

EXPLANATORY STATEMENT

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

Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Act 1995

Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Regulations 2023

Purpose

The purpose of the *Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Regulations 2023* (Import Levy Regulations) is to revoke and remake the existing regulations under the *Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Act 1995* (Import 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 Import Levy Act provides that the Governor-General may make regulations prescribing all matters which by the Import 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 Import Levy Act provides for certain matters relating to the imposition of import levies to be prescribed in the regulations. Specifically:

- subsection 3A(4) provides an exemption to the levy on the import of SGGs that applies where both the SGG is imported for the purpose of the destruction of the SGG, and the conditions specified in the regulations are satisfied;
- subsection 4A(2) provides an exemption to the import levy imposed on SGG equipment that applies to SGG equipment that is prescribed by the regulations;
- subsections 3A(7) and 4A(5) provide for the regulations to set the prescribed rate, which forms part of the formula to calculate the amount of levy imposed on the import of, respectively, SGGs and SGG equipment;
- subsection 4(5) provides for the regulations to prescribe the amount, or the method for working out, the amount of levy imposed on the import of substances other than SGGs.

The Import Levy Regulations are made under section 5 of the Import Levy Act and are made for the purposes of subsections 3A(4), 3A(7), 4(5), 4A(2) and 4A(5) of the Import Levy Act.

The repeal of the *Ozone Protection and Synthetic Greenhouse Gas (Import 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 import of scheduled substances and certain equipment.

The Import Levy Act complements the OPSGGM Act by imposing levy on the import of each of SGGs, substances other than SGGs and SGG equipment. 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 (Import Levy) Amendment Act 2022* (Import Levy Amendment Act) made minor changes to the Import Levy Act to (relevantly) remove the caps on the rate that levies can be set and remove the existing levy on the import of ODS equipment.

Impact and effect

The Import Levy Regulations prescribe, for the purposes of subsections 3A(4), 3A(7), 4(5), 4A(2) and 4A(5) of the Import Levy Act, relevant matters relating to the imposition of levy on the import of SGGs, substances other than SGGs and SGG equipment.

Specifically, the Import Levy Regulations:

- set conditions that must be satisfied for a licensee to be exempt from levy for the import of an SGG that is imported for destruction;
- prescribe meter dose inhalers that are used for medical purposes as exempt from levy imposed on the import of SGG equipment;
- set the prescribed rate for the purposes of working out the amount of levy imposed on the import of SGGs and SGG equipment;
- set the amount of levy imposed on the import of substances other than SGGs.

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

The Import Levy Regulations make no substantive changes to the content of the former Regulations, other than removing matters relating to now-repealed levy on the import of ODS equipment.

Pre-conditions to making the Import Levy Regulations

The requirements in subsections 3A(14), 4(6) and 4A(8) of the Import Levy Act were met prior to the Import Levy Regulations being made.

Consultation

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

Details and operation

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

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

Other

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

The Import 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.

Details of the Ozone Protection and Synthetic Greenhouse Gas (Import 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 (Import Levy) Regulations 2023 (the Import Levy Regulations).

Section 2 – Commencement

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

Schedule 1 to the Import 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 Import Levy Regulations commenced may be inserted into column 3 of this table in a published version of the Import Levy Regulations.

Section 3 – Authority

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

Section 4 – Schedules

This section provides that each instrument that is specified in a Schedule to the Import 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 (Import Levy) Regulations 2004* by Schedule 1.

Section 5 – Definitions

This section defines key terms for the purpose of the Import Levy Regulations. In the Import Levy Regulations, the term *Act* would mean the Import Levy Act, and the term *Management Regulations* would mean the *Ozone Protection and Synthetic Greenhouse Gas Management Regulations 1995*.

The first note following this section explains that expressions used in the Import 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 Import Levy Act.

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

Part 2 – Exemption from import levy

Section 6 – Conditions for exemption from import levy for SGGs – SGGs imported for destruction

Where a controlled substances licence (granted under the OPSGGM Act) allows the licensee to import SGGs into Australia, and the licensee imports an SGG during a reporting period during which the licence is in force, subsection 3A(1) of the Import Levy Act imposes levy on the licensee in respect of that import.

Imposition of this levy is subject to the exemptions set out in subsections 3A(2), (3) and (4) of the Import Levy Act.

Subsection 3A(4) of the Import Levy Act provides an exemption to the levy on the import of SGGs that applies where both the SGG is imported for the purpose of the destruction of the SGG (paragraph 3A(4)(1)), and the conditions specified in the regulations are satisfied (paragraph 3A(4)(b)).

Section 6 of the Import Levy Regulations specifies, for the purposes of paragraph 3A(4)(b) of the Import Levy Act, conditions that must be satisfied for the import of an SGG for destruction to be exempt from import levy under subsection 3A(1) of the Import Levy Act.

These conditions are:

- The licensee is required to give the Secretary evidence of the following in a form approved by the Secretary:
 - that an agreement has been entered into for the destruction of the SGG within 90 days of the import; and
 - that the destruction of the SGG has taken place, or will take place, at either a refrigerant destruction facility or an extinguishing agent destruction facility approved to operate under, respectively, regulation 114 or 306 of the *Ozone Protection and Synthetic Greenhouse Gas Management Regulations 1995*; and
 - that the SGG was destroyed within 90 days of the import.
- The evidence of the agreement needs to be provided to the Secretary before the SGG is imported;
- The evidence that the SGG was destroyed needs to be provided within 30 days after the destruction.

