**EXPLANATORY STATEMENT**

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

*Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Act 1995*

*Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Regulations 2023*

**Purpose**

The purpose of the *Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Regulations 2023* (Manufacture Levy Regulations) is to revoke and remake the existing regulations under the *Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Act 1995* (Manufacture Levy Act) to allow the administration of the Ozone Protection and Synthetic Greenhouse Gas Program (OPSGG Program) to be cost recovered as appropriate.

**Legislative authority**

Section 5 of the Manufacture Levy Act provides that the Governor-General may make regulations prescribing all matters which by the Manufacture Levy Act are required or permitted to be prescribed or as may be necessary or convenient to be prescribed for giving effect to that Act.

The Manufacture Levy Act provides for certain matters relating to the imposition of manufacture levies to be prescribed in the regulations. Specifically:

* subsections 3A(5) provides for the regulations to set the prescribed rate, which forms part of the formula to calculate the amount of levy imposed on the manufacture of SGGs;
* subsection 4(4) provides for the regulations to prescribe the amount, or the method for working out, the amount of levy imposed on the manufacture of substances other than SGGS.

The Manufacture Levy Regulations are made under section 5 of the Manufacture Levy Act and are made for the purposes of subsections 3A(5), and 4(4) of the Manufacture Levy Act.

The repeal of the *Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Regulations 2004* (the former Regulations) is made under subsection 33(3) of the *Acts Interpretation Act 1901*.

**Background**

The *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* (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, including by establishing a licensing scheme for (relevantly) the manufacture of scheduled substances.

The Manufacture Levy Act complements the OPSGGM Act by imposing levy on the manufacture of each of SGGs and substances other than SGGs. The purpose of such levies is to allow the administration of the OPSGG Program to be cost recovered as appropriate.

The *Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Amendment Act 2022* (Manufacture Levy Amendment Act) made minor changes to the Manufacture Levy Act to (relevantly) remove the caps on the rate that levies can be set.

**Impact and effect**

The Manufacture Levy Regulations prescribe, for the purposes of subsections 3A(5) and 4(4) of the Manufacture Levy Act, relevant matters relating to the imposition of levy on the manufacture of SGGs and substances other than SGGs.

Specifically, the Manufacture Levy Regulations:

* set the prescribed rate for the purposes of working out the amount of levy imposed on the manufacture of SGGs;
* set the amount of levy imposed on the manufacture of substances other than SGGs.

The Manufacture Levy Regulations also repeal and replace the former Regulations to take account of minor changes to the Manufacture Levy Act made by the Manufacture Levy Amendment Act and to modernise the drafting style.

The Manufacture Levy Regulations make no substantive changes to the content of the former Regulations.

**Pre-conditions to making the Import Levy Regulations**

The requirements in subsections 3A(12) and 4(4) of the Manufacture Levy Act were met prior to the Manufacture Levy Regulations being made.

**Consultation**

No consultation on the Manufacture Levy Regulations was undertaken due to the minor and machinery nature of the proposed amendments.

**Details and operation**

The Manufacture Levy Regulations commence on the later of the day after the Manufacture Levy Regulations are registered and immediately after the commencement of Schedule 1 to the Manufacture Levy Amendment Act.

Details of the Manufacture Levy Regulations are set out in Attachment A.

**Other**

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

The Manufacture Levy 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 *Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Regulations 2023***

*Part 1 - Preliminary*

Section 1 – Name

This section provides that the name of the instrument is the Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Regulations 2023 (the Manufacture Levy Regulations).

Section 2 – Commencement

This section provides that the Manufacture Levy Regulations commence on the later of the day after the Manufacture Levy Regulations are registered, and immediately after the commencement of Schedule 1 to the *Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Amendment Act 2022* (the Manufacture Levy Amendment Act)*.*

Schedule 1 to the Manufacture Levy Amendment Act commences 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* (OPSGGM Amendment Act). 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.

Subsection 2(2) provides that any information in column 3 of the table in subsection 2(1) is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument. For example, the date the Manufacture Levy Regulations commenced may be inserted into column 3 of this table in a published version of the Manufacture Levy Regulations.

Section 3 – Authority

This section provide that the Manufacture Levy Regulations are made under the *Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Act 1995* (the Manufacture Levy Act)*.*

Section 4 – Schedules

This section provides that each instrument that is specified in a Schedule to the Manufacture Levy 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.

This enables the repeal of the existing *Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Regulations 2004* by Schedule 1.

Section 5 – Definitions

This section defines key terms for the purpose of the Manufacture Levy Regulations. In the Manufacture Levy Regulations, the term *Act* would mean the Manufacture Levy Act.

The first note following this section explains that expressions used in the Manufacture Levy Act have the same meaning as in the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* (OPSGGM Act) and refers the reader to section 3 of the Manufacture Levy Act.

The second note following this section explains that a number of expressions used in the Manufacture Levy Regulations are defined in the Manufacture Levy Act or the OPSGGM Act.

*Part 2 – Amount of manufacture levy*

Section 6 – Amount of manufacture levy – SGGs

Where a controlled substance licence (granted under the OPSGGM Act) allows the licensee to manufacture an SGG, and the licensee manufactures an SGG during a reporting period during which the licence is in force, subsection 3A(1) of the Manufacture Levy Act imposes levy on the licensee in respect of that manufacture.

