

Ozone Layer Protection Act 2010

REPUBLIC OF VANUATU

OZONE LAYER PROTECTION ACT NO. 27 OF 2010

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Commencement: 24/01/2011

OZONE LAYER PROTECTION ACT NO. 27 OF 2010

An Act to control ozone depleting substances in Vanuatu in accordance with the obligations applying under the Vienna Convention for the Protection of the Ozone Layer and the Montreal Protocol, and for related purposes.

Be it enacted by the President and Parliament as follows-

PART 1 PRELIMINARY

1 Interpretation

(1) In this Act, unless the contrary intention appears:

aerosol spray and **aerosol** means any substance packed under pressure in a container with a device for releasing it directly into the atmosphere as a foam or fine spray, or a liquid or solid stream;

bulk, in relation to any controlled substance means any controlled substance that is acquired in a non-processed form, whether alone or in a mixture and includes any controlled substance that is acquired in a non-processed form, whether alone or in a mixture, that has been

recovered, cleaned (by filtering or drying) or reclaimed (by filtering, drying, distillation or chemical treatment). Bulk does not include any controlled substance that is in a manufactured product;

controlled substance means any substance specified in the Schedule;

Convention means the Vienna Convention for the Protection of the Ozone Layer (Adopted at Vienna on 22 March 1985);

Director means the Director responsible for the Department of Environmental Protection and Conservation;

export and exportation means to take or cause to be taken out of Vanuatu;

import and importation means to bring or cause to be brought into Vanuatu;

Minister means the Minister responsible for the Department of Environmental Protection and Conservation;

Montreal Protocol means the Montreal Protocol on Substances that Deplete the Ozone Layer (Adopted at Montreal on 16 September 1987), and includes all amendments to the Protocol that are ratified by Vanuatu from time to time;

National Ozone Advisory Committee means the Committee established under section 28;

non-complying country means any country that is not a party to the Montreal Protocol;

Officer means an officer appointed under the Environmental Protection and Conservation Act [CAP 283], any police officer and any customs officer appointed under the Customs Act [CAP 257];

plastic foam means any plastics in cellular mass that are formed with the use of any gas or volatile liquid introduced into liquid plastic to make bubbles;

sale means a method of disposition for valuable consideration (including barter), and includes:

- (a) the disposition to an agent for sale on consignment;
 - (b) offering for sale or attempting to sell, or receiving or having in possession for sale, or exposing for sale, or sending or delivering for sale, or causing or permitting any of these things to be done;
 - (c) the disposal by way of lottery, raffle or game of chance,
- and **sell** and **sold** have corresponding meanings;

solvent means any aqueous or organic product designed to clean a component or assembly by dissolving the contaminants present on its surface.

(2) Words used in this Act shall have the same meaning as is given to them in the Montreal Protocol, unless a contrary intention appears.

2 Objects of the Act

The objects of this Act are to:

- (a) protect human health and the environment from adverse effects resulting or likely to result from human activities which modify or are likely to modify the ozone layer; and
- (b) phase out ozone depleting substances as soon as possible except for essential uses; and

(c) give effect to the Vanuatu's obligations under the Convention for the Protection of the Ozone Layer and the Montreal Protocol on Substances that Deplete the Ozone Layer.

3 Precautionary principle

(1) Notwithstanding any provision in any other Act, any person or agency:

- (a) who has responsibilities under this Act; or
- (b) whose functions and powers may relate to any matter or thing involving the use, manufacture, sale, handling, storage or movement of ozone depleting substances within Vanuatu,

is to apply the precautionary principle when discharging their responsibilities and functions, or exercising their powers.

(2) For the purposes of this Act, the precautionary principle is applied if, in the event of a threat of damage to the environment or a risk to human health in Vanuatu, a lack of scientific certainty regarding the extent of adverse effects is not used to prevent or avoid a decision being made to minimise the potential adverse effects or risks from the importation, use, storage, handling or movement of ozone depleting substances within Vanuatu.

PART 2 PROHIBITIONS AND RESTRICTIONS ON CONTROLLED SUBSTANCES

4 Prohibitions and restrictions on the importation of controlled substances

(1) The importation into Vanuatu of any controlled substance specified in Parts I to VI (inclusive) of the Schedule is prohibited.

(2) Subject to section 6, the importation into Vanuatu of the following is prohibited:

- (a) any bulk methyl bromide, as specified in Part VIII of the Schedule; and
- (b) any bulk hydrochlorofluorocarbons, as specified in Part VII of the Schedule (whether alone or in a mixture).

