

1995

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for the Environment, Land and Planning)

Ozone Protection (Amendment) Bill 1995

A BILL

FOR

An Act to amend the *Ozone Protection Act 1991*

The Legislative Assembly for the Australian Capital Territory enacts as follows:

Short title

- 5 1. This Act may be cited as the *Ozone Protection (Amendment) Act 1995*.

Commencement

- 10 2. (1) Sections 1, 2, 3, 4, 7, 8, 9, 10 and 11 commence on the day on which this Act is notified in the *Gazette*.
- (2) Section 5 commences on 1 January 1997.
- (3) Section 6 commences on 1 January 1996.

Principal Act

3. In this Act, "Principal Act" means the *Ozone Protection Act 1991*.¹

Interpretation

4. Section 3 of the Principal Act is amended by inserting in subsection (1) the following definitions:

“ ‘equipment’ includes a hand held fire extinguisher;

5 ‘halon’ means any substance listed in Part II of Schedule 1 of the Commonwealth Act;”.

Prohibition on servicing of article containing ozone depleting substance

5. Section 7 of the Principal Act is amended—

- 10 (a) by omitting “A” and substituting “Subject to subsection (2), a”;
- (b) by omitting the penalty provision; and
- (c) by adding at the end the following subsection and penalty provision:

15 “(2) A person shall not, without reasonable excuse, service an installation that utilises chlorofluorocarbons.

Penalty:

- (a) if the offender is a natural person—50 penalty units or imprisonment for 6 months, or both;
- (b) if the offender is a body corporate—250 penalty units.”.

20 Insertion

6. After section 9 of the Principal Act the following sections are inserted:

Prohibition on operation of equipment etc. utilising halons

25 “9A. (1) A person shall not, without reasonable excuse, operate, or cause to be operated, equipment or an installation, that utilises halons.

Penalty:

- (a) if the offender is a natural person—50 penalty units or imprisonment for 6 months, or both;
- (b) if the offender is a body corporate—250 penalty units.

30 “(2) Subsection (1) does not apply to a person in relation to an installation where—

- (a) there is an exemption in force in relation to that installation under subsection 23C (1); or

- (b) the Authority has granted an essential use classification in relation to that installation under subsection 23E (1) and that classification has not been revoked.

Disposal of halons

- 5 “9B. (1) A person who extracts halons from an installation or equipment shall not, without reasonable excuse, fail to deposit the halons at the place specified by the Authority under subsection (2).

Penalty:

- 10 (a) if the offender is a natural person—50 penalty units or imprisonment for 6 months, or both;
- (b) if the offender is a body corporate—250 penalty units.

“(2) The Authority may, by instrument, specify the place at which halons may be deposited for disposal.

- 15 “(3) The Authority shall publish an instrument prepared in accordance with subsection (2)—

- (a) in the *Gazette*; and
- (b) in a daily newspaper published and circulating in the Territory.

- 20 “(4) The validity of an instrument prepared in accordance with subsection (2) shall not be taken to be affected by a failure to comply with subsection (3).”.

Exemptions

7. Subsection 12 (1) of the Principal Act is amended by inserting “(other than subsection 9B (1))” after “this Act”.

Insertion

- 25 8. After section 23 of the Principal Act the following Division is inserted in Part II:

“Division 3—Control of halons

Criteria for approval of exemptions and essential use classifications

- 30 “23A. (1) The Minister may, by instrument, declare—

- (a) the criteria to be applied by the Authority in determining whether to exempt an installation from the application of subsection 9A (1) under subsection 23C (1); and
- 35 (b) the criteria to be applied by the Authority in determining whether to grant an essential use classification under subsection 23E (1).

“(2) A declaration under subsection (1) is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

Application for exemption

5 “23B. (1) The owner of, or person responsible for, an installation which utilises halons may apply to the Authority for an exemption from the application of subsection 9A (1) in relation to the operation of that installation.

“(2) An application under subsection (1) shall—

- 10 (a) be in a form approved by the Authority; and
(b) be accompanied by the determined fee.

“(3) The Authority may, by written notice, require the applicant to provide such further written information relating to the application as is specified in the notice.

Exemption from subsection 9A (1)

15 “23C. (1) On receipt of an application under section 23B, the Authority shall, by notice in writing to the applicant, exempt, or refuse to exempt, the installation specified in the application from the application of subsection 9A (1).

