**EXPLANATORY STATEMENT**

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

*Customs Act 1901*

*Customs Legislation Amendment (Ozone Depleting Substances and Synthetic Greenhouse Gases) Regulations 2023*

**Legislative Authority**

The *Customs Act 1901* (the Customs Act) concerns customs-related functions and is the legislative authority that sets out the customs requirements for the importation and exportation of goods to and from Australia.

Subsection 270(1) of the Customs Act provides that the Governor-General may make regulations not inconsistent with that Act prescribing all matters which by the Customs Act are required or permitted to be prescribed or as may be necessary or convenient to be prescribed for giving effect to that Act.

Section 50 of the Customs Act provides that the Governor-General may, by regulation, prohibit the importation of goods into Australia. This power may be exercised by prohibiting the importation of goods absolutely, or by prohibiting the importation of goods unless specified conditions or restrictions are complied with.

The *Customs (Prohibited Imports) Regulations 1956* (the Prohibited Imports Regulations) control the importation of certain goods into Australia by prohibiting importation absolutely, or by making importation subject to permission or licence. This includes the import of scheduled substances and equipment regulated by the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* (OPSGGM Act).

Section 112 of the Customs Act provides that the Governor-General may, by regulation, prohibit the exportation of goods into Australia. This power may be exercised by prohibiting the exportation of goods absolutely, or by prohibiting the exportation of goods unless specified conditions or restrictions are complied with.

The *Customs (Prohibited Exports) Regulations 1958* (the Prohibited Exports Regulations) control the exportation of certain goods from Australia by prohibiting exportation absolutely, or by making exportation subject to permission or licence. This includes the export of scheduled substances and equipment regulated by the OPSGGM Act.

The Prohibited Imports and Exports Regulations are made solely for the purposes of sections 50 and 112 of the Customs Act respectively. Those respective Regulations are not subject to sunsetting by operation of table item 21 in section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015*.

**Purpose**

The purpose of the *Customs Legislation Amendment (Ozone Depleting Substances and Synthetic Greenhouse Gases) Regulations 2023* (the Amendment Regulations) is to make consequential amendments to the Prohibited Imports Regulations and the Prohibited Exports Regulations to align with changes to the OPSGGM Act made by the *Ozone Protection and Synthetic Greenhouse Gas Management Reform (Closing the Hole in the Ozone Layer) Act 2022* (OPSGGM Amendment Act).

To ensure that appropriate border controls are in place, the regimes set out in the OPSGGM and Customs Acts are, and have always been, consistent. If the unlicensed import or export of a scheduled substance or associated equipment is prohibited under the OPSGGM Act, it should also be prohibited under the Prohibited Imports Regulations and Prohibited Exports Regulations (as the case may be). Similarly, if a particular import or export is exempted from a prohibition under the OPSGGM Act, it should also be exempted from the corresponding prohibition under the Prohibited Imports Regulations or Prohibited Exports Regulations.

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, as well as the exemptions to those prohibitions.

The Amendment Regulations ensure continued consistency between the regimes set out in the OPSGGM and Customs Acts by making corresponding changes to the Prohibited Imports Regulations and Prohibited Exports Regulations.

**Background**

The OPSGGM Act implements Australia’s obligations under the *Vienna Convention for the Protection of the Ozone Layer* and its associated *Montreal Protocol on Substances that Deplete the Ozone Layer* (the Montreal Protocol), as well as the *United Nations Framework Convention on Climate Change* and its *Kyoto Protocol* and *Paris Agreement*.

The OPSGGM Amendment Act was enacted following a review of the Ozone Protection and Synthetic Greenhouse Gas Management Program (the Review) in 2016. That Review identified a range of measures to improve the effectiveness and efficiency of the OPSGGM Act and to further reduce emissions of ODS and SGGs. The Review recommendations were partially implemented by Act amendments in 2017.

The purpose of the OPSGGM Amendment Act was to implement the remaining Review recommendations, as well as a number of additional measures that:

* clarified and streamline the operation of the Act to ensure it is fit for purpose and gives effect to Australia’s international obligations;
* removed unnecessary regulation for industry;
* aligned with Commonwealth policy regarding compliance and enforcement matters; and
* made other minor administrative and technical amendments to adopt modern drafting approaches and improve the operation of the OPSGGM Act.

This included clarifying licence and exemption requirements (including changes to make the legislation easier to understand and reduce unintentional non-compliance) and bringing into the legislation controls that are currently imposed through licence conditions, such as the ban on import of bulk gas in non-refillable containers. These changes provide clarity for business and improve protection of the environment.

