



Ozone Protection and Synthetic Greenhouse Gas Management Act 1989

No. 7, 1989

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This compilation includes commenced amendments made by Act No. 126, 2015. Amendments made by Act No. 59, 2015 and Act No. 4, 2016 have not commenced but are noted in the endnotes

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About this compilation

This compilation

This is a compilation of the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* that shows the text of the law as amended and in force on 5 March 2016 (the *compilation date*).

The notes at the end of this compilation (the *endnotes*) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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An Act to provide for measures to protect the ozone layer and to minimise emissions of SGGs

Part I—Preliminary

1 Short title

This Act may be cited as the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989*.

2 Commencement

This Act commences on the day on which it receives the Royal Assent.

3 Objectives

The objectives of this Act are:

- (a) to institute, for the purpose of giving effect to Australia's obligations under the Vienna Convention and the Montreal Protocol, a system of controls on the manufacture, import and export of substances that deplete ozone in the atmosphere; and
- (b) to institute, and to provide for the institution of, specific controls on the manufacture, import, export, distribution and use of products that contain such substances or use such substances in their operation; and
- (c) to use the best endeavours to encourage Australian industry to:
 - (i) replace ozone depleting substances; and

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- (ii) achieve a faster and greater reduction in the levels of production and use of ozone depleting substances than are provided for in the Vienna Convention and the Montreal Protocol;
to the extent that such replacements and achievements are reasonably possible within the limits imposed by the availability of suitable alternate substances, and appropriate technology and devices; and
- (d) to provide controls on the manufacture, import, export and use of SGGs, for the purposes of giving effect to Australia's obligations under the Framework Convention on Climate Change and the Kyoto Protocol; and
- (e) to promote the responsible management of scheduled substances so as to minimise their impact on the atmosphere.

4 Saving of certain State and Territory laws

It is the intention of the Parliament that this Act is not to affect the operation of a law of a State or of a Territory that makes provision with respect to the protection of ozone in the atmosphere and is capable of operating concurrently with this Act.

5 Act to bind the Crown

- (1) This Act binds the Crown in right of the Commonwealth, of each of the States, of an internal Territory that has been established as a body politic and of Norfolk Island.
- (2) Nothing in this Act renders the Crown in right of the Commonwealth, of a State, of an internal Territory or of Norfolk Island liable to be prosecuted for an offence.

6 Extension to external Territories

This Act extends to all the external Territories.

6A Application of the *Criminal Code*

Chapter 2 (other than Part 2.5) of the *Criminal Code* applies to all offences against this Act or the regulations.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Part II—Explanation of terms used in the Act

7 Definitions

In this Act, unless the contrary intention appears:

Australia includes all the external Territories.

bromochloromethane means the substance referred to in Part VIII of Schedule 1, whether existing alone or in a mixture.

carbon tetrachloride means the substance referred to in Part III of Schedule 1, whether existing alone or in a mixture.

CFC means a substance referred to in Part I of Schedule 1, whether existing alone or in a mixture.

civil penalty order means an order under subsection 65AC(1).

civil penalty provision means:

- (a) a provision of this Act declared by this Act to be a civil penalty provision; or
- (b) a provision of the regulations declared by the regulations to be a civil penalty provision.

controlled substances licence means a licence referred to in subsection 13A(2).

designated court means:

- (a) the Federal Court; or
- (b) the Federal Circuit Court; or
- (c) a court of a State or Territory that has jurisdiction in relation to matters arising under this Act or the regulations.

Note: For jurisdiction of State and Territory courts, see sections 69C and 69D.

distribution includes sale and supply, whether for consideration or not.

enforcement powers has the meaning given by section 53.

enforcement warrant means:

- (a) a warrant issued under section 55E; or
- (b) a warrant signed by a magistrate under section 55F.

essential use, in relation to a stage-1 or stage-2 scheduled substance, means an essential use identified in relation to the substance by a decision adopted and in force under the Montreal Protocol.

essential uses licence means a licence referred to in subsection 13A(3).

evidential burden, in relation to a matter, means the burden of adducing or pointing to evidence that suggests a reasonable possibility that the matter exists or does not exist.

evidential material:

- (a) in relation to an offence against this Act or the regulations—means:
 - (i) a thing with respect to which the offence has been committed or is suspected, on reasonable grounds, of having been committed; or
 - (ii) a thing that there are reasonable grounds for suspecting will afford evidence as to the commission of the offence; or
 - (iii) a thing that there are reasonable grounds for suspecting is intended to be used for the purpose of committing the offence; or
- (b) in relation to a contravention of a civil penalty provision—means:
 - (i) a thing with respect to which the civil penalty provision has been contravened or is suspected, on reasonable grounds, of having been contravened; or
 - (ii) a thing that there are reasonable grounds for suspecting will afford evidence as to the contravention of the civil penalty provision; or

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- (iii) a thing that there are reasonable grounds for suspecting is intended to be used for the purpose of contravening the civil penalty provision.

executive officer of a body corporate means:

- (a) a director of the body corporate; or
- (b) the chief executive officer (however described) of the body corporate; or
- (c) the chief financial officer (however described) of the body corporate; or
- (d) the secretary of the body corporate.

export, in relation to goods or a substance, means do an act that constitutes exportation of the goods or substance from Australia within the meaning of section 112 of the *Customs Act 1901*, or would constitute such exportation if the external Territories were part of Australia for the purposes of that Act.

Federal Circuit Court means the Federal Circuit Court of Australia.

Federal Court means the Federal Court of Australia.

feedstock means an intermediate substance which is used to manufacture other chemicals.

forfeitable goods has the meaning given by section 57.

forfeiture notice means a notice under subsection 60A(1).

Framework Convention on Climate Change means the United Nations Framework Convention on Climate Change, done at New York on 9 May 1992, a copy of the English text of which is set out in Schedule 3E.

halon means any substance referred to in Part II of Schedule 1, whether existing alone or in a mixture.

HBFC means a hydrobromofluorocarbon referred to in Part VI of Schedule 1, whether existing alone or in a mixture.

HCFC means a hydrochlorofluorocarbon referred to in Part V of Schedule 1, whether existing alone or in a mixture.

HCFC industry limit, in relation to a particular year, means the quantity of HCFCs for that year worked out in accordance with section 24.

HCFC licence means a controlled substances licence that relates to HCFCs.

HCFC quota has the meaning given in subsection 8B(1).

heel allowance percentage for a substance means the percentage prescribed by the regulations for the substance for the purposes of this definition.

HFC means a hydrofluorocarbon referred to in Part IX of Schedule 1, whether existing alone or in a mixture.

import, in relation to goods or a substance, means do an act that constitutes importation of the goods or substance into Australia within the meaning of section 50 of the *Customs Act 1901*, or would constitute such importation if the external Territories were part of Australia for the purposes of that Act.

Kyoto Protocol means the Kyoto Protocol to the United Nations Framework Convention on Climate Change, done at Kyoto on 11 December 1997, as amended and in force for Australia from time to time.

Note: The text of the Kyoto Protocol is set out in Australian Treaty Series 2008 No. 2 ([2008] ATS 2). In 2011, the text of an international agreement in the Australian Treaty Series was accessible through the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

licence (except when used in Part IV) means a controlled substances licence, an essential uses licence, a used substances licence or an ODS/SGG equipment licence.

licence period means a period referred to in section 8A.

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licensee means a person who holds a licence under section 16.

methyl bromide means the substance referred to in Part VII of Schedule 1, whether existing alone or in a mixture.

methyl chloroform means the substance referred to in Part IV of Schedule 1 (that is, 1,1,1-trichloroethane), whether existing alone or in a mixture.

monitoring powers has the meaning given by section 51A.

Montreal Protocol means the Montreal Protocol on Substances that Deplete the Ozone Layer, as in force for Australia, an English text version of which is set out in Schedule 3, being that Protocol as affected by:

- (a) the adjustments set out in Schedules 3A and 3B; and
- (b) the amendments set out in Schedules 3C and 3D.

ODP tonnes has the meaning given in section 10.

ODS equipment has the meaning given by section 8C.

ODS/SGG equipment licence means an ODS/SGG equipment licence under section 13A.

offence against this Act or the regulations includes an offence against section 137.1 or 137.2 of the *Criminal Code* that relates to this Act or the regulations.

Note: See also section 11.6 of the *Criminal Code*.

officer of Customs has the same meaning as in the *Customs Act 1901*.

PFC means a perfluorocarbon referred to in Part X of Schedule 1, whether existing alone or in a mixture.

premises includes:

- (a) a structure, building, aircraft, vehicle or vessel;
- (b) land or a place (whether enclosed or built upon or not); and

(c) a part of premises (including premises of a kind referred to in paragraph (a) or (b)).

quarter means a period of 3 months commencing on 1 January, 1 April, 1 July or 1 October.

quota means an HCFC quota or a reserve HCFC quota.

quota period has the meaning given in section 8.

recycled or used HCFCs means HCFCs that are:

- (a) collected from machinery, equipment or containers during servicing or before disposal of the machinery, equipment or containers; and
- (b) intended to be re-used or destroyed.

recycled or used methyl bromide means methyl bromide that is:

- (a) collected from machinery, equipment or containers during servicing or before disposal of the machinery, equipment or containers; and
- (b) intended to be re-used or destroyed.

recycled stage-1 or stage-2 scheduled substances means stage-1 or stage-2 scheduled substances that are:

- (a) collected from machinery, equipment or containers during servicing or before disposal of the machinery, equipment or containers; and
- (b) intended to be re-used or destroyed.

reduce, in relation to the size of a quota, includes reduce to nil.

regulated HCFC activity means the following:

- (a) the manufacture of HCFCs;
- (b) the import of HCFCs.

reserve HCFC quota has the meaning given in subsection 8B(2).

reserve HCFC quota limit, in relation to a particular year, means the quantity of HCFCs for that year worked out in accordance with section 25.

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scheduled substance means a substance referred to in Schedule 1, whether existing alone or in a mixture.

Secretary means the Secretary of the Department.

SGG or ***synthetic greenhouse gas*** means an HFC, a PFC or sulfur hexafluoride.

SGG equipment has the meaning given by section 8D.

SGG licence means a controlled substances licence that relates to SGGs.

stage-1 CFC means a substance referred to in Division 1 of Part I of Schedule 1, whether existing alone or in a mixture.

stage-2 CFC means a substance referred to in Division 2 of Part I of Schedule 1, whether existing alone or in a mixture.

stage-1 scheduled substance means:

- (a) a stage-1 CFC; or
- (b) a halon.

stage-2 scheduled substance means:

- (a) a stage-2 CFC; or
- (b) carbon tetrachloride; or
- (c) methyl chloroform; or
- (d) bromochloromethane.

sulfur hexafluoride means the substance referred to in Part XI of Schedule 1, whether existing alone or in a mixture.

used substances licence means a licence referred to in subsection 13A(4).

Vienna Convention means the Vienna Convention for the Protection of the Ozone Layer, a copy of the English text of which is set out in Schedule 2.

8 Quota periods

- (1) A quota period is 2 years, or such longer or shorter period (if any) as the Minister determines in writing.
- (2) A determination made under subsection (1) is a legislative instrument.
- (3) The first quota period starts on the 1 January specified by the Minister under section 26.
- (4) Each quota period, except the first, starts at the end of the last preceding one.

8A Licence periods

- (1) For the purposes of this Act, each licence period is 2 years.
- (2) The first licence period starts on 1 January 1996.
- (3) Each licence period, except the first, starts at the end of the last preceding one.

8B HCFC quotas and reserve HCFC quotas

- (1) An HCFC quota allocated to a licensee for a quota period is the maximum quantity of HCFCs, expressed in ODP tonnes, allowed for regulated HCFC activities carried out by the licensee during that period.
- (2) A reserve HCFC quota allocated to a licensee is the maximum quantity of HCFCs, expressed in ODP tonnes, allowed for regulated HCFC activities carried out by the licensee while the quota stays in force.

8C ODS equipment

For the purposes of this Act, ***ODS equipment*** means air-conditioning equipment, or refrigeration equipment, that

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contains a substance that is an HCFC or, but for section 9, would be an HCFC.

8D SGG equipment

- (1) For the purposes of this Act, **SGG equipment** means:
- (a) equipment, or a product, that contains a substance that is an HFC or a PFC; or
 - (b) equipment, or a product, that contains a substance that is sulfur hexafluoride;
- but does not include:
- (c) equipment, or a product, prescribed by the regulations; or
 - (d) equipment, or a product, specified in a legislative instrument made by the Minister.
- (2) Unless sooner revoked, a legislative instrument made under paragraph (1)(d) ceases to be in force 12 months after it is registered under the *Legislation Act 2003*.

9 Scheduled substances (other than SGGs) in manufactured products

- (1) For the purposes of Parts III, IV and VII, a substance referred to in Schedule 1 (other than a substance referred to in Part IX, X or XI of that Schedule) is to be treated as not being referred to in that Schedule if the substance is in a manufactured product that:
- (a) in its operation, will use the substance; or
 - (b) consists in part of that substance only because the substance was used in the manufacturing process.

Note: For example, paragraph (1)(a) would apply to a Schedule 1 substance that is used as a propellant in an aerosol spray or fire extinguisher. Paragraph (1)(b) would apply to a Schedule 1 substance that remained in a foam product after the substance was used in the production of the foam.

- (2) For the avoidance of doubt, the use of a manufactured product solely for the storage or transport of a substance does not constitute

the use of the substance in the operation of the manufactured product.

10 Quantities expressed in ODP tonnes

- (1) A reference in this Act to ODP tonnes, in relation to an HCFC, is a reference to the quantity of the HCFC that results from multiplying its mass in tonnes by its ozone depleting potential.
- (2) If a substance is or contains a mixture of 2 or more HCFCs, the quantity of the substance, expressed in ODP tonnes, is the quantity that results from adding together the quantities of each of those HCFCs, expressed in ODP tonnes.

12 Recycling of scheduled substances

- (1) In this Act a reference to the manufacture of scheduled substances does not include a reference to a process by which a quantity of scheduled substances is produced by the recycling of substances containing scheduled substances of that quantity.
- (2) For the purposes of this Act, where a process for the manufacture of a quantity of scheduled substances involves, in part, the recycling of substances containing scheduled substances of a lesser quantity, the quantity of scheduled substances manufactured in the process shall be taken to be reduced by the quantity of scheduled substances in the substances recycled in the process.

12A Feedstocks

A reference in this Act (other than Part VII) to the manufacture or import of a scheduled substance does not include a reference to the manufacture or import of a scheduled substance exclusively for use as a feedstock.

Part III—Licences

12B Part does not apply to import or export of CFCs, HCFCs and SGGs for use on board ships or aircraft

This Part does not apply to the import or export of a CFC, HCFC or SGG if all of the following conditions are satisfied:

- (a) the CFC, HCFC or SGG is on board a ship or aircraft;
- (b) the ship or aircraft has air conditioning or refrigeration equipment;
- (c) the CFC, HCFC or SGG is exclusively for use in meeting the reasonable servicing requirements of that equipment during, or in connection with, one or more periods when the ship or aircraft is or will be engaged in a journey between:
 - (i) a place in Australia and a place outside Australia; or
 - (ii) 2 places outside Australia.

13 Unlicensed manufacture, import or export

- (1) A person must not manufacture an HCFC or methyl bromide unless the person holds a controlled substances licence that allows the person to do so.
- (1AA) A person must not import or export an HCFC (other than a recycled or used HCFC) or methyl bromide (other than recycled or used methyl bromide) unless the person holds a controlled substances licence that allows the person to do so.
- (1AB) A person must not import or export a recycled or used HCFC or recycled or used methyl bromide unless the person holds a used substances licence that allows the person to do so.
- (1A) A person must not manufacture, import or export an SGG unless:
 - (a) the person holds a controlled substances licence that allows the person to do so; or

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- (b) the manufacture, import or export is in circumstances that are prescribed by the regulations.
- (2) A person must not manufacture or export an HBFC.
- (3) A person must not import an HBFC unless the person holds an essential uses licence that allows the person to do so.
- (4) A person must not manufacture a stage-1 or stage-2 scheduled substance unless the person holds an essential uses licence that allows the person to do so.
- (5) A person must not import or export a stage-1 or stage-2 scheduled substance (other than a recycled or used substance) unless the person holds an essential uses licence that allows the person to do so.
- (6) A person must not import or export a recycled or used stage-1 or stage-2 scheduled substance unless the person holds a used substances licence that allows the person to do so.
- (6A) A person must not import ODS equipment or SGG equipment unless:
- (a) the person holds an ODS/SGG equipment licence; or
 - (b) the following conditions are satisfied:
 - (i) the equipment is kept by the person, or by a member of the person's household, wholly or principally for private or domestic use;
 - (ii) the equipment is prescribed by the regulations or specified in a legislative instrument made by the Minister;
 - (iii) if the equipment is prescribed by regulations made for the purposes of subparagraph (ii)—the conditions (if any) prescribed by the regulations;
 - (iv) if the equipment is specified in an instrument made by the Minister under subparagraph (ii)—the conditions (if any) specified in a legislative instrument made by the Minister; or
 - (c) the following conditions are satisfied:
-

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- (i) the total number of ODS equipment and SGG equipment imported by the person in a period prescribed by the regulations, or specified in a legislative instrument made by the Minister, is no more than the number prescribed by the regulations or specified in a legislative instrument made by the Minister;
 - (ii) the person, the equipment, and the importation, meet the conditions (if any) prescribed by the regulations or specified in a legislative instrument made by the Minister.
- (6B) Unless sooner revoked, a legislative instrument made by the Minister under subparagraph (6A)(b)(ii) or (iv) ceases to be in force 12 months after it is registered under the *Legislation Act 2003*.
- (7) A person who contravenes this section is guilty of an offence punishable on conviction by a fine not exceeding 500 penalty units.
- (8) An offence under this section is an offence of strict liability.
- Note: For *strict liability*, see section 6.1 of the *Criminal Code*.
- (9) Subsections (1), (1AA), (1AB), (1A), (2), (3), (4), (5), (6) and (6A) are ***civil penalty provisions***.
- Note 1: Division 7 of Part VIII provides for pecuniary penalties for breaches of civil penalty provisions.
- Note 2: For maximum penalty, see subsections 65AC(4) and (4A).

13A Licences and what they allow

- (1) A person may apply to the Minister for all or any of the following licences:
- (a) a controlled substances licence;
 - (b) an essential uses licence;
 - (c) a used substances licence;
 - (d) an ODS/SGG equipment licence.

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- (2) A controlled substances licence allows the licensee to do one of the following:
- (a) to carry out whichever one or more of the following activities is specified in it:
 - (i) manufacture HCFCs;
 - (ii) import HCFCs;
 - (iii) export HCFCs;
 - (b) to carry out whichever one or more of the following activities is specified in it:
 - (i) manufacture methyl bromide;
 - (ii) import methyl bromide;
 - (iii) export methyl bromide;
 - (c) to carry out whichever one or more of the following activities is specified in it:
 - (i) manufacture SGGs;
 - (ii) import SGGs;
 - (iii) export SGGs.
- (3) An essential uses licence allows the licensee to carry out whichever of the following activities is specified in it:
- (a) manufacture specified stage-1 or stage-2 scheduled substances for essential uses;
 - (b) import specified stage-1 or stage-2 scheduled substances, or specified HBFCs, for essential uses;
 - (c) export specified stage-1 or stage-2 scheduled substances for essential uses.
- (4) A used substances licence allows the licensee to carry out whichever of the following activities is specified in it:
- (a) import specified recycled or used stage-1 or stage-2 scheduled substances;
 - (b) export specified recycled or used stage-1 or stage-2 scheduled substances;
 - (c) import specified recycled or used HCFCs or recycled or used methyl bromide;

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- (d) export specified recycled or used HCFCs or recycled or used methyl bromide.
- (5) An ODS/SGG equipment licence allows the licensee to import ODS equipment or SGG equipment.

14 Application for licence

- (1) An application for a licence must:
 - (a) be in a form approved by the Minister; and
 - (aa) be accompanied by the prescribed fee, unless the fee has been waived in accordance with the regulations; and
 - (b) be given to the Minister.
- (2) The approved form of application may provide for verification by statutory declaration of statements made in an application.

15 Request for further information

The Minister may, within 60 days after an application for a licence is made, give an applicant for a licence written notice requiring the applicant to give the Minister such further information relating to the application as is specified in the notice.

16 Grant of licence

- (1) Subject to subsections (3A) and (4), the Minister may grant a licence to a person who has applied for it in accordance with section 14.
- (3) A licence (other than an HCFC licence, an SGG licence or an ODS/SGG equipment licence) must specify:
 - (a) the substance or substances to which it relates; and
 - (b) the activities it allows, and the maximum quantities of that substance, or each of those substances, allowed for each of those activities.
- (3AA) An SGG licence must state that it relates to SGGs, and must specify the activities it allows.

- (3A) In deciding whether or not to grant a licence, the Minister:
- (a) must have regard to Australia's international obligations, and the policies of the Commonwealth Government, in relation to the manufacture, importation or consumption of scheduled substances; and
 - (b) may have regard to any other matters he or she thinks relevant.
- (3B) 2 or more licences granted to the same person may be set out in the same document.
- (4) The Minister shall not grant a licence to a person unless the Minister is satisfied that the person is a fit and proper person to be granted a licence.
- (5) Without limiting, by implication, the generality of the matters which the Minister may take into account in determining whether a person is a fit and proper person for the purposes of subsection (4), the Minister shall have regard to:
- (aa) any civil penalty order made against the person for a contravention of a civil penalty provision, where the contravention occurred within the 10 years immediately preceding the making of the application; and
 - (a) any conviction of the person for an offence against this Act or the regulations committed within the 10 years immediately preceding the making of the application; and
 - (b) any conviction of the person for an offence against a law of the Commonwealth, of a State or of a Territory that is punishable by imprisonment for a period of 6 months or longer, being an offence committed within the 10 years immediately preceding the making of the application; and
 - (ba) if the person is a body corporate—any civil penalty order made against an executive officer of the body corporate for a contravention of a civil penalty provision, where the contravention occurred within the 10 years immediately preceding the making of the application; and
 - (bb) if the person is a body corporate—any conviction of an executive officer of the body corporate for an offence against

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- this Act or the regulations committed within the 10 years immediately preceding the making of the application; and
- (bc) if the person is a body corporate—any conviction of an executive officer of the body corporate for an offence against a law of the Commonwealth, of a State or of a Territory that is punishable by imprisonment for a period of 6 months or longer, where the offence was committed within the 10 years immediately preceding the making of the application; and
 - (c) whether the person is bankrupt, has applied to take the benefit of any law for the relief of bankrupt or insolvent debtors, has compounded with creditors or has made an assignment of remuneration for their benefit; and
 - (ca) if the person is a body corporate—whether an executive officer of the body corporate is bankrupt, has applied to take the benefit of any law for the relief of bankrupt or insolvent debtors, has compounded with creditors or has made an assignment of remuneration for their benefit; and
 - (d) any statement by the person in an application under this Act or the regulations that was false or misleading in a material particular; and
 - (e) where any statement by the person in an application under this Act or the regulations was false or misleading in a material particular—whether the person knew that the statement was false or misleading; and
 - (ea) if the person is a body corporate—any statement made by an executive officer of the body corporate in an application under this Act or the regulations that was false or misleading in a material particular; and
 - (eb) if:
 - (i) the person is a body corporate; and
 - (ii) a statement made by an executive officer of the body corporate in an application under this Act or the regulations was false or misleading in a material particular;
whether the executive officer knew that the statement was false or misleading; and

- (f) whether the person has contravened a condition of a licence;
and
 - (fa) if the person is a body corporate—whether an executive officer of the body corporate has contravened a condition of a licence; and
 - (g) whether the person held a licence that was cancelled under section 20; and
 - (h) if the person is a body corporate—whether an executive officer of the body corporate held a licence that was cancelled under section 20.
- (6) A reference in subsection (5) to a conviction for an offence includes a reference to the making of an order under section 19B of the *Crimes Act 1914* in relation to the offence.
- (7) An application is refused by giving the applicant written notice of the refusal and of the reasons for the refusal.

17 Deemed refusal of licence

- (1) If, at the end of 60 days after an application for a licence is made, the Minister has neither granted a licence nor made a request under section 15, the Minister shall be regarded, for the purposes of section 66, as having refused the application on the last of the 60 days.
- (2) If:
- (a) the Minister makes a request under section 15; and
 - (b) at the end of 60 days after the request was made, the Minister has not granted a licence to the applicant;
- the Minister shall be taken, for the purposes of section 66, to have refused the application on the last of the 60 days.
- (3) If:
- (a) Subdivision A of Division 4 of Part 11 of the *Environment Protection and Biodiversity Conservation Act 1999* applies in relation to the granting of a licence; and

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- (b) the Minister has not granted the licence at the end of 30 days after he or she received advice under that Subdivision on the proposed grant;

he or she is taken for the purposes of section 66 to have refused the application for the licence on the last of those days.

Note: Under Subdivision A of Division 4 of Part 11 of the *Environment Protection and Biodiversity Conservation Act 1999*, persons considering whether to authorise certain actions must get advice on environmental matters from the Minister administering that Subdivision.

- (4) Subsections (1) and (2) do not apply in relation to an application for a licence if Subdivision A of Division 4 of Part 11 of the *Environment Protection and Biodiversity Conservation Act 1999* applies in relation to the granting of the licence.

18 Conditions of licences

- (1) A controlled substances licence allowing the licensee to manufacture, import or export HCFCs is subject to the following conditions:
- (a) the licensee must not engage in a regulated HCFC activity in a quota period unless the licensee has been allocated an HCFC quota for that period, or a reserve HCFC quota; and
 - (b) the licensee must ensure that the total quantity of HCFCs, expressed in ODP tonnes, involved in regulated HCFC activities engaged in by the licensee in that period is not more than that quota.
- (1A) For the purposes of subsection (1), the quantity of HCFCs that is taken to be involved in regulated HCFC activities engaged in by a licensee in a period is the quantity of HCFCs that is actually involved in regulated HCFC activities engaged in by the licensee in the period reduced by the heel allowance percentage for HCFCs.
- (2) A licence (other than an SGG licence) that allows the licensee to import a scheduled substance is subject to the condition that the licensee must only import the substance from a country that is a party to the Montreal Protocol for the purposes of Part VI.

- (3) A licence (other than an SGG licence) that allows the licensee to export a scheduled substance is subject to the condition that the licensee must only export the substance to a country that is a party to the Montreal Protocol for the purposes of Part VI.
- (4) The Minister may, when granting a licence or at any time afterwards, impose other conditions on the licence.
- (5) A condition imposed under subsection (4) has no effect unless it is set out in the licence, or in a written notice given to the licensee.
- (6) The following are examples of the kinds of conditions the Minister may impose under subsection (4):
- (a) conditions about the quantity of particular scheduled substances that the licensee may manufacture, import or export, as the case may be, during any period while the licence is in force;
 - (b) conditions prohibiting the licensee from doing anything otherwise covered by the licence unless the licensee also holds another type of licence;
 - (c) conditions about the purpose or purposes for which particular scheduled substances may be manufactured, imported or exported, as the case may be, under the licence;
 - (d) conditions requiring the licensee to give written reports to the Minister.
- (7) A licensee must not contravene a condition of his or her licence.
Penalty: 500 penalty units.
- (7A) An offence under subsection (7) is an offence of strict liability.
Note: For *strict liability*, see section 6.1 of the *Criminal Code*.
- (7B) Subsection (7) does not apply if the person has a reasonable excuse.
Note: The defendant bears an evidential burden in relation to the matter in subsection (7B). See subsection 13.3(3) of the *Criminal Code*.
- (7C) A licensee must not contravene a condition of his or her licence.
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(7D) Subsection (7C) is a *civil penalty provision*.

Note 1: Division 7 of Part VIII provides for pecuniary penalties for breaches of civil penalty provisions.

Note 2: For maximum penalty, see subsection 65AC(4).

(7E) Subsection (7C) does not apply if the licensee has a reasonable excuse.

(7F) A person who wishes to rely on subsection (7E) in proceedings for a civil penalty order bears an evidential burden in relation to that matter.

(8) The Minister may, on his or her own initiative or on written application by the licensee, vary or revoke a condition imposed under subsection (4).

(9) A variation or revocation of a condition must be by written notice given to the licensee.

19 Duration of licences

(1) A licence comes into force on the day specified in it.

(2) A controlled substances licence stays in force until the end of the licence period in which it is granted, unless it is cancelled, or stops being in force for any other reason, before then.

(3) An essential uses licence or a used substances licence stays in force until the end of the licence period in which it is granted, or of any shorter period specified in it, unless it is cancelled, or stops being in force for any other reason, before then.

(4) An ODS/SGG equipment licence stays in force:

(a) for a period of 2 years beginning at the start of the day the licence comes into force; or

(b) if a shorter period is specified in, or ascertained in accordance with, the licence—for that period;

unless it is cancelled, or stops being in force for any other reason, before then.

19A Termination of licences

- (1) The Minister may, by written notice given to a licensee, terminate all licences of the kind specified in the notice that are held by the licensee.
- (2) The Minister must not terminate a licence (other than an SGG licence or an ODS/SGG equipment licence) unless satisfied that it is necessary to do so for the purpose of giving effect to an adjustment or amendment of the Montreal Protocol.
- (3) A notice terminating a specified kind of licence takes effect on the day specified in the notice.
- (4) A notice given on the basis of an adjustment or amendment of the Montreal Protocol that has not entered into force for Australia must not specify a day earlier than the day when the adjustment or amendment enters into force for Australia.
- (5) When a notice given to a licensee takes effect, all licences of the kind specified in it that are held by the licensee stop being in force.

19B Transfer of licences

- (1) The Minister may transfer a licence from the licensee to another person (the *transferee*) on a joint application by the licensee and the transferee.
- (2) An application must:
 - (a) be in a form approved by the Minister; and
 - (b) be signed by both applicants; and
 - (c) be given to the Minister.
- (3) The approved form of application may provide for verification by statutory declaration of statements made in an application.
- (4) The Minister must not grant an application unless satisfied that the transferee is a fit and proper person to be granted a licence.

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- (5) Without limiting the matters that the Minister may take into account in determining whether a transferee is a fit and proper person for the purpose of subsection (4), the Minister must have regard to the matters mentioned in paragraphs 16(5)(a) to (g), inclusive, as affected by subsection 16(6).
- (6) A decision by the Minister transferring a licence, or refusing to transfer a licence, must be by written notice given to the applicants.
- (7) A notice of a decision refusing to transfer a licence must state the reasons for the decision.
- (8) If the Minister transfers a licence, the transferee is taken to be the licensee on and after the date of the transfer.

19C Amendment of licence at request of licensee

- (1) The Minister may amend a licence at the written request of the licensee.

Note: For example, if there is a change in the name of the licensee, the licence could be amended to specify the new name.

- (2) Subsection (1) does not allow amendment of a condition of a licence.

Note: Section 18 deals with variation of the conditions of a licence.

20 Cancellation of licence

- (1) The Minister may cancel a licence if satisfied that the licensee:
 - (a) is no longer a fit and proper person to hold a licence; or
 - (b) has contravened a condition of the licence.
- (2) Without limiting, by implication, the generality of the matters which the Minister may take into account in determining whether a person is a fit and proper person for the purposes of subsection (1), the Minister shall have regard to:
 - (aa) any civil penalty order made against the person for a contravention of a civil penalty provision, where the

contravention occurred within the immediately preceding 10 years; and

- (a) any conviction of the person for an offence against this Act or the regulations committed within the immediately preceding 10 years; and
- (b) any conviction of the person for an offence against a law of the Commonwealth, of a State or of a Territory that is punishable by imprisonment for a period of 6 months or longer, being an offence committed within the immediately preceding 10 years; and
- (ba) if the person is a body corporate—any civil penalty order made against an executive officer of the body corporate for a contravention of a civil penalty provision, where the contravention occurred within the immediately preceding 10 years; and
- (bb) if the person is a body corporate—any conviction of an executive officer of the body corporate for an offence against this Act or the regulations committed within the immediately preceding 10 years; and
- (bc) if the person is a body corporate—any conviction of an executive officer of the body corporate for an offence against a law of the Commonwealth, of a State or of a Territory that is punishable by imprisonment for a period of 6 months or longer, where the offence was committed within the immediately preceding 10 years; and
- (c) whether the person is bankrupt, has applied to take the benefit of any law for the relief of bankrupt or insolvent debtors, has compounded with creditors or has made an assignment of remuneration for their benefit; and
- (ca) if the person is a body corporate—whether an executive officer of the body corporate is bankrupt, has applied to take the benefit of any law for the relief of bankrupt or insolvent debtors, has compounded with creditors or has made an assignment of remuneration for their benefit; and
- (d) any statement by the person, in an application under this Act or the regulations, that was false or misleading in a material particular; and

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- (e) where any statement by the person in such an application was false or misleading in a material particular—whether the person knew that the statement was false or misleading; and
 - (f) if the person is a body corporate—any statement made by an executive officer of the body corporate in an application under this Act or the regulations that was false or misleading in a material particular; and
 - (g) if:
 - (i) the person is a body corporate; and
 - (ii) a statement made by an executive officer of the body corporate in an application under this Act or the regulations was false or misleading in a material particular;
whether the executive officer knew that the statement was false or misleading.
- (3) A reference in subsection (2) to a conviction for an offence includes a reference to the making of an order under section 19B of the *Crimes Act 1914* in relation to the offence.
- (4) The Minister shall cancel a licence by giving to the licensee a written notice stating that the licence has been cancelled and setting out the reasons for the cancellation.
- (5) The cancellation of a licence takes effect 60 days after the notice is given to the licensee under subsection (4).

21 Surrender of licence

- (1) A licensee may, at any time, surrender a licence by giving the Minister written notice that the licence is surrendered.
- (2) The surrender of a licence takes effect (unless the licence is sooner cancelled):
 - (a) if a date of effect is stated in the notice of surrender, at the end of that day; or
 - (b) in any other case, on the day on which the notice is given.

22 Publication of information regarding licences etc.

The regulations may make provision for the periodic publication of details of:

- (a) licences granted;
- (b) applications for licences refused; and
- (c) licences cancelled or surrendered.

Part IV—HCFC quotas

23 Meaning of *licence* and *licensee*

In this Part:

licence means a controlled substances licence allowing the licensee to manufacture, import or export HCFCs.

licensee means the holder of a controlled substances licence allowing the licensee to manufacture, import or export HCFCs.

24 How to work out HCFC industry limits

For the purposes of this Part, the HCFC industry limit for a calendar year specified in column 2 of an item in the following table is the quantity of HCFCs specified in column 3 of that item.

Table of HCFC industry limits		
Column 1	Column 2	Column 3
Item No.	Calendar year	HCFC industry limit Quantity of HCFCs in ODP tonnes per year
1	1996, 1997, 1998, 1999	250
2	2000, 2001	220
3	2002, 2003	190
4	2004, 2005	160
5	2006, 2007	130
6	2008, 2009	100
7	2010, 2011	70
8	2012, 2013	40
9	2014, 2015	10

Table of HCFC industry limits		
Column 1	Column 2	Column 3
Item No.	Calendar year	HCFC industry limit Quantity of HCFCs in ODP tonnes per year
10	2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029	2.5
11	2030	0

25 How to work out reserve HCFC quota limits

For the purposes of this Part, the reserve HCFC quota limit for a calendar year specified in column 2 of an item in the following table is the quantity of HCFCs specified in column 3 of that item.

Table of reserve HCFC quota limits		
Column 1	Column 2	Column 3
Item No.	Calendar year	HCFC quota limit Quantity of HCFCs in ODP tonnes per year
1	1996, 1997, 1998, 1999, 2000, 2001	50
2	2002, 2003	40
3	2004, 2005	35
4	2006, 2007	30
5	2008, 2009	20
6	2010, 2011	15
7	2012, 2013	10
8	2014, 2015	2
9	2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029	0.24
10	2030	0

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26 Start of first HCFC quota period

- (1) If the Minister becomes aware that in any year (the *excess year*) the total quantity of HCFCs, expressed in ODP tonnes, involved in regulated HCFC activities engaged in by licensees is more than 90% of the HCFC industry limit for that year, the Minister must publish a notice in the *Gazette*.
- (2) A notice must:
 - (a) specify the 1 January next following the date of the notice as the start of the first HCFC quota period; and
 - (b) contain a statement to the effect that every licence is subject to the conditions mentioned in subsection 18(1) and explaining the effect of those conditions; and
 - (c) specify the base year to be used in allocating HCFC quotas to licensees during the first HCFC quota period.
- (3) The base year to be specified in a notice is the last calendar year before the excess year.
- (4) A notice under this section is not a legislative instrument.

27 Application for quota

- (1) An application for a quota must:
 - (a) be in a form approved by the Minister; and
 - (b) be given to the Minister.
- (2) The approved form of application may provide for verification by statutory declaration of statements made in an application.
- (3) An application may only be made by a licensee.

28 Allocation of quota

- (1) Subject to this section and section 29, the Minister may, on an application made in accordance with section 27, allocate a quota to the applicant.

- (2) The Minister must determine the size of each quota in accordance with section 31 or 32, as the case requires.
- (3) In deciding whether or not to allocate a quota, the Minister:
 - (a) must have regard to Australia's international obligations, and the policies of the Commonwealth Government, in relation to the manufacture, importation or consumption of scheduled substances; and
 - (b) may have regard to any other matters he or she thinks relevant.
- (4) A quota is allocated by written notice given to the applicant.
- (5) The notice must:
 - (a) specify the size of the quota; and
 - (b) state whether it is an HCFC quota or a reserve HCFC quota; and
 - (c) in the case of an HCFC quota—specify the quota period for which it is allocated; and
 - (d) in the case of a reserve HCFC quota—specify the period (not longer than 12 months) for which it is allocated.
- (6) If the Minister refuses to allocate a quota, the Minister must notify the applicant in writing of the refusal and of the reasons for it.

29 Limits on power to allocate reserve HCFC quotas

- (1) The Minister must not allocate a reserve HCFC quota unless satisfied that exceptional circumstances exist.
- (2) For the purposes of subsection (1), exceptional circumstances exist if, and only if:
 - (a) the use of the relevant HCFC is essential for medical, veterinary, defence or public safety purposes; and
 - (b) there is no practicable alternative to that use; and
 - (c) without the allocation, the HCFC will not be available, in the quantities required for that use, within a reasonable period.

