



## Environment and Heritage Legislation Amendment Bill 2005

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## Environment and Heritage Legislation Amendment Bill 2005

**Date Introduced:** 16 March 2005

**House:** Senate

**Portfolio:** Environment and Heritage

**Commencement:** Schedule 1 commences 28 days after Royal Assent and Schedule 2 commences on Royal Assent

### Purpose

This Bill amends the Ozone Protection and Synthetic Greenhouse Gas Management Act 1989 to:

- change the licensing requirements for the import and export of hydrochlorofluorocarbons and methyl bromide, and
- increase the reporting requirements for manufacturers of synthetic greenhouse gases.

The Bill also amends the *Sydney Harbour Federation Trust Act 1989* to enable a parcel of land to be sold.

### Background

#### Ozone Protection and Synthetic Greenhouse Gas Management Act 1989

The *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* (the Act) implements Australia's obligations under the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer (Montreal Protocol)<sup>1</sup>. The Montreal Protocol has been amended a number of times to extend its scope. Australia has ratified the 1990, 1992, 1995 and 1997 amendments but not the 1999 (Beijing) amendment. Amongst other things, these amendments have progressively tightened regulation of the manufacture, use, trade and disposal of ozone depleting substances (ODS) included in the original Montreal Protocol as well as expanding the range of ODS covered by its scope.

ODS, such as hydrochlorofluorocarbons (HCFCs), chlorofluorocarbons (CFCs), halons, and methyl bromide, are used for a variety of purposes such as refrigeration and air conditioning, foam manufacture, fumigation, fire extinguishing and a range of aerosol products. If released into the atmosphere, ODS damage the ozone layer which protects the earth from UV-B radiation.

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The regulation of ozone is split between the Commonwealth and the states. The Act and other associated legislation and regulations prohibit the import, export and manufacture of those ODS that are the most damaging to the ozone layer and place various limitations on less damaging ODS with a view to a progressive phase-out of these latter substances. Regulation of end use has historically been conducted by the states however following the Review of the Commonwealth's ozone protection legislation which reported in 2001, the Commonwealth has now been given primary responsibility for controlling the end use of ODS.<sup>2</sup> The Commonwealth has a work program for developing regulations to cover industries that use ODS (such as refrigeration and air-conditioning) which will replace the existing state regulatory arrangements. The regulations will cover licensing, training requirements and setting appropriate standards for conducting work to minimise emissions of ODS. The states and territories still have a role in providing training to meet the new Commonwealth standards through the TAFE system, however this may be provided by any registered training organisation.

## Synthetic Greenhouse Gases

With the phasing out of some ODS during the 1990s, alternative gases were needed to replace them. Whilst ozone-benign, some of the alternatives brought in are potent greenhouse gases, that is, contribute to the Greenhouse effect. These are termed synthetic greenhouse gases, or SGGs. There are two main types of SGGs that have replaced the traditional ODS, hydrofluorocarbons (HFCs) and perfluorocarbons (PFC)s. According to a review of the arrangements that was conducted in 2001<sup>3</sup>:

HFCs are currently the refrigerant of choice in Australia for most domestic and non-domestic air conditioning and refrigeration systems. They are also used in the manufacture of rigid polyurethane foam and metered dose medical inhalers and serve as a sterilant gas, as a solvent, as a propellant in aerosols and as a streaming agent in fire extinguishers. PFCs are used as a cleaning agent in the electronics industry, in certain fire suppression systems and in some refrigerant blends.

The Act and other associated legislation place limitations on the import, export and manufacture of SGG's.

## Sydney Harbour Federation Trust Act 2001

Following negotiations with the NSW government during 1997 and 1998, the Commonwealth Government included a commitment in its 1998 election platform to:

return Sydney Harbour foreshore defence sites to the people of Australia and protect the national and heritage values of those sites...[by] provid[ing] \$90 million from the Federation Fund and establish[ing] a Sydney Harbour Federation Trust...[which will] assume management and planning responsibilities for the sites...for a period of ten years.<sup>4</sup>

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The Sydney Harbour Federation Trust was created in September 2001 following passage of the *Sydney Harbour Federation Trust Act 2001* (SHFT Act).

The sites covered by the trust are:

- Macquarie Lightstation on South Head
- The former artillery school at North Head
- Woolwich Dock and Parklands
- Cockatoo Island
- Snapper Island
- land at Middle Head, George's Heights and Chowder Bay, and
- the former Marine Biological Station at Watson's Bay.

## Main Provisions

### Schedule 1 – amendments to the Ozone Protection and Synthetic Greenhouse Gas Management Act 1989

A person must not manufacture, import or export HCFC's or methyl bromide unless they hold a controlled substances licence.<sup>5</sup> Currently a person who wishes to import or export recycled or used HCFC's or methyl bromide must not do so unless they hold both a controlled substances licence and a used substances licence.<sup>6</sup> At the time the licensing requirements were put in place, it was not intended that both a controlled substances licence and a used substances licence would be required for the import and export of recycled and used HCFC's and methyl bromide.<sup>7</sup> The intention was for recycled and used substances to only require a used substances licence. **Item 1** of the Bill amends the Act to remove the double licensing requirement.

This amendment will not change the level of care or accountability that needs to be met by importers or exporters of recycled or used substances. It does however decrease the licensing costs. Currently each licence application costs \$15,000. As a result, these amendments will halve the licensing costs for persons wishing to import or export recycled or used HCFC's and methyl bromide.

