

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

OZONE PROTECTION AMENDMENT BILL 1995

OZONE PROTECTION (LICENCE FEES - IMPORTS) BILL 1995

OZONE PROTECTION (LICENCE FEES - MANUFACTURE) BILL 1995

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for the Environment, Sport and
Territories, Senator the Hon John Faulkner)



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GENERAL OUTLINE

The purpose of the Ozone Protection Amendment Bill 1995 is to implement Commonwealth Government policy and Australia's international obligations under the Montreal Protocol on Substances that Deplete the Ozone Layer ("Montreal Protocol"). The existing *Ozone Protection Act 1989* ("the Act") needs to be updated in line with amendments to the Protocol.

The proposed amendments to the Act will:

- bring control of all ozone depleting substances together under the Act by incorporating measures from the *Ozone Protection (HCFC, HBFC and Methyl Bromide) Regulations* and the *Ozone Protection (Product Control) Regulations*;
- remove existing references to current licences and quotas for chlorofluorocarbons ("CFCs"), halons, carbon tetrachloride and methyl chloroform, as the import and manufacture of these substances will be banned from 1 January 1996, with limited exceptions. Provisions for those exceptions will:
 - establish a system of "essential uses licences" for the import and manufacture of CFCs, halons, carbon tetrachloride and methyl chloroform; and
 - establish a system of "used substances licences" for the importation and export of used or recycled CFCs, halons, carbon tetrachloride and methyl chloroform;
- introduce from 1 January 1996 a system of "controlled substances licences", quotas and reporting for the import, export and manufacture of:

- hydrochlorofluorocarbons ("HCFCs"), limiting the quantity per year to that permitted under the amended Act in accordance with a timetable set by the Montreal Protocol; and
- methyl bromide, limiting the quantity per year to that permitted under the Montreal Protocol;
- impose a two-yearly administration fee for each licence issued under the Act, which will be set by regulation at \$10,000 until the year 2000, except for essential uses licences, for which the fee will be \$2000. These amounts are based on cost recovery;
- ban the manufacture and export of hydrobromofluorocarbons ("HBFCs"), which are ozone depleting substances not currently used in Australia. The import of HBFCs will be banned unless an essential uses licence is granted;
- establish an Ozone Protection Trust Fund to allow revenue from the licensing schemes to be directed into ozone protection programs. This will ensure that revenue collected from licensees at the time of peak activity (1996-2000) can be expended at the times of low activity (2000-2030), when the need for information programs will be most critical; and
- repeal the *Ozone Protection (Licence Fees-Imports) Act 1989* and the *Ozone Protection (Licence Fees-Manufacture) Act 1989*.

To establish funding for the new licensing scheme, the *Ozone Protection (Licence Fees-Imports) Act 1995* and *Ozone Protection (Licence Fees-Manufacture) Act 1995* will:

- allow for non-refundable licence fees ("activity fees") to fund administration of the Act and industry and public awareness programs. Industry representatives have been consulted on the level of fees, which will be levied according to the quantity and ozone depletion potential ("ODP") of HCFCs imported or manufactured, and the amount of methyl bromide imported or manufactured; and
- enable the setting of fees by regulation.

FINANCIAL IMPACT STATEMENT

The licence application fees payable under the amended Principal Act will cover the costs of administering the licence scheme, including:

- assessing licence applications;
- issuing licences;
- monitoring licence activity;
- keeping records of quota allocations, transfers, variations etc.; and
- reporting to the Protocol Secretariat on annual activity.

The activity fees levied under the *Ozone Protection (Licence Fees-Imports) Act 1995* and *Ozone Protection (Licence Fees-Manufacture) Act 1995* will fund the furthering of the phase out programs for HCFCs and methyl bromide and related public awareness programs.

The net effect on revenue will be neutral.

OZONE PROTECTION AMENDMENT BILL 1995
NOTES ON CLAUSES

Clause 1. - Short Title

1. This clause provides for the proposed Act to be cited as the *Ozone Protection Amendment Act 1995*. It also notes that references throughout the Bill to the "Principal Act" refer to the *Ozone Protection Act 1989*.

Clause 2. - Commencement

2. Proposed clause 2(1) provides that the amended Act will come into operation on the day it receives Royal Assent.

3. Proposed clause 2(2) provides that proposed section 3 and Schedule 1 (apart from item 18) commence on 1 January 1996. This ensures that the new licence scheme will commence on 1 January 1996. The effect of excluding item 18 will be that no further applications for licences under the Principal Act will be permitted from the day the Ozone Protection Amendment Act 1995 receives Royal Assent.

Clause 3. - Repeals

4. Proposed clause 3 repeals the *Ozone Protection (Licence Fees-Imports) Act 1989* and the *Ozone Protection (Licence Fees-Manufacture) Act 1989*. Proposed subclauses 3(2) and 3(3) ensure that fees due for activity in 1995 will still be payable after these Acts are repealed, and that the penalty rates for late fees under existing subsection 69(2) of the Principal Act will still apply. Proposed subclauses 3(4) and 3(5) ensure that the quarterly and annual reporting requirements under existing sections 47 and 47A will still apply to scheduled substances and "transitional substances" (HCFCs), as regulated under the existing Act, after these sections are repealed by the proposed amendments.

Clause 4. - Schedules

5. Proposed clause 4(1) provides for the amendment of the Act as set out in the applicable items in proposed Schedule 1. Proposed clause 4(2) states that the other items in proposed Schedules 1 and 2 have effect according to

their terms. This provision accommodates the transitional arrangements, under which some amendments in proposed Schedule 1 may never take effect, depending on when the *Financial Management and Accountability Bill 1995* enters into force as an Act. The transitional arrangements are described in detail in the notes below on: Parts 2, 3 and 4 of proposed Schedule 1; and in the notes on proposed Schedule 2, which ensures that licence applications under the new scheme can be made before the proposed amendments enter into force on 1 January 1996, should the proposed bill receive the Royal Assent prior to that date.