5 Prohibitions on the importation of certain goods

(1) Subject to subsection 6(2), the importation into Vanuatu of the following goods (whether new or second hand) is prohibited:

- (a) aerosol spray that contains a controlled substance, other than methyl bromide;
- (b) plastic foam, or any goods that contain plastic foam, that is or are manufactured using a controlled substance specified in Part I or Part II of the Schedule including any;
 - (i) extruded polystyrene foam;
 - (ii) polystyrene boardstock;

(iii) thermoformed plastic packaging such as supermarket meat or produce trays, egg cartons, fast-food containers, disposable plates and cups, horticultural packaging trays and packaging netting;

(c) dry-cleaning machine that contains or is designed to use a controlled substance as a solvent;

(d) fire extinguisher that contains a controlled substance;

(e) dehumidifiers, refrigerators, freezers, air-conditioners, supermarket display cases, heat pumps and water coolers that contain a controlled substance listed in Part I and Part II of the Schedule.

(2) Subject to subsection 6(2), the importation of any of the following goods containing any controlled substance (other than one specified in Part VII or Part VIII of the Schedule) is prohibited:

(a) refrigerators and freezers;

(b) dehumidifiers and domestic and commercial refrigeration, air conditioning and heat pump equipment;

(c) air conditioning and heat pump units;

(d) automobile and truck air conditioning units (whether incorporated in vehicles or not);

(e) ice machines and water coolers;

(f) aerosol products (other than medical aerosols);

(g) portable fire extinguishers;

(h) insulation boards, panels and pipe covers;

(i) pre-polymers (a reactive mixture of isocyanate and polyoll to which chlorofluorocarbons are added to make rigid plastic foams).

6 Exemptions in relation to imports

(1) The following exemptions may be given in relation to prohibition and restriction of imports referred to in section 4, in accordance with a permit issued under Part 3 in the following manner:

(a) a Quarantine and Pre-shipment Permit in accordance with section 14 in relation to methyl bromide;

(b) a Medical or Health Related Permit in accordance with section 15 in relation to medical products using any controlled substance;

(c) a Base Year License in accordance with section 20 in relation to controlled substances specified in Part VII of the Schedule.

(2) Section 5 does not make it unlawful for any person to:

- (a) import any controlled substance, or any goods containing any controlled substance, that is or are used only as packaging, or part of the packaging, of any other imported goods; or
- (b) import any goods that are personal or household effects, and in respect of which the Director of Customs is satisfied that they are not intended for any other person, or for gift, sale or exchange.

(3) This Act does not prevent an exemption being granted by the Director of Customs in respect of the import or subsequent export of any substances or goods only for the purpose of being transhipped into another ship or aircraft for carriage to a destination that is outside the territorial limits of Vanuatu.

7 Regulation of exports of controlled substances

(1) The exportation from Vanuatu of any bulk controlled substance specified in Part I - VI of the Schedule to any country is prohibited.

(2) A person who intends to export any bulk controlled substance must apply to the Director for approval, and is to give particulars of:

- (a) the substance to be exported; and
- (b) the date and amount of the intended export; and
- (c) the destination city and country, and the receiving body of the substance; and
- (d) the intended use or disposal of the substance at its destination.

(3) The Director may approve the export of any bulk controlled substance that has been retrieved from vehicles, goods and equipment in Vanuatu and which is to be exported for the purposes of safe disposal in a foreign country.

(4) An approval given under subsection (3) must be consistent with all requirements applying under the Convention or the Montreal Protocol, and must require that the storage, movement and disposal of the controlled substance be undertaken in accordance with accepted international best practice.

8 Prohibitions on manufacture of controlled substances

The manufacture within Vanuatu of any of the following substances or goods is prohibited:

- (a) any controlled substance;
- (b) aerosol spray that contains any controlled substance other than methyl bromide;
- (c) plastic foam, or any goods that contain plastic foam, that is or are manufactured using any controlled substance specified in Part I or Part II of the Schedule (including any of the goods referred to in paragraph 5(1)(b));
- (d) dry-cleaning machine that contains or is designed to use any controlled substance as a solvent;
- (e) fire extinguisher that contains any controlled substance.

9 Prohibitions on sales of controlled substances

Subject to section 10, the sale in Vanuatu of the following goods is prohibited:

- (a) any goods specified in paragraph 8(a) to (d) (inclusive); and
- (b) any fire extinguisher that contains any controlled substance listed in Parts I to VI (inclusive) of the Schedule.

10 Exemptions in relation to sales

Section 9 does not make it unlawful for any person to sell:

- (a) any second hand goods; or
- (b) any goods in respect of which a permit granted under Part 3 applies.

