THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

OZONE PROTECTION AND SYNTHETIC GREENHOUSE GAS MANAGEMENT AMENDMENT BILL 2010

EXPLANATORY MEMORANDUM

(Circulated by authority of the Hon Tony Burke MP, Minister for Sustainability, Environment, Water, Population and Communities)
OZONE PROTECTION AND SYNTHETIC GREENHOUSE GAS MANAGEMENT AMENDMENT BILL 2010

OUTLINE

The Ozone Protection and Synthetic Greenhouse Gas Management Amendment Bill 2010 (the Bill) improves the operation of the Ozone Protection and Synthetic Greenhouse Gas Management Act 1989 (the Ozone Act) by:

- introducing a civil penalties regime and providing for the establishment of an infringement notice scheme;
- clarifying the powers of inspectors, particularly in relation to the collection and testing of ozone depleting substances and synthetic greenhouse gases and search of electronic data storage;
- providing for inspectors to be assisted in exercising their powers. This is particularly important where technical specialists are required;
- improving the procedures for dealing with evidential material, including the seizure, retention, return or forfeiture of that material and providing for enhanced testing arrangements;
- clarifying the purposes of the Ozone Protection and SGG Account (the Account), which is a Special Account established by the Act, to support the development of evidence-based policy by allowing research to be funded from the Account;
- allowing ongoing staged phase-out of hydrochlorofluorocarbon (HCFC) using equipment in Australia to complement the staged phase-out of the import of bulk HCFC that is needed to service this equipment; and
- by making a number of other technical and administrative amendments to the Act.

The amendments contained in this Bill address a number of issues that have arisen in the operation of the Ozone Act since its enactment in 1989, particularly in relation to compliance and enforcement. Industry stakeholders have expressed a desire for more frequent and effective enforcement of the Ozone Act (and regulations) through an Australia-wide consultation process in 2008 and otherwise.

The Bill is divided into two schedules that deal with the following matters:

- General amendments of the Ozone Act; and
- Other amendments of the Ozone Act.

Financial Impact Statement

This Bill will have no financial impact.
NOTES ON CLAUSES

Clause 1: Short title

1. Clause 1 is a formal provision specifying the short title of the Act.

Clause 2: Commencement

2. Sections 1 to 3 of the Act will commence on the day the Act receives Royal Assent.

3. Schedules 1 and 2 of the Act will commence on a single day to be fixed by proclamation or six months after the Act receives Royal Assent, whichever happens sooner.

Clause 3: Schedule(s)

4. This is a machinery provision that provides that each Act, which is specified in a schedule to this Act, is amended as set out in the items of the schedule.

SCHEDULE 1 – GENERAL AMENDMENTS

Item 1 – At the end of section 6A (before the note)

5. This item amends section 6A of the Ozone Act to extend the application of Chapter 2 of the Criminal Code (other than Part 2.5 of the Criminal Code) to all offences against the Act or the regulations. Currently, section 6A only applies Chapter 2 of the Criminal Code to offences against the Ozone Act.

Item 2 – Subsection 7(1)

6. This item inserts a definition of civil penalty order. This definition is required as a consequence of the inclusion of civil penalties in the Ozone Act.

Item 3 – Subsection 7(1)

7. This item inserts a definition of civil penalty provision. This definition is also required as a consequence of the inclusion of civil penalties in the Ozone Act.

Item 4 – Subsection 7(1)

8. This item inserts a definition of designated court. Designated courts will have jurisdiction in relation to applications for compensation, applications that goods are not forfeitable goods and civil penalties.
Item 5 – Subsection 7(1)

10. This item provides that the definition of enforcement powers is that provided in section 53. Item 86 inserts a new section 53 into the Ozone Act which sets out the powers of Inspectors when searching for evidence of an offence or contravention of a civil penalty provision.

Item 6 – Subsection 7(1)

11. This item inserts a definition of enforcement warrant. Item 87 inserts new sections 55E and 55F into the Ozone Act which provide for the issuing of enforcement warrants by magistrates.

Item 7 – Subsection 7(1)

12. This item inserts a definition of evidential burden which will apply to civil penalty proceedings. The definition mirrors the definition of evidential burden in section 13.3 of the Criminal Code.

Item 8 – Subsection 7(1)

13. This item inserts a definition of evidential material. This definition is required as a consequence of the inclusion of civil penalties and the extension of the enforcement powers in Part VIII of the Ozone Act to cover contraventions of civil penalty provisions.

Item 9 – Subsection 7(1)

14. This item inserts a definition of executive officer of a body corporate.

Item 10 – Subsection 7(1)

15. This item provides that the definition of forfeitable goods is that given in section 57.

Item 11 – Subsection 7(1)

16. This item provides that a forfeiture notice is a notice under subsection 60A(1).

Item 12 – Subsection 7(1)

17. This item provides that the definition of monitoring powers is that given in section 51A. Item 85 inserts a new section 51A into the Ozone Act which sets out the monitoring powers of Inspectors.
Item 13 – Subsection 7(1)

18. This item inserts a definition of offence against this Act or the regulations to clarify that this term includes offences against sections 137.1 and 137.2 of the Criminal Code that relate to the Act or regulations. Sections 137.1 and 137.2 of the Criminal Code relate to providing false or misleading statements or documents.

Item 14 – Subsection 7(1)

19. This item inserts a definition of penalty unit and provides that the definition is the same as that in section 4AA of the Crimes Act 1914. This definition will apply to civil penalty proceedings and ensures the definition of penalty units is the same for both criminal and civil proceedings.

Item 15 – Subsection 7(1)

20. This item inserts a definition of Secretary.

Item 16 – At the end of subsection 8(1)

21. This item makes a technical amendment to subsection 8(1). The effect of the amendment is that a ministerial determination of a quota period must be in writing.

Item 17 – Subsection 8(2)

22. This item substitutes a new subsection 8(2) into the Ozone Act. New subsection 8(2) confirms that a determination of quota periods for HCFC imports and manufacture under subsection 8(1) of the Act is a legislative instrument for the purposes of the Legislative Instruments Act 2003. Subsection 8(2) currently provides that a determination setting quota periods is a disallowable instrument for the purposes of s 46A of the Acts Interpretation Act 1901. Section 46A of the Acts Interpretation Act 1901 has been repealed, however, subparagraph 6(d)(i) of the Legislative Instruments Act 2003 deems an instrument to be a legislative instrument if the instrument is made in the exercise of a power delegated by parliament before 1 January 2005 and declared by the enabling legislation to be disallowable instruments for the purposes of s 46A of the Acts Interpretation Act 1901. Therefore, this amendment confirms existing law regarding legislative instruments; it also removes reference to the repealed s 46A of the Acts Interpretation Act 1901.
Item 18 – At the end of section 13

23. This item inserts a new subsection 13(9) into the Ozone Act. Subsection 13(9) provides for a civil penalty as an alternative to the offences in subsections 13(1), (1AA), (1AB), (1A), (2), (3), (4), (5), (6) and (6A) of the Ozone Act which relate to the import, export or manufacture of an ozone depleting substance, synthetic greenhouse gas or pre-charged equipment without the appropriate licence. The maximum penalty for a contravention of these civil penalty provisions is the same as the maximum penalty for contravention of the corresponding criminal offence; that is 500 penalty units.

Item 19 – Before paragraph 16(5)(a)

24. This item inserts a new paragraph 16(5)(aa) into the Ozone Act. Paragraph 16(5)(aa) allows the Minister to have regard to civil penalty orders made against a person in the preceding ten years when considering whether or not a person is a fit and proper person to be granted a licence under the Ozone Act. With the inclusion of civil penalties in the Ozone Act, consideration of civil penalties in this context is appropriate as it is relevant to determining whether an applicant meets the fit and proper person requirements.