SCHEDULE 1 - Amendments of the Ozone Protection Act 1989

Item 1: Paragraph 3(a)

Objectives

6. This item replaces existing subsection 3(a) of the Principal Act with a simplified description of the Act's objectives, to clarify the purpose of the Act.

Item 2: Subsection 7(1) (definition of *Protocol*)

7. This item omits the existing definition of Protocol, which states that a "copy of the English text" of the Protocol is set out in Schedule 3. The new definition states that "Protocol" means "the Montreal Protocol on Substances that Deplete the Ozone Layer, as in force for Australia, an English text version of which is set out in Schedule 3". The reason for this change is that whilst the Montreal Protocol has been amended, no official consolidated version has been issued by the Montreal Protocol Secretariat. The version in proposed Schedule 3 reflects the Protocol as currently binding on Australia.

Item 3 Subsection 7(1) (definitions of *base year, CFC quota, CFC quota period, halon quota, halon quota period, inspector, methyl chloroform quota, methyl chloroform quota period, quota activity, quota period, restricted licence and transitional substance*)

8. This item deletes from the existing Act twelve definitions which will become obsolete under the proposed amendments. These include, for example, definitions relating to the licensing and quota system for CFCs, halons, carbon tetrachloride and methyl chloroform, which will be banned as of 1 January 1996 except under essential uses licences and used substances licences. The definitions of these substances themselves will remain under the proposed amendments because they will still be regulated by the Principal Act.

Item 4: Subsection 7(1)

9. This item amends section 7(1) of the Principal Act by adding nineteen definitions including:

hydrochlorofluorocarbons ("HCFCs"), hydrobromofluorocarbons ("HBFCs") and methyl bromide; and

terms used in the new licence and quota systems for ozone depleting substances. These terms relate to and include the three new categories of licences:

- "controlled substances licence", for the import, export or manufacture of HCFCs or methyl bromide. The Montreal Protocol requires the quantities of imports and manufacture to be controlled. Export controls are also necessary to ensure that exports to non-Protocol countries do not occur;

- "essential uses licence", for the import, export or manufacture of CFCs, halons, carbon tetrachloride or methyl chloroform, or the import of HBFCs, which will be otherwise banned from 1 January 1996. Under the Montreal Protocol, a limited number of uses have been designated as "essential"; these include, for example, metered dose inhalers for asthma and laboratory and analytical uses; and

- "used substances licence", for the import or export of recycled or used CFCs, halons, carbon tetrachloride or methyl chloroform, which will be otherwise banned from 1 January 1996.

10. The new terms also include "ODP tonnes". ODP stands for "ozone depletion potential". The ODP of each substance in Annexes A, B, C and E of the Montreal Protocol is listed in those Annexes as reproduced in the version of the Montreal Protocol in proposed Schedule 3, and also in the tables of scheduled substances in proposed Schedule 1. The ODP tonnage of a substance is calculated by multiplying its metric tonnage by its ODP.

11. HCFCs imported, exported or manufactured in Australia will be measured in terms of ODP tonnes. This is necessary because the limits for HCFCs are expressed under the Montreal Protocol in ODP tonnage.

Quantities of methyl bromide and all other scheduled substances will be calculated in metric tonnes.

12. Other new definitions are inserted as necessary to define terms used in the new licence and quota systems.

Item 5 Section 8

Quota Periods

13. This item repeals existing section 8 of the Principal Act, which provides for a minimum of twelve months for CFC, halon and methyl chloroform quota periods, and replaces it with proposed sections 8, 8A and 8B.

14. Proposed section 8 provides that quota periods will commence on 1 January 1996 and will extend for two years unless varied by the Minister by Gazette notice. "Quota" is defined in proposed subsection 7(1) as an HCFC quota or a reserve HCFC quota. None of the other scheduled substances will be subject to quota allocations under the proposed amendments.

Licence Periods

15. Proposed section 8A provides that each licence period will be two years. If, for example, during the first licence period from 1 January 1996 to 31 December 1997, a person applies for and is issued with a licence at 1 January 1997, the licence can only extend to the end of that licence period, i.e. 31 December 1997.

16. If the HCFC quota system in proposed Part IV is triggered under proposed section 26 (i.e. if the total amount of HCFCs used by licensees exceeds 90% of the industry limit for that year), HCFC quotas will be issued so as to coincide with the HCFC licence periods. This means that if the first quota system commences in the middle of a licence period, the first quotas will be issued only for the remainder of that period to enable the two systems to operate concurrently when the next licence period commences.

HCFC quotas and reserve HCFC quotas

17. Proposed section 8B defines "HCFC quota" and "reserve HCFC quota", which are concepts used in proposed Part IV-HCFC QUOTAS.

Items 6-9 Subsection 9(1), 9(1)(a), 9(1)(b), 9(2)

References to 'transitional substance'

18. These items amend subsections 9 (1) and 9 (2) by deleting an obsolete term "transitional substance", which was used in the Principal Act to describe HCFCs before they became scheduled substances.

Item 10 Sections 10, 10A and 11

Quantities expressed in ODP tonnes

19. This item repeals existing sections 10 and 10A, and 11 and inserts a new section 10. Existing section 10A will become obsolete as it refers to transitional substances.

20. Existing section 10 refers to the measurement of scheduled substances in terms of their "ozone depleting effect", as defined in existing section 11. This term will be obsolete under the proposed amendments, under which the measurement of HCFCs will be based on the term "ODP tonnes" as defined in proposed section 10(1).

21. Proposed section 10(1) defines "ODP tonnes" by explaining that, in relation to an HCFC, ODP tonnage is calculated by multiplying the metric tonnage of the substance by its ozone depleting potential. Quantities of HCFCs imported, exported or manufactured in Australia will be measured in terms of ODP. This is necessary because the limits for HCFCs are expressed under the Montreal Protocol in terms of a formula which is calculated in ODP tonnage.

22. Proposed section 10(2) is to clarify how ODP tonnage will be calculated where a substance consists of or contains more than one type of HCFC, as different HCFCs may have different ozone depletion potentials.