PART 3 PERMITS, REGISTRATION AND LICENCING

Division 1 – General

11 General principles to be applied to permits, registrations and licenses

(1) The following matters are to be taken into account when considering an application under this Part:

- (a) the obligations of Vanuatu under the Convention and the Montreal Protocol; and
- (b) the need to phase out ozone depleting substances, except for essential uses; and
- (c) whether any alternative products are available to be used instead of the ozone depleting substance; and
- (d) the application of any import quota in accordance with any regulations made under this Act; and
- (e) the need to ensure that all registered and licensed importers of controlled substances under permits are given fair and equitable access to rights of importation under permits and licenses granted under this Part; and
- (f) any requirement that may be imposed in relation to the use of any ozone depleting substance so as to minimise its effect on the ozone layer.

(2) A permit, registration or license must not be granted under this Part if the grant is inconsistent with any recommendation made by the National Ozone Advisory Committee.

12 General provisions in relation to permits, registrations and licenses

(1) The following requirements apply to all permits, registrations and licenses issued under this Part:

- (a) an application is to be made to the Director on a form approved from time to time by the Director, and must otherwise be in accordance with any requirements imposed by the Director; and
- (b) the applicant is to provide any information, or further information, required by the Director; and
- (c) the application is to be accompanied by the prescribed fee and such additional fees as may be determined from time to time by the Director (except in relation to an application made by any Department or agency of Government, which is to be exempt from fees); and
- (d) a permit, registration or license may not be transferred; and
- (e) the permit or license holder must submit an annual report (in the case of a permit holder) or a bi-annual report (in the case of a license holder) to the Director on a date determined by the Director and the report must specify:
 - (i) the amount of any controlled substance imported or consumed; and
 - (ii) the uses to which the controlled substance was put; and
 - (iii) any other matter that the Director may from time to time require be included in the report; and
- (f) a permit or licence is subject to such conditions imposed by the Director, including any condition requiring compliance with any approval, permission, licence or accreditation available in another country relating to:
 - (i) any controlled substance; or
 - (ii) any equipment used in relation to a controlled substance; or
 - (iii) the manner in which a controlled substance may be used; and
- (g) the Director may revoke a permit, registration or license if the he or she is satisfied that:
 - (i) the permit, registration or license holder has been convicted of any offence against this Act or any other offence involving ozone depleting substances; or
 - (ii) the permit, registration or license holder provided false or misleading information in relation to the application for the permit; or
 - (iii) the permitted import contravenes any obligation under the Convention or the Montreal Protocol; and
- (h) licenses granted under this Part are only valid for a period of 12 months from the date of issue, and may be renewed for periods not exceeding 12 months; and
- (i) any imports made under any permit or license issued under this Part is subject to the Customs Act [CAP 257] and the Plant Protection Act [CAP 239].

(2) A permit or license issued under this Part may not be renewed if the permit or license holder has not complied with the requirements of paragraph 12(1)(e) or any conditions of the permit or license.

13 Provision of information relevant to controlled substances

- (1) The Director may make a written request to any person:
 - (a) holding a licence, permit or registration under this Act; or

(b) who possesses or controls any controlled substance,

to submit reports or records relating to a controlled substance, or to provide relevant information or data for the purpose of reporting under the Convention and the Montreal Protocol.

(2) A person, to whom a written request has been made under subsection (1), who refuses or fails to comply with the request, is guilty of an offence punishable on conviction to a fine not exceeding VT250,000.

(3) For the purposes of reporting under the Convention and the Montreal Protocol, the Director has the power to access to any information held by any Ministry or government agency relating to controlled substances in Vanuatu.

Division 2 – Permits

14 Quarantine and pre-shipment permits

(1) In this section:

quarantine applications means any treatments to prevent or control the introduction, establishment or spread of quarantine pests (including diseases);

pre-shipment applications means any treatments applied directly preceding and in relation to export, to meet the phytosanitary or sanitary requirements of the importing country, or the existing phytosanitary or sanitary requirements of the exporting country.

(2) The Director may, after consulting the Director of Quarantine, grant a permit under this section in relation to the importation of methyl bromide if he or she is satisfied that it is to be used for legitimate quarantine or pre-shipment applications.

15 Medical and health related permits

(1) The Director may, after consulting the Director of Public Health, grant a permit under this section in relation to the importation of any product containing a controlled substance, if he or she is satisfied that the controlled substance has a medical application relating to the protection of life or health.

