



# **Ozone Protection and Synthetic Greenhouse Gas Management Reform (Closing the Hole in the Ozone Layer) Act 2022**

**No. 92, 2022**

**An Act to amend the *Ozone Protection and Synthetic  
Greenhouse Gas Management Act 1989*, and for  
related purposes**

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



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**An Act to amend the *Ozone Protection and Synthetic  
Greenhouse Gas Management Act 1989*, and for  
related purposes**

*[Assented to 13 December 2022]*

The Parliament of Australia enacts:

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*No. 92, 2022      Ozone Protection and Synthetic Greenhouse Gas Management Reform      1*  
*(Closing the Hole in the Ozone Layer) Act 2022*

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## 1 Short title

This Act is the *Ozone Protection and Synthetic Greenhouse Gas Management Reform (Closing the Hole in the Ozone Layer) Act 2022*.

## 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.	13 December 2022
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.	13 June 2023

Note: This table relates only to the provisions of this Act as originally enacted.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Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule

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concerned, and any other item in a Schedule to this Act has effect according to its terms.

## Schedule 1—Amendments

## Part 1—Amendments

*Ozone Protection and Synthetic Greenhouse Gas  
Management Act 1989*

## 1 Paragraph 3(d)

Omit “and the Kyoto Protocol”, substitute “, the Kyoto Protocol and the Paris Agreement”.

## 2 After section 3

Insert:

### 3A Simplified outline of this Act

This Act provides for controls on activities involving certain ozone depleting substances and synthetic greenhouse gases (SGGs), collectively referred to as scheduled substances.

A person must not carry out any of the following activities unless the person holds a licence that allows the activity (subject to certain exceptions):

- (a) manufacturing, importing or exporting a scheduled substance;
- (b) manufacturing, importing or exporting equipment that contains a scheduled substance, or uses a scheduled substance in its operation.

In certain cases, the manufacture, import or export of equipment that contains a scheduled substance, or uses a scheduled substance in its operation, is prohibited only if the equipment or substance (or both) is prescribed by regulations made under this Act.

There are 5 kinds of licence, as follows:

- (a) controlled substances licences, that allow the manufacture, import or export of HCFCs, methyl bromide or SGGs;



- (b) essential uses licences, that allow the manufacture, import or export of scheduled substances (other than methyl bromide and SGGs other than HFCs) for essential uses;
- (c) used substances licences, that allow the import or export of used substances;
- (d) feedstock licences, that allow the manufacture or import of scheduled substances exclusively for use as a feedstock;
- (e) equipment licences, that allow the manufacture, import or export of equipment that contains a scheduled substance, or that uses a scheduled substance in its operation.

There are certain mandatory licence conditions, including conditions relating to quotas for manufacturing or importing HCFCs or HFCs under controlled substances licences. The Minister may also impose licence conditions.

Regulations made under this Act may make provision for the following:

- (a) prohibiting or regulating the distribution, purchase, acquisition or disposal of scheduled substances;
- (b) prohibiting or regulating the storage, use or handling of scheduled substances (other than certain uses of HCFCs);
- (c) prohibiting or regulating the recovery, recycling or destruction of scheduled substances;
- (d) labelling requirements for scheduled substances and for equipment that contains or uses scheduled substances.

A person must not, except in limited circumstances:

- (a) discharge a scheduled substance if it is likely to enter the atmosphere; or
- (b) use an HCFC that was manufactured or imported on or after 1 January 2020.

A person may have reporting obligations if the person:

- (a) manufactures, imports or exports a scheduled substance;  
or
- (b) manufactures, imports or exports equipment under an equipment licence.

Record-keeping obligations relating to the manufacture, import or export of scheduled substances by licensees are provided for by the regulations.

This Act and the regulations are enforced by triggering certain provisions of the Regulatory Powers Act. Provision is also made for:

- (a) the use and disclosure of information obtained under this Act or the Regulatory Powers Act as it applies in relation to this Act; and
- (b) applicants and licensees to seek review of certain decisions made under this Act.

### 3 Section 6A

Omit “(other than Part 2.5)”.

#### 4 At the end of Part I

Add:

## 6B Contravening an offence provision or a civil penalty provision

- (1) This section applies if a provision of this Act provides that a person contravening another provision of this Act (the ***conduct provision***) commits an offence or is liable to a civil penalty.
- (2) For the purposes of this Act, and the Regulatory Powers Act to the extent that it relates to this Act, a reference to a contravention of an offence provision or a civil penalty provision includes a reference to a contravention of the conduct provision.
- (3) For the purposes of applying Chapter 2 of the *Criminal Code* to the offence, the physical elements of the offence are set out in the conduct provision.

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

## **5 Before section 7**

Insert:

### **7AA Simplified outline of this Part**

This Part is about terms used in this Act.

Section 7 is like a dictionary and contains a list of most terms that are defined in the Act. A term will either be defined in section 7 or in another provision of this Act. If another provision defines the term, section 7 will usually have a signpost to that definition.

The remaining provisions of this Part either define particular terms that are used elsewhere in the Act or affect the meaning of references to particular expressions.

## **6 Section 7 (definition of *100-year global warming potential*)**

Omit “a table in Schedule 1”, substitute “the clause in Schedule 1 that covers that substance”.

## **7 Section 7**

Repeal the following definitions:

- (a) definition of *bromochloromethane*;
- (b) definition of *carbon tetrachloride*.

## **8 Section 7 (definition of *CFC*)**

Omit “means a substance referred to in Part I”, substitute “(short for chlorofluorocarbon) means a substance covered by clause 1”.

## **9 Section 7 (definition of *civil penalty order*)**

Repeal the definition, substitute:

*civil penalty order* has the same meaning as in the Regulatory Powers Act.

**10 Section 7 (definition of *civil penalty provision*)**

Repeat the definition, substitute:

***civil penalty provision*** has the same meaning as in the Regulatory Powers Act.

## 11 Section 7

Insert:

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

***contravene*** an offence or civil penalty provision has a meaning affected by section 6B.

Note: The meaning of *contravention* is correspondingly affected (see section 18A of the *Acts Interpretation Act 1901*).

**critical uses**, of methyl bromide, has the meaning given by subsection 18(10).

**12 Section 7 (paragraph (a) of the definition of *designated court*)**

After “Court”, insert “of Australia”.

## 13 Section 7

Insert:

**emergency use**, of methyl bromide, has the meaning given by subsection 18(10).

## 14 Section 7

Repeal the following definitions:

- (a) definition of *enforcement powers*;
- (b) definition of *enforcement warrant*.

## 15 Section 7

Insert:

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

***entrusted person*** means:

- (a) the Minister; or
- (b) the Secretary; or
- (c) an APS employee in the Department; or
- (d) any other person employed in, or engaged by, the Department.

**16 Section 7 (definition of *equipment licence*)**

Omit “13A(5)”, substitute “13A(6)”.

**17 Section 7 (definition of *essential use*)**

Repeal the definition, substitute:

***essential use*** has the meaning given by subsection 13A(3B).

**18 Section 7**

Repeal the following definitions:

- (a) definition of ***evidential burden***;
- (b) definition of ***evidential material***;
- (c) definition of ***Federal Court***.

**19 Section 7**

Insert:

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

**20 Section 7 (definition of *halon*)**

Omit “referred to in Part II”, substitute “covered by clause 2”.

**21 Section 7 (definition of *HBFC*)**

Omit “means a hydrobromofluorocarbon referred to in Part VI”, substitute “(short for hydrobromofluorocarbon) means a substance covered by clause 6”.

**22 Section 7 (definition of *HCFC*)**

Omit “means a hydrochlorofluorocarbon referred to in Part V”, substitute “(short for hydrochlorofluorocarbon) means a substance covered by clause 5”.

## 23 Section 7 (definition of *HFC*)

Omit “means a hydrofluorocarbon referred to in Part IX”, substitute “(short for hydrofluorocarbon) means a substance covered by clause 9”.

## 24 Section 7

Insert:

*inspector* means:

- (a) a member or special member of the Australian Federal Police; or
- (b) an officer of Customs; or
- (c) a person appointed by the Secretary as an inspector under section 49.

***laboratory and analytical uses***, of methyl bromide, has the meaning given by subsection 18(10).

## 25 Section 7 (definition of *licence*)

Omit “or an equipment licence”, substitute “, an equipment licence or a feedstock licence”.

## 26 Section 7 (definition of *methyl bromide*)

Omit “referred to in Part VII”, substitute “covered by clause 7”.

## 27 Section 7

Repeal the following definitions:

- (a) definition of *methyl chloroform*;
- (b) definition of *monitoring powers*.

## 28 Section 7 (definition of *nitrogen trifluoride*)

Omit “referred to in Part XII”, substitute “covered by clause 12”.

## 29 Section 7 (definition of *ODS equipment*)

Repeat the definition, substitute:

***ODS equipment*** means equipment that:

- (a) contains a scheduled substance other than an SGG; or

(b) uses a scheduled substance other than an SGG in its operation.

Note: Equipment may be covered by this definition even if the equipment also contains a scheduled substance that is an SGG.

**30 Section 7 (definition of offence against this Act or the regulations)**

Omit “section 137.1 or 137.2 of the *Criminal Code*”, substitute “the *Crimes Act 1914* or the *Criminal Code*”.

**31 Section 7**

Insert:

*official* has the same meaning as in the *Public Governance, Performance and Accountability Act 2013*.

**32 Section 7 (definition of ozone depleting potential)**

Omit “a table in Schedule 1”, substitute “the clause in Schedule 1 that covers that substance”.

**33 Section 7**

Insert:

*Paris Agreement* means the Paris Agreement, done at Paris on 12 December 2015, as amended and in force for Australia from time to time.

Note: The Agreement, as originally in force for Australia, is in Australian Treaty Series 2016 No. 24 ([2016] ATS 24) and could in 2022 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

**34 Section 7 (definition of PFC)**

Omit “means a perfluorocarbon referred to in Part X”, substitute “(short for perfluorocarbon) means a substance covered by clause 10”.

**35 Section 7 (definition of premises)**

Repeal the definition.

## 36 Section 7

Insert:

***protected information*** means information of any of the following kinds obtained by an entrusted person:

- (a) information the disclosure of which by the entrusted person could reasonably be expected to found an action by a person (other than the Commonwealth) for breach of a duty of confidence;
- (b) information the disclosure of which could reasonably be expected to prejudice the effective working of government;
- (c) information the disclosure of which could reasonably be expected to prejudice the prevention, detection, investigation, prosecution or punishment of one or more offences;
- (d) information the disclosure of which could reasonably be expected to endanger a person's life or physical safety;
- (e) information the disclosure of which could reasonably be expected to prejudice the protection of public safety or the environment.

***QPS use***, of methyl bromide, has the meaning given by subsection 18(11).

**reconsideration decision** has the meaning given by subsection 65ZB(2).

## 37 Section 7

Repeal the following definitions:

- (a) definition of *recycled or used HCFCs*;
- (b) definition of *recycled or used methyl bromide*;
- (c) definition of *recycled or used SGGs*;
- (d) definition of *recycled or used stage-1 or stage-2 scheduled substances*.

## 38 Section 7

Insert:

**refrigeration and air conditioning equipment** has the meaning given by subsection 12B(2).



***Regulatory Powers Act*** means the *Regulatory Powers (Standard Provisions) Act 2014*.

***relevant information*** means information obtained by an entrusted person under, or in accordance with, this Act or the Regulatory Powers Act as it applies in relation to this Act.

***reviewable decision*** has the meaning given by section 65X.

**39 Section 7 (definition of *Schedule 4 activity*)**

Repeal the definition.

**40 Section 7 (definition of *scheduled substance*)**

Omit “referred to”, substitute “covered by a clause”.

**41 Section 7 (definition of *section 69G activity*)**

Repeal the definition.

**42 Section 7 (definition of *SGG equipment*)**

Repeal the definition, substitute:

***SGG equipment*** means equipment that:

- (a) contains an SGG and does not contain any scheduled substance that is not an SGG; or
- (b) uses an SGG in its operation and does not use any scheduled substance that is not an SGG in its operation.

Note: Equipment that contains a scheduled substance other than an SGG, or that uses a scheduled substance other than an SGG in its operation, is ODS equipment.

**43 Section 7**

Repeal the following definitions:

- (a) definition of *stage-1 CFC*;
- (b) definition of *stage-2 CFC*;
- (c) definition of *stage-1 scheduled substance*;
- (d) definition of *stage-2 scheduled substance*.

**44 Section 7**

Insert:

***State or Territory government body*** means:

- (a) a Department of State of a State or Territory; or
- (b) an agency of a State or Territory; or
- (c) an authority of a State or Territory.

#### 45 Section 7 (definition of *sulfur hexafluoride*)

Omit “referred to in Part XI”, substitute “covered by clause 11”.

## 46 Section 7

Insert:

**suspended:** a licence is **suspended** if it is suspended under subsection 19D(1).

*used substance* has the meaning given by section 9AA.

## 47 Sections 8C, 8D and 9

Repeal the sections, substitute:

## 9 References to scheduled substances and equipment

### Scheduled substances

- (1) A reference in this Act to a scheduled substance (or type of scheduled substance) is a reference to a bulk scheduled substance (or a bulk scheduled substance of that type), except if the reference is in relation to equipment that:
  - (a) contains a scheduled substance (or type of scheduled substance); or
  - (b) uses a scheduled substance (or type of scheduled substance) in its operation.
- (2) A scheduled substance is a ***bulk scheduled substance*** unless the substance is:
  - (a) contained in equipment; or
  - (b) used in the operation of equipment.

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

Note 1: Subsection (3) affects whether a scheduled substance is contained in, or used in the operation of, equipment for the purposes of this subsection.

Note 2: Subsection (4) and regulations made for the purposes of paragraph (5)(a) may also affect whether a substance is a bulk scheduled substance.

*Equipment used only for storing or transporting a scheduled substance*

(3) A reference in this Act to:

- (a) equipment **containing** a scheduled substance (or type of scheduled substance); or
- (b) equipment **using** a scheduled substance (or type of scheduled substance) in its operation;

does not cover equipment that contains a scheduled substance, or is being used, for the sole purpose of storing or transporting the substance.

Note: Subsection (4) and regulations made for the purposes of paragraph (5)(b) or (c) may also affect whether a substance is contained in, or used in the operation of, equipment.

