



AUSTRALIAN CAPITAL TERRITORY

Ozone Protection Act 1991

No. 107 of 1991

TABLE OF PROVISIONS

Section

PART I—PRELIMINARY

1. Short title
2. Commencement
3. Interpretation
4. Application to Crown

PART II—CONTROL OF OZONE DEPLETING SUBSTANCES

Division 1—Offences

5. Prohibition on discharging ozone depleting substance
6. Prohibition on manufacture and dealing with ozone depleting substance
7. Prohibition on service of article containing ozone depleting substance
8. Prohibition on use of ozone depleting substance
9. Dealing etc. after certain dates
10. Labelling
11. Contravention etc. of notices

TABLE OF PROVISIONS—continued

Section

12. Exemptions

Division 2—Licences

- 13. Application for licence
- 14. Grant of licence
- 15. Form of licence
- 16. Variation of conditions
- 17. Effect of licence
- 18. Renewal of licence
- 19. Suspension or cancellation of licence
- 20. Preliminary suspension
- 21. Temporary licences
- 22. Duration of licences
- 23. Register

PART III—APPROVED COURSES AND EXAMINATIONS

- 24. Determination of approved courses
- 25. Determination of approved examinations

PART IV—ENFORCEMENT

- 26. Things connected with offences
- 27. Inspectors
- 28. Return of identity cards
- 29. Searches—monitoring compliance with Act
- 30. Consent to entry
- 31. Receipt for samples
- 32. Return of certain seized articles
- 33. Offence-related searches and seizures
- 34. Obstructing inspectors
- 35. False information
- 36. Warning notices
- 37. Form of warning notice
- 38. Ozone protection notice
- 39. Further details for inclusion in ozone protection notice
- 40. Variation of ozone protection notice by Authority
- 41. Acquisition and destruction of ozone depleting substances
- 42. Review of decisions
- 43. Notification

PART V—MISCELLANEOUS

- 44. Corporations—penalties
- 45. Conduct of directors, servants and agents
- 46. Service of documents
- 47. Power of Minister to determine fees
- 48. Regulations



AUSTRALIAN CAPITAL TERRITORY

Ozone Protection Act 1991

No. 107 of 1991

An Act to provide for measures to protect atmospheric ozone

[Notified in ACT Gazette S162: 10 January 1992]

The Legislative Assembly for the Australian Capital Territory enacts as follows:

PART I—PRELIMINARY

Short title

1. This Act may be cited as the *Ozone Protection Act 1991*.

Commencement

2. (1) Section 1 and this section commence on the day on which this Act is notified in the *Gazette*.

(2) The remaining provisions commence on a day, or respective days, fixed by the Minister by notice in the *Gazette*.

(3) If a provision referred to in subsection (2) has not commenced before the end of the period of 6 months commencing on the day on which this Act is notified in the *Gazette*, that provision, by force of this subsection, commences on the first day after the end of that period.

Interpretation

3. (1) In this Act, unless the contrary intention appears—
“approved course” means a course approved under section 24;

- “approved examination” means an examination approved under section 25;
- “Authority” means the Pollution Control Authority established under the *Air Pollution Act 1984*;
- “Commonwealth Act” means the *Ozone Protection Act 1989* of the Commonwealth;
- “corresponding law” means a law of a State or another Territory relating to the use of ozone depleting substances;
- “deal” means sell, supply, transport or store;
- “dispose of” includes destroy;
- “inspector” means a person appointed to be an inspector under section 27;
- “licence” means a licence granted under section 14;
- “licensee” means the holder of a licence;
- “occupier”, in relation to premises, includes a person who is, or is reasonably believed to be, in charge of the premises;
- “ozone depleting substance” means—
- (a) any substance referred to in Schedule 1 of the Commonwealth Act; and
 - (b) any other prescribed substance;
- “sell” means—
- (a) sell or exchange; or
 - (b) offer for sale;
- “service”, in relation to an article containing an ozone depleting substance, includes repair other than repair that does not, or is not likely to, involve interference with the ozone depleting substance contained in the article;
- “supply” includes—
- (a) send, forward or deliver for, or on, sale or exchange;
 - (b) supply under a credit sale within the meaning of the *Credit Act 1985*; or
 - (c) give away;
- “Tribunal” means the Australian Capital Territory Administrative Appeals Tribunal;

“use” means to dispose of, recycle or re-process.