(2) The Director may, after consulting with the National Ozone Advisory Committee, grant a permit for the importation of any product containing any controlled substance specified in Parts I, II, IV of the Schedule, if he or she is satisfied, that the product is necessary for human health or safety.

16 Import permits for Approved Importers

A person who wishes to import a controlled substance in any form must:

(a) be registered as an Approved Importer under subsection 18(2); and

(b) apply to the Director for a permit in the manner set out in subsection 12(1).

17 Goods for which no permit may apply

(1) A permit issued under this Part must not allow the importation of the following:

- (a) any dry-cleaning machine which contains or is designed to use any bulk controlled substance as a solvent; and
- (b) any goods specified in subsection 5(2) imported from any non-complying country; and
- (c) any aerosol or fire extinguisher prohibited by this Act, except where its use is necessary for human health.

(2) A permit that contravenes subsection (1) is null and void.

Division 3 – Registration and licensing

18 Registration of Approved Importers and Approved Facilities

(1) A person who:

- (a) wishes to import, purchase, sell, store, process, recover, recycle or refill a controlled substance; or
- (b) intends to use any premises or facility for the sale, storage, processing, recovery, recycling, refilling or purchasing for resale of any controlled substance,

must apply to the Director to be registered as an Approved Importer or Approved Facility.

(2) The Director may, on the recommendation of the National Ozone Advisory Committee, approve an application if he or she is satisfied that the applicant:

- (a) has not been convicted of any offence against this Act or any other offence involving ozone depleting substances; and
- (b) has not provided any false or misleading information in relation to the application to be registered; and
- (c) has the necessary skills, trained staff and equipment to:
 - (i) minimise emissions of the controlled substance; and
 - (ii) recover, store and deal with controlled substances,

in a manner which does not contravene any obligation or requirements under the Convention and the Montreal Protocol and is in accordance with accepted best practice.

(3) A person approved under this section is to be registered as an Approved Importer or Approved Facility for a period of up to 3 years, provided that during this period the person

does not commit any offences under this Act.

(4) The Director is to maintain a register of Approved Importers and Approved Facilities and is to make the register available for public inspection.

19 Licensing of Approved Importers and Approved Facilities

(1) An Approved Importer or Approved Facility who wishes to purchase, sell, store, process, recover, recycle or refill a controlled substance must apply to the Director for a licence to undertake such activity.

(2) To avoid doubt, a person who wishes to apply for a licence under this section must be registered as an Approved Importer or Approved Facility under section 18.

20 Base year license for HCFC's

(1) A base year license for HCFC's may only be granted in relation to a controlled substance specified in Part VII of the Schedule, and may only be issued to a person or business whose activities will not contravene the Montreal Protocol or any provision of this Act.

(2) A license granted under this section may require the reduction of the consumption of the relevant controlled substance in accordance with the timetable applying to that controlled substance under the Montreal Protocol (taking into account the application of Article 5 relating to developing countries).

(3) A license issued under this section is valid for a period of 12 months from the date of issue, and may be renewed for periods not exceeding 12 months.

(4) Despite subsection (3), a license issued under this section ceases to apply:

- (a) on a date determined by the Director; or
- (b) on such other date as is specified in the license; or
- (c) by reason of paragraph 12(1)(g).

(5) The Director must only grant a license under this section permitting the importation and use of a controlled substance, if the importation and use will not constitute a breach of Vanuatu's obligations under the Convention or the Montreal Protocol.

(6) A license granted that is not consistent with the requirements of subsection (5) is to be deemed null and void.

(7) Regulations made under this Act may impose quotas on the importation of any controlled substance specified in Part VII of the Schedule, and any matter concerning the application of a quota scheme to such imports.

(8) A quota scheme imposed under subsection (7) must be made in consultation with the National Ozone Advisory Committee.

21 Licensing of persons to handle controlled substances

(1) Any person who wishes to undertake the recycling, recharging or capturing of any controlled substance must apply to the Director for a licence to handle controlled substances.

(2) To avoid doubt, a person or employee of an organisation licensed under section 19 must also be licensed under this section if that person or employee is the person undertaking the recycling, recharging or capturing activities.

PART 4 ENFORCEMENT AND OFFENCES

22 Powers of officers

(1) Subject to subsections (2) and (3), an Officer may enter:

- (a) any land or building, other than a dwelling house, at any time; and
- (b) a dwelling house at a reasonable time during daylight hours; and
- (c) a vessel, ship, aircraft, vehicle or other form of conveyance at any time,

for the purposes of investigating the commission of any offence or the breach of any lawful obligation under this Act, or enforcing the provisions of this Act.

