve the clarity of the provision and to adopt modern drafting practices. There is no change to the substantive effect of the provision.

Item [42] – Subregulation 900(3) (table)

224. The table in subregulation 900(3) of the Principal Regulations sets out the reporting requirements in relation to the import, export or manufacture of scheduled substances, equipment containing a scheduled substance and equipment that uses a scheduled substance in its operation. The purpose of reporting requirements is to ensure Australia is able to meet its international obligations and to monitor compliance with the OPSGGM Act.

225. The table in subregulation 900(3) is made for the purposes of subsection 46(1) of the OPSGGM Act. The OPSGGM Amendment Act amended subsection 46(1) of the OPSGGM Act so that only persons who carry out any of the following activities during a reporting period are subject to a requirement to report under that subsection:

- a person who manufactures, imports or exports a scheduled substance; and
- a person who manufactures, imports or exports equipment under an equipment licences.

226. Item 42 of Schedule 1 to the Amendment Regulations amends existing subregulation 900(3) to repeal the existing table and substitute a new table. The new table aligns the reporting requirements at subregulation 900(3) with the changes made to the enabling provision in subsection 46(1) of the OPSGGM Act by the OPSGGM Amendment Act.

227. The new table in subregulation 900(3) contains 3 items.

228. Item 1 of the table sets the reporting requirements in relation to the import, export and manufacture of scheduled substances. A person who manufactures, imports or exports a scheduled substance during a reporting period is required to report to the Minister:

- each kind of scheduled substance that the person manufactured, imported or exported during the reporting period; and
- for each of those kinds of scheduled substances:
 - the total amount, in metric tonnes, of the kind of scheduled substance that was manufactured, imported or exported for any purpose; and
 - the total amount, in metric tonnes, of the kind of scheduled substance that was manufactured, imported or exported for use as feedstock.

229. Item 2 of the table sets the reporting requirements in relation to importing SGG equipment. A person who imports SGG equipment under an equipment licence is required to report to the Minister:

- the categories of SGG equipment mentioned in subregulation 900(5) that the person imported during the reporting period; and
- for each of those categories of equipment:
 - the total number of units of the equipment that the person imported during the reporting period; and

- the total amount, in metric tonnes, of each kind of scheduled substance that is an HFC, nitrogen trifluoride, a PFC or sulfur hexafluoride and is contained in the equipment in that category that the person imported during the reporting period.
230. There are no reporting requirements on the export or manufacture of SGG equipment, as an equipment licence would not, at this stage, be required under the OPSGGM Act in order to undertake such activities. If, in the future, regulations are made that have the effect that the OPSGGM Act would prohibit the unlicensed export or manufacture of SGG equipment, it is intended that reporting requirements for these activities would be prescribed at that time.
231. Item 3 of the table sets the reporting requirements in relation to importing or manufacturing ODS equipment. A person who imports or manufactures ODS equipment under an equipment licence is required to report to the Minister:
- the categories of ODS equipment mentioned in subregulation 900(6) that the person imported or manufactured during the reporting period; and
 - the kinds of scheduled substances contained in that equipment; and
 - for each of those kinds of scheduled substances – the total amount, in metric tonnes, of the kind of scheduled substance contained in that equipment.
232. There are no reporting requirements on the export of ODS equipment, as an equipment licence would not, at this stage, be required under the OPSGGM Act in order to undertake such activities. If, in the future, regulations are made that have the effect that the OPSGGM Act would prohibit the unlicensed export of ODS equipment, it is intended that reporting requirements for this activity would be prescribed at that time.

Item [43] – Subregulation 900(4)

233. The purpose of subregulation 900(4) is to clarify reports given under subsection 46(1) of the Act are required to include information about each chemically unique scheduled substance that is imported, exported or manufactured (as required by the table in subregulation 900(3)), rather than just ‘kinds’ of scheduled substances generally (such as ‘CFCs’).
234. Existing subregulation 900(4) does so by introducing a concept of a ‘scheduled kind of a scheduled substance’. This terminology is confusing and ambiguous.
235. Item 43 of Schedule 1 to the Amendment Regulations amends regulation 900 of the Principal Regulations to repeal existing subregulation 900(4) and substitute new subregulation 900(4). New subregulation 900(4) improves the clarity of the provision (by directly referencing the kinds of scheduled substances covered by

Schedule 1 to the OPSGGM Act) and adopts a modern drafting style. There is no change to the substantive operation of subregulation 900(4).

