

2005

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

ENVIRONMENT AND HERITAGE LEGISLATION AMENDMENT BILL 2005

EXPLANATORY MEMORANDUM

(Circulated by authority of Senator the Hon Ian Campbell,
Minister for the Environment and Heritage)

GENERAL OUTLINE

The purpose of this Bill is to amend the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* and the *Sydney Harbour Federation Trust Act 2001*.

The amendments to the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* will ensure that persons or organisations wishing to import or export a recycled or used hydrochlorofluorocarbon (HCFC) or methyl bromide will only require a used substances licence. The bill will also amend the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* to ensure that persons who manufacture synthetic greenhouse gases are subject to reporting obligations that mirror those for persons who import or export synthetic greenhouse gases.

In relation to amendments to the *Sydney Harbour Federation Trust Act 2001*, the Sydney Harbour Federation Trust (the 'Trust'), established by the *Sydney Harbour Federation Trust Act 2001*, is responsible for planning the future use of certain former defence and other Commonwealth lands vested in the Trust and to maximise public access to those lands. The *Sydney Harbour Federation Trust Act 2001* provides that, subject to environment and heritage considerations, 19 residential lots at Georges Heights/Middle Head listed in Schedule 2 to the *Sydney Harbour Federation Trust Act 2001* may be sold. The other lands are listed in Schedule 1 and are to remain in public ownership.

The amendments to the *Sydney Harbour Federation Trust Act 2001* will permit the sale of a disused Scout Hall site in Markham Close, Mosman, which is currently listed in Schedule 1, and, in exchange, remove a part of the land in Schedule 2 and transfer it to Schedule 1.

The Scout Hall land comprises around 2/10 of a hectare of the Trust lands. The land swap is consistent with the fundamental objective of making the lands available for public access and use.

The Scout Hall land does not have any significant environmental and heritage value, and is more suitable for residential use than as public open space. It is proposed that the Scout Hall land would be subdivided for sale for residential purposes. Other residential land in Markham Close would then be restored to parklands, resulting in an improvement to the proposed Headland Park along the ridgeline.

This is in keeping with the Comprehensive Plan for Trust sites, which came into effect on 10 September 2003. Community consultation in the development of the Management Plan for the area (adopted on 9 December 2003) resulted in this land swap proposal.

To facilitate the amendment to the *Sydney Harbour Federation Trust Act 2001*, three lots (Lots 15, 16 and 17 in DP 233157) have been subdivided to create three new lots (Lots 104, 105 and 106 in DP 1079507). The amendment will update the *Sydney Harbour Federation Trust Act 2001* with these current legal property descriptions.

Amendments arising from this Bill

This Bill amends the following Acts: the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* and the *Sydney Harbour Federation Trust Act 2001*.

The Bill has two schedules. The first schedule amends the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* and the second schedule amends the *Sydney Harbour Federation Trust Act 2001*.

FINANCIAL IMPACT STATEMENT

The Bill will have no financial impact.

REGULATION IMPACT STATEMENT

The Office of Regulation Review has considered these proposed amendments and determined that a Regulation Impact Statement is not required for the amendments.

NOTES ON INDIVIDUAL CLAUSES

Clause 1 - Short title

1. This clause provides that the short title by which the Act may be cited is the *Environment and Heritage Legislation Amendment Act 2005*.

Clause 2 - Commencement

2. Subclause (1) provides that the commencement date for sections 1, 2 and 3 and the amendments to the *Sydney Harbour Federation Trust Act 2001* contained in Schedule 2 of the Act is the day on which the Act receives the Royal Assent. Subclause (1) also provides that the commencement date for amendments to the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* contained in Schedule 1 of the Act is the 28th day after the day on which the Act receives the Royal Assent.

Clause 3 - Schedules

3. This clause provides that, subject to the commencement provisions above, each Act, which is specified in a Schedule to the Act, is amended as set out in the items in the Schedule.

Schedule 1 - Ozone Protection and Synthetic Greenhouse Gas Management Act 1989

Item 1 – Subsection 13(1)

4. This item repeals the existing subsection 13(1) and replaces it with proposed new subsections 13(1), (1AA) and (1AB).
5. The proposed new subsection 13(1) provides that a person must not manufacture HCFC or methyl bromide unless the person holds a controlled substances licence that allows the person to do so.
6. The proposed new subsection 13(1AA) provides that a person must not import or export new HCFC or methyl bromide (that is, HCFC or methyl bromide that is not recycled or used unless the person has a controlled substances licence that allows the person to do so).
7. The proposed new subsection 13(1AB) provides that a person must not import or export recycled or used HCFC or methyl bromide unless the person has a used substances licence that allows the person to do so.