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- (3) The Minister must not allocate a reserve HCFC quota for a year, or part of a year, if the sum of the amounts of all other reserve HCFC quotas allocated for that year, or any part of that year, equals the reserve HCFC quota limit for that year.

30 Duration of quotas

- (1) An HCFC quota stays in force until the end of the quota period for which it is allocated, unless it stops being in force for any other reason before then.
- (2) A reserve HCFC quota stays in force until the end of the period specified in it under paragraph 28(5)(d), unless it stops being in force for any other reason before then.

31 HCFC quota sizes

- (1) The size of an HCFC quota allocated to a licensee for a quota period is to be worked out using the formula:

$$\frac{ALA}{AIA} \times IL$$

where:

ALA (amount of licensee's activities) means the sum of the quantities of HCFCs, expressed in ODP tonnes, involved in regulated HCFC activities carried out under the licence during the base year by:

- (a) the licensee; or
(b) if the licence was transferred to the licensee—the licensee and the transferor.

AIA (amount of industry activities) means the sum of the quantities of HCFCs, expressed in ODP tonnes, involved in regulated HCFC activities carried out by all licensees during the base year.

IL (industry limit) means the sum of the HCFC industry limits for each year of the quota period.

(2) In this section:

base year means:

- (a) in relation to an allocation for the first HCFC quota period—the base year specified in the notice under section 26; and
- (b) in relation to an allocation for any other HCFC quota period—the penultimate calendar year before the start of that quota period.

32 Reserve HCFC quota sizes

In determining the amount of each reserve HCFC quota allocated for a year, or part of a year, the Minister must ensure that the sum of that amount and the amounts of all other reserve HCFC quotas allocated for that year, or any part of that year, is not more than the reserve HCFC quota limit for that year.

33 Reserve HCFC quotas: variation or revocation

- (1) The Minister may vary or revoke a reserve HCFC quota if satisfied that the exceptional circumstances on which its allocation was based have changed or no longer exist.
- (2) A variation or revocation takes effect when a written notice of it is given to the licensee to whom the quota was allocated.
- (3) The Minister must not vary a reserve HCFC quota allocated to a licensee by increasing the amount of the quota if the increased amount could not have been allocated to the licensee under section 29.

34 Quotas cease when licences cease

A quota allocated to a licensee stops being in force when the licensee's licence is cancelled, or stops being in force for any other reason.

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35 Transfer of quotas

- (1) If:
 - (a) a licensee is allocated a quota; and
 - (b) the Minister transfers the licence under section 19B;
the unused part of the quota is taken to have been allocated to the transferee on the date of the transfer.
- (2) A licensee may, without transferring his or her licence, transfer a quota, or part of a quota, allocated to the licensee to another licensee.
- (3) A transfer mentioned in subsection (2) has no effect until the transferor notifies the Minister of the transfer.
- (4) A notice must:
 - (a) state the transferee's name, address and licence number; and
 - (b) specify the amount of quota transferred.
- (5) After a transfer mentioned in subsection (2) takes effect:
 - (a) the transferred quota, or part of a quota, is taken to have been allocated to the transferee; and
 - (b) if part of a quota is transferred—the transferor is taken to have been allocated the untransferred part of the quota.
- (6) A transfer mentioned in subsection (2) only has effect to the extent to which it relates to a quota that has not been used, or to an unused part of a quota.
- (7) In this section:
quota does not include a reserve HCFC quota.

Part V—Control of manufacture etc. of products containing or using scheduled substances

37 Persons to whom this Part applies, activities to which this Part applies

- (1) A person is a person to whom this Part applies if the person is:
 - (a) a foreign corporation within the meaning of paragraph 51(xx) of the Constitution;
 - (b) a trading corporation (within the meaning of that paragraph) formed within the limits of Australia;
 - (c) a financial corporation (within the meaning of that paragraph) so formed, including a body corporate that carries on as its sole or principal business the business of banking (other than State banking not extending beyond the limits of the State concerned) or insurance (other than State insurance not extending beyond the limits of the State concerned); or
 - (d) a body corporate incorporated in a Territory other than the Northern Territory.

- (2) The following activities are activities to which this Part applies:
 - (a) trade or commerce between Australia and places outside Australia;
 - (b) trade or commerce among the States;
 - (c) trade or commerce within a Territory other than the Northern Territory, between a State and a Territory or between 2 Territories;
 - (d) the supply of goods or services to the Commonwealth;
 - (e) the use of postal, telegraphic or telephonic services;
 - (f) the making of a radio or television broadcast.

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38 Manufacture and import of products in contravention of Schedule 4

- (1) A person to whom this Part applies shall not manufacture or import a product that contains scheduled substances, or uses scheduled substances in its operation, in contravention of a provision of Schedule 4.

Penalty: 500 penalty units.

- (2) A person shall not, in the course of engaging in an activity to which this Part applies, manufacture or import a product that contains scheduled substances, or uses scheduled substances in its operation, in contravention of a provision of Schedule 4.

Penalty: 500 penalty units.

- (2A) An offence under this section is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (2B) A person to whom this Part applies must not manufacture or import a product that contains scheduled substances, or uses scheduled substances in its operation, in contravention of a provision of Schedule 4.

- (2C) A person must not, in the course of engaging in an activity to which this Part applies, manufacture or import a product that contains scheduled substances, or uses scheduled substances in its operation, in contravention of a provision of Schedule 4.

- (2D) Subsections (2B) and (2C) are *civil penalty provisions*.

Note 1: Division 7 of Part VIII provides for pecuniary penalties for breaches of civil penalty provisions.

Note 2: For maximum penalty, see subsection 65AC(4).

- (3) Schedule 4 shall not be read as imposing obligations on a person who is not a person to whom this Part applies except to the extent that the person is engaging in an activity to which this Part applies.

39 Regulations concerning manufacture etc. of scheduled substances

- (1) The regulations may include provisions prohibiting or regulating the manufacture, import, export, distribution or use by persons to whom this Part applies, or by persons engaging in activities to which this Part applies, of products that contain scheduled substances or depend on such substances for their operation.
- (2) The provisions that may be made by the regulations include, but are not limited to, provisions:
 - (a) prohibiting the manufacture, import, export, distribution or use of particular kinds of products;
 - (b) prohibiting the manufacture, import, export, distribution or use of particular kinds of products except in accordance with prescribed requirements;
 - (c) prohibiting the manufacture or import of products by a person who has not complied with a code of practice relating to the recovery, recycling or disposal of scheduled substances used in products manufactured or imported by that person; or
 - (d) prohibiting the distribution by a corporation of products that are not labelled or marked in accordance with the regulations.

40 Exemptions

- (1) A person may apply to the Minister for an exemption from compliance with an obligation imposed by Schedule 4, or by regulations made for the purposes of section 39, in relation to a product, being an obligation in respect of which an exemption granted under this section would exempt a person from compliance.
- (2) An application:
 - (a) must be in a form approved by the Minister; and
 - (b) must be accompanied by the prescribed fee, unless the fee has been waived in accordance with the regulations.
- (3) The Minister may grant to the applicant an exemption from compliance with an obligation imposed by Schedule 4, or by

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regulations made under section 39, in relation to a product if the Minister is satisfied:

- (a) that:
 - (i) the product is essential for medical, veterinary, defence, industrial safety or public safety purposes; and
 - (ii) no practical alternative exists to the use of scheduled substances in the operation or manufacture, as the case requires, of the product if it is to continue to be effective for such a purpose;
 - (b) that, because of the requirements of a law concerning the manufacture or use of the product, there is no practical alternative to the use of scheduled substances in the operation or manufacture, as the case requires, of the product; or
 - (c) the product is for use in conjunction with the calibration of scientific, measuring or safety equipment.
- (4) An application for an exemption from compliance with an obligation referred to in subsection (1) may be made, and such an exemption may be granted, before, on or after the day on which the obligation (but for any exemption granted under this section) takes effect.
- (5) The grant of an exemption shall be by notice in writing given to the applicant.
- (6) The notice shall specify the period during which the exemption is to remain in force.
- (6A) An exemption may be granted subject to such conditions as are specified in the notice.
- (7) The Minister shall:
- (a) cause a copy of the notice to be published in the *Gazette* as soon as practicable after it is given to the applicant; and
 - (b) cause a copy of the notice to be laid before each House of the Parliament within 15 sitting days of that House after the day on which a copy of the notice is so published.

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- (8) An application for an exemption is refused by giving to the applicant written notice of the refusal and of the reasons for the refusal.
- (9) The Minister may, by written notice given to the holder of an exemption, cancel the exemption if there has been a contravention of any of the conditions to which it is subject.
- (10) It is not an offence to contravene a condition to which an exemption is subject.

Part VI—Control of imports and exports

41 Montreal Protocol countries

- (1) The Minister must maintain a Register of Montreal Protocol Countries, listing:
 - (a) each country that is to be treated as a Montreal Protocol country for the purposes of this Part; and
 - (b) for each such country—the substance or substances for which it is to be treated as a Montreal Protocol country for the purposes of this Part.
- (2) The Minister must not list a country in the Register for a particular substance if to do so would be inconsistent with Australia's obligations in relation to the import of any of the following things from countries that are not parties to the Montreal Protocol:
 - (a) scheduled substances;
 - (b) products containing scheduled substances;
 - (c) products manufactured using scheduled substances.
- (2A) The Minister may remove a country from the Register.
- (2B) If a substance is listed in the Register in relation to a country, the Minister may remove the substance from the Register in relation to that country.
- (3) For the purposes of this Part, a country is a ***non-Montreal Protocol country*** at a particular time for a particular substance if the country is not listed in the Register at that time for that substance.

Example: If a country is listed in the Register for substance A but not for substance B (both being stage-1 scheduled substances), then subsection 44(1) prohibits the import of substance B from that country but does not apply to the import of substance A from that country.
- (4) The Minister must ensure that the Register is accessible to the public through the internet.

- (5) The Minister may give a written certificate stating that a specified country was, or was not, on a specified date, listed in the Register for a specified substance. The certificate is prima facie evidence of the matters stated in the certificate.
- (6) The Register is not a legislative instrument.

44 Import of products containing scheduled substances from non-Montreal Protocol countries

- (1) On and after the implementation day for this subsection, a person shall not import from a non-Montreal Protocol country a product containing a stage-1 scheduled substance.

Penalty: 300 penalty units.

- (1A) An offence under subsection (1) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (2) The implementation day for subsection (1) is the day fixed by the Minister as the day on which, in order for Australia to comply with its international obligations under paragraph 3 of Article 4 of the Montreal Protocol, the prohibition in subsection (1) must take effect.

- (2A) A person must not import from a non-Montreal Protocol country a product containing a stage-1 scheduled substance.

- (2B) Subsection (2A) is a *civil penalty provision*.

Note 1: Division 7 of Part VIII provides for pecuniary penalties for breaches of civil penalty provisions.

Note 2: For maximum penalty, see subsection 65AC(4).

- (3) Subsections (1) and (2A) apply to a product declared, in writing, by the Minister to be a product to which subsections (1) and (2A) apply, being a product listed in the annex referred to in paragraph 3 of Article 4 of the Montreal Protocol.
- (4) The fixing of a day under subsection (2) shall be by notice published in the *Gazette*.
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- (5) On and after the 3rd anniversary of the commencement of this subsection, a person must not import from a non-Montreal Protocol country a product containing a stage-2 scheduled substance.

Penalty: 300 penalty units.

- (5A) An offence under subsection (5) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (5B) A person must not import from a non-Montreal Protocol country a product containing a stage-2 scheduled substance.

- (5C) Subsection (5B) is a *civil penalty provision*.

Note 1: Division 7 of Part VIII provides for pecuniary penalties for breaches of civil penalty provisions.

Note 2: For maximum penalty, see subsection 65AC(4).

- (6) Subsections (5) and (5B) apply to a product declared, in writing, by the Minister to be a product to which subsections (5) and (5B) apply, being a product listed in the annex referred to in paragraph 3 *bis* of Article 4 of the Montreal Protocol.

- (7) A declaration under subsection (3) or (6) is a legislative instrument.

45 Import of products manufactured using scheduled substances from non-Montreal Protocol countries

- (1) On and after the implementation day for this subsection, a person shall not import from a non-Montreal Protocol country a product in the manufacture of which a stage-1 scheduled substance was used.

Penalty: 300 penalty units.

- (1A) An offence under subsection (1) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (2) The implementation day for subsection (1) is the day fixed by the Minister as the day on which, in order for Australia to comply with its international obligations under paragraph 4 of Article 4 of the

Montreal Protocol, the prohibition in subsection (1) must take effect.

(2A) A person must not import from a non-Montreal Protocol country a product in the manufacture of which a stage-1 scheduled substance was used.

(2B) Subsection (2A) is a ***civil penalty provision***.

Note 1: Division 7 of Part VIII provides for pecuniary penalties for breaches of civil penalty provisions.

Note 2: For maximum penalty, see subsection 65AC(4).

(3) Subsections (1) and (2A) apply to a product declared, in writing, by the Minister to be a product to which subsections (1) and (2A) apply, being a product listed in the annex referred to in paragraph 4 of Article 4 of the Montreal Protocol.

(3A) On and after the 5th anniversary of the commencement of this subsection, a person must not import from a non-Montreal Protocol country a product in the manufacture of which a stage-2 scheduled substance was used.

Penalty: 300 penalty units.

(3AA) An offence under subsection (3A) is an offence of strict liability.

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

(3AB) A person must not import from a non-Montreal Protocol country a product in the manufacture of which a stage-2 scheduled substance was used.

(3AC) Subsection (3AB) is a ***civil penalty provision***.

Note 1: Division 7 of Part VIII provides for pecuniary penalties for breaches of civil penalty provisions.

Note 2: For maximum penalty, see subsection 65AC(4).

(3B) Subsections (3A) and (3AB) apply to a product declared, in writing, by the Minister to be a product to which subsections (3A)

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and (3AB) apply, being a product listed in the annex referred to in paragraph 4 *bis* of Article 4 of the Montreal Protocol.

- (4) Subsections (1), (2A), (3A) and (3AB) do not apply to an importation of a product, of a kind referred to in subsection (3) or (3B), as the case requires, in accordance with conditions determined, in writing, by the Minister as the conditions under which importation of the product will be permitted.
- (5) The Minister shall not determine conditions that are inconsistent with Australia's international obligations under paragraph 4 of Article 4 of the Montreal Protocol.
- (6) The fixing of a day under subsection (2) shall be by notice published in the *Gazette*.
- (7) A declaration under subsection (3) or (3B) is a legislative instrument.
- (8) A determination under subsection (4) is a legislative instrument.
- (9) Despite the *Legislation Act 2003*, a determination under subsection (4) of this section commences at the start of the first day on which the determination is no longer liable to be disallowed, or to be taken to have been disallowed, under that Act.

Part VIA—Controls on disposal, use etc. of scheduled substances

45A 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;
 - (b) regulating the storage, use or handling of scheduled substances;
 - (c) labelling requirements for scheduled substances and for products that contain or use scheduled substances;
 - (d) conferring functions on persons or bodies (including non-government bodies) in relation to matters covered by paragraph (a), (b) or (c);
 - (e) matters incidental to matters covered by paragraph (a), (b), (c) or (d).
- (2) For the avoidance of doubt, the regulations may make provision for regulating something by providing that it must not be done unless specified conditions are met.

45B Discharge of scheduled substances

- (1) A person is guilty of an offence if:
 - (a) the person engages in conduct; and
 - (b) the conduct occurs on or after the startup date; and
 - (c) the conduct results in the discharge of a scheduled substance; and
 - (d) the discharge occurs in circumstances where it is likely that the scheduled substance will enter the atmosphere; and
 - (e) the discharge is not in accordance with the regulations.

Penalty: 300 penalty units.

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- (2) Strict liability applies to subsection (1).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (2A) A person must not engage in conduct if:
- (a) the conduct results in the discharge of a scheduled substance; and
 - (b) the discharge occurs in circumstances where it is likely that the scheduled substance will enter the atmosphere; and
 - (c) the discharge is not in accordance with the regulations.

- (2B) Subsection (2A) is a *civil penalty provision*.

Note 1: Division 7 of Part VIII provides for pecuniary penalties for breaches of civil penalty provisions.

Note 2: For maximum penalty, see subsection 65AC(4).

- (3) Subsections (1) and (2A) do not apply if the discharge occurs when a product containing a scheduled substance is being used for its designed purpose. If the product concerned is a halon fire extinguisher, then its use during a training exercise is treated as not being use for its designed purpose.

Note: A defendant in criminal proceedings bears an evidential burden in relation to the matter in subsection (3): see subsection 13.3(3) of the *Criminal Code*.

- (3A) A person who wishes to rely on subsection (3) of this section in proceedings for a civil penalty order bears an evidential burden in relation to that matter.

- (4) In this section:

engage in conduct has the same meaning as in the *Criminal Code*.

scheduled substance does not include a scheduled substance in a manufactured product that consists in part of that substance only because the substance was used in the manufacturing process.

startup date means a date fixed by Proclamation for the purposes of this section.

Part VII—Reports and records

46 Quarterly reports by manufacturers, importers and exporters of scheduled substances (other than SGGs and substances in ODS equipment or SGG equipment)

- (1) Each person who manufactured, imported or exported a scheduled substance during a quarter occurring after the commencement of this section must, before the 15th day after the end of the quarter, give the Minister a report in accordance with the regulations specifying the following:
 - (a) the quantity of each scheduled substance manufactured by the person during the quarter;
 - (b) the quantity of each scheduled substance manufactured by the person during the quarter for use as feedstock;
 - (c) the quantity of each scheduled substance imported by the person during the quarter;
 - (d) the quantity of each scheduled substance imported by the person during the quarter, broken down by country of origin;
 - (e) the quantity of each scheduled substance imported by the person during the quarter for use as feedstock;
 - (f) the quantity of each scheduled substance exported by the person during the quarter;
 - (g) the quantity of each scheduled substance exported by the person during the quarter, broken down by country of destination;
 - (h) the quantity of each scheduled substance destroyed by the person during the quarter.

(1AA) If:

- (a) a person holds a licence; and
- (b) the person was not required to give a report under subsection (1) in relation to a quarter;

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the person must, before the 15th day after the end of the quarter, give the Minister a report in accordance with the regulations.

- (1A) Subsections (1) and (1AA) do not apply to:
- (a) an SGG; or
 - (b) a scheduled substance in ODS equipment or SGG equipment.

- (2) A person must not contravene subsection (1) or (1AA).

Penalty: 60 penalty units.

- (2A) An offence under subsection (2) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (2B) Subsection (2) does not apply if the person has a reasonable excuse.

Note: The defendant bears an evidential burden in relation to the matter in subsection (2B). See subsection 13.3(3) of the *Criminal Code*.

- (2C) A person must not contravene subsection (1) or (1AA).

- (2E) Subsection (2C) is a ***civil penalty provision***.

Note 1: Division 7 of Part VIII provides for pecuniary penalties for breaches of civil penalty provisions.

Note 2: For maximum penalty, see subsection 65AC(4).

- (2F) Subsection (2C) does not apply if the person has a reasonable excuse.

- (2G) A person who wishes to rely on subsection (2F) of this section in proceedings for a civil penalty order bears an evidential burden in relation to that matter.

- (3) If:

- (a) a person is required to give the Minister a report under subsection (1) in relation to a quarter; and
- (b) a particular quantity mentioned in subsection (1) is a nil amount for that person in that quarter;

the person's report must say so.

46A Quarterly reports by manufacturers, importers and exporters of SGGs, ODS equipment or SGG equipment*Manufacturer*

- (1) If:
- (a) a person manufactures an SGG during:
 - (i) the quarter beginning on 1 July 2012; or
 - (ii) a later quarter; and
 - (b) the manufacture is not in circumstances prescribed by regulations made for the purposes of paragraph 13(1A)(b);
- the person must, before the 15th day after the end of the quarter, give the Minister a report in accordance with the regulations.

Importer

- (2) If:
- (a) a person imports an SGG during:
 - (i) the quarter beginning on 1 July 2012; or
 - (ii) a later quarter; and
 - (b) the import is not in circumstances prescribed by regulations made for the purposes of paragraph 13(1A)(b); and
 - (c) the SGG is not contained in ODS equipment or SGG equipment;
- the person must, before the 15th day after the end of the quarter, give the Minister a report in accordance with the regulations.
- (3) If:
- (a) a person imports ODS equipment or SGG equipment during:
 - (i) the quarter beginning on 1 July 2012; or
 - (ii) a later quarter; and
 - (b) the import is not covered by paragraph 13(6A)(b) or (c);
- the person must, before the 15th day after the end of the quarter, give the Minister a report in accordance with the regulations.

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Exporter

- (4) If:
- (a) a person exports an SGG during:
 - (i) the quarter beginning on 1 July 2012; or
 - (ii) a later quarter; and
 - (b) the export is not in circumstances prescribed by regulations made for the purposes of paragraph 13(1A)(b);
- the person must, before the 15th day after the end of the quarter, give the Minister a report in accordance with the regulations.

Controlled substances licensees—nil reports

- (4A) If:
- (a) a person holds a controlled substances licence; and
 - (b) the person was not required to give a report under subsection (1), (2) or (4) in relation to a quarter;
- the person must, before the 15th day after the end of the quarter, give the Minister a report in accordance with the regulations.

ODS/SGG equipment licensees—nil reports

- (4B) If:
- (a) a person holds an ODS/SGG equipment licence; and
 - (b) the person was not required to give a report under subsection (3) in relation to a quarter;
- the person must, before the 15th day after the end of the quarter, give the Minister a report in accordance with the regulations.

Offence

- (5) A person commits an offence if:
- (a) the person is subject to a requirement under subsection (1), (2), (3), (4), (4A) or (4B); and
 - (b) the person omits to do an act; and
 - (c) the omission breaches the requirement.

Penalty: 60 penalty units.

- (6) An offence under subsection (5) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (7) Subsections (1), (2), (3), (4), (4A) and (4B) are ***civil penalty provisions***.

Note 1: Division 7 of Part VIII provides for pecuniary penalties for breaches of civil penalty provisions.

Note 2: For maximum penalty, see subsection 65AC(4).

48 Records to be kept by licensees

- (1) The regulations may make provision as to the keeping by a licensee of records relating to the manufacture, import, export or destruction of scheduled substances by the licensee.
- (2) Regulations made for the purpose of this section may include provisions relating to the production of records to the Minister on request.

Part VIII—Enforcement

Division 1—Powers of inspectors

Subdivision A—Inspectors

48A Meaning of *inspector*

In this Part:

appointed inspector means a person appointed as an inspector under section 49.

inspector means:

- (a) a member or special member of the Australian Federal Police; or
- (b) an officer of Customs; or
- (c) an appointed inspector.

49 Appointment of inspectors

- (1) The Minister may, by instrument in writing, appoint as an inspector a person who is:
 - (a) an officer or employee of an authority of the Commonwealth; or
 - (b) a person engaged under the *Public Service Act 1999*; or
 - (c) an officer or employee of the Public Service of a State or Territory; or
 - (d) a member of the Police Force of a State or Territory.
- (2) The Minister shall not appoint an officer or employee of the Public Service of a State or Territory, or a member of the Police Force of a State or Territory, as an inspector unless the appointment is in accordance with an arrangement made by the Minister with a Minister of that State or Territory.

- (3) The Minister must not appoint a person as an inspector unless the Minister is satisfied that the person has suitable qualifications and experience to properly exercise the powers of an inspector.

49A Directions to inspectors

- (1) An inspector must, in exercising powers as an inspector, comply with any directions of the Minister.
- (2) If a direction is given under subsection (1) in writing, the direction is not a legislative instrument.

50 Identity cards

- (1) The Minister may cause an identity card to be issued to each appointed inspector.
- (1A) An identity card must be in a form approved by the Minister and have on it a recent photograph of the person to whom it is issued.
- (2) A person who ceases to be an appointed inspector shall, as soon as practicable, return his or her identity card to the Minister.
- (3) A person who contravenes subsection (2) is guilty of an offence punishable on conviction by a fine not exceeding 1 penalty unit.
- (4) An offence under subsection (3) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

Subdivision B—Monitoring powers

51 Searches to monitor compliance with Act etc.

- (1) Subject to subsections (2) and (3), an inspector may, to the extent that it is reasonably necessary for the purpose of ascertaining whether this Act or the regulations have been complied with, enter, at any time during the day or night, any premises and exercise the monitoring powers set out in section 51A.

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- (2) An inspector may not, under subsection (1), enter premises that are a residence unless the occupier of the premises has consented to the entry.
- (3) An inspector is not entitled to enter premises under subsection (1) of this section, or exercise the monitoring powers set out in section 51A in relation to premises, if:
 - (a) the occupier of the premises has required the inspector to produce, for the occupier's inspection, evidence of the inspector's identity; and
 - (b) the inspector fails to produce his or her identity card, or written evidence identifying the inspector as a member or special member of the Australian Federal Police or an officer of Customs, as the case may be.

51A Monitoring powers of inspectors

General powers

- (1) The following are the **monitoring powers** that an inspector may exercise in relation to premises under section 51:
 - (a) to search the premises and any thing on the premises;
 - (b) to inspect, examine, take measurements of, conduct tests on, or take samples of, any gas or other substance on the premises;
 - (c) to take photographs, make video or audio recordings or make sketches of the premises or any thing on the premises;
 - (d) to inspect any book, record or document on the premises;
 - (e) to remove, take extracts from, or make copies of, any such book, record or document;
 - (f) to take onto the premises such equipment and materials as the inspector requires for the purpose of exercising powers in relation to the premises;
 - (g) the powers set out in subsections (2), (3) and (5).

Operating electronic equipment

- (2) The monitoring powers include the power to operate electronic equipment at premises to find out whether:
- (a) the equipment; or
 - (b) a disk, tape or other storage device that:
 - (i) is on the premises; and
 - (ii) can be used with the equipment or is associated with it;contains information that is relevant to ascertaining whether this Act or the regulations have been complied with.
- (3) The monitoring powers include the following powers in relation to information described in subsection (2) found in the exercise of the power under that subsection:
- (a) to operate electronic equipment at the premises to put the information in documentary form and remove the documents so produced from the premises;
 - (b) to operate electronic equipment at the premises to transfer the information to a disk, tape or other storage device that:
 - (i) is brought to the premises for the exercise of the power; or
 - (ii) is at the premises and the use of which for the purpose has been agreed to in writing by the occupier of the premises or a person apparently representing the occupier;and remove the disk, tape or other storage device from the premises.
- (4) An inspector must not operate electronic equipment as mentioned in subsection (2) or (3) unless he or she believes on reasonable grounds that the operation of the equipment can be carried out without damage to the equipment.

Securing things if entry to the premises is with the consent of the occupier etc.

- (5) The monitoring powers include the power to secure a thing on the premises for not more than 24 hours if:
-

Section 51A

- (a) the thing is found on the premises during the exercise of monitoring powers under subsection (1); and
 - (b) the occupier of the premises, or another person who apparently represents the occupier, consents to the inspector entering the premises; and
 - (c) the inspector believes, on reasonable grounds, that:
 - (i) the thing affords evidence as to the commission of an offence against this Act or the regulations, as to a contravention of a civil penalty provision, or as to both; and
 - (ii) it is necessary to secure the thing in order to prevent it from being concealed, lost or destroyed before a warrant to seize the thing is obtained.
- (6) The inspector must not exercise the power under subsection (5) unless the inspector has given the occupier of the premises, or another person who apparently represents the occupier, a written notice that specifies the thing that the inspector intends to secure.
- (7) If an inspector believes on reasonable grounds that the thing needs to be secured for more than 24 hours, he or she may apply to a magistrate for an extension of that period.
- (8) The inspector must give notice to the occupier of the premises, or another person who apparently represents the occupier, of his or her intention to apply for an extension. The occupier is entitled to be heard in relation to that application.
- (9) The 24 hour period may be extended more than once.

Offence

- (10) A person commits an offence if:
- (a) an inspector has given the occupier of premises, or another person who apparently represents the occupier of premises, a notice under subsection (6); and
 - (b) the notice specifies a thing; and

- (c) the person moves, alters or interferes with the thing specified in the notice.

Penalty for contravention of this subsection: Imprisonment for 2 years.

51B Persons assisting inspectors—monitoring powers

Inspectors may be assisted by other persons

- (1) An inspector may, in entering premises under section 51 and in exercising the monitoring powers set out in the following provisions in relation to the premises:
- (a) paragraph 51A(1)(a);
 - (b) paragraph 51A(1)(b);
 - (c) paragraph 51A(1)(c);
 - (d) paragraph 51A(1)(f);
 - (e) subsection 51A(2);
 - (f) subsection 51A(3);

be assisted by other persons if that assistance is necessary and reasonable.

- (2) For the purposes of this section, a person giving such assistance is a ***person assisting*** the inspector.

Powers of a person assisting the inspector

- (3) A person assisting the inspector may:
- (a) enter the premises; and
 - (b) exercise the monitoring powers set out in the following provisions in relation to the premises:
 - (i) paragraph 51A(1)(a);
 - (ii) paragraph 51A(1)(b);
 - (iii) paragraph 51A(1)(c);
 - (iv) paragraph 51A(1)(f);
 - (v) subsection 51A(2);
 - (vi) subsection 51A(3);

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but only in accordance with a direction given to the person by the inspector.

- (4) A power exercised by a person assisting the inspector as mentioned in subsection (3) is taken for all purposes to have been exercised by the inspector.
- (5) If a direction is given under paragraph (3)(b) in writing, the direction is not a legislative instrument.

Subdivision C—Enforcement powers

52 Inspector may enter premises with consent or under enforcement warrant

- (1) If an inspector has reasonable grounds for suspecting that there may be evidential material on any premises, the inspector may:
 - (a) enter the premises; and
 - (b) exercise the enforcement powers set out in section 53.
- (2) However, an inspector is not authorised to enter the premises unless:
 - (a) the occupier of the premises, or a person apparently representing the occupier, has consented to the entry; or
 - (b) the entry is made under an enforcement warrant.

Note: For enforcement warrants, see sections 55E and 55F.

53 Enforcement powers of inspectors

General powers

- (1) The following are the **enforcement powers** that an inspector may exercise in relation to premises under section 52:
 - (a) to search the premises and any thing on the premises for the evidential material;
 - (b) to inspect, examine, take measurements of, conduct tests on, or take samples of the evidential material;

- (c) to take photographs, make video or audio recordings or make sketches of the premises or the evidential material;
- (d) to take onto the premises such equipment and materials as the inspector requires for the purpose of exercising powers in relation to the premises;
- (e) the powers in subsections (2), (3), (4), (8) and (9).

Power to seize

- (2) If the entry is under an enforcement warrant, the enforcement powers include the power to seize the evidential material if the inspector finds it on the premises.

Note: For enforcement warrants, see sections 55E and 55F.

Operation of equipment

- (3) The enforcement powers include the power to operate electronic equipment at premises to find out whether:
 - (a) the equipment; or
 - (b) a disk, tape or other storage device that:
 - (i) is on the premises; and
 - (ii) can be used with the equipment or is associated with it;contains evidential material.

Removing documents and disks etc.

- (4) The enforcement powers include the following powers in relation to evidential material found in the exercise of the power under subsection (3):
 - (a) to seize the equipment and any disk, tape or other associated device;
 - (b) to operate electronic equipment at the premises to put the information in documentary form and seize the documents so produced;
 - (c) to operate electronic equipment at the premises to transfer the information to a disk, tape or other storage device that:

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- (i) is brought to the premises for the exercise of the power;
or
 - (ii) is at the premises and the use of which for the purpose has been agreed to in writing by the occupier of the premises, or another person who apparently represents the occupier;
- and remove the disk, tape or other storage device from the premises.

How powers to be exercised

- (5) An inspector must not operate electronic equipment as mentioned in subsection (3) or (4) unless he or she believes on reasonable grounds that the operation of the equipment can be carried out without damage to the equipment.

Seizing equipment

- (6) An inspector must not seize equipment under paragraph (4)(a) unless:
- (a) it is not practicable to put the material in documentary form as mentioned in paragraph (4)(b) or to transfer the material as mentioned in paragraph (4)(c); or
 - (b) possession by the occupier of the equipment could constitute an offence against a law of the Commonwealth.
- (7) An inspector must not seize equipment under paragraph (4)(a) or documents under paragraph (4)(b) unless the inspector entered the premises under an enforcement warrant.

Seizing other evidential material

- (8) If:
- (a) in the course of searching for a particular thing, in accordance with an enforcement warrant, an inspector finds another thing that the inspector believes on reasonable grounds to be evidential material; and

- (b) the inspector believes, on reasonable grounds, that it is necessary to seize the other thing in order to prevent its concealment, loss or destruction, or its use:
 - (i) in committing, continuing or repeating an offence against this Act or the regulations; or
 - (ii) in committing, continuing or repeating a contravention of a civil penalty provision;
- the enforcement powers include the power to seize that other thing.

Seizing containers

- (9) If:
- (a) an inspector has a power to seize a thing (the ***seizable thing***) under subsection (2), (4) or (8); and
 - (b) the seizable thing is in a container; and
 - (c) the inspector believes, on reasonable grounds, that it is not reasonably practicable to seize the seizable thing without also seizing the container;
- then, for the purposes of seizing the seizable thing, the enforcement powers include the power to seize the container containing the seizable thing (whether or not the container also contains any other thing).
- (10) If the seizable thing is returned under section 53G or 60B, the container must be returned at the same time as the seizable thing.
- (11) If the seizable thing is forfeited to the Commonwealth, the container must be returned as soon as reasonably practicable after the forfeiture.

Note: For forfeiture, see Division 3.

53A Persons assisting inspectors—enforcement powers

Inspectors may be assisted by other persons

- (1) An inspector may, in entering premises under section 52 and in exercising the enforcement powers set out in the following provisions in relation to the premises:
-

Section 53B

- (a) paragraph 53(1)(a);
- (b) paragraph 53(1)(b);
- (c) paragraph 53(1)(c);
- (d) paragraph 53(1)(d);
- (e) subsection 53(3);
- (f) subsection 53(4);

be assisted by other persons if that assistance is necessary and reasonable.

- (2) For the purposes of this section, a person giving such assistance is a *person assisting* the inspector.

Powers of a person assisting the inspector

- (3) A person assisting the inspector may:
- (a) enter the premises; and
 - (b) exercise the enforcement powers set out in the following provisions:
 - (i) paragraph 53(1)(a);
 - (ii) paragraph 53(1)(b);
 - (iii) paragraph 53(1)(c);
 - (iv) paragraph 53(1)(d);
 - (v) subsection 53(3);
 - (vi) subsection 53(4);in relation to the premises, but only in accordance with a direction given to the person by the inspector.
- (4) A power exercised by a person assisting the inspector as mentioned in subsection (3) is taken for all purposes to have been exercised by the inspector.
- (5) If a direction is given under paragraph (3)(b) in writing, the direction is not a legislative instrument.

53B Announcement before entry under warrant

- (1) An inspector must, before entering premises under an enforcement warrant:
- (a) announce that he or she is authorised to enter the premises; and
 - (b) show:
 - (i) his or her identity card; or
 - (ii) written evidence identifying the inspector as a member or special member of the Australian Federal Police or an officer of Customs;to the occupier of the premises, or another person apparently representing the occupier, if the occupier or other person is present at the premises; and
 - (c) give any person at the premises an opportunity to allow entry to the premises.
- (2) However, an inspector is not required to comply with subsection (1) if he or she believes on reasonable grounds that immediate entry to the premises is required:
- (a) to prevent serious damage to the environment; or
 - (b) to ensure that the effective execution of the warrant is not frustrated.
- (3) If:
- (a) an inspector is not required to comply with subsection (1) because of subsection (2); and
 - (b) the occupier of the premises, or another person apparently representing the occupier, is present at the premises;
- the inspector must, as soon as practicable after entering the premises, show:
- (c) his or her identity card; or
 - (d) written evidence identifying the inspector as a member or special member of the Australian Federal Police or an officer of Customs;
- to the occupier or other person.

Section 53C

53C Details of warrant etc. to be given to occupier

- (1) If:
 - (a) an enforcement warrant is being executed in relation to premises; and
 - (b) the occupier of the premises, or another person apparently representing the occupier, is present at the premises;the inspector executing the warrant must, as soon as practicable, make a copy of the enforcement warrant available to the occupier or other person.
- (2) The copy need not include the signature of the magistrate who issued the enforcement warrant.

Subdivision D—General provisions relating to seizure etc.

53D Receipts for seized things and seizure notice

Receipts

- (1) If a thing is seized under section 53, the inspector must provide a receipt for the thing.
- (2) If 2 or more things are seized, they may be covered in the one receipt.

Notice

- (3) The receipt must be accompanied by a notice that sets out, in summary form, an explanation of sections 53E, 53F, 53G, 53H, 53J, 53K and 53L.

53E Copies of seized things to be provided

- (1) If, under an enforcement warrant relating to premises, an inspector seizes:
 - (a) a document, film, computer file or other thing that can be readily copied; or

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- (b) a storage device, the information in which can be readily copied;
- the inspector must, if requested to do so by:
- (c) the occupier of the premises; or
 - (d) another person who apparently represents the occupier and who is present when the warrant is executed;
- give a copy of the thing or the information to the occupier or other person as soon as practicable after the seizure.
- (2) However, subsection (1) does not apply if:
- (a) the thing that has been seized was seized under paragraph 53(4)(b) or (c); or
 - (b) possession by the occupier of the document, film, computer file, thing or information could constitute an offence against a law of the Commonwealth.

53F Inspection of seized books, records or documents

If:

- (a) an inspector seizes a book, record or document under section 53; and
 - (b) the book, record or document is in the inspector's possession;
- the inspector must permit a person who would be entitled to inspect the book, record or document if it were not in the inspector's possession to inspect the book, record or document at all reasonable times.

53G Return of seized things

- (1) Subject to any contrary order of a court, if:
- (a) an inspector seizes a thing under section 53; and
 - (b) a forfeiture notice has not been given in relation to the thing;
- the inspector must return it if:
- (c) the reason for its seizure no longer exists or it is decided that it is not to be used in evidence; or

Section 53H

(d) the period of 60 days after its seizure ends;
whichever first occurs, unless the thing is forfeited to the
Commonwealth.

Note: For forfeiture, see Division 3.

