Australian Government

Department of the Environment and Heritage

Australian Greenhouse Office

Proposed regulations to manage Ozone Depleting Substances and Synthetic Greenhouse Gases used in the Fire Protection Industry

JANUARY 2004

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1. Introduction

On the 5th of June 2003 the Australian Government introduced a bill into the Parliament to amend the *Ozone Protection Act 1989* (OPA). The *Ozone Protection and Synthetic Greenhouse Gas Legislation Amendment Bill 2003*, which was passed by the Australian Parliament in December 2003, extends the scope of the previous legislation to:

- incorporate synthetic greenhouse gases (SGG) used as replacements for ozone depleting substances (ODS) into the import, export and manufacturing licence system, but without any quotas or phase-outs;
- develop and implement nationally consistent end-use controls[1] on purchase, sale, handling and disposal of ODS and SGG; and
- implement international commitments to ban the import and manufacture of a new ODS and ban the trade of some ODS with countries that are not parties to the Montreal Protocol or its instruments.

The legislation amends and renames the *Ozone Protection Act 1989* to the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989*. The regulations developed under the amended legislation – such as those proposed in this paper - will replace sections of State and Territory ozone protection legislation {see Appendix 1}.

The new legislation establishes a comprehensive and nationally consistent approach to the management of ODS and SGG, with an underlying aim to minimise preventable emissions of ODS and SGG. The legislation does not propose to ban or phase out SGG, but to introduce regulation to require mandatory application of standards and effective handling techniques and to limit direct emissions of SGG and ODS unless exemptions have been provided for, either within the regulations or through permits. The scope of the legislation does not include uses of SGG outside the traditional Montreal Protocol industry sectors – fire protection, refrigeration and air-conditioning, solvents, foam blowing, aerosols and fumigation.

The Australian Government will maintain direct responsibility for the operation of the manufacture, import and export licensing system for both ODS and SGG and will consider establishing or empowering an industry body to operate as an 'agent of the Australian Government'. This body would be strictly bound by a contractual agreement that sets out the roles and responsibilities for this body and the Government in relation to the regulation of ozone depleting and synthetic greenhouse gas vapourising liquid fire extinguishing agents in the fire protection industry.

An independent review procedure, based on an Advisory Council with input from all industry sectors, might also be established to provide advice to Government on the operation of end-use regulations and industry performance and to consider stakeholder comments. This paper describes proposals for these delivery structures, as well as proposals relating to the specific regulations on who can handle ODS and SGG fire protection agents.

[1] End use refers primarily to the technician who uses the substances in the marketplace for activities involved in the installation, maintenance and decommissioning of equipment.

2. Purpose

Following passage of the *Ozone Protection and Synthetic Greenhouse Gas Management Act 2003* in December 2003, the Government needs to develop regulations to establish a consistent national approach to managing the supply and end use of ODS and their SGG replacements.

The purpose of this paper is to highlight issues and make proposals for the regulations that will apply to the fire protection industry, as well as suggesting how these might be implemented. Taking into account the comments received on this discussion paper, the Australian Government will draft regulations and, if required, regulatory impact statements. The Australian Government will distribute these draft regulations for further comment prior to their entering into force.

Industry is encouraged to provide comments on this discussion paper and any other pertinent issues. All submissions should be received by 5 pm on Friday 20 February 2004. Instructions for lodgment of submission are set out in section 8 of this paper.

3. Background

The *Ozone Protection Act (*OPA*)* was introduced to give effect to Australia's obligations under the Vienna Convention for the Protection of the Ozone Layer and the Montreal Protocol on Substances that Deplete the Ozone Layer. Under the OPA, imports of Halon ceased in 1992.

In August 1989, the Australian Environment Council[2] issued a national "Strategy for Ozone Protection", which was intended to complement and enhance Australia's international actions for ozone protection. For the fire protection industry, the Strategy led to the accelerated phase-out of Halon, used primarily in fixed flooding systems (Halon 1301) and in portable fire extinguishers (Halon 1211). In accordance with the Strategy, State and Territory legislation required the decommissioning of halon fire protection systems for all but essential uses.

Under the Strategy, surplus Halon 1211 was collected and stored at a Government facility to await destruction. Halon 1301 was to be reclaimed for re-use to meet essential needs until alternatives were available for all applications. The continued use of halon in some applications has been subject to State/Territory Government approval, either through individual licences or through broad exemptions published under appropriate State/Territory law.

The Strategy for Ozone Protection was reviewed in 1994. This process reviewed the progress of the strategy and made some additional recommendations in relation to the phase out of ODS. These recommendations did not include any significant change to the phase out of halons and HCFCs used by the fire protection sector.

