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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**OZONE PROTECTION AND SYNTHETIC GREENHOUSE GAS MANAGEMENT
AMENDMENT (MISCELLANEOUS MEASURES) BILL 2021**

EXPLANATORY MEMORANDUM

(Circulated by the authority of the Minister for the Environment, the Hon. Sussan Ley MP)

OZONE PROTECTION AND SYNTHETIC GREENHOUSE GAS MANAGEMENT AMENDMENT (MISCELLANEOUS MEASURES) BILL 2021

GENERAL OUTLINE

The Ozone Protection and Synthetic Greenhouse Gas Management (Miscellaneous Measures) Amendment Bill 2021 (the Bill) would amend the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* (the Act).

The Act implements Australia's international obligations under the Montreal Protocol on Substances that Deplete the Ozone Layer (the Montreal Protocol), the Vienna Convention for the Protection of the Ozone Layer, the United Nations Framework Convention on Climate Change and the Kyoto Protocol. The Act controls the import, export and manufacture of specified substances, known as scheduled substances, and the import and manufacture of products containing scheduled substances or that use scheduled substances in their operation.

The purpose of this Bill is to improve the effectiveness and efficiency of the Ozone Protection and Synthetic Greenhouse Gas Program (the Program) in order to reduce the burden on business, streamline and reduce the complexity of the Act, and ensure the Program can continue to achieve important environmental outcomes.

The Bill would make amendments to the Act to:

- bring into the legislation controls that are currently imposed through licence conditions, such as the ban on import of bulk gas in non-refillable containers. These changes provide clarity for business and improve protection of the environment;
- clarify licence and exemption requirements, including changes to make the legislation easier to understand and reduce unintentional non-compliance;
- increase the time allowed for submitting reports and paying levies, which reduces the burden on business and maximises compliance with program requirements by increasing flexibility for business to manage their workload and cash flow without compromising on environmental standards;
- reform the compliance and enforcement approach provisions of the Act to provide for consistent Commonwealth regulatory powers and increase legal certainty for industry and individuals who are subject to the Act, including:
 - adopting the standard provisions of the *Regulatory Powers (Standard Provisions) Act 2014* (Regulatory Powers Act), including minor modifications appropriate to the Program;
 - modernising the offence and penalty structure in the Act to provide flexibility in enforcement while also providing deterrence against non-compliance;
 - introducing information gathering powers to ensure compliance with the Act including the ability to issue a notice to produce;

- adding the option of licence suspension as an alternative to immediate cancellation or financial penalties;
- introducing an internal review mechanism for reviewable decisions;
- allowing the use or disclosure of information collected under the Act to facilitate compliance with state and territory and other Australian Government legislation, while maintaining appropriate protections for certain sensitive information.

FINANCIAL IMPACT STATEMENT

The Bill would have no financial impact on the Australian Government Budget.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

The Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

The full statement of compatibility with human rights is attached to this explanatory memorandum (**Attachment A**).

OZONE PROTECTION AND SYNTHETIC GREENHOUSE GAS MANAGEMENT AMENDMENT (MISCELLANEOUS MEASURES) BILL 2021

NOTES ON CLAUSES

Clause 1 – Short title

1. Clause 1 would provide that the Bill may be cited as the *Ozone Protection and Synthetic Greenhouse Gas Management (Miscellaneous Measures) Amendment Act 2021*.

Clause 2 – Commencement

2. Clause 2 would provide that sections 1 to 3 of the Bill commence the day after the Bill receives the Royal Assent.
3. Clause 2 would also have the effect that Schedule 1 to the Bill would commence on the earlier of a single day set by Proclamation or six months after the Bill receives the Royal Assent. These provisions would contain the substantive amendments to the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* (the Act).

Clause 3 – Schedules

4. Clause 3 would provide that the legislation that is specified to be amended or repealed as set out in a Schedule to the Bill has effect according to the terms of the relevant Schedule.
5. Schedule 1 to the Bill would amend the Act in the manner specified in Schedule 1.