- (2) At the end of the 60 days specified in subsection (1), an inspector must take reasonable steps to return the thing to the person from whom it was seized, unless:
- (a) proceedings in respect of which the thing may afford evidence were instituted before the end of the 60 days and have not been completed (including an appeal to a court in relation to those proceedings); or
 - (b) an inspector may retain the thing because of an order under section 53H; or
 - (c) the owner of the thing consents to the thing not being returned; or
 - (d) to return the thing could cause an imminent risk of death, serious illness, serious injury or serious damage to the environment; or
 - (e) an inspector is otherwise authorised (by a law, or an order of a court, of the Commonwealth or of a State or Territory) to retain, destroy or dispose of the thing.

53H Magistrate may permit seized things to be retained

- (1) An inspector may apply to a magistrate for an order that he or she may retain the thing for a further period if:
- (a) before the end of 60 days after the seizure; or
 - (b) before the end of a period previously specified in an order of a magistrate under this section;
- proceedings in respect of which the thing may afford evidence have not commenced.
- (2) If the magistrate is satisfied that it is necessary for an inspector to continue to retain the thing:
- (a) for the purpose of an investigation as to whether:

- (i) an offence against this Act or the regulations has been committed; or
 - (ii) a civil penalty provision has been contravened; or
 - (b) to enable:
 - (i) evidence of an offence against this Act or the regulations to be secured for the purpose of a prosecution; or
 - (ii) evidence of a contravention of a civil penalty provision to be secured for the purpose of civil proceedings;
- the magistrate may order that an inspector may retain the thing for a period (not exceeding 3 years) specified in the order.
- (3) Before making the application, the inspector must:
 - (a) take reasonable steps to discover who has an interest in the retention of the thing; and
 - (b) if it is practicable to do so, notify each person whom the inspector believes to have such an interest of the proposed application.

53J Powers to take samples and conduct tests

Taking samples

- (1) If an inspector seizes gas or another substance under section 53, the inspector may arrange for samples to be taken of the gas or other substance by the inspector or another person.
- (2) The regulations may prescribe procedures for dealing with samples taken under this Division.
- (3) The regulations may provide for compensation to be paid for samples taken under this Division.

Conducting tests

- (4) If a sample of gas or another substance is taken by an inspector under this Division, the inspector may arrange for tests to be conducted on the sample by the inspector or another person.

Section 53K

- (5) The regulations may prescribe procedures for the conduct of tests under this Division.

Substantial compliance with procedures

- (6) The regulations may provide that:
- (a) particular procedures prescribed for the purposes of this section need not be strictly complied with; and
 - (b) substantial compliance is sufficient.
- (7) However, subsection (6) does not apply to procedures for ensuring that a sample is not interfered with by anyone who is not authorised to do so.

53K Directions about how pressurised container is to be dealt with

Scope

- (1) This section applies if an inspector seizes a pressurised container under section 53.

Application for direction

- (2) The inspector may apply to the Minister or Secretary for a direction under subsection (3).

Direction

- (3) If:
- (a) the inspector applies to the Minister or Secretary for a direction under subsection (2); and
 - (b) the Minister or Secretary, as the case may be, is satisfied that the pressurised container constitutes a danger to public health and safety;
- the Minister or Secretary, as the case may be, may direct that the pressurised container must be dealt with in a manner specified in the direction.

Section 53L

- (4) A direction under subsection (3) may require the pressurised container and its contents to be destroyed.
- (5) Subsection (4) does not limit subsection (3).
- (6) The inspector must comply with a direction under subsection (3).
- (7) A direction under subsection (3) is not a legislative instrument.

Compensation

- (8) If a pressurised container and its contents is destroyed under this section, the owner of the container may apply to a designated court for compensation.
- (9) On application under subsection (8), the designated court must order the Commonwealth to pay compensation if the court is satisfied that the pressurised container did not contain forfeitable goods.
- (10) The amount of compensation ordered must be the market value of the pressurised container and its contents at the time they were destroyed.

53L Disposal of goods if person cannot be located

- (1) If:
 - (a) a thing is seized under section 53; and
 - (b) apart from this section, the thing is required to be returned to a person; and
 - (c) the Secretary cannot, despite making reasonable efforts, locate the person;the Secretary may dispose of the thing, or cause the thing to be disposed of, in such manner as he or she thinks appropriate.
- (2) The Secretary may, by writing, delegate any or all of his or her powers under subsection (1) to an SES employee or acting SES employee.

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Section 53M

Note: The expressions *SES employee* and *acting SES employee* are defined in the *Acts Interpretation Act 1901*.

- (3) A delegate must comply with any written directions of the Secretary.

Subdivision E—Obligations and incidental powers of inspectors

53M Consent

- (1) An inspector must, before obtaining the consent of a person to enter premises under this Division, inform the person that he or she may refuse consent.
- (2) An entry of an inspector with the consent of a person is not lawful unless the person voluntarily consented to the entry.

54 Power to require information etc.

- (1) Subject to subsection (2), an inspector who has entered premises under this Division may, to the extent that it is reasonably necessary for the purpose of ascertaining whether this Act or the regulations have been complied with, require a person to answer any questions put by the inspector and to produce any books, records or documents requested by the inspector.
- (2) An inspector is not entitled to make a requirement of a person under subsection (1) unless the inspector produces, for inspection by the person, his or her identity card, or written evidence identifying the inspector as a member or special member of the Australian Federal Police or an officer of Customs, as the case may be.

55 Inspection of books, records or documents removed by, or produced to, inspectors

If:

- (a) either:

Section 55A

- (i) an inspector removes a book, record or document under paragraph 51A(1)(e); or
 - (ii) a person produces a book, record or document to an inspector in compliance with a requirement under subsection 54(1); and
- (b) the book, record or document is in the inspector's possession; the inspector must permit a person who would be entitled to inspect the book, record or document if it were not in the inspector's possession to inspect the book, record or document at all reasonable times.

55A Return of books, records or documents removed by, or produced to, inspectors

- (1) Subject to any contrary order of a court, if:
- (a) either:
 - (i) an inspector removes a book, record or document under paragraph 51A(1)(e); or
 - (ii) a person produces a book, record or document to an inspector in compliance with a requirement under subsection 54(1); and
 - (b) the book, record or document is in the inspector's possession; the inspector must return the book, record or document if:
 - (c) the reason for its removal or production no longer exists or it is decided that it is not to be used in evidence; or
 - (d) the period of 60 days after its removal or production ends;whichever first occurs, unless the book, record or document is forfeited to the Commonwealth.
- Note: For forfeiture, see Division 3.
- (2) At the end of the 60 days specified in subsection (1), an inspector must take reasonable steps to return the book, record or document to the person from whom it was removed, or who produced it, unless:
- (a) proceedings in respect of which the book, record or document may afford evidence were instituted before the end

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- of the 60 days and have not been completed (including an appeal to a court in relation to those proceedings); or
- (b) an inspector may retain the book, record or document because of an order under section 55B; or
 - (c) the owner of the book, record or document consents to it not being returned; or
 - (d) an inspector is otherwise authorised (by a law, or an order of a court, of the Commonwealth or of a State or Territory) to retain, destroy or dispose of the book, record or document.

55B Magistrate may permit books, records or documents to be retained

- (1) An inspector may apply to a magistrate for an order that he or she may retain the book, record or document for a further period if:
 - (a) before the end of 60 days after the removal or production of the book, record or document; or
 - (b) before the end of a period previously specified in an order of a magistrate under this section;proceedings in respect of which the book, record or document may afford evidence have not commenced.
- (2) If the magistrate is satisfied that it is necessary for an inspector to continue to retain the book, record or document:
 - (a) for the purpose of an investigation as to whether:
 - (i) an offence against this Act or the regulations has been committed; or
 - (ii) a civil penalty provision has been contravened; or
 - (b) to enable:
 - (i) evidence of an offence against this Act or the regulations to be secured for the purpose of a prosecution; or
 - (ii) evidence of a contravention of a civil penalty provision to be secured for the purpose of civil proceedings;

the magistrate may order that an inspector may retain the book, record or document for a period (not exceeding 3 years) specified in the order.

- (3) Before making the application, the inspector must:
- (a) take reasonable steps to discover who has an interest in the retention of the book, record or document; and
 - (b) if it is practicable to do so, notify each person whom the inspector believes to have such an interest of the proposed application.

55C Securing electronic equipment for use by experts

- (1) If an inspector believes on reasonable grounds that:
- (a) any of the following:
 - (i) information that is relevant to ascertaining whether this Act or the regulations have been complied with;
 - (ii) evidential material;may be accessible by operating electronic equipment at particular premises; and
 - (b) expert assistance is required to operate the equipment; and
 - (c) if he or she does not take action under this subsection, the information or material may be destroyed, altered or otherwise interfered with;

he or she may do whatever is necessary to secure the equipment, whether by locking it up, placing a guard or otherwise.

Notice to occupier

- (2) The inspector must give notice to the occupier of the premises, or another person who apparently represents the occupier, of his or her intention to secure the equipment and of the fact that the equipment may be secured for up to 24 hours.

Period during which equipment may be secured

- (3) The equipment may be secured:
- (a) for a period not exceeding 24 hours; or

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(b) until the equipment has been operated by the expert;
whichever happens first.

Extensions

- (4) If the inspector believes on reasonable grounds that the expert assistance will not be available within 24 hours, he or she may apply to a magistrate for an order extending that period.
- (5) The inspector must give notice to the occupier of the premises, or another person who apparently represents the occupier, of his or her intention to apply for an extension, and the occupier is entitled to be heard in relation to the application.
- (6) The magistrate may order an extension for a period specified in the order if the magistrate is satisfied that the extension is necessary.

55D Compensation for damage to electronic equipment

- (1) This section applies if:
 - (a) as a result of electronic equipment being operated as mentioned in this Division:
 - (i) damage is caused to the equipment; or
 - (ii) the data recorded on the equipment is damaged; or
 - (iii) programs associated with the use of the equipment, or with the use of the data, are damaged or corrupted; and
 - (b) the damage or corruption occurs because:
 - (i) insufficient care was exercised in selecting the person who was to operate the equipment; or
 - (ii) insufficient care was exercised by the person operating the equipment.
- (2) The Commonwealth must pay the owner of the equipment, or the user of the data or programs, such reasonable compensation for the damage or corruption as the Commonwealth and the owner or user agree on.

- (3) However, if the owner or user and the Commonwealth fail to agree, the owner or user may institute proceedings in a designated court for such reasonable amount of compensation as the designated court determines.
- (4) In determining the amount of compensation payable, regard is to be had to whether the occupier of the premises, or the occupier's employees and agents, if they were available at the time, provided any appropriate warning or guidance on the operation of the equipment.
- (5) In this section:
damage, in relation to data, includes damage by erasure of data or addition of other data.

Subdivision F—Enforcement warrants

55E Enforcement warrants

Application for an enforcement warrant

- (1) An inspector may apply to a magistrate for an enforcement warrant under this section in relation to premises.

Issue of an enforcement warrant

- (2) The magistrate may issue the enforcement warrant if the magistrate is satisfied, by information on oath, that there are reasonable grounds for suspecting that there is, or there may be within the next 72 hours, evidential material in or on the premises.
- (3) However, the magistrate must not issue the enforcement warrant unless the inspector or some other person has given to the magistrate, either orally or by affidavit, such further information (if any) as the magistrate requires concerning the grounds on which the issue of the warrant is being sought.

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Content of an enforcement warrant

- (4) The enforcement warrant must:
- (a) name one or more inspectors; and
 - (b) authorise the inspectors so named, with such assistance and by such force as is necessary and reasonable:
 - (i) to enter the premises; and
 - (ii) to exercise the enforcement powers set out in section 53; and
 - (c) state whether the entry is authorised to be made at any time of the day or night or during specified hours of the day or night; and
 - (d) specify the day (not more than one week after the issue of the warrant) on which the warrant ceases to have effect; and
 - (e) state the purpose for which the warrant is issued.

55F Enforcement warrants by telephone, telex, fax etc.

Application for an enforcement warrant

- (1) If, in an urgent case, an inspector considers it necessary to do so, the inspector may apply to a magistrate by telephone, telex, fax or other electronic means for an enforcement warrant in relation to premises.
- (2) The magistrate may require communication by voice to the extent that it is practicable in the circumstances.
- (3) Before applying for the enforcement warrant, the inspector must prepare an information of the kind mentioned in subsection 55E(2) in relation to the premises that sets out the grounds on which the warrant is sought.
- (4) If it is necessary to do so, the inspector may apply for the enforcement warrant before the information is sworn.

Issue of an enforcement warrant

- (5) If the magistrate is satisfied:
-

- (a) after having considered the terms of the information; and
 - (b) after having received such further information (if any) as the magistrate requires concerning the grounds on which the issue of the enforcement warrant is being sought;
- that there are reasonable grounds for issuing the warrant, the magistrate may complete and sign the same warrant that the magistrate would issue under section 55E if the application had been made under that section.

Obligations of magistrate and inspector once an enforcement warrant issued

- (6) If the magistrate completes and signs the enforcement warrant:
 - (a) the magistrate must:
 - (i) tell the inspector what the terms of the warrant are; and
 - (ii) tell the inspector the day on which and the time at which the warrant was signed; and
 - (iii) tell the inspector the day (not more than one week after the magistrate completes and signs the warrant) on which the warrant ceases to have effect; and
 - (iv) record on the warrant the reasons for issuing the warrant; and
 - (b) the inspector must:
 - (i) complete a form of enforcement warrant in the same terms as the warrant completed and signed by the magistrate; and
 - (ii) write on the form the name of the magistrate and the day on which and the time at which the warrant was signed.
- (7) The inspector must also, not later than the day after the day of expiry or execution of the enforcement warrant, whichever is the earlier, send to the magistrate:
 - (a) the form of enforcement warrant completed by the inspector; and
 - (b) the information referred to in subsection (3), which must have been duly sworn.

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- (8) When the magistrate receives those documents, the magistrate must:
- (a) attach them to the enforcement warrant that the magistrate completed and signed; and
 - (b) deal with them in the way in which the magistrate would have dealt with the information if the application had been made under section 55E.

Authority of an enforcement warrant

- (9) A form of enforcement warrant duly completed under subsection (6) is authority for any entry, search, seizure or other exercise of a power that the warrant signed by the magistrate authorises.
- (10) If:
- (a) it is material, in any proceedings, for a court to be satisfied that an exercise of a power was authorised by this section; and
 - (b) the enforcement warrant signed by the magistrate authorising the exercise of the power is not produced in evidence;
- the court must assume, unless the contrary is proved, that the exercise of the power was not authorised by such a warrant.

55G Offences relating to warrants

- (1) A person commits an offence if:
- (a) the person is an inspector; and
 - (b) the person makes an application for an enforcement warrant; and
 - (c) the application includes a statement; and
 - (d) the statement is false or misleading in a material particular.

Penalty: Imprisonment for 2 years.

- (2) The fault element for paragraph (1)(d) is knowledge.
- (3) A person commits an offence if:

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- (a) the person is an inspector; and
- (b) the person prepares a document that purports to be a form of enforcement warrant under section 55F; and
- (c) the document states the name of a magistrate; and
- (d) the magistrate named did not issue the enforcement warrant.

Penalty: Imprisonment for 2 years.

- (4) A person commits an offence if:
- (a) the person is an inspector; and
 - (b) the person prepares a document that purports to be a form of enforcement warrant under section 55F; and
 - (c) the document states a matter; and
 - (d) the matter departs in a material particular from the form authorised by the magistrate.

Penalty: Imprisonment for 2 years.

- (5) The fault element for paragraph (4)(d) is knowledge.

- (6) A person commits an offence if:
- (a) the person is an inspector; and
 - (b) the person:
 - (i) purports to execute; or
 - (ii) presents to another person;a document that purports to be a form of enforcement warrant under section 55F; and
 - (c) the document:
 - (i) has not been approved by a magistrate under section 55F; or
 - (ii) departs in a material particular from the terms authorised by that section.

Penalty: Imprisonment for 2 years.

- (7) The fault element for paragraph (6)(c) is knowledge.

- (8) A person commits an offence if:

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- (a) the person is an inspector; and
- (b) the person gives a form of enforcement warrant under section 55F to a magistrate; and
- (c) the form of enforcement warrant is not the form of enforcement warrant that the inspector purported to execute.

Penalty for contravention of this subsection: Imprisonment for 2 years.

Subdivision G—Powers of magistrates

55H Powers of magistrates

Powers conferred personally

- (1) A power conferred on a magistrate by this Division is conferred on the magistrate:
 - (a) in a personal capacity; and
 - (b) not as a court or a member of a court.

Powers need not be accepted

- (2) The magistrate need not accept the power conferred.

Protection and immunity

- (3) A magistrate exercising a power conferred by this Division has the same protection and immunity as if he or she were exercising the power:
 - (a) as the court of which the magistrate is a member; or
 - (b) as a member of the court of which the magistrate is a member.

Division 2—Injunctions

56 Injunctions

- (1) Where a person has engaged, is engaging or is proposing to engage in any conduct that constituted or would constitute a contravention of this Act or the regulations, the Federal Court may, on the application of the Minister or any other person, grant an injunction restraining the person from engaging in the conduct and, if in the court's opinion it is desirable to do so, requiring the person to do any act or thing.
- (2) Where:
 - (a) a person has refused or failed, or is refusing or failing, or is proposing to refuse or fail, to do an act or thing; and
 - (b) the refusal or failure was, is, or would be a contravention of this Act or the regulations;the Federal Court may, on the application of the Minister or any other person, grant an injunction requiring the first-mentioned person to do that act or thing.
- (3) Where an application is made to the court for an injunction under this section, the court may, if in the court's opinion it is desirable to do so, before considering the application, grant an interim injunction restraining a person from engaging in conduct of the kind referred to in that subsection pending the determination of the application.
- (4) The court may discharge or vary an injunction granted under this section.
- (5) The power of the court to grant an injunction restraining a person from engaging in conduct of a particular kind may be exercised:
 - (a) if the court is satisfied that the person has engaged in conduct of that kind—whether or not it appears to the court that the person intends to engage again, or to continue to engage, in conduct of that kind; or

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- (b) if it appears to the court that, in the event that an injunction is not granted, it is likely that the person will engage in conduct of that kind—whether or not the person has previously engaged in conduct of that kind and whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person engages in conduct of that kind.
- (6) The power of the court to grant an injunction requiring a person to do a particular act or thing may be exercised:
 - (a) if the court is satisfied that the person has refused or failed to do that act or thing—whether or not it appears to the court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; or
 - (b) if it appears to the court that, in the event that an injunction is not granted, it is likely that the person will refuse or fail to do that act or thing—whether or not the person has previously refused or failed to do that act or thing and whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person refuses or fails to do that act or thing.
- (7) Where the Minister makes an application to the court for the grant of an injunction under this section, the court shall not require the Minister or any other person, as a condition of the granting of an interim injunction, to give any undertakings as to damages.
- (8) The powers conferred on the court under this section are in addition to, and not in derogation of, any powers of the court, whether conferred by this Act or otherwise.

Division 3—Forfeiture of goods

Subdivision A—Forfeitable goods

57 Forfeitable goods

- (1) For the purposes of this Act, the following goods are *forfeitable goods*:
- (a) scheduled substances in respect of the manufacture of which:
 - (i) a person has been convicted of an offence under section 13; or
 - (ii) a civil penalty order has been made against a person for a contravention of a civil penalty provision set out in section 13; or
 - (iii) a person has contravened section 13;
 - (b) scheduled substances in respect of the import of which:
 - (i) a person has been convicted of an offence under section 13; or
 - (ii) a civil penalty order has been made against a person for a contravention of a civil penalty provision set out in section 13; or
 - (iii) a person has contravened section 13;
 - (c) scheduled substances in respect of the export of which:
 - (i) a person has been convicted of an offence under section 13; or
 - (ii) a civil penalty order has been made against a person for a contravention of a civil penalty provision set out in section 13; or
 - (iii) a person has contravened section 13;
 - (d) products that contain scheduled substances, or that use scheduled substances in their operation, where:
 - (i) a person has been convicted of an offence against section 38 in respect of the manufacture or import of the products; or

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- (ii) a civil penalty order has been made against a person for a contravention of a civil penalty provision set out in section 38 in respect of the manufacture or import of the products; or
- (iii) a person has contravened section 38 in respect of the manufacture or import of the products;
- (e) products that contain scheduled substances, or that use scheduled substances in their operation, where:
 - (i) a person has been convicted of an offence against regulations made for the purposes of section 39 in respect of the manufacture, import, export, distribution or use of the products; or
 - (ii) a person has contravened regulations made for the purposes of section 39 in respect of the manufacture, import, export, distribution or use of the products;
- (f) products that contain scheduled substances, where:
 - (i) a person has been convicted of an offence against section 44 in respect of the import of the products; or
 - (ii) a civil penalty order has been made against a person for a contravention of a civil penalty provision set out in section 44 in respect of the import of the products; or
 - (iii) a person has contravened section 44 in respect of the import of the products;
- (g) products in the manufacture of which scheduled substances were used, where:
 - (i) a person has been convicted of an offence against section 45 in respect of the import of the products; or
 - (ii) a civil penalty order has been made against a person for a contravention of a civil penalty provision set out in section 45 in respect of the import of the products; or
 - (iii) a person has contravened section 45 in respect of the import of the products;
- (h) prescribed goods in respect of which:
 - (i) a person has been convicted of an offence against a prescribed provision of the regulations; or

- (ii) a civil penalty order has been made against a person for a contravention of a civil penalty provision set out in the regulations; or
 - (iii) a person has contravened a prescribed provision of the regulations.
- (2) For the purposes of this Act, goods are also *forfeitable goods* if:
- (a) the goods are a quantity of scheduled substances or products; and
 - (b) the goods are mixed with another quantity of scheduled substances or products (the *other quantity*) of the same kind or a similar kind; and
 - (c) the other quantity is forfeitable goods.

Subdivision B—Forfeiture following conviction or making of civil penalty order

58 Goods forfeited to Commonwealth

- (1) Where a person is convicted of an offence against a provision of this Act or the regulations referred to in subsection 57(1), all forfeitable goods to which the offence relates are, by force of the conviction, forfeited to the Commonwealth.
- (2) If a civil penalty order has been made against a person for a contravention of a civil penalty provision referred to in subsection 57(1), all forfeitable goods to which the contravention relates are, by force of the order, forfeited to the Commonwealth.

59 Power to seize forfeited goods

- (1) An inspector may seize goods that are forfeited under section 58.
- (2) Without prejudice to any other method of seizing goods, goods may be seized under subsection (1) by an inspector attaching, or causing to be attached, to the goods, or to the container in which the goods are held, a notice in writing signed by the inspector and:
 - (a) identifying the goods;

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- (b) stating that the goods have been seized under this subsection;
and
 - (c) specifying the reason for the seizure.
- (3) An inspector who seizes goods in the manner referred to in subsection (2) shall, as soon as practicable, serve on the owner of the goods or the person who had possession, custody or control of the goods immediately before they were seized a copy of the notice under subsection (2).

60 Persons not to move etc. seized goods

- (1) A person is guilty of an offence if:
- (a) the person engages in conduct; and
 - (b) the conduct causes goods to be moved, altered or interfered with; and
 - (c) the goods are the subject of a notice under subsection 59(2).

Penalty: Imprisonment for 2 years.

- (1A) Subsection (1) does not apply if the person engages in the conduct in accordance with a direction given to the person by the Minister.

Note: The defendant bears an evidential burden in relation to the matter in subsection (1A). See subsection 13.3(3) of the *Criminal Code*.

- (1B) In subsections (1) and (1A):

engage in conduct means:

- (a) do an act; or
 - (b) omit to perform an act.
- (2) A person to whom a copy of a notice has been given under subsection 59(3) shall take all reasonable precautions, and exercise all due diligence, to prevent the moving, alteration or interference with the goods to which the notice relates except in accordance with a direction given by the Minister.

Penalty: imprisonment for 2 years.

Subdivision C—Forfeiture of seized goods

60A Forfeiture notices

- (1) If:
 - (a) an inspector seizes goods under section 53; and
 - (b) the inspector suspects, on reasonable grounds, that the goods are forfeitable goods;the inspector may, within 7 days after the seizure, give a written notice (a *forfeiture notice*) to:
 - (c) the owner of the goods; or
 - (d) if the owner of the goods cannot be identified after reasonable inquiry—the person from whom the goods were seized.
- (2) The forfeiture notice must:
 - (a) identify the goods; and
 - (b) state that the goods have been seized; and
 - (c) specify the reason for the seizure; and
 - (d) state that the goods will be forfeited to the Commonwealth unless:
 - (i) the owner of the thing, or the person from whom the thing was seized, applies to a designated court under section 60B within 60 days after the forfeiture notice is given; and
 - (ii) the court makes an order that the goods are not forfeitable goods; and
 - (e) specify the address of the Secretary.

60B Claims that seized goods are not forfeitable goods

- (1) If a forfeiture notice is given under section 60A in relation to goods (the *identified goods*), either of the following persons:
 - (a) the owner of the goods;
 - (b) the person from whom the goods were seized;may apply to a designated court for:

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- (c) an order that all of the identified goods are not forfeitable goods; or
 - (d) an order that specified identified goods are not forfeitable goods.
- (2) The application must be made within 60 days after forfeiture notice is given.
- (3) If a person applies for an order under paragraph (1)(c), the court must:
 - (a) make the order if it is satisfied that the identified goods are not forfeitable goods; or
 - (b) refuse to make the order if it is not satisfied that the identified goods are not forfeitable goods.
- (4) If a person applies for an order under paragraph (1)(d), the court must:
 - (a) make the order if it is satisfied that the goods specified in the application are not forfeitable goods; or
 - (b) refuse to make the order if it is not satisfied that the goods specified in the application are not forfeitable goods.
- (5) If the court makes an order under paragraph (3)(a) or (4)(a) in relation to goods, the inspector must take reasonable steps to return the goods to the applicant, unless:
 - (a) proceedings in respect of which the goods may afford evidence were instituted before the order was made and have not been completed (including an appeal to a court in relation to those proceedings); or
 - (b) to return the goods could cause an imminent risk of death, serious illness, serious injury or serious damage to the environment; or
 - (c) an inspector is otherwise authorised (by a law, or an order of a court, of the Commonwealth or of a State or Territory) to retain, destroy or dispose of the goods.

60C Forfeiture of seized goods to the Commonwealth

- (1) If:
- (a) a forfeiture notice has been given in relation to seized goods;
and
 - (b) 60 days pass after the notice is given, and an application under section 60B has not been made in relation to the goods;
- the goods are forfeited to the Commonwealth at the end of the 60th day after the day the forfeiture notice was given.
- (2) If:
- (a) a forfeiture notice has been given in relation to seized goods;
and
 - (b) within 60 days after the notice is given, an application under section 60B is made to a designated court for an order that the goods are not forfeitable goods; and
 - (c) the court refuses to make the order;
- the goods are forfeited to the Commonwealth when the court refuses to make the order.

60D Right of compensation in certain circumstances

- (1) If:
- (a) goods are seized under section 53; and
 - (b) the goods are forfeited to the Commonwealth under section 60C;
- the owner of the goods may apply to a designated court for compensation.
- (2) On application under subsection (1), the court must order that the Commonwealth pay compensation to the owner of the goods if the court is satisfied that:
- (a) the applicant is the owner of the goods; and
 - (b) either:
 - (i) Division 1 was not complied with in relation to the seizure of the goods; or
 - (ii) the goods were not forfeitable goods.

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- (3) The amount of compensation ordered must be the market value of the goods at the time the goods were forfeited.

Subdivision D—General provisions

60E Forfeited goods become the property of the Commonwealth

Goods that are forfeited to the Commonwealth under this Division become the property of the Commonwealth.

61 Disposal of forfeited goods

- (1) Goods that are forfeited under section 58 or section 60C shall be dealt with and disposed of in accordance with the directions of the Minister.
- (2) The forfeited goods must not be sold.

Division 4—Offences

62 False statements

- (1) A person shall not, in relation to an application made under this Act or the regulations:
- (a) make a statement that is false or misleading in a material particular; or
 - (b) give to the Minister or any other person a document that contains information that is false or misleading in a material particular without:
 - (i) indicating to the Minister or other person that the document is false or misleading and the respect in which the document is false or misleading; and
 - (ii) providing correct information to the Minister or other person if the first-mentioned person is in possession of, or can reasonably acquire, the correct information.

Penalty: imprisonment for 2 years.

- (2) A person shall not, otherwise than in relation to such an application:
- (a) make to an inspector doing duty in relation to this Act a statement that is false or misleading in a material particular; or
 - (b) give to an inspector doing duty in relation to this Act a document that contains information that is false or misleading in a material particular without:
 - (i) indicating to the inspector that the document is false or misleading and the respect in which the document is false or misleading; and
 - (ii) providing correct information to the inspector if the person is in possession of, or can reasonably acquire, the correct information.

Penalty: imprisonment for 12 months.

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- (3) A person shall not include in a report given to the Minister, or kept, under Part VII a statement that is false or misleading in a material particular.

Penalty: imprisonment for 2 years.

- (4) A person must not include in a report given to the Minister in accordance with a condition of a licence a statement that is false or misleading in a material particular.

Penalty: imprisonment for 2 years.

- (5) The fault elements for:

- (a) the circumstance that the statement mentioned in paragraph (1)(a) or (2)(a) or subsection (3) or (4) is false or misleading in a material particular; or
(b) the circumstance that the document mentioned in paragraph (1)(b) or (2)(b) contains information that is false or misleading in a material particular;

are knowledge and recklessness.

63 Obstruction of inspectors etc.

- (1) A person shall not intentionally obstruct, hinder or resist an inspector, or a person assisting an inspector under section 51B or 53A, in the performance of his or her functions under this Act.

Penalty: imprisonment for 6 months.

- (2) Subsection (1) does not apply if the person has a reasonable excuse.

Note: The defendant bears an evidential burden in relation to the matter in subsection (2). See subsection 13.3(3) of the *Criminal Code*.

64 Failure to answer questions etc.

- (1) A person shall not refuse or fail to answer a question or produce a document when so required by an inspector under this Act.

Penalty: imprisonment for 12 months.

(1A) Subsection (1) does not apply if the person has a reasonable excuse.

Note: The defendant bears an evidential burden in relation to the matter in subsection (1A). See subsection 13.3(3) of the *Criminal Code*.

(2) Subject to subsections (3), (6) and (9), it is a reasonable excuse for the purposes of subsection (1A) for a person:

(a) to refuse or fail to answer a question when so required under this Act; or

(b) to refuse or fail to produce a document when so required under this Act;

that the answer to the question, or producing the document, as the case may be, might tend to incriminate the person or make the person liable to forfeiture or a penalty.

(3) Subsection (2) does not apply in relation to a failure or refusal by a person to answer a question, or to produce a document, on the ground that the answer to the question or producing the document might tend to prove his or her guilt of an offence against, or make him or her liable to forfeiture or a penalty under, a law of the Commonwealth or of a Territory, if the Director of Public Prosecutions has given the person a written undertaking under subsection (4).

(4) An undertaking by the Director of Public Prosecutions shall:

(a) be an undertaking that:

(i) an answer given, or a document produced, by the person; or

(ii) any information or document obtained as a direct or indirect consequence of the answering of the question, or the production of the document;

will not be used in evidence in any proceedings for an offence against a law of the Commonwealth or of a Territory against the person, other than proceedings in respect of the falsity of evidence given by the person;

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- (b) state that, in the opinion of the Director of Public Prosecutions, there are special reasons why, in the public interest, the question should be answered or the document should be produced; and
 - (c) state the general nature of those reasons.
- (5) An inspector may recommend to the Director of Public Prosecutions that a person who has been, or is to be, required under this Act to answer a question or produce a document be given an undertaking under subsection (4).
- (6) Subsection (2) does not apply in relation to a failure or refusal by a person to answer a question, or to produce a document, on the ground that the answer to the question or producing the document might tend to prove his or her guilt of an offence against, or make him or her liable to forfeiture or a penalty under, a law of a State, if the Attorney-General of the State, or a person authorised by that Attorney-General (being the person holding the office of Director of Public Prosecutions, or a similar office, of the State) has given the person a written undertaking under subsection (7).
- (7) An undertaking by the Attorney-General of the State, or authorised person, shall:
 - (a) be an undertaking that:
 - (i) an answer given, or a document produced, by the person; or
 - (ii) any information or document obtained as a direct or indirect consequence of the answering of the question, or the production of the document;will not be used in evidence in any proceedings for an offence against a law of the State against the person, other than proceedings in respect of the falsity of evidence given by the person;
 - (b) state that, in the opinion of the person giving the undertaking, there are special reasons why, in the public interest, the question should be answered or the document should be produced; and
 - (c) state the general nature of those reasons.

- (8) An inspector may recommend to the Attorney-General of a State that a person who has been, or is to be, required under this Act to give information or produce a document be given an undertaking under subsection (7).
- (9) For the purposes of subsection (1A):
- (a) it is not a reasonable excuse for a body corporate to refuse or fail to produce a document that production of the document might tend to incriminate the body corporate or make it liable to forfeiture or a penalty; and
 - (b) it is not a reasonable excuse for a person to refuse or fail to produce a document that is, or forms part of, a record of an existing or past business (not being, if the individual is or has been an employee, a document that sets out details of earnings received by the person in respect of his or her employment and does not set out any other information) that production of the document might tend to incriminate the person or make the individual liable to forfeiture or a penalty.
- (10) Subsections (3), (6) and (9) do not apply where proceedings, in respect of which giving information or producing a document might tend to incriminate a person or make a person liable to forfeiture or a penalty, have been commenced against the person and have not been finally dealt with by a court or otherwise disposed of.
- (11) In this section, *State* includes the Northern Territory.

65 Conduct by directors, employees and agents

- (1) Where, in proceedings for an offence against this Act, it is necessary to establish the state of mind of a body corporate in relation to particular conduct, it is sufficient to show:
- (a) that the conduct was engaged in by a director, employee or agent of the body corporate within the scope of his or her actual or apparent authority; and
 - (b) that the director, employee or agent had the state of mind.

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- (2) Any conduct engaged in on behalf of a body corporate by a director, employee or agent of the body corporate within the scope of his or her actual or apparent authority shall be taken, for the purposes of a prosecution for an offence against this Act, to have been engaged in also by the body corporate unless the body corporate establishes that the body corporate took reasonable precautions and exercised due diligence to avoid the conduct.
- (3) Where, in proceedings for an offence against this Act, it is necessary to establish the state of mind of a person other than a body corporate in relation to particular conduct, it is sufficient to show:
- (a) that the conduct was engaged in by an employee or agent of the person within the scope of his or her actual or apparent authority; and
 - (b) that the employee or agent had the state of mind.
- (4) Any conduct engaged in on behalf of a person other than a body corporate by an employee or agent of the person within the scope of his or her actual or apparent authority shall be taken, for the purposes of a prosecution for an offence against this Act, to have been engaged in also by the first-mentioned person unless the first-mentioned person establishes that the first-mentioned person took reasonable precautions and exercised due diligence to avoid the conduct.
- (5) Where:
- (a) a person other than a body corporate is convicted of an offence; and
 - (b) the person would not have been convicted of the offence if subsections (3) and (4) had not been enacted;
- the person is not liable to be punished by imprisonment for that offence.
- (6) A reference in subsection (1) or (3) to the state of mind of a person includes a reference to:
- (a) the knowledge, intention, opinion, belief or purpose of the person; and

- (b) the person's reasons for the intention, opinion, belief or purpose.
- (7) A reference in this section to a director of a body corporate includes a reference to a constituent member of a body corporate incorporated for a public purpose by a law of the Commonwealth, of a State or of a Territory.
- (8) A reference in this section to engaging in conduct includes a reference to failing or refusing to engage in conduct.
- (9) A reference in this section to an offence against this Act includes a reference to:
 - (a) an offence created by the regulations; and
 - (b) an offence:
 - (i) against section 6 of the *Crimes Act 1914*; or
 - (ii) that is taken to have been committed because of section 11.2 or 11.2A of the *Criminal Code*; or
 - (iii) against section 11.1, 11.4 or 11.5 of the *Criminal Code*; being an offence that relates to the regulations.

Division 5—Infringement notices

65AA Infringement notices

Infringement notices for offences

- (1) The regulations may make provision enabling a person who is alleged to have committed:
 - (a) an offence against any of the following provisions:
 - (i) section 13;
 - (ii) section 18;
 - (iii) section 38;
 - (iv) section 44;
 - (v) section 45;
 - (vi) section 45B;
 - (vii) section 46;
 - (viii) section 46A; or
 - (b) a specified offence against the regulations;
to pay a specified penalty to the Commonwealth as an alternative to prosecution.
- (2) The penalty must not exceed:
 - (a) if the person is not a body corporate—12 penalty units; or
 - (b) if the person is a body corporate—60 penalty units.

Infringement notices for contraventions of civil penalty provisions

- (3) The regulations may make provision enabling a person who is alleged to have contravened a particular civil penalty provision to pay a specified penalty to the Commonwealth as an alternative to proceedings for a civil penalty order.
- (4) The penalty must not exceed:
 - (a) if the person is not a body corporate—12 penalty units; or
 - (b) if the person is a body corporate—60 penalty units.

Division 6—Ancillary contravention of civil penalty provisions

65AB Ancillary contravention of civil penalty provision

- (1) A person must not:
- (a) attempt to contravene a civil penalty provision (other than this subsection); or
 - (b) aid, abet, counsel or procure a contravention of a civil penalty provision (other than this subsection); or
 - (c) induce, whether by threats or promises or otherwise, a contravention of a civil penalty provision (other than this subsection); or
 - (d) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of a civil penalty provision (other than this subsection); or
 - (e) conspire with others to effect a contravention of a civil penalty provision (other than this subsection).

- (2) Subsection (1) is a ***civil penalty provision***.

Note 1: Division 7 provides for pecuniary penalties for breaches of civil penalty provisions.

Note 2: For maximum penalty, see subsection 65AC(5).

Division 7—Civil penalty orders

65AC Civil penalty orders

- (1) If a designated court is satisfied that a person has contravened a civil penalty provision, the court may order the person to pay the Commonwealth a pecuniary penalty.
- (2) An order under subsection (1) is to be known as a *civil penalty order*.

Determining amount of pecuniary penalty

- (3) In determining the pecuniary penalty, the court may have regard to all relevant matters, including:
 - (a) the nature and extent of the contravention; and
 - (b) the nature and extent of any loss or damage suffered as a result of the contravention; and
 - (c) the circumstances in which the contravention took place; and
 - (d) whether the person has previously been found by a court in proceedings under this Act or the regulations to have engaged in any similar conduct; and
 - (e) the extent to which the person has co-operated with the authorities; and
 - (f) if the person is a body corporate:
 - (i) the level of the employees, officers or agents of the body corporate involved in the contravention; and
 - (ii) whether the body corporate exercised due diligence to avoid the contravention; and
 - (iii) whether the body corporate had a corporate culture conducive to compliance.

