



Ozone Protection and Synthetic Greenhouse Gas Management Act 1989

No. 7, 1989

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About this compilation

This compilation

This is a compilation of the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* that shows the text of the law as amended and in force on 1 January 2020 (the *compilation date*).

The notes at the end of this compilation (the *endnotes*) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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An Act to provide for measures to protect the ozone layer and to minimise emissions of SGGs

Part I—Preliminary

1 Short title

This Act may be cited as the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989*.

2 Commencement

This Act commences on the day on which it receives the Royal Assent.

3 Objectives

The objectives of this Act are:

- (a) to institute, for the purpose of giving effect to Australia's obligations under the Vienna Convention and the Montreal Protocol, a system of controls on the manufacture, import and export of ozone depleting substances and SGGs; and
- (b) to institute, and to provide for the institution of, specific controls on the manufacture, import, export, distribution and use of equipment that contains such substances or uses such substances in its operation; and
- (c) to use the best endeavours to encourage Australian industry to:
 - (i) replace ozone depleting substances and SGGs; and
 - (ii) achieve a faster and greater reduction in the levels of production and use of ozone depleting substances and SGGs than are provided for in the Vienna Convention and the Montreal Protocol;

to the extent that such replacements and achievements are reasonably possible within the limits imposed by the

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availability of suitable alternate substances, and appropriate technology and devices; and

- (d) to provide controls on the manufacture, import, export and use of SGGs, for the purposes of giving effect to Australia's obligations under the Framework Convention on Climate Change and the Kyoto Protocol; and
- (e) to promote the responsible management of scheduled substances so as to minimise their impact on the atmosphere.

4 Saving of certain State and Territory laws

It is the intention of the Parliament that this Act is not to affect the operation of a law of a State or of a Territory that makes provision with respect to the protection of ozone in the atmosphere and is capable of operating concurrently with this Act.

5 Act to bind the Crown

- (1) This Act binds the Crown in right of the Commonwealth, of each of the States and of an internal Territory that has been established as a body politic.
- (2) Nothing in this Act renders the Crown in right of the Commonwealth, of a State or of an internal Territory liable to be prosecuted for an offence.

6 Extension to external Territories

This Act extends to all the external Territories.

6A Application of the *Criminal Code*

Chapter 2 (other than Part 2.5) of the *Criminal Code* applies to all offences against this Act or the regulations.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Part II—Explanation of terms used in the Act

7 Definitions

In this Act, unless the contrary intention appears:

100-year global warming potential of a scheduled substance means the 100-year global warming potential (if any) specified for that substance by a table in Schedule 1.

approved form means a form approved under section 66A.

Australia includes all the external Territories.

bromochloromethane means the substance referred to in Part VIII of Schedule 1, whether existing alone or in a mixture.

bulk scheduled substance has the meaning given by section 9.

carbon tetrachloride means the substance referred to in Part III of Schedule 1, whether existing alone or in a mixture.

CFC means a substance referred to in Part I of Schedule 1, whether existing alone or in a mixture.

civil penalty order means an order under subsection 65AC(1).

civil penalty provision means:

- (a) a provision of this Act declared by this Act to be a civil penalty provision; or
- (b) a provision of the regulations declared by the regulations to be a civil penalty provision.

CO₂e megatonnes has the meaning given by section 9A.

containing: equipment **containing** a scheduled substance has a meaning affected by section 9.

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controlled substances licence means a licence referred to in subsection 13A(2).

designated court means:

- (a) the Federal Court; or
- (b) the Federal Circuit Court; or
- (c) a court of a State or Territory that has jurisdiction in relation to matters arising under this Act or the regulations.

Note: For jurisdiction of State and Territory courts, see sections 69C and 69D.

distribution includes sale and supply, whether for consideration or not.

enforcement powers has the meaning given by section 53.

enforcement warrant means:

- (a) a warrant issued under section 55E; or
- (b) a warrant signed by a magistrate under section 55F.

equipment includes products.

equipment licence means a licence referred to in subsection 13A(5).

essential use, in relation to a stage-1 or stage-2 scheduled substance, means an essential use identified in relation to the substance by a decision adopted and in force under the Montreal Protocol.

essential uses licence means a licence referred to in subsection 13A(3).

evidential burden, in relation to a matter, means the burden of adducing or pointing to evidence that suggests a reasonable possibility that the matter exists or does not exist.

evidential material:

- (a) in relation to an offence against this Act or the regulations—
means:

- (i) a thing with respect to which the offence has been committed or is suspected, on reasonable grounds, of having been committed; or
 - (ii) a thing that there are reasonable grounds for suspecting will afford evidence as to the commission of the offence; or
 - (iii) a thing that there are reasonable grounds for suspecting is intended to be used for the purpose of committing the offence; or
- (b) in relation to a contravention of a civil penalty provision—means:
- (i) a thing with respect to which the civil penalty provision has been contravened or is suspected, on reasonable grounds, of having been contravened; or
 - (ii) a thing that there are reasonable grounds for suspecting will afford evidence as to the contravention of the civil penalty provision; or
 - (iii) a thing that there are reasonable grounds for suspecting is intended to be used for the purpose of contravening the civil penalty provision.

executive officer of a body corporate means:

- (a) a director of the body corporate; or
- (b) the chief executive officer (however described) of the body corporate; or
- (c) the chief financial officer (however described) of the body corporate; or
- (d) the secretary of the body corporate.

export, in relation to goods or a substance, means do an act that constitutes exportation of the goods or substance from Australia within the meaning of section 112 of the *Customs Act 1901*, or would constitute such exportation if the external Territories were part of Australia for the purposes of that Act.

Federal Circuit Court means the Federal Circuit Court of Australia.

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Federal Court means the Federal Court of Australia.

feedstock means an intermediate substance which is used to manufacture other chemicals.

forfeitable goods has the meaning given by section 57.

forfeiture notice means a notice under subsection 60A(1).

Framework Convention on Climate Change means the United Nations Framework Convention on Climate Change done at New York on 9 May 1992, as in force for Australia from time to time.

Note: The Framework Convention, as originally in force for Australia, is in Australian Treaty Series 1994 No. 2 ([1994] ATS 2) and could in 2017 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

halon means any substance referred to in Part II of Schedule 1, whether existing alone or in a mixture.

HBFC means a hydrobromofluorocarbon referred to in Part VI of Schedule 1, whether existing alone or in a mixture.

HCFC means a hydrochlorofluorocarbon referred to in Part V of Schedule 1, whether existing alone or in a mixture.

HCFC industry limit, in relation to a particular year, means the quantity of HCFCs for that year worked out in accordance with section 24.

HCFC licence means a controlled substances licence that relates to HCFCs.

HCFC quota means an HCFC quota allocated for a quota period under section 28.

Note: A reserve HCFC quota is not an ***HCFC quota***.

heel allowance percentage for a substance means the percentage prescribed by the regulations for the substance for the purposes of this definition.

HFC means a hydrofluorocarbon referred to in Part IX of Schedule 1, whether existing alone or in a mixture.

HFC industry limit has the meaning given by section 36A.

HFC quota means an HFC quota allocated for a calendar year under regulations made for the purposes of section 36C.

Note: A reserve HFC quota is not an **HFC quota**.

import, in relation to goods or a substance, means do an act that constitutes importation of the goods or substance into Australia within the meaning of section 50 of the *Customs Act 1901*, or would constitute such importation if the external Territories were part of Australia for the purposes of that Act.

Kigali Amendment means the Amendment to the Montreal Protocol adopted by Decision XXVIII/1 of the Twenty-Eighth Meeting of the Parties to the Montreal Protocol at Kigali on 15 October 2016.

Note: In 2017, the Kigali Amendment could be viewed at the United Nations website (www.un.org).

Kyoto Protocol means the Kyoto Protocol to the United Nations Framework Convention on Climate Change, done at Kyoto on 11 December 1997, as in force for Australia from time to time.

Note: The Kyoto Protocol, as originally in force for Australia, is in Australian Treaty Series 2008 No. 2 ([2008] ATS 2), and could in 2017 be viewed in the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

licence (except when used in Part IV) means a controlled substances licence, an essential uses licence, a used substances licence or an equipment licence.

licence period means a period referred to in section 8A.

licensee means a person who holds a licence under section 16.

methyl bromide means the substance referred to in Part VII of Schedule 1, whether existing alone or in a mixture.

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methyl chloroform means the substance referred to in Part IV of Schedule 1 (that is, 1,1,1-trichloroethane), whether existing alone or in a mixture.

monitoring powers has the meaning given by section 51A.

Montreal Protocol means the Montreal Protocol on Substances that Deplete the Ozone Layer done at Montreal on 16 September 1987, as in force for Australia from time to time.

Note: The Montreal Protocol, as originally in force for Australia, is in Australian Treaty Series 1989 No. 18 ([1989] ATS 18) and could in 2017 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

nitrogen trifluoride means the substance referred to in Part XII of Schedule 1, whether existing alone or in a mixture.

ODP tonnes has the meaning given in section 10.

ODS equipment has the meaning given by section 8C.

offence against this Act or the regulations includes an offence against section 137.1 or 137.2 of the *Criminal Code* that relates to this Act or the regulations.

Note: See also section 11.6 of the *Criminal Code*.

officer of Customs has the same meaning as in the *Customs Act 1901*.

ozone depleting potential of a scheduled substance means the ozone depleting potential (if any) specified for that substance by a table in Schedule 1.

PFC means a perfluorocarbon referred to in Part X of Schedule 1, whether existing alone or in a mixture.

premises includes:

- (a) a structure, building, aircraft, vehicle or vessel;
- (b) land or a place (whether enclosed or built upon or not); and

- (c) a part of premises (including premises of a kind referred to in paragraph (a) or (b)).

quota means an HCFC quota or a reserve HCFC quota.

quota period has the meaning given by section 23A.

Note: Quota periods relate to HCFC quotas. There are also HFC quotas, which are allocated for calendar years.

recycled or used HCFCs means HCFCs that are:

- (a) collected from machinery, equipment or containers during servicing or before disposal of the machinery, equipment or containers; and
- (b) intended to be re-used or destroyed.

recycled or used methyl bromide means methyl bromide that is:

- (a) collected from machinery, equipment or containers during servicing or before disposal of the machinery, equipment or containers; and
- (b) intended to be re-used or destroyed.

recycled or used SGGs means SGGs that are:

- (a) collected from machinery, equipment or containers during servicing or before disposal of the machinery, equipment or containers; and
- (b) intended to be re-used or destroyed.

recycled or used stage-1 or stage-2 scheduled substances means stage-1 scheduled substances, or stage-2 scheduled substances, that are:

- (a) collected from machinery, equipment or containers during servicing or before disposal of the machinery, equipment or containers; and
- (b) intended to be re-used or destroyed.

regulated HCFC activity has the meaning given by section 25A.

regulated HFC activity has the meaning given by section 36B.

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reporting period means a period of 6 months starting on 1 January or 1 July.

reserve HCFC quota means a reserve HCFC quota allocated under section 28.

Note: A reserve HCFC quota is not an **HCFC quota**.

reserve HCFC quota limit, in relation to a particular year, means the quantity of HCFCs for that year worked out in accordance with section 25.

reserve HFC quota means a reserve HFC quota allocated under regulations made for the purposes of section 36G.

Note: A reserve HFC quota is not an **HFC quota**.

reserve HFC quota limit has the meaning given by subsection 36G(3).

Schedule 4 activity means the manufacturing or importing of equipment if:

- (a) the equipment contains scheduled substances, or uses scheduled substances in its operation; and
- (b) the manufacturing or importing contravenes Schedule 4 (disregarding subsections 13(2) and (5)).

scheduled substance means a substance referred to in Schedule 1, whether existing alone or in a mixture.

Secretary means the Secretary of the Department.

section 69G activity means the manufacturing or importing of equipment in contravention of regulations made for the purposes of section 69G (disregarding subsections 69G(4) and (5)).

SGG or **synthetic greenhouse gas** means any of the following:

- (a) an HFC;
- (b) nitrogen trifluoride;
- (c) a PFC;
- (d) sulfur hexafluoride.

SGG equipment has the meaning given by section 8D.

SGG licence means a controlled substances licence that relates to SGGs.

SGG licensee means the holder of an SGG licence.

stage-1 CFC means a substance referred to in Division 1 of Part I of Schedule 1, whether existing alone or in a mixture.

stage-2 CFC means a substance referred to in Division 2 of Part I of Schedule 1, whether existing alone or in a mixture.

stage-1 scheduled substance means:

- (a) a stage-1 CFC; or
- (b) a halon.

stage-2 scheduled substance means:

- (a) a stage-2 CFC; or
- (b) carbon tetrachloride; or
- (c) methyl chloroform; or
- (d) bromochloromethane.

sulfur hexafluoride means the substance referred to in Part XI of Schedule 1, whether existing alone or in a mixture.

used substances licence means a licence referred to in subsection 13A(4).

using a scheduled substance in the operation of equipment has a meaning affected by section 9.

Vienna Convention means the Vienna Convention for the Protection of the Ozone Layer done at Vienna on 22 March 1985, as in force for Australia from time to time.

Note: The Vienna Convention, as originally in force for Australia, is in Australian Treaty Series 1988 No. 26 ([1988] ATS 26) and could in 2017 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

Section 8A

8A Licence periods

- (1) For the purposes of this Act, each licence period is 2 years.
- (2) The first licence period starts on 1 January 1996.
- (3) Each licence period, except the first, starts at the end of the last preceding one.

8C ODS equipment

For the purposes of this Act, **ODS equipment** means air-conditioning equipment, or refrigeration equipment, that contains a substance that is an HCFC.

8D SGG equipment

- (1) For the purposes of this Act, **SGG equipment** means:
 - (a) equipment that contains a substance that is an HFC or a PFC;
or
 - (b) equipment that contains a substance that is nitrogen trifluoride or sulfur hexafluoride;but does not include:
 - (c) equipment prescribed by the regulations; or
 - (d) equipment specified in a legislative instrument made by the Minister.
- (2) Unless sooner revoked, a legislative instrument made under paragraph (1)(d) ceases to be in force 12 months after it is registered under the *Legislation Act 2003*.

9 Bulk scheduled substances and equipment

Bulk scheduled substances

- (1) A reference in this Act to a scheduled substance (or to a type of scheduled substance), other than a reference relating to equipment, is a reference to a bulk scheduled substance (or to a bulk scheduled substance of that type).

- (2) Subject to subsections (5) and (6), a scheduled substance is a **bulk scheduled substance** unless it is:
- (a) contained in equipment for a purpose other than, or in addition to, the purpose of storing or transporting the substance; or
 - (b) used in the operation of equipment.

Example: Paragraph (2)(b)—a scheduled substance that is used as a propellant in an aerosol spray or fire extinguisher is not a bulk scheduled substance.

Equipment containing or using scheduled substances

- (3) Subject to subsection (6):
- (a) a reference in this Act (other than this section) to equipment **containing** a scheduled substance does not include a reference to containing the substance for the sole purpose of storing or transporting the substance; and
 - (b) a reference in this Act to **using** a scheduled substance in the operation of equipment does not include a reference to using the equipment for the storage or transport of the substance.
- (4) To avoid doubt, and without limiting when equipment contains a scheduled substance for the sole purpose of storing or transporting the substance, equipment contains a scheduled substance for that sole purpose if:
- (a) the substance must be transferred to other equipment to realise its intended use; or
 - (b) the equipment must be attached to other equipment to realise its intended use.

Substances used in the process of manufacturing equipment

- (5) Subject to subsection (6), a scheduled substance that is contained in equipment only because the substance was used in the process of manufacturing the equipment is neither:
- (a) a **bulk scheduled substance**; nor
 - (b) **contained** in, or **used** in the operation of, the equipment.

Section 9A

Example: A scheduled substance that remained in minute quantities in open cell foam after the substance was used in the production of the foam is neither a bulk scheduled substance nor contained in, or used in the operation of, the foam.

Regulations

- (6) The regulations may provide that, in prescribed circumstances, a scheduled substance:
- (a) is a **bulk scheduled substance**, or is not a **bulk scheduled substance**; or
 - (b) is taken to be **contained** in equipment, or is taken not to be **contained** in equipment; or
 - (c) is taken to be **used** in the operation of equipment, or is taken not to be **used** in the operation of equipment.

Regulations made for the purposes of this subsection have effect despite subsections (2) to (5).

9A Quantities expressed in CO₂e megatonnes

- (1) A reference in this Act to **CO₂e megatonnes**, in relation to an HCFC or HFC, is a reference to the quantity of the HCFC or HFC that results from multiplying its mass in megatonnes by its 100-year global warming potential.
- (2) If a substance is or contains a mixture of 2 or more HCFCs or HFCs, the quantity of the substance, expressed in CO₂e megatonnes, is the quantity that results from adding together the quantities of each of those HCFCs or HFCs, expressed in CO₂e megatonnes.

10 Quantities expressed in ODP tonnes

- (1) A reference in this Act to ODP tonnes, in relation to an HCFC, is a reference to the quantity of the HCFC that results from multiplying its mass in tonnes by its ozone depleting potential.
- (2) If a substance is or contains a mixture of 2 or more HCFCs, the quantity of the substance, expressed in ODP tonnes, is the quantity

that results from adding together the quantities of each of those HCFCs, expressed in ODP tonnes.

12 Recycling of scheduled substances

- (1) In this Act a reference to the manufacture of scheduled substances does not include a reference to a process by which a quantity of scheduled substances is produced by the recycling of substances containing scheduled substances of that quantity.
- (2) For the purposes of this Act, where a process for the manufacture of a quantity of scheduled substances involves, in part, the recycling of substances containing scheduled substances of a lesser quantity, the quantity of scheduled substances manufactured in the process shall be taken to be reduced by the quantity of scheduled substances in the substances recycled in the process.

12A Feedstocks

A reference in this Act (other than Part VII) to the manufacture or import of a scheduled substance does not include a reference to the manufacture or import of a scheduled substance exclusively for use as a feedstock.

Part III—Licences

Division 1—Scope of Part

12B Import or export of CFCs, HCFCs and SGGs for use on board ships or aircraft

This Part and Parts IV and IVA do not apply to the import or export of a CFC, HCFC or SGG if all of the following conditions are satisfied:

- (a) the CFC, HCFC or SGG is on board a ship or aircraft;
- (b) the ship or aircraft has air conditioning or refrigeration equipment;
- (c) the CFC, HCFC or SGG is exclusively for use in meeting the reasonable servicing requirements of that equipment during, or in connection with, one or more periods when the ship or aircraft is or will be engaged in a journey between:
 - (i) a place in Australia and a place outside Australia; or
 - (ii) 2 places outside Australia.

Division 2—Requirement to have licence

13 Unlicensed manufacture, import or export

Substances and equipment

- (1) A person must not, subject to subsections (2) to (6):
- (a) manufacture, import or export any of the following:
 - (i) an HCFC;
 - (ii) methyl bromide;
 - (iii) an SGG;
 - (iv) an HBFC;
 - (v) a stage-1 or stage-2 scheduled substance; or
 - (b) import SGG equipment (other than by carrying out a Schedule 4 activity or a section 69G activity); or
 - (c) carry out a Schedule 4 activity.

Note: Section 69G activities are prohibited by regulations made for the purposes of section 69G.

Exceptions

- (2) Subsection (1) does not apply to an activity allowed by a licence the person holds.
- Note 1: See section 13A for the activities allowed by each type of licence.
- Note 2: No licence allows the manufacture or export of HBFCs.
- (3) Subparagraph (1)(a)(iii) does not apply to manufacturing, importing or exporting an SGG (other than a recycled or used SGG) in circumstances prescribed by the regulations.
- (4) Regulations made for the purposes of subsection (3) must be consistent with Australia's international obligations.
- (5) Paragraph (1)(b) or (c) does not apply to a person carrying out an activity in relation to equipment if:

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Division 2 Requirement to have licence

Section 13A

- (a) the equipment is kept by the person, or by a member of the person's household, wholly or principally for private or domestic use; and
 - (b) the equipment is prescribed by the regulations; and
 - (c) any conditions prescribed by the regulations are satisfied.
- (6) Paragraph (1)(b) does not apply to a person importing SGG equipment if:
- (b) the total amount of an SGG contained in SGG equipment in the importation is not greater than the amount (if any) prescribed by the regulations in relation to the SGG; and
 - (c) any other conditions prescribed by the regulations in relation to the person, the equipment, and the importation are satisfied.

Note: In a prosecution for an offence against subsection (7), a defendant bears an evidential burden in relation to the matter in subsection (2), (3), (5) or (6) (see subsection 13.3(3) of the *Criminal Code*).

Penalties

- (7) A person commits an offence of strict liability if the person contravenes subsection (1).

Penalty: 500 penalty units.

- (8) Subsection (1) is a ***civil penalty provision***.

Note 1: Division 7 of Part VIII provides for pecuniary penalties for breaches of civil penalty provisions.

Note 2: For maximum penalty, see subsections 65AC(4) and (4A).

13A Licences and what they allow

Controlled substances licence

- (2) A controlled substances licence allows (subject to subsection (2A)) the licensee to do one of the following:
- (a) to carry out whichever one or more of the following activities is specified in it:

- (i) manufacture HCFCs;
 - (ii) import HCFCs;
 - (iii) export HCFCs;
- (b) to carry out whichever one or more of the following activities is specified in it:
- (i) manufacture methyl bromide;
 - (ii) import methyl bromide;
 - (iii) export methyl bromide;
- (c) to carry out whichever one or more of the following activities is specified in it:
- (i) manufacture SGGs;
 - (ii) import SGGs;
 - (iii) export SGGs.
- (2A) A controlled substances licence does not apply to:
- (a) recycled or used HCFCs; or
 - (b) recycled or used methyl bromide; or
 - (c) recycled or used SGGs.

Note: See subsection (4) (about used substances licences).

Essential uses licence

- (3) An essential uses licence allows (subject to subsection (3A)) the licensee to carry out whichever of the following activities is specified in it:
- (a) manufacture specified stage-1 or stage-2 scheduled substances for essential uses;
 - (b) import specified stage-1 or stage-2 scheduled substances, or specified HBFCs, for essential uses;
 - (c) export specified stage-1 or stage-2 scheduled substances for essential uses.
- (3A) An essential uses licence does not apply to recycled or used stage-1 or stage-2 scheduled substances.

Note: See subsection (4) (about used substances licences).

Part III Licences

Division 2 Requirement to have licence

Section 13A

Used substances licence

- (4) A used substances licence allows the licensee to carry out whichever of the following activities is specified in it:
- (a) import specified recycled or used stage-1 or stage-2 scheduled substances;
 - (b) export specified recycled or used stage-1 or stage-2 scheduled substances;
 - (c) import specified recycled or used HCFCs or recycled or used methyl bromide;
 - (d) export specified recycled or used HCFCs or recycled or used methyl bromide;
 - (e) import specified recycled or used SGGs;
 - (f) export specified recycled or used SGGs.

Equipment licence

- (5) An equipment licence allows the licensee to carry out the following activities:
- (a) import SGG equipment (other than by carrying out Schedule 4 activities or section 69G activities);
 - (b) any Schedule 4 activities or section 69G activities specified in the licence.
- (6) To avoid doubt, activities that may be specified as mentioned in paragraph (5)(b) include importing specified SGG equipment if importing that equipment is a Schedule 4 activity or section 69G activity.