Item [44] – Subregulation 900(5)

236. Subregulation 900(5) of the Principal Regulations lists the categories of equipment the import of which would be required to be reported under item 2 of the table in subregulation 900(3) (as the table is proposed to be amended by item 42, set out above).
237. Item 44 of Schedule 1 to the Amendment Regulations amends existing subregulation 900(5) of the Principal Regulation to omit the reference to ‘items 2 and 3’ and substitute a reference just to ‘item 2’.
238. This amendment is consequential to the amendments made to the table at subregulation 900(3) by item 42, which clarify that the reporting requirements at item 2 of the table apply to SGG equipment, while the reporting requirements at item 3 of the table apply to ODS equipment. As the list of equipment at subregulation 900(5) contains SGG equipment only, this list is only relevant to the reporting requirements at new item 2 of the table, not item 3.

Item [45] – Subregulation 900(6)

239. Subregulation 900(6) of the Principal Regulations lists the categories of equipment the manufacture or import of which would be required to be reported under item 3 of the table in subregulation 900(3) (as the table is proposed to be amended by item 42, set out above).
240. Item 45 of Schedule 1 to the Amendment Regulations amends existing subregulation 900(6) of the Principal Regulation to omit the first occurring ‘equipment’ and substitute a reference to ‘ODS equipment’.
241. The purpose of this amendment is to clarify that all equipment listed at subregulation 900(6) is ODS equipment (not SGG equipment), consistent with the reporting requirements in new item 3 of the table in new subregulation 900(3).

Item [46] – Subregulation 900(7)

242. Subregulation 900(7) of the Principal Regulations sets certain reporting requirements relating to the import or manufacture of SGGs under a permit granted under regulation 3A or a notice given under regulation 3AA.
243. Item 46 of Schedule 1 to the Amendment Regulations amends existing regulation 900 of the Principal Regulations to repeal subregulation 900(7). This amendment is consequential to the amendment made by item 4, which repeals existing regulations 3A and 3AA. As existing regulations 3A and 3AA are being repealed, subregulation 900(7) is redundant and can also be repealed.

Item [47] – Part 8

244. Part 8 of the Principal Regulations (regulations 906 to 912) is made for the purposes of former section 65AA of the OPSGGM Act and deals with the application of infringement notices to certain offences under the regulations.
245. The OPSGGM Amendment Act amended the OPSGGM Act to, relevantly, repeal section 65AA of the OPSGGM Act and to instead apply Part 5 of the Regulatory Powers Act to all strict liability offences and civil penalty provisions under the OPSGGM Act or regulations.
246. This means that the offences covered by existing Part 8 of the Principal Regulations are now subject to the standard infringement notice regime under Part 5 of the Regulatory Powers Act, rather than a separate ad hoc regime under the OPSGGM Act. As such (and noting that its enabling power has been repealed) Part 8 of the Principal Regulations is now redundant and can be repealed.
247. Item 47 of Schedule 1 to the Amendment Regulations amends the Principal Regulations to repeal existing Part 8, for the reasons set out above.

Item [48] – Before Division 9.1 of Part 9

248. Part 9 of the Principal Regulations deals with miscellaneous matters.
249. Item 48 of Schedule 1 to the Amendment Regulations inserts a new note following the heading of Part 9. The new note explains that Part 8 is intentionally not used and regulation numbers 906 to 912 (inclusive) are reserved for future use.
250. This amendment is consequential to the amendment made by item 47, which repeals existing Part 8 of the Principal Regulations.

Item [49] – Division 9.1 of Part 9

251. Division 9.1 of Part 9 (regulations 913 to 915) of the Principal Regulations is made for the purposes of former section 69G of the OPSGGM Act and has the effect of prohibiting the manufacture or import of equipment that contains HCFCs or uses HCFCs in its operation.
252. The OPSGGM Amendment Act streamlined the licensing provisions of that Act to improve clarity and better reflect the policy intent. As part of these changes, section 69G was repealed and a prohibition on the import or manufacture of ODS equipment without a licence was instead inserted into sections 13 and 13AA of the OPSGGM Act.
253. The equipment covered by existing Division 9.1 of Part 9 falls within the definition of ODS equipment in the OPSGGM Act.
254. As such (and noting that its enabling power has been repealed) Division 9.1 of Part 9 of the Principal Regulations is now redundant and can be repealed.

