April 2016

Measures to achieve Emissions Reduction and Efficiency and Effectiveness gains in the Ozone Protection and Synthetic Greenhouse Gas Management Programme

Stemming from the Review of the Ozone Protection and Synthetic Greenhouse Gas Management Programme, announced by the Minister for the Environment, The Hon Greg Hunt MP on 24 May 2014.

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OVERVIEW

This document sets out the measures recommended for implementation into the Ozone Protection and Synthetic Greenhouse Gas Management Programme, covering the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989,* subordinate legislation and administrative policy.

The measures are intended to be implemented through legislative amendments in all cases except where specifically identified as being administrative policy changes only.

SECTION 1 – EMISSIONS REDUCTION MEASURES

Area for reform: Australian HFC phase-down

The Australian Government has announced Australia will look to fast track work to reduce domestic hydrofluorocarbon (HFC) emissions by 85 per cent by 2036, as part of 2030 greenhouse gas emission reduction commitment. A phase-down of HFC imports in Australia will be ahead of a global commitment to a HFC phase-down under the *Montreal Protocol on Substances that Deplete the Ozone Layer* (Montreal Protocol).

Measure: Introduce an HFC phase down under the Ozone Protection and Synthetic Greenhouse Gas Management (OPSGGM) legislation[1]. This would be a substantial measure, with the key features being:

- **Phase-down schedule and steps:** An 85 per cent phase-down of HFC imports commencing on 1 January 2018 and reaching 85 per cent on 31 December 2036. The phase-down would have biannual reductions aligned with licensing periods under the OPSGGM Act.

- **Baseline:** Use the years 2011-2013 with total HFC consumption and 75 per cent of HCFC consumption for the same period to inform the calculation of an appropriate baseline. This takes into account likely Montreal Protocol negotiations, and considers the likely Montreal Protocol baseline as the maximum setting.

- **Starting point:** The starting point for a HFC phase down is 8.0 Mt Co2e which is less than the 2011-2013 baseline. The reduced figure is due to a number of factors including changes within the industry and aberrations during and following the carbon tax period. Australian industry has agreed this starting point is consistent with current use.

- **Phase-down mechanism:** The measure proposes a reducing import quota system to achieve the 85 per cent phase-down. The quota system would be a hybrid of incumbent (grandfathered – existing importers) and balloted or Ministerial allocation. Incumbent quota would be calculated on the basis of past market share, and the remainder where participants apply for quota.

- **Participants and quota:** Total quota is initially split at 90 per cent incumbent and 10 per cent ballot quota, which is open to all applicants including new market entrants, or by Ministerial discretion. It will provide the capacity to change the incumbent/balloted split from 90/10 to a maximum incumbent percentage set at 95 per cent, with the remaining 5 per cent available for ballot in perpetuity. The intent of the phase-down mechanism and quota split is to achieve recognition for established participants and competitive fairness for all established and potential stakeholders. It is further recommended that provision is made for the Minister to retire quota where appropriate, such as identified after a scheme review.

[1] *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989*
Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Act 1995
Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Act 1995
Ozone Protection and Synthetic Greenhouse Gas Management Regulations 1995
Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Regulations 2004
Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Regulations 2004

- **Efficient distribution – secondary market trading:** Provide for secondary market trading (by allowing quota transfer) to facilitate quota ending up in the hands of participants for who it provides the most value.

- **Review:** Provision is made for a review mechanism that allows for adjustments to quota allocation and the pace of the phase-down to ensure the policy objective is met and continues to be met. This would include regular review (for example, three yearly) as well as specific trigger points.

- **Scheme coverage:**
    - HFC phase-down applies only to HFCs controlled under the United Nations Framework Convention on Climate Change (UNFCCC) and its Kyoto Protocol. The other synthetic greenhouse gases (SGGs), perfluorocarbons, sulfur hexafluoride and nitrogen trifluoride, have limited use in Australia and will not be subject to a phase-down.
    - The HFC phase-down applies to imports of “bulk” gas only and not gas contained in pre-charged equipment
    - New and used HFC imports are differentiated and controlled by different mechanisms. Quota applies to new HFCs only, with used HFCs controlled by different means. Placing imported used HFCs on the Australian market would generally not be permitted unless it can be accommodated within existing quota.
    - Provision is made for specific exemptions that can be periodically reassessed.
    - Provision is made for complementary HFC equipment bans in line with review of the scheme. The equipment ban may be required for small split system air conditioners containing the high global warming potential refrigerant R410A, and automotive air conditioning systems using high global warming potential refrigerants.

Policy intent: To guide Australian industry through the phase-down of HFCs in a way that encourages transition to new technologies, respects the investment into the market by current importers, provides opportunity for competition through a fair mechanism to include new entrants and is at a pace Australian industry can manage.

SECTION 2 - EFFICIENCY AND EFFECTIVENESS MEASURES

Area for reform: Regulation of additional substances

Australia has obligations under international treaties to control ozone depleting substances (ODS) and SGGs under the Montreal Protocol and the UNFCCC and its *Kyoto Protocol* respectively.

Measure: Amend the OPSGGM legislation to include HFC-41-10mee, PFC $C_{10}F_{18}$ and nitrogen trifluoride.

Policy intent: To include ODS and SGGs covered by current international obligations. Australia's obligations under the Kyoto Protocol's second commitment period, if ratified and once entered into force, will include these three SGGs not currently covered by the OPSGGM Programme.

Measure: Request importers to voluntarily report on specified substances, such as new ODS species not regulated under the OPSGGM Programme, being produced or sold.

Policy intent: Decisions by the Parties to the Montreal Protocol indicate that Parties should report on new ODS species being produced or sold in their territories, even where they are not controlled. Voluntary reporting is preferred over amending the legislation to require mandatory reporting of emerging substances. The Department has a good relationship and consistent communication with industry over a number of years, and a voluntary reporting scheme of emerging substances is expected to provide satisfactory data.