Division 3—Grant of licence

14 Application for licence

- (1) A person may apply to the Minister for all or any of the following licences:
 - (a) a controlled substances licence;
 - (b) an essential uses licence;
 - (c) a used substances licence;
 - (d) an equipment licence.
- (2) An application for a licence must:
 - (a) be in the approved form; and
 - (aa) be accompanied by the prescribed fee, unless the fee has been waived in accordance with the regulations; and
 - (b) be given to the Minister.

15 Request for further information

The Minister may, within 60 days after an application for a licence is made, give an applicant for a licence written notice requiring the applicant to give the Minister such further information relating to the application as is specified in the notice.

16 Grant of licence

Minister may grant licence

- (1) Subject to subsections (3A) to (6B), the Minister may grant a licence to a person who has applied for it in accordance with section 14.

Content and form of licence

- (3) A licence (other than an HCFC licence, an SGG licence or an equipment licence):

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- (a) must specify:
 - (i) the substance or substances to which it relates; and
 - (ii) the activities it allows; and
 - (b) may specify the maximum quantities of any or all of those substances allowed for any or all of those activities.
- (3AA) An SGG licence must state that it relates to SGGs, and must specify the activities it allows.
- (3AB) An equipment licence must:
- (a) state that it allows the licensee to import SGG equipment (other than by carrying out Schedule 4 activities or section 69G activities); and
 - (b) specify the Schedule 4 activities and section 69G activities (if any) the licence allows.
- (3AC) Two or more licences granted to the same person may be set out in the same document.

Criteria for granting licence

- (3A) In deciding whether or not to grant a licence, the Minister:
- (a) must have regard to Australia's international obligations, and the policies of the Commonwealth Government, in relation to the manufacture, importation or consumption of scheduled substances; and
 - (b) may have regard to any other matters he or she thinks relevant.
- (4) The Minister shall not grant a licence to a person unless the Minister is satisfied that the person is a fit and proper person to be granted a licence.
- (5) Without limiting, by implication, the generality of the matters which the Minister may take into account in determining whether a person is a fit and proper person for the purposes of subsection (4), the Minister shall have regard to:
- (aa) any civil penalty order made against the person for a contravention of a civil penalty provision, where the

- contravention occurred within the 10 years immediately preceding the making of the application; and
- (a) any conviction of the person for an offence against this Act or the regulations committed within the 10 years immediately preceding the making of the application; and
 - (b) any conviction of the person for an offence against a law of the Commonwealth, of a State or of a Territory that is punishable by imprisonment for a period of 6 months or longer, being an offence committed within the 10 years immediately preceding the making of the application; and
- (ba) if the person is a body corporate—any civil penalty order made against an executive officer of the body corporate for a contravention of a civil penalty provision, where the contravention occurred within the 10 years immediately preceding the making of the application; and
- (bb) if the person is a body corporate—any conviction of an executive officer of the body corporate for an offence against this Act or the regulations committed within the 10 years immediately preceding the making of the application; and
- (bc) if the person is a body corporate—any conviction of an executive officer of the body corporate for an offence against a law of the Commonwealth, of a State or of a Territory that is punishable by imprisonment for a period of 6 months or longer, where the offence was committed within the 10 years immediately preceding the making of the application; and
- (c) whether the person is bankrupt, has applied to take the benefit of any law for the relief of bankrupt or insolvent debtors, has compounded with creditors or has made an assignment of remuneration for their benefit; and
- (ca) if the person is a body corporate—whether an executive officer of the body corporate is bankrupt, has applied to take the benefit of any law for the relief of bankrupt or insolvent debtors, has compounded with creditors or has made an assignment of remuneration for their benefit; and
- (d) any statement by the person in an application under this Act or the regulations that was false or misleading in a material particular; and
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- (e) where any statement by the person in an application under this Act or the regulations was false or misleading in a material particular—whether the person knew that the statement was false or misleading; and
 - (ea) if the person is a body corporate—any statement made by an executive officer of the body corporate in an application under this Act or the regulations that was false or misleading in a material particular; and
 - (eb) if:
 - (i) the person is a body corporate; and
 - (ii) a statement made by an executive officer of the body corporate in an application under this Act or the regulations was false or misleading in a material particular;
whether the executive officer knew that the statement was false or misleading; and
 - (f) whether the person has contravened a condition of a licence; and
 - (fa) if the person is a body corporate—whether an executive officer of the body corporate has contravened a condition of a licence; and
 - (g) whether the person held a licence that was cancelled under section 20; and
 - (h) if the person is a body corporate—whether an executive officer of the body corporate held a licence that was cancelled under section 20.
- (6) A reference in subsection (5) to a conviction for an offence includes a reference to the making of an order under section 19B of the *Crimes Act 1914* in relation to the offence.
- (6A) The Minister must not grant an equipment licence that allows a Schedule 4 activity or section 69G activity in relation to equipment unless:
- (a) either or both of the following subparagraphs apply:
 - (i) subsection (6B) applies in relation to the equipment;

- (ii) the Schedule 4 activity or section 69G activity is prescribed by the regulations for the purposes of this subparagraph; and
 - (b) the requirements (if any) prescribed by the regulations for the purposes of this paragraph in relation to the activity and the licence are satisfied.
- (6B) For the purposes of subparagraph (6A)(a)(i), this subsection applies if the Minister is satisfied that:
- (a) both:
 - (i) the equipment is essential for medical, veterinary, defence, industrial safety, or public safety, purposes; and
 - (ii) no practical alternative exists to the use of scheduled substances in the operation or manufacture, as the case requires, of the equipment if it is to continue to be effective for such a purpose; or
 - (b) because of the requirements of a law concerning the manufacture or use of the equipment, there is no practical alternative to the use of scheduled substances in the operation or manufacture, as the case requires, of the equipment; or
 - (c) the equipment is for use in conjunction with the calibration of scientific, measuring or safety equipment.

Refusal of application

- (7) An application is refused by giving the applicant written notice of the refusal and of the reasons for the refusal.

17 Deemed refusal of licence

- (1) If, at the end of 60 days after an application for a licence is made, the Minister has not:
 - (a) granted a licence; or
 - (b) refused the application; or
 - (c) made a request under section 15;

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the Minister is taken, for the purposes of section 66 and subject to subsection (4) of this section, to have refused the application on the last of the 60 days.

(2) If:

- (a) the Minister gives an applicant notice under section 15 requiring the applicant to give the Minister further information relating to the application; and
- (b) at the end of 60 days after the information is given to the Minister, the Minister has not:
 - (i) granted a licence; or
 - (ii) refused the application; or
 - (iii) made a further request under section 15;

the Minister is taken, for the purposes of section 66 and subject to subsection (4) of this section, to have refused the application on the last of those 60 days.

(3) If:

- (a) Subdivision A of Division 4 of Part 11 of the *Environment Protection and Biodiversity Conservation Act 1999* applies in relation to the granting of a licence; and
- (b) the Minister has not granted the licence at the end of 30 days after he or she received advice under that Subdivision on the proposed grant;

he or she is taken for the purposes of section 66 to have refused the application for the licence on the last of those days.

Note: Under Subdivision A of Division 4 of Part 11 of the *Environment Protection and Biodiversity Conservation Act 1999*, persons considering whether to authorise certain actions must get advice on environmental matters from the Minister administering that Subdivision.

- (4) Subsections (1) and (2) do not apply in relation to an application for a licence if Subdivision A of Division 4 of Part 11 of the *Environment Protection and Biodiversity Conservation Act 1999* applies in relation to the granting of the licence.

Division 4—Conditions on, and duration of, licence

18 Conditions of licences

- (1) A licence is subject to the conditions specified in the applicable item or items (if any) of the following table:

Licence conditions		
Item	Column 1 Licence	Column 2 Conditions
1	A controlled substances licence that allows the licensee to manufacture, import or export HCFCs	<p>(a) the licensee must not engage in a regulated HCFC activity in a quota period unless the licensee has been allocated:</p> <ul style="list-style-type: none"> (i) an HCFC quota for that period; or (ii) a reserve HCFC quota; <p>that is in force when the licensee engages in the activity; and</p> <p>(b) if the licensee has been allocated an HCFC quota for a quota period—the licensee must ensure that the total quantity of HCFCs, expressed in ODP tonnes, involved in regulated HCFC activities engaged in by the licensee in the quota period is not more than the total of:</p> <ul style="list-style-type: none"> (i) that quota; and (ii) any reserve HCFC quotas allocated to the licensee that are in force at any time in the quota period; and <p>(c) if the licensee has been allocated a reserve HCFC quota that is in force for a period (the <i>reserve period</i>) in a quota period, but has not been allocated an HCFC quota for that quota period—the licensee must ensure that the total quantity of HCFCs, expressed in ODP tonnes, involved in regulated HCFC activities engaged in by the licensee in the reserve period is not more than that reserve HCFC quota; and</p> <p>(d) the licensee must comply with any directions</p>

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Division 4 Conditions on, and duration of, licence

Section 18

Licence conditions		
Item	Column 1 Licence	Column 2 Conditions
		the Minister gives to the licensee under section 35A (directions to export HCFCs if quota exceeded).
2	A licence (other than an SGG licence) that allows the licensee to import a scheduled substance	The licensee must only import the substance from a country that is a Montreal Protocol country for the purposes of Part VI for the substance.
3	A licence (other than an SGG licence) that allows the licensee to export a scheduled substance	The licensee must only export the substance to a country that is a Montreal Protocol country for the purposes of Part VI for the substance.
4	An SGG licence	(a) the SGG licensee must not engage in a regulated HFC activity in a calendar year unless the licensee has been allocated: (i) an HFC quota for the year; or (ii) a reserve HFC quota; that is in force when the licensee engages in the activity; and (b) if the SGG licensee has been allocated an HFC quota for a calendar year—the licensee must ensure that the total quantity of HFCs, expressed in CO ₂ e megatonnes, involved in regulated HFC activities engaged in by the licensee in the year is not more than the total of: (i) that quota; and (ii) any reserve HFC quotas allocated to the licensee that are in force at any time in the year; and (c) if the SGG licensee has been allocated a reserve HFC quota that is in force for a period (the reserve period) in a calendar year, but has not been allocated an HFC quota for the year—the licensee must ensure that the total quantity of

Licence conditions		
Item	Column 1 Licence	Column 2 Conditions
		HFCs, expressed in CO ₂ e megatonnes, involved in regulated HFC activities engaged in by the licensee in the reserve period is not more than that reserve HFC quota; and (d) the SGG licensee must comply with any directions the Minister gives to the licensee under section 36H (directions to export HFCs if quota exceeded).
5	An SGG licence that allows the SGG licensee to import HFCs	The SGG licensee must only import HFCs from a country that is a Montreal Protocol country for the purposes of Part VI for HFCs.
6	An SGG licence that allows the SGG licensee to export HFCs	The SGG licensee must only export HFCs to a country that is a Montreal Protocol country for the purposes of Part VI for HFCs.

Note 1: For the quantity of HCFCs that is taken to be involved in regulated HCFC activities, see subsection 25A(2).

Note 2: For the quantity of HFCs that is taken to be involved in regulated HFC activities, see subsection 36B(2).

(2) The conditions mentioned in items 5 and 6 of the table in subsection (1) do not apply to importing or exporting SGGs before the day the changes to Article 4 of the Montreal Protocol set out in Article I of the Kigali Amendment enter into force for Australia.

(3) The Minister must announce, by notifiable instrument, the day the changes come into force for Australia.

Note: The changes cannot come into force before 1 January 2033.

Other conditions

(4) The Minister may, when granting a licence or at any time afterwards, impose other conditions on the licence.

Part III Licences

Division 4 Conditions on, and duration of, licence

Section 18

- (5) A condition imposed under subsection (4) has no effect unless it is set out in the licence, or in a written notice given to the licensee.
- (6) The following are examples of the kinds of conditions the Minister may impose under subsection (4):
- (a) conditions about the quantity of particular scheduled substances that the licensee may manufacture, import or export, as the case may be, during any period while the licence is in force;
 - (b) conditions prohibiting the licensee from doing anything otherwise covered by the licence unless the licensee also holds another type of licence;
 - (c) conditions about the purpose or purposes for which particular scheduled substances may be manufactured, imported or exported, as the case may be, under the licence;
 - (d) conditions requiring the licensee to give written reports to the Minister.

Penalties

- (7) A licensee must not contravene a condition of his or her licence.

Penalty: 500 penalty units.

- (7A) An offence under subsection (7) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (7B) Subsection (7) does not apply if the person has a reasonable excuse.

Note: The defendant bears an evidential burden in relation to the matter in subsection (7B). See subsection 13.3(3) of the *Criminal Code*.

- (7C) A licensee must not contravene a condition of his or her licence.

- (7D) Subsection (7C) is a *civil penalty provision*.

Note 1: Division 7 of Part VIII provides for pecuniary penalties for breaches of civil penalty provisions.

Note 2: For maximum penalty, see subsection 65AC(4).

- (7E) Subsection (7C) does not apply if the licensee has a reasonable excuse.
- (7F) A person who wishes to rely on subsection (7E) in proceedings for a civil penalty order bears an evidential burden in relation to that matter.

Varying or revoking conditions

- (8) The Minister may, on his or her own initiative or on written application by the licensee, vary or revoke a condition imposed under subsection (4).
- (9) A variation or revocation of a condition must be by written notice given to the licensee.

19 Duration of licences

When a licence comes into force

- (1) A licence comes into force on the day specified in it.

When a licence stops being in force

- (2) A controlled substances licence, an essential uses licence or a used substances licence stays in force until the earlier of:
- (a) the end of:
 - (i) if the licence is not renewed under section 19AC—the licence period in which the licence comes into force under subsection (1) of this section; or
 - (ii) if the licence is renewed one or more times under section 19AC—the licence period starting immediately after the time the licence would have ended apart from the last renewal; and
 - (b) if the licence is an essential uses licence, or a used substances licence, that specifies a period that ends before the time that applies under paragraph (a)—the end of that specified period; unless the licence is cancelled, or stops being in force for any other reason, before then.

Part III Licences

Division 4 Conditions on, and duration of, licence

Section 19

Note: An essential uses licence, or a used substances licence, that specifies a period under paragraph (b) cannot be renewed: see subsection 19AC(4).

- (3) An equipment licence stays in force until the earlier of:
- (a) the end of:
 - (i) if the licence is not renewed under section 19AC—2 years starting on the day the licence comes into force under subsection (1) of this section; or
 - (ii) if the licence is renewed one or more times under section 19AC—2 years starting immediately after the time the licence would have ended apart from the last renewal; and
 - (b) if the licence specifies a period, or a method for ascertaining a period, that ends before the time that applies under paragraph (a)—the end of that period;
- unless the licence is cancelled, or stops being in force for any other reason, before then.

Division 5—Renewing licences

19AA Application for renewal of licence

- (1) The holder of a licence may apply to the Minister for a renewal of the licence.
- (2) The application must be made no later than 60 days before the licence ceases to be in force.
- (3) The application must:
 - (a) be in the approved form; and
 - (b) be accompanied by the fee prescribed by the regulations, unless the fee has been waived in accordance with the regulations; and
 - (c) be given to the Minister.

19AB Request for further information

The Minister may, within 60 days after an application for a renewal of a licence is made under section 19AA, give the applicant written notice requiring the applicant to give to the Minister such further information relating to the application as is specified in the notice.

19AC Decision on application

- (1) If a person applies under section 19AA for a renewal of a licence, the Minister must:
 - (a) subject to subsections (2) and (4), renew the licence by:
 - (i) giving the applicant written notice of the renewal; and
 - (ii) amending the licence as mentioned in subsection (5), if applicable; or
 - (b) refuse to renew the licence, by giving the applicant written notice of:
 - (i) the refusal; and
 - (ii) the reasons for the refusal.

Part III Licences

Division 5 Renewing licences

Section 19AD

Note: The effect of a renewal of a licence is to extend the period for which the licence is in force: see subparagraphs 19(2)(a)(ii) and (3)(a)(ii).

- (2) Subsections 16(3A) to (6B) (about criteria) apply in relation to renewing the licence in the same way as those subsections apply in relation to granting a licence.
- (3) In applying subsection (2), the Minister may take into account the Minister's previous consideration of the matters mentioned in subsections 16(3A) to (6B) in relation to granting or renewing the licence.

Licences in force for a specified period

- (4) The Minister must not renew an essential uses licence, or a used substances licence, that specifies a period for the purposes of paragraph 19(2)(b).

Note 1: Paragraph 19(2)(b) allows a licence to specify a period, shorter than a licence period, during which the licence stays in force.

Note 2: The Minister may amend the specified period under section 19C at the request of the licensee.

- (5) If the Minister renews an equipment licence that specifies a period or method for the purposes of paragraph 19(3)(b), the Minister must amend the licence to:
 - (a) remove the specification; or
 - (b) specify a period, or a method for ascertaining a period, that ends within 2 years after the time the licence would have ended apart from the renewal.

Note: Paragraph 19(3)(b) allows a licence to specify a period, or a method for ascertaining a period, shorter than 2 years, during which the licence stays in force.

19AD Deemed refusal of renewal

- (1) If, at the end of 60 days after an application for a renewal of a licence is made under section 19AA, the Minister has not:
 - (a) renewed the licence under section 19AC; or
 - (b) refused the application under section 19AC; or

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(c) made a request under section 19AB;
the Minister is taken, for the purposes of sections 19AE and 66, to have refused the application on the last of the 60 days.

(2) If:

(a) the Minister gives an applicant notice under section 19AB requiring the applicant to give to the Minister further information relating to the application; and

(b) at the end of 60 days after the information is given to the Minister, the Minister has not:

(i) renewed the licence under section 19AC; or

(ii) refused the application under section 19AC; or

(iii) made a further request under section 19AB;

the Minister is taken, for the purposes of sections 19AE and 66, to have refused the application on the last of the 60 days.

19AE Deemed application for new licence

If:

(a) a person applies under section 19AA for a renewal of a licence; and

(b) the licence ceases to be in force (other than because it is cancelled or terminated) before the Minister:

(i) renews the licence under section 19AC; or

(ii) refuses the application under section 19AC;

the person is taken to have applied in accordance with section 14 for a licence of the same type on the day after the licence ceased to be in force.

Division 6—Other changes to licences

19A Termination of licences

- (1) The Minister may, by written notice given to a licensee, terminate all licences of the kind specified in the notice that are held by the licensee.
- (2) The Minister must not terminate a licence unless satisfied that it is necessary to do so for the purpose of giving effect to an adjustment or amendment of:
 - (a) the Montreal Protocol; or
 - (b) the Framework Convention on Climate Change; or
 - (c) the Kyoto Protocol.
- (3) A notice terminating a specified kind of licence takes effect on the day specified in the notice.
- (4) A notice given on the basis of an adjustment or amendment of the Montreal Protocol that has not entered into force for Australia must not specify a day earlier than the day when the adjustment or amendment enters into force for Australia.
- (5) When a notice given to a licensee takes effect, all licences of the kind specified in it that are held by the licensee stop being in force.

19B Transfer of licences

- (1) The Minister may transfer a licence from the licensee to another person (the *transferee*) on a joint application by the licensee and the transferee.
- (2) An application must:
 - (a) be in the approved form; and
 - (b) be signed by both applicants; and
 - (c) be given to the Minister.

- (4) The Minister must not grant an application unless satisfied that the transferee is a fit and proper person to be granted a licence.
- (5) Without limiting the matters that the Minister may take into account in determining whether a transferee is a fit and proper person for the purpose of subsection (4), the Minister must have regard to the matters mentioned in paragraphs 16(5)(a) to (g), inclusive, as affected by subsection 16(6).
- (6) A decision by the Minister transferring a licence, or refusing to transfer a licence, must be by written notice given to the applicants.
- (7) A notice of a decision refusing to transfer a licence must state the reasons for the decision.
- (8) If the Minister transfers a licence, the transferee is taken to be the licensee on and after the date of the transfer.

19C Amendment of licence at request of licensee

- (1) The Minister may amend a licence at the written request of the licensee.

Note: For example, if there is a change in the name of the licensee, the licence could be amended to specify the new name.

- (2) Subsection (1) does not allow amendment of a condition of a licence.

Note: Section 18 deals with variation of the conditions of a licence.

20 Cancellation of licence

- (1) The Minister may cancel a licence if satisfied that the licensee:
 - (a) is no longer a fit and proper person to hold a licence; or
 - (b) has contravened a condition of the licence.
- (2) Without limiting, by implication, the generality of the matters which the Minister may take into account in determining whether a person is a fit and proper person for the purposes of subsection (1), the Minister shall have regard to:

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- (aa) any civil penalty order made against the person for a contravention of a civil penalty provision, where the contravention occurred within the immediately preceding 10 years; and
- (a) any conviction of the person for an offence against this Act or the regulations committed within the immediately preceding 10 years; and
- (b) any conviction of the person for an offence against a law of the Commonwealth, of a State or of a Territory that is punishable by imprisonment for a period of 6 months or longer, being an offence committed within the immediately preceding 10 years; and
- (ba) if the person is a body corporate—any civil penalty order made against an executive officer of the body corporate for a contravention of a civil penalty provision, where the contravention occurred within the immediately preceding 10 years; and
- (bb) if the person is a body corporate—any conviction of an executive officer of the body corporate for an offence against this Act or the regulations committed within the immediately preceding 10 years; and
- (bc) if the person is a body corporate—any conviction of an executive officer of the body corporate for an offence against a law of the Commonwealth, of a State or of a Territory that is punishable by imprisonment for a period of 6 months or longer, where the offence was committed within the immediately preceding 10 years; and
- (c) whether the person is bankrupt, has applied to take the benefit of any law for the relief of bankrupt or insolvent debtors, has compounded with creditors or has made an assignment of remuneration for their benefit; and
- (ca) if the person is a body corporate—whether an executive officer of the body corporate is bankrupt, has applied to take the benefit of any law for the relief of bankrupt or insolvent debtors, has compounded with creditors or has made an assignment of remuneration for their benefit; and

- (d) any statement by the person, in an application under this Act or the regulations, that was false or misleading in a material particular; and
 - (e) where any statement by the person in such an application was false or misleading in a material particular—whether the person knew that the statement was false or misleading; and
 - (f) if the person is a body corporate—any statement made by an executive officer of the body corporate in an application under this Act or the regulations that was false or misleading in a material particular; and
 - (g) if:
 - (i) the person is a body corporate; and
 - (ii) a statement made by an executive officer of the body corporate in an application under this Act or the regulations was false or misleading in a material particular;
whether the executive officer knew that the statement was false or misleading.
- (3) A reference in subsection (2) to a conviction for an offence includes a reference to the making of an order under section 19B of the *Crimes Act 1914* in relation to the offence.
- (4) The Minister shall cancel a licence by giving to the licensee a written notice stating that the licence has been cancelled and setting out the reasons for the cancellation.
- (5) The cancellation of a licence takes effect 60 days after the notice is given to the licensee under subsection (4).

21 Surrender of licence

- (1) A licensee may, at any time, surrender a licence by giving the Minister written notice that the licence is surrendered.
- (2) The surrender of a licence takes effect (unless the licence is sooner cancelled):

Part III Licences

Division 6 Other changes to licences

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- (a) if a date of effect is stated in the notice of surrender, at the end of that day; or
- (b) in any other case, on the day on which the notice is given.

Division 7—Other provisions

22 Publication of information regarding licences etc.

The regulations may make provision for the periodic publication of details of:

- (a) licences granted;
- (b) applications for licences refused; and
- (c) licences cancelled or surrendered.

Part IV—HCFC quotas

22A Simplified outline of this Part

The Minister may allocate to a licensee:

- (a) an HCFC quota for a quota period; or
- (b) in exceptional circumstances, a reserve HCFC quota for a specified period (which need not be a quota period).