**Consultation**

The Department of Home Affairs, which has policy responsibility for the Customs Act, was consulted on the Amendment Regulations. No public consultation was undertaken due to the minor and machinery nature of the amendments. The Minister for Home Affairs approved the Amendment Regulations and associated explanatory material.

**Details and Operation**

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

The Amendment Regulations commence at the same time as Schedule 1 to the OPSGGM Amendment Act). Schedule 1 to 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 12 December 2022), it commences on the day after the end of that period (being 13 June 2023).

**Other matters**

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.

**ATTACHMENT A**

**Details of the *Customs Legislation Amendment (Ozone Depleting Substances and Synthetic Greenhouse Gases) Regulations 2023***

Section 1 – Name

1. This section provides that the name of the instrument is the *Customs Legislation Amendment (Ozone Depleting Substances and Synthetic Greenhouse Gases) Regulations 2023* (the Amendment Regulations).

Section 2 – Commencement

1. This section has the effect that the Amendment Regulations commence at the same time as Schedule 1 to the *Ozone Protection and Synthetic Greenhouse Gas Management Reform (Closing the Hole in the Ozone Layer) Act 2022* (the OPSGGM Amendment Act)*.*
2. Schedule 1 to 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 12 December 2022), it commences on the day after the end of that period (being 13 June 2023).

Section 3 – Authority

1. This section provides that the Amendment Regulations are made under the *Customs Act 1901* (the Customs Act).

Section 4 – Schedules

1. 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 the instrument has effect according to its terms.
2. This enables the amendment of the *Customs (Prohibited Exports) Regulations 1958* (Prohibited Exports Regulations) and the *Customs (Prohibited Imports) Regulations 1956* (Prohibited Imports Regulations) by Schedule 1 to the Amendment Regulations.

Schedule 1 – Amendments

1. Previously, regulation 13F of the Prohibited Exports Regulations and regulation 5K of the Prohibited Imports Regulations complemented the restrictions on the exportation and importation of ozone depleting substances (ODS) and synthetic greenhouse gases (SGG) imposed by the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* (OPSGGM Act). This was done by prohibiting the exportation and importation of those substances and, in some circumstances, associated equipment, unless a license granted under that Act was produced to the Collector.
2. The term “Collector” is defined under the section 8 of the Customs Act and means Comptroller-General of Customs or any officer of Customs doing duty in the matter in relation to which the expression is used.
3. Consistent with the OPSGGM Act, as supported by the *Ozone Protection and Synthetic Greenhouse Gas Management Regulations 1995* (OPSGGM Regulations), the prohibitions in regulation 13F and 5K did not apply to the following:

* Chlorofluorocarbons (CFCs), Hydrochlorofluorocarbons (HCFCs) or SGGs that are for use on board a ship or aircraft;
* a substance that is contained in goods prescribed in the OPSGGM Regulations that will use the substance in the operation of the goods;
* a substance that is present in goods because the substance was used in the manufacturing process for the goods.

1. There were also a number of exceptions to the prohibitions in regulations 13F and 5K, consistent with the exceptions to the corresponding prohibitions in the OPSGGM Act.
2. The OPSGGM Act will be amended by the *Ozone Protection and Synthetic Greenhouse Gas Management Reform (Closing the Hole in the Ozone Layer) Act 2022* (OPSGGM Amendment Act) when Schedule 1 to the OPSGGM Amendment Act commences. Of relevance, the OPSGGM Amendment Act amends the relevant provisions of the OPSGGM Act dealing with import, export and manufacture prohibitions relating to ODS, SGGs and associated equipment. The amendments consolidate, streamline and modernise those prohibitions, as well as the exemptions to those prohibitions.
3. The purpose of the amendments made by Schedule 1 to the Amendment Regulations is to amend the controls on the exportation and importation of ODS, SGGs and associated equipment under the Prohibited Exports Regulations and the Prohibited Imports Regulations such that they align with the changes in the OPSGGM Act, as amended by the OPSGGM Amendment Act. This will ensure appropriate border controls continue for ODS, SGGs and, where relevant, associated equipment.
4. References in this explanatory statement to the OPSGGM Act refer to that Act as amended by the OPSGGM Amendment Act.