[2] The Australian Environment Council (AEC) was established in 1972 to provide a forum for consultation between the Australian, State and Territory Governments on appropriate environmental matters. The AEC consists of Commonwealth, State and Territory Ministers with a responsibility for environmental matters. (Strategy for Ozone Protection ISBN 0 642 14752 3 – page IV,1989)

A review of the OPA was completed in 2001 and identified a number of potential improvements to the way Australia was managing the phase-out of ODS. The review also identified an opportunity to limit the emissions of powerful global warming gases (HFCs and PFCs) being introduced as replacements for ODS. A copy of the report of the review, incorporating the results of the extensive consultation process undertaken, is published on the Department of the Environment and Heritage web site at: http://www.deh.gov.au/atmosphere/ozone/review/index.html

The three most significant recommendations were for the Australian Government to:

- extend its legislation to ensure national consistency in ozone protection regulation across all States and Territories, in relation to supply and end use control;
- legislate to extend the range of controls on ODS to their HFC and PFC replacements; and
- prohibit unauthorised emissions of controlled substances – both ODS and SGG.

4 Regulatory Models

There are a number of models that could be developed for the management of ODS and SGG. These models range from the development of specific regulations prescribing the uses, methods, and outcomes required, through the application of identified industry standards, to the provision of voluntary guidelines and self-regulation.

These approaches were discussed in some detail in the Regulatory Impact Statements prepared for the *Ozone Protection and Synthetic Greenhouse Gas Legislation Amendment Bill 2003*. Copies of these Regulatory Impact Statements are incorporated in the Explanatory Memorandum to the *Amendment Bill* and are available at:
http://www.deh.gov.au/atmosphere/ozone/legislation/commonwealthleg.html

4.1 Codified Regulation

A codified regulation model is based on detailed regulations for compliance under the *Act* administered directly by the Government, a Statutory Agency or an Industry Body acting as an agent for the Government. This system has clear advantages in clarity of purpose and, if codified correctly, the requirements can be stated in a concise and unambiguous manner. The regulations indicate what is required and how to achieve it, and provide guidance on desired outcomes to enable enforcement through documented procedures. If these are not followed, violations will constitute a clear offence.

The disadvantages inherent in this approach are that regulations may not add to the efficiency of the process, but rather they may add an unnecessary layer of bureaucracy. Such a system may also be prone to weakness in the longer term as maintenance of regulations, required to cater for changes in technology, is costly and time consuming. The development and maintenance of the regulations also relies on detailed and up to date knowledge of the industry and technology being regulated.

4.2 Self-Regulation

A self-regulation model relies on industry establishing and operating a set of codes of practice designed to achieve specific outcomes, which can be either mandated internally or imposed externally.

This approach has significant advantages over the codified regulation model in so far as the standards and codes of practice are developed by the industry and are derived from the rich knowledge and experience available within industry.

A significant disadvantage is that this model lacks an independent enforcement mechanism. Non-complying businesses may not accept the guidance of their industry and may instead choose to continue to operate outside the industry codes. Development and maintenance of standards relies on the cooperation of participating industries, and the willingness and ability of the industry to implement its codes.

The self-regulation model attracted significant criticism in the industry consultation round leading up to the drafting of the *Ozone Protection and Synthetic Greenhouse Gas Legislation Amendment Bill 2003*.

4.3 Co-regulation – The preferred option

A co-regulation model, which incorporates both industry involvement in maintaining a robust and flexible system and the requirements imposed by Government regulation, is presently the preferred model. It provides some of the benefits of both the codified regulation model and the self regulation model.

The codification of industry-developed codes of practice, and their implementation by an industry board acting as 'agents for the Australian Government', ensures that the codes are relevant and implemented by an organisation familiar with the industry, also while meeting specified government objectives. Government oversight and the backing of regulatory sanctions overcome many of the perceived weaknesses of simple self regulation. Regulating to give standards, good practice guidelines and codes of practice the force of law also provides an opportunity to adopt existing work practice standards within the regulatory system.

For example, existing codes of practice, such as the Fire Protection Association's Code of Best Practice for Reduction of Emissions of Vapourising Liquid Fire Extinguishing Agents, could be incorporated in the regulatory system. This model has already been endorsed by several State and Territory governments and has support within the industry.

5. Role and Structure of the Industry Board

5.1 Industry Board Responsibilities

During public consultation leading to the drafting of the legislative changes, industry and other stakeholders supported the establishment of an Industry Board to implement and manage the day-to-day operations of regulations for fire protection industry under the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989*. In

particular, the Industry Board could assist in regulating certain aspects of the fire protection industry to ensure a nationally consistent approach.