Under section 18, it is a condition of a controlled substances licence that:

- (a) the licensee must not engage in a regulated HCFC activity unless the licensee has been allocated a quota; and
- (b) the total quantity of HCFCs involved in regulated HCFC activities engaged in by the licensee is not more than the licensee's quotas.

Sections 24 and 25 limit how much quota the Minister may allocate.

23 Meaning of *licence* and *licensee*

In this Part:

licence means a controlled substances licence allowing the licensee to manufacture, import or export HCFCs.

licensee means the holder of a controlled substances licence allowing the licensee to manufacture, import or export HCFCs.

23A HCFC quota periods

- (1) A ***quota period*** is 2 years, or such longer or shorter period (if any) as is determined under subsection (2).

- (2) The Minister may, by legislative instrument, determine a period for the purposes of subsection (1).
- (3) The first quota period starts on the 1 January specified by the Minister under section 26.
- (4) Each quota period, except the first, starts immediately after the end of the last preceding one.

24 How to work out HCFC industry limits

For the purposes of this Part, the HCFC industry limit for a calendar year specified in column 2 of an item in the following table is the quantity of HCFCs specified in column 3 of that item.

Table of HCFC industry limits		
Column 1	Column 2	Column 3
Item No.	Calendar year	HCFC industry limit Quantity of HCFCs in ODP tonnes per year
1	1996, 1997, 1998, 1999	250
2	2000, 2001	220
3	2002, 2003	190
4	2004, 2005	160
5	2006, 2007	130
6	2008, 2009	100
7	2010, 2011	70
8	2012, 2013	40
9	2014, 2015	10
10	2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029	2.5
11	2030	0

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25 How to work out reserve HCFC quota limits

For the purposes of this Part, the reserve HCFC quota limit for a calendar year specified in column 2 of an item in the following table is the quantity of HCFCs specified in column 3 of that item.

Table of reserve HCFC quota limits		
Column 1	Column 2	Column 3
Item No.	Calendar year	HCFC quota limit Quantity of HCFCs in ODP tonnes per year
1	1996, 1997, 1998, 1999, 2000, 2001	50
2	2002, 2003	40
3	2004, 2005	35
4	2006, 2007	30
5	2008, 2009	20
6	2010, 2011	15
7	2012, 2013	10
8	2014, 2015	2
9	2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029	0.24
10	2030	0

25A Regulated HCFC activities

- (1) A *regulated HCFC activity* is the manufacture or import of HCFCs.

Note: This Part does not apply to the import of HCFCs for use on board ships or aircraft in certain circumstances: see section 12B.

- (2) For the purposes of this Act, the quantity of HCFCs that is taken to be involved in regulated HCFC activities engaged in by a licensee in a period is the greater of the quantity worked out using the following formula and nil:

$$\left(\begin{array}{l} \text{Quantity of HCFCs} \\ \text{actually involved in} \\ \text{regulated HFC} \\ \text{activities engaged in} \\ \text{by the licensee} \\ \text{in the period,} \\ \text{expressed in} \\ \text{ODP tonnes} \end{array} - \begin{array}{l} \text{Quantity of} \\ \text{HCFCs exported} \\ \text{by the licensee} \\ \text{in the period,} \\ \text{expressed in} \\ \text{ODP tonnes} \end{array} \right) \times \left(\begin{array}{l} 100\% - \\ \text{Heel} \\ \text{allowance} \\ \text{percentage} \\ \text{for HCFCs} \end{array} \right)$$

- (3) For the purposes of subsection (2), the quantity of HCFCs exported by a licensee in a period is taken not to include any quantity exported under a direction given to the licensee under section 35A (direction to export HCFCs if quota exceeded).

26 Start of first HCFC quota period

- (1) If the Minister becomes aware that in any year (the *excess year*) the total quantity of HCFCs, expressed in ODP tonnes, involved in regulated HCFC activities engaged in by licensees is more than 90% of the HCFC industry limit for that year, the Minister must publish a notice in the *Gazette*.
- (2) A notice must:
- (a) specify the 1 January next following the date of the notice as the start of the first HCFC quota period; and
 - (c) specify the base year to be used in allocating HCFC quotas to licensees during the first HCFC quota period.
- (3) The base year to be specified in a notice is the last calendar year before the excess year.
- (4) A notice under this section is not a legislative instrument.

27 Application for quota

- (1) An application for a quota must:
- (a) be in the approved form; and
 - (b) be given to the Minister.

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- (3) An application may only be made by a licensee.

28 Allocation of quota

- (1) Subject to this section and section 29, the Minister may, on an application made in accordance with section 27, allocate a quota to the applicant.
- (2) The Minister must determine the size of each quota in accordance with section 31 or 32, as the case requires.
- (3) In deciding whether or not to allocate a quota, the Minister:
- (a) must have regard to Australia's international obligations, and the policies of the Commonwealth Government, in relation to the manufacture, importation or consumption of scheduled substances; and
 - (b) may have regard to any other matters he or she thinks relevant.
- (4) A quota is allocated by written notice given to the applicant.
- (5) The notice must:
- (a) specify the size of the quota; and
 - (b) state whether it is an HCFC quota or a reserve HCFC quota; and
 - (c) in the case of an HCFC quota—specify the quota period for which it is allocated; and
 - (d) in the case of a reserve HCFC quota—specify the period (not longer than 12 months) for which it is allocated.
- (6) If the Minister refuses to allocate a quota, the Minister must notify the applicant in writing of the refusal and of the reasons for it.

29 Limits on power to allocate reserve HCFC quotas

- (1) The Minister must not allocate a reserve HCFC quota unless satisfied that exceptional circumstances exist.

- (2) For the purposes of subsection (1), exceptional circumstances exist if, and only if:
- (a) the use of the relevant HCFC is essential for medical, veterinary, defence or public safety purposes; and
 - (b) there is no practicable alternative to that use; and
 - (c) without the allocation, the HCFC will not be available, in the quantities required for that use, within a reasonable period.
- (3) The Minister must not allocate a reserve HCFC quota for a year, or part of a year, if the sum of the amounts of all other reserve HCFC quotas allocated for that year, or any part of that year, equals the reserve HCFC quota limit for that year.

30 Duration of quotas

- (1) An HCFC quota stays in force until the end of the quota period for which it is allocated, unless it stops being in force for any other reason before then.
- (2) A reserve HCFC quota stays in force until the end of the period specified in it under paragraph 28(5)(d), unless it stops being in force for any other reason before then.

31 HCFC quota sizes

- (1) The size of an HCFC quota allocated to a licensee for a quota period is to be worked out using the formula:

$$\frac{ALA}{AIA} \times IL$$

where:

ALA (amount of licensee's activities) means the sum of the quantities of HCFCs, expressed in ODP tonnes, involved in regulated HCFC activities carried out under the licence during the base year by:

- (a) the licensee; or

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- (b) if the licence was transferred to the licensee—the licensee and the transferor.

AIA (amount of industry activities) means the sum of the quantities of HCFCs, expressed in ODP tonnes, involved in regulated HCFC activities carried out by all licensees during the base year.

IL (industry limit) means the sum of the HCFC industry limits for each year of the quota period.

- (2) In this section:

base year means:

- (a) in relation to an allocation for the first HCFC quota period—the base year specified in the notice under section 26; and
(b) in relation to an allocation for any other HCFC quota period—the penultimate calendar year before the start of that quota period.

32 Reserve HCFC quota sizes

In determining the amount of each reserve HCFC quota allocated for a year, or part of a year, the Minister must ensure that the sum of that amount and the amounts of all other reserve HCFC quotas allocated for that year, or any part of that year, is not more than the reserve HCFC quota limit for that year.

33 Reserve HCFC quotas: variation or revocation

- (1) The Minister may vary or revoke a reserve HCFC quota if satisfied that the exceptional circumstances on which its allocation was based have changed or no longer exist.
- (2) A variation or revocation takes effect when a written notice of it is given to the licensee to whom the quota was allocated.
- (3) The Minister must not vary a reserve HCFC quota allocated to a licensee by increasing the amount of the quota if the increased amount could not have been allocated to the licensee under section 29.

34 Quotas cease when licences cease

A quota allocated to a licensee stops being in force when the licensee's licence is cancelled, or stops being in force for any other reason.

35 Transfer of quotas

- (1) If:
 - (a) a licensee is allocated an HCFC quota; and
 - (b) the Minister transfers the licence under section 19B;the unused part of the quota is taken to have been allocated to the transferee on the date of the transfer.
- (2) A licensee may, without transferring the licensee's licence, transfer to another licensee the unused part of:
 - (a) an HCFC quota allocated to the first licensee for a quota period; and
 - (b) each HCFC quota (if any) allocated to the first licensee for later quota periods.
- (2A) A licensee may, instead of transferring the whole of the unused parts of the quotas mentioned in subsection (2):
 - (a) choose a particular percentage; and
 - (b) without transferring the licensee's licence, transfer to another licensee the lesser of the following percentages of each of those quotas:
 - (i) the chosen percentage;
 - (ii) the percentage of the quota that is unused.
- (3) A transfer mentioned in subsection (2) has no effect until the transferor notifies the Minister of the transfer.
- (4) A notice must:
 - (a) state the transferee's name, address and licence number; and
 - (b) specify the amount of quota transferred.
- (5) After a transfer mentioned in subsection (2) takes effect:

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- (a) the transferred quota, or part of a quota, is taken to have been allocated to the transferee; and
- (b) if part of a quota is transferred—the transferor is taken to have been allocated the untransferred part of the quota.

35A Direction to export HCFCs if quota exceeded

- (1) The Minister may, by written notice given to a licensee, direct the licensee to export a specified quantity of HCFCs by a specified time if:
- (a) both:
 - (i) the licensee has been allocated an HCFC quota for a quota period; and
 - (ii) the total quantity of HCFCs, expressed in ODP tonnes, involved in regulated HCFC activities engaged in by the licensee in the year exceeds the total of that quota and any reserve HCFC quotas allocated to the licensee that are in force at any time in the period; or
 - (b) both:
 - (i) the licensee has been allocated a reserve HCFC quota that is in force for a period (the *reserve period*) in a quota period, but has not been allocated an HCFC quota for the quota period; and
 - (ii) the total quantity of HCFCs, expressed in ODP tonnes, involved in regulated HCFC activities engaged in by the licensee in the reserve period exceeds the reserve HCFC quota.

Note: It is a condition of the licence that the licensee comply with the direction: see subsection 18(1).

- (2) The amount specified in the direction must not be greater than the amount of the excess.

Part IVA—HFC quotas

Division 1—Outline of this Part

36 Simplified outline of this Part

The Minister may allocate to an SGG licensee:

- (a) an HFC quota for a calendar year; or
- (b) in prescribed circumstances, a reserve HFC quota for a specified period (which need not be a calendar year).

Under section 18, it is a condition of an SGG licence that:

- (a) the licensee must not engage in a regulated HFC activity unless the licensee has been allocated a quota; and
- (b) the total quantity of HFCs involved in regulated HFC activities engaged in by the licensee is not more than the licensee's quotas.

Sections 36A and 36G limit how much quota the Minister may allocate.

Division 2—HFC quotas

36A HFC industry limit

- (1) The **HFC industry limit** for a calendar year is the quantity of HFCs, expressed in CO₂e megatonnes:
 - (a) prescribed by the regulations in relation to the year for the purposes of this subsection; or
 - (b) worked out in accordance with a method prescribed by the regulations in relation to the year for the purposes of this subsection.
- (2) The sum of the amounts of all HFC quotas allocated for a calendar year must not exceed the HFC industry limit for the year.
- (3) Regulations made for the purposes of subsection (1) must be consistent with Australia's international obligations.

36B Regulated HFC activities

- (1) A **regulated HFC activity** is the manufacture or import of HFCs other than:
 - (a) the import of HFCs that are recycled or used SGGs; or
 - (b) the import of HFCs in SGG equipment; or
 - (c) the manufacture or import of HFCs in circumstances prescribed for the purposes of subsection 13(3).

Note 1: Subsection 13(3) allows the regulations to prescribe circumstances in which a licence is not required for the manufacture or import of HFCs and other SGGs.

Note 2: This Part does not apply to the import or export of HFCs for use on board ships or aircraft in certain circumstances: see section 12B.

- (2) For the purposes of this Act, the quantity of HFCs that is taken to be involved in regulated HFC activities engaged in by an SGG licensee in a period is the greater of the amount worked out using the following formula and nil:

$$\left(\begin{array}{r} \text{Quantity of HFCs} \\ \text{actually involved in} \\ \text{regulated HFC} \\ \text{activities engaged in} \\ \text{by the licensee} \\ \text{in the period,} \\ \text{expressed in} \\ \text{CO}_2\text{e megatonnes} \end{array} - \begin{array}{r} \text{Quantity of} \\ \text{HFCs exported} \\ \text{by the licensee} \\ \text{in the period,} \\ \text{expressed in} \\ \text{CO}_2\text{e megatonnes} \end{array} \right) \times \left(\begin{array}{r} 100\% - \\ \text{Heel} \\ \text{allowance} \\ \text{percentage} \\ \text{for HFCs} \end{array} \right)$$

- (3) For the purposes of subsection (2), the quantity of HFCs exported by an SGG licensee in a period is taken not to include any quantity exported under a direction given to the licensee under section 36H (direction to export HFCs if quota exceeded).

36C Applications, allocation and size of HFC quotas

- (1) The regulations may provide in relation to any of the following:
- (a) processes for applying for HFC quotas, including who may apply;
 - (b) processes for the Minister to:
 - (i) allocate HFC quotas for calendar years to SGG licensees; or
 - (ii) vary the size of HFC quotas; or
 - (iii) stop allocated HFC quotas being in force; or
 - (iv) cancel allocated HFC quotas, with the effect that the quotas are taken never to have been in force;
 - (c) the effect on HFC industry limits of the processes mentioned in paragraph (b);
 - (d) the size of HFC quotas, or the method for working out the size of HFC quotas;
 - (e) review of decisions made under regulations made for the purposes of this section.
- (2) Regulations made for the purposes of subsection (1) may provide in relation to a matter mentioned in that subsection by providing for the matter, or for anything relating to it, to be determined by the Minister, including by legislative instrument.

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36D Duration of HFC quotas

An HFC quota stays in force until the end of the calendar year for which it is allocated, unless it stops being in force for any other reason before then.

36E Quotas cease when licences cease

An HFC quota allocated to an SGG licensee stops being in force when the licensee's SGG licence is cancelled, or stops being in force for any other reason.

36F Transfer of quotas

Transfer of HFC quota if SGG licence transferred

- (1) If the Minister transfers an SGG licensee's SGG licence under section 19B, the unused part of each HFC quota (if any) allocated to the first licensee for calendar years ending on or after the date of the transfer is taken to have been allocated to the transferee on that date.

Transfer of HFC quota without transferring SGG licence

- (2) An SGG licensee may, without transferring the licensee's SGG licence, transfer to another SGG licensee the unused part of:
 - (a) an HFC quota allocated to the first licensee for a calendar year; and
 - (b) each HFC quota (if any) allocated to the first licensee for later calendar years.
- (3) An SGG licensee may, instead of transferring the whole of the unused parts of the HFC quotas mentioned in subsection (2):
 - (a) choose a particular percentage; and
 - (b) without transferring the licensee's SGG licence, transfer to another SGG licensee the lesser of the following percentages of each of those quotas:
 - (i) the chosen percentage;

- (ii) the percentage of the quota that is unused.
- (4) A transfer under subsection (2) or (3) has no effect until the transferor notifies the Minister of the transfer.
- (5) A notice must:
 - (a) state the transferee's name, address and licence number; and
 - (b) specify the amount of each HFC quota transferred.
- (6) After a transfer under subsection (2) or (3) takes effect:
 - (a) each transferred HFC quota, or each transferred part of an HFC quota, is taken to have been allocated to the transferee; and
 - (b) if only part of an HFC quota is transferred—the transferor is taken to have been allocated the untransferred part of the quota.

Division 3—Reserve HFC quotas

36G Reserve HFC quotas

Reserve HFC quotas

- (1) The Minister must not allocate a reserve HFC quota unless satisfied that circumstances prescribed by the regulations for the purposes of this subsection exist.
- (2) The regulations may provide in relation to any of the following:
 - (a) processes for applying for reserve HFC quotas, including who may apply;
 - (b) processes for the Minister to:
 - (i) allocate reserve HFC quotas; or
 - (ii) vary the size or period of reserve HFC quotas; or
 - (iii) stop allocated reserve HFC quotas being in force; or
 - (iv) cancel allocated reserve HFC quotas, with the effect that the quotas are taken never to have been in force;
 - (c) processes for transferring reserve HFC quotas between SGG licensees;
 - (d) the size of reserve HFC quotas, or the method for working out the size of reserve HFC quotas;
 - (e) the period (not longer than 12 months) during which each reserve HFC quota is in force;
 - (f) review of decisions made under regulations made for the purposes of this subsection.

Reserve HFC quota limit

- (3) The ***reserve HFC quota limit*** for a calendar year is the quantity of HFCs, expressed in CO₂e megatonnes:
 - (a) prescribed by the regulations in relation to the year for the purposes of this subsection; or

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- (b) worked out in accordance with a method prescribed by the regulations in relation to the year for the purposes of this subsection.
- (4) The sum of the amounts of all reserve HFC quotas allocated for a calendar year (including any part of that year) must not be more than the reserve HFC quota limit for that year.
- (5) Regulations made for the purposes of subsection (3) must be consistent with Australia's international obligations.

Division 4—Other provisions

36H Direction to export HFCs if quota exceeded

- (1) The Minister may, by written notice given to an SGG licensee, direct the licensee to export a specified quantity of HFCs by a specified time if:
- (a) both:
 - (i) the SGG licensee has been allocated an HFC quota for a calendar year; and
 - (ii) the total quantity of HFCs, expressed in CO₂e megatonnes, involved in regulated HFC activities engaged in by the licensee in the year exceeds the total of that quota and any reserve HFC quotas allocated to the licensee that are in force at any time in the year; or
 - (b) both:
 - (i) the SGG licensee has been allocated a reserve HFC quota that is in force for a period (the *reserve period*) in a calendar year, but has not been allocated an HFC quota for the year; and
 - (ii) the total quantity of HFCs, expressed in CO₂e megatonnes, involved in regulated HFC activities engaged in by the licensee in the reserve period exceeds the reserve HFC quota.
- Note 1: It is a condition of the SGG licence that the licensee comply with the direction: see subsection 18(1).
- Note 2: A person requires an SGG licence to export an HFC in most circumstances: see section 13.
- (2) The amount specified in the direction must not be greater than the amount of the excess.

36J Basis on which quotas are allocated

An HFC quota or reserve HFC quota is allocated on the basis that:

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- (a) the quota may be varied under regulations made for the purposes of subsection 36C(1) or 36G(2); and
- (b) the quota may stop being in force under section 36F or under regulations made for the purposes of subsection 36C(1) or 36G(2); and
- (c) the quota may be cancelled under regulations made for the purposes of subsection 36C(1) or 36G(2); and
- (d) the quota may be varied, stop being in force or be cancelled by or under later legislation; and
- (e) no compensation is payable if the quota is varied, stops being in force or is cancelled as mentioned in any of the above paragraphs.

Part VI—Control of imports and exports

41 Montreal Protocol countries

- (1) The Minister must maintain a Register of Montreal Protocol Countries, listing:
 - (a) each country that is to be treated as a Montreal Protocol country for the purposes of this Part; and
 - (b) for each such country—the substance or substances for which it is to be treated as a Montreal Protocol country for the purposes of this Part.
- (2) The Minister must not list a country in the Register for a particular substance if to do so would be inconsistent with Australia's obligations in relation to the import of any of the following things from countries that are not parties to the Montreal Protocol:
 - (a) scheduled substances;
 - (b) equipment containing scheduled substances;
 - (c) equipment manufactured using scheduled substances.
- (2A) The Minister may remove a country from the Register.
- (2B) If a substance is listed in the Register in relation to a country, the Minister may remove the substance from the Register in relation to that country.
- (3) For the purposes of this Part, a country is a ***non-Montreal Protocol country*** at a particular time for a particular substance if the country is not listed in the Register at that time for that substance.

Example: If a country is listed in the Register for substance A but not for substance B (both being stage-1 scheduled substances), then subsection 44(1) prohibits the import of substance B from that country but does not apply to the import of substance A from that country.
- (4) The Minister must ensure that the Register is accessible to the public through the internet.

- (5) The Minister may give a written certificate stating that a specified country was, or was not, on a specified date, listed in the Register for a specified substance. The certificate is prima facie evidence of the matters stated in the certificate.
- (6) The Register is not a legislative instrument.

44 Import of equipment containing scheduled substances from non-Montreal Protocol countries

- (1) On and after the implementation day for this subsection, a person shall not import from a non-Montreal Protocol country equipment containing a stage-1 scheduled substance.

Penalty: 300 penalty units.

- (1A) An offence under subsection (1) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (2) The implementation day for subsection (1) is the day fixed by the Minister as the day on which, in order for Australia to comply with its international obligations under paragraph 3 of Article 4 of the Montreal Protocol, the prohibition in subsection (1) must take effect.

- (2A) A person must not import from a non-Montreal Protocol country equipment containing a stage-1 scheduled substance.

- (2B) Subsection (2A) is a *civil penalty provision*.

Note 1: Division 7 of Part VIII provides for pecuniary penalties for breaches of civil penalty provisions.

Note 2: For maximum penalty, see subsection 65AC(4).

- (3) Subsections (1) and (2A) apply to equipment declared, in writing, by the Minister to be equipment to which subsections (1) and (2A) apply, being equipment listed in the annex referred to in paragraph 3 of Article 4 of the Montreal Protocol.
- (4) The fixing of a day under subsection (2) shall be by notice published in the *Gazette*.

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- (5) On and after the 3rd anniversary of the commencement of this subsection, a person must not import from a non-Montreal Protocol country equipment containing a stage-2 scheduled substance.

Penalty: 300 penalty units.

- (5A) An offence under subsection (5) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (5B) A person must not import from a non-Montreal Protocol country equipment containing a stage-2 scheduled substance.

- (5C) Subsection (5B) is a *civil penalty provision*.

Note 1: Division 7 of Part VIII provides for pecuniary penalties for breaches of civil penalty provisions.

Note 2: For maximum penalty, see subsection 65AC(4).

- (6) Subsections (5) and (5B) apply to equipment declared, in writing, by the Minister to be equipment to which subsections (5) and (5B) apply, being equipment listed in the annex referred to in paragraph 3 *bis* of Article 4 of the Montreal Protocol.
- (7) A declaration under subsection (3) or (6) is a legislative instrument.

45 Import of equipment manufactured using scheduled substances from non-Montreal Protocol countries

- (1) On and after the implementation day for this subsection, a person shall not import from a non-Montreal Protocol country equipment in the manufacture of which a stage-1 scheduled substance was used.

Penalty: 300 penalty units.

- (1A) An offence under subsection (1) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (2) The implementation day for subsection (1) is the day fixed by the Minister as the day on which, in order for Australia to comply with

its international obligations under paragraph 4 of Article 4 of the Montreal Protocol, the prohibition in subsection (1) must take effect.

(2A) A person must not import from a non-Montreal Protocol country equipment in the manufacture of which a stage-1 scheduled substance was used.

(2B) Subsection (2A) is a ***civil penalty provision***.

Note 1: Division 7 of Part VIII provides for pecuniary penalties for breaches of civil penalty provisions.

