

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 (2024 Measures No.1) Regulations 2024

Purpose

The purpose of the *Ozone Protection and Synthetic Greenhouse Gas Management Amendment (2024 Measures No.1) Regulations 2024* (the Amendment Regulations) is to amend the *Ozone Protection and Synthetic Greenhouse Gas Management Regulations 1995* (the Principal Regulations) to prohibit the unlicensed manufacture or import of certain air conditioning equipment and limit the circumstances for which a licence to manufacture or import such equipment can be granted. The Amendment Regulations also increase and modernise the penalties in the Principal Regulations, provide a mechanism for the Minister to determine licence qualifications and standards in a separate legislative instrument, and set application fees for special circumstances exemptions in the refrigeration and air conditioning industry permit scheme and the fire protection industry permit schemes.

Legislative authority

Section 70 of the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* (the Act) provides that the Governor-General may make regulations required or permitted by the Act or that are necessary or convenient to be prescribed for carrying out or giving effect to the Act.

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

- prohibit the unlicensed manufacture of specified equipment that contains a scheduled substance (section 13);
- extend the prohibition on unlicensed manufacture or import of equipment to specified equipment that uses a scheduled substance in its operation (sections 13 and 13AA);
- prescribe additional requirements to grant an equipment licence (section 16); and
- prohibit or regulate the distribution, purchase, acquisition, or disposal of scheduled substances (section 45A).

The Amendment Regulations are made under section 70 of the Act and are made for the purposes of the relevant provisions in sections 13, 13AA and 45A of the Act.

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

Background

The Act and 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*.

Impact and effect

The Amendment Regulations amend the Principal Regulations to:

- prohibit, from 1 July 2024, the import and manufacture of small synthetic greenhouse gas (SGG) air conditioning equipment containing or using a hydrofluorocarbon (HFC) with a global warming potential (GWP) over 750 without a licence;
- prohibit, from 1 July 2025, the import and manufacture of multi-head small SGG air conditioning equipment containing or using an HFC with a GWP over 750 without a licence;
- prescribe additional criteria for equipment licences for the import or manufacture of small SGG air conditioning equipment (from 1 July 2024) and multi-head small SGG air conditioning equipment (from 1 July 2025);
- modernise the drafting of the offence provisions in the Principal Regulations, including clarifying when an offence provision is strict liability;
- increase the penalties for offences from 10 penalty units to 50 penalty units;
- insert a mirror civil penalty provision for each offence in the Principal Regulations. The civil penalty provisions have a maximum civil penalty of 60 penalty units;
- provide a mechanism to move the list of qualifications, units of competency and standards required for a refrigerant handling licence and an extinguishing agent handling licence from the regulations to a separate legislative instrument made by the Minister; and
- impose a fee for special circumstances exemptions in the refrigeration and air conditioning context and increase the same fee in the fire protection context.

Pre-conditions to making the Amendment Regulations

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

Consultation

The Department published a consultation paper on restrictions on import and manufacture of small air conditioning units in June 2021. Consultation was open for 6 weeks and 20 responses were received. Follow up discussions were held with some respondents to seek further information and better understand the issues raised. Overall, respondents were supportive of the proposal.

Consultation was undertaken for the review of the Ozone Protection and Synthetic Greenhouse Gas Program completed in 2016, which recommended increasing the penalties for the offences in the Regulations. No specific consultation was undertaken in relation to the other measures due to the minor and machinery nature of those measures.

Details and operation

The Amendment Regulations commence on the day after registration. Part 1 of Schedule 1 and Schedule 2 to the Amendment Regulations commence on 1 July 2024. Part 2 of Schedule 1 to the Amendment Regulations commences on 1 July 2025. Schedule 3 to the Amendment Regulations commences on 1 August 2024.

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 (2024 Measures No. 1) Regulations 2024*

Section 1 – Name

1. This section provides that the name of the regulations is the *Ozone Protection and Synthetic Greenhouse Gas Management Amendment (2024 Measures No. 1) Regulations 2024* (the Amendment Regulations).

Section 2 – Commencement

2. This section has the effect that:
 - a. the Amendment Regulations commence on the day after registration; and
 - b. Part 1 of Schedules 1 and Schedule 2 to the Amendment Regulations commence on 1 July 2024; and
 - c. Part 2 of Schedule to the Amendment Regulations commences on 1 July 2025; and
 - d. Schedule 3 to the Amendment Regulations commences on 1 August 2024.

Section 3 – Authority

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

Section 4 – Schedules

4. 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.
5. This enables the amendment of the *Ozone Protection and Synthetic Greenhouse Gas Management Regulations 1995* (the Principal Regulations) by Schedules 1 to 3.

Schedule 1 – Amendments relating to restricting the import and manufacture of certain SGG equipment

6. The amendments made by Schedule 1 to the Amendment Regulations:
 - a. prohibit, from 1 July 2024, the import and manufacture of small SGG air conditioning equipment containing or using a hydrofluorocarbon (HFC) with a global warming potential (GWP) over 750 without a licence; and
 - b. prohibit, from 1 July 2025, the import and manufacture of multi-head small SGG air conditioning equipment containing or using an HFC with a GWP over 750 without a licence;

- c. prescribe additional criteria for the granting of equipment licences for the import or manufacture of small SGG air conditioning equipment (from 1 July 2024) and multi-head small SGG air conditioning equipment (from 1 July 2025), so that such licences can only be granted in very limited circumstances.
7. These amendments remove from the market small air conditioning equipment using higher GWP refrigerants such as HFC 410a (GWP 2,088). These higher GWP refrigerants have already been largely replaced in the Australian market for small air conditioning equipment by lower GWP alternatives. These amendments remove the older technology from the market without affecting consumer choice or pricing.
8. These amendments complement Australia's HFC phase-down by reducing demand for HFCs to service equipment and will reduce greenhouse gas emissions by stopping the unnecessary introduction of additional equipment containing high GWP refrigerants into Australian homes and businesses.

Part 1 – Amendments commencing 1 July 2024

Ozone Protection and Synthetic Greenhouse Gas Management Regulations 1995

Item [1] – Regulation 2

9. Regulation 2 of the Principal Regulations defines key terms for the purposes of the Principal Regulations.
10. Item 1 of Schedule 1 to the Amendment Regulations amends existing regulation 2 of the Principal Regulations to insert new definitions for small SGG air conditioning equipment and multi-head small SGG air conditioning equipment.
11. These terms define the scope of the prohibitions on unlicensed manufacture and import made by the amendments in Schedule 1.
12. *Multi-head small SGG air conditioning equipment* is defined as SGG equipment that:
 - a. is the outdoor unit of a multi-head split system air conditioning system (whether or not the air conditioning system is a variable refrigerant flow system); and
 - b. contains, or uses in its operation, an HFC that has a global warming potential of more than 750; and
 - c. is designed to be used primarily to cool or heat (or both) for human comfort a stationary space; and
 - d. has, or will have when charged, a standard refrigerant charge of 2.6 kilograms or less.

13. *Small SGG air conditioning equipment* is defined as SGG equipment that:

- a. is any of the following:
 - i. the outdoor unit of a single head split system air conditioning system;
 - ii. a portable air conditioning system;
 - iii. an air conditioning system that consists of a single unit designed to be mounted on a wall or window; and
- b. contains, or uses in its operation, an HFC that has a global warming potential of more than 750; and
- c. is designed to be used primarily to cool or heat (or both) for human comfort a stationary space; and
- d. has, or will have when charged, a standard refrigerant charge of 2.6 kilograms or less; and
- e. is not multi-head small SGG air conditioning equipment.

14. It is intended that the equipment covered by both definitions are air-to-air single phase and three-phase air conditioning units, including outdoor units for multi-head split systems and single-head split systems for stationary spaces (including units to be installed in portable buildings). However, it is not intended that the following be covered:

- a. close control air conditioners for use in climate control for computer rooms and electrical enclosures;
- b. evaporative coolers or any other cooling systems that are not of the vapour compression type;
- c. air-to-water units that provide heating or cooling to stationary spaces by way of circulating water or other fluid;
- d. dehumidifiers;
- e. air conditioners specifically designed and sold only for installation in end-use mobile applications, such as caravans, mobile homes, camper vans, boats and rail cars;
- f. air conditioners specifically designed and sold only for installation in machinery operator's cabins, whether or not the operator's cabin can be moved independently of the machinery; and

- g. air conditioners specifically designed and sold only for installation in specialised high temperature industrial applications, such as crane cabins used over blast furnaces.

Item [2] – After subregulation 3(1)

15. Subsection 13(3) of the Act has the effect of prohibiting the unlicensed manufacture of equipment that contains a scheduled substance, but only if the equipment or substance (or both) is prescribed by the regulations (paragraph 13(3)(d)). 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.
16. Item 2 of Schedule 1 to the Amendment Regulations amends existing regulation 3 of the Principal Regulations to insert new subregulation 3(1A).
17. New subregulation 3(1A) prescribes, for the purposes of paragraph 13(3)(d) of the Act, small SGG air conditioning equipment.
18. The effect of this amendment is to prohibit the unlicensed manufacture of small SGG air conditioning equipment that contains an HFC that has a global warming potential of more than 750.
19. The unlicensed manufacture of small SGG air conditioning equipment that uses in its operation an HFC that has a global warming potential of more than 750 is prohibited by the amendment made by item 3 below.
20. This means that, following the amendments made by Schedule 1 to the Amendment Regulations, a person wanting to manufacture small SGG air conditioning equipment to Australia requires a licence to do so.
21. Accordingly, from 1 July 2024, a person who manufactures small SGG air conditioning equipment without a licence may be liable for a fault based offence, a strict liability offence or a civil penalty provision for contravening subsection 13(3) or (5) of the Act (see section 13AC of the Act).
22. The prohibition on unlicensed manufacture of small SGG air conditioning equipment is appropriate as the intention is to reduce the installation of new equipment of this type, other than for essential uses, to support the smooth implementation of Australia's HFC phase down and because of the environmental risks associated with the equipment. This is consistent with the phase down (under the Montreal Protocol) of HFCs on the basis of the harm such substances cause to the environment.

Item [3] – Subregulation 3(2)

23. Subsection 13(5) of the 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 (paragraph 13(5)(d)). 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.

24. Subregulation 3(2) of the Principal Regulations prescribes, 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.
25. Item 3 of Schedule 1 to the Amendment Regulations amends existing regulation 3 to repeal subregulation 3(2) and substitute a new subregulation 3(2).
26. New subregulation 3(2) prescribes, for the purposes of paragraph 13(5)(d) of the Act, the following:
 - a. a scheduled substance other than an SGG; and
 - b. small SGG air conditioning equipment.
27. The effect of this amendment is to add small SGG air conditioning equipment that uses in its operation an HFC that has a global warming potential of more than 750 to the kinds of equipment for which unlicensed manufacture is prohibited.
28. The unlicensed manufacture of small SGG air conditioning equipment that contains an HFC that has a global warming potential of more than 750 is prohibited by the amendment made by item 2 above.
29. This means that, following the amendments made by Schedule 1 to the Amendment Regulations, a person wanting to manufacture small SGG air conditioning equipment to Australia requires a licence to do so.
30. Accordingly, from 1 July 2024, a person who manufactures small SGG air conditioning equipment without a licence may be liable for a fault based offence, a strict liability offence or a civil penalty provision for contravening subsection 13(3) or (5) of the Act (see section 13AC of the Act).
31. The prohibition on unlicensed manufacture of small SGG air conditioning equipment is appropriate as the intention is to reduce the installation of new equipment of this type, other than for essential uses, to support the smooth implementation of Australia's HFC phase down and because of environmental risks associated with the equipment. This is consistent with the phase down (under the Montreal Protocol) of HFCs on the basis of the harm such substances cause to the environment.

Item [4] – Subregulation 3A(4)

32. Subsection 13AA(5) of the 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 (paragraph 13AA(5)(d)). 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.

33. Subregulation 3A(4) of the Principal Regulations prescribes, for the purpose of 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.
34. Item 4 of Schedule 1 to the Amendment Regulations amends existing regulation 3A to repeal subregulation 3A(4) and substitute a new subregulation 3A(4).
35. New subregulation 3A(4) prescribes, for the purposes of paragraph 13AA(5)(d) of the Act, the following:
 - a. a scheduled substance other than an SGG; and
 - b. small SGG air conditioning equipment.
36. The effect of this amendment is to add small SGG air conditioning equipment that uses in its operation an HFC that has a global warming potential of more than 750 to the kinds of equipment for which unlicensed import is prohibited.
37. The unlicensed import of small SGG air conditioning equipment that contains an HFC that has a global warming potential of more than 750 is already prohibited under subsection 13AA(3) of the Act.
38. This means that, following the amendments made by Schedule 1 to the Amendment Regulations, a person wanting to import small SGG air conditioning equipment to Australia requires a licence to do so.
39. Accordingly, from 1 July 2024, a person who imports small SGG air conditioning equipment without a licence may be liable for a fault based offence, a strict liability offence or a civil penalty provision for contravening subsection 13AA(3) or (5) of the Act (see section 13AC of the Act).
40. The prohibition on unlicensed imports of small SGG air conditioning equipment is appropriate as the intention is to reduce the installation of new equipment of this type, other than for essential uses, to support the smooth implementation of Australia's HFC phase down and because of the environmental risks associated with the equipment. This is consistent with the phase down (under the Montreal Protocol) of HFCs on the basis of the harm such substances cause to the environment.

Item [5] – After regulation 3D

41. Section 16 of the 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.

42. An *equipment licence* allows the licensee to import, manufacture or export specified ODS equipment or SGG equipment, as specified in the licence (see subsection 13A(6) of the Act).
43. *SGG equipment* is defined in section 7 of the Act to mean equipment that contains an SGG and does not contain any scheduled substance that is not an SGG, or that uses an SGG in its operation and does not use any scheduled substance that is not an SGG in its operation. This includes small SGG air conditioning equipment.
44. Subsection 16(5) of the Act sets out specific criteria for granting an equipment licence for the manufacture, import or export of SGG equipment. Specifically, the Minister must not grant an equipment licence that allows the manufacture, import or export of SGG equipment unless the requirements (if any) prescribed by the regulations for the purposes of subsection 16(5) in relation to the activity, the equipment and the relevant type of scheduled substance, are met.
45. Item 5 of Schedule 1 of the Amendment Regulations amends the Principal Regulations to insert new regulation 3DA.
46. New regulation 3DA is made for the purposes of subsection 16(5) of the Act and has the effect that the Minister is only be able to grant an equipment licence allowing the import or manufacture of SGG equipment that is small SGG air conditioning equipment in very limited circumstances.
47. Specifically, the Minister needs to be satisfied that one or more of the following circumstances applies in relation to the equipment:
 - a. both:
 - i. the equipment is essential for medical, veterinary, defence, industrial safety, public safety, scientific, testing or monitoring purposes or laboratory and analytical uses; and
 - ii. no practical alternative exists to the use of an HFC that has a global warming potential of more than 750 in the operation or manufacture, as the case requires, of the equipment if it is to continue to be effective for such a purpose;
 - b. because of the requirements of a law concerning the manufacture or use of the equipment, there is no practical alternative to the use of an HFC that has a global warming potential of more than 750 in the operation of the equipment;

- c. in the case of the import of equipment—it would be impracticable to remove or retrofit the equipment because it is incidental to other equipment that is being imported;
- d. the equipment is for use in conjunction with the calibration of scientific, measuring or safety equipment;
- e. both:
 - i. exceptional circumstances justify granting the licence in relation to the equipment; and
 - ii. granting the licence would not be inconsistent with Australia’s international obligations under the Montreal Protocol.

48. These strict limitations are appropriate for small SGG air conditioning equipment as the intention is to reduce the installation of new equipment of this type, other than for essential uses, to support the smooth implementation of Australia’s HFC phase down and because of the environmental risks associated with the equipment. This is consistent with the phase down (under the Montreal Protocol) of HFCs on the basis of the harm such substances cause to the environment.

Part 2 – Amendments commencing 1 July 2025

Ozone Protection and Synthetic Greenhouse Gas Management Regulations 1995

Item [6] – Subregulation 3(1A)

- 49. Item 6 of Schedule 1 to the Amendment Regulations amends existing regulation 3 of the Principal Regulations to repeal subregulation 3(1A) (as inserted by item 2 above) and substitute a new subregulation 3(1A).
- 50. New subregulation 3(1A) prescribes, for the purposes of paragraph 13(3)(d) of the Act, both small SGG air conditioning equipment and multi-head small SGG air conditioning equipment.
- 51. The effect of this amendment is that, from 1 July 2025, the manufacture of multi-head small SGG air conditioning equipment is also prohibited without a licence.
- 52. Accordingly, from 1 July 2025, a person who manufactures multi-head small SGG air conditioning equipment without a licence may be liable for a fault based offence, a strict liability offence or a civil penalty provision for contravening subsection 13(3) of the Act (see section 13AC of the Act).
- 53. The prohibition on unlicensed manufacture of multi-head small SGG air conditioning equipment from 1 July 2025 is appropriate as the intention is to reduce the installation of new equipment of this type, other than for essential uses, to support the smooth implementation of Australia’s HFC phase down and because of the environmental risks

associated with the equipment. This is consistent with the phase down (under the Montreal Protocol) of HFCs on the basis of the harm such substances cause to the environment.

Item [7] – At the end of subregulation 3(2)

54. Item 7 of Schedule 1 to the Amendment Regulations amends existing subregulation 3(2) of the Principal Regulations (as amended by item 3 above) to insert new paragraph 3(2)(c).
55. New paragraph 3(2)(c) prescribes, for the purposes of paragraph 13(5)(d) of the Act, multi-head small SGG air conditioning equipment.
56. The effect of this amendment is that, from 1 July 2025, the manufacture of multi-head small SGG air conditioning equipment is also prohibited without a licence.
57. Accordingly, from 1 July 2025, a person who manufactures multi-head small SGG air conditioning equipment without a licence may be liable for a fault based offence, a strict liability offence or a civil penalty provision for contravening subsection 13(5) of the Act (see section 13AC of the Act).
58. The prohibition on unlicensed manufacture of multi-head small SGG air conditioning equipment from 1 July 2025 is appropriate as the intention is to reduce the installation of new equipment of this type, other than for essential uses, to support the smooth implementation of Australia’s HFC phase down and because of the environmental risks associated with the equipment. This is consistent with the phase down (under the Montreal Protocol) of HFCs on the basis of the harm such substances cause to the environment.

Item [8] – At the end of subregulation 3A(4)

59. Item 8 of Schedule 1 to the Amendment Regulations amends existing subregulation 3A(4) of the Principal Regulations (as amended by item 4 above) to insert new paragraph 3A(4)(c).
60. New paragraph 3A(4)(c) prescribes, for the purposes of paragraph 13AA(5)(d) of the Act, multi-head small SGG air conditioning equipment.
61. The effect of this amendment is that, from 1 July 2025, the import of multi-head small SGG air conditioning equipment is also prohibited without a licence.
62. Accordingly, from 1 July 2025, a person who imports multi-head small SGG air conditioning equipment without a licence may be liable for a fault based offence, a strict liability offence or a civil penalty provision for contravening subsection 13AA(3) or (5) of the Act (see section 13AC of the Act).
63. The prohibition on unlicensed import of multi-head small SGG air conditioning equipment is appropriate as the intention is to reduce the installation of new equipment of

this type, other than for essential uses, to support the smooth implementation of Australia's HFC phase down and because of the environmental risks associated with the equipment. This is consistent with the phase down (under the Montreal Protocol) of HFCs on the basis of the harm such substances cause to the environment.

Item [9] – Paragraph 3DA(1)(a)

64. Item 9 of Schedule 1 to the Amendment Regulations amends existing paragraph 3DA(1)(a) of the Principal Regulations (as inserted by item 5 above) to insert 'or multi-head small SGG air conditioning equipment' after 'conditioning equipment'.
65. The combined effect of this amendment and the amendment made by item 10 of Schedule 1 is that, from 1 July 2025, the Minister is only be able to grant a licence to manufacture or import small SGG air conditioning equipment or multi-head small SGG air conditioning equipment if satisfied of one or more of the criteria in subregulation 3DA(2).
66. This means that licences to import or manufacture small SGG air conditioning equipment or multi-head small SGG air conditioning equipment will generally only be able to be granted in very limited circumstances, for essential uses.
67. It is appropriate to impose these strict limitations on licences to import or manufacture multi-head small SGG air conditioning equipment from 1 July 2025, based on the environmental risks associated with the equipment.

Item [10] – Paragraph 3DA(1)(b)

68. Item 10 of Schedule 1 to the Amendment Regulations amends existing paragraph 3DA(1)(b) of the Principal Regulations (as inserted by item 5 above) to insert 'or multi-head small SGG air conditioning equipment' after 'conditioning equipment'.
69. The combined effect of this amendment and the amendment made by item 9 of Schedule 1 is that, from 1 July 2025, the Minister is only be able to grant a licence to manufacture or import small SGG air conditioning equipment or multi-head small SGG air conditioning equipment if satisfied of one or more of the criteria in subregulation 3DA(2).
70. This means that licences to import or manufacture small SGG air conditioning equipment or multi-head small SGG air conditioning equipment will generally only be able to be granted in very limited circumstances, for essential uses.
71. It is appropriate to impose these strict limitations on licences to import or manufacture multi-head small SGG air conditioning equipment from 1 July 2025, based on the environmental risks associated with the equipment.

Schedule 2 – Amendments relating to penalties

Ozone Protection and Synthetic Greenhouse Gas Management Regulations 1995

72. The amendments made by Schedule 2 of the Amendment Regulations:

- a. modernise the drafting of the offence provisions in the Principal Regulations, including clarifying when an offence provision is strict liability;
- b. increase the penalties for offences from 10 penalty units to 50 penalty units; and
- c. insert a mirror civil penalty provision for each offence in the Principal Regulations. The civil penalty provisions have a maximum civil penalty of 60 penalty units.

Item [1] – Regulation 111 (heading)

73. Item 1 of Schedule 2 to the Amendment Regulations amends the heading of existing regulation 111 of the Principal Regulations to omit ‘Offence – carrying’ and substitute ‘Carrying’.

74. This amendment is consequential to the amendments made by items 2 to 4 of Schedule 2 and reflects that regulation 111 now includes both a strict liability offence and a civil penalty provision.

Item [2] – Subregulation 111(1)

75. Item 2 of Schedule 2 to the Amendment Regulations amends existing subregulation 111(1) of the Principal Regulations to omit ‘commits an offence’ and substitute ‘contravenes this subregulation’.

76. This amendment is consequential to the amendments made by items 3 and 4 of Schedule 2 and reflects that regulation 111 now includes both a strict liability offence and a civil penalty provision.

Item [3] – Subregulation 111(1) (penalty)

77. Item 3 of Schedule 2 to the Amendment Regulations amends existing subregulation 111(1) of the Principal Regulations to repeal the penalty of 10 penalty units.

78. This amendment is consequential to the amendment made by item 4 of Schedule 2 which, relevantly, inserts a new higher penalty for the strict liability offence, and a penalty for the new civil penalty provision, in regulation 111.

Item [4] – Subregulation 111(3)

79. Regulation 111 of the Principal Regulations deals with carrying out work in relation to RAC equipment. *RAC equipment* is defined in regulation 110 of the Principal Regulations to mean equipment, used for the cooling or heating of anything, that uses any or all of CFC, HCFC, HFC, PFC and halon.