***Customs (Prohibited Exports) Regulations 1958***

**Item [1] – Subregulation 2(1)**

1. Subregulation 2(1) of the Prohibited Exports Regulations defines key terms, including *CFC*, *HBFC*, *HCFC*, *HFC*, *nitrogen trifluoride*, *PFC*, *SGG* and *sulphur hexafluoride*, for the purposes of the export controls in regulation 13F of the Prohibited Exports Regulations. The terms mentioned are no longer referenced in regulation 13F, as amended by items 2 and 3 of the Amendment Regulations. As such, the definitions are redundant.
2. The purpose of item 1 of Schedule 1 to the Amendment Regulations is to complement the amendments made by items 2 and 3 by amending subregulation 2(1) to repeal the redundant terms.

**Item [2] – Regulation 13F**

1. Item 2 of Schedule 1 to the Amendment Regulations repeals regulation 13F of the Prohibited Exports Regulations and substitutes a new regulation 13F. New regulation 13F sets out the export controls on ODS and SGGs (both of which are scheduled substances under the OPSGGM Act), and equipment that contains a scheduled substance or uses a scheduled substance in its operation, by reference to requirements as set out in the OPSGGM Act.

*Prohibitions on export*

1. New subregulation 13F(1) has the effect that the exportation from Australia (except to an external Territory) of each of the following is prohibited unless an exception under new subregulation 13F(2) applies:

* a scheduled substance (within the meaning of the OPSGGM Act) (new paragraph 13F(1)(a));
* equipment that contains a scheduled substance, if the equipment or the substance (or both) is prescribed by regulations made for the purposes of new paragraph 13AB(3)(d) of the OPSGGM Act (new paragraph 13F(1)(b));
* equipment that uses a scheduled substance in its operation, if the equipment or the substance (or both) is prescribed by regulations made for the purposes of new paragraph 13AB(5)(d) of the OPSGGM Act (new paragraph 13F(1)(c)).

New paragraph 13F(1)(a)

1. Under the OPSGGM Act, a *scheduled substance* covers any substance listed in Schedule 1 to that Act. The substances listed in Schedule 1 to the OPSGGM Act are the same substances (ODS and SGGs) listed in Schedule 15 to the Prohibited Exports Regulations (prior to its repeal by item 3).
2. New paragraph 13F(1)(a) operates in the same way as previous subregulation 13F(1), but directly applies the meaning of *scheduled substance* by reference to the substances listed in Schedule 1 to the OPSGGM Act. In doing so, new paragraph 13F(1)(a) will automatically pick up any changes to the list of substances as they are made to Schedule 1 to the OPSGGM Act.

New paragraphs 13F(1)(b) and (c)

1. Under the OPSGGM Act:

* the export of a scheduled substance is prohibited; and
* the export of equipment that contains a scheduled substance, or that uses a scheduled substance in its operation, is prohibited if either the equipment or substance (or both) is prescribed in the regulations.

1. This approach allows the regulations made under the OPSGGM Act to prescribe equipment, the export of which is prohibited under that Act without a licence, based on the specific risks to the environment posed by the relevant substance or equipment at the time.
2. For instance, the regulations under the OPSGGM Act would be able to prescribe that the export of all equipment that contains (or that uses in its operation) a particular scheduled substance is prohibited. Alternatively, the regulations could prescribe that the export of a particular kind of equipment that contains (or that uses in its operation) any scheduled substance is prohibited, or that the export of a particular kind of equipment that contains (or that uses in its operation) a particular scheduled substance is prohibited.
3. New paragraphs 13F(1)(b) and (c) operate to prohibit the exportation of equipment that contains a scheduled substance, or that uses a scheduled substance in its operation, if such equipment is prescribed in regulations made under the OPSGGM Act. In doing so, the new paragraphs automatically pick up any equipment prohibited by the OPSGGM Act if, and when, such equipment is prescribed in regulations made under that Act. This ensures consistency between the regimes in the OPSGGM Act and the Prohibited Exports Regulations.
4. There are currently no regulations made under either of paragraphs 13AB(3)(d) or 13AB(5)(d) of the OPSGGM Act. This means that, currently, there are no prohibitions on the export of equipment that contains (or that uses in its operation) a scheduled substance under the OPSGGM Act that are picked up by new subregulation 13F(1) of the Prohibited Exports Regulations. This is consistent with former subregulations 13F(3) and (4) of the Prohibited Exports Regulations, which do not prohibit the export of such equipment from Australia.

*Exceptions to prohibitions on export*

1. New subregulation 13F(2) set outs the exceptions to the prohibition in new subregulation 13F(1).
2. Under new subregulation 13F(2), the prohibition in new subregulation 13F(1) does not apply:

* if none of new subsections 13AB(1), (3) and (5) of the OPSGGM Act are contravened in relation to the exportation (new paragraph 13F(2)(a)); and
* if the exportation is allowed by a licence granted under section 16 of that Act—the licence, or a copy of the licence, is produced to a Collector (new paragraph 13F(2)(b)).

