

OZONE PROTECTION ACT 1989 No. 208

NEW SOUTH WALES



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SCHEDULE 1 - OZONE DEPLETING SUBSTANCES

OZONE PROTECTION ACT 1989 No. 208

NEW SOUTH WALES



Act No. 208, 1989

An Act to empower the regulation and prohibition of the manufacture, sale, distribution, use, emission, re-cycling, storage and disposal of stratospheric ozone depleting substances and articles which contain those substances; and for other purposes. [Assented to 21 December 1989]

The Legislature of New South Wales enacts:

PART 1 - PRELIMINARY

Short title

1. This Act may be cited as the Ozone Protection Act 1989.

Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Object of Act

3. The object of this Act is to provide for a system of controls on substances which when released into and dispersed in the atmosphere act as atmospheric pollutants that contribute to depletion of ozone in the stratospheric ozone layer.

Definitions

4. (1) In this Act:

"**authorised officer**", in relation to a function under this Act, means a member of the staff of the Commission authorised in writing by the Commission, either generally or in a special case, to exercise that function;

"**Commission**" means the State Pollution Control Commission constituted by the State Pollution Control Commission Act 1970;

"**controlled article**" means an article or other thing (including plant and equipment) that:

- (a) contains a controlled substance; or
- (b) uses, or is designed or intended to use, a controlled substance in its operation,

and includes any substance with which a controlled substance is mixed;

"**controlled substance**" means:

- (a) any substance specified in Schedule 1 (Ozone depleting substances); or
- (b) any substance prescribed by the regulations as an ozone depleting substance on the recommendation of the Minister under section 5;

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"premises" includes:

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

"sell" means sell by wholesale or retail, and includes barter, supply for profit, offer or expose for sale, receive for sale, have in possession for sale, send, forward or deliver for sale and cause, suffer or allow to be sold, offered or exposed for sale;

"use" includes:

- (a) operate; and
- (b) use in the course of manufacture; and
- (c) have in possession for use.

(2) In this Act:

- (a) a reference to a function includes a reference to a power, authority and duty; and
- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

Recommendations concerning prescription of controlled substances

5. The Minister may recommend that a substance be prescribed as an ozone depleting substance if satisfied that the release into and dispersal in the atmosphere of the substance:

- (a) will contribute to the depletion of stratospheric ozone; or
- (b) is reasonably likely to contribute to the depletion of stratospheric ozone.

PART 2 - CONTROLS

General regulatory provisions

6. (1) The regulations may make provision for or with respect to:
- (a) regulating or prohibiting the manufacture, sale, distribution, conveyance, storage, possession and use of controlled substances and controlled articles; and
 - (b) regulating the design, installation, operation, servicing, maintenance, repair, modification or decommissioning of any controlled article or any plant or equipment used to manufacture such an article; and

- (c) requiring and regulating the recovery, re-cycling, disposal and destruction of controlled substances and controlled articles; and
- (d) regulating or prohibiting the emission of controlled substances into the atmosphere; and
- (e) the payment of compensation, out of money to be provided by Parliament, in connection with the operation of this Act.

(2) The other provisions of this Part are examples of the way in which the power in subsection (1) to make regulations can be exercised and are not (unless the provision specifically provides otherwise) intended to limit the operation of that subsection.

Licences and registration

7. The regulations may make provision for or with respect to:
- (a) the licensing of persons engaged in activities authorised to be regulated by the regulations; and
 - (b) the registration of premises used for the carrying out of any activity authorised to be regulated by the regulations; and
 - (c) the registration of any plant or equipment that contains a controlled substance or that uses a controlled substance in its operation; and
 - (d) the payment of licence and registration fees.

Recovery, re-cycling etc.

8. The regulations may make provision for or with respect to the recovery, re-cycling, storage, disposal and destruction of controlled substances and controlled articles, including provision:

- (a) requiring the manufacturer or seller of any controlled article to take specified steps to recover any controlled substance that the article contains; and
- (b) requiring such a manufacturer or seller to institute specified measures to ensure or encourage the recovery of controlled substances (including, for example, measures for the payment and refund of deposits on controlled articles); and
- (c) requiring the re-cycling of controlled substances so recovered; and
- (d) requiring the destruction or storage of controlled substances; and

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- (e) authorising the Commission to undertake the recovery, storage and destruction of controlled substances and empowering the Commission to recover its costs in doing so from the manufacturer or seller of any article that contained the controlled substance so recovered; and
- (f) specifying the required means of disposal, storage and destruction of controlled substances and standards of the design and operation of, and permissible emissions by, disposal equipment.

