



Ozone Protection Act 1989

No. 7 of 1989

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SCHEDULE 4

**CONTROL OF MANUFACTURE ETC. OF PRODUCTS CONTAINING OR
USING SCHEDULED SUBSTANCES**



Ozone Protection Act 1989

No. 7 of 1989

An Act to provide for measures to protect ozone in the atmosphere

[Assented to 16 March 1989]

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

PART I—PRELIMINARY

Short title

1. This Act may be cited as the *Ozone Protection Act 1989*.

Commencement

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

Objectives

3. The objectives of this Act are:

- (a) to institute a system of controls on the manufacture, import and export of substances that deplete ozone in the atmosphere, for the purpose of:

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- (i) giving effect to Australia's obligations under the Convention and the Protocol; and
 - (ii) further reducing Australia's exports of such substances;
- (b) to institute, and to provide for the institution of, specific controls on the manufacture, import, export, distribution and use of products that contain such substances or use such substances in their operation; and
- (c) to use the best endeavours to encourage Australian industry to:
- (i) replace ozone depleting substances; and
 - (ii) achieve a faster and greater reduction in the levels of production and use of ozone depleting substances than are provided for in the Convention and the Protocol;
- to the extent that such replacements and achievements are reasonably possible within the limits imposed by the availability of suitable alternate substances, and appropriate technology and devices.

Saving of certain State and Territory laws

4. 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.

Act to bind the Crown

5. (1) This Act binds the Crown in right of the Commonwealth, of each of the States, of an internal Territory that has been established as a body politic and of Norfolk Island.

(2) Nothing in this Act renders the Crown in right of the Commonwealth, of a State, of an internal Territory or of Norfolk Island liable to be prosecuted for an offence.

Extension to external Territories

6. This Act extends to all the external Territories.

PART II—EXPLANATION OF TERMS USED IN THE ACT

Definitions

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

“Australia” includes all the external Territories;

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

“CFC quota” means a quota allocated or renewed under Part IV that permits the manufacture, import or export of CFCs;

“CFC quota period” means a CFC quota period as defined in section 8;

“Convention” means the Vienna Convention for the Protection of the Ozone Layer, a copy of the English text of which is set out in Schedule 2;

“distribution” includes sale and supply, whether for consideration or not;

“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 Court” means the Federal Court of Australia;

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

“halon quota” means a quota allocated or renewed under Part IV that permits the manufacture or import of halons;

“halon quota period” means a halon quota period as defined in section 8;

“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;

“inspector” means a person appointed as an inspector under section 49;

“licensee” means a person who holds a licence under section 16;

“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));

“Protocol” means the Montreal Protocol on Substances that Deplete the Ozone Layer, a copy of the English text of which is set out in Schedule 3;

“quarter” means a period of 3 months commencing on 1 January, 1 April, 1 July or 1 October;

“quota activity” means:

- (a) the manufacture of CFCs;
- (b) the import of CFCs;
- (c) the export of CFCs;
- (d) the manufacture of halons; or
- (e) the import of halons;

“quota period” means a CFC quota period or a halon quota period;

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

(2) A reference in this Act to an offence against this Act, to an offence against a provision of this Act or to a contravention of this Act includes a

reference to an offence against section 5, 6, 7 or 7A, or paragraph 86 (1) (a), of the *Crimes Act 1914* that relates to this Act or that provision, as the case requires.

(3) A reference in this Act to an offence against the regulations or to a contravention of the regulations includes a reference to an offence against section 5, 6, 7 or 7A, or paragraph 86 (1) (a), of the *Crimes Act 1914* that relates to the regulations.

Quota periods

8. (1) A CFC quota period or a halon quota period has a duration of 12 months unless it is extended by the Minister.

(2) Each CFC quota period (other than the first) commences at the end of the previous CFC quota period, and each halon quota period (other than the first) commences at the end of the previous halon quota period.

(3) The first CFC quota period commences on:

(a) if the Protocol entered into force on 1 January 1989—1 July 1989;
or

(b) in any other case—a later day fixed by the Minister.

(4) The first halon quota period commences on:

(a) if the Protocol entered into force on 1 January 1989—1 January 1992; or

(b) in any other case—a later day fixed by the Minister.

(5) A day fixed under subsection (3) shall be not earlier than 6 months after the entry into force of the Protocol.

(6) A day fixed under subsection (4) shall be not earlier than 3 years after the entry into force of the Protocol.

(7) An extension under subsection (1) or the fixing of a day under subsection (3) or (4) shall be by notice published in the *Gazette*.

(8) A notice effecting an extension under subsection (1) is a disallowable instrument within the meaning of section 46A of the *Acts Interpretation Act 1901*.

Scheduled substances not to include manufactured products

9. (1) A reference in this Act to a scheduled substance does not include a reference to a manufactured product that:

(a) contains, and will use in its operation, a scheduled substance; or

(b) consists in part of a scheduled substance only because the substance was used in the manufacturing process.

(2) A reference in subsection (1) to a manufactured product does not include a reference to a manufactured product that is to be used only for the transportation and storage of a scheduled substance unless the substance can only be used in conjunction with the product.

Quantity—in relation to scheduled substances

10. A reference in this Act to a quantity of a scheduled substance or scheduled substances is a reference to the amount of the substance or substances expressed in terms of the ozone depleting effect of the amount.

Ozone depleting effect

11. (1) For the purposes of this Act, the ozone depleting effect of an amount of a scheduled substance is the number obtained by multiplying the number representing the mass of the amount in kilograms by the factor specified in column 2 of Schedule 1 as the ozone depleting potential of the substance.

(2) The ozone depleting effect of amounts of 2 or more scheduled substances, considered together, is the sum of the numbers representing the ozone depleting effect of the amounts.

Recycling of scheduled substances

12. (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.

PART III—LICENCES

Unlicensed manufacture, import or export

13. (1) After the beginning of the first CFC quota period, a person shall not:

- (a) manufacture a CFC;
- (b) import a CFC; or
- (c) export a CFC;

unless the person holds a licence under section 16.

Penalty:

- (a) in the case of a natural person—\$50,000; or
- (b) in the case of a body corporate—\$250,000.

(2) After the beginning of the first halon quota period, a person shall not:

- (a) manufacture a halon;
- (b) import a halon; or
- (c) export a halon;

unless the person holds a licence under section 16.

Penalty:

- (a) in the case of a natural person—\$50,000; or
- (b) in the case of a body corporate—\$250,000.

Application for licence

14. (1) An application for a licence shall:

- (a) be in the prescribed form; and
- (b) be given to the Minister.

(2) The prescribed form of application may provide for verification of statements in an application by statutory declaration.

Request for further information

15. 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.

Grant of licence

16. (1) Subject to subsections (3) and (4), the Minister may grant a licence to a person who has applied under section 14.

(2) A licence shall be granted in the prescribed form.

(3) Subject to subsection (4), the Minister shall grant a licence to a person who:

- (a) immediately before the commencement of this Act was conducting an enterprise in the course of which scheduled substances were being manufactured, imported or exported; and
- (b) applies for a licence within 3 months after the date of commencement of this Act.

(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:

- (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;
- (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;

- (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;
- (d) any statement by the person in the application that was false or misleading in a material particular; and
- (e) where any statement by the person in the application was false or misleading in a material particular—whether the person knew that the statement was false or misleading.

(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.

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

Deemed refusal of licence

17. (1) If, at the end of 60 days after an application for a licence is made, the Minister has neither granted a licence nor made a request under section 15, the Minister shall be regarded, for the purposes of section 66, as having refused the application on the last of the 60 days.

(2) If:

- (a) the Minister makes a request under section 15; and
- (b) at the end of 60 days after the request was made, the Minister has not granted a licence to the applicant;

the Minister shall be taken, for the purposes of section 66, to have refused the application on the last of the 60 days.

Duration of licence

18. (1) A licence remains in force for a period of 10 years.

(2) A licence granted before the beginning of the first CFC quota period comes into force at the beginning of that quota period.

Renewal of licence

19. (1) A licensee may, at any time within the 6 months prior to the expiry of a licence, apply for renewal of the licence.

(2) The application shall:

- (a) be in a form approved by the Minister; and
- (b) be given to the Minister.

(3) The approved form of application may provide for verification of statements in an application by statutory declaration.

(4) The Minister may, within 60 days after an application has been made, give the applicant for renewal written notice requiring the applicant

to give the Minister such further information relating to the application as is specified in the notice.

(5) The Minister shall not renew the licence unless the Minister is satisfied that the applicant is a fit and proper person to be a licensee.

(6) 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 (5), the Minister shall have regard to the matters set out in subsection 16 (5) (as affected by subsection 16 (6)) as if the application for renewal were an application for a licence.

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

(8) If, at the end of 60 days after an application for a licence is made, the Minister has neither granted a licence nor made a request under subsection (4), the Minister shall be regarded, for the purposes of section 66, as having refused the application on the last of the 60 days.

(9) If:

- (a) the Minister makes a request under subsection (4); and
- (b) at the end of 60 days after the request was made, the Minister has not granted a licence to the applicant;

the Minister shall be taken, for the purposes of section 66, to have refused the application on the last of the 60 days.

Cancellation of licence

20. (1) The Minister may cancel a licence if the Minister is satisfied that the licensee is no longer a fit and proper person to hold a 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:

- (a) any conviction of the person for an offence against this Act or the regulations committed within the immediately preceding 10 years;
- (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;
- (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;
- (d) any statement by the person, in an application under this Act, 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.

(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).

Surrender of licence

21. (1) A licensee may, at any time, surrender a licence by:

- (a) returning the licence to the Minister; and
- (b) giving the Minister written notice that the licence is surrendered.

(2) The surrender of a licence takes effect (unless the licence is sooner cancelled):

- (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.

Publication of information regarding licences etc.

22. 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—QUOTAS

Manufacture in excess of quota

23. (1) A licensee shall not manufacture a CFC in a CFC quota period unless:

- (a) the licensee is the holder of a quota permitting the manufacture of CFCs in the quota period; and
- (b) the quantity of the CFC manufactured, together with all other quantities of CFCs manufactured by the licensee in the quota period, does not exceed the quota held by the licensee for the manufacture of CFCs in the quota period.

Penalty:

- (a) in the case of a natural person—\$50,000; or
- (b) in the case of a body corporate—\$250,000.

(2) A licensee shall not manufacture a halon in a halon quota period unless:

- (a) the licensee is the holder of a quota permitting the manufacture of halons in the quota period; and
- (b) the quantity of the halon manufactured, together with all other quantities of halons manufactured by the licensee in the quota period, does not exceed the quota held by the licensee for the manufacture of halons in the quota period.

Penalty:

- (a) in the case of a natural person—\$50,000; or
- (b) in the case of a body corporate—\$250,000.

Import in excess of quota

24. (1) A licensee shall not import a CFC in a CFC quota period unless:

- (a) the licensee is the holder of a quota permitting the importation of CFCs in the quota period; and
- (b) the quantity of the CFC imported, together with all other quantities of CFCs imported by the licensee in the quota period, does not exceed the quota held by the licensee for the importation of CFCs in the quota period.

Penalty:

- (a) in the case of a natural person—\$50,000; or
- (b) in the case of a body corporate—\$250,000.

(2) A licensee shall not import a halon in a halon quota period unless:

- (a) the licensee is the holder of a quota permitting the importation of halons in the quota period; and
- (b) the quantity of the halon imported, together with all other quantities of halons imported by the licensee in the quota period, does not exceed the quota held by the licensee for the importation of halons in the quota period.

Penalty:

- (a) in the case of a natural person—\$50,000; or
- (b) in the case of a body corporate—\$250,000.

Export in excess of quota

25. A licensee shall not export a CFC in a CFC quota period unless:

- (a) the licensee is the holder of a quota permitting the export of CFCs in the quota period; and
- (b) the quantity of the CFC exported, together with all other quantities of CFCs exported by the licensee in the quota period, does not exceed the quota held by the licensee for the export of CFCs in the quota period.

Penalty:

- (a) in the case of a natural person—\$50,000; or
- (b) in the case of a body corporate—\$250,000.

Nature of quotas

26. (1) A CFC quota may be allocated in respect of one or more of the following:

- (a) manufacture of CFCs;
- (b) import of CFCs;
- (c) export of CFCs.

(2) The size of a CFC quota is the quantity of CFCs that the holder may manufacture, import or export, as the case may be, during a quota period to which the quota relates.

(3) A halon quota may be allocated in respect of one or both of the following:

- (a) manufacture of halons;
- (b) import of halons.

(4) The size of a halon quota is the quantity of halons that the holder may manufacture or import, as the case may be, during a quota period to which the quota relates.