SCHEDULE 1 – AMENDMENTS

PART 1 - AMENDMENTS

Item 1

6. Section 3 of the Act sets out the objectives of the Act. Under existing paragraph 3(d), these objectives include to provide controls on the manufacture, import, export and use of synthetic greenhouse gas, for the purposes of giving effect to Australia's obligations under the Framework Convention on Climate Change and the Kyoto Protocol.
7. Item 1 would amend paragraph 3(d) of the Act to insert a reference to Australia's obligations under the Paris Agreement. The effect would be that the objectives of the Act would include to provide controls on the manufacture, import, export and use of synthetic greenhouse gas, for the purposes of giving effect to Australia's obligations under the Paris Agreement, as well as under the Framework Convention on Climate Change and the Kyoto Protocol.
8. The Paris Agreement would be defined in section 7 (see item 33).

Item 2

9. Item 2 would insert new section 3A into the Act. New section 3A would provide a simplified outline to the Act. The outline is not intended to be comprehensive and has been included to assist readers to understand the substantive provisions of the Act. It is intended that readers will rely on the substantive provisions of the Act.

Item 3

10. Item 3 would amend section 6A to omit '(other than Part 2.5)'. This would ensure that the entire Chapter 2 of the Schedule 1 to the *Criminal Code Act 1995* (Criminal Code) applies to all offences against the Act or the regulations. This amendment is consequential to the repeal of existing section 65 of the Act by item 138.

Item 4

11. Item 4 would insert a new section 6B at the end of Part I of the Act.
12. New section 6B would clarify that where a provision in the Act provides that a person contravening another provision of the Act (the conduct provision) commits an offence or civil penalty provision, a reference to a contravention of an offence provision or a civil penalty provision includes a reference to a contravention of the conduct provision. This is because the conduct provision will set out the relevant physical elements of the offence or civil penalty provision that is being referenced.
13. The purpose of new section 6B is to make clear what constitutes the physical elements of offences under the Act and the *Regulatory Powers (Standard Provisions) Act 2014* (Regulatory Powers Act) (as it applies to the Act).
14. The note after new section 6B would explain that Chapter 2 of the Criminal Code sets out general principles of criminal responsibility.

Item 5

15. Item 5 would insert new section 7AA into the Act. New section 7AA would provide a simplified outline to the Part II of the Act (Explanation of terms used in the Act). The outline is not intended to be comprehensive and has been included to assist readers to understand the substantive provisions of the Part. It is intended that readers will rely on the substantive provisions of the Part.

Item 6

16. Item 6 would amend the definition of *100-year global warming potential* in section 7 of the Act to omit "a table in Schedule 1" and to substitute "the clause in Schedule 1 that covers that substance". This definition is a signpost definition to refer readers to where in the Act the term would be substantively defined.

17. This item would be consequential to amendments being made by items 157 to 162 which streamlines and simplifies Schedule 1 to the Act. This amendment would simply update the reference to where the substantive definition, in relation to a scheduled substance, would be found in Schedule 1 to the Act.

Item 7

18. Item 7 would amend section 7 of the Act to repeal the existing definitions of *bromochloromethane* and *carbon tetrachloride*.

19. The amendments made by this item would be consequential to the amendments made by item 103, which would repeal existing Part VI of the Act. As the terms bromochloromethane and carbon tetrachloride are only used in Part VI of the Act, the definitions would be redundant if Part VI is repealed.

Item 8

20. Item 8 would amend the definition of *CFC* in section 7 of the Act to omit “means a substance referred to in Part I” and to substitute “(short for chlorofluorocarbon) means a substance covered by clause 1”. This definition is a signpost definition to refer readers to where in the Act the term would be substantively defined.

21. This item would be consequential to amendments being made by items 157 to 162 which streamline and simplify Schedule 1 to the Act. This amendment would simply update the reference to where the substantive definition would be found in Schedule 1 to the Act

Item 9

22. Item 9 would amend the definition of *civil penalty order* in section 7 of the Act to align with the Regulatory Powers Act. This amendment is consequential to the amendments made by item 138 to trigger Part 4 of the Regulatory Powers Act (dealing with civil penalty provisions).