Item 20 – After paragraph 16(5)(b)

25. This item inserts new paragraphs 16(5)(ba), (bb) and (bc) into the Ozone Act which allow the Minister to consider previous conduct of executive officers of a body corporate when considering whether or not a body corporate is a fit and proper person to be granted a licence under the Ozone Act. Previous conduct which can be taken into account includes contraventions of civil penalty provisions in the Ozone Act and criminal convictions, whether under the Ozone Act or another law of the Commonwealth, a State or a Territory. It is currently unclear whether the Minister can consider the conduct of the executive officers when applying the fit and proper person requirement to bodies corporate. The conduct of executive officers is pertinent to determining whether a body corporate is a fit and proper person, particularly, for example, in relation to new corporations that have clean records but the executive officers of that body corporate may not. The objective of this amendment and those in items 21, 24, 25 and 26 is to allow the Minister to explicitly consider the conduct of executive officers when deciding whether a body corporate is a fit and proper person to be granted a licence.
Item 21 – After paragraph 16(5)(c)

26. This item inserts a new paragraph 16(5)(ca) into the Ozone Act. New paragraph 16(5)(ca) allows the Minister to consider whether or not an executive officer of a 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 benefits, when considering whether or not a body corporate is a fit and proper person to be granted a licence. The effect of this amendment is to broaden the matters the Minister can have regard to when determining whether a body corporate is a fit and proper person to be granted a licence.

Item 22 – Paragraph 16(5)(d)

27. This item amends paragraph 16(5)(d) of the Ozone Act to allow the Minister to take into account false or misleading statements made in an application under either the Act or the regulations when considering whether or not an applicant is a fit and proper person to be granted a licence. Since 2005, applications have been made under the regulations for refrigeration and air conditioning and fire protection industry permits. The objective of this amendment is to update the Ozone Act to reflect those amendments to the regulations and allow the Minister to consider false or misleading statements in applications under the regulations when considering whether a person meets the fit and proper person requirements.

Item 23 – Paragraph 16(5)(e)

28. This item amends paragraph 16(5)(e) in consequence of the amendments to paragraph 16(5)(d) (see item 22) and allows the Minister, in circumstances where a false and misleading statement has been made in an application under either the Ozone Act or the regulations, to consider whether the person knowingly made the false or misleading statement when deciding whether or not that person is a fit and proper person to be granted a licence.

Item 24 – After paragraph 16(5)(e)

29. This item inserts paragraphs 16(5)(ea) and 16(5)(eb) to the Ozone Act. These provisions allow the Minister to consider whether an executive officer of a body corporate has made a false or misleading statement in an application under the Ozone Act or regulations and whether the executive officer knowingly made the false statement, when deciding whether or not a body corporate is a fit and proper person to be granted a licence. The effect of this amendment is to broaden the matters the Minister can have regard to when determining whether a body corporate is a fit and proper person to be granted a licence.
Item 25 – After paragraph 16(5)(f)

30. This item inserts paragraph 16(5)(fa) into the Ozone Act. Paragraph 16(5)(fa) will allow the Minister to consider whether an executive officer of a body corporate has contravened a condition of a licence issued under the Ozone Act when considering whether or not a body corporate is a fit and proper person to be granted a licence under the Ozone Act. The objective of this amendment is to allow the Minister to properly consider further relevant information when assessing whether a body corporate applicant is a fit and proper person.

Item 26 – At the end of subsection 16(5)

31. This item adds paragraph 16(5)(h) into the Ozone Act. This amendment allows the Minister to take into account whether an executive officer of a body corporate has held a licence issued under the Ozone Act and that was cancelled under section 20, when considering whether or not a body corporate is a fit and proper person to be granted a licence under the Ozone Act.

Item 27 – After subsection 18(7B)

32. This item inserts subsections 18(7C), (7D), (7E) and (7F) into the Ozone Act. These provisions provide for a civil penalty as an alternative to the offence in subsection 18(7) of the Ozone Act relating to the contravention of a licence condition. The maximum penalty for a contravention of this civil penalty provision is the same as the maximum penalty for contravention of the corresponding criminal offence; that is 500 penalty units.

33. A licensee will not contravene the civil penalty provision in subsection 18(7C) if they have a reasonable excuse. A person who wishes to claim they have a reasonable excuse bears an evidential burden in relation to that matter. This reflects the reasonable excuse defence for the mirror criminal offence in subsection 18(7) and the evidential burden in relation to that defence as set out in section 13.3 of the Criminal Code.

Item 28 – At the end of section 19

34. This item adds subsection 19(4) into the Ozone Act which defines the licence period for a pre-charged equipment licence.

35. Currently, pre-charged equipment licences are valid until the end of the licence period in which it was issued. Licence periods run from 1 January of every even numbered year to 31 December of the following year (a two year period).

36. New subsection 19(4) provides that pre-charged equipment licences will be in force for two years from the date of issue or for a shorter period specified, unless it is cancelled or stops being in force for any other reason before then. This ensures that pre-charged equipment licensees get the full time period value of their licence.
Item 29 – Before paragraph 20(2)(a)

37. This item inserts a new paragraph 20(2)(aa) into the Ozone Act which allows the Minister to consider civil penalty orders made against a person in the preceding ten years when considering whether a person continues to be a fit and proper person to hold a licence. With the inclusion of civil penalties in the Ozone Act, consideration of civil penalties in this context is appropriate as it is relevant to determining whether a person continues to be a fit and proper person to hold a licence.

Item 30 – At the end of paragraph 20(2)(a)

38. This item makes a minor grammatical correction to this paragraph.

Item 31 – At the end of paragraph 20(2)(b)

39. This item makes a minor grammatical correction to this paragraph.

Item 32 – After paragraph 20(2)(b)

40. This item inserts new paragraphs 20(2)(ba), (bb) and (bc) into the Ozone Act. These new paragraphs allow the Minister to consider previous conduct of executive officers of a body corporate when considering whether or not a body corporate continues to be a fit and proper person to hold a licence. Previous conduct which can be taken into account includes contraventions of civil penalty provisions in the Ozone Act and criminal convictions, whether under the Ozone Act or another law of the Commonwealth, a State or a Territory. It is currently uncertain as to whether the Minister can consider the conduct of executive officers in applying the fit and proper person requirement to bodies corporate. The conduct of executive officers is relevant to the question of whether a body corporate is a fit and proper person to remain as a licensee. This amendment, as well as those in items 34 and 36, enables the Minister to specifically consider certain conduct of executive officers when deciding whether a body corporate is a fit and proper person to remain a licensee.

Item 33 – At the end of paragraph 20(2)(c)

41. This item makes a minor grammatical correction to this paragraph.

Item 34 – After paragraph 20(2)(c)

42. This item inserts a new paragraph 20(2)(ca) into the Ozone Act. New paragraph 20(2)(ca) allows the Minister to consider whether or not an executive officer of a 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 benefits, when considering whether or not a body corporate is a fit and proper person to remain a licensee. The effect of this amendment is to broaden the matters the Minister can have regard to when determining whether a body corporate is a fit and proper person to remain a licensee.
Item 35 – Paragraph 20(2)(d)

43. This item amends paragraph 20(2)(d) of the Ozone Act to allow the Minister to take into account false or misleading statements made in an application under either the Act or the regulations when considering whether or not a person continues to be a fit and proper person to hold a licence. Since 2005, applications have been made under the regulations for refrigeration and air conditioning and fire protection industry permits. The objective of this amendment is to update the Ozone Act to reflect those amendments to the regulations and allow the Minister to consider false or misleading statements in applications under the regulations when considering whether a person meets the fit and proper person requirements.

Item 36 – At the end of subsection 20(2)

44. This item adds paragraphs 20(2)(f) and (g) to the Ozone Act. These provisions allow the Minister to consider whether an executive officer of a body corporate has made a false or misleading statement in an application under the Ozone Act or regulations and whether the person knowingly made the false statement, when deciding whether or not a body corporate continues to be a fit and proper person to hold a licence. This amendment will enable the Minister to consider further relevant information when deciding whether a body corporate remains a fit and proper person.