The Industry Board would need to represent the breadth of industry sub-sectors in the fire protection industry. It could undertake a number of functions as 'agents of the Australian Government'. It would need to be a not-for-profit organisation and would operate on a cost recovery basis once fully established. The Industry Board would be bound by both regulations, which will spell out the objectives of the Board, and by a contractual arrangement which will outline the day-to-day responsibilities and financial and reporting arrangements.

It is proposed that these functions include but not be limited to:

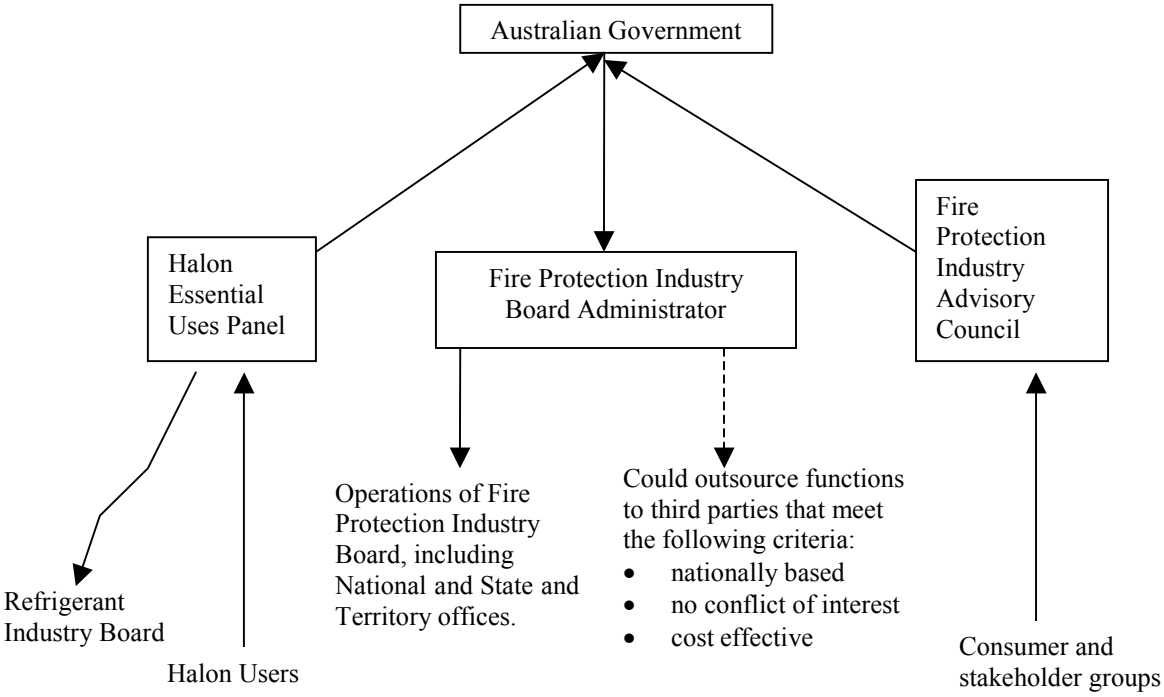
- developing, adapting and maintaining codes of practice to support the operation of the fire protection industry's use of ODS and SGG;
- ensuring the skills required by technicians are codified;
- establishing and operating a licensing system to ensure that technicians working in the fire protection, or related industries, have the technical skills and knowledge required to proficiently handle the ODS and SGG used in the fire protection industry;
- facilitating access to relevant education and training opportunities for technicians working in the fire protection industry;
- undertaking reviews and audits to ensure compliance with:
  - the licensing system
  - the requirement to employ suitably qualified technicians
  - the requirement to provide appropriate equipment and
  - that the equipment is certified and operating correctly
- establishing a registration system for companies selling, purchasing, commercially storing, reclaiming and disposing of ODS and SGG;
- maintaining a register of equipment used to transfer, recycle or reclaim ODS and SGG;
- developing, adapting and maintaining codes of practice to ensure that halon, HCFC and SGG stored on a commercial basis is managed appropriately and that measures are in place to monitor, detect and minimise emissions;
- implementing transitional arrangements to facilitate the transfer of licences and registration under State-based systems to the new national system, incorporating an appeal and consultation process;
- ensuring that halon is used only in "essential use applications" determined by the Australian Government on the advice of the Halon Essential Uses Panel or other body established under regulation to recommend on essential uses; and
- engaging in education and compliance activities on the codes of practice and regulatory requirements through:
  - dissemination of information to technicians and companies;
  - a program of compliance audits; and
  - identification and notification of offences.

The Industry Board will need to be able to demonstrate that it can carry out its functions in a way that is consistent with the Act, in the public interest and without any real or perceived conflict of interest.

5.2 Industry Board organisation

The Australian Fire Protection Industry Board will comprise an Administrator, contracted by the Government, an Advisory Council, consisting of members representing the industry and the community.