23. Quantities of methyl bromide and all other scheduled substances will be calculated in metric tonnes.

Items 11 - 14 Subsections 12(1) and 12(2)

Recycling of scheduled substances

24. These items amend existing section 12 by removing obsolete references to "transitional substances". The term "transitional substance" was used in the Principal Act to describe HCFCs before they became scheduled substances.

Items 15- 16 Section 12B

Use of CFCs on ships and aircraft

25. These items extend the existing exemption to ensure that the exemption from licensing requirements under existing section 12B for the use of CFCs on ships and aircraft is extended to imports as well as exports and to HCFCs in the same circumstances. Methyl bromide is not included in this exemption as it is not used in equipment on ships and aircraft, however CFCs and HCFCs are used in ship and aircraft refrigeration and air conditioning systems.

Item 17 Section 13

Unlicensed manufacture, import or export

26. This item sets the new controls by replacing existing section 13. Proposed section 13 prohibits the unlicensed manufacture, import or export of the new scheduled substances HCFCs and methyl bromide, prohibits outright the manufacture and export of HBFCs and allows imports of HBFCs under an essential uses licences. It also prohibits the import, export or manufacture of stage-1 or stage-2 scheduled substances (i.e. CFCs, halons, carbon tetrachloride and methyl chloroform), without either an essential uses licence or a used substances licence as created by the proposed amendments.

27. The penalty listed under proposed section 13 is expressed in penalty units, in conformity with Commonwealth Government criminal law policy.

28. The item also inserts a proposed section 13A, which introduces the three types of licences which may be granted under the amended Act and the activities allowed under each. Three types of licence are required because there are three different control regimes required by the Montreal Protocol for three categories of substances. The Montreal Protocol permits the continued import, export and manufacture of "controlled substances". The second category of substances, to be covered by essential uses licences, are banned under the Montreal Protocol except for essential uses approved by the Parties to the Montreal Protocol. For the third category of substances, i.e. used or recycled substances, quantities are not controlled under the Protocol but must be recorded.

29. A controlled substances licence is only available for the manufacture, import and export of HCFCs or methyl bromide.

30. An essential uses licence is only available for activity specified in the licence: i.e. the manufacture, import or export of stage-1 or stage-2 scheduled substances or the import of specified HBFCs.

31. A used substances licence is only available for activities specified in the licence: i.e. the import or export of stage-1 or stage-2 scheduled substances.

Application for licence

32. Item 17 also inserts a new section 14. Proposed section 14 provides that licence applications must be in an approved form (rather than the prescribed form in existing section 14), which will allow change to the form of the licence application when appropriate, without amending the regulations.

Item 18 Section 14

33. This item repeals existing section 14, which is to be replaced by proposed section 14 as described above.

Item 19 Subsection 16(1) and (2)

Grant of licence

34. This item simplifies existing subsection 16(1) to remove obsolete references to licences for the substances which will be banned under the proposed amendments, except in circumstances where an essential uses licence or a used substances licence may be granted. Proposed section 16(1) provides that the Minister may, subject to proposed subsections 16(3A) and (4), grant a licence to a person who has applied for it in accordance with proposed section 14.

35. This item also omits existing section 16(2). Under proposed section 16, the licence form will not be prescribed by regulation. This will allow flexibility to change the form as appropriate.

36. Proposed subsection 16(2) ensures that the Minister may not grant a licence unless the applicant has either paid the fee which will be set by Regulation, or that fee has been waived in accordance with the Regulations.

Item 20 Subsection 16(3A)

Activities must be specified in a licence

37. This item repeals existing subsection 16(3A), which contains obsolete references to licences for the substances which will be banned from 1 January 1996 under the proposed amendments, (i.e. CFCs, halons, methyl chloroform and carbon tetrachloride), except in circumstances where an essential uses licence or a used substances licence may be granted.

38. Proposed subsection 16(3) provides that all licences issued under the amended Act (except for a controlled substances licence for the manufacture, import or export of HCFCs) must specify the activities allowed under the licence and the maximum quantities allowed for each of those activities. Controlled substances licences for the manufacture, import or export of HCFCs are not included in this provision because the amount of HCFC activity allowed under a licence is dealt with in proposed Part IV-HCFC

QUOTAS. Until proposed Part IV commences, individual licensees will not have limits on the quantities they can import, export or manufacture.

39. Proposed subsection 16(3A) provides that in deciding whether or not to grant a licence the Minister must have regard to Australia's obligations under the Montreal Protocol and the policies of the Commonwealth Government and may have regard to any other relevant matters. This is to ensure that the Minister is not bound to issue a licence, for example where the applicant proves they are a fit and proper person, but to issue the licence would be otherwise inconsistent with Australia's international obligations or with Commonwealth Government policy.

Item 21 Subsection 16(3C), (3D) and (3E)

References to stage-2 CFCs, carbon tetrachloride and methyl chloroform

40. This item repeals subsections 16 (3C), 3(D) and (3E) to remove obsolete references to licences for stage-2 CFCs, carbon tetrachloride and methyl chloroform, which will be banned under the proposed amendments, except in circumstances where an essential uses licence or a used substances licence may be granted.

Item 22 Paragraph 16(5)(a), (b) and (c)

41. This item clarifies existing paragraphs 16(5)(a), (b) and (c) as additional to and not exclusive of each other.

Item 23 Subsection 16(5)

42. This item amends subsection 16(5) to include additional matters which the Minister may take into account to determine whether an applicant is a fit and proper person to hold a licence: namely, whether that person has previously breached a licence condition (proposed paragraph 16(5)(f)); or has held a licence which was cancelled under existing section 20, or proposed section 20 (proposed paragraph 16(5)(g)).

Item 24 Subsections 16(8), (9) and (10)

43. This item removes obsolete existing subsections 16 (8), (9) and (10), which refer to licences to import, manufacture or export CFCs, methyl chloroform, halons and carbon tetrachloride, due to the banning of these substances from 1 January 1996, except where an essential uses licence or a used substances licence may be granted.