(2) An Officer must not exercise the powers conferred to him or her under paragraph (1)(a) or (b) except for the purposes of investigating an alleged offence where the Officer has reasonable grounds to believe that such entry will produce evidence in relation to that offence.

(3) An Officer acting under this section may, if so required, produce some duly authenticated document showing his or her authority.

(4) The owner or person in charge of any premises entered into by an Officer in pursuance of subsection (1) and every person found in the premises are to give the Officer all reasonable assistance and furnish him with such information and such samples as the Officer requires.

(5) The power conferred by paragraph (1)(b) is not to be exercised unless a notice of the intended entry has been given to the occupier.

(6) If a Magistrate, on sworn information in writing:

(a) is satisfied that there is reasonable ground for entry into any premises for any such purpose as is mentioned; and

(b) is also satisfied either:

(i) that admission to the premises has been refused, or a refusal is apprehended and that notice of the intention to apply for a warrant has been given to the occupier; or

(ii) that an application for admission, or the giving of such a notice, would defeat the object of the entry, or that the case is one of urgency, or that the premises are unoccupied or the occupier temporarily absent,

the Magistrate may by warrant signed by him authorize any authorized officer to enter the premises, if need be by force.

(7) An authorized officer entering any premises by virtue of this section, or of a warrant issued under it, may take with him such other persons as may be necessary, and on leaving any unoccupied premises which he has entered by virtue of such a warrant shall leave them as effectively secured against trespassers as he found them.

(8) In exercising his or her powers under this section, an Officer may:

(a) conduct such investigations and examinations as are necessary to monitor the effects of any activity, matter or thing relevant to ozone depleting substances, or to determine whether any offence has been committed; and

(b) take samples for the purpose of analysis and testing; and

(c) take photographs or measurements; and

(d) require any person apparently associated with an activity under investigation to state his or her full name, occupation and usual place of residence; and

(e) require the production of any document relevant to the activity, matter or thing under investigation, including any licence or permit required by this law; and

(f) require from any person any assistance that is relevant to the investigation or monitoring activity; and

(g) seize any item used in the commission of an offence against this Act.

23 Seizure of substances and goods

(1) An Officer, in the course of exercising a power under this Act, the Environmental Protection and Conservation Act [CAP 283] or the Customs Act [CAP 257] may seize any:

(a) controlled substance; or

(b) goods containing any controlled substance; or

(c) equipment using or used in connection with any controlled substance,

that the officer reasonably suspects is the subject of a breach of any prohibition under this Act.

(2) Any controlled substance, goods or equipment seized under this section:

(a) is to be stored at a place, and in a manner, in accordance with a direction given by the Director; and

(b) may be retained until such time as the Director is satisfied by its owner, or the person from whom it has been seized, that it is not or has not been the subject of any breach of a prohibition under this Act.

(3) If:

- (a) it is agreed by the owner of the controlled substance, goods or equipment that they are in breach of a prohibition under this Act; or
- (b) the owner has not satisfied the Director under subsection (2) within 6 months from the date of seizure,

the controlled substance, goods or equipment may be disposed of or destroyed in a manner directed by the Director.

24 Forfeiture of seized substances and goods and duties to dispose

(1) If a person is convicted of an offence against this Act, the court may order that any controlled substance, goods or equipment in relation to which the offence was committed, be forfeited to the Government.

(2) Any substances, goods or equipment forfeited under subsection (1) is to be disposed of in a manner determined by the Director.

(3) The costs of dealing with or disposing of any substance, goods or equipment forfeited under this section shall constitute a debt due to the Government, and may be recovered by action in a court of competent jurisdiction.

(4) In all cases the importer or owner of any controlled substance which is imported, owned or used in contravention of this Act or of the Convention and the Montreal Protocol has the duty to properly dispose of the substance, and any equipment in which the substance is contained.

(5) Disposal under subsection (3) must be by re-export in accordance with law, or by any other means which the Director determines from time to time.

25 Call-up of substances or goods

The Director may, from time to time, issue a public notice requiring that any controlled substance, goods containing any controlled substance or equipment using or used in connection with any controlled substance:

- (a) be stored or handled in accordance with any direction that the Director gives; or
- (b) be delivered at a designated time to a designated place for storage or disposal; or
- (c) be otherwise disposed of or destroyed in accordance with any direction that Director gives.

26 Offences and penalties

(1) A person who:

- (a) acts in contravention of any requirement or prohibition under this Act; or
- (b) aids or abets any person in contravening any requirement or prohibition under this Act; or

(c) conspires with any person to do any act in contravention of any requirement or prohibition under this Act,

is guilty of an offence punishable on conviction by imprisonment for a term not exceeding 6 months, or a fine not exceeding VT5,000,000, or both.