(2) A reference in this Act to an ozone depleting substance shall not be read as including a reference to a manufactured article that—

- (a) contains, or will use in its operation, an ozone depleting substance; or
- (b) consists in part of an ozone depleting substance only because the substance was used in the manufacturing process.

(3) A reference in subsection (2) to a manufactured article shall not be read as including a reference to a manufactured article that is to be used only for the transportation and storage of an ozone depleting substance unless the substance can only be used in conjunction with the article.

Application to Crown

4. This Act binds the Crown.

PART II—CONTROL OF OZONE DEPLETING SUBSTANCES

Division 1—Offences

Prohibition on discharging ozone depleting substance

5. A person shall not, without reasonable excuse, discharge an ozone depleting substance into the atmosphere.

Penalty: \$5,000 or imprisonment for 6 months.

Prohibition on manufacture and dealing with ozone depleting substance

6. (1) A person shall not, without reasonable excuse, manufacture an ozone depleting substance except in accordance with a licence.

Penalty: \$5,000 or imprisonment for 6 months.

(2) A person shall not, without reasonable excuse, deal with an ozone depleting substance except in accordance with a licence.

Penalty: \$5,000 or imprisonment for 6 months.

Prohibition on service of article containing ozone depleting substance

7. A person shall not, without reasonable excuse, service an article containing an ozone depleting substance except in accordance with a licence.

Penalty: \$5,000 or imprisonment for 6 months.

Prohibition on use of ozone depleting substance

8. A person shall not, without reasonable excuse, use an ozone depleting substance except in accordance with a licence.

Penalty: \$5,000 or imprisonment for 6 months.

Dealing etc. after certain dates

9. (1) A person shall not, without reasonable excuse, deal with, use or manufacture an ozone depleting substance after the prescribed date.

Penalty: \$5,000 or imprisonment for 6 months.

(2) The regulations may specify different dates in respect of—

- (a) different ozone depleting substances; and
- (b) different classes of licences.

Labelling

10. (1) A person shall not, without reasonable excuse, deal with an ozone depleting substance or an article containing an ozone depleting substance unless the substance is labelled in accordance with the regulations.

Penalty: \$5,000 or imprisonment for 6 months.

(2) Subsection (1) does not apply to a person who deals with an article containing less than 3 kilograms of an ozone depleting substance otherwise than in the ordinary course of business.

Contravention etc. of notices

11. A person shall not, without reasonable excuse—

- (a) contravene a warning notice in force under section 36; or
- (b) fail to comply with the requirements of an ozone protection notice in force under section 38.

Penalty: \$5,000 or imprisonment for 6 months.

Exemptions

12. (1) The regulations may exempt—

- (a) a specified person; or
- (b) a person included in a specified class of persons;

from compliance with all or any of the provisions of this Act or the regulations.

(2) The regulations may specify the circumstances, whether generally or in a particular case, in which the exemption applies.

Division 2—Licences

Application for licence

13. (1) Application may be made to the Authority for a licence to—

- (a) manufacture;
- (b) deal with;
- (c) use; or
- (d) service an article which contains;

an ozone depleting substance.

(2) An application for a licence shall—

- (a) be in accordance with a form approved by the Authority;
- (b) specify the period, not exceeding 12 months, for which the licence is sought;
- (c) be executed by the applicant;
- (d) be lodged with the Authority; and
- (e) be accompanied by the determined fee.

Grant of licence

14. (1) The Authority shall grant a licence to use an ozone depleting substance or service an article which contains an ozone depleting substance if satisfied that—

- (a) the applicant—
 - (i) has satisfactorily completed an approved course or an approved examination; or
 - (ii) is accredited under a corresponding law; and
- (b) the applicant has not been convicted of an offence against this Act or a corresponding law.

(2) The Authority may grant a licence to use an ozone depleting substance or service an article which contains an ozone depleting substance if the applicant has been convicted of an offence against this Act or a corresponding law, if the Authority is satisfied that the applicant is otherwise a fit and proper person to hold the licence to which the application relates.

(3) The Authority may grant a licence to deal with or manufacture an ozone depleting substance.

