



Ozone Protection and Synthetic Greenhouse Gas Management Legislation Amendment Act 2017

No. 67, 2017

**An Act to amend the law relating to ozone
protection and synthetic greenhouse gas
management, and for related purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation
(<https://www.legislation.gov.au/>)

Contents

1	Short title.....	2
2	Commencement.....	2
3	Schedules.....	3
Schedule 1—Amendments commencing day to be proclaimed		4
Part 1—HFCs		4
<i>Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Act 1995</i>		4
<i>Ozone Protection and Synthetic Greenhouse Gas Management Act 1989</i>		4
<i>Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Act 1995</i>		28
Part 2—References to equipment and products		29
<i>Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Act 1995</i>		29
<i>Ozone Protection and Synthetic Greenhouse Gas Management Act 1989</i>		29
<i>Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Act 1995</i>		36
Part 3—References to conventions		38
<i>Ozone Protection and Synthetic Greenhouse Gas Management Act 1989</i>		38
Part 4—Delegations		40
<i>Ozone Protection and Synthetic Greenhouse Gas Management Act 1989</i>		40
Schedule 2—Amendments commencing 1 January 2018		41
Part 1—Licences		41
Division 1—Renewing licences		41
<i>Ozone Protection and Synthetic Greenhouse Gas Management Act 1989</i>		41
Division 2—Equipment licences		47

<i>Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Act 1995</i>	47
<i>Ozone Protection and Synthetic Greenhouse Gas Management Act 1989</i>	47
Division 3—Application, saving and transitional provisions	54
Part 2—Levy periods, threshold and penalty interest	57
<i>Evidence Act 1995</i>	57
<i>Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Act 1995</i>	57
<i>Ozone Protection and Synthetic Greenhouse Gas Management Act 1989</i>	58
<i>Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Act 1995</i>	60
Part 3—Licence quantity limits	63
<i>Ozone Protection and Synthetic Greenhouse Gas Management Act 1989</i>	63
Part 4—Synthetic greenhouse gases	64
<i>Ozone Protection and Synthetic Greenhouse Gas Management Act 1989</i>	64
Part 5—Export of HCFCs	66
<i>Ozone Protection and Synthetic Greenhouse Gas Management Act 1989</i>	66
Schedule 3—Amendments commencing 1 January 2020	67
Part 1—Bulk HCFC use	67
<i>Ozone Protection and Synthetic Greenhouse Gas Management Act 1989</i>	67
Part 2—HCFC equipment	68
<i>Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Act 1995</i>	68
<i>Ozone Protection and Synthetic Greenhouse Gas Management Act 1989</i>	68



Ozone Protection and Synthetic Greenhouse Gas Management Legislation Amendment Act 2017

No. 67, 2017

**An Act to amend the law relating to ozone
protection and synthetic greenhouse gas
management, and for related purposes**

[Assented to 23 June 2017]

The Parliament of Australia enacts:

No. 67, 2017

*Ozone Protection and Synthetic Greenhouse Gas Management
Legislation Amendment Act 2017*

1

1 Short title

This Act is the *Ozone Protection and Synthetic Greenhouse Gas Management Legislation Amendment Act 2017*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	23 June 2017
2. Schedule 1	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	1 August 2017 (F2017N00057)
3. Schedule 2	The later of: (a) immediately after the commencement of the provisions covered by table item 2; and (b) the start of 1 January 2018.	1 January 2018 (paragraph (b) applies)
4. Schedule 3	1 January 2020.	1 January 2020

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments commencing day to be proclaimed

Part 1—HFCs

Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Act 1995

1 Subsection 3A(2)

Omit “paragraph 13(1A)(b)”, substitute “subsection 13(3)”.

2 Subsections 4A(3) and 4B(2)

Omit “paragraph 13(6A)(b) or (c)”, substitute “subsection 13(5) or (6)”.

Ozone Protection and Synthetic Greenhouse Gas Management Act 1989

3 Paragraph 3(a)

Omit “substances that deplete ozone in the atmosphere”, substitute
“ozone depleting substances and SGGs”.

4 Subparagraphs 3(c)(i) and (ii)

After “ozone depleting substances”, insert “and SGGs”.

5 Section 7

Insert:

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

approved form means a form approved under section 66A.

CO₂e megatonnes has the meaning given by section 9A.

6 Section 7 (definition of HCFC quota)

Repeal the definition, substitute:

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

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

7 Section 7

Insert:

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

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

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

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

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

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

8 Subsection 7(1) (definition of quota period)

Repeal the definition, substitute:

quota period has the meaning given by section 23A.

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

9 Section 7

Insert:

recycled or used SGGs means SGGs that are:

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

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

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

10 Section 7 (definition of *recycled stage-1 or stage-2 scheduled substances*)

Repeal the definition.

11 Section 7 (definition of *reduce*)

Repeal the definition.

12 Section 7 (definition of *regulated HCFC activity*)

Repeal the definition.

13 Section 7

Insert:

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

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

14 Section 7 (definition of *reserve HCFC quota*)

Repeal the definition, substitute:

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

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

15 Section 7

Insert:

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

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

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

SGG licensee means the holder of an SGG licence.

16 Sections 8 and 8B

Repeal the sections.

17 After section 9

Insert:

9A Quantities expressed in CO₂e megatonnes

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

18 Section 12B (heading)

Repeal the heading, substitute:

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

19 Section 12B

Omit “does”, substitute “and Parts IV and IVA do”.

20 Section 13

Repeal the section, substitute:

13 Unlicensed manufacture, import or export

Substances and equipment

- (1) A person must not, subject to subsections (2) to (6):
- (a) manufacture, import or export any of the following:
 - (i) an HCFC;
 - (ii) methyl bromide;
 - (iii) an SGG;
 - (iv) an HBFC;
 - (v) a stage-1 or stage-2 scheduled substance; or
 - (b) import ODS equipment or SGG equipment.

Exceptions

- (2) Subsection (1) does not apply to an activity allowed by a licence the person holds.

Note 1: See section 13A for the activities allowed by each type of licence.

Note 2: No licence allows the manufacture or export of HBFCs.