Area for reform: Improvements to HCFC phase-out provisions

Australia is phasing out imports of hydrochlorofluorocarbons (HCFCs) under the Montreal Protocol, under an accelerated phase out agreed with industry in the early 1990s. The Montreal Protocol imposes additional obligations to limit the use of HCFCs imported from 2020 to the servicing of existing refrigeration and air conditioning equipment.

Measure: Amend the legislation to include provisions to limit the use of bulk HCFCs imported from 2020 to the servicing of existing refrigeration and air conditioning equipment.

Policy Intent: To give effect to Australia's obligations under Article 2F paragraph 6(a) of the Montreal Protocol.

Area for reform: Improvements to HCFC phase-out provisions

As a part of Australia's phase out of hydrochlorofluorocarbons (HCFCs) under the Montreal Protocol, equipment bans for refrigeration and air conditioning equipment have been instituted to assist in reducing the demand for bulk gas. The use of HCFCs in most other products and equipment has already reduced to minimal levels.

Measure: Extend the HCFC equipment bans to include non refrigeration and air conditioning equipment – such as aerosols, blown foams, fire protection equipment and solvents.

Policy Intent: To support the phase out of bulk HCFCs. Provision to allow products essential for medical, veterinary, defence or safety purposes or similar would be included

Area for reform: Licensing – Import, export & manufacture

In order to meet its obligations under the Montreal Protocol, Australia is required to have an import, manufacture and export licensing system for ODS. The system is implemented through the OPSGGM Act. The licensing system applies regulatory measures to reduce ODS and SGG emissions, as well as facilitating Australia meeting its emission inventory reporting obligations for SGGs under the UNFCCC.

The OPSGGM Act has become increasingly complex due to amendments made over time in response to evolving international obligations and domestic policy needs. The structure of the OPSGGM Act is difficult to understand for users, increasing the risk of inadvertent non-compliance and hindering efficient administration. A number of areas for reform have been identified to improve the operation of the Act.

Minor Amendments – Increase low volume licence exemption threshold for HFC equipment

Importers of equipment charged with HFCs that fall under a low volume threshold are exempt from the requirement to hold an import licence. The appropriateness and level of the threshold has been reviewed.

Measure: Increase the exemption threshold for low volume importers of HFC equipment to ensure that only statistically significant gas imports are captured under the scheme. It is proposed to increase the threshold stipulated in the OPSGGM Regulations from 10 kilograms to 25 kilograms annually.

Policy Intent: Changing the qualifying criteria for this exemption would focus licensing requirements on larger importers, and remove the administrative burden on 400 importers of low levels of gas that do not significantly impact on emissions and Australia's emissions inventory reporting.

Minor Amendments – Maintain the low volume licence exemption threshold for HCFC equipment

Importers of equipment charged with HCFCs that fall under a low threshold level are exempt from the requirement to hold an import licence. The appropriateness and level of the threshold has been reviewed.

Measure: Leave the low volume equipment threshold for HCFCs at a maximum of 10kg of gas (in total) in up to five pieces of equipment, only once every two years.

Policy Intent: An appropriate threshold should not encourage commercial import activity which would be counter to efforts supporting the phase out of bulk HCFCs, noting that most commercial import of HCFC equipment has already ceased.

Minor Amendments – Introduce enabling provisions for importing HFCs and HCFCs for uses considered to be essential

Currently, a limited range of banned gases can be imported into Australia for "essential uses" as identified by the Montreal Protocol. This applies to gases already banned in Australia, such as chlorofuorocarbons and carbon tetrachloride. This does not apply to:

- HCFCs which are being phased out entirely (by 2030), or
- HFCs which are likely to be phased down starting in the near future.

For regular circumstances, importers of bulk HFCs and HCFCs are required to hold an import licence, and in the case of HCFCs hold import quota too. If an HFC phase down is initiated, importers of HFCs will also require quota allocation. There are no provisions for importing HFCs and HCFCs for uses considered to be essential outside of those regular channels during and after the phase down/out of those gasses.

Measure: To provide a limited exemption from licensing and quota provisions for imports of HFCs and HCFCs for uses considered to be essential. This would apply during the respective phase-downs (for HFCs) and phase-outs (for HCFCs) of the gases, as well as the eventual ban on HCFCs.

Montreal Protocol parties are currently considering allowing essential uses of HCFCs and decisions in relation to HFC controls have not been made. Therefore, it is proposed to introduce enabling provisions only at this stage pending Parties to the Montreal Protocol making a decision on this type of exemption.

Policy Intent: Some niche importers require small quantities of scheduled substances for uses considered to be essential and laboratory and/or analytical use. The requirement for high purity may mean that bulk gas imports (which are generally less pure) may not be suitable for purpose. There may also be defence or public safety requirements where non-flammable substances are required. The provision would allow for uses as yet unknown to be included in the scheme in a timely manner.

Minor Amendments – Allow renewal of import, export and manufacture licences

Under the current arrangements, licences expire at the end of two years and a licence holder must complete a full new licence application.

Measure: It is proposed to simplify licensing to allow licences to be renewed rather than expiring after two years. The licence will be rolled over into a new licence period and the licence number will remain the same. The proposal is that licence holders must submit a renewal application and pay the renewal fee before the 31st day after licence expires. If the licence is not renewed within 30 days after expiry, a new licence application is required.

Policy Intent: Requiring a full new licence application imposes unnecessary administrative burden as it requires a further full fit and proper person assessment, the provision again of certified identification and other duplicative processes. Also, there is no continuity of licence number as the system generates a new licence number for each application – this is administratively inefficient and complicates compliance and enforcement measures.

Minor Amendments – Reduce reporting frequency

Manufacturers, importers and exporters of ODS and SGGs and equipment are required to provide a quarterly report on the quantity of scheduled substance manufactured, imported or exported. The data collected in the reports must be consistent with Australia's international treaty obligations.

Measure: Change reporting obligations from quarterly to six monthly. Entities could still report quarterly if this suited their business needs. Remove the requirement to provide a report when there has been no import or export (nil reporting).