Item 10

23. Item 10 would amend the definition of *civil penalty provision* in section 7 of the Act to align with the Regulatory Powers Act. This amendment is consequential to the amendments made by item 138 to trigger Part 4 of the Regulatory Powers Act (dealing with civil penalty provisions).

Item 11

24. Item 11 would amend section 7 of the Act to insert signpost definitions for *Commonwealth entity* and *critical uses* (of methyl bromide).

25. The term *Commonwealth entity* would have the same meaning as in the *Public Governance, Performance and Accountability Act 2013*. This term would be relevant to new Part VIIIB (concerning information sharing) proposed by item 145.
26. The term *critical uses* (in relation to methyl bromide), would have the meaning in new subsection 18(10) (proposed by item 70). This term would be relevant to the mandatory licence conditions in the table in subsection 18(1) of the Act, which would require a person holding a controlled substances licence allowing the import, manufacture or export of the methyl bromide to only do so for one or more of the following purposes (as set out in the licence): critical uses (including laboratory and analytical uses), an emergency use, or a QPS use (or, for export, use as a feedstock) (see item 64).
27. Item 11 would also insert a definition of *contravene*, in relation to an offence or civil penalty provision which would provide that the term has a meaning affected by section 6B. The note after the definition explains that the meaning of contravention is correspondingly affected, due to section 18A of the *Acts Interpretation Act 1901*.

Item 12

28. Item 12 would amend the definition of *designated court* in section 7 of the Act to clarify that the reference to the Federal Court in paragraph (a) of that definition is a reference to the Federal Court of Australia.

Item 13

29. Item 13 would amend section 7 of the Act to insert a signpost definition for *emergency use* (of methyl bromide).
30. The term *emergency use* (in relation to methyl bromide), would have the meaning in new subsection 18(10) (proposed by item 70). This term would be relevant to the mandatory licence conditions in the table in subsection 18(1) of the Act, which would require a person holding a controlled substances licence allowing the import, manufacture or export of the methyl bromide to only do so for one or more of the following purposes (as set out in the licence): critical uses (including laboratory and analytical uses), an emergency use, or a QPS use (or, for export, use as a feedstock) (see item 64).

Item 14

31. Item 14 would repeal the definitions of *enforcement powers* and *enforcement warrant* in section 7 of the Act. These amendments are consequential to the amendments made by item 128 which would repeal existing Division 2 of Part VIII of the Act and replace it with new Divisions 2 and 2A. New Divisions 2 and 2A would trigger the monitoring and investigation powers in Parts 2 and 3 of the Regulatory Powers Act.
32. These terms are not used in new Divisions 2 and 2A and therefore are no longer required as definitions.

Item 15

33. Item 15 would insert a definition for *engage in conduct* into section 7 of the Act. This term would have the same meaning as in the Criminal Code. This would not be a new definition, but would be moved to section 7 from subsection 45B(4) as it is appropriate that the definition apply to the whole Act, rather than just section 45B. Existing subsection 45B(4) would be repealed by item 111 of this Schedule.
34. Item 15 would also amend section 7 of the Act to insert a definition for *entrusted person*. An *entrusted person* would mean the Minister, the Secretary, an APS employee in the Department or any other person employed in, or engaged by, the Department. This term would be relevant to new Part VIII B (concerning information sharing) proposed by item 145.

Item 16

35. Item 16 would amend the existing definition of *equipment licence* in section 7 of the Act to change the cross-reference in that definition from subsection 13A(5) to subsection 13A(6). This amendment is consequential to the amendments made by item 53.

Item 17

36. Item 17 would amend section 7 of the Act to repeal the existing definition of *essential use* and replace it with a signpost to the new definition of *essential use* in new subsection 13A(3B).
37. This amendment is consequential to item 53 of this Schedule, which would insert new subsection 13A(3B).