(4) In determining whether or not to grant a licence under subsection (3), the Authority shall have regard to—

- (a) whether there exists a reasonable alternative to an ozone depleting substance to which the application relates;
- (b) any relevant date prescribed under section 9 in relation to an ozone depleting substance to which the application relates;
- (c) whether the storage and other equipment proposed to be used in relation to the ozone depleting substance meets the prescribed standards of design and operation of, and of permissible emissions by, such equipment;
- (d) if the applicant is a natural person—whether he or she has been convicted of an offence against this Act or a corresponding law; and
- (e) if the applicant is a body corporate—whether any person having the management or control of the body corporate, or the body corporate itself has been convicted of an offence against this Act or a corresponding law.

Form of licence

15. (1) A licence shall specify—

- (a) the period for which the licence is to remain in force;
- (b) the conditions to which the licence is subject; and
- (c) such other particulars as are prescribed.

(2) The conditions which the Authority may impose include, but are not limited to—

- (a) in the case of a licence to manufacture an ozone depleting substance—conditions specifying—
 - (i) the ozone depleting substance or substances which may be manufactured under the licence; and
 - (ii) the quantity of each ozone depleting substance which may be so manufactured;
- (b) in the case of a licence to deal with an ozone depleting substance—conditions specifying—

- (i) the manner in which an ozone depleting substance may be dealt with; and
 - (ii) the quantity of each ozone depleting substance which may be acquired under the licence;
- (c) in the case of a licence to use an ozone depleting substance—conditions—
 - (i) specifying the manner in which an ozone depleting substance may be used; and
 - (ii) relating to steps to be taken to minimise the likelihood of the mixing of ozone depleting substances; and
- (d) in the case of a licence to service an article containing an ozone depleting substance—conditions—
 - (i) specifying the types of articles to which the licence relates; and
 - (ii) relating to steps to be taken to minimise the likelihood of the mixing of ozone depleting substances.

Variation of conditions

16. (1) Where the Authority is satisfied that it is necessary for the purpose of reducing the emission of ozone depleting substances, to vary, revoke or impose a specified condition in or on a licence, the Authority shall, by notice in writing served on the licensee, require the licensee, within a specified period, being not more than 28 days and not less than 14 days after the date of the notice—

- (a) to show cause why the condition should not be imposed, revoked or varied in the manner specified in the notice; and
- (b) to forward the licence to the Authority.

(2) The Authority may, on application by a licensee, if it is satisfied that it is necessary for the purpose of reducing the emission of ozone depleting substances—

- (a) vary or revoke a condition specified in a licence; or
- (b) impose a condition on a licence.

(3) Where a notice under subsection (1) is served on a licensee, the Authority may, after the expiration of the period specified in the notice, and taking into account any representation made by the licensee—

- (a) vary, in a specified manner, a condition to which the licence is subject;

- (b) revoke the specified condition;
- (c) impose a specified condition on the licence; or
- (d) not vary, revoke or impose the specified condition;

and shall return the licence to the licensee.

(4) The licensee shall not—

- (a) refuse or fail to comply with a requirement made under subsection (1); or
- (b) contravene a condition of a licence.

(5) A person who, without reasonable excuse, contravenes subsection (4) is guilty of an offence punishable, on conviction, by a fine not exceeding \$5,000 or imprisonment for 6 months.

Effect of licence

17. A licence authorises the licensee, subject to the licence, to do such of the following as are specified in the licence:

- (a) in relation to an ozone depleting substance—
 - (i) to manufacture the substance;
 - (ii) to deal with the substance; or
 - (iii) to use the substance;
- (b) in relation to an article containing an ozone depleting substance—to service the article.

Renewal of licence

18. The Authority shall, on application being made, and on payment of the determined fee, before the expiration of the term of a licence, renew the licence for such period as is specified in the licence, commencing on the day immediately following the day on which, but for its renewal, the licence would have expired.

Suspension or cancellation of licence

19. (1) The Authority may, by notice in writing, require the licensee to show cause why the licence should not be suspended or cancelled on one of the following grounds:

- (a) that the licensee has been convicted of an offence against this Act or a corresponding law;
- (b) that the licensee has failed to comply with a condition to which the licence is subject;

- (c) that there is a reasonable alternative to the ozone depleting substance to which the licence relates;
- (d) that the storage or other equipment used in relation to the ozone depleting substance fails to meet the prescribed standards of design and operation of, and of permissible emissions by, such equipment;
- (e) where the licence has been granted pursuant to subsection 14 (2)—that the licensee is no longer a fit and proper person to hold the licence.