Note 2: For maximum penalty, see subsection 65AC(4).

(3) Subsections (1) and (2A) apply to equipment declared, in writing, by the Minister to be equipment to which subsections (1) and (2A) apply, being equipment listed in the annex referred to in paragraph 4 of Article 4 of the Montreal Protocol.

(3A) On and after the 5th anniversary of the commencement of this subsection, a person must not import from a non-Montreal Protocol country equipment in the manufacture of which a stage-2 scheduled substance was used.

Penalty: 300 penalty units.

(3AA) An offence under subsection (3A) is an offence of strict liability.

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

(3AB) A person must not import from a non-Montreal Protocol country equipment in the manufacture of which a stage-2 scheduled substance was used.

(3AC) Subsection (3AB) is a ***civil penalty provision***.

Note 1: Division 7 of Part VIII provides for pecuniary penalties for breaches of civil penalty provisions.

Note 2: For maximum penalty, see subsection 65AC(4).

(3B) Subsections (3A) and (3AB) apply to equipment declared, in writing, by the Minister to be equipment to which subsections (3A)

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and (3AB) apply, being equipment listed in the annex referred to in paragraph 4 *bis* of Article 4 of the Montreal Protocol.

- (4) Subsections (1), (2A), (3A) and (3AB) do not apply to an importation of equipment, of a kind referred to in subsection (3) or (3B), as the case requires, in accordance with conditions determined, in writing, by the Minister as the conditions under which importation of the equipment will be permitted.
- (5) The Minister shall not determine conditions that are inconsistent with Australia's international obligations under paragraph 4 of Article 4 of the Montreal Protocol.
- (6) The fixing of a day under subsection (2) shall be by notice published in the *Gazette*.
- (7) A declaration under subsection (3) or (3B) is a legislative instrument.
- (8) A determination under subsection (4) is a legislative instrument.
- (9) Despite the *Legislation Act 2003*, a determination under subsection (4) of this section commences at the start of the first day on which the determination is no longer liable to be disallowed, or to be taken to have been disallowed, under that Act.

Part VIA—Controls on disposal, use etc. of scheduled substances

45A Regulation of disposal, use etc. of scheduled substances

- (1) The regulations may make provision for the following:
 - (a) regulating the sale or purchase, or any other acquisition or disposal, of scheduled substances;
 - (b) regulating the storage, use or handling of scheduled substances (other than a use of HCFCs that is prohibited under section 45C);
 - (c) labelling requirements for scheduled substances and for equipment that contains or uses scheduled substances;
 - (d) conferring functions on persons or bodies (including non-government bodies) in relation to matters covered by paragraph (a), (b) or (c);
 - (e) matters incidental to matters covered by paragraph (a), (b), (c) or (d).
- (2) For the avoidance of doubt, the regulations may make provision for regulating something by providing that it must not be done unless specified conditions are met.

45B Discharge of scheduled substances

- (1) A person commits an offence if:
 - (a) the person engages in conduct; and
 - (b) the conduct occurs on or after the startup date; and
 - (c) the conduct results in the discharge of a scheduled substance; and
 - (d) the discharge occurs in circumstances where it is likely that the scheduled substance will enter the atmosphere; and
 - (e) the discharge is not in accordance with the regulations.

Penalty: 300 penalty units.

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- (2) Strict liability applies to subsection (1).

Note: For **strict liability**, see section 6.1 of the *Criminal Code*.

- (2A) A person must not engage in conduct if:
- (a) the conduct results in the discharge of a scheduled substance; and
 - (b) the discharge occurs in circumstances where it is likely that the scheduled substance will enter the atmosphere; and
 - (c) the discharge is not in accordance with the regulations.

- (2B) Subsection (2A) is a **civil penalty provision**.

Note 1: Division 7 of Part VIII provides for pecuniary penalties for breaches of civil penalty provisions.

Note 2: For maximum penalty, see subsection 65AC(4).

- (3) Subsections (1) and (2A) do not apply if the discharge occurs when equipment containing a scheduled substance is being used for its designed purpose. If the equipment concerned is a halon fire extinguisher, then its use during a training exercise is treated as not being use for its designed purpose.

Note: A defendant in criminal proceedings bears an evidential burden in relation to the matter in subsection (3): see subsection 13.3(3) of the *Criminal Code*.

- (3A) A person who wishes to rely on subsection (3) of this section in proceedings for a civil penalty order bears an evidential burden in relation to that matter.

- (4) In this section:

engage in conduct has the same meaning as in the *Criminal Code*.

scheduled substance does not include a scheduled substance in manufactured equipment that consists in part of that substance only because the substance was used in the manufacturing process.

startup date means a date fixed by Proclamation for the purposes of this section.

45C Use of HCFC

- (1) A person must not use an HCFC that was manufactured or imported on or after 1 January 2020.
- (2) Subsection (1) does not apply if the use is for a purpose prescribed by the regulations for the purposes of this subsection.

Note: In a prosecution for an offence against subsection (3), a defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code*).

Penalties

- (3) A person commits an offence of strict liability if the person contravenes subsection (1).

Penalty: 300 penalty units.

- (4) Subsection (1) is a ***civil penalty provision***.

Note 1: Division 7 of Part VIII provides for pecuniary penalties for breaches of civil penalty provisions.

Note 2: For maximum penalty, see subsection 65AC(4).

Part VII—Reports and records

46 Periodic reports by manufacturers, importers and exporters of scheduled substances

Requirement to report

- (1) A person who engages, during a reporting period, in an activity set out in column 1 of an item of the following table must give to the Minister a report in relation to the activity in accordance with subsection (1A) and the regulations, unless an exception in column 2 of the item applies.

Reportable activities		
Item	Column 1 Activity	Column 2 Exceptions
1	manufacturing, importing, exporting or destroying a scheduled substance	(a) the scheduled substance is an SGG; or (b) the scheduled substance is contained in SGG equipment; or (c) the activity is a Schedule 4 activity or section 69G activity
2	manufacturing, importing, exporting or destroying an SGG	(a) the SGG is contained in SGG equipment; or (b) the activity is a Schedule 4 activity or section 69G activity; or (c) the activity occurs in circumstances prescribed by the regulations for the purposes of subsection 13(3)
3	importing SGG equipment	(a) the importing is a Schedule 4 activity or section 69G activity; or (b) the importing is covered by

Reportable activities		
Item	Column 1 Activity	Column 2 Exceptions
		subsection 13(5) or (6)
4	a Schedule 4 activity or a section 69G activity	the activity is covered by subsection 13(5)

When report must be given

- (1A) The report must be given to the Minister before the 15th day after the end of the reporting period.

Quarterly reporting

- (1B) Without limiting subsection (1), a person may comply with that section by giving separate reports in relation to each half of the reporting period.

Penalties

- (2) A person commits an offence if the person contravenes subsection (1).

Penalty: 60 penalty units.

- (2A) An offence under subsection (2) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (2B) Subsection (2) does not apply if the person has a reasonable excuse.

Note: The defendant bears an evidential burden in relation to the matter in subsection (2B). See subsection 13.3(3) of the *Criminal Code*.

- (2C) A person must not contravene subsection (1).

- (2E) Subsection (2C) is a ***civil penalty provision***.

Note 1: Division 7 of Part VIII provides for pecuniary penalties for breaches of civil penalty provisions.

Note 2: For maximum penalty, see subsection 65AC(4).

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- (2F) Subsection (2C) does not apply if the person has a reasonable excuse.
- (2G) A person who wishes to rely on subsection (2F) of this section in proceedings for a civil penalty order bears an evidential burden in relation to that matter.

48 Records to be kept by licensees

- (1) The regulations may make provision as to the keeping by a licensee of records relating to the manufacture, import, export or destruction of scheduled substances by the licensee.
- (2) Regulations made for the purpose of this section may include provisions relating to the production of records to the Minister on request.

Part VIII—Enforcement

Division 1—Powers of inspectors

Subdivision A—Inspectors

48A Meaning of *inspector*

In this Part:

appointed inspector means a person appointed as an inspector under section 49.

inspector means:

- (a) a member or special member of the Australian Federal Police; or
- (b) an officer of Customs; or
- (c) an appointed inspector.

49 Appointment of inspectors

- (1) The Minister may, by instrument in writing, appoint as an inspector a person who is:
 - (a) an officer or employee of an authority of the Commonwealth; or
 - (b) a person engaged under the *Public Service Act 1999*; or
 - (c) an officer or employee of the Public Service of a State or Territory; or
 - (d) a member of the Police Force of a State or Territory.
- (2) The Minister shall not appoint an officer or employee of the Public Service of a State or Territory, or a member of the Police Force of a State or Territory, as an inspector unless the appointment is in accordance with an arrangement made by the Minister with a Minister of that State or Territory.

Section 49A

- (3) The Minister must not appoint a person as an inspector unless the Minister is satisfied that the person has suitable qualifications and experience to properly exercise the powers of an inspector.

49A Directions to inspectors

- (1) An inspector must, in exercising powers as an inspector, comply with any directions of the Minister.
- (2) If a direction is given under subsection (1) in writing, the direction is not a legislative instrument.

50 Identity cards

- (1) The Minister may cause an identity card to be issued to each appointed inspector.
- (1A) An identity card must:
 - (a) be in the approved form; and
 - (b) have on it a recent photograph of the person to whom it is issued.
- (2) A person who ceases to be an appointed inspector shall, as soon as practicable, return his or her identity card to the Minister.
- (3) A person who contravenes subsection (2) commits an offence punishable on conviction by a fine not exceeding 1 penalty unit.
- (4) An offence under subsection (3) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

Subdivision B—Monitoring powers

51 Searches to monitor compliance with Act etc.

- (1) Subject to subsections (2) and (3), an inspector may, to the extent that it is reasonably necessary for the purpose of ascertaining whether this Act or the regulations have been complied with, enter,

at any time during the day or night, any premises and exercise the monitoring powers set out in section 51A.

- (2) An inspector may not, under subsection (1), enter premises that are a residence unless the occupier of the premises has consented to the entry.
- (3) An inspector is not entitled to enter premises under subsection (1) of this section, or exercise the monitoring powers set out in section 51A in relation to premises, if:
 - (a) the occupier of the premises has required the inspector to produce, for the occupier's inspection, evidence of the inspector's identity; and
 - (b) the inspector fails to produce his or her identity card, or written evidence identifying the inspector as a member or special member of the Australian Federal Police or an officer of Customs, as the case may be.

51A Monitoring powers of inspectors

General powers

- (1) The following are the **monitoring powers** that an inspector may exercise in relation to premises under section 51:
 - (a) to search the premises and any thing on the premises;
 - (b) to inspect, examine, take measurements of, conduct tests on, or take samples of, any gas or other substance on the premises;
 - (c) to take photographs, make video or audio recordings or make sketches of the premises or any thing on the premises;
 - (d) to inspect any book, record or document on the premises;
 - (e) to remove, take extracts from, or make copies of, any such book, record or document;
 - (f) to take onto the premises such equipment and materials as the inspector requires for the purpose of exercising powers in relation to the premises;
 - (g) the powers set out in subsections (2), (3) and (5).

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Operating electronic equipment

- (2) The monitoring powers include the power to operate electronic equipment at premises to find out whether:
- (a) the equipment; or
 - (b) a disk, tape or other storage device that:
 - (i) is on the premises; and
 - (ii) can be used with the equipment or is associated with it;
- contains information that is relevant to ascertaining whether this Act or the regulations have been complied with.
- (3) The monitoring powers include the following powers in relation to information described in subsection (2) found in the exercise of the power under that subsection:
- (a) to operate electronic equipment at the premises to put the information in documentary form and remove the documents so produced from the premises;
 - (b) to operate electronic equipment at the premises to transfer the information to a disk, tape or other storage device that:
 - (i) is brought to the premises for the exercise of the power; or
 - (ii) is at the premises and the use of which for the purpose has been agreed to in writing by the occupier of the premises or a person apparently representing the occupier;
- and remove the disk, tape or other storage device from the premises.
- (4) An inspector must not operate electronic equipment as mentioned in subsection (2) or (3) unless he or she believes on reasonable grounds that the operation of the equipment can be carried out without damage to the equipment.

Securing things if entry to the premises is with the consent of the occupier etc.

- (5) The monitoring powers include the power to secure a thing on the premises for not more than 24 hours if:

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- (a) the thing is found on the premises during the exercise of monitoring powers under subsection (1); and
 - (b) the occupier of the premises, or another person who apparently represents the occupier, consents to the inspector entering the premises; and
 - (c) the inspector believes, on reasonable grounds, that:
 - (i) the thing affords evidence as to the commission of an offence against this Act or the regulations, as to a contravention of a civil penalty provision, or as to both; and
 - (ii) it is necessary to secure the thing in order to prevent it from being concealed, lost or destroyed before a warrant to seize the thing is obtained.
- (6) The inspector must not exercise the power under subsection (5) unless the inspector has given the occupier of the premises, or another person who apparently represents the occupier, a written notice that specifies the thing that the inspector intends to secure.
- (7) If an inspector believes on reasonable grounds that the thing needs to be secured for more than 24 hours, he or she may apply to a magistrate for an extension of that period.
- (8) The inspector must give notice to the occupier of the premises, or another person who apparently represents the occupier, of his or her intention to apply for an extension. The occupier is entitled to be heard in relation to that application.
- (9) The 24 hour period may be extended more than once.

Offence

- (10) A person commits an offence if:
- (a) an inspector has given the occupier of premises, or another person who apparently represents the occupier of premises, a notice under subsection (6); and
 - (b) the notice specifies a thing; and

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- (c) the person moves, alters or interferes with the thing specified in the notice.

Penalty for contravention of this subsection: Imprisonment for 2 years.

51B Persons assisting inspectors—monitoring powers

Inspectors may be assisted by other persons

- (1) An inspector may, in entering premises under section 51 and in exercising the monitoring powers set out in the following provisions in relation to the premises:
 - (a) paragraph 51A(1)(a);
 - (b) paragraph 51A(1)(b);
 - (c) paragraph 51A(1)(c);
 - (d) paragraph 51A(1)(f);
 - (e) subsection 51A(2);
 - (f) subsection 51A(3);

be assisted by other persons if that assistance is necessary and reasonable.

- (2) For the purposes of this section, a person giving such assistance is a ***person assisting*** the inspector.

Powers of a person assisting the inspector

- (3) A person assisting the inspector may:
 - (a) enter the premises; and
 - (b) exercise the monitoring powers set out in the following provisions in relation to the premises:
 - (i) paragraph 51A(1)(a);
 - (ii) paragraph 51A(1)(b);
 - (iii) paragraph 51A(1)(c);
 - (iv) paragraph 51A(1)(f);
 - (v) subsection 51A(2);
 - (vi) subsection 51A(3);

but only in accordance with a direction given to the person by the inspector.

- (4) A power exercised by a person assisting the inspector as mentioned in subsection (3) is taken for all purposes to have been exercised by the inspector.
- (5) If a direction is given under paragraph (3)(b) in writing, the direction is not a legislative instrument.

Subdivision C—Enforcement powers

52 Inspector may enter premises with consent or under enforcement warrant

- (1) If an inspector has reasonable grounds for suspecting that there may be evidential material on any premises, the inspector may:
 - (a) enter the premises; and
 - (b) exercise the enforcement powers set out in section 53.
- (2) However, an inspector is not authorised to enter the premises unless:
 - (a) the occupier of the premises, or a person apparently representing the occupier, has consented to the entry; or
 - (b) the entry is made under an enforcement warrant.

Note: For enforcement warrants, see sections 55E and 55F.

53 Enforcement powers of inspectors

General powers

- (1) The following are the **enforcement powers** that an inspector may exercise in relation to premises under section 52:
 - (a) to search the premises and any thing on the premises for the evidential material;
 - (b) to inspect, examine, take measurements of, conduct tests on, or take samples of the evidential material;

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- (c) to take photographs, make video or audio recordings or make sketches of the premises or the evidential material;
- (d) to take onto the premises such equipment and materials as the inspector requires for the purpose of exercising powers in relation to the premises;
- (e) the powers in subsections (2), (3), (4), (8) and (9).

Power to seize

- (2) If the entry is under an enforcement warrant, the enforcement powers include the power to seize the evidential material if the inspector finds it on the premises.

Note: For enforcement warrants, see sections 55E and 55F.

Operation of equipment

- (3) The enforcement powers include the power to operate electronic equipment at premises to find out whether:
 - (a) the equipment; or
 - (b) a disk, tape or other storage device that:
 - (i) is on the premises; and
 - (ii) can be used with the equipment or is associated with it;contains evidential material.

Removing documents and disks etc.

- (4) The enforcement powers include the following powers in relation to evidential material found in the exercise of the power under subsection (3):
 - (a) to seize the equipment and any disk, tape or other associated device;
 - (b) to operate electronic equipment at the premises to put the information in documentary form and seize the documents so produced;
 - (c) to operate electronic equipment at the premises to transfer the information to a disk, tape or other storage device that:

- (i) is brought to the premises for the exercise of the power;
or
 - (ii) is at the premises and the use of which for the purpose has been agreed to in writing by the occupier of the premises, or another person who apparently represents the occupier;
- and remove the disk, tape or other storage device from the premises.

How powers to be exercised

- (5) An inspector must not operate electronic equipment as mentioned in subsection (3) or (4) unless he or she believes on reasonable grounds that the operation of the equipment can be carried out without damage to the equipment.

Seizing equipment

- (6) An inspector must not seize equipment under paragraph (4)(a) unless:
 - (a) it is not practicable to put the material in documentary form as mentioned in paragraph (4)(b) or to transfer the material as mentioned in paragraph (4)(c); or
 - (b) possession by the occupier of the equipment could constitute an offence against a law of the Commonwealth.
- (7) An inspector must not seize equipment under paragraph (4)(a) or documents under paragraph (4)(b) unless the inspector entered the premises under an enforcement warrant.

Seizing other evidential material

- (8) If:
 - (a) in the course of searching for a particular thing, in accordance with an enforcement warrant, an inspector finds another thing that the inspector believes on reasonable grounds to be evidential material; and

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(b) the inspector believes, on reasonable grounds, that it is necessary to seize the other thing in order to prevent its concealment, loss or destruction, or its use:

- (i) in committing, continuing or repeating an offence against this Act or the regulations; or
- (ii) in committing, continuing or repeating a contravention of a civil penalty provision;

the enforcement powers include the power to seize that other thing.

Seizing containers

(9) If:

- (a) an inspector has a power to seize a thing (the *seizable thing*) under subsection (2), (4) or (8); and
- (b) the seizable thing is in a container; and
- (c) the inspector believes, on reasonable grounds, that it is not reasonably practicable to seize the seizable thing without also seizing the container;

then, for the purposes of seizing the seizable thing, the enforcement powers include the power to seize the container containing the seizable thing (whether or not the container also contains any other thing).

- (10) If the seizable thing is returned under section 53G or 60B, the container must be returned at the same time as the seizable thing.
- (11) If the seizable thing is forfeited to the Commonwealth, the container must be returned as soon as reasonably practicable after the forfeiture.

Note: For forfeiture, see Division 3.

53A Persons assisting inspectors—enforcement powers

Inspectors may be assisted by other persons

- (1) An inspector may, in entering premises under section 52 and in exercising the enforcement powers set out in the following provisions in relation to the premises:

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- (a) paragraph 53(1)(a);
- (b) paragraph 53(1)(b);
- (c) paragraph 53(1)(c);
- (d) paragraph 53(1)(d);
- (e) subsection 53(3);
- (f) subsection 53(4);

be assisted by other persons if that assistance is necessary and reasonable.

- (2) For the purposes of this section, a person giving such assistance is a *person assisting* the inspector.

Powers of a person assisting the inspector

- (3) A person assisting the inspector may:
- (a) enter the premises; and
 - (b) exercise the enforcement powers set out in the following provisions:
 - (i) paragraph 53(1)(a);
 - (ii) paragraph 53(1)(b);
 - (iii) paragraph 53(1)(c);
 - (iv) paragraph 53(1)(d);
 - (v) subsection 53(3);
 - (vi) subsection 53(4);in relation to the premises, but only in accordance with a direction given to the person by the inspector.
- (4) A power exercised by a person assisting the inspector as mentioned in subsection (3) is taken for all purposes to have been exercised by the inspector.
- (5) If a direction is given under paragraph (3)(b) in writing, the direction is not a legislative instrument.

Section 53B

53B Announcement before entry under warrant

- (1) An inspector must, before entering premises under an enforcement warrant:
- (a) announce that he or she is authorised to enter the premises; and
 - (b) show:
 - (i) his or her identity card; or
 - (ii) written evidence identifying the inspector as a member or special member of the Australian Federal Police or an officer of Customs;to the occupier of the premises, or another person apparently representing the occupier, if the occupier or other person is present at the premises; and
 - (c) give any person at the premises an opportunity to allow entry to the premises.
- (2) However, an inspector is not required to comply with subsection (1) if he or she believes on reasonable grounds that immediate entry to the premises is required:
- (a) to prevent serious damage to the environment; or
 - (b) to ensure that the effective execution of the warrant is not frustrated.
- (3) If:
- (a) an inspector is not required to comply with subsection (1) because of subsection (2); and
 - (b) the occupier of the premises, or another person apparently representing the occupier, is present at the premises;
- the inspector must, as soon as practicable after entering the premises, show:
- (c) his or her identity card; or
 - (d) written evidence identifying the inspector as a member or special member of the Australian Federal Police or an officer of Customs;
- to the occupier or other person.

53C Details of warrant etc. to be given to occupier

- (1) If:
 - (a) an enforcement warrant is being executed in relation to premises; and
 - (b) the occupier of the premises, or another person apparently representing the occupier, is present at the premises;the inspector executing the warrant must, as soon as practicable, make a copy of the enforcement warrant available to the occupier or other person.
- (2) The copy need not include the signature of the magistrate who issued the enforcement warrant.

Subdivision D—General provisions relating to seizure etc.

53D Receipts for seized things and seizure notice

Receipts

- (1) If a thing is seized under section 53, the inspector must provide a receipt for the thing.
- (2) If 2 or more things are seized, they may be covered in the one receipt.

Notice

- (3) The receipt must be accompanied by a notice that sets out, in summary form, an explanation of sections 53E, 53F, 53G, 53H, 53J, 53K and 53L.

53E Copies of seized things to be provided

- (1) If, under an enforcement warrant relating to premises, an inspector seizes:
 - (a) a document, film, computer file or other thing that can be readily copied; or

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- (b) a storage device, the information in which can be readily copied;
- the inspector must, if requested to do so by:
- (c) the occupier of the premises; or
 - (d) another person who apparently represents the occupier and who is present when the warrant is executed;
- give a copy of the thing or the information to the occupier or other person as soon as practicable after the seizure.
- (2) However, subsection (1) does not apply if:
- (a) the thing that has been seized was seized under paragraph 53(4)(b) or (c); or
 - (b) possession by the occupier of the document, film, computer file, thing or information could constitute an offence against a law of the Commonwealth.

53F Inspection of seized books, records or documents

If:

- (a) an inspector seizes a book, record or document under section 53; and
 - (b) the book, record or document is in the inspector's possession;
- the inspector must permit a person who would be entitled to inspect the book, record or document if it were not in the inspector's possession to inspect the book, record or document at all reasonable times.

53G Return of seized things

- (1) Subject to any contrary order of a court, if:
- (a) an inspector seizes a thing under section 53; and
 - (b) a forfeiture notice has not been given in relation to the thing;
- the inspector must return it if:
- (c) the reason for its seizure no longer exists or it is decided that it is not to be used in evidence; or

(d) the period of 60 days after its seizure ends;
whichever first occurs, unless the thing is forfeited to the
Commonwealth.