8. Both *recycled or used HCFCs* and *recycled or used methyl bromide* are defined under section 7 of the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989*.
9. An offence under section 13 is an offence of strict liability and this will apply to contraventions associated with the proposed new subsections 13(1), (1AA) and (1AB) to ensure the integrity in Australia's management of ozone depleting substances.
10. The penalty for not complying with the new subsections is a fine of up to 500 penalty units. The magnitude of the penalty reflects the significant impact of possible illegal imports not only to the environment, but also to Australia's international obligations. From an environmental perspective, illegal imports of HCFCs and methyl bromide threaten not only the local environment, but have impacts on the global atmosphere for many years after they are released into the environment.
11. In addition to environmental impacts, illegal imports of HCFC and methyl bromide are likely to place Australia into non-compliance with the international agreement regulating these chemicals, the *Montreal Protocol on Substances that Deplete the Ozone Layer*. Under this agreement, Australia has agreed to undertake strict import and manufacture controls for these substances. Illegal imports risk Australia being declared non-compliant with the *Montreal Protocol* and losing all access to ozone-depleting substances from overseas sources.
12. Ozone depleting substances are used in many applications that are critical to human health and safety, as well as essential to many industries including the refrigeration and air-conditioning, fire protection, solvents, aerosols, foams and fumigation industries. As continued access to these substances will be necessary for several years, strong deterrents are necessary to ensure that Australia does not fall into non-compliance with its *Montreal Protocol* obligations.

Item 2 – After subsection 46(1B)

13. This item inserts a proposed new subsection 46(1BA) after subsection 46(1B). The proposed new subsection will require manufacturers of synthetic greenhouse gases (SGG) to report to the Minister every quarter on the amount of SGG manufactured. This amendment was an oversight from the 2003 amendment to the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* and brings reporting obligations for SGG into line with those for all other controlled substances.

Item 3 – Subsection 46(2AA)

14. This item will make contravention of the proposed new subsection 46(1BA) an offence punishable with fine of up to 10 penalty units. The penalty for not reporting to the Minister on the amount of SGG manufactured within a quarter is, under the proposed new subsection, consistent with existing penalties for not reporting on the amounts of SGG imported into, or exported from, Australia.
15. Contravention of the proposed new subsection 46(1BA) is a strict liability offence. In imposing strict liability, consideration was given to both the Senate Standing Committee for the Scrutiny of Bills Sixth Report of 2002 on *Application of Absolute and Strict Liability Offences in Commonwealth Legislation* and to the *Guide to Framing Commonwealth Offences, Civil Penalties and Enforcement Powers*.

Schedule 2 - Sydney Harbour Federation Trust Act 2001

Item 1 - Schedule 1 (table item 1) Defence land to be vested in the Trust and remain in public ownership

16. This item removes the disused Scout Hall land from Schedule 1 of the *Sydney Harbour Federation Trust Act 2001*, and inserts three other lots at Markham Close, Mosman, including one which has a new legal property description into Schedule 1.
17. This amendment will allow land that is more suitable for public open space to be retained in public ownership, and updates the *Sydney Harbour Federation Trust Act 2001* with current legal property descriptions of the land.

Item 2 – Schedule 2 (table item 1) Other land to be vested in the Trust

18. This item inserts the disused Scout Hall land into Schedule 2 of the *Sydney Harbour Federation Trust Act 2001*.
19. This amendment will permit the sale of the Scout Hall land.

Item 3 – Schedule 2 (table item 1) Other land to be vested in the Trust

20. This item removes land from Schedule 2 of the *Sydney Harbour Federation Trust Act 2001*.
21. This amendment will allow land that is more suitable for public open space to be retained in public ownership.

Item 4 – Schedule 2 (table item 1)

22. This item removes land from Schedule 2 of the *Sydney Harbour Federation Trust Act 2001* and inserts new legal property descriptions of two lots.
23. This amendment will allow land that is more suitable for public open space to be retained in public ownership and updates the *Sydney Harbour Federation Trust Act 2001* with current legal property descriptions of land that may be sold.