1. This means that if an exception in subregulation 13F(2) applies, the export is not prohibited under new subregulation 13F(1) of the Prohibited Exports Regulations.

Export that does not contravene OPSGGM Act

1. New paragraph 13F(2)(a) provides an exception to the prohibition in new subregulation 13F(1) where the exportation of the substance or equipment does not contravene new subsections 13AB(1), (3) and (5) of the OPSGGM Act.
2. The purpose of new paragraph 13F(2)(a) is to capture the exceptions to the prohibition in the OPSGGM Act on exporting scheduled substances or equipment that contains, or uses in its operation, a scheduled substance. The effect is that the relevant exceptions under the OPSGGM Act also operate as exceptions to the prohibition on exportation of the same goods under the Prohibited Exports Regulations.
3. In practice, this means a person is, under the Prohibited Export Regulations, exempted from the prohibition on exporting a scheduled substance or equipment that contains a scheduled substance, or that uses a scheduled substance in its operation – provided the export does not contravene any of subsections 13AB(1), (3) and (5) of the OPSGGM Act (subject to also meeting the requirements of paragraph 13F(2)(b), where relevant).
4. New subsections 13AB(1), (3) and (5) of the OPSGGM Act set out the relevant prohibitions in that Act for the export of scheduled substances (new subsection 13AB(1)), and the export of equipment that contains a scheduled substance (new subsection 13AB(3) or that uses a scheduled substance in its operation (new subsection 13AB(5)). An export contravenes one of these provisions if:

* the person does not hold a licence (under the OPSGGM Act) that allowed the export; and
* the person is not exempt from the requirement to hold a licence to export the scheduled substance or equipment under the OPSGGM Act.

1. This means that where:

* an exporter holds a relevant licence under the OPSGGM Act allowing the export; or
* an exporter does not require a licence under the OPSGGM Act to export the substance or equipment because one or more of the exceptions in that Act applies,

the export does not contravene any of subsections 13AB(1), (3) or (5) (and is permitted under that Act).

1. The exceptions in the OPSGGM Act to the requirement to hold a licence to export a scheduled substance or (where relevant) equipment are:

* • for the export of a CFC, halon, HCFC, Hydrofluorocarbon (HFC) or Perfluorocarbons (PFC) – where the requirements in new section 12B of the OPSGGM Act (relating to ship stores) are satisfied;
* for the export of a HCFC or HFC – where the substance is exported in accordance with a direction from the Minister under, respectively, section 35A or section 36H of the OPSGGM Act (see new subsection 13AB(2) of the OPSGGM Act);

* for the export of an SGG (other than an SGG that is a used substance) – where the export is in circumstances, or for a purpose, prescribed by the regulations (see new subsection 13AB(2) of the OPSGGM Act);
* for the export of equipment – where the equipment is of a kind prescribed by the regulations, or where the export is in circumstances, or for a purpose, prescribed by the regulations (see new subsection 13AB(4) of the OPSGGM Act).

1. If any of the above exceptions apply to the exportation of a scheduled substance or an equipment, then the exportation of the substance or equipment does not contravene the requirements under new subsections 13AB(1), (3) and (5) of the OPSGGM Act.

Export under a licence that is produced

1. New paragraph 13F(2)(b) provides an exception to the prohibition in subregulation 13F(1) for a person who exports a scheduled substance (or, where relevant, equipment that contains a scheduled substance or that uses a scheduled substance in its operation) if:

* the exportation is allowed by a licence granted under section 16 of the OPSGGM Act; and
* the licence, or a copy of the licence, is produced to a Collector.

1. This means that, if the export is allowed under a licence granted under the OPSGMM Act, it is also permitted under the Prohibited Exports Regulations, but only where the licence (or a copy of the licence) is produced to a Collector. This requirement is consistent with former regulation 13F of the Prohibited Exports Regulations.

*Other matters*

1. The first note following new subregulation 13F(2) clarifies that a suspended licence does not allow the licensee to carry out any activity that the licence would otherwise allow, and refers the reader to subsection 19D(4) of the OPSGGM Act.
2. The second note following new subregulation 13F(2) refers the reader to examples of exceptions in the OPSGGM Act to the prohibitions in subsections 13AB(1), (3) and (5). Those examples are described above.
3. New subregulation 13F(3) provides that section 9 of the OPSGGM Act applies in relation to new regulation 13F as if regulation 13F were a provision of that Act. 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. The purpose of applying this section to new regulation 13F is to ensure that scheduled substances and equipment are treated consistently under the OPSGGM Act and Prohibited Exports Regulations.
4. New subregulation 13F(4) has the effect that, for the purposes of new regulation 13F:

* the term *equipment* takes the same meaning as in the OPSGGM Act; and
* the term OPSGGM Act refers to the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989*.

