Ozone Protection Bill 1988

Date Introduced: 10 November 1988
House: House of Representatives
Presented by: Hon. Clyde Holding, M.P., Minister for the Arts and Territories

Digest of Bill

Purpose
To establish a system of controls to reduce the manufacture, import, export, distribution and use of ozone-depleting chlorofluorocarbons (CFCs) and halons.

Background
Ozone is a molecule concentrated in the atmosphere at 15 to 50km above the earth's surface. The level of ozone in the atmosphere is a balance between different rates of production and destruction resulting from reactions between ozone, oxygen and ultraviolet sunlight. The rate of destruction of ozone can be accelerated considerably by the action of ozone-modifying substances like CFCs and halons. Ozone is important to the biosphere as it absorbs ultraviolet radiation in the wavelengths lethal to single cell organisms and the surface cells of plants and animals.

CFCs and halons are artificial chemicals. Their principle uses are refrigeration and air-conditioning, fire extinguishers, propellant in aerosols, and cleaning solvents used in the electronics industry. The amount of CFCs in the atmosphere has increased in recent years, and this has generated concern as to their long-term effect on the atmosphere, and, particularly, to the level of ozone. Although there is little doubt that CFCs and halons can affect the level of ozone, there is no direct evidence of this happening as yet. If CFCs and halons are a major cause of ozone depletion, there will be a long term recovery period even if their use is stopped. The recovery period has been put at 110 years. Recovery is possible, as the level of ozone in the atmosphere is a balance between production and destruction processes, and if the rate of destruction slows, the balance may be re-established. Australian production of CFCs and halons has remained relatively constant since the 1970s, with 12 000 tonnes being produced in 1985. Although the usage of CFCs for aerosols has been reduced by 70% under a voluntary code controlled by manufacturers, there has been an increase in other applications.

A reduction in the level of ozone in the atmosphere could have a number of adverse effects, such as increased skin cancer, harm to plants and aquatic organisms, increase in smog in some urban areas, and aggravation of global warming trends ('greenhouse effect').
The recent discovery of an 'ozone hole' above Antarctica has generated much debate. The 'ozone hole' is a reduction in the level of ozone above Antarctica during the spring (October, November). The cause of the 'ozone hole' is unknown, but a number of theories have been put forward, including increased solar activity, changes in the direction of airflow in the south polar region, and various chemical explanations. As yet, there is no conclusive evidence to support these theories.

In September 1987, Australia and 23 other countries signed the 'Vienna Convention for the Protection of the Ozone Layer' (the Convention). On 8 June 1988, Australia signed the 'Montreal Protocol on Substances that Deplete the Ozone Layer' (the Protocol). The Protocol requires a 50% reduction in the use of ozone-depleting substances over ten years. These agreements appear in the Schedules to the Bill.

In the explanatory memorandum to the Bill, it is estimated that the measures contained in the Bill will cost $185 000 in 1988–89. This will be a once only cost, as fees will be introduced on the production and importation of CFCs and halons to recoup future costs.

Main Provisions
The objects of the Bill are to institute a system of controls to reduce the manufacture, import, export, distribution and use of ozone-depleting CFCs and halons; and to give effect to Australia's obligations under the Convention and the Protocol (clause 3).

The Bill will not exclude the operation of State and Territory laws which are capable of operating concurrently with this Bill (clause 4).

'Quota activity' is defined to include the manufacture and importation of CFCs and halons, and the export of CFCs (clause 7).

A CFC or halon quota period will last a year. Each subsequent quota period will commence at the end of the previous period. If the Protocol has come into effect, the first CFC or halon quota period will commence on 1 January 1989. The Minister may fix a later commencement date (clause 8).

The quantity of CFCs and halons will be measured in terms of their ozone depleting effect. The ozone-depleting effect of a CFC or halon will be obtained by multiplying the mass of the substance by the ozone-depleting potential number specified in Schedule 1 (clauses 10 and 11).

After the commencement of the first CFC or halon quota period, individuals and companies are not to manufacture, import, or export CFCs and halons without a licence. The maximum penalties for a breach of this provision will be fines of $50 000 for individuals, and $250 000 for corporations (clause 12).
The Minister may grant a licence for a quota activity where the Minister is satisfied that the applicant is a fit and proper person to hold a licence. Where, immediately before the commencement of this Bill, an applicant was conducting an enterprise which involved a quota activity, the granting of a licence will be mandatory if the application is made within three months of the commencement of this Bill, and the applicant is a fit and proper person (clause 15).

A licence will remain valid for ten years (clause 17).

The Minister may cancel a licence if satisfied that the licensee is no longer a fit and proper person to hold a licence. The cancellation will take effect 60 days after notice of cancellation is given (clause 19).

It will be an offence for a licence holder to manufacture more CFCs or halons than their quota allows (clause 22). Clauses 23 and 24 contain similar provision for the import and export of CFCs and halons.

The Minister is to issue quotas in two circumstances. First, where immediately before the commencement of this Bill, the applicant was conducting an enterprise which involved quota activities. Secondly, a quota is to be allocated where the application is made in respect of an activity essential to Australia's defence (clause 27).

The size of a quota, in respect of the manufacture or import of CFCs and halons, will be determined by adding together as many of the following components as are applicable to a particular quota activity: the defence purposes component, the 1986 component, and the discretionary component. The defence component is the quantity which the Minister is satisfied must be manufactured or imported for essential defence purposes. The 1986 component is the quantity of CFCs or halons that were manufactured or imported by an enterprise in 1986. The discretionary component is the quantity of CFCs or halons that the Minister is satisfied the applicant should be permitted to manufacture or import, in addition to any quantity mentioned above. (clause 28).