Item 37 – Section 25 (table item 9, column 3)

45. This item corrects a drafting error in the amounts of HCFC allowed in the reserve quota for each year from 2016 to 2029 (inclusive) from 0.5 ODP tonnes to 0.24 ODP tonnes. The effect of this amendment is to ensure that the sum total of the HCFC industry limit (see section 24 of the Ozone Act) and the HCFC reserve quota, does not exceed Australia’s total quota for 2016 and beyond under the Montreal Protocol.

Item 38 – At the end of section 26

46. This item adds a new subsection 26(4) into the Ozone Act. New subsection 26(4) provides that a notice under section 26 of the Ozone Act, declaring the start of the first HCFC quota period, is not a legislative instrument for the purposes of the Legislative Instruments Act 2003. This provision clarifies the operation of section 5 of the Legislative Instruments Act 2003 and is not a substantive exemption.
Item 39 – Subsection 38(1) (penalty)

47. This item increases the maximum penalty for the offence in subsection 38(1) of the Ozone Act from 50 penalty units to 500 penalty units. This offence relates to contravention of the provisions in Schedule 4 of the Ozone Act by certain types of corporation. For example, a foreign corporation or a trading corporation formed within the limits of the Commonwealth. The new penalty aligns with similar offences under the Environment Protection and Biodiversity Conservation Act 1999 and ensures an adequate deterrent to contravention is maintained.

Item 40 – Subsection 38(2) (penalty)

48. This item increases the maximum penalty for the offence in subsection 38(2) of the Ozone Act from 50 penalty units to 500 penalty units. This offence relates to contravention of the provisions in Schedule 4 of the Ozone Act by persons engaged in certain kinds of activities, for example, trade or commerce between Australia and places outside Australian or between the States or the supply of goods or services to the Commonwealth. The new penalty aligns with similar offences under the Environment Protection and Biodiversity Conservation Act 1999 and ensures an adequate deterrent to contravention is maintained.

Item 41 – After subsection 38(2A)

49. This item inserts subsections 38(2B), (2C) and (2D) into the Ozone Act. New subsections 38(2B), (2C) and (2D) provide for a civil penalty as an alternative to the offences in subsections 38(1) and 38(2) of the Ozone Act. The maximum penalty for a contravention of these civil penalty provisions is the same as the maximum penalty for contravention of the corresponding criminal offence; that is 500 penalty units (the amended penalty – see items 39 and 40).

Item 42 – After subsection 41(2)

50. This item inserts subsections 41(2A) and (2B) into the Ozone Act. New subsections 41(2A) and (2B) clarify the Minister’s power to remove a country from the Register of Montreal Protocol countries and/or remove a substance from the Register in relation to a country. Removing a country and/or a substance from the Register of Montreal Protocol countries limits trade in ozone depleting substances with that country and allows the Minister to give effect in Australia to Australia’s obligations under the Montreal Protocol.

Item 43 – At the end of section 41

51. This adds subsection 41(6) into the Ozone Act. The effect of this amendment is to clarify that the Register of Montreal Protocol countries maintained by the Minister in accordance with subsection 41(1), is not a legislative instrument for the purposes of the Legislative Instruments Act 2003. This provision clarifies the operation of section 5 of the Legislative Instruments Act 2003 and is not a substantive exemption.
Item 44 – Subsection 44(1) (penalty)

52. This item increases the maximum penalty for the offence in subsection 44(1) of the Ozone Act from 100 penalty units to 300 penalty units. This offence relates to the importation of a stage-1 scheduled substance from a non-Montreal Protocol country. Stage-1 scheduled substances include the CFC described in Division 1 of Part 1 of Schedule 1 of the Ozone Act and halon. The new penalty aligns with similar offences under the Environment Protection and Biodiversity Conservation Act 1999 and ensures an adequate deterrent to contravention is maintained.

Item 45 – After subsection 44(2)

53. This item inserts subsections 44(2A) and (2B) into the Ozone Act. New subsections 44(2A) and (2B) provide for a civil penalty as an alternative to the offence in subsection 44(1) of the Ozone Act. The maximum penalty for a contravention of this civil penalty provision is the same as the maximum penalty for contravention of the corresponding criminal offence; that is 300 penalty units (the amended penalty – see item 44).

Item 46 – Subsection 44(3) and Item 47 – Subsection 44(3)

54. These items amend subsection 44(3) of the Ozone Act. The effect of these amendments is that the offence in subsection 44(1) and the new civil penalty provision in subsection 44(2A) apply to products declared by the Minister to be subject to subsections 44(1) and 44(2A). The products declared by the Minister must be included in the annex referred to in paragraph 3 of Article 4 of the Montreal Protocol. These amendments are required as a consequence of the inclusion of the mirror civil penalty provision in subsection 44(2A) (see item 45).

Item 48 – Subsection 44(4)

55. This item amends subsection 44(4) of the Ozone Act. The effect of this amendment is that a declaration of a product under subsection 44(3) of the Ozone Act no longer needs to be published in the Gazette. This amendment is required as a consequence of item 53 which provides that a declaration under subsection 44(3) is now a legislative instrument and therefore published on the Federal Register of Legislative Instruments.
Item 49 – Subsection 44(5) (penalty)

56. This item increases the maximum penalty for the offence in subsection 44(5) of the Ozone Act from 100 penalty units to 300 penalty units. This offence relates to the importation of a stage-2 scheduled substance from a non-Montreal Protocol country. Stage – 2 scheduled substances include the CFC described in Division 2 of Part 1 of Schedule 1 of the Ozone Act, carbon tetrachloride, methyl chloroform and bromochloromethane. The new penalty aligns with similar offences under the Environment Protection and Biodiversity Conservation Act 1999 and ensures an adequate deterrent to contravention is maintained.

Item 50 – After subsection 44(5A)

57. This item inserts subsections 44 (5B) and (5C) into the Ozone Act. The purpose of this amendment is to provide for a civil penalty as an alternative to the offence in subsection 44(5) of the Ozone Act. The maximum penalty for a contravention of this civil penalty provision is the same as the maximum penalty for contravention of the corresponding criminal offence; that is 300 penalty units (the amended penalty – see item 49).

Item 51 – Subsection 44(6) and Item 52 – Subsection 44(6)

58. These items amend subsection 44(6) of the Ozone Act. The effect of these amendments is that the offence in subsection 44(5) and the new civil penalty provision in subsection 44(5B) apply to products declared by the Minister to be subject to subsections 44(5) and 44(5B). The products declared by the Minister must be included in the annex referred to in paragraph 3 bis of Article 4 of the Montreal Protocol. These amendments are required as a consequence of the inclusion of the mirror civil penalty provision in subsection 44(5B) (see item 50).

Item 53 – Subsection 44(7)

59. This item repeals subsection 44(7) of the Ozone Act and substitutes a new subsection 44(7). The purpose of this amendment is to clarify that declarations under subsections 44(3) and (6) of the Ozone Act are legislative instruments for the purposes of the Legislative Instruments Act 2003.

Item 54 – Subsection 45(1) (penalty)

60. This item increases the maximum penalty for the offence in subsection 45(1) of the Ozone Act from 100 penalty units to 300 penalty units. This offence relates to the importation from a non-Montreal Protocol country of a product in the manufacture of which a stage-1 scheduled substance was used. The new penalty aligns with similar offences under the Environment Protection and Biodiversity Conservation Act 1999 and ensures an adequate deterrent to contravention is maintained.
Item 55 – After subsection 45(2)

61. This item inserts subsections 45(2A) and (2B) into the Ozone Act. This amendment provides for a civil penalty as an alternative to the offence in subsection 45(1) of the Ozone Act. The maximum penalty for a contravention of this civil penalty provision is the same as the maximum penalty for contravention of the corresponding criminal offence; that is 300 penalty units (the amended penalty – see item 54).