*Substances used in the process of manufacturing equipment*

(4) 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 remains in minute quantities in open cell foam after being used in the production of the foam.

*Regulations*

(5) The regulations may provide that, in prescribed circumstances, a scheduled substance:

- (a) is taken to be, or not to be, a **bulk scheduled substance**; or
- (b) is taken to be, or not to be, **contained** in equipment; or
- (c) is taken to be, or not to be, **used** in the operation of equipment; or

- (d) is taken to be, or not to be, contained in equipment for the sole purpose of storing or transporting the substance;
  - (e) is taken to be, or not to be, contained in equipment only because the substance was used in the process of manufacturing the equipment.
- (6) Regulations made for the purposes of subsection (5) have effect despite subsections (2) to (4).

## 9AA Used substances

- (1) Subject to subsection (2), a scheduled substance is a ***used substance*** for the purposes of this Act if it is:
  - (a) collected from a container or other equipment during servicing, or in connection with the disposal, of the container or other equipment; or
  - (b) collected after an emissive use of the substance.
- (2) The regulations may provide that, in prescribed circumstances, a scheduled substance:
  - (a) is taken to be a ***used substance***; or
  - (b) is taken not to be a ***used substance***.

## 48 Subsection 9A(1)

Omit “HCFC or” (wherever occurring).

## 49 Subsection 9A(2)

Omit “HCFCs or” (wherever occurring).

## 50 Section 12A

Repeal the section.

## 51 Division 1 of Part III

Repeal the Division, substitute:

## **Division 1—Preliminary**

### **12A Simplified outline of this Part**

A person must not carry out any of the following activities unless the person holds a licence that allows the activity (subject to certain exceptions):

- (a) manufacturing, importing or exporting a scheduled substance;
- (b) manufacturing, importing or exporting equipment that contains a scheduled substance, or uses a scheduled substance in its operation.

In certain cases, the manufacture, import or export of equipment that contains a scheduled substance, or uses a scheduled substance in its operation, is prohibited only if the equipment or substance (or both) is prescribed by regulations made under this Act.

There are 5 kinds of licence, as follows:

- (a) controlled substances licences, that allow the manufacture, import or export of HCFCs, methyl bromide or SGGs;
- (b) essential uses licences, that allow the manufacture, import or export of scheduled substances (other than methyl bromide and SGGs other than HFCs) for essential uses;
- (c) used substances licences, that allow the import or export of used substances;
- (d) feedstock licences, that allow the manufacture or import of scheduled substances exclusively for use as a feedstock;
- (e) equipment licences, that allow the manufacture, import or export of equipment that contains a scheduled substance, or that uses a scheduled substance in its operation.

There are certain mandatory licence conditions, including conditions relating to quotas for manufacturing or importing

HCFCs or HFCs under controlled substances licences (see Parts IV and IVA). The Minister may also impose licence conditions.

The Minister may renew a licence, subject to certain conditions.

The Minister may also:

- (a) terminate a licence if necessary for the purposes of giving effect to relevant international agreements; or
- (b) transfer a licence, on application; or
- (c) amend a licence at the request of the licensee; or
- (d) suspend or cancel a licence if the licensee contravenes a licence condition, is no longer a fit and proper person to hold a licence or, for a suspension, is uncontactable.

The regulations may provide for certain details relating to licences to be published.

## 12B Import or export of CFCs, halons, HCFCs, HFCs and PFCs for use on board ships or aircraft

- (1) This Part and Parts IV and IVA do not apply to the import or export of a CFC, halon, HCFC, HFC or PFC if all of the following conditions are satisfied:
  - (a) the CFC, halon, HCFC, HFC or PFC is on board a ship or aircraft;
  - (b) the ship or aircraft has either or both of the following:
    - (i) refrigeration and air conditioning equipment;
    - (ii) fire protection equipment;
  - (c) the CFC, halon, HCFC, HFC or PFC is exclusively for use in meeting the reasonable servicing requirements of that equipment during, or in connection with, one or more periods when the ship or aircraft is or will be engaged in a journey between:
    - (i) a place in Australia and a place outside Australia; or
    - (ii) 2 places outside Australia.
- (2) ***Refrigeration and air conditioning equipment*** means equipment, used for the cooling or heating of anything, that uses one or more of the following:
  - (a) a CFC;

- (b) a halon;
- (c) an HCFC;
- (d) an HFC;
- (e) a PFC.

## **52 Section 13**

Repeal the section, substitute:

### **13 Prohibition—unlicensed manufacture of scheduled substance or equipment**

#### *Unlicensed manufacture of a scheduled substance*

- (1) A person contravenes this subsection if:
- (a) the person manufactures a substance; and
  - (b) the substance is a scheduled substance; and
  - (c) the person does not hold a licence that allows the manufacture.

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

Note 2: While suspended, a licence does not allow the licensee to carry out any activity that the licence would otherwise allow: see subsection 19D(4).

- (2) Subsection (1) does not apply to a person manufacturing an SGG in circumstances, or for a purpose, prescribed by the regulations for the purposes of this subsection. Any such regulations must be consistent with Australia's international obligations.

Note: A person who wishes to rely on this subsection bears an evidential burden in relation to the matter in this subsection. See subsection 13.3(3) of the *Criminal Code* and section 96 of the Regulatory Powers Act.

#### *Unlicensed manufacture of equipment containing a scheduled substance*

- (3) A person contravenes this subsection if:
- (a) the person manufactures equipment; and
  - (b) the equipment contains a substance; and
  - (c) the substance is a scheduled substance; and

- (d) if the equipment is SGG equipment—the equipment or the substance (or both) is prescribed by the regulations for the purposes of this paragraph; and
- (e) the person does not hold a licence that allows the manufacture.

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

Note 2: While suspended, a licence does not allow the licensee to carry out any activity that the licence would otherwise allow: see subsection 19D(4).

- (4) Subsection (3) does not apply to a person manufacturing equipment:
- (a) of a kind prescribed by the regulations for the purposes of this paragraph; or
  - (b) in circumstances, or for a purpose, prescribed by the regulations for the purposes of this paragraph.

**Note:** A person who wishes to rely on this subsection bears an evidential burden in relation to the matter in this subsection. See subsection 13.3(3) of the *Criminal Code* and section 96 of the Regulatory Powers Act.

*Unlicensed manufacture of equipment that uses a scheduled substance in its operation*

- (5) A person contravenes this subsection if:
- (a) the person manufactures equipment; and
  - (b) the equipment uses a substance in its operation; and
  - (c) the substance is a scheduled substance; and
  - (d) the equipment or the substance (or both) is prescribed by the regulations for the purposes of this paragraph; and
  - (e) the person does not hold a licence that allows the manufacture.

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

Note 2: While suspended, a licence does not allow the licensee to carry out any activity that the licence would otherwise allow: see subsection 19D(4).

- (6) Subsection (5) does not apply to a person manufacturing equipment:



- (a) of a kind prescribed by the regulations for the purposes of this paragraph; or
- (b) in circumstances, or for a purpose, prescribed by the regulations for the purposes of this paragraph.

Note: A person who wishes to rely on this subsection bears an evidential burden in relation to the matter in this subsection. See subsection 13.3(3) of the *Criminal Code* and section 96 of the Regulatory Powers Act.

### **13AA Prohibition—unlicensed import of scheduled substance or equipment**

#### *Unlicensed import of a scheduled substance*

- (1) A person contravenes this subsection if:
  - (a) the person imports a substance; and
  - (b) the substance is a scheduled substance; and
  - (c) the person does not hold a licence that allows the importation.

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

Note 2: While suspended, a licence does not allow the licensee to carry out any activity that the licence would otherwise allow: see subsection 19D(4).

- (2) Subsection (1) does not apply to a person importing an SGG (other than an SGG that is a used substance) in circumstances, or for a purpose, prescribed by the regulations for the purposes of this subsection. Any such regulations must be consistent with Australia's international obligations.

Note: A person who wishes to rely on this subsection bears an evidential burden in relation to the matter in this subsection. See subsection 13.3(3) of the *Criminal Code* and section 96 of the Regulatory Powers Act.

#### *Unlicensed import of equipment containing a scheduled substance*

- (3) A person contravenes this subsection if:
  - (a) the person imports equipment; and
  - (b) the equipment contains a substance; and
  - (c) the substance is a scheduled substance; and

- (d) the person does not hold a licence that allows the importation; and
- (e) if the equipment contains an SGG—the person's importation of the equipment is not covered by the low volume imports exemption under subsection (4).

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

Note 2: While suspended, a licence does not allow the licensee to carry out any activity that the licence would otherwise allow: see subsection 19D(4).

Note 3: For exceptions to this subsection, see subsections (6) to (9).

- (4) For the purposes of paragraph (3)(e), a person's importation of equipment is covered by the low volume imports exemption under this subsection if:
- (a) the total amount of SGGs contained in the equipment is not greater than an amount prescribed by the regulations for the purposes of this paragraph; and
  - (b) any other conditions prescribed by the regulations for the purposes of this paragraph in relation to the person, the equipment or the importation are satisfied.

*Unlicensed import of equipment that uses a scheduled substance in its operation*

- (5) A person contravenes this subsection if:
- (a) the person imports equipment; and
  - (b) the equipment uses a substance in its operation; and
  - (c) the substance is a scheduled substance; and
  - (d) the equipment or the substance (or both) is prescribed by the regulations for the purposes of this paragraph; and
  - (e) the person does not hold a licence that allows the importation.

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

Note 2: While suspended, a licence does not allow the licensee to carry out any activity that the licence would otherwise allow: see subsection 19D(4).

Note 3: For exceptions to this subsection, see subsections (6) to (9).

*Equipment exceptions—prescribed equipment, circumstances or purposes*

- (6) Subsection (3) or (5) does not apply to a person importing equipment:
- (a) of a kind prescribed by the regulations for the purposes of this paragraph; or
  - (b) in circumstances, or for a purpose, prescribed by the regulations for the purposes of this paragraph.

*Equipment exceptions—private or domestic use*

- (7) Subsection (3) or (5) does not apply to a person importing 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 for the purposes of this paragraph; and
  - (c) any other conditions prescribed by the regulations for the purposes of this paragraph are satisfied.

*Equipment exceptions—temporary imports*

- (8) Subsection (3) or (5) does not apply to a person importing equipment if:
- (a) the equipment is imported:
    - (i) for a purpose, or in circumstances, (if any) prescribed by the regulations for the purposes of this subparagraph; and
    - (ii) with the intention of later exporting the equipment within a period not exceeding 12 months, or a longer period prescribed by the regulations for the purposes of this subparagraph; and
  - (b) any other conditions prescribed by the regulations for the purposes of this paragraph in relation to the person, the equipment or the importation are satisfied.

### *Equipment exceptions—returning Australian equipment*

- (9) Subsection (3) or (5) does not apply to a person importing equipment if:
- (a) the equipment is of a kind prescribed by the regulations for the purposes of this paragraph; and
  - (b) the person had previously exported the equipment for a purpose, or in circumstances, (if any) prescribed by the regulations for the purposes of this paragraph; and
  - (c) while the equipment was outside Australia, no change was made to the type and quantity of scheduled substances contained in or used in the operation of the equipment, except in circumstances, or for purposes, (if any) prescribed by the regulations for the purposes of this paragraph; and
  - (d) title to the equipment remains unchanged between the time of export and time of import of the equipment.

Note: A person who wishes to rely on subsection (6), (7), (8) or (9) bears an evidential burden in relation to the matter in that subsection. See subsection 13.3(3) of the *Criminal Code* and section 96 of the *Regulatory Powers Act*.

**13AB Prohibition—unlicensed export of scheduled substance or equipment**

*Unlicensed export of a scheduled substance*

- (1) A person contravenes this subsection if:
  - (a) the person exports a substance; and
  - (b) the substance is a scheduled substance; and
  - (c) the person does not hold a licence that allows the export.

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

Note 2: While suspended, a licence does not allow the licensee to carry out any activity that the licence would otherwise allow: see subsection 19D(4).

- (2) Subsection (1) does not apply to a person exporting a substance if:
- (a) the substance is an HCFC and the substance is exported in accordance with a direction given to the person by the Minister under section 35A; or

- (b) the substance is an HFC and the substance is exported in accordance with a direction given to the person by the Minister under section 36H; or
- (c) the substance is an SGG (other than an SGG that is a used substance) and the substance is exported in circumstances, or for a purpose, prescribed by the regulations for the purposes of this paragraph.

Any regulations made for the purposes of paragraph (c) must be consistent with Australia's international obligations.

Note: A person who wishes to rely on this subsection bears an evidential burden in relation to the matter in this subsection. See subsection 13.3(3) of the *Criminal Code* and section 96 of the Regulatory Powers Act.

*Unlicensed export of equipment containing a scheduled substance*

- (3) A person contravenes this subsection if:
  - (a) the person exports equipment; and
  - (b) the equipment contains a substance; and
  - (c) the substance is a scheduled substance; and
  - (d) the equipment or the substance (or both) is prescribed by the regulations for the purposes of this paragraph; and
  - (e) the person does not hold a licence that allows the export.

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

Note 2: While suspended, a licence does not allow the licensee to carry out any activity that the licence would otherwise allow: see subsection 19D(4).

- (4) Subsection (3) does not apply to a person exporting equipment:
  - (a) of a kind prescribed by the regulations for the purposes of this paragraph; or
  - (b) in circumstances, or for a purpose, prescribed by the regulations for the purposes of this paragraph.

Note: A person who wishes to rely on this subsection bears an evidential burden in relation to the matter in this subsection. See subsection 13.3(3) of the *Criminal Code* and section 96 of the Regulatory Powers Act.

*Unlicensed export of equipment that uses a scheduled substance in its operation*

- (5) A person contravenes this subsection if:
- (a) the person exports equipment; and
  - (b) the equipment uses a substance in its operation; and
  - (c) the substance is a scheduled substance; and
  - (d) the equipment or the substance (or both) is prescribed by the regulations for the purposes of this paragraph; and
  - (e) the person does not hold a licence that allows the export.

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

Note 2: While suspended, a licence does not allow the licensee to carry out any activity that the licence would otherwise allow: see subsection 19D(4).

- (6) Subsection (5) does not apply to a person exporting equipment:
- (a) of a kind prescribed by the regulations for the purposes of this paragraph; or
  - (b) in circumstances, or for a purpose, prescribed by the regulations for the purposes of this paragraph.

