

**1991**

**THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN  
CAPITAL TERRITORY**

**OZONE PROTECTION BILL 1991**

**EXPLANATORY MEMORANDUM**

**Circulated by Authority of the Minister for the Environment,  
Land and Planning**

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Authorised by the ACT Parliamentary Counsel—also accessible at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)

## OZONE PROTECTION BILL 1991

Australia has an international obligation under the Montreal Protocol on Substances that Deplete the Ozone Layer to control and eventually phase out the use of ozone depleting substances. Pursuant to this Protocol the Commonwealth has enacted the *Ozone Protection Act 1989* to regulate the manufacture, import and export of ozone depleting substances and to put specific controls on the manufacture, import, export, distribution and use of products that contain ozone depleting substances or use ozone depleting substances in their operation.

The Ozone Protection Bill 1991 will complement the Commonwealth legislation at the Territory level by regulating activities that present a significant risk of the emission of ozone depleting substances. This Bill is consistent with the legislation of other States and Territories in this respect.

The main administrative body under this Bill is the Pollution Control Authority (the Authority) established under the *Air Pollution Act 1984*. The Authority also has functions under the *Noise Control Act 1988* and the *Water Pollution Act 1984*.

The operative offence provisions of the Bill are contained in Part II. Part II provides that it is an offence to discharge an ozone depleting substance into the atmosphere without reasonable excuse. Part II also provides that it is an offence to manufacture, sell, supply, transport, store, recycle, reprocess or dispose of an ozone depleting substance except in accordance with a licence. It is also an offence to service articles that contain ozone depleting substances, such as refrigerators and air-conditioners, without an appropriate licence. Part II provides for phase out dates for ozone depleting substances and provides for the labelling of ozone depleting substances and products that contain ozone depleting substances. The labelling requirements will ensure that ozone depleting substances are not inadvertently mixed and that consumers are aware of the content of the products that they are buying.

The provisions dealing with licensing are also contained in Part II of the Bill. The use of a licensing system will control ozone depleting substances at the wholesale level and at the point where there is interference with the substances in the servicing of equipment that contains ozone depleting substances.

Part III of the Bill is the education component of the Bill. The Pollution Control Authority may approve courses under this Part to ensure that an acceptable level of education in the handling of ozone depleting substances is available consistently with that available in other States and Territories. This level of education is one of the prerequisites to the licensing scheme.

The remainder of the Bill deals with enforcement and miscellaneous matters. The enforcement provisions are very similar to other environment protection legislation in force in the Territory.

Financial considerations:

This Bill is expected to be budget neutral.

Details of the Bill are included below.

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### **PART I - PRELIMINARY**

Clauses 1 and 2 deal with formal matters. The Bill is expressed to commence on a day or days to be fixed by the Minister by notice in the Gazette. The delayed commencement is to allow for the preparation of regulations and the setting up of the administrative arrangements for the Act. Regulations will be prepared prior to commencement relying on section 5 of the *Subordinate Laws Act 1989* which allows subordinate laws to be prepared between notification and commencement of an enactment. It is proposed that the regulations will then commence on the same day as the Act.

Clause 3 provides for the interpretation of certain terms that are used in the Bill. Important definitions are "deal" which means "sell, supply, transport or store" and "use" which means "dispose of, recycle or re-process".

Subclauses 3(2) and (3) are also significant as they exclude articles that contain ozone depleting substances as a working component or as a residue of the manufacturing process from the operation of the Act. These provisions are necessary to exclude, for example, a person who sells a domestic refrigerator through the classified advertisements of a newspaper from the requirement to be licensed to deal with an ozone depleting substance.

Clause 4 provides that the Crown is bound by the provisions of the Act.

### **PART II - CONTROL OF OZONE DEPLETING SUBSTANCES**

This Part is the most important element of the Bill in controlling ozone depleting substances. Part II contains nearly all of the offence provisions and sets out the licensing scheme which is the main mechanism controlling the amounts and application of ozone depleting substances in the Territory.

Clause 5 provides that it is an offence to intentionally discharge an ozone depleting substance into the atmosphere. This provision makes it an offence to discharge

ozone depleting substances from electrical appliances such as refrigerators and to discharge certain types of fire extinguishers that contain ozone depleting substances (except where the Minister has granted an exemption under clause 12).