80. Subregulation 111(1) prohibits a person from carrying out work in relation to RAC equipment, except in certain circumstances. The term *carries out work in relation to RAC equipment* is defined in subregulation 111(2) as doing anything with a refrigerant, or a component of RAC equipment, that involves a risk of refrigerant being emitted, including:

- a. decanting the refrigerant;
- b. manufacturing, installing, commissioning, servicing and maintaining RAC equipment, whether or not refrigerant is present; and
- c. decommissioning RAC equipment in which refrigerant is present.

81. Item 4 of Schedule 2 to the Amendment Regulations amends existing regulation 111 of the Principal Regulations to repeal existing subregulation 111(3) and substitute new subregulations 111(3) and (4).

82. New subregulation 111(3) makes it a strict liability offence for a person to contravene the prohibition in subregulation 111(1). The maximum penalty for this offence is 50 penalty units.

83. Strict liability is provided for this offence having regard to the *Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers 2011* (Commonwealth Guide to Framing Offences) and the *Senate Scrutiny of Bills Committee Sixth Report of 2002: Application of Absolute and Strict Liability Offences in Commonwealth Legislation* (Scrutiny of Bills Committee 6th Report). Consistent with these documents, strict liability is appropriate because:

- a. the offence is not punishable by imprisonment;
- b. the offence is subject to a maximum penalty of 50 penalty units for an individual;
- c. the actions which trigger the offence are simple, readily understood and easily defended. The offence is triggered if a person carries out work in relation to RAC equipment, without appropriate authority to do so;
- d. offences relating to the handling of refrigerant need to be dealt with efficiently to ensure industry and community confidence in the regulatory regime;
- e. the offence is subject to an infringement notice under the Act;
- f. the absence of strict liability may adversely affect the capacity to prosecute offenders. Whether or not a defendant intentionally, recklessly or negligently carried out work in relation to RAC equipment, without authority to do so, is generally a matter that is peculiarly within the knowledge of the defendant alone. Proving the contrary beyond reasonable doubt may require significant and difficult to obtain indirect and circumstantial evidence;
- g. the requirement to obtain the necessary licences, authorisations or exemptions to carry out work in relation to RAC equipment is a necessary part of ensuring that the Act and the Principal Regulations remains an effective and efficient

mechanism to both implement Australia's obligations under the Montreal Protocol and other relevant international treaties, and to realise its intended environmental benefits. Carrying out work in relation to RAC equipment, without authority to do so, could result in significant environmental harm and could damage Australia's international relations; and

- h. the person affected is placed on notice to guard against the possibility of contravention, which is likely to significantly enhance the effectiveness of the enforcement regime in deterring the conduct in question.

84. The defence of honest and reasonable mistake of fact is available for strict liability offences (see sections 6.1 and 9.2 of Schedule 1 to the *Criminal Code Act 1995* (Criminal Code)) and the existence of strict liability does not make any other defence unavailable (see subsection 6.1(3) of Schedule 1 to the Criminal Code).

85. New subregulation 111(4) has the effect of establishing a mirror civil penalty provision which is contravened where a person contravenes the prohibition in subregulation 111(1). The maximum penalty is 60 penalty units. A body corporate is liable for five times this amount as a maximum penalty (see subsection 82(5) of the *Regulatory Powers (Standard Provisions) Act 2014* (Regulatory Powers Act)).

86. The combination of strict liability offence and civil penalty provision provides an adequate deterrent from persons carrying out work in relation to RAC equipment, without the authority to do so, which has the potential to cause significant harm. It is also appropriate to include both civil and criminal penalties in order to provide flexibility for the Commonwealth to enforce the prohibition appropriately without always needing to pursue criminal penalties (noting that conviction for a criminal offence carries with it a range of consequences beyond the immediate penalty). It is expected criminal proceedings would be brought for conduct that is at the more serious end of the spectrum.

Item [5] – Regulation 111A (heading)

87. Item 5 of Schedule 2 to the Amendment Regulations amends the heading of existing regulation 111A of the Principal Regulations to omit 'Offence – prohibited' and substitute 'Prohibited'.

88. This amendment is consequential to the amendments made by items 6 to 8 of Schedule 2 and reflects that regulation 111A now includes both a strict liability offence and a civil penalty provision.

Item [6] – Subregulation 111A(1)

89. Item 6 of Schedule 2 to the Amendment Regulations amends existing subregulation 111A(1) of the Principal Regulations to omit 'commits an offence of strict liability' and substitute 'contravenes this subregulation'.

90. This amendment is consequential to the amendments made by items 7 and 8 of Schedule 2 and reflects that regulation 111A now includes both a strict liability offence and a civil penalty provision.

Item [7] – Subregulation 111A(1) (penalty)

91. Item 7 of Schedule 2 to the Amendment Regulations amends existing subregulation 111A(1) of the Principal Regulations to repeal the penalty of 10 penalty units.

92. This amendment is consequential to the amendment made by item 8 of Schedule 2 which, relevantly, inserts a new higher penalty for the strict liability offence, and a penalty for the new civil penalty provision, in regulation 111A.

Item [8] – Subregulation 111A(2)

93. Regulation 111A of the Principal Regulations, subject to the amendment made by item 6 above, prohibits a person from engaging in prohibited refrigerant charging (subregulation 111A(1)). The term prohibited *refrigerant charging* is defined in subregulation 2AAA(3).

94. Item 8 of Schedule 2 to the Amendment Regulations amends existing regulation 111A of the Principal Regulations to repeal subregulation 111A(2) and substitute new subregulations 111A(2) and (3).

95. New subregulation 111A(2) makes it a strict liability offence for a person to contravene the prohibition in subregulation 111A(1). The maximum penalty for this offence is 50 penalty units.

96. Strict liability is provided for this offence having regard to the Commonwealth Guide to Framing Offences and the Scrutiny of Bills Committee 6th Report. Consistent with these documents, strict liability is appropriate because:

- a. the offence is not punishable by imprisonment;
- b. the offence is subject to a maximum penalty of 50 penalty units for an individual;
- c. the actions which trigger the offence are simple, readily understood and easily defended. The offence is triggered if a person engages in prohibited refrigerant charging;
- d. offences relating to prohibited refrigerant charging need to be dealt with efficiently to ensure industry and community confidence in the regulatory regime;
- e. the offence is subject to an infringement notice under the Act;
- f. the absence of strict liability may adversely affect the capacity to prosecute offenders. Whether or not a defendant intentionally, recklessly or negligently engaged in prohibited refrigerant charging is generally a matter that is peculiarly within the knowledge of the defendant alone. Proving the contrary beyond

reasonable doubt may require significant and difficult to obtain indirect and circumstantial evidence;

- g. the requirement to comply with the Principal Regulations when charging equipment containing refrigerant is a necessary part of ensuring that the Act and the Principal Regulations remains an effective and efficient mechanism to both implement Australia's obligations under the Montreal Protocol and other relevant international treaties, and to realise its intended environmental benefits. Engaging in prohibited refrigerant charging could result in significant environmental harm and could damage Australia's international relations; and
- h. the person affected is placed on notice to guard against the possibility of contravention, which is likely to significantly enhance the effectiveness of the enforcement regime in deterring the conduct in question.

97. The defence of honest and reasonable mistake of fact is available for strict liability offences (see sections 6.1 and 9.2 of Schedule 1 to the Criminal Code) and the existence of strict liability does not make any other defence unavailable (see subsection 6.1(3) of Schedule 1 to the Criminal Code).

98. New subregulation 111A(3) has the effect of establishing a mirror civil penalty provision which is contravened where a person contravenes the prohibition in subregulation 111A(1). The maximum penalty is 60 penalty units. A body corporate is liable for five times this amount as a maximum penalty (see subsection 82(5) of the Regulatory Powers Act).

99. The combination of strict liability offence and civil penalty provision provide an adequate deterrent from a person engaging in prohibited refrigerant charging, which has the potential to cause significant harm. It is also appropriate to include both civil and criminal penalties in order to provide flexibility for the Commonwealth to enforce the prohibition appropriately without always needing to pursue criminal penalties (noting that conviction for a criminal offence carries with it a range of consequences beyond the immediate penalty). It is expected criminal proceedings would be brought for conduct that is at the more serious end of the spectrum.

Item [9] – Regulation 112 (heading)

100. Item 9 of Schedule 2 to the Amendment Regulations amends the heading of existing regulation 112 of the Principal Regulations to omit 'Offence – possessing' and substitute 'Possessing'.

101. This amendment is consequential to the amendments made by items 10 and 11 of Schedule 2 and reflect that regulation 112 now includes both a strict liability offence and a civil penalty provision.

Item [10] – Subregulation 112(2) (penalty)

102. Item 10 of Schedule 2 to the Amendment Regulations amends existing subregulation 112(2) of the Principal Regulations to repeal the penalty of 10 penalty units.
103. This amendment is consequential to the amendment made by item 11 of Schedule 2 which, relevantly, inserts a new higher penalty for the strict liability offence, and a penalty for the new civil penalty provision, in regulation 112.

Item [11] – Subregulations 112(3) and (4)

104. Regulation 112 of the Principal Regulations deals with the possession of bulk refrigerant. The term *bulk refrigerant* means a refrigerant, other than halon, that is, or has been, for use in RAC equipment (subregulation 112(1)).
105. Subregulation 112(2) prohibits a person from acquiring, possessing or disposing of bulk refrigerant, except in certain circumstances.
106. Item 11 of Schedule 2 to the Amendment Regulations amends existing regulation 112 of the Principal Regulations to repeal existing subregulations 112(3) and (4) and substitute new subregulations 112(3), (4) and (5).
107. New subregulation 112(3) prescribes a number of offence-specific defences to the prohibition in subregulation 112(2). Under new subregulation 112(3), the prohibition in subregulation 112(2) does not apply to a person if the person, as soon as practicable after becoming aware that the person possessed bulk refrigerant, gave it to:
 - a. the holder of a refrigerant trading authorisation; or
 - b. the operator of a refrigerant destruction facility; or
 - c. the holder of a special circumstances exemption that entitles the holder to acquire, possess or dispose of bulk refrigerant.
108. The first note following new subregulation 112(3) clarifies that a person who wishes to rely on an exception in subregulation 112(3) bears an evidential burden in relation to the matter and refers the reader to subsection 13.3(3) of the Criminal Code and section 96 of the Regulatory Powers Act.
109. The reversal of the burden of proof is appropriate as the matter to be proved is a matter that would be peculiarly in the knowledge of the defendant. For instance, the defendant would be best placed to know whether, as soon as practicable after becoming aware that the person possessed bulk refrigerant, they gave it to a person entitled to possess the bulk refrigerant. In the event of a prosecution, it would be significantly more difficult and costly for the prosecution to disprove all possible circumstances than it would be for a defendant to establish the existence of one potential circumstance or purpose.

110. The second note following new subregulation 112(3) directs the reader to the list of holders of refrigerant trading authorisations on the Department's website.
111. New subregulation 112(4) makes it a strict liability offence for a person to contravene the prohibition in subregulation 112(2). The maximum penalty for this offence is 50 penalty units.
112. Strict liability is provided for this offence having regard to the Commonwealth Guide to Framing Offences and the Scrutiny of Bills Committee 6th Report. Consistent with these documents, strict liability is appropriate because:
- a. the offence is not punishable by imprisonment;
 - b. the offence is subject to a maximum penalty of 50 penalty units for an individual;
 - c. the actions which trigger the offence are simple, readily understood and easily defended. The offence is triggered if a person acquires, possesses or disposes of bulk refrigerant, without appropriate authority to do so;
 - d. offences relating to the possession of bulk refrigerant need to be dealt with efficiently to ensure industry and community confidence in the regulatory regime;
 - e. the offence is subject to an infringement notice under the Act;
 - f. the absence of strict liability may adversely affect the capacity to prosecute offenders. Whether or not a defendant intentionally, recklessly or negligently acquires, possessed or disposed of bulk refrigerant without authority to do so is generally a matter that is peculiarly within the knowledge of the defendant alone. Proving the contrary beyond reasonable doubt may require significant and difficult to obtain indirect and circumstantial evidence;
 - g. the requirement to obtain the necessary licences, authorisations or exemptions to acquire, possess or dispose of bulk refrigerant is a necessary part of ensuring that the Act and the Principal Regulations remains an effective and efficient mechanism to both implement Australia's obligations under the Montreal Protocol and other relevant international treaties, and to realise its intended environmental benefits. Acquiring, possessing or disposing of bulk refrigerant without authority to do so could result in significant environmental harm and could damage Australia's international relations; and
 - h. the person affected is placed on notice to guard against the possibility of contravention, which is likely to significantly enhance the effectiveness of the enforcement regime in deterring the conduct in question.

113. The defence of honest and reasonable mistake of fact is available for strict liability offences (see sections 6.1 and 9.2 of Schedule 1 to the Criminal Code) and the existence of strict liability does not make any other defence unavailable (see subsection 6.1(3) of Schedule 1 to the Criminal Code).
114. New subregulation 112(5) has the effect of establishing a mirror civil penalty provision which is contravened where a person contravenes the prohibition in subregulation 112(2). The maximum penalty is 60 penalty units. A body corporate is liable for five times this amount as a maximum penalty (see subsection 82(5) of the Regulatory Powers Act).
115. The combination of strict liability offence and civil penalty provision provides an adequate deterrent from persons acquiring, possessing or disposing of bulk refrigerant without the authority to do so, which has the potential to cause significant harm. It is also appropriate to include both civil and criminal penalties in order to provide flexibility for the Commonwealth to enforce the prohibition appropriately without always needing to pursue criminal penalties (noting that conviction for a criminal offence carries with it a range of consequences beyond the immediate penalty). It is expected criminal proceedings would be brought for conduct that is at the more serious end of the spectrum.

Item [12] – Regulation 113 (heading)

116. Item 12 of Schedule 2 to the Amendment Regulations amends the heading of existing regulation 113 of the Principal Regulations to omit ‘Offence – possessing’ and substitute ‘Possessing’.
117. This amendment is consequential to the amendments made by items 13 and 14 of Schedule 2 and reflect that regulation 113 now includes both a strict liability offence and a civil penalty provision.

Item [13] – Subregulation 113(1) (penalty)

118. Item 13 of Schedule 2 to the Amendment Regulations amends existing subregulation 113(1) of the Principal Regulations to repeal the penalty of 10 penalty units.
119. This amendment is consequential to the amendment made by item 14 of Schedule 2 which, relevantly, inserts a new higher penalty for the strict liability offence, and a penalty for the new civil penalty provision, in regulation 113.

Item [14] – Subregulations 113(2) and (3)

120. Regulation 113 of the Principal Regulations deals with the possession of halon. Subregulation 113(1) prohibits the possession of halon that is, or has been, for use in RAC equipment, except in certain circumstances.
121. Item 14 of Schedule 2 to the Amendment Regulations amends existing regulation 113 of the Principal Regulations to repeal existing subregulations 113A(2) and (3) and insert new subregulations 113(2), (3) and (4).

122. New subregulation 113(2) prescribes a number of offence-specific defences to the prohibition in subregulation 113(1). Under new subregulation 113(2), the prohibition in subregulation 113(1) does not apply to a person if the person:
- a. in the case of a person who is the holder of an extinguishing agent trading authorisation – acquired the halon for transfer to an extinguishing agent destruction facility; or
 - b. as soon as practicable after becoming aware that the person possessed halon, gave it to:
 - i. the operator of a refrigerant destruction facility; or
 - ii. the holder of a special circumstances exemption that entitles the holder to possess halon.
123. The note following new subregulation 113(2) clarifies that a person who wishes to rely on an exception in subregulation 113(2) bears an evidential burden in relation to the matter and refers the reader to subsection 13.3(3) of the Criminal Code and section 96 of the Regulatory Powers Act.
124. The reversal of the burden of proof is appropriate as the matter to be proved is a matter that would be peculiarly in the knowledge of the defendant. For instance, the defendant would be best placed to know whether, as soon as practicable after becoming aware that the person possessed halon, they gave it to a person entitled to possess the halon. In the event of a prosecution, it would be significantly more difficult and costly for the prosecution to disprove all possible circumstances than it would be for a defendant to establish the existence of one potential circumstance or purpose.
125. New subregulation 113(3) makes it a strict liability offence for a person to contravene the prohibition in subregulation 113(1). The maximum penalty for this offence is 50 penalty units.
126. Strict liability is provided for this offence having regard to the Commonwealth Guide to Framing Offences and the Scrutiny of Bills Committee 6th Report. Consistent with these documents, strict liability is appropriate because:
- a. the offence is not punishable by imprisonment;
 - b. the offence is subject to a maximum penalty of 50 penalty units for an individual;
 - c. the actions which trigger the offence are simple, readily understood and easily defended. The offence is triggered if a person possesses halon that is, or has been, for use in RAC equipment, without appropriate authority to do so;

- d. offences relating to the possession of halon need to be dealt with efficiently to ensure industry and community confidence in the regulatory regime;
- e. the offence is subject to an infringement notice under the Act;
- f. the absence of strict liability may adversely affect the capacity to prosecute offenders. Whether or not a defendant intentionally, recklessly or negligently possessed halon that is, or has been, for use in RAC equipment, without authority to do so is generally a matter that is peculiarly within the knowledge of the defendant alone. Proving the contrary beyond reasonable doubt may require significant and difficult to obtain indirect and circumstantial evidence;
- g. the requirement to obtain the necessary licences, authorisations or exemptions to possess halon that is, or has been, for use in RAC equipment is a necessary part of ensuring that the Act and the Principal Regulations remains an effective and efficient mechanism to both implement Australia's obligations under the Montreal Protocol and other relevant international treaties, and to realise its intended environmental benefits. Possessing halon without authority to do so could result in significant environmental harm and could damage Australia's international relations; and
- h. the person affected is placed on notice to guard against the possibility of contravention, which is likely to significantly enhance the effectiveness of the enforcement regime in deterring the conduct in question.

127. The defence of honest and reasonable mistake of fact is available for strict liability offences (see sections 6.1 and 9.2 of Schedule 1 to the Criminal Code) and the existence of strict liability does not make any other defence unavailable (see subsection 6.1(3) of Schedule 1 to the Criminal Code).
128. New subregulation 113(4) has the effect of establishing a mirror civil penalty provision which is contravened where a person contravenes the prohibition in subregulation 113(1). The maximum penalty is 60 penalty units. A body corporate is liable for five times this amount as a maximum penalty (see subsection 82(5) of the Regulatory Powers Act).
129. The combination of strict liability offence and civil penalty provision provides an adequate deterrent from persons possessing halon without authority to do so, which has the potential to cause significant harm. It is also appropriate to include both civil and criminal penalties in order to provide flexibility for the Commonwealth to enforce the prohibition appropriately without always needing to pursue criminal penalties (noting that conviction for a criminal offence carries with it a range of consequences beyond the immediate penalty). It is expected criminal proceedings would be brought for conduct that is at the more serious end of the spectrum.

Item [15] – Regulation 113A

130. Item 15 of Schedule 2 to the Amendment Regulations repeals existing regulation 113A of the Principal Regulations and substitutes a new regulation 113A.
131. New subregulation 113A(1) prohibits a person from making a representation that the person can provide a service that involves the acquisition, disposal, storage, use or handling of a refrigerant if:
- a. at the time of making the representation, the person does not RAC Industry permit that entitles the person to provide the service; and
 - b. at the time of making the representation, the person does not employ, or has not engaged, a person who holds a refrigerant handling licence for work of the kind that is necessary to provide the service.
132. A *RAC Industry permit* covers the following: a refrigerant handling licence, a refrigerant trading authorisation, an RAC equipment manufacturing authorisation, a halon special permit, a restricted refrigerant trading authorisation and a special circumstances exemption (see regulation 110 of the Principal Regulations).
133. New subregulation 113A(2) provides that the prohibition in subregulation 113A(1) does not apply to a person if:
- a. both of the following apply:
 - i. at the time of making the representation, the person has entered into an agreement (however described) with someone else to provide the service; and
 - ii. the agreement contains a provision to the effect that the service must be provided by the holder of an RAC industry permit that entitles the holder to provide the service; or
 - b. both of the following apply:
 - i. at the time of making the representation, the person is an employee or contractor of the holder of a special circumstances exemption; and
 - ii. the representation made by the person is for an activity covered by the exemption.
134. The note following new subregulation 113A(2) clarifies that a person who wishes to rely on an exception in subregulation 113A(2) bears an evidential burden in relation to the matter and refers the reader to subsection 13.3(3) of the Criminal Code and section 96 of the Regulatory Powers Act.

135. The reversal of the burden of proof is appropriate as the matter to be proved is a matter that would be peculiarly in the knowledge of the defendant. For instance, the defendant would be best placed to know their employment relationship or whether they have entered into a commercial agreement with another qualified person to provide the service. In the event of a prosecution, it would be significantly more difficult and costly for the prosecution to disprove all possible circumstances than it would be for a defendant to establish the existence of one potential circumstance or purpose.
136. In addition:
- a. new subregulation 113A(3) prohibits a person from making a representation that the person is the holder of a kind of RAC Industry permit if, at the time of making the representation, the person is not the holder of a RAC Industry permit; and
 - b. new subregulation 113A(4) prohibits a person who is employed to work on a AMSA vessel from making a representation that the person holds a AMSA certificate if, at the time of making the representation, the person is not the holder of an AMSA certificate. The terms *AMSA vessel* and *AMSA certificate* are defined in regulation 110 of the Principal Regulations.
137. New subregulation 113A(5) makes it a strict liability offence for a person to contravene the prohibition in subregulations 113A(1), (3) or (4). The maximum penalty for this offence is 50 penalty units.
138. Strict liability is provided for this offence having regard to the Commonwealth Guide to Framing Offences and the Scrutiny of Bills Committee 6th Report. Consistent with these documents, strict liability is appropriate because:
- a. the offence is not punishable by imprisonment;
 - b. the offence is subject to a maximum penalty of 50 penalty units for an individual;
 - c. the actions which trigger the offence are simple, readily understood and easily defended. The offence is triggered if a person makes a false representation that they can legally provide a service that involves the acquisition, disposal, storage, use or handling of a refrigerant;
 - d. offences relating to false representations need to be dealt with efficiently to ensure industry and community confidence in the regulatory regime;
 - e. the offence is subject to an infringement notice under the Act;
 - f. the absence of strict liability may adversely affect the capacity to prosecute offenders. Whether or not a defendant intentionally, recklessly or negligently

made a false representation they can legally provide a service that involves the acquisition, disposal, storage, use or handling of a refrigerant is generally a matter that is peculiarly within the knowledge of the defendant alone. Proving the contrary beyond reasonable doubt may require significant and difficult to obtain indirect and circumstantial evidence;

- g. the requirement to obtain the necessary licences, authorisations or exemptions to legally provide a service that involves the acquisition, disposal, storage, use or handling of refrigerant is a necessary part of ensuring that the Act and the Principal Regulations remains an effective and efficient mechanism to both implement Australia's obligations under the Montreal Protocol and other relevant international treaties, and to realise its intended environmental benefits. Making false representations that a person can legally provide a service involving refrigerant could result in significant environmental harm and could damage Australia's international relations; and
- h. the person affected is placed on notice to guard against the possibility of contravention, which is likely to significantly enhance the effectiveness of the enforcement regime in deterring the conduct in question.

