

Ozone Protection Act 1989

As at 22 December 1999

Reprint history:

Reprint No 1

3 October 1995

Long Title

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.

Part 1 – Preliminary

1 Name of Act

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

2 Commencement

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

3 Object of Act

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.

4 Definitions

(1) In this Act: "**authorised officer**" means an authorised officer under the *Protection of the Environment Operations Act 1997*. "**Authority**" means the Environment Protection Authority. "**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.

"**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.

"**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.

5 Recommendations concerning prescription of controlled substances

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

6 General regulatory provisions

- (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.

7 Licences and registration

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.

8 Recovery, re-cycling etc

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
- (e) authorising the Authority to undertake the recovery, storage and destruction of controlled substances and empowering the Authority 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.

9 Codes of practice

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 as in force for the time being.

10 Accreditation of courses etc

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 Authority of training courses, training institutions and examining bodies, and
- (b) authorising the Authority to set up examining bodies and conduct examinations.

11 Records and returns

- (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 Authority 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.

12 Labelling etc

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).

13 Exemptions

- (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 Authority 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 Authority, or
 - (b) granted to apply for a period not exceeding 60 days.

Part 3 – Enforcement

14 Powers of Authority to require information etc

- (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 Authority may, by notice in writing given to a person to whom this section applies, require the person:
 - (a) to furnish to the Authority 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 Authority in relation to the manner in which the person carries on any such activities.

(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 Authority 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.

15 Disclosure of information

(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.

16-20 (Repealed)

21 Offence by employee--liability of employer

(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.

22 Offences by corporations

(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.

23-25 (Repealed)

Part 4 – General

26 Act binds Crown

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.

27 Service of documents

(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.

28 (Repealed)

29 Education and research

The Authority 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.

30 Regulations

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.

31 Penalty

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.

32 Consultation prior to making of regulations

- (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.

33 Relationship to Protection of the Environment Operations Act 1997

- (1) This Act is to be read and construed as being in addition to and not in derogation of the *Protection of the Environment Operations Act 1997*.
- (2) Chapter 7 (Investigation) and Chapter 8 (Criminal and other proceedings) of the *Protection of the Environment Operations Act 1997* apply to this Act and the regulations.

34-39 (Repealed)

Schedule 1 Ozone depleting substances

(Section 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)

Historical notes

The following abbreviations are used in the Historical notes:

Am	amended	LW	legislation website	Sch	Schedule
Cl	clause	No	number	Schs	Schedules
ClI	clauses	p	page	Sec	section
Div	Division	pp	pages	Secs	sections
Divs	Divisions	Reg	Regulation	Subdiv	Subdivision
GG	Government Gazette	Regs	Regulations	Subdivs	Subdivisions
Ins	inserted	Rep	repealed	Subst	substituted

Table of amending instruments *Ozone Protection Act 1989 No 208*. Assented to 21.12.1989. Date of commencement, 31.3.1991, sec 2 and GG No 45 of 15.3.1991, p 2082. This Act has been amended as follows:

1991	No 17	<i>Statute Law (Miscellaneous Provisions) Act 1991</i> . Assented to 3.5.1991. Date of commencement of the provision of Sch 1 relating to the <i>Ozone Protection Act 1989</i> , assent, sec 2.
	No 60	<i>Protection of the Environment Administration Act 1991</i> . Assented to 12.12.1991. Date of commencement of the provisions of Sch 3 relating to the <i>Ozone Protection Act 1989</i> , 1.3.1992, sec 2 and GG No 26 of 21.2.1992, p 1043.
	No 92	<i>Search Warrants (Amendment) Act 1991</i> . Assented to 17.12.1991. Date of commencement, 20.9.1992, sec 2 and GG No 116 of 18.9.1992, p 6837.
1993	No 46	<i>Statute Law (Miscellaneous Provisions) Act 1993</i> . Assented to 15.6.1993. Date of commencement of the provision of Sch 1 relating to the <i>Ozone Protection Act 1989</i> , assent, Sch 1.
1997	No 7	<i>Statute Law (Miscellaneous Provisions) Act (No 2) 1997</i> . Assented to 17.12.1997. Date of commencement of Sch 2.21, assent, sec 2 (2).

	14 7	
	No 15 6	<i>Protection of the Environment Operations Act 1997</i> . Assented to 19.12.1997. Date of commencement, 1.7.1999, sec 2 and GG No 178 of 24.12.1998, p 9952.
199 9	No 85	<i>Statute Law (Miscellaneous Provisions) Act (No 2) 1999</i> . Assented to 3.12.1999. Date of commencement of Sch 4, assent, sec 2 (1).

Table of amendments

Sec 4	Am 1991 No 60, Sch 3; 1993 No 46, Sch 1; 1997 No 147, Sch 2.21; 1997 No 156, Sch 4.14 [1].
Sec 9	Am 1991 No 17, Sch 1.
Sec 16	Rep 1997 No 156, Sch 4.14 [2].
Sec 17	Rep 1997 No 156, Sch 4.14 [3].
Sec 18	Rep 1997 No 156, Sch 4.14 [4].
Sec 19	Am 1991 No 92, Sch 2. Rep 1997 No 156, Sch 4.14 [5].
Sec 20	Rep 1997 No 156, Sch 4.14 [6].
Sec 23	Am 1991 No 60, Sch 3. Rep 1997 No 156, Sch 4.14 [7].
Sec 24	Rep 1997 No 156, Sch 4.14 [8].
Sec 25	Rep 1997 No 156, Sch 4.14 [9].
Sec 28	Rep 1991 No 60, Sch 3.
Sec 33	Am 1997 No 156, Sch 4.14 [10] [11].
Secs 34-38	Rep 1999 No 85, Sch 4.
Sec 39	Rep 1997 No 156, Sch 4.14 [12].
The whole Act (except sec 28)	Am 1991 No 60, Sch 3 ("Commission" omitted wherever occurring, "Authority" inserted instead).