255. Item 49 of Schedule 1 to the Amendment Regulations amends Part 9 of the Principal Regulations to repeal existing Division 9.1, for the reasons set out above.

Item [50] – Division 9.2 of Part 9 (heading)

256. Item 50 of Schedule 1 to the Amendment Regulations amends Part 9 of the Principal Regulations to repeal the heading for existing Division 9.2.

257. This amendment is consequential to the amendment made by item 49, which repeals existing Division 9.1 of the Principal Regulations. Without Division 9.1, there is no need for the remaining provisions in Part 9 to be in a Division 9.2.

Item [51] – Regulation 916

258. Regulation 916 of the Principal Regulations allows the Secretary to delegate any or all of his or her functions or powers under the Principal Regulations to an SES employee or acting SES employee in the Department, or an APS employee who holds, or is acting in, an Executive Level 2, or equivalent, position in the Department.

259. The OPSGGM Amendment Act amended the OPSGGM Act to insert new section 67AA into that Act. New section 67AA allows the Secretary to delegate any or all of their functions and powers under the OPSGGM Act, the Principal Regulations or the Regulatory Powers Act (as it applies to the OPSGGM Act) to an SES employee or acting SES employee in the Department or, for a power or function under section 66 or 67 of the Regulatory Powers Act—an inspector. These levels are considered appropriate, given the nature of the Secretary’s powers.

260. As the power to delegate the Secretary’s powers and functions in the Principal Regulation is now included in the OPSGGM Act, existing regulation 916 is now redundant and can be repealed.

261. Item 51 of Schedule 1 to the Amendment Regulations amends the Principal Regulations to repeal existing regulation 916, for the reasons set out above.

Item [52] – At the end of Part 10

262. Item 52 of Schedule 1 to the Amendment Regulations inserts new Division 9 at the end of Part 10 of the Principal Regulations.

263. Division 9 of Part 10 (new regulations 979 to 984) insert application provisions into the Principal Regulations that set out how the amendments made by the Amendment Regulations would apply.

New regulation 979 – Definitions

264. New regulation 979 defines the terms *amending regulations* and *commencement time* for the purpose of new Division 9 of Part 10. The term *amending regulations*

refers to the Proposed Regulations. The term *commencement time* refers to the commencement of new Division 9 of Part 10.

New regulation 980 – Application fees for licences and renewal of licences

265. New regulation 980 is an application provision that deals with the amendments made to regulation 3C (item 5) and 3D (item 6). These amendments concern the circumstances for waiving application fees for applications for the granting or renewal of a licence.
266. The effect of new subregulation 980(1) is that the changes to existing regulation 3C (including the new power for the Minister to waive application fees for licences in exceptional circumstances) apply in relation to an application for a licence made on or after the commencement time.
267. The effect of new subregulation 980(2) is that the changes to existing regulation 3D (including the new power for the Minister to waive application fees for renewal of licences in exceptional circumstances) apply in relation to an application for a licence renewal made on or after the commencement time.

New regulation 981 – Decisions relating to grants of permits – fit and proper person test

268. New regulation 981 is an application provision that deals with the amendments made to regulation 102 (concerning the fit and proper person test) by items 14 to 16 of Schedule 1 to the Amendment Regulations.
269. The effect of new regulation 981 is that the amendments to existing regulation 102 apply in relation to a decision whether to grant a permit that is made on or after the commencement time, whether the application for the permit was made before, on or after the commencement time.

New regulation 982 – Records of non-QPS uses of methyl bromide

270. New regulation 982 is an application provision that deals with the amendments made to subparagraph 221(2)(d)(iv) (dealing with methyl bromide record keeping requirements) by item 21 of Schedule 1 to the Amendment Regulations.
271. The effect of new regulation 982 is that the proposed amendments to the information required to be included in records by the holder of a methyl bromide non-QPS permit would apply in relation to a use of methyl bromide under the permit that occurs on or after the commencement time, whether the permit is granted before, on or after that time.

