

AUSTRALIAN CAPITAL TERRITORY

OZONE PROTECTION ACT 1991

EXPLANATORY STATEMENT TO DETERMINATION OF CRITERION FOR GRANTING OF AN ESSENTIAL USE CLASSIFICATION FOR AN INSTALLATION THAT UTILISES HALONS

No. 163 of 1995

The ACT *Ozone Protection Act 1991* (the Act) came into effect on 31 August 1992. The Act is based on the recommendations of the national *Strategy for Ozone Protection 1989*, which arose out of Australia's obligations under the *Montreal Protocol on Substances that deplete the Ozone Layer* to control and eventually phase-out the use of ozone depleting substances in Australia.

The Act controls the distribution and use of ozone depleting substances listed in Schedule 1 of the *Commonwealth Ozone Protection Act 1989*. The Act recognises a statutory position of Pollution Control Authority for administering the Act.

The controls are similar to those adopted in other states. It is illegal to manufacture, deal with or use ozone depleting substances or to service equipment that contains an ozone depleting substance without a licence. In the context of the Act the term *deal* means sell, supply, transport or store. The Act also prohibits discharge of ozone depleting substances without reasonable excuse.

The timetable under the Montreal Protocol has now been accelerated to require the total phase-out of halons by 31 December 1995. The *Commonwealth Ozone Protection Act 1989* has been amended to reflect this accelerated timetable and came into force in November 1995. The ACT Act has been amended to remain consistent with the Commonwealth Act.

Subsection 9A(1) of the amended Act prohibits operation of equipment or an installation that utilises halons after 31 December 1995. Subsection 9A(2)(b) states that this prohibition does not apply if the Pollution Control Authority has granted an essential use classification under subsection 23E(1).

Division 3 of the Act provides for a declaration of criteria to be applied by the Pollution Control Authority for approval of exemptions and essential use classifications. In particular, subsection 23A states that the Minister may declare criteria for essential use classification (paragraph (b)) by instrument.

The criteria for granting "essential use classification" are clearly defined under the Montreal Protocol. The National Assessment Panel for Halon Essential Uses (the Panel) is an expert body set up by the Commonwealth specifically to enable a consistent application of these criteria across Australia. The disallowable instrument which relates to the granting of essential use classification under subsection 23E(1) nominates the Panel as the advisory body to Pollution Control Authority.

The essential use classification applies to situations where human life is threatened and evacuation is not possible and a suitable replacement for halons is not available. A typical example of such a situation would be fire in the cockpit or passenger cabin of an aircraft.

The assessment provided by the Panel, on a case by case basis, is used by all other jurisdictions in deciding whether to grant "essential use classification". This assessment is provided free of charge. It is intended that local applications for essential use classification will be referred to the Panel.