Item 25 Sections 17A, 18, 18A and 19

44. Under this item, existing sections 17A, 18, 18A and 19 are repealed as they refer to aspects of the existing licence scheme (such as restricted licences) which will no longer exist once the amendments come into force. They are replaced with proposed sections 18, 19, 19A, and 19B.

Conditions of Licences

45. Under proposed subsections 18(1), (2) and (3), statutory conditions are imposed on the licence.

46. Under proposed subsections 18(4), (5), and (6) the additional licence conditions under existing subsections 17(4) and (5) which the Minister may impose have been simplified, and non-definitive examples provided.

47. Proposed subsection 18(7) replaces the penalty for contravention of a licence in existing subsection 17(6) with penalty units, in conformity with Commonwealth Government criminal law policy.

48. Proposed subsection 18(8) provides for different circumstances in which revocation or variation of a licence condition may be initiated, i.e. on the Minister's own initiative or on written application by a licensee.

49. Proposed subsection 18(9) provides as a separate requirement that any such revocation or variation must be given by written notice to the licensee.

Duration of licences

50. Proposed section 19 provides that each licence granted under the amended Act will stay in force until the end of the licence period in which it

is granted, unless it stops being in force for some reason under the Act before then. This is to ensure that all licences will be linked to the two year licence periods set by the amended Act. The section distinguishes between controlled substances licences and essential uses or used substances licences, because for the latter two types of licence, periods shorter than two years may be specified as licence conditions.

Termination of Licences

51. Proposed section 19A allows the Minister to terminate licences in order to give effect to adjustments or amendments to the Montreal Protocol. The Minister must give written notice of the termination and must specify the type of licence terminated and the date of termination. The termination notice must not take effect before the adjustment or amendment to the Protocol takes effect. This provision is to ensure that Australia can comply with, for example, earlier phase-out dates or reduced consumption targets for ozone depleting substances which come into force under the Protocol in any particular licence period.

Transfer of Licences

52. Proposed section 19B allows the Minister to authorise transfer of a licence on joint application in the approved form by the licensee and the transferee, providing that the Minister is satisfied that the transferee is a fit and proper person. In deciding whether the transferee is a fit and proper person, the Minister must have regard to the matters mentioned in existing subsections 16(5)(a), (b), (c), (d) and (e) and proposed subsections 16 (f) and (g), but may also have regard to other matters.

53. Proposed subsection 19B(8) provides that the transferee will taken to be the licensee from the date of transfer, to ensure that the transferee is bound by the licence conditions from that date.

Item 26 Subsection 20(1)

Cancellation of a Licence

54. Proposed subsection 20(1) replaces existing subsection 20(1), which contains an obsolete reference to restricted licences. Under the Principal

Act, only restricted licences were subject to conditions, whereas all licences under the proposed amendments will have conditions attached.

Item 27 Part IV

55. This item repeals existing Part IV, which deals with quotas for CFCs, halons and methyl chloroform. This Part will become obsolete once these substances are banned from 1 January 1996, other than under essential uses or used substances licences. The item replaces the repealed existing Part with a proposed Part IV, which deals with HCFC quotas.

NEW PART IV - HCFC QUOTAS

Meaning of licence and licensee

56. Proposed section 23 provides that in the new Part IV, "licence" is a reference only to a controlled substances licence to manufacture, import or export HCFCs, and that "licensee" refers only to the holder of this type of licence. This proposed amendment is to clarify that the new Part IV does not apply to the other types of licences under the proposed amendments, i.e. essential uses and used substances licences.

How to work out the HCFC industry limits

57. Proposed section 24 introduces the "Table of HCFC industry limits". The table sets out the HCFC industry limit in ODP tonnes for each calendar year between 1996 and 2030. The HCFC industry limit for each period listed in the table is the maximum total quantity of HCFC quota that the Minister may issue for all licences in a quota period.

How to work out reserve HCFC quota limits

58. Proposed section 25 introduces the "Table of HCFC Reserve Quota Limits". This table sets out the reserve HCFC quota limit for each calendar year between 1996 and 2001. The reserve HCFC quota limit represents the maximum total reserve quota the Minister may allocate in any one year.

59. The reserve quota system will only commence after the first HCFC quota period commences. In order to obtain a reserve quota the applicant

will need to demonstrate that "exceptional circumstances" as set out in proposed section 29 exist.

Start of first HCFC quota period

60. Proposed section 26 explains how the first HCFC quota period will be triggered. This will occur in the year ("the excess year") in which the total industry activity exceeds 90% of the industry limit specified for that year in proposed section 24. Proposed section 26 requires the Minister, once aware that the excess year has been reached, to publish a notice in the Gazette to announce that the first HCFC quota period will commence on 1 January of the following year.

61. The notice must specify the last calendar year before the excess year as the base year for calculating individual HCFC quotas for the first HCFC quota period. The notice must also specify that all licences will be subject to the conditions mentioned in proposed subsection 18(1).

Application for quota

62. Proposed section 27 provides for applications in the approved form to the Minister by licensees. The proposed new section differs from existing section 27 by specifying an approved form instead of a prescribed one, and so removes the need to amend the form by regulation.

Allocation of quota

63. Proposed section 28 provides that the Minister must, subject to proposed subsection 28(3), issue a quota or a reserve quota to a licensee who applies under proposed section 27, and by notice to the licensee specify the amount and type of quota and the period for which it is allocated. Proposed subsection 28(3) provides that in deciding whether or not to allocate a quota, the Minister must have regard to Australia's international obligations and to the policies of the Commonwealth Government in relation to scheduled substances, and may have regard to other matters he or she thinks relevant. This provision is intended to ensure that the Minister is not obliged to grant quotas which would be inconsistent with Australia's Montreal Protocol obligations or Commonwealth Government policy.