139. The defence of honest and reasonable mistake of fact is available for strict liability offences (see sections 6.1 and 9.2 of Schedule 1 to the Criminal Code) and the existence of strict liability does not make any other defence unavailable (see subsection 6.1(3) of Schedule 1 to the Criminal Code).

140. New subregulation 113A(6) has the effect of establishing a mirror civil penalty provision which is contravened where a person contravenes the prohibition in subregulations 113A(1), (3) or (4). The maximum penalty is 60 penalty units. A body corporate is liable for five times this amount as a maximum penalty (see subsection 82(5) of the Regulatory Powers Act).

141. The combination of strict liability offence and civil penalty provision provides an adequate deterrent from persons making false representations they can legally provide a service that involves the acquisition, disposal, storage, use or handling of a refrigerant, which has the potential to cause significant harm. It is also appropriate to include both civil and criminal penalties in order to provide flexibility for the Commonwealth to enforce the prohibition appropriately without always needing to pursue criminal penalties (noting that conviction for a criminal offence carries with it a range of consequences beyond the immediate penalty). It is expected criminal proceedings would be brought for conduct that is at the more serious end of the spectrum.

Item [16] – Regulation 136

142. Item 16 of Schedule 2 to the Amendment Regulations repeals existing regulation 136 of the Principal Regulations and substitutes a new regulation 136.

143. New regulation 136 of the Principal Regulations prohibits a person who holds a licence granted under Subdivision 6A.2.2 (covering refrigerant handling licences, restricted refrigeration and air conditioning licences and refrigeration and air conditioning trainee licences) from contravening a condition of that licence (subregulation 136(1)).
144. New subregulation 136(2) makes it a strict liability offence for a person to contravene the prohibition in subregulation 136(1). The maximum penalty for this offence is 50 penalty units.
145. Strict liability is provided for this offence having regard to the Commonwealth Guide to Framing Offences and the Scrutiny of Bills Committee 6th Report. Consistent with these documents, strict liability is appropriate because:
- a. the offence is not punishable by imprisonment;
 - b. the offence is subject to a maximum penalty of 50 penalty units for an individual;
 - c. the actions which trigger the offence are simple, readily understood and easily defended. The offence is triggered if a person who holds a refrigerant handling licence, a restricted refrigeration and air conditioning licence or a refrigeration and air conditioning trainee licence, contravenes a condition of that licence;
 - d. offences relating to contravention of licence conditions need to be dealt with efficiently to ensure industry and community confidence in the regulatory regime;
 - e. the offence is subject to an infringement notice under the Act;
 - f. the absence of strict liability may adversely affect the capacity to prosecute offenders. Whether or not a defendant intentionally, recklessly or negligently contravened a condition of their licence is generally a matter that is peculiarly within the knowledge of the defendant alone. Proving the contrary beyond reasonable doubt may require significant and difficult to obtain indirect and circumstantial evidence;
 - g. the requirement to obtain a refrigerant handling licence, a restricted refrigeration and air conditioning licence or a refrigeration and air conditioning trainee licence, and to comply with the conditions of that licence is a necessary part of ensuring that the Act and the Principal Regulations remains an effective and efficient mechanism to both implement Australia's obligations under the Montreal Protocol and other relevant international treaties, and to realise its intended environmental benefits. Contravention of licence conditions could result in significant environmental harm and could damage Australia's international relations; and

- h. the person affected is placed on notice to guard against the possibility of contravention, which is likely to significantly enhance the effectiveness of the enforcement regime in deterring the conduct in question.
- 146. The defence of honest and reasonable mistake of fact is available for strict liability offences (see sections 6.1 and 9.2 of Schedule 1 to the Criminal Code) and the existence of strict liability does not make any other defence unavailable (see subsection 6.1(3) of Schedule 1 to the Criminal Code).
- 147. New subregulation 136(3) has the effect of establishing a mirror civil penalty provision which is contravened where a person contravenes the prohibition in subregulation 136(1). The maximum penalty is 60 penalty units. A body corporate is liable for five times this amount as a maximum penalty (see subsection 82(5) of the Regulatory Powers Act).
- 148. The combination of strict liability offence and civil penalty provision provides an adequate deterrent from person contravening the conditions of their refrigerant handling licence, restricted refrigeration and air conditioning licence or refrigeration and air conditioning trainee licence, which has the potential to cause significant harm. It is also appropriate to include both civil and criminal penalties in order to provide flexibility for the Commonwealth to enforce the prohibition appropriately without always needing to pursue criminal penalties (noting that conviction for a criminal offence carries with it a range of consequences beyond the immediate penalty). It is expected criminal proceedings would be brought for conduct that is at the more serious end of the spectrum.

Item [17] – Regulation 142

- 149. Item 17 of Schedule 2 to the Amendment Regulations repeals existing regulation 142 of the Principal Regulations and substitutes a new regulation 142.
- 150. New regulation 142 of the Principal Regulations prohibits a person who holds an authorisation granted under Subdivision 6A.2.3 (covering refrigerant trading authorisations, RAC equipment manufacturing authorisations and restricted refrigerant trading authorisations) from contravening a condition of that authorisation (subregulation 142(1)).
- 151. New subregulation 142(2) makes it a strict liability offence for a person to contravene the prohibition in subregulation 142(1). The maximum penalty for this offence is 50 penalty units.
- 152. Strict liability is provided for this offence having regard to the Commonwealth Guide to Framing Offences and the Scrutiny of Bills Committee 6th Report. Consistent with these documents, strict liability is appropriate because:
 - a. the offence is not punishable by imprisonment;

- b. the offence is subject to a maximum penalty of 50 penalty units for an individual;
 - c. the actions which trigger the offence are simple, readily understood and easily defended. The offence is triggered if a person who holds a refrigerant trading authorisation, a RAC equipment authorisation or a restricted refrigerant trading authorisation contravenes a condition of that authorisation;
 - d. offences relating to contravention of conditions of authorisations need to be dealt with efficiently to ensure industry and community confidence in the regulatory regime;
 - e. the offence is subject to an infringement notice under the Act;
 - f. the absence of strict liability may adversely affect the capacity to prosecute offenders. Whether or not a defendant intentionally, recklessly or negligently contravened a condition of their authorisation is generally a matter that is peculiarly within the knowledge of the defendant alone. Proving the contrary beyond reasonable doubt may require significant and difficult to obtain indirect and circumstantial evidence;
 - g. the requirement to obtain a refrigerant trading authorisation, a RAC equipment manufacturing authorisation or a restricted refrigerant trading authorisation, and to comply with the conditions of that authorisation, is a necessary part of ensuring that the Act and the Principal Regulations remains an effective and efficient mechanism to both implement Australia's obligations under the Montreal Protocol and other relevant international treaties, and to realise its intended environmental benefits. Contravention of conditions of authorisations could result in significant environmental harm and could damage Australia's international relations; and
 - h. the person affected is placed on notice to guard against the possibility of contravention, which is likely to significantly enhance the effectiveness of the enforcement regime in deterring the conduct in question.
153. The defence of honest and reasonable mistake of fact is available for strict liability offences (see sections 6.1 and 9.2 of Schedule 1 to the Criminal Code) and the existence of strict liability does not make any other defence unavailable (see subsection 6.1(3) of Schedule 1 to the Criminal Code).
154. New subregulation 142(3) has the effect of establishing a mirror civil penalty provision which is contravened where a person contravenes the prohibition in subregulation 142(1). The maximum penalty is 60 penalty units. A body corporate is liable for five times this amount as a maximum penalty (see subsection 82(5) of the Regulatory Powers Act).
155. The combination of strict liability offence and civil penalty provision provides an adequate deterrent from person contravening the conditions of their refrigerant trading

authorisation, RAC equipment manufacturing authorisation or restricted refrigerant trading authorisation, which has the potential to cause significant harm. It is also appropriate to include both civil and criminal penalties in order to provide flexibility for the Commonwealth to enforce the prohibition appropriately without always needing to pursue criminal penalties (noting that conviction for a criminal offence carries with it a range of consequences beyond the immediate penalty). It is expected criminal proceedings would be brought for conduct that is at the more serious end of the spectrum.

Item [18] – Regulation 150 (heading)

156. Item 18 of Schedule 2 to the Amendment Regulations amends the heading of existing regulation 150 of the Principal Regulations to omit ‘Application for halon’ and substitute ‘Halon’.
157. This amendment is consequential to the amendments made by item 20 of Schedule 2 and reflects that regulation 150 now includes both a strict liability offence and a civil penalty provision.

Item [19] – Subregulation 150(1)

158. Item 19 of Schedule 2 to the Amendment Regulations amends existing subregulation 150(1) to omit ‘to a person a permit, in writing, entitling him or her’ and substitute ‘a written permit (a halon special permit) to a person, entitling the person’.
159. This is a drafting style change only. This amendment does not result in any substantive change to the operation of existing subregulation 150(1).

Item [20] – At the end of regulation 150

160. Regulation 150 of the Principal Regulations deals with halon special permits in the RAC context. Subregulation 150(1) allows a relevant authority to, on application, grant a halon special permit to a person entitling the person to possess halon that is for use in RAC equipment.
161. Item 20 of Schedule 2 to the Amendment Regulations amends existing regulation 150 to insert new subregulations 150(4) to (7) at the end of the regulation.
162. New regulation 150(4) allows the relevant authority to put a condition on a halon special permit granted to a person under subregulation 150(1). This aligns halon special permits that entitle the holder to possess halon for use in RAC equipment to the provisions regulating halon special permits that entitle the holder to possess halon for use in fire protection equipment (see regulation 341). The notes following new subregulation 150(4) provide 2 examples of conditions that could be applied on a halon special permit under this new subregulation.
163. New subregulation 150(5) of the Principal Regulations prohibits a person who holds a halon special permit from contravening a condition of that permit.

164. New subregulation 150(6) makes it a strict liability offence for a person to contravene the prohibition in subregulation 150(5). The maximum penalty for this offence is 50 penalty units.
165. Strict liability is provided for this offence having regard to the Commonwealth Guide to Framing Offences and the Scrutiny of Bills Committee 6th Report. Consistent with these documents, strict liability is appropriate because:
- a. the offence is not punishable by imprisonment;
 - b. the offence is subject to a maximum penalty of 50 penalty units for an individual;
 - c. the actions which trigger the offence are simple, readily understood and easily defended. The offence is triggered if a person who holds a halon special permit contravenes a condition of that permit;
 - d. offences relating to contravention of conditions of permits need to be dealt with efficiently to ensure industry and community confidence in the regulatory regime;
 - e. the offence is subject to an infringement notice under the Act;
 - f. the absence of strict liability may adversely affect the capacity to prosecute offenders. Whether or not a defendant intentionally, recklessly or negligently contravened a condition of their halon special permit is generally a matter that is peculiarly within the knowledge of the defendant alone. Proving the contrary beyond reasonable doubt may require significant and difficult to obtain indirect and circumstantial evidence;
 - g. the requirement to obtain an halon special permit to possess halon for use in RAC equipment, and to comply with the conditions of that permit, is a necessary part of ensuring that the Act and the Principal Regulations remains an effective and efficient mechanism to both implement Australia's obligations under the Montreal Protocol and other relevant international treaties, and to realise its intended environmental benefits. Contravention of conditions of halon special permits could result in significant environmental harm and could damage Australia's international relations; and
 - h. the person affected is placed on notice to guard against the possibility of contravention, which is likely to significantly enhance the effectiveness of the enforcement regime in deterring the conduct in question.
166. The defence of honest and reasonable mistake of fact is available for strict liability offences (see sections 6.1 and 9.2 of Schedule 1 to the Criminal Code) and the existence

of strict liability does not make any other defence unavailable (see subsection 6.1(3) of Schedule 1 to the Criminal Code).

167. New subregulation 150(7) has the effect of establishing a mirror civil penalty provision which is contravened where a person contravenes the prohibition in subregulation 150(5). The maximum penalty is 60 penalty units. A body corporate is liable for five times this amount as a maximum penalty (see subsection 82(5) of the Regulatory Powers Act).
168. The combination of strict liability offence and civil penalty provision provides an adequate deterrent from persons contravening the conditions of their halon special permit, which has the potential to cause significant harm. It is also appropriate to include both civil and criminal penalties in order to provide flexibility for the Commonwealth to enforce the prohibition appropriately without always needing to pursue criminal penalties (noting that conviction for a criminal offence carries with it a range of consequences beyond the immediate penalty). It is expected criminal proceedings would be brought for conduct that is at the more serious end of the spectrum.

Item [21] – Subregulation 155(1)

169. Item 21 of Schedule 2 to the Amendment Regulations amends existing subregulation 155(1) of the Principal Regulations to omit ‘commits an offence’ and substitute ‘contravenes this subregulation’.
170. This amendment is consequential to the amendments made by items 22 and 23 of Schedule 2 and reflect that regulation 155 now includes both a strict liability offence and a civil penalty provision.

Item [22] – Subregulation 155(1) (penalty)

171. Item 22 of Schedule 2 to the Amendment Regulations amends existing subregulation 155(1) of the Principal Regulations to repeal the penalty of 10 penalty units.
172. This amendment is consequential to the amendments made by item 23 of Schedule 2 which, relevantly, insert a new higher penalty for the strict liability offence, and a penalty for the new civil penalty provision, in regulation 155.

Item [23] – Subregulation 155(2)

173. Regulation 155 of the Principal Regulations deals with contravention of the conditions of a special circumstances exemption granted under regulation 151 (dealing with refrigerant).
174. Subregulation 155(1) of the Principal Regulations prohibits a person who holds a special circumstances exemption granted under regulation 151 and that is subject to a condition, from doing an act or omission that contravenes a condition of that exemption.

175. Item 23 of Schedule 2 to the Amendment Regulations amends existing regulation 155 of the Principal Regulations to repeal existing subregulation 155(2) and substitute new subregulations 155(2) and (3).
176. New subregulation 155(2) makes it a strict liability offence for a person to contravene the prohibition in subregulation 155(1). The maximum penalty for this offence is 50 penalty units.
177. Strict liability is provided for this offence having regard to the Commonwealth Guide to Framing Offences and the Scrutiny of Bills Committee 6th Report. Consistent with these documents, strict liability is appropriate because:
- a. the offence is not punishable by imprisonment;
 - b. the offence is subject to a maximum penalty of 50 penalty units for an individual;
 - c. the actions which trigger the offence are simple, readily understood and easily defended. The offence is triggered if a person who holds a special circumstances exemption granted under regulation 151 contravenes a condition of that exemption;
 - d. offences relating to contravention of conditions of exemptions need to be dealt with efficiently to ensure industry and community confidence in the regulatory regime;
 - e. the offence is subject to an infringement notice under the Act;
 - f. the absence of strict liability may adversely affect the capacity to prosecute offenders. Whether or not a defendant intentionally, recklessly or negligently contravened a condition of their special circumstances exemption is generally a matter that is peculiarly within the knowledge of the defendant alone. Proving the contrary beyond reasonable doubt may require significant and difficult to obtain indirect and circumstantial evidence;
 - g. the requirement to obtain a special circumstances exemption to handle refrigerant without a licence, and to comply with the conditions of that exemption, is a necessary part of ensuring that the Act and the Principal Regulations remains an effective and efficient mechanism to both implement Australia's obligations under the Montreal Protocol and other relevant international treaties, and to realise its intended environmental benefits. Contravention of conditions of special circumstances exemptions could result in significant environmental harm and could damage Australia's international relations; and

- h. the person affected is placed on notice to guard against the possibility of contravention, which is likely to significantly enhance the effectiveness of the enforcement regime in deterring the conduct in question.
178. The defence of honest and reasonable mistake of fact is available for strict liability offences (see sections 6.1 and 9.2 of Schedule 1 to the Criminal Code) and the existence of strict liability does not make any other defence unavailable (see subsection 6.1(3) of Schedule 1 to the Criminal Code).
179. New subregulation 155(3) has the effect of establishing a mirror civil penalty provision which is contravened where a person contravenes the prohibition in subregulation 155(1). The maximum penalty is 60 penalty units. A body corporate is liable for five times this amount as a maximum penalty (see subsection 82(5) of the Regulatory Powers Act).
180. The combination of strict liability offence and civil penalty provision provides an adequate deterrent from persons contravening the conditions of their special circumstances exemption, which has the potential to cause significant harm. It is also appropriate to include both civil and criminal penalties in order to provide flexibility for the Commonwealth to enforce the prohibition appropriately without always needing to pursue criminal penalties (noting that conviction for a criminal offence carries with it a range of consequences beyond the immediate penalty). It is expected criminal proceedings would be brought for conduct that is at the more serious end of the spectrum.

Item [24] – Regulation 212 (heading)

181. Item 24 of Schedule 2 to the Amendment Regulations amends the heading of existing regulation 212 of the Principal Regulations to omit ‘Offence - using’ and substitute ‘Using’.
182. This amendment is consequential to the amendments made by items 25 to 29 of Schedule 2 and reflects that regulation 212 now includes both strict liability offences and civil penalty provisions.

Item [25] – Subregulation 212(1)

183. Item 25 of Schedule 2 to the Amendment Regulations amends existing subregulation 212(1) of the Principal Regulations to omit ‘commits an offence of strict liability’ and substitute ‘contravenes this subregulation’.
184. This amendment is consequential to the amendments made by items 26 and 29 of Schedule 2 and reflects that regulation 212 now includes both strict liability offences and civil penalty provisions.

Item [26] – Subregulation 212(1) (penalty)

185. Item 26 of Schedule 2 to the Amendment Regulations amends existing subregulation 212(1) of the Principal Regulations to repeal the penalty of 10 penalty units.

186. This amendment is consequential to the amendment made by item 29 of Schedule 2 which, relevantly, inserts a new higher penalty for the strict liability offences, and a penalties for the new civil penalty provisions, in regulation 212.

Item [27] – Subregulation 212(2)

187. Item 27 of Schedule 2 to the Amendment Regulations amends existing subregulation 212(2) of the Principal Regulations to omit ‘commits an offence of strict liability’ and substitute ‘contravenes this subregulation’.

188. This amendment is consequential to the amendments made by items 28 and 29 of Schedule 2 and reflects that regulation 212 now includes both strict liability offences and civil penalty provisions.

Item [28] – Subregulation 212(2) (penalty)

189. Item 28 of Schedule 2 to the Amendment Regulations amends existing subregulation 212(2) of the Principal Regulations to repeal the penalty of 10 penalty units.

190. This amendment is consequential to the amendment made by item 29 of Schedule 2 which, relevantly, inserts a new higher penalty for the strict liability offences, and penalties for the new civil penalty provisions, in regulation 212.

Item [29] – At the end of regulation 212

191. Regulation 212 of the Principal Regulations deals with the use of methyl bromide for a non-QPS use.

192. Specifically, and subject to the amendment made by item 25 above, subregulation 212(1) prohibits a person from using methyl bromide for a non-QPS use during a year unless the person is the holder of a non-QPS permit for that year, or is acting on behalf of a person who is the holder of a non-QPS permit for that year.

193. In addition, and subject to the amendment made by item 27 above, subregulation 212(2) prohibits the holder of a non-QPS permit from using more methyl bromide for non-QPS uses during the year than is permitted by the permit, or from contravening a condition of the non-QPS permit.

194. Item 29 of Schedule 2 to the Amendment Regulations amends existing regulation 212 of the Principal Regulations to insert new subregulations 212(3) and (4) at the end of the regulation.

195. New subregulation 212(3) makes it a strict liability offence for a person to contravene the prohibition in subregulation 212(1) or (2). The maximum penalty for this offence is 50 penalty units.

196. Strict liability is provided for this offence having regard to the Commonwealth Guide to Framing Offences and the Scrutiny of Bills Committee 6th Report. Consistent with these documents, strict liability is appropriate because:
- a. the offence is not punishable by imprisonment;
 - b. the offence is subject to a maximum penalty of 50 penalty units for an individual;
 - c. the actions which trigger the offence are simple, readily understood and easily defended. The offence is triggered if a person uses methyl bromide for a non-QPS use and either does not hold a non-QPS permit, or does not comply with the requirements or conditions of their non-QPS permit;
 - d. offences relating to the use of methyl bromide need to be dealt with efficiently to ensure industry and community confidence in the regulatory regime;
 - e. the offence is subject to an infringement notice under the Act;
 - f. the absence of strict liability may adversely affect the capacity to prosecute offenders. Whether or not a defendant intentionally, recklessly or negligently used methyl bromide for a non-QPS use without a non-QPS permit, or failed to comply with the requirements or conditions of their non-QPS permit is generally a matter that is peculiarly within the knowledge of the defendant alone. Proving the contrary beyond reasonable doubt may require significant and difficult to obtain indirect and circumstantial evidence;
 - g. the requirements to obtain a non-QPS permit to use methyl bromide for a non-QPS use are a necessary part of ensuring that the Act and the Principal Regulations remains an effective and efficient mechanism to both implement Australia's obligations under the Montreal Protocol and other relevant international treaties, and to realise its intended environmental benefits. Misuse of methyl bromide could result in significant environmental harm and could damage Australia's international relations; and
 - h. the person affected is placed on notice to guard against the possibility of contravention, which is likely to significantly enhance the effectiveness of the enforcement regime in deterring the conduct in question.
197. The defence of honest and reasonable mistake of fact is available for strict liability offences (see sections 6.1 and 9.2 of Schedule 1 to the Criminal Code) and the existence of strict liability does not make any other defence unavailable (see subsection 6.1(3) of Schedule 1 to the Criminal Code).
198. New subregulation 212(4) has the effect of establishing a mirror civil penalty provision which is contravened where a person contravenes the prohibition in subregulations

212(1) or (2). The maximum penalty is 60 penalty units. A body corporate is liable for five times this amount as a maximum penalty (see subsection 82(5) of the Regulatory Powers Act).

199. The combination of strict liability offence and civil penalty provision provides an adequate deterrent from persons using methyl bromide for a non-QPS use without obtaining a non-QPS permit, or without complying with the requirements or conditions of a non-QPS permit, which has the potential to cause significant harm. It is also appropriate to include both civil and criminal penalties in order to provide flexibility for the Commonwealth to enforce the prohibition appropriately without always needing to pursue criminal penalties (noting that conviction for a criminal offence carries with it a range of consequences beyond the immediate penalty). It is expected criminal proceedings would be brought for conduct that is at the more serious end of the spectrum.

Item [30] – Regulation 213 (heading)

200. Item 30 of Schedule 2 to the Amendment Regulations amends the heading of existing regulation 213 of the Principal Regulations to omit ‘Offence - supplying’ and substitute ‘Supplying’.
201. This amendment is consequential to the amendments made by items 31 to 33 of Schedule 2 and reflects that regulation 213 now includes both a strict liability offence and a civil penalty provision.

Item [31] – Subregulation 213(1)

202. Item 31 of Schedule 2 to the Amendment Regulations amends existing subregulation 213(1) of the Principal Regulations to omit ‘commits an offence of strict liability’ and substitute ‘contravenes this subregulation’.
203. This amendment is consequential to the amendments made by items 32 and 33 of Schedule 2 and reflects that regulation 213 now includes both a strict liability offence and a civil penalty provision.