(2) A notice shall—

- (a) contain particulars of the facts or circumstances on which the Authority has formed the opinion that the ground specified in the notice exists; and
- (b) specify a period of not less than 14 days and not more than 28 days after the date of service of the notice within which the licensee is required to show cause to the Authority why the licence should not be suspended or cancelled.

(3) A licensee who receives a notice may apply for an extension of the period within which the licensee is required to show cause and such application may be made notwithstanding that the period the extension of which is sought has expired.

(4) The Authority may, on receiving an application under subsection (3), extend the period by not more than 28 days.

(5) After the expiry of the period specified in a notice under subsection (1) or any extension of that period, the Authority may—

- (a) fix a time and place for an inquiry into the proposed suspension or cancellation and shall give notice in writing of the time and place of that inquiry to the licensee;
- (b) remove any suspension imposed under section 20 and make a decision not to suspend or cancel the licence; or
- (c) where no cause to the contrary has been shown—suspend or cancel the licence.

(6) If, on holding an inquiry in accordance with paragraph (5) (a), the Authority is satisfied that the ground specified in the notice exists, the Authority may suspend or cancel the licence.

(7) A suspension under paragraph (5) (c) or subsection (6) has effect—

- (a) in the case of suspension on a ground specified in paragraph (1) (b) or (d)—until such time as the ground no longer exists; or
- (b) in any other case—for such period as the Authority considers appropriate having regard to the circumstances of the case.

(8) Cancellation of a licence takes effect on the date on which notice of the cancellation is served on the licensee.

(9) A licence is not to be taken to be in force during any period for which it is suspended.

Preliminary suspension

20. (1) Where the Authority considers it necessary to do so, having regard to the circumstances leading to the giving of a notice under subsection 19 (1) and the grounds specified in the notice, the Authority may suspend a licence before the licensee shows cause to the contrary.

(2) Where the Authority has suspended a licence under subsection (1), it shall deal with the matter as soon as practicable in accordance with section 19.

(3) For the purposes of subsection (2), paragraph 19 (2) (b) shall be read as if the period referred to in that paragraph were a period of not less than 7 days and not more than 14 days.

Temporary licences

21. (1) The Authority may, on application by a person for a temporary licence, grant the person a temporary licence if satisfied that the applicant, before the commencement day, used, manufactured or dealt with an ozone depleting substance or, in the ordinary course of business, serviced an article that contained an ozone depleting substance.

(2) An application under subsection (1) shall—

- (a) be in accordance with a form approved by the Authority;
- (b) be executed by the applicant; and
- (c) in the case of an application for a temporary manufacturer's licence—be accompanied by the determined fee.

(3) Sections 15, 16, 17, 19 and 20 apply to a temporary licence in the same manner as they apply to a licence.

Duration of licences

22. A licence granted under section 14 or 21 or renewed under section 18 remains in force—

- (a) for such period, not exceeding 12 months, as is specified in the licence;
- (b) until it is cancelled or suspended by the Authority; or
- (c) if a date is prescribed under subsection 9 (1) in relation to the licence or an ozone depleting substance to which the licence relates—until the prescribed date;

whichever first occurs.

Register

23. (1) The Authority shall maintain a register of persons who are licensed.

(2) The register shall be available for public inspection during normal working hours.

PART III—APPROVED COURSES AND EXAMINATIONS**Determination of approved courses**

24. (1) The Authority may determine that a specified course is an approved course for the purposes of this Act.

(2) A determination under subsection (1) shall—

- (a) be in writing; and
- (b) specify—
 - (i) the nature, syllabus and duration of the approved course; and
 - (ii) the requirements as to education, experience or any other matter to be satisfied by a person wishing to undertake that course.

(3) The Authority shall—

- (a) prepare a statement setting out particulars of each determination; and
- (b) make copies of the statement available, on request, to members of the public.

Determination of approved examinations

25. The Authority may, by instrument in writing, determine that a specified examination is an approved examination for the purposes of this Act.

PART IV—ENFORCEMENT**Things connected with offences**

26. (1) For the purposes of this Part, a thing is connected with a particular offence if—

- (a) it is a thing with respect to which the offence has been committed;
- (b) it will afford evidence of the commission of the offence; or
- (c) it was used, or is or was intended to be used, for the purpose of committing the offence.