Currently under the Act, if a person imports or exports SGG's they are required to give the Minister a report in accordance with the regulations.<sup>8</sup> The report is required to contain a range of information including the following:

- the amount (if any) of HFC-134a imported by the person and the amount (if any) exported during the quarter, expressed in CO<sub>2</sub> equivalent tonnes;

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- if the person imported or exported any secondary SGGs<sup>9</sup> during the quarter:
  - ~ each kind of secondary SGG imported and each kind exported; and
  - ~ the total amount of secondary SGGs imported and the total amount exported during the quarter, expressed in CO<sub>2</sub> equivalent tonnes;
- if the person imported or exported any exotic SGGs<sup>10</sup> during the quarter:
  - ~ the amount of exotic SGGs imported and the amount exported during the quarter expressed in CO<sub>2</sub> equivalent tonnes; and
  - ~ whether any exotic SGG mentioned in items 9 to 15 of table 900-2 of the Ozone Protection and Synthetic Greenhouse Gas Management Regulations 1995 were imported or exported.

By comparison, where a person manufactures SGG's they are not however required to provide a report on their manufacturing activities. **Item 2** of the Bill proposes to change this so that persons who manufacture SGG's will be required to give a report that contains information that is specified in the regulations. Currently there is no regulation that sets out the requirements which must be contained within the report. As a result the Ozone Protection and Synthetic Greenhouse Gas Management Regulations 1995 will need to be amended. The amendments will specify similar reporting requirements to those that apply to importers and exporters of SGG's.

## Schedule 2 – amendments to the Sydney Harbour Federation Trust Act 2001

Under the *Sydney Harbour Federation Trust Act 2001* (SHFT Act), those properties listed in Schedule 1 of the Act are not to be sold. Those properties listed in Schedule 2 of the SHFT Act may be sold provided the Minister approves the sale. This Bill proposes to transfer one of the properties listed in Schedule 1, the Scout Hall site in Markham Close Mosman, to Schedule 2 so that the property can be sold. In exchange for this, the Bill proposes to transfer other land at Markham Close, Mosman, listed in Schedule 2, across to Schedule 1. The second reading speech to the Bill states that<sup>11</sup>

The effect of the proposed amendments contained within this bill will be to enable the Sydney Harbour Federation Trust to more effectively bring to the fore the natural ridgeline of Middle Head peninsula and add to the character of the Headland Park...

This land swap is consistent with the Sydney Harbour Federation Trust's comprehensive plan and the fundamental objective of making its land accessible to the public...

The proposed land swap was overwhelmingly supported by the community during the exhibition of the draft Management Plan.

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On occasions there has been concern regarding the sale of certain parts of the trust land,<sup>12</sup> however this proposal to sell land appears to be non-contentious. The purpose of the sale is to fund implementation of the Trust's overall management plan.

**Item 1** removes the Scout Hall (Lot 1 in Deposited Plan 233157), from Schedule 1. **Item 2** inserts the Scout Hall into Schedule 2.

**Item 2** also inserts into Schedule 1 the land at Markham Close, Mosman (Lot 19 in Deposited Plan 233157, Lot 1 in Deposited Plan 831153, and Lot 106 in Deposited Plan 1079507) which was swapped for the Scout Hall. This land has been given a new legal name for the purposes of the transfer. **Item 3 and 4** amends Schedule 2 to remove the land moved to Schedule 1 from Schedule 2.

## Concluding Comments

This Bill amends the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* so that persons wishing to import or export recycled and used HCFC's and methyl bromide are only required to hold a used substances licence. The Bill changes reporting requirements so that manufacturers of SGG's will be required to report to the Minister on their manufacturing activities.

The Bill also amends the *Sydney Harbour Federation Trust Act 1989* to enable a parcel of land to be sold.

These amendments do not appear to be controversial.

## Endnotes

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- 1 The 1987 Montreal Protocol contains specific obligations that build on the original framework agreement, the 1985 Vienna Convention for the Protection of the Ozone Layer. The relationship between the Vienna and Montreal agreements is similar to that between the 1992 Climate Change convention and 1997 Kyoto Protocol. See: <http://www.unep.org/ozone/aboutsec.shtml> for more background.
  - 2 In April 2000 a Task Force consisting of representatives from Environment Australia, the Australian Greenhouse Office, the Attorney-General's Department and Pricewaterhouse Coopers was formed to review the impact, appropriateness, effectiveness and efficiency of Commonwealth ozone protection. The Review was completed in January 2001.
  - 3 See footnote 2 above. This quote is from the review's *Paper 6 - Synthetic greenhouse gases used in Montreal Protocol Industries*.
  - 4 Coalition Environment Policy, *Protecting the Sydney Harbour Foreshore*, September 1998.

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- 5 Sub-section 13(1) of the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989*.
- 6 Section 13 and 13A of the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989*.
- 7 Discussions with officers at the Department of Environment and Heritage.
- 8 Section 46 of the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989*
- 9 ‘Secondary SGG’ is defined in Regulation 900 of the Ozone Protection and Synthetic Greenhouse Gas Management Regulations 1995.
- 10 ‘Exotic SGG’ is defined in Regulation 900 of the Ozone Protection and Synthetic Greenhouse Gas Management Regulations 1995.
- 11 Minister for Justice and Customs, Senator Ellison, ‘Second Reading Speech Environment and Heritage Legislation Amendment Bill 2005’ *Hansard*, 16 March 2005, p. 6.
- 12 Senator Andrew Bartlett, Leader of the Australian Democrats, *Don’t sell trust land at middle head*, ‘Media Release’, 30 December 2002, Geraldine O’Brien, ‘Anger over historic site sell-off plan’ *The Sydney Morning Herald*, 21 March 2002.

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