Policy Intent: Changing reporting obligations from quarterly to six monthly would reduce business reporting (and subsequent levy payment frequency) requirements by 50 per cent. This and removing the requirement for nil reporting would provide a benefit to licence holders as it is likely to reduce the time required to comply with the legislation. Some businesses prefer to report quarterly as it aligns with other business activity reporting. Those businesses would be able to continue to report on a quarterly basis.

Minor Amendments – Introduce levy thresholds

The OPSGGM Act currently imposes a levy on imports and manufacturing based on quarterly reporting of activity. Many of these levy debts are for very small amounts.

Measure: Introduce a threshold for small value invoices, of $330 or less, under the OPSGGM Act. Amounts under $330 in a reporting period would no longer require recording, invoicing, or banking.

Policy Intent: Small value levy transactions can impose a significant cost on import and manufacture licence holders. A small value threshold would eliminate non-cost effective transactions between business and the Australian Government and provide efficiencies for both licensees and the Department. There would also be the capacity to vary the threshold amount through the regulations to maintain the waiver amount at a reasonable level.

Minor Amendments – Remove penalty interest provisions on outstanding levy obligations

The OPSGGM Act currently imposes penalty interest on outstanding levy obligations, charged at 30 per cent per annum and calculated daily.

Measure: Remove penalty interest provisions on outstanding levy obligations. More effective methods may be applied, such as suspension of licence pending payment of outstanding levies (once due process has been observed), or utilising a debt collection.

Policy Intent: Penalty interest was intended to be a deterrent, encouraging licence holders to pay their levies on time and avoid the penalty. However, the majority of licences having penalty interest applied are repeat offenders, suggesting it is not sufficient deterrent.

In the post equivalent carbon tax context, penalty interest amounts have been of small value, with an excess of non-cost effective transactions per year.

Minor Amendments – Specific Controls - Allow the use of methyl bromide for laboratory or analytical purposes

There is currently no allowable use of methyl bromide for laboratory or analytical purposes under the OPSGGM Act or Regulations.

Measure: Amend the OPSGGM Regulations to provide for the import of methyl bromide for laboratory or analytical purposes.

Policy Intent: The Department has received a number of enquiries related to the use of methyl bromide for laboratory or analytical purposes including skin exposure research into products containing methyl bromide. Decisions under the Montreal Protocol provide for

specific exempt uses of methyl bromide such as laboratory use. It is therefore appropriate to reflect this exemption type in the OPSGGM Regulations.

Minor Amendments – Specific Controls - Update methyl bromide licence conditions

Licences under the OPSGGM Act, including methyl bromide licences are issued subject to certain conditions. The appropriateness of these conditions has been reviewed.

Measure: Remove licence condition requirements for summary records of use and remove requirements for stockpile reports. Remove licence conditions that limit the amount of methyl bromide that may be imported for Quarantine and Pre-Shipment (QPS) applications.

Policy Intent: Amend or remove outdated licence conditions that place unnecessary regulatory burden on licensees, such as different reporting requirements for different activities related to methyl bromide. Licence conditions in relation to stockpile reports were implemented at an earlier stage of the methyl bromide phase out and are redundant. Summary records of use are duplicative and not required. The licence condition that impose a limit on the amount of methyl bromide that can be imported for QPS fumigations is arbitrary as there are no Montreal Protocol limits on methyl bromide use for QPS purposes. The import limit is an unnecessary administrative burden.

Minor Amendments – Specific Controls – HCFC quota allocation

Under the current quota system, the quota is allocated in set two-year periods, with imports undertaken in the first year used to calculate the next two-year quota allocation.

Measure: Provide for the Minister to retrospectively vary the size of quotas where an error has been detected.

Policy Intent: The Minister has no explicit power to retrospectively vary the size of quotas allocated to individual licensees in order to correct for a reporting error in a base year, whether the error is from the importer's or the administrative side. Any error made in the base year discovered after quota allocation cannot be remedied and has an impact on all quota holders (as the percentage of quota has been distributed incorrectly). The objective is to establish a mechanism that allows a fair, efficient and effective allocation of HCFC quota into the tail end of the phase-down, while still allowing for possible redistribution of HCFC quota if satisfied that the circumstances on which its allocation was based have changed or were incorrect.

Minor Amendments – Specific Controls – HCFC quota calculation

Under the current quota system, HCFCs subsequently exported after import into Australia are counted as part of an entity's quota.

Measure: Provide for HCFCs subsequently exported after import not to be counted as part of an entity's quota.

Policy Intent: To align the treatment of exported HCFCs with obligations under the Montreal Protocol, which does not treat such exports as a part of Australia's consumption - Consumption is defined under the Montreal Protocol as production plus imports minus exports. Entities import gases in containers of standard sizes which often does not align with

their allowed quota. This measure will allow entities to export the excess amounts of HCFCs that were imported due to these gas container constraints.

Minor Amendments – Specific Controls – Regular domestic review of uses considered to be essential

The OPSGGM Act and Regulations include a number or references to 'essential uses' or uses that are essential, which impacts upon licensing and exemptions in relation to import controls and domestic end use (e.g fire protection technicians) controls.

Measure: Provide for an appropriate and robust mechanism in place to interpret what constitutes an essential use in line with Montreal Protocol guiding principles.

Policy Intent: The Montreal Protocol has guiding principles regarding essential uses (Decision IV/25). While the Parties to the Montreal Protocol meet to decide some specific uses, it would be useful to regularly review essential uses in relation to particular products or applications in the Australian market.

The intention is to ensure that there is an appropriate and robust mechanism in place for interpreting what an essential use is, whether particular products or applications can be considered to fall under this umbrella, and to be consistent with Montreal Protocol. Review would involve seeking input from technical and industry experts. The review mechanism would be implemented by administrative policy changes.

Minor Amendments – Specific Controls – Streamline administration of Section 40 exemptions

There is no mechanism to surrender an exemption currently granted under section 40 of the OPSGGM Act. Also there is currently a requirement to gazette and lay before Parliament section 40 exemptions when the exemption is granted or whenever a section 40 is varied.