**Note:** A person who wishes to rely on this subsection bears an evidential burden in relation to the matter in this subsection. See subsection 13.3(3) of the *Criminal Code* and section 96 of the Regulatory Powers Act.

### **13AC Penalties for unlicensed manufacture, import or export of scheduled substances or equipment**

### Fault-based offence

- (1) A person commits an offence if the person contravenes subsection 13(1), (3) or (5), 13AA(1), (3) or (5) or 13AB(1), (3) or (5).

**Note:** The physical elements of an offence against this subsection are set out in the subsection contravened (see subsection 6B(3)).

Penalty: 500 penalty units.

*Strict liability offence*

- (2) A person commits an offence of strict liability if the person contravenes subsection 13(1), (3) or (5), 13AA(1), (3) or (5) or 13AB(1), (3) or (5).

Penalty: 60 penalty units.

*Civil penalty provision*

- (3) A person is liable to a civil penalty if the person contravenes subsection 13(1), (3) or (5), 13AA(1), (3) or (5) or 13AB(1), (3) or (5).

Civil penalty: 600 penalty units.

**53 Subsections 13A(2A) to (6)**

Repeal the subsections, substitute:

- (2A) A controlled substances licence does not apply to:
- (a) scheduled substances that are used substances; or
  - (b) the import or manufacture of scheduled substances that are used exclusively as a feedstock.

*Essential uses licence*

- (3) An essential uses licence allows (subject to subsection (3A)) the licensee to carry out whichever one or more of the following activities is specified in it:
- (a) manufacture specified scheduled substances for essential uses;
  - (b) import specified scheduled substances for essential uses;
  - (c) export specified scheduled substances for essential uses.
- (3A) An essential uses licence does not apply to:
- (a) scheduled substances that are used substances; or
  - (b) scheduled substances that are used exclusively as a feedstock; or
  - (c) methyl bromide; or
  - (d) SGGs other than HFCs.

Note: For paragraph (a), see subsection (4) (about used substances licences).  
For paragraph (b), see subsection (5) (about feedstock licences).

- (3B) An *essential use* of a scheduled substance is an essential use identified in relation to the substance by a decision made by the parties to the Montreal Protocol that applies to Australia.

### Used substances licence

- (4) A used substances licence allows (subject to subsection (4A)) the licensee to carry out whichever of the following activities is specified in it:
- (a) import specified substances that are used substances;
  - (b) export specified substances that are used substances.
- (4A) A used substances licence does not apply to the import of used substances that are used exclusively as a feedstock.

### Feedstock licence

- (5) A feedstock licence allows the licensee to carry out whichever one or more of the following activities is specified in it:
- (a) manufacture specified scheduled substances exclusively for use as a feedstock;
  - (b) import specified scheduled substances exclusively for use as a feedstock.

### Equipment licence

- (6) An equipment licence allows the licensee to carry out whichever one or more of the following activities is specified in it:
  - (a) manufacture specified ODS equipment;
  - (b) import specified ODS equipment;
  - (c) export specified ODS equipment;
  - (d) manufacture specified SGG equipment;
  - (e) import specified SGG equipment;
  - (f) export specified SGG equipment.

**54 At the end of Division 2 of Part III**

Add:



## 13B Fit and proper person considerations

### *Mandatory considerations*

- (1) Without limiting the matters that the Minister may take into account in determining whether a person is a fit and proper person for the purposes of this Part, in the exercise of a power listed in column 1 of an item of the following table, the Minister must have regard to the considerations in column 2 of the item.

<b>Fit and proper person considerations</b>		
<b>Item</b>	<b>Column 1 Power</b>	<b>Column 2 Mandatory considerations</b>
1	A power to grant, transfer, suspend or cancel a licence	<p>The following:</p> <ul style="list-style-type: none"> <li>(a) the person's history in relation to environmental matters;</li> <li>(b) 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;</li> <li>(c) if a statement made by the person in an application or report under this Act or the regulations was false or misleading in a material particular: <ul style="list-style-type: none"> <li>(i) that fact; and</li> <li>(ii) whether the person knew that the statement was false or misleading;</li> </ul> </li> <li>(d) whether the person has complied with a requirement to pay levy under either of the following: <ul style="list-style-type: none"> <li>(i) the <i>Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Act 1995</i>;</li> <li>(ii) the <i>Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Act 1995</i>;</li> </ul> </li> <li>(e) whether the person has complied with a requirement to give a report under this Act or the regulations</li> </ul>
2	A power to grant or transfer a	<p>The following:</p> <ul style="list-style-type: none"> <li>(a) whether the person has contravened a condition of a</li> </ul>

<b>Fit and proper person considerations</b>		
<b>Item</b>	<b>Column 1 Power</b>	<b>Column 2 Mandatory considerations</b>
	licence	licence; (b) whether a licence held by the person has been: (i) suspended; or (ii) cancelled under section 20
3	A power to cancel a licence	Whether a licence held by the person has been suspended

*Mandatory considerations—bodies corporate*

- (2) If the person is a body corporate, the Minister:
- (a) must also have regard to each consideration in column 2 of the table in subsection (1) in relation to each person who is an executive officer of the body (whether or not the person was an executive officer of the body corporate at the time a matter occurs that relates to the consideration); and
  - (b) may also have regard to whether the body is a Chapter 5 body corporate within the meaning of the *Corporations Act 2001*.

*Spent conviction scheme not affected*

- (3) This section does not affect the operation of Part VIIC of the *Crimes Act 1914* (which includes provisions that, in certain circumstances, relieve persons from the requirement to disclose spent convictions and require persons aware of such convictions to disregard them).

**55 At the end of subsection 14(1)**

Add:  
; (e) a feedstock licence.

**56 Paragraph 14(2)(aa)**

Omit “prescribed fee”, substitute “fee prescribed by the regulations (if any)”.

**57 Subsection 16(1)**

Omit “(6B)”, substitute “(6A)”.

**58 Subsection 16(3AB)**

Repeal the subsection, substitute:

- (3AB) An equipment licence must specify whichever one or more of the following activities that the licence allows:
- (a) manufacture specified ODS equipment;
  - (b) import specified ODS equipment;
  - (c) export specified ODS equipment;
  - (d) manufacture specified SGG equipment;
  - (e) import specified SGG equipment;
  - (f) export specified SGG equipment.

**59 Subsection 16(4)**

Omit “shall not”, substitute “must not”.

**60 At the end of subsection 16(4)**

Add:

Note: The mandatory fit and proper person considerations are set out in section 13B.

**61 Subsections 16(5), (6), (6A) and (6B)**

Repeal the subsections, substitute:

- (4A) The Minister must not grant a controlled substances licence, or a used substances licence, that allows the manufacture, import or export of a scheduled substance unless the requirements (if any) prescribed by the regulations for the purposes of this subsection in relation to the kind of licence, the activity and the relevant type of scheduled substance are satisfied.
- (5) The Minister must not grant an equipment licence that allows the manufacture, import or export of SGG equipment unless the requirements (if any) prescribed by the regulations for the purposes of this subsection in relation to the activity, the equipment and the relevant type of scheduled substance are satisfied.

- (6) The Minister must not grant an equipment licence that allows the manufacture, import or export of ODS equipment unless:
  - (a) for equipment that contains a scheduled substance—subsection (6A) applies in relation to the equipment; and
  - (b) in any case—the requirements (if any) prescribed by the regulations for the purposes of this paragraph in relation to the activity, the equipment and the relevant type of scheduled substance are satisfied.
- (6A) For the purposes of paragraph (6)(a), this subsection applies if the Minister is satisfied that:
  - (a) both:
    - (i) the equipment is essential for medical, veterinary, defence, industrial safety, public safety, scientific, testing or monitoring purposes or laboratory and analytical uses; 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) in the case of the import or export of equipment—it would be impracticable to remove or retrofit the equipment because it is incidental to other equipment that is being imported or exported; or
  - (d) in any case—the equipment is for use in conjunction with the calibration of scientific, measuring or safety equipment; or
  - (e) in any case—both:
    - (i) exceptional circumstances justify granting the licence; and
    - (ii) granting the licence would not be inconsistent with Australia's international obligations under the Montreal Protocol; or
  - (f) in any case—the manufacture, import or export would occur in circumstances prescribed by the regulations for the purposes of this paragraph.

**62 Subsections 17(1) and (2)**

Omit “for the purposes of section 66 and subject to subsection (4) of this section”, substitute “subject to subsection (4)”.

**63 Subsection 17(3)**

Omit “for the purposes of section 66”.

**64 Subsection 18(1) (after table item 1)**

Insert:

1A	A controlled substances licence that allows the licensee to manufacture, import or export methyl bromide	The licensee may manufacture, import or export methyl bromide only for one or more of the following purposes, as set out in the licence: (a) critical uses (including laboratory and analytical uses); (b) an emergency use; (c) a QPS use; (d) in the case of export—use as a feedstock.
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**65 Subsection 18(1) (table items 2 and 3)**

Omit “Montreal Protocol country for the purposes of Part VI for the substance”, substitute “party to the Montreal Protocol”.

**66 Subsection 18(1) (table items 5 and 6)**

Omit “Montreal Protocol country for the purposes of Part VI for HFCs”, substitute “party to the Montreal Protocol”.

**67 Subsection 18(1) (at the end of the table)**

Add:

7	A licence (other than an equipment licence) that allows the licensee to import a scheduled substance	The licensee must not import the substance in a non-refillable container, unless the conditions (if any) prescribed by the regulations for the purposes of this item in relation to the container and the import are satisfied.
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8	A suspended licence	<p>The licensee must comply with any directions the Minister gives to the licensee under either of the following sections:</p> <ul style="list-style-type: none"> <li>(a) section 35A (directions to export HCFCs if quota exceeded);</li> <li>(b) section 36H (directions to export HFCs if quota exceeded).</li> </ul>
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**68 After paragraph 18(6)(c)**

Insert:

- (ca) conditions requiring the licensee to enter into an arrangement for the recovery, recycling or destruction of scheduled substances with a person approved by the Minister under regulations made for the purposes of paragraph 45A(1)(ba);

## 69 Subsections 18(7) to (7F)

Repeal the subsections, substitute:

### Fault-based offence

- (7) A licensee commits an offence if:
- (a) the licensee engages in conduct; and
  - (b) the conduct contravenes a condition of the licensee's licence.

Penalty: 500 penalty units.

*Strict liability offence*

- (7A) A licensee commits an offence of strict liability if the licensee contravenes a condition of the licensee's licence.

Penalty: 60 penalty units.

### Civil penalty provision

- (7B) A licensee is liable to a civil penalty if the licensee contravenes a condition of the licensee's licence.

Civil penalty: 600 penalty units.

## **70 At the end of section 18**

Add:

### *Methyl bromide definitions*

(10) For the purposes of this Act, methyl bromide is used:

- (a) for **critical uses**; or
- (b) for an **emergency use**; or
- (c) for **laboratory and analytical uses**;

if the use is:

- (d) exempt from a provision of the Montreal Protocol, under any decision made by the parties to the Montreal Protocol that applies to Australia, on account of being critical uses, an emergency use or laboratory and analytical uses (as the case requires); and
- (e) in compliance with the conditions of any such decision.

Note: Under the Montreal Protocol, critical uses includes laboratory and analytical uses.

(11) For the purposes of this Act, methyl bromide is used for a **QPS use** if:

- (a) it is applied by, or with the authorisation of, a Commonwealth, State or Territory authority to prevent the introduction, establishment or spread of a pest or disease in Australia, a State or a Territory; or
- (b) it is applied to a commodity, before it is exported, to meet the requirements of the importing country or a law of the Commonwealth.

Note: QPS is short for quarantine and pre-shipment.

## **71 Subsection 19(2)**

Omit “controlled substances licence, an essential uses licence or a used substances licence”, substitute “licence, other than an equipment licence,”.

## **72 At the end of section 19**

Add:

Note: A licence does not stop being in force only because it is suspended:  
see subsection 19D(4).

**73 At the end of subsection 19AA(1)**

Add “, subject to subsection (4)”.

**74 Paragraph 19AA(3)(b)**

After “prescribed by the regulations”, insert “(if any)”.

**75 At the end of section 19AA**

Add:

- (4) The holder of a suspended licence may not apply to the Minister for a renewal of any licence held by the person until the period of suspension ends or the suspension is revoked by the Minister.

**76 Subsections 19AC(2) and (3)**

Omit “(6B)”, substitute “(6A)”.

**77 Subsections 19AD(1) and (2)**

Omit “, for the purposes of sections 19AE and 66, to have refused the application”, substitute “to have refused the application under section 19AC”.

**78 Subsection 19A(1)**

After “all licences”, insert “(including suspended licences)”.

**79 At the end of subsection 19A(2)**

Add:

; or (d) the Paris Agreement.

**80 Subsection 19B(1)**

After “a licence”, insert “, other than a suspended licence,”.

**81 After subsection 19B(4)**

Insert:

Note: The mandatory fit and proper person considerations are set out in section 13B.



## **82 Subsection 19B(5)**

Repeal the subsection.

## **83 Subsection 19C(1)**

After “a licence”, insert “(including a suspended licence)”.

## **84 After section 19C**

Insert:

### **19D Suspension of licence**

#### *Circumstances that may lead to suspension*

- (1) The Minister may suspend a licence if satisfied that the licensee:
- (a) is no longer a fit and proper person to hold a licence; or
  - (b) has contravened a condition of the licence; or
  - (c) is uncontactable.

Note: The mandatory fit and proper person considerations are set out in section 13B.

- (2) A licensee is **uncontactable** if, and only if, the Minister has made 2 or more reasonable attempts to contact the licensee during a period of 6 months ending immediately before the decision to suspend the licence, but has not been able to contact the licensee.

#### *Suspension notices*

- (3) The Minister must give the licensee written notice of the suspension (the **suspension notice**) specifying:
- (a) the reasons for the suspension; and
  - (b) the day the suspension takes effect; and
  - (c) either or both of the following:
    - (i) the actions the licensee must take for the suspension to end;
    - (ii) a fixed period for the suspension.

### Effect of suspension

- (4) While suspended, the licence does not allow the licensee to carry out any activity that the licence would otherwise allow. However, the licence remains in force despite the suspension.

### *Suspension notices specifying required actions*

- (5) If the suspension notice specifies actions the licensee must take for the suspension to end, the Minister must give written notice to the licensee when satisfied that the licensee has taken the specified actions.