- (3) Subparagraph (1)(a)(iii) does not apply to manufacturing, importing or exporting an SGG (other than a recycled or used SGG) in circumstances prescribed by the regulations.
- (4) Regulations made for the purposes of subsection (3) must be consistent with Australia's international obligations.
- (5) Paragraph (1)(b) does not apply to a person carrying out an activity in relation to equipment if:
- (a) the equipment is kept by the person, or by a member of the person's household, wholly or principally for private or domestic use; and
 - (b) the equipment is prescribed by the regulations; and
 - (c) any conditions prescribed by the regulations are satisfied.
- (6) Paragraph (1)(b) does not apply to a person importing ODS equipment or SGG equipment if:
- (a) in the case of ODS equipment—the total amount of HCFC contained in ODS equipment in the importation is not greater than the amount (if any) prescribed by the regulations; and

- (b) in the case of SGG equipment—the total amount of an SGG contained in SGG equipment in the importation is not greater than the amount (if any) prescribed by the regulations in relation to the SGG; and
- (c) in any case—any other conditions prescribed by the regulations in relation to the person, the equipment, and the importation are satisfied.

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

Penalties

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

Penalty: 500 penalty units.

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

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

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

21 Saving—regulations

Regulations:

- (a) made for the purposes of a provision of the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* mentioned in column 1 of an item of the following table; and
 - (b) in force immediately before the commencement of this item;
- have effect, from that commencement, as if they had been made for the purposes of the provision of that Act, as amended by this Part, mentioned in column 2 of that item.

Regulations		
Item	Column 1	Column 2
	Old provision	New provision
1	Paragraph 13(1A)(b)	Subsection 13(3)
2	Subparagraph 13(6A)(b)(ii)	Paragraph 13(5)(b)

Schedule 1 Amendments commencing day to be proclaimed
Part 1 HFCs

Regulations

Item	Column 1 Old provision	Column 2 New provision
3	Subparagraph 13(6A)(b)(iii)	Paragraph 13(5)(c)

22 Subsection 13A(2)

After “allows”, insert “(subject to subsection (2A))”.

23 After subsection 13A(2)

Insert:

(2A) A controlled substances licence does not apply to:

- (a) recycled or used HCFCs; or
- (b) recycled or used methyl bromide; or
- (c) recycled or used SGGs.

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

24 Subsection 13A(3)

After “allows”, insert “(subject to subsection (3A))”.

25 After subsection 13A(3)

Insert:

(3A) An essential uses licence does not apply to recycled or used stage-1 or stage-2 scheduled substances.

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

26 At the end of subsection 13A(4)

Add:

- ; (e) import specified recycled or used SGGs;
- (f) export specified recycled or used SGGs.

27 Subsection 14(1)

Omit “(1)”.

28 Paragraph 14(1)(a)

Repeal the paragraph, substitute:

(a) be in the approved form; and

29 Subsection 14(2)

Repeal the subsection.

30 Subsections 18(1) to (3)

Repeal the subsections, substitute:

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

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

Schedule 1 Amendments commencing day to be proclaimed**Part 1** HFCs

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

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

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

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

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

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

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

Other conditions

31 Application of amendments

HCFCs

(1) The amendment of subsection 18(1) of the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* made by this Part, to the extent the amendment relates to controlled substances licences,

applies to a controlled substances licence that is in force on or after the commencement of this item, whether the licence was granted before, on or after that commencement.

HFCs

- (2) Item 4 of the table in subsection 18(1) of the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989*, as amended by this Part, applies to an SGG licence that is in force on or after the commencement of this item, whether the licence was granted before, on or after that commencement.
- (3) Paragraphs (a), (b) and (c) of column 2 of that item do not apply to a regulated HFC activity engaged in before 1 January 2018.

32 Before subsection 18(7)

Insert:

Penalties

33 Before subsection 18(8)

Insert:

Varying or revoking conditions

34 Paragraph 19B(2)(a)

Repeal the paragraph, substitute:

- (a) be in the approved form; and

35 Subsection 19B(3)

Repeal the subsection.

36 Before section 23

Insert:

22A Simplified outline of this Part

<p>The Minister may allocate to a licensee:</p> <p>(a) an HCFC quota for a quota period; or</p>

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

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

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

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

37 After section 23

Insert:

23A HCFC quota periods

- (1) A *quota period* is 2 years, or such longer or shorter period (if any) as is determined under subsection (2).
- (2) The Minister may, by legislative instrument, determine a period for the purposes of subsection (1).
- (3) The first quota period starts on the 1 January specified by the Minister under section 26.
- (4) Each quota period, except the first, starts immediately after the end of the last preceding one.

38 After section 25

Insert:

25A Regulated HCFC activities

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

Schedule 1 Amendments commencing day to be proclaimed
Part 1 HFCs

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

- (2) For the purposes of this Act, the quantity of HCFCs that is taken to be involved in regulated HCFC activities engaged in by a licensee in a period is the quantity of HCFCs that is actually involved in regulated HCFC activities engaged in by the licensee in the period reduced by the heel allowance percentage for HCFCs.

39 Paragraph 26(2)(b)

Repeal the paragraph.

40 Paragraph 27(1)(a)

Repeal the paragraph, substitute:

- (a) be in the approved form; and

41 Subsection 27(2)

Repeal the subsection.

42 Paragraph 35(1)(a)

Omit “a quota”, substitute “an HCFC quota”.

43 Subsection 35(2)

Repeal the subsection, substitute:

- (2) A licensee may, without transferring the licensee’s licence, transfer to another licensee the unused part of:
- (a) an HCFC quota allocated to the first licensee for a quota period; and
 - (b) each HCFC quota (if any) allocated to the first licensee for later quota periods.
- (2A) A licensee may, instead of transferring the whole of the unused parts of the quotas mentioned in subsection (2):
- (a) choose a particular percentage; and
 - (b) without transferring the licensee’s licence, transfer to another licensee the lesser of the following percentages of each of those quotas:
 - (i) the chosen percentage;

- (ii) the percentage of the quota that is unused.

44 Subsections 35(6) and (7)

Repeal the subsections.

45 At the end of Part IV

Add:

35A Direction to export HCFCs if quota exceeded

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

46 Application of amendments

Section 35A of the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989*, as added by this Part, applies in relation to quota periods or reserve periods that start on or after the commencement of this item.

47 After Part IV

Insert:

Part IVA—HFC quotas

Division 1—Outline of this Part

36 Simplified outline of this Part

The Minister may allocate to an SGG licensee:

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

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

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

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

Division 2—HFC quotas

36A HFC industry limit

- (1) The **HFC industry limit** for a calendar year is the quantity of HFCs, expressed in CO₂e megatonnes:

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

36B Regulated HFC activities

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

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

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

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

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

- (3) For the purposes of subsection (2), the quantity of HFCs exported by an SGG licensee in a period is taken not to include any quantity

exported under a direction given to the licensee under section 36H (direction to export HFCs if quota exceeded).