(2) A reference in this Part, to an offence shall be read as including a reference to an offence that there are reasonable grounds for believing has been or will be committed.

Inspectors

27. (1) The Authority may, by instrument in writing, appoint persons to be inspectors for the purposes of this Act.

(2) An inspector shall, subject to this Act, perform such duties for the purposes of this Act as the Authority directs.

(3) The Authority shall issue to an inspector an identity card specifying the name and appointment of the person and on which appears a recent photograph of the person.

Return of identity cards

28. A person appointed to be an inspector shall not, without reasonable excuse, fail to return his or her identity card to the Authority on ceasing to be an inspector.

Penalty: \$100.

Searches—monitoring compliance with Act

29. (1) For the purposes of ascertaining whether the provisions of this Act have been complied with, the Authority or an inspector may, without a warrant—

- (a) enter, at any reasonable time, premises (other than residential premises)—

- (i) on which ozone depleting substances are being manufactured, dealt with or used, or articles which contain ozone depleting substances are being serviced; or
- (ii) on which the Authority or an inspector believes, on reasonable grounds, that such an activity is taking place; or
- (b) enter any premises at any time with the consent of the occupier.

(2) The Authority or an inspector who enters premises under subsection (1) may—

- (a) inspect, examine, take measurements of, or conduct tests concerning, the premises, or any ozone depleting substance or thing in or on the premises;
- (b) require any person on the premises—
 - (i) to give the Authority or the inspector such information; or
 - (ii) to produce to the Authority or the inspector any document containing such information;

relating to any ozone depleting substance or thing in or on the premises as the Authority or inspector, as the case may be, requires;

- (c) inspect, make copies of, or take extracts from, a document referred to in subparagraph (b) (ii);
- (d) take such photographs, or make such sketches or recordings, as the Authority or inspector considers necessary;
- (e) to the extent that it is necessary to inspect or examine, or to take measurements or conduct tests in relation to, any ozone depleting substance in or on the premises—
 - (i) seize the ozone depleting substance, and any container or other thing, and remove them from the premises; or
 - (ii) take (without paying for it) a sample of the ozone depleting substance and remove the sample from the premises;
- (f) seize any ozone depleting substance that the Authority or the inspector believes on reasonable grounds is connected with an offence against this Act or the regulations and remove it from the premises;
- (g) seize any ozone depleting substance for the purpose of its disposal where the Authority or inspector believes on reasonable grounds

that it is necessary to ensure the minimisation of any risk of damage to the environment; and

- (h) require the occupier to give the Authority or the inspector such assistance as is necessary and reasonable to enable the Authority or an inspector to exercise powers under this Act or the regulations.

(3) A person shall not, without reasonable excuse, fail to comply with a requirement made of the person under paragraph (2) (h).

Penalty: \$5,000 or imprisonment for 6 months.

Consent to entry

30. (1) If the Authority or an inspector requests a person to consent to the Authority or the inspector entering premises under section 29, he or she shall inform the person that the person may refuse consent.

(2) Where the Authority or an inspector obtains the consent of a person for the purposes of section 29, the Authority or inspector, as the case requires, shall ask the person to sign a written acknowledgment—

- (a) that the person has been informed that he or she may refuse to so consent;
- (b) that the person has consented; and
- (c) of the day on which, and the time at which, the person consented.

(3) Where it is material, in any proceedings, for a court to be satisfied of the voluntary consent of a person for the purposes of section 29 and an acknowledgment, in accordance with subsection (2), signed by the person is not produced in evidence, it shall be presumed that the person did not consent, unless the contrary is established.

Receipt for samples

31. An inspector who takes a sample under subparagraph 29 (2) (e) (ii) shall give a receipt for the sample to the occupier of the premises from which the sample was taken.

Return of certain seized articles

32. (1) Where the Authority or an inspector—

- (a) having seized any ozone depleting substance or thing under paragraph 29 (2) (e), believes on reasonable grounds that it is connected with an offence against this Act or the regulations; or

- (b) under paragraph 29 (2) (f), seizes any ozone depleting substance or thing that the Authority or the inspector believes on reasonable grounds is connected with an offence against this Act or the regulations;

the Authority or the inspector, as the case requires, may retain the ozone depleting substance or thing for the purpose of adducing evidence in a prosecution for the offence.