Subsection 3A(5) of the Manufacture Levy Act provides that the amount of levy that is imposed (by subsection 3A(1)) on a licensee in respect of the manufacture of SGGs in a reporting period is the amount worked out using the formula *number of tonnes of the SGG multiplied by the prescribed rate.*

The term *prescribed rate* is defined in subsection 3A(5) of the Manufacture Levy Act as the amount prescribed by the regulations for the purposes of the definition.

Section 6 of the Manufacture Levy Regulations prescribes, for the purposes of the definition of prescribed rate in subsection 3A(5) of the Manufacture Levy Act, the amount of $165.

This would have the effect that the amount of levy that is imposed on a licensee in respect of the manufacture of SGGs in a reporting period is the number of tonnes of the SGG manufactured in that reporting period multiplied by $165. This maintains the levy at the existing rate.

Section 7 – Amount of manufacture levy – manufacture of substances other than SGGs

Where a controlled substance licence (granted under the OPSGGM Act) allows the licensee to manufacture a substance or substances (other than an SGG), and the licensee manufactures any such substance during a reporting period during which the licence is in force, subsection 4(1) of the Manufacture Levy Act imposes levy on the licensee in respect of that import.

This provision covers the manufacture of methyl bromide or hydrochlorofluorocarbons (HCFCs), as these are the only ozone depleting substances that can be imported under a controlled substances licence.

Subsection 4(4) of the Manufacture Levy Act provides that the amount of levy imposed (by subsection 4(1)) on a licensee in respect of the manufacture of a substance other than an SGG in a reporting period is the amount prescribed, or worked out in accordance with a method prescribed, by the regulations for the purposes of that subsection.

Section 7 of the Manufacture Levy Regulations prescribes, for the purposes of subsection 4(4) of the Manufacture Levy Act, that:

* the amount of levy for the manufacture of an HCFC is $3000 per ODP tonne; and
* the amount of levy for the manufacture of methyl bromide is $135 per tonne.

This maintains these levies at the existing rate.

*Part 3 – Application and transitional provisions*

Section 8 – Application of this instrument

Section 8 of the Manufacture Levy Regulations sets out the application and transitional provisions relating to the Manufacture Levy Regulations. The effect is:

* The Manufacture Levy Regulations apply in relation to reporting periods that start on or after Schedule 1 to the *Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Amendment Act 2022* (Manufacture Levy Amendment Act) commences. This is consistent with the commencement of the amendments to the Manufacture Levy Act made by the Manufacture Levy Amendment Act.
* The *Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Regulations 2004* as in force immediately before the repeal of that instrument by Schedule 1 to the Proposed Regulations continues to apply in relation to reporting periods starting before Schedule 1 to the Manufacture Levy Amendment Act commences (as if the repeal of that instrument had not happened).

Schedule 1 – Repeals

***Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Regulations 2004***

**Item [1] – The whole of the instrument**

Item 1 of Schedule 1 to the Manufacture Levy Regulations repeals the *Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Regulations 2004* (the former Regulations).

The Manufacture Levy Regulations update and replace the former Regulations to take account of the minor changes to the Manufacture Levy Act made by the Manufacture Levy Amendment Act, and to modernise the drafting style. The Manufacture Levy Regulations make no substantive changes to the content of the former Regulations.

**ATTACHMENT B**

**Statement of Compatibility with Human Rights**

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

*Ozone Depleting Substances and Synthetic Greenhouse Gas (Manufacture Levy) 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 *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* 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, including by establishing a licensing scheme for (relevantly) the manufacture of scheduled substances.

The *Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Act 1995* (Manufacture Levy Act) complements the OPSGGM Act by imposing levy on the manufacture of SGGs and substances other than SGGs. The purpose of such levies is to allow the administration of the OPSGG Program to be cost recovered as appropriate.

The purpose of the *Ozone Depleting Substances and Synthetic Greenhouse Gas (Manufacture Levy) Regulations 2023* (Manufacture Levy Regulations) is to prescribe, for the purposes of subsections 3A(5) and 4(4) of the Manufacture Levy Act, relevant matters relating to the imposition of levy on the manufacture of SGGs and substances other than SGGs. Specifically, the Manufacture Levy Regulations:

* set the prescribed rate for the purposes of working out the amount of levy imposed on the manufacture of SGGs;
* set the amount of levy imposed on the import of substances other than SGGs.

The Manufacture Levy Regulations also repeal and replace the *Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Regulations 2004* (the former Regulations) to take account of minor changes to the Manufacture Levy Act made by the *Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Amendment Act 2022* (Manufacture Levy Amendment Act) and to modernise the drafting style. The Manufacture Levy Amendment Act made minor changes to the Manufacture Levy Act to (relevantly) remove the caps on the rate that levies can be set.

The Import Levy Regulations make no substantive changes to the content of the former Regulations.

**Human Rights Implications**

The Manufacture Levy Regulations do not engage any applicable human rights.

**Conclusion**

The Manufacture Levy Regulations is compatible with human rights because it does not raise any human rights issues.

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