Codes of practice

9. The regulations may make provision for or with respect to:

- (a) the formulation, approval, adoption and revision of industry codes of practice relating to any activity that is authorised to be regulated by the regulations; and
- (b) requiring compliance with any such codes of practice.

Accreditation of courses etc.

10. The regulations may make provision, in connection with requirements as to the qualifications of persons engaged in the design, installation, operation, servicing, maintenance, repair, modification or decommissioning of plant or equipment, for or with respect to:

- (a) for the approval and accreditation by the Commission of training courses, training institutions and examining bodies; and
- (b) authorising the Commission to set up examining bodies and conduct examinations.

Records and returns

11. (1) The regulations may make provision for or with respect to requiring persons who carry on activities that are authorised to be regulated by the regulations to keep specified records and furnish specified returns to the Commission concerning those activities.

(2) The regulations may require such a person to maintain the record for a specified period even if the person ceases to carry on the activities concerned.

Labelling etc.

12. The regulations may make provision for or with respect to requiring controlled substances or controlled articles to be labelled or identified in a specified manner (including provision for the identification of substances by the addition of colours or odours).

Exemptions

13. (1) The regulations may make provision for or with respect to exemptions (whether or not subject to conditions) from compliance with all or specified provisions of the regulations, including provision:

- (a) authorising the Commission or the Minister to grant such an exemption; and
- (b) specifying circumstances in which an exemption granted under any law of another State, a Territory or the Commonwealth relating to stratospheric ozone protection is to be considered to be an exemption granted under the regulations.

(2) The regulations may authorise the granting of an exemption by the Minister only if the exemption is:

- (a) granted on the recommendation of the Commission; or
- (b) granted to apply for a period not exceeding 60 days.

PART 3 - ENFORCEMENT

Powers of Commission to require information etc.

14. (1) This section applies to any person who carries on, or who apparently carries on or is in charge of, a business that involves the manufacture, sale or use of a controlled substance or controlled article.

(2) The Commission may, by notice in writing given to a person to whom this section applies, require the person:

- (a) to furnish to the Commission specified information or information of a specified kind as to the business activities carried on by the person in so far as they relate to controlled substances or controlled articles; and
- (b) to confer with the Commission in relation to the manner in which the person carries on any such activities.

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(3) A person given such a notice must comply with the notice within the time required by the notice.

Maximum penalty: 50 penalty units in the case of a corporation or 20 penalty units in any other case.

(4) Any statement made to the Commission pursuant to a requirement made under this section is not admissible in evidence in any proceedings against any natural person for an offence, except the offence of failing to comply with a requirement made under this section.

Disclosure of information

15. (1) A person must not disclose any information relating to any manufacturing or other industrial or commercial secrets or working processes and obtained in connection with the administration or execution of this Act or the regulations, unless the disclosure:

- (a) is made with the consent of the person from whom the information was obtained; or
- (b) is made in connection with the administration or execution of this Act or the regulations; or
- (c) is made with the prior permission of the Minister; or
- (d) is ordered by a court, or by any other body or person authorised by law to examine witnesses, in the course of, and for the purpose of, the hearing and determination by that court, body or person of any matter; or
- (e) is made by an authorised officer to an officer or authority engaged in administering or executing a law of the Commonwealth or of another State or a Territory relating to stratospheric ozone protection.

Maximum penalty: 20 penalty units.

(2) The Minister is not to grant the permission referred to in subsection (1) (c) unless satisfied that to do so would be in the public interest.

Powers of inspection etc.