Measure: Allow exemptions issued under Section 40 (or their equivalent) to be surrendered, as well as removing gazettal and tabling requirements associated with those exemptions

Policy Intent: The requirement to gazette and lay before Parliament is time consuming and outdated. Instead, the information would be published on the Department's website. Removing the requirement would provide greater administrative efficiency and consistency with the treatment of general licence requirements under the legislation.

As there is no mechanism to surrender an exemption currently issued under Section 40, the only option for effectively 'ending' the licence is to vary its end date. This also necessitates the process of gazettal and laying before Parliament. The Department has received feedback that it would be useful for businesses to have a simple and efficient exemption surrender option in response to changing business circumstances.

Minor Amendments – Specific Controls – Feedstock exemptions

Feedstocks are scheduled substances exclusively as an intermediate substance to manufacture other chemicals. Feedstock use is not emissive as the chemical is wholly converted to another substance. Feedstock uses are not subject to all of the controls in the

Ozone Act, although reporting is still required to support obligations under the Montreal Protocol.

Measure: Clarify existing provisions that feedstocks are exempt from licensing, levy and quota obligations under the Act.

Policy Intent: Importers generally use larger containers called 'ISO tanks' (15 000 to 40 000 litres) for the transport and storage of scheduled substances. Levy requirements are not intended to apply to any portion of the gas in an ISO tank that is used for feedstocks. However, due to the narrow reading of the OPSGGM Act importers of larger containers where only a portion of the gas is intended for feedstock use are in fact subject to the import levy for the feedstock portion. The narrow reading of the OPSGGM Act also means that importers of larger containers where only a portion of the gas is intended for feedstock use are subject to the HCFC quota requirement, which is not the policy intention or Montreal Protocol requirement.

Minor Amendments – Specific Controls – Internal decision review mechanism

Currently, decisions relating to the import, export and manufacture licensing system can only be appealed directly to the Administrative Appeals Tribunal (AAT); there is no internal review mechanism.

Measure: Provide for an internal decision review mechanism in addition to Administrative Appeals Tribunal processes. This would allow an officer independent of the original decision to review the original decision. The option to seek review by the AAT would remain available, but only after an internal review procedure has been completed.

Policy Intent: The option for an internal review is consistent with other legislation and the main OPSGGM Regulations that allow decisions made in relation to the end-use licensing schemes to be reconsidered by the relevant authority. Internal review of these decisions prior to their review by the AAT is expected to be more efficient.

Appealable decisions include; decisions refusing to grant licences or exemptions, decisions in relation to HCFC quota, decisions to revoke, vary or impose licence conditions, decisions to terminate or cancel a licence or exemption.

Minor Amendments – Specific Controls – Australian Government inter-agency data sharing

Information sharing provisions in the OPSGGM legislation are minimal.

Measure: Amendments are proposed to allow for information sharing to facilitate the Department and other Commonwealth and state and territory agencies to administer their legislation, for example, consumer protection law or tax law. Information sharing could also reduce compliance costs by enabling a single report to satisfy reporting requirements under more than one piece of legislation.

Policy Intent: A broad provision will enable the Department to disclose information to other agencies if it falls within one or more categories of 'authorised disclosure'. Similar provisions already exist in other Commonwealth legislation and could be adopted for OPSGGM Act. Disclosures are proposed for the purposes of;

1. performing a duty or function, or exercising a power, under or in relation to the OPSGGM Act;
2. enabling another person to perform duties or functions, or exercise powers, under or in relation to the OPSGGM Act;
3. assisting in the administration or enforcement of another law of the Commonwealth, a state or a territory;
4. allowing information sharing on the manufacture, import, supply or export of products as required by the *Greenhouse and Energy Minimum Standards Act 2012* (GEMS Act). This has the potential to provide benefits to industry members by enabling entities to report once to meet two legislative requirements.

Minor Amendments – Specific Controls –Definitions

The OPSGGM Act defines terms used in the Act to facilitate efficient operation of the licence scheme. However, some terms are either not defined within the OPSGGM Act or require clarification. For example, definitions are called up referencing another Act or are effectively common law definitions, which may change with judicial interpretation over time.

Measure: Provide clear definitions in the Act for:
- date of import
- date of export
- what is bulk gas, and what is equipment/products that contain/use gas
- what is refrigeration and air conditioning equipment
- what is feedstock

Provide clear definitions in the Regulations for:
- what is an ODS or SGG extinguishing agent
- what is a bulk container
- what do reclaim, recover and recycle mean
- what are allowed uses
- special circumstances exemptions
- include heat pumps in the definition of refrigeration and air conditioning equipment
- purpose of Restricted Refrigerant Trading Authorisation

Policy Intent: The absence of clear definitions has led to importers not seeking an appropriate licence or exemption at the correct time leading to inadvertent non-compliance, importing without a licence which is a contravention of the OPSGGM Act, or attempting to use a different entities' licence to import the goods.

The intent of the amendments is to clarify when a licence is required, clarify who needs to hold a licence and reduce the risk of illegal imports and non-compliance with the OPSGGM Act. The licensing scheme needs to be flexible enough to accommodate these uncertainties without unduly affecting importers or the integrity of the licensing scheme itself. Delays at the border are costly for the importer and exporter as goods have to be warehoused before being entered for home consumption or released for export. The licensing scheme should aim to minimise such delays.

Minor Amendments – Specific Controls -Temporary imports and exports

The definition of import does not consider temporary imports, for example, airline operations, ships that sail into Australia's territorial waters for a limited period of time, the movement of military equipment and the temporary import of cars. This means that an import and, for bulk gases, an export licence is required.

Measure: Allow goods to be imported or exported under appropriate circumstances without the requirement for licensing. Temporary imports to be included in regulation would include: goods in transit - goods not intended to remain in Australia and which do not change ownership during the voyage—for example, refrigerated shipping containers, known as reefers, unloaded from one ship and transferred to another, or goods unloaded to bonded storehouse and then shipped out. Also, products that are imported under Carnet or other international agreements relating to temporary imports; products that are exported and re-imported (or vice versa) for repairs or exchange; products that are regularly imported and exported from Australia, without changing ownership, for example, mining /earth moving equipment, and vessels engaged in a short period of coastal trade.