Item [32] – Subregulation 213(1) (penalty)

204. Item 32 of Schedule 2 to the Amendment Regulations amends existing subregulation 213(1) of the Principal Regulations to repeal the penalty of 10 penalty units.
205. This amendment is consequential to the amendment made by item 33 of Schedule 2 which, relevantly, inserts a new higher penalty for the strict liability offence, and a penalty for the new civil penalty provision, in regulation 213.

Item [33] – At the end of regulation 213

206. Regulation 213 of the Principal Regulations deals with a person who supplies methyl bromide to another person for a non-QPS use.

207. Specifically, and subject to the amendment made by item 31 above, subregulation 213(1) prohibits a person from supplying methyl bromide to another person for a non-QPS use if the supplier does not comply with the requirements in subregulations 213(2), (3) and (4) in relation to the sale.
208. The requirements in subregulation 213(2) are that the buyer must hold a non-QPS permit for the year or be acting on behalf of the holder of a non-QPS permit for the year, or be a nominated non-QPS supplier for a non-QPS permit holder for the year.
209. The requirements in subregulation 213(3) are that if the buyer holds a non-QPS permit for the year, or is acting on behalf of such a permit holder, the supplier must be a nominated non-QPS supplier for the permit holder, and the supplier must ensure that the total amount of methyl bromide sold during the year by the supplier to the permit holder for non-QPS uses is equal to, or less than, the permit holder's allocated amount for the year.
210. The requirements in subregulation 213(4) are that if the buyer is a nominated non-QPS supplier for a non-QPS permit holder for the year, the supplier must ensure that the total amount of methyl bromide sold during the year to the buyer is equal to, or less than, the total of the allocated amounts for the year for all non-QPS permit holders in relation to whom the buyer is a nominated non-QPS supplier.
211. Item 33 of Schedule 2 to the Amendment Regulations amends existing regulation 213 of the Principal Regulations to insert new subregulations 213(7) and (8) at the end of the regulation.
212. New subregulation 213(7) makes it a strict liability offence for a person to contravene the prohibition in subregulation 213(1). The maximum penalty for this offence is 50 penalty units.
213. Strict liability is provided for this offence having regard to the Commonwealth Guide to Framing Offences and the Scrutiny of Bills Committee 6th Report. Consistent with these documents, strict liability is appropriate because:
 - a. the offence is not punishable by imprisonment;
 - b. the offence is subject to a maximum penalty of 50 penalty units for an individual;
 - c. the actions which trigger the offence are simple, readily understood and easily defended. The offence is triggered if a person supplies methyl bromide for a non-QPS use and does not comply with the requirements in subregulations 213(2), (3) and (4);

- d. offences relating to the supply of methyl bromide need to be dealt with efficiently to ensure industry and community confidence in the regulatory regime;
- e. the offence is subject to an infringement notice under the Act;
- f. the absence of strict liability may adversely affect the capacity to prosecute offenders. Whether or not a defendant intentionally, recklessly or negligently supplied methyl bromide for a non-QPS use without complying with the requirements of subregulations 213(2), (3) or (4) is generally a matter that is peculiarly within the knowledge of the defendant alone. Proving the contrary beyond reasonable doubt may require significant and difficult to obtain indirect and circumstantial evidence;
- g. the requirements for supplying methyl bromide for a non-QPS use are a necessary part of ensuring that the Act and the Principal Regulations remains an effective and efficient mechanism to both implement Australia's obligations under the Montreal Protocol and other relevant international treaties, and to realise its intended environmental benefits. Misuse of methyl bromide could result in significant environmental harm and could damage Australia's international relations; and
- h. the person affected is placed on notice to guard against the possibility of contravention, which is likely to significantly enhance the effectiveness of the enforcement regime in deterring the conduct in question.

214. The defence of honest and reasonable mistake of fact is available for strict liability offences (see sections 6.1 and 9.2 of Schedule 1 to the Criminal Code) and the existence of strict liability does not make any other defence unavailable (see subsection 6.1(3) of Schedule 1 to the Criminal Code).

215. New subregulation 213(8) has the effect of establishing a mirror civil penalty provision which is contravened where a person contravenes the prohibition in subregulation 213(1). The maximum penalty is 60 penalty units. A body corporate is liable for five times this amount as a maximum penalty (see subsection 82(5) of the Regulatory Powers Act).

216. The combination of strict liability offence and civil penalty provision provides an adequate deterrent from persons supplying methyl bromide for a non-QPS use without complying with the requirements in subregulations 213(2), (3) or (4) which has the potential to cause significant harm. It is also appropriate to include both civil and criminal penalties in order to provide flexibility for the Commonwealth to enforce the prohibition appropriately without always needing to pursue criminal penalties (noting that conviction for a criminal offence carries with it a range of consequences beyond the immediate penalty). It is expected criminal proceedings would be brought for conduct that is at the more serious end of the spectrum.

Item [34] – Regulation 214 (heading)

217. Item 34 of Schedule 2 to the Amendment Regulations amends the heading of existing regulation 214 of the Principal Regulations to omit ‘Offence - using’ and substitute ‘Using’.
218. This amendment is consequential to the amendments made by items 35 to 39 of Schedule 2 and reflects that regulation 214 now includes both strict liability offences and civil penalty provisions.

Item [35] – Subregulation 214(1)

219. Item 35 of Schedule 2 to the Amendment Regulations amends existing subregulation 214(1) of the Principal Regulations to omit ‘commits an offence of strict liability’ and substitute ‘contravenes this subregulation’.
220. This amendment is consequential to the amendments made by items 36 and 39 of Schedule 2 and reflects that regulation 214 now includes both strict liability offences and civil penalty provisions.

Item [36] – Subregulation 214(1) (penalty)

221. Item 36 of Schedule 2 to the Amendment Regulations amends existing subregulation 214(1) of the Principal Regulations to repeal the penalty of 10 penalty units.
222. This amendment is consequential to the amendment made by item 39 of Schedule 2 which, relevantly, inserts a new higher penalty for the strict liability offences, and a penalties for the new civil penalty provisions, in regulation 214.

Item [37] – Subregulation 214(2)

223. Item 37 of Schedule 2 to the Amendment Regulations amends existing subregulation 214(2) of the Principal Regulations to omit ‘commits an offence of strict liability’ and substitute ‘contravenes this subregulation’.
224. This amendment is consequential to the amendments made by items 38 and 39 of Schedule 2 and reflects that regulation 214 now includes both strict liability offences and civil penalty provisions.

Item [38] – Subregulation 214(2) (penalty)

225. Item 38 of Schedule 2 to the Amendment Regulations amends existing subregulation 214(2) of the Principal Regulations to repeal the penalty of 10 penalty units.
226. This amendment is consequential to the amendment made by item 39 of Schedule 2 which, relevantly, inserts a new higher penalty for the strict liability offences, and penalties for the new civil penalty provisions, in regulation 214.

Item [39] – At the end of regulation 214

227. Regulation 214 of the Principal Regulations deals with the use of methyl bromide as a feedstock.

228. Specifically, and subject to the amendment made by item 35 above, subregulation 214(1) prohibits a person from using methyl bromide as a feedstock during a year unless the person is the holder of a feedstock permit for that year, or is acting on behalf of a person who is the holder of a feedstock permit for that year.
229. In addition, and subject to the amendment made by item 37 above, subregulation 214(2) prohibits the holder of a feedstock permit from using more methyl bromide as feedstock during the year than is permitted by the permit, or from contravening a condition of the feedstock permit.
230. Item 39 of Schedule 2 to the Amendment Regulations amends existing regulation 214 of the Principal Regulations to insert new subregulations 214(3) and (4) at the end of the regulation.
231. New subregulation 214(3) makes it a strict liability offence for a person to contravene the prohibition in subregulation 214(1) or (2). The maximum penalty for this offence is 50 penalty units.
232. Strict liability is provided for this offence having regard to the Commonwealth Guide to Framing Offences and the Scrutiny of Bills Committee 6th Report. Consistent with these documents, strict liability is appropriate because:
- a. the offence is not punishable by imprisonment;
 - b. the offence is subject to a maximum penalty of 50 penalty units for an individual;
 - c. the actions which trigger the offence are simple, readily understood and easily defended. The offence is triggered if a person uses methyl bromide for feedstock and either does not hold a feedstock permit, or does not comply with the requirements or conditions of their feedstock permit;
 - d. offences relating to the use of methyl bromide need to be dealt with efficiently to ensure industry and community confidence in the regulatory regime;
 - e. the offence is subject to an infringement notice under the Act;
 - f. the absence of strict liability may adversely affect the capacity to prosecute offenders. Whether or not a defendant intentionally, recklessly or negligently used methyl bromide for feedstock without a feedstock permit, or failed to comply with the requirements or conditions of their feedstock permit is generally a matter that is peculiarly within the knowledge of the defendant alone. Proving the contrary beyond reasonable doubt may require significant and difficult to obtain indirect and circumstantial evidence;

- g. the requirement to obtain a feedstock permit to use methyl bromide as a feedstock are a necessary part of ensuring that the Act and the Principal Regulations remains an effective and efficient mechanism to both implement Australia's obligations under the Montreal Protocol and other relevant international treaties, and to realise its intended environmental benefits. Misuse of methyl bromide could result in significant environmental harm and could damage Australia's international relations; and
 - h. the person affected is placed on notice to guard against the possibility of contravention, which is likely to significantly enhance the effectiveness of the enforcement regime in deterring the conduct in question.
233. The defence of honest and reasonable mistake of fact is available for strict liability offences (see sections 6.1 and 9.2 of Schedule 1 to the Criminal Code) and the existence of strict liability does not make any other defence unavailable (see subsection 6.1(3) of Schedule 1 to the Criminal Code).
234. New subregulation 214(4) has the effect of establishing a mirror civil penalty provision which is contravened where a person contravenes the prohibition in subregulations 214(1) or (2). The maximum penalty is 60 penalty units. A body corporate is liable for five times this amount as a maximum penalty (see subsection 82(5) of the Regulatory Powers Act).
235. The combination of strict liability offence and civil penalty provision provides an adequate deterrent from persons using methyl bromide as a feedstock without obtaining a feedstock permit, or without complying with the requirements or conditions of a feedstock permit, which has the potential to cause significant harm. It is also appropriate to include both civil and criminal penalties in order to provide flexibility for the Commonwealth to enforce the prohibition appropriately without always needing to pursue criminal penalties (noting that conviction for a criminal offence carries with it a range of consequences beyond the immediate penalty). It is expected criminal proceedings would be brought for conduct that is at the more serious end of the spectrum.

Item [40] – Regulation 215 (heading)

236. Item 40 of Schedule 2 to the Amendment Regulations amends the heading of existing regulation 215 of the Principal Regulations to omit 'Offence - supplying' and substitute 'Supplying'.
237. This amendment is consequential to the amendments made by items 41 to 43 of Schedule 2 and reflects that regulation 215 now includes both a strict liability offence and a civil penalty provision.

Item [41] – Subregulation 215(1)

238. Item 41 of Schedule 2 to the Amendment Regulations amends existing subregulation 215(1) of the Principal Regulations to omit ‘commits an offence of strict liability’ and substitute ‘contravenes this subregulation’.
239. This amendment is consequential to the amendments made by items 42 and 43 of Schedule 2 and reflects that regulation 215 now includes both a strict liability offence and a civil penalty provision.

Item [42] – Subregulation 215(1) (penalty)

240. Item 42 of Schedule 2 to the Amendment Regulations amends existing subregulation 215(1) of the Principal Regulations to repeal the penalty of 10 penalty units.
241. This amendment is consequential to the amendment made by item 43 of Schedule 2 which, relevantly, insert a new higher penalty for the strict liability offence, and a penalty for the new civil penalty provision, in regulation 215.

Item [43] – At the end of regulation 215

242. Regulation 215 of the Principal Regulations deals with a person who supplies methyl bromide to another person for use as a feedstock.
243. Specifically, and subject to the amendment made by item 41 above, subregulation 215(1) prohibits a person from supplying methyl bromide to another person for use as a feedstock if the supplier does not comply with the requirements in subregulation 215(2) in relation to the sale.
244. The requirements in subregulation 215(2) include that the buyer must hold a feedstock permit for the year (or be acting on behalf of a person who holds a feedstock permit for the year), and that the supplier must be a nominated feedstock supplier for the buyer and must ensure that the total amount of methyl bromide sold during the year by the supplier to the permit holder for use as a feedstock is equal to or less than the amount that the permit holder is permitted, under the permit, to buy during the year.
245. Item 43 of Schedule 2 to the Amendment Regulations amends existing regulation 215 of the Principal Regulations to insert new subregulations 215(4) and (5) at the end of the regulation.
246. New subregulation 215(4) makes it a strict liability offence for a person to contravene the prohibition in subregulation 215(1). The maximum penalty for this offence is 50 penalty units.
247. Strict liability is provided for this offence having regard to the Commonwealth Guide to Framing Offences and the Scrutiny of Bills Committee 6th Report. Consistent with these documents, strict liability is appropriate because:
- a. the offence is not punishable by imprisonment;

- b. the offence is subject to a maximum penalty of 50 penalty units for an individual;
 - c. the actions which trigger the offence are simple, readily understood and easily defended. The offence is triggered if a person supplies methyl bromide for use as a feedstock and does not comply with the requirements in subregulation 215(2);
 - d. offences relating to the supply of methyl bromide need to be dealt with efficiently to ensure industry and community confidence in the regulatory regime;
 - e. the offence is subject to an infringement notice under the Act;
 - f. the absence of strict liability may adversely affect the capacity to prosecute offenders. Whether or not a defendant intentionally, recklessly or negligently supplied methyl bromide for use as a feedstock without complying with the requirements of subregulation 215(2) is generally a matter that is peculiarly within the knowledge of the defendant alone. Proving the contrary beyond reasonable doubt may require significant and difficult to obtain indirect and circumstantial evidence;
 - g. the requirements for supplying methyl bromide for use as a feedstock are a necessary part of ensuring that the Act and the Principal Regulations remains an effective and efficient mechanism to both implement Australia's obligations under the Montreal Protocol and other relevant international treaties, and to realise its intended environmental benefits. Misuse of methyl bromide could result in significant environmental harm and could damage Australia's international relations; and
 - h. the person affected is placed on notice to guard against the possibility of contravention, which is likely to significantly enhance the effectiveness of the enforcement regime in deterring the conduct in question.
248. The defence of honest and reasonable mistake of fact is available for strict liability offences (see sections 6.1 and 9.2 of Schedule 1 to the Criminal Code) and the existence of strict liability does not make any other defence unavailable (see subsection 6.1(3) of Schedule 1 to the Criminal Code).
249. New subregulation 215(5) has the effect of establishing a mirror civil penalty provision which is contravened where a person contravenes the prohibition in subregulation 215(1). The maximum penalty is 60 penalty units. A body corporate is liable for five times this amount as a maximum penalty (see subsection 82(5) of the Regulatory Powers Act).

250. The combination of strict liability offence and civil penalty provision provides an adequate deterrent from persons supplying methyl bromide for use as a feedstock without complying with the requirements in subregulation 215(2), which has the potential to cause significant harm. It is also appropriate to include both civil and criminal penalties in order to provide flexibility for the Commonwealth to enforce the prohibition appropriately without always needing to pursue criminal penalties (noting that conviction for a criminal offence carries with it a range of consequences beyond the immediate penalty). It is expected criminal proceedings would be brought for conduct that is at the more serious end of the spectrum.

Item [44] – Subregulations 220(1), (2) and (4) (penalty)

251. Item 44 of Schedule 2 to the Amendment Regulations amends existing subregulations 220(1), (2) and (4) of the Principal Regulations to repeal the penalty of 10 penalty units for the strict liability offences in these subregulations.

252. This amendment is consequential to the amendment made by item 45 of Schedule 2 which, relevantly, inserts a new higher penalty for the strict liability offences, and penalties for the new civil penalty provisions, in regulation 220.

Item [45] – Subregulation 220(5)

253. Regulation 220 of the Principal Regulations deals with record keeping requirements for a person who supplies methyl bromide to another person.

254. Subregulations 220(1) requires a person who supplies methyl bromide to another person to keep a record of the sale, in an approved form and signed by the supplier, that contains the following information:

- a. the name and ABN (if any) of the supplier;
- b. the name, address, telephone number and ABN (if any) of the buyer;
- c. the date of sale;
- d. the amount of methyl bromide sold;
- e. a declaration, signed by the buyer, stating the following in relation to the amount of methyl bromide sold:
 - i. how much is to be used for non-QPS purposes;
 - ii. how much is to be used for QPS purposes;
 - iii. how much is to be used as a feedstock;
 - iv. how much is to be used for laboratory and analytical uses.

255. Subregulation 220(2) requires the records required under subregulation 220(1) to be retained for 5 years from the date of the sale.
256. Subregulation 220(4) requires the person to give the Minister a copy of a record retained under regulation 220 within 14 days of the Minister requesting in writing a copy of the record.
257. Item 45 of Schedule 2 to the Amendment Regulations amends existing regulation 220 of the Principal Regulations to repeal existing subregulation 220(5) and substitute new subregulations 221(5) and (6).
258. New subregulation 221(5) makes it a strict liability offence for a person to fail to comply with the record keeping requirements in subregulations 220(1), (2) or (4). The maximum penalty for this offence is 50 penalty units.
259. Strict liability is provided for this offence having regard to the Commonwealth Guide to Framing Offences and the Scrutiny of Bills Committee 6th Report. Consistent with these documents, strict liability is appropriate because:
- a. the offence is not punishable by imprisonment;
 - b. the offence is subject to a maximum penalty of 50 penalty units for an individual;
 - c. the actions which trigger the offence are simple, readily understood and easily defended. The offence is triggered if a person supplies methyl bromide and fails to comply with their record keeping obligations;
 - d. offences relating to methyl bromide and record keeping obligations need to be dealt with efficiently to ensure industry and community confidence in the regulatory regime;
 - e. the offence is subject to an infringement notice under the Act;
 - f. the absence of strict liability may adversely affect the capacity to prosecute offenders. Whether or not a defendant intentionally, recklessly or negligently failed to comply with the record keeping obligations for the supply of methyl bromide is generally a matter that is peculiarly within the knowledge of the defendant alone. Proving the contrary beyond reasonable doubt may require significant and difficult to obtain indirect and circumstantial evidence;
 - g. the requirement to comply with record keeping obligations is a necessary part of ensuring that the Act and the Principal Regulations remains an effective and efficient mechanism to both implement Australia's obligations under the Montreal Protocol and other relevant international treaties, and to realise its intended environmental benefits. Misuse of methyl bromide could result in

significant environmental harm and could damage Australia's international relations; and

- h. the person affected is placed on notice to guard against the possibility of contravention, which is likely to significantly enhance the effectiveness of the enforcement regime in deterring the conduct in question.
260. The defence of honest and reasonable mistake of fact is available for strict liability offences (see sections 6.1 and 9.2 of Schedule 1 to the Criminal Code) and the existence of strict liability does not make any other defence unavailable (see subsection 6.1(3) of Schedule 1 to the Criminal Code).
261. New subregulation 220(6) has the effect of establishing a mirror civil penalty provision which is contravened where a person fails to comply with the record keeping requirements in subregulations 220(1), (2) or (4). The maximum penalty is 60 penalty units. A body corporate is liable for five times this amount as a maximum penalty (see subsection 82(5) of the Regulatory Powers Act).
262. The combination of strict liability offence and civil penalty provision provides an adequate deterrent from persons failing to comply with their record keeping obligations relating to the supply of methyl bromide, which has the potential to cause significant harm. It is also appropriate to include both civil and criminal penalties in order to provide flexibility for the Commonwealth to enforce the prohibition appropriately without always needing to pursue criminal penalties (noting that conviction for a criminal offence carries with it a range of consequences beyond the immediate penalty). It is expected criminal proceedings would be brought for conduct that is at the more serious end of the spectrum.

Item [46] – Subregulations 221(1), (3) and (5) (penalty)

263. Item 46 of Schedule 2 to the Amendment Regulations amend existing subregulations 221(1), (3) and (5) of the Principal Regulations to repeal the penalty of 10 penalty units for the strict liability offences in these subregulations.
264. This amendment is consequential to the amendment made by item 47 of Schedule 2 which, relevantly, inserts a new higher penalty for the strict liability offences, and penalties for the new civil penalty provisions, in regulation 221.

Item [47] – Subregulation 221(6)

265. Regulation 221 of the Principal Regulations deals with record keeping requirements for a person who uses methyl bromide for a QPS or non-QPS purpose.
266. Subregulations 221(1) and (2) have the combined effect that a person who uses methyl bromide for a QPS or non-QPS purpose must keep a record of the information set out in subregulation 221(2) in relation to each occasion on which methyl bromide is used for a QPS or non-QPS purpose.

267. Subregulation 221(3) requires the records required under subregulation 221(1) to be retained for 5 years from the day to which the record relates.
268. Subregulation 221(5) requires the person to give the Minister a copy of a record retained under regulation 223 within 14 days of the Minister requesting in writing a copy of the record.
269. Item 47 of Schedule 2 to the Amendment Regulations amends existing regulation 221 of the Principal Regulations to repeal existing subregulation 221(6) and substitute new subregulations 221(6) and (7).
270. New subregulation 221(6) makes it a strict liability offence for a person to fail to comply with the record keeping requirements in subregulations 223(1), (3) or (5). The maximum penalty for this offence is 50 penalty units.
271. Strict liability is provided for this offence having regard to the Commonwealth Guide to Framing Offences and the Scrutiny of Bills Committee 6th Report. Consistent with these documents, strict liability is appropriate because:
- a. the offence is not punishable by imprisonment;
 - b. the offence is subject to a maximum penalty of 50 penalty units for an individual;
 - c. the actions which trigger the offence are simple, readily understood and easily defended. The offence is triggered if a person uses methyl bromide for a QPS or non-QPS purpose and fails to comply with their record keeping obligations;
 - d. offences relating to methyl bromide and record keeping obligations need to be dealt with efficiently to ensure industry and community confidence in the regulatory regime;
 - e. the offence is subject to an infringement notice under the Act;
 - f. the absence of strict liability may adversely affect the capacity to prosecute offenders. Whether or not a defendant intentionally, recklessly or negligently failed to comply with the record keeping obligations for use of methyl bromide for a QPS or non-QPS purpose is generally a matter that is peculiarly within the knowledge of the defendant alone. Proving the contrary beyond reasonable doubt may require significant and difficult to obtain indirect and circumstantial evidence;
 - g. the requirement to comply with record keeping obligations is a necessary part of ensuring that the Act and the Principal Regulations remains an effective and efficient mechanism to both implement Australia's obligations under the Montreal Protocol and other relevant international treaties, and to realise its

intended environmental benefits. Misuse of methyl bromide could result in significant environmental harm and could damage Australia's international relations; and

- h. the person affected is placed on notice to guard against the possibility of contravention, which is likely to significantly enhance the effectiveness of the enforcement regime in deterring the conduct in question.