Item 56 – Subsection 45(3) and Item 57 – Subsection 45(3)

62. These items amend subsection 45(3) of the Ozone Act. The effect of these amendments is that the offence in subsection 45(1) and the new civil penalty provision in subsection 45(2A) apply to products declared by the Minister to be subject to subsections 45(1) and 45(2A). The products declared by the Minister must be included in the annex referred to in paragraph 4 of Article 4 of the Montreal Protocol. These amendments are required as a consequence of the inclusion of the mirror civil penalty provision in subsection 45(2A) (see item 55).

Item 58 – Subsection 45(3A) (penalty)

63. This item increases the maximum penalty for the offence in subsection 45(3A) of the Ozone Act from 100 penalty units to 300 penalty units. This offence relates to the importation from a non-Montreal Protocol country of a product in the manufacture of which a stage-2 scheduled substance was used. The new penalty aligns with similar offences under the Environment Protection and Biodiversity Conservation Act 1999 and ensures an adequate deterrent to contravention is maintained.

Item 59 – After subsection 45(3AA)

64. This item inserts subsections 45(3AB) and (3AC) into the Ozone Act. The purpose of this amendment is to provide for a civil penalty as an alternative to the offence in subsection 45(3A) of the Ozone Act. The maximum penalty for a contravention of this civil penalty provision is the same as the maximum penalty for contravention of the corresponding criminal offence; that is 300 penalty units (the amended penalty – see item 58).
Item 60 – Subsection 45(3B) and Item 61 – Subsection 45(3B)

65. These items amend subsection 45(3B) of the Ozone Act. The effect of these amendments is that the offence in subsection 45(3A) and the new civil penalty provision in subsection 45(3AB) apply to products declared by the Minister to be subject to subsections 45(3A) and 45(3AB). The products declared by the Minister must be included in the annex referred to in paragraph 4 bis of Article 4 of the Montreal Protocol. These amendments are required as a consequence of the inclusion of the mirror civil penalty provision in subsection 45(3AB) (see item 59).

Item 62 – Subsection 45(4) and Item 63 – Subsection 45(4)

66. These items make minor consequential amendments to subsection 45(4).

67. The purpose of item 62 is to ensure that the exemption in relation to products imported in accordance with conditions determined by the Minister, which currently applies to the offences in subsections 45(1) and (3A), will also apply to the mirror civil penalty provisions in subsections 45(2A) and (3AB).

68. The effect of the amendment in item 63 is to confirm that if the Minister sets out certain conditions under which the import of a product will be exempt from the application of subsections 45(1), (2A), (3A) and (3AB), those conditions must be determined in writing.

Item 64 – Subsection 45(6)

69. This item amends subsection 45(6) of the Ozone Act. The effect of this amendment is that a declaration of a product under subsections 45(3) or (3B) or the determination of conditions under subsection 45(4) of the Ozone Act no longer needs to be published in the Gazette. This amendment is required as a consequence of item 65 which provides that these instruments are now legislative instruments and therefore published on the Federal Register of Legislative Instruments.

Item 65 – Subsections 45(7) and (8)

70. This item repeals subsections 45(7) and (8) of the Ozone Act and substitutes new subsections 45(7), (8) and (9).

71. New subsections 45(7) and (8) provide that instruments made under 45(3), (3B) or (4) of the Ozone Act are legislative instruments for the purposes of the Legislative Instruments Act 2003. This amendment confirms existing law regarding legislative instruments and removes reference to the repealed s 46A of the Acts Interpretation Act 1901.
72. New subsection 45(9) provides that a Ministerial determination under subsection 45(4) commences on the first day on which the determination is no longer liable to be disallowed or to have been taken to have been disallowed under the *Legislative Instruments Act 2003*. This amendment removes a reference to a now repealed section of the *Acts Interpretation Act 1901*. These new provisions have the same effect as the repealed *Acts Interpretation Act 1901* provisions.

**Item 66 – Subsection 45B(1) (penalty)**

73. This item increases the maximum penalty for the offence in subsection 45B(1) of the Ozone Act from 100 penalty units to 300 penalty units. This offence relates to the discharge of scheduled substances that is not in accordance with the regulations. The new penalty aligns with similar offences under the *Environment Protection and Biodiversity Conservation Act 1999* and ensures an adequate deterrent to contravention is maintained.

**Item 67 – After subsection 45B(2)**

74. This item inserts subsections 45B(2A) and (2B) into the Ozone Act. The purpose of this amendment is to provide for a civil penalty as an alternative to the offence in subsection 45B(1) of the Ozone Act. The maximum penalty for a contravention of this civil penalty provision is the same as the maximum penalty for contravention of the corresponding criminal offence; that is 300 penalty units (the amended penalty – see item 66).

**Item 68 – Subsection 45B(3)**

75. This item amends subsection 45B(3) of the Ozone Act. Subsection 45B(3) provides for an exception to the offence of unlawful discharge of a scheduled substance where a product is being used for its designed purpose (except where the product is a halon fire extinguisher and the product is being used for training purposes). This addition incorporates the new civil penalty provision of subsection 45B(2A) (see item 67).

**Item 69 – Subsection 45B(3) (note)**

76. This item amends the note to subsection 45B(3). The purpose of this note is to inform people of the application of the evidential burden provisions of the *Criminal Code* to subsection 45B(3). Subsection 45B(3) now also provides an exception to the mirror civil penalty provision in subsection 45B(2A). The *Criminal Code* only applies to criminal proceedings and not civil penalty proceedings. The amendment to the note clarifies that the evidential burden requirements of the *Criminal Code* only apply to a defendant in criminal proceedings.
Item 70 – After subsection 45B(3)

77. This section inserts a new subsection 45B(3A) into the Ozone Act. This amendment imposes an evidential burden on a person who wishes to rely on subsection 45B(3) in a civil penalty proceeding. This mirrors the evidential burden for defendants wishing to rely on subsection 45B(3) in criminal proceedings as set out in the *Criminal Code*.

Item 71 – Subsection 46(1)

78. This item amends subsection 46(1) of the Ozone Act to change the reporting requirements for licensees. Currently, licensees must submit a report within 15 days after the end of the quarter. This provides only a 15 day window in which reporting can occur. For certain importers, especially low volume importers, it is preferable that they report prior to the end of the quarter as they will only import once in the quarter. The amended reporting requirements will allow licensees to report at any time prior to the 15th day after the end of the quarter. This is less administratively cumbersome both for the importer and government.

Item 72 – Subsection 46(1)

79. This item amends subsection 46(1) of the Ozone Act to change the format in which licensees must submit their report. The new requirement is that it be in accordance with the regulations. This amendment removes the unnecessary administrative process of having the Minister or his/her delegate approve each change in the reporting format.

Item 73 – Subsections 46(1B), (1BA) and (1C)

80. This item amends subsections 46(1B), (1BA) and (1C) of the Ozone Act to change the reporting requirements for licensees, who import, export or manufacture a synthetic greenhouse gas or import pre-charged equipment. The effect of these amendments is similar to item 71 in that it changes the reporting period for certain licensees from a fifteen day window at the end of the quarter to any time from the start of the quarter to a date 15 days after the end of the quarter.

Item 74 – Subsection 46(2) (penalty)

81. This item reduces the maximum penalty for the offence in subsection 46(2) of the Ozone Act from 100 penalty units to 60 penalty units. This offence relates to the failure to submit reports in accordance with subsection 46(1). This reduction recognises the less serious nature of this offence when compared to other offences which involve actual venting of scheduled substances or actions which put Australia at risk of failing to meet its international obligations.
Item 75 – Subsection 46(2AA) (penalty)

82. This item increase the maximum penalty for the offence in subsection 46(2AA) of the Ozone Act from 10 penalty unit to 60 penalty units. This offence relates to the failure to submit reports as required by subsections 46(1B), (1BA) and (1C). This amendment reflects that the offences in subsections 46(2) and (2AA) are of a similar nature and the penalty should be the same.