The Administrator would be responsible directly to the Australian Government, under contract for the services it delivers. The Advisory Council would provide the Government with an industry perspective on the operation and impact of the regulations and performance of the Administrator.



Expressions of interest were sought in 2003, from parties interested in undertaking the role of the Industry Board. In response, the Fire Protection Association of Australia expressed an interest in playing this role and has participated in the development of this paper. The Industry Board would be supported by funding provided by licence and registration fees on a cost-recovery basis.

Following receipt of comments on the discussion paper, the Australian Government will further consider the appointment of the Administrator and Advisory Council.

6. Role and structure of the Advisory Council

6.1 Fire Protection Industry Advisory Council Responsibilities

6.1.1 Advice to Government

A key role of the Fire Protection Industry Advisory Council will be to advise Government on a broad range of industry issues that may impact on the operation of the legislation. This advice will enable the Government to respond to emerging trends in the industry.

Advice is anticipated to cover issues such as:

- effectiveness of the licensing system;
- effectiveness of the registration system;
- trends in the trading of halon, HCFC and SGG; and
- suggestions for changing/updating the regulations.

6.1.2 Industry and Licensee Advocacy

The Councils will provide a review role to hear complaints and take suggestions from industry members or clients of the industry who consider that they may have been disadvantaged by the operation of the regulations.

Complaints or concerns could be addressed to the Australian Government by the Advisory Council. The Government could then appoint a member(s) of the Administrator to review the matter. They would then report back to the Government, making recommendations on the substantive issues raised. The recommendations of the Administrator would inform the Government's response to the complaint.

6.2 Appointment of the Fire Protection Industry Advisory Council

It is important that an Advisory Council represent all of the relevant industry sub-sectors and has appropriate technical expertise to enable it to provide useful and timely advice to the Australian Government, as well as to other interested stakeholders. The structure of the Council, its membership, and specific roles and responsibilities may be incorporated in the regulations. The nature of the charter and the operation of the Council, the selection of its members, their roles, and the number of members and their constituency, will be informed by responses to this paper.

6.2.1 Options for appointing the Advisory Council

A range of options for the selection of members to serve on the Fire Protection Industry Advisory Council are described below. While these descriptions are not a definitive list of options, they are intended to provide a starting point for considering the best way to structure such a body. Comments on the composition, selection and appointment process are welcome and would assist Government in deciding which option to implement.

> Direct appointment of "appropriately qualified persons"
> Under this option the Fire Protection Industry Advisory Council is appointed directly by the Australian Government following advertising for expressions of interest from persons and/or organisations wishing to participate on the Fire Protection Industry Advisory Council.
>
> Members of the Fire Protection Industry Advisory Council could be appointed, on a rolling basis, for a period of about 3 years. Their principal role would be to provide an independent overview of the activities of the Administrator, to provide advice to the Australian Government on the operation of the Administrator and the regulations more generally, and to represent and assist industry members in disputes with the Administrator. The Administrator would retain responsibility for delivering the requirements of the regulations as prescribed in a contract with the Australian Government.

Contracting members of the Fire Protection Industry Advisory Council
This option is similar to the previous option, but increases the management role of members of the Fire Protection Industry Advisory Council. Under this option, the same Council members could be appointed by the Australian Government to directly manage the activities of the Administrator. The Fire Protection Industry Advisory Council members in turn may appoint or employ officials to undertake the tasks under the general structure of the contracting organisation.

The disadvantage of this option is that the formation of a Council, comprised of members individually appointed by the Australian Government with contractual obligations to the Australian Government as a Council, could present difficulties in areas of performance management, legal responsibility and liability. Disputes within such a structure could involve the Australian Government in the day-to-day management of the regulations.

Appointment of "key stakeholder" representatives
Under this option, key stakeholders would be invited to nominate to serve on the Fire Protection Industry Advisory Council. When appointed, the stakeholder could be represented by an employee or agent.

This approach provides benefits in terms of flexibility for participating organisations and could assist in building commitment and support for the activities of the Fire Protection Industry Advisory Council.

An Advisory Council made up of stakeholder nominees may be open to the criticism that it is a captive of the dominant players in the industry. Ensuring that representation on the Council is broad enough to represent smaller players, employee/technician groups, key customer groups and environment representatives could dispel this perception.

There is potential for a conflict of interest to arise under all of the models described above, particularly in areas where the Advisory Council is assisting licensees in resolving conflicts with the Administrator, or in providing advice to Government in areas of direct concern to Council members. In order to minimise the potential for conflict, people appointed to the Council will be asked to disclose any areas of potential conflict prior to appointment and disqualify themselves from the meeting, or part of the meeting where the conflict may arise.