Item 18

38. Item 18 would amend section 7 of the Act to repeal a number of terms that would no longer be necessary to define as a result of other amendments made by this Schedule. Definitions of *evidential burden* and *evidential material* would no longer be required in section 7 due to the repeal of Subdivisions B, C, D, E, F and G of Division 1 of Part VIII of the Act by item 127 of this Schedule. A definition of *Federal Court* would no longer be required in section 7 due to the operation of item 12 of this Schedule.

Item 19

39. Item 19 would insert a new definition for *feedstock licence* in section 7 of the Act to mean a licence referred to in subsection 13A(5), as amended by item 53 of the Bill. This would be a signpost definition to refer readers to where in the Act the term would be substantively defined.

Item 20

40. Item 20 would amend the definition of *halon* in section 7 of the Act to omit “referred to in Part II” and to substitute “covered by clause 2”. This definition is a signpost definition to refer readers to where in the Act the term would be substantively defined.
41. This item would be consequential to amendments being made by items 157 to 162 which streamline and simplify Schedule 1 to the Act. This amendment would simply update the reference to where the substantive definition would be found in Schedule 1 to the Act.

Item 21

42. Item 21 would amend the definition of *HBFC* in section 7 of the Act to omit “means a hydrobromofluorocarbon referred to in Part VI” and to substitute “(short for hydrobromofluorocarbon) means a substance covered by clause 6”. This definition is a signpost definition to refer readers to where in the Act the term would be substantively defined.
43. This item would be consequential to amendments being made by items 157 to 162 which streamline and simplify Schedule 1 to the Act. This amendment would simply update the reference to where the substantive definition would be found in Schedule 1 to the Act.

Item 22

44. Item 22 would amend the definition of *HCFC* in section 7 of the Act to omit “means a hydrochlorofluorocarbon referred to in Part V” and to substitute “(short for hydrochlorofluorocarbon) means a substance covered by clause 5”. This definition is a signpost definition to refer readers to where in the Act the term would be substantively defined.
45. This item would be consequential to amendments being made by items 157 to 162 which streamline and simplify Schedule 1 to the Act. This amendment would simply update the reference to where the substantive definition would be found in Schedule 1 to the Act.

Item 23

46. Item 23 would amend the definition of *HFC* in section 7 of the Act to omit “means a hydrofluorocarbon referred to in Part IX” and to substitute “(short for hydrofluorocarbon) means a substance covered by clause 9”. This definition is a signpost definition to refer readers to where in the Act the term would be substantively defined.
47. This item would be consequential to amendments being made by items 157 to 162 which streamline and simplify Schedule 1 to the Act. This amendment would simply update the reference to where the substantive definition would be found in Schedule 1 to the Act.

Item 24

48. Item 24 would amend section 7 of the Act to insert new definitions for *inspector* and *laboratory and analytical uses* (of methyl bromide).

49. An *inspector* would mean:

- a member or special member of the Australian Federal Police; or
- an officer of Customs; or
- a person appointed by the Secretary as an inspector under section 49 of the Act.

50. The inclusion of a member or special member of the Australian Federal Police or an officer of Customs as an inspector under the Act is appropriate because inspectors exercising powers and functions under the Act, or the Regulatory Powers Act as it applies to the Act, may be involved in monitoring and controlling imports and exports at the Australian border.

51. The term *laboratory and analytical uses* (in relation to methyl bromide) would have the meaning in new subsection 18(10) (as proposed by item 70). This term is relevant to the mandatory licence conditions in the table in subsection 18(1) of the Act, which would require a person holding a controlled substances licence allowing the import, manufacture or export of the methyl bromide to only do so for one or more of the following purposes (as set out in the licence): critical uses, an emergency use, laboratory and analytical uses or a QPS use (or, for export, use as a feedstock) (see item 64).

Item 25

52. Item 25 would amend the definition of *licence* in section 7 of the Act to omit “or an equipment licence” and to substitute “, an equipment licence or a feedstock licence”.

