

EXPLANATORY STATEMENT

Issued by 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 Regulations 1995

Ozone Protection and Synthetic Greenhouse Gas Management (Application Fees Indexation Freeze) Determination 2023

Purpose

The purpose of the *Ozone Protection and Synthetic Greenhouse Gas Management (Application Fees Indexation Freeze) Determination 2023* (the Determination) is to stop the indexation of relevant application fees for refrigeration and air conditioning (RAC) industry permits and fire protection industry permits for the 2024 calendar year. This will have the effect that these fees will remain at their current rate for 2024.

Legislative authority

The Determination is made under subregulation 346(2A) of the *Ozone Protection and Synthetic Greenhouse Gas Management Regulations 1995* (OPSGGM Regulations).

Subregulation 346(2A) of the OPSGGM Regulations provides that the Minister may, by legislative instrument, determine that subregulation 346(2) does not apply in relation to one or more calendar years.

Subregulation 346(2) has the effect of indexing application fees prescribed under regulations 343 and 344 (relating to RAC industry permits and fire protection industry permits on an annual basis. This ensures that fees increase each year that the annual wage price index (published by the Australian Statistician) increases.

Background

The *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* (OPSGGM Act) and the OPSGGM Regulations implement Australia's international obligations under the *Vienna Convention for the Protection of the Ozone Layer*, its *Montreal Protocol on Substances that Deplete the Ozone Layer* and the *United Nations Framework Convention on Climate Change*. It does so through the control of the import, export, manufacture and use of substances covered by the OPSGGM Act.

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

Under Division 6A.2 of the OPSGGM Regulations, a person or organisation must hold a refrigeration and air conditioning (RAC) industry permit (such as a refrigerant handling licence or a refrigerant trading authorisation) to handle, acquire, possess or dispose of controlled refrigerant and to work on RAC equipment that uses a controlled refrigerant.

Similarly, under Division 6A.4 of the OPSGGM Regulations, a person or organisation must hold a fire protection industry permit (such as an extinguishing agent handling licence or an extinguishing agent trading authorisation) to handle, acquire, possess or dispose of controlled extinguishing agent and to work on fire protection equipment that uses a controlled extinguishing agent.

Regulations 343 and 344 prescribe application fees for RAC industry permits and fire protection industry permits.

Impact and effect

The effect of the Determination is to stop the application fees for RAC industry permits and fire protection industry permits from increasing on 1 January 2024. This will mean that the relevant fees remain at their current rate for the whole of 2024.

This is appropriate because analysis indicates a fee increase is not required for the Commonwealth's costs in assessing these permit applications to be appropriately cost recovered in 2024. Any short-term impacts can be managed within the structure of the special account. Freezing fees for one year is also appropriate ahead of commencing a full review of cost recovery arrangements, which is estimated to begin in 2025.

Pre-conditions to making the Determination

The OPSGGM Regulations specify no further conditions that need to be satisfied before the power to make the Determination may be exercised.

Consultation

Consultation with industry stakeholders occurred at meetings with the Air Conditioning and Refrigeration Permit Scheme Industry Advisory Group and Fire Protection Permit Scheme Industry Advisory Group during 2023. No negative impacts on stakeholders are expected.

Details and operation

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

The Determination is a legislative instrument for the purposes of the *Legislation Act 2003*.

The Determination commences the day after it is registered.

The Determination is 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 (Application Fees Indexation Freeze) Determination 2023

Section 1 – Name

1. This section provides that the title of the instrument is the *Ozone Protection and Synthetic Greenhouse Gas Management (Application Fees Indexation Freeze) Determination 2023* (the Determination).

Section 2 – Commencement

2. This section provides that the Determination commences on the day after it is registered.

Section 3 – Authority

3. This section provides that the Determination is made under subregulation 346(2A) of the *Ozone Protection and Synthetic Greenhouse Gas Management Regulations 1995* (the OPSGGM Regulations).

Section 4 – Definitions

4. This section defines the term *Regulations*, as used in the Determination. The *Regulations* would refer to the OPSGGM Regulations.

Section 5 – Certain Part 6A application fees—indexation freeze

5. Regulations 343 and 344 of the OPSGGM Regulations set relevant application fees for refrigeration and air-conditioning industry permits (granted under Division 6A.2) and fire protection industry permits (granted under Division 6A.4).
6. Subregulations 346(1) and (2) of the OPSGGM Regulations have the combined effect that the fees prescribed in regulations 343 and 344 are indexed on an annual basis. This ensures that fees increase each year that the annual wage price index (published by the Australian Statistician) increases.
7. Subregulation 346(2A) allows the Minister to, by legislative instrument, determine that the annual indexation for permit fees (imposed by subregulation 346(2)) does not apply in relation to one or more calendar years.
8. Section 5 of the Determination is made for the purposes of subregulation 346(2A) and provides that subregulation 346(2) of the OPSGGM Regulations does not apply in relation to the 2023 calendar year.
9. The effect is that application fee rates in regulations 343 and 344 will not be increased on 1 January 2024; fee rates in 2024 will remain at their current rates. This is appropriate as a fee increase is not required for the Commonwealth's costs in assessing such applications to be appropriately cost recovered in 2024. The fee freeze is intended to be a short-term measure ahead of the next full review of cost recovery arrangements, and can be managed within the structure of the special account.

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 (Application Fees Indexation
Freeze) Determination 2023*

This Determination is compatible with the human rights and freedoms 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* (OPSGGM Act) and the *Ozone Protection and Synthetic Greenhouse Gas Management Regulations 1995* (OPSGGM Regulations) implement Australia's international obligations under the *Vienna Convention for the Protection of the Ozone Layer*, its *Montreal Protocol on Substances that Deplete the Ozone Layer* and the *United Nations Framework Convention on Climate Change*. It does so through the control of the import, export, manufacture and use of substances covered by the OPSGGM Act.

Under Division 6A.2 of the OPSGGM Regulations, a person or organisation must hold a refrigeration and air conditioning (RAC) industry permit (such as a refrigerant handling licence or a refrigerant trading authorisation) to handle, acquire, possess or dispose of controlled refrigerant and to work on RAC equipment that uses a controlled refrigerant.

Similarly, under Division 6A.4 of the OPSGGM Regulations, a person or organisation must hold a fire protection industry permit (such as an extinguishing agent handling licence or an extinguishing agent trading authorisation) to handle, acquire, possess or dispose of controlled extinguishing agent and to work on fire protection equipment that uses a controlled extinguishing agent.

Regulations 343 and 344 prescribe application fees for RAC industry permits and fire protection industry permits.

Subregulation 346(2) has the effect of indexing application fees prescribed under regulations 343 and 344 (relating to RAC industry permits and fire protection industry permits) on an annual basis. This ensures that fees increase each year that the annual wage price index (published by the Australian Statistician) increases.

Subregulation 346(2A) of the OPSGGM Regulations provides that the Minister may, by legislative instrument, determine that subregulation 346(2) does not apply in relation to one or more calendar years.

The Determination is made under subregulation 346(2A) OPSGGM Regulations and has the effect of stopping the indexation of relevant application fees for RAC industry permits and fire protection industry permits for the 2024 calendar year. This will have the effect that these fees will remain at their current rate for 2024.

Human rights implications

The Determination does not engage with any of the applicable rights or freedoms.

Conclusion

The Determination is compatible with human rights as it does not raise any human rights issues.