Application for quota

27. (1) An application for a quota shall:

- (a) be in the prescribed form; and
- (b) be given to the Minister.

(2) The prescribed form of application may provide for verification of statements in an application by statutory declaration.

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

(4) An application for a CFC quota and an application for a halon quota shall be made separately.

Allocation of quota

28. (1) If, on an application for quota having been made, the Minister is satisfied that:

- (a) the applicant was, immediately before the commencement of this Act, conducting an enterprise in the course of which scheduled substances were manufactured in Australia, imported or exported; or
- (b) the application is made in respect of an activity that is essential for purposes connected with Australia's defence;

the Minister shall allocate a quota to the applicant.

(2) A quota is allocated by written notice given to the applicant.

(3) The notice shall specify, as the terms of the quota:

- (a) whether the quota is a CFC quota or a halon quota;
 - (b) the quota activities to which it relates;
 - (c) the size of the quota in respect of each of those activities, expressed in accordance with subsection 26 (2) or (4), as the case requires; and
 - (d) the quota period in relation to which the quota is allocated.
- (4) The notice shall not specify, under paragraph (3) (b), a quota activity unless:
- (a) the applicant was, immediately before the commencement of this Act, conducting an enterprise in the course of which the activity was being engaged in; or
 - (b) the activity is essential for purposes connected with Australia's defence.
- (5) The size of the quota to be specified in the notice in respect of a quota activity shall be ascertained:
- (a) if the activity is not the export of CFCs—in accordance with section 29; or
 - (b) if the activity is the export of CFCs—in accordance with section 30.
- (6) An application for a quota is refused by giving the applicant written notice of the refusal and of the reasons for the refusal.

Ascertainment of size of quota—initial allocation in respect of manufacture or import

29. (1) The size of quotas in respect of the manufacture or import of CFCs during the first CFC quota period shall be ascertained under this section in such manner that the total quantity of CFCs represented by the quotas does not exceed the total quantity of CFCs manufactured in Australia or imported, as the case may be, during 1986, being the total quantity specified in respect of such manufacture or import, as the case may be, in the report published under subsection 46 (2).

(2) The size of quotas in respect of the manufacture or import of halons during the first halon quota period shall be ascertained under this section in such manner that the total quantity of halons represented by the quotas does not exceed the total quantity of halons manufactured in Australia or imported into Australia, as the case may be, during 1986, being the total quantity specified in respect of such manufacture or import, as the case may be, in the report published under subsection 46 (2).

(3) The size of a quota allocated under section 28 to an applicant shall, in respect of a particular quota activity proposed to be engaged in by the applicant, be ascertained by adding together as many of the following components as are applicable in relation to the activity:

- (a) the defence purposes component;
- (b) the 1986 component;
- (c) the discretionary component.

(4) The defence purposes component in relation to the quota activity is the quantity of CFCs or halons, as the case may be, that the Minister is satisfied must be manufactured or imported, as the case may be, during the quota period concerned in order for the applicant to engage in that activity to the extent that it is essential for purposes connected with Australia's defence.

(5) Subject to subsection (6), the 1986 component in relation to the quota activity is the quantity of CFCs or halons, as the case may be, that the Minister is satisfied was manufactured or imported, as the case may be, in the conduct of an enterprise during 1986, being an enterprise that was, immediately before the commencement of this Act, being conducted by the applicant.

(6) The quantity that would, but for this subsection, be the 1986 component in relation to the quota activity shall be taken to be reduced if the Minister is satisfied that, having regard to the defence purposes components (if any) in relation to the activity, ascertaining 1986 components in relation to the activity in accordance with subsection (5) could result in Australia contravening its international obligations in relation to the manufacture, importation or consumption of scheduled substances.

(7) 1986 components in relation to a quota activity may only be reduced in such a manner that each 1986 component in relation to the activity is, so far as is reasonably practicable, reduced by an equal proportion according to its size.

(8) Subject to subsections (1) and (2), the discretionary component in relation to the quota activity is the quantity of CFCs or halons, as the case may be, that the Minister is satisfied the applicant should be permitted to manufacture or import, as the case may be, in addition to any quantity the applicant is permitted to manufacture or import because of subsections (4) and (5).

(9) In deciding whether there should be a discretionary component, or the size of any discretionary component, the Minister shall have regard to:

- (a) the extent to which the applicant has engaged in the quota activity between the end of 1986 and the commencement of this Act; and
- (b) such other matters as the Minister thinks fit.

Ascertainment of size of quota—initial allocation in respect of export of CFCs

30. (1) The size of quotas in respect of the export of CFCs during the first CFC quota period shall be ascertained under this section in such manner that the total quantity of CFCs represented by the quotas does not permit the export of a total quantity of CFCs having an ozone depleting effect exceeding 3,800,000.

(2) The size of a quota allocated under section 28 to an applicant in respect of the export of CFCs shall be ascertained by adding together the 1986 component (if any) in relation to the export of CFCs and the discretionary component (if any) in relation to the export of CFCs.

(3) The 1986 component in relation to the export of CFCs is the quantity of CFCs that the Minister is satisfied was exported in the conduct of an enterprise during 1986, being an enterprise that was, immediately before the commencement of this Act, being conducted by the applicant.

(4) Subject to subsection (1), the discretionary component in relation to the export of CFCs is the quantity of CFCs that the Minister is satisfied the applicant should be permitted to export in addition to any quantity the applicant is permitted to export because of subsection (3).

(5) In deciding whether there should be a discretionary component, or the size of any discretionary component, the Minister shall have regard to:

- (a) the extent to which the applicant has engaged in the export of CFCs between the end of 1986 and the commencement of this Act; and
- (b) such other matters as the Minister thinks fit.

Renewal of quota

31. (1) A licensee who is the holder of a quota may, not less than one month and not more than 3 months before the end of the quota period to which the quota relates, apply to the Minister for renewal of the quota in relation to the next quota period.

- (2) The application shall:
- (a) be in the prescribed form; and
 - (b) be given to the Minister.

(3) The prescribed form of application may provide for verification of statements in an application by statutory declaration.

(4) An application for renewal of a CFC quota and an application for renewal of a halon quota shall be made separately.

(5) If, on an application for renewal of a quota having been made, the Minister is satisfied that:

- (a) the applicant is, at the time of making the application, the holder of a quota; and
- (b) to renew the quota would not be inconsistent with Australia's international obligations in relation to the manufacture, importation or consumption of scheduled substances;

the Minister shall renew the quota.

- (6) A quota is renewed by written notice given to the applicant.
- (7) The notice shall specify, as the terms of the quota:
 - (a) whether the quota is a CFC quota or a halon quota;

- (b) the quota activities to which it relates;
- (c) the size of the quota in respect of each of those activities, expressed in accordance with subsection 26 (2) or (4), as the case requires; and
- (d) the quota period in relation to which the quota is renewed.

(8) The notice shall not specify, under paragraph (7) (b), a quota activity unless:

- (a) the applicant is permitted to engage in the activity under the quota during the current quota period; or
- (b) engaging in the activity is essential for purposes connected with Australia's defence.

(9) The size of the quota to be specified in the notice in respect of a quota activity shall be ascertained:

- (a) if the activity is not the export of CFCs—in accordance with section 32; or
- (b) if the activity is the export of CFCs—in accordance with section 33.

(10) An application for renewal of a quota is refused by giving the applicant written notice of the refusal and of the reasons for the refusal.

Ascertainment of size of quota on renewal

32. (1) The size of a quota as renewed under section 31 shall, in respect of a particular quota activity proposed to be engaged in by the applicant for the renewal, be ascertained by adding together the defence purposes component (if any) in relation to the activity and the previous quota component (if any) in relation to the activity.

(2) The defence purposes component in relation to the quota activity is the quantity of CFCs or halons, as the case may be, that the Minister is satisfied must be manufactured or imported, as the case may be, during the quota period in relation to which the quota is renewed in order for the applicant to engage in that activity to the extent that it is essential for purposes connected with Australia's defence.

(3) Subject to subsections (4) and (5), the previous quota component in relation to the quota activity is the quantity of CFCs or halons, as the case may be, that the applicant is permitted under the quota to manufacture or import, as the case may be, in the course of engaging in the activity during the quota period prior to the quota period in relation to which the quota is renewed.

(4) For the purposes of subsection (3), quota activity, engaged in during the previous quota period, that is attributable to a defence purposes component in relation to the activity shall be disregarded.

(5) The quantity that would, but for this subsection, be the previous quota component in relation to the quota activity shall be taken to be

reduced if the Minister is satisfied that ascertaining previous quota components in relation to the activity in accordance with subsection (3) could result in Australia contravening its international obligations in relation to the manufacture, importation or consumption of scheduled substances.

(6) Previous quota components in relation to a quota activity may only be reduced in such a manner that each previous quota component in relation to the activity is, so far as is reasonably practicable, reduced by an equal proportion according to its size.

Ascertainment of size of quota in respect of export of CFCs on renewal

33. The size of the quota as renewed under section 31 shall, in respect of the export of CFCs proposed to be engaged in by the applicant for the renewal, be ascertained by reducing by 5% the quantity of CFCs that the applicant was permitted to export under the quota concerned during the quota period prior to the quota period in respect of which the application for renewal is made.

Variation of quota

34. (1) A licensee who is the holder of a quota may apply to the Minister for variation of the terms of the quota.

- (2) The application shall:
- (a) be in the prescribed form; and
 - (b) be given to the Minister.

(3) If, on the application being made, the Minister is satisfied that it is consistent with the objects of this Act and with Australia's international obligations in relation to the manufacture, importation and consumption of scheduled substances, the Minister may, by notice in writing, vary the terms of the quota (other than the term specifying a quota period) in the manner set out in the notice.

(4) The variation takes effect from the day specified in the notice for the purpose.

(5) An application for variation of a quota is refused by giving the applicant written notice of the refusal and of the reasons for the refusal.

Quota transferable

35. (1) A quota or part of a quota may be transferred by the holder to another licensee.

- (2) A transfer may be made with or without consideration.

(3) A licensee who transfers a quota or part of a quota shall, within 14 days after the transfer, give the Minister written notice of:

- (a) the name and address of the transferee;
- (b) the quota activities to which the transfer relates; and
- (c) in respect of each of those activities, the proportion of quota transferred.

(4) On notice being so given, the transferee shall be taken to be the holder of the quota or the part of the quota specified in the transfer, and, in the case of a transfer of part of a quota, the quota held previously shall be taken to have been varied accordingly.

(5) The holder of a quota shall not, during a quota period, transfer a part of the quota that, in relation to a quota activity permitted under the quota, is larger than the part of the quota that, in relation to that activity, remains unused during the quota period.

Publishing of quota levels

36. (1) Within one month after the beginning of each CFC quota period, the Minister shall cause to be published in the *Gazette* a notice setting out:

- (a) the total quantity of CFCs permitted to be manufactured under CFC quotas during the period;
- (b) the total quantity of those CFCs permitted to be manufactured under CFC quotas during the period as part of an activity that is essential for purposes connected with Australia's defence;
- (c) the total quantity of CFCs permitted to be imported under CFC quotas during the period;
- (d) the total quantity of those CFCs permitted to be imported under CFC quotas during the period as part of an activity that is essential for purposes connected with Australia's defence; and
- (e) the total quantity of CFCs permitted to be exported under CFC quotas during the period.

(2) Within one month after the beginning of each halon quota period, the Minister shall cause to be published in the *Gazette* a notice setting out:

- (a) the total quantity of halons permitted to be manufactured under halon quotas during the period;
- (b) the total quantity of those halons permitted to be manufactured under halon quotas during the period as part of an activity that is essential for purposes connected with Australia's defence;
- (c) the total quantity of halons permitted to be imported under halon quota during the period; and
- (d) the total quantity of those halons permitted to be imported under halon quotas during the period as part of an activity that is essential for purposes connected with Australia's defence.

PART V—CONTROL OF MANUFACTURE ETC. OF PRODUCTS CONTAINING OR USING SCHEDULED SUBSTANCES

Persons to whom this Part applies, activities to which this Part applies

37. (1) A person is a person to whom this Part applies if the person is:

- (a) a foreign corporation within the meaning of paragraph 51 (xx) of the Constitution;

- (b) a trading corporation (within the meaning of that paragraph) formed within the limits of Australia;
 - (c) a financial corporation (within the meaning of that paragraph) so formed, including 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
 - (d) a body corporate incorporated in a Territory other than the Northern Territory.
- (2) The following activities are activities to which this Part applies:
- (a) trade or commerce between Australia and places outside Australia;
 - (b) trade or commerce among the States;
 - (c) trade or commerce within a Territory other than the Northern Territory, between a State and a Territory or between 2 Territories;
 - (d) the supply of goods or services to the Commonwealth;
 - (e) the use of postal, telegraphic or telephonic services;
 - (f) the making of a radio or television broadcast.