Maximum pecuniary penalty

- (4) The pecuniary penalty payable by a person in respect of a contravention of a civil penalty provision (other than subsection 13(1A) or (6A) or 65AB(1)) must not exceed:
- (a) if an offence against a provision of this Act or the regulations corresponds to the civil penalty provision—the maximum pecuniary penalty that could have been imposed on the person if the person had been convicted of the offence; or
 - (b) otherwise:
 - (i) if the person is not a body corporate—50 penalty units; or
 - (ii) if the person is a body corporate—250 penalty units.
- (4A) The pecuniary penalty payable by a person in respect of a contravention of subsection 13(1A) or (6A) must not exceed:
- (a) if the person is not a body corporate—2,000 penalty units; or
 - (b) if the person is a body corporate—10,000 penalty units.
- (5) The pecuniary penalty payable by a person in respect of a contravention of subsection 65AB(1) that relates to another civil penalty provision must not exceed:
- (a) if an offence against a provision of this Act or the regulations corresponds to the other civil penalty provision—the maximum pecuniary penalty that could have been imposed on the person if the person had been convicted of the offence; or
 - (b) otherwise:
 - (i) if the person is not a body corporate—50 penalty units; or
 - (ii) if the person is a body corporate—250 penalty units.

Civil enforcement of penalty

- (6) A pecuniary penalty is a civil debt payable to the Commonwealth. The Commonwealth may enforce the civil penalty order as if it were an order made in civil proceedings against the person to

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recover a debt due by the person. The debt arising from the order is taken to be a judgment debt.

65AD Who may apply for a civil penalty order

- (1) Only the Minister may apply for a civil penalty order.
- (2) Subsection (1) does not exclude the operation of the *Director of Public Prosecutions Act 1983*.

65AE Two or more proceedings may be heard together

The designated court may direct that 2 or more proceedings for civil penalty orders are to be heard together.

65AF Time limit for application for an order

Proceedings for a civil penalty order may be started no later than 6 years after the contravention.

65AG Civil evidence and procedure rules for civil penalty orders

The designated court must apply the rules of evidence and procedure for civil matters when hearing proceedings for a civil penalty order.

65AH Civil proceedings after criminal proceedings

The designated court must not make a civil penalty order against a person for a contravention of a civil penalty provision if the person has been convicted of an offence constituted by conduct that is substantially the same as the conduct constituting the contravention.

65AI Criminal proceedings during civil proceedings

- (1) Proceedings for a civil penalty order against a person for a contravention of a civil penalty provision are stayed if:

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- (a) criminal proceedings are started or have already been started against the person for an offence; and
 - (b) the offence is constituted by conduct that is substantially the same as the conduct alleged to constitute the contravention.
- (2) The proceedings for the order may be resumed if the person is not convicted of the offence. Otherwise, the proceedings for the order are dismissed.

65AJ Criminal proceedings after civil proceedings

Criminal proceedings may be started against a person for conduct that is substantially the same as conduct constituting a contravention of a civil penalty provision regardless of whether a civil penalty order has been made against the person.

65AK Evidence given in proceedings for a civil penalty order not admissible in criminal proceedings

Evidence of information given, or evidence of production of documents, by an individual is not admissible in criminal proceedings against the individual if:

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

However, this does not apply to a criminal proceeding in respect of the falsity of the evidence given by the individual in the proceedings for the civil penalty order.

65AL Mistake of fact

- (1) A person is not liable to have a civil penalty order made against the person for a contravention of a civil penalty provision if:

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- (a) at or before the time of the conduct constituting the contravention, the person:
 - (i) considered whether or not facts existed; and
 - (ii) was under a mistaken but reasonable belief about those facts; and
 - (b) had those facts existed, the conduct would not have constituted a contravention of the civil penalty provision.
- (2) For the purposes of subsection (1), a person may be regarded as having considered whether or not facts existed if:
- (a) the person had considered, on a previous occasion, whether those facts existed in the circumstances surrounding that occasion; and
 - (b) the person honestly and reasonably believed that the circumstances surrounding the present occasion were the same, or substantially the same, as those surrounding the previous occasion.
- (3) A person who wishes to rely on subsection (1) or (2) in proceedings for a civil penalty order bears an evidential burden in relation to that matter.

65AM State of mind

Scope

- (1) This section applies to proceedings for a civil penalty order against a person for a contravention of a civil penalty provision (other than subsection 65AB(1)).

State of mind

- (2) In the proceedings, it is not necessary to prove:
- (a) the person's intention; or
 - (b) the person's knowledge; or
 - (c) the person's recklessness; or
 - (d) the person's negligence; or
 - (e) any other state of mind of the person.

(3) Subsection (2) does not affect the operation of section 65AL.

Part VIII A—Ozone Protection and SGG Account

65A Definitions

In this Part:

Account means the Ozone Protection and SGG Account that is continued in existence by subsection 65B(1).

National Halon Bank means the Commonwealth facility known as the National Halon Bank.

ODS means a substance referred to in any of Parts I to VIII of Schedule 1, whether existing alone or in a mixture.

65B Ozone Protection and SGG Account

- (1) The old account is continued in existence as the Ozone Protection and SGG Account.
- (2) The Account is a special account for the purposes of the *Public Governance, Performance and Accountability Act 2013*.
- (3) In this section:

old account means the account that was in existence immediately before the commencement of this section under the Part VIII A of this Act that was repealed by the *Ozone Protection and Synthetic Greenhouse Gas Legislation Amendment Act 2003*.

65C Amounts to be credited to the Account

- (1) Amounts equal to the following amounts must be credited to the Account:
 - (aa) amounts received by the Commonwealth under section 3A of the *Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Act 1995*;

- (ab) amounts received by the Commonwealth under section 4A of the *Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Act 1995*;
- (ac) amounts received by the Commonwealth under section 3A of the *Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Act 1995*;
- (a) amounts received by the Commonwealth under:
 - (i) section 4 or 4B of the *Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Act 1995*; or
 - (ii) section 4 of the *Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Act 1995*;including those Acts as in force before the commencement of the *Ozone Protection and Synthetic Greenhouse Gas Legislation Amendment Act 2003*;
- (b) amounts received by the Commonwealth as fees for applications under this Act or the regulations;
- (c) amounts received by the Commonwealth as fees for exemption applications under section 40;
- (d) amounts received by the Commonwealth as penalties under subsection 69(2);
- (e) income received by the Commonwealth from the operation of the National Halon Bank;
- (f) interest received by the Commonwealth from the investment of money standing to the credit of the Account.

Notional payments and receipts by non-corporate Commonwealth entities

- (2) If:
 - (a) either:
 - (i) a non-corporate Commonwealth entity makes a notional payment to another non-corporate Commonwealth entity; or
 - (ii) one part of a non-corporate Commonwealth entity makes a notional payment to another part of that entity; and

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- (b) the transaction would involve the debiting of an appropriation if the notional payment were a real payment; then:
- (c) this section applies in relation to the notional payment as if it were a real payment; and
- (d) this section applies in relation to the notional receipt of the notional payment as if it were a real receipt.

Note: This subsection applies to transactions that do not actually involve payments or receipts, because the parties to the transaction (non-corporate Commonwealth entities) are merely parts of the Commonwealth.

- (3) In subsection (2):

non-corporate Commonwealth entity has the same meaning as in the *Public Governance, Performance and Accountability Act 2013*.

65D Purposes of the Account

The following are the purposes of the Account:

- (a) paying or reimbursing the Commonwealth's costs associated with the administration of this Act and the regulations;
- (b) paying or reimbursing the Commonwealth's costs associated with furthering the following programs (including providing information about those programs):
 - (i) ODS phaseout programs;
 - (ii) emission minimisation programs for ODSs and SGGs;
- (c) paying or reimbursing the Commonwealth's costs associated with management of the National Halon Bank;
- (ca) paying or reimbursing the Commonwealth's costs associated with research relating to:
 - (i) substances that deplete ozone in the atmosphere; or
 - (ii) synthetic greenhouse gases;
- (d) refunding any amounts credited to the Account in error.

Part IX—Miscellaneous

66 Review of decisions

Applications may be made to the Administrative Appeals Tribunal for the review of the following decisions of the Minister:

- (a) a decision refusing to grant a licence under section 16 (including a decision that is taken to have been made by virtue of section 17);
- (b) a decision imposing, revoking or varying a condition under section 18;
- (ba) a decision terminating a licence under section 19A;
- (bb) a decision refusing to transfer a licence under section 19B;
- (bc) a decision refusing to make an amendment under section 19C;
- (c) a decision to cancel a licence under section 20;
- (d) a decision allocating, or refusing to allocate, a quota under section 28;
- (e) a decision varying or revoking a reserve HCFC quota under section 33;
- (g) a decision refusing to grant an exemption under section 40;
- (h) a decision to specify an exemption condition under section 40;
- (i) a decision to cancel an exemption under section 40.

67 Statements to accompany notification of decisions

- (1) Where a decision of a kind referred to in section 66 is made and a notice in writing of the decision is given to a person whose interests are affected by the decision, the notice shall include a statement to the effect that, if the person is dissatisfied with the decision, application may, subject to the *Administrative Appeals Tribunal Act 1975*, be made to the Administrative Appeals Tribunal for review of the decision and, except where

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subsection 28(4) of that Act applies, also include a statement to the effect that the person may request a statement under section 28 of that Act.

- (2) A failure to comply with subsection (1) does not affect the validity of the decision.

67A Delegation

- (1) The Minister may, by writing, delegate all or any of his or her powers and functions under this Act or the regulations to an SES employee or acting SES employee.
- (2) Subsection (1) does not apply to the Minister's powers under section 19A, 20 or 53K.
- (3) In exercising powers or functions under a delegation, the delegate must comply with any directions of the Minister.

67B Disclosure of information to the Clean Energy Regulator

Scope

- (1) This section applies to information obtained under this Act or the regulations.

Disclosure

- (2) The Minister may disclose the information to the Clean Energy Regulator for the purposes of, or in connection with, the performance of the functions, or the exercise of the powers, of the Clean Energy Regulator.

Other powers of disclosure not limited

- (3) This section does not, by implication, limit the Minister's powers to disclose the information to a person other than the Clean Energy Regulator.

68 Annual report

- (1) The Minister shall:
 - (a) as soon as practicable after the end of each financial year, prepare a report on the operation of this Act during that year; and
 - (b) cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House after the preparation of the report is completed.
- (2) If this Act does not commence at the beginning of a financial year, this section has effect in relation to the period beginning at the commencement of this Act and ending on the next 30 June as if:
 - (a) if the period is less than 6 months—the period were included in the next financial year; or
 - (b) in any other case—the period were a financial year.

69 Collection of licence levies

- (1) A licence levy is due and payable:
 - (a) at the end of 60 days after the end of the quarter to which the levy relates; or
 - (b) if the Minister allows the licensee concerned a longer period—at the end of that longer period.
- (2) If the liability of a licensee to pay a licence levy is not discharged on or before the day when the levy becomes due and payable, there is payable by the licensee to the Commonwealth by way of penalty, in addition to the levy, an amount calculated at the rate of 30% per annum upon so much of the levy as from time to time remains unpaid, to be calculated from the day when the levy becomes due and payable.
- (3) The following amounts may be recovered by the Commonwealth as debts due to the Commonwealth:
 - (a) licence levies that are due and payable;
 - (b) amounts that are payable under subsection (2).

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(4) In this section:

licence levy means levy payable under:

- (a) the *Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Act 1995*; or
- (b) the *Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Act 1995*;

and includes any amount payable under either of those Acts as in force before the commencement of the *Ozone Protection and Synthetic Greenhouse Gas Legislation Amendment Act 2003*.

69A Implementation of Montreal Protocol—supplementary regulations

- (1) The regulations may make provision for and in relation to giving effect to an adjustment or amendment of the Montreal Protocol, in so far as the adjustment or amendment relates to a substance other than a scheduled substance (whether that substance exists alone or in a mixture).
- (2) Regulations made by virtue of subsection (1) in relation to an adjustment or amendment of the Montreal Protocol that has not entered into force for Australia must not come into operation on a date earlier than the date on which the adjustment or amendment entered into force for Australia.

69B Severability

- (1) This section applies if the enactment of one or more provisions of this Act (other than Part V or VI) or the regulations goes beyond giving effect to the Vienna Convention, the Montreal Protocol, the Framework Convention on Climate Change and the Kyoto Protocol.

- (2) The provisions are to be read so that their application is limited to, or in relation to:
- (a) giving effect to the Vienna Convention, the Montreal Protocol, the Framework Convention on Climate Change and the Kyoto Protocol; or
 - (b) matters external to Australia; or
 - (c) matters of international concern; or
 - (d) conduct engaged in by a corporation of a kind mentioned in paragraph 37(1)(a), (b), (c) or (d); or
 - (e) activities of a kind mentioned in paragraph 37(2)(a), (b), (c), (d), (e) or (f).

69C Jurisdiction of State courts

- (1) The courts of the States are invested with federal jurisdiction in relation to matters arising under:
- (a) this Act; and
 - (b) the regulations.
- (2) Jurisdiction is invested under subsection (1) within the limits (other than limits of locality) of the jurisdiction of the court (whether those limits are limits as to subject matter or otherwise).

69D Jurisdiction of Territory courts

- (1) Jurisdiction is conferred on the courts of the Territories in relation to matters arising under:
- (a) this Act; and
 - (b) the regulations.
- (2) Jurisdiction is conferred under subsection (1):
- (a) only so far as the Constitution permits; and
 - (b) within the limits (other than limits of locality) of the jurisdiction of the court (whether those limits are limits as to subject matter or otherwise).

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69E Compensation for acquisition of property

- (1) If the operation of this Act or the regulations would result in an acquisition of property from a person otherwise than on just terms, the Commonwealth is liable to pay a reasonable amount of compensation to the person.
- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in a court of competent jurisdiction for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.
- (3) In this section:

acquisition of property has the same meaning as in paragraph 51(xxxi) of the Constitution.

just terms has the same meaning as in paragraph 51(xxxi) of the Constitution.

69F Arrangements with States and Territories—magistrates

States

- (1) The Minister may make arrangements with a Minister of a State in relation to the performance of the functions of a magistrate under this Act by a magistrate of that State.
- (2) The Minister may arrange with a Minister of a State with whom an arrangement is in force under subsection (1) for the variation or revocation of the arrangement.

Australian Capital Territory

- (3) The Minister may make arrangements with a Minister of the Australian Capital Territory in relation to the performance of the functions of a magistrate under this Act by a magistrate of the Australian Capital Territory.

- (4) The Minister may arrange with a Minister of the Australian Capital Territory for the variation or revocation of an arrangement in force under subsection (3).

Northern Territory

- (5) The Minister may make arrangements with a Minister of the Northern Territory in relation to the performance of the functions of a magistrate under this Act by a magistrate of the Northern Territory.
- (6) The Minister may arrange with a Minister of the Northern Territory for the variation or revocation of an arrangement in force under subsection (5).

Norfolk Island

- (7) The Minister may make arrangements with the Administrator of Norfolk Island in relation to the performance of the functions of a magistrate under this Act by a magistrate of Norfolk Island.
- (8) The Minister may arrange with the Administrator of Norfolk Island for the variation or revocation of an arrangement in force under subsection (7).

Gazettal

- (9) A copy of each instrument by which an arrangement under this section is made, varied or revoked is to be published in the *Gazette*.

Legislation Act 2003

- (10) An instrument by which an arrangement under this section is made, varied or revoked is not a legislative instrument.

70 Regulations

The Governor-General may make regulations, not inconsistent with this Act, prescribing matters:

- (a) required or permitted by this Act to be prescribed; or

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(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act;
including regulations prescribing penalties, not exceeding 50 penalty units in the case of a natural person or 250 penalty units in the case of a body corporate, for offences against the regulations.

Schedule 1—Scheduled substances

Section 7

Part I

Division 1—Stage-1 CFCs

Column 1 Substance	Column 2 Ozone depleting potential
Trichlorofluoromethane (CFC-11)	1.0
Dichlorodifluoromethane (CFC-12)	1.0
Trichlorotrifluoroethane (CFC-113)	0.8
Dichlorotetrafluoroethane (CFC-114)	1.0
(Mono) chloropentafluoroethane (CFC-115)	0.6

Schedule 1 Scheduled substances
Part I

Division 2—Stage-2 CFCs

Column 1 Substance	Column 2 Ozone depleting potential
CF ₃ Cl (CFC-13)	1.0
C ₂ FCl ₅ (CFC-111)	1.0
C ₂ F ₂ Cl ₄ (CFC-112)	1.0
C ₃ FCl ₇ (CFC-211)	1.0
C ₃ F ₂ Cl ₆ (CFC-212)	1.0
C ₃ F ₃ Cl ₅ (CFC-213)	1.0
C ₃ F ₄ Cl ₄ (CFC-214)	1.0
C ₃ F ₅ Cl ₃ (CFC-215)	1.0
C ₃ F ₆ Cl ₂ (CFC-216)	1.0
C ₃ F ₇ Cl (CFC-217)	1.0

Part II—Halons

Column 1	Column 2
Substance	Ozone depleting potential
Bromochlorodifluoromethane (Halon-1211)	3.0
Bromotrifluoromethane (Halon-1301)	10.0
Dibromotetrafluoroethane (Halon-2402)	6.0

Part III—Carbon tetrachloride

Column 1	Column 2
Substance	Ozone depleting potential
Carbon tetrachloride (CCl ₄)	1.1

Part IV—Methyl chloroform

Column 1	Column 2
Substance	Ozone depleting potential
1,1,1-trichloroethane (C ₂ H ₃ Cl ₃ *)	0.1

*This formula does not refer to 1,1,2-trichloroethane

Part V—HCFCs

Column 1 Substance	Column 2 Ozone depleting potential
CHFCl ₂ (HCFC-21)	0.04
CHF ₂ Cl (HCFC-22)	0.055
CH ₂ FCl (HCFC-31)	0.02
C ₂ HFCl ₄ (HCFC-121)	0.04
C ₂ HF ₂ Cl ₃ (HCFC-122)	0.08
C ₂ HF ₃ Cl ₂ (HCFC-123)	0.06
CHCl ₂ CF ₃ (HCFC-123)	0.02
C ₂ HF ₄ Cl (HCFC-124)	0.04
CHFClCF ₃ (HCFC-124)	0.022
C ₂ H ₂ FCl ₃ (HCFC-131)	0.05
C ₂ H ₂ F ₂ Cl ₂ (HCFC-132)	0.05
C ₂ H ₂ F ₃ Cl (HCFC-133)	0.06
C ₂ H ₃ FCl ₂ (HCFC-141)	0.07

Column 1 Substance	Column 2 Ozone depleting potential
CH ₃ CFCl ₂ (HCFC-141b)	0.11
C ₂ H ₃ F ₂ Cl (HCFC-142)	0.07
CH ₃ CF ₂ Cl (HCFC-142b)	0.065
C ₂ H ₄ FCI (HCFC-151)	0.005
C ₃ HFCl ₆ (HCFC-221)	0.07
C ₃ HF ₂ Cl ₅ (HCFC-222)	0.09
C ₃ HF ₃ Cl ₄ (HCFC-223)	0.08
C ₃ HF ₄ Cl ₃ (HCFC-224)	0.09
C ₃ HF ₅ Cl ₂ (HCFC-225)	0.07
CF ₃ CF ₂ CHCl ₂ (HCFC-225ca)	0.025
CF ₂ ClCF ₂ CHClF (HCFC-225cb)	0.033
C ₃ HF ₆ Cl (HCFC-226)	0.1
C ₃ H ₂ FCI ₅ (HCFC-231)	0.09
C ₃ H ₂ F ₂ Cl ₄ (HCFC-232)	0.1
C ₃ H ₂ F ₃ Cl ₃ (HCFC-233)	0.23

Schedule 1 Scheduled substances
Part V HCFCs

Column 1 Substance	Column 2 Ozone depleting potential
C ₃ H ₂ F ₄ Cl ₂ (HCFC-234)	0.28
C ₃ H ₂ F ₅ Cl (HCFC-235)	0.52
C ₃ H ₃ FCl ₄ (HCFC-241)	0.09
C ₃ H ₃ F ₂ Cl ₃ (HCFC-242)	0.13
C ₃ H ₃ F ₃ Cl ₂ (HCFC-243)	0.12
C ₃ H ₃ F ₄ Cl (HCFC-244)	0.14
C ₃ H ₄ FCl ₃ (HCFC-251)	0.01
C ₃ H ₄ F ₂ Cl ₂ (HCFC-252)	0.04
C ₃ H ₄ F ₃ Cl (HCFC-253)	0.03
C ₃ H ₅ FCl ₂ (HCFC-261)	0.02
C ₃ H ₅ F ₂ Cl (HCFC-262)	0.02
C ₃ H ₆ FCl (HCFC-271)	0.03

Part VI—HBFCs

Column 1 Substance	Column 2 Ozone depleting potential
CHBr ₂	1.00
CHF ₂ Br (HBFC-22B1)	0.74
CH ₂ FBr	0.73
C ₂ HFBr ₄	0.8
C ₂ HF ₂ Br ₃	1.8
C ₂ HF ₃ Br ₂	1.6
C ₂ HF ₄ Br	1.2
C ₂ H ₂ FBr ₃	1.1
C ₂ H ₂ F ₂ Br ₂	1.5
C ₂ H ₂ F ₃ Br	1.6
C ₂ H ₃ FBr ₂	1.7
C ₂ H ₃ F ₂ Br	1.1
C ₂ H ₄ FBr	0.1
C ₃ HFBr ₆	1.5
C ₃ HF ₂ Br ₅	1.9
C ₃ HF ₃ Br ₄	1.8
C ₃ HF ₄ Br ₃	2.2
C ₃ HF ₅ Br ₂	2.0
C ₃ HF ₆ Br	3.3
C ₃ H ₂ FBr ₅	1.9
C ₃ H ₂ F ₂ Br ₄	2.1
C ₃ H ₂ F ₃ Br ₃	5.6
C ₃ H ₂ F ₄ Br ₂	7.5
C ₃ H ₂ F ₅ Br	1.4
C ₃ H ₃ FBr ₄	1.9
C ₃ H ₃ F ₂ Br ₃	3.1
C ₃ H ₃ F ₃ Br ₂	2.5

Schedule 1 Scheduled substances
Part VI HBFCs

Column 1 Substance	Column 2 Ozone depleting potential
C ₃ H ₃ F ₄ Br	4.4
C ₃ H ₄ FBr ₃	0.3
C ₃ H ₄ F ₂ Br ₂	1.0
C ₃ H ₄ F ₃ Br	0.8
C ₃ H ₅ FBr ₂	0.4
C ₃ H ₅ F ₂ Br	0.8
C ₃ H ₆ FBr	0.7

Part VII—Methyl bromide

Column 1 Substance	Column 2 Ozone depleting potential
CH ₃ Br	0.6

Part VIII—Bromochloromethane

Substance	Ozone depleting potential
CH ₂ BrCl	0.12

Part IX—HFCs

Substance
CHF ₃ (HFC-23)
CH ₂ F ₂ (HFC-32)
CH ₃ F (HFC-41)
CHF ₂ CF ₃ (HFC-125)
CHF ₂ CHF ₂ (HFC-134)
CH ₂ FCF ₃ (HFC-134a)
CHF ₂ CH ₂ F (HFC-143)
CF ₃ CH ₃ (HFC-143a)
CH ₂ FCH ₂ F (HFC-152)
CH ₃ CHF ₂ (HFC-152a)
CH ₃ CH ₂ F (HFC-161)
CF ₃ CHF ₂ CF ₃ (HFC-227ea)
CH ₂ FCF ₂ CF ₃ (HFC-236cb)
CHF ₂ CHF ₂ CF ₃ (HFC-236ea)
CF ₃ CH ₂ CF ₃ (HFC-236fa)
CH ₂ FCF ₂ CHF ₂ (HFC-245ca)
CHF ₂ CH ₂ CF ₃ (HFC-245fa)
CF ₃ CH ₂ CF ₂ CH ₃ (HFC-365mfc)
CF ₃ CHF ₂ CF ₂ CF ₃ (HFC-43-10mee)

Part X—PFCs

Substance
CF ₄
C ₂ F ₆
C ₃ F ₈
C ₄ F ₁₀
c-C ₄ F ₈
C ₅ F ₁₂
C ₆ F ₁₄

Part XI—Sulfur hexafluoride

Substance
Sulfur hexafluoride (SF ₆)

Schedule 2—Vienna Convention for the Protection of the Ozone Layer

Section 7

Preamble

The Parties to this Convention,

Aware of the potentially harmful impact on human health and the environment through modification of the ozone layer,

Recalling the pertinent provisions of the Declaration of the United Nations Conference on the Human Environment, and in particular principle 21, which provides that “States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction”,

Taking into account the circumstances and particular requirements of developing countries,

Mindful of the work and studies proceeding within both international and national organizations and, in particular, of the World Plan of Action on the Ozone Layer of the United Nations Environment Programme,

Mindful also of the precautionary measures for the protection of the ozone layer which have already been taken at the national and international levels,

Aware that measures to protect the ozone layer from modifications due to human activities require international co-operation and action, and should be based on relevant scientific and technical considerations,

Aware also of the need for further research and systematic observations to further develop scientific knowledge of the ozone layer and possible adverse effects resulting from its modification,

Determined to protect human health and the environment against adverse effects resulting from modifications of the ozone layer,

HAVE AGREED AS FOLLOWS:

Article 1

DEFINITIONS

For the purposes of this Convention:

1. "The ozone layer" means the layer of atmospheric ozone above the planetary boundary layer.
2. "Adverse effects" means changes in the physical environment or biota, including changes in climate, which have significant deleterious effects on human health or on the composition, resilience and productivity of natural and managed ecosystems, or on materials useful to mankind.
3. "Alternative technologies or equipment" means technologies or equipment the use of which makes it possible to reduce or effectively eliminate emissions of substances which have or are likely to have adverse effects on the ozone layer.
4. "Alternative substances" means substances which reduce, eliminate or avoid adverse effects on the ozone layer.
5. "Parties" means, unless the text otherwise indicates, Parties to this Convention.
6. "Regional economic integration organisation" means an organisation constituted by sovereign States of a given region which has competence in respect of matters governed by this Convention or its protocols and has been duly authorized, in accordance with its internal procedures, to sign, ratify, accept, approve or accede to the instruments concerned.
7. "Protocols" means protocols to this Convention.

Article 2

GENERAL OBLIGATIONS

1. The Parties shall take appropriate measures in accordance with the provisions of this Convention and of those protocols in force to which they are party to protect human health and the environment against adverse effects resulting or likely to result from human activities which modify or are likely to modify the ozone layer.
2. To this end the Parties shall, in accordance with the means at their disposal and their capabilities:
 - (a) Co-operate by means of systematic observations, research and information exchange in order to better understand and assess the

effects of human activities on the ozone layer and the effects on human health and the environment from modification of the ozone layer;

- (b) Adopt appropriate legislative or administrative measures and co-operate in harmonising appropriate policies to control, limit, reduce or prevent human activities under their jurisdiction or control should it be found that these activities have or are likely to have adverse effects resulting from modification or likely modification of the ozone layer;
 - (c) Co-operate in the formulation of agreed measures, procedures and standards for the implementation of this Convention, with a view to the adoption of protocols and annexes;
 - (d) Co-operate with competent international bodies to implement effectively this Convention and protocols to which they are party.
3. The provisions of this Convention shall in no way affect the right of Parties to adopt, in accordance with international law, domestic measures additional to those referred to in paragraphs 1 and 2 above, nor shall they affect additional domestic measures already taken by a Party, provided that these measures are not incompatible with their obligations under this Convention.
4. The application of this article shall be based on relevant scientific and technical considerations.

Article 3

RESEARCH AND SYSTEMATIC OBSERVATIONS

1. The Parties undertake, as appropriate, to initiate and co-operate in, directly or through competent international bodies, the conduct of research and scientific assessments on:
- (a) The physical and chemical processes that may affect the ozone layer;
 - (b) The human health and other biological effects deriving from any modifications of the ozone layer, particularly those resulting from changes in ultra-violet solar radiation having biological effects (UV-B);
 - (c) Climatic effects deriving from any modifications of the ozone layer;
 - (d) Effects deriving from any modifications of the ozone layer and any consequent change in UV-B radiation on natural and synthetic materials useful to mankind;

- (e) Substances, practices, processes and activities that may affect the ozone layer, and their cumulative effects;
- (f) Alternative substances and technologies;
- (g) Related socio-economic matters;

and as further elaborated in annexes I and II.

2. The Parties undertake to promote or establish, as appropriate, directly or through competent international bodies and taking fully into account national legislation and relevant ongoing activities at both the national and international levels, joint or complementary programmes for systematic observation of the state of the ozone layer and other relevant parameters, as elaborated in annex I.

3. The Parties undertake to co-operate, directly or through competent international bodies, in ensuring the collection, validation and transmission of research and observational data through appropriate world data centres in a regular and timely fashion.

Article 4

CO-OPERATION IN THE LEGAL, SCIENTIFIC AND TECHNICAL FIELDS

1. The Parties shall facilitate and encourage the exchange of scientific, technical, socio-economic, commercial and legal information relevant to this Convention as further elaborated in annex II. Such information shall be supplied to bodies agreed upon by the Parties. Any such body receiving information regarded as confidential by the supplying Party shall ensure that such information is not disclosed and shall aggregate it to protect its confidentiality before it is made available to all Parties.

2. The Parties shall co-operate, consistent with their national laws, regulations and practices and taking into account in particular the needs of the developing countries, in promoting, directly or through competent international bodies, the development and transfer of technology and knowledge. Such co-operation shall be carried out particularly through:

- (a) Facilitation of the acquisition of alternative technologies by other Parties;
- (b) Provision of information on alternative technologies and equipment, and supply of special manuals or guides to them;
- (c) The supply of necessary equipment and facilities for research and systematic observations;

- (d) Appropriate training of scientific and technical personnel.

Article 5

TRANSMISSION OF INFORMATION

The Parties shall transmit, through the secretariat, to the Conference of the Parties established under article 6 information on the measures adopted by them in implementation of this Convention and of protocols to which they are party in such form and at such intervals as the meetings of the parties to the relevant instruments may determine.

Article 6

CONFERENCE OF THE PARTIES

1. A Conference of the Parties is hereby established. The first meeting of the Conference of the Parties shall be convened by the secretariat designated on an interim basis under article 7 not later than one year after entry into force of this Convention. Thereafter, ordinary meetings of the Conference of the Parties shall be held at regular intervals to be determined by the Conference at its first meeting.
 2. Extraordinary meetings of the Conference of the Parties shall be held at such other times as may be deemed necessary by the Conference, or at the written request of any Party, provided that, within six months of the request being communicated to them by the secretariat, it is supported by at least one third of the Parties.
 3. The Conference of the Parties shall by consensus agree upon and adopt rules of procedure and financial rules for itself and for any subsidiary bodies it may establish, as well as financial provisions governing the functioning of the secretariat.
 4. The Conference of the Parties shall keep under continuous review the implementation of this Convention, and, in addition, shall:
 - (a) Establish the form and the intervals for transmitting the information to be submitted in accordance with article 5 and consider such information as well as reports submitted by any subsidiary body;
 - (b) Review the scientific information on the ozone layer, on its possible modification and on possible effects of any such modification;
 - (c) Promote, in accordance with article 2, the harmonization of appropriate policies, strategies and measures for minimizing the
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release of substances causing or likely to cause modification of the ozone layer, and make recommendations on any other measures relating to this Convention;

- (d) Adopt, in accordance with articles 3 and 4, programmes for research, systematic observations, scientific and technological co-operation, the exchange of information and the transfer of technology and knowledge;
- (e) Consider and adopt, as required, in accordance with articles 9 and 10, amendments to this Convention and its annexes;
- (f) Consider amendments to any protocol, as well as to any annexes thereto, and, if so decided, recommend their adoption to the parties to the protocol concerned;
- (g) Consider and adopt, as required, in accordance with article 10, additional annexes to this Convention;
- (h) Consider and adopt, as required, protocols in accordance with article 8;
- (i) Establish such subsidiary bodies as are deemed necessary for the implementation of this Convention;
- (j) Seek, where appropriate, the services of competent international bodies and scientific committees, in particular the World Meteorological Organization and the World Health Organization, as well as the Co-ordinating Committee on the Ozone Layer, in scientific research, systematic observations and other activities pertinent to the objectives of this Convention, and make use as appropriate of information from these bodies and committees;
- (k) Consider and undertake any additional action that may be required for the achievement of the purposes of this Convention.

5. The United Nations, its specialized agencies and the International Atomic Energy Agency, as well as any State not party to this Convention, may be represented at meetings of the Conference of the Parties by observers. Any body or agency, whether national or international, governmental or non-governmental, qualified in fields relating to the protection of the ozone layer which has informed the secretariat of its wish to be represented at a meeting of the Conference of the Parties as an observer may be admitted unless at least one-third of the Parties present object. The admission and participation of observers shall be subject to the rules of procedure adopted by the Conference of the Parties.

Article 7

SECRETARIAT

1. The functions of the secretariat shall be:
 - (a) To arrange for and service meetings provided for in articles 6, 8, 9 and 10;
 - (b) To prepare and transmit reports based upon information received in accordance with articles 4 and 5, as well as upon information derived from meetings of subsidiary bodies established under article 6;
 - (c) To perform the functions assigned to it by any protocol;
 - (d) To prepare reports on its activities carried out in implementation of its functions under this Convention and present them to the Conference of the Parties;
 - (e) To ensure the necessary co-ordination with other relevant international bodies, and in particular to enter into such administrative and contractual arrangements as may be required for the effective discharge of its functions;
 - (f) To perform such other functions as may be determined by the Conference of the Parties.
2. The secretariat functions will be carried out on an interim basis by the United Nations Environment Programme until the completion of the first ordinary meeting of the Conference of the Parties held pursuant to article 6. At its first ordinary meeting, the Conference of the Parties shall designate the secretariat from amongst those existing competent international organizations which have signified their willingness to carry out the secretariat functions under this Convention.

Article 8

ADOPTION OF PROTOCOLS

1. The Conference of the Parties may at a meeting adopt protocols pursuant to article 2.
2. The text of any proposed protocol shall be communicated to the Parties by the secretariat at least six months before such a meeting.

Article 9

AMENDMENT OF THE CONVENTION OR PROTOCOLS

1. Any Party may propose amendments to this Convention or to any protocol. Such amendments shall take due account, *inter alia*, of relevant scientific and technical considerations.
2. Amendments to this Convention shall be adopted at a meeting of the Conference of the Parties. Amendments to any protocol shall be adopted at a meeting of the Parties to the protocol in question. The text of any proposed amendment to this Convention or to any protocol, except as may otherwise be provided in such protocol, shall be communicated to the Parties by the secretariat at least six months before the meeting at which it is proposed for adoption. The secretariat shall also communicate proposed amendments to the signatories to this Convention for information.
3. The Parties shall make every effort to reach agreement on any proposed amendment to this Convention by consensus. If all efforts at consensus have been exhausted, and no agreement reached, the amendment shall as a last resort be adopted by a three-fourths majority vote of the Parties present and voting at the meeting, and shall be submitted by the Depositary to all Parties for ratification, approval or acceptance.
4. The procedure mentioned in paragraph 3 above shall apply to amendments to any protocol, except that a two-thirds majority of the parties to that protocol present and voting at the meeting shall suffice for their adoption.
5. Ratification, approval or acceptance of amendments shall be notified to the Depositary in writing. Amendments adopted in accordance with paragraphs 3 or 4 above shall enter into force between parties having accepted them on the ninetieth day after the receipt by the Depositary of notification of their ratification, approval or acceptance by at least three-fourths of the Parties to this Convention or by at least two-thirds of the parties to the protocol concerned, except as may otherwise be provided in such protocol. Thereafter the amendments shall enter into force for any other Party on the ninetieth day after that Party deposits its instrument of ratification, approval or acceptance of the amendments.
6. For the purposes of this article, "Parties present and voting" means Parties present and casting an affirmative or negative vote.

Article 10

ADOPTION AND AMENDMENT OF ANNEXES

1. The annexes to this Convention or to any protocol shall form an integral part of this Convention or of such protocol, as the case may be, and, unless expressly provided otherwise, a reference to this Convention or its protocols constitutes at the same time a reference to any annexes thereto. Such annexes shall be restricted to scientific, technical and administrative matters.
2. Except as may be otherwise provided in any protocol with respect to its annexes, the following procedure shall apply to the proposal, adoption and entry into force of additional annexes to this Convention or of annexes to a protocol:
 - (a) Annexes to this Convention shall be proposed and adopted according to the procedure laid down in article 9, paragraphs 2 and 3, while annexes to any protocol shall be proposed and adopted according to the procedure laid down in article 9, paragraphs 2 and 4;
 - (b) Any party that is unable to approve an additional annex to this Convention or an annex to any protocol to which it is party shall so notify the Depositary, in writing, within six months from the date of the communication of the adoption by the Depositary. The Depositary shall without delay notify all Parties of any such notification received. A Party may at any time substitute an acceptance for a previous declaration of objection and the annexes shall thereupon enter into force for that Party;
 - (c) On the expiry of six months from the date of the circulation of the communication by the Depositary, the annex shall become effective for all Parties to this Convention or to any protocol concerned which have not submitted a notification in accordance with the provision of subparagraph (b) above.
3. The proposal, adoption and entry into force of amendments to annexes to this Convention or to any protocol shall be subject to the same procedure as for the proposal, adoption and entry into force of annexes to the Convention or annexes to a protocol. Annexes and amendments thereto shall take due account, inter alia, of relevant scientific and technical considerations.
4. If an additional annex or an amendment to an annex involves an amendment to this Convention or to any protocol, the additional annex or amended annex shall not enter into force until such time as the amendment to this Convention or to the protocol concerned enters into force.