53. This item would be consequential to amendments being made by item 53 which introduces a feedstock licence as a new type of licence. This amendment would ensure that a feedstock licence is also included as a type of licence.

Item 26

54. Item 26 would amend the definition of *methyl bromide* in section 7 of the Act to omit “referred to in Part VII” and to substitute “covered by clause 7”. This definition is a signpost definition to refer readers to where in the Act the term would be substantively defined.

55. This item would be consequential to amendments being made by items 157 to 162 which streamlines and simplifies Schedule 1 to the Act. This amendment would simply update the reference to where the substantive definition would be found in Schedule 1 to the Act.

Item 27

56. Item 27 would amend section 7 of the Act to repeal the existing definitions of *methyl chloroform* and *monitoring powers*.
57. Repealing the definition of *methyl chloroform* would be consequential to the amendments made by item 103, which would repeal existing Part VI of the Act. As the term methyl chloroform is only used in Part VI of the Act, the definition would be redundant if Part VI is repealed.
58. The definition of *monitoring powers* would no longer be required in section 7 due to the repeal of Subdivisions B, C, D, E, F and G of Division 1 of Part VIII of the Act by item 127 of this Schedule.

Item 28

59. Item 28 would amend the definition of *nitrogen trifluoride* in section 7 of the Act to omit “referred to in Part XII” and to substitute “covered by clause 12”. This definition is a signpost definition to refer readers to where in the Act the term would be substantively defined.
60. This item would be consequential to amendments being made by item 157 to 162 which streamline and simplify Schedule 1 to the Act. This amendment would simply update the reference to where the substantive definition would be found in Schedule 1 to the Act.

Item 29

61. Item 29 would amend section 7 of the Act to repeal the existing signpost definition of *ODS equipment* and replace it with a new substantive definition of *ODS equipment*.
62. Under the new definition, equipment containing any scheduled substance other than a synthetic greenhouse gas, or that uses a scheduled substance other than a synthetic greenhouse gas in its operation, would be *ODS equipment*.
63. This would have the effect of expanding the existing definition of ODS equipment, which only covers refrigeration and air-conditioning equipment containing a HCFC. This is considered appropriate due to the harmful properties of ozone depleting substances and the fact that these substances are being phased out under the Montreal Protocol.
64. Where equipment contains both ozone depleting substances and synthetic greenhouse gas, it would be considered ODS equipment, not SGG equipment (regardless of the amount of or ratios of ozone depleting substance to synthetic greenhouse gas in the equipment). This is explained in the note following the definition. Equipment containing any ozone depleting substance should be subject to the more stringent requirements applying to the import, manufacture or export of ODS equipment. This is appropriate given the level of

harm to the environment posed by ozone depleting substances and the fact that these substances are being phased out under the Montreal Protocol.

Item 30

65. Item 30 would amend the definition of *offence against this Act or the regulations* in section 7 of the Act to clarify that the term also includes an offence against the *Crimes Act 1914* or the *Criminal Code*, as that offence relates to the Act or the regulations.

Item 31

66. Item 31 would amend section 7 of the Act to insert a definition for *official*.

67. The term *official* would have the same meaning as in the *Public Governance, Performance and Accountability Act 2013*. This term would be relevant to new Part VIIIIB (concerning information sharing) proposed by item 145.

Item 32

68. Item 32 would amend the definition of *ozone depleting potential* in section 7 of the Act to omit “table in Schedule 1” and to substitute “the clause in Schedule 1 that covers that substance”. This definition is a signpost definition to refer readers to where in the Act the term would be substantively defined.

69. This item would be consequential to amendments being made by items 157 to 162 which streamline and simplify Schedule 1 to the Act. This amendment would simply update the reference to where the substantive definition, in relation to a scheduled substance, would be found in Schedule 1 to the Act.

Item 33

70. Item 33 would insert a new definition for *Paris Agreement* to mean the Paris Agreement, done at Paris on 12 December 2015, as amended and in force for Australia from time to time. The note following this definition would provide the Australian Treaty Series reference for the Paris Agreement and refer readers to where it can be viewed online.