*When a suspension ends*

- (6) The suspension ends in accordance with the following table:

When the suspension of a licence ends		
Item	Column 1 If the suspension notice specifies ...	Column 2 the suspension ends ...
1	actions the licensee must take for the suspension to end	at the start of the day the Minister gives notice under subsection (5), subject to item 3
2	a fixed period for the suspension	immediately after the end of the fixed period, subject to item 3
3	both: (a) actions the licensee must take for the suspension to end; and (b) a fixed period for the suspension	at the later of the following times: (a) the start of the day the Minister gives a notice under subsection (5); (b) immediately after the end of the fixed period

### Variation and revocation

- (7) The Minister may, by written notice given to the licensee, do either of the following if the Minister considers it appropriate to do so:
- (a) vary the suspension notice;
  - (b) revoke the suspension.

**85 Subsection 20(1)**

After “may cancel a licence”, insert “(including a suspended licence)”.

**86 After subsection 20(1)**

Insert:

Note: The mandatory fit and proper person considerations are set out in section 13B.

**87 Subsections 20(2) and (3)**

Repeal the subsections.

**88 Subsection 21(1)**

After “a licence”, insert “(including a suspended licence)”.

**89 At the end of paragraph 22(a)**

Add “and”.

**90 Paragraph 22(c)**

After “licences”, insert “suspended,”.

**91 At the end of subsection 25A(1)**

Add “under a controlled substances licence”.

**92 At the end of section 34**

Add:

Note: A licence does not stop being in force only because it is suspended: see subsection 19D(4).

**93 Subsections 35(2) and (2A)**

Omit “A licensee may”, substitute “A licensee (including the licensee for a suspended licence) may”.

**94 Subsection 35A(1)**

After “by written notice given to a licensee”, insert “(including the licensee for a suspended licence)”.

**95 After subsection 35A(1)**

Insert:

- (1A) Before the time specified in the direction (or a later time specified in a notice under this subsection), the Minister may specify a later time by written notice given to the licensee.

## 96 Subsection 36B(1)

Repeal the subsection, substitute:

- (1) A ***regulated HFC activity*** is the manufacture or import of HFCs under an SGG licence.

Note 1: A licence is not required for the manufacture or import of HFCs and other SGGs in certain circumstances, or for certain purposes, prescribed by the regulations: see subsections 13(2) and 13AA(2).

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.

**97 At the end of section 36E**

Add:

**Note:** An SGG licence does not stop being in force only because it is suspended: see subsection 19D(4).

## 98 Subsections 36F(2) and (3)

Omit “An SGG licensee may”, substitute “An SGG licensee (including the licensee for a suspended SGG licence) may”.

## 99 Subsection 36H(1)

After “by written notice given to an SGG licensee”, insert “(including the licensee for a suspended SGG licence)”.

**100 Subsection 36H(1) (note 1)**

Omit “Note 1”, substitute “Note”.

**101 Subsection 36H(1) (note 2)**

Repeal the note.

**102 After subsection 36H(1)**

Insert:

- (1A) Before the time specified in the direction (or a later time specified in a notice under this subsection), the Minister may specify a later time by written notice given to the licensee.

### **103 Part VI**

Repeal the Part.

### **104 Before section 45A**

Insert:

#### **45AA Simplified outline of this Part**

The regulations may make provision for the following:

- (a) prohibiting or regulating the distribution, purchase, acquisition or disposal of scheduled substances;
- (b) prohibiting or regulating the storage, use or handling of scheduled substances (other than certain uses of HCFCs);
- (c) prohibiting or regulating the recovery, recycling or destruction of scheduled substances;
- (d) labelling requirements for scheduled substances and for equipment that contains or uses scheduled substances.

A person must not, except in limited circumstances:

- (a) discharge a scheduled substance if it is likely to enter the atmosphere; or
- (b) use an HCFC that was manufactured or imported on or after 1 January 2020.

### **105 Paragraph 45A(1)(a)**

Repeal the paragraph, substitute:

- (a) prohibiting or regulating the distribution, purchase, acquisition or disposal of scheduled substances;

### **106 Paragraph 45A(1)(b)**

Before “regulating”, insert “prohibiting or”.

**107 After paragraph 45A(1)(b)**

Insert:

- (ba) prohibiting or regulating the recovery, recycling or destruction of scheduled substances;

## 108 Paragraphs 45A(1)(d)

After “(b)”, insert “, (ba)”.

## 109 Paragraph 45A(1)(e)

After “(b),” insert “(ba),”.

**110 At the end of section 45A**

Add:

- (3) The regulations may make provision for regulating something by providing for it, or anything relating to it, to be determined by the Minister, including by legislative instrument.
- (4) Despite subsection 14(2) of the *Legislation Act 2003*, regulations made for the purposes of this section may make provision in relation to a matter by applying, adopting or incorporating any matter contained in an instrument or other writing as in force or existing from time to time.
- (5) Regulations made for the purposes of this section must be consistent with Australia's international obligations.

## 111 Sections 45B and 45C

Repeal the sections, substitute:

## 45B Discharge of scheduled substances

### Prohibition

- (1) A person contravenes this subsection if:
  - (a) the person engages in conduct; and
  - (b) the conduct results in the discharge of a scheduled substance;  
and

- (c) the discharge occurs in circumstances where it is likely that the scheduled substance will enter the atmosphere; and
- (d) the discharge is not in accordance with regulations made for the purposes of this paragraph.

*Exception*

- (2) Subsection (1) does not apply if the discharge occurs as a result of using equipment, that contains a scheduled substance, for the purpose for which the equipment was designed.

Note: A person who wishes to rely on this subsection bears an evidential burden in relation to the matter in this subsection. See subsection 13.3(3) of the *Criminal Code* and section 96 of the Regulatory Powers Act.

- (3) For the purposes of subsection (2), the use of a halon fire extinguisher during, or in connection with, a training exercise is taken not to be a use of the extinguisher for the purpose for which it was designed.

*Fault-based offence*

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

Note: The physical elements of an offence against this subsection are set out in subsection (1) (see subsection 6B(3)).

Penalty: 300 penalty units.

*Strict liability offence*

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

Penalty: 60 penalty units.

*Civil penalty provision*

- (6) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 400 penalty units.

## 45C Use of HCFC

- (1) A person contravenes this subsection if:
- (a) the person uses an HCFC; and
  - (b) the HCFC was manufactured or imported on or after 1 January 2020; and
  - (c) the use is not for a purpose prescribed by the regulations for the purposes of this paragraph.

### *Fault-based offence*

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

Note: The physical elements of an offence against this subsection are set out in subsection (1) (see subsection 6B(3)).

Penalty: 300 penalty units.

### *Strict liability offence*

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

Penalty: 60 penalty units.

### *Civil penalty provision*

- (4) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 400 penalty units.

## 112 Before section 46

Insert:

## 46AA Simplified outline of this Part

A person may have reporting obligations if the person:

- (a) manufactures, imports or exports a scheduled substance;

or



- (b) manufactures, imports or exports equipment under an equipment licence.

Record-keeping obligations relating to the manufacture, import or export of scheduled substances by licensees are provided for by the regulations.

### **113 Section 46 (heading)**

Repeal the heading, substitute:

## **46 Periodic reports in relation to scheduled substances**

### **114 Subsection 46(1)**

Repeal the subsection, substitute:

#### *Requirement to report*

- (1) A person who carries out any of the following activities during a reporting period must give the Minister a report in relation to the activity, in accordance with subsection (1A) of this section and the regulations:
- (a) manufacturing, importing or exporting a scheduled substance;
  - (b) manufacturing, importing or exporting equipment under an equipment licence.

Note: For paragraph (b)—an equipment licence is not always required for the manufacture, import or export of equipment that contains a scheduled substance, or uses a scheduled substance in its operation: see (for example) subsections 13(4) and (6), 13AA(4) and (6) to (9), and 13AB(4) and (6).

### **115 Subsection 46(1A)**

Omit “15th day”, substitute “31st day”.

### **116 Subsections 46(2) to (2G)**

Repeal the subsections, substitute:

### *Strict liability offence*

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

Penalty: 40 penalty units.

### Civil penalty provision

- (3) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 60 penalty units.

### 117 Subsection 48(1)

After “by a licensee”, insert “(including the licensee for a suspended licence)”.

### 118 Subsection 48(1)

Omit “, export or destruction”, substitute “or export”.

**119 At the end of section 48**

Add:

**Note:** A licensee may also have obligations in relation to the keeping and production of records, in relation to activities covered by section 45A, under regulations made for the purposes of that section.

**120 Division 1 of Part VIII (heading)**

Repeal the heading, substitute:

## Division 1—Preliminary

**121 Subdivision A of Division 1 of Part VIII (heading)**

Repeal the heading.

## 122 Section 48A

Repeal the section, substitute:

#### **48A Simplified outline of this Part**

The Secretary and inspectors have monitoring, inspection and enforcement powers under the Regulatory Powers Act to ensure this Act and the regulations are being complied with.

The Regulatory Powers Act creates a framework for monitoring and investigating compliance with this Act and the regulations, as well as providing for the enforcement of civil penalty provisions and the use of infringement notices, enforceable undertakings and injunctions.

This Part provides certain monitoring and investigation powers in addition to those provided by the Regulatory Powers Act.

Goods relating to contraventions of certain provisions of this Act or the regulations may be forfeited to the Commonwealth if:

- (a) a person is convicted of an offence, or a civil penalty order is made, in relation to the relevant contravention; or
- (b) the goods are seized under the Regulatory Powers Act.

The Secretary may require a person to give information or produce documents that are relevant for the purposes of investigating or preventing:

- (a) an offence against this Act or the regulations; or
- (b) a contravention of a civil penalty provision of this Act or the regulations.

#### **123 Subsection 49(1)**

Omit “Minister”, substitute “Secretary”.

#### **124 Subsection 49(2)**

Omit “The Minister shall”, substitute “The Secretary must”.

#### **125 Subsections 49(3) and 49A(1)**

Omit “Minister” (wherever occurring), substitute “Secretary”.

## 126 Section 50

Repeal the section.

**127 Subdivisions B, C, D, E, F and G of Division 1 of Part VIII**

Repeal the Subdivisions.

## 128 Division 2 of Part VIII

Repeal the Division, substitute:

## Division 2—Monitoring powers

## 50 Monitoring powers

### Provisions subject to monitoring

- (1) The following provisions are subject to monitoring under Part 2 of the Regulatory Powers Act:
- (a) each provision of this Act and the regulations;
  - (b) an offence provision of the *Crimes Act 1914* or the *Criminal Code*, to the extent that it relates to one or more of the provisions mentioned in paragraph (a).

**Note:** Part 2 of the Regulatory Powers Act creates a framework for monitoring whether the provisions mentioned in this subsection have been complied with. It includes powers of entry and inspection.

*Information subject to monitoring*

- (2) Information given in compliance or purported compliance with a provision of this Act or the regulations is subject to monitoring under Part 2 of the Regulatory Powers Act.

**Note:** Part 2 of the Regulatory Powers Act creates a framework for monitoring whether the information is correct. It includes powers of entry and inspection.

*Related provisions, authorised applicant, authorised person, issuing officer, relevant chief executive and relevant court*

- (3) For the purposes of Part 2 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in subsection (1) and the information mentioned in subsection (2):

- (a) the following provisions of the *Customs Act 1901* are related to the provisions and the information:
  - (i) subsections 50(4) and (7) (prohibited imports);
  - (ii) subsections 112(2B) and (2BC) (prohibited exports);
- (b) an inspector is an authorised applicant; and
- (c) an inspector is an authorised person; and
- (d) a magistrate is an issuing officer; and
- (e) the Secretary is the relevant chief executive; and
- (f) a designated court is a relevant court.

*Person assisting*

- (4) An authorised person may be assisted by other persons in exercising powers or performing functions or duties under Part 2 of the Regulatory Powers Act in relation to the provisions mentioned in subsection (1), and the information mentioned in subsection (2).

*Extension to external Territories*

- (5) Part 2 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in subsection (1) and the information mentioned in subsection (2), extends to every external Territory.

## **51 Modifications of Part 2 of the Regulatory Powers Act**

*Additional monitoring power*

- (1) For the purposes of determining:
  - (a) whether a provision mentioned in subsection 50(1) has been, or is being, complied with; or
  - (b) the correctness of information mentioned in subsection 50(2);the additional powers mentioned in subsection (2) are taken to be included in the monitoring powers under Part 2 of the Regulatory Powers Act.
- (2) The additional monitoring powers are:
  - (a) the power to take samples of any thing on premises entered under Part 2 of the Regulatory Powers Act; and
  - (b) the power to remove, test and analyse such samples; and

- (c) the power to secure premises entered under Part 2 of the Regulatory Powers Act; and
- (d) the power to secure things on premises entered under Part 2 of the Regulatory Powers Act for the purpose of sampling, testing or analysing those things; and
- (e) the power to secure a container on premises entered under Part 2 of the Regulatory Powers Act that contains a thing if the inspector reasonably believes that it is not reasonably practicable to secure the thing without also securing the container (whether or not the container contains any other thing).

### *Use of force in executing a monitoring warrant*

- (3) In executing a monitoring warrant under Part 2 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in subsection 50(1) and the information mentioned in subsection 50(2) of this Act:
- (a) an authorised person may use such force against things as is necessary and reasonable in the circumstances; and
  - (b) a person assisting the authorised person may use such force against things as is necessary and reasonable in the circumstances.

### Identity cards

- (4) A reference to an identity card in sections 25 and 26 and subsection 35(6) of the Regulatory Powers Act, as those provisions apply in relation to the provisions mentioned in subsection 50(1) and information mentioned in subsection 50(2) of this Act, is taken to include a reference to written evidence identifying the authorised person as a member or special member of the Australian Federal Police or an officer of Customs, as the case may be.
- (5) Subsection 35(1) of the Regulatory Powers Act, as that subsection applies in relation to the provisions mentioned in subsection 50(1) and information mentioned in subsection 50(2) of this Act, does not require the relevant chief executive to issue an identity card to an authorised person who is a member or special member of the Australian Federal Police, or an officer of Customs.

*Period during which monitoring warrant may be in force*

- (6) Paragraph 32(4)(f) of the Regulatory Powers Act applies in relation to the provisions mentioned in subsection 50(1) and information mentioned in subsection 50(2) of this Act as if the reference in that paragraph to 3 months were a reference to 6 months.