36C Applications, allocation and size of HFC quotas

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

36D Duration of HFC quotas

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

36E Quotas cease when licences cease

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

36F Transfer of quotas

Transfer of HFC quota if SGG licence transferred

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

Transfer of HFC quota without transferring SGG licence

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

- (b) if only part of an HFC quota is transferred—the transferor is taken to have been allocated the untransferred part of the quota.

Division 3—Reserve HFC quotas

36G Reserve HFC quotas

Reserve HFC quotas

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

Reserve HFC quota limit

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

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

Division 4—Other provisions

36H Direction to export HFCs if quota exceeded

- (1) The Minister may, by written notice given to an SGG licensee, direct the licensee to export a specified quantity of HFCs by a specified time if:
 - (a) both:
 - (i) the SGG licensee has been allocated an HFC quota for a calendar year; and
 - (ii) the total quantity of HFCs, expressed in CO₂e megatonnes, involved in regulated HFC activities engaged in by the licensee in the year exceeds the total of that quota and any reserve HFC quotas allocated to the licensee that are in force at any time in the year; or
 - (b) both:
 - (i) the SGG licensee has been allocated a reserve HFC quota that is in force for a period (the *reserve period*) in a calendar year, but has not been allocated an HFC quota for the year; and
 - (ii) the total quantity of HFCs, expressed in CO₂e megatonnes, involved in regulated HFC activities engaged in by the licensee in the reserve period exceeds the reserve HFC quota.

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

Note 2: A person requires an SGG licence to export an HFC in most circumstances: see section 13.

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

36J Basis on which quotas are allocated

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

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

48 Application of amendments—HFC quotas and reserve HFC quotas

- (1) Division 2 of Part IVA of the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989*, as inserted by this Part, applies in relation to 2018 and later calendar years.
- (2) A reserve HFC quota must not come into force before 1 January 2018.

49 Subsection 50(1A)

Repeal the subsection, substitute:

- (1A) An identity card must:
 - (a) be in the approved form; and
 - (b) have on it a recent photograph of the person to whom it is issued.

50 Subsection 65AC(4)

Omit “subsection 13(1A) or (6A) or”, substitute “subparagraph 13(1)(a)(iii), paragraph 13(1)(b) or subsection”.

51 Subsection 65AC(4A)

Omit “subsection 13(1A) or (6A)”, substitute
“subparagraph 13(1)(a)(iii) or paragraph 13(1)(b)”.

52 After paragraph 66(e)

Insert:

- (ea) a decision to direct a licensee to export a quantity of HCFCs under section 35A;
- (eb) a decision to direct an SGG licensee to export a quantity of HFCs under section 36H;

53 After section 66

Insert:

66A Approved forms

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

54 Transitional provision—approved forms

If:

- (a) the Minister approved a form under a provision of the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989*; and
- (b) the approval was in force immediately before the commencement of this item;

the approval has effect from that commencement as if it had been made under section 66A of that Act, as amended by this Part, for the purposes of the provision mentioned in paragraph (a) of this item.

55 Part V of Schedule 1

Repeal the Part, substitute:

Schedule 1 Amendments commencing day to be proclaimed
Part 1 HFCs

Part V—HCFCs

HCFCs			
Item	Column 1 Substance	Column 2 Ozone depleting potential	Column 3 100-year global warming potential
1	CHFCl ₂ (HCFC-21)	0.04	151
2	CHF ₂ Cl (HCFC-22)	0.055	1,810
3	CH ₂ FCI (HCFC-31)	0.02	
4	C ₂ HFCl ₄ (HCFC-121)	0.04	
5	C ₂ HF ₂ Cl ₃ (HCFC-122)	0.08	
6	C ₂ HF ₃ Cl ₂ (HCFC-123)	0.06	
7	CHCl ₂ CF ₃ (HCFC-123)	0.02	77
8	C ₂ HF ₄ Cl (HCFC-124)	0.04	
9	CHFClCF ₃ (HCFC-124)	0.022	609
10	C ₂ H ₂ FCI ₃ (HCFC-131)	0.05	
11	C ₂ H ₂ F ₂ Cl ₂ (HCFC-132)	0.05	
12	C ₂ H ₂ F ₃ Cl (HCFC-133)	0.06	
13	C ₂ H ₃ FCI ₂ (HCFC-141)	0.07	
14	CH ₃ CFCl ₂ (HCFC-141b)	0.11	725
15	C ₂ H ₃ F ₂ Cl (HCFC-142)	0.07	
16	CH ₃ CF ₂ Cl (HCFC-142b)	0.065	2,310
17	C ₂ H ₄ FCI (HCFC-151)	0.005	
18	C ₃ HFCl ₆ (HCFC-221)	0.07	
19	C ₃ HF ₂ Cl ₅ (HCFC-222)	0.09	
20	C ₃ HF ₃ Cl ₄ (HCFC-223)	0.08	
21	C ₃ HF ₄ Cl ₃ (HCFC-224)	0.09	
22	C ₃ HF ₅ Cl ₂ (HCFC-225)	0.07	
23	CF ₃ CF ₂ CHCl ₂ (HCFC-225ca)	0.025	122
24	CF ₂ ClCF ₂ CHClF (HCFC-225cb)	0.033	595
25	C ₃ HF ₆ Cl (HCFC-226)	0.1	
26	C ₃ H ₂ FCI ₅ (HCFC-231)	0.09	
27	C ₃ H ₂ F ₂ Cl ₄ (HCFC-232)	0.1	

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

56 Part IX of Schedule 1

Repeal the Part, substitute:

Part IX—HFCs

HFCs		
Item	Column 1 Substance	Column 2 100-year global warming potential
1	CHF ₃ (HFC-23)	14,800
2	CH ₂ F ₂ (HFC-32)	675
3	CH ₃ F (HFC-41)	92
4	CHF ₂ CF ₃ (HFC-125)	3,500
5	CHF ₂ CHF ₂ (HFC-134)	1,100

Schedule 1 Amendments commencing day to be proclaimed
Part 1 HFCs

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

***Ozone Protection and Synthetic Greenhouse Gas
(Manufacture Levy) Act 1995***

57 Subsection 3A(2)

Omit “paragraph 13(1A)(b)”, substitute “subsection 13(3)”.