16. (1) An authorised officer may enter premises if the authorised officer suspects on reasonable grounds that:

- (a) an offence against this Act or the regulations is being or has been committed on the premises; or
 - (b) the premises are being used for the carrying on of a business in the course of which any controlled substance or controlled article is manufactured, sold or used.
- (2) An authorised officer is not entitled to enter a part of premises used for residential purposes, except:
- (a) with the consent of the occupier; or
 - (b) under the authority of a search warrant.
- (3) An authorised officer who enters premises under this section may:
- (a) search the premises and inspect any plant, equipment, substance or article found there; and
 - (b) require any person there to answer questions or produce records under the person's control concerning any business apparently carried on there; and
 - (c) make copies of or take extracts from records so produced; and
 - (d) make such examination and inquiry and such tests as the authorised officer considers necessary to ascertain whether the provisions of this Act or the regulations are being or have been complied with; and
 - (e) take such photographs as the authorised officer considers necessary in connection with the administration of this Act; and
 - (f) take without payment, for the purpose of examination or testing, samples of any substance that the authorised officer suspects on reasonable grounds is a controlled substance in respect of which an offence against this Act or the regulations has been or is being committed; and
 - (g) seize and remove anything that the authorised officer suspects on reasonable grounds to be a controlled substance or controlled article in respect of which an offence against this Act or the regulations has been or is being committed.
- (4) A requirement under this section to produce a record includes, where the record is not written at all (as, for example, in the case of records stored electronically) or not written wholly in the English language, a requirement to produce a statement, written in the English language, setting out such of the particulars in the record as are not written in the English language.

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(5) An authorised officer is not authorised to take a sample of any substance or to remove anything that appears to the authorised officer to be in the custody of a person unless the authorised officer makes out and tenders to the person a receipt.

(6) Every authorised officer is to be provided with a certificate of authority and on applying for admission to any premises must, if requested to do so, produce the certificate to the occupier of the premises.

Obstruction etc. of authorised officer

17. A person must not:

- (a) assault, threaten, hinder or obstruct an authorised officer when the authorised officer is exercising any function of an authorised officer under this Act; or
- (b) fail to comply with a requirement made by an authorised officer under the authority of this Act.

Maximum penalty: 50 penalty units.

Orders - compliance with Act

18. (1) If a person has contravened, is contravening or is proposing to contravene a provision of this Act or the regulations, the Land and Environment Court may, on the application of the Commission, grant an order:

- (a) restraining the person from doing so; or
- (b) requiring the person to do any act or thing necessary to avoid or remedy the contravention.

(2) The Court may, before considering the application, grant an interim order restraining a person from engaging in conduct pending the determination of the application.

(3) The Court may rescind or vary such an order or interim order.

(4) If the Commission makes an application for an order under this section, the Court is not to require the Commission or any other person, as a condition of granting an interim order, to give any undertaking as to damages.

(5) If the Court has power under this section to grant an order, the Court may, either in addition to or in substitution for the grant of the order, order the person to pay damages to any person or to the Crown.

Search warrants

19. (1) An authorised officer may apply to an authorised justice for the issue of a search warrant if the authorised officer believes on reasonable grounds that a provision of this Act or the regulations is being or has been contravened on any premises.

(2) An authorised justice to whom such an application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising an authorised officer named in the warrant:

- (a) to enter the premises; and
- (b) to exercise any function of an authorised officer under section 16.

(3) Part 3 of the Search Warrants Act 1985 applies to a search warrant issued under this section.

(4) In this section:

"authorised justice" means a Magistrate or a justice of the peace employed in the Attorney General's Department.

Penalty notices for certain offences

20. (1) An authorised officer may serve a penalty notice on a person if it appears to the officer that the person has committed an offence under this Act or the regulations, being an offence prescribed by the regulations for the purposes of this section.

(2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person may pay, within the time and to the person specified in the notice, the amount of penalty prescribed by the regulations for the offence if dealt with under this section.

(3) A penalty notice may be served personally or by post.

(4) If the amount of penalty prescribed for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.

(5) Payment under this section is not to be regarded as an admission of liability for the purpose of, nor in any way to affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.

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- (6) The regulations may:
- (a) prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence; and
 - (b) prescribe the amount of penalty payable for the offence if dealt with under this section; and
 - (c) prescribe different amounts of penalties for different offences or classes of offences.