The options above are not intended to be exhaustive. They are designed to raise issues and stimulate discussion, which will in turn better inform decision making by Government.

6.2.2 Size of the Council

The size of the Council and quorum requirements should be set to ensure that Fire Protection Industry Advisory Council business could be effectively undertaken. Structuring the Council along subsets designated to undertake specific functions could be considered:

- training and prior recognition, including technical competencies

- business registration
- special permits (National Halon Essential Uses Panel)
- audits and compliance

Members of the Council with appropriate expertise could participate in one or more of the specific functions, or as a generalist. The Australian Government would participate as an observer. The Administrator would provide secretariat support and could participate as a full member.

6.2.3 Remuneration of Advisory Council members

The Australian Government has procedures in place to pay sitting fees to office holders who are appointed to Australian Government boards, councils and committees and who generally work on a part-time basis. This includes reimbursement for travel costs and other direct expenses.

7. Regulatory Instruments and Approaches

7.1 Licensing

The aim of licensing technicians working in the industry is to ensure that technicians have the necessary competencies to work with these gases in an environmentally responsible manner that minimises the likelihood of avoidable emissions. Licences must therefore relate to the type of work being done and the competencies required to undertake them. As a general principle, there should be as few as possible categories of licence, but sufficient to adequately cover the market.

The current Code of Best Practice for Reduction of Emissions of Vapourising Liquid Fire Extinguishing Agents recognises three categories of accreditation. These are:
- servicing of fire extinguishers;
- installation and servicing of fixed fire protection sytems; and
- recovery, reclamation or recycling of controlled substances.

This accreditation system is supported by Australian Standards and Training packages developed within the industry to support skill development. Accreditation is widely implemented in Victoria and New South Wales, and could be extended nationally to form the basis of the skill based assessment upon which to base the licensing system for the industry.

7.1.1 Competencies required

The competencies required to carry out a task can be derived from codes of best practice, where these exist, or by developing new codes where these do not exist. The competencies required can be codified and used to develop training packages and test criteria to assess prior learning. A table of competencies required for each of the proposed licence components are listed below:

Description	Code
Extinguisher Servicing Licence	
Use portable fire equipment	PRMPFES 05A
Prepare for installation and maintenance	PRMPFES 06A
Service portable extinguishers in the field	PRMPFES09A
Service portable extinguishers in the workshop	PRMPFES 014A
Hydrostatic test portable and wheeled CO_2 fire extinguishers	PRMPFES 018A
Service wheeled Fire extinguishers in the field	PRMPFES 020A
Service wheeled Fire extinguishers in the workshop	PRMPFES 021A
Fixed System Installation Licence	
Prepare for installation and maintenance	PRMPFES 06A
Hydrostatic test portable and wheeled CO_2 fire extinguishers	PRMPFES 018A
Inspect and service gaseous fire suppression systems	PRMPFES 25A
Fixed System Maintenance Licence	
Prepare for installation and maintenance	PRMPFES 06A
Hydrostatic test portable and wheeled CO_2 fire extinguishers	PRMPFES 018A
Inspect and service gaseous fire suppression systems	PRMPFES 25A
Recovery, Reclamation and Recycling Licence To cover people working in commercial warehousing and plants reclaiming gases	
Service portable extinguishers in the workshop	PRMPFES 014A
Hydrostatic test portable and wheeled CO_2 fire extinguishers	PRMPFES 018A
Service wheeled Fire extinguishers in the workshop	PRMPFES 021A
Commercial storage Licence	
To be developed – See Recovery, Reclamation and Recycling above.	
System Design Licence	
To be developed	

7.1.2 Tasks permitted under a licence

The particular set of competencies required for tasks can be matched and grouped to ensure that technicians working in a specific field are not required to obtain multiple licences, although this may be required where a technician works across a broad sector of the industry. This could occur in a number of circumstances such as, remote areas, or with small or single operator companies. It is proposed that each licence card could indicate one or more categories of licence and that one licence fee would cover one or more categories of licence depending on applicants' competencies.

7.1.3 Licence Period and Cost

Licences should be issued for a fixed period and are valid nationally. The period should reflect the competing needs of keeping costs as low as possible and maintaining technical currency. It has been suggested that a 1 to 3 year licence period would achieve this objective. The cost of a licence is proposed to be in the order of $50 to $100 per annum. Advice is being sought on whether these licences should and can be GST exempt.

7.1.4 Acquiring, maintaining and testing of competencies

Core competencies are developed into training packages for delivery in a number of ways and, as a basic principle, the Australian Government wants as many avenues as possible for an individual to demonstrate their competency. For example, companies can deliver specialized training to their employees, or this can be done by training providers, or incorporated into specific broader training in related fields. The Administrator will have a role in validating that particular training courses deliver the necessary competencies.