## **Division 2A—Investigation powers**

### **52 Investigation powers**

*Provisions subject to investigation*

- (1) A provision is subject to investigation under Part 3 of the Regulatory Powers Act if it is:
- (a) a provision that creates an offence against this Act or the regulations; or
  - (b) a civil penalty provision of this Act or the regulations.

Note 1: Part 3 of the Regulatory Powers Act creates a framework for investigating whether a provision has been contravened. It includes powers of entry, search and seizure.

Note 2: For paragraph (a), see the definition of *offence against this Act or the regulations* in section 7.

*Related provisions, authorised applicant, authorised person, issuing officer, relevant chief executive and relevant court*

- (2) For the purposes of Part 3 of the Regulatory Powers Act, as that Part applies in relation to evidential material that relates to a provision mentioned in subsection (1):
- (a) the following provisions of the *Customs Act 1901* are related to that evidential material:
    - (i) subsections 50(4) and (7) (prohibited imports);
    - (ii) subsections 112(2B) and (2BC) (prohibited exports);and
  - (b) an inspector is an authorised applicant; and
  - (c) an inspector is an authorised person; and
  - (d) a magistrate is an issuing officer; and
  - (e) the Secretary is the relevant chief executive; and

- (f) a designated court is a relevant court.

## Person assisting

- (3) An authorised person may be assisted by other persons in exercising powers or performing functions or duties under Part 3 of the Regulatory Powers Act in relation to evidential material that relates to a provision mentioned in subsection (1).

### *Extension to external Territories*

- (4) Part 3 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in subsection (1), extends to every external Territory.

### 53 Modifications of Part 3 of the Regulatory Powers Act

### *Additional investigative powers*

- (1) The additional powers mentioned in subsection (2) are taken to be included in the investigation powers under Part 3 of the Regulatory Powers Act, as that Part applies in relation to evidential material that relates to a provision mentioned in subsection 52(1).
- (2) The additional investigation powers are:
  - (a) the power to take samples of any thing on premises entered under Part 3 of the Regulatory Powers Act; and
  - (b) the power to remove, test and analyse such samples; and
  - (c) the power to secure premises entered under Part 3 of the Regulatory Powers Act; and
  - (d) the power to secure things on premises entered under Part 3 of the Regulatory Powers Act for the purpose of sampling, testing or analysing those things; and
  - (e) the power to secure a container on premises entered under Part 3 of the Regulatory Powers Act that contains a thing if the inspector reasonably believes that it is not reasonably practicable to secure the thing without also securing the container (whether or not the container contains any other thing); and
  - (f) if the authorised person has the power to seize a thing (the *seizable thing*) under Part 3 of the Regulatory Powers Act—



the power to seize a container that contains the seizable thing, and any other thing contained in the container, if the inspector reasonably believes that it is not reasonably practicable to seize the seizable thing without also seizing the container.

*Return of containers*

- (3) Despite subsection 66(1) of the Regulatory Powers Act, the requirement under that subsection for the relevant chief executive to take reasonable steps to return a container or other thing, seized under the additional power mentioned in paragraph (2)(f) of this section, applies only from the following time:
- (a) subject to paragraph (b) of this subsection—the time that requirement applies in relation to the seizable thing;
  - (b) if the seizable thing is the subject of a forfeiture notice under section 60A of this Act—the time:
    - (i) the seizable thing is returned under subsection 60B(5) of this Act; or
    - (ii) the seizable thing is forfeited to the Commonwealth under section 60C of this Act.

Note: Section 66 of the Regulatory Powers Act may not apply at all in relation to the container or other thing if the container or other thing is the subject of a forfeiture notice under section 60A of this Act: see subsection (4) of this section.

*Goods subject to forfeiture notice*

- (4) Sections 66 to 69 of the Regulatory Powers Act do not apply to a thing seized under Part 3 of that Act if the thing is the subject of a forfeiture notice under section 60A of this Act.

*Operating equipment etc. that may contain evidential material*

- (5) Subsection 50(1) of the Regulatory Powers Act is taken to include the power (subject to subsections 50(3) and (4) of that Act) to:
- (a) operate electronic equipment on premises entered under Part 3 of that Act, as that Part applies to evidential material that relates to a provision mentioned in subsection 52(1) of this Act; and
  - (b) use a disk, tape or other storage device that:

- (i) is on those premises; and
- (ii) can be used with the equipment or is associated with it;
- to find out whether the equipment, disk, tape or other storage device contains such evidential material.

*When investigation warrant need not be announced*

- (6) An additional circumstance in which subsection 56(2) of the Regulatory Powers Act is taken to authorise an authorised person not to comply with subsection 56(1) of that Act, in relation to an entry to premises under an investigation warrant to search for evidential material that relates to a provision mentioned in subsection 52(1) of this Act, is that the authorised person believes on reasonable grounds that immediate entry to the premises is required to prevent serious damage to the environment.

Note: Subsection 56(3) of the Regulatory Powers Act requires the authorised person's identity card to be shown as soon as practicable after entering the premises if the authorised person does not comply with subsection 56(1) of that Act because of subsection 56(2) of that Act.

### *Use of force in executing an investigation warrant*

- (7) In executing an investigation warrant under Part 3 of the Regulatory Powers Act, as that Part applies in relation to evidential material that relates to a provision mentioned in subsection 52(1) of this Act:
- (a) an authorised person may use such force against things as is necessary and reasonable in the circumstances; and
  - (b) a person assisting the authorised person may use such force against things as is necessary and reasonable in the circumstances.

### Identity cards

- (8) A reference to an identity card in sections 55 and 56 and subsection 76(6) of the Regulatory Powers Act, as those provisions apply in relation to evidential material that relates to a provision mentioned in subsection 52(1) of this Act, is taken to include a reference to written evidence identifying the authorised person as a member or special member of the Australian Federal Police or an officer of Customs, as the case may be.

- (9) Subsection 76(1) of the Regulatory Powers Act, as that subsection applies in relation to evidential material that relates to a provision mentioned in subsection 52(1) of this Act, does not require the relevant chief executive to issue an identity card to an authorised person who is a member or special member of the Australian Federal Police, or an officer of Customs.

## **54 Directions about dealing with pressurised containers**

### *Directions*

- (1) The Secretary may, by writing, direct an inspector to deal with a pressurised container seized under Part 3 of the Regulatory Powers Act (as that Part operates because of this Part), and its contents, in a manner specified in the direction. The inspector must comply with the direction.
- (2) A direction under subsection (1) may require the pressurised container and its contents to be destroyed.
- (3) A direction under subsection (1) may be given only:
- (a) on application by an inspector; and
  - (b) if the Secretary is satisfied that the pressurised container:
    - (i) constitutes a danger to public health and safety; or
    - (ii) may cause damage to the environment.
- (4) If the Secretary gives a direction under subsection (1), then sections 66 to 69 of the Regulatory Powers Act do not apply to the container or its contents.
- (5) A direction under subsection (1) is not a legislative instrument.

### *Compensation*

- (6) If a pressurised container and its contents are destroyed under this section, the owner of the container may apply to a designated court for compensation.
- (7) On application under subsection (6), the designated court must order the Commonwealth to pay compensation if the court is satisfied that the pressurised container is not, or did not contain, forfeitable goods.

- (8) The amount of compensation ordered must be the market value of the pressurised container and its contents at the time they were destroyed.

## 129 Subsection 57(1)

Repeal the subsection, substitute:

- (1) For the purposes of this Act, the following are *forfeitable goods*:
  - (a) scheduled substances in respect of the manufacture of which a person has contravened subsection 13(1);
  - (b) scheduled substances in respect of the import of which a person has contravened subsection 13AA(1);
  - (c) scheduled substances in respect of the export of which a person has contravened subsection 13AB(1);
  - (d) equipment that contains a scheduled substance, and the scheduled substance itself, if a person has contravened subsection 13(3), 13AA(3) or 13AB(3) in respect of the manufacture, import or export of the equipment;
  - (e) equipment that uses a scheduled substance in its operation, if a person has contravened subsection 13(5), 13AA(5) or 13AB(5) in respect of the manufacture, import or export of the equipment;
  - (f) a non-refillable container, and any scheduled substance it contains, if a person has contravened the licence condition specified in item 7 of the table in subsection 18(1) in respect of the import of the scheduled substance in the container;
  - (g) prescribed goods in respect of which a person has contravened a prescribed provision of the regulations.
- (1A) Without limiting subsection (1), a person is taken to have contravened a provision for the purposes of that subsection if:
  - (a) the person is convicted of an offence against this Act or the regulations for a contravention of the provision; or
  - (b) a civil penalty order is made against the person for a contravention of the provision.

**130 Subsection 58(1)**

Omit “Where a person is convicted of an offence against a provision of this Act or the regulations”, substitute “If a person is convicted of an offence against this Act or the regulations for a contravention of a provision”.

**131 Subsection 58(2)**

Omit “has been made against a person for a contravention of a civil penalty provision”, substitute “is made against a person for a contravention of a provision”.

**132 Section 60**

Repeal the section, substitute:

**60 Persons not to move etc. seized goods**

*Causing seized goods to be moved etc.*

- (1) A person contravenes this subsection if:
- (a) the person engages in conduct; and
  - (b) the conduct causes goods to be moved, altered or interfered with; and
  - (c) the goods are the subject of a notice under subsection 59(2).
- (2) Subsection (1) does not apply if the person engages in the conduct in accordance with a direction given to the person by the Secretary.

Note: A person who wishes to rely on this subsection bears an evidential burden in relation to the matter in this subsection. See subsection 13.3(3) of the *Criminal Code* and section 96 of the *Regulatory Powers Act*.

*Failing to take precautions to prevent moving etc. of seized goods*

- (3) A person contravenes this subsection if:
- (a) the person is given under subsection 59(3) a copy of a notice under subsection 59(2); and
  - (b) the person fails to take all reasonable precautions, or to 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 Secretary.

*Penalties*

- (4) A person commits an offence if the person contravenes subsection (1) or (3).

Note: The physical elements of an offence against this subsection are set out in the subsection contravened (see subsection 6B(3)).

Penalty: 500 penalty units.

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

Penalty: 60 penalty units.

- (6) A person is liable to a civil penalty if the person contravenes subsection (1) or (3).

Civil penalty: 600 penalty units.

**133 Paragraph 60A(1)(a)**

Omit “section 53”, substitute “section 49 or 52 of the Regulatory Powers Act”.

**134 Paragraph 60D(1)(a)**

Omit “section 53”, substitute “section 49 or 52 of the Regulatory Powers Act”.

**135 Paragraph 60D(1)(b)**

After “section 60C”, insert “of this Act”.

**136 Subparagraph 60D(2)(b)(i)**

Omit “Division 1”, substitute “Part 3 of the Regulatory Powers Act, as that Part applies in relation to evidential material that relates to a provision mentioned in subsection 52(1) of this Act,”.

**137 At the end of Division 3 of Part VIII**

Add:

Note: Sections 66 to 69 of the Regulatory Powers Act do not apply to goods that are the subject of a forfeiture notice under section 60A of this Act: see subsection 53(4) of this Act.

## **138 Divisions 4 to 7 of Part VIII**

Repeal the Divisions, substitute:

### **Division 4—Civil penalties**

#### **62 Civil penalty provisions**

##### *Enforceable civil penalty provisions*

- (1) Each civil penalty provision of this Act or the regulations is enforceable under Part 4 of the Regulatory Powers Act.

Note: Part 4 of the Regulatory Powers Act allows a civil penalty provision to be enforced by obtaining an order for a person to pay a pecuniary penalty for the contravention of the provision.

##### *Authorised applicant*

- (2) For the purposes of Part 4 of the Regulatory Powers Act, the Secretary is an authorised applicant in relation to the civil penalty provisions mentioned in subsection (1).

##### *Relevant court*

- (3) For the purposes of Part 4 of the Regulatory Powers Act, a designated court is a relevant court in relation to the civil penalty provisions mentioned in subsection (1).

##### *Extension to external Territories*

- (4) Part 4 of the Regulatory Powers Act, as that Part applies in relation to the civil penalty provisions mentioned in subsection (1), extends to every external Territory.

##### *Liability of Crown*

- (5) To avoid doubt, subsection 5(2) of this Act does not prevent the Crown from being liable to pay a pecuniary penalty under a civil penalty order under Part 4 of the Regulatory Powers Act, as that Part applies in relation to this Act.

## Division 5—Infringement notices

## 63 Infringement notices

### *Provisions subject to an infringement notice*

- (1) The following provisions are subject to an infringement notice under Part 5 of the Regulatory Powers Act:
  - (a) each provision of this Act or the regulations, contravention of which constitutes an offence of strict liability;
  - (b) each civil penalty provision of this Act or the regulations.

**Note:** Part 5 of the Regulatory Powers Act creates a framework for using infringement notices in relation to provisions.

*Infringement officer*

- (2) For the purposes of Part 5 of the Regulatory Powers Act, an inspector is an infringement officer in relation to the provisions mentioned in subsection (1).

*Relevant chief executive*

- (3) For the purposes of Part 5 of the Regulatory Powers Act, the Secretary is the relevant chief executive in relation to the provisions mentioned in subsection (1).

### *Extension to external Territories*

- (4) Part 5 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in subsection (1), extends to every external Territory.

## Division 6—Enforceable undertakings

## 64 Enforceable undertakings

### *Enforceable provisions*

- (1) The provisions of this Act and the regulations are enforceable under Part 6 of the Regulatory Powers Act.



Note: Part 6 of the Regulatory Powers Act creates a framework for accepting and enforcing undertakings relating to compliance with provisions.

*Authorised person*

- (2) For the purposes of Part 6 of the Regulatory Powers Act, the Secretary is an authorised person in relation to the provisions mentioned in subsection (1).

*Relevant court*

- (3) For the purposes of Part 6 of the Regulatory Powers Act, a designated court is a relevant court in relation to the provisions mentioned in subsection (1).

*Enforceable undertaking may be published on Department's website*

- (4) The Secretary may cause an undertaking given under Part 6 of the Regulatory Powers Act in relation to a provision mentioned in subsection (1) to be published on the Department's website.

*Extension to external Territories*

- (5) Part 6 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in subsection (1), extends to every external Territory.

## **Division 7—Injunctions**

### **64A Injunctions**

*Enforceable provisions*

- (1) The provisions of this Act and the regulations are enforceable under Part 7 of the Regulatory Powers Act.