Manufacture and import of products in contravention of Schedule 4

38. (1) A person to whom this Part applies shall not manufacture or import a product that contains scheduled substances, or uses scheduled substances in its operation, in contravention of a provision of Schedule 4.

Penalty:

- (a) in the case of a natural person—\$5,000; or
- (b) in the case of a body corporate—\$25,000.

(2) A person shall not, in the course of engaging in an activity to which this Part applies, manufacture or import a product that contains scheduled substances, or uses scheduled substances in its operation, in contravention of a provision of Schedule 4.

Penalty:

- (a) in the case of a natural person—\$5,000; or
- (b) in the case of a body corporate—\$25,000.

(3) Schedule 4 shall not be read as imposing obligations on a person who is not a person to whom this Part applies except to the extent that the person is engaging in an activity to which this Part applies.

Regulations concerning manufacture etc. of scheduled substances

39. (1) The regulations may include provisions prohibiting or regulating the manufacture, import, export, distribution or use by persons to whom this Part applies, or by persons engaging in activities to which this Part applies, of products that contain scheduled substances or depend on such substances for their 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 products;
- (b) prohibiting the manufacture, import, export, distribution or use of particular kinds of products except in accordance with prescribed requirements;
- (c) prohibiting the manufacture or import of products by a person who has not complied with a code of practice relating to the recovery, recycling or disposal of scheduled substances used in products manufactured or imported by that person; or
- (d) prohibiting the distribution by a corporation of products that are not labelled or marked in accordance with the regulations.

Exemptions

40. (1) A person may apply to the Minister for an exemption from compliance with an obligation imposed by Schedule 4, or by regulations made for the purposes of section 39, in relation to a product, being an obligation in respect of which an exemption granted under this section would exempt a person from compliance.

(2) An application shall be in the prescribed form.

(3) The Minister may grant to the applicant an exemption from compliance with an obligation imposed by Schedule 4, or by regulations made under section 39, in relation to a product if the Minister is satisfied:

- (a) that:
 - (i) the product 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 product if it is to continue to be effective for such a purpose;
- (b) that, because of the requirements of a law concerning the manufacture or use of the product, there is no practical alternative to the use of scheduled substances in the operation or manufacture, as the case requires, of the product; or
- (c) the product is for use in conjunction with the calibration of scientific, measuring or safety equipment.

(4) An application for an exemption from compliance with an obligation referred to in subsection (1) may be made, and such an exemption may be granted, before, on or after the day on which the obligation (but for any exemption granted under this section) takes effect.

(5) The grant of an exemption shall be by notice in writing given to the applicant.

(6) The notice shall specify the period during which the exemption is to remain in force.

(7) The Minister shall:

- (a) cause a copy of the notice to be published in the *Gazette* as soon as practicable after it is given to the applicant; and
- (b) cause a copy of the notice to be laid before each House of the Parliament within 15 sitting days of that House after the day on which a copy of the notice is so published.

(8) An application for an exemption is refused by giving to the applicant written notice of the refusal and of the reasons for the refusal.

PART VI—CONTROL OF IMPORTS AND EXPORTS

Protocol countries

41. (1) For the purposes of this Part, a country is a non-Protocol country if the country is not a party to the Protocol.

(2) The regulations may specify all the countries that are parties to the Protocol.

(3) A country specified under subsection (2) shall be taken, for the purposes of this Part, to be a party to the Protocol.

(4) The regulations may also specify countries that, although not parties to the Protocol, are to be taken, for the purposes of this Part, other than section 43, to be parties to the Protocol.

(5) A country specified under subsection (4) shall be taken, for the purposes of this Part, other than section 43, to be a party to the Protocol.

(6) Regulations made for the purposes of subsection (4) shall not specify a country if to specify that country would be inconsistent with Australia's obligations in relation to the import of:

- (a) scheduled substances;
- (b) products containing scheduled substances; and
- (c) products manufactured using scheduled substances;

from countries that are not parties to the Protocol.

(7) The mere fact that a country is not specified in regulations made for the purposes of this section shall not be taken to mean that, for the purposes of this Part, the country is not a party to the Protocol.

Import of scheduled substances from non-Protocol countries

42. (1) On and after the implementation day for this section, a person shall not import a scheduled substance from a non-Protocol country.

Penalty:

- (a) in the case of a natural person—\$10,000; or
- (b) in the case of a body corporate—\$50,000.

(2) The implementation day for this section is:

- (a) if the Protocol enters into force on 1 January 1989—1 January 1990; or
- (b) in any other case—a later day fixed by the Minister, being a day occurring not earlier than one year after the entry into force of the Protocol.

(3) The fixing of a day under subsection (2) shall be by notice published in the *Gazette*.

Export of scheduled substances to non-Protocol countries

43. On and after 1 January 1993, a person shall not export a scheduled substance to a non-Protocol country.

Penalty:

- (a) in the case of a natural person—\$10,000; or
- (b) in the case of a body corporate—\$50,000.

Import of products containing scheduled substances from non-Protocol countries

44. (1) On and after the implementation day for this section, a person shall not import a product containing a scheduled substance, being a product to which this section applies, from a non-Protocol country.

Penalty:

- (a) in the case of a natural person—\$10,000; or
- (b) in the case of a body corporate—\$50,000.

(2) The implementation day for this section 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 Protocol, the prohibition in subsection (1) must take effect.

(3) A product to which this section applies is a product declared by the Minister to be a product to which this section applies, being a product listed in the annex referred to in paragraph 3 of Article 4 of the Protocol.

(4) The fixing of a day under subsection (2) or the declaration of a product under subsection (3) shall be by notice published in the *Gazette*.

Import of products manufactured using scheduled substances from non-Protocol countries

45. (1) On and after the implementation day for this section, a person shall not import a product in the manufacture of which a scheduled substance was used, being a product to which this section applies, from a non-Protocol country.

Penalty:

- (a) in the case of a natural person—\$10,000; or
- (b) in the case of a body corporate—\$50,000.

(2) The implementation day for this section 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 Protocol, the prohibition in subsection (1) must take effect.

(3) A product to which this section applies is a product declared by the Minister to be a product to which this section applies, being a product listed in the annex referred to in paragraph 4 of Article 4 of the Protocol.

(4) Subsection (1) does not apply to an importation of a product, of a kind referred to in subsection (1), in accordance with conditions determined by the Minister as the conditions under which importation of the product 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 Protocol.

(6) The fixing of a day under subsection (2), the declaration of a product under subsection (3) or the determination of conditions under subsection (4) shall be by notice published in the *Gazette*.

(7) A notice determining conditions under subsection (4) is a disallowable instrument within the meaning of section 46A of the *Acts Interpretation Act 1901*.

(8) Section 48 of the *Acts Interpretation Act 1901* applies to a notice under subsection (4) as if paragraph (1) (b) of section 48 were omitted and the following paragraph substituted:

“(b) subject to this section, shall take effect on the first day on which the notice is no longer liable to be disallowed, or to be deemed to be disallowed, under this section; and”.

PART VII—REPORTS AND RECORDS

Initial report on 1986 activity

46. (1) Each person who, during 1986, manufactured in Australia or imported any scheduled substance shall, within one month of the commencement of this Act, give the Minister a written report:

- (a) stating which of the following activities the person engaged in during 1986:
 - (i) the manufacture of CFCs;
 - (ii) the import of CFCs;
 - (iii) the manufacture of halons;
 - (iv) the import of halons; and
- (b) in respect of each activity so engaged in, the quantity of CFCs or halons, as the case may be, that the person manufactured or imported, as the case may be, during 1986.

Penalty:

- (a) in the case of a natural person—\$10,000; or
- (b) in the case of a body corporate—\$50,000.

(2) Within 2 months after the commencement of this Act, the Minister shall publish in the *Gazette* a notice that, using the information given under subsection (1) and any other relevant information available to the Minister, specifies, in respect of each activity referred to in paragraph (1) (a), the total quantity of CFCs or halons, as the case may be, that was manufactured in Australia or imported during 1986 in the course of that activity.

Quarterly reports by licensees

47. (1) Each person who was a licensee at any time during a quarter (other than a quarter that ended before the commencement of the first CFC quota period) shall give to the Minister a written report specifying:

- (a) subject to subsection (2), the quantity of CFCs manufactured by the person during the quarter;
- (b) subject to subsection (2), the quantity of CFCs imported by the person during the quarter;
- (c) subject to subsection (2), the quantity of CFCs exported by the person during the quarter;
- (d) subject to subsections (3) and (4), the quantity of halons manufactured by the person during the quarter;
- (e) subject to subsections (3) and (4), the quantity of halons imported by the person during the quarter; and
- (f) subject to subsection (2), the quantity of halons exported by the person during the quarter.

Penalty:

- (a) in the case of a natural person—\$10,000; or
- (b) in the case of a body corporate—\$50,000.

(2) If the first CFC quota period commences part way through a quarter, paragraphs (1) (a), (b), (c) and (f) do not apply in respect of a report under subsection (1) in relation to so much of the quarter as elapsed before the period commenced.

(3) Paragraphs (1) (d) and (e) do not apply in respect of a report under subsection (1) in relation to a quarter that ends before the commencement of the first halon quota period.

(4) If the first halon quota period commences part way through a quarter, paragraphs (1) (d) and (e) do not apply in respect of a report under subsection (1) in relation to so much of the quarter as elapsed before the period commenced.

(5) A report shall be given to the Minister within 15 days after the end of the quarter to which it relates.

(6) For the purposes of subsection (1), if the quantity of CFCs or halons manufactured or imported during a quarter is a nil amount, the report concerned shall state that fact.

Records to be kept by licensees

48. (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—Inspectors

Appointment of inspectors

49. (1) The Minister may, by instrument in writing, appoint as an inspector a person who is:

- (a) a member or special member of the Australian Federal Police;
- (b) an officer or employee of the Australian Public Service, the Australian Customs Service or any other authority of the Commonwealth;
- (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.

Identity cards

50. (1) The Minister may cause to be issued to an inspector an identity card in a form approved by the Minister.

(2) A person who ceases to be an inspector shall, as soon as practicable, return his or her identity card to the Minister.

(3) A person who contravenes subsection (2) is guilty of an offence punishable on conviction by a fine not exceeding \$100.

Searches to monitor compliance with Act etc.

51. (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 that the inspector has reasonable cause to believe are premises to which this section applies and:

- (a) search the premises;
 - (b) take photographs, or make sketches, of the premises or any substance or thing at the premises;
 - (c) inspect any book, record or document kept at the premises; or
 - (d) remove, or make copies of, any such book, record or document.
- (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 exercise any powers under subsection (1) in relation to premises if:
- (a) the occupier of the premises has required the inspector to produce his or her identity card for inspection by the occupier; and
 - (b) the inspector fails to comply with the requirement.
- (4) This section applies to premises at which:
- (a) quota activities are engaged in;
 - (b) activities that are the subject of regulation under Part V are engaged in; or
 - (c) records relating to any such activities are kept.

Offence-related searches and seizures

52. (1) Where an inspector has reasonable grounds for suspecting that there may be on any premises a particular thing that may afford evidence as to the commission of an offence against this Act, the inspector may:

- (a) with the consent of the occupier of the land or premises; or
 - (b) under a warrant issued under subsection (2);
- enter the premises, and:
- (c) search the premises for the thing; and
 - (d) if the inspector finds the thing on or in the premises—seize the thing.

(2) Where an information on oath is laid before a Magistrate alleging that there are reasonable grounds for suspecting that there may be upon or in any premises a particular thing that may afford evidence as to the commission of an offence against this Act and the information sets out those grounds, the Magistrate may issue a search warrant in accordance with the form prescribed for the purposes of this subsection authorising an inspector named in the warrant, with such assistance, and by such force, as is necessary and reasonable, to enter the premises and exercise the powers referred to in paragraphs (1) (c) and (d) in respect of the thing.

- (3) A Magistrate shall not issue a warrant under subsection (2) unless:
- (a) the informant 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; and

(b) the Magistrate is satisfied that there are reasonable grounds for issuing the warrant.

(4) There shall be stated in a warrant issued under subsection (2):

- (a) the purpose for which the warrant is issued, and the nature of the offence in relation to which the entry and search are authorised;
- (b) whether entry is authorised to be made at any time of the day or night or during specified hours of the day or night;
- (c) a description of the kind of documents, substances, equipment or things to be seized; and
- (d) a day, not being later than one month after the day of issue of the warrant, upon which the warrant ceases to have effect.