(2) A person who fails to comply with:

(a) a condition of a permit, licence or registration under Part III; or

(b) a notice given by the Director under section 25:

is guilty of an offence punishable on conviction by imprisonment for a term not exceeding 1 month, or a fine not exceeding VT5,000,000, or both.

(3) A person who, in the course of servicing any equipment used in relation to any controlled substance, wilfully or negligently permits any controlled substance to be discharged into the atmosphere is guilty of an offence punishable on conviction by imprisonment for a term not exceeding 6 months, or a fine not exceeding VT1,000,000, or both.

(4) A person who:

(a) hinders or obstructs an Officer in the performance of his or her duties under this Act, or the exercise of a power under this Act; or

(b) induces or incites any other person to hinder or obstruct an Officer acting in accordance with this Act; or

(c) by words or conduct falsely represents that he or she is an Officer, or who otherwise impersonates an Officer; or

(d) provides false or misleading information:

(i) to an Officer who is exercising a power under this Act; or

(ii) in any application made under this Act; or

(iii) in any return required to be provided under this Act,

is guilty of an offence punishable on conviction:

(I) if the person is an individual – by imprisonment not exceeding 3 months or a fine not exceeding VT250,000, or both; or

(II) if the person is a body corporate – by a fine not exceeding VT500,000.

(5) If a corporation, Approved Importer or Approved Facility commits an offence under this Act, any officer, director or agent of the corporation who authorised, assented to or participated in, or by his or her neglect or omission contributed to the commission of the offence, is a party to and may be found guilty of the offence, and is to be liable to the penalty provided for the offence.

27 Penalty notice

- (1) An Officer may serve a penalty notice on a person if it appears to the Officer that the person has committed an offence under any provision of this Act or the regulations.
- (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 a time and to a person specified in the notice the amount of penalty prescribed by the regulations for the offence if dealt with under this section.
- (3) Payments made under this section are to be made at the Ministry of Finance and Economic Management which is then to be transferred into the Environmental Trust Fund established under the Environmental Protection and Conservation Act [CAP 283].
- (4) A penalty notice may be served personally or by post.
- (5) If the amount of penalty prescribed for the purposes of this section for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.
- (6) Payment under this section is not to be regarded as an admission of liability for the purpose of, nor in any way affect or prejudice, any civil proceeding arising out of the same occurrence.
- (7) 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.
- (8) The amount of a penalty prescribed under this section for an offence must not exceed the maximum amount of penalty which could be imposed for the offence by a court.
- (9) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.

PART 5 MISCELLANEOUS PROVISIONS

28 National Ozone Advisory Committee

- (1) The National Ozone Advisory Committee is established.
- (2) The Committee has the following functions:
 - (a) to advise the government on any matter concerning the control of ozone depleting substances in Vanuatu;
 - (b) to perform the roles and functions specified in this Act;

- (c) to formulate schemes of incentives to encourage the change-over of equipment so as to minimise the use of controlled substances permitted in accordance with this Act;
- (d) to otherwise ensure that Vanuatu complies with its obligations under the Convention and the Montreal Protocol.

29 Composition of the Committee

(1) The Committee consists of the following members:

- (a) the Director of the Department of Environmental Protection and Conservation; and
- (b) the Director of the Department of Customs and Inland Revenue; and
- (c) the Director of the Department of Public Health; and
- (d) the Director of the Department of Quarantine; and
- (e) the Director of the Department of Fisheries; and
- (f) the Director of the Department of Tourism; and
- (g) the Director of the Department of Meteorological Services; and
- (h) the Chairman of the National Advisory Committee on Climate Change; and

(i) not more than 3 persons nominated by the National Council of the Chambers of Commerce and Industry of Vanuatu, to represent private sector industries that use controlled substances paragraph (.

(2) A member of the Committee may nominate another appropriate officer within his or her office to attend meetings of the Committee on his or her behalf and to participate in the deliberations of the Committee.

(3) The Committee members are to appoint from amongst themselves by a majority voting, the chairperson and deputy chairperson.

(4) The Committee is to meet at least 4 times a year.

(5) The Committee is to provide a twice annual report to the Minister on the outcomes of its meetings.

(6) Subject to this Act, the Committee may determine and regulate its own procedures.

30 Regulations

(1) The Minister may by Order make regulations not inconsistent with this Act for the better carrying out or giving effect to the provisions of this Act.