It is important that once skills are acquired they are maintained and that additional training be acquired where necessary, such as when new technologies are introduced into the market or regulations are amended. It is therefore proposed that when a licence falls due for renewal, a licensee will need to demonstrate that they have up-to-date experience. Additionally, a licensee could be required to undertake any additional training appropriate to the licence that has been introduced in the period since the licence was last renewed. A grace period could be provided for any new requirements introduced within 6 months of the renewal.

The currency of skills could be confirmed by formal testing; confirming that the technician is actually working in the industry and is in compliance with appropriate codes of practice; or by other means such as field or workshop audits.

7.1.5 Reporting requirements for licensees

In order to better estimate emissions of HCFC and SGG, technicians, could be required to report – through their employer or the gas supplier – the amount and type of gas used in new installations or the amount and type of gas used in maintenance and to refill systems that were vented either accidentally or in a fire.

There could also be provision for technicians to self-report incidents where an emission has occurred as a result of action taken directly by the technician. This would not trigger any compliance activity under the Act or the regulations, but rather be used to identify what work practices were leading to emissions and how these could be improved.

7.2 Registration

Registration of companies working in the fire protection industry is required to ensure that these companies employ only licenced technicians to carry out the work, and that they possess equipment appropriate to the task and that it is functioning correctly.

Purchase and sale of halon, HCFC and SGG will be restricted to companies that are registered and have access to the equipment necessary to safely handle the gases. Persons or organisations owning fire protection equipment containing halon, HCFC and SGG do not require registration unless these organisations also carry out maintenance on their equipment.

As in licensing, the national regulations will replace the (currently 11) State and Territory requirements. Registration of companies working in the fire protection industry will be required to ensure that the ODS and SGG are appropriately managed through the supply chain and that appropriate care is taken to ensure that only trained

professionals use the gases where there is any likelihood of avoidable emissions. There are two proposals for registration requirements – either companies register based on their ABN/trading name (or grouped ABN) or on a workplace-by-workplace basis.

- If companies are registered based on ABN, to ensure balance between large and small companies, companies with premises in more than one state will need to be registered for their operations in each State or Territory. This duplicate registration does not apply to companies located only in one state, but that carry out business in two or more states. For example, companies located in the Albury/ Wodonga area would only need to be registered in either NSW or Victoria.
- Companies could be required to hold a registration for each workplace/premises.

Companies supplying halon, HCFC and SGG on a wholesale basis will be required to submit to the Administrator a quarterly report of supplies to registered companies technicians. The report is to include the gas supplied (by trade name), the quantity and the licence number of the recipient.

To be registered a company must:

- employ only licenced technicians to handle vapourising liquid fire extinguishing agents;
- maintain adequate equipment for the nature of the work (which would be defined in the regulations); and
- meet all reporting requirements.

The cost of registration is intended to meet the cost of administering the regulations, providing support services and conducting compliance audits. Company registration is proposed on an annual basis at a registration cost in the order of $150 to $200 per annum.

7.3 Special Permits

A special permit system will also be established to manage ownership of halon for essential uses, and to minimise emissions of halon, HCFC and SGG required for system design and testing and for critical training.

Under current State and Territory legislation, the ownership and use of halon fire protection systems is prohibited for all but approved essential uses. The special permit system will provide a continuation of these exemptions where required.

A special body will be established under the regulations to provide independent advice to the Australian Government in relation to the appropriateness of halon fire protection systems in specific applications. The criteria for determining essential use are included in the Halon Management Strategy published in February 2000, which is available at: http://www.deh.gov.au/atmosphere/ozone/strategies/halonstrategy.html

In line with the objective of reducing emissions, the use of HCFC and SGG for trials, demonstrations and training will be restricted. The special advisory body will develop

criteria to determine the appropriateness of proposed test or training uses of controlled substances that will be developed into a code of practice or documented in the regulations. Persons or companies wishing to undertake training or test discharges will be able to apply for a special permit.

It is proposed that there be no cost for special permits.

7.4 Disposal of used halon, HCFC and SGG

The *Act* includes a prohibition on unauthorized venting of halon, HCFC or SGG contained in fire protection systems. Gases that are removed from equipment may be reclaimed for future use, either in the original or other equipment.

Gases removed but not returned to equipment during maintenance, or gases removed when equipment is decommissioned, must be collected for disposal or long term storage at an approved registered facility. Waste controlled substances held in long term storage are subject to the same registration conditions as apply to commercial storage of new or reclaimed material.

There is no product stewardship scheme in place for the fire protection industry. The cost of disposal of unwanted or contaminated agents remains with the owner of the system, however, recycling and reuse of agents is the preferred approach. The Australian Government is willing to consider working with the fire protection industry to develop a product stewardship scheme for fire protection agents if this is supported by the industry and other stakeholders.