Note: For forfeiture, see Division 3.

- (2) At the end of the 60 days specified in subsection (1), an inspector must take reasonable steps to return the thing to the person from whom it was seized, unless:
- (a) proceedings in respect of which the thing may afford evidence were instituted before the end of the 60 days and have not been completed (including an appeal to a court in relation to those proceedings); or
 - (b) an inspector may retain the thing because of an order under section 53H; or
 - (c) the owner of the thing consents to the thing not being returned; or
 - (d) to return the thing could cause an imminent risk of death, serious illness, serious injury or serious damage to the environment; or
 - (e) an inspector is otherwise authorised (by a law, or an order of a court, of the Commonwealth or of a State or Territory) to retain, destroy or dispose of the thing.

53H Magistrate may permit seized things to be retained

- (1) An inspector may apply to a magistrate for an order that he or she may retain the thing for a further period if:
- (a) before the end of 60 days after the seizure; or
 - (b) before the end of a period previously specified in an order of a magistrate under this section;
- proceedings in respect of which the thing may afford evidence have not commenced.
- (2) If the magistrate is satisfied that it is necessary for an inspector to continue to retain the thing:
- (a) for the purpose of an investigation as to whether:

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- (i) an offence against this Act or the regulations has been committed; or
 - (ii) a civil penalty provision has been contravened; or
 - (b) to enable:
 - (i) evidence of an offence against this Act or the regulations to be secured for the purpose of a prosecution; or
 - (ii) evidence of a contravention of a civil penalty provision to be secured for the purpose of civil proceedings;
- the magistrate may order that an inspector may retain the thing for a period (not exceeding 3 years) specified in the order.
- (3) Before making the application, the inspector must:
 - (a) take reasonable steps to discover who has an interest in the retention of the thing; and
 - (b) if it is practicable to do so, notify each person whom the inspector believes to have such an interest of the proposed application.

53J Powers to take samples and conduct tests

Taking samples

- (1) If an inspector seizes gas or another substance under section 53, the inspector may arrange for samples to be taken of the gas or other substance by the inspector or another person.
- (2) The regulations may prescribe procedures for dealing with samples taken under this Division.
- (3) The regulations may provide for compensation to be paid for samples taken under this Division.

Conducting tests

- (4) If a sample of gas or another substance is taken by an inspector under this Division, the inspector may arrange for tests to be conducted on the sample by the inspector or another person.

- (5) The regulations may prescribe procedures for the conduct of tests under this Division.

Substantial compliance with procedures

- (6) The regulations may provide that:
- (a) particular procedures prescribed for the purposes of this section need not be strictly complied with; and
 - (b) substantial compliance is sufficient.
- (7) However, subsection (6) does not apply to procedures for ensuring that a sample is not interfered with by anyone who is not authorised to do so.

53K Directions about how pressurised container is to be dealt with

Scope

- (1) This section applies if an inspector seizes a pressurised container under section 53.

Application for direction

- (2) The inspector may apply to the Minister or Secretary for a direction under subsection (3).

Direction

- (3) If:
- (a) the inspector applies to the Minister or Secretary for a direction under subsection (2); and
 - (b) the Minister or Secretary, as the case may be, is satisfied that the pressurised container constitutes a danger to public health and safety;
- the Minister or Secretary, as the case may be, may direct that the pressurised container must be dealt with in a manner specified in the direction.

Section 53L

- (4) A direction under subsection (3) may require the pressurised container and its contents to be destroyed.
- (5) Subsection (4) does not limit subsection (3).
- (6) The inspector must comply with a direction under subsection (3).
- (7) A direction under subsection (3) is not a legislative instrument.

Compensation

- (8) If a pressurised container and its contents is destroyed under this section, the owner of the container may apply to a designated court for compensation.
- (9) On application under subsection (8), the designated court must order the Commonwealth to pay compensation if the court is satisfied that the pressurised container did not contain forfeitable goods.
- (10) The amount of compensation ordered must be the market value of the pressurised container and its contents at the time they were destroyed.

53L Disposal of goods if person cannot be located

- (1) If:
 - (a) a thing is seized under section 53; and
 - (b) apart from this section, the thing is required to be returned to a person; and
 - (c) the Secretary cannot, despite making reasonable efforts, locate the person;the Secretary may dispose of the thing, or cause the thing to be disposed of, in such manner as he or she thinks appropriate.
- (2) The Secretary may, by writing, delegate any or all of his or her powers under subsection (1) to an SES employee or acting SES employee.

Note: The expressions *SES employee* and *acting SES employee* are defined in the *Acts Interpretation Act 1901*.

- (3) A delegate must comply with any written directions of the Secretary.

Subdivision E—Obligations and incidental powers of inspectors

53M Consent

- (1) An inspector must, before obtaining the consent of a person to enter premises under this Division, inform the person that he or she may refuse consent.
- (2) An entry of an inspector with the consent of a person is not lawful unless the person voluntarily consented to the entry.

54 Power to require information etc.

- (1) Subject to subsection (2), an inspector who has entered premises under this Division may, to the extent that it is reasonably necessary for the purpose of ascertaining whether this Act or the regulations have been complied with, require a person to answer any questions put by the inspector and to produce any books, records or documents requested by the inspector.
- (2) An inspector is not entitled to make a requirement of a person under subsection (1) unless the inspector produces, for inspection by the person, his or her identity card, or written evidence identifying the inspector as a member or special member of the Australian Federal Police or an officer of Customs, as the case may be.

55 Inspection of books, records or documents removed by, or produced to, inspectors

If:

- (a) either:

Section 55A

- (i) an inspector removes a book, record or document under paragraph 51A(1)(e); or
 - (ii) a person produces a book, record or document to an inspector in compliance with a requirement under subsection 54(1); and
- (b) the book, record or document is in the inspector's possession; the inspector must permit a person who would be entitled to inspect the book, record or document if it were not in the inspector's possession to inspect the book, record or document at all reasonable times.

55A Return of books, records or documents removed by, or produced to, inspectors

- (1) Subject to any contrary order of a court, if:
- (a) either:
 - (i) an inspector removes a book, record or document under paragraph 51A(1)(e); or
 - (ii) a person produces a book, record or document to an inspector in compliance with a requirement under subsection 54(1); and
 - (b) the book, record or document is in the inspector's possession; the inspector must return the book, record or document if:
 - (c) the reason for its removal or production no longer exists or it is decided that it is not to be used in evidence; or
 - (d) the period of 60 days after its removal or production ends;
- whichever first occurs, unless the book, record or document is forfeited to the Commonwealth.
- Note: For forfeiture, see Division 3.
- (2) At the end of the 60 days specified in subsection (1), an inspector must take reasonable steps to return the book, record or document to the person from whom it was removed, or who produced it, unless:
- (a) proceedings in respect of which the book, record or document may afford evidence were instituted before the end

- of the 60 days and have not been completed (including an appeal to a court in relation to those proceedings); or
- (b) an inspector may retain the book, record or document because of an order under section 55B; or
 - (c) the owner of the book, record or document consents to it not being returned; or
 - (d) an inspector is otherwise authorised (by a law, or an order of a court, of the Commonwealth or of a State or Territory) to retain, destroy or dispose of the book, record or document.

55B Magistrate may permit books, records or documents to be retained

- (1) An inspector may apply to a magistrate for an order that he or she may retain the book, record or document for a further period if:
 - (a) before the end of 60 days after the removal or production of the book, record or document; or
 - (b) before the end of a period previously specified in an order of a magistrate under this section;proceedings in respect of which the book, record or document may afford evidence have not commenced.
- (2) If the magistrate is satisfied that it is necessary for an inspector to continue to retain the book, record or document:
 - (a) for the purpose of an investigation as to whether:
 - (i) an offence against this Act or the regulations has been committed; or
 - (ii) a civil penalty provision has been contravened; or
 - (b) to enable:
 - (i) evidence of an offence against this Act or the regulations to be secured for the purpose of a prosecution; or
 - (ii) evidence of a contravention of a civil penalty provision to be secured for the purpose of civil proceedings;

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the magistrate may order that an inspector may retain the book, record or document for a period (not exceeding 3 years) specified in the order.

- (3) Before making the application, the inspector must:
- (a) take reasonable steps to discover who has an interest in the retention of the book, record or document; and
 - (b) if it is practicable to do so, notify each person whom the inspector believes to have such an interest of the proposed application.

55C Securing electronic equipment for use by experts

- (1) If an inspector believes on reasonable grounds that:
- (a) any of the following:
 - (i) information that is relevant to ascertaining whether this Act or the regulations have been complied with;
 - (ii) evidential material;may be accessible by operating electronic equipment at particular premises; and
 - (b) expert assistance is required to operate the equipment; and
 - (c) if he or she does not take action under this subsection, the information or material may be destroyed, altered or otherwise interfered with;

he or she may do whatever is necessary to secure the equipment, whether by locking it up, placing a guard or otherwise.

Notice to occupier

- (2) The inspector must give notice to the occupier of the premises, or another person who apparently represents the occupier, of his or her intention to secure the equipment and of the fact that the equipment may be secured for up to 24 hours.

Period during which equipment may be secured

- (3) The equipment may be secured:
- (a) for a period not exceeding 24 hours; or

(b) until the equipment has been operated by the expert;
whichever happens first.

Extensions

- (4) If the inspector believes on reasonable grounds that the expert assistance will not be available within 24 hours, he or she may apply to a magistrate for an order extending that period.
- (5) The inspector must give notice to the occupier of the premises, or another person who apparently represents the occupier, of his or her intention to apply for an extension, and the occupier is entitled to be heard in relation to the application.
- (6) The magistrate may order an extension for a period specified in the order if the magistrate is satisfied that the extension is necessary.

55D Compensation for damage to electronic equipment

- (1) This section applies if:
 - (a) as a result of electronic equipment being operated as mentioned in this Division:
 - (i) damage is caused to the equipment; or
 - (ii) the data recorded on the equipment is damaged; or
 - (iii) programs associated with the use of the equipment, or with the use of the data, are damaged or corrupted; and
 - (b) the damage or corruption occurs because:
 - (i) insufficient care was exercised in selecting the person who was to operate the equipment; or
 - (ii) insufficient care was exercised by the person operating the equipment.
- (2) The Commonwealth must pay the owner of the equipment, or the user of the data or programs, such reasonable compensation for the damage or corruption as the Commonwealth and the owner or user agree on.

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- (3) However, if the owner or user and the Commonwealth fail to agree, the owner or user may institute proceedings in a designated court for such reasonable amount of compensation as the designated court determines.
- (4) In determining the amount of compensation payable, regard is to be had to whether the occupier of the premises, or the occupier's employees and agents, if they were available at the time, provided any appropriate warning or guidance on the operation of the equipment.
- (5) In this section:
damage, in relation to data, includes damage by erasure of data or addition of other data.

Subdivision F—Enforcement warrants

55E Enforcement warrants

Application for an enforcement warrant

- (1) An inspector may apply to a magistrate for an enforcement warrant under this section in relation to premises.

Issue of an enforcement warrant

- (2) The magistrate may issue the enforcement warrant if the magistrate is satisfied, by information on oath, that there are reasonable grounds for suspecting that there is, or there may be within the next 72 hours, evidential material in or on the premises.
- (3) However, the magistrate must not issue the enforcement warrant unless the inspector or some other person has given to the magistrate, either orally or by affidavit, such further information (if any) as the magistrate requires concerning the grounds on which the issue of the warrant is being sought.

Content of an enforcement warrant

- (4) The enforcement warrant must:
- (a) name one or more inspectors; and
 - (b) authorise the inspectors so named, with such assistance and by such force as is necessary and reasonable:
 - (i) to enter the premises; and
 - (ii) to exercise the enforcement powers set out in section 53; and
 - (c) state whether the entry is authorised to be made at any time of the day or night or during specified hours of the day or night; and
 - (d) specify the day (not more than one week after the issue of the warrant) on which the warrant ceases to have effect; and
 - (e) state the purpose for which the warrant is issued.

55F Enforcement warrants by telephone, telex, fax etc.

Application for an enforcement warrant

- (1) If, in an urgent case, an inspector considers it necessary to do so, the inspector may apply to a magistrate by telephone, telex, fax or other electronic means for an enforcement warrant in relation to premises.
- (2) The magistrate may require communication by voice to the extent that it is practicable in the circumstances.
- (3) Before applying for the enforcement warrant, the inspector must prepare an information of the kind mentioned in subsection 55E(2) in relation to the premises that sets out the grounds on which the warrant is sought.
- (4) If it is necessary to do so, the inspector may apply for the enforcement warrant before the information is sworn.

Issue of an enforcement warrant

- (5) If the magistrate is satisfied:
-

Section 55F

- (a) after having considered the terms of the information; and
- (b) after having received such further information (if any) as the magistrate requires concerning the grounds on which the issue of the enforcement warrant is being sought;

that there are reasonable grounds for issuing the warrant, the magistrate may complete and sign the same warrant that the magistrate would issue under section 55E if the application had been made under that section.

Obligations of magistrate and inspector once an enforcement warrant issued

- (6) If the magistrate completes and signs the enforcement warrant:
 - (a) the magistrate must:
 - (i) tell the inspector what the terms of the warrant are; and
 - (ii) tell the inspector the day on which and the time at which the warrant was signed; and
 - (iii) tell the inspector the day (not more than one week after the magistrate completes and signs the warrant) on which the warrant ceases to have effect; and
 - (iv) record on the warrant the reasons for issuing the warrant; and
 - (b) the inspector must:
 - (i) complete a form of enforcement warrant in the same terms as the warrant completed and signed by the magistrate; and
 - (ii) write on the form the name of the magistrate and the day on which and the time at which the warrant was signed.
- (7) The inspector must also, not later than the day after the day of expiry or execution of the enforcement warrant, whichever is the earlier, send to the magistrate:
 - (a) the form of enforcement warrant completed by the inspector; and
 - (b) the information referred to in subsection (3), which must have been duly sworn.

- (8) When the magistrate receives those documents, the magistrate must:
- (a) attach them to the enforcement warrant that the magistrate completed and signed; and
 - (b) deal with them in the way in which the magistrate would have dealt with the information if the application had been made under section 55E.

Authority of an enforcement warrant

- (9) A form of enforcement warrant duly completed under subsection (6) is authority for any entry, search, seizure or other exercise of a power that the warrant signed by the magistrate authorises.
- (10) If:
- (a) it is material, in any proceedings, for a court to be satisfied that an exercise of a power was authorised by this section; and
 - (b) the enforcement warrant signed by the magistrate authorising the exercise of the power is not produced in evidence;
- the court must assume, unless the contrary is proved, that the exercise of the power was not authorised by such a warrant.

55G Offences relating to warrants

- (1) A person commits an offence if:
- (a) the person is an inspector; and
 - (b) the person makes an application for an enforcement warrant; and
 - (c) the application includes a statement; and
 - (d) the statement is false or misleading in a material particular.

Penalty: Imprisonment for 2 years.

- (2) The fault element for paragraph (1)(d) is knowledge.
- (3) A person commits an offence if:

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- (a) the person is an inspector; and
- (b) the person prepares a document that purports to be a form of enforcement warrant under section 55F; and
- (c) the document states the name of a magistrate; and
- (d) the magistrate named did not issue the enforcement warrant.

Penalty: Imprisonment for 2 years.

- (4) A person commits an offence if:
- (a) the person is an inspector; and
 - (b) the person prepares a document that purports to be a form of enforcement warrant under section 55F; and
 - (c) the document states a matter; and
 - (d) the matter departs in a material particular from the form authorised by the magistrate.

Penalty: Imprisonment for 2 years.

- (5) The fault element for paragraph (4)(d) is knowledge.

- (6) A person commits an offence if:
- (a) the person is an inspector; and
 - (b) the person:
 - (i) purports to execute; or
 - (ii) presents to another person;a document that purports to be a form of enforcement warrant under section 55F; and
 - (c) the document:
 - (i) has not been approved by a magistrate under section 55F; or
 - (ii) departs in a material particular from the terms authorised by that section.

Penalty: Imprisonment for 2 years.

- (7) The fault element for paragraph (6)(c) is knowledge.

- (8) A person commits an offence if:

- (a) the person is an inspector; and
- (b) the person gives a form of enforcement warrant under section 55F to a magistrate; and
- (c) the form of enforcement warrant is not the form of enforcement warrant that the inspector purported to execute.

Penalty for contravention of this subsection: Imprisonment for 2 years.

Subdivision G—Powers of magistrates

55H Powers of magistrates

Powers conferred personally

- (1) A power conferred on a magistrate by this Division is conferred on the magistrate:
 - (a) in a personal capacity; and
 - (b) not as a court or a member of a court.

Powers need not be accepted

- (2) The magistrate need not accept the power conferred.

Protection and immunity

- (3) A magistrate exercising a power conferred by this Division has the same protection and immunity as if he or she were exercising the power:
 - (a) as the court of which the magistrate is a member; or
 - (b) as a member of the court of which the magistrate is a member.

Division 2—Injunctions

56 Injunctions

- (1) Where a person has engaged, is engaging or is proposing to engage in any conduct that constituted or would constitute a contravention of this Act or the regulations, the Federal Court may, on the application of the Minister or any other person, grant an injunction restraining the person from engaging in the conduct and, if in the court's opinion it is desirable to do so, requiring the person to do any act or thing.
- (2) Where:
 - (a) a person has refused or failed, or is refusing or failing, or is proposing to refuse or fail, to do an act or thing; and
 - (b) the refusal or failure was, is, or would be a contravention of this Act or the regulations;the Federal Court may, on the application of the Minister or any other person, grant an injunction requiring the first-mentioned person to do that act or thing.
- (3) Where an application is made to the court for an injunction under this section, the court may, if in the court's opinion it is desirable to do so, before considering the application, grant an interim injunction restraining a person from engaging in conduct of the kind referred to in that subsection pending the determination of the application.
- (4) The court may discharge or vary an injunction granted under this section.
- (5) The power of the court to grant an injunction restraining a person from engaging in conduct of a particular kind may be exercised:
 - (a) if the court is satisfied that the person has engaged in conduct of that kind—whether or not it appears to the court that the person intends to engage again, or to continue to engage, in conduct of that kind; or

- (b) if it appears to the court that, in the event that an injunction is not granted, it is likely that the person will engage in conduct of that kind—whether or not the person has previously engaged in conduct of that kind and whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person engages in conduct of that kind.
- (6) The power of the court to grant an injunction requiring a person to do a particular act or thing may be exercised:
 - (a) if the court is satisfied that the person has refused or failed to do that act or thing—whether or not it appears to the court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; or
 - (b) if it appears to the court that, in the event that an injunction is not granted, it is likely that the person will refuse or fail to do that act or thing—whether or not the person has previously refused or failed to do that act or thing and whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person refuses or fails to do that act or thing.
- (7) Where the Minister makes an application to the court for the grant of an injunction under this section, the court shall not require the Minister or any other person, as a condition of the granting of an interim injunction, to give any undertakings as to damages.
- (8) The powers conferred on the court under this section are in addition to, and not in derogation of, any powers of the court, whether conferred by this Act or otherwise.

Division 3—Forfeiture of goods

Subdivision A—Forfeitable goods

57 Forfeitable goods

- (1) For the purposes of this Act, the following goods are *forfeitable goods*:
- (a) scheduled substances in respect of the manufacture of which:
 - (i) a person has been convicted of an offence under section 13; or
 - (ii) a civil penalty order has been made against a person for a contravention of a civil penalty provision set out in section 13; or
 - (iii) a person has contravened section 13;
 - (b) scheduled substances in respect of the import of which:
 - (i) a person has been convicted of an offence under section 13; or
 - (ii) a civil penalty order has been made against a person for a contravention of a civil penalty provision set out in section 13; or
 - (iii) a person has contravened section 13;
 - (c) scheduled substances in respect of the export of which:
 - (i) a person has been convicted of an offence under section 13; or
 - (ii) a civil penalty order has been made against a person for a contravention of a civil penalty provision set out in section 13; or
 - (iii) a person has contravened section 13;
 - (d) equipment that contains scheduled substances, or that uses scheduled substances in its operation, where:
 - (i) a person has been convicted of an offence against section 13 in respect of the manufacture or import of the equipment; or

- (ii) a civil penalty order has been made against a person for a contravention of a civil penalty provision set out in section 13 in respect of the manufacture or import of the equipment; or
 - (iii) a person has contravened section 13 in respect of the manufacture or import of the equipment;
- (e) equipment that contains scheduled substances, or that uses scheduled substances in its operation, where:
 - (i) a person has been convicted of an offence against regulations made for the purposes of section 69G in respect of the manufacture, import, export, distribution or use of the equipment; or
 - (ii) a person has contravened regulations made for the purposes of section 69G in respect of the manufacture, import, export, distribution or use of the equipment;
- (f) equipment that contains scheduled substances, where:
 - (i) a person has been convicted of an offence against section 44 in respect of the import of the equipment; or
 - (ii) a civil penalty order has been made against a person for a contravention of a civil penalty provision set out in section 44 in respect of the import of the equipment; or
 - (iii) a person has contravened section 44 in respect of the import of the equipment;
- (g) equipment in the manufacture of which scheduled substances were used, where:
 - (i) a person has been convicted of an offence against section 45 in respect of the import of the equipment; or
 - (ii) a civil penalty order has been made against a person for a contravention of a civil penalty provision set out in section 45 in respect of the import of the equipment; or
 - (iii) a person has contravened section 45 in respect of the import of the equipment;
- (h) prescribed goods in respect of which:
 - (i) a person has been convicted of an offence against a prescribed provision of the regulations; or

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- (ii) a civil penalty order has been made against a person for a contravention of a civil penalty provision set out in the regulations; or
 - (iii) a person has contravened a prescribed provision of the regulations.
- (2) For the purposes of this Act, goods are also *forfeitable goods* if:
- (a) the goods are a quantity of scheduled substances or equipment; and
 - (b) the goods are mixed with another quantity of scheduled substances or equipment (the *other quantity*) of the same kind or a similar kind; and
 - (c) the other quantity is forfeitable goods.

Subdivision B—Forfeiture following conviction or making of civil penalty order

58 Goods forfeited to Commonwealth

- (1) Where a person is convicted of an offence against a provision of this Act or the regulations referred to in subsection 57(1), all forfeitable goods to which the offence relates are, by force of the conviction, forfeited to the Commonwealth.
- (2) If a civil penalty order has been made against a person for a contravention of a civil penalty provision referred to in subsection 57(1), all forfeitable goods to which the contravention relates are, by force of the order, forfeited to the Commonwealth.

59 Power to seize forfeited goods

- (1) An inspector may seize goods that are forfeited under section 58.
- (2) Without prejudice to any other method of seizing goods, goods may be seized under subsection (1) by an inspector attaching, or causing to be attached, to the goods, or to the container in which the goods are held, a notice in writing signed by the inspector and:
 - (a) identifying the goods;

- (b) stating that the goods have been seized under this subsection;
and
 - (c) specifying the reason for the seizure.
- (3) An inspector who seizes goods in the manner referred to in subsection (2) shall, as soon as practicable, serve on the owner of the goods or the person who had possession, custody or control of the goods immediately before they were seized a copy of the notice under subsection (2).

60 Persons not to move etc. seized goods

- (1) A person commits an offence if:
- (a) the person engages in conduct; and
 - (b) the conduct causes goods to be moved, altered or interfered with; and
 - (c) the goods are the subject of a notice under subsection 59(2).