(5) If, in the course of searching, under a warrant issued under this section, for a particular thing in relation to a particular offence, an inspector finds a thing that the inspector believes, on reasonable grounds, to be:

- (a) a thing that will afford evidence as to the commission of the offence, although not the thing specified in the warrant; or
- (b) a thing that will afford evidence as to the commission of another offence under this Act or the regulations;

and the inspector believes, on reasonable grounds, that it is necessary to seize that thing in order to prevent its concealment, loss or destruction, or its use in committing, continuing or repeating the offence or the other offence, the warrant shall be taken to authorise the inspector to seize that thing.

(6) Where an inspector seizes any thing under subsection (1), the inspector may retain the thing until the expiration of a period of 60 days after the seizure or, if proceedings for an offence against this Act in respect of which the thing may afford evidence are instituted within that period, until the proceedings (including any appeal to a court in relation to those proceedings) are completed.

(7) The Minister may authorise any thing seized under subsection (1) to be released to the owner, or to the person from whom the thing was seized, either unconditionally or on such conditions as the Minister thinks fit.

Warrants may be granted by telephone

53. (1) Where, because of circumstances of urgency, an inspector considers it necessary to do so, the inspector may make an application for a warrant under subsection 52 (2), by telephone, in accordance with this section.

(2) Before so making application, an inspector shall prepare an information of a kind referred to in subsection 52 (2) that sets out the grounds on which the issue of the warrant is being sought, but may, if it is necessary to do so, make the application before the information has been sworn.

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(3) Where a Magistrate to whom an application under subsection (1) is made is satisfied:

- (a) after having considered the terms of the information prepared in accordance with subsection (2); and
- (b) after having received such further information (if any) as the Magistrate requires concerning the grounds on which the issue of the warrant is being sought;

that there are reasonable grounds for issuing the warrant, the Magistrate shall complete and sign such a search warrant as the Magistrate would issue under section 52 if the application had been made in accordance with that section.

(4) Where a Magistrate signs a warrant under subsection (3):

- (a) the Magistrate shall inform the inspector of the terms of the warrant and the date on which and the time at which it was signed, and record on the warrant the reasons for the granting of the warrant; and
- (b) the inspector shall complete a form of warrant in the terms furnished to the inspector by the Magistrate and write on it the name of the Magistrate and the date on which and the time at which the warrant was signed.

(5) Where an inspector completes a form of warrant in accordance with subsection (4), the inspector shall, not later than the day after the date of expiry or execution, whichever is the earlier, of the warrant, forward to the Magistrate who signed the warrant the form of warrant completed by the inspector and the information duly sworn in connection with the warrant.

(6) Upon receipt of the documents referred to in subsection (5), the Magistrate shall attach to them the warrant signed by the Magistrate and deal with the documents in the manner in which the Magistrate would have dealt with the information if the application for the warrant had been made in accordance with section 52.

(7) A form of warrant duly completed by an inspector in accordance with subsection (4) is, if it is in accordance with the terms of the warrant signed by the Magistrate, authority for any entry, search, seizure or other exercise of a power that the warrant so signed authorises.

(8) Where it is material, in any proceedings, for a court to be satisfied that an entry, search, seizure or other exercise of power was authorised in accordance with this section, and the warrant signed by a Magistrate in accordance with this section authorising the entry, search, seizure or other exercise of power is not produced in evidence, the court shall assume, unless the contrary is proved, that the entry, search, seizure or other exercise of power was not authorised by such a warrant.

Power to require information etc.

54. (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 his or her identity card for inspection by the person.

Retention of books, records and documents

55. Where an inspector removes a book, record or document from premises under subsection 51 (1) or seizes a book, record or document under section 52 or a person produces a book, record or document to an inspector in accordance with a requirement under subsection 54 (1):

- (a)** the inspector may retain possession of the book, record or document for such period as is necessary and reasonable for the purpose of ascertaining whether this Act or the regulations have been complied with; and
- (b)** during that period the inspector shall 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.

Division 2—Injunctions

Injunctions

56. (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

Forfeitable goods

57. (1) For the purposes of this Division, the following goods shall be taken to be forfeitable goods:

- (a) scheduled substances in respect of the manufacture of which a person has been convicted of an offence against section 13 or 23;
- (b) scheduled substances in respect of the import of which a person has been convicted of an offence against section 13, 24 or 42;
- (c) scheduled substances in respect of the export of which a person has been convicted of an offence against section 13, 25 or 43;

- (d) products that contain scheduled substances, or that use scheduled substances in their operation, being products in respect of the manufacture, import, export, distribution or use of which a person has been convicted of an offence against section 38 or regulations made for the purposes of section 39;
- (e) products containing scheduled substances, being products in respect of the import of which a person has been convicted of an offence against section 44;
- (f) products in the manufacture of which scheduled substances were used, being products in respect of the importation of which a person has been convicted of an offence against section 45.

(2) For the purposes of this Part, where a quantity of scheduled substances or products that, under subsection (1), are forfeitable goods are mixed with scheduled substances or products of the same or a similar kind that are not, under that subsection, forfeitable goods, that quantity of the mixture of the substances or products shall be taken to be forfeitable goods.

Goods forfeited to Commonwealth

58. Where a person is convicted of an offence against a provision of this Act referred to in subsection 57(1), all forfeitable goods to which the offence relates are, by force of the conviction, forfeited to the Commonwealth.

Power to seize forfeited goods

59. (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).

Persons not to move etc. seized goods

60. (1) A person shall not move, alter or interfere with goods that are the subject of a notice under subsection 59 (2) except in accordance with a direction given to the person by the Minister.

Penalty: \$5,000 or imprisonment for 2 years, or both.

(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: \$5,000 or imprisonment for 2 years, or both.

Disposal of forfeited goods

61. Goods that are forfeited under section 58 shall be dealt with and disposed of in accordance with the directions of the Minister.

Division 4—Offences

False statements

62. (1) A person shall not, in relation to an application for, or an application for the renewal or variation of, a licence or a quota, or in relation to an application for an exemption under section 40, knowingly or recklessly:

- (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:

- (a) in the case of a natural person—\$5,000 or imprisonment for 2 years, or both; or
 - (b) in the case of a body corporate—\$25,000.
- (2)** A person shall not, otherwise than in relation to such an application, knowingly or recklessly:
- (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:

- (a) in the case of a natural person—a fine not exceeding \$2,000 or imprisonment for 12 months, or both; or
- (b) in the case of a body corporate—\$10,000.

(3) A person shall not knowingly or recklessly 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:

- (a) in the case of a natural person—\$5,000 or imprisonment for 2 years, or both; or
- (b) in the case of a body corporate—\$25,000.

Obstruction of inspectors etc.

63. A person shall not, without reasonable excuse, wilfully obstruct, hinder or resist an inspector in the performance of his or her functions under this Act.

Penalty: \$1,000 or imprisonment for 6 months, or both.

Failure to answer questions etc.

64. (1) A person shall not, without reasonable excuse, refuse or fail to answer a question or produce a document when so required by an inspector under this Act.

Penalty:

- (a) in the case of a natural person—\$2,000 or imprisonment for 12 months, or both; or
- (b) in the case of a body corporate—\$10,000.

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

(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 (1):

- (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.

Conduct by directors, servants and agents

65. (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, servant or agent of the body corporate within the scope of his or her actual or apparent authority; and
- (b) that the director, servant or agent had the state of mind.

(2) Any conduct engaged in on behalf of a body corporate by a director, servant 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 a servant or agent of the person within the scope of his or her actual or apparent authority; and
- (b) that the servant or agent had the state of mind.

(4) Any conduct engaged in on behalf of a person other than a body corporate by a servant 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) and (4) 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
- (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 created by section 5, 6, 7 or 7A, or subsection 86 (1), of the *Crimes Act 1914*, being an offence that relates to the regulations.

PART IX—MISCELLANEOUS

Review of decisions

66. 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 refusing to renew a licence under section 19 (including a decision that is taken to have been made by virtue of that section);
- (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 renewing, or refusing to renew, a quota under section 31;
- (f) a decision varying, or refusing to vary, a quota under section 34;
- (g) a decision refusing to grant an exemption under section 40.

Statements to accompany notification of decisions

67. (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.

Annual report

68. (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.

Collection of licence fees

69. (1) A licence fee is due and payable at the end of 15 days after the end of the quarter to which it relates.

(2) If the liability of a licensee to pay a licence fee is not discharged on or before the day when the fee becomes due and payable, there is payable by the licensee to the Commonwealth by way of penalty, in addition to the fee, an amount calculated at the rate of 30% per annum upon so much of the fee as from time to time remains unpaid, to be calculated from the day when the fee becomes due and payable.

(3) The following amounts may be recovered by the Commonwealth as debts due to the Commonwealth:

- (a) licence fees that are due and payable;
- (b) amounts that are payable under subsection (2).

(4) In this section, “licence fee” means a fee payable by a licensee under the *Ozone Protection (Licence Fees—Manufacture) Act 1989* or the *Ozone Protection (Licence Fees—Imports) Act 1989*.

Regulations

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

- (a) required or permitted by this Act to be prescribed; or

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(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act;

including regulations prescribing penalties, not exceeding \$1,000 in the case of a natural person or \$5,000 in the case of a body corporate, for offences against the regulations.

SCHEDULE 1

Section 7

SCHEDULED SUBSTANCES

PART I

CFCs

Column 1	Column 2
Substance	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

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

SCHEDULE 2

Section 7

**VIENNA CONVENTION FOR THE PROTECTION OF THE OZONE
LAYER**

Preamble

The Parties to this Convention,

SCHEDULE 2—continued

Aware of the potentially harmful impact on human health and the environment through modification of the ozone layer,

Recalling the pertinent provisions of the Declaration of the United Nations Conference on the Human Environment, and in particular principle 21, which provides that “States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction”,

Taking into account the circumstances and particular requirements of developing countries,

Mindful of the work and studies proceeding within both international and national organizations and, in particular, of the World Plan of Action on the Ozone Layer of the United Nations Environment Programme,

Mindful also of the precautionary measures for the protection of the ozone layer which have already been taken at the national and international levels,

Aware that measures to protect the ozone layer from modifications due to human activities require international co-operation and action, and should be based on relevant scientific and technical considerations,

Aware also of the need for further research and systematic observations to further develop scientific knowledge of the ozone layer and possible adverse effects resulting from its modification,

Determined to protect human health and the environment against adverse effects resulting from modifications of the ozone layer,

HAVE AGREED AS FOLLOWS:

Article 1
DEFINITIONS

For the purposes of this Convention:

1. “The ozone layer” means the layer of atmospheric ozone above the planetary boundary layer.
2. “Adverse effects” means changes in the physical environment or biota, including changes in climate, which have significant deleterious effects on human health or on the composition, resilience and productivity of natural and managed ecosystems, or on materials useful to mankind.
3. “Alternative technologies or equipment” means technologies or equipment the use of which makes it possible to reduce or effectively eliminate emissions of substances which have or are likely to have adverse effects on the ozone layer.

SCHEDULE 2—continued

4. “Alternative substances” means substances which reduce, eliminate or avoid adverse effects on the ozone layer.
5. “Parties” means, unless the text otherwise indicates, Parties to this Convention.
6. “Regional economic integration organisation” means an organisation constituted by sovereign States of a given region which has competence in respect of matters governed by this Convention or its protocols and has been duly authorized, in accordance with its internal procedures, to sign, ratify, accept, approve or accede to the instruments concerned.
7. “Protocols” means protocols to this Convention.

Article 2

GENERAL OBLIGATIONS

1. The Parties shall take appropriate measures in accordance with the provisions of this Convention and of those protocols in force to which they are party to protect human health and the environment against adverse effects resulting or likely to result from human activities which modify or are likely to modify the ozone layer.
2. To this end the Parties shall, in accordance with the means at their disposal and their capabilities:
 - (a) Co-operate by means of systematic observations, research and information exchange in order to better understand and assess the effects of human activities on the ozone layer and the effects on human health and the environment from modification of the ozone layer;
 - (b) Adopt appropriate legislative or administrative measures and co-operate in harmonising appropriate policies to control, limit, reduce or prevent human activities under their jurisdiction or control should it be found that these activities have or are likely to have adverse effects resulting from modification or likely modification of the ozone layer;
 - (c) Co-operate in the formulation of agreed measures, procedures and standards for the implementation of this Convention, with a view to the adoption of protocols and annexes;
 - (d) Co-operate with competent international bodies to implement effectively this Convention and protocols to which they are party.
3. The provisions of this Convention shall in no way affect the right of Parties to adopt, in accordance with international law, domestic measures additional to those referred to in paragraphs 1 and 2 above, nor shall they affect additional domestic measures already taken by a Party, provided that these measures are not incompatible with their obligations under this Convention.
4. The application of this article shall be based on relevant scientific and technical considerations.