(7) The amount of a penalty prescribed under this section for an offence is not to exceed the maximum amount of penalty which could be imposed for the offence by a court.

(8) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings which may be taken in respect of offences.

Offence by employee - liability of employer

21. (1) If an employee contravenes any provision of this Act or the regulations, the employer is to be taken to have contravened the same provision (whether or not the employee contravened the provision without the employer's authority or contrary to the employer's orders or instructions).

(2) It is a defence in proceedings against an employer for such a contravention if it is established:

- (a) that the employer had no knowledge of the contravention; and
- (b) that the employer could not, by the exercise of due diligence, have prevented the contravention.

(3) An employer may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the employee has been proceeded against or convicted under that provision.

Offences by corporations

22. (1) If a corporation contravenes any provision of this Act or the regulations, each person who is a director of the corporation or who is concerned in the management of the corporation is to be taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.

(2) A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the corporation has been proceeded against or convicted under that provision.

(3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation against this Act or the regulations.

Proceedings for offences

23. (1) Proceedings for an offence under this Act or the regulations are to be disposed of summarily before:

- (a) a Local Court constituted by a Magistrate; or
- (b) the Land and Environment Court in its summary jurisdiction.

(2) Despite any provision of the Justices Act 1902 or any other Act, proceedings for an offence against this Act or the regulations may be commenced not later than 3 years after the date alleged to be the date on which the offence was committed.

(3) Proceedings may be taken and prosecuted only by a person acting with the authority of the Commission and may not be taken in the Land and Environment Court except with the consent of the Minister.

(4) The maximum pecuniary penalty that may be imposed by a Local Court in proceedings for an offence under this Act or the regulations is 100 penalty units or the maximum penalty applicable to the offence, whichever is less.

(5) In proceedings for an offence, a certificate by the Commission or the Minister as to the granting of authority or consent to prosecute is evidence of that authority or consent.

Forfeiture

24. (1) When a person is convicted of an offence against this Act or the regulations, the court may order forfeiture to the Crown of any controlled substance or controlled article in respect of which the offence was committed if the court finds it to be the property of the person so convicted.

(2) On application made by or on behalf of the Commission in the prescribed manner, a Local Court may order forfeiture to the Crown

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of any controlled substance or controlled article seized by an authorised officer under section 16.

(3) The making of an order under this section operates to forfeit the property concerned to the Crown.

(4) Forfeited property is to be disposed of as the Minister directs.

Retention and disposal of seized property

25. (1) A substance or article seized by an authorised officer under section 16 may be retained for 6 months (or a longer period approved under subsection (3)) but then must be returned to the person from whom it was seized unless:

- (a) it has been forfeited to the Crown under section 24; or
- (b) the Commission gives notice in the prescribed manner before that period expires to the effect that application will be made under section 24 on a specified day for forfeiture to the Crown of the substance or article.

(2) Unless the substance or article is forfeited to the Crown as a result of the making of that application, the Commission is to return it to the person from whom it was seized or to the person who appears to the Commission to be entitled to possession of it.

(3) A Local Court may on the application of the Commission approve the retention of a seized substance or article for a specified period longer than 6 months.

PART 4 - GENERAL

Act binds Crown

26. This Act binds the Crown in right of New South Wales and, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

Service of documents

27. (1) A document required or permitted by this Act or the regulations to be served on a person, whether the expression "serve", "give" or "send" or any other expression is used, may be served:

- (a) on a natural person by delivering it to the person personally or by leaving it at, or by sending it by pre-paid post to, the address

of the place of residence or business of the person last known to the person serving the document; or

- (b) on a body corporate by leaving it at, or sending it by pre-paid post to, the head office, a registered office or a principal office of the body corporate.

(2) Nothing in this section:

- (a) affects the operation of any other law of the State or elsewhere that authorises the service of a document in any other way; or
- (b) affects the power of a court to authorise service of a document in any other way.

Delegation

28. (1) The Commission may delegate to an officer of the Commission a function of the Commission exercisable under this Act.

(2) A power of delegation under this section may not itself be delegated under this section.