Article 11

SETTLEMENT OF DISPUTES

1. In the event of a dispute between Parties concerning the interpretation or application of this Convention, the parties concerned shall seek solution by negotiation.
2. If the Parties concerned cannot reach agreement by negotiation, they may jointly seek the good offices of, or request mediation by, a third party.
3. When ratifying, accepting, approving or acceding to this Convention, or at any time thereafter, a State or regional economic integration organization may declare in writing to the Depositary that for a dispute not resolved in accordance with paragraph 1 or paragraph 2 above, it accepts one or both of the following means of dispute settlement as compulsory:
 - (a) Arbitration in accordance with procedures to be adopted by the Conference of the Parties at its first ordinary meeting;
 - (b) Submission of the dispute to the International Court of Justice.
4. If the parties have not, in accordance with paragraph 3 above, accepted the same or any procedure, the dispute shall be submitted to conciliation in accordance with paragraph 5 below unless the parties otherwise agree.
5. A conciliation commission shall be created upon the request of one of the parties to the dispute. The commission shall be composed of an equal number of members appointed by each party concerned and a chairman chosen jointly by the members appointed by each party. The commission shall render a final and recommendatory award, which the parties shall consider in good faith.
6. The provisions of this article shall apply with respect to any protocol except as otherwise provided in the protocol concerned.

Article 12

SIGNATURE

This Convention shall be open for signature by States and by regional economic integration organizations at the Federal Ministry for Foreign Affairs of the Republic of Austria in Vienna from 22 March 1985 to 21 September 1985, and at United Nations Headquarters in New York from 22 September 1985 to 21 March 1986.

Article 13

RATIFICATION, ACCEPTANCE OR APPROVAL

1. This Convention and any protocol shall be subject to ratification, acceptance or approval by States and by regional economic integration organizations. Instruments of ratification, acceptance or approval shall be deposited with the Depositary.
2. Any organization referred to in paragraph 1 above which becomes a Party to this Convention or any protocol without any of its member States being a Party shall be bound by all the obligations under the Convention or the protocol, as the case may be. In the case of such organizations, one or more of whose member States is a Party to the Convention or relevant protocol, the organization and its member States shall decide on their respective responsibilities for the performance of their obligation under the Convention or protocol, as the case may be. In such cases, the organization and the member States shall not be entitled to exercise rights under the Convention or relevant protocol concurrently.
3. In their instruments of ratification, acceptance or approval, the organizations referred to in paragraph 1 above shall declare the extent of their competence with respect to the matters governed by the Convention or the relevant protocol. These organizations shall also inform the Depositary of any substantial modification in the extent of their competence.

Article 14

ACCESSION

1. This Convention and any protocol shall be open for accession by States and by regional economic integration organizations from the date on which the convention or the protocol concerned is closed for signature. The instruments of accession shall be deposited with the Depositary.
2. In their instruments of accession, the organizations referred to in paragraph 1 above shall declare the extent of their competence with respect to the matters governed by the Convention or the relevant protocol. These organizations shall also inform the Depositary of any substantial modification in the extent of their competence.
3. The provisions of article 13, paragraph 2, shall apply to regional economic integration organizations which accede to this Convention or any protocol.

Article 15

RIGHT TO VOTE

1. Each Party to this Convention or to any protocol shall have one vote.
2. Except as provided for in paragraph 1 above, regional economic integration organizations, in matters within their competence, shall exercise their right to vote with a number of votes equal to the number of their member States which are Parties to the Convention or the relevant protocol. Such organizations shall not exercise their right to vote if their member States exercise theirs, and vice versa.

Article 16

RELATIONSHIP BETWEEN THE CONVENTION AND ITS PROTOCOLS

1. A State or a regional economic integration organization may not become a party to a protocol unless it is, or becomes at the same time, a Party to the Convention.
2. Decisions concerning any protocol shall be taken only by the parties to the protocol concerned.

Article 17

ENTRY INTO FORCE

1. This Convention shall enter into force on the ninetieth day after the date of deposit of the twentieth instrument of ratification, acceptance, approval or accession.
 2. Any protocol, except as otherwise provided in such protocol, shall enter into force on the ninetieth day after the date of deposit of the eleventh instrument of ratification, acceptance or approval of such protocol or accession thereto.
 3. For each Party which ratifies, accepts or approves this Convention or accedes thereto after the deposit of the twentieth instrument of ratification, acceptance, approval or accession, it shall enter into force on the ninetieth day after the date of deposit by such Party of its instrument of ratification, acceptance, approval or accession.
 4. Any protocol, except as otherwise provided in such protocol, shall enter into force for a party that ratifies, accepts or approves that protocol or accedes thereto after its entry into force pursuant to paragraph 2 above, on the ninetieth day after the date on which that party deposits its instrument of ratification,
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acceptance, approval or accession, or on the date on which the Convention enters into force for that Party, whichever shall be the later.

5. For the purposes of paragraphs 1 and 2 above, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.

Article 18

RESERVATIONS

No reservations may be made to this Convention.

Article 19

WITHDRAWAL

1. At any time after four years from the date on which this Convention has entered into force for a Party, that Party may withdraw from the Convention by giving written notification to the Depositary.

2. Except as may be provided in any protocol, at any time after four years from the date on which such protocol has entered into force for a party, that party may withdraw from the protocol by giving written notification to the Depositary.

3. Any such withdrawal shall take effect upon expiry of one year after the date of its receipt by the Depositary, or on such later date as may be specified in the notification of the withdrawal.

4. Any Party which withdraws from this Convention shall be considered as also having withdrawn from any protocol to which it is party.

Article 20

DEPOSITARY

1. The Secretary-General of the United Nations shall assume the functions of depositary of this Convention and any protocols.

2. The Depositary shall inform the Parties, in particular, of:

- (a) The signature of this Convention and of any protocol, and the deposit of instruments of ratification, acceptance, approval or accession in accordance with articles 13 and 14;

- (b) The date on which the Convention and any protocol will come into force in accordance with article 17;
- (c) Notifications of withdrawal made in accordance with article 19;
- (d) Amendments adopted with respect to the Convention and any protocol, their acceptance by the parties and their date of entry into force in accordance with article 9;
- (e) All communications relating to the adoption and approval of annexes and to the amendment of annexes in accordance with article 10;
- (f) Notifications by regional economic integration organizations of the extent of their competence with respect to matters governed by this Convention and any protocols, and of any modifications thereof;
- (g) Declarations made in accordance with article 11, paragraph 3.

Article 21

AUTHENTIC TEXTS

The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned, being duly authorized to that effect, have signed this Convention.

Done at Vienna

on the 22nd day of March 1985

Annex I

RESEARCH AND SYSTEMATIC OBSERVATIONS

1. The Parties to the Convention recognize that the major scientific issues are:
 - (a) Modification of the ozone layer which would result in a change in the amount of solar ultra-violet radiation having biological effects (UV-B) that reaches the Earth's surface and the potential consequences for human health, for organisms, ecosystems and materials useful to mankind;
 - (b) Modification of the vertical distribution of ozone, which could change the temperature structure of the atmosphere and the potential consequences for weather and climate.

2. The Parties to the Convention, in accordance with article 3, shall co-operate in conducting research and systematic observations and in formulating recommendations for future research and observation in such areas as:

- (a) Research into the physics and chemistry of the atmosphere
 - (i) Comprehensive theoretical models: further development of models which consider the interaction between radiative, dynamic and chemical processes; studies of the simultaneous effects of various man-made and naturally occurring species upon atmospheric ozone; interpretation of satellite and non-satellite measurement data sets; evaluation of trends in atmospheric and geophysical parameters, and the development of methods for attributing changes in these parameters to specific causes;
 - (ii) Laboratory studies of: rate coefficients, absorption cross-sections and mechanisms of tropospheric and stratospheric chemical and photochemical processes; spectroscopic data to support field measurements in all relevant spectral regions;
 - (iii) Field measurements: the concentration and fluxes of key source gases of both natural and anthropogenic origin; atmospheric dynamics studies; simultaneous measurements of photochemically-related species down to the planetary boundary layer, using in situ and remote sensing instruments; intercomparison of different sensors, including co-ordinated correlative measurements for satellite instrumentation; three-dimensional fields of key atmospheric trace constituents, solar spectral flux and meteorological parameters;
 - (iv) Instrument development, including satellite and non-satellite sensors for atmospheric trace constituents, solar flux and meteorological parameters;
 - (b) Research into health, biological and photodegradation effects
 - (i) The relationship between human exposure to visible and ultra-violet solar radiation and (a) the development of both non-melanoma and melanoma skin cancer and (b) the effects on the immunological system;
 - (ii) Effects of UV-B radiation, including the wavelength dependence, upon (a) agricultural crops, forests and other terrestrial ecosystems and (b) the aquatic food web and fisheries, as well as possible inhibition of oxygen production by marine phytoplankton;
 - (iii) The mechanisms by which UV-B radiation acts on biological materials, species and ecosystems, including: the relationship
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- between dose, dose rate, and response; photorepair, adaptation, and protection;
- (iv) Studies of biological action spectra and the spectral response using polychromatic radiation in order to include possible interactions of the various wavelength regions;
 - (v) The influence of UV-B radiation on: the sensitivities and activities of biological species important to the biospheric balance; primary processes such as photosynthesis and biosynthesis;
 - (vi) The influence of UV-B radiation on the photodegradation of pollutants, agricultural chemicals and other materials;
- (c) Research on effects on climate
- (i) Theoretical and observational studies of the radiative effects of ozone and other trace species and the impact on climate parameters, such as land and ocean surface temperatures, precipitation patterns, the exchange between the troposphere and stratosphere;
 - (ii) the investigation of the effects of such climate impacts on various aspects of human activity;
- (d) Systematic observations on:
- (i) The status of the ozone layer (i.e. the spatial and temporal variability of the total column content and vertical distribution) by making the Global Ozone Observing System, based on the integration of satellite and ground-based systems, fully operational;
 - (ii) The tropospheric and stratospheric concentrations of source gases for the HO_x, NO_x, ClO_x and carbon families;
 - (iii) The temperature from the ground to the mesosphere, utilizing both ground-based and satellite systems;
 - (iv) Wavelength-resolved solar flux reaching, and thermal radiation leaving, the Earth's atmosphere, utilizing satellite measurements;
 - (v) Wavelength-resolved solar flux reaching the Earth's surface in the ultra-violet range having biological effects (UV-B);
 - (vi) Aerosol properties and distribution from the ground to the mesosphere, utilizing ground-based, airborne and satellite systems;
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- (vii) Climatically important variables by the maintenance of programmes of high-quality meteorological surface measurements;
 - (viii) Trace species, temperatures, solar flux and aerosols utilizing improved methods for analysing global data.
3. The Parties to the Convention shall co-operate, taking into account the particular needs of the developing countries, in promoting the appropriate scientific and technical training required to participate in the research and systematic observations outlined in this annex. Particular emphasis should be given to the intercalibration of observational instrumentation and methods with a view to generating comparable or standardized scientific data sets.
4. The following chemical substances of natural and anthropogenic origin, not listed in order of priority, are thought to have the potential to modify the chemical and physical properties of the ozone layer.
- (a) Carbon substances
 - (i) Carbon monoxide (CO)

Carbon monoxide has significant natural and anthropogenic sources, and is thought to play a major direct role in tropospheric photochemistry, and an indirect role in stratospheric photochemistry.
 - (ii) Carbon dioxide (CO₂)

Carbon dioxide has significant natural and anthropogenic sources, and affects stratospheric ozone by influencing the thermal structure of the atmosphere.
 - (iii) Methane (CH₄)

Methane has both natural and anthropogenic sources, and affects both tropospheric and stratospheric ozone.
 - (iv) Non-methane hydrocarbon species

Non-methane hydrocarbon species, which consist of a large number of chemical substances, have both natural and anthropogenic sources, and play a direct role in tropospheric photochemistry and an indirect role in stratospheric photochemistry.
 - (b) Nitrogen substances
 - (i) Nitrous oxide (N₂O)

The dominant sources of N₂O are natural, but anthropogenic contributions are becoming increasingly important. Nitrous oxide is the primary source of stratospheric NO_x, which play a vital role in controlling the abundance of stratospheric ozone.

(ii) Nitrogen oxides (NO_x)

Ground-level sources of NO_x play a major direct role only in tropospheric photochemical processes and an indirect role in stratosphere photochemistry, whereas injection of NO_x close to the tropopause may lead directly to a change in upper tropospheric and stratospheric ozone.

(c) Chlorine substances

(i) Fully halogenated alkanes, e.g. CCl₄, CFCl₃ (CFC-11), CF₂Cl₂ (CFC-12), C₂F₃Cl₃ (CFC-113), C₂F₄Cl₂ (CFC-114)

Fully halogenated alkanes are anthropogenic and act as a source of ClO_x, which plays a vital role in ozone photochemistry, especially in the 30-50 km altitude region.

(ii) Partially halogenated alkanes, e.g. CH₃Cl, CHF₂Cl (CFC-22), CH₃CCl₃, CHFCl₂ (CFC-21)

The sources of CH₃Cl are natural, whereas the other partially halogenated alkanes mentioned above are anthropogenic in origin. These gases also act as a source of stratospheric ClO_x.

(d) Bromine substances

Fully halogenated alkanes, e.g. CF₃Br

These gases are anthropogenic and act as a source of BrO_x, which behaves in a manner similar to ClO_x.

(e) Hydrogen substances

(i) Hydrogen (H₂)

Hydrogen, the source of which is natural and anthropogenic, plays a minor role in stratospheric photochemistry.

(ii) Water (H₂O)

Water, the source of which is natural, plays a vital role in both tropospheric and stratospheric photochemistry. Local sources of water vapour in the stratosphere include the oxidation of methane and, to a lesser extent, of hydrogen.

Annex II

INFORMATION EXCHANGE

1. The Parties to the Convention recognize that the collection and sharing of information is an important means of implementing the objectives of this Convention and of assuring that any actions that may be taken are appropriate

and equitable. Therefore, Parties shall exchange scientific, technical, socio-economic, business, commercial and legal information.

2. The Parties to the Convention, in deciding what information is to be collected and exchanged, should take into account the usefulness of the information and the costs of obtaining it. The Parties further recognize that co-operation under this annex has to be consistent with national laws, regulations and practices regarding patents, trade secrets, and protection of confidential and proprietary information.

3. Scientific information

This includes information on:

- (a) Planned and ongoing research, both governmental and private, to facilitate the co-ordination of research programmes so as to make the most effective use of available national and international resources;
- (b) The emission data needed for research;
- (c) Scientific results published in peer-reviewed literature on the understanding of the physics and chemistry of the Earth's atmosphere and of its susceptibility to change, in particular on the state of the ozone layer and effects on human health, environment and climate which would result from changes on all time-scales in either the total column content or the vertical distribution of ozone;
- (d) The assessment of research results and the recommendations for future research.

4. Technical information

This includes information on:

- (a) The availability and cost of chemical substitutes and of alternative technologies to reduce the emissions of ozone-modifying substances and related planned and ongoing research;
- (b) The limitations and any risks involved in using chemical or other substitutes and alternative technologies.

5. Socio-economic and commercial information on the substances referred to in annex I

This includes information on:

- (a) Production and production capacity;
 - (b) Use and use patterns;
 - (c) Imports/exports;
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- (d) The costs, risks and benefits of human activities which may indirectly modify the ozone layer and of the impacts of regulatory actions taken or being considered to control these activities.

6. Legal information

This includes information on:

- (a) National laws, administrative measures and legal research relevant to the protection of the ozone layer;
- (b) International agreements, including bilateral agreements, relevant to the protection of the ozone layer;
- (c) Methods and terms of licensing and availability of patents relevant to the protection of the ozone layer.

Schedule 3—Montreal Protocol on Substances that Deplete the Ozone Layer

Section 7

MONTREAL PROTOCOL ON SUBSTANCES THAT DEplete THE OZONE LAYER AS ADJUSTED AND AMENDED BY THE SECOND MEETING OF THE PARTIES LONDON, 27-29 JUNE 1990 AND FURTHER AMENDED BY THE THIRD MEETING OF THE PARTIES NAIROBI, 19-21 JUNE 1991 AND BY THE FOURTH MEETING OF THE PARTIES COPENHAGEN, 23-25 NOVEMBER 1992

The Parties to this Protocol,

Being Parties to the Vienna Convention for the Protection of the Ozone Layer,

Mindful of their obligation under that Convention to take appropriate measures to protect human health and the environment against adverse effects resulting or likely to result from human activities which modify or are likely to modify the ozone layer,

Recognising that world-wide emissions of certain substances can significantly deplete and otherwise modify the ozone layer in a manner that is likely to result in adverse effects on human health and the environment,

Conscious of the potential climatic effects of emissions of these substances,

Aware that measures taken to protect the ozone layer from depletion should be based on relevant scientific knowledge, taking into account technical and economic considerations,

Determined to protect the ozone layer by taking precautionary measures to control equitably total global emissions of substances that deplete it, with the ultimate objective of their elimination on the basis of developments in scientific knowledge, taking into account technical and economic considerations and bearing in mind the developmental needs of developing countries,

Acknowledging that special provision is required to meet the needs of developing countries, including the provision of additional financial resources and access to relevant technologies, bearing in mind that the magnitude of funds necessary is predictable, and the funds can be expected to make a substantial

difference in the world's ability to address the scientifically established problem of ozone depletion and its harmful effects,

Noting the precautionary measures for controlling emissions of certain chlorofluorocarbons that have already been taken at national and regional levels,

Considering the importance of promoting international co-operation in the research, development and transfer of alternative technologies relating to the control and reduction of emissions of substances that deplete the ozone layer, bearing in mind in particular the needs of developing countries,

HAVE AGREED AS FOLLOWS:

ARTICLE 1: DEFINITIONS

For the purposes of this Protocol:

1. "Convention" means the Vienna Convention for the Protection of the Ozone Layer, adopted on 22 March 1985.
2. "Parties" means, unless the text otherwise indicates, Parties to this Protocol.
3. "Secretariat" means the Secretariat of the Convention.
4. "Controlled substance" means a substance in Annex A, Annex B, Annex C or Annex E to this Protocol, of any such substance, except as specified in the relevant Annex, but excludes any controlled substance or mixture which is in a manufactured product other than a container used for the transportation or storage of that substance.
5. "Production" means the amount of controlled substances produced, minus the amount destroyed by technologies to be approved by the Parties and minus the amount entirely used as feedstock in the manufacture of other chemicals. The amount recycled and reused is not to be considered as "production".
6. "Consumption" means production plus imports minus exports of controlled substances.
7. "Calculated levels" of production, imports, exports and consumption means levels determined in accordance with Article 3.
8. "Industrial rationalization" means the transfer of all or a portion of the calculated level of production of one Party to another, for the purpose of achieving economic efficiencies or responding to anticipated shortfalls in supply as a result of plant closures.

ARTICLE 2: CONTROL MEASURES

1. (Incorporated in Article 2A as per the adjustments made in Second Meeting of the Parties in London in 1990).
2. Replaced by Article 2B.
- 3 and 4. Replaced in Article 2A.
5. Any Party may, for one or more control periods, transfer to another Party any portion of its calculated level of production set out in Articles 2A to 2E, and Article 2H provided that the total combined calculated levels of production of the Parties concerned for any group of controlled substances do not exceed the production limits set out in those Articles for that group. Such transfer of production shall be notified to the Secretariat by each of the Parties concerned, stating the terms of such transfer and the period for which it is to apply.
- 5 bis. Any Party not operating under paragraph 1 of Article 5 may, for one or more control periods, transfer to another such Party any portion of its calculated level of consumption set out in Article 2F, provided that the calculated level of consumption of controlled substances in Group I of Annex A of the Party transferring the portion of its calculated level of consumption did not exceed 0.25 kilograms per capita in 1989 and that the total combined calculated levels of consumption of the Parties concerned do not exceed the consumption limits set out in Article 2F. Such transfer of consumption shall be notified to the Secretariat by each of the Parties concerned, stating the terms of such transfer and the period for which it is to apply.
6. Any Party not operating under Article 5, that has facilities for the production of Annex A or Annex B controlled substances under construction, or contracted for, prior to 16 September 1987, and provided for in national legislation prior to 1 January 1987, may add the production from such facilities to its 1986 production of such substances for the purposes of determining its calculated level of production for 1986, provided that such facilities are completed by 31 December 1990 and that such production does not raise that Party's annual calculated level of consumption of the controlled substances above 0.5 kilograms per capita.
7. Any transfer of production pursuant to paragraph 5 or any addition of production pursuant to paragraph 6 shall be notified to the Secretariat, no later than the time of the transfer or addition.

8. (a) Any Parties which are Member States of a regional economic integration organization as defined in Article 1 (6) of the Convention may agree that they shall jointly fulfil their obligations respecting consumption under this Article and Articles 2A to 2H provided that their total combined calculated level of consumption does not exceed the levels required by this Article and Articles 2A to 2H.
- (b) The Parties to any such agreement shall inform the Secretariat of the terms of the agreement before the date of the reduction in consumption with which the agreement is concerned.
- (c) Such agreement will become operative only if all Member States of the regional economic integration organization and the organization concerned are Parties to the Protocol and have notified the Secretariat of their manner of implementation.
9. (a) Based on the assessments made pursuant to Article 6, the Parties may decide whether:
- (i) Adjustments to the ozone depleting potentials specified in Annex A, Annex B, Annex C and/or Annex E should be made and, if so, what the adjustments should be; and
- (ii) Further adjustments and reductions of production or consumption of the controlled substances should be undertaken and, if so, what the scope, amount and timing of any such adjustments and reductions should be;
- (b) Proposals for such adjustments shall be communicated to the Parties by the Secretariat at least six months before the meeting of the Parties at which they are proposed for adoption;
- (c) In taking such decisions, the Parties shall make every effort to reach agreement by consensus. If all efforts at consensus have been exhausted, and no agreement reached, such decisions shall, as a last resort, be adopted by a two-thirds majority vote of the Parties present and voting representing a majority of the Parties operating under Paragraph 1 of Article 5 present and voting and a majority of the Parties not so operating present and voting;
- (d) The decisions, which shall be binding on all Parties, shall forthwith be communicated to the Parties by the Depositary. Unless otherwise provided in the decisions, they shall enter into force on the expiry of six months from the date of the circulation of the communication by the Depositary.

10. Based on the assessments made pursuant to Article 6 of this Protocol and in accordance with the procedure set out in Article 9 of the Convention, the Parties may decide:
 - (i) whether any substances, and if so which, should be added to or removed from any annex to this Protocol, and
 - (ii) the mechanism, scope and timing of the control measures that should apply to those substances.
11. Notwithstanding the provisions contained in this Article and Articles 2A to 2H Parties may take more stringent measures than those required by this Article and Articles 2A to 2H.

INTRODUCTION TO THE ADJUSTMENTS

The Second Meeting of the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer decides, on the basis of assessments made pursuant to Article 6 of the Protocol, to adopt adjustments and reductions of production and consumption of the controlled substances in Annex A to the Protocol, as follows, with the understanding that:

- (a) References in Article 2 to “this Article” and throughout the Protocol to “Article 2” shall be interpreted as references to Articles 2, 2A and 2B;
- (b) References throughout the Protocol to “paragraphs 1 to 4 of Article 2” shall be interpreted as references to Articles 2A and 2B; and
- (c) The reference in paragraph 5 of Article 2 to “paragraphs 1, 3 and 4” shall be interpreted as a reference to Article 2A.

ARTICLE 2A: CFCs

1. Each Party shall ensure that for the twelve-month period commencing on the first day of the seventh month following the date of entry into force of this Protocol, and in each twelve-month period thereafter, its calculated level of consumption of the controlled substances in Group I of Annex A does not exceed its calculated level of consumption in 1986. By the end of the same period, each Party producing one or more of these substances shall ensure that its calculated level of production of the substances does not exceed its calculated level of production in 1986, except that such level may have increased by no more than ten per cent based on the 1986 level. Such increase shall be permitted only so as to satisfy the basic domestic needs of the Parties operating under Article 5 and for the purposes of industrial rationalization between Parties.

2. Each Party shall ensure that for the period from 1 July 1991 to 31 December 1992 its calculated levels of consumption and production of the controlled substances in Group I of Annex A do not exceed 150 per cent of its calculated levels of production and consumption of those substances in 1986; with effect from 1 January 1993, the twelve-month control period for these controlled substances shall run from 1 January to 31 December each year.
3. Each Party shall ensure that for the twelve-month period commencing on 1 January 1994, and in each twelve-month period thereafter, its calculated level of consumption of the controlled substances in Group I of Annex A does not exceed, annually, twenty-five per cent of its calculated level of consumption in 1986. Each Party producing one or more of these substances shall, for the same periods, ensure that its calculated level of production of the substances does not exceed, annually, twenty-five per cent of its calculated level of production in 1986. However, in order to satisfy the basic domestic needs of the Parties operating under paragraph 1 of Article 5, its calculated level of production may exceed that limit by up to ten per cent of its calculated level of production in 1986.
4. Each Party shall ensure that for the twelve-month period commencing on 1 January 1996, and in each twelve-month period thereafter, its calculated level of consumption of the controlled substances in Group I of Annex A does not exceed zero. Each Party producing one or more of these substances shall, for the same periods, ensure that its calculated level of production of the substances does not exceed zero. However, in order to satisfy the basic domestic needs of the Parties operating under paragraph 1 of Article 5, its calculated level of production may exceed that limit by up to fifteen per cent of its calculated level of production in 1986. This paragraph will apply save to the extent that the Parties decide to permit the level of production or consumption that is necessary to satisfy uses agreed by them to be essential.

ARTICLE 2B: HALONS

1. Each Party shall ensure that for the twelve-month period commencing on 1 January 1992, and in each twelve-month period thereafter, its calculated level of consumption of the controlled substances in Group II of Annex A does not exceed, annually, its calculated level of consumption in 1986. Each Party producing one or more of these substances shall, for the same periods, ensure that its calculated level of

production of the substances does not exceed, annually, its calculated level of production in 1986. However, in order to satisfy the basic domestic needs of the Parties operating under paragraph 1 of Article 5, its calculated level of production may exceed that limit by up to ten per cent of its calculated level of production in 1986.

2. Each Party shall ensure that for the twelve-month period commencing on 1 January 1994, and in each twelve-month period thereafter, its calculated level of consumption of the controlled substances in Group II of Annex A does not exceed zero. Each Party producing one or more of these substances shall, for the same periods, ensure that its calculated level of production of the substances does not exceed zero. However, in order to satisfy the basic domestic needs of the Parties operating under paragraph 1 of Article 5, its calculated level of production may exceed that limit by up to fifteen per cent of its calculated level of production in 1986. This paragraph will apply save to the extent that the Parties decide to permit the level of production or consumption that is necessary to satisfy uses agreed by them to be essential.

ARTICLE 2C: OTHER FULLY HALOGENATED CFCs

1. Each Party shall ensure that for the twelve-month period commencing on 1 January 1993, its calculated level of consumption of the controlled substances in Group I of Annex B does not exceed, annually, eighty per cent of its calculated level of consumption in 1989. Each Party producing one or more of these substances shall, for the same period, ensure that its calculated level of production of the substances does not exceed, annually, eighty per cent of its calculated level of production in 1989. However, in order to satisfy the basic domestic needs of the Parties operating under paragraph 1 of Article 5, its calculated level of production may exceed that limit by up to ten per cent of its calculated level of production in 1989.
2. Each Party shall ensure that for the twelve-month period commencing on 1 January 1994, and in each twelve-month period thereafter, its calculated level of consumption of the controlled substances in Group I of Annex B does not exceed, annually, twenty-five per cent of its calculated level of consumption in 1989. Each Party producing one or more of these substances shall, for the same periods, ensure that its calculated level of production of the substances does not exceed, annually, twenty-five per cent of its calculated level of production in 1989. However, in order to satisfy the basic domestic needs of the

Parties operating under paragraph 1 of Article 5, its calculated level of production may exceed that limit by up to ten per cent of its calculated level of production in 1989.

3. Each Party shall ensure that for the twelve-month period commencing on 1 January 1996, and in each twelve-month period thereafter, its calculated level of consumption of the controlled substances in Group I of Annex B does not exceed zero. Each Party producing one or more of these substances shall, for the same periods, ensure that its calculated level of production of the substances does not exceed zero. However, in order to satisfy the basic domestic needs of the Parties operating under paragraph 1 of Article 5, its calculated level of production may exceed that limit by up to fifteen per cent of its calculated level of production in 1989. This paragraph will apply save to the extent that the Parties decide to permit the level of production or consumption that is necessary to satisfy uses agreed by them to be essential.

ARTICLE 2D: CARBON TETRACHLORIDE

1. Each Party shall ensure that for the twelve-month period commencing on 1 January 1995, its calculated level of consumption of the controlled substance in Group II of Annex B does not exceed, annually, fifteen per cent of its calculated level of consumption in 1989. Each Party producing the substance shall, for the same period, ensure that its calculated level of production of the substance does not exceed, annually, fifteen per cent of its calculated level of production in 1989.

However, in order to satisfy the basic domestic needs of the Parties operating under paragraph 1 of Article 5, its calculated level of production may exceed that limit by up to ten per cent of its calculated level of production in 1989.

2. Each Party shall ensure that for the twelve-month period commencing on 1 January 1996, and in each twelve-month period thereafter, its calculated level of consumption of the controlled substance in Group II of Annex B does not exceed zero. Each Party producing the substance shall, for the same periods, ensure that its calculated level of production of the substance does not exceed zero. However, in order to satisfy the basic domestic needs of the Parties operating under paragraph 1 of Article 5, its calculated level of production may exceed that limit by up to fifteen per cent of its calculated level of production in 1989. This paragraph will apply save to the extent that the Parties decide to permit

the level of production or consumption that is necessary to satisfy uses agreed by them to be essential.

ARTICLE 2E: 1,1,1—TRICHLOROETHANE (METHYL CHLOROFORM)

1. Each Party shall ensure that for the twelve-month period commencing on 1 January 1993, its calculated level of consumption of the controlled substance in Group III of Annex B does not exceed, annually, its calculated level of consumption in 1989. Each Party producing the substance shall, for the same period, ensure that its calculated level of production of the substance does not exceed, annually, its calculated level of production in 1989. However, in order to satisfy the basic domestic needs of the Parties operating under paragraph 1 of Article 5, its calculated level of production may exceed that limit by up to ten per cent of its calculated level of production in 1989.
2. Each Party shall ensure that for the twelve-month period commencing on 1 January 1994, and in each twelve-month period thereafter, its calculated level of consumption of the controlled substance in Group III of Annex B does not exceed, annually, fifty per cent of its calculated level of consumption in 1989. Each Party producing the substance shall, for the same periods, ensure that its calculated level of production of the substance does not exceed, annually, fifty per cent of its calculated level of production in 1989. However, in order to satisfy the basic domestic needs of the Parties operating under paragraph 1 of Article 5, its calculated level of production may exceed that limit by up to ten per cent of its calculated level of production in 1989.
3. Each Party shall ensure that for the twelve-month period commencing on 1 January 1996, and in each twelve-month period thereafter, its calculated level of consumption of the controlled substance in Group III of Annex B does not exceed zero. Each Party producing the substance shall, for the same periods, ensure that its calculated level of production of the substance does not exceed zero. However, in order to satisfy the basic domestic needs of the Parties operating under paragraph 1 of Article 5, its calculated level of production may exceed that limit by up to fifteen per cent of its calculated level of production for 1989. This paragraph will apply save to the extent that the Parties decide to permit the level of production or consumption that is necessary to satisfy uses agreed by them to be essential.

ARTICLE 2F: HYDROCHLOROFLUOROCARBONS

1. Each Party shall ensure that for the twelve-month period commencing on 1 January 1996, and in each twelve-month period thereafter, its calculated level of consumption of the controlled substances in Group I of Annex C does not exceed, annually, the sum of:
 - (a) Three point one per cent of its calculated level of consumption in 1989 of the controlled substances in Group I of Annex A; and
 - (b) Its calculated level of consumption in 1989 of the controlled substances in Group I of Annex C.
 2. Each Party shall ensure that for the twelve-month period commencing on 1 January 2004, and in each twelve-month period thereafter, its calculated level of consumption of the controlled substances in Group I of Annex C does not exceed, annually, sixty-five per cent of the sum referred to in paragraph 1 of this Article.
 3. Each Party shall ensure that for the twelve-month period commencing on 1 January 2010, and in each twelve-month period thereafter, its calculated level of consumption of the controlled substances in Group I of Annex C does not exceed, annually, thirty-five per cent of the sum referred to in paragraph 1 of this Article.
 4. Each Party shall ensure that for the twelve-month period commencing on 1 January 2015, and in each twelve-month period thereafter, its calculated level of consumption of the controlled substances in Group I of Annex C does not exceed, annually, ten per cent of the sum referred to in paragraph 1 of this Article.
 5. Each Party shall ensure that for the twelve-month period commencing on 1 January 2020, and in each twelve-month period thereafter, its calculated level of consumption of the controlled substances in Group I of Annex C does not exceed, annually, zero point five per cent of the sum referred to in paragraph 1 of this Article.
 6. Each Party shall ensure that for the twelve-month period commencing on 1 January 2030, and in each twelve-month period thereafter, its calculated level of consumption of the controlled substances in Group I of Annex C does not exceed zero.
 7. As of 1 January 1996, each Party shall endeavour to ensure that:
 - (a) The use of controlled substances in Group I of Annex C is limited to those applications where other more environmentally suitable alternative substances or technologies are not available;
 - (b) The use of controlled substances in Group I of Annex C is not outside the areas of application currently met by controlled
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- substances in Annexes A, B and C, except in rare cases for the protection of human life or human health; and
- (c) Controlled substances in Group I of Annex C are selected for use in a manner that minimizes ozone depletion, in addition to meeting other environmental, safety and economic considerations.

ARTICLE 2G: HYDROBROMOFLUOROCARBONS

Each Party shall ensure that for the twelve-month period commencing on 1 January 1996, and in each twelve-month period thereafter, its calculated level of consumption of the controlled substances in Group II of Annex C does not exceed zero. Each Party producing the substances shall, for the same periods, ensure that its calculated level of production of the substances does not exceed zero. This paragraph will apply save to the extent that the Parties decide to permit the level of production or consumption that is necessary to satisfy uses agreed by them to be essential.

ARTICLE 2H: METHYL BROMIDE

Each Party shall ensure that for the twelve-month period commencing on 1 January 1995, and in each twelve-month period thereafter, its calculated level of consumption of the controlled substance in Annex E does not exceed, annually, its calculated level of consumption in 1991. Each Party producing the substance shall, for the same periods, ensure that its calculated level of production of the substance does not exceed, annually, its calculated level of production in 1991. However, in order to satisfy the basic domestic needs of the Parties operating under paragraph 1 of Article 5, its calculated level of production may exceed that limit by up to ten per cent of its calculated level of production in 1991. The calculated levels of consumption and production under this Article shall not include the amounts used by the Party for quarantine and pre-shipment applications.

ARTICLE 3: CALCULATION OF CONTROL LEVELS

For the purposes of Articles 2, 2A to 2H and 5, each Party shall, for each group of substances in Annex A, Annex B, Annex C or Annex E determine its calculated levels of:

- (a) Production by:
- (i) multiplying its annual production of each controlled substance by the ozone depleting potential specified in respect of it in Annex A, Annex B, Annex C or Annex E;
 - (ii) adding together, for each such Group, the resulting figures;

- (b) Imports and exports, respectively, by following, mutatis mutandis, the procedure set out in subparagraph (a); and
- (c) Consumption by adding together its calculated levels of production and imports and subtracting its calculated level of exports as determined in accordance with subparagraphs (a) and (b). However, beginning on 1 January 1993, any export of controlled substances to non-Parties shall not be subtracted in calculating the consumption level of the exporting Party.

ARTICLE 4: CONTROL OF TRADE WITH NON-PARTIES

- 1. As of 1 January 1990, each Party shall ban the import of the controlled substances in Annex A from any State not party to this Protocol.
- 1 bis. Within one year of the date of the entry into force of this paragraph, each Party shall ban the import of the controlled substances in Annex B from any State not party to this Protocol.
- 1 ter. Within one year of the date of entry into force of this paragraph, each Party shall ban the import of any controlled substances in Group II of Annex C from any State not party to this Protocol.
- 2. As of 1 January 1993, each Party shall ban the export of any controlled substances in Annex A to any State not party to this Protocol.
- 2 bis. Commencing one year after the date of entry into force of this paragraph, each Party shall ban the export of any controlled substances in Annex B to any State not party to this Protocol.
- 2 ter. Commencing one year after the date of entry into force of this paragraph, each Party shall ban the export of any controlled substances in Group II of Annex C to any State not party to this Protocol.
- 3. By 1 January 1992, the Parties shall, following the procedures in Article 10 of the Convention, elaborate in an annex a list of products containing controlled substances in Annex A. Parties that have not objected to the annex in accordance with those procedures shall ban, within one year of the annex having become effective, the import of those products from any State not party to this Protocol.
- 3 bis. Within three years of the date of the entry into force of this paragraph, the Parties shall, following the procedures in Article 10 of the Convention, elaborate in an annex a list of products containing controlled substances in Annex B. Parties that have not objected to the annex in accordance with those procedures shall ban, within one year of the annex having become effective, the import of those products from any State not party to this Protocol.

- 3 ter. Within three years of the date of entry into force of this paragraph, the Parties shall, following the procedures in Article 10 of the Convention, elaborate in an annex a list of products containing controlled substances in Group II of Annex C. Parties that have not objected to the annex in accordance with those procedures shall ban, within one year of the annex having become effective, the import of those products from any State not party to this Protocol.
4. By 1 January 1994, the Parties shall determine the feasibility of banning or restricting, from States not party to this Protocol, the import of products produced with, but not containing, controlled substances in Annex A. If determined feasible, the Parties shall, following the procedures in Article 10 of the Convention, elaborate in an annex a list of such products. Parties that have not objected to the annex in accordance with those procedures shall ban, within one year of the annex having become effective, the import of those products from any State not party to this Protocol.
- 4 bis. Within five years of the date of the entry into force of this paragraph, the Parties shall determine the feasibility of banning or restricting, from States not party to this Protocol, the import of products produced with, but not containing, controlled substances in Annex B. If determined feasible, the Parties shall, following the procedures in Article 10 of the Convention, elaborate in an annex a list of such products. Parties that have not objected to the annex in accordance with those procedures shall ban or restrict, within one year of the annex having become effective, the import of those products from any State not party to this Protocol.
- 4 ter. Within five years of the date of entry into force of this paragraph, the Parties shall determine the feasibility of banning or restricting, from States not party to this Protocol, the import of products produced with, but not containing, controlled substances in Group II of Annex C. If determined feasible, the Parties shall, following the procedures in Article 10 of the Convention, elaborate in an annex a list of such products. Parties that have not objected to the annex in accordance with those procedures shall ban or restrict, within one year of the annex having become effective, the import of those products from any State not party to this Protocol.
5. Each Party undertakes to the fullest practicable extent to discourage the export to any State not party to this Protocol of technology for

producing and for utilizing controlled substances in Annexes A and B and Group II of Annex C.