20 “(2) The Authority shall not exempt an installation unless it is satisfied that the criteria declared by the Minister under paragraph 23A (1) (a) have been met.

“(3) In determining whether to exempt an installation, the Authority shall consider any further information provided by the applicant in accordance with a notice under subsection 23B (3).

25 “(4) The Authority may impose such conditions on an exemption as it considers appropriate and if the Authority does so, the exemption shall, for the purposes of paragraph 9A (2) (a), be taken to be in force only while those conditions are complied with.

30 “(5) An exemption shall be for the period specified in the notice to the applicant, being a period not exceeding 6 months.

“(6) The Authority shall not grant more than 1 exemption in relation to a particular installation.

Application for essential use classification

35 “23D. (1) The owner of, or person responsible for, an installation which utilises halons may apply to the Authority for the grant of an essential use classification in relation to the installation.

“(2) An application under subsection (1) shall—

- (a) be in a form approved by the Authority; and
- (b) be accompanied by the determined fee.

5 “(3) The Authority may, by written notice, require the applicant to provide such further written information relating to the application as is specified in the notice.

Grant of essential use classification

10 “23E. (1) On receipt of an application under section 23D, the Authority shall, by notice in writing to the applicant, grant, or refuse to grant, an essential use classification in relation to the installation specified in the application.

“(2) The Authority shall not grant an essential use classification unless it is satisfied that the criteria declared by the Minister under paragraph 23A (1) (b) have been met.

15 “(3) In determining whether to grant an essential use classification, the Authority shall consider any further information provided by the applicant in accordance with a notice under subsection 23D (3).

20 “(4) The Authority may impose such conditions on an essential use classification as it considers appropriate and if the Authority does so, the classification shall, for the purposes of paragraph 9A (2) (b), be taken to be granted only while those conditions are being complied with.

Variation or revocation of essential use classification

25 “23F. (1) This section applies where the Authority believes, on reasonable grounds, that an installation which has been granted an essential use classification, may no longer meet the criteria declared by the Minister under paragraph 23A (1) (b).

“(2) Where this section applies, the Authority shall, subject to section 23G, give the person responsible for the installation a notice in writing—

- 30 (a) stating that the Authority is considering variation or revocation of the classification applying to the installation;
- (b) specifying the grounds upon which the Authority is considering variation or revocation of the classification; and
- 35 (c) stating that both the person responsible for, and the owner of, the installation may give a written response to the Authority by the specified date, being a date not less than 28 days after the date of the notice.

“(3) Subject to subsection (4), after the prescribed date and taking into consideration any response received in accordance with a notice under paragraph (2) (c), the Authority shall—

- 5 (a) where it is satisfied, on reasonable grounds, that the installation no longer meets the criteria declared by the Minister under paragraph 23A (1) (b)—
- (i) revoke the classification; or
 - (ii) vary the classification by imposing conditions or by varying the existing conditions; or
- 10 (b) in any other case—make no change to the classification.

“(4) The Authority shall not impose or vary conditions under subparagraph (3) (a) (ii) unless it is satisfied on reasonable grounds that the imposition or variation, as the case may be, would ensure that the installation meets the criteria declared by the Minister under paragraph 23A (1) (b).

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“(5) On making a decision under subsection (3), the Authority shall give each person to whom a notice under subsection (2) was given, notice of the decision in accordance with subsection (6).

“(6) A notice under subsection (5) shall state—

- 20 (a) that the classification has been revoked and the grounds on which it has been revoked;
- (b) that the classification is now subject to the specified conditions and the grounds on which the conditions are being imposed;
- 25 (c) that the classification is now subject to the specified variation of the existing conditions and the grounds on which the conditions are being varied; or
- (d) that the classification will not be revoked;

and shall state the date on which the notice takes effect, being a date not less than 28 days after the date of the notice.

30 “(7) In subsection (3)—

‘prescribed date’ means, whichever is the earlier of—

- (a) the date specified in the notice under paragraph (2) (c) being the date by which a response must be received; or
- (b) the date on which the Authority has received—
 - 35 (i) a response from the person responsible for the installation; or

- (ii) where the person responsible for the installation is not the owner of the installation—responses from both the owner and the person responsible for the installation.

5 Obligation to notify owner of installation

“23G. (1) The Authority shall, before causing a notice under subsection 23F (2) to be given to the person responsible for an installation, make reasonable enquiries to ascertain—

- 10 (a) the identities of the person responsible for the installation and the owner of the installation; and
- (b) if the Authority ascertains that the person responsible for the installation is not the owner—the address of the owner of the installation.