Policy Intent: Requiring licensing for goods only temporarily imported or exported is a costly and time-consuming requirement for importers and exporters while having little environmental value. This policy does not align with other Commonwealth legislation and policies, such as the *Coastal Trading (Revitalising Australian Shipping) Act 2012*. Making allowances for temporary imports would also clarify the treatment of foreign flagged ships and is consistent with the *United Nations Convention on the Law of the Sea* to which Australia is a party.

Minor Amendments – Specific Controls – Date of import and requirement to hold a licence

A licence under the OPSGGM Act is generally required to import scheduled substances or products or equipment containing those substances. Importing without holding a licence in these circumstances is a breach of the OPSGGM Act. Some importers, in particular first time importers, are unaware of the need for a licence and fail to apply for a licence prior to import.

Measure: Provide for import licence backdating in the OPSGGM Act to maximise import licence compliance by importers, such as by clarifying that a licence may take effect from a date earlier than the decision to grant the licence.

Policy Intent: Some importers are unaware of the need for an import licence. In other cases, a licence application may be received too late to be processed by the Department prior to the date the goods land in Australia. Both scenarios result in importing without a granted licence, which is a breach of the OPSGGM Act. This is undesirable and it is preferred that there is a mechanism for importers to become compliant and join the licensing scheme in a timely manner.

The intent of backdating is to balance the integrity of the licence scheme with its practical operation and avoid using enforcement powers as a first option. In cases where the importer is unwilling to apply for the appropriate licence, the compliance and enforcement powers would continue to apply.

Minor Amendments – Specific Controls – Bans on disposable cylinders

Non-refillable cylinders are specifically manufactured, single use cylinders that are filled with ODS or SGGs and used for servicing or commissioning equipment. The import of HFC in non-refillable cylinders is prohibited under *Customs (Prohibited Imports) Regulation 1956*.

Measure: Provide for a ban on the import of non-refillable cylinders in the OPSGGM Act in line with the Customs ban.

Policy Intent: Disposable, non-refillable cylinders are environmentally undesirable due to emissions. After use, the cylinders should be sent for disposal and deliberately punctured, in accordance with pressure vessel regulations. However, puncturing the cylinder allows the residual amount of ODS or SGGs to be emitted to the atmosphere (around 5 per cent of gas remains in the cylinder once it reaches equal pressure).

In addition to the *Customs (Prohibited Imports) Regulations 1956* ban, which supports the intent of the OPSSGM Programme, it is a condition of controlled substance licences granted under the Ozone Act that ODS and SGGs not be imported in disposable cylinders. Compliance and enforcement outcomes based on licence conditions and regulations under other legislation may be less reliable than if a ban on disposable cylinders was established under the OPSGGM Act.

Minor Amendments – Specific Controls – Banning conversion to or retrofitting refrigeration and air conditioning equipment with a higher GWP substance

During maintenance or repair of refrigeration and air conditioning equipment there may be a temptation to use high GWP gases that are well established in the market instead of the low GWP gas used in the original equipment manufacture.

Measure: Prohibit retrofit of a piece of equipment containing a non-regulated substance to a regulated substance, and prohibit conversion of equipment from a lower GWP substance to a higher GWP substance.

Policy Intent: Air conditioning and refrigeration equipment is designed for use with specific refrigerants. Using different refrigerants may mean that the equipment operates inefficiently and uses more power, thus leading to greater indirect emissions. This measure would also work in support of specific equipment gas bans, such as being considered for the mobile air conditioning sector (e.g cars and trucks) and small split system home air conditioners.

Minor Amendments – Restructure of the Act

The OPSGGM Act has been amended in an incremental nature over time in response to Australia's evolving international obligations. This has resulted in an Act where imports, exports and manufacture of gases and equipment containing those gases are controlled through a complex mixture of licensing, licensing exemptions, bans, and exemptions to those bans.

Measure: Simplify the import, export and manufacture licence scheme into two streams: goods that require a licence and goods that do not. In particular; changing the current section 40 exemption to an equipment licence. The current criteria ensuring only essential equipment is imported under the new equipment licence would be retained. This ensures that equipment that is currently banned continues to be banned.

Policy Intent: The current legislative structure is complicated and difficult to navigate and understand for users and does not always support efficient administration. Its complexity also increases the risk of inadvertent non-compliance. The new structure is intended to have greater flexibility and will facilitate adaptation to further changes in Australia's international obligations as they occur.

Minor Amendments – Streamlining of exemption provisions

There are three different provisions exempting SGGs from licensing requirements under the OPSGGM Act: substances destroyed in a manufacturing process; substances manufactured as a by-product of aluminium manufacture; and substances used in the production or casting of magnesium. Each of these exemptions has different application and approval processes.

Measure: Remove the requirement to seek Ministerial approval via a notice or permit. For SGGs used in the production or casting of magnesium, provide for a general exemption in line with that provided for SGGs manufactured as a by-product of aluminium production. For SGGs which will be destroyed in a manufacturing process, these importers would import these substances under a feedstock licensing exemption (see proposed clarification of the definition of feedstock.)

Policy Intent: Streamline and align the administration of these approvals and minimise associated regulatory burden

Minor Amendments – Approval of destruction facilities

Destruction of waste or unwanted ODS and SGGs avoids their emission to the atmosphere. The Montreal Protocol provides guidelines for the destruction of CFCs, halon, carbon tetrachloride, methyl chloroform and HCFCs, including approved destruction technologies. Consistent with these guidelines, the Ozone Regulations allow the Minister to approve the operation of facilities for the destruction of:

- refrigerants, which requires one application, and
- extinguishing agents, which requires a different application

Measure: Provide for one application and approval process for the destruction of scheduled substances.