(2) Without limiting the generality of subsection (1), the Minister may make regulations for any of the following purposes:

- (a) declare any substance to be a controlled substance for the purposes of this Act and amend the Schedule to have the substance included;
- (b) amend the Schedule to make it consistent with any change to the Montreal Protocol from time to time;
- (c) to determine that any substance is not longer a controlled substance if the Montreal Protocol is amended to that effect;
- (d) to impose requirements for the training and certification of technicians handling controlled substances, and the licensing of importers and facilities;
- (e) to impose duties and obligations on users of equipment containing controlled substances to avoid leaking and venting of the substances, to adequately maintain the equipment and to apply best practice in relation to the recovery, recycling, storage and management of controlled substances;
- (f) to impose quota schemes for the importation of controlled substances specified in Part VII of the Schedule, and controls over the sale and stockpiling of substances imported under the quota scheme;
- (g) to apply incentives to encourage the change-over of equipment so as to minimise the use of controlled substances;
- (h) to require permits or licenses to be held by registered importers and facilities, and to prescribe fees, procedures and other arrangements in relation to such permits or licenses;
- (i) to prescribe fees or charges in respect of any application made or service provided under this Act;
- (j) to make any other arrangement that is required to implement and enforce the Convention and the Montreal Protocol.

(3) Regulations made under section may prescribe offences for breaches of the regulations and impose penalties for such breaches being fines not exceeding VT5,000,000.

31 Commencement

This Act commences on the day on which it is published in the Gazette.

SCHEDULE

CONTROLLED SUBSTANCES

PART I CFCs (CHLOROFLUOROCARBONS)

<i>Chemical Formula</i>	<i>Substance</i>	<i>Ozone Depleting Potential*</i>
CFC13	CFC-11	1.0
CF2C12	CFC-12	1.0

C2F3C13	CFC-113	0.8
C2F4C12	CFC-114	1.0
C2F5C1	CFC-115	0.6

**PART II
HALONS**

<i>Chemical Formula</i>	<i>Substance</i>	<i>Ozone Depleting Potential*</i>
CF2BrCl	Halon 1211	3.0
CF3Br	Halon 1301	10.0
C2F4Br2	Halon 2402	6.0

**PART III
OTHER CFCS (CHLOROFLUOROCARBONS)**

<i>Chemical Formula</i>	<i>Substance</i>	<i>Ozone Depleting Potential*</i>
CF3C1	CFC-13	1.0
C2FC15	CFC-111	1.0
C2F214	CFC-112	1.0
C3FC17	CFC-211	1.0
C3F2C16	CFC-212	1.0
C3F3C15	CFC-213	1.0
C3F4C14	CFC-214	1.0
C3F5C13	CFC-215	1.0
C3F6C12	CFC-216	1.0
C3F7C1	CFC-217	1.0

**PART IV
CARBON TETRACHLORIDE**

<i>Chemical Formula</i>	<i>Substance</i>	<i>Ozone Depleting Potential*</i>
CCl4	Carbon tetrachloride	1.1

**PART V
METHYL CHLOROFORM**

<i>Chemical Formula</i>	<i>Substance</i>	<i>Ozone Depleting Potential*</i>
C2H3Cl3	1,1,1-trichloroethane	0.1

