Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Amendment Bill 2011

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Law and Bills Digest Section

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Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Amendment Bill 2011

Date introduced: 13 September 2011
House: House of Representatives
Portfolio: Climate Change and Energy Efficiency

Commencement: Sections 1 to 3 on Royal Assent. Schedule 1 commences on 1 July 2012, however if section 3 of the Clean Energy Act 2011 does not commence before 1 July 2012, the provisions do not commence at all.

Links: The links to the Bill, its Explanatory Memorandum and second reading speech can be found on the Bill's home page, or through http://www.aph.gov.au/bills/. When Bills have been passed and have received Royal Assent, they become Acts, which can be found at the ComLaw website at http://www.comlaw.gov.au/.

Purpose

The Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Amendment Bill 2011 amends the Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Act 1995 to incorporate an equivalent carbon charge to the import of synthetic greenhouse gases in addition to existing levies that currently apply to SGGs (synthetic greenhouse gases) and equipment containing SGGs and ODS (ozone depleting substances).

Background

Ozone depletion is a significant global environmental issue. The Ozone Protection and Synthetic Greenhouse Gas Management Act 1989 (the Management Act) gives effect to Australia’s obligations under the Montreal Protocol on Substances That Deplete the Ozone Layer (a protocol to the Vienna Convention for the Protection of the Ozone Layer)\(^1\), to phase out the use of ozone depleting substances. The Act provides for the control of the use of synthetic greenhouse gas replacements and, among other things, provides for the responsible management of ODS and SGGs to minimize their impact on the atmosphere. It provides authority to regulate the sale, purchase, use, storage and disposal of ODS and SGGs and the power to create a nationally consistent system to control the

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end uses of these harmful gases. Together the Acts control the manufacture, import, export and distribution of all ODS and SGGs.

The two levy Acts impose levies on import and manufacture of these substances:

Levies on import and manufacturing activity under a controlled substance licence are payable each quarter under the Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Act 1995 and the Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Act 1995 according to the quantity and ozone depleting potential of HCFCs imported or manufactured; or the quantity of methyl bromide, HFC or PFC imported or manufactured. Australia has not manufactured ozone depleting substances since 1996, and has never manufactured HFCs or PFCs.

**Basis of policy commitment**

The Government’s Climate Change Plan sets out the policy in relation to synthetic greenhouse gases. The policy is as follows:

High Global warming potential of synthetic greenhouse gases (with the exception of perfluorocarbons from aluminium smelting) will not be included in the carbon pricing mechanism but will be subject to an equivalent carbon price using existing import and manufacture levies under the Ozone Protection and Synthetic Greenhouse Gas Management legislation. Levies will be adjusted annually to reflect the prevailing carbon price. From 1 July 2013, incentives will be provided for destruction of waste synthetic greenhouse gases, including ozone depleting substances, recovered at end of life.

**Committee consideration**

**Senate Standing Committee for the Scrutiny of Bills**

The Senate Committee drew attention to the setting of a rate of a levy by regulation noting:

This creates a risk that the levy may, in fact, become a tax. It is for the Parliament, rather than the makers of subordinate legislation, to set a rate of tax. However, the Committee accepts

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that there are circumstances where the rate of a levy may be more expeditiously determined through amending regulations rather than enabling legislation.\(^6\)

**Joint Select Committee on Australia’s Clean Energy Future Legislation**

The Joint Committee had the following to say on the synthetic greenhouse gas Bills:

The Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Amendment Bill 2011 and the Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Amendment Bill 2011 ensure that the manufacture and importation of Kyoto protocol synthetic greenhouse gases (hydrofluorocarbons, perfluorocarbons and sulphur hexafluoride) will be subject to the carbon price by way of the existing levy structure under *the Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Act 1995*, *the Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Act 1995* (together, the Levy Acts) and *the Ozone Protection and Synthetic Greenhouse Gas Management Act 1989*. The equivalent carbon price will be calculated based on the CO\(_2\)-e of the gas, multiplied by the applicable charge. The carbon price will be additional to the existing levy imposed by each Levy Act. The Levy bills will allow the Minister to determine whether or not a licensee is exempt from paying the levy in specific circumstances. These circumstances include the manufacture of medical equipment or such circumstances where it is simply impracticable to impose a levy.\(^7\)

**Financial implications**

The financial statement is included in the Explanatory Memorandum to the Clean Energy Bill 2011.\(^8\)

**Key provisions**

**Item 1** amends the long title to the Act to include in addition to the existing title ODS equipment (ozone depleting substance) and SGG equipment (synthetic greenhouse gas).

**Item 2** inserts proposed section 2A and 2B. Proposed section 2A contains a number of defined terms. Proposed section 2B deals with the carbon dioxide equivalence of an amount of SGG. Proposed subsection 2B(1) provides that the carbon dioxide equivalence of an SGG which is a greenhouse gas is the amount of the SGG multiplied by a value specified in the regulations for that particular SGG. Proposed subsection 2B(2) provides that for an SGG that is not a greenhouse gas, the carbon dioxide equivalence is zero. The Ozone Management Act currently manages SGGs that

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\(^8\) Explanatory Memorandum, Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Amendment Bill 2011, p. 5.

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currently are not listed under the Kyoto Protocol and therefore they are not subject to the carbon price mechanism. Hence the carbon dioxide equivalence is zero.