Limits on power to allocate reserve HCFC quotas

64. Proposed section 29 outlines the exceptional circumstances which must exist before the Minister can issue an HCFC reserve quota. A reserve quota can be issued for a year or a part of a year, depending on the circumstances. The Minister cannot issue more reserve quota for any one year than the total amount specified in the Table of Reserve HCFC Quota Limits in proposed section 25.

Duration of quotas

65. Proposed section 30 provides that an HCFC quota only stays in force until the end of an HCFC quota period. A reserve HCFC quota stays in force until the date specified in the notice made under proposed section 28(5)(d).

HCFC quota sizes

66. Proposed section 31 sets out how to determine HCFC quota sizes.

67. Proposed subsection 31(1) contains a formula which illustrates how to calculate the amount of an HCFC quota allocated to a licensee for a quota period. Individual quotas will be issued on the basis of the licensee's activity in "the base year", proportional to the total licensee activity in that year, multiplied by the amount specified as the industry limit for the year in which quota is to be issued. Where a licence is transferred to a transferee who has no base year activity, the formula allows for the transferor's base year activity to be used to calculate the transferee's quota. This means that where the transferee is a company which was not involved in HCFC activity in the year to be used as the base year for quota calculation, that company can still apply for and be allocated a quota, because its quota will be calculated based on the activity of the transferor.

68. Proposed subsection 31(2) defines "base year" for the first HCFC quota period and for subsequent HCFC quota periods.

Reserve HCFC quota sizes

69. Under proposed section 32 the Minister must not issue more reserve quota for any one year than the total reserve HCFC quota limit specified for that year in the HCFC Reserve Table in proposed section 25.

Reserve HCFC quotas: variation or revocation

70. Proposed section 33 provides that if the exceptional circumstances for which the reserve quota was issued change, then the Minister may by written notice revoke or vary a reserve quota. Proposed subsection 33(3) is to ensure that a quota variation will not result in the reserve HCFC quota limit being exceeded.

Quotas cease when licences cease

71. Proposed section 34 ensures that, as a quota is not intended to exist without a corresponding licence, when a licence ceases to be in force for whatever reason, the associated quota automatically ceases.

Transfer of quotas

72. Under proposed subsection 35(1), if a licence is transferred by the Minister under proposed section 19B, the unused part of the quota attached to that licence is also taken to have been transferred.

73. Proposed subsection 35(2) allows licensees to transfer quota to another HCFC licensee. Proposed subsections 35(3), (4), (5) and (6) detail the transfer mechanism and the conditions under which a transfer takes effect.

74. Proposed section 35(7) provides that references to "quota" in proposed section 35 do not include reserve HCFC quota. This is to ensure that reserve HCFC quota is not transferable, given that under proposed section 29, a reserve HCFC quota may be allocated only in exceptional circumstances and each allocation would need to be considered separately on its individual merits.

Items 28- 33: Subsections 38(1),(2), 42(1), (4), 43(1), (2), 44(1), (5), 45(1), (3A)

75. These items amend existing subsections 38(1) and 38(2) to replace references to fines of \$5,000 with references to 50 penalty units, and existing subsections 42(1), 42(4), 43(1), 43(2), 44(1), 44(5), 45(1) and 45(3A) to replace references to fines of \$10,000 with references to 100 penalty units. These amendments are to bring the penalty references into conformity with Commonwealth Government criminal law policy.

Item 34 Sections 46, 46A, 47 and 47A

Quarterly reports by manufacturers, importers and exporters of scheduled substances

76. This item repeals existing sections 46, 46A, 47 and 47(A) which contain obsolete references to reporting requirements on CFCs, halons, methyl chloroform, carbon tetrachloride and transitional substances. The repealed sections are all replaced by proposed section 46, which is in a simplified format and covers reporting for all scheduled substances.

77. Proposed subsection 46(1) details quarterly reporting requirements for persons who import, manufacture or export scheduled substances. The reports must be given to the Minister within 15 days of the end of each quarter, on the approved reporting form. These requirements are to allow the accurate monitoring of Australia's use of scheduled substances to ensure that the 90% of the HCFC industry limit referred to in proposed section 26 is closely monitored and that the Montreal Protocol targets are met.

78. Proposed subsection 46(2) imposes a penalty expressed as 100 penalty units, in conformity with Commonwealth Government criminal law policy. This provision replaces the separate offences in existing sections 46, 46A, 47 and 47(A)

79. Proposed subsection 46(3) notes that even if a quantity mentioned in proposed subsection 46(1) is a nil amount in any particular quarter, that amount must still be specified in the licensee's report.

PART VIII - ENFORCEMENT

Item 35 Section 48A

Meaning of Inspector

80. This item repeals existing section 48A which contains obsolete references to transitional substances, which will not exist as such under the amendments. "Transitional substances" under the Principal Act were HCFCs, which are "controlled substances" under the proposed amendments.

81. Proposed section 48A contains definitions of "appointed inspector" and "inspector" for the purposes of Part VIII of the Principal Act. The distinction between the two definitions is to ensure that members of the Australian Federal Police and officers of Customs are automatically defined as "inspectors", and need not be formally appointed as such by the Minister. The definition of "inspector" includes "appointed inspectors", which may be appointed by the Minister under existing section 49.

Item 36 Paragraphs 49(1)(a) and (b)

Appointment of Inspectors

82. This item amends existing subsection 49(1) by deleting paragraphs (a) and (b) and replacing them with a simplified proposed paragraph 49(1)(a) which combines the two repealed paragraphs.

Item 37 Subsection 50(1)

Identity cards

83. This item repeals existing subsection 50(1) and replaces it with proposed subsections 50(1) and 50(1A). Proposed subsection 50(1) provides that the Minister may cause an identity card to be issued to appointed inspectors.

84. Proposed subsection 50(2) provides that an identity card must be in a form approved by the Minister and introduces a requirement that the card

have on it a recent photograph of the inspector, in accordance with Commonwealth Government policy.

Item 38 Subsection 50(2)

Identity cards

85. This item updates the reference to "inspector" in existing subsection 50(2) to "appointed inspector".

Item 39 Subsection 50(3)

Identity cards

86. This item converts the penalty reference in existing subsection 50(3) to penalty units, in conformity with Commonwealth Government criminal law policy.