Penalty: Imprisonment for 2 years.

- (1A) Subsection (1) does not apply if the person engages in the conduct in accordance with a direction given to the person by the Minister.

Note: The defendant bears an evidential burden in relation to the matter in subsection (1A). See subsection 13.3(3) of the *Criminal Code*.

- (1B) In subsections (1) and (1A):

engage in conduct means:

- (a) do an act; or
 - (b) omit to perform an act.
- (2) A person to whom a copy of a notice has been given under subsection 59(3) shall take all reasonable precautions, and exercise all due diligence, to prevent the moving, alteration or interference with the goods to which the notice relates except in accordance with a direction given by the Minister.

Penalty: imprisonment for 2 years.

Section 60A

Subdivision C—Forfeiture of seized goods

60A Forfeiture notices

- (1) If:
 - (a) an inspector seizes goods under section 53; and
 - (b) the inspector suspects, on reasonable grounds, that the goods are forfeitable goods;the inspector may, within 7 days after the seizure, give a written notice (a *forfeiture notice*) to:
 - (c) the owner of the goods; or
 - (d) if the owner of the goods cannot be identified after reasonable inquiry—the person from whom the goods were seized.
- (2) The forfeiture notice must:
 - (a) identify the goods; and
 - (b) state that the goods have been seized; and
 - (c) specify the reason for the seizure; and
 - (d) state that the goods will be forfeited to the Commonwealth unless:
 - (i) the owner of the thing, or the person from whom the thing was seized, applies to a designated court under section 60B within 60 days after the forfeiture notice is given; and
 - (ii) the court makes an order that the goods are not forfeitable goods; and
 - (e) specify the address of the Secretary.

60B Claims that seized goods are not forfeitable goods

- (1) If a forfeiture notice is given under section 60A in relation to goods (the *identified goods*), either of the following persons:
 - (a) the owner of the goods;
 - (b) the person from whom the goods were seized;may apply to a designated court for:

Section 60B

- (c) an order that all of the identified goods are not forfeitable goods; or
 - (d) an order that specified identified goods are not forfeitable goods.
- (2) The application must be made within 60 days after forfeiture notice is given.
- (3) If a person applies for an order under paragraph (1)(c), the court must:
- (a) make the order if it is satisfied that the identified goods are not forfeitable goods; or
 - (b) refuse to make the order if it is not satisfied that the identified goods are not forfeitable goods.
- (4) If a person applies for an order under paragraph (1)(d), the court must:
- (a) make the order if it is satisfied that the goods specified in the application are not forfeitable goods; or
 - (b) refuse to make the order if it is not satisfied that the goods specified in the application are not forfeitable goods.
- (5) If the court makes an order under paragraph (3)(a) or (4)(a) in relation to goods, the inspector must take reasonable steps to return the goods to the applicant, unless:
- (a) proceedings in respect of which the goods may afford evidence were instituted before the order was made and have not been completed (including an appeal to a court in relation to those proceedings); or
 - (b) to return the goods could cause an imminent risk of death, serious illness, serious injury or serious damage to the environment; or
 - (c) an inspector is otherwise authorised (by a law, or an order of a court, of the Commonwealth or of a State or Territory) to retain, destroy or dispose of the goods.

Section 60C

60C Forfeiture of seized goods to the Commonwealth

- (1) If:
- (a) a forfeiture notice has been given in relation to seized goods;
and
 - (b) 60 days pass after the notice is given, and an application under section 60B has not been made in relation to the goods;
- the goods are forfeited to the Commonwealth at the end of the 60th day after the day the forfeiture notice was given.
- (2) If:
- (a) a forfeiture notice has been given in relation to seized goods;
and
 - (b) within 60 days after the notice is given, an application under section 60B is made to a designated court for an order that the goods are not forfeitable goods; and
 - (c) the court refuses to make the order;
- the goods are forfeited to the Commonwealth when the court refuses to make the order.

60D Right of compensation in certain circumstances

- (1) If:
- (a) goods are seized under section 53; and
 - (b) the goods are forfeited to the Commonwealth under section 60C;
- the owner of the goods may apply to a designated court for compensation.
- (2) On application under subsection (1), the court must order that the Commonwealth pay compensation to the owner of the goods if the court is satisfied that:
- (a) the applicant is the owner of the goods; and
 - (b) either:
 - (i) Division 1 was not complied with in relation to the seizure of the goods; or
 - (ii) the goods were not forfeitable goods.

- (3) The amount of compensation ordered must be the market value of the goods at the time the goods were forfeited.

Subdivision D—General provisions

60E Forfeited goods become the property of the Commonwealth

Goods that are forfeited to the Commonwealth under this Division become the property of the Commonwealth.

61 Disposal of forfeited goods

- (1) Goods that are forfeited under section 58 or section 60C shall be dealt with and disposed of in accordance with the directions of the Minister.
- (2) The forfeited goods must not be sold.

Division 4—Offences

62 False statements

- (1) A person shall not, in relation to an application made under this Act or the regulations:
- (a) make a statement that is false or misleading in a material particular; or
 - (b) give to the Minister or any other person a document that contains information that is false or misleading in a material particular without:
 - (i) indicating to the Minister or other person that the document is false or misleading and the respect in which the document is false or misleading; and
 - (ii) providing correct information to the Minister or other person if the first-mentioned person is in possession of, or can reasonably acquire, the correct information.

Penalty: imprisonment for 2 years.

- (2) A person shall not, otherwise than in relation to such an application:
- (a) make to an inspector doing duty in relation to this Act a statement that is false or misleading in a material particular; or
 - (b) give to an inspector doing duty in relation to this Act a document that contains information that is false or misleading in a material particular without:
 - (i) indicating to the inspector that the document is false or misleading and the respect in which the document is false or misleading; and
 - (ii) providing correct information to the inspector if the person is in possession of, or can reasonably acquire, the correct information.

Penalty: imprisonment for 12 months.

- (3) A person shall not include in a report given to the Minister, or kept, under Part VII a statement that is false or misleading in a material particular.

Penalty: imprisonment for 2 years.

- (4) A person must not include in a report given to the Minister in accordance with a condition of a licence a statement that is false or misleading in a material particular.

Penalty: imprisonment for 2 years.

- (5) The fault elements for:

(a) the circumstance that the statement mentioned in paragraph (1)(a) or (2)(a) or subsection (3) or (4) is false or misleading in a material particular; or

(b) the circumstance that the document mentioned in paragraph (1)(b) or (2)(b) contains information that is false or misleading in a material particular;

are knowledge and recklessness.

63 Obstruction of inspectors etc.

- (1) A person shall not intentionally obstruct, hinder or resist an inspector, or a person assisting an inspector under section 51B or 53A, in the performance of his or her functions under this Act.

Penalty: imprisonment for 6 months.

- (2) Subsection (1) does not apply if the person has a reasonable excuse.

Note: The defendant bears an evidential burden in relation to the matter in subsection (2). See subsection 13.3(3) of the *Criminal Code*.

64 Failure to answer questions etc.

- (1) A person shall not refuse or fail to answer a question or produce a document when so required by an inspector under this Act.

Penalty: imprisonment for 12 months.

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- (1A) Subsection (1) does not apply if the person has a reasonable excuse.

Note: The defendant bears an evidential burden in relation to the matter in subsection (1A). See subsection 13.3(3) of the *Criminal Code*.

- (2) Subject to subsections (3), (6) and (9), it is a reasonable excuse for the purposes of subsection (1A) for a person:

(a) to refuse or fail to answer a question when so required under this Act; or

(b) to refuse or fail to produce a document when so required under this Act;

that the answer to the question, or producing the document, as the case may be, might tend to incriminate the person or make the person liable to forfeiture or a penalty.

- (3) Subsection (2) does not apply in relation to a failure or refusal by a person to answer a question, or to produce a document, on the ground that the answer to the question or producing the document might tend to prove his or her guilt of an offence against, or make him or her liable to forfeiture or a penalty under, a law of the Commonwealth or of a Territory, if the Director of Public Prosecutions has given the person a written undertaking under subsection (4).

- (4) An undertaking by the Director of Public Prosecutions shall:

(a) be an undertaking that:

(i) an answer given, or a document produced, by the person; or

(ii) any information or document obtained as a direct or indirect consequence of the answering of the question, or the production of the document;

will not be used in evidence in any proceedings for an offence against a law of the Commonwealth or of a Territory against the person, other than proceedings in respect of the falsity of evidence given by the person;

- (b) state that, in the opinion of the Director of Public Prosecutions, there are special reasons why, in the public interest, the question should be answered or the document should be produced; and
 - (c) state the general nature of those reasons.
- (5) An inspector may recommend to the Director of Public Prosecutions that a person who has been, or is to be, required under this Act to answer a question or produce a document be given an undertaking under subsection (4).
- (6) Subsection (2) does not apply in relation to a failure or refusal by a person to answer a question, or to produce a document, on the ground that the answer to the question or producing the document might tend to prove his or her guilt of an offence against, or make him or her liable to forfeiture or a penalty under, a law of a State, if the Attorney-General of the State, or a person authorised by that Attorney-General (being the person holding the office of Director of Public Prosecutions, or a similar office, of the State) has given the person a written undertaking under subsection (7).
- (7) An undertaking by the Attorney-General of the State, or authorised person, shall:
 - (a) be an undertaking that:
 - (i) an answer given, or a document produced, by the person; or
 - (ii) any information or document obtained as a direct or indirect consequence of the answering of the question, or the production of the document;will not be used in evidence in any proceedings for an offence against a law of the State against the person, other than proceedings in respect of the falsity of evidence given by the person;
 - (b) state that, in the opinion of the person giving the undertaking, there are special reasons why, in the public interest, the question should be answered or the document should be produced; and
 - (c) state the general nature of those reasons.

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- (8) An inspector may recommend to the Attorney-General of a State that a person who has been, or is to be, required under this Act to give information or produce a document be given an undertaking under subsection (7).
- (9) For the purposes of subsection (1A):
 - (a) it is not a reasonable excuse for a body corporate to refuse or fail to produce a document that production of the document might tend to incriminate the body corporate or make it liable to forfeiture or a penalty; and
 - (b) it is not a reasonable excuse for a person to refuse or fail to produce a document that is, or forms part of, a record of an existing or past business (not being, if the individual is or has been an employee, a document that sets out details of earnings received by the person in respect of his or her employment and does not set out any other information) that production of the document might tend to incriminate the person or make the individual liable to forfeiture or a penalty.
- (10) Subsections (3), (6) and (9) do not apply where proceedings, in respect of which giving information or producing a document might tend to incriminate a person or make a person liable to forfeiture or a penalty, have been commenced against the person and have not been finally dealt with by a court or otherwise disposed of.
- (11) In this section, *State* includes the Northern Territory.

65 Conduct by directors, employees and agents

- (1) Where, in proceedings for an offence against this Act, it is necessary to establish the state of mind of a body corporate in relation to particular conduct, it is sufficient to show:
 - (a) that the conduct was engaged in by a director, employee or agent of the body corporate within the scope of his or her actual or apparent authority; and
 - (b) that the director, employee or agent had the state of mind.

- (2) Any conduct engaged in on behalf of a body corporate by a director, employee or agent of the body corporate within the scope of his or her actual or apparent authority shall be taken, for the purposes of a prosecution for an offence against this Act, to have been engaged in also by the body corporate unless the body corporate establishes that the body corporate took reasonable precautions and exercised due diligence to avoid the conduct.
- (3) Where, in proceedings for an offence against this Act, it is necessary to establish the state of mind of a person other than a body corporate in relation to particular conduct, it is sufficient to show:
- (a) that the conduct was engaged in by an employee or agent of the person within the scope of his or her actual or apparent authority; and
 - (b) that the employee or agent had the state of mind.
- (4) Any conduct engaged in on behalf of a person other than a body corporate by an employee or agent of the person within the scope of his or her actual or apparent authority shall be taken, for the purposes of a prosecution for an offence against this Act, to have been engaged in also by the first-mentioned person unless the first-mentioned person establishes that the first-mentioned person took reasonable precautions and exercised due diligence to avoid the conduct.
- (5) Where:
- (a) a person other than a body corporate is convicted of an offence; and
 - (b) the person would not have been convicted of the offence if subsections (3) to (6B) had not been enacted;
- the person is not liable to be punished by imprisonment for that offence.
- (6) A reference in subsection (1) or (3) to the state of mind of a person includes a reference to:
- (a) the knowledge, intention, opinion, belief or purpose of the person; and

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- (b) the person's reasons for the intention, opinion, belief or purpose.
- (7) A reference in this section to a director of a body corporate includes a reference to a constituent member of a body corporate incorporated for a public purpose by a law of the Commonwealth, of a State or of a Territory.
- (8) A reference in this section to engaging in conduct includes a reference to failing or refusing to engage in conduct.
- (9) A reference in this section to an offence against this Act includes a reference to:
 - (a) an offence created by the regulations; and
 - (b) an offence:
 - (i) against section 6 of the *Crimes Act 1914*; or
 - (ii) that is taken to have been committed because of section 11.2 or 11.2A of the *Criminal Code*; or
 - (iii) against section 11.1, 11.4 or 11.5 of the *Criminal Code*; being an offence that relates to the regulations.

Division 5—Infringement notices

65AA Infringement notices

Infringement notices for offences

- (1) The regulations may make provision enabling a person who is alleged to have committed:
 - (a) an offence against any of the following provisions:
 - (i) section 13;
 - (ii) section 18;
 - (iv) section 44;
 - (v) section 45;
 - (vi) section 45B;
 - (vii) section 46; or
 - (b) a specified offence against the regulations;
to pay a specified penalty to the Commonwealth as an alternative to prosecution.
- (2) The penalty must not exceed:
 - (a) if the person is not a body corporate—12 penalty units; or
 - (b) if the person is a body corporate—60 penalty units.

Infringement notices for contraventions of civil penalty provisions

- (3) The regulations may make provision enabling a person who is alleged to have contravened a particular civil penalty provision to pay a specified penalty to the Commonwealth as an alternative to proceedings for a civil penalty order.
- (4) The penalty must not exceed:
 - (a) if the person is not a body corporate—12 penalty units; or
 - (b) if the person is a body corporate—60 penalty units.

Division 6—Ancillary contravention of civil penalty provisions

65AB Ancillary contravention of civil penalty provision

- (1) A person must not:
- (a) attempt to contravene a civil penalty provision (other than this subsection); or
 - (b) aid, abet, counsel or procure a contravention of a civil penalty provision (other than this subsection); or
 - (c) induce, whether by threats or promises or otherwise, a contravention of a civil penalty provision (other than this subsection); or
 - (d) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of a civil penalty provision (other than this subsection); or
 - (e) conspire with others to effect a contravention of a civil penalty provision (other than this subsection).

- (2) Subsection (1) is a ***civil penalty provision***.

Note 1: Division 7 provides for pecuniary penalties for breaches of civil penalty provisions.

Note 2: For maximum penalty, see subsection 65AC(5).

Division 7—Civil penalty orders

65AC Civil penalty orders

- (1) If a designated court is satisfied that a person has contravened a civil penalty provision, the court may order the person to pay the Commonwealth a pecuniary penalty.
- (2) An order under subsection (1) is to be known as a *civil penalty order*.

Determining amount of pecuniary penalty

- (3) In determining the pecuniary penalty, the court may have regard to all relevant matters, including:
 - (a) the nature and extent of the contravention; and
 - (b) the nature and extent of any loss or damage suffered as a result of the contravention; and
 - (c) the circumstances in which the contravention took place; and
 - (d) whether the person has previously been found by a court in proceedings under this Act or the regulations to have engaged in any similar conduct; and
 - (e) the extent to which the person has co-operated with the authorities; and
 - (f) if the person is a body corporate:
 - (i) the level of the employees, officers or agents of the body corporate involved in the contravention; and
 - (ii) whether the body corporate exercised due diligence to avoid the contravention; and
 - (iii) whether the body corporate had a corporate culture conducive to compliance.

Maximum pecuniary penalty

- (4) The pecuniary penalty payable by a person in respect of a contravention of a civil penalty provision (other than

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subparagraph 13(1)(a)(iii), paragraph 13(1)(b) or subsection 65AB(1)) must not exceed:

- (a) if an offence against a provision of this Act or the regulations corresponds to the civil penalty provision—the maximum pecuniary penalty that could have been imposed on the person if the person had been convicted of the offence; or
 - (b) otherwise:
 - (i) if the person is not a body corporate—50 penalty units; or
 - (ii) if the person is a body corporate—250 penalty units.
- (4A) The pecuniary penalty payable by a person in respect of a contravention of subparagraph 13(1)(a)(iii) or paragraph 13(1)(b) must not exceed:
- (a) if the person is not a body corporate—2,000 penalty units; or
 - (b) if the person is a body corporate—10,000 penalty units.
- (5) The pecuniary penalty payable by a person in respect of a contravention of subsection 65AB(1) that relates to another civil penalty provision must not exceed:
- (a) if an offence against a provision of this Act or the regulations corresponds to the other civil penalty provision—the maximum pecuniary penalty that could have been imposed on the person if the person had been convicted of the offence; or
 - (b) otherwise:
 - (i) if the person is not a body corporate—50 penalty units; or
 - (ii) if the person is a body corporate—250 penalty units.

Civil enforcement of penalty

- (6) A pecuniary penalty is a civil debt payable to the Commonwealth. The Commonwealth may enforce the civil penalty order as if it were an order made in civil proceedings against the person to recover a debt due by the person. The debt arising from the order is taken to be a judgment debt.

65AD Who may apply for a civil penalty order

- (1) Only the Minister may apply for a civil penalty order.
- (2) Subsection (1) does not exclude the operation of the *Director of Public Prosecutions Act 1983*.

65AE Two or more proceedings may be heard together

The designated court may direct that 2 or more proceedings for civil penalty orders are to be heard together.

65AF Time limit for application for an order

Proceedings for a civil penalty order may be started no later than 6 years after the contravention.

65AG Civil evidence and procedure rules for civil penalty orders

The designated court must apply the rules of evidence and procedure for civil matters when hearing proceedings for a civil penalty order.

65AH Civil proceedings after criminal proceedings

The designated court must not make a civil penalty order against a person for a contravention of a civil penalty provision if the person has been convicted of an offence constituted by conduct that is substantially the same as the conduct constituting the contravention.

65AI Criminal proceedings during civil proceedings

- (1) Proceedings for a civil penalty order against a person for a contravention of a civil penalty provision are stayed if:
 - (a) criminal proceedings are started or have already been started against the person for an offence; and
 - (b) the offence is constituted by conduct that is substantially the same as the conduct alleged to constitute the contravention.

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- (2) The proceedings for the order may be resumed if the person is not convicted of the offence. Otherwise, the proceedings for the order are dismissed.

65AJ Criminal proceedings after civil proceedings

Criminal proceedings may be started against a person for conduct that is substantially the same as conduct constituting a contravention of a civil penalty provision regardless of whether a civil penalty order has been made against the person.

65AK Evidence given in proceedings for a civil penalty order not admissible in criminal proceedings

Evidence of information given, or evidence of production of documents, by an individual is not admissible in criminal proceedings against the individual if:

- (a) the individual previously gave the evidence or produced the documents in proceedings for a civil penalty order against the individual for a contravention of a civil penalty provision (whether or not the order was made); and
- (b) the conduct alleged to constitute the offence is substantially the same as the conduct that was claimed to constitute the contravention.

However, this does not apply to a criminal proceeding in respect of the falsity of the evidence given by the individual in the proceedings for the civil penalty order.

65AL Mistake of fact

- (1) A person is not liable to have a civil penalty order made against the person for a contravention of a civil penalty provision if:
- (a) at or before the time of the conduct constituting the contravention, the person:
- (i) considered whether or not facts existed; and
- (ii) was under a mistaken but reasonable belief about those facts; and

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- (b) had those facts existed, the conduct would not have constituted a contravention of the civil penalty provision.
- (2) For the purposes of subsection (1), a person may be regarded as having considered whether or not facts existed if:
 - (a) the person had considered, on a previous occasion, whether those facts existed in the circumstances surrounding that occasion; and
 - (b) the person honestly and reasonably believed that the circumstances surrounding the present occasion were the same, or substantially the same, as those surrounding the previous occasion.
- (3) A person who wishes to rely on subsection (1) or (2) in proceedings for a civil penalty order bears an evidential burden in relation to that matter.

65AM State of mind

Scope

- (1) This section applies to proceedings for a civil penalty order against a person for a contravention of a civil penalty provision (other than subsection 65AB(1)).

State of mind

- (2) In the proceedings, it is not necessary to prove:
 - (a) the person's intention; or
 - (b) the person's knowledge; or
 - (c) the person's recklessness; or
 - (d) the person's negligence; or
 - (e) any other state of mind of the person.
- (3) Subsection (2) does not affect the operation of section 65AL.

Part VIII A—Ozone Protection and SGG Account

65A Definitions

In this Part:

Account means the Ozone Protection and SGG Account that is continued in existence by subsection 65B(1).

National Halon Bank means the Commonwealth facility known as the National Halon Bank.

ODS means a substance referred to in any of Parts I to VIII of Schedule 1, whether existing alone or in a mixture.

65B Ozone Protection and SGG Account

- (1) The old account is continued in existence as the Ozone Protection and SGG Account.
- (2) The Account is a special account for the purposes of the *Public Governance, Performance and Accountability Act 2013*.
- (3) In this section:

old account means the account that was in existence immediately before the commencement of this section under the Part VIII A of this Act that was repealed by the *Ozone Protection and Synthetic Greenhouse Gas Legislation Amendment Act 2003*.

65C Amounts to be credited to the Account

- (1) Amounts equal to the following amounts must be credited to the Account:
 - (aa) amounts received by the Commonwealth under section 3A of the *Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Act 1995*;

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- (ab) amounts received by the Commonwealth under section 4A of the *Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Act 1995*;
 - (ac) amounts received by the Commonwealth under section 3A of the *Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Act 1995*;
 - (a) amounts received by the Commonwealth under:
 - (i) section 4 or 4B of the *Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Act 1995*; or
 - (ii) section 4 of the *Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Act 1995*;including those Acts as in force before the commencement of the *Ozone Protection and Synthetic Greenhouse Gas Legislation Amendment Act 2003*;
 - (b) amounts received by the Commonwealth as fees for applications under this Act or the regulations;
 - (e) income received by the Commonwealth from the operation of the National Halon Bank;
 - (f) interest received by the Commonwealth from the investment of money standing to the credit of the Account.

Notional payments and receipts by non-corporate Commonwealth entities

- (2) If:
 - (a) either:
 - (i) a non-corporate Commonwealth entity makes a notional payment to another non-corporate Commonwealth entity; or
 - (ii) one part of a non-corporate Commonwealth entity makes a notional payment to another part of that entity; and
 - (b) the transaction would involve the debiting of an appropriation if the notional payment were a real payment;then:

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- (c) this section applies in relation to the notional payment as if it were a real payment; and
- (d) this section applies in relation to the notional receipt of the notional payment as if it were a real receipt.

Note: This subsection applies to transactions that do not actually involve payments or receipts, because the parties to the transaction (non-corporate Commonwealth entities) are merely parts of the Commonwealth.

- (3) In subsection (2):

non-corporate Commonwealth entity has the same meaning as in the *Public Governance, Performance and Accountability Act 2013*.