SCHEDULE 2—continued

Article 3

RESEARCH AND SYSTEMATIC OBSERVATIONS

1. The Parties undertake, as appropriate, to initiate and co-operate in, directly or through competent international bodies, the conduct of research and scientific assessments on:

- (a) The physical and chemical processes that may affect the ozone layer;
- (b) The human health and other biological effects deriving from any modifications of the ozone layer, particularly those resulting from changes in ultra-violet solar radiation having biological effects (UV-B);
- (c) Climatic effects deriving from any modifications of the ozone layer;
- (d) Effects deriving from any modifications of the ozone layer and any consequent change in UV-B radiation on natural and synthetic materials useful to mankind;
- (e) Substances, practices, processes and activities that may affect the ozone layer, and their cumulative effects;
- (f) Alternative substances and technologies;
- (g) Related socio-economic matters;

and as further elaborated in annexes I and II.

2. The Parties undertake to promote or establish, as appropriate, directly or through competent international bodies and taking fully into account national legislation and relevant ongoing activities at both the national and international levels, joint or complementary programmes for systematic observation of the state of the ozone layer and other relevant parameters, as elaborated in annex I.

3. The Parties undertake to co-operate, directly or through competent international bodies, in ensuring the collection, validation and transmission of research and observational data through appropriate world data centres in a regular and timely fashion.

Article 4

CO-OPERATION IN THE LEGAL, SCIENTIFIC AND TECHNICAL FIELDS

1. The Parties shall facilitate and encourage the exchange of scientific, technical, socio-economic, commercial and legal information relevant to this Convention as further elaborated in annex II. Such information shall be supplied to bodies agreed upon by the Parties. Any such body receiving information regarded as confidential by the supplying Party shall ensure that such information is not disclosed and shall aggregate it to protect its confidentiality before it is made available to all Parties.

2. The Parties shall co-operate, consistent with their national laws, regulations and practices and taking into account in particular the needs of the developing countries, in promoting, directly or through competent international bodies,

SCHEDULE 2—continued

the development and transfer of technology and knowledge. Such co-operation shall be carried out particularly through:

- (a) Facilitation of the acquisition of alternative technologies by other Parties;
- (b) Provision of information on alternative technologies and equipment, and supply of special manuals or guides to them;
- (c) The supply of necessary equipment and facilities for research and systematic observations;
- (d) Appropriate training of scientific and technical personnel.

Article 5

TRANSMISSION OF INFORMATION

The Parties shall transmit, through the secretariat, to the Conference of the Parties established under article 6 information on the measures adopted by them in implementation of this Convention and of protocols to which they are party in such form and at such intervals as the meetings of the parties to the relevant instruments may determine.

Article 6

CONFERENCE OF THE PARTIES

1. A Conference of the Parties is hereby established. The first meeting of the Conference of the Parties shall be convened by the secretariat designated on an interim basis under article 7 not later than one year after entry into force of this Convention. Thereafter, ordinary meetings of the Conference of the Parties shall be held at regular intervals to be determined by the Conference at its first meeting.
2. Extraordinary meetings of the Conference of the Parties shall be held at such other times as may be deemed necessary by the Conference, or at the written request of any Party, provided that, within six months of the request being communicated to them by the secretariat, it is supported by at least one third of the Parties.
3. The Conference of the Parties shall by consensus agree upon and adopt rules of procedure and financial rules for itself and for any subsidiary bodies it may establish, as well as financial provisions governing the functioning of the secretariat.
4. The Conference of the Parties shall keep under continuous review the implementation of this Convention, and, in addition, shall:
 - (a) Establish the form and the intervals for transmitting the information to be submitted in accordance with article 5 and consider such information as well as reports submitted by any subsidiary body;
 - (b) Review the scientific information on the ozone layer, on its possible modification and on possible effects of any such modification;
 - (c) Promote, in accordance with article 2, the harmonization of appropriate policies, strategies and measures for minimizing the release of substances causing or likely to cause modification of the

SCHEDULE 2—continued

ozone layer, and make recommendations on any other measures relating to this Convention;

- (d) Adopt, in accordance with articles 3 and 4, programmes for research, systematic observations, scientific and technological co-operation, the exchange of information and the transfer of technology and knowledge;
- (e) Consider and adopt, as required, in accordance with articles 9 and 10, amendments to this Convention and its annexes;
- (f) Consider amendments to any protocol, as well as to any annexes thereto, and, if so decided, recommend their adoption to the parties to the protocol concerned;
- (g) Consider and adopt, as required, in accordance with article 10, additional annexes to this Convention;
- (h) Consider and adopt, as required, protocols in accordance with article 8;
- (i) Establish such subsidiary bodies as are deemed necessary for the implementation of this Convention;
- (j) Seek, where appropriate, the services of competent international bodies and scientific committees, in particular the World Meteorological Organization and the World Health Organization, as well as the Co-ordinating Committee on the Ozone Layer, in scientific research, systematic observations and other activities pertinent to the objectives of this Convention, and make use as appropriate of information from these bodies and committees;
- (k) Consider and undertake any additional action that may be required for the achievement of the purposes of this Convention.

5. The United Nations, its specialized agencies and the International Atomic Energy Agency, as well as any State not party to this Convention, may be represented at meetings of the Conference of the Parties by observers. Any body or agency, whether national or international, governmental or non-governmental, qualified in fields relating to the protection of the ozone layer which has informed the secretariat of its wish to be represented at a meeting of the Conference of the Parties as an observer may be admitted unless at least one-third of the Parties present object. The admission and participation of observers shall be subject to the rules of procedure adopted by the Conference of the Parties.

Article 7

SECRETARIAT

- 1. The functions of the secretariat shall be:
 - (a) To arrange for and service meetings provided for in articles 6, 8, 9 and 10;
 - (b) To prepare and transmit reports based upon information received in accordance with articles 4 and 5, as well as upon information

SCHEDULE 2—continued

derived from meetings of subsidiary bodies established under article 6;

- (c) To perform the functions assigned to it by any protocol;
- (d) To prepare reports on its activities carried out in implementation of its functions under this Convention and present them to the Conference of the Parties;
- (e) To ensure the necessary co-ordination with other relevant international bodies, and in particular to enter into such administrative and contractual arrangements as may be required for the effective discharge of its functions;
- (f) To perform such other functions as may be determined by the Conference of the Parties.

2. The secretariat functions will be carried out on an interim basis by the United Nations Environment Programme until the completion of the first ordinary meeting of the Conference of the Parties held pursuant to article 6. At its first ordinary meeting, the Conference of the Parties shall designate the secretariat from amongst those existing competent international organizations which have signified their willingness to carry out the secretariat functions under this Convention.

Article 8

ADOPTION OF PROTOCOLS

1. The Conference of the Parties may at a meeting adopt protocols pursuant to article 2.
2. The text of any proposed protocol shall be communicated to the Parties by the secretariat at least six months before such a meeting.

Article 9

AMENDMENT OF THE CONVENTION OR PROTOCOLS

1. Any Party may propose amendments to this Convention or to any protocol. Such amendments shall take due account, inter alia, of relevant scientific and technical considerations.
2. Amendments to this Convention shall be adopted at a meeting of the Conference of the Parties. Amendments to any protocol shall be adopted at a meeting of the Parties to the protocol in question. The text of any proposed amendment to this Convention or to any protocol, except as may otherwise be provided in such protocol, shall be communicated to the Parties by the secretariat at least six months before the meeting at which it is proposed for adoption. The secretariat shall also communicate proposed amendments to the signatories to this Convention for information.
3. The Parties shall make every effort to reach agreement on any proposed amendment to this Convention by consensus. If all efforts at consensus have been exhausted, and no agreement reached, the amendment shall as a last resort be adopted by a three-fourths majority vote of the Parties present

SCHEDULE 2—continued

and voting at the meeting, and shall be submitted by the Depositary to all Parties for ratification, approval or acceptance.

4. The procedure mentioned in paragraph 3 above shall apply to amendments to any protocol, except that a two-thirds majority of the parties to that protocol present and voting at the meeting shall suffice for their adoption.

5. Ratification, approval or acceptance of amendments shall be notified to the Depositary in writing. Amendments adopted in accordance with paragraphs 3 or 4 above shall enter into force between parties having accepted them on the ninetieth day after the receipt by the Depositary of notification of their ratification, approval or acceptance by at least three-fourths of the Parties to this Convention or by at least two-thirds of the parties to the protocol concerned, except as may otherwise be provided in such protocol. Thereafter the amendments shall enter into force for any other Party on the ninetieth day after that Party deposits its instrument of ratification, approval or acceptance of the amendments.

6. For the purposes of this article, "Parties present and voting" means Parties present and casting an affirmative or negative vote.

Article 10

ADOPTION AND AMENDMENT OF ANNEXES

1. The annexes to this Convention or to any protocol shall form an integral part of this Convention or of such protocol, as the case may be, and, unless expressly provided otherwise, a reference to this Convention or its protocols constitutes at the same time a reference to any annexes thereto. Such annexes shall be restricted to scientific, technical and administrative matters.

2. Except as may be otherwise provided in any protocol with respect to its annexes, the following procedure shall apply to the proposal, adoption and entry into force of additional annexes to this Convention or of annexes to a protocol:

- (a) Annexes to this Convention shall be proposed and adopted according to the procedure laid down in article 9, paragraphs 2 and 3, while annexes to any protocol shall be proposed and adopted according to the procedure laid down in article 9, paragraphs 2 and 4;
- (b) Any party that is unable to approve an additional annex to this Convention or an annex to any protocol to which it is party shall so notify the Depositary, in writing, within six months from the date of the communication of the adoption by the Depositary. The Depositary shall without delay notify all Parties of any such notification received. A Party may at any time substitute an acceptance for a previous declaration of objection and the annexes shall thereupon enter into force for that Party;
- (c) On the expiry of six months from the date of the circulation of the communication by the Depositary, the annex shall become effective for all Parties to this Convention or to any protocol concerned which have not submitted a notification in accordance with the provision of subparagraph (b) above.

SCHEDULE 2—continued

3. The proposal, adoption and entry into force of annexes to this Convention or to any protocol shall be subject to the same procedure as for the proposal, adoption and entry into force of annexes to the Convention or annexes to a protocol. Annexes and amendments thereto shall take due account, inter alia, of relevant scientific and technical considerations.

4. If an additional annex or an amendment to an annex involves an amendment to this Convention or to any protocol, the additional annex or amended annex shall not enter into force until such time as the amendment to this Convention or to the protocol concerned enters into force.

Article 11

SETTLEMENT OF DISPUTES

1. In the event of a dispute between Parties concerning the interpretation or application of this Convention, the parties concerned shall seek solution by negotiation.

2. If the Parties concerned cannot reach agreement by negotiation, they may jointly seek the good offices of, or request mediation by, a third party.

3. When ratifying, accepting, approving or acceding to this Convention, or at any time thereafter, a State or regional economic integration organization may declare in writing to the Depositary that for a dispute not resolved in accordance with paragraph 1 or paragraph 2 above, it accepts one or both of the following means of dispute settlement as compulsory:

- (a) Arbitration in accordance with procedures to be adopted by the Conference of the Parties at its first ordinary meeting;
- (b) Submission of the dispute to the International Court of Justice.

4. If the parties have not, in accordance with paragraph 3 above, accepted the same or any procedure, the dispute shall be submitted to conciliation in accordance with paragraph 5 below unless the parties otherwise agree.

5. A conciliation commission shall be created upon the request of one of the parties to the dispute. The commission shall be composed of an equal number of members appointed by each party concerned and a chairman chosen jointly by the members appointed by each party. The commission shall render a final and recommendatory award, which the parties shall consider in good faith.

6. The provisions of this article shall apply with respect to any protocol except as otherwise provided in the protocol concerned.

Article 12

SIGNATURE

This Convention shall be open for signature by States and by regional economic integration organizations at the Federal Ministry for Foreign Affairs of the Republic of Austria in Vienna from 22 March 1985 to 21 September 1985, and at United Nations Headquarters in New York from 22 September 1985 to 21 March 1986.