Item 76 – After subsection 46(2B)

83. This item inserts subsections 46(2C), (2D), (2E), (2F) and (2G) into the Ozone Act. These provisions provide for a civil penalty as an alternative to the offences in subsections 46(2) and (2AA). The maximum penalty for a contravention of these civil penalty provisions is the same as the maximum penalty for contravention of the corresponding criminal offence; that is 60 penalty units (the amended penalties – see items 74 and 75).

84. A person will not contravene the civil penalty provision in subsections 46(2C) and (2D) if they have a reasonable excuse. A person who wishes to claim they have a reasonable excuse bears an evidential burden in relation to that matter. This reflects the reasonable excuse defence for the mirror criminal offences in subsections 46(2) and (2AA) and the evidential burden in relation to that defence as set out in section 13.3 of the Criminal Code.

Item 77 – Division 1 of Part VIII (heading)

85. This item amends the title of the Division to make it a more accurate reflection of the contents of the Division.

Item 78 – Before section 48A

86. This item is a machinery provision that creates Subdivision A of Division 1.

Item 79 – At the end of section 49

87. This item adds a new subsection 49(3) into the Ozone Act. New subsection 49(3) requires the Minister to be satisfied that a person has suitable qualifications and experience to properly exercise the powers of an inspector, before appointing a person as an inspector under the Act.

Item 80 – After section 49

88. This item inserts section 49A into the Ozone Act and requires inspectors exercising powers under the Act to do so in accordance with any directions that the Minister may give in relation to those powers. The purpose of new section 49A is to require inspectors to comply with extant departmental policies, procedures and guidelines in the exercise of their powers.
89. Subsection 49A(2) provides that a written direction to an inspector made under subsection 49(1) is not a legislative instrument. This provision clarifies the operation of section 5 of the *Legislative Instruments Act 2003* and is not a substantive exemption.

**Item 81 – Before section 51**

90. This item is a machinery provision that creates Subdivision B of Division 1.

**Item 82 – Subsection 51(1)**

91. This item makes minor technical amendments to subsection 51(1) as a consequence of the insertion of new section 51A which sets out the monitoring powers of inspectors.

**Item 83 – Subsection 51(3)**

92. This item also makes minor technical amendments as a consequence of the insertion of new section 51A

**Item 84 – Subsection 51(4)**

93. This item repeals subsection 51(4). Subsection 51(4) limits the premises an inspector can enter to monitor compliance with the Ozone Act or the regulations. Subsection 51(4) excludes premises which may contain relevant material and as a result restricts the ability of inspectors to effectively monitor compliance. The types of premises on which an inspector may exercise his or her powers will now be included in subsection 51(1) and is determined by whether entry is reasonably necessary in order to monitor compliance.

**Item 85 – After section 51**

94. This item inserts new sections 51A and 51B into the Ozone Act.

95. Section 51A sets out the monitoring powers of inspectors. In addition to the monitoring powers currently in the Ozone Act, section 51A enables inspectors to take samples of, or conduct tests on, any gas or other substance and to take onto the premises such equipment and materials as the inspector requires for the purpose of exercising the monitoring powers. This new suite of powers is required because, ozone depleting substances and synthetic greenhouse gases are often colourless, odourless liquids or gases which require *in situ* testing or laboratory testing of samples, to determine if it is or is not a scheduled substance and because specialist equipment is required to conduct such tests and take such samples. These provisions are consistent with Commonwealth legislation and are based on the monitoring powers in the *Fuel Quality Standards Act 2000*. 
New subsections 51A (2) and (3) and (4) enable inspectors to operate computers and other similar devices to find out whether they contain information that is relevant to ascertaining whether a person has complied with the Ozone Act or regulations. The new powers allow inspectors to make copies of information stored on computers and other similar devices and to take those copies away. Subsection 51A(4) stipulates that the powers in subsections 51A(2) and (3) can only be exercised where the inspector believes, on reasonable grounds, that exercising those powers will not damage the equipment. These additional powers are required as most modern business records are stored electronically, not in paper form.

Subsection 51A(5) allows an inspector to secure an item in situ for 24 hours where the inspector believes, on reasonable grounds, that the item affords evidence of an offence or a contravention of a civil penalty provision and it is necessary to secure the item to prevent its concealment, loss or destruction before a warrant can be obtained. Items cannot be secured for more than 24 hours without an order from a magistrate.

Before exercising the power under subsection 51A(5), an inspector must provide a written notice to the occupier of the premises (or his/her representative) setting out the thing(s) that the inspector intends to secure. Subsection 51A(10) makes it an offence for a person to move, alter or interfere with an item that has been specified in a notice issued in accordance with subsection 51A(5). The maximum penalty for this offence is 2 years imprisonment.

Section 51B allows persons who are not inspectors to assist inspectors in exercising the monitoring powers. Allowing assistants recognises that many of the tests and inspections that need to be carried out require specialist technical knowledge and expertise which an inspector may not possess. Assistants have limited powers and may only exercise those powers in accordance with a direction given by an inspector. For all purposes, any monitoring power exercised by an assistant is taken to have been exercised by the instructing inspector.

Item 86 – Sections 52 and 53

This item repeals sections 52 and 53 and inserts three new Subdivisions into Division 1 of Part VIII of the Ozone Act (Subdivision C – Enforcement powers, Subdivision D – General provisions relating to seizure etc. and Subdivision E – Obligations and incidental powers of inspectors).
Subdivision C – Enforcement powers (new sections 52, 53 and 53A - 53C)

101. This item includes a Subdivision which sets out the enforcement powers of inspectors. These powers were previously referred to as offence related search and seizure powers. The change in definition reflects that these powers will be exercised to search for evidence relating to both criminal offences as well as contraventions of civil penalty provisions.

102. New section 52 allows an inspector to enter premises with the consent of the occupier or under an enforcement warrant. This type of warrant is new to the Ozone Act and is created by the new section 55E (see item 87).

103. Section 53 sets out the enforcement powers of an inspector. The enforcement powers enable an inspector to take a sample of evidential material and to take onto the premises equipment or material required for the purpose of exercising the enforcement powers. These powers are required as evidential material will often be in the form of a colourless, odourless liquid or gas, stored in amounts of one tonne or more, and seizing the entire object would not be practicable. These provisions are modelled on the search and seizure powers in the Fuel Quality Standards Act 2000.

104. Subsection 53(2) allows an inspector to seize evidential material found during a search but only in circumstances where they are on the premises under an enforcement warrant.

105. Subsections 53(3) and (4) allow inspectors to inspect computers or other similar equipment, to operate such equipment to ascertain whether it contains evidential material and to seize the equipment or make copies of the information contained on such equipment but only in circumstances where the inspector believes that these things can be carried out without damaging the equipment. These additional powers are required as most modern business records are stored electronically, not in paper form. These provisions are consistent with Commonwealth legislation and are based on the search and seizure powers in the Fuel Quality Standards Act 2000.

106. Subsections 53(6) and (7) set out further restrictions on the seizure of computers and other like equipment. Equipment can only be seized by an inspector if the inspector is on the premises under an enforcement warrant and it is not practicable to make copies of the information contained in the equipment. Seizure is also permitted where continued possession of the equipment by the occupier would constitute an offence against a law of the Commonwealth.