(2) If a prosecution for an offence against this Act or the regulations is not instituted within 90 days after the date of the seizure, the Authority or the inspector shall take all reasonably practicable steps to return the ozone depleting substance or thing to the person whom he or she reasonably believes is entitled to its possession.

Offence-related searches and seizures

33. (1) Where the Authority or an inspector believes on reasonable grounds that there is, or may be, in or on any premises, a thing of a particular kind connected with a particular offence against this Act or the regulations, the Authority or the inspector, as the case requires, may—

- (a) lay before the magistrate an information on oath setting out those grounds; and
- (b) apply for the issue of a warrant to search the premises for things of that kind.

(2) Where an application is made under subsection (1) for a warrant to search premises, a magistrate may, subject to subsection (3), issue a warrant authorising an inspector named in the warrant, with such assistance and by such force as is necessary and reasonable—

- (a) to enter the premises; and
- (b) to exercise any power under subsection 29 (2).

(3) A magistrate shall not issue a warrant under subsection (2) unless—

- (a) the informant or another person has given the magistrate, either orally or by affidavit, any further information that the magistrate requires concerning the grounds on which the issue of the warrant is being sought; and
- (b) the magistrate is satisfied that there are reasonable grounds for issuing the warrant.

(4) A warrant shall—

- (a) state the purpose for which it is issued;
- (b) specify the nature of the relevant offence;
- (c) specify particular hours during which the entry is authorised, or state that the entry is authorised at any time of the day or night;
- (d) include a description of the kinds of things in relation to which the powers under the warrant may be exercised; and
- (e) specify the date, being a date not later than 1 month after the date of issue of the warrant, on which the warrant ceases to have effect.

Obstructing inspectors

34. A person shall not, without reasonable excuse—

- (a) obstruct or hinder the Authority or an inspector in the exercise of powers under this Act or the regulations; or
- (b) contravene a requirement made by the Authority or an inspector under the Act.

Penalty: \$5,000 or imprisonment for 6 months.

False information

35. A person shall not, in purported compliance with a requirement made by the Authority or an inspector under the Act, give the Authority or the inspector—

- (a) information that is, to the person's knowledge, false or misleading in a material particular; or
- (b) any document containing information that is, to the person's knowledge, false or misleading in a material particular.

Penalty: \$5,000 or imprisonment for 6 months.

Warning notices

36. If the Authority believes on reasonable grounds that it is necessary in order to prevent the emission of an ozone depleting substance into the atmosphere, the Authority may cause to be published in a daily newspaper published and circulating in the Territory, a notice about—

- (a) using;
- (b) dealing with;
- (c) manufacturing; or
- (d) servicing an article that contains;

an ozone depleting substance.

Form of warning notice

37. (1) A notice under section 36 may include—

- (a) such instructions as the Authority considers reasonable for using or dealing with the ozone depleting substance and any article containing the ozone depleting substance, including the time within which any such dealing is to be effected;
- (b) such instructions as the Authority considers reasonable for manufacturing, or servicing articles which contain, the ozone depleting substance, including the time within which any such manufacturing or servicing is to be effected; and
- (c) such warnings as the Authority considers reasonable in relation to using, dealing with, manufacturing, or servicing an article which contains, the ozone depleting substance.

(2) A notice under section 36 shall specify each ozone depleting substance to which the notice relates and the common name (if any) under which the substance is supplied.

Ozone protection notice

38. (1) Where there are reasonable grounds for believing—

- (a) that an ozone depleting substance has been, is being, or is likely to be emitted into the atmosphere from premises in contravention of this Act; and
- (b) that it is necessary to control the emission of the ozone depleting substance for the purpose of ensuring that the provisions of this Act are being complied with;

the Authority or an inspector may, by notice in writing given to the occupier of those premises, require the occupier to carry out the measures specified in the notice within a specified period.

(2) In deciding whether to give an ozone protection notice and in determining the period for compliance with the notice, the Authority or the inspector, as the case may be, shall have regard to all the circumstances of the matter, including—

- (a) any licence issued to the occupier under section 14 or 21;
- (b) the nature of any activity or process engaged in on the relevant premises;
- (c) the nature of the relevant emission;
- (d) the location of the relevant emission; and

- (e) the nature, cost and complexity of any action required to be taken by the occupier to control the relevant emission.