Item 40 Paragraphs 51(3)(a) and (b)

Searches to monitor compliance with Act etc.

87. This item replaces existing paragraphs 51(3)(a) and (b) with proposed paragraphs 51(3)(a) and (b), to achieve consistency with proposed sections 48A, 49 and 50.

Item 41 Subsection 54(2)

Power to require information etc.

88. This item amends existing subsection 54(2) to ensure that it is consistent with proposed sections 48A, 49 and 50.

Item 42 Subsection 62(1)

False Statements

89. This item amends existing subsection 62(1) to remove an obsolete reference to licence renewals (which will not exist under the proposed

amendments), and to extend the provision to apply to all applications made under the Act, rather than those specified in existing subsection 62(1).

Item 43 Subsection 62(3) (penalty)

False Statements

90. This item amends the two-part penalty in existing subsection 62(3), paragraph (a) of which contains an obsolete reference to an offence relating to transitional substances (which will not exist as such under the proposed amendments), and substitutes a simplified penalty provision.

Item 44 Subsection 62(4)

False Statements

91. This item amends existing subsection 62(4) to remove the obsolete reference to restricted licences (which will not exist under the proposed amendments), so that proposed subsection 62(4) applies to all licences issued under the amended Act.

PART IX - MISCELLANEOUS

Items 45- 46 Paragraphs 66(aa), (b), (e), (f) and (fa)

Review of Decisions

92. These items amend existing section 66, which lists decisions of the Minister made under the Principal Act which may be reviewed by the Administrative Appeals Tribunal. The amendments are necessary to reflect the proposed repeal and addition of sections in the Principal Act.

93. Item 45 repeals existing paragraphs 66(aa) and 66(b) which contain obsolete references to decisions under existing section 17A on restricted licences, which will no longer exist, and existing section 19 on licence renewals, which will no longer occur. The item inserts proposed paragraphs 66(b), 66(ba) and 66(bb), to ensure that decisions under proposed sections 18, 19A and 19B are included in the list of the Minister's decisions which may be reviewed by the Administrative Appeals Tribunal.

94. Item 46 repeals existing paragraphs 66(e), (f) and (fa), which contain obsolete references to decisions made under existing sections 31, 34, 29(10), 32(7) and 33(2), all of which will be repealed by the proposed amendments. The item also inserts proposed paragraph 66(e), to ensure that decisions varying or revoking a reserve HCFC quota under proposed section 33 are included in the list of the Minister's decisions which may be reviewed by the Administrative Appeals Tribunal.

Item 47 Subsection 67A(1)

Delegation

95. This item amends existing subsection 67A(1) to update the list of Minister's powers which may be delegated, in accordance with the proposed amendments to the Principal Act.

Item 48 Subsection 67A(2)

96. This item repeals existing subsection 67A(2), because it contains a reference to a existing section 34, which will be repealed by the proposed amendments.

Item 49 Subsection 69(4)

Collection of licence fees

97. This item repeals existing subsection 69(4), which contains obsolete references to the *Ozone Protection (Licence Fees - Manufacture) Act 1989* and the *Ozone Protection (Licence Fees - Imports) Act 1989*. The item inserts proposed subsection 69(4), which defines licence fees as fees payable under the proposed Ozone Protection (Licence Fees - Manufacture) Act 1995 or the proposed Ozone Protection (Licence Fees - Imports) Act 1995.

Item 50 Schedule 1

SCHEDULED SUBSTANCES

98. This item adds to existing Schedule 1 a proposed Part V, (HCFCs), Part VI (HBFCs) and Part VII (methyl bromide). These new Parts list in tabular form the chemical formula of each substance controlled under the Montreal Protocol. This amendment brings HCFCs, HBFCs and methyl bromide within the Principal Act's definition of "scheduled substance".

Item 51 Schedule 3

99. This item repeals existing Schedule 3 and replaces it with proposed Schedule 3, which contains a consolidated form of the Montreal Protocol on Substances that Deplete the Ozone Layer. This amendment is necessary because the Protocol has been amended since the Principal Act was last reprinted in November 1992. This consolidated version of the Protocol includes the 1990 London Amendments, which appear in existing Schedule 3, and the 1992 Copenhagen Amendments, which Australia ratified in June 1994. The 1992 Amendments to the Protocol added HCFCs, HBFCs and methyl bromide to the list of controlled substances and brought forward the international phase-out date for CFCs, halons, methyl chloroform and carbon tetrachloride to 1 January 1996.

Item 52 Schedule 4

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

100. This item adds proposed clauses 6, 7, 8, 9 and 10 to existing Schedule 4. The prohibitions in proposed clauses 7-10 on the manufacture and import of various products containing or manufactured with stage-1 or stage-2 scheduled substances are currently included in the *Ozone Protection (Product Control) Regulations 1990*. They are included in the proposed amendments to the Principal Act in order to consolidate the legislation. These clauses add the following product bans to the list in existing Schedule 4:

manufacture and importation of foams that are manufactured with CFCs (proposed clauses 7 and 8);

- manufacture and importation of disposable containers of CFC refrigerant (proposed clause 9); and
manufacture and importation of refrigeration and air conditioning equipment which uses, or is designed to use, a CFC refrigerant or which contains foams manufactured with CFCs. Refrigerated transport containers are excluded from this provision (proposed clause 10).

101. The ban on the import of halon products in proposed clause 6 has been included here even though such imports are also prohibited under proposed section 13. This is to ensure that halon which is transported in small portable cylinders is covered by the amended Act, and to clearly establish that halon in small containers is regarded as a product.

PARTS 2, 3 AND 4

Summary

102. At the time of drafting of these amendments, the *Financial Management and Accountability Bill 1995* ("the Financial Bill") has been introduced into Parliament. It is uncertain whether or not the Financial Bill will come into operation before or after the proposed amendments to the Principal Act. The Financial Bill will require all existing trust funds (including all those established under the *Audit Act 1901*) to become "reserves". This must be taken into account in relation to the establishment of the Ozone Protection Trust Fund.