The total initial quotas for export of CFCs is a quantity having an ozone-depleting effect of 3,800,000. The size of a quota allocated to an applicant will be ascertained by adding together the 1986 export component, and any discretionary component. The 1986 component, and discretionary component, are defined in similar terms as in clause 28 (clause 29).

Clause 32 will provide that the size of a renewed CFC export quota is to be calculated by reducing the quantity of CFCs that the applicant was previously permitted to export by 5%.
Clause 34 provides for transfers of quotas or parts of quotas between licensees. The Minister is to be notified of any transfer.

Proposed Part V (clauses 36 - 39) will apply to foreign corporations, trading corporations, financial corporations, and companies incorporated in a Territory, other than the Northern Territory. The activities to which the Part applies include: interstate trade or commerce; foreign trade; the supply of goods or services to the Commonwealth; use of postal, telegraphic or telephonic services; and radio or television broadcasting (clause 36).

It will be an offence to manufacture or import, other than in accordance with an exemption under clause 39, a product which contravenes Schedule 4. Schedule 4 sets out controls on the manufacture and importation of certain products using CFCs and halons, including dry cleaning machinery, automotive air conditioning maintenance kits, disposable containers of refrigerants, extruded polystyrene packaging and insulation, and aerosol products. The maximum penalties for a breach of this provision will be fines of $5,000 for individuals and $25,000 for corporations (clause 37).

Clause 38 will provide that the regulations may include provisions prohibiting or regulating the manufacture, import, export, distribution or use, of CFCs and halons.

The Minister may grant an exemption from compliance with an obligation imposed by clause 37, or by regulations, if satisfied that the product is essential for medical, veterinary, defence, industrial safety or public safety purposes and that there is no practical alternative; or that the product is for use in conjunction with the calibration of scientific, measuring or safety equipment. Exemptions are to be tabled in each House of the Parliament (clause 39).

Proposed Part VI (clauses 40 - 44) will prohibit the import and export of CFCs and halons, and the import and export of products containing, manufactured with, or using, CFCs and halons, from and to countries which are not signatories to the Protocol. The maximum penalties for a breach of these provisions will be fines of $10,000 for natural persons, and $50,000 for corporations.

Clause 45 will require each person who, during 1986, manufactured or imported into Australia any CFCs or halons, to report to the Minister particulars of their activities and the quantities involved. The maximum penalty for a breach of this provision will be fines of $10,000 for natural persons, and $50,000 for corporations.

During a quota period, licensees are to report to the Minister, each quarter, the quantities of CFCs and halons manufactured, imported and exported. The maximum penalty for a breach of this provision will be fines of $10,000 for individuals and $50,000 for corporations (clause 46).
Where quota activities, or activities that are the subject of regulation, are being engaged in, or related records are kept, an Inspector may, without warrant, enter and search the premises to determine whether this Bill or the regulations have been complied with. Inspectors may search a premises, take photographs or make sketches of the premises, inspect any records kept at the premises, or remove or make copies of any records. However, an inspector may not enter a residence unless the occupier has consented (clause 50).

Clause 51 will provide for the search of a premises and seizure of items which an inspector has reasonable grounds for suspecting may provide evidence of an offence against this Bill. An inspector may only exercise this power with the consent of the occupier, or under a warrant issued by a Magistrate. Warrants may be issued by telephone if required urgently (clause 52).

Inspectors, to the extent that it is reasonably necessary to determine whether the provisions of this Bill have been complied with, may require a person to answer questions and produce documents requested (clause 53).

Clause 55 provides for injunctions to be granted to prevent breaches of the Bill. Where the Minister makes an application, the court is not to require the Minister to give any undertaking as to damages.

Goods relating to an offence against this Bill for which a person has been convicted, will be forfeited to the Commonwealth and may be seized by an inspector (clauses 56–60).

Proposed Division 4 (clauses 61–64) deals with offences. It will be an offence knowingly or recklessly make false statements, in relation to an application for renewal or variation of a licence or quota, to an inspector, or in a report to the Minister. The maximum penalty for breach of this provision will be fines of $5,000 or imprisonment for 2 years or both for natural persons, and $25,000 for corporations (clause 61).

It will be an offence to fail to answer questions, or produce documents, without reasonable excuse, when required to do so by an inspector. The maximum penalty for breach of this provision will be fines of $2,000 for individuals and $10,000 for corporations (clause 63).

Decisions of the Minister granting, cancelling, allocating, renewing, or varying a licence, quota, or exemption, will be subject to review by the Administrative Appeals Tribunal (clause 65).

Licence fees will be payable at the end of 15 days after the end of the quarter to which they relate. Unpaid fees will attract a penalty, compounding at the rate of 30% per annum, on the unpaid fee (clause 67).
The Governor-General may make regulations, including regulations prescribing penalties not exceeding $1 000 for natural persons or $5 000 for corporations (clause 68).

Proposed Schedules 2 and 3 set out the text of the Convention and the Protocol.

References
2. Ibid, p. 5.
4. Ibid, pp. 11 and 12.
5. Ibid, p. 15.

For further information, if required, contact the Law and Government Group.

28 November 1988

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This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

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