Note: Part 7 of the Regulatory Powers Act creates a framework for using injunctions to enforce provisions.

*Authorised person*

- (2) For the purposes of Part 7 of the Regulatory Powers Act, the Secretary is an authorised person in relation to the provisions mentioned in subsection (1).

## Relevant court

- (3) For the purposes of Part 7 of the Regulatory Powers Act, a designated court is a relevant court in relation to the provisions mentioned in subsection (1).

### *Extension to external Territories*

- (4) Part 7 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in subsection (1), extends to every external Territory.

## Division 8—Notices to produce

**64B Secretary may require person to provide information etc.**

## Scope

- (1) This section applies if the Secretary believes, on reasonable grounds, that a person is capable of giving information, or producing any document, that is relevant for the purposes of investigating or preventing:
  - (a) an offence against this Act or the regulations; or
  - (b) a contravention of a civil penalty provision of this Act or the regulations.

Note: For paragraph (a), see the definition of *offence against this Act or the regulations* in section 7.

*Notice to produce*

- (2) The Secretary may, by written notice, require the person to give the information, or produce the document, to an inspector.
- (3) The notice must specify the following:

- (a) how the person is to give the information or produce the document;
  - (b) the period (which must be at least 14 days after the day the notice is given) within which the person is to give the information or produce the document;
  - (c) the effect of subsection (4) and sections 137.1 and 137.2 of the *Criminal Code*.
- (4) A person contravenes this subsection if:
- (a) the person is given a notice under subsection (2); and
  - (b) the person fails to comply with the notice within the period specified in the notice.

*Strict liability offence*

- (5) A person commits an offence of strict liability if the person contravenes subsection (4).

Penalty: 30 penalty units.

*Civil penalty*

- (6) A person is liable to a civil penalty if the person contravenes subsection (4).

Civil penalty: 30 penalty units.

*Individuals not excused from giving information or producing documents in certain circumstances*

- (7) An individual is not excused from giving information or producing a document under this section on the ground that giving the information or producing the document might tend to incriminate the individual in relation to an offence.

Note: A body corporate is not entitled to claim the privilege against self-incrimination.

- (8) However:
- (a) the information given or document produced; and
  - (b) the giving of the information or the production of the document; and

- (c) any information, document or thing obtained as a direct or indirect consequence of the giving of the information or the production of the document;
- are not admissible in evidence against the individual in criminal proceedings other than proceedings for an offence against:
- (d) this section; or
- (e) section 137.1 or 137.2 of the *Criminal Code* that relates to this section.
- (9) If, at general law, an individual would otherwise be able to claim the privilege against self-exposure to a penalty (other than a penalty for an offence) in relation to giving information or producing a document under this section, the individual is not excused from giving the information or producing the document under this section on that ground.

**Note:** A body corporate is not entitled to claim the privilege against self-exposure to a penalty.

### 139 Before section 65A

Insert:

## 65 Simplified outline of this Part

This Part continues in existence the Ozone Protection and SGG Account, which is a special account for the purposes of the *Public Governance, Performance and Accountability Act 2013*.

Amounts are credited to the Account from the following sources:

- (a) application fees received by the Commonwealth under this Act or the regulations;
- (b) levy amounts received by the Commonwealth under the *Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Act 1995* or the *Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Act 1995*;
- (c) income received by the Commonwealth from the operation of the National Halon Bank;

- (d) interest received by the Commonwealth from the investment of money standing to the credit of the Account.

The purposes of the Account include paying or reimbursing the Commonwealth's costs associated with the following:

- (a) administering this Act and the regulations;
- (b) furthering certain programs to phase out or phase down, or minimise emissions of, scheduled substances;
- (c) managing the National Halon Bank;
- (d) research relating to ozone depleting substances or SGGs.

#### **140 Section 65A (definition of ODS)**

Repeal the definition.

#### **141 Paragraphs 65C(1)(aa) to (a)**

Repeal the paragraphs, substitute:

- (a) amounts received by the Commonwealth under the *Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Act 1995* or the *Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Act 1995*;

#### **142 Subparagraph 65D(b)(i)**

Repeal the subparagraph, substitute:

- (i) programs to phase out or phase down scheduled substances;

#### **143 Subparagraph 65D(b)(ii)**

Omit "ODSs and SGGs", substitute "scheduled substances".

#### **144 At the end of section 65D**

Add:

- ; (e) refunding or remitting, in accordance with regulations made for the purposes of subsection 70(4), amounts received by the Commonwealth as fees for applications under this Act or the regulations.

## 145 After Part VIIIA

Insert:

## Part VIIIB—Information sharing

## Division 1—Outline of this Part

## 65E Simplified outline of this Part

This Part regulates the disclosure and use of information (referred to as relevant information) obtained under this Act (or the Regulatory Powers Act as it applies in relation to this Act) by any of the following persons (referred to as entrusted persons):

- (a) the Minister;
- (b) the Secretary;
- (c) an APS employee in the Department;
- (d) any other person employed in, or engaged by, the Department.

The Minister may disclose relevant information to Commonwealth entities, State or Territory government bodies, and certain enforcement bodies, subject to certain conditions. In addition, the Minister may use or disclose relevant information to prevent or lessen a serious risk to human health or the environment.

An entrusted person may use or disclose relevant information for certain other purposes, including for the purposes of this and certain other Acts.

A person may commit an offence or be liable to a civil penalty if the person uses or discloses certain kinds of relevant information other than in accordance with this Part.

## **Division 2—Authorised uses and disclosures by Minister**

### **65F Disclosure of relevant information to Commonwealth entities**

The Minister may disclose relevant information to a Commonwealth entity if the Minister is satisfied the disclosure is for the purposes of assisting the entity to perform its functions or exercise its powers.

### **65G Disclosure of relevant information to State or Territory government body**

The Minister may disclose relevant information to a State or Territory government body if:

- (a) the Minister reasonably believes that the disclosure of the information is necessary for the purposes of:
  - (i) the Minister performing functions, or exercising powers, under this Act; or
  - (ii) the administration of a State or Territory law; and
- (b) the State or Territory government body has undertaken not to use or further disclose the information except in accordance with an agreement that:
  - (i) is in force between the Commonwealth and the State or Territory; and
  - (ii) applies in relation to the information; and
- (c) the Minister is satisfied that the information will be used and further disclosed only in accordance with the agreement.

### **65H Disclosure for the purposes of law enforcement**

- (1) The Minister may disclose relevant information to an enforcement body if:
  - (a) the Minister reasonably believes that the disclosure of the information is necessary for:
    - (i) the enforcement of the criminal law; or
    - (ii) the enforcement of a law imposing a pecuniary penalty; or
    - (iii) the protection of public revenue; and





**65P Use or disclosure with consent**

An entrusted person may use or disclose relevant information that relates to a person if:

- (a) the person has consented to the use or disclosure; and
- (b) the use or disclosure is in accordance with that consent.

**65Q Person who provided information**

An entrusted person may disclose relevant information to the person who provided the information.

**65R Summaries or statistics**

An entrusted person may use or disclose:

- (a) summaries of relevant information; or
- (b) statistics derived from relevant information;

if those summaries or statistics do not enable the identification of a person.

**65S Disclosure to a court, tribunal etc.**

An entrusted person may disclose relevant information, or a document containing relevant information:

- (a) for the purposes of proceedings before:
  - (i) a court; or
  - (ii) a tribunal, authority or person that has the power to require the answering of questions or the production of documents; or
- (b) in accordance with an order of a court or such a tribunal, authority or person.

**65T Use for the purposes of disclosure**

An entrusted person may use relevant information for the purpose of disclosing the relevant information under this Division.

## Division 4—Offences

**65U Unauthorised use or disclosure of protected information—entrusted person**

### Unauthorised use or disclosure

- (1) A person contravenes this subsection if:
  - (a) the person is, or has been, an entrusted person; and
  - (b) the person has obtained relevant information in the person's capacity as an entrusted person; and
  - (c) the information is protected information; and
  - (d) the person uses or discloses the information.

## Exceptions

- (2) However, subsection (1) does not apply if the use or disclosure is authorised or required by:
- (a) this Act; or
  - (b) any other law of the Commonwealth; or
  - (c) a prescribed law of a State or a Territory.

Note: A person who wishes to rely on this subsection bears an evidential burden in relation to the matter in this subsection. See subsection 13.3(3) of the *Criminal Code* and section 96 of the Regulatory Powers Act.

### Fault-based offence

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

**Note:** The physical elements of an offence against this subsection are set out in subsection (1) (see subsection 6B(3)).

**Penalty:** Imprisonment for 2 years or 180 penalty units, or both.

*Strict liability offence*

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

Penalty: 60 penalty units.

*Civil penalty provision*

- (5) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 300 penalty units.

**65V Unauthorised use or disclosure of protected information—  
official of Commonwealth entity**

- (1) A person contravenes this subsection if:
- (a) the person is, or has been, an official of a Commonwealth entity; and
  - (b) the person has obtained relevant information in the person's capacity as an official of the entity; and
  - (c) the information is protected information that was disclosed to the entity under section 65F; and
  - (d) the person uses or discloses the information other than for the purpose for which it was disclosed to the entity.

*Fault-based offence*

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

Note: The physical elements of an offence against this subsection are set out in subsection (1) (see subsection 6B(3)).

Penalty: Imprisonment for 2 years or 180 penalty units, or both.

*Strict liability offence*

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

Penalty: 60 penalty units.

*Civil penalty provision*

- (4) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 300 penalty units.

## Part VIIC—Review of decisions

## 65W Simplified outline of this Part

Certain decisions made under this Act are reviewable under this Part.

The applicant or licensee in relation to a reviewable decision made by a delegate may apply to the Minister for the decision to be reconsidered. If the decision is to be reconsidered by a delegate, the delegate must not have been involved in making the original decision. After reconsidering the original decision, the Minister or delegate must affirm, vary or set aside the original decision.

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

- (a) a reviewable decision made by the Minister personally;  
or
- (b) a decision made on a reconsideration of a reviewable decision.

## 65X Reviewable decisions

Each of the following decisions of the Minister is a ***reviewable decision***:

- (a) a decision under section 16 to refuse to grant a licence (including a decision that is taken to have been made under section 17);
- (b) a decision under section 18 to impose, revoke or vary a licence condition;
- (c) a decision under section 19AC to refuse to renew a licence (including a decision that is taken to have been made under section 19AD);
- (d) a decision under section 19A to terminate a licence;
- (e) a decision under section 19B to refuse to transfer a licence;
- (f) a decision under section 19C to refuse to amend a licence;
- (g) a decision under subsection 19D(1) to suspend a licence;

- (h) a decision under subsection 19D(3) to specify either or both of the following in a suspension notice given under that subsection:
  - (i) actions the licensee must take for the suspension to end;
  - (ii) a fixed period for the suspension;
- (i) a decision under paragraph 19D(7)(a) to vary a suspension notice;
- (j) a decision under section 20 to cancel a licence;
- (k) a decision under section 28 to allocate, or refuse to allocate, a quota;
- (l) a decision under section 33 to vary or revoke a reserve HCFC quota;
- (m) a decision under section 35A to direct a licensee to export a quantity of HCFCs;
- (n) a decision under section 36H to direct an SGG licensee to export a quantity of HFCs.

#### **65Y Notification of reviewable decisions etc.**

- (1) As soon as practicable after a reviewable decision is made, the Minister must give the applicant or licensee concerned a written notice of the decision containing:
  - (a) the reasons for the decision; and
  - (b) details of the applicant's or licensee's right to have the decision reconsidered under section 65ZA or to apply for review of the decision under section 65ZC (as the case requires).
- (2) A notice is taken to have been given under subsection (1) if the reasons, and details mentioned in paragraph (1)(b), are contained in a written notice of the reviewable decision under another provision of this Act.
- (3) Failure to give a notice under subsection (1) (including as mentioned in subsection (2)) in relation to a reviewable decision does not affect the validity of the reviewable decision.

## 65Z Reconsideration of reviewable decisions—application for reconsideration

- (1) An applicant or licensee may apply to the Minister to reconsider a reviewable decision (the ***original decision***) made in relation to the applicant or licensee, other than:
  - (a) a reviewable decision made by the Minister personally; or
  - (b) a reconsideration decision.
- (2) The application must:
  - (a) be in writing; and
  - (b) be made within:
    - (i) 21 days after the day on which the original decision is made (or taken to have been made); or
    - (ii) if, either before or after the end of that 21-day period, the Minister extends the period within which the application may be made—the extended period; and
  - (c) set out the reasons why the applicant or licensee wants the original decision reconsidered.

## 65ZA Reconsideration of reviewable decisions—conducting the reconsideration

### Conducting reconsideration

- (1) On receiving an application under section 65Z, the Minister must reconsider the original decision.
- (2) If a delegate of the Minister is to reconsider the original decision, the delegate must:
  - (a) not have been involved in making the original decision; and
  - (b) except in the case of a decision taken to have been made under section 17 or 19AD—occupy a position that is at least as senior as that occupied by the person who made the original decision.

*Seeking further information*

- (3) The Minister may, by written notice, require the applicant or licensee to give the Minister further information about the application for reconsideration.
- (4) If further information is sought, the applicant or licensee must provide the requested information within 30 days after the day notice is given under subsection (3).

**65ZB Reconsideration of reviewable decisions—reconsideration decision**

*Decision on reconsideration*

- (1) After reconsidering the original decision, the Minister:
  - (a) must affirm, vary or set aside the original decision; and
  - (b) if the original decision is set aside—may make such other decision as the Minister thinks appropriate.

*Notice of reconsideration decision*

- (2) As soon as practicable after making a decision under subsection (1) (the **reconsideration decision**), the Minister must give the applicant or licensee written notice of the reconsideration decision containing:
  - (a) reasons for the reconsideration decision; and
  - (b) details of the applicant's or licensee's right to apply for review of the reconsideration decision under section 65ZC.
- (3) Failure to give a notice under subsection (2) in relation to the reconsideration decision does not affect the validity of the reconsideration decision.

*When reconsideration decision takes effect*

- (4) The reconsideration decision takes effect:
  - (a) on the day specified in the notice of the reconsideration decision given under subsection (2); or

- (b) if a day is not specified—on the day the reconsideration decision is made, or taken to have been made (see subsection (5)).