Clause 6 provides that it is an offence for a person to manufacture an ozone depleting substance or deal with an ozone depleting substance except in accordance with a licence. The provisions relating to licences are contained in clauses 13 to 23 of the Bill inclusive.

Clause 7 provides that it is an offence to service an article containing an ozone depleting substance except in accordance with an appropriate licence. For example, this clause makes it an offence to service a refrigerator or car air-conditioner without an appropriate licence. This control on the servicing of articles that contain ozone depleting substances is necessary to prevent discharges of ozone depleting substances by persons who may not have the necessary skills to contain the ozone depleting substances in those articles for recycling or reprocessing when servicing the article.

Clause 8 provides that it is an offence to use an ozone depleting substance except in accordance with a licence. The provisions relating to licences are contained in clauses 13 to 23 of the Bill inclusive.

Clause 9 provides that it is an offence to deal with, use or manufacture an ozone depleting substance after the prescribed date. This clause allows the Executive to prescribe "phase-out" dates for particular ozone depleting substances and different applications of ozone depleting substances.

Clause 10 creates the offence of dealing with an ozone depleting substance or an article containing an ozone depleting substance without attaching appropriate labels. The labels required to be fixed will identify the ozone depleting substances so that unintentional mixing of ozone depleting substances is avoided and will encourage the safer handling of those substances to prevent emissions. Labelling of consumer products is also covered by clause 10 so that consumers may make informed choices as to whether they use products that contain ozone depleting substances. This label also acts as a reminder that servicing of some products may only be undertaken by an appropriately licensed person.

Subclause 10(2) provides an exception to this offence where a person deals with an article containing less than 3 kilograms of ozone depleting substance otherwise than

in the ordinary course of business. This exception is necessary because the offence is specifically applied to articles that contain ozone depleting substances contrary to the general exemption for these types of articles in subclauses 3(2) and (3) of the Bill. The 3 kilogram limit means that the exemption will only apply to domestic type articles. The qualification as to "otherwise than in the ordinary course of business" is provided to exempt one-off sales, such as a person selling a domestic refrigerator through the classified advertisements without having a label attached to the refrigerator indicating that it contains an ozone depleting substance, from the offence provision.

Clause 11 makes it an offence to contravene a warning notice in force under section 36 of the Act or an ozone protection notice in force under section 38 of the Act. A warning notice is a general notice published in a newspaper giving instructions or warnings about using or dealing with an ozone depleting substance. An ozone protection notice is a specific notice directing a person to cease an activity that is causing, or is likely to cause, the emission of an ozone depleting substance in contravention of the Act.

Clause 12 provides for the exemption of persons from any or all of the provisions of the Act. This provision is necessary, for example, to exempt pharmacists from the licensing and labelling requirements of the Act where the pharmacists sell essential drugs, such as asthma medication, which are in dispensers that use ozone depleting substances as a propellant.

Clause 13 sets out the requirements for applications for a licence to manufacture, deal with or use an ozone depleting substance or to service an article containing, an ozone depleting substance.

Clause 14 sets out the matters to which the Authority is to have regard in considering whether or not to grant a person a licence. In granting a licence to use an ozone depleting substance or to service an article containing an ozone depleting substance the Authority must be satisfied that the applicant has completed an approved course or examination or State or other Territory equivalent. This criteria is to ensure that licensees are competent to conduct the activities specified in the licence and are aware of the nature of ozone depleting substances and of their effect on the ozone layer.

The Authority is required to have regard to other matters such as reasonable alternatives to an ozone depleting substance, phase-out dates and whether the

storage and other equipment proposed to be used in relation to the ozone depleting substance meets certain prescribed standards of design etc., in determining whether or not to grant a licence to manufacture or deal with an ozone depleting substance. These considerations are specific to licences to deal with and manufacture ozone depleting substances because these types of licences affect the whole supply of ozone depleting substances in the Territory.

The duration of a licence granted under clause 14 is provided for in clause 22 of the Bill.