103. Proposed Parts 2, Part 3 and Part 4 have been drafted to accommodate either eventuality regarding the date of operation of the Financial Bill, so as to avoid the need subsequently to amend the Principal Act in a separate round of amendments.

PART 2 - AMENDMENTS ESTABLISHING THE OZONE PROTECTION RESERVE

Items 53 and 54 The Financial Management and Accountability Act and Application of Part

104. Items 53 and 54 allow for the correct citation of the Financial Bill, whether it is passed in 1995 or 1996, and provide that proposed Part 2 only applies if the Financial Bill commences on or before 1 January 1996.

Item 55 New Part VIIIA

105. Item 55 inserts new Part VIIIA into the Principal Act to establish the Ozone Protection Reserve.

Part VIIIA - OZONE PROTECTION RESERVE

106. Proposed section 65A defines the meaning of "Reserve" for the purposes of proposed Part VIIIA.

Establishment of Reserve

107. Proposed section 65B establishes the Ozone Protection Reserve as a component of the Reserved Money Fund. The Reserve is established in this manner in accordance with the provisions of the Financial Bill.

Payments into Reserve

108. Proposed section 65C lists the payments which the Commonwealth must pay into the Reserve out of the Consolidated Revenue Fund.

Proposed paragraphs 65C(1)(a) - (e) list the following amounts:

amounts received by the Commonwealth as fees for the granting of licences; and

amounts received as fees under the *Ozone Protection (Licence Fees - Manufacture) Act 1995* and the *Ozone Protection (Licence Fees - Imports) Act 1995*; and

amounts received under the *Ozone Protection (Licence Fees - Manufacture) Act 1989* and the *Ozone Protection (Licence Fees - Imports) Act 1989*, given that fees due under these Acts will still be payable (under proposed clause 3 of the Ozone Protection Amendment Bill 1995) after the amendments to the Principal Act take effect; and

amounts received by the Commonwealth as penalties under existing subsection 69(2); and

- any interest from investment of money from the Reserve.

Purposes of the Reserve

109. Proposed section 65D identifies the purposes for which money from the Ozone Protection Reserve may be spent. These purposes are to reimburse the Commonwealth for costs associated with: furthering the HCFC and methyl bromide phaseout programs; providing information about those programs; and administering the licensing and quota systems under the Principal Act.

110. Proposed paragraph 65D(b) allows funds paid into the Reserve in error to be refunded.

PART 3 - AMENDMENTS ESTABLISHING THE OZONE PROTECTION TRUST FUND

Items 56 and 57 The Financial Management and Accountability Act and Application of Part

111. Items 56 and 57 provide that proposed Part 3 only applies if the Financial Bill does not commence on or before 1 January 1996.

Item 58 New Part VIIIA

112. Item 58 inserts new Part VIIIA, to establish the Ozone Protection Trust Fund ("Trust Fund"), into the Principal Act.

PART VIIIA - OZONE PROTECTION TRUST FUND

113. Proposed section 65A defines the meaning of "Fund" for the purposes of proposed Part VIIIA.

Establishment of Fund

114. Proposed sections 65A and 65B of new Part VIIIA establish the Ozone Protection Trust Fund, pursuant to section 62A of the *Audit Act 1901*.

Payments into Fund

115. Proposed section 65C identifies the types of revenue which the Commonwealth Government must pay into the Trust Fund. Proposed paragraphs 65C(1)(a) - (e) list the following amounts:

- amounts received by the Commonwealth as fees for the granting of licences; and

amounts received as fees under the *Ozone Protection (Licence Fees - Manufacture) Act 1995* and the *Ozone Protection (Licence Fees - Imports) Act 1995*; and

amounts received under the *Ozone Protection (Licence Fees - Manufacture) Act 1989* and the *Ozone Protection (Licence Fees - Imports) Act 1989*, given that fees due under these Acts will still be payable (under proposed clause 3 of the *Ozone Protection Amendment Bill 1995*) after the amendments to the Principal Act take effect; and

amounts received by the Commonwealth as penalties under existing subsection 69(2); and

any interest from investment of money from the Trust Fund.

116. Because these amounts will have been initially paid into Consolidated Revenue, proposed section 65C(2) appropriates the Consolidated Revenue Fund to allow those funds to be then paid into the Ozone Protection Trust Fund.

Purposes of the Fund

117. Proposed section 65D identifies the purposes for which money from the Trust Fund may be spent. These purposes are to reimburse the Commonwealth for costs associated with: funding the furthering of the HCFC and methyl bromide phaseout programs; providing information about those programs; and administering the licensing and quota systems under the Principal Act.

118. Proposed paragraph 65D(b) allows funds paid into the Trust Fund in error to be refunded.

PART 4 - AMENDMENTS OF PART VIII A OF THE OZONE PROTECTION ACT

119. Proposed Part 4 will apply only if the Financial Bill does not commence on or before 1 January 1996, and proposed Part 3 therefore establishes the Ozone Protection Trust Fund. In that case, the Principal Act will need to be amended once the Financial Bill does come into operation, to convert the Trust Fund to a Reserve and other amendments in accordance with the Financial Bill. The mechanism in proposed Part 4

ensures that these amendments will be made automatically and will avoid the need to make a separate round of amendments to the Principal Act.

Items 59, 60 and 61

The Financial Management and Accountability Act

120. Proposed items 59, 60 and 61 bring proposed Part 4 into effect on the day that the Financial Bill commences, and provide for the Financial Bill to be cited as either the *Financial Management and Accountability Act 1995* or the *Financial Management and Accountability Act 1996*, according to which year it is passed in.

Item 62 Heading to Part VIIIA

121. This item amends the heading of Part VIIIA to "Ozone Protection Reserve", to reflect the replacement of the Trust Fund with the Reserve.

