

OZONE PROTECTION BILL 1989

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to provide a broad power for the making of regulations to place controls on and permit the prohibition of the production and use of:

- * substances that deplete stratospheric ozone when emitted into the atmosphere; and
- * articles that contain or use those substances in their operation.

The State Pollution Control Commission is to administer the proposed Act.

PART 1 - PRELIMINARY

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the proposed Act to commence on a day or days to be appointed by proclamation.

Clause 3 sets out the object of the proposed Act.

Clause 4 contains definitions. Important definitions are:

- * "controlled substance" which means the ozone depleting substances listed in Schedule 1 to the proposed Act and substances prescribed as ozone depleting substances by the regulations;
- * "controlled article" which means any thing that contains a controlled substance or uses a controlled substance in its operation.

Clause 5 sets out the requirements to be satisfied before a substance can be prescribed as a controlled substance.

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PART 2 - CONTROLS

Clause 6 empowers the making of regulations covering a wide variety of matters involving controlled substances and controlled articles, including manufacture, sale, distribution, conveyance, storage, possession, use, re-cycling and disposal.

Clause 7 makes it clear that the regulations can require licences to be held and can require premises, vehicles and vessels to be registered.

Clause 8 gives examples of the way in which the regulations can make provision concerning recovery, re-cycling and disposal of controlled substances.

Clause 9 makes it clear that the regulations can make provision for the adoption of and for requiring compliance with industry codes of practice.

Clause 10 makes it clear that the regulations can provide for the accreditation of training courses and related matters.

Clause 11 makes it clear that the regulations can require persons engaged in activities regulated by the regulations to keep records and furnish returns to the Commission.

Clause 12 makes it clear that the regulations can require the labelling or identification by other means of controlled substances and controlled articles.

Clause 13 makes it clear that the regulations can provide for the granting of exemptions from the requirements of the regulations by the Commission or (with certain restrictions) the Minister.

PART 3 - ENFORCEMENT

Clause 14 authorises the Commission to require a person carrying on a business involving controlled substances or controlled articles to furnish information to the Commission and confer with the Commission on relevant matters.

Clause 15 protects from disclosure information obtained under the proposed Act concerning industrial or commercial secrets or working processes. Disclosure is only allowed in certain limited circumstances.

Clause 16 gives an authorised officer the power to enter and search premises if an offence is suspected of having been committed there or if the premises are used for the carrying on of a business involving controlled substances or controlled articles. The officer is empowered to ask questions of persons on the premises, require the production of records, make tests, take photographs and take samples. Entry to residential premises cannot be demanded without a search warrant.

Clause 17 creates an offence of obstructing or failing to comply with a lawful requirement made by an authorised officer.

Clause 18 empowers the Commission to apply to the Land and Environment Court for an order restraining a person from committing an offence against the proposed Act or regulations or ordering the person to do anything necessary to remedy the contravention.

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Clause 19 provides for the issue of search warrants.

Clause 20 provides for the issue of penalty notices ("on-the-spot" fines) for offences against the proposed Act or regulations.

Clause 21 makes an employer liable for an offence committed by his or her employee under the proposed Act or regulations unless the employer can establish that he or she had no knowledge of the offence and that reasonable diligence could not have prevented it.

Clause 22 makes directors of a corporation liable for an offence committed by the corporation if the director knowingly authorised or permitted the offence.

Clause 23 provides for the taking of proceedings under the proposed Act before a Local Court or the Land and Environment Court in its summary jurisdiction. The maximum penalty that can be imposed by a Local Court is 100 penalty units (\$10,000).

Clause 24 provides for the forfeiture by court order of articles and substances involved in offences under the proposed Act.

Clause 25 provides for the period for which substances and articles seized by authorised officers can be retained.

PART 4 - GENERAL

Clause 26 provides that the proposed Act binds the Crown.

Clause 27 sets out the way in which documents can be served under the proposed Act.

Clause 28 authorises the Commission to delegate its functions under the proposed Act to any officer of the Commission.

Clause 29 makes it clear that the Commission can conduct advertising and educational campaigns to promote awareness of the causes and effects of stratospheric ozone depletion.

Clause 30 gives the Governor-in-Council the power to make the regulations authorised by the proposed Act and other necessary or convenient regulations.

Clause 31 provides that the regulations may impose penalties of up to \$10,000 on individuals and \$20,000 on corporations.

Clause 32 provides that regulations can be made only on the recommendation of the Minister and requires the Minister to consult with a committee of Ministers before recommending a regulation.

Clause 33 makes it clear that the proposed Act does not derogate from the Environmental Offences and Penalties Act 1989.

Clause 34 amends the Environmental Offences and Penalties Act 1989 to make it an offence under that Act to contravene a provision of the regulations under the proposed Act relating to the emission of controlled substances so as to cause or be likely to cause harm to the environment. That Act provides for penalties of up to \$1,000,000 and 2 years imprisonment.

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Clause 35 makes a consequential amendment to the Search Warrants Act 1985.

Clause 36 makes a consequential amendment to the Justices Act 1902.

Clause 37 makes consequential amendments to the Land and Environment Court Act 1979.

Clause 38 makes consequential amendments to the State Pollution Control Commission Act 1970.

Clause 39 is a "sunset clause" that provides for the proposed Act to expire in 5 years unless either House of Parliament passes a resolution to the contrary.

Schedule 1 lists known ozone depleting substances being those controlled substances to which the Act will apply initially.