A refusal to grant a licence is reviewable by the Administrative Appeals Tribunal under clause 42 of the Bill. A licensee may also appeal to the Tribunal against a decision of the Authority to impose conditions on the licence and a decision of the Authority to grant a licence for a period that is less than that applied for.

Clause 15 specifies what form a licence granted under clause 14 is to take. All licences will specify the period for which the licence is to remain in force, any conditions, and other particulars as prescribed by regulation. The types of particulars that will be prescribed by regulation will include matters such as requirements as to the keeping of records and requirements as to containment equipment to be used for ozone depleting substances.

The types of conditions that each type of licence may contain are also set out. Licences to manufacture may contain conditions to limit the quantity and types of ozone depleting substances that may be manufactured. Licences to deal with an ozone depleting substance may contain conditions specifying what type of dealing is permitted under the licence and limiting the quantity of ozone depleting substances which may be acquired under the licence. Licences to use an ozone depleting substance or to service an article containing an ozone depleting substance may contain conditions specifying the manner in which an ozone depleting substance may be used, the types of articles that may be serviced and measures to be taken to minimise mixing of ozone depleting substances. These conditions are all aimed at controlling and minimising the quantities of ozone depleting substances that are in the Territory at any one time and minimising the emissions of those substances.

Clause 16 provides that the Authority may vary the conditions of a licence on her or his own motion or on application by the licensee. The circumstances in which a licence may be varied and the procedures to be followed in so doing are also set out

in the clause. A decision of the Authority to vary or impose a new condition under this clause is reviewable by the Administrative Appeals Tribunal under clause 42 of the Bill.

Clause 17 sets out the effect of a licence issued under the Act by providing that the licence authorises the doing of the things specified in the licence.

Clause 18 provides that a licence may be renewed on application to the Authority and payment of the determined fee. The period of that renewal is as specified by clause 22 of the Bill.

Clause 19 provides that the Authority may cancel or suspend a licence. The grounds on which a licence may be suspended or cancelled are set out in subclause 19(1). The clause goes on to specify a procedure for the giving of notice of a proposed suspension or cancellation to the licensee. The licensee is given the right to make representations to the Authority as to why the licence should not be cancelled or suspended and a procedure for the hearing of any such representations is specified.

Any decision to suspend or cancel a licence under clause 19 of the Bill may be reviewed by the Administrative Appeals Tribunal under clause 42 of the Bill.

Clause 20 provides that the Authority may, where the circumstances are sufficiently serious as to warrant it, suspend a licence before the expiration of the period in which the licensee may show cause as to why the licence should not be suspended or cancelled. Where the Authority does make a preliminary suspension then the matter must be dealt with as soon as possible. The period within which the licensee may show cause is also cut down in the case of a preliminary suspension to expedite the matter.

Clause 21 provides for the issuing of temporary licences. Temporary licences will cover the initial period after commencement of the Act. The requirement that temporary licences be granted only to applicants who, before the commencement of the legislation, used, manufactured, dealt with or were engaged in the business of servicing articles that contain an ozone depleting substance is intended to serve as the equivalent consideration to the "approved course" and "approved examination" considerations in clause 14 of the Bill. It would be unrealistic to expect licensees to immediately complete an approved course or examination on commencement of the Act in order to apply for a licence. The requirement to have been working in the



relevant area is a transitional provision to fill the gap between when the Act commences and when approved courses and examinations will be available to licensees.

Clause 22 further provides that other provisions of the Act will apply to a transitional licence in the same manner as they apply to an ordinary licence. That is, a transitional licence will be in the same form as an ordinary licence (clause 15), will be able to be subject to variation of condition (clause 16), will have the same effect as a normal licence (clause 17), may be suspended or cancelled in the same manner as an ordinary licence (clause 19) and may be subject to a preliminary suspension (clause 20). A temporary licence may not be renewed and hence will not be in force for any longer than the maximum 12 month period provided for in clause 22.

Clause 22 sets out the duration of licences under the Act. The standard period for which a licence will be granted is 12 months. The exceptions to this will be if the licence is suspended or cancelled before the 12 months is up or if a phase out date for the activity permitted by the licence is prescribed.