(3) Where the period specified for compliance with an ozone protection notice or any variation of that period is less than 14 days, that notice or the notice varying such period may be given to the occupier by any of the methods set out in subsection 46 (1) or (2), as the case requires, other than by sending the relevant notice by post to the occupier.

(4) An ozone protection notice may require the occupier of the premises to do any one or more of the following:

- (a) to cease to carry on or not to commence any specified process or activity on the relevant premises;
- (b) to carry on, modify or control a specified process or activity in the manner specified in the notice;
- (c) to supply to the Authority or the inspector any plans, specifications or other information specified in the notice showing how a specified process or activity will be carried on, modified or controlled;
- (d) to take such measures including installation, alteration, maintenance or operation of any apparatus, plant or structures, as may be specified in the notice;
- (e) to provide monitoring equipment and carry out a monitoring program as specified in the notice.

Further details for inclusion in ozone protection notice

39. An ozone protection notice shall, in addition to the matters specified in accordance with subsection 38 (4), specify—

- (a) the address and description of the premises in respect of which the notice is issued;
- (b) the date on which the notice is given to the occupier; and
- (c) the period within which a requirement specified in the notice is to be complied with by the occupier.

Variation of ozone protection notice by Authority

40. (1) Where an ozone protection notice has been given to an occupier, the Authority may, of its own motion or upon application in writing by the occupier—

- (a) vary the notice by extending the compliance period specified in the notice;

- (b) vary any other requirement specified in the notice; or
- (c) revoke a requirement specified in the notice.

(2) The Authority shall not make a decision under subsection (1) in relation to an ozone protection notice where, as permitted by this Act, an application has been lodged with the Tribunal for the review of a decision in respect of that notice.

(3) The Authority shall not make a decision under subsection (1) in relation to an ozone protection notice without having regard to all the circumstances of the matter including—

- (a) any licence issued to the occupier under section 14 or 21;
- (b) the nature of any activity or process engaged in on the relevant premises;
- (c) the nature of the relevant emission;
- (d) the location of the relevant emission; and
- (e) the nature, cost and complexity of the action required to be taken by the occupier in order to comply with the notice.

(4) The Authority shall notify the occupier in writing of a decision under subsection (1) in relation to an ozone protection notice—

- (a) in the case of a decision of its own motion—within 7 days of making the decision; and
- (b) in the case of a decision upon application by the occupier—within 7 days of receiving the application.

Acquisition and destruction of ozone depleting substances

41. (1) Where an ozone depleting substance is—

- (a) seized under subsection 29 (2) of this Act; or
- (b) surrendered to the Authority, whether pursuant to a notice under section 36 or 38 or otherwise;

the Authority shall give written notice to—

- (c) the owner of the ozone depleting substance; or
- (d) the person who had possession, custody or control of it immediately before the seizure or acquisition;

requesting that person to show cause why the ozone depleting substance should not be disposed of.

(2) A notice under this section shall specify—

- (a) the grounds upon which the Authority or the inspector bases his or her belief that the disposal of the ozone depleting substance is necessary; and
- (b) the period, not being less than 2 working days after the day on which the notice was given, after which the Authority may cause the ozone depleting substance to be disposed of under subsection (3).

(3) Where a notice is given under subsection (1), the Authority shall cause the ozone depleting substance to be disposed of after the expiration of the period specified in the notice, if, taking into account any representation made by the person to whom the notice was directed, the Authority is satisfied on reasonable grounds that the disposal of the ozone depleting substance is necessary to ensure the minimisation of any risk of damage to the environment or to public health.

(4) If the Authority is not satisfied under subsection (3) as to the necessity of the disposing of an ozone depleting substance, the Authority shall cause the ozone depleting substance to be released to its owner, or to the person from whom it was seized.

(5) Where an ozone depleting substance is disposed of pursuant to subsection (3), the Territory shall compensate the owner.