*Original decision taken to be affirmed if no decision made*

- (5) The Minister is taken to have made a reconsideration decision affirming the original decision if the Minister does not make a reconsideration decision on the application before the end of whichever of the following periods is applicable:
- (a) the period of 60 days starting on the day after the application for reconsideration was made, unless paragraph (b) or (c) applies;
  - (b) if the Minister has requested further information by a notice given under subsection 65ZA(3) and such information is provided—the period of 60 days starting on the day after the information is provided;
  - (c) if the Minister has requested further information by a notice given under subsection 65ZA(3) and such information is not provided—the period of 90 days starting on the day after the notice was given under that subsection.

## 65ZC Review of decisions by Administrative Appeals Tribunal

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

- (a) a reviewable decision made by the Minister personally;
- (b) a reconsideration decision.

## 146 Section 66

Repeal the section, substitute:

## 66 Simplified outline of this Part

This Part deals with miscellaneous matters, such as approved forms, delegations, annual reports, collection of levies, constitutional matters and regulations.



**147 Section 67**

Repeal the section.

**148 Section 67A (at the end of the heading)**

Add “by the Minister”.

**149 Before paragraph 67A(1)(a)**

Insert:

(aa) the Secretary; or

**150 Subsection 67A(2)**

Omit “, 20 or 53K”, substitute “or 20”.

**151 After section 67A**

Insert:

**67AA Delegation by the Secretary**

- (1) The Secretary may, by writing, delegate all or any of the Secretary’s powers and functions under this Act or the regulations, or under any of Parts 2 to 7 of the Regulatory Powers Act (as those Parts apply in relation to this Act), to:
  - (a) an SES employee or acting SES employee in the Department; or
  - (b) for a power or function under section 66 or 67 of the Regulatory Powers Act—an inspector.
- (2) In exercising powers or functions under a delegation, the delegate must comply with any directions of the Secretary.

**152 Paragraph 69(1)(a)**

Omit “60 days”, substitute “90 days”.

**153 Section 69B**

Repeal the section, substitute:

## 69B Constitutional basis of this Act

This Act (other than Part VIIIB) relies on the Commonwealth's legislative powers under paragraph 51(xxix) (external affairs) of the Constitution as it relates to giving effect to Australia's obligations under relevant international agreements, in particular:

- (a) the Vienna Convention; and
- (b) the Montreal Protocol; and
- (c) the Framework Convention on Climate Change; and
- (d) the Kyoto Protocol; and
- (e) the Paris Agreement.

Note: Part VIIIB is about information sharing. That Part relies on a range of legislative powers of the Commonwealth.

## 69BA Additional operation of this Act

### *Additional operation of this Act in relation to particular activities*

- (1) In addition to section 69B, this Act also has effect as provided by this section in relation to the following activities:
  - (a) manufacturing, importing or exporting a substance, scheduled substance or type of scheduled substance;
  - (b) distributing, disposing of, purchasing or acquiring a substance, scheduled substance or type of scheduled substance;
  - (c) storing, using or handling a substance, scheduled substance or type of scheduled substance;
  - (d) engaging in conduct that results in the discharge of a substance, scheduled substance or type of scheduled substance;
  - (e) recovering, recycling or destroying a substance, scheduled substance or type of scheduled substance.
- (2) In addition to section 69B, this Act also has effect as provided by this section in relation to the manufacture, import or export of equipment, or a kind of equipment, that:
  - (a) uses a scheduled substance in its operation; or
  - (b) contains a scheduled substance.

*Corporations*

- (3) This Act also has the effect it would have if a reference to an activity mentioned in subsection (1) or (2) was expressly confined to such an activity carried out by a corporation to which paragraph 51(xx) of the Constitution applies.

*Territories*

- (4) This Act also has the effect it would have if a reference to an activity mentioned in subsection (1) or (2) was expressly confined to:
- (a) such an activity carried out by a body corporate that is incorporated in a Territory; or
  - (b) such an activity carried out in a Territory.

*Trade and commerce*

- (5) This Act also has the effect it would have if a reference to an activity mentioned in subsection (1) or (2) was expressly confined to such an activity carried out in the course of:
- (a) trade and commerce between Australia and places outside Australia; or
  - (b) trade and commerce among the States; or
  - (c) trade and commerce between a State and a Territory.

*Agencies of the Commonwealth*

- (6) This Act also has the effect it would have if a reference to an activity mentioned in subsection (1) or (2) was expressly confined to:
- (a) such an activity carried out in the supply of goods or services to the Commonwealth, or a corporate Commonwealth entity or a Commonwealth company (both within the meaning of the *Public Governance, Performance and Accountability Act 2013*); or
  - (b) such an activity carried out by the Commonwealth, or a corporate Commonwealth entity or a Commonwealth company (both within the meaning of that Act).

## Communications

- (7) This Act also has the effect it would have if a reference to an activity mentioned in subsection (1) or (2) was expressly confined to such an activity undertaken using a service to which paragraph 51(v) of the Constitution applies.

### 154 Subsection 69E(1)

After “the regulations”, insert “, or the Regulatory Powers Act as that Act operates because of this Act,”.

## 155 Sections 69F and 69G

Repeal the sections.

## 156 Section 70

Repeal the section, substitute:

## 70 Regulations

- (1) The Governor-General may make regulations, not inconsistent with this Act, prescribing matters:
  - (a) required or permitted by this Act to be prescribed; or
  - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

## Offences

- (2) The regulations may prescribe penalties, not exceeding a fine of 50 penalty units, for offences against the regulations.

### Civil penalty provisions

- (3) The regulations may prescribe pecuniary penalties, not exceeding 60 penalty units, for contravening civil penalty provisions in the regulations.

### Fees

- (4) The regulations may provide for:

- (a) the charging and recovery of fees for applications under this Act or the regulations (including by non-government bodies); and
  - (b) the remission, refund or waiver of those fees, or the exemption of persons from payment of those fees.
- (5) A fee must not be such as to amount to taxation.

*Incorporation etc. of international agreements etc.*

- (6) Despite subsection 14(2) of the *Legislation Act 2003*, the regulations may make provision in relation to a matter by applying, adopting or incorporating any matter contained in the following as in force or existing from time to time:
- (a) the Vienna Convention;
  - (b) the Montreal Protocol;
  - (c) the Framework Convention on Climate Change;
  - (d) the Kyoto Protocol;
  - (e) the Paris Agreement;
  - (f) a decision adopted or made under an international agreement covered by any of paragraphs (a) to (e).

## 157 Parts I to IV of Schedule 1

Repeal the Parts, substitute:

### 1 CFCs

For the purposes of the definitions of **CFC** and **scheduled substance** in section 7, this clause covers a substance mentioned in an item of the following table. The **ozone depleting potential** for the substance is specified in column 2 of the item.

<b>CFCs</b>		
<b>Item</b>	<b>Column 1 Substance</b>	<b>Column 2 Ozone depleting potential</b>
1	Trichlorofluoromethane (CFC-11)	1.0
2	Dichlorodifluoromethane (CFC-12)	1.0
3	CF <sub>3</sub> Cl (CFC-13)	1.0

## Part 1 Amendments

CFCs		
Item	Column 1 Substance	Column 2 Ozone depleting potential
4	C <sub>2</sub> FCl <sub>5</sub> (CFC-111)	1.0
5	C <sub>2</sub> F <sub>2</sub> Cl <sub>4</sub> (CFC-112)	1.0
6	Trichlorotrifluoroethane (CFC-113)	0.8
7	Dichlorotetrafluoroethane (CFC-114)	1.0
8	(Mono) chloropentafluoroethane (CFC-115)	0.6
9	C <sub>3</sub> FCl <sub>7</sub> (CFC-211)	1.0
10	C <sub>3</sub> F <sub>2</sub> Cl <sub>6</sub> (CFC-212)	1.0
11	C <sub>3</sub> F <sub>3</sub> Cl <sub>5</sub> (CFC-213)	1.0
12	C <sub>3</sub> F <sub>4</sub> Cl <sub>4</sub> (CFC-214)	1.0
13	C <sub>3</sub> F <sub>5</sub> Cl <sub>3</sub> (CFC-215)	1.0
14	C <sub>3</sub> F <sub>6</sub> Cl <sub>2</sub> (CFC-216)	1.0
15	C <sub>3</sub> F <sub>7</sub> Cl (CFC-217)	1.0

## 2 Halons

For the purposes of the definitions of *halon* and *scheduled substance* in section 7, this clause covers a substance mentioned in an item of the following table. The *ozone depleting potential* for the substance is specified in column 2 of the item.

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

### 3 Carbon tetrachloride

For the purposes of the definition of *scheduled substance* in section 7, this clause covers a substance mentioned in an item of the following table. The *ozone depleting potential* for the substance is specified in column 2 of the item.

Carbon tetrachloride		
Item	Column 1 Substance	Column 2 Ozone depleting potential
1	Carbon tetrachloride (CCl <sub>4</sub> )	1.1

#### 4 Methyl chloroform

For the purposes of the definition of *scheduled substance* in section 7, this clause covers a substance mentioned in an item of the following table. The *ozone depleting potential* for the substance is specified in column 2 of the item.

Methyl chloroform		
Item	Column 1 Substance	Column 2 Ozone depleting potential
1	1,1,1-trichloroethane (C <sub>2</sub> H <sub>3</sub> Cl <sub>3</sub> )	0.1

Note: The formula C<sub>2</sub>H<sub>3</sub>Cl<sub>3</sub> does not refer to 1,1,2-trichloroethane.

#### 158 Part V (heading) of Schedule 1

Repeal the heading, substitute:

#### 5 HCFCs

For the purposes of the definitions of *HCFC* and *scheduled substance* in section 7, this clause covers a substance mentioned in an item of the following table. The *ozone depleting potential* for the substance is specified in column 2 of the item and the *100-year global warming potential* for the substance (if any) is specified in column 3 of the item.

#### 159 Parts VI to VIII of Schedule 1

Repeal the Parts, substitute:

## 6 HBFCs

For the purposes of the definitions of *HBFC* and *scheduled substance* in section 7, this clause covers a substance mentioned in an item of the following table. The *ozone depleting potential* for the substance is specified in column 2 of the item.

HBFCs		
Item	Column 1 Substance	Column 2 Ozone depleting potential
1	CH <sub>2</sub> Br <sub>2</sub>	1.0
2	CH <sub>2</sub> FBr (HBFC-22B1)	0.74
3	CH <sub>2</sub> FBr	0.73
4	C <sub>2</sub> H <sub>2</sub> Br <sub>4</sub>	0.8
5	C <sub>2</sub> H <sub>2</sub> F <sub>2</sub> Br <sub>3</sub>	1.8
6	C <sub>2</sub> H <sub>2</sub> F <sub>3</sub> Br <sub>2</sub>	1.6
7	C <sub>2</sub> H <sub>2</sub> F <sub>4</sub> Br	1.2
8	C <sub>2</sub> H <sub>2</sub> FBr <sub>3</sub>	1.1
9	C <sub>2</sub> H <sub>2</sub> F <sub>2</sub> Br <sub>2</sub>	1.5
10	C <sub>2</sub> H <sub>2</sub> F <sub>3</sub> Br	1.6
11	C <sub>2</sub> H <sub>3</sub> FBr <sub>2</sub>	1.7
12	C <sub>2</sub> H <sub>3</sub> F <sub>2</sub> Br	1.1
13	C <sub>2</sub> H <sub>4</sub> FBr	0.1
14	C <sub>3</sub> H <sub>2</sub> FBr <sub>6</sub>	1.5
15	C <sub>3</sub> H <sub>2</sub> F <sub>2</sub> Br <sub>5</sub>	1.9
16	C <sub>3</sub> H <sub>2</sub> F <sub>3</sub> Br <sub>4</sub>	1.8
17	C <sub>3</sub> H <sub>2</sub> F <sub>4</sub> Br <sub>3</sub>	2.2
18	C <sub>3</sub> H <sub>2</sub> F <sub>5</sub> Br <sub>2</sub>	2.0
19	C <sub>3</sub> H <sub>2</sub> F <sub>6</sub> Br	3.3
20	C <sub>3</sub> H <sub>2</sub> FBr <sub>5</sub>	1.9
21	C <sub>3</sub> H <sub>2</sub> F <sub>2</sub> Br <sub>4</sub>	2.1
22	C <sub>3</sub> H <sub>2</sub> F <sub>3</sub> Br <sub>3</sub>	5.6
23	C <sub>3</sub> H <sub>2</sub> F <sub>4</sub> Br <sub>2</sub>	7.5
24	C <sub>3</sub> H <sub>2</sub> F <sub>5</sub> Br	1.4
25	C <sub>3</sub> H <sub>3</sub> FBr <sub>4</sub>	1.9



<b>HBFCs</b>		
<b>Item</b>	<b>Column 1 Substance</b>	<b>Column 2 Ozone depleting potential</b>
26	C <sub>3</sub> H <sub>3</sub> F <sub>2</sub> Br <sub>3</sub>	3.1
27	C <sub>3</sub> H <sub>3</sub> F <sub>3</sub> Br <sub>2</sub>	2.5
28	C <sub>3</sub> H <sub>3</sub> F <sub>4</sub> Br	4.4
29	C <sub>3</sub> H <sub>4</sub> FBr <sub>3</sub>	0.3
30	C <sub>3</sub> H <sub>4</sub> F <sub>2</sub> Br <sub>2</sub>	1.0
31	C <sub>3</sub> H <sub>4</sub> F <sub>3</sub> Br	0.8
32	C <sub>3</sub> H <sub>5</sub> FBr <sub>2</sub>	0.4
33	C <sub>3</sub> H <sub>5</sub> F <sub>2</sub> Br	0.8
34	C <sub>3</sub> H <sub>6</sub> FBr	0.7

## 7 Methyl bromide

For the purposes of the definitions of *methyl bromide* and *scheduled substance* in section 7, this clause covers a substance mentioned in an item of the following table. The *ozone depleting potential* for the substance is specified in column 2 of the item.

<b>Methyl bromide</b>		
<b>Item</b>	<b>Column 1 Substance</b>	<b>Column 2 Ozone depleting potential</b>
1	CH <sub>3</sub> Br	0.6

## 8 Bromochloromethane

For the purposes of the definition of *scheduled substance* in section 7, this clause covers a substance mentioned in an item of the following table. The *ozone depleting potential* for the substance is specified in column 2 of the item.