6. Each Party shall refrain from providing new subsidies, aid, credits, guarantees or insurance programmes for the export to States not party to this Protocol of products, equipment, plants or technology that would facilitate the production of controlled substances in Annexes A and B and Group II of Annex C.
7. Paragraphs 5 and 6 shall not apply to products, equipment, plants or technology that improve the containment, recovery, recycling or destruction of controlled substances, promote the development of alternative substances, or otherwise contribute to the reduction of emissions of controlled substances in Annexes A and B and Group II of Annex C.
8. Notwithstanding the provisions of this Article, imports referred to in paragraphs 1, 1 bis, 3, 3 bis, 4, and 4 bis and exports referred to in paragraphs 1 to 4 ter of this Article may be permitted from, or to, any State not party to this Protocol, if that State is determined, by a meeting of the Parties, to be in full compliance with Article 2, Articles 2A to 2E, Article 2G and this Article, and have submitted data to that effect as specified in Article 7.
9. For the purposes of this Article, the term “State not party to this Protocol” shall include, with respect to a particular controlled substance, a State or regional economic integration organization that has not agreed to be bound by the control measures in effect for that substance.
10. By 1 January 1996, the Parties shall consider whether to amend this Protocol in order to extend the measures in this Article to trade in controlled substances in Group I of Annex C and in Annex E with States not party to the Protocol.

ARTICLE 5: SPECIAL SITUATION OF DEVELOPING COUNTRIES

1. Any Party that is a developing country and whose annual calculated level of consumption of the controlled substances in Annex A is less than 0.3 kilograms per capita on the date of the entry into force of the Protocol for it, or any time thereafter until 1 January 1999, shall, in order to meet its basic domestic needs, be entitled to delay for ten years its compliance with the control measures set out in Articles 2A to 2E, provided that any further amendments to the adjustments or Amendment adopted at the Second Meeting of the Parties in London,

29 June 1990, shall apply to the Parties operating under this paragraph after the review provided for in paragraph 8 of this Article has taken place and shall be based on the conclusions of that review.

- 1 bis. The Parties shall, taking into account the review referred to in paragraph 8 of this Article, the assessments made pursuant to Article 6 and any other relevant information, decide by 1 January 1996, through the procedure set forth in paragraph 9 of Article 2:
- (a) With respect to paragraphs 1 to 6 of Article 2F, what base year, initial levels, control schedules and phase-out date for consumption of the controlled substances in Group I of Annex C will apply to Parties operating under paragraph 1 of this Article;
 - (b) With respect to Article 2G, what phase-out date for production and consumption of the controlled substances in Group II of Annex C will apply to Parties operating under paragraph 1 of this Article; and
 - (c) With respect to Article 2H, what base year, initial levels and control schedules for consumption and production of the controlled substance in Annex E will apply to Parties operating under paragraph 1 of this Article.
2. However, any Party operating under paragraph 1 of this Article shall exceed neither an annual calculated level of consumption of the controlled substances in Annex A of 0.3 kilograms per capita nor an annual calculated level of consumption of controlled substances of Annex B of 0.2 kilograms per capita.
3. When implementing the control measures set out in Articles 2A to 2E, any Party operating under paragraph 1 of this Article shall be entitled to use:
- (a) For controlled substances under Annex A, either the average of its annual calculated level of consumption for the period 1995 to 1997 inclusive or a calculated level of consumption of 0.3 kilograms per capita, whichever is the lower, as the basis for determining its compliance with the control measures.
 - (b) For controlled substances under Annex B, the average of its annual calculated level of consumption for the period 1998 to 2000 inclusive or a calculated level of consumption of 0.2 kilograms per capita, whichever is the lower, as the basis for determining its compliance with the control measures.
4. If a Party operating under paragraph 1 of this Article, at any time before the control measures obligations in Articles 2A to 2H become
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applicable to it, finds itself unable to obtain an adequate supply of controlled substances, it may notify this to the Secretariat. The Secretariat shall forthwith transmit a copy of such notification to the Parties, which shall consider the matter at their next Meeting, and decide upon appropriate action to be taken.

5. Developing the capacity to fulfil the obligations of the Parties operating under paragraph 1 of this Article to comply with the control measures set out in Articles 2A to 2E, and any control measures in Articles 2F to 2H that are decided pursuant to paragraph 1 bis of this Article, and their implementation by those same Parties will depend upon the effective implementation of the financial co-operation as provided by Article 10 and the transfer of technology as provided by Article 10A.
6. Any Party operating under paragraph 1 of this Article may, at any time, notify the Secretariat in writing that, having taken all practicable steps it is unable to implement any or all of the obligations laid down in Articles 2A to 2E, or any or all obligations in Articles 2F to 2H that are decided pursuant to paragraph 1 bis of this Article, due to the inadequate implementation of Articles 10 and 10A. The Secretariat shall forthwith transmit a copy of the notification to the Parties, which shall consider the matter at their next Meeting, giving due recognition to paragraph 5 of this Article and shall decide upon appropriate action to be taken.
7. During the period between notification and the Meeting of the Parties at which the appropriate action referred to in paragraph 6 above is to be decided, or for a further period if the Meeting of the Parties so decides, the non-compliance procedures referred to in Article 8 shall not be invoked against the notifying Party.
8. A Meeting of the Parties shall review, not later than 1995, the situation of the Parties operating under paragraph 1 of this Article, including the effective implementation of financial co-operation and transfer of technology to them, and adopt such revisions that may be deemed necessary regarding the schedule of control measures applicable to those Parties.
9. Decisions of the Parties referred to in paragraph 4, 6 and 7 of this Article shall be taken according to the same procedure applied to decision-making under Article 10.

ARTICLE 6: ASSESSMENT AND REVIEW OF CONTROL MEASURES

Beginning in 1990, and at least every four years thereafter, the Parties shall assess the control measures provided for in Article 2 and Articles 2A to 2H on the basis of available scientific, environmental, technical and economic information. At least one year before each assessment, the Parties shall convene appropriate panels of experts qualified in the fields mentioned and determine the composition and terms of reference of any such panels. Within one year of being convened, the panels will report their conclusions, through the Secretariat, to the Parties.

ARTICLE 7: REPORTING OF DATA

1. Each Party shall provide to the Secretariat, within three months of becoming a Party, statistical data on its production, imports and exports of each of the controlled substances in Annex A for the year 1986, or the best possible estimates of such data where actual data are not available.
2. Each Party shall provide to the Secretariat statistical data on its production, imports and exports of each of the controlled substances,
 - in Annexes B and C, for the year 1989;
 - in Annex E, for the year 1991,or the best possible estimates of such data where actual data are not available, not later than three months after the date when the provisions set out in the Protocol with regard to the substances in Annexes B, C and E respectively enter into force for that Party.
3. Each Party shall provide to the Secretariat statistical data on its annual production (as defined in paragraph 5 of Article 1) of each of the controlled substances listed in Annexes A, B, C and E and, separately, for each substance,
 - amounts used for feedstocks,
 - amounts destroyed by technologies approved by the Parties, and
 - imports from and exports to Parties and non-Parties respectively,for the year during which provisions concerning the substances in Annexes A, B, C and E respectively entered into force for that Party and for each year thereafter. Data shall be forwarded not later than nine months after the end of the year to which the data relate.
- 3 bis. Each Party shall provide to the Secretariat separate statistical data of its annual imports and exports of each of the controlled substances listed in Group II of Annex A and Group I of Annex C that have been recycled.

4. For Parties operating under the provisions of paragraph 8 (a) of Article 2, the requirements in paragraphs 1, 2, 3 and 3 bis of this Article in respect of statistical data on imports and exports shall be satisfied if the regional economic integration organization concerned provides data on imports and exports between the organization and States that are not members of that organization.

ARTICLE 8: NON-COMPLIANCE

The Parties, at their first meeting, shall consider and approve procedures and institutional mechanisms for determining non-compliance with the provisions of this Protocol and for treatment of Parties found to be in non-compliance.

ARTICLE 9: RESEARCH, DEVELOPMENT, PUBLIC AWARENESS AND EXCHANGE OF INFORMATION

1. The Parties shall co-operate, consistent with their national laws, regulations and practices and taking into account in particular the needs of developing countries, in promoting, directly or through competent international bodies, research, development and exchange of information on:
 - (a) best technologies for improving the containment, recovery, recycling, or destruction of controlled substances or otherwise reducing their emissions;
 - (b) possible alternatives to controlled substances, to products containing such substances, and to products manufactured with them; and
 - (c) costs and benefits of relevant control strategies.
2. The Parties, individually, jointly or through competent international bodies, shall co-operate in promoting public awareness of the environmental effects of the emissions of controlled substances and other substances that deplete the ozone layer.
3. Within two years of the entry into force of this Protocol and every two years thereafter, each Party shall submit to the Secretariat a summary of the activities it has conducted pursuant to this Article.

ARTICLE 10: FINANCIAL MECHANISM

1. The Parties shall establish a mechanism for the purposes of providing financial and technical co-operation, including the transfer of technologies, to Parties operating under paragraph 1 of Article 5 of this Protocol to enable their compliance with the control measures set out in Articles 2A to 2E, and any control measures in Articles 2F to 2H that

are decided pursuant to paragraph 1 bis of Article 5 of the Protocol. The mechanism, contributions to which shall be additional to other financial transfers to Parties operating under that paragraph, shall meet all agreed incremental costs of such Parties in order to enable their compliance with the control measures of the Protocol. An indicative list of the categories of incremental costs shall be decided by the meeting of the Parties.

2. The mechanism established under paragraph 1 shall include a Multilateral Fund. It may also include other means of multilateral, regional and bilateral co-operation.
3. The Multilateral Fund shall:
 - (a) Meet, on a grant or concessional basis as appropriate, and according to criteria to be decided upon by the Parties, the agreed incremental costs;
 - (b) Finance clearing-house functions to:
 - (i) Assist Parties operating under paragraph 1 of Article 5, through country specific studies and other technical co-operation, to identify their needs for co-operation;
 - (ii) Facilitate technical co-operation to meet these identified needs;
 - (iii) Distribute, as provided for in Article 9, information and relevant materials, and hold workshops, training sessions, and other related activities, for the benefit of Parties that are developing countries; and
 - (iv) Facilitate and monitor other multilateral, regional and bilateral co-operation available to Parties that are developing countries;
 - (c) Finance the secretarial services of the Multilateral Fund and related support costs.
4. The Multilateral Fund shall operate under the authority of the Parties who shall decide on its overall policies.
5. The Parties shall establish an Executive Committee to develop and monitor the implementation of specific operational policies, guidelines and administrative arrangements, including the disbursement of resources, for the purpose of achieving the objectives of the Multilateral Fund. The Executive Committee shall discharge its tasks and responsibilities, specified in its terms of reference as agreed by the Parties, with the co-operation and assistance of the International Bank for Reconstruction and Development (World Bank), the United Nations

Environment Programme, the United Nations Development Programme or other appropriate agencies depending on their respective areas of expertise. The members of the Executive Committee, which shall be selected on the basis of a balanced representation of the Parties operating under paragraph 1 of Article 5 and of the Parties not so operating, shall be endorsed by the Parties.

6. The Multilateral Fund shall be financed by contributions from Parties not operating under paragraph 1 of Article 5 in convertible currency or, in certain circumstances, in kind and/or in national currency, on the basis of the United Nations scale of assessments. Contributions by other Parties shall be encouraged. Bilateral and, in particular cases agreed by a decision of the Parties, regional co-operation may, up to a percentage and consistent with any criteria to be specified by decision of the Parties, be considered as a contribution to the Multilateral Fund, provided that such co-operation, as a minimum:
 - (a) Strictly relates to compliance with the provisions of this Protocol;
 - (b) Provides additional resources; and
 - (c) Meets agreed incremental costs.
7. The Parties shall decide upon the programme budget of the Multilateral Fund for each fiscal period and upon the percentage of contributions of the individual Parties thereto.
8. Resources under the Multilateral Fund shall be disbursed with the concurrence of the beneficiary Party.
9. Decisions by the Parties under this Article shall be taken by consensus whenever possible. If all efforts at consensus have been exhausted and no agreement reached, decisions shall be adopted by a two-thirds majority vote of the Parties present and voting, representing a majority of the Parties operating under paragraph 1 of Article 5 present and voting and a majority of the Parties not so operating present and voting.
10. The financial mechanism set out in this Article is without prejudice to any future arrangements that may be developed with respect to other environmental issues.

ARTICLE 10A: TRANSFER OF TECHNOLOGY

Each Party shall take every practicable step, consistent with the programmes supported by the financial mechanism, to ensure:

- (a) that the best available, environmentally safe substitutes and related technologies are expeditiously transferred to Parties operating under paragraph 1 of Article 5; and

- (b) that the transfers referred to in subparagraph (a) occur under fair and most favourable conditions.

ARTICLE 11: MEETINGS OF THE PARTIES

1. The Parties shall hold meetings at regular intervals. The Secretariat shall convene the first meeting of the Parties not later than one year after the date of the entry into force of this Protocol and in conjunction with a meeting of the Conference of the Parties to the Convention, if a meeting of the latter is scheduled within that period.
2. Subsequent ordinary meetings of the parties shall be held, unless the Parties otherwise decide, in conjunction with meetings of the Conference of the Parties to the Convention. Extraordinary meetings of the Parties shall be held at such other times as may be deemed necessary by a meeting of the Parties, or at the written request of any Party, provided that within six months of such a request being communicated to them by the Secretariat, it is supported by at least one third of the Parties.
3. The Parties, at their first meeting, shall:
 - (a) adopt by consensus rules of procedure for their meetings;
 - (b) adopt by consensus the financial rules referred to in paragraph 2 of Article 13;
 - (c) establish the panels and determine the terms of reference referred to in Article 6; and
 - (d) consider and approve the procedures and institutional mechanisms specified in Article 8.
4. The functions of the meetings of the Parties shall be to:
 - (a) review the implementation of this Protocol;
 - (b) decide on any adjustments or reductions referred to in paragraph 9 of Article 2;
 - (c) decide on any addition to, insertion in or removal from any annex of substances and on related control measures in accordance with paragraph 10 of Article 2;
 - (d) establish, where necessary, guidelines or procedures for reporting of information as provided for in Article 7 and paragraph 3 of Article 9;
 - (e) review requests for technical assistance submitted pursuant to paragraph 2 of Article 10;
 - (f) review reports prepared by the secretariat pursuant to subparagraph (c) of Article 12;

- (g) assess, in accordance with Article 6, the control measures;
 - (h) consider and adopt, as required, proposals for amendment of this Protocol or any annex and for any new annex;
 - (i) consider and adopt the budget for implementing this Protocol; and
 - (j) consider and undertake any additional action that may be required for the achievement of the purposes of this Protocol.
5. The United Nations, its specialized agencies and the International Atomic Energy Agency, as well as any State not party to this Protocol, may be represented at meetings of the Parties as observers. Any body or agency, whether national or international, governmental or non-governmental, qualified in fields relating to the protection of the ozone layer which has informed the secretariat of its wish to be represented at a meeting of the Parties as an observer may be admitted unless at least one third of the Parties present object. The admission and participation of observers shall be subject to the rules of procedure adopted by the Parties.

ARTICLE 12: SECRETARIAT

For the purposes of this Protocol, the Secretariat shall:

- (a) arrange for and service meetings of the Parties as provided for in Article 11;
- (b) receive and make available, upon request by a Party, data provided pursuant to Article 7;
- (c) prepare and distribute regularly to the Parties reports based on information received pursuant to Articles 7 and 9;
- (d) notify the Parties of any request for technical assistance received pursuant to Article 10 so as to facilitate the provision of such assistance;
- (e) encourage non-Parties to attend the meetings of the Parties as observers and to act in accordance with the provisions of this Protocol;
- (f) provide, as appropriate, the information and requests referred to in subparagraphs (c) and (d) to such non-party observers; and
- (g) perform such other functions for the achievement of the purposes of this Protocol as may be assigned to it by the Parties.

ARTICLE 13: FINANCIAL PROVISIONS

1. The funds required for the operation of this Protocol, including those for the functioning of the Secretariat related to this Protocol, shall be charged exclusively against contributions from the Parties.
2. The Parties, at their first meeting, shall adopt by consensus financial rules for the operation of this Protocol.

ARTICLE 14: RELATIONSHIP OF THIS PROTOCOL TO THE CONVENTION

Except as otherwise provided in this Protocol, the provisions of the Convention relating to its protocols shall apply to this Protocol.

ARTICLE 15: SIGNATURE

This Protocol shall be open for signature by States and by regional economic integration organizations in Montreal on 16 September 1987, in Ottawa from 17 September 1987 to 16 January 1988, and at United Nations Headquarters in New York from 17 January 1988 to 15 September 1988.

ARTICLE 16: ENTRY INTO FORCE

1. This Protocol shall enter into force on 1 January 1989, provided that at least eleven instruments of ratification, acceptance, approval of the Protocol or accession thereto have been deposited by States or regional economic integration organizations representing at least two-thirds of 1986 estimated global consumption of the controlled substances, and the provisions of paragraph 1 of Article 17 of the Convention have been fulfilled. In the event that these conditions have not been fulfilled by that date, the Protocol shall enter into force on the ninetieth day following the date on which the conditions have been fulfilled.
2. For the purposes of paragraph 1, any such instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.
3. After the entry into force of this Protocol, any State or regional economic integration organization shall become a Party to it on the ninetieth day following the date of deposit of its instrument of ratification, acceptance, approval or accession.

ARTICLE 17: PARTIES JOINING AFTER ENTRY INTO FORCE

Subject to Article 5, any State or regional economic integration organization which becomes a Party to this Protocol after the date of its entry into force, shall fulfil forthwith the sum of the obligations under Article 2, as well as under

Articles 2A to 2H and Article 4, that apply at that date to the States and regional economic integration organizations that became Parties on the date the Protocol entered into force.

ARTICLE 18: RESERVATIONS

No reservations may be made to this Protocol.

ARTICLE 19: WITHDRAWAL

Any Party may withdraw from this Protocol by giving written notification to the Depositary at any time after four years of assuming the obligations specified in paragraph 1 of Article 2A. Any such withdrawal shall take effect upon expiry of one year after the date of its receipt by the Depositary, or on such later date as may be specified in the notification of the withdrawal.

ARTICLE 20: AUTHENTIC TEXTS

The original of this Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF THE UNDERSIGNED, BEING DULY AUTHORIZED TO THAT EFFECT, HAVE SIGNED THIS PROTOCOL.

DONE AT MONTREAL THIS SIXTEENTH DAY OF SEPTEMBER, ONE THOUSAND NINE HUNDRED AND EIGHTY SEVEN.

Schedule 3 Montreal Protocol on Substances that Deplete the Ozone Layer

Annex A

CONTROLLED SUBSTANCES

Group	Substance	Ozone Depleting Potential* /
Group I		
CFCl ₃	(CFC-11)	1.0
CF ₂ Cl ₂	(CFC-12)	1.0
C ₂ F ₃ Cl ₃	(CFC-113)	0.8
C ₂ F ₄ Cl ₂	(CFC-114)	1.0
C ₂ F ₅ Cl	(CFC-115)	0.6
Group II		
CF ₂ BrCl	(halon-1211)	3.0
CF ₃ Br	(halon-1301)	10.0
C ₂ F ₄ Br ₂	(halon-2402)	6.0

*/ These ozone depleting potentials are estimates based on existing knowledge and will be reviewed and revised periodically.

Annex B

CONTROLLED SUBSTANCES

Group	Substance	Ozone-depleting potential
Group I		
CF ₃ Cl	(CFC-13)	1.0
C ₂ FCl ₅	(CFC-111)	1.0
C ₂ F ₂ Cl ₄	(CFC-112)	1.0
C ₃ FCl ₇	(CFC-211)	1.0
C ₃ F ₂ Cl ₆	(CFC-212)	1.0
C ₃ F ₃ Cl ₅	(CFC-213)	1.0
C ₃ F ₄ Cl ₄	(CFC-214)	1.0
C ₃ F ₅ Cl ₃	(CFC-215)	1.0
C ₃ F ₆ Cl ₂	(CFC-216)	1.0
C ₃ F ₇ Cl	(CFC-217)	1.0

Group	Substance	Ozone-depleting potential
Group II		
CCl ₄	carbon tetrachloride	1.1
Group III		
C ₂ H ₃ Cl ₃ *	1,1,1-trichloroethane (methyl chloroform)	0.1

* This formula does not refer to 1,1,2-trichloroethane.

Annex C

CONTROLLED SUBSTANCES

Group	Substance	Number of Isomers	Ozone Depleting Potential*
Group I			
CHFCl ₂	(HCFC-21)**	1	0.04
CHF ₂ Cl	(HCFC-22)**	1	0.055
CH ₂ FCl	(HCFC-31)	1	0.02
C ₂ HFCl ₄	(HCFC-121)	2	0.01—0.04
C ₂ HF ₂ Cl ₃	(HCFC-122)	3	0.02—0.08
C ₂ HF ₃ Cl ₂	(HCFC-123)	3	0.02—0.06
CHCl ₂ CF ₃	(HCFC-123)**	—	0.02
C ₂ HF ₄ Cl	(HCFC-124)	2	0.02—0.04
CHFClCF ₃	(HCFC-124)**	—	0.022
C ₂ H ₂ FCl ₃	(HCFC-131)	3	0.007—0.05
C ₂ H ₂ F ₂ Cl ₂	(HCFC-132)	4	0.008—0.05
C ₂ H ₂ F ₃ Cl	(HCFC-133)	3	0.02—0.06
C ₂ H ₃ FCl ₂	(HCFC-141)	3	0.005—0.07
CH ₃ CFCl ₂	(HCFC-141b)**	—	0.11
C ₂ H ₃ F ₂ Cl	(HCFC-142)	3	0.008—0.07
CH ₃ CF ₂ Cl	(HCFC-142b)**	—	0.065
C ₂ H ₄ FCl	(HCFC-151)	2	0.003—0.005
C ₃ HFCl ₆	(HCFC-221)	5	0.015—0.07
C ₃ HF ₂ Cl ₅	(HCFC-222)	9	0.01—0.09

Schedule 3 Montreal Protocol on Substances that Deplete the Ozone Layer

Group	Substance	Number of Isomers	Ozone Depleting Potential*	
	C ₃ HF ₃ Cl ₄	(HCFC-223)	12	0.01—0.08
	C ₃ HF ₄ Cl ₃	(HCFC-224)	12	0.01—0.09
	C ₃ HF ₅ Cl ₂	(HCFC-225)	9	0.02—0.07
	CF ₃ CF ₂ CHCl ₂	(HCFC-225ca)**	—	0.025
	CF ₂ ClCF ₂ CHClF	(HCFC-225cb)**	—	0.033
	C ₃ HF ₆ Cl	(HCFC-226)	5	0.02—0.10
	C ₃ H ₂ FCl ₅	(HCFC-231)	9	0.05—0.09
	C ₃ H ₂ F ₂ Cl ₄	(HCFC-232)	16	0.008—0.10
	C ₃ H ₂ F ₃ Cl ₃	(HCFC-233)	18	0.007—0.23
	C ₃ H ₂ F ₄ Cl ₂	(HCFC-234)	16	0.01—0.28
	C ₃ H ₂ F ₅ Cl	(HCFC-235)	9	0.03—0.52
	C ₃ H ₃ FCl ₄	(HCFC-241)	12	0.004—0.09
	C ₃ H ₃ F ₂ Cl ₃	(HCFC-242)	18	0.005—0.13
	C ₃ H ₃ F ₃ Cl ₂	(HCFC-243)	18	0.007—0.12
	C ₃ H ₃ F ₄ Cl	(HCFC-244)	12	0.009—0.14
	C ₃ H ₄ FCl ₃	(HCFC-251)	12	0.001—0.01
	C ₃ H ₄ F ₂ Cl ₂	(HCFC-252)	16	0.005—0.04
	C ₃ H ₄ F ₃ Cl	(HCFC-253)	12	0.003—0.03
	C ₃ H ₅ FCl ₂	(HCFC-261)	9	0.002—0.02
	C ₃ H ₅ F ₂ Cl	(HCFC-262)	9	0.002—0.02
	C ₃ H ₆ FCl	(HCFC-271)	5	0.001—0.03
Group II				
	CH ₂ Br ₂		1	1.00
	CHF ₂ Br	(HBFC-22B1)	1	0.74
	CH ₂ FBr		1	0.73
	C ₂ HFBr ₄		2	0.3—0.8
	C ₂ HF ₂ Br ₃		3	0.5—1.8
	C ₂ HF ₃ Br ₂		3	0.4—1.6
	C ₂ HF ₄ Br		2	0.7—1.2
	C ₂ H ₂ FBr ₃		3	0.1—1.1
	C ₂ H ₂ F ₂ Br ₂		4	0.2—1.5

Group	Substance	Number of Isomers	Ozone Depleting Potential*
	C ₂ H ₂ F ₃ Br	3	0.7—1.6
	C ₂ H ₃ FBr ₂	3	0.1—1.7
	C ₂ H ₃ F ₂ Br	3	0.2—1.1
	C ₂ H ₄ FBr	2	0.07—0.1
	C ₃ HFBr ₆	5	0.3—1.15
	C ₃ HF ₂ Br ₅	9	0.2—1.9
	C ₃ HF ₃ Br ₄	12	0.3—1.8
	C ₃ HF ₄ Br ₃	12	0.5—2.2
	C ₃ HF ₅ Br ₂	9	0.9—2.0
	C ₃ HF ₆ Br	5	0.7—3.3
	C ₃ H ₂ FBr ₅	9	0.1—1.9
	C ₃ H ₂ F ₂ Br ₄	16	0.2—2.1
	C ₃ H ₂ F ₃ Br ₃	18	0.2—5.6
	C ₃ H ₂ F ₄ Br ₂	16	0.3—7.5
	C ₃ H ₂ F ₅ Br	8	0.9—1.4
	C ₃ H ₃ FBr ₄	12	0.08—1.9
	C ₃ H ₃ F ₂ Br ₃	18	0.1—3.1
	C ₃ H ₃ F ₃ Br ₂	18	0.1—2.5
	C ₃ H ₃ F ₄ Br ₂	12	0.3—4.4
	C ₃ H ₄ FBr ₃	12	0.03—0.3
	C ₃ H ₄ F ₂ Br	16	0.1—1.0
	C ₃ H ₄ F ₃ Br	12	0.07—0.8
	C ₃ H ₅ FBr ₂	9	0.04—0.4
	C ₃ H ₅ F ₂ Br	9	0.07—0.8
	C ₃ H ₆ FBr	5	0.02—0.7

* Where a range of ODPs is indicated, the highest value in that range shall be used for the purposes of the Protocol. The ODPs listed as a single value have been determined from calculations based on laboratory measurements. Those listed as a range are based on estimates and are less certain. The range pertains to an isomeric group. The upper value is the

Schedule 3 Montreal Protocol on Substances that Deplete the Ozone Layer

estimate of the ODP of the isomer with the highest ODP, and the lower value is the estimate of the ODP of the isomer with the lowest ODP.

** Identifies the most commercially viable substances with ODP values listed against them to be used for the purposes of the Protocol.

Annex D*

A LIST OF PRODUCTS** CONTAINING CONTROLLED
SUBSTANCES SPECIFIED IN ANNEX A (ADOPTED IN
ACCORDANCE WITH ARTICLE 4, PARAGRAPH 3)

PRODUCTS	CUSTOMS CODE NO.
1. Automobile and truck air conditioning units (whether incorporated in vehicles or not)
2. Domestic and commercial refrigeration and air conditioning/heat pump equipment***
e.g. Refrigerators
Freezers
Dehumidifiers
Water coolers
Ice machines
Air conditioning and heat pump units
3. Aerosol products, except medical aerosols
4. Portable fire extinguisher
5. Insulation boards, panels and pipe covers
6. Pre-polymers

* This Annex was adopted by the Third Meeting of the Parties in Nairobi, 21 June 1991 as required by paragraph 3 of Article 4 of the Protocol.

** Though not when transported in consignments of personal or household effects or in similar non-commercial situations normally exempted from customs attention.

*** When containing controlled substances in Annex A as a refrigerant and/or in insulating material of the product.

Schedule 3 Montreal Protocol on Substances that Deplete the Ozone Layer

Annex E

CONTROLLED SUBSTANCE

Group	Substance	Ozone Depleting Potential
Group I		
CH3Br	methyl bromide	0.7

Schedule 3A—Adjustments to the Montreal Protocol on Substances that Deplete the Ozone Layer of 16 September 1987

Note: See the definition of *Montreal Protocol* in subsection 7(1).

(Vienna, 7 December 1995)

ADJUSTMENTS TO THE MONTREAL PROTOCOL ON SUBSTANCES THAT DEplete THE OZONE LAYER OF 16 SEPTEMBER 1987

Controlled substances in Annex A

Article 5: Special situation of developing countries

The following paragraph *8bis* shall be inserted after paragraph 8 of Article 5 of the Protocol:

8bis. Based on the conclusions of the review referred to in paragraph 8 above:

- (a) With respect to the controlled substances in Annex A, a Party operating under paragraph 1 of this Article shall, in order to meet its basic domestic needs, be entitled to delay for ten years its compliance with the control measures adopted by the Second Meeting of the Parties in London, 29 June 1990, and reference by the Protocol to Articles 2A and 2B shall be read accordingly;

Controlled substances in Annex B

Article 5: Special situation of developing countries

The following subparagraph shall be inserted after subparagraph (a) of paragraph *8bis* of Article 5 of the Protocol:

- (b) With respect to the controlled substances in Annex B, a Party operating under paragraph 1 of this Article shall, in order to meet

its basic domestic needs, be entitled to delay for ten years its compliance with the control measures adopted by the Second Meeting of the Parties in London, 29 June 1990, and reference by this Protocol to Articles 2C to 2E shall be read accordingly.

Controlled substances in Annexes C and E

Article 2F, paragraph 1(a): Hydrochlorofluorocarbons

In paragraph 1(a) of Article 2F, for the words:

Three point one

there shall be substituted:

Two point eight

Article 2F, paragraph 5: Hydrochlorofluorocarbons

The following sentence shall be added to the end of paragraph 5 of Article 2F of the Protocol:

Such consumption shall, however, be restricted to the servicing of refrigeration and air conditioning equipment existing at that date.

Article 2H: Methyl bromide

Article 2H of the Protocol shall read as follows:

Article 2H: Methyl bromide

1. Each Party shall ensure that for the twelve-month period commencing on 1 January 1995, and in each twelve-month period thereafter, its calculated level of consumption of the controlled substance in Annex E does not exceed, annually, its calculated level of consumption in 1991. Each Party producing the substance shall, for the same periods, ensure that its calculated level of production of the substance does not exceed, annually, its calculated level of production in 1991. However, in order to satisfy the basic domestic needs of the Parties operating under paragraph 1 of Article 5, its calculated level of production may exceed

that limit by up to ten per cent of its calculated level of production in 1991.

2. Each Party shall ensure that for the twelve-month period commencing on 1 January 2001, and in each twelve-month period thereafter, its calculated level of consumption of the controlled substance in Annex E does not exceed, annually, seventy-five per cent of its calculated level of consumption in 1991. Each Party producing the substance shall, for the same periods, ensure that its calculated level of production of the substance does not exceed, annually, seventy-five per cent of its calculated level of production in 1991. However, in order to satisfy the basic domestic needs of the Parties operating under paragraph 1 of Article 5, its calculated level of production may exceed that limit by up to ten per cent of its calculated level of production in 1991.

3. Each Party shall ensure that for the twelve-month period commencing on 1 January 2005, and in each twelve-month period thereafter, its calculated level of consumption of the controlled substance in Annex E does not exceed, annually, fifty per cent of its calculated level of consumption in 1991. Each Party producing the substance shall, for the same periods, ensure that its calculated level of production of the substance does not exceed, annually, fifty per cent of its calculated level of production in 1991. However, in order to satisfy the basic domestic needs of the Parties operating under paragraph 1 of Article 5, its calculated level of production may exceed that limit by up to ten per cent of its calculated level of production in 1991.

4. Each Party shall ensure that for the twelve-month period commencing on 1 January 2010, and in each twelve-month period thereafter, its calculated level of consumption of the controlled substance in Annex E does not exceed zero. Each Party producing the substance shall, for the same periods, ensure that its calculated level of production of the substance does not exceed zero. However, in order to satisfy the basic domestic needs of the Parties operating under paragraph 1 of Article 5, its calculated level of production may exceed that limit by up to fifteen per cent of its calculated level of production in 1991. This paragraph will apply save to the extent that the Parties decide to permit the level of production or consumption that is necessary to satisfy uses agreed by them to be critical agricultural uses.

5. The calculated levels of consumption and production under this Article shall not include the amounts used by the Party for quarantine and pre-shipment applications.

Article 5, paragraph 8*ter*: Special situation of developing countries

The following paragraph 8*ter* shall be inserted after paragraph 8*bis* of Article 5 of the Protocol:

8*ter*. Pursuant to paragraph 1*bis* above:

- (a) Each Party operating under paragraph 1 of this Article shall ensure that for the twelve-month period commencing on 1 January 2016, and in each twelve-month period thereafter, its calculated level of consumption of the controlled substances in Group I of Annex C does not exceed, annually, its calculated level of consumption in 2015;
- (b) Each Party operating under paragraph 1 of this Article shall ensure that for the twelve-month period commencing on 1 January 2040, and in each twelve-month period thereafter, its calculated level of consumption of the controlled substances in Group I of Annex C does not exceed zero;
- (c) Each Party operating under paragraph 1 of this Article shall comply with Article 2G;
- (d) With regard to the controlled substance contained in Annex E:
 - (i) As of 1 January 2002 each Party operating under paragraph 1 of this Article shall comply with the control measures set out in paragraph 1 of Article 2H and, as the basis for its compliance with these control measures, it shall use the average of its annual calculated level of consumption and production, respectively, for the period of 1995 to 1998 inclusive;

- (ii) The calculated levels of consumption and production under this subparagraph shall not include the amounts used by the Party for quarantine and pre-shipment applications.

Annex E: Methyl bromide

For "0.7" in the third column of Annex E substitute "0.6".

Schedule 3B—Adjustments to Annexes A, B and E of the Montreal Protocol on Substances that Deplete the Ozone Layer of 16 September 1987

Note: See the definition of *Montreal Protocol* in subsection 7(1).

(Montreal, 17 September 1997)

ADJUSTMENTS TO ANNEXES A, B AND E OF THE MONTREAL PROTOCOL ON SUBSTANCES THAT DEplete THE OZONE LAYER OF 16 SEPTEMBER 1987

Decision IX/1. Further adjustments with regard to Annex A substances

To adopt, in accordance with the procedure laid down in paragraph 9 of Article 2 of the Montreal Protocol and on the basis of the assessments made pursuant to Article 6 of the Protocol, the adjustments with regard to production of the controlled substances listed in Annex A to the Protocol, as set out in Annex I to the report of the Ninth Meeting of the Parties;

Decision IX/2. Further adjustments with regard to Annex B substances

To adopt, in accordance with the procedure laid down in paragraph 9 of Article 2 of the Montreal Protocol and on the basis of the assessments made pursuant to Article 6 of the Protocol, the adjustments with regard to production of the controlled substances listed in Annex B to the Protocol, as set out in Annex II to the report of the Ninth Meeting of the Parties;

Decision IX/3. Further adjustments and reductions with regard to the Annex E substance

To adopt, in accordance with the procedure laid down in paragraph 9 of Article 2 of the Montreal Protocol and on the basis of the assessments made pursuant to Article 6 of the Protocol, the adjustments and reductions of production and

consumption of the controlled substance listed in Annex E to the Protocol, as set out in Annex III to the report of the Ninth Meeting of the Parties.

ANNEX I
ADJUSTMENTS AGREED AT THE NINTH MEETING OF THE PARTIES
RELATING TO CONTROLLED SUBSTANCES IN ANNEX A

Article 5, paragraph 3

The following words shall be added at the end of paragraph 3(a) of Article 5 of the Protocol:

relating to consumption

The following subparagraph shall be added to paragraph 3 of Article 5 of the Protocol:

(c) For controlled substances under Annex A, either the average of its annual calculated level of production for the period 1995 to 1997 inclusive or a calculated level of production of 0.3 kilograms per capita, whichever is the lower, as the basis for determining its compliance with the control measures relating to production.

ANNEX II
ADJUSTMENTS AGREED AT THE NINTH MEETING OF THE PARTIES
RELATING TO CONTROLLED SUBSTANCES IN ANNEX B

Article 5, paragraph 3

The following words shall be added at the end of paragraph 3(b) of Article 5 of the Protocol:

relating to consumption

The following subparagraph shall be added to paragraph 3 of Article 5 of the Protocol:

(d) For controlled substances under Annex B, either the average of its annual calculated level of production for the period 1998 to 2000 inclusive or a calculated level of production of 0.2 kilograms per capita, whichever is the lower, as the basis for determining its compliance with the control measures relating to production.

ANNEX III
ADJUSTMENTS AGREED AT THE NINTH MEETING OF THE PARTIES
RELATING TO THE CONTROLLED SUBSTANCE IN ANNEX E

A. Article 2H: Methyl bromide

1. Paragraphs 2 to 4 of Article 2H of the Protocol shall be replaced by the following paragraphs:

2. Each Party shall ensure that for the twelve-month period commencing on 1 January 1999, and in the twelve-month period thereafter, its calculated level of consumption of the controlled substance in Annex E does not exceed, annually, seventy-five percent of its calculated level of consumption in 1991. Each Party producing the substance shall, for the same periods, ensure that its calculated level of production of the substance does not exceed, annually, seventy-five percent of its calculated level of production in 1991. However, in order to satisfy the basic domestic needs of the Parties operating under paragraph 1 of Article 5, its calculated level of production may exceed that limit by up to ten percent of its calculated level of production in 1991.