Part 2—References to equipment and products

Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Act 1995

58 Section 2A (definition of *medical equipment*)

Omit “a pharmaceutical product”, substitute “pharmaceutical equipment”.

59 Subparagraph 3A(9)(b)(iii)

Omit “a product, or in equipment,”, substitute “equipment”.

60 Subparagraph 3A(9)(b)(iv)

Omit “a product, or of equipment,”, substitute “equipment”.

61 Subsection 4B(5)

Repeal the subsection.

Ozone Protection and Synthetic Greenhouse Gas Management Act 1989

62 Paragraph 3(b)

Omit “products that contain such substances or use such substances in their”, substitute “equipment that contains such substances or uses such substances in its”.

63 Section 7

Insert:

bulk scheduled substance has the meaning given by section 9.

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

equipment includes products.

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

64 Section 8C

Omit “or, but for section 9, would be an HCFC”.

65 Paragraphs 8D(1)(a), (b), (c) and (d)

Omit “, or a product,”.

66 Section 9

Repeal the section, substitute:

9 Bulk scheduled substances and equipment

Bulk scheduled substances

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

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

Equipment containing or using scheduled substances

- (3) Subject to subsection (6):
 - (a) a reference in this Act (other than this section) to equipment **containing** a scheduled substance does not include a reference to containing the substance for the sole purpose of storing or transporting the substance; and
 - (b) a reference in this Act to **using** a scheduled substance in the operation of equipment does not include a reference to using the equipment for the storage or transport of the substance.

- (4) To avoid doubt, and without limiting when equipment contains a scheduled substance for the sole purpose of storing or transporting the substance, equipment contains a scheduled substance for that sole purpose if:
- (a) the substance must be transferred to other equipment to realise its intended use; or
 - (b) the equipment must be attached to other equipment to realise its intended use.

Substances used in the process of manufacturing equipment

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

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

Regulations

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

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

67 Part V (heading)

Repeal the heading, substitute:

Part V—Control of manufacture etc. of equipment containing or using scheduled substances

68 Section 38 (heading)

Repeal the heading, substitute:

38 Manufacture and import of equipment in contravention of Schedule 4

69 Subsections 38(1), (2), (2B) and (2C)

Omit “a product”, substitute “equipment”.

70 Subsection 39(1)

Omit “products that contain scheduled substances or depend on such substances for their”, substitute “equipment that contains scheduled substances or uses scheduled substances in its”.

71 Paragraphs 39(2)(a), (b), (c) and (d)

Omit “products” (wherever occurring), substitute “equipment”.

72 Paragraph 39(2)(d)

Omit “are”, substitute “is”.

73 Subsections 40(1) and (3)

Omit “a product”, substitute “equipment”.

74 Subparagraphs 40(3)(a)(i) and (ii)

Omit “product”, substitute “equipment”.

75 Paragraphs 40(3)(b) and (c)

Omit “product” (wherever occurring), substitute “equipment”.

76 Paragraphs 41(2)(b) and (c)

Omit “products”, substitute “equipment”.

77 Section 44 (heading)

Repeal the heading, substitute:

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

78 Subsections 44(1), (2A), (3), (5), (5B) and (6)

Omit “a product” (wherever occurring), substitute “equipment”.

79 Section 45 (heading)

Repeal the heading, substitute:

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

80 Subsections 45(1), (2A), (3), (3A), (3AB), (3B) and (4)

Omit “a product” (wherever occurring), substitute “equipment”.

81 Subsection 45(4)

Omit “the product”, substitute “the equipment”.

82 Transitional—declarations

(1) A declaration:

(a) made by the Minister under subsection 44(3) of the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989*; and

(b) in force immediately before the commencement of this item; and

(c) that declared a product to be a product to which subsections 44(1) and (2A) of that Act apply;

has effect, from that commencement, as if it were a declaration made under subsection 44(3) of that Act, as amended by this Part, that declared the product to be equipment to which subsections 44(1) and (2A) apply.

(2) A declaration:

(a) made by the Minister under subsection 45(3) of the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989*; and

(b) in force immediately before the commencement of this item; and

(c) that declared a product to be a product to which subsections 45(1) and (2A) of that Act apply; has effect, from that commencement, as if it were a declaration made under subsection 45(3) of that Act, as amended by this Part, that declared the product to be equipment to which subsections 45(1) and (2A) apply.

83 Paragraph 45A(1)(c)

Omit “products that contain or use”, substitute “equipment that contains or uses”.

84 Subsection 45B(3)

Omit “a product”, substitute “equipment”.

85 Subsection 45B(3)

Omit “the product”, substitute “the equipment”.

86 Subsection 45B(4) (definition of *scheduled substance*)

Omit “a manufactured product”, substitute “manufactured equipment”.

87 Paragraph 57(1)(d)

Omit “products that contain scheduled substances, or that use scheduled substances in their”, substitute “equipment that contains scheduled substances, or that uses scheduled substances in its”.

88 Subparagraphs 57(1)(d)(i), (ii) and (iii)

Omit “products”, substitute “equipment”.

89 Paragraph 57(1)(e)

Omit “products that contain scheduled substances, or that use scheduled substances in their”, substitute “equipment that contains scheduled substances, or that uses scheduled substances in its”.

90 Subparagraphs 57(1)(e)(i) and (ii)

Omit “products”, substitute “equipment”.

91 Paragraph 57(1)(f)

Omit “products that contain”, substitute “equipment that contains”.

92 Subparagraphs 57(1)(f)(i), (ii) and (iii)

Omit “products”, substitute “equipment”.

93 Paragraphs 57(1)(g) and (2)(a) and (b)

Omit “products” (wherever occurring), substitute “equipment”.

94 Schedule 4 (heading)

Repeal the heading, substitute:

**Schedule 4—Control of manufacture etc. of
equipment containing or using
scheduled substances**

95 Subclause 4(1) of Schedule 4

Omit “a polystyrene product”, substitute “polystyrene equipment”.

96 Subparagraphs 4(1)(a)(i) and (ii) of Schedule 4

Omit “product”, substitute “equipment”.

97 Paragraph 4(1)(b) of Schedule 4

Omit “product”, substitute “equipment”.