107. Subsection 53(8) allows inspectors, searching premises under an enforcement warrant, to seize anything they reasonably believe to be evidential material if that seizure is necessary to prevent the material’s loss, concealment or destruction or that seizure is necessary to prevent the ongoing commission of an offence or contravention of a civil penalty provision.
Subsections 53(9), (10) and (11) deal with the seizure of containers which contain something the inspector has the power to seize. Where a container contains something that an inspector is permitted to seize and it is not reasonably practicable to seize the thing without also seizing the container, the inspector may seize the container as well as the seizable thing. This power is necessary as the seizable thing will most often be a liquid or gas in either a cylinder or a piece of equipment such as a refrigerator or air conditioner. It would not be practicable to seize just the liquid or gas. However, if the seizable thing is returned to the person from whom it was seized or is forfeited to the Commonwealth, the container must also be returned, either at the same time that the seizable thing is returned or as soon as practicable after the forfeiture.

New section 53A is similar to section 51B in that it allows persons who are not inspectors to accompany an inspector onto premises to assist with a search. Allowing inspectors to be assisted in the exercise of their enforcement powers is appropriate as many of the tests and inspections that need to be carried out require specialist technical knowledge and expertise which an inspector may not possess.

Subsection 53B(1) requires inspectors, when entering premises under an enforcement warrant, to announce themselves and the fact that they intend to enter the premises, to produce identification and to give any person at the premises an opportunity to allow entry. An inspector is not required to comply with subsection 53B(1), where the inspector needs to force immediate entry to prevent serious damage to the environment and/or to ensure that the effective execution of the search warrant is not frustrated. This exemption is designed to prevent the destruction of evidence and/or the release of environmentally harmful substances in an attempt to destroy evidence. Where an inspector is permitted to immediately enter premises, they must identify themselves as soon as practicable after entry.

Inspectors are required to provide a copy of an enforcement warrant to the occupier of the premises (or his or her representative) on which they are executing the warrant.

Subdivision D – General provisions relating to seizure etc (new sections 53D – 53L)

This item includes a Subdivision which sets out general provisions relating to seized material. Currently, the Ozone Act does not include appropriate procedures for the receipt of seized items, the return or retention of those items by an inspector and the testing of samples by an inspector. The purpose of this new Subdivision is to improve the operation of the Ozone Act by the establishment of an appropriate framework for handling evidence and other seized material.

Section 53D requires an inspector to issue a receipt for seized items. The receipt must include a summary of sections 53E, 53F, 53G, 53H, 53J, 53K and 53L. Those sections set out the procedures for the retention, return or disposal of seized items.
An inspector must, if requested to do so, provide a copy of seized documents, films, computer files or the contents of storage devices to the person from whom they were seized, except where the item seized is itself a copy of an original – seized under paragraph 53(4)(b) or (c) – or if possession of the copy by the occupier would constitute an offence.

Section 53F requires an inspector to allow someone who would be entitled to inspect a book, record or document if they were not in the possession of an inspector to inspect, at all reasonable times, such seized books, records or documents.

Section 53G provides that items seized by an inspector must be returned after 60 days or after the reason for seizure no longer exists, whichever occurs first, unless the seized item is forfeited to the Commonwealth. An inspector must take reasonable steps to return a seized item to the person from whom it was seized unless they are lawfully excused on one of the grounds set out in subsection 53G(2). The circumstances where an inspector is not required to return a seized item, include where a magistrate has ordered that the thing be retained (see new s 53G(2)(b)) and where proceedings in which the seized item may be used as evidence were instituted before the inspector was required to return the item and those proceedings have not been completed (see new s 53G(2)(a)).

Section 53H provides that an inspector may apply to a magistrate for an order that he or she may retain a seized item for up to three years. An application must be made before the expiry of the period an inspector is permitted to retain the seized item. Before applying for an order of this kind, an inspector must take reasonable steps to find each person that has an interest in the retention of the item and, if practicable, notify each such person of the proposed application.

A magistrate may order that an inspector may retain a seized item if reasonably satisfied that the retention of the item is necessary for the purposes of an investigation into a possible criminal offence or contravention of a civil penalty provision, or to enable evidence of an offence or a contravention of a civil penalty provision to be secured for the purpose of criminal or civil proceedings. This provides inspectors with an opportunity, subject to the scrutiny of a magistrate, to hold a seized item for an extended period where an investigation or a court proceeding is likely to continue for longer than the 60 days an inspector is permitted to retain possession of a seized item.

Section 53J provides for sampling and testing and allows the regulations to prescribe appropriate procedures. Ozone depleting substances and synthetic greenhouse gases are most often colourless and odourless liquids or gasses. Therefore testing of samples is required to determine the nature of substances that are suspected to be scheduled substances. This amendment will enable an appropriate testing framework to be implemented and is based on the testing provisions of the Fuel Quality Standards Act 2000.
120. Ozone depleting substances and synthetic greenhouse gases are often stored under pressure. The seizure, movement and/or storage of a pressure vessel such as a cylinder that is not in a safe condition presents a serious health and safety risk. Section 53K enables the Minister or the Secretary to direct an inspector to deal with a pressure vessel if that vessel constitutes a danger to public health and safety, including, if directed, to destroy the vessel. The owner of a pressure vessel that is destroyed can apply to a court for compensation if the vessel did not contain forfeitable goods.

121. Section 53L enables the Secretary to dispose of a seized item if the Secretary is unable, despite reasonable efforts, to locate the person to whom a seized item should be returned. The Secretary may delegate, by writing, these powers to an SES employee or acting SES employee.

Subdivision E – Obligations and incidental powers of inspectors (new section 53M)

122. This item includes a Subdivision which deals with the obligations and incidental powers of inspectors.

123. Section 53M requires an inspector, seeking voluntary access to premises, to inform the occupier of the premises that they can refuse to give consent to entry. The person must voluntarily consent to entry by an inspector otherwise the entry by the inspector is not lawful.

Item 87 – Section 55

124. This item repeals section 55 and inserts new sections 55 and 55A – 55D into new Subdivision E. The item also includes two new Subdivisions into Division 1 of Part VIII of the Ozone Act (Subdivision F – Enforcement Warrants and Subdivision G – Powers of magistrates).

125. This item repeals section 55 and substitutes a new section 55 which requires an inspector to permit the inspection of a document, book or record removed or surrendered by a person who would be entitled to inspect such a thing if it were not in the inspector’s possession.

126. Section 55A requires that documents, records and books removed by or provided to an inspector, must be returned after 60 days, or after the reason for the removal or production no longer exists or after a decision has been made that the thing is not to be used as evidence, whichever occurs first, unless the item is forfeited to the Commonwealth. An inspector must take reasonable steps to return an item to the person from whom it was removed unless they are lawfully excused on one of the grounds set out in subsection 55A(2). The circumstances where an inspector is not required to return an item, include where a magistrate has ordered that the thing be retained (see new s 55A(2)(b)) and where proceedings in which the item may be used as evidence were instituted before the inspector was required to return the item and those proceedings have not been completed (see new s 55A(2)(a)).
Section 55B provides that an inspector may apply to a magistrate for an order that he or she may retain a book record or document for up to three years. An application must be made before the expiry of the period an inspector is permitted to retain the item. Before applying for an order of this kind, an inspector must take reasonable steps to find each person that has an interest in the retention of the item and, if practicable, notify each such person of the proposed application.

A magistrate may order that an inspector may retain a book, record or document if reasonably satisfied that the retention of the item is necessary for the purposes of an investigation into a possible criminal offence or contravention of a civil penalty provision, or to enable evidence of an offence or a contravention of a civil penalty provision to be secured for the purpose of criminal or civil proceedings. This provides inspectors with an opportunity, subject to scrutiny by a magistrate, to retain an item for an extended period where an investigation or a court proceeding is likely to continue for longer than the 60 days an inspector is permitted to retain possession of an item.