3. Each Party shall ensure that for the twelve-month period commencing on 1 January 2001, and in the twelve-month period thereafter, its calculated level of consumption of the controlled substance in Annex E does not exceed, annually, fifty percent of its calculated level of consumption in 1991. Each Party producing the substance shall, for the same periods, ensure that its calculated level of production of the substance does not exceed, annually, fifty percent of its calculated level of production in 1991. However, in order to satisfy the basic domestic needs of the Parties operating under paragraph 1 of Article 5, its calculated level of production may exceed that limit by up to ten percent of its calculated level of production in 1991.

4. Each Party shall ensure that for the twelve-month period commencing on 1 January 2003, and in the twelve-month period thereafter, its calculated level of consumption of the controlled substance in Annex E does not exceed, annually, thirty percent of its calculated level of consumption in 1991. Each Party producing the substance shall, for the same periods, ensure that its calculated level of production of the substance does not exceed, annually, thirty percent of its calculated level of production in 1991. However, in order to satisfy the basic domestic needs of the Parties operating under paragraph 1 of Article 5, its calculated level of production may exceed that limit by up to ten percent of its calculated level of production in 1991.

5. Each Party shall ensure that for the twelve-month period commencing on 1 January 2005, and in each twelve-month period thereafter, its calculated level of consumption of the controlled substance in Annex E does not exceed zero. Each Party producing the substance shall, for the same periods, ensure that its calculated level of production of the substance does not exceed zero. However, in order to satisfy the basic domestic needs of the Parties operating under paragraph 1 of Article 5, its calculated level of production may exceed that limit by up to fifteen percent of its calculated level of production in 1991. This paragraph will apply save to the extent that the Parties decide to permit the level of production or consumption that is necessary to satisfy uses agreed by them to be critical uses.

2. Paragraph 5 of Article 2H of the Protocol shall become paragraph 6.

B. Article 5, paragraph 8ter(d)

1. The following shall be inserted after paragraph 8ter(d)(i) of Article 5 of the Protocol:

(ii) Each Party operating under paragraph 1 of this Article shall ensure that for the twelve-month period commencing on 1 January 2005, and in each twelve-month period thereafter, its calculated levels of consumption and production of the controlled substance in Annex E do not exceed, annually, eighty percent of the average of its annual calculated levels of consumption and production, respectively, for the period of 1995 to 1998 inclusive;

(iii) Each Party operating under paragraph 1 of this Article shall ensure that for the twelve-month period commencing on 1 January 2015 and in each

twelve-month period thereafter, its calculated levels of consumption and production of the controlled substance in Annex E do not exceed zero. This paragraph will apply save to the extent that the Parties decide to permit the level of production or consumption that is necessary to satisfy uses agreed by them to be critical uses;

2. Paragraph 8ter(d)(ii) of Article 5 of the Protocol shall become paragraph 8 ter(d)(iv).

Adopted at the Ninth Meeting of Parties to the Protocol.

Schedule 3C—Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer of 16 September 1987

Note: See the definition of *Montreal Protocol* in subsection 7(1).

(Montreal, 17 September 1997)

AMENDMENT TO THE MONTREAL PROTOCOL ON SUBSTANCES THAT DEplete THE OZONE LAYER OF 16 SEPTEMBER 1987

Decision IX/4. Further amendment of the Protocol

To adopt, in accordance with the procedure laid down in paragraph 4 of Article 9 of the Vienna Convention for the Protection of the Ozone Layer, the Amendment to the Montreal Protocol as set out in Annex IV to the report of the Ninth Meeting of the Parties.

ANNEX IV AMENDMENT TO THE MONTREAL PROTOCOL ADOPTED BY THE NINTH MEETING OF THE PARTIES

Article 1: Amendment

A. Article 4, paragraph 1qua

The following paragraph shall be inserted after paragraph 1ter of Article 4 of the Protocol:

1qua Within one year of the date of entry into force of this paragraph, each Party shall ban the import of the controlled substance in Annex E from any State not party to this Protocol.

B. Article 4, paragraph 2qua

The following paragraph shall be inserted after paragraph 2ter of Article 4 of the Protocol:

2qua Commencing one year after the date of entry into force of this paragraph, each Party shall ban the export of the controlled substance in Annex E to any State not party to this Protocol.

C. Article 4, paragraphs 5, 6 and 7

In paragraphs 5, 6 and 7 of Article 4 of the Protocol, for the words:

and Group II of Annex C

there shall be substituted:

, Group II of Annex C and Annex E

D. Article 4, paragraph 8

In paragraph 8 of Article 4 of the Protocol, for the words:

Article 2G

there shall be substituted:

Articles 2G and 2H

E. Article 4A: Control of trade with Parties

The following Article shall be added to the Protocol as Article 4A:

1. Where, after the phase-out date applicable to it for a controlled substance, a Party is unable, despite having taken all practicable steps to comply with its obligation under the Protocol, to cease production of that substance for domestic consumption, other than for uses agreed by the Parties to be essential,

it shall ban the export of used, recycled and reclaimed quantities of that substance, other than for the purpose of destruction.

2. Paragraph 1 of this Article shall apply without prejudice to the operation of Article 11 of the Convention and the non-compliance procedure developed under Article 8 of the Protocol.

F. Article 4B: Licensing

The following Article shall be added to the Protocol as Article 4B:

1. Each Party shall, by 1 January 2000 or within three months of the date of entry into force of this Article for it, whichever is the later, establish and implement a system for licensing the import and export of new, used, recycled and reclaimed controlled substances in Annexes A, B, C and E.

2. Notwithstanding paragraph 1 of this Article, any Party operating under paragraph 1 of Article 5 which decides it is not in a position to establish and implement a system for licensing the import and export of controlled substances in Annexes C and E, may delay taking those actions until 1 January 2005 and 1 January 2002, respectively.

3. Each Party shall, within three months of the date of introducing its licensing system, report to the Secretariat on the establishment and operation of that system.

4. The Secretariat shall periodically prepare and circulate to all Parties a list of the Parties that have reported to it on their licensing systems and shall forward this information to the Implementation Committee for consideration and appropriate recommendations to the Parties.

Article 2: Relationship to the 1992 Amendment

No State or regional economic integration organization may deposit an instrument of ratification, acceptance, approval or accession to this Amendment unless it has previously, or simultaneously, deposited such an instrument to the Amendment adopted at the Fourth Meeting of the Parties in Copenhagen, 25 November 1992.

Article 3: Entry into force

1. This Amendment shall enter into force on 1 January 1999, provided that at least twenty instruments of ratification, acceptance or approval of the Amendment have been deposited by States or regional economic integration organizations that are Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer. In the event that this condition has not been fulfilled by that date, the Amendment shall enter into force on the ninetieth day following the date on which it has been fulfilled.

2. For the purposes of paragraph 1, any such instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.

3. After the entry into force of this Amendment, as provided under paragraph 1, it shall enter into force for any other Party to the Protocol on the ninetieth day following the date of deposit of its instrument of ratification, acceptance or approval.

Adopted at the Ninth Meeting of Parties to the Protocol.

Schedule 3D—Beijing amendment to the Montreal Protocol

Note: See the definition of *Montreal Protocol* in subsection 7(1).

AMENDMENT TO THE MONTREAL PROTOCOL ON SUBSTANCES THAT DEplete THE OZONE LAYER

Article 1: Amendment

A. Article 2, paragraph 5

In paragraph 5 of Article 2 of the Protocol, for the words:

Articles 2A to 2E

there shall be substituted:

Articles 2A to 2F

B. Article 2, paragraphs 8(a) and 11

In paragraphs 8(a) and 11 of Article 2 of the Protocol, for the words:

Articles 2A to 2H

there shall be substituted:

Articles 2A to 2I

C. Article 2F, paragraph 8

The following paragraph shall be added after paragraph 7 of Article 2F of the Protocol:

Each Party producing one or more of these substances shall ensure that for the twelve-month period commencing on 1 January 2004, and in each twelve-month period thereafter, its

calculated level of production of the controlled substances in Group I of Annex C does not exceed, annually, the average of:

- (a) The sum of its calculated level of consumption in 1989 of the controlled substances in Group I of Annex C and two point eight per cent of its calculated level of consumption in 1989 of the controlled substances in Group I of Annex A; and
- (b) The sum of its calculated level of production in 1989 of the controlled substances in Group I of Annex C and two point eight per cent of its calculated level of production in 1989 of the controlled substances in Group I of Annex A.

However, in order to satisfy the basic domestic needs of the Parties operating under paragraph 1 of Article 5, its calculated level of production may exceed that limit by up to fifteen per cent of its calculated level of production of the controlled substances in Group I of Annex C as defined above.

D. Article 2I

The following Article shall be inserted after Article 2H of the Protocol:

Article 2I: Bromochloromethane

Each Party shall ensure that for the twelve-month period commencing on 1 January 2002, and in each twelve-month period thereafter, its calculated level of consumption and production of the controlled substance in Group III of Annex C does not exceed zero. This paragraph will apply save to the extent that the Parties decide to permit the level of production or consumption that is necessary to satisfy uses agreed by them to be essential.

E. Article 3

In Article 3 of the Protocol, for the words:

Articles 2, 2A to 2H

there shall be substituted:

Articles 2, 2A to 2I

F. Article 4, paragraphs 1 quin. and 1 sex.

The following paragraphs shall be added to Article 4 of the Protocol after paragraph 1 *qua*:

1 *quin.* As of 1 January 2004, each Party shall ban the import of the controlled substances in Group I of Annex C from any State not party to this Protocol.

1 *sex.* Within one year of the date of entry into force of this paragraph, each Party shall ban the import of the controlled substance in Group III of Annex C from any State not party to this Protocol.

G. Article 4, paragraphs 2 quin. and 2 sex.

The following paragraphs shall be added to Article 4 of the Protocol after paragraph 2 *qua*:

2 *quin.* As of 1 January 2004, each Party shall ban the export of the controlled substances in Group I of Annex C to any State not party to this Protocol.

2 *sex.* Within one year of the date of entry into force of this paragraph, each Party shall ban the export of the controlled substance in Group III of Annex C to any State not party to this Protocol.

H. Article 4, paragraphs 5 to 7

In paragraphs 5 to 7 of Article 4 of the Protocol, for the words:

Annexes A and B, Group II of Annex C and Annex E

there shall be substituted:

Annexes A, B, C and E

I. Article 4, paragraph 8

In paragraph 8 of Article 4 of the Protocol, for the words:

Articles 2A to 2E, Articles 2G and 2H

there shall be substituted:

Articles 2A to 2I

J. Article 5, paragraph 4

In paragraph 4 of Article 5 of the Protocol, for the words:

Articles 2A to 2H

there shall be substituted:

Articles 2A to 2I

K. Article 5, paragraphs 5 and 6

In paragraphs 5 and 6 of Article 5 of the Protocol, for the words:

Articles 2A to 2E

there shall be substituted:

Articles 2A to 2E and Article 2I

L. Article 5, paragraph 8 ter (a)

The following sentence shall be added at the end of subparagraph 8 *ter* (a) of Article 5 of the Protocol:

As of 1 January 2016 each Party operating under paragraph 1 of this Article shall comply with the control measures set out in paragraph 8 of Article 2F and, as the basis for its compliance with these control measures, it shall use the average of its calculated levels of production and consumption in 2015;

M. Article 6

In Article 6 of the Protocol, for the words:

Articles 2A to 2H

there shall be substituted:

Articles 2A to 2I

N. Article 7, paragraph 2

In paragraph 2 of Article 7 of the Protocol, for the words:

Annexes B and C

there shall be substituted:

Annex B and Groups I and II of Annex C

O. Article 7, paragraph 3

The following sentence shall be added after the first sentence of paragraph 3 of Article 7 of the Protocol:

Each Party shall provide to the Secretariat statistical data on the annual amount of the controlled substance listed in Annex E used for quarantine and pre-shipment applications.

P. Article 10

In paragraph 1 of Article 10 of the Protocol, for the words:

Articles 2A to 2E

there shall be substituted:

Articles 2A to 2E and Article 2I

Q. Article 17

In Article 17 of the Protocol, for the words:

Articles 2A to 2H

there shall be substituted:

Articles 2A to 2I

R. Annex C

The following group shall be added to Annex C to the Protocol:

Group Substance	Number of Isomers	Ozone-Depleting Potential
Group III		
CH ₂ BrCl bromochloromethane	1	0.12

Article 2: Relationship to the 1997 Amendment

No State or regional economic integration organization may deposit an instrument of ratification, acceptance or approval of or accession to this Amendment unless it has previously, or simultaneously, deposited such an instrument to the Amendment adopted at the Ninth Meeting of the Parties in Montreal, 17 September 1997.

Article 3: Entry into force

1. This Amendment shall enter into force on 1 January 2001, provided that at least twenty instruments of ratification, acceptance or approval of the

Amendment have been deposited by States or regional economic integration organizations that are Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer. In the event that this condition has not been fulfilled by that date, the Amendment shall enter into force on the ninetieth day following the date on which it has been fulfilled.

2. For the purposes of paragraph 1, any such instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.

3. After the entry into force of this Amendment, as provided under paragraph 1, it shall enter into force for any other Party to the Protocol on the ninetieth day following the date of deposit of its instrument of ratification, acceptance or approval.

Schedule 3E—Framework Convention on Climate Change

Note: See the definition of *Framework Convention on Climate Change* in subsection 7(1).

UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE

The Parties to this Convention,

Acknowledging that change in the Earth's climate and its adverse effects are a common concern of humankind,

Concerned that human activities have been substantially increasing the atmospheric concentrations of greenhouse gases, that these increases enhance the natural greenhouse effect, and that this will result on average in an additional warming of the Earth's surface and atmosphere and may adversely affect natural ecosystems and humankind,

Noting that the largest share of historical and current global emissions of greenhouse gases has originated in developed countries, that per capita emissions in developing countries are still relatively low and that the share of global emissions originating in developing countries will grow to meet their social and development needs,

Aware of the role and importance in terrestrial and marine ecosystems of sinks and reservoirs of greenhouse gases,

Noting that there are many uncertainties in predictions of climate change, particularly with regard to the timing, magnitude and regional patterns thereof,

Acknowledging that the global nature of climate change calls for the widest possible cooperation by all countries and their participation in an effective and appropriate international response, in accordance with their common but differentiated responsibilities and respective capabilities and their social and economic conditions,

Recalling the pertinent provisions of the Declaration of the United Nations Conference on the Human Environment, adopted at Stockholm on 16 June 1972,

Recalling also that States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction,

Reaffirming the principle of sovereignty of States in international cooperation to address climate change,

Recognizing that States should enact effective environmental legislation, that environmental standards, management objectives and priorities should reflect the environmental and developmental context to which they apply, and that standards applied by some countries may be inappropriate and of unwarranted economic and social cost to other countries, in particular developing countries,

Recalling the provisions of General Assembly resolution 44/228 of 22 December 1989 on the United Nations Conference on Environment and Development, and resolutions 43/53 of 6 December 1988, 44/207 of 22 December 1989, 45/212 of 21 December 1990 and 46/169 of 19 December 1991 on protection of global climate for present and future generations of mankind,

Recalling also the provisions of General Assembly resolution 44/206 of 22 December 1989 on the possible adverse effects of sealevel rise on islands and coastal areas, particularly low-lying coastal areas and the pertinent provisions of General Assembly resolution 44/172 of 19 December 1989 on the implementation of the Plan of Action to Combat Desertification,

Recalling further the Vienna Convention for the Protection of the Ozone Layer, 1985, and the Montreal Protocol on Substances that Deplete the Ozone Layer, 1987, as adjusted and amended on 29 June 1990,

Noting the Ministerial Declaration of the Second World Climate Conference adopted on 7 November 1990,

Conscious of the valuable analytical work being conducted by many States on climate change and of the important contributions of the World Meteorological Organization, the United Nations Environment Programme and other organs, organizations and bodies of the United Nations system, as well as other international and intergovernmental bodies, to the exchange of results of scientific research and the coordination of research,

Recognizing that steps required to understand and address climate change will be environmentally, socially and economically most effective if they are based on relevant scientific, technical and economic considerations and continually re-evaluated in the light of new findings in these areas,

Recognizing that various actions to address climate change can be justified economically in their own right and can also help in solving other environmental problems,

Recognizing also the need for developed countries to take immediate action in a flexible manner on the basis of clear priorities, as a first step towards comprehensive response strategies at the global, national and, where agreed, regional levels that take into account all greenhouse gases, with due consideration of their relative contributions to the enhancement of the greenhouse effect,

Recognizing further that low-lying and other small island countries, countries with low-lying coastal, arid and semi-arid areas or areas liable to floods, drought and desertification, and developing countries with fragile mountainous ecosystems are particularly vulnerable to the adverse effects of climate change,

Recognizing the special difficulties of those countries, especially developing countries, whose economies are particularly dependent on fossil fuel production, use and exportation, as a consequence of action taken on limiting greenhouse gas emissions,

Affirming that responses to climate change should be coordinated with social and economic development in an integrated manner with a view to

avoiding adverse impacts on the latter, taking into full account the legitimate priority needs of developing countries for the achievement of sustained economic growth and the eradication of poverty,

Recognizing that all countries, especially developing countries, need access to resources required to achieve sustainable social and economic development and that, in order for developing countries to progress towards that goal, their energy consumption will need to grow taking into account the possibilities for achieving greater energy efficiency and for controlling greenhouse gas emissions in general, including through the application of new technologies on terms which make such an application economically and socially beneficial,

Determined to protect the climate system for present and future generations,

Have agreed as follows:

ARTICLE 1

DEFINITIONS*

For the purposes of this Convention:

1. “Adverse effects of climate change” means changes in the physical environment or biota resulting from climate change which have significant deleterious effects on the composition, resilience or productivity of natural and managed ecosystems or on the operation of socio-economic systems or on human health and welfare.
2. “Climate change” means a change of climate which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and which is in addition to natural climate variability observed over comparable time periods.
3. “Climate system” means the totality of the atmosphere, hydrosphere, biosphere and geosphere and their interactions.

4. “Emissions” means the release of greenhouse gases and/or their precursors into the atmosphere over a specified area and period of time.
5. “Greenhouse gases” means those gaseous constituents of the atmosphere, both natural and anthropogenic, that absorb and re-emit infrared radiation.
6. “Regional economic integration organization” means an organization constituted by sovereign States of a given region which has competence in respect of matters governed by this Convention or its protocols and has been duly authorized, in accordance with its internal procedures, to sign, ratify, accept, approve or accede to the instruments concerned.
7. “Reservoir” means a component or components of the climate system where a greenhouse gas or a precursor of a greenhouse gas is stored.
8. “Sink” means any process, activity or mechanism which removes a greenhouse gas, an aerosol or a precursor of a greenhouse gas from the atmosphere.
9. “Source” means any process or activity which releases a greenhouse gas, an aerosol or a precursor of a greenhouse gas into the atmosphere.

ARTICLE 2

OBJECTIVE

The ultimate objective of this Convention and any related legal instruments that the Conference of the Parties may adopt is to achieve, in accordance with the relevant provisions of the Convention, stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system. Such a level should be achieved within a time frame sufficient to allow ecosystems to adapt naturally to climate change, to ensure that food production is not threatened and to enable economic development to proceed in a sustainable manner.

ARTICLE 3

PRINCIPLES

In their actions to achieve the objective of the Convention and to implement its provisions, the Parties shall be guided, *inter alia*, by the following:

1. The Parties should protect the climate system for the benefit of present and future generations of humankind, on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities. Accordingly, the developed country Parties should take the lead in combating climate change and the adverse effects thereof.
2. The specific needs and special circumstances of developing country Parties, especially those that are particularly vulnerable to the adverse effects of climate change, and of those Parties, especially developing country Parties, that would have to bear a disproportionate or abnormal burden under the Convention, should be given full consideration.
3. The Parties should take precautionary measures to anticipate, prevent or minimize the causes of climate change and mitigate its adverse effects. Where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing such measures, taking into account that policies and measures to deal with climate change should be cost-effective so as to ensure global benefits at the lowest possible cost. To achieve this, such policies and measures should take into account different socio-economic contexts, be comprehensive, cover all relevant sources, sinks and reservoirs of greenhouse gases and adaptation, and comprise all economic sectors. Efforts to address climate change may be carried out cooperatively by interested Parties.
4. The Parties have a right to, and should, promote sustainable development. Policies and measures to protect the climate system against human-induced change should be appropriate for the specific conditions of each Party and should be integrated with national development programmes, taking into account that economic development is essential for adopting measures to address climate change.

5. The Parties should cooperate to promote a supportive and open international economic system that would lead to sustainable economic growth and development in all Parties, particularly developing country Parties, thus enabling them better to address the problems of climate change. Measures taken to combat climate change, including unilateral ones, should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade.

ARTICLE 4

COMMITMENTS

1. All Parties, taking into account their common but differentiated responsibilities and their specific national and regional development priorities, objectives and circumstances, shall:

(a) Develop, periodically update, publish and make available to the Conference of the Parties, in accordance with Article 12, national inventories of anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol, using comparable methodologies to be agreed upon by the Conference of the Parties;

(b) Formulate, implement, publish and regularly update national and, where appropriate, regional programmes containing measures to mitigate climate change by addressing anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol, and measures to facilitate adequate adaptation to climate change;

(c) Promote and cooperate in the development, application and diffusion, including transfer, of technologies, practices and processes that control, reduce or prevent anthropogenic emissions of greenhouse gases not controlled by the Montreal Protocol in all relevant sectors, including the energy, transport, industry, agriculture, forestry and waste management sectors;

(d) Promote sustainable management, and promote and cooperate in the conservation and enhancement, as appropriate, of sinks and reservoirs of all greenhouse gases not controlled by the Montreal Protocol, including

biomass, forests and oceans as well as other terrestrial, coastal and marine ecosystems;

(e) Cooperate in preparing for adaptation to the impacts of climate change; develop and elaborate appropriate and integrated plans for coastal zone management, water resources and agriculture, and for the protection and rehabilitation of areas, particularly in Africa, affected by drought and desertification, as well as floods;

(f) Take climate change considerations into account, to the extent feasible, in their relevant social, economic and environmental policies and actions, and employ appropriate methods, for example impact assessments, formulated and determined nationally, with a view to minimizing adverse effects on the economy, on public health and on the quality of the environment, of projects or measures undertaken by them to mitigate or adapt to climate change;

(g) Promote and cooperate in scientific, technological, technical, socio-economic and other research, systematic observation and development of data archives related to the climate system and intended to further the understanding and to reduce or eliminate the remaining uncertainties regarding the causes, effects, magnitude and timing of climate change and the economic and social consequences of various response strategies;

(h) Promote and cooperate in the full, open and prompt exchange of relevant scientific, technological, technical, socio-economic and legal information related to the climate system and climate change, and to the economic and social consequences of various response strategies;

(i) Promote and cooperate in education, training and public awareness related to climate change and encourage the widest participation in this process, including that of non-governmental organizations; and

(j) Communicate to the Conference of the Parties information related to implementation, in accordance with Article 12.

2. The developed country Parties and other Parties included in annex I commit themselves specifically as provided for in the following:

(a) Each of these Parties shall adopt national ^{1/} policies and take corresponding measures on the mitigation of climate change, by limiting its anthropogenic emissions of greenhouse gases and protecting and enhancing its greenhouse gas sinks and reservoirs. These policies and measures will demonstrate that developed countries are taking the lead in modifying longer-term trends in anthropogenic emissions consistent with the objective of the Convention, recognizing that the return by the end of the present decade to earlier levels of anthropogenic emissions of carbon dioxide and other greenhouse gases not controlled by the Montreal Protocol would contribute to such modification, and taking into account the differences in these Parties' starting points and approaches, economic structures and resource bases, the need to maintain strong and sustainable economic growth, available technologies and other individual circumstances, as well as the need for equitable and appropriate contributions by each of these Parties to the global effort regarding that objective. These Parties may implement such policies and measures jointly with other Parties and may assist other Parties in contributing to the achievement of the objective of the Convention and, in particular, that of this subparagraph;

(b) In order to promote progress to this end, each of these Parties shall communicate, within six months of the entry into force of the Convention for it and periodically thereafter, and in accordance with Article 12, detailed information on its policies and measures referred to in subparagraph (a) above, as well as on its resulting projected anthropogenic emissions by sources and removals by sinks of greenhouse gases not controlled by the Montreal Protocol for the period referred to in subparagraph (a), with the aim of returning individually or jointly to their 1990 levels these anthropogenic emissions of carbon dioxide and other greenhouse gases not controlled by the Montreal Protocol. This information will be reviewed by the Conference of the Parties, at its first session and periodically thereafter, in accordance with Article 7;

(c) Calculations of emissions by sources and removals by sinks of greenhouse gases for the purposes of subparagraph (b) above should take into account the best available scientific knowledge, including of the effective capacity of sinks and the respective contributions of such gases to climate change. The Conference of the Parties shall consider and agree on methodologies for these calculations at its first session and review them regularly thereafter;

(d) The Conference of the Parties shall, at its first session, review the adequacy of subparagraphs (a) and (b) above. Such review shall be carried out in the light of the best available scientific information and assessment on climate change and its impacts, as well as relevant technical, social and economic information. Based on this review, the Conference of the Parties shall take appropriate action, which may include the adoption of amendments to the commitments in subparagraphs (a) and (b) above. The Conference of the Parties, at its first session, shall also take decisions regarding criteria for joint implementation as indicated in subparagraph (a) above. A second review of subparagraphs (a) and (b) shall take place not later than 31 December 1998, and thereafter at regular intervals determined by the Conference of the Parties, until the objective of the Convention is met;

(e) Each of these Parties shall:

- (i) coordinate as appropriate with other such Parties, relevant economic and administrative instruments developed to achieve the objective of the Convention; and
- (ii) identify and periodically review its own policies and practices which encourage activities that lead to greater levels of anthropogenic emissions of greenhouse gases not controlled by the Montreal Protocol than would otherwise occur;

(f) The Conference of the Parties shall review, not later than 31 December 1998, available information with a view to taking decisions regarding such amendments to the lists in annexes I and II as may be appropriate, with the approval of the Party concerned;

(g) Any Party not included in annex I may, in its instrument of ratification, acceptance, approval or accession, or at any time thereafter, notify the Depositary that it intends to be bound by subparagraphs (a) and (b) above. The Depositary shall inform the other signatories and Parties of any such notification.

3. The developed country Parties and other developed Parties included in annex II shall provide new and additional financial resources to meet the agreed full costs incurred by developing country Parties in complying with their obligations under Article 12, paragraph 1. They shall also provide such financial

resources, including for the transfer of technology, needed by the developing country Parties to meet the agreed full incremental costs of implementing measures that are covered by paragraph 1 of this Article and that are agreed between a developing country Party and the international entity or entities referred to in Article 11, in accordance with that Article. The implementation of these commitments shall take into account the need for adequacy and predictability in the flow of funds and the importance of appropriate burden sharing among the developed country Parties.

4. The developed country Parties and other developed Parties included in annex II shall also assist the developing country Parties that are particularly vulnerable to the adverse effects of climate change in meeting costs of adaptation to those adverse effects.

5. The developed country Parties and other developed Parties included in annex II shall take all practicable steps to promote, facilitate and finance, as appropriate, the transfer of, or access to, environmentally sound technologies and know-how to other Parties, particularly developing country Parties, to enable them to implement the provisions of the Convention. In this process, the developed country Parties shall support the development and enhancement of endogenous capacities and technologies of developing country Parties. Other Parties and organizations in a position to do so may also assist in facilitating the transfer of such technologies.

6. In the implementation of their commitments under paragraph 2 above, a certain degree of flexibility shall be allowed by the Conference of the Parties to the Parties included in annex I undergoing the process of transition to a market economy, in order to enhance the ability of these Parties to address climate change, including with regard to the historical level of anthropogenic emissions of greenhouse gases not controlled by the Montreal Protocol chosen as a reference.

7. The extent to which developing country Parties will effectively implement their commitments under the Convention will depend on the effective implementation by developed country Parties of their commitments under the Convention related to financial resources and transfer of technology and will take fully into account that economic and social development and poverty eradication are the first and overriding priorities of the developing country Parties.

8. In the implementation of the commitments in this Article, the Parties shall give full consideration to what actions are necessary under the Convention, including actions related to funding, insurance and the transfer of technology, to meet the specific needs and concerns of developing country Parties arising from the adverse effects of climate change and/or the impact of the implementation of response measures, especially on:

- (a) Small island countries;
- (b) Countries with low-lying coastal areas;
- (c) Countries with arid and semi-arid areas, forested areas and areas liable to forest decay;
- (d) Countries with areas prone to natural disasters;
- (e) Countries with areas liable to drought and desertification;
- (f) Countries with areas of high urban atmospheric pollution;
- (g) Countries with areas with fragile ecosystems, including mountainous ecosystems;
- (h) Countries whose economies are highly dependent on income generated from the production, processing and export, and/or on consumption of fossil fuels and associated energy-intensive products; and
- (i) Land-locked and transit countries.

Further, the Conference of the Parties may take actions, as appropriate, with respect to this paragraph.

9. The Parties shall take full account of the specific needs and special situations of the least developed countries in their actions with regard to funding and transfer of technology.

10. The Parties shall, in accordance with Article 10, take into consideration in the implementation of the commitments of the Convention the situation of Parties, particularly developing country Parties, with economies that are vulnerable to the adverse effects of the implementation of measures to respond to climate change. This applies notably to Parties with economies that are highly dependent on income generated from the production, processing and export, and/or consumption of fossil fuels and associated energy-intensive products and/or the use of fossil fuels for which such Parties have serious difficulties in switching to alternatives.

ARTICLE 5

RESEARCH AND SYSTEMATIC OBSERVATION

In carrying out their commitments under Article 4, paragraph 1 (g), the Parties shall:

(a) Support and further develop, as appropriate, international and intergovernmental programmes and networks or organizations aimed at defining, conducting, assessing and financing research, data collection and systematic observation, taking into account the need to minimize duplication of effort;

(b) Support international and intergovernmental efforts to strengthen systematic observation and national scientific and technical research capacities and capabilities, particularly in developing countries, and to promote access to, and the exchange of, data and analyses thereof obtained from areas beyond national jurisdiction; and

(c) Take into account the particular concerns and needs of developing countries and cooperate in improving their endogenous capacities and capabilities to participate in the efforts referred to in subparagraphs (a) and (b) above.

ARTICLE 6

EDUCATION, TRAINING AND PUBLIC AWARENESS

In carrying out their commitments under Article 4, paragraph 1 (i), the Parties shall:

- (a) Promote and facilitate at the national and, as appropriate, subregional and regional levels, and in accordance with national laws and regulations, and within their respective capacities:
 - (i) the development and implementation of educational and public awareness programmes on climate change and its effects;
 - (ii) public access to information on climate change and its effects;
 - (iii) public participation in addressing climate change and its effects and developing adequate responses; and
 - (iv) training of scientific, technical and managerial personnel.
- (b) Cooperate in and promote, at the international level, and, where appropriate, using existing bodies:
 - (i) the development and exchange of educational and public awareness material on climate change and its effects; and
 - (ii) the development and implementation of education and training programmes, including the strengthening of national institutions and the exchange or secondment of personnel to train experts in this field, in particular for developing countries.

ARTICLE 7

CONFERENCE OF THE PARTIES

1. A Conference of the Parties is hereby established.
2. The Conference of the Parties, as the supreme body of this Convention, shall keep under regular review the implementation of the Convention and any related legal instruments that the Conference of the Parties may adopt, and shall make, within its mandate, the decisions necessary to promote the effective implementation of the Convention. To this end, it shall:
 - (a) Periodically examine the obligations of the Parties and the institutional arrangements under the Convention, in the light of the objective of the Convention, the experience gained in its implementation and the evolution of scientific and technological knowledge;
 - (b) Promote and facilitate the exchange of information on measures adopted by the Parties to address climate change and its effects, taking into account the differing circumstances, responsibilities and capabilities of the Parties and their respective commitments under the Convention;
 - (c) Facilitate, at the request of two or more Parties, the coordination of measures adopted by them to address climate change and its effects, taking into account the differing circumstances, responsibilities and capabilities of the Parties and their respective commitments under the Convention;
 - (d) Promote and guide, in accordance with the objective and provisions of the Convention, the development and periodic refinement of comparable methodologies, to be agreed on by the Conference of the Parties, inter alia, for preparing inventories of greenhouse gas emissions by sources and removals by sinks, and for evaluating the effectiveness of measures to limit the emissions and enhance the removals of these gases;
 - (e) Assess, on the basis of all information made available to it in accordance with the provisions of the Convention, the implementation of the Convention by the Parties, the overall effects of the measures taken pursuant to

the Convention, in particular environmental, economic and social effects as well as their cumulative impacts and the extent to which progress towards the objective of the Convention is being achieved;

(f) Consider and adopt regular reports on the implementation of the Convention and ensure their publication;

(g) Make recommendations on any matters necessary for the implementation of the Convention;

(h) Seek to mobilize financial resources in accordance with Article 4, paragraphs 3, 4 and 5, and Article 11;

(i) Establish such subsidiary bodies as are deemed necessary for the implementation of the Convention;

(j) Review reports submitted by its subsidiary bodies and provide guidance to them;

(k) Agree upon and adopt, by consensus, rules of procedure and financial rules for itself and for any subsidiary bodies;

(l) Seek and utilize, where appropriate, the services and cooperation of, and information provided by, competent international organizations and intergovernmental and non-governmental bodies; and

(m) Exercise such other functions as are required for the achievement of the objective of the Convention as well as all other functions assigned to it under the Convention.

3. The Conference of the Parties shall, at its first session, adopt its own rules of procedure as well as those of the subsidiary bodies established by the Convention, which shall include decision-making procedures for matters not already covered by decision-making procedures stipulated in the Convention. Such procedures may include specified majorities required for the adoption of particular decisions.

4. The first session of the Conference of the Parties shall be convened by the interim secretariat referred to in Article 21 and shall take place not later than

one year after the date of entry into force of the Convention. Thereafter, ordinary sessions of the Conference of the Parties shall be held every year unless otherwise decided by the Conference of the Parties.

5. Extraordinary sessions of the Conference of the Parties shall be held at such other times as may be deemed necessary by the Conference, or at the written request of any Party, provided that, within six months of the request being communicated to the Parties by the secretariat, it is supported by at least one-third of the Parties.

6. The United Nations, its specialized agencies and the International Atomic Energy Agency, as well as any State member thereof or observers thereto not Party to the Convention, may be represented at sessions of the Conference of the Parties as observers. Any body or agency, whether national or international, governmental or non-governmental, which is qualified in matters covered by the Convention, and which has informed the secretariat of its wish to be represented at a session of the Conference of the Parties as an observer, may be so admitted unless at least one-third of the Parties present object. The admission and participation of observers shall be subject to the rules of procedure adopted by the Conference of the Parties.

ARTICLE 8

SECRETARIAT

1. A secretariat is hereby established.
2. The functions of the secretariat shall be:
 - (a) To make arrangements for sessions of the Conference of the Parties and its subsidiary bodies established under the Convention and to provide them with services as required;
 - (b) To compile and transmit reports submitted to it;
 - (c) To facilitate assistance to the Parties, particularly developing country Parties, on request, in the compilation and communication of information required in accordance with the provisions of the Convention;

(d) To prepare reports on its activities and present them to the Conference of the Parties;

(e) To ensure the necessary coordination with the secretariats of other relevant international bodies;

(f) To enter, under the overall guidance of the Conference of the Parties, into such administrative and contractual arrangements as may be required for the effective discharge of its functions; and

(g) To perform the other secretariat functions specified in the Convention and in any of its protocols and such other functions as may be determined by the Conference of the Parties.

3. The Conference of the Parties, at its first session, shall designate a permanent secretariat and make arrangements for its functioning.

ARTICLE 9

SUBSIDIARY BODY FOR SCIENTIFIC AND TECHNOLOGICAL ADVICE

1. A subsidiary body for scientific and technological advice is hereby established to provide the Conference of the Parties and, as appropriate, its other subsidiary bodies with timely information and advice on scientific and technological matters relating to the Convention. This body shall be open to participation by all Parties and shall be multidisciplinary. It shall comprise government representatives competent in the relevant field of expertise. It shall report regularly to the Conference of the Parties on all aspects of its work.

2. Under the guidance of the Conference of the Parties, and drawing upon existing competent international bodies, this body shall:

(a) Provide assessments of the state of scientific knowledge relating to climate change and its effects;

(b) Prepare scientific assessments on the effects of measures taken in the implementation of the Convention;

(c) Identify innovative, efficient and state-of-the-art technologies and know-how and advise on the ways and means of promoting development and/or transferring such technologies;

(d) Provide advice on scientific programmes, international cooperation in research and development related to climate change, as well as on ways and means of supporting endogenous capacity-building in developing countries; and

(e) Respond to scientific, technological and methodological questions that the Conference of the Parties and its subsidiary bodies may put to the body.

3. The functions and terms of reference of this body may be further elaborated by the Conference of the Parties.

ARTICLE 10

SUBSIDIARY BODY FOR IMPLEMENTATION

1. A subsidiary body for implementation is hereby established to assist the Conference of the Parties in the assessment and review of the effective implementation of the Convention. This body shall be open to participation by all Parties and comprise government representatives who are experts on matters related to climate change. It shall report regularly to the Conference of the Parties on all aspects of its work.

2. Under the guidance of the Conference of the Parties, this body shall:

(a) Consider the information communicated in accordance with Article 12, paragraph 1, to assess the overall aggregated effect of the steps taken by the Parties in the light of the latest scientific assessments concerning climate change;

(b) Consider the information communicated in accordance with Article 12, paragraph 2, in order to assist the Conference of the Parties in carrying out the reviews required by Article 4, paragraph 2 (d); and

(c) Assist the Conference of the Parties, as appropriate, in the preparation and implementation of its decisions.

ARTICLE 11

FINANCIAL MECHANISM

1. A mechanism for the provision of financial resources on a grant or concessional basis, including for the transfer of technology, is hereby defined. It shall function under the guidance of and be accountable to the Conference of the Parties, which shall decide on its policies, programme priorities and eligibility criteria related to this Convention. Its operation shall be entrusted to one or more existing international entities.

2. The financial mechanism shall have an equitable and balanced representation of all Parties within a transparent system of governance.