**Item [3] – Schedule 15**

1. Schedule 15 to the Prohibited Exports Regulations lists the ODS and SGGs that are subject to the export prohibitions in former regulation 13F of the Prohibited Exports Regulations. The substances listed in Schedule 15 to the Prohibited Exports Regulations are identical to those listed in Schedule 1 to the OPSGGM Act.
2. This ensures that the same substances are regulated under both the OPSGGM Act and the Prohibited Exports Regulations.
3. Item 2 of the Amendment Regulations, amongst other matters, has the effect that the prohibition on exportation applies to those ODS and SGGs listed in Schedule 1 to the OPSGGM Act instead of those listed in former Schedule 15 to the Prohibited Exports Regulations. As such, the latter Schedule is redundant.
4. The purpose of the amendments made by item 3 is to complement the amendments made by item 2 by repealing Schedule 15 to the Prohibited Exports Regulations.

***Customs (Prohibited Imports) Regulations 1956***

**Item [4] – Subregulation 2(1)**

1. Subregulation 2(1) of ­­­the Prohibited Imports Regulations defines key terms, including *CFC*, *HCFC*, *HFC*, *nitrogen trifluoride*, *PFC*, *SGG* and *sulfur hexafluoride*, for the purposes of the import control under regulation 5K of the Prohibited Imports Regulations. The terms mentioned are longer referenced in regulation 5K, as amended by items 5 and 7 of the Amendment Regulations. As such, these definitions are redundant.
2. The purpose of item 4 of Schedule 1 to the Amendment Regulations is to complement the amendments made by items 5 and 7 by amending subregulation 2(1) of the Prohibited Export Regulations to repeal the redundant terms.

**Item [5] – Regulation 5K**

1. Item 5 of Schedule 1 to the Amendment Regulations repeals regulation 5K of the Prohibited Imports Regulations and substitutes a new regulation 5K. New regulation 5K sets out the import controls on ODS and SGGs (both of which are scheduled substances under the OPSGGM Act), and equipment that contains a scheduled substance or uses a scheduled substance in its operation, by reference to requirements as set out in the OPSGGM Act.

*Prohibitions on import*

1. New subregulation 5K(1) has the effect that the importation into Australia (except from an external Territory) of each of the following is prohibited unless an exception under new subregulation 5K(2) applies:

* a scheduled substance (within the meaning of the OPSGGM Act) (new paragraph 5K(1)(a));
* equipment that contains a scheduled substance (new paragraph 15K(1)(b));
* equipment that uses a scheduled substance in its operation, if the equipment or the substance (or both) is prescribed by regulations made for the purposes of new paragraph 13AA(5)(d) of the OPSGGM Act (new paragraph 5K(1)(c)).

New paragraph 5K(1)(a)

1. As noted above, under the OPSGGM Act, a *scheduled substance* covers any substance listed in Schedule 1 to that Act. The substances listed in Schedule 1 to the OPSGGM Act are the same substances listed in Schedule 10 to the Prohibited Imports Regulations (prior to its repeal by item 7).
2. New paragraph 5K(1)(a) operates in the same way as previous subregulation 5K(1), but directly applies the meaning of scheduled substance by reference to the substances listed in Schedule 1 to the OPSGGM Act. In doing so, new paragraph 5K(1)(a) will automatically pick up any changes to the list of substances as they are made to Schedule 1 to the OPSGGM Act.

New paragraphs 5K(1)(b) and (c)

1. Under the OPSGGM Act:

* the import of a scheduled substance is prohibited; and
* the import of equipment that contains a scheduled substance is prohibited; and
* the import of equipment that uses a scheduled substance in its operation, is prohibited if either the equipment or substance (or both) is prescribed in the regulations.