272. The defence of honest and reasonable mistake of fact is available for strict liability offences (see sections 6.1 and 9.2 of Schedule 1 to the Criminal Code) and the existence of strict liability does not make any other defence unavailable (see subsection 6.1(3) of Schedule 1 to the Criminal Code).
273. New subregulation 221(7) has the effect of establishing a mirror civil penalty provision which is contravened when a person fails to comply with the record keeping requirements in subregulations 223(1), (3) or (5). The maximum penalty is 60 penalty units. A body corporate is liable for five times this amount as a maximum penalty (see subsection 82(5) of the Regulatory Powers Act).
274. The combination of strict liability offence and civil penalty provision provides an adequate deterrent from persons failing to comply with their record keeping obligations relating to the use methyl bromide for a QPS or non-QPS purpose, which has the potential to cause significant harm. It is also appropriate to include both civil and criminal penalties in order to provide flexibility for the Commonwealth to enforce the prohibition appropriately without always needing to pursue criminal penalties (noting that conviction for a criminal offence carries with it a range of consequences beyond the immediate penalty). It is expected criminal proceedings would be brought for conduct that is at the more serious end of the spectrum.

Item [48] – Subregulations 223(1), (2) and (4) (penalty)

275. Item 48 of Schedule 2 to the Amendment Regulations amends existing subregulations 223(1), (2) and (4) of the Principal Regulations to repeal the penalty of 10 penalty units for the strict liability offences in these subregulations.
276. This amendment is consequential to the amendment made by item 49 of Schedule 2 which, relevantly, inserts a new higher penalty for the strict liability offences, and penalties for the new civil penalty provisions, in regulation 223.

Item [49] – Subregulation 223(5)

277. Regulation 223 of the Principal Regulations deals with record keeping requirements for a person who uses methyl bromide as a feedstock.
278. Subregulation 223(1) requires a person who uses methyl bromide as a feedstock to keep a record of the following information in relation to each day on which the person uses methyl bromide as a feedstock:

- a. the date; and
 - b. the amount of methyl bromide used by the person as a feedstock on the day; and
 - c. the type and amount of chemical or chemicals that the methyl bromide was used to manufacture; and
 - d. what, if any, measures, were taken to minimise methyl bromide emissions.
279. Subregulation 223(1) requires the records required under subregulation 223(1) to be retained for 5 years from the day to which the record relates.
280. Subregulation 223(4) requires the person to give the Minister a copy of a record retained under regulation 223 within 14 days of the Minister requesting in writing a copy of the record.
281. Item 49 of Schedule 2 to the Amendment Regulations amends existing regulation 223 of the Principal Regulations to repeal existing subregulation 223(5) and substitute new subregulations 223(5) and (6).
282. New subregulation 223(5) makes it a strict liability offence for a person to fail to comply with the record keeping requirements in subregulations 223(1), (2) or (4). The maximum penalty for this offence is 50 penalty units.
283. Strict liability is provided for this offence having regard to the Commonwealth Guide to Framing Offences and the Scrutiny of Bills Committee 6th Report. Consistent with these documents, strict liability is appropriate because:
- a. the offence is not punishable by imprisonment;
 - b. the offence is subject to a maximum penalty of 50 penalty units for an individual;
 - c. the actions which trigger the offence are simple, readily understood and easily defended. The offence is triggered if a person uses methyl bromide as a feedstock fails to comply with their record keeping obligations;
 - d. offences relating to methyl bromide and record keeping obligations need to be dealt with efficiently to ensure industry and community confidence in the regulatory regime;
 - e. the offence is subject to an infringement notice under the Act;
 - f. the absence of strict liability may adversely affect the capacity to prosecute offenders. Whether or not a defendant intentionally, recklessly or negligently failed to comply with the record keeping obligations for use of methyl bromide

as a feedstock is generally a matter that is peculiarly within the knowledge of the defendant alone. Proving the contrary beyond reasonable doubt may require significant and difficult to obtain indirect and circumstantial evidence;

- g. the requirement to comply with record keeping obligations is a necessary part of ensuring that the Act and the Principal Regulations remains an effective and efficient mechanism to both implement Australia's obligations under the Montreal Protocol and other relevant international treaties, and to realise its intended environmental benefits. Misuse of methyl bromide could result in significant environmental harm and could damage Australia's international relations; and
- h. the person affected is placed on notice to guard against the possibility of contravention, which is likely to significantly enhance the effectiveness of the enforcement regime in deterring the conduct in question.

284. The defence of honest and reasonable mistake of fact is available for strict liability offences (see sections 6.1 and 9.2 of Schedule 1 to the Criminal Code) and the existence of strict liability does not make any other defence unavailable (see subsection 6.1(3) of Schedule 1 to the Criminal Code).

285. New subregulation 223(6) has the effect of establishing a mirror civil penalty provision which is contravened when a person fails to comply with the record keeping requirements in subregulations 223(1), (2) or (4). The maximum penalty is 60 penalty units. A body corporate is liable for five times this amount as a maximum penalty (see subsection 82(5) of the Regulatory Powers Act).

286. The combination of strict liability offence and civil penalty provision provides an adequate deterrent from persons failing to comply with their record keeping obligations relating to the use methyl bromide as a feedstock, which has the potential to cause significant harm. It is also appropriate to include both civil and criminal penalties in order to provide flexibility for the Commonwealth to enforce the prohibition appropriately without always needing to pursue criminal penalties (noting that conviction for a criminal offence carries with it a range of consequences beyond the immediate penalty). It is expected criminal proceedings would be brought for conduct that is at the more serious end of the spectrum.

Item [50] – Subregulation 230(1) (penalty)

287. Item 50 of Schedule 2 to the Amendment Regulations amends existing subregulation 230(1) of the Principal Regulations to repeal the penalty of 10 penalty units.

288. This amendment is consequential to the amendment made by item 52 of Schedule 2 which, relevantly, inserts a new higher penalty for the strict liability offence, and a penalty for the new civil penalty provision, in regulation 230.

Item [51] – At the end of subregulation 230(1A)

289. Subregulation 230(1) of the Principal Regulations sets reporting requirements for a person who supplies methyl bromide. Failure to comply with these requirements is, subject to the amendment made by item 52 below, a strict liability offence and contravention of a civil penalty provision.
290. Subsection 230(1A) of the Principal Regulations makes it an offence-specific defence to the failing to comply with the requirements in subregulation 230(1) for a sale of methyl bromide if the whole amount of methyl bromide sold is declared by the buyer for the purposes of to be for QPS uses.
291. Item 51 of Schedule 2 to the Amendment Regulations amends existing regulation 230 to insert a new note after subregulation 230(1A). The new note clarifies that a person who wishes to rely on the exception in subregulation 230(1A) bears an evidential burden in relation to the matter and refers the reader to subsection 13.3(3) of the Criminal Code and section 96 of the Regulatory Powers Act.
292. The reversal of the burden of proof is appropriate as the matter to be proved is a matter that would be peculiarly in the knowledge of the defendant. For instance, the defendant would be best placed to know the purpose for which the buyer intended to use the methyl bromide that is the subject of the supply. In the event of a prosecution, it would be significantly more difficult and costly for the prosecution to disprove all possible circumstances than it would be for a defendant to establish the existence of one potential circumstance or purpose.

Item [52] – Subregulation 230(2)

293. Regulation 230 of the Principal Regulations deals with reporting obligations by a person who supplies methyl bromide (the supplier).
294. Subregulation 230(1) requires a person who supplies methyl bromide during a reporting period to, within 14 days after the end of a reporting period, give the Minister a report that sets out:
- a. the name and ABN (if any) of the supplier; and
 - b. in relation to each sale of methyl bromide made by the supplier in the period:
 - c. the date of sale; and
 - d. the name and ABN (if any) of the buyer; and
 - e. the amount of methyl bromide sold; and
 - f. from the declaration made by the buyer – how much of the methyl bromide was declared for QPS uses, for non-QPS uses, for feedstock and for laboratory and analytical uses.

295. Item 52 of Schedule 2 to the Amendment Regulations amends existing regulation 230 of the Principal Regulations to repeal existing subregulation 230(2) and substitute new subregulations 230(2) and (3).
296. New subregulation 230(2) makes it a strict liability offence for a person to fail to comply with the reporting requirements in subregulation 230(1). The maximum penalty for this offence is 50 penalty units.
297. Strict liability is provided for this offence having regard to the Commonwealth Guide to Framing Offences and the Scrutiny of Bills Committee 6th Report. Consistent with these documents, strict liability is appropriate because:
- a. the offence is not punishable by imprisonment;
 - b. the offence is subject to a maximum penalty of 50 penalty units for an individual;
 - c. the actions which trigger the offence are simple, readily understood and easily defended. The offence is triggered if a person supplies methyl bromide fails to comply with their reporting obligations;
 - d. offences relating to methyl bromide and reporting obligations need to be dealt with efficiently to ensure industry and community confidence in the regulatory regime;
 - e. the offence is subject to an infringement notice under the Act;
 - f. the absence of strict liability may adversely affect the capacity to prosecute offenders. Whether or not a defendant intentionally, recklessly or negligently failed to comply with the reporting obligations for the supply of methyl bromide is generally a matter that is peculiarly within the knowledge of the defendant alone. Proving the contrary beyond reasonable doubt may require significant and difficult to obtain indirect and circumstantial evidence;
 - g. the requirement to comply with reporting obligations is a necessary part of ensuring that the Act and the Principal Regulations remains an effective and efficient mechanism to both implement Australia's obligations under the Montreal Protocol and other relevant international treaties, and to realise its intended environmental benefits. Misuse of methyl bromide could result in significant environmental harm and could damage Australia's international relations; and
 - h. the person affected is placed on notice to guard against the possibility of contravention, which is likely to significantly enhance the effectiveness of the enforcement regime in deterring the conduct in question.

298. The defence of honest and reasonable mistake of fact is available for strict liability offences (see sections 6.1 and 9.2 of Schedule 1 to the Criminal Code) and the existence of strict liability does not make any other defence unavailable (see subsection 6.1(3) of Schedule 1 to the Criminal Code).
299. New subregulation 230(3) has the effect of establishing a mirror civil penalty provision which is contravened where a person fails to comply with the reporting requirements in subregulation 230(1). The maximum penalty is 60 penalty units. A body corporate is liable for five times this amount as a maximum penalty (see subsection 82(5) of the Regulatory Powers Act).
300. The combination of strict liability offence and civil penalty provision provides an adequate deterrent from persons failing to comply with their reporting obligations relating to the supply of methyl bromide, which has the potential to cause significant harm. It is also appropriate to include both civil and criminal penalties in order to provide flexibility for the Commonwealth to enforce the prohibition appropriately without always needing to pursue criminal penalties (noting that conviction for a criminal offence carries with it a range of consequences beyond the immediate penalty). It is expected criminal proceedings would be brought for conduct that is at the more serious end of the spectrum.

Item [53] – Subregulation 231(1) (penalty)

301. Item 53 of Schedule 2 to the Amendment Regulations amends existing subregulation 231(1) of the Principal Regulations to repeal the penalty of 10 penalty units.
302. This amendment is consequential to the amendment made by item 54 of Schedule 2 which, relevantly, inserts a new higher penalty for the strict liability offence, and a penalty for the new civil penalty provision, in regulation 231.

Item [54] – Subregulation 231(4)

303. Regulation 231 of the Principal Regulations deals with reporting obligations by the holder of a non-QPS permit relating to the use of methyl bromide.
304. Subregulation 231(1) requires a person who holds a non-QPS permit, within 14 days after the end of a reporting period in a year, to give the Minister a report that:
- a. is in the approved form; and
 - b. sets out the information required by subregulation 231(2); and
 - c. is signed by the non-QPS permit holder and any contractor who carried out a fumigation to which the report relates.

305. Item 54 of Schedule 2 to the Amendment Regulations amends existing regulation 231 of the Principal Regulations to repeal existing subregulation 231(4) and substitute new subregulations 231(3) and (4).
306. New subregulation 231(3) makes it a strict liability offence for a person to fail to comply with the reporting requirements in subregulation 231(1). The maximum penalty for this offence is 50 penalty units.
307. Strict liability is provided for this offence having regard to the Commonwealth Guide to Framing Offences and the Scrutiny of Bills Committee 6th Report. Consistent with these documents, strict liability is appropriate because:
- a. the offence is not punishable by imprisonment;
 - b. the offence is subject to a maximum penalty of 50 penalty units for an individual;
 - c. the actions which trigger the offence are simple, readily understood and easily defended. The offence is triggered if a person who holds a non-QPS permit relating to the use of methyl bromide fails to comply with their reporting obligations;
 - d. offences relating to methyl bromide and reporting obligations need to be dealt with efficiently to ensure industry and community confidence in the regulatory regime;
 - e. the offence is subject to an infringement notice under the Act;
 - f. the absence of strict liability may adversely affect the capacity to prosecute offenders. Whether or not a defendant intentionally, recklessly or negligently failed to comply with the reporting obligations for their non-QPS permit is generally a matter that is peculiarly within the knowledge of the defendant alone. Proving the contrary beyond reasonable doubt may require significant and difficult to obtain indirect and circumstantial evidence;
 - g. the requirement to comply with reporting obligations is a necessary part of ensuring that the Act and the Principal Regulations remains an effective and efficient mechanism to both implement Australia's obligations under the Montreal Protocol and other relevant international treaties, and to realise its intended environmental benefits. Misuse of methyl bromide could result in significant environmental harm and could damage Australia's international relations; and
 - h. the person affected is placed on notice to guard against the possibility of contravention, which is likely to significantly enhance the effectiveness of the enforcement regime in deterring the conduct in question.

308. The defence of honest and reasonable mistake of fact is available for strict liability offences (see sections 6.1 and 9.2 of Schedule 1 to the Criminal Code) and the existence of strict liability does not make any other defence unavailable (see subsection 6.1(3) of Schedule 1 to the Criminal Code).
309. New subregulation 231(4) has the effect of establishing a mirror civil penalty provision which is contravened where a person fails to comply with the reporting requirements in subregulation 231(1). The maximum penalty is 60 penalty units. A body corporate is liable for five times this amount as a maximum penalty (see subsection 82(5) of the Regulatory Powers Act).
310. The combination of strict liability offence and civil penalty provision provides an adequate deterrent from persons failing to comply with their reporting obligations relating to a non-QPS permit for the use of methyl bromide, which has the potential to cause significant harm. It is also appropriate to include both civil and criminal penalties in order to provide flexibility for the Commonwealth to enforce the prohibition appropriately without always needing to pursue criminal penalties (noting that conviction for a criminal offence carries with it a range of consequences beyond the immediate penalty). It is expected criminal proceedings would be brought for conduct that is at the more serious end of the spectrum.

Item [55] – Subregulation 232(1) (penalty)

311. Item 55 of Schedule 2 to the Amendment Regulations amends existing subregulation 232(1) of the Principal Regulations to repeal the penalty of 10 penalty units.
312. This amendment is consequential to the amendment made by item 56 of Schedule 2 which, relevantly, inserts a new higher penalty for the strict liability offence, and a penalty for the new civil penalty provision, in regulation 232.

Item [56] – Subregulation 232(3)

313. Regulation 232 of the Principal Regulations deals with reporting obligations by the holder of an emergency permit relating to the use of methyl bromide.
314. Subregulations 232(1) and (1A) have the combined effect that a person who holds an emergency permit must, within 14 days after the earlier of the end of period specified in the permit during which methyl bromide may be used under the permit, or the time of the use of methyl bromide that exhausts the amount of methyl bromide that may be used under the permit, give the Minister a report that:
- a. is in the approved form; and
 - b. sets out the information required by subregulation 232(2); and
 - c. is signed by the permit holder and any contractor who carried out a fumigation under the emergency permit.

315. Item 56 of Schedule 2 to the Amendment Regulations amends existing regulation 232 of the Principal Regulations to repeal existing subregulation 232(3) and substitute new subregulations 232(3) and (4).
316. New subregulation 232(3) makes it a strict liability offence for a person to fail to comply with the reporting requirements in subregulation 232(1). The maximum penalty for this offence is 50 penalty units.
317. Strict liability is provided for this offence having regard to the Commonwealth Guide to Framing Offences and the Scrutiny of Bills Committee 6th Report. Consistent with these documents, strict liability is appropriate because:
- a. the offence is not punishable by imprisonment;
 - b. the offence is subject to a maximum penalty of 50 penalty units for an individual;
 - c. the actions which trigger the offence are simple, readily understood and easily defended. The offence is triggered if a person who holds an emergency permit relating to the use of methyl bromide fails to comply with their reporting obligations;
 - d. offences relating to methyl bromide and reporting obligations need to be dealt with efficiently to ensure industry and community confidence in the regulatory regime;
 - e. the offence is subject to an infringement notice under the Act;
 - f. the absence of strict liability may adversely affect the capacity to prosecute offenders. Whether or not a defendant intentionally, recklessly or negligently failed to comply with the reporting obligations for their emergency permit is generally a matter that is peculiarly within the knowledge of the defendant alone. Proving the contrary beyond reasonable doubt may require significant and difficult to obtain indirect and circumstantial evidence;
 - g. the requirement to comply with reporting obligations is a necessary part of ensuring that the Act and the Principal Regulations remains an effective and efficient mechanism to both implement Australia's obligations under the Montreal Protocol and other relevant international treaties, and to realise its intended environmental benefits. Misuse of methyl bromide could result in significant environmental harm and could damage Australia's international relations; and

- h. the person affected is placed on notice to guard against the possibility of contravention, which is likely to significantly enhance the effectiveness of the enforcement regime in deterring the conduct in question.

- 318. The defence of honest and reasonable mistake of fact is available for strict liability offences (see sections 6.1 and 9.2 of Schedule 1 to the Criminal Code) and the existence of strict liability does not make any other defence unavailable (see subsection 6.1(3) of Schedule 1 to the Criminal Code).
- 319. New subregulation 232(4) has the effect of establishing a mirror civil penalty provision which is contravened where a person fails to comply with the reporting requirements in subregulation 232(1). The maximum penalty is 60 penalty units. A body corporate is liable for five times this amount as a maximum penalty (see subsection 82(5) of the Regulatory Powers Act).
- 320. The combination of strict liability offence and civil penalty provision provides an adequate deterrent from persons failing to comply with their reporting obligations relating to an emergency permit for the use of methyl bromide, which has the potential to cause significant harm. It is also appropriate to include both civil and criminal penalties in order to provide flexibility for the Commonwealth to enforce the prohibition appropriately without always needing to pursue criminal penalties (noting that conviction for a criminal offence carries with it a range of consequences beyond the immediate penalty). It is expected criminal proceedings would be brought for conduct that is at the more serious end of the spectrum.

Item [57] – Subregulation 233(1) (penalty)

- 321. Item 57 of Schedule 2 to the Amendment Regulations amends existing subregulation 233(1) of the Principal Regulations to repeal the penalty of 10 penalty units.
- 322. This amendment is consequential to the amendment made by item 58 of Schedule 2 which, relevantly, inserts a new higher penalty for the strict liability offence, and a penalty for the new civil penalty provision, in regulation 233.

Item [58] – Subregulation 233(2)

- 323. Regulation 233 of the Principal Regulations deals with reporting obligations by holders of feedstock permits.
- 324. Subregulation 233(1) requires a person who holds a feedstock permit during a year to, within 21 days after the end of the year, give the Minister a report that sets out:
 - a. the amount of methyl bromide used by, or on behalf of, the person as a feedstock in the year; and
 - b. what chemical, or chemicals, the methyl bromide was used to manufacture; and

- c. if no methyl bromide was used by, or on behalf of, the person as a feedstock in the year, a statement to this effect.
- 325. Item 58 of Schedule 2 to the Amendment Regulations amends existing regulation 233 of the Principal Regulations to repeal existing subregulation 233(2) and substitute new subregulations 233(2) and (3).
- 326. New subregulation 233(2) makes it a strict liability offence for a person to fail to comply with the reporting requirements in subregulation 233(1). The maximum penalty for this offence is 50 penalty units.
- 327. Strict liability is provided for this offence having regard to the Commonwealth Guide to Framing Offences and the Scrutiny of Bills Committee 6th Report. Consistent with these documents, strict liability is appropriate because:
 - a. the offence is not punishable by imprisonment;
 - b. the offence is subject to a maximum penalty of 50 penalty units for an individual;
 - c. the actions which trigger the offence are simple, readily understood and easily defended. The offence is triggered if a person who holds a feedstock permit fails to comply with their reporting obligations;
 - d. offences relating to feedstock and reporting obligations need to be dealt with efficiently to ensure industry and community confidence in the regulatory regime;
 - e. the offence is subject to an infringement notice under the Act;
 - f. the absence of strict liability may adversely affect the capacity to prosecute offenders. Whether or not a defendant intentionally, recklessly or negligently failed to comply with the reporting obligations for their feedstock permit is generally a matter that is peculiarly within the knowledge of the defendant alone. Proving the contrary beyond reasonable doubt may require significant and difficult to obtain indirect and circumstantial evidence;
 - g. the requirement to comply with reporting obligations is a necessary part of ensuring that the Act and the Principal Regulations remains an effective and efficient mechanism to both implement Australia's obligations under the Montreal Protocol and other relevant international treaties, and to realise its intended environmental benefits. Misuse of feedstock could result in significant environmental harm and could damage Australia's international relations; and

- h. the person affected is placed on notice to guard against the possibility of contravention, which is likely to significantly enhance the effectiveness of the enforcement regime in deterring the conduct in question.
328. The defence of honest and reasonable mistake of fact is available for strict liability offences (see sections 6.1 and 9.2 of Schedule 1 to the Criminal Code) and the existence of strict liability does not make any other defence unavailable (see subsection 6.1(3) of Schedule 1 to the Criminal Code).
329. New subregulation 233(3) has the effect of establishing a mirror civil penalty provision which is contravened where a person fails to comply with the reporting requirements in subregulation 233(1). The maximum penalty is 60 penalty units. A body corporate is liable for five times this amount as a maximum penalty (see subsection 82(5) of the Regulatory Powers Act).
330. The combination of strict liability offence and civil penalty provision provides an adequate deterrent from persons failing to comply with their reporting obligations relating to a feedstock permit, which has the potential to cause significant harm. It is also appropriate to include both civil and criminal penalties in order to provide flexibility for the Commonwealth to enforce the prohibition appropriately without always needing to pursue criminal penalties (noting that conviction for a criminal offence carries with it a range of consequences beyond the immediate penalty). It is expected criminal proceedings would be brought for conduct that is at the more serious end of the spectrum.

Item [59] – Regulation 302 (heading)

331. Item 59 of Schedule 2 to the Amendment Regulations amends the heading of existing regulation 302 of the Principal Regulations to omit ‘Offence – handling’ and substitute ‘Handling’.
332. This amendment is consequential to the amendments made by items 60 to 63 of Schedule 2 and reflects that regulation 302 now includes both a strict liability offence and a civil penalty provision.

Item [60] – Subregulation 302(1)

333. Item 60 of Schedule 2 to the Amendment Regulations amends existing subregulation 302(1) of the Principal Regulations to omit ‘commits an offence’ and substitute ‘contravenes this subregulation’.
334. This amendment is consequential to the amendments made by items 61 to 63 of Schedule 2 and reflects that regulation 302 now includes both a strict liability offence and a civil penalty provision.

Item [61] – Subregulation 302(1) (penalty)

335. Item 61 of Schedule 2 to the Amendment Regulations amends existing subregulation 302(1) of the Principal Regulations to repeal the penalty of 10 penalty units.

336. This amendment is consequential to the amendment made by item 63 of Schedule 2 which, relevantly, inserts a new higher penalty for the strict liability offence, and a penalty for the new civil penalty provision, in regulation 302.