3. The Conference of the Parties and the entity or entities entrusted with the operation of the financial mechanism shall agree upon arrangements to give effect to the above paragraphs, which shall include the following:

(a) Modalities to ensure that the funded projects to address climate change are in conformity with the policies, programme priorities and eligibility criteria established by the Conference of the Parties;

(b) Modalities by which a particular funding decision may be reconsidered in light of these policies, programme priorities and eligibility criteria;

(c) Provision by the entity or entities of regular reports to the Conference of the Parties on its funding operations, which is consistent with the requirement for accountability set out in paragraph 1 above; and

(d) Determination in a predictable and identifiable manner of the amount of funding necessary and available for the implementation of this Convention and the conditions under which that amount shall be periodically reviewed.

4. The Conference of the Parties shall make arrangements to implement the above-mentioned provisions at its first session, reviewing and taking into account the interim arrangements referred to in Article 21, paragraph 3, and shall decide whether these interim arrangements shall be maintained. Within four years thereafter, the Conference of the Parties shall review the financial mechanism and take appropriate measures.

5. The developed country Parties may also provide and developing country Parties avail themselves of, financial resources related to the implementation of the Convention through bilateral, regional and other multilateral channels.

ARTICLE 12

COMMUNICATION OF INFORMATION RELATED TO IMPLEMENTATION

1. In accordance with Article 4, paragraph 1, each Party shall communicate to the Conference of the Parties, through the secretariat, the following elements of information:

(a) A national inventory of anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol, to the extent its capacities permit, using comparable methodologies to be promoted and agreed upon by the Conference of the Parties;

(b) A general description of steps taken or envisaged by the Party to implement the Convention; and

(c) Any other information that the Party considers relevant to the achievement of the objective of the Convention and suitable for inclusion in its communication, including, if feasible, material relevant for calculations of global emission trends.

2. Each developed country Party and each other Party included in annex I shall incorporate in its communication the following elements of information:

(a) A detailed description of the policies and measures that it has adopted to implement its commitment under Article 4, paragraphs 2 (a) and 2 (b); and

(b) A specific estimate of the effects that the policies and measures referred to in subparagraph (a) immediately above will have on anthropogenic emissions by its sources and removals by its sinks of greenhouse gases during the period referred to in Article 4, paragraph 2 (a).

3. In addition, each developed country Party and each other developed Party included in annex II shall incorporate details of measures taken in accordance with Article 4, paragraphs 3, 4 and 5.

4. Developing country Parties may, on a voluntary basis, propose projects for financing, including specific technologies, materials, equipment, techniques or practices that would be needed to implement such projects, along with, if possible, an estimate of all incremental costs, of the reductions of emissions and increments of removals of greenhouse gases, as well as an estimate of the consequent benefits.

5. Each developed country Party and each other Party included in annex I shall make its initial communication within six months of the entry into force of the Convention for that Party. Each Party not so listed shall make its initial communication within three years of the entry into force of the Convention for that Party, or of the availability of financial resources in accordance with Article 4, paragraph 3. Parties that are least developed countries may make their initial communication at their discretion. The frequency of subsequent communications by all Parties shall be determined by the Conference of the Parties, taking into account the differentiated timetable set by this paragraph.

6. Information communicated by Parties under this Article shall be transmitted by the secretariat as soon as possible to the Conference of the Parties and to any subsidiary bodies concerned. If necessary, the procedures for the communication of information may be further considered by the Conference of the Parties.

7. From its first session, the Conference of the Parties shall arrange for the provision to developing country Parties of technical and financial support, on request, in compiling and communicating information under this Article, as well

as in identifying the technical and financial needs associated with proposed projects and response measures under Article 4. Such support may be provided by other Parties, by competent international organizations and by the secretariat, as appropriate.

8. Any group of Parties may, subject to guidelines adopted by the Conference of the Parties, and to prior notification to the Conference of the Parties, make a joint communication in fulfilment of their obligations under this Article, provided that such a communication includes information on the fulfilment by each of these Parties of its individual obligations under the Convention.

9. Information received by the secretariat that is designated by a Party as confidential, in accordance with criteria to be established by the Conference of the Parties, shall be aggregated by the secretariat to protect its confidentiality before being made available to any of the bodies involved in the communication and review of information.

10. Subject to paragraph 9 above, and without prejudice to the ability of any Party to make public its communication at any time, the secretariat shall make communications by Parties under this Article publicly available at the time they are submitted to the Conference of the Parties.

ARTICLE 13

RESOLUTION OF QUESTIONS REGARDING IMPLEMENTATION

The Conference of the Parties shall, at its first session, consider the establishment of a multilateral consultative process, available to Parties on their request, for the resolution of questions regarding the implementation of the Convention.

ARTICLE 14

SETTLEMENT OF DISPUTES

1. In the event of a dispute between any two or more Parties concerning the interpretation or application of the Convention, the Parties concerned shall seek a settlement of the dispute through negotiation or any other peaceful means of their own choice.

2. When ratifying, accepting, approving or acceding to the Convention, or at any time thereafter, a Party which is not a regional economic integration organization may declare in a written instrument submitted to the Depositary that, in respect of any dispute concerning the interpretation or application of the Convention, it recognizes as compulsory *ipso facto* and without special agreement, in relation to any Party accepting the same obligation:

(a) Submission of the dispute to the International Court of Justice, and/or

(b) Arbitration in accordance with procedures to be adopted by the Conference of the Parties as soon as practicable, in an annex on arbitration.

A Party which is a regional economic integration organization may make a declaration with like effect in relation to arbitration in accordance with the procedures referred to in subparagraph (b) above.

3. A declaration made under paragraph 2 above shall remain in force until it expires in accordance with its terms or until three months after written notice of its revocation has been deposited with the Depositary.

4. A new declaration, a notice of revocation or the expiry of a declaration shall not in any way affect proceedings pending before the International Court of Justice or the arbitral tribunal, unless the parties to the dispute otherwise agree.

5. Subject to the operation of paragraph 2 above, if after twelve months following notification by one Party to another that a dispute exists between them, the Parties concerned have not been able to settle their dispute through the

means mentioned in paragraph 1 above, the dispute shall be submitted, at the request of any of the parties to the dispute, to conciliation.

6. A conciliation commission shall be created upon the request of one of the parties to the dispute. The commission shall be composed of an equal number of members appointed by each party concerned and a chairman chosen jointly by the members appointed by each party. The commission shall render a recommendatory award, which the parties shall consider in good faith.

7. Additional procedures relating to conciliation shall be adopted by the Conference of the Parties, as soon as practicable, in an annex on conciliation.

8. The provisions of this Article shall apply to any related legal instrument which the Conference of the Parties may adopt, unless the instrument provides otherwise.

ARTICLE 15

AMENDMENTS TO THE CONVENTION

1. Any Party may propose amendments to the Convention.

2. Amendments to the Convention shall be adopted at an ordinary session of the Conference of the Parties. The text of any proposed amendment to the Convention shall be communicated to the Parties by the secretariat at least six months before the meeting at which it is proposed for adoption. The secretariat shall also communicate proposed amendments to the signatories to the Convention and, for information, to the Depositary.

3. The Parties shall make every effort to reach agreement on any proposed amendment to the Convention by consensus. If all efforts at consensus have been exhausted, and no agreement reached, the amendment shall as a last resort be adopted by a three-fourths majority vote of the Parties present and voting at the meeting. The adopted amendment shall be communicated by the secretariat to the Depositary, who shall circulate it to all Parties for their acceptance.

4. Instruments of acceptance in respect of an amendment shall be deposited with the Depositary. An amendment adopted in accordance with

paragraph 3 above shall enter into force for those Parties having accepted it on the ninetieth day after the date of receipt by the Depositary of an instrument of acceptance by at least three-fourths of the Parties to the Convention.

5. The amendment shall enter into force for any other Party on the ninetieth day after the date on which that Party deposits with the Depositary its instrument of acceptance of the said amendment.

6. For the purposes of this Article, “Parties present and voting” means Parties present and casting an affirmative or negative vote.

ARTICLE 16

ADOPTION AND AMENDMENT OF ANNEXES TO THE CONVENTION

1. Annexes to the Convention shall form an integral part thereof and, unless otherwise expressly provided, a reference to the Convention constitutes at the same time a reference to any annexes thereto. Without prejudice to the provisions of Article 14, paragraphs 2 (b) and 7, such annexes shall be restricted to lists, forms and any other material of a descriptive nature that is of a scientific, technical, procedural or administrative character.

2. Annexes to the Convention shall be proposed and adopted in accordance with the procedure set forth in Article 15, paragraphs 2, 3, and 4.

3. An annex that has been adopted in accordance with paragraph 2 above shall enter into force for all Parties to the Convention six months after the date of the communication by the Depositary to such Parties of the adoption of the annex, except for those Parties that have notified the Depositary, in writing, within that period of their non-acceptance of the annex. The annex shall enter into force for Parties which withdraw their notification of non-acceptance on the ninetieth day after the date on which withdrawal of such notification has been received by the Depositary.

4. The proposal, adoption and entry into force of amendments to annexes to the Convention shall be subject to the same procedure as that for the proposal, adoption and entry into force of annexes to the Convention in accordance with paragraphs 2 and 3 above.

5. If the adoption of an annex or an amendment to an annex involves an amendment to the Convention, that annex or amendment to an annex shall not enter into force until such time as the amendment to the Convention enters into force.

ARTICLE 17

PROTOCOLS

1. The Conference of the Parties may, at any ordinary session, adopt protocols to the Convention.
2. The text of any proposed protocol shall be communicated to the Parties by the secretariat at least six months before such a session.
3. The requirements for the entry into force of any protocol shall be established by that instrument.
4. Only Parties to the Convention may be Parties to a protocol.
5. Decisions under any protocol shall be taken only by the Parties to the protocol concerned.

ARTICLE 18

RIGHT TO VOTE

1. Each Party to the Convention shall have one vote, except as provided for in paragraph 2 below.
2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote with a number of votes equal to the number of their member States that are Parties to the Convention. Such an organization shall not exercise its right to vote if any of its member States exercises its right, and vice versa.

ARTICLE 19

DEPOSITARY

The Secretary-General of the United Nations shall be the Depositary of the Convention and of protocols adopted in accordance with Article 17.

ARTICLE 20

SIGNATURE

This Convention shall be open for signature by States Members of the United Nations or of any of its specialized agencies or that are Parties to the Statute of the International Court of Justice and by regional economic integration organizations at Rio de Janeiro, during the United Nations Conference on Environment and Development, and thereafter at United Nations Headquarters in New York from 20 June 1992 to 19 June 1993.

ARTICLE 21

INTERIM ARRANGEMENTS

1. The secretariat functions referred to in Article 8 will be carried out on an interim basis by the secretariat established by the General Assembly of the United Nations in its resolution 45/212 of 21 December 1990, until the completion of the first session of the Conference of the Parties.
2. The head of the interim secretariat referred to in paragraph 1 above will cooperate closely with the Intergovernmental Panel on Climate Change to ensure that the Panel can respond to the need for objective scientific and technical advice. Other relevant scientific bodies could also be consulted.
3. The Global Environment Facility of the United Nations Development Programme, the United Nations Environment Programme and the International Bank for Reconstruction and Development shall be the international entity entrusted with the operation of the financial mechanism referred to in Article 11

on an interim basis. In this connection, the Global Environment Facility should be appropriately restructured and its membership made universal to enable it to fulfil the requirements of Article 11.

ARTICLE 22

RATIFICATION, ACCEPTANCE, APPROVAL OR ACCESSION

1. The Convention shall be subject to ratification, acceptance, approval or accession by States and by regional economic integration organizations. It shall be open for accession from the day after the date on which the Convention is closed for signature. Instruments of ratification, acceptance, approval or accession shall be deposited with the Depositary.
2. Any regional economic integration organization which becomes a Party to the Convention without any of its member States being a Party shall be bound by all the obligations under the Convention. In the case of such organizations, one or more of whose member States is a Party to the Convention, the organization and its member States shall decide on their respective responsibilities for the performance of their obligations under the Convention. In such cases, the organization and the member States shall not be entitled to exercise rights under the Convention concurrently.
3. In their instruments of ratification, acceptance, approval or accession, regional economic integration organizations shall declare the extent of their competence with respect to the matters governed by the Convention. These organizations shall also inform the Depositary, who shall in turn inform the Parties, of any substantial modification in the extent of their competence.

ARTICLE 23

ENTRY INTO FORCE

1. The Convention shall enter into force on the ninetieth day after the date of deposit of the fiftieth instrument of ratification, acceptance, approval or accession.

2. For each State or regional economic integration organization that ratifies, accepts or approves the Convention or accedes thereto after the deposit of the fiftieth instrument of ratification, acceptance, approval or accession, the Convention shall enter into force on the ninetieth day after the date of deposit by such State or regional economic integration organization of its instrument of ratification, acceptance, approval or accession.

3. For the purposes of paragraphs 1 and 2 above, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by States members of the organization.

ARTICLE 24

RESERVATIONS

No reservations may be made to the Convention.

ARTICLE 25

WITHDRAWAL

1. At any time after three years from the date on which the Convention has entered into force for a Party, that Party may withdraw from the Convention by giving written notification to the Depositary.

2. Any such withdrawal shall take effect upon expiry of one year from the date of receipt by the Depositary of the notification of withdrawal, or on such later date as may be specified in the notification of withdrawal.

3. Any Party that withdraws from the Convention shall be considered as also having withdrawn from any protocol to which it is a Party.

ARTICLE 26

AUTHENTIC TEXTS

The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned, being duly authorized to that effect, have signed this Convention.

DONE at New York this ninth day of May one thousand nine hundred and ninety-two.

[Signatures omitted]

* Titles of articles are included solely to assist the reader.

^{1/} This includes policies and measures adopted by regional economic integration organizations.

ANNEX I

Australia
Austria
Belarus a/
Belgium
Bulgaria a/
Canada
Czechoslovakia a/
Denmark
European Community
Estonia a/
Finland
France
Germany
Greece
Hungary a/
Iceland
Ireland
Italy
Japan
Latvia a/
Lithuania a/
Luxembourg
Netherlands
New Zealand
Norway
Poland a/
Portugal
Romania a/
Russian Federation a/
Spain
Sweden
Switzerland
Turkey
Ukraine a/
United Kingdom of Great Britain and Northern Ireland
United States of America

a/ Countries that are undergoing the process of transition to a market economy.

ANNEX II

Australia
Austria
Belgium
Canada
Denmark
European Community
Finland
France
Germany
Greece
Iceland
Ireland
Italy
Japan
Luxembourg
Netherlands
New Zealand
Norway
Portugal
Spain
Sweden
Switzerland
Turkey
United Kingdom of Great Britain and Northern Ireland
United States of America

Schedule 4—Control of manufacture etc. of products containing or using scheduled substances

Section 38

1 Dry cleaning machinery

- (1) A person shall not manufacture or import machinery that is intended for the dry cleaning of clothing or similar articles if the machinery is capable of being operated using a scheduled substance.
- (2) This clause applies as follows:
 - (a) in the case of a stage-1 scheduled substance—to the manufacture or import of machinery after the commencement of this Act;
 - (b) in the case of a stage-2 scheduled substance—to the manufacture or import of machinery after the commencement of the *Ozone Protection Amendment Act 1992*.

2 Automotive air conditioning maintenance kits

- (1) A person shall not manufacture or import equipment that:
 - (a) is intended for use as, or as a part of, a kit for the maintenance of automotive air conditioning units; and
 - (b) consists, wholly or partly, of a non-refillable container:
 - (i) that encloses a scheduled substance (whether alone or with another substance); and
 - (ii) the contents of which, immediately after manufacture, weigh 5 kilograms or less.
- (2) This clause applies as follows:
 - (a) in the case of a stage-1 scheduled substance—to the manufacture or import of equipment after 31 January 1989;

Clause 4

- (b) in the case of a stage-2 scheduled substance—to the manufacture or import of equipment after the commencement of the *Ozone Protection Amendment Act 1992*.

4 Extruded polystyrene packaging and insulation

- (1) A person shall not manufacture or import a polystyrene product if:
 - (a) either:
 - (i) the product contains a scheduled substance; or
 - (ii) a scheduled substance was used in the manufacture of the product; and
 - (b) the product is intended for use as packaging or as thermal insulating material.
- (2) This clause applies as follows:
 - (a) in the case of a stage-1 scheduled substance—to the manufacture or import of products after 31 December 1989;
 - (b) in the case of a stage-2 scheduled substance—to the manufacture or import of products after the commencement of the *Ozone Protection Amendment Act 1992*.

5 Aerosol products

- (1) A person shall not manufacture or import an aerosol product that contains a scheduled substance unless the manufacture or importation is in accordance with an exemption granted to the person under section 40.
- (2) This clause applies as follows:
 - (a) in the case of a stage-1 scheduled substance—to the manufacture or import of products after 31 December 1989;
 - (b) in the case of a stage-2 scheduled substance (other than methyl chloroform)—to the manufacture or import of products after the commencement of the *Ozone Protection Amendment Act 1992*;

- (c) in the case of methyl chloroform—to the manufacture or import of products after whichever is the later of the following times:
- (i) the commencement of the Ozone Protection Amendment Act 1992;
 - (ii) the end of 31 December 1992.

6 Products containing halon

A person must not manufacture or import a product that contains a halon.

7 Rigid polyurethane foam product

A person must not manufacture or import a rigid polyurethane foam product if the product is intended for use as packaging and:

- (a) the product contains a stage-1 or stage-2 scheduled substance; or
- (b) a stage-1 or stage-2 scheduled substance was used in the manufacture of the product.

8 Moulded flexible polyurethane foam

A person must not manufacture moulded flexible polyurethane foam if:

- (a) the foam contains a stage-1 or stage-2 scheduled substance; or
- (b) a stage-1 or stage-2 scheduled substance is used in the manufacture of the foam.

9 Disposable containers of refrigerants

A person must not manufacture or import a product consisting wholly or partly of a non-refillable container if:

- (a) the product contains a CFC; and
- (b) the product is designed for use in the maintenance of refrigerative units (including air conditioning units).

Clause 10

10 Refrigeration and air conditioning equipment

- (1) A person must not manufacture or import refrigeration or air conditioning equipment if:
- (a) the equipment is charged with a CFC refrigerant or an HCFC refrigerant; or
 - (b) the equipment is designed to operate by solely using:
 - (i) a CFC refrigerant; or
 - (ii) an HCFC refrigerant; or
 - (iii) either a CFC refrigerant or an HCFC refrigerant; or
 - (c) the equipment is insulated with foam manufactured with a CFC or an HCFC.

- (1A) Subclause (1) does not apply to equipment specified in the regulations.

Note: For specification by class, see subsection 13(3) of the *Legislation Act 2003*.

- (2) Subclause (1) does not apply to the import of refrigerated transport containers (including insulated shipping containers and air freight containers to which refrigerated clip on units are attached).

- (3) In subclause (2):

refrigerated clip on unit means a refrigeration unit that can be attached to an insulated container where the container does not have an integrated refrigeration system.

Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

Editorial changes

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can

Endnotes

Endnote 1—About the endnotes

be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation “(md not incorp)” is added to the details of the amendment included in the amendment history.

Endnote 2—Abbreviation key

ad = added or inserted	o = order(s)
am = amended	Ord = Ordinance
amdt = amendment	orig = original
c = clause(s)	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
C[x] = Compilation No. x	pres = present
Ch = Chapter(s)	prev = previous
def = definition(s)	(prev...) = previously
Dict = Dictionary	Pt = Part(s)
disallowed = disallowed by Parliament	r = regulation(s)/rule(s)
Div = Division(s)	reloc = relocated
ed = editorial change	renum = renumbered
exp = expires/expired or ceases/ceased to have effect	rep = repealed
F = Federal Register of Legislation	rs = repealed and substituted
gaz = gazette	s = section(s)/subsection(s)
LA = <i>Legislation Act 2003</i>	Sch = Schedule(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sdiv = Subdivision(s)
(md) = misdescribed amendment can be given effect	SLI = Select Legislative Instrument
(md not incorp) = misdescribed amendment cannot be given effect	SR = Statutory Rules
mod = modified/modification	Sub-Ch = Sub-Chapter(s)
No. = Number(s)	SubPt = Subpart(s)
	<u>underlining</u> = whole or part not commenced or to be commenced

Endnotes

Endnote 3—Legislation history

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Ozone Protection Act 1989	7, 1989	16 Mar 1989	16 Mar 1989 (s 2)	
Ozone Protection Amendment Act 1992	46, 1992	11 June 1992	9 Nov 1992 (gaz 1992, No S321)	s 11(2), 26(2), 27(2), 33(2), 34(2) and 37(2)
Ozone Protection Amendment Act 1995	124, 1995	2 Nov 1995	s 3 and Sch 1 (items 1–17, 19–66 (s 2(2))): 1 Jan 1996 Remainder: 2 Nov 1995 (s 2(1))	s 3(2)–(5), Sch 1 (item 61) and Sch 2
as amended by Audit (Transitional and Miscellaneous) Amendment Act 1997	152, 1997	24 Oct 1997	Sch 3 (items 11–18): 2 Nov 1995 (s 2(3)(f))	—
Environment, Sport and Territories Legislation Amendment Act 1997	118, 1997	7 July 1997	Sch 1 (items 50–57): 7 July 1997 (s 2 (1))	—
Ozone Protection Amendment Act 1999	36, 1999	31 May 1999	31 May 1999 (s 2)	—
Environmental Reform (Consequential Provisions) Act 1999	92, 1999	16 July 1999	Sch 7 (items 17, 18): 16 July 2000 (s 2(1))	Sch 7 (item 18)
Public Employment (Consequential and Transitional) Amendment Act 1999	146, 1999	11 Nov 1999	Sch 1 (items 721–723): 5 Dec 1999 (gaz 1999, No S584) (s 2(1), (2))	—

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Environment and Heritage Legislation Amendment (Application of Criminal Code) Act 2001	15, 2001	22 Mar 2001	s 4 and Sch 1 (items 106–128): 24 May 2001 (s 2(1)(c))	s 4
Environmental Legislation Amendment Act 2001	118, 2001	18 Sept 2001	Sch 2 (item 14): 18 Sept 2001 (s 2(1))	—
Ozone Protection and Synthetic Greenhouse Gas Legislation Amendment Act 2003	126, 2003	5 Dec 2003	5 Dec 2003 (s 2)	s 4
Environment and Heritage Legislation Amendment Act 2005	97, 2005	6 July 2005	Sch 1: 3 Aug 2005 (s 2(1) item 2) Remainder: 6 July 2005 (s 2(1) items 1, 3)	—
Crimes Legislation Amendment (Serious and Organised Crime) Act (No. 2) 2010	4, 2010	19 Feb 2010	Sch 11 (item 14): 20 Feb 2010 (s 2(1) item 13)	—
Statute Law Revision Act 2010	8, 2010	1 Mar 2010	Sch 5 (item 137(a)): 1 Mar 2010 (s 2(1) items 31, 38)	—
Ozone Protection and Synthetic Greenhouse Gas Management Amendment Act 2010	125, 2010	18 Nov 2010	Sch 1 and 2: 18 May 2011 (s 2(1) items 1, 2) Remainder: 18 Nov 2010 (s 2(1) item 1)	Sch 1 (items 109–118)
Statute Law Revision Act 2011	5, 2011	22 Mar 2011	Sch 1 (items 87–91): 22 Mar 2011 (s 2(1) item 2)	—

Ozone Protection and Synthetic Greenhouse Gas Management Act 1989

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Compilation No. 27

Compilation date: 5/3/16

Registered: 22/4/16

Endnotes

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Clean Energy (Consequential Amendments) Act 2011	132, 2011	18 Nov 2011	Sch 1 (item 194): 2 Apr 2012 (s 2(1) item 2) Sch 1 (items 415B–451, 456–460): 1 July 2012 (s 2(1) item 3)	Schl (items 456–460)
Financial Framework Legislation Amendment Act (No. 1) 2013	8, 2013	14 Mar 2013	Sch 1 (item 5): 15 Mar 2013 (s 2)	—
Federal Circuit Court of Australia (Consequential Amendments) Act 2013	13, 2013	14 Mar 2013	Sch 1 (items 461, 462): 12 Apr 2013 (s 2(1) item 2)	—
Statute Law Revision Act (No. 1) 2014	31, 2014	27 May 2014	Sch 8 (item 34): 24 June 2014 (s 2(1) item 9)	—
Clean Energy Legislation (Carbon Tax Repeal) Act 2014	83, 2014	17 July 2014	Sch 1 (items 313–315, 338): 1 July 2014 (s 2(1) items 2, 3)	Sch 1 (item 338)
Omnibus Repeal Day (Autumn 2014) Act 2014	109, 2014	16 Oct 2014	Sch 5 (items 62, 63, 66, 69–82): 17 Oct 2014 (s 2(1) item 2)	Sch 5 (items 66, 79)
Statute Law Revision Act (No. 1) 2015	5, 2015	25 Feb 2015	Sch 3 (items 137–141): 25 Mar 2015 (s 2(1) item 10)	—
Public Governance and Resources Legislation Amendment Act (No. 1) 2015	36, 2015	13 Apr 2015	Sch 5 (items 51, 52, 74–77) and Sch 7 (items 1, 2): 14 Apr 2015 (s 2)	Sch 5 (items 74–77) and Sch 7 (items 1, 2)
as amended by				
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 486): 5 Mar 2016 (s 2(1) item 2)	—

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Norfolk Island Legislation Amendment Act 2015	59, 2015	26 May 2015	Sch 2 (items 293, 294): <u>1 July 2016 (s 2(1) item 5)</u> Sch 2 (items 356–396): 18 June 2015 (s 2(1) item 6)	Sch 2 (items 356–396)
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (items 464–467): 5 Mar 2016 (s 2(1) item 2)	—
Statute Law Revision Act (No. 1) 2016	4, 2016	11 Feb 2016	Sch 4 (items 1, 226): <u>10 Mar 2016 (s 2(1) item 6)</u>	—

Endnotes

Endnote 4—Amendment history

Endnote 4—Amendment history

Provision affected	How affected
Title	am. No. 126, 2003
Part I	
s. 1	am. No. 126, 2003
s. 3	am. No. 124, 1995; No. 126, 2003; No. 132, 2011
s. 5	am <u>No 59, 2015</u>
s. 6A.....	ad. No. 15, 2001
	am. No. 125, 2010
Part II	
s. 7	am. No. 46, 1992; No. 124, 1995; No. 118, 1997; No. 36, 1999; No. 126, 2003; No. 125, 2010; No. 132, 2011; No. 13, 2013; No 31 and 109, 2014
s. 8	am. No. 46, 1992
	rs. No. 124, 1995
	am. No. 125, 2010
ss. 8A, 8B	ad. No. 124, 1995
s. 8C.....	ad. No.132, 2011
s. 8D.....	ad. No. 132, 2011
	am No 126, 2015
Heading to s. 9	am. No. 124, 1995
	rs. No. 126, 2003; No. 132, 2011
s. 9	am. No. 46, 1992; No. 124, 1995
	rs. No. 126, 2003
	am. No. 132, 2011
s. 10	rs. No. 124, 1995
s. 10A.....	ad. No. 46, 1992
	rep. No. 124, 1995
s. 11	rep. No. 124, 1995
Heading to s. 12.....	am. No. 124, 1995
s. 12	am. No. 46, 1992; No. 124, 1995

Endnote 4—Amendment history

Provision affected	How affected
s. 12A.....	ad. No. 46, 1992
Part III	
Heading to s. 12B.....	am. No. 124, 1995; No. 126, 2003
s. 12B.....	ad. No. 46, 1992 am. No. 124, 1995; No. 126, 2003
s. 13	am. No. 46, 1992 rs. No. 124, 1995 am. No. 15, 2001; No. 126, 2003; No. 97, 2005; No. 125, 2010; No. 132, 2011; No. 109, 2014; No. 126, 2015; <u>No. 4, 2016</u>
s. 13A.....	ad. No. 124, 1995 am. No. 36, 1999; No. 126, 2003; No. 132, 2011
s. 14	rs. No. 124, 1995 am. No. 126, 2003
s. 16	am. No. 46, 1992; No. 124, 1995; No. 126, 2003; No. 125, 2010; No. 132, 2011
s. 17	am. No. 92, 1999
s. 17A.....	ad. No. 46, 1992 rep. No. 124, 1995
s. 18	am. No. 46, 1992 rs. No. 124, 1995 am. No. 36, 1999; No. 15, 2001; No. 126, 2003; No. 125, 2010; No. 109, 2014
s. 18A.....	ad. No. 46, 1992 rep. No. 124, 1995
s. 19	rs. No. 124, 1995 am. No. 125, 2010; No. 132, 2011
s. 19A.....	ad. No. 124, 1995 am. No. 126, 2003; No. 132, 2011
s. 19B.....	ad. No. 124, 1995
s. 19C.....	ad. No. 126, 2003
s. 20	am. No. 46, 1992; No. 124, 1995; No. 125, 2010

Endnotes

Endnote 4—Amendment history

Provision affected	How affected
s 21	am No 109, 2014
Part IV	
Part IV	rs. No. 124, 1995
ss. 22A–22C.....	ad. No. 46, 1992 rep. No. 124, 1995
s. 23	am. No. 46, 1992 rs. No. 124, 1995 am. No. 36, 1999
s. 24	am. No. 46, 1992 rs. No. 124, 1995
s. 25	am. No. 46, 1992 rs. No. 124, 1995 am. No. 125, 2010
s. 26	am. No. 46, 1992 rs. No. 124, 1995 am. No. 118, 1997; No. 125, 2010
ss. 27–33	am. No. 46, 1992 rs. No. 124, 1995
ss. 34, 35	rs. No. 124, 1995
s. 36	am. No. 46, 1992 rep. No. 124, 1995
Part V	
s. 38	am. No. 46, 1992; No. 124, 1995; No. 15, 2001; No. 125, 2010
s. 40	am. No. 46, 1992; No. 126, 2003
Part VI	
s. 41	am. No. 46, 1992; No. 118, 2001 rs. No. 126, 2003 am. Nos. 8 and 125, 2010
ss. 42, 43	am. No. 46, 1992; No. 124, 1995 rep. No. 36, 1999
Heading to s. 44	am. No. 126, 2003

Endnote 4—Amendment history

Provision affected	How affected
s. 44	am. No. 46, 1992; No. 124, 1995; No. 15, 2001; No. 126, 2003; No. 125, 2010
Heading to s. 45	am. No. 126, 2003
s. 45	am. No. 46, 1992; No. 124, 1995; No. 15, 2001; No. 126, 2003; No. 125, 2010; No 126, 2015
Part VIA	
Part VIA.....	ad. No. 126, 2003
s. 45A.....	ad. No. 126, 2003
s. 45B.....	ad. No. 126, 2003 am. No. 125, 2010; <u>No 4, 2016</u>
Part VII	
Heading to s. 46.....	am. No. 126, 2003 rs. No. 132, 2011
s. 46	am. No. 46, 1992 rs. No. 124, 1995 am. No. 15, 2001; No. 126, 2003; No. 97, 2005; No. 125, 2010; No. 132, 2011; No 109, 2014
s. 46A.....	ad. No. 46, 1992 rep. No. 124, 1995 ad. No. 132, 2011 am No 109, 2014
s. 47	rs. No. 46, 1992 rep. No. 124, 1995
s. 47A.....	ad. No. 46, 1992 rep. No. 124, 1995
Part VIII	
Division 1	
Heading to Div. 1 of	rs. No. 125, 2010
Part VIII	
Subdivision A	
Heading to Subdiv. A of	ad. No. 125, 2010
Div. 1 of Part VIII	

Endnotes

Endnote 4—Amendment history

Provision affected	How affected
s. 48A.....	ad. No. 46, 1992 rs. No. 124, 1995
s. 49	am. No. 124, 1995; No. 146, 1999; No. 125, 2010
s. 49A.....	ad. No. 125, 2010
s. 50	am. No. 124, 1995; No. 15, 2001; <u>No 4, 2016</u>
Subdivision B	
Heading to Subdiv. B of..... Div. 1 of Part VIII	ad. No. 125, 2010
s. 51	am. No. 124, 1995; No. 125, 2010
ss. 51A, 51B.....	ad. No. 125, 2010
Subdivision C	
Subdiv. C of Div. 1 of..... Part VIII	ad. No. 125, 2010
s. 52	am. No. 126, 2003 rs. No. 125, 2010
s. 53	rs. No. 125, 2010
ss. 53A–53C.....	ad. No. 125, 2010
Subdivision D	
Subdiv. D of Div. 1 of..... Part VIII	ad. No. 125, 2010
ss. 53D–53H	ad. No. 125, 2010
ss. 53J–53L.....	ad. No. 125, 2010
Subdivision E	
Heading to Subdiv. E of..... Div. 1 of Part VIII	ad. No. 125, 2010
s. 53M.....	ad. No. 125, 2010
s. 54	am. No. 124, 1995
s. 55	rs. No. 125, 2010
ss. 55A–55D	ad. No. 125, 2010
Subdivision F	
Subdiv. F of Div. 1 of..... Part VIII	ad. No. 125, 2010

Endnote 4—Amendment history

Provision affected	How affected
ss. 55E–55G.....	ad. No. 125, 2010
Subdivision G	
Subdiv. G of Div. 1 of..... Part VIII	ad. No. 125, 2010
s. 55H.....	ad. No. 125, 2010
Division 3	
Subdivision A	
Subdiv. A of Div. 3 of..... Part VIII	ad. No. 125, 2010
s. 57	am. No. 46, 1992; No. 118, 1997 rs. No. 125, 2010
Subdivision B	
Heading to Subdiv. B of..... Div. 3 of Part VIII	ad. No. 125, 2010
s. 58	am. No. 125, 2010
s. 60	am. No. 46, 1992; No. 15, 2001; <u>No 4, 2016</u>
Subdivision C	
Subdiv. C of Div. 3 of..... Part VIII	ad. No. 125, 2010
ss. 60A–60D	ad. No. 125, 2010
Subdivision D	
Heading to Subdiv. D of	ad. No. 125, 2010
Div. 3 of Part VIII	
s. 60E.....	ad. No. 125, 2010
s. 61	am. No. 125, 2010
Division 4	
s. 62	am. No. 46, 1992; No. 124, 1995; No. 15, 2001; No. 125, 2010
s. 63	am. No. 46, 1992; No. 15, 2001; No. 125, 2010
s. 64	am. No. 46, 1992; No. 15, 2001
s. 65	am. No. 4, 2010; No 5, 2015
Division 5	
Div. 5 of Part VIII.....	ad. No. 125, 2010

Endnotes

Endnote 4—Amendment history

Provision affected	How affected
s. 65AA.....	ad. No. 125, 2010 am. No. 132, 2011
Division 6	
Div. 6 of Part VIII.....	ad. No. 125, 2010
s. 65AB.....	ad. No. 125, 2010
Division 7	
Div. 7 of Part VIII.....	ad. No. 125, 2010
s. 65AC.....	ad. No. 125, 2010 am. No.132, 2011
s. 65AD.....	ad. No. 125, 2010
s. 65AE.....	ad. No. 125, 2010
s. 65AF.....	ad. No. 125, 2010
s. 65AG.....	ad. No. 125, 2010
s. 65AH.....	ad. No. 125, 2010
s. 65AI.....	ad. No. 125, 2010
s. 65AJ.....	ad. No. 125, 2010
s. 65AK.....	ad. No. 125, 2010
s. 65AL.....	ad. No. 125, 2010
s. 65AM.....	ad. No. 125, 2010
Part VIIIA	
Heading to Part VIIIA.....	ad. No. 124, 1995 (as am. by No. 152, 1997) rs. No. 126, 2003
Part VIIIA.....	ad. No. 124, 1995 rs. No. 126, 2003
s 65A.....	ad No 124, 1995 rs No 124, 1995 (as am by No 152, 1997); No 126, 2003
s 65B.....	ad No 124, 1995 rs No 124, 1995 (as am by No 152, 1997); No 126, 2003; No 36, 2015
s. 65C.....	ad. No. 124, 1995 am. No. 124, 1995 rs. No. 126, 2003

Endnote 4—Amendment history

Provision affected	How affected
	am. No. 125, 2010; No. 132, 2011; No 83, 2014
s. 65D.....	ad. No. 124, 1995
	am. No. 124, 1995
	rs. No. 126, 2003
	am. No. 125, 2010
Part IX	
s. 66	am. No. 46, 1992; No. 124, 1995; No. 126, 2003
s. 67A.....	ad. No. 46, 1992
	am. No. 124, 1995; Nos. 36 and 146, 1999
	rs. No. 126, 2003
	am. No. 125, 2010
s. 67B.....	ad. No. 132, 2011
Heading to s. 69	am. No. 126, 2003
s. 69	am. No. 124, 1995; No. 126, 2003; No. 132, 2011
s. 69AA.....	ad. No. 132, 2011
	rep No 83, 2014
s. 69AB.....	ad. No. 132, 2011
	rep No 83, 2014
s. 69AC	ad. No. 132, 2011
	rep No 83, 2014
s. 69AD.....	ad. No. 8, 2013
	rep No 83, 2014
Heading to s. 69A	am. No. 126, 2003
s. 69A.....	ad. No. 46, 1992
	am. No. 126, 2003
s. 69B.....	ad. No. 46, 1992
	am. No. 126, 2003; No. 132, 2011
s 69C.....	ad No 125, 2010
s 69D.....	ad No 125, 2010
s 69E.....	ad No 125, 2010
s 69F	ad No 125, 2010

Endnotes

Endnote 4—Amendment history

Provision affected	How affected
	am No 126, 2015
s. 70	am. No. 125, 2010
Schedule 1	
Schedule 1.....	am. No. 46, 1992; No. 124, 1995; No. 118, 1997; No. 126, 2003; No. 132, 2011; No 109, 2014
Schedule 2	
Schedule 2.....	am. No. 5, 2011
Schedule 3	
Schedule 3.....	rs. No. 46, 1992; No. 124, 1995 am. No. 118, 1997
Schedule 3A	
Note to heading to.....	am. No. 126, 2003
Schedule 3A	
Schedule 3A.....	ad. No. 36, 1999
Schedule 3B	
Note to heading to.....	am. No. 126, 2003
Schedule 3B	
Schedule 3B.....	ad. No. 36, 1999
Schedule 3C	
Note to heading to.....	am. No. 126, 2003
Schedule 3C	
Schedule 3C.....	ad. No. 36, 1999
Schedule 3D	
Schedule 3D.....	ad. No. 126, 2003
Schedule 3E	
Schedule 3E.....	ad. No. 126, 2003
Schedule 4	
Schedule 4.....	am. No. 46, 1992; No. 124, 1995; No. 118, 1997; No. 36, 1999; No. 125, 2010; No 109, 2014; No 126, 2015