SCHEDULE 2—continued

Article 13

RATIFICATION, ACCEPTANCE OR APPROVAL

1. This Convention and any protocol shall be subject to ratification, acceptance or approval by States and by regional economic integration organizations. Instruments of ratification, acceptance or approval shall be deposited with the Depository.
2. Any organization referred to in paragraph 1 above which becomes a Party to this Convention or any protocol without any of its member States being a Party shall be bound by all the obligations under the Convention or the protocol, as the case may be. In the case of such organizations, one or more of whose member States is a Party to the Convention or relevant protocol, the organization and its member states shall decide on their respective responsibilities for the performance of their obligation under the Convention or protocol, as the case may be. In such cases, the organization and the member States shall not be entitled to exercise rights under the Convention or relevant protocol concurrently.
3. In their instruments of ratification, acceptance or approval, the organizations referred to in paragraph 1 above shall declare the extent of their competence with respect to the matters governed by the Convention or the relevant protocol. These organizations shall also inform the Depository of any substantial modification in the extent of their competence.

Article 14

ACCESSION

1. This Convention and any protocol shall be open for accession by States and by regional economic integration organizations from the date on which the convention or the protocol concerned is closed for signature. The instruments of accession shall be deposited with the Depository.
2. In their instruments of accession, the organizations referred to in paragraph 1 above shall declare the extent of their competence with respect to the matters governed by the Convention or the relevant protocol. These organizations shall also inform the Depository of any substantial modification in the extent of their competence.
3. The provisions of article 13, paragraph 2, shall apply to regional economic integration organizations which accede to this Convention or any protocol.

Article 15

RIGHT TO VOTE

1. Each Party to this Convention or to any protocol shall have one vote.
2. Except as provided for in paragraph 1 above, regional economic integration organizations, in matters within their competence, shall exercise their right to vote with a number of votes equal to the number of their member States which are Parties to the Convention or the relevant protocol. Such

SCHEDULE 2—continued

organizations shall not exercise their right to vote if their member States exercise theirs, and vice versa.

Article 16

**RELATIONSHIP BETWEEN THE CONVENTION AND ITS
PROTOCOLS**

1. A State or a regional economic integration organization may not become a party to a protocol unless it is, or becomes at the same time, a Party to the Convention.
2. Decisions concerning any protocol shall be taken only by the parties to the protocol concerned.

Article 17

ENTRY INTO FORCE

1. This Convention shall enter into force on the ninetieth day after the date of deposit of the twentieth instrument of ratification, acceptance, approval or accession.
2. Any protocol, except as otherwise provided in such protocol, shall enter into force on the ninetieth day after the date of deposit of the eleventh instrument of ratification, acceptance or approval of such protocol or accession thereto.
3. For each Party which ratifies, accepts or approves this Convention or accedes thereto after the deposit of the twentieth instrument of ratification, acceptance, approval or accession, it shall enter into force on the ninetieth day after the date of deposit by such Party of its instrument of ratification, acceptance, approval or accession.
4. Any protocol, except as otherwise provided in such protocol, shall enter into force for a party that ratifies, accepts or approves that protocol or accedes thereto after its entry into force pursuant to paragraph 2 above, on the ninetieth day after the date on which that party deposits its instrument of ratification, acceptance, approval or accession, or on the date on which the Convention enters into force for that Party, whichever shall be the later.
5. For the purposes of paragraphs 1 and 2 above, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.

Article 18

RESERVATIONS

No reservations may be made to this Convention.

Article 19

WITHDRAWAL

1. At any time after four years from the date on which this Convention has entered into force for a Party, that Party may withdraw from the Convention by giving written notification to the Depositary.

SCHEDULE 2—continued

2. Except as may be provided in any protocol, at any time after four years from the date on which such protocol has entered into force for a party, that party may withdraw from the protocol by giving written notification to the Depositary.
3. Any such withdrawal shall take effect upon expiry of one year after the date of its receipt by the Depositary, or on such later date as may be specified in the notification of the withdrawal.
4. Any Party which withdraws from this Convention shall be considered as also having withdrawn from any protocol to which it is party.

Article 20

DEPOSITARY

1. The Secretary-General of the United Nations shall assume the functions of depositary of this Convention and any protocols.
2. The Depositary shall inform the Parties, in particular, of:
 - (a) The signature of this Convention and of any protocol, and the deposit of instruments of ratification, acceptance, approval or accession in accordance with articles 13 and 14;
 - (b) The date on which the Convention and any protocol will come into force in accordance with article 17;
 - (c) Notifications of withdrawal made in accordance with article 19;
 - (d) Amendments adopted with respect to the Convention and any protocol, their acceptance by the parties and their date of entry into force in accordance with article 9;
 - (e) All communications relating to the adoption and approval of annexes and to the amendment of annexes in accordance with article 10;
 - (f) Notifications by regional economic integration organizations of the extent of their competence with respect to matters governed by this Convention and any protocols, and of any modifications thereof;
 - (g) Declarations made in accordance with article 11, paragraph 3.

Article 21

AUTHENTIC TEXTS

The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned, being duly authorized to that effect, have signed this Convention.

Done at Vienna

on the 22nd day of March 1985

SCHEDULE 2—continued

Annex I

RESEARCH AND SYSTEMATIC OBSERVATIONS

1. The Parties to the Convention recognize that the major scientific issues are:

- (a) Modification of the ozone layer which would result in a change in the amount of solar ultra-violet radiation having biological effects (UV-B) that reaches the Earth's surface and the potential consequences for human health, for organisms, ecosystems and materials useful to mankind;
- (b) Modification of the vertical distribution of ozone, which could change the temperature structure of the atmosphere and the potential consequences for weather and climate.

2. The Parties to the Convention, in accordance with article 3, shall co-operate in conducting research and systematic observations and in formulating recommendations for future research and observation in such areas as:

- (a) Research into the physics and chemistry of the atmosphere
 - (i) Comprehensive theoretical models: further development of models which consider the interaction between radiative, dynamic and chemical processes; studies of the simultaneous effects of various man-made and naturally occurring species upon atmospheric ozone; interpretation of satellite and non-satellite measurement data sets; evaluation of trends in atmospheric and geophysical parameters, and the development of methods for attributing changes in these parameters to specific causes;
 - (ii) Laboratory studies of: rate coefficients, absorption cross-sections and mechanisms of tropospheric and stratospheric chemical and photochemical processes; spectroscopic data to support field measurements in all relevant spectral regions;
 - (iii) Field measurements: the concentration and fluxes of key source gases of both natural and anthropogenic origin; atmospheric dynamics studies; simultaneous measurements of photochemically-related species down to the planetary boundary layer, using *in situ* and remote sensing instruments; intercomparison of different sensors, including co-ordinated correlative measurements for satellite instrumentation; three-dimensional fields of key atmospheric trace constituents, solar spectral flux and meteorological parameters;
 - (iv) Instrument development, including satellite and non-satellite sensors for atmospheric trace constituents, solar flux and meteorological parameters;
- (b) Research into health, biological and photodegradation effects
 - (i) The relationship between human exposure to visible and ultra-violet solar radiation and (a) the development of both non-melanoma and melanoma skin cancer and (b) the effects on the immunological system;

SCHEDULE 2—continued

- (ii) Effects of UV-B radiation, including the wavelength dependence, upon (a) agricultural crops, forests and other terrestrial ecosystems and (b) the aquatic food web and fisheries, as well as possible inhibition of oxygen production by marine phytoplankton;
- (iii) The mechanisms by which UV-B radiation acts on biological materials, species and ecosystems, including: the relationship between dose, dose rate, and response; photorepair, adaptation, and protection;
- (iv) Studies of biological action spectra and the spectral response using polychromatic radiation in order to include possible interactions of the various wavelength regions;
- (v) The influence of UV-B radiation on: the sensitivities and activities of biological species important to the biospheric balance; primary processes such as photosynthesis and biosynthesis;
- (vi) The influence of UV-B radiation on the photodegradation of pollutants, agricultural chemicals and other materials;
- (c) Research on effects on climate
 - (i) Theoretical and observational studies of the radiative effects of ozone and other trace species and the impact on climate parameters, such as land and ocean surface temperatures, precipitation patterns, the exchange between the troposphere and stratosphere;
 - (ii) the investigation of the effects of such climate impacts on various aspects of human activity;
- (d) Systematic observations on:
 - (i) The status of the ozone layer (i.e. the spatial and temporal variability of the total column content and vertical distribution) by making the Global Ozone Observing System, based on the integration of satellite and ground-based systems, fully operational;
 - (ii) The tropospheric and stratospheric concentrations of source gases for the HO_x, NO_x, ClO_x and carbon families;
 - (iii) The temperature from the ground to the mesosphere, utilizing both ground-based and satellite systems;
 - (iv) Wavelength-resolved solar flux reaching, and thermal radiation leaving, the Earth's atmosphere, utilizing satellite measurements;
 - (v) Wavelength-resolved solar flux reaching the Earth's surface in the ultra-violet range having biological effects (UV-B);
 - (vi) Aerosol properties and distribution from the ground to the mesosphere, utilizing ground-based, airborne and satellite systems;
 - (vii) Climatically important variables by the maintenance of

SCHEDULE 2—continued

programmes of high-quality meteorological surface measurements;

- (viii) Trace species, temperatures, solar flux and aerosols utilizing improved methods for analysing global data.

3. The Parties to the Convention shall co-operate, taking into account the particular needs of the developing countries, in promoting the appropriate scientific and technical training required to participate in the research and systematic observations outlined in this annex. Particular emphasis should be given to the intercalibration of observational instrumentation and methods with a view to generating comparable or standardized scientific data sets.

4. The following chemical substances of natural and anthropogenic origin, not listed in order of priority, are thought to have the potential to modify the chemical and physical properties of the ozone layer.

(a) Carbon substances

(i) Carbon monoxide (CO)

Carbon monoxide has significant natural and anthropogenic sources, and is thought to play a major direct role in tropospheric photochemistry, and an indirect role in stratospheric photochemistry.

(ii) Carbon dioxide (CO₂)

Carbon dioxide has significant natural and anthropogenic sources, and affects stratospheric ozone by influencing the thermal structure of the atmosphere.

(iii) Methane (CH₄)

Methane has both natural and anthropogenic sources, and affects both tropospheric and stratospheric ozone.

(iv) Non-methane hydrocarbon species

Non-methane hydrocarbon species, which consist of a large number of chemical substances, have both natural and anthropogenic sources, and play a direct role in tropospheric photochemistry and an indirect role in stratospheric photochemistry.

(b) Nitrogen substances

(i) Nitrous oxide (N₂O)

The dominant sources of N₂O are natural, but anthropogenic contributions are becoming increasingly important. Nitrous oxide is the primary source of stratospheric NO_x, which play a vital role in controlling the abundance of stratospheric ozone.

(ii) Nitrogen oxides (NO_x)

Ground-level sources of NO_x play a major direct role only in tropospheric photochemical processes and an indirect role in stratosphere photochemistry, whereas injection of NO_x close to

SCHEDULE 2—continued

the tropopause may lead directly to a change in upper tropospheric and stratospheric ozone.

(c) Chlorine substances

- (i) Fully halogenated alkanes, e.g. CCl₄, CFC1₁ (CFC-11), CF₂Cl₂ (CFC-12), C₂F₅Cl₃ (CFC-113), C₂F₄Cl₂ (CFC-114)

Fully halogenated alkanes are anthropogenic and act as a source of C10_x, which plays a vital role in ozone photochemistry, especially in the 30-50 km altitude region.

- (ii) Partially halogenated alkanes, e.g. CH₃Cl, CHF₂Cl (CFC-22), CH₂CCl₃, CHFCl₂ (CFC-21)

The sources of CH₃Cl are natural, whereas the other partially halogenated alkanes mentioned above are anthropogenic in origin. These gases also act as a source of stratospheric C10_x.

(d) Bromine substances

Fully halogenated alkanes, e.g. CF₃Br

These gases are anthropogenic and act as a source of Br0_x, which behaves in a manner similar to C10_x.

(e) Hydrogen substances

- (i) Hydrogen (H₂)

Hydrogen, the source of which is natural and anthropogenic, plays a minor role in stratospheric photochemistry.

- (ii) Water (H₂O)

Water, the source of which is natural, plays a vital role in both tropospheric and stratospheric photochemistry. Local sources of water vapour in the stratosphere include the oxidation of methane and, to a lesser extent, of hydrogen.

Annex II

INFORMATION EXCHANGE

1. The Parties to the Convention recognize that the collection and sharing of information is an important means of implementing the objectives of this Convention and of assuring that any actions that may be taken are appropriate and equitable. Therefore, Parties shall exchange scientific, technical, socio-economic, business, commercial and legal information.