7.5 Regulations on use of ODS and SGG Fire Protection Agents

The Australian Government also proposes to directly regulate the management of ODS and SGG fire protection agents. This could occur by giving the Code of Best Practice for Reduction of Emissions of Vapourising Liquid Fire Extinguishing Agents force of law in the end-use regulations to the legislation. Additional codes, to be supported in regulations, may be required to ensure the responsible use of fire protection agents. It is proposed that regulations also be implemented covering the:

- commercial storage requirements for vapourising liquid fire extinguishing agents;
- general prohibition on the ownership and use of halon except for essential uses;
- roles and responsibilities of the administering body; and
- establishment of a scale of offences under the regulations.

Additional regulations addressing gaps or weaknesses in the regulation of ODS and SGG fire protection agents may be developed following the establishment of the first set of regulations described in this discussion paper and will be subject to further consultation with industry. Development of further codes of practice, supported by regulations, will be required for:

- the commercial storage of controlled substances;
- performance standards for decanting and handling equipment; and
- criteria to be applied in the purchase and sale of controlled substances, including nature and extent of records that must be kept and or reporting requirements.

7.6 Compliance activities

A system of compliance will be established to ensure that the licence, registration, and special permit system is operating effectively and that other regulations are being observed. The object of the activities is to ensure that appropriate levels of care are being exercised and to encourage businesses and technicians to improve their performance.

A separate discussion paper on compliance and enforcement approaches is being developed.

A graduated response model depending on the severity and frequency of non-compliance with the regulations may provide a suitable response mechanism. Under the model, breaches of the regulations could be addressed through a range of responses from administrative actions to criminal proceedings, including:

- issue of a notice to comply;
- issue of an infringement notice (fine);
- cancellation of licence and/or registration;
- civil action under the regulations; and
- criminal investigation and prosecution.

The Australian Government will undertake all enforcement activities and will determine the level of response appropriate to the nature of the offence.

The Administrator would appoint compliance auditors to conduct audits of licensees and registered business, including their premises and equipment. Where deficiencies in operations are observed during these audits, the Administrator could issue a notice requiring corrective action with a specified timeframe. A further audit would be carried out following the expiration of the specified period.

The Administrator will notify the Australian Government of serious breaches of the regulations, and the Government would determine the appropriate level of response such as requiring additional training, issuing fines, revoking licences, or prosecution.

7.7 Facilitating education and training

The introduction of uniform national regulation, based on standard competencies and procedures, will necessitate the development and delivery of training programs to ensure that these competencies are met nationally.

The Administrator will have a responsibility to facilitate the delivery of training to technicians in conjunction with registered training organisations. Where appropriate, procedures for recognition of prior learning will be developed and special bridging courses prepared to meet transitional requirements. The individuals undertaking the training will meet the cost of the training.

Ongoing training is essential to maintain skills and currency with new and emerging technologies. The Administrator will develop, as appropriate, training packages and assessment systems as technology and doctrine change, as described above.

7.8 Transitional Issues

Existing State and Territory Legislation is being replaced by the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989*. This includes State and Territory requirements relating to ODS and SGG fire protection agents and related issues such as the licensing of technicians, the registration of companies, equipment certification, reporting and training.

The introduction of new regulations may cause concern to businesses and technicians being affected by these regulations for the first time. The Australian Government is committed to consulting with technicians and business on new requirements, as well as giving industry the appropriate time and tools to comply with the new requirements.

7.8.1 Transition - Licensing

The *Act* will replace State and Territory legislation in this area, including the licensing of technicians working with halon and HCFC, where these licences are currently issued.

It is proposed to recognise all existing licences that are current at the time that the new regulations become effective. Transition arrangements could remain in place for a period of two years, (or another period based on comment provided in response to this paper), after which time technicians are expected to have acquired the competencies necessary to obtain a licence from the Administrator under the revised arrangements.

Renewal of licences within the transitional period:

- Where a technician's licence or permit to handle ozone depleting substances lapses during the transition period, and s/he intends to continue working with halon, HCFC or SGG, then s/he must obtain a licence from the Administrator.
- The Administrator will issue licences to technicians provided that they meet the competency standards established for the licence. Where a technician working in the industry does not qualify for the award of the licence, a temporary or transitional licence will be provided for a limited period to enable the competencies to be acquired and tested. The transitional licence applies only to technicians working in the industry and is intended to provide continuity in those jurisdictions where formal competencies are not required and/or training is not available. It is proposed that this period be 12 months.