98 Paragraphs 4(2)(a) and (b) of Schedule 4

Omit “products”, substitute “equipment”.

99 Clause 5 of Schedule 4 (heading)

Repeal the heading, substitute:

5 Aerosol equipment

100 Subclause 5(1) of Schedule 4

Omit “an aerosol product”, substitute “aerosol equipment”.

101 Paragraphs 5(2)(a), (b) and (c) of Schedule 4

Omit “products”, substitute “equipment”.

102 Clause 6 of Schedule 4 (heading)

Repeal the heading, substitute:

6 Equipment containing halon

103 Clause 6 of Schedule 4

Omit “a product”, substitute “equipment”.

104 Clause 7 of Schedule 4 (heading)

Repeal the heading, substitute:

7 Rigid polyurethane foam equipment

105 Clause 7 of Schedule 4

Omit “a rigid polyurethane foam product if the product”, substitute “rigid polyurethane foam equipment if the equipment”.

106 Paragraphs 7(a) and (b) of Schedule 4

Omit “product”, substitute “equipment”.

107 Clause 9 of Schedule 4

Omit “a product”, substitute “equipment”.

108 Paragraphs 9(a) and (b) of Schedule 4

Omit “product”, substitute “equipment”.

***Ozone Protection and Synthetic Greenhouse Gas
(Manufacture Levy) Act 1995***

109 Section 2A (definition of *medical equipment*)

Omit “a pharmaceutical product”, substitute “pharmaceutical equipment”.

110 Subparagraph 3A(7)(b)(iii)

Omit “a product, or in equipment,”, substitute “equipment”.

111 Subparagraph 3A(7)(b)(iv)

Omit “a product, or of equipment,”, substitute “equipment”.

Part 3—References to conventions

Ozone Protection and Synthetic Greenhouse Gas Management Act 1989

112 Section 7 (definition of *Framework Convention on Climate Change*)

Repeal the definition, substitute:

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

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

113 Section 7 (definition of *Kyoto Protocol*)

Omit “amended and”.

114 Section 7 (note at the end of the definition of *Kyoto Protocol*)

Repeal the note, substitute:

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

115 Section 7 (definition of *Montreal Protocol*)

Repeal the definition, substitute:

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

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

116 Section 7 (definition of *Vienna Convention*)

Repeal the definition, substitute:

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

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

117 Schedules 2 to 3E

Repeal the Schedules.

Part 4—Delegations

Ozone Protection and Synthetic Greenhouse Gas Management Act 1989

118 Subsection 67A(1)

Repeal the subsection, substitute:

- (1) The Minister may, by writing, delegate all or any of his or her powers and functions under this Act or the regulations to:
 - (a) an SES employee or acting SES employee in the Department;
or
 - (b) an APS employee who holds, or is acting in, an Executive Level 2, or equivalent, position in the Department.

119 Saving—delegations

A delegation:

- (a) made under subsection 67A(1) of the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989*; and
 - (b) in force immediately before the commencement of this item;
- has effect, from that commencement, as if it had been made under that subsection as amended by this Part.

Schedule 2—Amendments commencing 1 January 2018

Part 1—Licences

Division 1—Renewing licences

Ozone Protection and Synthetic Greenhouse Gas Management Act 1989

1 Before section 12B

Insert:

Division 1—Scope of Part

2 Before section 13

Insert:

Division 2—Requirement to have licence

3 Subsection 13A(1)

Repeal the subsection.

4 Before section 14

Insert:

Division 3—Grant of licence

5 Section 14 (after the heading)

Insert:

- (1) A person may apply to the Minister for all or any of the following licences:
 - (a) a controlled substances licence;
 - (b) an essential uses licence;
 - (c) a used substances licence;

(d) an equipment licence.

6 Section 14

Before “An application”, insert “(2)”.

7 Subsections 17(1) and (2)

Repeal the subsections, substitute:

- (1) If, at the end of 60 days after an application for a licence is made, the Minister has not:
 - (a) granted a licence; or
 - (b) refused the application; or
 - (c) made a request under section 15;the Minister is taken, for the purposes of section 66 and subject to subsection (4) of this section, to have refused the application on the last of the 60 days.
- (2) If:
 - (a) the Minister gives an applicant notice under section 15 requiring the applicant to give the Minister further information relating to the application; and
 - (b) at the end of 60 days after the information is given to the Minister, the Minister has not:
 - (i) granted a licence; or
 - (ii) refused the application; or
 - (iii) made a further request under section 15;the Minister is taken, for the purposes of section 66 and subject to subsection (4) of this section, to have refused the application on the last of those 60 days.

8 Before section 18

Insert:

Division 4—Conditions on, and duration of, licence

9 Section 19

Repeal the section, substitute:

19 Duration of licences

When a licence comes into force

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

When a licence stops being in force

- (2) A controlled substances licence, an essential uses licence or a used substances licence stays in force until the earlier of:

- (a) the end of:

- (i) if the licence is not renewed under section 19AC—the licence period in which the licence comes into force under subsection (1) of this section; or
- (ii) if the licence is renewed one or more times under section 19AC—the licence period starting immediately after the time the licence would have ended apart from the last renewal; and

- (b) if the licence is an essential uses licence, or a used substances licence, that specifies a period that ends before the time that applies under paragraph (a)—the end of that specified period; unless the licence is cancelled, or stops being in force for any other reason, before then.

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

- (3) An equipment licence stays in force until the earlier of:

- (a) the end of:

- (i) if the licence is not renewed under section 19AC—2 years starting on the day the licence comes into force under subsection (1) of this section; or
- (ii) if the licence is renewed one or more times under section 19AC—2 years starting immediately after the time the licence would have ended apart from the last renewal; and

- (b) if the licence specifies a period, or a method for ascertaining a period, that ends before the time that applies under paragraph (a)—the end of that period;

unless the licence is cancelled, or stops being in force for any other reason, before then.

10 After section 19

Insert:

Division 5—Renewing licences

19AA Application for renewal of licence

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

19AB Request for further information

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

19AC Decision on application

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

- (i) the refusal; and
- (ii) the reasons for the refusal.