Where these conditions are satisfied, the licensee is required to pay the import levy for the SGG that is imported for destruction.

Section 7 – Exemption from import levy for SGG equipment – metered dose inhalers

Where an equipment licence (granted under the OPSGGM Act) allows the licensee to import SGG equipment, and the licensee imports SGG equipment during a reporting period during which the licence is in force, subsection 4A(1) of the Import Levy Act imposes levy on the licensee in respect of that import.

Imposition of this levy is subject to the exemptions set out in subsections 4A(2) and (3) of the Import Levy Act.

Subsection 4A(2) of the Import Levy Act provides an exemption to the import levy imposed on SGG equipment that applies to SGG equipment that is prescribed by the regulations.

Section 7 of the Import Levy Regulations prescribes, for the purpose of subsection 4A(2) of the Import Levy Act, a meter dose inhaler that is used for medical purposes. This has the effect of exempting the import of meter dose inhalers used for medical purposes from the import levy on SGG equipment imposed by subsection 4A(1) of the Import Levy Act.

Part 3 – Amount of import levy

Section 8 – Amount of import levy – SGGs

Subsection 3A(7) of the Import Levy Act provides that the amount of levy that is imposed (by subsection 3A(1) of the Import Levy Act) on a licensee in respect of the import 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(7) of the Import Levy Act as the amount prescribed by the regulations for the purposes of the definition.

Section 8 of the Import Levy Regulations prescribes, for the purposes of the definition of prescribed rate in subsection 3A(7) of the Import Levy Act, the amount of \$165.

This has the effect that the amount of levy that is imposed on a licensee in respect of the import of SGGs in a reporting period is the number of tonnes of the SGG imported in that reporting period multiplied by \$165. This maintains the levy at the existing rate.

Section 9 – Amount of import levy – import of substances other than SGGs

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

This provision covers the import 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(5) of the Import Levy Act provides that the amount of levy imposed (by subsection 4(1) of the Import Levy Act) on a licensee in respect of the import 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 9 of the Import Levy Regulations prescribes, for the purposes of subsection 4(5) of the Import Levy Act, that:

- the amount of levy for the import of a HCFC is \$3000 per ODP tonne; and
- the amount of levy for the import of methyl bromide is \$135 per tonne.

This maintains these levies at the existing rate.

Section 10 – Amount of import levy – SGG equipment

Subsection 4A(5) of the Import Levy Act provides that the amount of levy that is imposed (by subsection 4A(1) of the Import Levy Act) on a licensee in respect of the import of SGG equipment in a reporting period is the amount worked out using the formula *number of tonnes of the SGG contained in the equipment multiplied by the prescribed rate*.

The term *prescribed rate* is defined in subsection 4A(5) of the Import Levy Act as the amount prescribed by the regulations for the purposes of the definition.

Section 10 of the Import Levy Regulations prescribes, for the purposes of the definition of prescribed rate in subsection 4A(5) of the Import Levy Act, the amount of \$165.

This has the effect that the amount of levy that is imposed on a licensee in respect of the import of SGG equipment in a reporting period is the number of tonnes of SGG contained in the imported equipment in that reporting period multiplied by \$165. This maintains this levy at the existing rate.

Part 4 – Application and transitional provisions

Section 11 – Application of this instrument

Section 11 of the Import Levy Regulations sets out the application and transitional provisions relating to the Import Levy Regulations. The effect is:

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

Schedule 1 – Repeals

Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Regulations 2004

Item [1] – The whole of the instrument

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

The Import Levy Regulations update and replace the former Regulations to take account of the minor changes to the Import Levy Act made by the Import Levy Amendment Act, and to modernise the drafting style. The Import Levy Regulations make no substantive changes to the content of the former Regulations, other than to remove matters relating to the now-repealed levy on the import of ODS equipment.

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 (Import 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 import of scheduled substances and certain equipment.

The *Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Act 1995* (Import Levy Act) complements the OPSGGM Act by imposing levy on the import of each of SGGs, substances other than SGGs and SGG equipment. 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 (Import Levy) Regulations 2023* (Import Levy Regulations) is to prescribe, for the purposes of subsections 3A(4), 3A(7), 4(5), 4A(2) and 4A(5) of the Import Levy Act, relevant matters relating to the imposition of levy on the import of SGGs, substances other than SGGs and SGG equipment. Specifically, the Import Levy Regulations:

- set conditions that must be satisfied for a licensee to be exempt from levy for the import of an SGG that is imported for destruction;
- prescribe meter dose inhalers that are used for medical purposes as exempt from levy imposed on the import of SGG equipment;
- set the prescribed rate for the purposes of working out the amount of levy imposed on the import of SGGs and SGG equipment;
- set the amount of levy imposed on the import of substances other than SGGs.

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

The Import Levy Regulations make no substantive changes to the content of the former Regulations, other than removing matters relating to now-repealed levy on the import of ODS equipment.

Human Rights Implications

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

Conclusion

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

The Hon. Tanya Plibersek MP
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