1. This approach allows the regulations made under the OPSGGM Act to prescribe equipment that uses a scheduled substance in its operation, the import of which is prohibited under that Act without a licence, based on the specific risks to the environment posed by the relevant substance or equipment at the time.
2. For instance, the regulations under the OPSGGM Act would be able to prescribe that the import of all equipment that uses a particular scheduled substance in its operation is prohibited. Alternatively, the regulations could prescribe that the import of a particular kind of equipment that uses any scheduled substance in its operation is prohibited, or that the import of a particular kind of equipment that uses a particular scheduled substance in its operation is prohibited.
3. New paragraph 5K(1)(b) picks up the prohibition in the OPSGGM Act on the import of equipment that contains a scheduled substance, so that the importation of such equipment is also prohibited under the Prohibited Imports Regulations. This ensures continued consistency between the regimes in the OPSGGM Act and the Prohibited Imports Regulations.
4. New paragraph 5K(1)(c) operates to prohibit the importation of equipment that uses a scheduled substance in its operation, if such equipment is prescribed in regulations made under the OPSGGM Act. In doing so, the new paragraphs automatically picks up any import prohibitions on such equipment under the OPSGGM Act if, and when, that equipment is prescribed by regulations made under that Act. This ensures consistency between the regimes in the OPSGGM Act and the Prohibited Imports Regulations.
5. The *Ozone Protection and Synthetic Greenhouse Gas Management Amendment (2023 Measures No.1) Regulations 2023* amended the OPSGGM Regulations so that, from 13 June 2023, imports equipment that uses an ODS in its operation is prohibited under the OPSGGM Act and, therefore, is picked up by new subregulation 5K(1) of the Prohibited Imports Regulations.

*Exceptions to prohibitions on import*

1. New subregulation 5K(2) sets out the exceptions to the prohibition in new subregulation 5K(1).
2. Under new subregulation 5K(2), the prohibition in new subregulation 5K(1) does not apply :

* if none of subsections 13AA(1), (3) and (5) of the OPSGGM Act are contravened in relation to the importation (new paragraph 5K(2)(a)); and
* if the importation is allowed by a licence granted under section 16 of that Act (new paragraph 5K(2)(b)):
  + the licence, or a copy of the licence, is produced to a Collector; and
  + in the case of a substance imported in a non-refillable container—the conditions (if any) prescribed by regulations made for the purposes of item 7 of the table in subsection 18(1) of that Act in relation to the container and the import are satisfied.

1. This means that if an exception in subregulation 5K(2) applies, the import is not prohibited under new subregulation 5K(1) of the Prohibited Imports Regulations.

Import that does not contravene OPSGGM Act

1. New paragraph 5K(2)(a) provides an exception to the prohibition in new subregulation 5K(1) where the importation of the substance or equipment does not contravene new subsections 13AA(1), (3) and (5) of the OPSGGM Act.
2. The purpose of new paragraph 5K(2)(a) is to capture the exceptions to the prohibition in the OPSGGM Act on importing scheduled substances or equipment that contains a scheduled substance, or that uses a scheduled substance in its operation. The effect is that the relevant exceptions under the OPSGGM Act also operate as exceptions to the prohibition on importation of the same goods under the Prohibited Imports Regulations.
3. In other words, a person is, under the Prohibited Imports Regulations, exempted from the prohibition on importing a scheduled substance, equipment that contains a scheduled substance, or equipment that uses a scheduled substance in its operation – provided the import does not contravene any of subsections 13AA(1), (3) and (5) of the OPSGGM Act (subject to also meeting the requirements of paragraph 5K(2)(b), where relevant).
4. New subsections 13AA(1), (3) and (5) of the OPSGGM Act set out the relevant prohibitions in that Act for the import of scheduled substances (new subsection 13AA(1)), the import of equipment that contains a scheduled substance (new subsection 13AA(3), and the import of equipment that uses a scheduled substance in its operation (new subsection 13AA(5)). An import would only contravene one of these provisions if:

* the person does not hold a licence (under the OPSGGM Act) that allowed the import; and
* the person requires is not exempt from the requirement to hold a licence to import the scheduled substance or equipment under the OPSGGM Act.

1. This means that if:

* an importer holds a relevant licence under the OPSGGM Act allowing the import; or
* an importer does not require a licence under the OPSGGM Act to import the substance or equipment because one or more of the exceptions in that Act applies to the export,

the import does not contravene any of subsections 13AA(1), (3) or (5) (and is permitted under that Act).