Clause 23 provides that the Authority is required to keep a register of persons who are licensed under the Act. This register is available as a public record of persons who are licensed to carry out activities controlled by the Act. This is of particular importance as a record of persons who are licensed to service particular articles that contain ozone depleting substances.

### **PART III - APPROVED COURSES AND EXAMINATIONS**

This Part provides for the education and training component of the Bill. Part III sets out the processes for the approval of courses and examinations. Approved courses and examinations are required by clause 14 of the Bill as confirmation of an applicant's competency to hold a licence under the Act.

Clause 24 provides that Authority may determine that a course is an approved course for the purposes of the Act. The purpose of providing approved courses and examinations is to set objective standards for the training and education, for example, of motor mechanics in the effects of ozone depleting substances on the ozone layer and in appropriate containment and recycling measures to prevent the emission of those substances in the course of servicing automobile air-conditioners. A person who completes such a course satisfactorily will have demonstrated a level

of competency sufficient to be licensed to service automobile air-conditioners. Clause 24 goes on to provide that an instrument of determination of an approved course must meet certain requirements and must be available to members of the public.

Clause 25 provides that the Authority may approve examinations for the purposes of the Act. Approved examinations will be available to persons who feel that they have sufficient knowledge of the effect of ozone depleting substances on the ozone layer and practical skills or experience to meet the required standards for a licence without doing the approved course.

#### **PART IV - ENFORCEMENT**

This Part provides for the appointment of inspectors for the purposes of the Act and sets out the powers of inspectors and the Authority in enforcing the provisions of the Act. Part IV also contains provisions for the giving of warning notices and ozone protection notices.

Clause 26 is a formal interpretation clause for the purposes of Part IV. Subclause 26(1) sets out the basis on which things are connected with a particular offence. Subclause 26(2) provides that a reference to an offence is to be read as including a reference to an offence that there are reasonable grounds for believing has been or will be committed.

Clause 27 is a standard provision allowing for the appointment of inspectors for the purposes of the Act.

Clause 28 is a standard provision requiring inspectors to return identity cards on ceasing to be an inspector.

Clause 29 is a standard provision setting out the powers of inspectors in entering and searching premises without a warrant. Inspectors may only enter premises, other than residential premises, where an ozone depleting substance is being manufactured, dealt with or used or where an article which contains an ozone depleting substance is being serviced, or where the inspector has a reasonable suspicion that such activities are occurring, or if the occupier of the premises has consented to the entry. The requirements for obtaining a person's consent to entry are set out in clause 30 of the Bill. The powers of inspectors in inspecting premises

are specified in subclause 29(2). Subclause 29(3) is a standard provision making it an offence to fail to give an inspector such assistance as is necessary and reasonable to enable the inspector to exercise her or his powers.

Clause 30 provides for procedures to be followed in obtaining a person's consent to entry to premises.

Clause 31 provides that an inspector must give a receipt for any samples taken under the Act. This procedure protects the rights of the owner of the sample with regard to that sample.

Clause 32 sets out the rights of the Authority or an inspector to hold any sample or thing seized under the Act for the purpose of adducing evidence in a prosecution for an offence against the Act or regulations. The clause further provides a 90 day limit on the period for which the Authority or inspector may hold the sample or thing without instituting a prosecution for an offence under the Act. This time limit will ensure that a person will not be unreasonably denied the right to possession of the seized articles.

Clause 33 is a standard provision setting out the procedures to be followed in obtaining a warrant to search premises for evidence of offences under the Act. An inspector or the Authority must obtain a warrant in order to search residential premises where the occupier of those residential premises does not consent to entry by an inspector under clause 29 and where the inspector or the Authority believes that the premises contain a thing that is connected with a particular offence against the Act or regulations.

Clause 34 is a standard provision making it an offence to obstruct the Authority or an inspector in the exercise of their powers under the Act.

Clause 35 provides that it is an offence to knowingly give the Authority or an inspector any information or document that is false or misleading.

Clause 36 allows the Authority to issue warning notices by publication in a newspaper published or circulating in the Territory. Warning notices are general directions as to dealing with or using ozone depleting substances aimed at minimising emissions of those substances. A warning notice may also give

directions as to surrender of ozone depleting substances. Failure to comply with a warning notice is an offence under clause 11 of the Bill.