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

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

Licences in force for a specified period

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

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

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

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

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

19AD Deemed refusal of renewal

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

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

(2) If:

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

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

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

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

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

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

19AE Deemed application for new licence

If:

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

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

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

(ii) refuses the application under section 19AC;

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

Division 6—Other changes to licences

11 Subsection 19A(2)

Repeal the subsection, substitute:

(2) The Minister must not terminate a licence unless satisfied that it is necessary to do so for the purpose of giving effect to an adjustment or amendment of:

(a) the Montreal Protocol; or

- (b) the Framework Convention on Climate Change; or
- (c) the Kyoto Protocol.

12 Before section 22

Insert:

Division 7—Other provisions

13 After paragraph 66(b)

Insert:

- (baa) a decision refusing to renew a licence under section 19AC (including a decision that is taken to have been made under section 19AD);

Division 2—Equipment licences

Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Act 1995

14 Paragraph 4A(1)(a)

Omit “ODS/SGG”.

15 Paragraph 4B(1)(a)

Omit “ODS/SGG”.

Ozone Protection and Synthetic Greenhouse Gas Management Act 1989

16 Section 7

Insert:

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

17 Section 7 (definition of *licence*)

Omit “ODS/SGG”.

18 Section 7 (definition of ODS/SGG equipment licence)

Repeal the definition.

19 Section 7

Insert:

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

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

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

20 At the end of paragraph 13(1)(b)

Add “(other than by carrying out a Schedule 4 activity or a section 69G activity)”.

21 At the end of subsection 13(1)

Add:

; or (c) carry out a Schedule 4 activity.

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

22 Subsection 13(5)

After “Paragraph (1)(b)”, insert “or (c)”.

23 Before subsection 13A(2)

Insert:

Controlled substances licence

24 Before subsection 13A(3)

Insert:

Essential uses licence

25 Before subsection 13A(4)

Insert:

Used substances licence

26 Subsection 13A(5)

Repeal the subsection, substitute:

Equipment licence

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

27 Before subsection 16(1)

Insert:

Minister may grant licence

28 Subsection 16(1)

Omit “and (4)”, substitute “to (6B)”.

29 Before subsection 16(3)

Insert:

Content and form of licence

30 Subsection 16(3)

Omit “ODS/SGG”.

31 After subsection 16(3AA)

Insert:

(3AB) An equipment licence must:

- (a) state that it allows the licensee to import ODS equipment or SGG equipment (other than by carrying out Schedule 4 activities or section 69G activities); and
- (b) specify the Schedule 4 activities and section 69G activities (if any) the licence allows.

(3AC) Two or more licences granted to the same person may be set out in the same document.

Criteria for granting licence

32 Subsection 16(3B)

Repeal the subsection.

33 After subsection 16(6)

Insert:

(6A) The Minister must not grant an equipment licence that allows a Schedule 4 activity or section 69G activity in relation to equipment unless:

- (a) either or both of the following subparagraphs apply:
 - (i) subsection (6B) applies in relation to the equipment;
 - (ii) the Schedule 4 activity or section 69G activity is prescribed by the regulations for the purposes of this subparagraph; and
- (b) the requirements (if any) prescribed by the regulations for the purposes of this paragraph in relation to the activity and the licence are satisfied.

(6B) For the purposes of subparagraph (6A)(a)(i), this subsection applies if the Minister is satisfied that:

- (a) both:
 - (i) the equipment is essential for medical, veterinary, defence, industrial safety, or public safety, purposes; and

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

Refusal of application

34 Part V

Repeal the Part.

35 Subparagraphs 57(1)(d)(i), (ii) and (iii)

Omit “38”, substitute “13”.

36 Subparagraphs 57(1)(e)(i) and (ii)

Omit “39”, substitute “69G”.

37 Subparagraph 65AA(1)(a)(iii)

Repeal the subparagraph.

38 Paragraph 65C(1)(c)

Repeal the paragraph.

39 Paragraph 66(eb)

Omit “36H;”, substitute “36H.”.

40 Paragraphs 66(g), (h) and (i)

Repeal the paragraphs.

41 Subsection 69B(1)

Omit “V or”.

42 Paragraphs 69B(2)(d) and (e)

Repeal the paragraphs, substitute:

- (d) conduct engaged in by:
 - (i) a corporation to which paragraph 51(xx) of the Constitution applies; or
 - (ii) a body corporate that carries on as its sole or principal business the business of banking (other than State banking not extending beyond the limits of the State concerned) or insurance (other than State insurance not extending beyond the limits of the State concerned); or
 - (iii) a body corporate incorporated in a Territory; or
- (e) the following activities:
 - (i) trade or commerce between Australia and places outside Australia;
 - (ii) trade or commerce among the States;
 - (iii) trade or commerce within a Territory, between a State and a Territory or between 2 Territories;
 - (iv) the supply of goods or services to the Commonwealth;
 - (v) the use of postal, telegraphic or telephonic services;
 - (vi) the making of a radio or television broadcast.

43 At the end of section 69B

Add:

- (3) A term used in subsection (2) and the Constitution has the same meaning in that subsection as it has in the Constitution.

44 After section 69F

Insert:

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

- (1) The regulations may include provisions prohibiting or regulating the manufacture, import, export, distribution or use of equipment that:
 - (a) contains scheduled substances; or
 - (b) uses scheduled substances in its operation.

- (2) The provisions that may be made by the regulations include, but are not limited to, provisions:
- (a) prohibiting the manufacture, import, export, distribution or use of particular kinds of equipment; or
 - (b) prohibiting the manufacture, import, export, distribution or use of particular kinds of equipment except in accordance with prescribed requirements; or
 - (c) prohibiting the manufacture or import of equipment by a person who has not complied with a code of practice relating to the recovery, recycling or disposal of scheduled substances used in equipment manufactured or imported by that person; or
 - (d) prohibiting the distribution of equipment that is not labelled or marked in accordance with the regulations.
- (3) To avoid doubt, the provisions that may be made by the regulations include, but are not limited to, provisions prohibiting or regulating the import of ODS equipment or SGG equipment.
- Note: Importing ODS equipment or SGG equipment is prohibited under paragraph 13(1)(b), except to the extent it is a Schedule 4 activity (and therefore prohibited under paragraph 13(1)(c)) or is prohibited by the regulations made for the purposes of this section.
- (4) A person does not contravene a regulation made for the purposes of this section by carrying out a section 69G activity if the person holds an equipment licence that allows the activity.
- (5) Subsection 13(5) (exception for certain private or domestic use) applies in relation to a regulation made for the purposes of this section in the same way as that subsection applies in relation to paragraph 13(1)(b) or (c).