Item [62] – Subregulation 302(1A) (note)

337. Subregulation 302(1) prohibits a person from handling an extinguishing agent, that is, or has been, for use in fire protection equipment, except in certain circumstances. There are a number of offence-specific defences to this prohibition set out in subregulation 302(1A).

338. Item 62 of Schedule 2 to the Amendment Regulations amends existing regulation 302 to insert a new note after subregulation 302(1A). The new note clarifies that a person who wishes to rely on the exceptions in subregulation 302(1A) bears an evidential burden in relation to the matter and refers the reader to subsection 13.3(3) of the Criminal Code and section 96 of the Regulatory Powers Act.

339. The reversal of the burden of proof is appropriate as the matter to be proved is a matter that would be peculiarly in the knowledge of the defendant. For instance, the defendant would be best placed to know the circumstances in which, or the purpose for which handled the extinguishing agent, including whether the extinguishing agent will be installed in an aircraft, or whether the person handled the extinguishing agent for the purpose of removing or installing the equipment. In the event of a prosecution, it would be significantly more difficult and costly for the prosecution to disprove all possible circumstances than it would be for a defendant to establish the existence of one potential circumstance or purpose.

Item [63] – Subregulation 302(3)

340. Regulation 302 of the Principal Regulations deals with the handling of an extinguishing agent, that is, or has been, for use in fire protection equipment.

341. Subregulation 302(1) prohibits a person from handling an extinguishing agent, that is, or has been, for use in fire protection equipment, except in certain circumstances. There are a number of offence-specific defences to this prohibition set out in subregulation 302(1A).

342. Item 63 of Schedule 2 to the Amendment Regulations amends existing regulation 302 of the Principal Regulations to repeal existing subregulation 302(3) and substitute new subregulations 302(3) and (4).

343. New subregulation 302(3) makes it a strict liability offence for a person to contravene the prohibition in subregulation 302(1). The maximum penalty for this offence is 50 penalty units.

344. Strict liability is provided for this offence having regard to the Commonwealth Guide to Framing Offences and the Scrutiny of Bills Committee 6th Report. Consistent with these documents, strict liability is appropriate because:

- a. the offence is not punishable by imprisonment;
- b. the offence is subject to a maximum penalty of 50 penalty units for an individual;
- c. the actions which trigger the offence are simple, readily understood and easily defended. The offence is triggered if a person handles an extinguishing agent that is, or has been, for use in fire protection equipment, without appropriate authority to do so;
- d. offences relating to the handling of extinguishing agent need to be dealt with efficiently to ensure industry and community confidence in the regulatory regime;
- e. the offence is subject to an infringement notice under the Act;
- f. the absence of strict liability may adversely affect the capacity to prosecute offenders. Whether or not a defendant intentionally, recklessly or negligently handled an extinguishing agent that is, or has been, for use in fire protection equipment, without authority to do so is generally a matter that is peculiarly within the knowledge of the defendant alone. Proving the contrary beyond reasonable doubt may require significant and difficult to obtain indirect and circumstantial evidence;
- g. the requirement to obtain the necessary licences, authorisations or exemptions to handle extinguishing agent that is, or has been, for use in fire protection equipment, is a necessary part of ensuring that the Act and the Principal Regulations remains an effective and efficient mechanism to both implement Australia's obligations under the Montreal Protocol and other relevant international treaties, and to realise its intended environmental benefits. Handling extinguishing agent that is, or has been, for use in fire protection equipment, without authority to do so, could result in significant environmental harm and could damage Australia's international relations; and
- h. the person affected is placed on notice to guard against the possibility of contravention, which is likely to significantly enhance the effectiveness of the enforcement regime in deterring the conduct in question.

345. The defence of honest and reasonable mistake of fact is available for strict liability offences (see sections 6.1 and 9.2 of Schedule 1 to the Criminal Code) and the existence of strict liability does not make any other defence unavailable (see subsection 6.1(3) of Schedule 1 to the Criminal Code).

346. New subregulation 302(4) has the effect of establishing a mirror civil penalty provision which is contravened where a person contravenes the prohibition in subregulation 302(1). The maximum penalty is 60 penalty units. A body corporate is liable for five times this amount as a maximum penalty (see subsection 82(5) of the Regulatory Powers Act).
347. The combination of strict liability offence and civil penalty provision provides an adequate deterrent from persons handling extinguishing agent that is, or has been, for use in fire protection equipment, without the authority to do so, which has the potential to cause significant harm. It is also appropriate to include both civil and criminal penalties in order to provide flexibility for the Commonwealth to enforce the prohibition appropriately without always needing to pursue criminal penalties (noting that conviction for a criminal offence carries with it a range of consequences beyond the immediate penalty). It is expected criminal proceedings would be brought for conduct that is at the more serious end of the spectrum.

Item [64] – Regulation 303 (heading)

348. Item 64 of Schedule 2 to the Amendment Regulations amends the heading of existing regulation 303 of the Principal Regulations to omit ‘Offence – possessing’ and substitute ‘Possessing’.
349. This amendment is consequential to the amendments made by items 65 to 68 of Schedule 2 and reflects that regulation 303 now includes both a strict liability offence and a civil penalty provision.

Item [65] – Subregulation 303(2) (penalty)

350. Item 65 of Schedule 2 to the Amendment Regulations amends existing subregulation 303(2) of the Principal Regulations to repeal the penalty of 10 penalty units.
351. This amendment is consequential to the amendment made by items 66 to 68 of Schedule 2 which, relevantly, inserts a new higher penalty for the strict liability offence, and a penalty for the new civil penalty provision, in regulation 303.

Item [66] – Subregulation 303(3)

352. Item 66 of Schedule 2 to the Amendment Regulations amends existing subregulation 303(3) to omit all the words before paragraph (a) and substitute ‘Subregulation (2) does not apply to a person if, as soon as practicable after becoming aware that the person possessed bulk extinguishing agent, the person gave it to’.
353. This is a drafting style change only. This amendment does not result in any substantive change to the operation of existing subregulation 303(3).

Item [67] – At the end of subregulation 303(3)

354. Subregulation 303(2) of the Principal Regulations prohibits a person from acquiring, possessing or disposing of bulk extinguishing agent, except in certain circumstances.

There are a number of offence-specific defences to this prohibition set out in subregulation 303(3).

355. Item 67 of Schedule 2 to the Amendment Regulations amends existing regulation 303 to insert a new note after subregulation 303(3). The new note clarifies that a person who wishes to rely on the exceptions in subregulation 303(3) bears an evidential burden in relation to the matter and refers the reader to subsection 13.3(3) of the Criminal Code and section 96 of the Regulatory Powers Act.
356. The reversal of the burden of proof is appropriate as the matter to be proved is a matter that would be peculiarly in the knowledge of the defendant. For instance, the defendant would be best placed to know the circumstances in which, or the purpose for which, they acquired, possessed or disposed of bulk extinguishing agent, including whether they, as soon as practicable after becoming aware they possessed the bulk extinguishing agent, gave it to a person with the authority to possess the extinguishing agent. In the event of a prosecution, it would be significantly more difficult and costly for the prosecution to disprove all possible circumstances than it would be for a defendant to establish the existence of one potential circumstance or purpose.

Item [68] – Subregulation 303(4)

357. Regulation 303 of the Principal Regulations deals with the possession of bulk extinguishing agent. The term bulk extinguishing agent means an extinguishing agent, other than halon, that is, or has been, for use in fire protection equipment, but does not include an agent that is contained in fire protection equipment (subregulation 303(1)).
358. Subregulation 303(2) prohibits a person from acquiring, possessing or disposing of bulk extinguishing agent, except in certain circumstances. There are a number of offence-specific defences to this prohibition set out in subregulation 303(3).
359. Item 68 of Schedule 2 to the Amendment Regulations amends existing regulation 303 of the Principal Regulations to repeal existing subregulation 303(4) and substitute new subregulations 303(4) and (5).
360. New subregulation 303(4) makes it a strict liability offence for a person to contravene the prohibition in subregulation 303(2). The maximum penalty for this offence is 50 penalty units.
361. Strict liability is provided for this offence having regard to the Commonwealth Guide to Framing Offences and the Scrutiny of Bills Committee 6th Report. Consistent with these documents, strict liability is appropriate because:
 - a. the offence is not punishable by imprisonment;
 - b. the offence is subject to a maximum penalty of 50 penalty units for an individual;

- c. the actions which trigger the offence are simple, readily understood and easily defended. The offence is triggered if a person acquires, possesses or disposes of bulk extinguishing agent, without appropriate authority to do so;
- d. offences relating to the possession of bulk extinguishing agent need to be dealt with efficiently to ensure industry and community confidence in the regulatory regime;
- e. the offence is subject to an infringement notice under the Act;
- f. the absence of strict liability may adversely affect the capacity to prosecute offenders. Whether or not a defendant intentionally, recklessly or negligently acquires, possessed or disposed of bulk extinguishing agent without authority to do so is generally a matter that is peculiarly within the knowledge of the defendant alone. Proving the contrary beyond reasonable doubt may require significant and difficult to obtain indirect and circumstantial evidence;
- g. the requirement to obtain the necessary licences, authorisations or exemptions to acquire, possess or dispose of bulk extinguishing agent is a necessary part of ensuring that the Act and the Principal Regulations remains an effective and efficient mechanism to both implement Australia's obligations under the Montreal Protocol and other relevant international treaties, and to realise its intended environmental benefits. Acquiring, possessing or disposing of bulk extinguishing agent without authority to do so could result in significant environmental harm and could damage Australia's international relations; and
- h. the person affected is placed on notice to guard against the possibility of contravention, which is likely to significantly enhance the effectiveness of the enforcement regime in deterring the conduct in question.

362. The defence of honest and reasonable mistake of fact is available for strict liability offences (see sections 6.1 and 9.2 of Schedule 1 to the Criminal Code) and the existence of strict liability does not make any other defence unavailable (see subsection 6.1(3) of Schedule 1 to the Criminal Code).

363. New subregulation 303(5) has the effect of establishing a mirror civil penalty provision which is contravened where a person contravenes the prohibition in subregulation 303(2). The maximum penalty is 60 penalty units. A body corporate is liable for five times this amount as a maximum penalty (see subsection 82(5) of the Regulatory Powers Act).

364. The combination of strict liability offence and civil penalty provision provides an adequate deterrent from persons acquiring, possessing or disposing of bulk extinguishing agent without the authority to do so, which has the potential to cause significant harm. It is also appropriate to include both civil and criminal penalties in order to provide flexibility for the Commonwealth to enforce the prohibition

appropriately without always needing to pursue criminal penalties (noting that conviction for a criminal offence carries with it a range of consequences beyond the immediate penalty). It is expected criminal proceedings would be brought for conduct that is at the more serious end of the spectrum.

Item [69] – Regulation 303A

365. Item 69 of Schedule 2 to the Amendment Regulations repeals existing regulation 303A of the Principal Regulations and substitutes a new regulation 303A.
366. New regulation 303A of the Principal Regulations prohibits a person from engaging in prohibited extinguishing agent charging (subregulation 303A(1)). The term *prohibited extinguishing agent charging* is defined in subregulation 2AAB(3).
367. New subregulation 303A(2) makes it a strict liability offence for a person to contravene the prohibition in subregulation 303A(1). The maximum penalty for this offence is 50 penalty units.
368. Strict liability is provided for this offence having regard to the Commonwealth Guide to Framing Offences and the Scrutiny of Bills Committee 6th Report. Consistent with these documents, strict liability is appropriate because:
 - a. the offence is not punishable by imprisonment;
 - b. the offence is subject to a maximum penalty of 50 penalty units for an individual;
 - c. the actions which trigger the offence are simple, readily understood and easily defended. The offence is triggered if a person engages in prohibited extinguishing agent charging;
 - d. offences relating to prohibited extinguishing agent charging need to be dealt with efficiently to ensure industry and community confidence in the regulatory regime;
 - e. the offence is subject to an infringement notice under the Act;
 - f. the absence of strict liability may adversely affect the capacity to prosecute offenders. Whether or not a defendant intentionally, recklessly or negligently engaged in prohibited extinguishing agent charging is generally a matter that is peculiarly within the knowledge of the defendant alone. Proving the contrary beyond reasonable doubt may require significant and difficult to obtain indirect and circumstantial evidence;
 - g. the requirement to comply with the Principal Regulations when charging equipment containing extinguishing agent is a necessary part of ensuring that the Act and the Principal Regulations remains an effective and efficient

mechanism to both implement Australia's obligations under the Montreal Protocol and other relevant international treaties, and to realise its intended environmental benefits. Engaging in prohibited extinguishing agent charging could result in significant environmental harm and could damage Australia's international relations; and

- h. the person affected is placed on notice to guard against the possibility of contravention, which is likely to significantly enhance the effectiveness of the enforcement regime in deterring the conduct in question.

369. The defence of honest and reasonable mistake of fact is available for strict liability offences (see sections 6.1 and 9.2 of Schedule 1 to the Criminal Code) and the existence of strict liability does not make any other defence unavailable (see subsection 6.1(3) of Schedule 1 to the Criminal Code).

370. New subregulation 303A(3) has the effect of establishing a mirror civil penalty provision which is contravened where a person contravenes the prohibition in subregulation 303A(1). The maximum penalty is 60 penalty units. A body corporate is liable for five times this amount as a maximum penalty (see subsection 82(5) of the Regulatory Powers Act).

371. The combination of strict liability offence and civil penalty provision provides an adequate deterrent from a person engaging in prohibited extinguishing agent charging, which has the potential to cause significant harm. It is also appropriate to include both civil and criminal penalties in order to provide flexibility for the Commonwealth to enforce the prohibition appropriately without always needing to pursue criminal penalties (noting that conviction for a criminal offence carries with it a range of consequences beyond the immediate penalty). It is expected criminal proceedings would be brought for conduct that is at the more serious end of the spectrum.

Item [70] – Regulation 304 (heading)

372. Item 70 of Schedule 2 to the Amendment Regulations amends the heading of existing regulation 304 of the Principal Regulations to omit 'Offence – possessing' and substitute 'Possessing'.

373. This amendment is consequential to the amendments made by items 71 to 77 of Schedule 2 and reflects that regulation 304 now includes both a strict liability offence and a civil penalty provision.

Item [71] – Subregulation 304(1) (penalty)

374. Item 71 of Schedule 2 to the Amendment Regulations amends existing subregulation 304(1) of the Principal Regulations to repeal the penalty of 10 penalty units.

375. This amendment is consequential to the amendment made by items 76 and 77 of Schedule 2 which, relevantly, inserts a new higher penalty for the strict liability offence, and a penalty for the new civil penalty provision, in regulation 304.

Item [72] – Subregulation 304(2)

376. Item 72 of Schedule 2 to the Amendment Regulations amends existing subregulation 304(2) to omit ‘It is a defence to a charge of contravening subregulation (1) that the defendant’ and substitute ‘Subregulation (1) does not apply to a person if the person’.
377. This is a drafting style change only. This amendment does not result in any substantive change to the operation of existing subregulation 304(2).

Item [73] – Paragraph 304(2)(a)

378. Item 73 of Schedule 2 to the Amendment Regulations amends existing paragraph 304(2)(a) to omit ‘a defendant’ and substitute ‘a person’.
379. This is a drafting style change only. This amendment does not result in any substantive change to the operation of existing paragraph 304(2)(a).

Item [74] – Paragraph 304(2)(b)

380. Item 74 of Schedule 2 to the Amendment Regulations amends existing paragraph 304(2)(b) to omit ‘he or she’ and substitute ‘the person’.
381. This is a drafting style change only. This amendment does not result in any substantive change to the operation of existing paragraph 304(2)(b).

Item [75] – At the end of subregulation 304(2)

382. Subregulation 304(1) of the Principal Regulations prohibits the possession of halon that is, or has been, for use in fire protection equipment, except in certain circumstances. There are a number of offence-specific defences to this prohibition set out in subregulation 304(2).
383. Item 75 of Schedule 2 to the Amendment Regulations amends existing regulation 304 to insert a new note after subregulation 304(2). The new note clarifies that a person who wishes to rely on the exceptions in subregulation 304(2) bears an evidential burden in relation to the matter and refers the reader to subsection 13.3(3) of the Criminal Code and section 96 of the Regulatory Powers Act.
384. The reversal of the burden of proof is appropriate as the matter to be proved is a matter that would be peculiarly in the knowledge of the defendant. For instance, the defendant would be best placed to know the circumstances in which, or the purpose for which, they possessed halon that is to be, or has been, for use in fire protection equipment, including whether they are an officer in charge of a fire station or whether they, as soon as practicable after becoming aware they possessed the halon, gave it to a person with the authority to possess the halon. In the event of a prosecution, it would be significantly more difficult and costly for the prosecution to disprove all possible circumstances than it would be for a defendant to establish the existence of one potential circumstance or purpose.

Item [76] – Subregulation 304(3)

385. Item 76 of Schedule 2 to the Amendment Regulations amends existing regulation 304 of the Principal Regulations to repeal existing subregulation 304(3). This amendment is consequential to the amendment made by item 77.

Item [77] – At the end of regulation 304

386. Regulation 304 of the Principal Regulations deals with the possession of halon. Subregulation 304(1) prohibits the possession of halon that is, or has been, for use in fire protection equipment, except in certain circumstances. There are a number of offence-specific defences to this prohibition set out in subregulation 304(2).

387. Item 77 of Schedule 2 to the Amendment Regulations amends existing regulation 304 of the Principal Regulations to insert new subregulations 304(5) and (6).

388. New subregulation 304(5) makes it a strict liability offence for a person to contravene the prohibition in subregulation 304(1). The maximum penalty for this offence is 50 penalty units.

389. Strict liability is provided for this offence having regard to the Commonwealth Guide to Framing Offences and the Scrutiny of Bills Committee 6th Report. Consistent with these documents, strict liability is appropriate because:

- a. the offence is not punishable by imprisonment;
- b. the offence is subject to a maximum penalty of 50 penalty units for an individual;
- c. the actions which trigger the offence are simple, readily understood and easily defended. The offence is triggered if a person possesses halon that is, or has been, for use in fire protection equipment, without appropriate authority to do so;
- d. offences relating to the possession of halon need to be dealt with efficiently to ensure industry and community confidence in the regulatory regime;
- e. the offence is subject to an infringement notice under the Act;
- f. the absence of strict liability may adversely affect the capacity to prosecute offenders. Whether or not a defendant intentionally, recklessly or negligently possessed halon that is, or has been, for use in fire protection equipment, without authority to do so is generally a matter that is peculiarly within the knowledge of the defendant alone. Proving the contrary beyond reasonable doubt may require significant and difficult to obtain indirect and circumstantial evidence;
- g. the requirement to obtain the necessary licences, authorisations or exemptions to possess halon that is, or has been, for use in fire protection equipment is a

necessary part of ensuring that the Act and the Principal Regulations remains an effective and efficient mechanism to both implement Australia's obligations under the Montreal Protocol and other relevant international treaties, and to realise its intended environmental benefits. Possessing halon without authority to do so could result in significant environmental harm and could damage Australia's international relations; and

- h. the person affected is placed on notice to guard against the possibility of contravention, which is likely to significantly enhance the effectiveness of the enforcement regime in deterring the conduct in question.

- 390. The defence of honest and reasonable mistake of fact is available for strict liability offences (see sections 6.1 and 9.2 of Schedule 1 to the Criminal Code) and the existence of strict liability does not make any other defence unavailable (see subsection 6.1(3) of Schedule 1 to the Criminal Code).
- 391. New subregulation 304(6) has the effect of establishing a mirror civil penalty provision which is contravened where a person contravenes the prohibition in subregulation 304(1). The maximum penalty is 60 penalty units. A body corporate is liable for five times this amount as a maximum penalty (see subsection 82(5) of the Regulatory Powers Act).
- 392. The combination of strict liability offence and civil penalty provision provides an adequate deterrent from persons possessing halon without authority to do so, which has the potential to cause significant harm. It is also appropriate to include both civil and criminal penalties in order to provide flexibility for the Commonwealth to enforce the prohibition appropriately without always needing to pursue criminal penalties (noting that conviction for a criminal offence carries with it a range of consequences beyond the immediate penalty). It is expected criminal proceedings would be brought for conduct that is at the more serious end of the spectrum.

Item [78] – Regulation 304A (heading)

- 393. Item 78 of Schedule 2 to the Amendment Regulations amends the heading of existing regulation 304A of the Principal Regulations to omit 'Offence – false' and substitute 'False'.
- 394. This amendment is consequential to the amendments made by items 79 to of Schedule 2 and reflects that regulation 304A now includes both strict liability offences and civil penalty provisions.

Item [79] – Subregulation 304A(1)

- 395. Item 79 of Schedule 2 to the Amendment Regulations amends existing subregulation 304A(1) of the Principal Regulations to omit 'commits an offence of strict liability' and substitute 'contravenes this subregulation'.

396. This amendment is consequential to the amendments made by items 80 to 84 of Schedule 2 and reflects that regulation 304A now includes both strict liability offences and civil penalty provisions.

Item [80] – Subregulation 304A(1) (penalty)

397. Item 80 of Schedule 2 to the Amendment Regulations amends existing subregulation 304A(1) of the Principal Regulations to repeal the penalty of 10 penalty units.

398. This amendment is consequential to the amendment made by item 84 of Schedule 2 which, relevantly, inserts a new higher penalty for the strict liability offences, and penalties for the new civil penalty provisions, in regulation 304A.

Item [81] – Subregulations 304A(2) and (2A) (note)

399. Subregulations 304A(2) and (2A) of the Principal Regulations contain a number of offence-specific offences for the prohibition in subregulation 304A(1) (dealing with a person making false representations that the person can legally provide a service that involves the acquisition, disposal, storage, use or handling of an extinguishing agent).

400. Item 81 of Schedule 2 to the Amendment Regulations amends existing regulation 304A to insert a new note after each of subregulations 304A(2) and (2A). The new notes clarify that a person who wishes to rely on the exceptions in subregulations 304A(2) and (2A) (as relevant) bears an evidential burden in relation to the matter and refers the reader to subsection 13.3(3) of the Criminal Code and section 96 of the Regulatory Powers Act.

401. The reversal of the burden of proof is appropriate as the matter to be proved is a matter that would be peculiarly in the knowledge of the defendant. For instance, the defendant would be best placed to know the circumstances in which, or the purpose for which, they made false representations they could legally provide a service that involves the acquisition, disposal, storage, use or handling of an extinguishing agent. Further the exceptions include that the person has entered into an agreement with another person to provide the service. Such agreements are peculiarly within the knowledge of the defendant because they are outside the scope of the legislation. In the event of a prosecution, it would be significantly more difficult and costly for the prosecution to disprove all possible circumstances than it would be for a defendant to establish the existence of one potential circumstance or purpose.

Item [82] – Subregulation 304A(3)

402. Item 82 of Schedule 2 to the Amendment Regulations amends existing subregulation 304A(3) of the Principal Regulations to omit ‘commits an offence of strict liability’ and substitute ‘contravenes this subregulation’.

403. This amendment is consequential to the amendments made by items 83 and 84 of Schedule 2 and reflects that regulation 304A now includes both strict liability offences and civil penalty provisions.

Item [83] – Subregulation 304A(3) (penalty)

404. Item 83 of Schedule 2 to the Amendment Regulations amends existing subregulation 304A(3) of the Principal Regulations to repeal the penalty of 10 penalty units.
405. This amendment is consequential to the amendment made by item 84 of Schedule 2 which, relevantly, inserts a new higher penalty for the strict liability offences, and penalties for the new civil penalty provisions, in regulation 304A.