The Explanatory Memorandum to this Bill explains how this carbon equivalence ratio operates:

The carbon dioxide equivalency is the global warming potency of a particular substance in comparison to carbon dioxide. For example the carbon equivalence of HFC-134a is 1300 which means its effect on the climate is 1300 times greater than carbon dioxide. The carbon dioxide equivalence of an amount of SGG is used in the calculation of the carbon component of the levy.10

Import Levy—SGGs

Item 3 inserts proposed section 3A which is the import levy for SGGs. Proposed 3A(1) provides that if a licensee under a controlled substances licence which allows the licensee to import SGGs imports an SGG while the licence is in force, a levy is imposed in respect of the imported SGG.

Exemptions to the levy

• the importation of an SGG in circumstances prescribed for the purposes of paragraph 13(1A)(b) of the Ozone Management Act 1989, that is circumstances prescribed in the regulations under the Management Act (proposed subsection 3A(2))
• where an SGG is imported for a purpose prescribed by the regulations (proposed subsection 3A(3))
• where an SGG is imported for the purpose of destruction and the conditions specified in the regulations are satisfied (proposed subsection 3A(4)) and
• where an SGG is imported that is contained in ODS or SGG equipment (proposed subsection 3A(5)).

Proposed subsection 3A(6) provides that if a licence is in force for part of a quarter then it is taken to have been in force for a quarter.

Proposed subsection 3A(7) provides the formula for determining the levy for the import of an SGG in a quarter.

| (Number of tonnes of the carbon dioxide equivalence of the SGG) | X | Applicable Charge | + | (Number of tonnes of the SGG) | X | Prescribed Rate |

10. Ibid., p. 7.

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Proposed subsection 3A(8) provides that the prescribed rate must not exceed $165 per tonne.

Proposed subsection 3A(9) provides that the Minister may determine that a licensee is exempt from the carbon charge component of the amount of the levy if the Minister is satisfied that the SGG is to be used:

- in medical equipment
- in the manufacture of medical equipment
- in a product or in equipment prescribed by the regulations in paragraph 8D(1)(c)
- in the manufacture of a product or equipment specified in a legislative instrument by the Minister in accordance with paragraph 8D(1)(d) or
- for a purpose prescribed by the regulations.

In making a determination, the Minister must have regard to the matters specified in the regulations (proposed subsection 3A(11)).

Proposed subsection 3A(10) clarifies that the carbon charge component amount of the levy is:

\[
(\text{Number of tonnes of the carbon dioxide equivalence of the SGG} \times \text{Applicable charge})
\]

Proposed subsection (7) defines Applicable charge.

Proposed subsection 3A(12) provides that the Minister must not make a recommendation to the Governor-General about regulations under subsection (3) unless the Minister is satisfied that:

- it is impracticable to impose a levy on the import of an SGG that is used for a purpose prescribed in the regulations, or
- a purpose to be prescribed by the regulations is a medical, veterinary, health or safety purpose.

Proposed subsection 3A(13) provides that the Minister must not recommend regulations to the Governor-General under subparagraph (9)(b)(v) (exempt from carbon charge component) unless the Minister is satisfied that:

- it is impracticable to require payment of the carbon charge component imposed on the import of an SGG for a purpose prescribed by those regulations, or
- it is a purpose that is a medical, veterinary, health or safety purpose under those regulations.

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11. The provisions in existing section 4(b) state that the rate of levy prescribed by the regulations cannot exceed $165 per tonne for SGGs – section 4(b), Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Act 1995. The import levy will now have two components: carbon dioxide equivalent charge + the prescribed rate.

12. Proposed paragraphs 8D(1)(c) or 8D(1)(d) are inserted into the Ozone Protection and Synthetic Greenhouse Gas Management Act 1989 by the Clean Energy (Consequential Amendments) Bill 2011.

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Import levy—SGG equipment

**Proposed section 4A** deals with the import levy for SGG equipment. **Proposed subsection 4A(1)** provides that a licensee importing ODS/SGG equipment is required to pay a levy in relation to that import. However, if the SGG equipment is prescribed by the regulations or specified in a legislative instrument by the Minister a levy does not apply under subsection (1) (**proposed 4A(2)**). A legislative instrument under paragraph (2)(b) ceases to be in force 12 months after it is registered under the *Legislative Instruments Act 2003* (**proposed subsection 4A(8)**).

**Proposed 4A(3)** provides that subsection (1) does not apply to the import of SGG equipment if it is covered by paragraph 13(6A)(b)**13** of the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989*.

**Proposed 4A(5)** contains the formula used to work out the amount of the levy. A levy does not apply to an SGG that is for a purpose prescribed by the regulations (**proposed 4A(7)**).

Import levy—ODS equipment

**Proposed section 4B** deals with an import levy on ODS equipment. **Proposed subsection 4B(1)** provides that a licensee importing ODS/SGG equipment, is subject to a levy imposed at the rate prescribed by the regulations. Subsection (1) does not apply if the import is covered by paragraph 13(6A)(b)**14** of the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* (**proposed 4B(2)**).

**Proposed subsection 4B(4)** provides that the rate of levy prescribed by the regulations must not exceed $3000 per ODP tonne.**15** Section 10 of the Management Act defines an ODP tonne and the Explanatory Memorandum for the current Bill gives an example of how the prescribed levy is worked for the purposes of proposed subsection 4B(4).

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13. Paragraph 13(6A)(b) refers to equipment covered by paragraph 68(1)(d) of the *Customs Act 1901*. Paragraph 68(1)(d) covers personal and household effects of a passenger or a member of a crew, of a ship or aircraft.

14. See footnote 9 for explanation.

15. The provisions in existing section 4(a) state that the rate of levy prescribed by the regulations cannot exceed $3000 per ODP tonne for HCFCs – section 4(a), *Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Act 1995*.

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