65D Purposes of the Account

The following are the purposes of the Account:

- (a) paying or reimbursing the Commonwealth's costs associated with the administration of this Act and the regulations;
- (b) paying or reimbursing the Commonwealth's costs associated with furthering the following programs (including providing information about those programs):
 - (i) ODS phaseout programs;
 - (ii) emission minimisation programs for ODSs and SGGs;
- (c) paying or reimbursing the Commonwealth's costs associated with management of the National Halon Bank;
- (ca) paying or reimbursing the Commonwealth's costs associated with research relating to:
 - (i) substances that deplete ozone in the atmosphere; or
 - (ii) synthetic greenhouse gases;
- (d) refunding any amounts credited to the Account in error.

Part IX—Miscellaneous

66 Review of decisions

Applications may be made to the Administrative Appeals Tribunal for the review of the following decisions of the Minister:

- (a) a decision refusing to grant a licence under section 16 (including a decision that is taken to have been made by virtue of section 17);
- (b) a decision imposing, revoking or varying a condition under section 18;
- (baa) a decision refusing to renew a licence under section 19AC (including a decision that is taken to have been made under section 19AD);
- (ba) a decision terminating a licence under section 19A;
- (bb) a decision refusing to transfer a licence under section 19B;
- (bc) a decision refusing to make an amendment under section 19C;
- (c) a decision to cancel a licence under section 20;
- (d) a decision allocating, or refusing to allocate, a quota under section 28;
- (e) a decision varying or revoking a reserve HCFC quota under section 33;
- (ea) a decision to direct a licensee to export a quantity of HCFCs under section 35A;
- (eb) a decision to direct an SGG licensee to export a quantity of HFCs under section 36H.

66A Approved forms

- (1) The Minister may, in writing, approve a form for the purposes of a provision of this Act.
- (2) An approved form of an application may provide for verification by statutory declaration of statements made in the application.

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67 Statements to accompany notification of decisions

- (1) Where a decision of a kind referred to in section 66 is made and a notice in writing of the decision is given to a person whose interests are affected by the decision, the notice shall include a statement to the effect that, if the person is dissatisfied with the decision, application may, subject to the *Administrative Appeals Tribunal Act 1975*, be made to the Administrative Appeals Tribunal for review of the decision and, except where subsection 28(4) of that Act applies, also include a statement to the effect that the person may request a statement under section 28 of that Act.
- (2) A failure to comply with subsection (1) does not affect the validity of the decision.

67A Delegation

- (1) The Minister may, by writing, delegate all or any of his or her powers and functions under this Act or the regulations to:
 - (a) an SES employee or acting SES employee in the Department;
or
 - (b) an APS employee who holds, or is acting in, an Executive Level 2, or equivalent, position in the Department.
- (2) Subsection (1) does not apply to the Minister's powers under section 19A, 20 or 53K.
- (3) In exercising powers or functions under a delegation, the delegate must comply with any directions of the Minister.

67B Disclosure of information to the Clean Energy Regulator

Scope

- (1) This section applies to information obtained under this Act or the regulations.

Disclosure

- (2) The Minister may disclose the information to the Clean Energy Regulator for the purposes of, or in connection with, the performance of the functions, or the exercise of the powers, of the Clean Energy Regulator.

Other powers of disclosure not limited

- (3) This section does not, by implication, limit the Minister's powers to disclose the information to a person other than the Clean Energy Regulator.

68 Annual report

- (1) The Minister shall:
 - (a) as soon as practicable after the end of each financial year, prepare a report on the operation of this Act during that year; and
 - (b) cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House after the preparation of the report is completed.
- (2) If this Act does not commence at the beginning of a financial year, this section has effect in relation to the period beginning at the commencement of this Act and ending on the next 30 June as if:
 - (a) if the period is less than 6 months—the period were included in the next financial year; or
 - (b) in any other case—the period were a financial year.

69 Collection of licence levies

- (1) A licence levy is due and payable:
 - (a) at the end of 60 days after the end of the reporting period to which the levy relates; or
 - (b) if the Minister allows the licensee concerned a longer period—at the end of that longer period.

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- (2) A licence levy is:
- (a) a debt due to the Commonwealth by the licensee concerned; and
 - (b) may be recovered by the Minister, on behalf of the Commonwealth, by action in a designated court.
- (3) A licence levy in relation to a reporting period is not payable by a licensee if the total of the licence levies that would be payable by the licensee in relation to the reporting period, apart from this subsection, is less than or equal to the amount (if any) prescribed by the regulations for the purposes of this subsection.
- (4) In this section:
- licence levy*** means levy payable under:
- (a) the *Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Act 1995*; or
 - (b) the *Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Act 1995*;
- and includes any amount payable under either of those Acts as in force before the commencement of the *Ozone Protection and Synthetic Greenhouse Gas Legislation Amendment Act 2003*.

69A Implementation of Montreal Protocol—supplementary regulations

- (1) The regulations may make provision for and in relation to giving effect to an adjustment or amendment of the Montreal Protocol, in so far as the adjustment or amendment relates to a substance other than a scheduled substance (whether that substance exists alone or in a mixture).
- (2) Regulations made by virtue of subsection (1) in relation to an adjustment or amendment of the Montreal Protocol that has not entered into force for Australia must not come into operation on a date earlier than the date on which the adjustment or amendment entered into force for Australia.

69B Severability

- (1) This section applies if the enactment of one or more provisions of this Act (other than Part VI) or the regulations goes beyond giving effect to the Vienna Convention, the Montreal Protocol, the Framework Convention on Climate Change and the Kyoto Protocol.
- (2) The provisions are to be read so that their application is limited to, or in relation to:
 - (a) giving effect to the Vienna Convention, the Montreal Protocol, the Framework Convention on Climate Change and the Kyoto Protocol; or
 - (b) matters external to Australia; or
 - (c) matters of international concern; or
 - (d) conduct engaged in by:
 - (i) a corporation to which paragraph 51(xx) of the Constitution applies; or
 - (ii) a body corporate that carries on as its sole or principal business the business of banking (other than State banking not extending beyond the limits of the State concerned) or insurance (other than State insurance not extending beyond the limits of the State concerned); or
 - (iii) a body corporate incorporated in a Territory; or
 - (e) the following activities:
 - (i) trade or commerce between Australia and places outside Australia;
 - (ii) trade or commerce among the States;
 - (iii) trade or commerce within a Territory, between a State and a Territory or between 2 Territories;
 - (iv) the supply of goods or services to the Commonwealth;
 - (v) the use of postal, telegraphic or telephonic services;
 - (vi) the making of a radio or television broadcast.
- (3) A term used in subsection (2) and the Constitution has the same meaning in that subsection as it has in the Constitution.

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69C Jurisdiction of State courts

- (1) The courts of the States are invested with federal jurisdiction in relation to matters arising under:
 - (a) this Act; and
 - (b) the regulations.
- (2) Jurisdiction is invested under subsection (1) within the limits (other than limits of locality) of the jurisdiction of the court (whether those limits are limits as to subject matter or otherwise).

69D Jurisdiction of Territory courts

- (1) Jurisdiction is conferred on the courts of the Territories in relation to matters arising under:
 - (a) this Act; and
 - (b) the regulations.
- (2) Jurisdiction is conferred under subsection (1):
 - (a) only so far as the Constitution permits; and
 - (b) within the limits (other than limits of locality) of the jurisdiction of the court (whether those limits are limits as to subject matter or otherwise).

69E Compensation for acquisition of property

- (1) If the operation of this Act or the regulations would result in an acquisition of property from a person otherwise than on just terms, the Commonwealth is liable to pay a reasonable amount of compensation to the person.
- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in a court of competent jurisdiction for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.
- (3) In this section:

acquisition of property has the same meaning as in paragraph 51(xxxi) of the Constitution.

just terms has the same meaning as in paragraph 51(xxxi) of the Constitution.

69F Arrangements with States and Territories—magistrates

States

- (1) The Minister may make arrangements with a Minister of a State in relation to the performance of the functions of a magistrate under this Act by a magistrate of that State.
- (2) The Minister may arrange with a Minister of a State with whom an arrangement is in force under subsection (1) for the variation or revocation of the arrangement.

Australian Capital Territory

- (3) The Minister may make arrangements with a Minister of the Australian Capital Territory in relation to the performance of the functions of a magistrate under this Act by a magistrate of the Australian Capital Territory.
- (4) The Minister may arrange with a Minister of the Australian Capital Territory for the variation or revocation of an arrangement in force under subsection (3).

Northern Territory

- (5) The Minister may make arrangements with a Minister of the Northern Territory in relation to the performance of the functions of a magistrate under this Act by a magistrate of the Northern Territory.
- (6) The Minister may arrange with a Minister of the Northern Territory for the variation or revocation of an arrangement in force under subsection (5).

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Norfolk Island

- (7) The Minister may make arrangements with the Administrator of Norfolk Island in relation to the performance of the functions of a magistrate under this Act by a magistrate of Norfolk Island.
- (8) The Minister may arrange with the Administrator of Norfolk Island for the variation or revocation of an arrangement in force under subsection (7).

Gazettal

- (9) A copy of each instrument by which an arrangement under this section is made, varied or revoked is to be published in the *Gazette*.

Legislation Act 2003

- (10) An instrument by which an arrangement under this section is made, varied or revoked is not a legislative instrument.

69G Regulations concerning manufacture etc. of equipment containing scheduled substances

- (1) The regulations may include provisions prohibiting or regulating the manufacture, import, export, distribution or use of equipment that:
 - (a) contains scheduled substances; or
 - (b) uses scheduled substances in its operation.
- (2) The provisions that may be made by the regulations include, but are not limited to, provisions:
 - (a) prohibiting the manufacture, import, export, distribution or use of particular kinds of equipment; or
 - (b) prohibiting the manufacture, import, export, distribution or use of particular kinds of equipment except in accordance with prescribed requirements; or
 - (c) prohibiting the manufacture or import of equipment by a person who has not complied with a code of practice relating to the recovery, recycling or disposal of scheduled substances

used in equipment manufactured or imported by that person;
or

- (d) prohibiting the distribution of equipment that is not labelled or marked in accordance with the regulations.
- (3) To avoid doubt, the provisions that may be made by the regulations include, but are not limited to, provisions prohibiting or regulating the import of SGG equipment.

Note: Importing SGG equipment is prohibited under paragraph 13(1)(b), except to the extent it is a Schedule 4 activity (and therefore prohibited under paragraph 13(1)(c)) or is prohibited by the regulations made for the purposes of this section.

- (4) A person does not contravene a regulation made for the purposes of this section by carrying out a section 69G activity if the person holds an equipment licence that allows the activity.
- (5) Subsection 13(5) (exception for certain private or domestic use) applies in relation to a regulation made for the purposes of this section in the same way as that subsection applies in relation to paragraph 13(1)(b) or (c).

70 Regulations

The Governor-General may make regulations, not inconsistent with this Act, prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act;

including regulations prescribing penalties, not exceeding 50 penalty units in the case of a natural person or 250 penalty units in the case of a body corporate, for offences against the regulations.

Schedule 1—Scheduled substances

Note: See section 7.

Part I

Division 1—Stage-1 CFCs

Column 1 Substance	Column 2 Ozone depleting potential
Trichlorofluoromethane (CFC-11)	1.0
Dichlorodifluoromethane (CFC-12)	1.0
Trichlorotrifluoroethane (CFC-113)	0.8
Dichlorotetrafluoroethane (CFC-114)	1.0
(Mono) chloropentafluoroethane (CFC-115)	0.6

Division 2—Stage-2 CFCs

Column 1 Substance	Column 2 Ozone depleting potential
CF ₃ Cl (CFC-13)	1.0
C ₂ FCl ₅ (CFC-111)	1.0
C ₂ F ₂ Cl ₄ (CFC-112)	1.0
C ₃ FCl ₇ (CFC-211)	1.0
C ₃ F ₂ Cl ₆ (CFC-212)	1.0
C ₃ F ₃ Cl ₅ (CFC-213)	1.0
C ₃ F ₄ Cl ₄ (CFC-214)	1.0
C ₃ F ₅ Cl ₃ (CFC-215)	1.0
C ₃ F ₆ Cl ₂ (CFC-216)	1.0
C ₃ F ₇ Cl (CFC-217)	1.0

Schedule 1 Scheduled substances

Part II Halons

Part II—Halons

Column 1	Column 2
Substance	Ozone depleting potential
Bromochlorodifluoromethane (Halon-1211)	3.0
Bromotrifluoromethane (Halon-1301)	10.0
Dibromotetrafluoroethane (Halon-2402)	6.0

Part III—Carbon tetrachloride

Column 1	Column 2
Substance	Ozone depleting potential
Carbon tetrachloride (CCl ₄)	1.1

Part IV—Methyl chloroform

Column 1 Substance	Column 2 Ozone depleting potential
1,1,1-trichloroethane (C ₂ H ₃ Cl ₃ *)	0.1

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

Part V—HCFCs

HCFCs			
Item	Column 1 Substance	Column 2 Ozone depleting potential	Column 3 100-year global warming potential
1	CHFC1 ₂ (HCFC-21)	0.04	151
2	CHF ₂ Cl (HCFC-22)	0.055	1,810
3	CH ₂ FC1 (HCFC-31)	0.02	
4	C ₂ HFCl ₄ (HCFC-121)	0.04	
5	C ₂ HF ₂ Cl ₃ (HCFC-122)	0.08	
6	C ₂ HF ₃ Cl ₂ (HCFC-123)	0.06	
7	CHCl ₂ CF ₃ (HCFC-123)	0.02	77
8	C ₂ HF ₄ Cl (HCFC-124)	0.04	
9	CHFClCF ₃ (HCFC-124)	0.022	609
10	C ₂ H ₂ FC1 ₃ (HCFC-131)	0.05	
11	C ₂ H ₂ F ₂ Cl ₂ (HCFC-132)	0.05	
12	C ₂ H ₂ F ₃ Cl (HCFC-133)	0.06	
13	C ₂ H ₃ FC1 ₂ (HCFC-141)	0.07	
14	CH ₃ CFCl ₂ (HCFC-141b)	0.11	725
15	C ₂ H ₃ F ₂ Cl (HCFC-142)	0.07	
16	CH ₃ CF ₂ Cl (HCFC-142b)	0.065	2,310
17	C ₂ H ₄ FC1 (HCFC-151)	0.005	
18	C ₃ HFCl ₆ (HCFC-221)	0.07	
19	C ₃ HF ₂ Cl ₅ (HCFC-222)	0.09	
20	C ₃ HF ₃ Cl ₄ (HCFC-223)	0.08	
21	C ₃ HF ₄ Cl ₃ (HCFC-224)	0.09	
22	C ₃ HF ₅ Cl ₂ (HCFC-225)	0.07	
23	CF ₃ CF ₂ CHCl ₂ (HCFC-225ca)	0.025	122
24	CF ₂ ClCF ₂ CHClF (HCFC-225cb)	0.033	595
25	C ₃ HF ₆ Cl (HCFC-226)	0.1	
26	C ₃ H ₂ FC1 ₅ (HCFC-231)	0.09	

Schedule 1 Scheduled substances
Part V HCFCs

HCFCs			
Item	Column 1 Substance	Column 2 Ozone depleting potential	Column 3 100-year global warming potential
27	C ₃ H ₂ F ₂ Cl ₄ (HCFC-232)	0.1	
28	C ₃ H ₂ F ₃ Cl ₃ (HCFC-233)	0.23	
29	C ₃ H ₂ F ₄ Cl ₂ (HCFC-234)	0.28	
30	C ₃ H ₂ F ₅ Cl (HCFC-235)	0.52	
31	C ₃ H ₃ FCl ₄ (HCFC-241)	0.09	
32	C ₃ H ₃ F ₂ Cl ₃ (HCFC-242)	0.13	
33	C ₃ H ₃ F ₃ Cl ₂ (HCFC-243)	0.12	
34	C ₃ H ₃ F ₄ Cl (HCFC-244)	0.14	
35	C ₃ H ₄ FCl ₃ (HCFC-251)	0.01	
36	C ₃ H ₄ F ₂ Cl ₂ (HCFC-252)	0.04	
37	C ₃ H ₄ F ₃ Cl (HCFC-253)	0.03	
38	C ₃ H ₅ FCl ₂ (HCFC-261)	0.02	
39	C ₃ H ₅ F ₂ Cl (HCFC-262)	0.02	
40	C ₃ H ₆ FCl (HCFC-271)	0.03	

Part VI—HBFCs

Column 1 Substance	Column 2 Ozone depleting potential
CH ₂ FBr ₂	1.00
CH ₂ F ₂ Br (HBFC-22B1)	0.74
CH ₂ FBr	0.73
C ₂ HFBr ₄	0.8
C ₂ HF ₂ Br ₃	1.8
C ₂ HF ₃ Br ₂	1.6
C ₂ HF ₄ Br	1.2
C ₂ H ₂ FBr ₃	1.1
C ₂ H ₂ F ₂ Br ₂	1.5
C ₂ H ₂ F ₃ Br	1.6
C ₂ H ₃ FBr ₂	1.7
C ₂ H ₃ F ₂ Br	1.1
C ₂ H ₄ FBr	0.1
C ₃ HFBr ₆	1.5
C ₃ HF ₂ Br ₅	1.9
C ₃ HF ₃ Br ₄	1.8
C ₃ HF ₄ Br ₃	2.2
C ₃ HF ₅ Br ₂	2.0
C ₃ HF ₆ Br	3.3
C ₃ H ₂ FBr ₅	1.9
C ₃ H ₂ F ₂ Br ₄	2.1
C ₃ H ₂ F ₃ Br ₃	5.6
C ₃ H ₂ F ₄ Br ₂	7.5
C ₃ H ₂ F ₅ Br	1.4
C ₃ H ₃ FBr ₄	1.9
C ₃ H ₃ F ₂ Br ₃	3.1
C ₃ H ₃ F ₃ Br ₂	2.5

Schedule 1 Scheduled substances
Part VI HBFCs

Column 1 Substance	Column 2 Ozone depleting potential
C ₃ H ₃ F ₄ Br	4.4
C ₃ H ₄ FBr ₃	0.3
C ₃ H ₄ F ₂ Br ₂	1.0
C ₃ H ₄ F ₃ Br	0.8
C ₃ H ₅ FBr ₂	0.4
C ₃ H ₅ F ₂ Br	0.8
C ₃ H ₆ FBr	0.7

Part VII—Methyl bromide

Column 1	Column 2
Substance	Ozone depleting potential
CH ₃ Br	0.6

Part VIII—Bromochloromethane

Substance	Ozone depleting potential
CH ₂ BrCl	0.12

Part IX—HFCs

HFCs		
Item	Column 1 Substance	Column 2 100-year global warming potential
1	CHF ₃ (HFC-23)	14,800
2	CH ₂ F ₂ (HFC-32)	675
3	CH ₃ F (HFC-41)	92
4	CHF ₂ CF ₃ (HFC-125)	3,500
5	CHF ₂ CHF ₂ (HFC-134)	1,100
6	CH ₂ FCF ₃ (HFC-134a)	1,430
7	CHF ₂ CH ₂ F (HFC-143)	353
8	CF ₃ CH ₃ (HFC-143a)	4,470
9	CH ₂ FCH ₂ F (HFC-152)	53
10	CH ₃ CHF ₂ (HFC-152a)	124
11	CF ₃ CHF ₂ CF ₃ (HFC-227ea)	3,220
12	CH ₂ FCF ₂ CF ₃ (HFC-236cb)	1,340
13	CHF ₂ CHF ₂ CF ₃ (HFC-236ea)	1,370
14	CF ₃ CH ₂ CF ₃ (HFC-236fa)	9,810
15	CH ₂ FCF ₂ CHF ₂ (HFC-245ca)	693
16	CHF ₂ CH ₂ CF ₃ (HFC-245fa)	1,030
17	CF ₃ CH ₂ CF ₂ CH ₃ (HFC-365mfc)	794
18	CF ₃ CHFCH ₂ CF ₂ CF ₃ (HFC-43-10mee)	1,640

Schedule 1 Scheduled substances
Part X PFCs

Part X—PFCs

PFCs	
Item	Substance
1	CF ₄ (PFC-14)
2	C ₂ F ₆ (PFC-116)
3	C ₃ F ₈ (PFC-218)
4	C ₄ F ₁₀ (PFC-3-1-10)
5	c-C ₄ F ₈ (PFC-318)
6	C ₅ F ₁₂ (PFC-4-1-12)
7	C ₆ F ₁₄ (PFC-5-1-14)
8	C ₁₀ F ₁₈ (PFC-9-1-18)

Part XI—Sulfur hexafluoride

Substance
Sulfur hexafluoride (SF ₆)

Part XII—Nitrogen trifluoride

Nitrogen trifluoride

Item	Substance
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1	Nitrogen trifluoride (NF ₃)
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Schedule 4—Control of manufacture etc. of equipment containing or using scheduled substances

Note: See the definition of *Schedule 4 activity* in section 7.

1 Dry cleaning machinery

- (1) A person shall not manufacture or import machinery that is intended for the dry cleaning of clothing or similar articles if the machinery is capable of being operated using a scheduled substance.
- (2) This clause applies as follows:
 - (a) in the case of a stage-1 scheduled substance—to the manufacture or import of machinery after the commencement of this Act;
 - (b) in the case of a stage-2 scheduled substance—to the manufacture or import of machinery after the commencement of the *Ozone Protection Amendment Act 1992*.

2 Automotive air conditioning maintenance kits

- (1) A person shall not manufacture or import equipment that:
 - (a) is intended for use as, or as a part of, a kit for the maintenance of automotive air conditioning units; and
 - (b) consists, wholly or partly, of a non-refillable container:
 - (i) that encloses a scheduled substance (whether alone or with another substance); and
 - (ii) the contents of which, immediately after manufacture, weigh 5 kilograms or less.
- (2) This clause applies as follows:
 - (a) in the case of a stage-1 scheduled substance—to the manufacture or import of equipment after 31 January 1989;

Clause 4

- (b) in the case of a stage-2 scheduled substance—to the manufacture or import of equipment after the commencement of the *Ozone Protection Amendment Act 1992*.

4 Extruded polystyrene packaging and insulation

- (1) A person shall not manufacture or import polystyrene equipment if:
 - (a) either:
 - (i) the equipment contains a scheduled substance; or
 - (ii) a scheduled substance was used in the manufacture of the equipment; and
 - (b) the equipment is intended for use as packaging or as thermal insulating material.
- (2) This clause applies as follows:
 - (a) in the case of a stage-1 scheduled substance—to the manufacture or import of equipment after 31 December 1989;
 - (b) in the case of a stage-2 scheduled substance—to the manufacture or import of equipment after the commencement of the *Ozone Protection Amendment Act 1992*.

5 Aerosol equipment

- (1) A person shall not manufacture or import aerosol equipment that contains a scheduled substance.
- (2) This clause applies as follows:
 - (a) in the case of a stage-1 scheduled substance—to the manufacture or import of equipment after 31 December 1989;
 - (b) in the case of a stage-2 scheduled substance (other than methyl chloroform)—to the manufacture or import of equipment after the commencement of the *Ozone Protection Amendment Act 1992*;

- (c) in the case of methyl chloroform—to the manufacture or import of equipment after whichever is the later of the following times:
- (i) the commencement of the Ozone Protection Amendment Act 1992;
 - (ii) the end of 31 December 1992.

6 Equipment containing halon

A person must not manufacture or import equipment that contains a halon.

7 Rigid polyurethane foam equipment

A person must not manufacture or import rigid polyurethane foam equipment if the equipment is intended for use as packaging and:

- (a) the equipment contains a stage-1 or stage-2 scheduled substance; or
- (b) a stage-1 or stage-2 scheduled substance was used in the manufacture of the equipment.