7.8.2 Registration

There will be no transitional arrangements. Businesses will be required to apply to the Administrator for registration within 3 months of the regulations coming into force. All businesses intending to buy or sell halon, HCFC and/or SGG must be registered. Businesses, such as transport companies moving halon, HCFC and/or SGG on behalf of a registered 3rd party do not need to be registered. Businesses or organisations storing halon, HCFC and/or SGG for sale, for their own use or on behalf of others, must be registered. (This does not apply to installed fire protection systems).

7.8.3 Equipment certification

In some jurisdictions, recovery, transfer, specialized decanting and reclaiming equipment used with ozone depleting substances currently requires certification.

Under the *Act,* all transfer and handling equipment used with halon, HCFC and SGG must be certified by an independent testing authority and registered with the Administrator within 6 months of the regulations coming into force. Existing certification will be accepted for the purpose of registration.

7.8.4 Training

Transitional arrangements will be put in place to enable approved training to be delivered to technicians seeking licensing.

8. Comments

Comments are sought from participants in the industry, government agencies and organizations using ODS and SGG and organisations with an interest in the management of ODS and SGG or its environmental impacts.

Comments must be received no later than 5 pm on Friday 20 February 2004. Written submissions in either electronic or hard copy, are required. Comments should be addressed to:

Brian Hobsbawn
Ozone and Synthetic Gas Team
GPO Box 787
Canberra ACT 2601
Brian.Hobsbawn@deh.gov.au.

8.1 Guide for making a submission

If you are preparing a submission in relation to this paper, please include the following information along with your comments/ suggestions.

Name and contact details

Please include your address, a telephone number, company or organisation and an email address if you have one. This will allow us to contact you if we have any questions.

Privacy

If you wish your submission to be kept confidential, please ensure that you state this.

9. Glossary

Australian Government	Synonymous with Commonwealth, Commonwealth Government, National Government or Federal Government.
Automotive	Includes trucks and buses, but excludes transport refrigeration.
Bulk ODS and SGG	Gas held in a cylinder, as opposed to being operational in equipment.
Decanting	The transfer of *scheduled substances* from one vessel to another.

Destruction	Any process that destroys a *scheduled substance* (be it an ODS or SGG) in such a way as to eliminate its ozone depleting potential or potential climate impacts.
End-User	Any person or corporate entity directly responsible for, or involved in, the design, manufacture, installation, operation, service, maintenance, commissioning, decommissioning of equipment or products that use or contain a *scheduled substance*, including the manufacture, storage, processing, recovery, disposal, transportation or other handling of a *scheduled substance*.
Handling	The sale, purchase, storage and transport of *scheduled substances*.
Ozone Depleting Substance	Any substance deemed to be a substance that either individually, or in combination with other substances, causes the destruction of stratospheric ozone; and included in the schedules to the Act.
Registration	All persons involved in the *supply* or *purchase* of *scheduled substances* are required to be registered under the Australian Government legislation.
Scheduled substances	All ODS and SGG included under the schedules to the Act and associated regulations.
Stationary	Every use other than automotive.
Supplier	Wholesaler or distributor of *scheduled substances*.
Synthetic Greenhouse Gas	Synthetic greenhouse gases are defined as Hydrofluorocarbons (HFC) and Perfluorocarbons (PFC) for the purpose of this Act.
Tradesperson/ tradespeople	Individual(s) who handle gas – including in decanting, installation of initial charge, maintenance of equipment and recovery and disposal of gas.
Use	The design, manufacture, installation, operation, service, maintenance, commissioning and decommissioning of equipment or products that use or contain a *scheduled substance*, including the manufacture, storage, processing, recovery, disposal, transportation or other handling of a *scheduled substance*.

Appendix 1 – Current State and Territory legislation impacted by new legislation

When the amendments to the Act and the supporting regulations are implemented, they will replace relevant sections of the following State and Territory legislation.

ACT
Environment Protection Act 1997
Environment Protection Regulations 1997

New South Wales
Ozone Protection Act 1989
Ozone Protection Regulation 1997

Northern Territory
Ozone Protection Act 1990
Ozone Protection Regulations 1995

Queensland
Environmental Protection Act 1994
Environment Protection Regulation 1998

South Australia
Environment Protection Act 1993
Environment Protection (Ozone) Regulations 1994

Tasmania
Environment Management and Pollution Control Act 1994

Victoria
Environment Protection Act 1970
Environment Protection (Control of Ozone Depleting Substances) Regulations 1989
Environment Protection (Fees) Regulations 1991
Environment Protection (Purchase & Sale of Products containing Ozone Depleting Substances) Regulations 1990
Environment Protection (Scheduled Premises & Exemptions) Regulations 1996
Industrial Waste Management Policy (Control of Ozone Depleting Substances)

Western Australia
Environmental Protection (Ozone Protection) Policy 1993