Policy Intent: To avoid duplicative regulatory burdens on business where they are required to submit two applications if they destroy gas that has been used for different purposes. Whether the gas was previously used as a refrigerant or extinguishing use is irrelevant as it is the specific destruction technology that must be in accordance with Montreal Protocol guidelines and destruction efficiency.

Minor Amendments – Appropriate Delegations

The OPSGGM Act gives the Minister the power to delegate all or any of his or her powers and functions (with some exceptions) under this Act or the regulations to a Senior Executive Service (SES) employee or acting SES employee.

Measure: Amend delegations for the more machinery measures (for example, the delegation to grant an import licence) from Assistant Secretary level to Executive Level (EL) 2 and EL1 levels (Director and Assistant Director).

Policy Intent: Amending the delegations as outlined will increase the span of control within the programme and reduce administrative burden.

Area for reform: Licensing – End-Use

Refrigeration and air conditioning and fire protection end-use controls complement emission reduction measures under the import, export and manufacture controls. The end-use controls were introduced in 2004 after the need for a consistent national approach to regulate the sale, purchase, acquisition, storage, use, disposal and labelling of ODS and SGGs was identified. National end-use controls implemented under the OPSGGM Programme replaced the previous inconsistent controls operating in the states and territories.

The end-use licensing controls have worked well and have delivered the emission reduction benefits projected in the 2001 review of the OPSGGM Programme. The current review, however, has identified that end-use controls need to adapt in light of changing technology and to support a rapidly changing industry.

Minor amendments – Format of end-use licence cards

The refrigeration and air conditioning and fire protection end-use permits are issued with a physical card that includes information about each permit a person holds and a unique permit number. Licensees are encouraged to present this card to members of the public to provide assurance that they hold the appropriate licences. Authorisation holders are required to include their authorisation number on relevant business documentation.

However, there is a risk that these licence cards could be considered an official Proof of Identity Document because they contain the Commonwealth Coat of Arms.

In addition, businesses that have held an authorisation which has lapsed are issued with a new authorisation number. Businesses are required to amend relevant business documentation to include their new authorisation number.

Recommendation: To make minor changes to the format of the existing licence cards by removing the Commonwealth Coat of Arms and maintaining authorisation numbers. This will require administrative policy changes only.

Policy Intent: Ensure that refrigeration and air conditioning and fire protection permit holders' card is consistent with the National Identity Security Strategy and maintain authorisation numbers.

Minor amendments – New structure for Restricted Handling Licences

A unique Restricted Refrigerant Handling Licence type has been established for each restricted activity within the refrigeration and air conditioning industry. This has resulted in an overly complex system which has lead to the perception of an occupational licensing scheme, rather than focusing only on the objectives of the OPSGGM Act.

Recommendation: The current structure of restricted refrigeration and air conditioning licences will be amended to provide for a smaller number of licence types and to allow for individual restrictions and entitlements on licences to be articulated in conditions under Regulation 135.

Policy Intent: To simplify the current structure of the Restricted Refrigerant Handling Licences. This would remove the need for some technicians to hold multiple licences.

Minor amendments – Allow for renewal of end-use licences/authorisations/permits

Under the current arrangements, end-use licences/authorisations/permits have a maximum duration of two years. Licence holders must re-apply every two years (depending on the licence type) at the end of the licence period.

Recommendation: To allow for the renewal of end-use licences/authorisations/permits.

Policy Intent: To formalise administrative processes in the OPSGGM Regulations that have already achieved desired efficiencies through administration of the current licence application process.

Minor amendments – Lengthen the duration of end-use licences/authorisations/permits to three years

Under the current arrangements, end-use licences/authorisations/permits have a duration of two years. Licence holders must re-apply every two years (depending on the licence type) at the end of the licence period.

Recommendation: To allow end-use licences to be issued for a period of up to three years.

Policy Intent: Extending the duration of end-use licences to a period of three years will achieve a reduction in the level of regulatory burden upon business through savings in cost and time associated with periodically renewing end-use licences. Regulation amendments would be required to change the period for licences and authorisations. There will be a phase in period where applicants and renewers have a choice of licence duration of 1, 2 or 3 years. This will help to even out the peaks and troughs of renewals for the administrators of the scheme.

Minor amendments – Clarify the Minister retains powers and functions despite appointing an industry board

The OPSGGM Regulations gives the Minister the power to appoint one or more industry boards and authorise the Boards to exercise any or all of the Ministers powers and functions under the Regulations.

Recommendation: Include regulation which clarifies the Minister retains powers and functions despite appointing an industry board.

Policy Intent: To clarify that while an industry board has been appointed by the Minister and authorised to exercise the Ministers powers and functions, the Minister still retains these powers and functions.

Minor amendments – Allow for the making of Legislative Instruments in addition to the Regulations

The OPSGGM Regulations contain several tables of licence information which need to be regularly updated. The power to make legislative instruments would allow for these requirements to be updated more readily than if they were set out in the Regulations.

Recommendation: The measure would seek to amend the OPSGGM Act to allow for the making of legislative instruments.

Policy Intent: To make an amendment to the OPSGGM Act to allow the making of Legislative Instruments in addition Regulations. This will provide for timely update of the Regulations where reference material has been updated such trade training course numbers and Australian Standards.

Minor amendments – Licence conditions relating to the use of transfer equipment

Licensees are currently unable to comply with the condition of licence specified in Regulation 326(1)(c) because there are not any organisations or people accredited by the National Association of Testing Authorities, Australia to approve, as fit for purpose, equipment used to transfer extinguishing agent from one vessel to another.

Recommendation: It is proposed that this licence condition be removed.

Policy Intent: The existing conditions of the Extinguishing Agent Trading Authorisation will continue to apply which require that the Authorisation holders maintain, so that it operates correctly, each item of the holder's equipment that is necessary to prevent avoidable emissions. This will, in effect, maintain the current level of regulation in relation to use of transfer equipment.

Minor amendments – Remove inconsistencies between exemptions for criminal offences and civil penalties in the Regulations

Under existing arrangements there are inconsistencies between exemptions for criminal offences and civil penalties in the OPSGGM Regulations.