45 Schedule 4 (note to Schedule heading)

Repeal the note, substitute:

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

46 Subclause 5(1) of Schedule 4

Omit “unless the manufacture or importation is in accordance with an exemption granted to the person under section 40”.

47 Clause 8 of Schedule 4

After “must not manufacture”, insert “or import”.

Division 3—Application, saving and transitional provisions

48 Application of amendments

- (1) The amendments of section 17 of the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* made by this Part apply in relation to notice given under section 15 of that Act on or after the commencement of this item in relation to an application for a licence, whether the application was made before, on or after that commencement.
- (2) Division 5 of Part III of the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989*, as inserted by this Part, applies in relation to an application made under that Act on or after the commencement of this item for the renewal of a licence, whether the licence was granted before, on or after that commencement.

49 Transitional—applications, licences and exemptions

Applications

- (1) If:
 - (a) before the commencement of this item, a person applied for a licence under subsection 13A(1) of the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989*; and
 - (b) immediately before that commencement, the Minister had neither granted the licence nor refused the application;the application has effect, from that commencement, as if it were an application made under subsection 14(1) of that Act, as amended by this Part.
- (2) If:
 - (a) before the commencement of this item, a person applied for an exemption under subsection 40(1) of the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989*; and

(b) immediately before that commencement, the Minister had neither granted the exemption nor refused the application; the application has effect, from that commencement, as if it were an application made under subsection 14(1) of that Act, as amended by this Part, for an equipment licence.

ODS/SGG equipment licences

- (3) An ODS/SGG equipment licence that:
- (a) was granted under the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* before the commencement of this item; and
 - (b) immediately before that commencement:
 - (i) was in force; or
 - (ii) had not yet come into force and had not been terminated or cancelled;
- has effect, from that commencement, as if the ODS/SGG equipment licence were an equipment licence granted under that Act, as amended by this Part.

Exemptions

- (4) An exemption that:
- (a) was granted under section 40 of the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989*; and
 - (b) immediately before the commencement of this item:
 - (i) was in force; or
 - (ii) had not yet come into force and had not been cancelled;
- has effect, from that commencement or from when the instrument comes into force after that commencement, as if:
- (c) the exemption were an equipment licence granted under that Act, as amended by this Part; and
 - (d) the licence specified, as Schedule 4 activities or section 69G activities it allowed, the activities that would contravene the obligation to which the exemption related; and
 - (e) the licence specified, under paragraph 19(3)(b) of that Act, the period that was specified in relation to the exemption under subsection 40(6) immediately before that commencement; and

- (f) any condition to which the exemption was subject under subsection 40(6A) of that Act immediately before that commencement were a condition imposed on the licence under subsection 18(4).

Part 2—Levy periods, threshold and penalty interest

Evidence Act 1995

50 Part 1 of the Dictionary (subparagraph (b)(vi) of the definition of *Commonwealth document*)

Omit “or 46A”.

Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Act 1995

51 Paragraph 3A(1)(b)

Omit “quarter”, substitute “reporting period”.

52 Subsections 3A(6) and (7)

Omit “quarter” (wherever occurring), substitute “reporting period”.

53 Paragraph 4(1)(b)

Omit “quarter”, substitute “reporting period”.

54 Subsection 4(4)

Omit “quarter” (wherever occurring), substitute “reporting period”.

55 Paragraph 4A(1)(b)

Omit “quarter”, substitute “reporting period”.

56 Subsections 4A(4) and (5)

Omit “quarter” (wherever occurring), substitute “reporting period”.

57 Paragraph 4B(1)(b)

Omit “quarter”, substitute “reporting period”.

58 Subsection 4B(3)

Omit “quarter” (wherever occurring), substitute “reporting period”.

***Ozone Protection and Synthetic Greenhouse Gas
Management Act 1989***

59 Section 7 (definition of quarter)

Repeal the definition.

60 Section 7

Insert:

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

61 Section 46 (heading)

Repeal the heading, substitute:

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

62 Subsections 46(1) to (2)

Repeal the subsections, substitute:

Requirement to report

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

Reportable activities		
Item	Column 1 Activity	Column 2 Exceptions
1	manufacturing, importing, exporting or destroying a scheduled substance	(a) the scheduled substance is an SGG; or (b) the scheduled substance is contained in ODS equipment or SGG equipment; or (c) the activity is a Schedule 4

Reportable activities		
Item	Column 1 Activity	Column 2 Exceptions
		activity or section 69G activity
2	manufacturing, importing, exporting or destroying an SGG	(a) the SGG is contained in ODS equipment or SGG equipment; or (b) the activity is a Schedule 4 activity or section 69G activity; or (c) the activity occurs in circumstances prescribed by the regulations for the purposes of subsection 13(3)
3	importing ODS equipment or SGG equipment	(a) the importing is a Schedule 4 activity or section 69G activity; or (b) the importing is covered by subsection 13(5) or (6)
4	a Schedule 4 activity or a section 69G activity	the activity is covered by subsection 13(5)

When report must be given

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

Quarterly reporting

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

Penalties

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

Penalty: 60 penalty units.

63 Subsection 46(2C)

Omit “or (1AA)”.

64 Subsection 46(3)

Repeal the subsection.

65 Section 46A

Repeal the section.

66 At the end of subparagraph 65AA(1)(a)(vii)

Add “or”.

67 Subparagraph 65AA(1)(a)(viii)

Repeal the subparagraph.

68 Paragraph 65C(1)(d)

Repeal the paragraph.

69 Paragraph 69(1)(a)

Omit “quarter”, substitute “reporting period”.

70 Subsections 69(2) and (3)

Repeal the subsections, substitute:

(2) A licence levy is:

- (a) a debt due to the Commonwealth by the licensee concerned;
and
- (b) may be recovered by the Minister, on behalf of the Commonwealth, by action in a designated court.

(3) A licence levy in relation to a reporting period is not payable by a licensee if the total of the licence levies that would be payable by the licensee in relation to the reporting period, apart from this subsection, is less than or equal to the amount (if any) prescribed by the regulations for the purposes of this subsection.

***Ozone Protection and Synthetic Greenhouse Gas
(Manufacture Levy) Act 1995***

71 Paragraph 3A(1)(b)

Omit “quarter”, substitute “reporting period”.

72 Subsections 3A(4) and (5)

Omit “quarter” (wherever occurring), substitute “reporting period”.