Education and research

29. The Commission may:

- (a) conduct research into, and investigate measures to counteract, the depletion of stratospheric ozone; and
- (b) conduct and fund the conduct of education and advertising to promote an awareness and understanding of the causes and effects of the depletion of stratospheric ozone and measures to counteract it.

Regulations

30. The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed, or that is necessary or convenient to be prescribed, for carrying out or giving effect to this Act.

Penalty

31. A regulation may create an offence punishable by a penalty not exceeding 200 penalty units in the case of a corporation or, in any other case, 100 penalty units.

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Consultation prior to making of regulations

32. (1) Regulations may only be made on the recommendation of the Minister.

(2) Before recommending that regulations be made, the Minister must consult with a committee consisting of the Minister and the following Ministers:

- (a) Minister for Health;
- (b) Minister for Agriculture and Rural Affairs;
- (c) Minister for Business and Consumer Affairs;
- (d) Minister for Minerals and Energy;
- (e) Minister for Natural Resources;
- (f) Minister for Local Government and the Minister for Planning.

Relationship to Environmental Offences and Penalties Act 1989

33. This Act is to be read and construed as being in addition to and not in derogation of the Environmental Offences and Penalties Act 1989.

Amendment of Environmental Offences and Penalties Act 1989

34. The Environmental Offences and Penalties Act 1989 is amended by inserting after section 6 the following section:

Emission of ozone depleting substances etc.

6A. A person who wilfully or negligently causes any controlled substance within the meaning of the Ozone Protection Act 1989 to be emitted into the atmosphere in contravention of the regulations under that Act and so as to harm or be likely to harm the environment is guilty of an offence against this Act.

Amendment of Search Warrants Act 1985 No. 37, s. 10 (Definitions)

35. The Search Warrants Act 1985 is amended by inserting in the definition of "search warrant" in section 10 in alphabetical order of Acts the following matter:

section 19 of the Ozone Protection Act 1989.

Amendment of Justices Act 1902 No. 27, s. 100I (Definitions)

36. The Justices Act 1902 is amended by inserting (in alphabetical order) in the statutory provisions listed under paragraph (a) of the definition of "penalty notice" in section 100I the following matter:

Ozone Protection Act 1989, section 20;

Amendment of Land and Environment Court Act 1979 No. 204

37. The Land and Environment Court Act 1979 is amended:

- (a) by inserting after section 20 (1) (ba) the following paragraph:
 - (bb) proceedings under section 18 of the Ozone Protection Act 1989;
- (b) by inserting in section 20 (3) (a) in alphabetical order of Acts the following:
 - Ozone Protection Act 1989;
- (c) by inserting after section 21 (a) the following paragraph:
 - (aa) proceedings under section 23 of the Ozone Protection Act 1989;

Amendment of State Pollution Control Commission Act 1970 No. 95

38. The State Pollution Control Commission Act 1970 is amended:

- (a) by omitting from paragraph (e) of the definition of "Pollution Control Acts" in section 5 the word "and";
- (b) by inserting at the end of paragraph (f) of the definition of "Pollution Control Acts" in section 5 the following word and paragraph:
 - and
 - (g) the Ozone Protection Act 1989;

Expiry of Act

39. (1) This Act expires at the beginning of the day that is 5 years after the day on which section 6 (General regulatory provisions) commences unless either House of Parliament passes a resolution that this Act is not to expire in accordance with this subsection.

(2) Either House of Parliament may pass a resolution that this Act is not to expire in accordance with subsection (1), but such a resolution has no effect unless passed before the time at which the expiry would, but for the resolution, take effect.

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SCHEDULE 1 - OZONE DEPLETING SUBSTANCES

(Sec. 4)

Trichlorofluoromethane (CFC-11)
Dichlorodifluoromethane (CFC-12)
Trichlorotrifluoroethane (CFC-113)
Dichlorotetrafluoroethane (CFC-114)
(Mono)chloropentafluoroethane (CFC-115)
Bromochlorodifluoromethane (Halon-1211)
Bromotrifluoromethane (Halon-1301)
Dibromotetrafluoroethane (Halon-2402)

[*Minister's second reading speech made in -
Legislative Assembly on 22 November 1989
Legislative Council on 29 November 1989*]