Recommendation: Amend the Regulations to extend the current carve out from sub section 45B(1) of the Act for emitting a scheduled substance while testing it, so that there is also a carve out from s45B(2A) of the Act.

Policy Intent: To ensure consistency between exemptions for criminal offences and civil penalties where appropriate to ensure full coverage of exemptions.

Streamlining current permit system

Feedback on the options paper suggests that the option to reduce end-use licensing to a single “ODS/SGG permit” would simplify current controls too much and would risk undermining the strengths of end-use licensing in its targeted training specifications that result in a highly skilled workforce. This was especially the case for representatives of the refrigeration and air conditioning industry where there is a diversity of skills required which are already recognised through the current licensing structure.

Recommendation: An alternative proposal to the single permit, comprising four recommendations, is based on analysis of feedback through public consultation and further consultation with the industry boards currently administering end-use licensing. These recommendations are:

1) Undertake further analysis to identify and remove duplication of trading authorisation application requirements for businesses’ trading ODS / SGGs used for both fire protection and refrigeration and air conditioning.

2) Undertake further analysis of permit requirements and permit coverage for businesses to determine whether further streamlining is possible without reducing the effectiveness of the legislation.

3) Undertake a separate review of the training and qualification requirements for end-use licensing to ensure they are appropriate for emerging issues; and to identify any duplication or unnecessary requirements for meeting the objectives of the Ozone legislation.

4) Undertake a separate review of the Regulations to achieve greater consistency and reduced complexity for both fire protection and refrigeration and air conditioning.

Policy Intent: There may be scope to further streamline the requirements under the Regulations for holding trading authorisations – extinguishing agent trading authorities and refrigerant trading authorities – as well as the regulatory requirements for halon special permits within the existing policy intent of the Regulations.

Area for reform: Compliance and Enforcement

Compliance and enforcement is connected to all activities covered by the OPSGGM Programme. Requirements include licence obligations for importers, exporters and manufacturers, reporting, payment of levies and fees, record keeping, acquisition, storage and disposal of substances, and for licensed entities to manage and handle scheduled substances lawfully, and for ODS and SGGs not to be emitted unless permitted by regulation.

The Review has found that within the regulatory scope of the OPSGGM Programme, there is capacity to strengthen the powers of the Commonwealth under the OPSGGM Programme and to improve the effectiveness of implementing those powers. Industry strongly supports improved compliance and enforcement.

Compliance and Enforcement – Notice to produce

Measure: Introduce provision to allow for Notice to Produce

Policy Intent: These provisions would enable the Department to request a licence holder to provide documents to the Department by post or email rather than requiring an inspector to undertake a site visit. Making this an explicit power in the OPSGGM Act, and incorporating an offence provision for non-compliance, will assist with compliance and enforcement activities.

A notice to produce saves time and money for both the licence holder and the Department.

Compliance and Enforcement – Penalties for deliberate damage or destruction

Measure: To provide a penalty for the deliberate damage or destruction of goods to prevent seizure during a compliance and enforcement action.

Policy Intent: This provision should be complementary, and not detract from, discharge of substances provisions.

Similar provisions exist in other Commonwealth legislation (examples include the *Customs Act (1901)* s209A and the *Environment Protection and Biodiversity Conservation Act 1999* s456).

Compliance and Enforcement – Infringement notices in domestic end-use

Measure: Expand the infringement notice scheme to end-use in the OPSGGM Regulations.

Policy Intent: To expand the civil penalty regime introduced in 2010, mirroring the criminal offence provisions in the legislation. The infringement notice scheme allows on the spot fines to be issued for breaches. Its operation is currently limited to offences included in the OPSGGM Act (import and export provisions).

Compliance and Enforcement – Infringement notice amounts

Measure: Specify Infringement Notice penalty amounts.

Policy Intent: Amend the Regulations to specify the Infringement Notice penalty that applies to infringement notice offences.

The Regulations do not currently specify the number of penalty units. The Australian Government Solicitor has advised that the application of the current infringement notice scheme where the delegate can decide the level of penalty has a risk of being challenged.

Compliance and Enforcement – Penalise false representations for fire protection permits

Measure: Include provisions to penalise false representations for fire protection permits.

Policy Intent: To align fire protection provisions with those in place for refrigeration and air conditioning.

Compliance and Enforcement – Requesting reasonable assistance during a search

Measure: Include provisions to include requesting reasonable assistance from the owner/occupier during a search.

Policy Intent: This mechanism exists in other Commonwealth legislation and allows for inspectors to request assistance when searching for evidence and can assist during a search of premises under warrant.

Compliance and Enforcement – Gas discharge during sampling and testing

Measure: Amend the Regulations to ensure any substance discharged as part of a gas sampling and testing process is allowable.

Policy Intent: Presently, Regulation 440 (1) (g) allows for a person to discharge a scheduled substance if the discharge occurs while the substance is being tested to determine what the substance is, the composition of the substance or the physical or chemical properties of the substance. However, it does not allow for a discharge of a scheduled substance while the substance is being sampled. Much like testing, there is the chance of a substance being discharged during sampling.

Compliance and Enforcement – Counterfeit goods

Measure: Amend the OPSGGM Act to include a new class of offence that prohibits either knowingly or recklessly importing, selling or otherwise dealing with counterfeit goods. That is, goods that contain a false representation of the formulation or composition of the goods or any ingredient or component of them.

Policy intent: To mitigate the risks associated with non-compliance by way of deterring possible future worst-case scenario non-compliant behaviour.

Compliance and Enforcement – Prohibited goods once past the border

Measure: To introduce a provision to enable the Department to seek the forfeiture and/or apply a penalty for the distribution of goods containing a scheduled substance.

Policy intent: The legislation presently does not give the Commonwealth powers to deal with prohibited goods once they are already imported into the economy, limiting the capability to enforce the emissions management objective of the legislation.

Compliance and Enforcement – Suspending a licence

Measure: To allow the Minister or delegate to suspend a licence if satisfied the licensee has breached a licence condition or is no longer a fit and proper person.