Item [84] – At the end of regulation 304A

406. Regulation 304A of the Principal Regulation deals with the situation where a person makes a false representation that the person can legally provide a service that involves the acquisition, disposal, storage, use or handling of an extinguishing agent.
407. Specifically, and consistent with the amendment made by item 79 above, a person contravenes subregulation 304A(1) if:
- a. the person makes a representation that the person can provide a service that involves the acquisition, disposal, storage, use or handling of an extinguishing agent; and
 - b. at the time of making the representation, the person does not hold a fire protection industry permit or special circumstances exemption that entitles the person to provide the service; and
 - c. at the time of making the representation, the person does not employ, or has not engaged, a person who holds an extinguishing agent handling licence for work of the kind that is necessary to provide the service.
408. There are a number of offence-specific defences to the prohibition in subregulation 304A(1) set out subregulations 304A(2) and (2A).
409. In addition, and consistent with the amendment made by item 82 above, a person contravenes subregulation 304A(3) if:
- a. the person makes a representation that the person is the holder of a kind of fire protection industry permit or special circumstances exemption; and
 - b. at the time of making the representation, the person is not the holder of a fire protection industry permit or special circumstances exemption of that kind.
410. Item 84 of Schedule 2 to the Amendment Regulations amends existing subregulation 304A to insert new subregulations 304A(4) and (5).
411. New subregulation 304A(4) makes it a strict liability offence for a person to contravene the prohibition in subregulations 304A(1) or 304A(3). The maximum penalty for this offence is 50 penalty units.

412. Strict liability is provided for this offence having regard to the Commonwealth Guide to Framing Offences and the Scrutiny of Bills Committee 6th Report. Consistent with these documents, strict liability is appropriate because:

- a. the offence is not punishable by imprisonment;
- b. the offence is subject to a maximum penalty of 50 penalty units for an individual;
- c. the actions which trigger the offence are simple, readily understood and easily defended. The offence is triggered if a person who makes a false representation that they can legally provide a service that involves the acquisition, disposal, storage, use or handling of an extinguishing agent;
- d. offences relating to false representations need to be dealt with efficiently to ensure industry and community confidence in the regulatory regime;
- e. the offence is subject to an infringement notice under the Act;
- f. the absence of strict liability may adversely affect the capacity to prosecute offenders. Whether or not a defendant intentionally, recklessly or negligently made a false representation they can legally provide a service that involves the acquisition, disposal, storage, use or handling of an extinguishing agent is generally a matter that is peculiarly within the knowledge of the defendant alone. Proving the contrary beyond reasonable doubt may require significant and difficult to obtain indirect and circumstantial evidence;
- g. the requirement to obtain the necessary licences, authorisations or exemptions to legally provide a service that involves the acquisition, disposal, storage, use or handling of an extinguishing agent is a necessary part of ensuring that the Act and the Principal Regulations remains an effective and efficient mechanism to both implement Australia's obligations under the Montreal Protocol and other relevant international treaties, and to realise its intended environmental benefits. Making false representations that a person can legally provide a service relating to extinguishing agents could result in significant environmental harm and could damage Australia's international relations; and
- h. the person affected is placed on notice to guard against the possibility of contravention, which is likely to significantly enhance the effectiveness of the enforcement regime in deterring the conduct in question.

413. The defence of honest and reasonable mistake of fact is available for strict liability offences (see sections 6.1 and 9.2 of Schedule 1 to the Criminal Code) and the existence of strict liability does not make any other defence unavailable (see subsection 6.1(3) of Schedule 1 to the Criminal Code).

414. New subregulation 304A(5) has the effect of establishing a mirror civil penalty provision which is contravened where a person contravenes the prohibition in subregulations 304A(1) or 304A(3). The maximum penalty is 60 penalty units. A body corporate is liable for five times this amount as a maximum penalty (see subsection 82(5) of the Regulatory Powers Act).
415. The combination of strict liability offence and civil penalty provision provides an adequate deterrent from persons making false representations they can legally provide a service that involves the acquisition, disposal, storage, use or handling of an extinguishing agent, which has the potential to cause significant harm. It is also appropriate to include both civil and criminal penalties in order to provide flexibility for the Commonwealth to enforce the prohibition appropriately without always needing to pursue criminal penalties (noting that conviction for a criminal offence carries with it a range of consequences beyond the immediate penalty). It is expected criminal proceedings would be brought for conduct that is at the more serious end of the spectrum.

Item [85] – Regulation 327

416. Item 85 of Schedule 2 to the Amendment Regulations repeals existing regulation 327 of the Principal Regulations and substitutes a new regulation 327.
417. New regulation 327 of the Principal Regulations prohibits a person who holds an extinguishing agent handling licence from contravening a condition of that licence (subregulation 327(1)).
418. New subregulation 327(2) makes it a strict liability offence for a person to contravene the prohibition in subregulation 327(1). The maximum penalty for this offence is 50 penalty units.
419. Strict liability is provided for this offence having regard to the Commonwealth Guide to Framing Offences and the Scrutiny of Bills Committee 6th Report. Consistent with these documents, strict liability is appropriate because:
- a. the offence is not punishable by imprisonment;
 - b. the offence is subject to a maximum penalty of 50 penalty units for an individual;
 - c. the actions which trigger the offence are simple, readily understood and easily defended. The offence is triggered if a person who holds an extinguishing agent handling licence contravenes a condition of that licence;
 - d. offences relating to contravention of licence conditions need to be dealt with efficiently to ensure industry and community confidence in the regulatory regime;

- e. the offence is subject to an infringement notice under the Act;
 - f. the absence of strict liability may adversely affect the capacity to prosecute offenders. Whether or not a defendant intentionally, recklessly or negligently contravened a condition of their extinguishing agent handling licence is generally a matter that is peculiarly within the knowledge of the defendant alone. Proving the contrary beyond reasonable doubt may require significant and difficult to obtain indirect and circumstantial evidence;
 - g. the requirement to obtain an extinguishing agent handling licence, and to comply with the conditions of that licence is a necessary part of ensuring that the Act and the Principal Regulations remains an effective and efficient mechanism to both implement Australia's obligations under the Montreal Protocol and other relevant international treaties, and to realise its intended environmental benefits. Contravention of licence conditions relating to scheduled substances that are extinguishing agents result in significant environmental harm and could damage Australia's international relations; and
 - h. the person affected is placed on notice to guard against the possibility of contravention, which is likely to significantly enhance the effectiveness of the enforcement regime in deterring the conduct in question.
420. The defence of honest and reasonable mistake of fact is available for strict liability offences (see sections 6.1 and 9.2 of Schedule 1 to the Criminal Code) and the existence of strict liability does not make any other defence unavailable (see subsection 6.1(3) of Schedule 1 to the Criminal Code).
421. New subregulation 327(3) has the effect of establishing a mirror civil penalty provision which is contravened where a person contravenes the prohibition in subregulation 327(1). The maximum penalty is 60 penalty units. A body corporate is liable for five times this amount as a maximum penalty (see subsection 82(5) of the Regulatory Powers Act).
422. The combination of strict liability offence and civil penalty provision provides an adequate deterrent from persons contravening the conditions of their extinguishing agent handling licence, which has the potential to cause significant harm. It is also appropriate to include both civil and criminal penalties in order to provide flexibility for the Commonwealth to enforce the prohibition appropriately without always needing to pursue criminal penalties (noting that conviction for a criminal offence carries with it a range of consequences beyond the immediate penalty). It is expected criminal proceedings would be brought for conduct that is at the more serious end of the spectrum.

Item [86] – Regulation 333

423. Item 86 of Schedule 2 to the Amendment Regulations repeals existing regulation 333 of the Principal Regulations and substitutes a new regulation 333.
424. New regulation 333 of the Principal Regulations prohibits a person who holds an extinguishing agent handling trading authorisation from contravening a condition of that authorisation (subregulation 333(1)).
425. New subregulation 333(2) makes it a strict liability offence for a person to contravene the prohibition in subregulation 333(1). The maximum penalty for this offence is 50 penalty units.
426. Strict liability is provided for this offence having regard to the Commonwealth Guide to Framing Offences and the Scrutiny of Bills Committee 6th Report. Consistent with these documents, strict liability is appropriate because:
- a. the offence is not punishable by imprisonment;
 - b. the offence is subject to a maximum penalty of 50 penalty units for an individual;
 - c. the actions which trigger the offence are simple, readily understood and easily defended. The offence is triggered if a person who holds an extinguishing agent handling trading authorisation contravenes a condition of that authorisation;
 - d. offences relating to contravention of conditions of authorisations need to be dealt with efficiently to ensure industry and community confidence in the regulatory regime;
 - e. the offence is subject to an infringement notice under the Act;
 - f. the absence of strict liability may adversely affect the capacity to prosecute offenders. Whether or not a defendant intentionally, recklessly or negligently contravened a condition of their extinguishing agent trading authorisation is generally a matter that is peculiarly within the knowledge of the defendant alone. Proving the contrary beyond reasonable doubt may require significant and difficult to obtain indirect and circumstantial evidence;
 - g. the requirement to obtain an extinguishing agent trading authorisation, and to comply with the conditions of that authorisation is a necessary part of ensuring that the Act and the Principal Regulations remains an effective and efficient mechanism to both implement Australia's obligations under the Montreal Protocol and other relevant international treaties, and to realise its intended environmental benefits. Contravention of conditions of authorisations relating to scheduled substances that are extinguishing agents could result in significant environmental harm and could damage Australia's international relations; and

- h. the person affected is placed on notice to guard against the possibility of contravention, which is likely to significantly enhance the effectiveness of the enforcement regime in deterring the conduct in question.
427. The defence of honest and reasonable mistake of fact is available for strict liability offences (see sections 6.1 and 9.2 of Schedule 1 to the Criminal Code) and the existence of strict liability does not make any other defence unavailable (see subsection 6.1(3) of Schedule 1 to the Criminal Code).
428. New subregulation 333(3) has the effect of establishing a mirror civil penalty provision which is contravened where a person contravenes the prohibition in subregulation 333(1). The maximum penalty is 60 penalty units. A body corporate is liable for five times this amount as a maximum penalty (see subsection 82(5) of the Regulatory Powers Act).
429. The combination of strict liability offence and civil penalty provision provides an adequate deterrent from persons contravening the conditions of their extinguishing agent handling trading authorisation, which has the potential to cause significant harm. It is also appropriate to include both civil and criminal penalties in order to provide flexibility for the Commonwealth to enforce the prohibition appropriately without always needing to pursue criminal penalties (noting that conviction for a criminal offence carries with it a range of consequences beyond the immediate penalty). It is expected criminal proceedings would be brought for conduct that is at the more serious end of the spectrum.

Item [87] – Subregulations 341(6) and (7)

430. Regulation 341 of the Principal Regulations deals with halon special permits. Subregulation 341(1) allows a relevant authority to, on application, grant a halon special permit to a permit entitling the person to possess halon that is for use in fire protection equipment. The relevant authority may put a condition on a halon special permit granted to a person under subregulation 341(1) (see subregulation 341(5)).
431. Item 87 of Schedule 2 to the Amendment Regulations repeals existing subregulations 341(6) and (7) and substitutes new subregulations 341(6) to (8).
432. New subregulation 341(6) of the Principal Regulations prohibits a person who holds an halon special permit from contravening a condition of that permit.
433. New subregulation 341(7) makes it a strict liability offence for a person to contravene the prohibition in subregulation 341(6). The maximum penalty for this offence is 50 penalty units.
434. Strict liability is provided for this offence having regard to the Commonwealth Guide to Framing Offences and the Scrutiny of Bills Committee 6th Report. Consistent with these documents, strict liability is appropriate because:

- a. the offence is not punishable by imprisonment;
- b. the offence is subject to a maximum penalty of 50 penalty units for an individual;
- c. the actions which trigger the offence are simple, readily understood and easily defended. The offence is triggered if a person who holds a halon special permit contravenes a condition of that permit;
- d. offences relating to contravention of conditions of permits need to be dealt with efficiently to ensure industry and community confidence in the regulatory regime;
- e. the offence is subject to an infringement notice under the Act;
- f. the absence of strict liability may adversely affect the capacity to prosecute offenders. Whether or not a defendant intentionally, recklessly or negligently contravened a condition of their halon special permit is generally a matter that is peculiarly within the knowledge of the defendant alone. Proving the contrary beyond reasonable doubt may require significant and difficult to obtain indirect and circumstantial evidence;
- g. the requirement to obtain a halon special permit to possess halon for use in fire protection equipment, and to comply with the conditions of that permit, is a necessary part of ensuring that the Act and the Principal Regulations remains an effective and efficient mechanism to both implement Australia's obligations under the Montreal Protocol and other relevant international treaties, and to realise its intended environmental benefits. Contravention of conditions of halon special permits could result in significant environmental harm and could damage Australia's international relations; and
- h. the person affected is placed on notice to guard against the possibility of contravention, which is likely to significantly enhance the effectiveness of the enforcement regime in deterring the conduct in question.

435. The defence of honest and reasonable mistake of fact is available for strict liability offences (see sections 6.1 and 9.2 of Schedule 1 to the Criminal Code) and the existence of strict liability does not make any other defence unavailable (see subsection 6.1(3) of Schedule 1 to the Criminal Code).

436. New subregulation 341(8) has the effect of establishing a mirror civil penalty provision which is contravened where a person contravenes the prohibition in subregulation 341(6). The maximum penalty is 60 penalty units. A body corporate is liable for five times this amount as a maximum penalty (see subsection 82(5) of the Regulatory Powers Act).

437. The combination of strict liability offence and civil penalty provision provides an adequate deterrent from persons contravening the conditions of their halon special permit, which has the potential to cause significant harm. It is also appropriate to include both civil and criminal penalties in order to provide flexibility for the Commonwealth to enforce the prohibition appropriately without always needing to pursue criminal penalties (noting that conviction for a criminal offence carries with it a range of consequences beyond the immediate penalty). It is expected criminal proceedings would be brought for conduct that is at the more serious end of the spectrum.

Item [88] – Subregulations 342D(1) and (2)

438. Regulation 342D of the Principal Regulations deals with contravention of the conditions of a special circumstances exemption granted under regulation 342 (dealing with extinguishing agent).

439. Item 88 of Schedule 2 to the Amendment Regulations amends existing regulation 342D of the Principal Regulations to repeal existing subregulations 342D(1) and (2) and substitutes new subregulations 342D(1) to (3).

440. New subregulation 342D(1) of the Principal Regulations prohibits a person who holds a special circumstances exemption granted under regulation 342 and that is subject to a condition, from doing an act or omission that contravenes a condition of that exemption.

441. New subregulation 342D(2) makes it a strict liability offence for a person to contravene the prohibition in subregulation 342D(1). The maximum penalty for this offence is 50 penalty units.

442. Strict liability is provided for this offence having regard to the Commonwealth Guide to Framing Offences and the Scrutiny of Bills Committee 6th Report. Consistent with these documents, strict liability is appropriate because:

- a. the offence is not punishable by imprisonment;
- b. the offence is subject to a maximum penalty of 50 penalty units for an individual;
- c. the actions which trigger the offence are simple, readily understood and easily defended. The offence is triggered if a person who holds a special circumstances exemption granted under regulation 342 contravenes a condition of that exemption;
- d. offences relating to contravention of conditions of exemptions need to be dealt with efficiently to ensure industry and community confidence in the regulatory regime;

- e. the offence is subject to an infringement notice under the Act;
 - f. the absence of strict liability may adversely affect the capacity to prosecute offenders. Whether or not a defendant intentionally, recklessly or negligently contravened a condition of their special circumstances exemption is generally a matter that is peculiarly within the knowledge of the defendant alone. Proving the contrary beyond reasonable doubt may require significant and difficult to obtain indirect and circumstantial evidence;
 - g. the requirement to obtain a special circumstances exemption to handle extinguishing agent without a licence, and to comply with the conditions of that exemption, is a necessary part of ensuring that the Act and the Principal Regulations remains an effective and efficient mechanism to both implement Australia's obligations under the Montreal Protocol and other relevant international treaties, and to realise its intended environmental benefits. Contravention of conditions of special circumstances exemptions could result in significant environmental harm and could damage Australia's international relations; and
 - h. the person affected is placed on notice to guard against the possibility of contravention, which is likely to significantly enhance the effectiveness of the enforcement regime in deterring the conduct in question.
443. The defence of honest and reasonable mistake of fact is available for strict liability offences (see sections 6.1 and 9.2 of Schedule 1 to the Criminal Code) and the existence of strict liability does not make any other defence unavailable (see subsection 6.1(3) of Schedule 1 to the Criminal Code).
444. New subregulation 342D(3) has the effect of establishing a mirror civil penalty provision which is contravened where a person contravenes the prohibition in subregulation 342D(1). The maximum penalty is 60 penalty units. A body corporate is liable for five times this amount as a maximum penalty (see subsection 82(5) of the Regulatory Powers Act).
445. The combination of strict liability offence and civil penalty provision provides an adequate deterrent from persons contravening the conditions of their special circumstances exemption, which has the potential to cause significant harm. It is also appropriate to include both civil and criminal penalties in order to provide flexibility for the Commonwealth to enforce the prohibition appropriately without always needing to pursue criminal penalties (noting that conviction for a criminal offence carries with it a range of consequences beyond the immediate penalty). It is expected criminal proceedings would be brought for conduct that is at the more serious end of the spectrum.

Item [89] – In the appropriate position in Part 10

446. Item 89 of Schedule 2 to the Amendment Regulations inserts new Division 10 (new regulation 985) at the end of Part 10 of the Principal Regulations.
447. New regulation 985 is an application provision that deals with the amendments made by Schedule 2 to the Amendment Regulations (relating to penalties).
448. The effect of new regulation 985 is that the amendments made by Schedule 2 apply in relation to conduct engaged in on or after 1 July 2024.
449. This means that conduct engaged in prior to the 1 July 2024 remains subject to the current provisions of the Principal Regulations, even if compliance action in relation to that conduct occurs after 1 July 2024.

Schedule 3 – Amendments relating to licence qualifications and standards

Ozone Protection and Synthetic Greenhouse Gas Management Regulations 1995

450. The amendments made by Schedule 3 to the Amendment Regulations amend the Principal Regulations for the purpose of:
- a. moving the list of qualifications and units of competency required for, respectively, a refrigerant handling licence and an extinguishing agent handling licence, from the regulations to a separate legislative instrument made by the Minister;
 - b. moving the list of standards with which holders of refrigerant handling licences, restricted refrigeration and air conditioning licences, refrigeration and air conditioning trainee licences and extinguishing agent handling licences must comply (as a condition of the licence) from the regulations to a separate legislative instrument made by the Minister; and
 - c. imposing a fee for special circumstances exemptions in the refrigeration and air conditioning context and increasing the fee for special circumstances exemptions in the fire protection context to align with this new fee.

Item [1] – Regulation 2 (definition of *registered qualification*)

451. Item 1 of Schedule 3 to the Amendment Regulations amends existing regulation 2 of the Principal Regulations to repeal the definition of *registered qualification*.
452. This amendment is consequential to the amendments made by items 3 to 7 of Schedule 3. The amendments made by those items mean this term is no longer used in the Principal Regulations.

Item [2] – Regulation 2 (definition of *registered unit of competency*)

453. Item 2 of Schedule 3 to the Amendment Regulations amends existing regulation 2 of the Principal Regulations to repeal the definition of *registered unit of competency*.

454. This amendment is consequential to the amendments made by items 11 and 12 of Schedule 3. The amendments made by those items mean this term is no longer used in the Principal Regulations.

Item [3] – Paragraph 131(2)(a)

455. Regulation 131 of the Principal Regulations deals with refrigerant handling licences. Subregulation 131(1) provides that a relevant authority may, on application, grant to a person a licence mentioned in column 1 of an item in Table 131 (covering the different kinds of refrigerant handling licences), entitling the person to engage in the work described in column 2 of the item.

456. Subregulation 131(2) sets out the criteria of which the relevant authority must be satisfied to grant a refrigerant handling licence to a person.

457. Item 3 of Schedule 3 to the Amendment Regulations amends existing subregulation 131(2) of the Principal Regulations to repeal paragraph 131(2)(a) and substitute a new paragraph 131(2)(a).

458. New paragraph 131(2)(a) has the effect that the relevant authority can only grant a refrigerant handling licence to a person if satisfied that the person holds a qualification that:

- a. is mentioned for the licence in a determination made by the Minister under subregulation 131(3); and
- b. is entered on the National Register (within the meaning of the *National Vocational Education and Training Regulator Act 2011*) when the requirements of the qualification are first satisfied by the applicant.

459. The purpose of new paragraph 131(2)(a) is to make it clear that the relevant qualifications for a refrigerant handling licence will now be found in a legislative instrument made by the Minister under new subregulation 131(3) (as inserted by item 5 below), rather than in the Principal Regulations themselves.

460. This amendment is consequential to the amendments made by items 5 and 6 of Schedule 3. It does not, of itself, result in any substantive change in the qualifications that are relevant to refrigerant handling licences; only to the location of those qualifications.

Item [4] – Subparagraphs 131(2)(b)(i) and (ii)

461. Item 4 of Schedule 3 to the Amendment Regulations amends existing subparagraphs 131(2)(b)(i) and (ii) of the Principal Regulations to omit ‘relevant qualification’ and substitute ‘qualification mentioned for the licence in a determination made by the Minister under subregulation (3)’.

462. This amendment is consequential to the amendments made by items 5 and 6 of Schedule 3 and reflects the intention that the relevant qualifications for refrigerant handling licences be moved from the Principal Regulations to a legislative instrument made by the Minister under new subregulation 131(3).

Item [5] – Subregulation 131(3)

463. Item 5 of Schedule 3 to the Amendment Regulations amends existing regulation 131 of the Principal Regulations to repeal existing subregulation 131(3) and substitute a new subregulation 131(3).

464. New subregulation 131(3) empowers the Minister to, by legislative instrument, determine qualifications required for a licence mentioned in column 1 of an item in Table 131 (covering the different kinds of refrigerant handling licences).

465. New subregulation 131(3) is made in reliance on subsection 45A(3) of the Act, which provides that the regulations may make provision for regulating something by providing for it, or anything relating to it, to be determined by the Minister, including by legislative instrument.

466. The purpose of including the relevant qualifications of which a relevant authority must be satisfied to grant a refrigerant handling licence to a person in a legislative instrument, rather than the regulations, is to ensure the list of qualifications can be more easily and quickly updated, as appropriate, to align with changing technologies.

Item [6] – Regulation 131 (table, column 3)

467. Item 6 of Schedule 3 to the Amendment Regulations amends existing regulation 131 of the Principal Regulations to repeal the column 3 of the table. Column 3 of the table contained a list of qualifications of which a relevant authority must be satisfied to grant a refrigerant handling licence to a person.

468. This amendment is consequential to the amendment made by item 5 of Schedule 3, which empowers the Minister to, by legislative instrument, determine qualifications required for the different kinds of refrigerant handling licences.

469. The intention is that the Minister will exercise the new power inserted by item 5 to determine an updated list of relevant qualifications by legislative instrument, rather than having those qualifications included in the regulations. This will ensure that the list of qualifications can be more easily and quickly updated, as appropriate, to align with changing technologies.