73 Paragraph 4(1)(b)

Omit “quarter”, substitute “reporting period”.

74 Subsection 4(3)

Omit “quarter” (wherever occurring), substitute “reporting period”.

75 Application of amendments

- (1) Subject to subitems (3) to (6), the amendments made by this Part apply in relation to:
 - (a) the first reporting period (the *first reporting period*) starting on or after the commencement of this item; and
 - (b) later reporting periods.
- (2) To avoid doubt, the amendments do not, subject to subitems (3) to (6), apply in relation to quarters ending before the start of the first reporting period.

Recovery and threshold

- (3) Subsection 69(2) of the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989*, as amended by this Part, applies in relation to a licence levy that:
 - (a) becomes due and payable on or after the commencement of this item; or
 - (b) became due and payable before that commencement, to the extent the levy is not paid before that commencement;whether the quarter or reporting period to which the levy relates ended before, on or after that commencement.
- (4) Subsection 69(3) of the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989*, as amended by this Part, applies in relation to a licence levy that becomes due and payable on or after the commencement of this item, whether the quarter or reporting period to which the levy relates ended before, on or after that commencement.

- (5) For the purposes of that subsection, a licence levy that relates to a quarter ending before the first reporting period is taken to relate to the reporting period in which the quarter occurs.

Penalty interest

- (6) Penalty interest is not incurred on or after the commencement of this item under subsection 69(2) of the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989*, as in force immediately before that commencement, in relation to a licence levy, whether the quarter or reporting period to which the levy relates ended before, on or after that commencement.

76 Transitional provision

If, immediately before the commencement of this item, the total of the debts due and payable by a person to the Commonwealth under section 69 of the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* is equal to or less than \$330, those debts cease to be payable at that commencement.

Part 3—Licence quantity limits

Ozone Protection and Synthetic Greenhouse Gas Management Act 1989

77 Subsection 16(3)

Repeal the subsection, substitute:

- (3) A licence (other than an HCFC licence, an SGG licence or an equipment licence):
 - (a) must specify:
 - (i) the substance or substances to which it relates; and
 - (ii) the activities it allows; and
 - (b) may specify the maximum quantities of any or all of those substances allowed for any or all of those activities.

Part 4—Synthetic greenhouse gases

Ozone Protection and Synthetic Greenhouse Gas Management Act 1989

78 Section 7

Insert:

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

79 Section 7 (definition of SGG)

Repeal the definition, substitute:

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

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

80 Paragraph 8D(1)(b)

Before “sulfur hexafluoride”, insert “nitrogen trifluoride or”.

81 Subsection 9(1)

Omit “or XI”, substitute “, XI or XII”.

82 Schedule 1 (note to the Schedule heading)

Repeal the note, substitute:

Note: See section 7.

83 Part X of Schedule 1

Repeal the Part, substitute:

Part X—PFCs

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

84 At the end of Schedule 1

Add:

Part XII—Nitrogen trifluoride

Nitrogen trifluoride	
Item	Substance
1	Nitrogen trifluoride (NF ₃)

85 Application of amendments

- (1) The amendments made by this Part apply in relation to an import, export or manufacture of goods or a substance that occurs on or after the commencement of this item.
- (2) To avoid doubt, a controlled substances licence that:
 - (a) was granted under the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* before the commencement of this item; and
 - (b) related to SGGs immediately before that commencement; and
 - (c) is in force on or after that commencement;relates, from that commencement, to SGGs within the meaning of that Act, as amended by this Schedule.

Part 5—Export of HCFCs

Ozone Protection and Synthetic Greenhouse Gas Management Act 1989

86 Subsection 25A(2)

Repeal the subsection, substitute:

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

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

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

87 Application of amendments

The amendment made by this Part applies in relation to periods starting on or after the commencement of this item.

Schedule 3—Amendments commencing 1 January 2020

Part 1—Bulk HCFC use

Ozone Protection and Synthetic Greenhouse Gas Management Act 1989

1 At the end of paragraph 45A(1)(b)

Add “(other than a use of HCFCs that is prohibited under section 45C)”.

2 At the end of Part VIA

Add:

45C Use of HCFC

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

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

Penalties

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

Penalty: 300 penalty units.

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

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

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

Part 2—HCFC equipment

Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Act 1995

3 Subsection 4B(2)

Omit “or (5)”.

Ozone Protection and Synthetic Greenhouse Gas Management Act 1989

4 Paragraph 13(1)(b)

Omit “ODS equipment or”.

5 Subsection 13(6)

Omit “ODS equipment or”.

6 Paragraph 13(6)(a)

Repeal the paragraph.

7 Paragraph 13(6)(b)

Omit “in the case of SGG equipment—”.

8 Paragraph 13(6)(c)

Omit “in any case—”.

9 Paragraph 13A(5)(a)

Omit “ODS equipment or”.

10 Subsection 13A(6)

Omit “ODS equipment or”.

11 Paragraph 16(3AB)(a)

Omit “ODS equipment or”.

12 Subsection 46(1) (table items 1, 2 and 3)

Omit “ODS equipment or”.

13 Subsection 69G(3)

Omit “ODS equipment or”.

14 Subsection 69G(3) (note)

Omit “ODS equipment or”.

15 Paragraph 10(1)(a) of Schedule 4

Omit “or an HCFC refrigerant”.

16 Paragraph 10(1)(b) of Schedule 4

Repeal the paragraph, substitute:

- (b) the equipment is designed to operate solely using a CFC refrigerant; or

17 Paragraph 10(1)(c) of Schedule 4

Omit “or an HCFC”.

18 At the end of Schedule 4

Add:

11 HCFC equipment

A person must not manufacture or import equipment that:

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

19 Application of amendments

- (1) The amendments made by this Part apply in relation to manufacturing or importing that occurs on or after the commencement of this item.
- (2) To avoid doubt, an equipment licence that:
 - (a) was granted under the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* before the commencement of this item; and

Schedule 3 Amendments commencing 1 January 2020

Part 2 HCFC equipment

(b) immediately before that commencement:

(i) was in force; or

(ii) had not yet come into force and had not been terminated or cancelled;

does not, after that commencement, allow the licensee to import ODS equipment unless that activity is specified in the licence as mentioned in paragraph 13A(5)(b) of that Act.

*[Minister's second reading speech made in—
House of Representatives on 30 March 2017
Senate on 14 June 2017]*

(64/17)