New sections 55, 55A and 55B are similar to sections 53F, 53G and 53H which apply to the return of seized items. The effect of these amendments is to ensure a similar process applies to the return of items obtained by inspectors regardless of whether the item was seized under enforcement powers, removed under monitoring powers or voluntarily produced by the owner of the item.

Access to evidence by inspectors on premises may require the use of specialist electronic equipment by trained operators. To prevent such information being destroyed, altered or otherwise interfered with while such specialist assistance is obtained, section 55C allows an inspector to secure equipment that they believe contains evidential material or other information relevant to ascertaining compliance with the Ozone Act or regulations. A notice must be given to the occupier of the premises (or his or her representative) that this step has been taken. The equipment can be secured for up to 24 hours, until the equipment has been operated by the expert or until the expiration of an extension order granted by a magistrate.

The Commonwealth must compensate the owner of any equipment, or, the user of any data or program, that is damaged or corrupted as a result of the exercise of the powers in section 55C. The damage must occur because insufficient care was exercised in selecting the expert or the expert exercised insufficient care in operating the equipment. If the Commonwealth and the owner cannot agree on compensation, the owner may apply to a court for reasonable compensation as the court may determine.

Subdivision F – Enforcement Warrants (new sections 55E – 55G)

This item includes a Subdivision which relates to enforcement warrants.
Enforcement warrants may be issued by a magistrate under section 55E. An enforcement warrant authorises an inspector to enter premises and exercise the enforcement powers in section 53. In urgent cases, an application for such a warrant may be made by telephone, fax or other electronic means (section 55F).

Section 55G creates a number of offences relating to the application for and execution of an enforcement warrant by an inspector. Each offence carries a maximum penalty of imprisonment for two years. Currently, the Ozone Act does not include offences relating to warrants. These additional offences fill a gap in the current legislation and are designed to deter inspectors from misleading magistrates when applying for warrants and possibly misusing the enhanced enforcement powers.

Subdivision G – Powers of magistrates (new section 55H)

Section 55H is a standard provision which provides that powers conferred on magistrates by the Ozone Act are conferred on them personally, not as a court or members of a court.

Item 88 – Section 57

The item repeals section 57 of the Ozone Act and substitutes a new section 57 which expands the definition of forfeitable goods to include, goods in respect of which, a person has been convicted of a specified offence against the regulations, or goods in respect of which a civil penalty order has been made against a person or goods in respect of which a person has contravened certain provisions of the Ozone Act or regulations. The extension of the definition of forfeitable goods is necessary given the increase in the number of criminal offences in the regulations since 2005 and the inclusion of civil penalties and an infringement notice scheme into the Ozone Act.

Item 89 – Before section 58

This item is a machinery provision that creates Subdivision B of Division 3.

Item 90 – Section 58

This item makes a minor formatting change required as a consequence of item 92.

Item 91 – Section 58, and Item 92 – At the end of section 58

These items amend section 58 of the Ozone Act. The purpose of these amendments is to expand the circumstances in which goods are automatically forfeited to the Commonwealth, to include goods in respect of which a person has been convicted of an offence against the regulations or has been the subject of a civil penalty order. These amendments are required as a consequence of item 88.
Item 93 – After section 60

140. This item inserts Subdivision C into Division 3 of Part VIII of the Ozone Act. The purpose of these amendments is to provide a further procedure by which goods may be forfeited to the Commonwealth in addition to those in sections 58 and 59 of the Ozone Act. The additional forfeiture provisions allow for goods to be forfeited to the Commonwealth through an administrative process. This process is designed primarily to deal with situations where the provisions of section 58 and 59 of the Ozone do not apply, such as where an infringement notice is issued for a contravention of the Ozone Act or regulations. As payment of an infringement notice is not an admission of guilt and in other circumstances a court may not have determined whether an offence has been committed or civil penalty provision contravened, due process is required to determine if goods seized as forfeitable goods are, in fact, forfeitable goods.

141. Where an inspector seizes goods under section 53 and believes on reasonable grounds that the seized goods are forfeitable goods as defined in section 57, the inspector may issue a forfeiture notice to the owner of the goods or, if the owner cannot be identified, the person from whom they were seized. The form and content requirements of the forfeiture notice are set out in subsection 60A(2).

142. The owner of the goods or the person from whom they were seized may apply to a court for an order that all or some of the seized goods are not forfeitable goods. Where an application is made to a court, the court must make an order or refuse to make an order that the goods are not forfeitable goods.

143. If a court orders that some or all of the goods are not forfeitable, the inspector must take reasonable steps to return the goods to the applicant unless they are lawfully excused on one of the grounds set out in subsection 60B(5). The circumstances where an inspector is not required to return goods that are not forfeitable include, where the return of the goods would cause an imminent risk of death, serious illness, serious injury or serious damage to the environment (see new s 60B(5)(b)) or where an inspector is otherwise authorised to retain or destroy the goods (see new s 60B(5)(c)).

144. Section 60C provides that goods are forfeitable if an application is not made to a court within 60 days of the giving of the forfeiture notice or, if an application is made to a court, the court refuses to make an order that the goods are not forfeitable.

145. Section 60D enables a person to apply to a court for compensation where goods are seized and forfeited and either Division 1 of Part VIII of the Ozone Act was not complied with in relation to the seizure, or, the goods were not forfeitable goods.

146. Section 60E provides that forfeited goods become the property of the Commonwealth.
Item 94 – Section 61 and Item 95 – Section 61

147. These items make minor technical amendments to section 61 as a result of the amendments in items 96 and 93.

Item 96 – At the end of section 61

148. This item amends section 61 of the Ozone Act. The effect of this amendment is that goods forfeited to the Commonwealth must not be sold. This provision gives legislative effect to the principle that the Commonwealth must not be seen to be profiting through the forfeiture of goods.

Item 98 – Subsection 63(1)

149. The purpose of this amendment is to extend the offence of obstructing inspectors to include obstruction of people assisting inspectors. This amendment is required by the inclusion of sections 51B and 53A (see items 85 and 86) which permit inspectors to be assisted when exercising their monitoring and enforcement powers.

Item 97 – Subsection 62(1)

150. This item amends subsection 62(1) of the Ozone Act to extend the offence of making a false or misleading statement in an application to applications under both the Ozone Act and the regulations. This reflects that applications are now made under the regulations for refrigeration and air conditioning and fire protection industry permits.

Item 99 – At the end of Part VIII

151. This item inserts three new Divisions into Part VIII of the Ozone Act (Division 5 – Infringement notices, Division 6 – Ancillary contravention of civil penalty provisions and Division 7 – Civil penalty orders).

Division 5 – Infringement notices (new section 65AA)

152. This item includes a new Division which provides for an infringement notice scheme.

153. Section 65AA states that a person alleged to have committed a certain specified offence or to have contravened a specified civil penalty provision, may pay a penalty to the Commonwealth as an alternative to prosecution or civil penalty proceedings as provided for in the regulations.

154. The specified penalty must not exceed one-fifth of the maximum fine or pecuniary penalty that a court could impose. This restriction is in line with existing Commonwealth practices and guidelines.
Division 6 – Ancillary contravention of civil penalty provisions (new section 65AB)

155. Subsection 65AB(1) provides that a person must not attempt to contravene a civil penalty provision, aid, abet, counsel or procure another to contravene a civil penalty provision, induce another to contravene a civil penalty provision or conspire with others to effect a contravention of a civil penalty provision. Subsection 65AB(1) is a civil penalty provision.

Division 7 – Civil penalty orders (new sections 65AC – 65AM)

156. This item includes a new Division which provides a framework for civil penalty orders.

157. These provisions allow the Minister to apply to a court (including the Federal Court of Australia or the Supreme Court of a State or Territory) for an order that the person who has contravened a civil penalty provision pay a pecuniary penalty. Amendments elsewhere in this Bill establish civil penalty provisions.

158. The provisions establishing the civil penalty regime include protections against multiple civil, or both civil and criminal action being taken against a person, consistent with the legal principle of double jeopardy.