“(2) Where—

- 15 (a) the Authority gives a notice under subsection 23F (2) to the person responsible for an installation; and
- (b) that person is, to the knowledge of the Authority, not the owner of the installation;

20 the Authority shall, at the time of giving the notice to that person, send a copy of the notice by post to the owner at the address last known to the Authority.

Removal of halons

25 “23H. The owner of an installation in respect of which an essential use classification has been revoked under paragraph 23F (3) (a) shall, as soon as practicable after the revocation has taken effect, arrange for the removal of the halons from the installation.

Penalty:

- 30 (a) if the offender is a natural person—50 penalty units or imprisonment for 6 months, or both;
- (b) if the offender is a body corporate—250 penalty units.”.

Review of decisions

9. Section 42 of the Principal Act is amended by inserting after paragraph (i) the following paragraphs:

- 35 “(ia) exempting, or refusing to exempt, an installation from the application of subsection 9A (1) under subsection 23C (1);
- (ib) imposing conditions on an exemption under subsection 23C (4);

- (ic) granting, or refusing to grant, an essential use classification under subsection 23E (1);
- (id) imposing conditions on an essential use classification under subsection 23E (4);
- 5 (ie) revoking an essential use classification under subparagraph 23F (3) (a) (i);
- (if) varying an essential use classification under subparagraph 23F (3) (a) (ii);”.

Notification

- 10 10. Section 43 of the Principal Act is amended—
- (a) by omitting from paragraph (1) (a) “or (i)” and substituting “, (i), (ia), (ib), (ic) or (id)”;
 - (b) by omitting from paragraph (1) (b) “and”; and
 - (c) by inserting after paragraph (1) (b) the following paragraph:
- 15 “(ba) in the case of a decision referred to in paragraph 42 (ie) or (if)—to each person to whom a notice is required to be sent under subsection 23F (5); and”.

Repeal

11. Section 44 of the Principal Act is repealed.

20 Further amendments

12. The Principal Act is amended as set out in the Schedule.

SCHEDULE

Section 12

FURTHER AMENDMENTS

Section 5—

- 25 Omit the penalty provision, substitute the following penalty provision:

“Penalty:

- (a) if the offender is a natural person—50 penalty units or imprisonment for 6 months, or both;
- (b) if the offender is a body corporate—250 penalty units.”.

SCHEDULE—continued**Subsection 6 (1)—**

Omit the penalty provision.

Subsection 6 (2)—

Omit the penalty provision, substitute the following penalty provision:

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“Penalty:

(a) if the offender is a natural person—50 penalty units or imprisonment for 6 months, or both;

(b) if the offender is a body corporate—250 penalty units.”.

Section 8—

10

Omit the penalty provision, substitute the following penalty provision:

“Penalty:

(a) if the offender is a natural person—50 penalty units or imprisonment for 6 months, or both;

(b) if the offender is a body corporate—250 penalty units.”.

15

Subsection 9 (1)—

Omit the penalty provision, substitute the following penalty provision:

“Penalty:

(a) if the offender is a natural person—50 penalty units or imprisonment for 6 months, or both;

20

(b) if the offender is a body corporate—250 penalty units.”.

Subsection 10 (1)—

Omit the penalty provision, substitute the following penalty provision:

“Penalty:

25

(a) if the offender is a natural person—50 penalty units or imprisonment for 6 months, or both;

(b) if the offender is a body corporate—250 penalty units.”.

Section 11—

Omit the penalty provision, substitute the following penalty provision:

SCHEDULE—continued

“Penalty:

- (a) if the offender is a natural person—50 penalty units or imprisonment for 6 months, or both;
- (b) if the offender is a body corporate—250 penalty units.”.

- 5 **Section 28 (penalty provision)—**
Omit “\$100”, substitute “1 penalty unit”.

Subsection 29 (3)—

Omit the penalty provision, substitute the following penalty provision:

“Penalty:

- 10 (a) if the offender is a natural person—50 penalty units;
- (b) if the offender is a body corporate—250 penalty units.”.

NOTES**Principal Act**

1. Reprinted as at 28 February 1995. See also Act No. 19, 1995.

Penalty units

See section 33AA of the *Interpretation Act 1967*.

Printed by Authority of Peter Bell, ACT Government Printer

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