Clause 37 provides that a warning notice may give instructions as to using or dealing with the ozone depleting substance or may give warnings in relation to using or dealing with the ozone depleting substance.

Clause 38 provides that the Authority may issue an ozone protection notice where the Authority considers that it is necessary to do so, having regard to all the circumstances of the matter, in order to prevent emissions or possible emissions of ozone depleting substances or to ensure that the provisions of the Act are complied with. The ozone protection notice is a type of pollution abatement notice that can direct a person to take action to prevent further emissions of ozone depleting substances. The types of action that an ozone protection notice may require are set out in subclause 38(4).

A decision to issue an ozone protection notice is reviewable by the Administrative Appeals Tribunal under clause 42 of the Bill. Failure to comply with a warning notice is an offence under clause 11 of the Bill.

Clause 39 sets out the details that must be specified in the ozone protection notice in addition to those required by clause 38.

Clause 40 sets out the procedure for variation of an ozone protection notice by the Authority or on application by the occupier of the premises to which the notice relates. The Authority may not make a decision to vary an ozone protection notice while an application for review of the decision to issue the notice has been lodged with the Administrative Appeals Tribunal as this would tend to pre-empt the decision of the Tribunal.

In making a decision to vary an ozone protection notice the Authority is required, as in a decision to issue such a notice under clause 38, to have regard to all of the circumstances of the matter. Subclause 40(4) sets out the requirements for notification of a decision regarding variation of an ozone protection notice.

A decision of the Authority to vary or not to vary an ozone protection notice is reviewable by the Administrative Appeals Tribunal under clause 42.

Clause 41 provides for the acquisition and disposal of ozone depleting substances by the Authority. The procedures required for notification prior to disposal are set out. The clause also provides that where an ozone depleting substance is disposed of in accordance with the Act then the Territory is required to pay compensation to the owner. This provision is required because of paragraph 23(1)(a) of the *Australian Capital Territory (Self-Government) Act 1988* of the Commonwealth. Paragraph 23(1)(a) provides that the Assembly has no power to make laws with respect to the acquisition of property otherwise than on just terms.

Clause 42 sets out the decisions of the Authority under the Act for which application for review by the Administrative Appeals Tribunal may be made.

Clause 43 is a standard provision setting out the notification requirements where the Authority makes a decision that is reviewable by the Administrative Appeals Tribunal. Notification of the decision to the affected person must also include a statement that the person whose interests are affected by the decision may request a statement pursuant to section 26 of the *Administrative Appeals Tribunal Act 1989*, except where subsection 26(11) of that Act applies. A statement pursuant to section 26 of the *Administrative Appeals Tribunal Act* sets out the findings on material questions of fact, refers to the evidence or other material on which those findings were based and gives the reasons for the decision. If a decision contains this, or the information has been provided to the applicant by means of a statement in writing, then subsection 26(11) of the *Administrative Appeals Tribunal Act* provides that an applicant is not entitled to a statement of reasons. Clause 43 further provides that the validity of a decision shall not be taken to have been affected by a failure to comply with these requirements.

## **PART V - MISCELLANEOUS**

Clause 44 provides that penalties for corporations are five times the level of those for natural persons.

Clause 45 is a standard provision to establish the state of mind of a body corporate or of a natural person where that body corporate or person does not act personally but acts through a director, servant or agent (as the case may be).

Clause 46 provides procedures for the serving of documents under the Act.

**Clause 47** allows the Minister to determine fees for the purposes of the Act. The only fees under the Act are fees for licences under clauses 13, 18 and 21 of the Bill.

**Clause 48** provides that the Executive may make regulations for the purposes of the Act. The particular things that the Executive may make regulations in relation to are the maintenance of records by the licensee (required by clause 15), containers to be used for the reclamation of ozone depleting substances (will also be prescribed for the purposes of clause 15), the labelling and marking of ozone depleting substances and articles containing ozone depleting substances (required by clause 10), the manner of storing and disposing of ozone depleting substances and the prescribing of standards of design and operation for storage and other equipment used in relation to an ozone depleting substance (required by clause 14).