2. The Parties to the Convention, in deciding what information is to be collected and exchanged, should take into account the usefulness of the information and the costs of obtaining it. The Parties further recognize that co-operation under this annex has to be consistent with national laws, regulations and practices regarding patents, trade secrets, and protection of confidential and proprietary information.

3. Scientific information

This includes information on:

- (a) Planned and ongoing research, both governmental and private, to facilitate the co-ordination of research programmes so as to make

SCHEDULE 2—continued

the most effective use of available national and international resources;

- (b) The emission data needed for research;
 - (c) Scientific results published in peer-reviewed literature on the understanding of the physics and chemistry of the Earth's atmosphere and of its susceptibility to change, in particular on the state of the ozone layer and effects on human health, environment and climate which would result from changes on all time-scales in either the total column content or the vertical distribution of ozone;
 - (d) The assessment of research results and the recommendations for future research.
4. Technical information
This includes information on:
- (a) The availability and cost of chemical substitutes and of alternative technologies to reduce the emissions of ozone-modifying substances and related planned and ongoing research;
 - (b) The limitations and any risks involved in using chemical or other substitutes and alternative technologies.
5. Socio-economic and commercial information on the substances referred to in annex I
This includes information on:
- (a) Production and production capacity;
 - (b) Use and use patterns;
 - (c) Imports/exports;
 - (d) The costs, risks and benefits of human activities which may indirectly modify the ozone layer and of the impacts of regulatory actions taken or being considered to control these activities.
6. Legal information
This includes information on:
- (a) National laws, administrative measures and legal research relevant to the protection of the ozone layer;
 - (b) International agreements, including bilateral agreements, relevant to the protection of the ozone layer;
 - (c) Methods and terms of licensing and availability of patents relevant to the protection of the ozone layer.

SCHEDULE 3

Section 7

MONTREAL PROTOCOL ON SUBSTANCES THAT DEplete THE OZONE LAYER

The Parties to this Protocol,

Being Parties to the Vienna Convention for the Protection of the Ozone Layer,

SCHEDULE 3—continued

Mindful of their obligation under that Convention to take appropriate measures to protect human health and the environment against adverse effects resulting or likely to result from human activities which modify or are likely to modify the ozone layer,

Recognizing that world-wide emissions of certain substances can significantly deplete and otherwise modify the ozone layer in a manner that is likely to result in adverse effects on human health and the environment,

Conscious of the potential climatic effects of emissions of these substances,

Aware that measures taken to protect the ozone layer from depletion should be based on relevant scientific knowledge, taking into account technical and economic considerations,

Determined to protect the ozone layer by taking precautionary measures to control equitably total global emissions of substances that deplete it, with the ultimate objective of their elimination on the basis of developments in scientific knowledge, taking into account technical and economic considerations,

Acknowledging that special provision is required to meet the needs of developing countries for these substances,

Noting the precautionary measures for controlling emissions of certain chlorofluorocarbons that have already been taken at national and regional levels,

Considering the importance of promoting international co-operation in the research and development of science and technology relating to the control and reduction of emissions of substances that deplete the ozone layer, bearing in mind in particular the needs of developing countries,

HAVE AGREED AS FOLLOWS:

ARTICLE 1: DEFINITIONS

For the purposes of this Protocol:

1. "Convention" means the Vienna Convention for the Protection of the Ozone Layer, adopted on 22 March 1985.
2. "Parties" means, unless the text otherwise indicates, parties to this Protocol.
3. "Secretariat" means the secretariat of the Convention.
4. "Controlled substance" means a substance listed in Annex A to this Protocol, whether existing alone or in a mixture. It excludes, however, any such substance or mixture which is in a manufactured product other than a container used for the transportation or storage of the substance listed.
5. "Production" means the amount of controlled substances produced minus the amount destroyed by technologies to be approved by the Parties.

SCHEDULE 3—continued

6. "Consumption" means production plus imports minus exports of controlled substances.
7. "Calculated levels" of production, imports, exports and consumption means levels determined in accordance with Article 3.
8. "Industrial rationalization" means the transfer of all or a portion of the calculated level of production of one Party to another, for the purpose of achieving economic efficiencies or responding to anticipated shortfalls in supply as a result of plant closures.

ARTICLE 2: CONTROL MEASURES

1. Each Party shall ensure that for the twelve-month period commencing on the first day of the seventh month following the date of the entry into force of this Protocol, and in each twelve-month period thereafter, its calculated level of consumption of the controlled substances in Group I of Annex A does not exceed its calculated level of consumption in 1986. By the end of the same period, each Party producing one or more of these substances shall ensure that its calculated level of production of the substances does not exceed its calculated level of production in 1986, except that such level may have increased by no more than ten per cent based on the 1986 level. Such increase shall be permitted only so as to satisfy the basic domestic needs of the Parties operating under Article 5 and for the purposes of industrial rationalization between Parties.
2. Each Party shall ensure that for the twelve-month period commencing on the first day of the thirty-seventh month following the date of the entry into force of this Protocol, and in each twelve month period thereafter, its calculated level of consumption of the controlled substances listed in Group II of Annex A does not exceed its calculated level of consumption in 1986. Each Party producing one or more of these substances shall ensure that its calculated level of production of the substances does not exceed its calculated level of production in 1986, except that such level may have increased by no more than ten per cent based on the 1986 level. Such increase shall be permitted only so as to satisfy the basic domestic needs of the Parties operating under Article 5 and for the purposes of industrial rationalization between Parties. The mechanisms for implementing these measures shall be decided by the Parties at their first meeting following the first scientific review.
3. Each Party shall ensure that for the period 1 July 1993 to 30 June 1994 and in each twelve-month period thereafter, its calculated level of consumption of the controlled substances in Group I of Annex A does not exceed, annually, eighty per cent of its calculated level of consumption in 1986. Each Party producing one or more of these substances shall, for the same periods, ensure that its calculated level of production of the substances does not exceed, annually, eighty per cent of its calculated level of production in 1986. However, in order to satisfy the basic domestic needs of the Parties operating under Article 5 and for the purposes of industrial rationalization between Parties, its calculated level of production may exceed that limit by up to ten per cent of its calculated level of production in 1986.

SCHEDULE 3—continued

4. Each Party shall ensure that for the period 1 July 1998 to 30 June 1999, and in each twelve-month period thereafter, its calculated level of consumption of the controlled substances in Group I of Annex A does not exceed, annually, fifty per cent of its calculated level of consumption in 1986. Each Party producing one or more of these substances shall, for the same periods, ensure that its calculated level of production of the substances does not exceed, annually, fifty per cent of its calculated level of production in 1986. However, in order to satisfy the basic domestic needs of the Parties operating under Article 5 and for the purposes of industrial rationalization between Parties, its calculated level of production may exceed that limit by up to fifteen per cent of its calculated level of production in 1986. This paragraph will apply unless the Parties decide otherwise at a meeting by a two-thirds majority of Parties present and voting, representing at least two-thirds of the total calculated level of consumption of these substances of the Parties. This decision shall be considered and made in the light of the assessments referred to in Article 6.
5. Any Party whose calculated level of production in 1986 of the controlled substances in Group I of Annex A was less than twenty-five kilotonnes may, for the purposes of industrial rationalization, transfer to or receive from any other Party, production in excess of the limits set out in paragraphs 1, 3 and 4 provided that the total combined calculated levels of production of the Parties concerned does not exceed the production limits set out in this Article. Any transfer of such production shall be notified to the secretariat, no later than the time of the transfer.
6. Any Party not operating under Article 5, that has facilities for the production of controlled substances under construction, or contracted for, prior to 16 September 1987, and provided for in national legislation prior to 1 January 1987, may add the production from such facilities to its 1986 production of such substances for the purposes of determining its calculated level of production for 1986, provided that such facilities are completed by 31 December 1990 and that such production does not raise that Party's annual calculated level of consumption of the controlled substances above 0.5 kilograms per capita.
7. Any transfer of production pursuant to paragraph 5 or any addition of production pursuant to paragraph 6 shall be notified to the secretariat, no later than the time of the transfer or addition.
8. (a) Any Parties which are Member States of a regional economic integration organization as defined in Article 1 (6) of the Convention may agree that they shall jointly fulfil their obligations respecting consumption under this Article provided that their total combined calculated level of consumption does not exceed the levels required by this Article.
- (b) The Parties to any such agreement shall inform the secretariat of the terms of the agreement before the date of the reduction in consumption with which the agreement is concerned.
- (c) Such agreement will become operative only if all Member States of the regional economic integration organization and the organization

SCHEDULE 3—continued

concerned are Parties to the Protocol and have notified the secretariat of their manner of implementation.

9. (a) Based on the assessments made pursuant to Article 6, the Parties may decide whether:
- (i) adjustments to the ozone depleting potentials specified in Annex A should be made and, if so, what the adjustments should be; and
 - (ii) further adjustments and reductions of production or consumption of the controlled substances from 1986 levels should be undertaken and, if so, what the scope, amount and timing of any such adjustments and reductions should be.
- (b) Proposals for such adjustments shall be communicated to the Parties by the secretariat at least six months before the meeting of the Parties at which they are proposed for adoption.
- (c) In taking such decisions, the Parties shall make every effort to reach agreement by consensus. If all efforts at consensus have been exhausted, and no agreement reached, such decisions shall, as a last resort, be adopted by a two-thirds majority vote of the Parties present and voting representing at least fifty per cent of the total consumption of the controlled substances of the Parties.
- (d) The decisions, which shall be binding on all Parties, shall forthwith be communicated to the Parties by the Depositary. Unless otherwise provided in the decisions, they shall enter into force on the expiry of six months from the date of the circulation of the communication by the Depositary.
10. (a) Based on the assessments made pursuant to Article 6 of this Protocol and in accordance with the procedure set out in Article 9 of the Convention, the Parties may decide:
- (i) whether any substances, and if so which, should be added to or removed from any annex to this Protocol; and
 - (ii) the mechanism, scope and timing of the control measures that should apply to those substances;
- (b) Any such decision shall become effective, provided that it has been accepted by a two-thirds majority vote of the Parties present and voting.
11. Notwithstanding the provisions contained in this Article, Parties may take more stringent measures than those required by this Article.

ARTICLE 3: CALCULATION OF CONTROL LEVELS

For the purposes of Articles 2 and 5, each Party shall, for each Group of substances in Annex A, determine its calculated levels of:

- (a) production by:

SCHEDULE 3—continued

- (i) multiplying its annual production of each controlled substance by the ozone depleting potential specified in respect of it in Annex A; and
- (ii) adding together, for each such Group, the resulting figures;
- (b) imports and exports, respectively, by following, mutatis mutandis, the procedure set out in subparagraph (a); and
- (c) consumption by adding together its calculated levels of production and imports and subtracting its calculated level of exports as determined in accordance with subparagraphs (a) and (b). However, beginning on 1 January 1993, any export of controlled substances to non-Parties shall not be subtracted in calculating the consumption level of the exporting Party.

ARTICLE 4: CONTROL OF TRADE WITH NON-PARTIES

1. Within one year of the entry into force of this Protocol, each Party shall ban the import of controlled substances from any State not party to this Protocol.
2. Beginning on 1 January 1993, no Party operating under paragraph 1 of Article 5 may export any controlled substance to any State not party to this Protocol.
3. Within three years of the date of the entry into force of this Protocol, the Parties shall, following the procedures in Article 10 of the Convention, elaborate in an annex a list of products containing controlled substances. Parties that have not objected to the annex in accordance with those procedures shall ban, within one year of the annex having become effective, the import of those products from any State not party to this Protocol.
4. Within five years of the entry into force of this Protocol, the Parties shall determine the feasibility of banning or restricting, from States not party to this Protocol, the import of products produced with, but not containing, controlled substances. If determined feasible, the Parties shall, following the procedures in Article 10 of the Convention, elaborate in an annex a list of such products. Parties that have not objected to it in accordance with those procedures shall ban or restrict, within one year of the annex having become effective, the import of those products from any State not party to this Protocol.
5. Each Party shall discourage the export, to any State not party to this Protocol, of technology for producing and for utilizing controlled substances.
6. Each Party shall refrain from providing new subsidies, aid, credits, guarantees or insurance programmes for the export to States not party to this Protocol of products, equipment, plants or technology that would facilitate the production of controlled substances.
7. Paragraphs 5 and 6 shall not apply to products, equipment, plants or technology that improve the containment, recovery, recycling or destruction of controlled substances, promote the development of alternative substances, or otherwise contribute to the reduction of emissions of controlled substances.