8 Moulded flexible polyurethane foam

A person must not manufacture or import moulded flexible polyurethane foam if:

- (a) the foam contains a stage-1 or stage-2 scheduled substance; or
- (b) a stage-1 or stage-2 scheduled substance is used in the manufacture of the foam.

9 Disposable containers of refrigerants

A person must not manufacture or import equipment consisting wholly or partly of a non-refillable container if:

- (a) the equipment contains a CFC; and
- (b) the equipment is designed for use in the maintenance of refrigerative units (including air conditioning units).

Clause 10

10 Refrigeration and air conditioning equipment

- (1) A person must not manufacture or import refrigeration or air conditioning equipment if:
- (a) the equipment is charged with a CFC refrigerant; or
 - (b) the equipment is designed to operate solely using a CFC refrigerant; or
 - (c) the equipment is insulated with foam manufactured with a CFC.

(1A) Subclause (1) does not apply to equipment specified in the regulations.

Note: For specification by class, see subsection 13(3) of the *Legislation Act 2003*.

(2) Subclause (1) does not apply to the import of refrigerated transport containers (including insulated shipping containers and air freight containers to which refrigerated clip on units are attached).

(3) In subclause (2):

refrigerated clip on unit means a refrigeration unit that can be attached to an insulated container where the container does not have an integrated refrigeration system.

11 HCFC equipment

A person must not manufacture or import equipment that:

- (a) contains HCFCs; or
- (b) uses HCFCs in its operation.

Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

Editorial changes

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can

Endnotes

Endnote 1—About the endnotes

be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation “(md not incorp)” is added to the details of the amendment included in the amendment history.

Endnote 2—Abbreviation key

ad = added or inserted	o = order(s)
am = amended	Ord = Ordinance
amdt = amendment	orig = original
c = clause(s)	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
C[x] = Compilation No. x	pres = present
Ch = Chapter(s)	prev = previous
def = definition(s)	(prev...) = previously
Dict = Dictionary	Pt = Part(s)
disallowed = disallowed by Parliament	r = regulation(s)/rule(s)
Div = Division(s)	reloc = relocated
ed = editorial change	renum = renumbered
exp = expires/expired or ceases/ceased to have effect	rep = repealed
F = Federal Register of Legislation	rs = repealed and substituted
gaz = gazette	s = section(s)/subsection(s)
LA = <i>Legislation Act 2003</i>	Sch = Schedule(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sdiv = Subdivision(s)
(md) = misdescribed amendment can be given effect	SLI = Select Legislative Instrument
(md not incorp) = misdescribed amendment cannot be given effect	SR = Statutory Rules
mod = modified/modification	Sub-Ch = Sub-Chapter(s)
No. = Number(s)	SubPt = Subpart(s)
	<u>underlining</u> = whole or part not commenced or to be commenced

Endnotes

Endnote 3—Legislation history

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Ozone Protection Act 1989	7, 1989	16 Mar 1989	16 Mar 1989 (s 2)	
Ozone Protection Amendment Act 1992	46, 1992	11 June 1992	9 Nov 1992 (gaz 1992, No S321)	s 11(2), 26(2), 27(2), 33(2), 34(2) and 37(2)
Ozone Protection Amendment Act 1995	124, 1995	2 Nov 1995	s 3 and Sch 1 (items 1–17, 19–66 (s 2(2))): 1 Jan 1996 Remainder: 2 Nov 1995 (s 2(1))	s 3(2)–(5), Sch 1 (item 61) and Sch 2
as amended by Audit (Transitional and Miscellaneous) Amendment Act 1997	152, 1997	24 Oct 1997	Sch 3 (items 11–18): 2 Nov 1995 (s 2(3)(f))	—
Environment, Sport and Territories Legislation Amendment Act 1997	118, 1997	7 July 1997	Sch 1 (items 50–57): 7 July 1997 (s 2 (1))	—
Ozone Protection Amendment Act 1999	36, 1999	31 May 1999	31 May 1999 (s 2)	—
Environmental Reform (Consequential Provisions) Act 1999	92, 1999	16 July 1999	Sch 7 (items 17, 18): 16 July 2000 (s 2(1))	Sch 7 (item 18)
Public Employment (Consequential and Transitional) Amendment Act 1999	146, 1999	11 Nov 1999	Sch 1 (items 721–723): 5 Dec 1999 (gaz 1999, No S584) (s 2(1), (2))	—

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Environment and Heritage Legislation Amendment (Application of Criminal Code) Act 2001	15, 2001	22 Mar 2001	s 4 and Sch 1 (items 106–128): 24 May 2001 (s 2(1)(c))	s 4
Environmental Legislation Amendment Act 2001	118, 2001	18 Sept 2001	Sch 2 (item 14): 18 Sept 2001 (s 2(1))	—
Ozone Protection and Synthetic Greenhouse Gas Legislation Amendment Act 2003	126, 2003	5 Dec 2003	5 Dec 2003 (s 2)	s 4
Environment and Heritage Legislation Amendment Act 2005	97, 2005	6 July 2005	Sch 1: 3 Aug 2005 (s 2(1) item 2) Remainder: 6 July 2005 (s 2(1) items 1, 3)	—
Crimes Legislation Amendment (Serious and Organised Crime) Act (No. 2) 2010	4, 2010	19 Feb 2010	Sch 11 (item 14): 20 Feb 2010 (s 2(1) item 13)	—
Statute Law Revision Act 2010	8, 2010	1 Mar 2010	Sch 5 (item 137(a)): 1 Mar 2010 (s 2(1) items 31, 38)	—
Ozone Protection and Synthetic Greenhouse Gas Management Amendment Act 2010	125, 2010	18 Nov 2010	Sch 1 and 2: 18 May 2011 (s 2(1) items 1, 2) Remainder: 18 Nov 2010 (s 2(1) item 1)	Sch 1 (items 109–118)
Statute Law Revision Act 2011	5, 2011	22 Mar 2011	Sch 1 (items 87–91): 22 Mar 2011 (s 2(1) item 2)	—

Ozone Protection and Synthetic Greenhouse Gas Management Act 1989

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Compilation No. 32

Compilation date: 1/1/20

Registered: 24/1/20

Endnotes

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Clean Energy (Consequential Amendments) Act 2011	132, 2011	18 Nov 2011	Sch 1 (item 194): 2 Apr 2012 (s 2(1) item 2) Sch 1 (items 415B–451, 456–460): 1 July 2012 (s 2(1) item 3)	Schl (items 456–460)
Financial Framework Legislation Amendment Act (No. 1) 2013	8, 2013	14 Mar 2013	Sch 1 (item 5): 15 Mar 2013 (s 2)	—
Federal Circuit Court of Australia (Consequential Amendments) Act 2013	13, 2013	14 Mar 2013	Sch 1 (items 461, 462): 12 Apr 2013 (s 2(1) item 2)	—
Statute Law Revision Act (No. 1) 2014	31, 2014	27 May 2014	Sch 8 (item 34): 24 June 2014 (s 2(1) item 9)	—
Clean Energy Legislation (Carbon Tax Repeal) Act 2014	83, 2014	17 July 2014	Sch 1 (items 313–315, 338): 1 July 2014 (s 2(1) items 2, 3)	Sch 1 (item 338)
Omnibus Repeal Day (Autumn 2014) Act 2014	109, 2014	16 Oct 2014	Sch 5 (items 62, 63, 66, 69–82): 17 Oct 2014 (s 2(1) item 2)	Sch 5 (items 66, 79)
Statute Law Revision Act (No. 1) 2015	5, 2015	25 Feb 2015	Sch 3 (items 137–141): 25 Mar 2015 (s 2(1) item 10)	—
Public Governance and Resources Legislation Amendment Act (No. 1) 2015	36, 2015	13 Apr 2015	Sch 5 (items 51, 52, 74–77) and Sch 7: 14 Apr 2015 (s 2)	Sch 5 (items 74–77) and Sch 7
as amended by				
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 486): 5 Mar 2016 (s 2(1) item 2)	—

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Norfolk Island Legislation Amendment Act 2015	59, 2015	26 May 2015	Sch 2 (items 293, 294): 1 July 2016 (s 2(1) item 5) Sch 2 (items 356–396): 18 June 2015 (s 2(1) item 6)	Sch 2 (items 356–396)
as amended by				
Territories Legislation Amendment Act 2016	33, 2016	23 Mar 2016	Sch 2: 24 Mar 2016 (s 2(1) item 2)	—
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (items 464–467): 5 Mar 2016 (s 2(1) item 2)	—
Statute Law Revision Act (No. 1) 2016	4, 2016	11 Feb 2016	Sch 4 (items 1, 226): 10 Mar 2016 (s 2(1) item 6)	—
Ozone Protection and Synthetic Greenhouse Gas Management Legislation Amendment Act 2017	67, 2017	23 June 2017	Sch 1 (items 3–56, 62–108, 112–119): 1 Aug 2017 (s 2(1) item 2) Sch 2 (items 1–13, 16–49, 59–70, 75–87): 1 Jan 2018 (s 2(1) item 3) Sch 3 (items 1, 2, 4–19): 1 Jan 2020 (s 2(1) item 4)	Sch 1 (items 21, 31, 46, 48, 54, 82, 119), Sch 2 (items 48, 49, 75, 76, 85, 87) and Sch 3 (item 19)

Endnotes

Endnote 4—Amendment history

Endnote 4—Amendment history

Provision affected	How affected
Title	am. No. 126, 2003
Part I	
s. 1	am. No. 126, 2003
s. 3	am No 124, 1995; No 126, 2003; No 132, 2011; No 67, 2017
s. 5	am No 59, 2015
s. 6A.....	ad. No. 15, 2001 am. No. 125, 2010
Part II	
s. 7	am No 46, 1992; No 124, 1995; No 118, 1997; No 36, 1999; No 126, 2003; No 125, 2010; No 132, 2011; No 13, 2013; No 31, 2014; No 109, 2014; No 67, 2017 ed C30
s. 8	am No 46, 1992 rs No 124, 1995 am No 125, 2010 rep No 67, 2017
s. 8A.....	ad No 124, 1995
s. 8B.....	ad No 124, 1995 rep No 67, 2017
s. 8C.....	ad No 132, 2011 am No 67, 2017
s. 8D.....	ad No 132, 2011 am No 126, 2015; No 67, 2017
s. 9	am No 46, 1992; No 124, 1995 rs No 126, 2003 am No 132, 2011 rs No 67, 2017 am No 67, 2017 (amdt never applied (Sch 2 item 81))
s. 9A.....	ad No 67, 2017

Endnote 4—Amendment history

Provision affected	How affected
s. 10	rs. No. 124, 1995
s. 10A.....	ad. No. 46, 1992 rep. No. 124, 1995
s. 11	rep. No. 124, 1995
s 12	am No 46, 1992; No 124, 1995
s. 12A.....	ad. No. 46, 1992
Part III	
Division 1	
Division 1 heading.....	ad No 67, 2017
s 12B.....	ad No 46, 1992 am No 124, 1995; No 126, 2003; No 67, 2017
Division 2	
Division 2 heading.....	ad No 67, 2017
s 13	am No 46, 1992 rs No 124, 1995 am No 15, 2001; No 126, 2003; No 97, 2005; No 125, 2010; No 132, 2011; No 109, 2014; No 126, 2015; No 4, 2016 rs No 67, 2017 am No 67, 2017 (Sch 3 item 4)
s 13A.....	ad No 124, 1995 am No 36, 1999; No 126, 2003; No 132, 2011; No 67, 2017
Division 3	
Division 3 heading.....	ad No 67, 2017
s 14	rs No 124, 1995 am No 126, 2003; No 67, 2017
s 16	am No 46, 1992; No 124, 1995; No 126, 2003; No 125, 2010; No 132, 2011; No 67, 2017
s 17.....	am No 92, 1999; No 67, 2017
s. 17A.....	ad. No. 46, 1992 rep. No. 124, 1995
Division 4	

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Endnote 4—Amendment history

Provision affected	How affected
Division 4 heading	ad No 67, 2017
s 18	am No 46, 1992 rs No 124, 1995 am No 36, 1999; No 15, 2001; No 126, 2003; No 125, 2010; No 109, 2014; No 67, 2017
s. 18A.....	ad. No. 46, 1992 rep. No. 124, 1995
s 19	rs No 124, 1995 am No 125, 2010; No 132, 2011 rs No 67, 2017 ed C31
Division 5	
Division 5	ad No 67, 2017
s 19AA.....	ad No 67, 2017
s 19AB.....	ad No 67, 2017
s 19AC.....	ad No 67, 2017
s 19AD.....	ad No 67, 2017
s 19AE	ad No 67, 2017
Division 6	
Division 6 heading.....	ad No 67, 2017
s 19A.....	ad No 124, 1995 am No 126, 2003; No 132, 2011; No 67, 2017
s 19B.....	ad No 124, 1995 am No 67, 2017
s. 19C.....	ad. No. 126, 2003
s. 20	am. No. 46, 1992; No. 124, 1995; No. 125, 2010
s 21	am No 109, 2014
Division 7	
Division 7 heading.....	ad No 67, 2017
Part IV	
Part IV	rs. No. 124, 1995

Endnote 4—Amendment history

Provision affected	How affected
s 22A.....	ad No 46, 1992 rep No 124, 1995 ad No 67, 2017
s 22B.....	ad No 46, 1992 rep No 124, 1995
s 22C.....	ad No 46, 1992 rep No 124, 1995
s. 23	am. No. 46, 1992 rs. No. 124, 1995 am. No. 36, 1999
s 23A.....	ad No 67, 2017
s. 24	am. No. 46, 1992 rs. No. 124, 1995
s. 25	am. No. 46, 1992 rs. No. 124, 1995 am. No. 125, 2010
s 25A.....	ad No 67, 2017 am No 67, 2017
s 26	am No 46, 1992 rs No 124, 1995 am No 118, 1997; No 125, 2010; No 67, 2017
s 27	am No 46, 1992 rs No 124, 1995 am No 67, 2017
s 28	am No 46, 1992 rs No 124, 1995
s 29	am No 46, 1992 rs No 124, 1995
s 30	am No 46, 1992 rs No 124, 1995
s 31	am No 46, 1992

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Endnote 4—Amendment history

Provision affected	How affected
	rs No 124, 1995
s 32	am No 46, 1992
	rs No 124, 1995
s 33	am No 46, 1992
	rs No 124, 1995
s 34	rs No 124, 1995
s 35	rs No 124, 1995
	am No 67, 2017
s 35A.....	ad No 67, 2017
s. 36	am. No. 46, 1992
	rep. No. 124, 1995
Part IVA	
Part IVA.....	ad No 67, 2017
Division 1	
s 36	ad No 67, 2017
Division 2	
s 36A.....	ad No 67, 2017
s 36B.....	ad No 67, 2017
s 36C.....	ad No 67, 2017
s 36D.....	ad No 67, 2017
s 36E.....	ad No 67, 2017
s 36F	ad No 67, 2017
Division 3	
s 36G.....	ad No 67, 2017
Division 4	
s 36H.....	ad No 67, 2017
s 36J.....	ad No 67, 2017
Part V heading	rs No 67, 2017
	rep No 67, 2017
Part V.....	rep No 67, 2017
s 37	rep No 67, 2017

Endnote 4—Amendment history

Provision affected	How affected
s 38	am No 46, 1992; No 124, 1995; No 15, 2001; No 125, 2010; No 67, 2017 rep No 67, 2017
s 39	am No 67, 2017 rep No 67, 2017
s 40	am No 46, 1992; No 126, 2003; No 67, 2017 rep No 67, 2017
Part VI	
s 41	am No 46, 1992; No 118, 2001 rs No 126, 2003 am No 8, 2010; No 125, 2010; No 67, 2017
ss. 42, 43	am. No. 46, 1992; No. 124, 1995 rep. No. 36, 1999
s 44	am No 46, 1992; No 124, 1995; No 15, 2001; No 126, 2003; No 125, 2010; No 67, 2017
s 45	am No 46, 1992; No 124, 1995; No 15, 2001; No 126, 2003; No 125, 2010; No 126, 2015; No 67, 2017
Part VIA	
Part VIA.....	ad. No. 126, 2003
s 45A.....	ad No 126, 2003 am No 67, 2017
s 45B.....	ad No 126, 2003 am No 125, 2010; No 4, 2016; No 67, 2017
s 45C.....	ad No 67, 2017
Part VII	
s 46	am No 46, 1992 rs No 124, 1995 am No 15, 2001; No 126, 2003; No 97, 2005; No 125, 2010; No 132, 2011; No 109, 2014; No 67, 2017
s 46A.....	ad No 46, 1992 rep No 124, 1995 ad No 132, 2011

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Endnote 4—Amendment history

Provision affected	How affected
	am No 109, 2014
	rep No 67, 2017
s. 47	rs. No. 46, 1992
	rep. No. 124, 1995
s. 47A.....	ad. No. 46, 1992
	rep. No. 124, 1995
Part VIII	
Division 1	
Division 1 heading	rs No 125, 2010
Subdivision A	
Subdivision A heading	ad No 125, 2010
s. 48A.....	ad. No. 46, 1992
	rs. No. 124, 1995
s. 49	am. No. 124, 1995; No. 146, 1999; No. 125, 2010
s. 49A.....	ad. No. 125, 2010
s 50	am No 124, 1995; No 15, 2001; No 4, 2016; No 67, 2017
Subdivision B	
Subdivision B heading	ad No 125, 2010
s. 51	am. No. 124, 1995; No. 125, 2010
ss. 51A, 51B.....	ad. No. 125, 2010
Subdivision C	
Subdivision C	ad No 125, 2010
s. 52	am. No. 126, 2003
	rs. No. 125, 2010
s. 53	rs. No. 125, 2010
ss. 53A–53C.....	ad. No. 125, 2010
Subdivision D	
Subdivision D	ad No 125, 2010
ss. 53D–53H	ad. No. 125, 2010
ss. 53J–53L.....	ad. No. 125, 2010
Subdivision E	

Endnote 4—Amendment history

Provision affected	How affected
Subdivision E heading	ad No 125, 2010
s. 53M.....	ad. No. 125, 2010
s. 54	am. No. 124, 1995
s. 55	rs. No. 125, 2010
ss. 55A–55D	ad. No. 125, 2010
Subdivision F	
Subdivision F	ad No 125, 2010
ss. 55E–55G.....	ad. No. 125, 2010
Subdivision G	
Subdivision G	ad No 125, 2010
s. 55H.....	ad. No. 125, 2010
Division 3	
Subdivision A	
Subdivision A	ad No 125, 2010
s 57	am No 46, 1992; No 118, 1997
	rs No 125, 2010
	am No 67, 2017
Subdivision B	
Subdivision B heading	ad No 125, 2010
s. 58	am. No. 125, 2010
s. 60	am. No. 46, 1992; No. 15, 2001; No 4, 2016
Subdivision C	
Subdivision C	ad No 125, 2010
ss. 60A–60D	ad. No. 125, 2010
Subdivision D	
Subdivision D heading.....	ad No 125, 2010
s. 60E.....	ad. No. 125, 2010
s. 61	am. No. 125, 2010
Division 4	
s. 62	am. No. 46, 1992; No. 124, 1995; No. 15, 2001; No. 125, 2010
s. 63	am. No. 46, 1992; No. 15, 2001; No. 125, 2010

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Provision affected	How affected
s. 64	am. No. 46, 1992; No. 15, 2001
s. 65	am. No. 4, 2010; No 5, 2015
Division 5	
Division 5	ad No 125, 2010
s 65AA.....	ad No 125, 2010 am No 132, 2011; No 67, 2017
Division 6	
Division 6	ad No 125, 2010
s. 65AB.....	ad. No. 125, 2010
Division 7	
Division 7	ad No 125, 2010
s 65AC.....	ad No 125, 2010 am No132, 2011; No 67, 2017
s. 65AD.....	ad. No. 125, 2010
s. 65AE.....	ad. No. 125, 2010
s. 65AF.....	ad. No. 125, 2010
s. 65AG.....	ad. No. 125, 2010
s. 65AH.....	ad. No. 125, 2010
s. 65AI.....	ad. No. 125, 2010
s. 65AJ.....	ad. No. 125, 2010
s. 65AK.....	ad. No. 125, 2010
s. 65AL.....	ad. No. 125, 2010
s. 65AM.....	ad. No. 125, 2010
Part VIIIA	
Part VIIIA heading.....	ad No 124, 1995 (as am by No 152, 1997) rs No 126, 2003
Part VIIIA.....	ad. No. 124, 1995 rs. No. 126, 2003
s 65A.....	ad No 124, 1995 rs No 124, 1995 (as am by No 152, 1997); No 126, 2003
s 65B.....	ad No 124, 1995

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Provision affected	How affected
	rs No 124, 1995 (as am by No 152, 1997); No 126, 2003; No 36, 2015
s 65C.....	ad No 124, 1995 am No 124, 1995 rs No 126, 2003 am No 125, 2010; No 132, 2011; No 83, 2014; No 67, 2017
s. 65D.....	ad. No. 124, 1995 am. No. 124, 1995 rs. No. 126, 2003 am. No. 125, 2010
Part IX	
s 66	am No 46, 1992; No 124, 1995; No 126, 2003; No 67, 2017
s 66A.....	ad No 67, 2017
s 67A.....	ad No 46, 1992 am No 124, 1995; No 36, 1999; No 146, 1999 rs No 126, 2003 am No 125, 2010; No 67, 2017
s. 67B.....	ad. No. 132, 2011
s 69	am No 124, 1995; No 126, 2003; No 132, 2011; No 67, 2017 ed C31
s. 69AA.....	ad. No. 132, 2011 rep No 83, 2014
s. 69AB.....	ad. No. 132, 2011 rep No 83, 2014
s. 69AC.....	ad. No. 132, 2011 rep No 83, 2014
s. 69AD.....	ad. No. 8, 2013 rep No 83, 2014
s. 69A.....	ad. No. 46, 1992 am. No. 126, 2003
s 69B.....	ad No 46, 1992 am No 126, 2003; No 132, 2011; No 67, 2017

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Endnote 4—Amendment history

Provision affected	How affected
s 69C.....	ad No 125, 2010
s 69D.....	ad No 125, 2010
s 69E.....	ad No 125, 2010
s 69F.....	ad No 125, 2010 am No 126, 2015
s 69G.....	ad No 67, 2017 am No 67, 2017
s. 70.....	am. No. 125, 2010
Schedule 1	
Schedule 1.....	am No 46, 1992; No 124, 1995; No 118, 1997; No 126, 2003; No 132, 2011; No 109, 2014; No 67, 2017
Schedule 2.....	am No 5, 2011 rep No 67, 2017
Schedule 3.....	rs No 46, 1992; No 124, 1995 am No 118, 1997 rep No 67, 2017
Schedule 3A.....	ad No 36, 1999 am No 126, 2003 rep No 67, 2017
Schedule 3B.....	ad No 36, 1999 am No 126, 2003 rep No 67, 2017
Schedule 3C.....	ad No 36, 1999 am No 126, 2003 rep No 67, 2017
Schedule 3D.....	ad No 126, 2003 rep No 67, 2017
Schedule 3E.....	ad No 126, 2003 rep No 67, 2017
Schedule 4	
<u>Schedule 4 heading</u>	rs No 67, 2017

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Provision affected	How affected
Schedule 4.....	am No 46, 1992; No 124, 1995; No 118, 1997; No 36, 1999; No 125, 2010; No 109, 2014; No 126, 2015; No 67, 2017