1. The exceptions in the OPSGGM Act to the requirement to hold a licence to import a scheduled substance or (where relevant) equipment are:

* for the import of a CFC, halon, HCFC, HFC or PFC – where the requirements in new section 12B of the OPSGGM Act (relating to ship stores) are satisfied;
* for the import of an SGG (other than an SGG that is a used substance) – where the import is in circumstances, or for a purpose, prescribed by the regulations (see new subsection 13AA(2) of the OPSGGM Act);
* for the import of equipment that contains an SGG – where the import is covered by the low volume imports exemption (in new subsection 13AA(4) of the OPSGGM Act);
* for the import of equipment – where the equipment is of a kind prescribed by the regulations, or in circumstances, or for a purpose, prescribed by the regulations (see new subsection 13AA(6) of the OPSGGM Act);
* for the import of equipment – where the import is covered by the household or domestic use exemption (in new subsection 13AA(7) of the OPSGGM Act);
* for the import of equipment – where the import is covered by the temporary imports exemption (in new subsection 13AA(8) of the OPSGGM Act);
* for the import of equipment – where the import is covered by the returning Australian equipment exemption (in new subsection 13(AA(9) of the OPSGGM Act).

1. If any of the above exceptions apply to the import of a scheduled substance or an equipment, then the import of the substance or equipment does not contravene the requirements under new subsections 13AA(1), (3), or (5) of the OPSGGM Act.

Import under a licence that is produced

1. New paragraph 5K(2)(b) provides an exception to the prohibition in new subregulation 5K(1) for a person who imports a scheduled substance, equipment that contains a scheduled substance or (where relevant) equipment that uses a scheduled substance in its operation, if:

* the importation is allowed by a licence granted under section 16 of the OPSGGM Act; and
* the licence, or a copy of the licence, is produced to a Collector; and
* in the case of a substance imported in a non-refillable container—the conditions (if any) prescribed by regulations made for the purposes of item 7 of the table in subsection 18(1) of the OPSGGM Act in relation to the container and the import are satisfied.

1. This means that, if the importation of a scheduled substance, equipment that contains a scheduled substance, or (where relevant) equipment that uses a scheduled substance in its operation, is allowed under a licence granted under the OPSGGM Act, it is also permitted under the Prohibited Imports Regulations, but only where the licence (or a copy of the licence) is produced to a Collector (subject to meeting the additional requirement in new subparagraph 5K(2)(b)(ii), where relevant). This is consistent with former regulation 5K of the Prohibited Imports Regulations.
2. The additional requirement (in new subparagraph 5K(2)(b)(ii)) that, even with a licence, a scheduled substance will only be able to be imported in a non-refillable container if it satisfies the conditions prescribed by the regulations is consistent with both:

* the new mandatory licence condition in item 7 of the table in subsection 18(1) of the OPSGGM Act; and
* the previous requirement in item 3 of Schedule 3 of the Prohibited Imports Regulations. This requirement has been removed by item 6 of Schedule 1 to the Amendment Regulations, to reduce unnecessary duplication (see below).

*Other matters*

1. The first note following new subregulation 5K(1) clarifies that a suspended licence does not allow the licensee to carry out any activity that the licence would otherwise allow, and refers the reader to subsection 19D(4) of the OPSGGM Act.
2. The second note following new subregulation 5K(2) refers the reader to examples of exceptions in the OPSGGM Act to the prohibitions in subsections 13AA(1), (3) and (5). Those examples are described above.
3. New subregulation 5K(3) provides that section 9 of the OPSGGM Act applies in relation to new regulation 5K as if regulation 5K were a provision of that Act. 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. The purpose of applying this section to new regulation 5K is to ensure that scheduled substances and equipment are treated consistently under the OPSGGM Act and Prohibited Imports Regulations.
4. New subregulation 5K(4) has the effect that, for the purposes of new regulation 5K:

* the term *equipment* takes the same meaning as in the OPSGGM Act; and
* the term OPSGGM Act refers to the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989*.

**Item [6] – Schedule 3 (table item 3)**

1. Subregulation 4(2) of the Prohibited Imports Regulations provides that the importation into Australia of the goods specified in the second column of an item in Schedule 3 to the Prohibited Imports Regulations is prohibited unless the conditions, restrictions or requirements specified in the third column of that Schedule opposite to the description of the goods are complied with.
2. As noted above, item 3 of Schedule 3 to the Prohibited Imports Regulations, read with subregulation 4(2) of those Regulations, has the effect of prohibiting the importation into Australia of non-refillable containers containing HFCs designed for use in the maintenance of refrigerative units (including air conditioning units), unless the written consent of the Minister or Department administering the OPSGGM Act is produced to a Collector.
3. While there has historically not been an equivalent of this prohibition in the OPSGGM Act, a condition to this effect has been uniformly imposed on licences granted under that Act for the import of bulk HFCs.
4. As noted above, the OPSGGM Amendment Act introduces into the OPSGGM Act a new mandatory licence condition that applies to the importation of all bulk scheduled substances under that Act. The condition is 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 (see new item 7 of the table in subsection 18(1) of the OPSGGM Act).
5. This new mandatory licence condition in the OPSGGM Act is picked up by the prohibition in new regulation 5K of the Prohibited Imports Regulations (inserted by item 5 above). New subparagraph 5K(2)(b)(ii) has the effect that the prohibition on importing a scheduled substance (within the meaning of the OPSGGM Act) into Australia in subregulation 5K(1) does not apply in the case of a substance imported in a non-refillable container if the conditions (if any) prescribed by regulations made for the purpose of item 7 of the table in subsection 18(1) of the OPSGGM Act in relation to the container and the import are satisfied. The importer is also required to produce a licence (or a copy of the licence) allowing the import to a Collector (see new subparagraph 5K(2)(b)(i)).
6. As the new mandatory licence condition in the OPSGGM Act (as picked up by new subparagraph 5K(2)(b)(ii) of the Prohibited Imports Regulations) wholly subsumes the prohibition in item 3 of Schedule 3 to the Prohibited Imports Regulations, item 6 of Schedule 1 to the Amendment Regulations amends Schedule 3 of the Prohibited Imports Regulations to repeal item 3.