159. A person is not liable to have a civil penalty order if, in relation to the contravention of a civil penalty provision, the person was acting under a mistake of fact.

Item 100 – At the end of paragraph 65C(1)(b)

160. This item makes a minor technical amendment to paragraph 65C(1)(b) of the Ozone Act. The effect of this amendment is that amounts received as licence fees under the regulations will be credited to the Ozone Protection and SGG Account.

Item 101 – At the end of section 65C

161. This item adds subsections 65C(2) and (3) to the Ozone Act. This amendment establishes a framework for crediting notional payments between Commonwealth agencies (within the meaning of the Financial Management and Accountability Act 1997) to the Ozone Protection and SGG Account. Currently payments between such agencies cannot be credited to the Ozone Protection and SGG Account.

Item 102 – After paragraph 65D(c)

162. This item inserts paragraph 65D(ca) into the Ozone Act. This amendment clarifies that money in the Ozone Protection and SGG Account can be used to fund research relating to ozone depleting substances and synthetic greenhouse gases. This research is necessary to demonstrate the need for, establish and improve the design of activities that give effect to the purposes of the Ozone Act.
Item 103 – Subsection 67A(1)

163. This item amends the Minister’s power to delegate powers and functions to include the Minister’s powers and functions under the Act and the regulations. This amendment is necessary because the Minister now has significant functions under the regulations in relation to the refrigeration and air conditioning and fire protection industry permit regime. The effect of this amendment is to allow the Minister to delegate those functions as appropriate.

Item 104 – Subsection 67A(2)

164. This item makes a minor technical amendment to subsection 67A(2). The effect of this amendment is that the Minister cannot delegate his or his powers under new section 53K. Section 53K enables the Minister to direct an inspector to deal with a pressure vessel which is a risk to public health or safety (see item 86).

Item 105 – After section 69B

165. This item inserts new sections 69C, 69D, 69E and 69F into the Ozone Act.

166. Sections 69C and 69D vest State and Territory courts with jurisdiction in relation to matters arising under the Ozone Act or the regulations. This amendment is required as a consequence of other amendments in this Bill which enable people to apply to State or Territory courts in relation to compensation, forfeitable goods and civil penalties.

167. Section 69E deals with compensation for acquisition of property. The purpose of this provision is to ensure that people receive just terms compensation, as required by section 51(xxxi) of the Constitution, if the operation of the Ozone Act or regulations results in the acquisition of property. This provision is modelled on similar provisions in the Historic Shipwrecks Act 1976 and is commonly used in Commonwealth legislation.

168. Section 69F empowers the Minister to make arrangements with the Minister of a State, the Australian Capital Territory, the Northern Territory or the Administrator of Norfolk Island in relation to the performance of functions by a magistrate. A copy of each instrument by which an arrangement is made, varied or revoked, must be published in the Gazette but is not a legislative instrument.

Item 106 – Section 70 and Item 107 – Section 70

169. These items increases the maximum penalty that can be prescribed for offences against the regulations to 50 penalty units for natural persons and 250 penalty units for bodies corporate. Currently the limit on penalties that can be prescribed by the regulations is set at specified monetary amounts. Setting the limit by reference to penalty units means that the penalty will increase (or
decrease) over time with a change in the value of a penalty unit ensuring the penalties remain sufficiently high to deter offences.

**Item 108 – After subclause 10(1) of Schedule 4**

170. This item, read in conjunction with item 2 of Schedule 2 of this Bill, provides that equipment pre-charged with hydrochlorofluorocarbon (HCFC) refrigerant, or, designed to operate on HCFC refrigerant, must not be manufactured or imported unless provided for in regulations. This allows for the ongoing staged phase-out of HCFC using equipment in Australia to complement the staged phase-out of the import of bulk HCFC that is needed to service this equipment.


171. These items provide for transitional matters as a consequence of the inclusion of civil penalties into the Ozone Act. The effect of these provisions is that where an instrument made under subsections 44(3), 44(6), 45(3) or 45(3B) of the Ozone Act is still in effect, references in those instruments to the criminal offence provisions of subsections 44(1), 44(5), 45(1) and 45(3A) are to be read as including a reference to the mirror civil penalty provisions in subsection 44(2A), 44(5B), 45(2A) and 45(3AB). The objective of this provision is to ensure that new instruments will not need to be made in order to cover the mirror civil penalty provisions inserted by this Bill.

**Item 113 – Application – reports under section 46 of the Ozone Protection and Synthetic Greenhouse Gas Management Act 1989**

172. This item clarifies the application of the amendments of section 46 of the Ozone Act made by items 71 - 76 of this Schedule. These amendments will apply in relation to a quarter starting after the commencement of this item.

**Item 114 – Application – licence periods of pre-charged equipment licences,**

173. This item clarifies the application of the amendments of section 19 of the Ozone Act made by item 28 of this Schedule. These amendments will apply in relation to pre-charged equipment licences granted after the commencement of this item.
Item 115 – Application – appointment of inspectors

174. This item clarifies the application of subsection 49(3) of the Ozone Act as inserted by item 79 of this Schedule. Subsection 49(3) will apply in relation to an appointment made after the commencement of this item.

Item 116 – Transitional – books, records or documents seized, removed or produced before commencement

175. This item provides for transitional matters related to the repeal of section 55 of the Ozone Act by item 87 of this Schedule. The effect of this provision is that section 55 of the Ozone Act, as in effect prior to its repeal, continues to apply to books, records or documents seized, removed or produced under the Ozone Act before the commencement of this item.

Item 117 – Transitional - things seized before commencement

176. These items provide for transitional matters related to the repeal of subsections 52(6) and (7) of the Ozone Act by item 86 of this Schedule. The effect of this provision is that subsections 52(6) and (7) of the Ozone Act, as in effect prior to repeal by this Schedule, continues to apply to things seized under the Ozone Act before the commencement of this item.

Item 118 - Transitional – forfeitable goods

177. This item is a transitional provision which provides that the amended definition of forfeitable goods (see item 88) encompasses goods involved in contraventions whether that contravention occurred before, at or after the commencement of this item 118. The purpose of this item is to clarify the application of the amended definition of forfeitable goods. This will avoid confusion as to what is or is not a forfeitable good and make is easier for inspectors to enforce the Act in the transition from the current provisions to the amended provisions, particularly, where a contravention occurred before the commencement of this Act but is not investigated until after the commencement. This might, in some cases, facilitate forfeiture by reference to a past event; however, the actual forfeiture will be prospective and relate to conduct which has always been prohibited by the Act.

Schedule 2 – OTHER AMENDMENTS

Item 1 – Paragraph 10(1)(a) of Schedule 4, Item 2 – Paragraph 10(1)(b) of Schedule 4 and Item 3 – At the end of paragraph 10(1)(c) of Schedule 4

178. These items amend Schedule 4 of the Ozone Act to extend the prohibition on the import or manufacture of refrigeration or air conditioning equipment that contains or is designed to run on a chlorofluorocarbon (CFC) refrigerant to cover refrigeration or air conditioning equipment containing or designed to run on an HCFC refrigerant.
179. These amendments allow ongoing staged phase-out of HCFC using equipment in Australia to complement the staged phase-out of the import of bulk HCFC that is needed to service this equipment.

180. The new paragraph 10(1)(b) also provides that the ban on equipment designed to operate on CFC or HCFC refrigerant applies where the equipment is also designed to operate using another substance. This amendment is to close a loophole which allowed equipment designed to operate on CFC to be retrofitted with another substance and a claim to be made that it did not fit into the category of “the equipment may only operate by using a CFC refrigerant”. Such retrofitting most often resulted in equipment that was not fit for purpose, not as energy efficient as it was designed to be and unsafe for the end user due to the higher operating pressures of the substituted refrigerants.