## Part 1 Amendments

**160 Part IX (heading) of Schedule 1**

## 9 HFCs

**161 Part X (heading) of Schedule 1**

## 10 PFCs

## 162 Parts XI and XII of Schedule 1

## 11 Sulfur hexafluoride

## 12 Nitrogen trifluoride

*Ozone Protection and Synthetic Greenhouse Gas Management Reform  
(Closing the Hole in the Ozone Layer) Act 2022*

**163 Schedule 4**

Repeal the Schedule.

## Division 1—Definitions

In this Part:

***OPSGGM regulations*** means regulations made for the purposes of the OPSGGM Act.

***pre-commencement licence*** means a licence that:

- (a) was granted under the OPSGGM Act 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.

## 165 Activities allowed by licences

- (1) Section 13A (licenses and what they allow) of the OPSGGM Act, as in force on and after the commencement of this item, applies on and after that commencement in relation to a licence that is granted or renewed on or after that commencement.
- (2) A pre-commencement licence that allowed the licensee to engage in particular activities immediately before the commencement of this item (or that would have allowed the licensee to engage in particular activities, if it had come into force) is taken to allow the licensee to engage in those same activities on and after that commencement while the licence is not suspended, until:
  - (a) the licence ceases to be in force; or
  - (b) the licence is renewed.

## **166 Grant and renewal of licences**

- (1) Section 16 (grant of licence) of the OPSGGM Act, as in force on and after the commencement of this item, applies in relation to granting a licence on or after that commencement, whether the application for the grant of the licence is made before, on or after that commencement.
- (2) Section 19AC (renewal of licence) of the OPSGGM Act, as in force on and after the commencement of this item, applies in relation to renewing a licence on or after that commencement, whether the application for the renewal is made before, on or after that commencement.

Note: As a result of this subitem, the criteria that apply for granting a licence on or after the commencement of this item also apply for renewing a licence on or after that commencement (see subsection 19AC(2) of the OPSGGM Act).

- (3) Subitem (2) has effect in relation to a pre-commencement licence subject to item 167.

## **167 Renewal of pre-commencement licences**

- (1) This item applies in relation to renewing, on or after the commencement of this item, a pre-commencement licence of a kind mentioned in subitem (5), whether the application for the renewal is made under section 19AA of the OPSGGM Act before, on or after that commencement.
- (2) The Minister must refuse to renew the licence if none of the activities allowed by the licence under section 13A of OPSGGM Act immediately before that commencement (or that would have been allowed, if the licence had come into force) is allowed by a licence of that kind under that section, as amended by Part 1 of this Schedule.
- (3) If subitem (2) does not apply and the Minister renews the licence in accordance with section 19AC of the OPSGGM Act, the Minister must, when renewing the licence, amend the licence so that it specifies only activities that are allowed by a licence of that kind under section 13A of OPSGGM Act, as amended by Part 1 of this Schedule.
- (4) Subsection 19AC(3) (previous consideration of matters) of the OPSGGM Act applies as if the reference in that subsection to subsections 16(3A) to (6A) of that Act included a reference to

subsections 16(3A) to (6B) of that Act, as in force immediately before the commencement of this item.

- (5) For the purposes of this item, there are 4 kinds of licence, as follows:
- (a) controlled substances licences;
  - (b) essential uses licences;
  - (c) used substances licences;
  - (d) equipment licences.

### **168 Fit and proper person considerations**

Section 13B of the OPSGGM Act, as in force on and after the commencement of this item, applies to the exercise of a power on or after that commencement:

- (a) to grant a licence, whether the licence is applied for before, on or after that commencement; or
- (b) to renew a licence, whether the renewal is applied for before, on or after that commencement; or
- (c) to transfer, suspend or cancel a licence, whether the licence is granted before, on or after that commencement.

### **169 Licence conditions and changes to licences**

- (1) Sections 18, 19A, 19B, 19C and 19D of the OPSGGM Act, as in force on and after the commencement of this item, apply in relation to a licence whether the licence is granted before, on or after that commencement.
- (2) Paragraphs 19D(1)(a) and (b) apply as mentioned in subitem (1) whether the licensee:
- (a) ceased to be a fit and proper person to hold a licence; or
  - (b) contravened a condition of the licence;
- before, on or after the commencement of this item.

### **170 Directions to export**

- (1) Subsection 13AB(2) of the OPSGGM Act, as in force on and after the commencement of this item, applies in relation to a direction under subsection 35A(1) or 36H(1) of that Act, whether the direction is given before, on or after that commencement.

- (2) Subsections 35A(1A) and 36H(1A) of the OPSGGM Act, as in force on and after the commencement of this item, apply in relation to a notice given to a licensee under subsection 35A(1) or 36H(1), as the case requires, before, on or after that commencement.

### **171 Reporting obligations**

Section 46 of the OPSGGM Act, as in force on and after the commencement of this item, applies in relation to a reporting period that ends on or after that commencement.

### **172 Information sharing**

Part VIIIB of the OPSGGM Act, as in force on and after the commencement of this item, applies in relation to the use and disclosure of information on or after that commencement, whether the information is obtained by an entrusted person before, on or after that commencement.

### **173 Review of decisions**

- (1) Part VIIIC of the OPSGGM Act, as in force on and after the commencement of this item, applies to a decision made on or after that commencement, whether an application (if any) for the exercise of a power to which the decision relates was made before, on or after that commencement.
- (2) Sections 66 and 67 of the OPSGGM Act, as in force immediately before the commencement of this item, continue to apply on and after that commencement in relation to a decision made before that commencement.

### **174 Collection of licence levies**

Subsections 69(1) and (1A) of the OPSGGM Act, as in force on and after the commencement of this item, apply in relation to a reporting period that ends on or after that commencement.

### **175 Crediting of amounts to Account**

Paragraph 65C(1)(a) of the OPSGGM Act, as in force on and after the commencement of this item, applies in relation to amounts received before, on or after that commencement.

## **176 Saving provision—regulations**

Regulations made under 70 of the OPSGGM Act, that were in force immediately before the commencement of this item, continue in force (and may be dealt with) as if they had been made under section 70 of that Act, as amended by Part 1 of this Schedule.

## **Division 3—Enforcement**

### **177 Appointment of inspectors**

An appointment made by the Minister under subsection 49(1) of the OPSGGM Act before the commencement of this item, that was in force immediately before that commencement, continues in force (and may be dealt with) after that commencement as if it had been made by the Secretary under that subsection as amended by Part 1 of this Schedule.

### **178 Identity cards**

- (1) An identity card issued under section 50 of the OPSGGM Act before the commencement of this item is taken to be an identity card issued under sections 35 and 76 of the Regulatory Powers Act (as those sections apply as described in the OPSGGM Act, as amended by Part 1 of this Schedule).
- (2) Despite the repeal of section 50 of the OPSGGM Act made by Part 1 of this Schedule, that section, as in force immediately before the commencement of this item, continues to apply on and after that commencement in relation to a person who ceased to be an appointed inspector before that commencement.

### **179 Monitoring and investigation**

#### *Application of regulatory powers*

- (1) Part 2 of the Regulatory Powers Act applies as described in the OPSGGM Act (as amended by Part 1 of this Schedule) in relation to determining, on or after the commencement of this item:
  - (a) whether a provision mentioned in subsection 50(1) of the OPSGGM Act (as so amended) has been or is being complied with on or after that commencement; or



- (b) whether a provision of the OPSGGM Act or the OPSGGM regulations (as in force at any time before that commencement) has been or is being complied with before, on or after that commencement; or
  - (c) the correctness of information given on or after that commencement in compliance, or purported compliance, with a provision mentioned in subsection 50(2) of the OPSGGM Act (as so amended); or
  - (d) the correctness of information given before, on or after that commencement in compliance, or purported compliance, with the OPSGGM Act or the OPSGGM regulations (as in force at any time before that commencement).
- (2) Part 3 of the Regulatory Powers Act applies as described in the OPSGGM Act (as amended by Part 1 of this Schedule) in relation to evidential material that relates to:
  - (a) a contravention or suspected contravention, on or after the commencement of this item, of a provision mentioned in subsection 52(1) of the OPSGGM Act (as so amended); or
  - (b) a contravention or suspected contravention, before, on or after the commencement of this item, of:
    - (i) a provision of the OPSGGM Act or the OPSGGM regulations (as in force at any time before that commencement) that created an offence against that Act or those regulations; or
    - (ii) section 137.1 or 137.2 of the *Criminal Code*, in so far as those sections relate to the OPSGGM Act or the OPSGGM regulations (as in force at any time before that commencement); or
    - (iii) a civil penalty provision of the OPSGGM Act or the OPSGGM regulations (as in force at any time before that commencement).

***Saving provisions of the old OPSGGM Act***

- (3) Division 1 of Part VIII of the OPSGGM Act, as in force immediately before the commencement of this item, continues to apply on and after that commencement in relation to the following:
  - (a) an application for a warrant made, but not decided, before that commencement under section 55E or 55F of the

- OPSGGM Act (as in force immediately before that commencement);
- (b) a warrant issued, or completed and signed, before, on or after that commencement under section 55E or 55F of the OPSGGM Act (as in force immediately before that commencement) as a result of an application made before that commencement;
  - (c) powers exercised, rights created and duties imposed under provisions of that Division before, on or after that commencement as a result of:
    - (i) an entry to premises, before that commencement, under section 51 of the OPSGGM Act (as in force immediately before that commencement); or
    - (ii) an entry to premises, before that commencement, under section 52 of the OPSGGM Act (as in force immediately before that commencement) with the consent of the occupier of the premises or a person apparently representing the occupier; or
    - (iii) an entry to premises before, on or after that commencement as a result of a warrant referred to in paragraph (b);
  - (d) things seized or secured under provisions of that Division before, on or after that commencement as a result of an entry referred to in subparagraph (c)(i), (ii) or (iii).

## **180 Civil penalties**

- (1) Part 4 of the Regulatory Powers Act applies as described in the OPSGGM Act (as amended by Part 1 of this Schedule) in relation to contraventions of civil penalty provisions of the OPSGGM Act or the OPSGGM regulations (as so amended) occurring on or after the commencement of this item.
- (2) Division 7 of Part VIII of the OPSGGM Act, as in force immediately before the commencement of this item, continues to apply on and after that commencement in relation to contraventions of the OPSGGM Act or the OPSGGM regulations (as in force at any time before that commencement) occurring before that commencement.

### **181 Infringement notices**

- (1) Part 5 of the Regulatory Powers Act applies as described in the OPSGGM Act (as amended by Part 1 of this Schedule) in relation to alleged contraventions of provisions referred to in subsection 63(1) of the OPSGGM Act (as so amended) occurring on or after the commencement of this item.
- (2) Division 5 of Part VIII of the OPSGGM Act, and provisions of the OPSGGM regulations made for the purposes of that Division, as in force immediately before the commencement of this item, continue to apply on and after that commencement in relation to:
  - (a) the alleged commission of an offence referred to in paragraph 65AA(1)(a) or (b) of the OPSGGM Act (as then in force) that occurs before that commencement; and
  - (b) the alleged contravention of a civil penalty provision referred to in subsection 65AA(3) of the OPSGGM Act (as then in force) that occurs before that commencement.

### **182 Enforceable undertakings**

Part 6 of the Regulatory Powers Act applies as described in the OPSGGM Act (as amended by Part 1 of this Schedule) in relation to undertakings given on or after the commencement of this item.

### **183 Injunctions**

- (1) Part 7 of the Regulatory Powers Act applies as described in the OPSGGM Act (as amended by Part 1 of this Schedule) in relation to:
  - (a) a contravention or possible contravention, on or after the commencement of this item, of a provision referred to in subsection 64A(1) of that Act (as so amended); or
  - (b) a contravention or possible contravention, before, on or after that commencement, of the OPSGGM Act or the OPSGGM regulations (as in force at any time before that commencement).
- (2) Section 56 of the OPSGGM Act, as in force immediately before the commencement of this item, continues to apply on and after that commencement in relation to an application made, but not decided, under that section before that commencement.

## 184 Forfeiture of goods

### *Forfeiture following conviction or civil penalty order*

- (1) Subitem (2) applies if either of the following occurs on or after commencement of this item:
- (a) a person is convicted of an offence, against a provision referred to in old subsection 57(1), that was committed before that commencement;
  - (b) a civil penalty order is made against a person for contravening a provision referred to in old subsection 57(1) before that commencement.
- (2) Section 58 of the OPSGGM Act, as in force on and after that commencement, applies in relation to the conviction or the making of the civil penalty order as if a reference in that section to forfeitable goods were a reference to old forfeitable goods.

### *Forfeiture notices*

- (3) Subitem (4) applies if:
- (a) an inspector seizes goods under section 49 or 52 of the Regulatory Powers Act on or after the commencement of this item; and
  - (b) the goods relate to a contravention of a provision referred to in old subsection 57(1) that occurred, or is suspected to have occurred, before that commencement.
- (4) Subdivision C of Division 3 of the OPSGGM Act, as in force on and after that commencement, applies in relation to the goods as if a reference in that Subdivision to forfeitable goods were a reference to old forfeitable goods.

### *Definition*

- (5) In this item:
- old forfeitable goods*** means forfeitable goods within the meaning of section 57 of the OPSGGM Act, as in force immediately before the commencement of this item.
- old subsection 57(1)*** means subsection 57(1) of the OPSGGM Act, as in force immediately before the commencement of this item.
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### **185 Moving etc. seized goods**

- (1) Section 60 of the OPSGGM Act, as in force on and after the commencement of this item, applies in relation to a notice given under subsection 59(2) of that Act on or after that commencement.
- (2) A direction given to a person by the Minister for the purposes of section 60 of the OPSGGM Act that was in force immediately before the commencement of this item continues in force (and may be dealt with) after that commencement as if the direction had been given to the person by the Secretary for the purposes of that section (as amended by Part 1 of this Schedule).

### **186 Notices to produce**

The Secretary may give a notice under section 64B of the OPSGGM Act, as in force on and after the commencement, even if:

- (a) the offence referred to in paragraph 64B(1)(a) is committed, or believed to have been committed, before the commencement of this item; or
- (b) the contravention of the civil penalty provision referred to in paragraph 64B(1)(b) occurred, or is believed to have occurred, before that commencement.

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*[Minister's second reading speech made in—  
House of Representatives on 28 September 2022  
Senate on 30 November 2022]*

(98/22)

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