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

**PART VI
HBFCs (HYDROBROMOFLUOROCARBONS)**

<i>Chemical Formula</i>	<i>Substance</i>	<i>Number of isomers</i>	<i>Ozone-Depleting Potential*</i>
CHBr ₂		1	1.00
CHF ₂ Br	(HBFC-22B1)	1	0.74
CH ₂ FBr		1	0.73
C ₂ H ₂ F ₂ Br ₂		2	0.3-0.8
C ₂ H ₂ F ₃ Br		3	0.5-1.8
C ₂ H ₂ F ₄ Br		3	0.4-1.6
C ₂ H ₃ F ₃ Br ₂		3	0.4-1.6
C ₂ H ₃ F ₄ Br		2	0.7-1.2
C ₂ H ₄ F ₃ Br		3	0.1-1.1
C ₂ H ₄ F ₂ Br ₂		4	0.2-1.5
C ₂ H ₄ F ₃ Br		3	0.7-1.6
C ₂ H ₃ F ₂ Br ₂		3	0.1-1.7
C ₂ H ₃ F ₃ Br		3	0.2-1.1
C ₂ H ₄ F ₂ Br		2	0.07-0.1
C ₃ H ₂ F ₅ Br		5	0.3-1.5
C ₃ H ₂ F ₆ Br		9	0.2-1.9
C ₃ H ₃ F ₄ Br ₂		12	0.3-1.8
C ₃ H ₃ F ₅ Br		12	0.5-2.2
C ₃ H ₃ F ₆ Br		9	0.9-2.0
C ₃ H ₄ F ₄ Br ₂		5	0.7-3.3
C ₃ H ₄ F ₅ Br		9	0.1-1.9
C ₃ H ₄ F ₆ Br		16	0.2-2.1
C ₃ H ₅ F ₃ Br ₃		18	0.2-5.6
C ₃ H ₅ F ₄ Br ₂		16	0.3-7.5
C ₃ H ₅ F ₅ Br		8	0.9-1.4
C ₃ H ₆ F ₂ Br ₄		12	0.08-1.9
C ₃ H ₆ F ₃ Br ₃		18	0.1-3.1
C ₃ H ₆ F ₄ Br ₂		18	0.1-2.5
C ₃ H ₆ F ₅ Br		12	0.3-4.4
C ₃ H ₇ F ₃ Br ₃		12	0.03-0.3
C ₃ H ₇ F ₄ Br ₂		16	0.1-1.0
C ₃ H ₇ F ₅ Br		12	0.07-0.8

C3H5FBr2		9	0.04-0.4
C3H5F2Br		9	0.07-0.8
C3H6FBr		5	0.02-0.7

**PART VII
HCFCs (HYDROCHLOROFLUOROCARBONS)**

<i>Chemical Formula</i>	<i>Substance</i>	<i>Number of isomers</i>	<i>Ozone-Depleting Potential*</i>
CHFCI2	(HCFC-21)	1	0.04
CHF2CI	(HCFC-22)	1	0.055
CH2FCI	(HCFC-31)	1	0.02
C2HFCI4	(HCFC-121)	2	0.01-0.04
C2HF2CI3	(HCFC-122)	3	0.02-0.08
C2HF3CI2	(HCFC-123)	3	0.02-0.06
CHCI2CF3	(HCFC-123)	-	0.02
C2HF4CI	(HCFC-124)	2	0.02-0.04
CHFCICF3	(HCFC-124)	-	0.022
C2H2FCI3	(HCFC-131)	3	0.007-0.05
C2H2F2CI2	(HCFC-132)	4	0.008-0.05
C2H2F3CI	(HCFC-133)	3	0.02-0.06
C2H3FCI2	(HCFC-141)	3	0.005-0.07
CH3CFCI2	(HCFC-141b)	-	0.11
C2H3F2CI	(HCFC-142)	3	0.008-0.07
CH3CF2CI	(HCFC-142b)	-	0.065
C2H4FCI	(HCFC-151)	2	0.003-0.005
C3HFCI6	(HCFC-221)	5	0.015-0.07
C3HF2CI5	(HCFC-222)	9	0.01-0.09
C3HF3CI4	(HCFC-223)	12	0.01-0.08
C3HF4CI3	(HCFC-224)	12	0.01-0.09
C3HF5CI2	(HCFC-225)	9	0.02-0.07
CF3CF2CHCI2	(HCFC-225ca)	-	0.025
CF2CI2CF2CHCI2	(HCFC-225cb)	-	0.033
C3HF6CI	(HCFC-226)	5	0.02-0.10
C3H2FCI5	(HCFC-231)	9	0.05-0.09
C3H2F2CI4	(HCFC-232)	16	0.008-0.10
C3H2F3CI3	(HCFC-233)	18	0.007-0.23
C3H2F4CI2	(HCFC-234)	16	0.01-0.28
C3H2F5CI	(HCFC-235)	9	0.03-0.52

C3H3FC14	(HCFC-241)	12	0.004-0.09
C3H3F2Cl3	(HCFC-242)	18	0.005-0.13
C3H3F3Cl2	(HCFC-243)	18	0.007-0.12
C3H3F4Cl	(HCFC-244)	12	0.009-0.14
C3H4FC13	(HCFC-251)	12	0.001-0.01
C3H4F2Cl2	(HCFC-252)	16	0.005-0.04
C3H4F3Cl	(HCFC-253)	12	0.003-0.03
C3H5FC12	(HCFC-261)	9	0.002-0.02
C3H5F2Cl	(HCFC-262)	9	0.002-0.02
C3H6FC1	(HCFC-271)	5	0.001-0.03

**PART VIII
METHYL BROMIDE**

<i>Chemical Formula</i>	<i>Substance</i>	<i>Ozone-Depleting Potential</i>
CH3Br	(Mono) bromomethane	0.6