Review of decisions

42. Application may be made to the Tribunal for a review of a decision by the Authority—

- (a) granting a licence under section 14 subject to conditions;
- (b) refusing to grant a licence under section 14;
- (c) granting a licence under section 14 for a period other than that applied for;
- (d) varying a condition under section 16 to which a licence is subject;
- (e) imposing a condition on a licence under section 16;
- (f) refusing to extend the period in which a licensee is required to show cause why a licence should not be cancelled or suspended under subsection 19 (4);
- (g) suspending or cancelling a licence under paragraph 19 (5) (c);
- (h) suspending or cancelling a licence under subsection 19 (6);
- (i) refusing to grant a temporary licence under section 21;
- (j) issuing an ozone protection notice under section 38;

- (k) varying an ozone protection notice under section 40; or
- (l) refusing to vary an ozone protection notice under section 40.

Notification

43. (1) Where the Authority makes a decision of a kind referred to in section 42, the Authority shall give notice in writing of the decision—

- (a) in the case of a decision referred to in paragraph 42 (a), (b), (c) or (i)—to the applicant;
- (b) in the case of a decision referred to in paragraph 42 (d), (e), (f), (g) or (h)—to the licensee; and
- (c) in any other case—to the occupier.

(2) A notice under subsection (1) shall—

- (a) include a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1989*, an application may be made to the Tribunal for a review of the decision to which the notice relates; and
- (b) except where subsection 26 (11) of that Act applies—include a statement to the effect that a person whose interests are affected by the decision may request a statement pursuant to section 26 of that Act.

(3) The validity of a decision referred to in subsection (1) is not affected by a failure to comply with subsection (2).

PART V—MISCELLANEOUS

Corporations—penalties

44. Where a body corporate is convicted of an offence against this Act or the regulations, the penalty that a court may impose is a fine not exceeding 5 times the maximum amount that, but for this section, the court could impose as a pecuniary penalty for that offence.

Conduct of directors, servants and agents

45. (1) Where, in any proceedings for an offence against this Act, it is necessary to establish the state of mind of a person or body in relation to particular conduct, it is sufficient to show—

- (a) that a director, servant or agent of the person or body had that state of mind; and

- (b) that the conduct was engaged in by that director, servant or agent within the scope of his or her actual or apparent authority.

(2) A reference in subsection (1) to the state of mind of the person or body includes a reference to—

- (a) the knowledge, intention, opinion, belief or purpose of the person or body; and
- (b) the person's or body's reasons for the intention, opinion, belief or purpose.

(3) Any conduct engaged in on behalf of a person or body by a director, servant or agent of the person or a body within the scope of his or her actual or apparent authority is to be taken, for the purposes of a prosecution of an offence against this Act, to have been engaged in also by the person or body unless the person or body establishes that reasonable precautions were taken and due diligence was exercised to avoid the conduct.

(4) Where—

- (a) a natural person is convicted of an offence; and
- (b) the person would not have been convicted of the offence if subsections (1), (2) and (3) had not been enacted;

the person is not liable to be punished by imprisonment for that offence.

(5) A reference in this section to engaging in conduct includes a reference to failing or refusing to engage in conduct.

Service of documents

46. (1) A document that is required by this Act to be given to a body corporate may be so given—

- (a) by delivering the document to a director, manager or secretary of the body corporate;
- (b) by leaving the document at the registered office in the Territory of the body corporate;
- (c) by leaving the document at an office or place of business of the body corporate in the Territory with a person apparently employed at that office or place of business and apparently not less than 16 years of age; or
- (d) by sending the document by post to the body corporate at its registered office in the Territory.

(2) A document that is required by this Act to be given to a person other than the Authority or a body corporate may be so given—

- (a) by delivering the document to him or her personally;
- (b) by leaving the document at his or her last known place of residence or business with a person apparently resident or employed at that place and apparently not less than 16 years of age; or
- (c) by sending the document by post addressed to the person at his or her last known place of residence or business.

Power of Minister to determine fees

47. The Minister may, by notice in writing published in the *Gazette*, determine fees for the purposes of this Act.

Regulations

48. (1) The Executive 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.

(2) Without limiting the generality of subsection (1), the regulations may—

- (a) make provision in relation to—
 - (i) the maintenance of records by the licensee;
 - (ii) containers to be used for the reclamation of ozone depleting substances;
 - (iii) the labelling and marking of ozone depleting substances and articles containing ozone depleting substances; and
 - (iv) the manner of storing and disposing of ozone depleting substances; and
- (b) prescribe, for offences against the regulations, penalties not exceeding \$1,000.

[Presentation speech made in Assembly on 28 November 1991]