Item 63 Sections 65A and 65B

Establishment of Ozone Protection Reserve

122. This item repeals proposed sections 65A and 65B, which will have been created by proposed Part 3 - Amendments Establishing the Ozone Protection Trust Fund. Those proposed sections established the Ozone Protection Trust Fund. Under this item they will be replaced by proposed sections 65A and 65B, which establish the Ozone Protection Reserve in place of the Trust Fund.

123. Proposed section 65A defines "Reserve" by reference to proposed section 65B and also provides for the *Audit (Transitional and Miscellaneous) Amendment Act* ("the Transitional Provisions Act") to be cited with its correct year, according to whether it is passed in 1995 or 1996. Proposed section 65B establishes the Reserve and ensures that the moneys from the Trust Fund can be transferred into the Reserve, with necessary references to the *Audit Act 1901* and the *Transitional Provisions Act*.

Items 64 and 66 Subsection 65C (1) and 65D

124. These items replace the word "Fund" with the word "Reserve" in proposed subsection 65C(1) and in proposed section 65D to reflect the replacement of the Trust Fund with the Reserve.

Item 65 Subsection 65C(2)

125. This item omits proposed subsection 65C(2), because once the Financial Bill comes into operation it will not be necessary to appropriate the Consolidated Revenue Fund for payments into the Trust Fund. An equivalent appropriation provision will not be necessary for the Ozone Protection Reserve.

SCHEDULE 2 - TRANSITIONAL AND SAVINGS PROVISIONS

Items 1-7

1. The objective of proposed Schedule 2 is to ensure that the necessary administrative preparations can be made for the new licence scheme under the amended Principal Act to commence on 1 January 1996. Applications for licences due to come into force on 1 January 1996 (i.e. controlled substances licences, essential uses licences and used substances licences) must be able to be made and considered before that date, during the transitional period. The Minister must also be able to grant licences during the transitional period, in anticipation of their coming into force on 1 January 1996.
2. Proposed items 1-7 provide the mechanism to enable these preparations to be made as if proposed Part 1 of the Ozone Protection Bill 1995 and any regulations made under proposed section 16 of the Principal Act had already come into force.

Item 1 Definitions

2. Proposed item 1 defines the transitional period as beginning on the day the proposed bill receives the Royal Assent and ending on 1 January 1996.

Item 2 Existing licences to stop being in force

Proposed item 2 provides that all licences under the existing Principal Act will cease to be in force on 1 January 1996. This provision is necessary because the substances controlled by these existing licences will be banned from 1 January 1996, other than under the new essential uses or used substances licences.

Items 3 and 4 Applications for licences before 1 January 1996 and Determination of applications

Proposed items 3 and 4 allow licence applications to be made during the transitional period and allow the Minister to decide those applications, as if the proposed amendments to the Principal Act had already come into effect.

Item 5 Licences granted before 1 January 1996

Proposed item 5 specifies 1 January 1996 as the day on which licences granted during the transitional period will come into force.

Item 6 Conditions may be imposed

This item is to ensure that the Minister may impose conditions on any licence granted during the transitional period as if the proposed amendments to the principal Act had already taken effect.

Item 7 Application of Principal Act, as amended, to decisions of Minister

Proposed item 7 ensures that decisions made by the Minister during the transitional period to refuse to grant a licence or to impose a licence condition will be subject to the proposed amendments to the Principal Act as if they had already taken effect. This is to ensure that, for example, such decisions of the Minister will be subject to review by the Administrative Appeals Tribunal under proposed section 66.

OZONE PROTECTION (LICENCE FEES - IMPORTS) BILL 1995

NOTES ON CLAUSES

Clause 1 - Short title

Proposed clause 1 provides that the proposed Act may be cited as the *Ozone Protection (Licence Fees - Import) Act 1995*.

Clause 2 - Commencement

Proposed clause 2 provides that the proposed Act will commence on 1 January 1996.

Clause 3 - Interpretation

Proposed clause 3 is to ensure that terms used in the proposed Act have the same meanings as in the *Ozone Protection Act 1989*.

Clause 4 - Licence Fees

Proposed clause 4(1) provides that a licensee who holds a controlled substances licence must pay to the Commonwealth, each quarter, a licence fee for HCFCs or methyl bromide imported during that quarter. The fees will be calculated at a rate to be fixed by regulations. Licence fees will not be payable for substances imported under essential uses or used substances licences.

Proposed clause 4(2) provides that where a controlled substances licence is only in force for part of a quarter, the part will be taken to be a whole quarter. The intention of this provision is to ensure that proposed clause 4(1) will still apply even if a licence is not in force for a full quarter.

Clause 5 - Regulations

Proposed clause 5 gives the Governor-General the power to make regulations fixing the rate of licence fees charged under proposed clause 4(1).

OZONE PROTECTION (LICENCE FEES - MANUFACTURE) BILL 1995

NOTES ON CLAUSES

Clause 1 - Short title

Proposed clause 1 provides that the proposed Act may be cited as the *Ozone Protection (Licence Fees - Manufacture) Act 1995*.

Clause 2 - Commencement

Proposed clause 2 provides that the proposed Act will commence on 1 January 1996.

Clause 3 - Interpretation

Proposed clause 3 is to ensure that terms used in the proposed Act have the same meanings as in the *Ozone Protection Act 1989*.

Clause 4 - Licence Fees

Proposed clause 4(1) provides that a licensee who holds a controlled substances licence must pay to the Commonwealth, each quarter, a licence fee for HCFCs or methyl bromide manufactured during that quarter. The fees will be calculated at a rate to be fixed by regulations. Licence fees will not be payable for substances manufactured under an essential uses licences. Used substances licences do not apply to manufacture.

Proposed clause 4(2) provides that where a controlled substances licence is only in force for part of a quarter, the part will be taken to be a whole quarter. The intention of this provision is to ensure that proposed clause 4(1) will still apply even if a licence is not in force for a full quarter.

Clause 5 - Regulations

Proposed clause 5 gives the Governor-General the power to make regulations fixing the rate of licence fees charged under proposed clause 4(1).