Item [7] – Paragraph 134(1)(a)

470. Regulation 134 of the Principal Regulations sets out the criteria of which a relevant authority must be satisfied to grant a refrigeration and air conditioning trainee licence to a person.

471. Item 7 of Schedule 3 to the Amendment Regulations amends existing paragraph 134(1)(a) of the Principal Regulations to omit ‘registered qualification mentioned in column 3 of an item in Table 131’ and substitute ‘qualification determined by the Minister under subregulation 131(3)’.
472. This amendment is consequential to the amendments made by items 5 and 6 of Schedule 3 and reflects the intention that the relevant qualifications for refrigerant handling licences be moved from the Principal Regulations to a legislative instrument made by the Minister under new subregulation 131(3).

Item [8] – Paragraphs 135(1)(a) and (aa)

473. Regulation 135 of the Principal Regulations sets out the mandatory conditions to which a licence granted under Subdivision 6A.2.2 (covering refrigerant handling licence, a restricted refrigeration and air conditioning licence and a refrigeration and air conditioning trainee licence) is subject.
474. Paragraph 135(1)(a) has the effect that a licence granted under Subdivision 6A.2.2 is subject to the condition that the licensee carries out the work to which the licence relates in accordance with any standard mentioned in an item in the table in regulation 135 that relates to the work.
475. Paragraph 135(1)(aa) has the effect that for licensees that are supervising a refrigeration and air conditioning trainee licensee – the licensee is subject to the condition that they must ensure that any work carried out by the trainee licensee is in accordance with the standard mentioned in an item in Table 135 that relates to the work.
476. Item 8 of Schedule 3 to the Amendment Regulations amends existing paragraphs 135(1)(a) and (aa) of the Principal Regulations to omit ‘mentioned in an item in Table 135’ and substitute ‘determined by the Minister under subregulation (5)’.
477. This amendment is consequential to the amendments made by items 9 and 10 of Schedule 3 and reflect the intention that the relevant standards with which licences must comply in carrying out work on RAC equipment be moved from the Principal Regulations to a legislative instrument made by the Minister under the new subregulation 135(5).

Item [9] – Subregulation 135(5)

478. Item 9 of Schedule 3 to the Amendment Regulations amends existing regulation 135 of the Principal Regulations to repeal existing subregulation 135(5) and substitute a new subregulation 135(5).
479. New subregulation 135(5) empowers the Minister to, by legislative instrument, determine standards that apply in relation to work carried out under a refrigerant handling licence, a restricted refrigeration and air conditioning licence or a refrigeration and air conditioning trainee licence.

480. New subregulation 135(5) is made in reliance on subsection 45A(3) of the Act, which provides that the regulations may make provision for regulating something by providing for it, or anything relating to it, to be determined by the Minister, including by legislative instrument.
481. The purpose of including the relevant standards with which the holder of a refrigerant handling licence, a restricted refrigeration and air conditioning licence or a refrigeration and air conditioning trainee licence must comply when carrying out work under that licence in a legislative instrument, rather than the regulations, is to ensure the list of standards can be more easily and quickly updated, as appropriate, to align with changing technologies.

Item [10] – Regulation 135 (table)

482. Item 10 of Schedule 3 to the Amendment Regulations amends existing regulation 135 of the Principal Regulations to repeal the table. The table contained a list of standards with which holders of a refrigerant handling licence, a restricted refrigeration and air conditioning licence or a refrigeration and air conditioning trainee licence must comply when engaging in work under that licence.
483. This amendment is consequential to the amendment made by item 9, which empowers the Minister to, by legislative instrument, determine standards that apply in relation to work carried out under a refrigerant handling licence, a restricted refrigeration and air conditioning licence or a refrigeration and air conditioning trainee licence.
484. The intention is that the Minister will exercise the new power inserted by item 9 to determine an updated list of relevant standards by legislative instrument, rather than having those standards included in the regulations. This will ensure that the list of standards can be more easily and quickly updated, where appropriate, to align with changing technologies.

Item [11] – Subregulations 322(2) and (3)

485. Regulation 322 of the Principal Regulations deals with extinguishing agent handling licences. Subregulation 322(1) provides that a relevant authority may, on application, grant to a person an extinguishing agent handling licence mentioned in column 1 of an item in Table 322 (covering the different kinds of extinguishing agent handling licences), entitling the person to engage in the work described in column 2 of the item.
486. Subregulations 322(2) and (3) set out the criteria of which the relevant authority must be satisfied to grant an extinguishing agent handling licence to a person.
487. Item 11 of Schedule 3 to the Amendment Regulations amends existing regulation 322 of the Principal Regulations to repeal subregulations 322(2) and (3) and substitute new subregulations 322(2) and (3).
488. New subregulation 322(2) has the effect that the relevant authority can only grant an extinguishing agent handling licence to a person if satisfied that:

- a. the person has satisfied the requirements of all of the units of competency determined by the Minister under subregulation (3) for the licence; and
- b. when the requirements of each unit of competency are first satisfied by the person, both:
 - i. the unit of competency is entered on the National Register (within the meaning of the *National Vocational Education and Training Regulator Act 2011*); and
 - ii. the registration of the unit of competency on the National Register has not been cancelled.

489. New subregulation 322(3) empowers the Minister to, by legislative instrument, determine units of competency required for a licence mentioned in column 1 of an item in Table 322 (covering the different kinds of extinguishing agent handling licences).

490. The purpose of new subregulation 322(2) is to make it clear that the relevant units of competency for an extinguishing agent handling licence will now be found in a legislative instrument made by the Minister under new subregulation 322(3), rather than in the Principal Regulations themselves.

491. New subregulation 322(3) is made in reliance on subsection 45A(3) of the Act, which provides that the regulations may make provision for regulating something by providing for it, or anything relating to it, to be determined by the Minister, including by legislative instrument. The purpose of including the relevant units of competency in a legislative instrument, rather than the regulations, is to ensure the list of units of competency can be more easily and quickly updated, as appropriate, to align with changing technologies.

492. This amendment does not, of itself, result in any substantive change in the units of competency that are relevant to extinguishing agent handling licences; only to the location of those units of competency.

Item [12] – Regulation 322 (table, column 3)

493. Item 12 of Schedule 3 to the Amendment Regulations amends existing regulation 322 of the Principal Regulations to repeal the column 3 of table. Column 3 contained a list of units of competency of which a relevant authority must be satisfied to grant an extinguishing agent handling licence to a person.

494. This amendment is consequential to the amendment made by item 11, which empowers the Minister to, by legislative instrument, determine units of competency required for an extinguishing agent handling licence.

495. The intention is that the Minister will exercise the new power inserted by item 11 to determine an updated list of relevant units of competency by legislative instrument, rather than having those units of competency included in the regulations. This will ensure that the list of units of competency can be more easily and quickly updated, as appropriate, to align with changing technologies.

Item [13] – Paragraph 326(1)(a)

496. Regulation 326 of the Principal Regulations sets out the mandatory conditions to which an extinguishing agent handling licence is subject. Paragraph 326(1)(a) has the effect that an extinguishing agent handling licence is subject to the condition that the licensee carries out the work to which the licence relates in accordance with any standard mentioned in an item in the table in regulation 326 that relates to the work.

497. Item 13 of Schedule 3 to the Amendment Regulations amends existing paragraph 326(1)(a) of the Principal Regulations to omit ‘mentioned in an item in Table 326’ and substitute ‘determined by the Minister under subregulation (5)’.

498. This amendment is consequential to the amendments made by items 15 and 16 of Schedule 3 and reflects the intention that the relevant standards which licensees must comply with in carrying out work under an extinguishing agent handling licence be moved from the Principal Regulations to a legislative instrument made by the Minister under the new subregulation 326(5).

Item [14] – Paragraph 326(1)(e)

499. Regulation 326 of the Principal Regulations sets out the mandatory conditions to which an extinguishing agent handling licence is subject. Paragraph 326(1)(e) has the effect that an extinguishing agent handling licence is subject to the condition that the licensee does not carry out any work to which the licence relates (other than decommissioning or disposal or work in the aviation or maritime industries) on fire protection equipment that does not comply with any standard mentioned in Table 326 that applies to the equipment.

500. Item 14 of Schedule 3 to the Amendment Regulations amends existing paragraph 326(1)(e) of the Principal Regulations to omit ‘mentioned in Table 326’ and substitute ‘determined by the Minister under subregulation (5)’.

501. This amendment is consequential to the amendments made by items 15 and 16 of Schedule 3, and reflects the intention that the relevant standards which licensees must comply with in carrying out work under an extinguishing agent handling licence be moved from the Principal Regulations to a legislative instrument made by the Minister under the new subregulation 326(5).

Item [15] – Subregulation 326(5)

502. Item 15 of Schedule 3 to the Amendment Regulations amends existing regulation 326 of the Principal Regulations to repeal subregulation 326(5) and substitute a new subregulation 326(5).

503. New subregulation 326(5) empowers the Minister to, by legislative instrument, determine standards that apply in relation to work carried out under an extinguishing agent handling licence.
504. New subregulation 326(5) is made in reliance on subsection 45A(3) of the Act, which provides that the regulations may make provision for regulating something by providing for it, or anything relating to it, to be determined by the Minister, including by legislative instrument.
505. The purpose of including the relevant standards with which the holder of an extinguishing agent handling licence must comply when carrying out work under that licence in a legislative instrument, rather than the regulations, is to ensure the list of standards can be more easily and quickly updated, as appropriate, to align with changing technologies.

Item [16] – Regulation 326 (table)

506. Item 16 of Schedule 3 to the Amendment Regulations amends existing regulation 326 of the Principal Regulations to repeal the table. The table contained a list of standards with which holders of an extinguishing agent handling licence must comply when engaging in work under that licence.
507. This amendment is consequential to the amendment made by item 15, which empowers the Minister to, by legislative instrument, determine standards that apply in relation to work carried out under an extinguishing agent handling licence.
508. The intention is that the Minister will exercise the new power inserted by item 15 to determine an updated list of relevant standards by legislative instrument, rather than having those standards included in the regulations. This will ensure that the list of standards can be more easily and quickly updated where appropriate.

Item [17] – Regulation 345 (heading)

509. Item 17 of Schedule 3 to the Amendment Regulations repeal the existing heading to regulation 345 of the Principal Regulations and inserts a new heading of ‘Application fees in relation to other Part 6A applications’.
510. This amendment is consequential to the amendments made by items 18 and 19 of Schedule 3 to the Amendment Regulations, which have the relevant effect of expanding the scope of regulation 345 so that the fees imposed on an application for a special circumstances exemption now apply to special circumstances exemptions in both the refrigeration and air-conditioning context and the fire protection context.

Item [18] – Regulation 345

511. Item 18 of Schedule 3 to the Amendment Regulations amends existing regulation 345 of the Principal Regulations to omit ‘other fire protection’ and substitute ‘other Part 6A’.

512. This amendment is consequential to the amendment made by item 19 of Schedule 3 to the Amendment Regulations which, relevantly, expands the scope of regulation 345 to cover special circumstances exemptions in both the refrigeration and air-conditioning context and the fire protection context.

Item [19] – Paragraph 345(b)

513. Regulation 345 of the Principal Regulations prescribes fees that must accompany an application for approval to operate an extinguishing agent destruction facility (granted under regulation 306) and an application for a special circumstances exemption in the fire protection context (granted under regulation 342).

514. Item 19 of Schedule 3 to the Amendment Regulations amends existing paragraph 345(b) of the Principal Regulations to omit ‘342 - \$200’ and substitute ‘151 or 342 – \$786’. This amendment has two consequences:

- a. the prescribed fee for an application for a special circumstances exemption is increased from \$200 to \$786. This increased amount more accurately reflects the costs of assessing these applications, consistent with the Australian Government Charging Framework; and
- b. the new fee applies to all applications for special circumstances exemptions – both in the refrigeration and air conditioning context (granted under regulation 151) and the fire protection context (granted under regulation 342). This ensures that all special circumstances exemptions are treated consistently in relation to fees under the Principal Regulations and acknowledges the cost to the Commonwealth of assessing applications under regulation 151.

Item [20] – At the end of Division 10 of Part 10

515. Item 20 of Schedule 3 to the Amendment Regulations amends Division 10 of Part 10 of the Principal Regulations to insert new regulation 986.

516. New regulation 986 is an application provision that deals with the amendments made by Schedule 3 to the Amendment Regulations (relating to licence qualifications and standards).

517. The effect of new subregulation 986(1) is that the amendments to regulations 131, 134 and 322 (relating to qualifications and competencies for, respectively, refrigerant handling licences and extinguishing agent handling licences) applies in relation to applications for a licence made on or after 1 August 2024.

518. This means that licence applications made, but not finally determined, prior to 1 August 2024 will be assessed in accordance with the current provisions of the Principal Regulations.

519. The effect of new subregulation 986(2) is that the amendments to regulations 135 and 326 (relating to standards that must be complied with by holders of a refrigerant handling licence, a restricted refrigeration and air conditioning licence, a refrigeration and air conditioning trainee licence or an extinguishing agent handling licence) applies in relation to work carried out under a licence on or after 1 August 2024 whether the licence was granted before, on or after that day.
520. The effect of new subregulation 987(3) is that the amendments to regulation 345 (relating to fees for special circumstances exemptions) applies in relation to an application for a special circumstances exemption made on or after 1 August 2024.

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 (2024 Measures No. 1) Regulations 2024

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 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 (2024 Measures No. 1) Regulations 2024* (the Amendment Regulations) amends the Principal Regulations to prohibit the unlicensed manufacture or import of certain air conditioning equipment and limit the circumstances for which a licence to manufacture or import such equipment can be granted. The Amendment Regulations also increase and modernise the penalties in the Principal Regulations, and provide a mechanism for the Minister to determine licence qualifications and standards in a separate legislative instrument.

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 a fair trial and hearing in Article 14(1) 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 SGG equipment that is small synthetic greenhouse gas (SGG) air conditioning equipment or multi-head small SGG air conditioning equipment. Such equipment contains or uses in its operation an HFC that has a global warming potential of more than 750. The Amendment Regulations reduce the impact on human and environmental health of such equipment by ensuring that the import or manufacture of the equipment is prohibited without a licence, and limiting the grant of a licence to import or manufacture such equipment to very limited circumstances involving essential uses. This protects the ozone layer and the climate system.

Therefore, the Amendment Regulations promote the right to health under Article 12 of the ICESCR.

Right to a fair trial and fair hearing

Article 14(1) of the ICCPR guarantees the right to a fair trial and fair hearing in relation to both criminal and civil proceedings.

Civil penalty provisions

The Amendment Regulations amends the Principal Regulations to insert civil penalty provisions relating to the acquisition, possession, handling, supply, use and disposal of scheduled substances that are refrigerants, methyl bromide or extinguishing agents.

Civil penalty provisions may engage criminal process rights under Articles 14 and 15 of the ICCPR, regardless of the distinction between criminal and civil penalties in domestic law. When a provision imposes a civil penalty, an assessment is required as to whether it amounts to a criminal penalty for the purposes of the ICCPR, so that an assessment can be made as to whether the provision is consistent with the requirements of the ICCPR.

Determining whether penalties could be considered criminal under international human rights law requires consideration of the classification of the penalty provisions under Australian domestic law, the nature and purpose of the penalties, and the severity of the penalties.

The civil penalty provisions inserted by the Amendment Regulations are expressly classified in the legislation as civil penalties. Those provisions create solely pecuniary penalties in the form of a debt payable to the Commonwealth. The purpose of these penalties is to encourage compliance with the requirements for the acquisition, possession, handling, supply, use and disposal of scheduled substances and effective administration of the Act. The civil penalty

provisions do not impose criminal liability and a finding by a court that they have been contravened does not lead to the creation of a criminal record. The civil penalties only apply to the participants of the regulatory regime, rather than the public in general. These factors all suggest that the civil penalties inserted by the Amendment Regulations are civil rather than criminal in nature.

The maximum penalties that may be imposed by civil penalty orders are 60 penalty units. Under subsection 82(5) of the Regulatory Powers Act, as it applies to the Act, the maximum penalties that apply to individuals is those specified in the civil penalty provisions of the Amendment Regulations. Due to the application of the standard provisions in Part 4 of the Regulatory Powers Act, the corporate multiplier provision in subsection 82(5) of the Regulatory Powers Act applies to the civil penalty provisions inserted by the Amendment Regulations. Consequently, for bodies corporate, the penalties will be no more than five times the penalty specified in the civil penalty provision, i.e., the maximum penalties will be 300 penalty units.

These civil pecuniary penalties for the civil penalty provisions inserted by the Amendment Regulations have been set by reference to *A Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers* (the Guide). They seek to reflect the seriousness of the contravening conduct and the threat that the conduct may pose to human and environmental health. The maximum amount of 60 penalty units also reflects that the civil penalty provisions are at the level of regulations, not Act level.

In light of the matters discussed above, the civil penalties inserted by the Amendment Regulations do not amount to a criminal penalty for the purposes of the ICCPR. This means the criminal process rights provided for by Articles 14 and 15 of the ICCPR are not engaged by the provisions of the Amendment Regulations (and the Regulatory Powers Act) relating to civil penalties.

Overlap of criminal and civil penalties

Sections 90 and 91 of the Regulatory Powers Act apply in relation to civil penalty proceedings brought under the Act as a result of the Amendment Regulations. These provisions concern the relationship between criminal and civil penalty proceedings.

Section 90 of the Regulatory Powers Act clarifies that criminal proceedings may be commenced against a person for conduct that is the same, or substantially the same, as conduct that constitutes a contravention of a civil penalty provision, regardless of whether a civil penalty order has been made against the person in relation to the contravention. This section recognises the importance of criminal proceedings and criminal penalties in sanctioning contraventions of a triggering Act (i.e. an Act that seeks to apply the standard provisions of the Regulatory Powers Act) and ensures that criminal remedies are not precluded by earlier civil action.

Section 90 of the Regulatory Powers Act engages the criminal process rights in Article 14 of the ICCPR, but does not limit those rights. Article 14(7) of the ICCPR provides that “no one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country”. This prohibition on double jeopardy is a fundamental safeguard in the common law

of Australia. It means that a person who has been convicted or acquitted of a criminal charge is not to be re-tried for the same or substantially the same offence.

As section 90 of the Regulatory Powers Act permits both civil and criminal proceedings, but not multiple criminal proceedings for the same conduct, Article 14(7) of the ICCPR is not infringed. Further, section 88 of the Regulatory Powers Act provides a safeguard against potential double jeopardy by stating that a court cannot make a civil penalty order against a person for a contravention of a civil penalty provision if the person has been convicted of an offence constituted by conduct that is the same, or substantially the same, as the conduct constituting the contravention.

Section 91 of the Regulatory Powers Act provides that evidence of information given, or evidence of production of documents, by an individual is not admissible in criminal proceedings against the individual if:

- the individual previously gave the information or produced the documents in proceedings for a civil penalty order against the individual for an alleged contravention of a civil penalty provision (whether or not the order was made); and
- the conduct alleged to constitute the offence is the same, or substantially the same, as the conduct alleged to constitute the contravention.

Section 91 of the Regulatory Powers Act ensures that information or documents produced during civil proceedings are not relied upon to support subsequent criminal proceedings, unless those proceedings are criminal proceedings relating to falsifying evidence in civil proceedings. Accordingly, that section engages, but does not limit, the criminal process rights in Article 14 of the ICCPR.

In summary, the combined effect of the Amendment Regulations, and the Regulatory Powers Act (as it applies to the Act) engages, but does not limit, the right to a fair and public hearing and the other criminal process rights and minimum guarantees in Article 14 of the ICCPR.

Right to the presumption of innocence

Strict liability offences

Strict liability offences engage and limit the presumption of innocence as they allow for the imposition of criminal liability without the need to prove fault. However, strict liability offences will not necessarily be inconsistent with the presumption of innocence, provided that the limitation of the presumption of innocence pursues a legitimate objective and is reasonable, necessary and proportionate to achieving that objective. It is also important to note that the defence of honest and reasonable mistake of fact is still available and the existence of strict liability does not make any other defence unavailable.

The Amendment Regulations modernise the drafting of offence provisions in the Principal Regulations relating to the acquisition, possession, handling, supply, use and disposal of scheduled substances that are refrigerants, methyl bromide or extinguishing agents, including:

- clarifying that these offences are strict liability offences; and

- increasing the penalties for the strict liability offences from 10 penalty units to 50 penalty units.

Application of strict liability to offences in the Amendment Regulations has been set out having regard to the Guide and the *Senate Scrutiny of Bills Committee Sixth Report of 2002: Application of Absolute and Strict Liability Offences in Commonwealth Legislation*. Consistent with these documents, strict liability is considered appropriate as the penalties for the offences do not include imprisonment and do not exceed 50 penalty units for an individual.

The requirements in the Principal Regulations that are the subject of a strict liability offence are considered necessary to the integrity of the regulatory regime and part of ensuring that the Act and the Principal Regulations remains an effective and efficient mechanism to both implement Australia's obligations under the Montreal Protocol and other relevant international treaties, and to realise its intended environmental benefits. Misuse of scheduled substances could result in significant environmental harm and could damage Australia's international relations. In addition, the actions which trigger the offences are simple, readily understood and easily defended.

The inclusion of strict liability offences therefore ensures that any non-compliance relating to the acquisition, possession, handling, supply, use and disposal of scheduled substances that are refrigerants, methyl bromide or extinguishing agents is able to be dealt with efficiently to ensure public confidence in the regulatory regime and also ensure Australia continues to meet its international obligations under the Montreal Protocol and other international treaties.

Therefore, to the extent that strict liability offences included in the Amendment Regulations limit the right to the presumption of innocence, the limitations are reasonable, necessary and proportionate.

Reversal of the burden of proof

Laws that shift the burden of proof to a defendant can be considered a limitation of the presumption of innocence. Where a defendant bears an evidential burden in relation to an exception to an offence, it means the defendant bears the burden of adducing or pointing to evidence that suggests a reasonable possibility that the exception has been met. Reversing the burden of proof is not necessarily inconsistent with the presumption of innocence, provided that the reversal pursues a legitimate objective and is reasonable, necessary and proportionate to achieving that object. Whether the right to the presumption of innocence is limited will depend on the circumstances and justification for the reverse burden.

The Amendment Regulations insert a number of notes throughout the Principal Regulations clarifying that, where an exception to an offence applies, the defendant bears an evidential burden to show that the exception applies to them.

The reversal of the burden of proof is justified in these instances, as the matter to be proved is generally a matter that would be peculiarly in the knowledge of the defendant. For instance, the defendant would be best placed to know the purpose for which the buyer intended to use the scheduled substance that is the subject of the supply, the purpose for which the defendant possessed or handled the scheduled substance (including whether, as soon as practicable after

becoming aware they possessed the scheduled substance, gave it to a person with the authority to possess the scheduled substance), or whether they have entered into a commercial agreement with another person to provide the service. In the event of a prosecution, it would be significantly more difficult and costly for the prosecution to disprove all possible circumstances than it would be for a defendant to establish the existence of one potential circumstance.

Consequently, to effectively protect the environment from the harm caused by the acquisition, possession, handling, supply, use or disposal of scheduled substances, it is reasonable, necessary and proportionate to reverse the burden of proof in these circumstances and limit the right to the presumption of innocence.

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 Article 14 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**