Policy Intent: This offers the delegate the opportunity to suspend a licence to encourage compliance rather than the more drastic action of cancelling a licence or prosecuting the licence holder.

Compliance and Enforcement – Publish compliance actions undertaken

Measure: Publish compliance actions undertaken. This would entail regular publication of compliance actions taken within the general limitations on disclosing information obtained under the OPSGGM Programme. General information that could be published by the Department could include for example the number of: site visits undertaken; infringement notices issued; civil penalty orders; and convictions.

Policy Intent: To allow the Department to publicise actions undertaken. This could be combined with the communication/education strategy listed at CE1 as well as the use of enforceable undertakings. Would act as deterrent for non compliance. Similar to provisions that exist in other Commonwealth legislation (Product Stewardship Act).

Compliance and Enforcement – Information sharing

Measure: Streamlining of information sharing between the Department, state and territory and Government agencies (specific to compliance and enforcement and separate to international reporting requirement data sharing).

Policy Intent: Ensure adequate provisions exist to allow information sharing between Commonwealth and State and Territory agencies. To allow for information sharing to facilitate prosecution under Commonwealth legislation or to notify State and Territory Departments of unsafe practices. Similar provisions exist in other Commonwealth legislation (Product Stewardship Act) and could be adapted for OPSGGM Act.

Compliance and Enforcement – Penalties for breaches

Measure: Increase the penalties for breaches

Policy Intent: Where appropriate, increase penalties for breaches. To ensure penalties are appropriate for an act of avoiding compliance and the impact/damage to the environment. Proposed changes to OPSGGM Regulations will be developed in consultation with the 'Guide to framing commonwealth offences'.

Compliance and Enforcement – Allowable emissions

Measure: Include provisions to allow emissions in specific circumstances.

Policy Intent: Include a list of circumstances where discharge of substances is allowable.

The discharge of scheduled substance, unless in accordance with the OPSGGM Regulations, is illegal. The list of exemptions is managed to ensure that the appropriate handling of scheduled substances is supported and emissions are avoided. This list can help manage perverse outcomes or conflicting regulatory obligations, such as where avoiding emission would lead to safety risks or where emission is required by other standards.

Compliance and Enforcement – powers to allow the disposal of seized and forfeited goods

The unlicensed importation of certain ODS / SGG equipment is prohibited by the OPSGGM Act and may be seized at the Australian border.

Measure: Undertake further analysis of options to allow the disposal of seized and forfeited goods, including through sale and gifting.

Policy Intent: To ensure that management of seized and forfeited goods allows for adequate cost recovery within the Programme.

Compliance and Enforcement – Enforceable undertakings

Measure: Allow enforceable undertakings.

Policy Intent: This would help align the enforcement powers under the Act with the Regulatory Powers Act. Further this provision would be complemented by CE1 communications strategy and CE3 publication of actions undertaken. Similar provision exists in other Commonwealth Legislation (*Regulatory Powers (Standard Provisions) Act 2014* and *Water Efficiency Labelling and Standards Act 2005*)

Area for reform: Cost Recovery

The OPSGGM Programme operates largely on a cost recovery basis with a range of fee and levy revenue streams through the *Ozone Protection and SGG Account*. This Special Account was established under the OPSGGM Act to facilitate the administration of the OPSGGM Programme, and needs to operate on a financially sustainable basis. All measures in this document have been considered in the broader context of cost recovery as outlined here.

Cost Recovery- Licence fees and levies

The Review found that the OPSGGM Programme is currently not achieving full cost recovery. A review of the existing cost recovery mechanisms in the OPSGG Programme will be conducted following the implementation of the measures proposed in this paper that will have a direct impact on cost recovery, such as increasing the import thresholds and levy thresholds. Licence fees established under the OPSGGM Act and levy amounts set under the OPSGGM Import and Manufacture Levy Acts were last modified in 2003.

Remove the levy limit currently stipulated in the *Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Act 1995* and *Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Act 1995* and provide for the levy rate to be set by Regulation.

Policy Intent: This will allow the rate of levy to be adjusted upwards or downwards to match cost recovery requirements. Any adjustment would follow Cost Recovery Impact Statement and Best Practice Regulation guidance.

Remove text of the Vienna Convention and the Montreal Protocol from the Act (Oth2)

Recommendation: Remove the text of the Vienna Convention and the Montreal Protocol from the OPSGGM Act, currently Schedule 2 and 3, and make appropriate references instead.

Policy intent: This is in line with current legislative practice.

Update the application of equipment bans to include individuals

Currently, certain bans and exemptions to those bans have limited application and do not apply to individual persons. This is not in line with Decisions of the Montreal Protocol which call for regulation in regards to equipment containing controlled substances.

Recommendation: Remove or amend relevant section(s) of the OPSGGM Act so that individual persons are also captured by the same bans and exemptions to those bans.

Policy intent: Update the OPSGGM Act to align with our international obligations and ensure the Department receives relevant data through licensing and subsequent reporting.

Update references contained in the Regulations

The regulations refer to the Navigation Act and National Quality Council. Changes to these references are required to ensure the current legislation and/or Commonwealth body.

Recommendation: To update out of date references to the *Navigation Act 1912* and National Quality Council.

Policy Intent: All out of date references in the OPSGGM Regulations will be updated.

Regulation making power for product stewardship schemes

Section 45A of the Act provides:

‘Regulation of disposal, use etc. of scheduled substances

(1) The regulations may make provision for the following:

(a) regulating the sale or purchase, or any other acquisition or disposal, of scheduled substances;’

The regulations do not explicitly provide for regulation of product stewardship schemes.

Recommendation: To amend Section 45A of the Act to clarify the regulation making power is intended to apply to product stewardship schemes.

Policy Intent: Clarify that the regulation making power applies to product stewardship of ozone depleting substances and synthetic greenhouse gases controlled under the Act. It is not intended to make a regulation at this time as Australia's only product stewardship scheme for waste refrigerants voluntarily meets suitable recovery and reporting arrangements.