**Item [7] – Schedule 10**

1. Schedule 10 to the Prohibited Imports Regulations lists the ODS and SGGs that are subject to the import prohibitions in former regulation 5K of the Prohibited Imports Regulations. The substances listed in Schedule 15 to the Prohibited Exports Regulations are identical to those listed in Schedule 1 to the OPSGGM Act.
2. Item 4 of the Amendment Regulations, amongst other matters, has the effect that the prohibition on importation applies to the ODS and SGGs listed in Schedule 1 to the OPSGGM Act instead of those listed in Schedule 10 to the Prohibited Imports Regulations. As such, the latter Schedule is redundant.
3. The purpose of the amendments made by item 7 is to complement the amendments made by item 4 by repealing Schedule 10 to the Prohibited Imports Regulations.

**ATTACHMENT B**

**Statement of Compatibility with Human Rights**

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

*Customs Legislation Amendment (Ozone Depleting Substances and Synthetic Greenhouse Gases) Regulations 2023*

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

**Overview of the Legislative Instrument**

The *Customs Act 1901* (the Customs Act) concerns customs-related functions and is the legislative authority that sets out the customs requirements for the importation and exportation of goods to and from Australia. The *Customs (Prohibited Imports) Regulations 1956* (the Prohibited Imports Regulations) control the importation of certain goods into Australia by prohibiting importation absolutely or by making importation subject to permission or licence. The *Customs (Prohibited Exports) Regulations 1958* (the Prohibited Exports Regulations) control the exportation of certain goods from Australia by prohibiting exportation absolutely or by making exportation subject to permission or licence.

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

The purpose of the *Customs Legislation Amendment (Ozone Depleting Substances and Synthetic Greenhouse Gases) Regulations 2023* (the Amendment Regulations) is to make consequential amendments to the Prohibited Imports Regulations and the Prohibited Exports Regulations to align with changes to the OPSGGM Act made by the *Ozone Protection and Synthetic Greenhouse Gas Management Reform (Closing the Hole in the Ozone Layer) Act 2022* (the OPSGGM Amendment Act).

To ensure that appropriate border controls are in place, the regimes set out in the OPSGGM Act and the Customs Act are, and have always been, consistent. If the unlicensed import or export of a scheduled substance or associated equipment is prohibited under the OPSGGM Act, it should also be prohibited under the Prohibited Imports Regulations and Prohibited Exports Regulations (as the case may be). Similarly, if a particular import or export is exempted from a prohibition under the OPSGGM Act, it should also be exempted from the corresponding prohibition under the Prohibited Imports Regulations or Prohibited Exports Regulations.

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.

The Amendment Regulations ensure continued consistency between the regimes set out in the OPSGGM and Customs Acts by making corresponding changes to the Prohibited Imports Regulations and Prohibited Exports Regulations.

**Human Rights Implications**

The Amendment Regulations engages the right to health in Article 12(1) of the International Covenant on Economic, Social and Cultural Rights (the ICESCR).

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 scheduled substances and equipment containing such substances, which include various types of ozone depleting substances and synthetic greenhouse gases. The Amendment Regulations achieve this by ensuring that appropriate border controls are in place for the import and export of ozone depleting substances and synthetic greenhouse gases, equipment containing such substances and equipment that uses such substances in its operation.

**Conclusion**

The Amendment Regulations is compatible with human rights because it promotes the right to health under Article 12(1) of the ICESCR.

**The Hon. Tanya Plibersek MP**

**Minister for the Environment and Water**