SCHEDULE 3—continued

8. Notwithstanding the provisions of this Article, imports referred to in paragraphs 1, 3 and 4 may be permitted from any State not party to this Protocol if that State is determined, by a meeting of the Parties, to be in full compliance with Article 2 and this Article, and has submitted data to that effect as specified in Article 7.

ARTICLE 5: SPECIAL SITUATION OF DEVELOPING COUNTRIES

1. Any Party that is a developing country and whose annual calculated level of consumption of the controlled substances is less than 0.3 kilograms per capita on the date of the entry into force of the Protocol for it, or any time thereafter within ten years of the date of entry into force of the Protocol shall, in order to meet its basic domestic needs, be entitled to delay its compliance with the control measures set out in paragraphs 1 to 4 of Article 2 by ten years after that specified in those paragraphs. However, such Party shall not exceed an annual calculated level of consumption of 0.3 kilograms per capita. Any such Party shall be entitled to use either the average of its annual calculated level of consumption for the period 1995 to 1997 inclusive or a calculated level of consumption of 0.3 kilograms per capita, whichever is the lower, as the basis for its compliance with the control measures.

2. The Parties undertake to facilitate access to environmentally safe alternative substances and technology for Parties that are developing countries and assist them to make expeditious use of such alternatives.

3. The Parties undertake to facilitate bilaterally or multilaterally the provision of subsidies, aid, credits, guarantees or insurance programmes to Parties that are developing countries for the use of alternative technology and for substitute products.

ARTICLE 6: ASSESSMENT AND REVIEW OF CONTROL MEASURES

Beginning in 1990, and at least every four years thereafter, the Parties shall assess the control measures provided for in Article 2 on the basis of available scientific, environmental, technical and economic information. At least one year before each assessment, the Parties shall convene appropriate panels of experts qualified in the fields mentioned and determine the composition and terms of reference of any such panels. Within one year of being convened, the panels will report their conclusions, through the secretariat, to the parties.

ARTICLE 7: REPORTING OF DATA

1. Each Party shall provide to the secretariat, within three months of becoming a Party, statistical data on its production, imports and exports of each of the controlled substances for the year 1986, or the best possible estimates of such data where actual data are not available.

2. Each Party shall provide statistical data to the secretariat on its annual production (with separate data on amounts destroyed by technologies to be approved by the Parties), imports, and exports to Parties and non-Parties, respectively, of such substances for the year during which it becomes a Party and for each year thereafter. It shall forward the data no later than nine months after the end of the year to which the data relate.

SCHEDULE 3—continued

ARTICLE 8: NON-COMPLIANCE

The Parties, at their first meeting, shall consider and approve procedures and institutional mechanisms for determining non-compliance with the provisions of this Protocol and for treatment of Parties found to be in non-compliance.

ARTICLE 9: RESEARCH, DEVELOPMENT, PUBLIC AWARENESS AND EXCHANGE OF INFORMATION

1. The Parties shall co-operate, consistent with their national laws, regulations and practices and taking into account in particular the needs of developing countries, in promoting, directly or through competent international bodies, research, development and exchange of information on:

- (a) best technologies for improving the containment, recovery, recycling or destruction of controlled substances or otherwise reducing their emissions;
- (b) possible alternatives to controlled substances, to products containing such substances, and to products manufactured with them; and
- (c) costs and benefits of relevant control strategies.

2. The Parties, individually, jointly or through competent international bodies, shall co-operate in promoting public awareness of the environmental effects of the emissions of controlled substances and other substances that deplete the ozone layer.

3. Within two years of the entry into force of this Protocol and every two years thereafter, each Party shall submit to the secretariat a summary of the activities it has conducted pursuant to this Article.

ARTICLE 10: TECHNICAL ASSISTANCE

1. The Parties shall, in the context of the provisions of Article 4 of the Convention, and taking into account in particular the needs of developing countries, co-operate in promoting technical assistance to facilitate participation in and implementation of this Protocol.

2. Any Party or Signatory to this Protocol may submit a request to the secretariat for technical assistance for the purposes of implementing or participating in the Protocol.

3. The Parties, at their first meeting, shall begin deliberations on the means of fulfilling the obligations set out in Article 9, and paragraphs 1 and 2 of this Article, including the preparation of workplans. Such workplans shall pay special attention to the needs and circumstances of the developing countries. States and regional economic integration organizations not party to the Protocol should be encouraged to participate in activities specified in such workplans.

ARTICLE 11: MEETINGS OF THE PARTIES

1. The Parties shall hold meetings at regular intervals. The secretariat shall convene the first meeting of the Parties not later than one year after the date of the entry into force of this Protocol and in conjunction with a

SCHEDULE 3—continued

meeting of the Conference of the Parties to the Convention, if a meeting of the latter is scheduled within that period.

2. Subsequent ordinary meetings of the Parties shall be held, unless the Parties otherwise decide, in conjunction with meetings of the Conference of the Parties to the Convention. Extraordinary meetings of the Parties shall be held at such other times as may be deemed necessary by a meeting of the Parties, or at the written request of any Party, provided that, within six months of such a request being communicated to them by the secretariat, it is supported by at least one third of the Parties.

3. The Parties, at their first meeting, shall:

- (a) adopt by consensus rules of procedure for their meetings;
- (b) adopt by consensus the financial rules referred to in paragraph 2 of Article 13;
- (c) establish the panels and determine the terms of reference referred to in Article 6;
- (d) consider and approve the procedures and institutional mechanisms specified in Article 8; and
- (e) begin preparation of workplans pursuant to paragraph 3 of Article 10.

4. The functions of the meetings of the Parties shall be to:

- (a) review the implementation of this Protocol;
- (b) decide on any adjustments or reductions referred to in paragraph 9 of Article 2;
- (c) decide on any addition to, insertion in or removal from any annex of substances and on related control measures in accordance with paragraph 10 of Article 2;
- (d) establish, where necessary, guidelines or procedures for reporting of information as provided for in Article 7 and paragraph 3 of Article 9;
- (e) review requests for technical assistance submitted pursuant to paragraph 2 of Article 10;
- (f) review reports prepared by the secretariat pursuant to subparagraph (c) of Article 12;
- (g) assess, in accordance with Article 6, the control measures provided for in Article 2;
- (h) consider and adopt, as required, proposals for amendment of this Protocol or any annex and for any new annex;
- (i) consider and adopt the budget for implementing this Protocol; and
- (j) consider and undertake any additional action that may be required for the achievement of the purposes of this Protocol.

5. The United Nations, its specialized agencies and the International Atomic Energy Agency, as well as any State not party to this Protocol, may be represented at meetings of the parties as observers. Any body or agency, whether national or international, governmental or non-governmental,

SCHEDULE 3—continued

qualified in fields relating to the protection of the ozone layer which has informed the secretariat of its wish to be represented at a meeting of the Parties as an observer may be admitted unless at least one third of the Parties present object. The admission and participation of observers shall be subject to the rules of procedure adopted by the Parties.

ARTICLE 12: SECRETARIAT

For the purposes of this Protocol, the secretariat shall:

- (a) arrange for and service meetings of the Parties as provided for in Article 11;
- (b) receive and make available, upon request by a Party, data provided pursuant to Article 7;
- (c) prepare and distribute regularly to the Parties reports based on information received pursuant to Articles 7 and 9;
- (d) notify the Parties of any request for technical assistance received pursuant to Article 10 so as to facilitate the provision of such assistance;
- (e) encourage non-Parties to attend the meetings of the Parties as observers and to act in accordance with the provisions of this Protocol;
- (f) provide, as appropriate, the information and requests referred to in subparagraphs (c) and (d) to such non-party observers; and
- (g) perform such other functions for the achievement of the purposes of this Protocol as may be assigned to it by the Parties.

ARTICLE 13: FINANCIAL PROVISIONS

1. The funds required for the operation of this Protocol, including those for the functioning of the secretariat related to this Protocol, shall be charged exclusively against contributions from the Parties.
2. The Parties, at their first meeting, shall adopt by consensus financial rules for the operation of this Protocol.

ARTICLE 14: RELATIONSHIP OF THIS PROTOCOL TO THE CONVENTION

Except as otherwise provided in this Protocol, the provisions of the Convention relating to its protocols shall apply to this Protocol.

ARTICLE 15: SIGNATURE

This Protocol shall be open for signature by States and by regional economic integration organizations in Montreal on 16 September 1987, in Ottawa from 17 September 1987 to 16 January 1988, and at United Nations Headquarters in New York from 17 January 1988 to 15 September 1988.

ARTICLE 16: ENTRY INTO FORCE

1. This Protocol shall enter into force on 1 January 1989, provided that at least eleven instruments of ratification, acceptance, approval of the Protocol or accession thereto have been deposited by States or regional economic

SCHEDULE 3—continued

integration organizations representing at least two-thirds of 1986 estimated global consumption of the controlled substances, and the provisions of paragraph 1 of Article 17 of the Convention have been fulfilled. In the event that these conditions have not been fulfilled by that date, the Protocol shall enter into force on the ninetieth day following the date on which the conditions have been fulfilled.

2. For the purposes of paragraph 1, any such instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.

3. After the entry into force of this Protocol, any State or regional economic integration organization shall become a Party to it on the ninetieth day following the date of deposit of its instrument of ratification, acceptance, approval or accession.

ARTICLE 17: PARTIES JOINING AFTER ENTRY INTO FORCE

Subject to Article 5, any State or regional economic integration organization which becomes a Party to this Protocol after the date of its entry into force, shall fulfil forthwith the sum of the obligations under Article 2, as well as under Article 4, that apply at that date to the States and regional economic integration organizations that became Parties on the date the Protocol entered into force.

ARTICLE 18: RESERVATIONS

No reservations may be made to this Protocol.

ARTICLE 19: WITHDRAWAL

For the purposes of this Protocol, the provisions of Article 19 of the Convention relating to withdrawal shall apply, except with respect to Parties referred to in paragraph 1 of Article 5. Any such Party may withdraw from this Protocol by giving written notification to the Depositary at any time after four years of assuming the obligations specified in paragraphs 1 to 4 of Article 2. Any such withdrawal shall take effect upon expiry of one year after the date of its receipt by the Depositary, or on such later date as may be specified in the notification of the withdrawal.

ARTICLE 20: AUTHENTIC TEXTS

The original of this Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF THE UNDERSIGNED, BEING DULY AUTHORIZED TO THAT EFFECT, HAVE SIGNED THIS PROTOCOL.

DONE AT MONTREAL THIS SIXTEENTH DAY OF SEPTEMBER, ONE THOUSAND NINE HUNDRED AND EIGHTY SEVEN

SCHEDULE 3—continued

ANNEX A

CONTROLLED SUBSTANCES

Group	Substance	Ozone Depleting Potential*
Group I	CFCl ₃ (CFC-11)	1.0
	CF ₂ Cl ₂ (CFC-12)	1.0
	C ₂ F ₃ Cl ₃ (CFC-113)	0.8
	C ₂ F ₄ Cl ₂ (CFC-114)	1.0
	C ₂ F ₅ Cl (CFC-115)	0.6
Group II	CF ₂ BrCl (halon-1211)	3.0
	CF ₃ Br (halon-1301)	10.0
	C ₂ F ₄ Br ₂ (halon-2402)	(to be determined)

* These ozone depleting potentials are estimates based on existing knowledge and will be reviewed and revised periodically.

SCHEDULE 4

Section 38

CONTROL OF MANUFACTURE ETC. OF PRODUCTS
CONTAINING OR USING SCHEDULED SUBSTANCES

Dry cleaning machinery

1. After the commencement of this Act, 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.

Automotive air conditioning maintenance kits

2. After 31 January 1989, 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.

Disposable containers of refrigerants

3. After 30 June 1989, a person shall not manufacture or import a product consisting of a non-refillable container enclosing a scheduled substance (whether alone or with another substance) if:

SCHEDULE 4—continued

- (a) the product is designed for use in the maintenance of refrigerative units (including air conditioning units); and
- (b) the contents of the non-refillable container, immediately after manufacture, weigh 5 kilograms or less.

Extruded polystyrene packaging and insulation

4. After 31 December 1989, a person shall not manufacture or import a polystyrene product if:

- (a) either:
 - (i) the product contains a scheduled substance; or
 - (ii) a scheduled substance was used in the manufacture of the product; and
- (b) the product is intended for use as packaging or as insulating material.

Aerosol products

5. After 31 December 1989, a person shall not manufacture or import an aerosol product that contains a scheduled substance unless the manufacture or importation is in accordance with an exemption granted to the person under section 40.

[*Minister's second reading speech made in—
House of Representatives on 10 November 1988
Senate on 25 November 1988*]