New regulation 983 – Reports of use under non-QPS permits

272. New regulation 983 is an application provision that deals with the amendments made to regulation 231 (reporting requirements for non-QPS permit holders) and regulation 232 (reporting requirements for emergency permits) by items 23 to 32 of Schedule 1 to the Amendment Regulations.

273. The effect of new subregulation 983(1) is that the amendments made to regulation 231 (including removing the requirement for emergency permit holders to report under this regulation) apply in relation to a reporting period that ends on or after the commencement time.
274. The effect new subregulation 983(2) is that the amendments made to regulation 232 apply in relation to emergency permits where the 14-day reporting period mentioned in subregulation 232(1) commences on or after the commencement time.
275. New subregulation 983(3) clarifies that new regulation 983 applies whether the relevant permit was granted before, on or after the commencement time.

New regulation 984 – Periodic reports

276. New regulation 984 is an application provision that deals with the amendments made to regulation 900 (reporting requirements) by items 40 to 46 of Schedule 1 to the Amendment Regulations.
277. The effect of new regulation 984 is that is that the amendments made to the reporting requirements (relating to the import, export and manufacture of scheduled substances and equipment) apply in relation to a reporting period that ends on or after the commencement time.

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 (2023 Measures No. 1) Regulations 2023

This instrument is compatible with human rights and freedom recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the legislative instrument

The *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* (the OPSGGM Act) and the *Ozone Protection and Synthetic Greenhouse Gas Management Regulations 1995* (the Principal Regulations) implement 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 (2023 Measures No. 1) Regulations 2023* (the Amendment Regulations) made consequential amendments to the Principal Regulations as a result of the changes to the OPSGGM Act made by the *Ozone Protection and Synthetic Greenhouse Gas Reform (Closing the Hole in the Ozone Layer) Act 2022*. Specifically, the Amendment Regulations amend the Principal Regulations to:

- align the section cross references in the Principal Regulations to the amended OPSGGM Act ;
- impose a requirement to obtain a licence to import or manufacture equipment that uses an ozone depleting substance (ODS) in its operation;
- set out the exemptions from requiring a licence to import, export or manufacture scheduled substances or equipment, including new exemptions for temporary imports and returning Australian equipment;
- provide for additional circumstances where licence fees can be waived;
- provide for information relating to the suspension of licences to be published
- update the fit and proper test and reporting requirements to align with changes to the Act;

- simplify reporting and record keeping requirements for the use of methyl bromide to reduce unnecessary burdens and duplications;
- repeal the existing compliance, enforcement and delegations provisions in the Principal Regulations, as these are now covered by the Act.

Human Rights implications

The Amendment Regulations engage:

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

The Amendment Regulations seek to promote the right to health under Article 12 of the ICESCR by reducing the impact on human and environmental health of equipment that uses an ODS in its operation. The Amendment Regulations achieve this by ensuring that the import or manufacture of such equipment is prohibited without a licence.

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.

The Amendment Regulations set out recording and reporting requirements for permit holders, and the details of reporting obligations required under the Act. They are as follows:

- Requirement for a person who uses methyl bromide for a quarantine and pre-shipment (QPS) or non-QPS to keep a record of certain information (items 21 and 22);
- Requirement for a person holding a non-QPS permit (other than emergency permit) to report certain information (items 23 to 29);
- Requirement for a person holding an emergency permit to report certain information (items 30 to 32); and

- Information to be included in periodic reports by manufacturers, importers and exporters of scheduled substances and equipment (item 40 to 46).

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 carries out activities that are regulated under the Act is necessary for the legitimate objective of assessing the suitability of a person to, for example, be granted 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.

Conclusion

The Amendment Regulations are compatible with human rights as it promotes human rights and, to the extent that it engages and limits human rights (including under Articles 17 of the ICCPR), those limitations are reasonable, necessary and proportionate to achieve the legitimate aims of the Amendment Regulations.

**Circulated by authority of the Minister for the Environment and Water,
the Hon. Tanya Plibersek MP**