Item 34

71. Item 34 would amend the definition of *PFC* in section 7 of the Act to omit “means a perfluorocarbon referred to in Part X” and to substitute “(short for perfluorocarbon) means a substance covered by clause 10”. This definition is a signpost definition to refer readers to where in the Act the term would be substantively defined.

72. This item would be consequential to amendments being made by item 157 to 162 which streamline and simplify Schedule 1 to the Act. This amendment would simply update the reference to where the substantive definition would be found in Schedule 1 to the Act.

Item 35

73. Item 35 would amend section 7 of the Act to repeal the definition of *premises*.
74. The definition of *premises* would no longer be required in section 7 due to the repeal of Subdivisions B, C, D, E, F and G of Division 1 of Part VIII of the Act by item 127 of this Schedule.

Item 36

75. Item 36 would amend section 7 of the Act to insert a definition for *protected information*, as well as signpost definitions for *QPS use* (of methyl bromide) and *reconsideration decision*.
76. The term *protected information* would cover information that is likely to cause certain serious harms if disclosed without authorisation. This term would be relevant to new Part VIII B (concerning information sharing) proposed by item 145.
77. The term *QPS use* (in relation to methyl bromide), would have the meaning in new subsection 18(11) (proposed by item 70). This term would be relevant to the mandatory licence conditions in the table in subsection 18(1) of the Act, which would require a person holding a controlled substances licence allowing the import, manufacture or export of the methyl bromide to only do so for one or more of the following purposes (as set out in the licence): critical uses (including laboratory and analytical uses), an emergency use, or a QPS use (or, for export, use as a feedstock) (see item 64).
78. The term *reconsideration decision* would have the meaning in new subsection 65ZB(2) (proposed by item 145). This term is relevant to the new process for internal reviews of certain decisions made under the Act.

Item 37

79. Item 37 would amend section 7 of the Act to repeal the existing definitions for *recycled or used HCFCs*, *recycled or used methyl bromide*, *recycled or used SGGs* and *recycled or used stage-1 or stage-2 scheduled substances*.
80. These terms would no longer be used in the Act, as the substances covered by them would instead fall under the new definition of used substance (see item 47). There would be no change in how these substances are regulated. For example, a person who wanted to import or manufacture a used synthetic greenhouse gas would still require a used substances licence to do so.

Item 38

81. Item 38 would amend section 7 of the Act to insert new definitions for *Regulatory Powers Act* and *relevant information*, as well as new signpost definitions for *refrigeration and air conditioning equipment* and *reviewable decision*.
82. The term *refrigeration and air conditioning equipment* would have the meaning in new subsection 12B(2). This term is relevant to the concept of ship stores, the import or export of which do not require a licence (see section 12B of the Act).
83. The *Regulatory Powers Act* would mean the *Regulatory Powers (Standard Provisions) Act 2014*.
84. The term *relevant information* would mean information obtained by an entrusted person under, or in accordance with, the Act or the Regulatory Powers Act as it applies in relation to the Act. This term would be relevant to new Part VIII B (concerning information sharing) proposed by item 145.
85. The term *reviewable decision* would have the meaning in new section 65X (as proposed by item 145). This term would be relevant to the new process for internal reviews of certain decisions made under the Act.

Item 39

86. Item 39 would amend section 7 of the Act to repeal the existing definition of *Schedule 4 activity*.
87. This term would no longer be used in the Act as Schedule 4 would be repealed by item 163.

Item 40

88. Item 40 would amend the definition of *scheduled substance* in section 7 of the Act to omit “referred to” and to substitute “covered by a clause”. This item would be consequential to amendments being made by items 157 to 162 which streamline and simplify Schedule 1 to the Act.

Item 41

89. Item 41 would repeal the definition of *section 69G activity*. This definition would no longer be necessary as existing section 69G would be repealed by item 155.

Item 42

90. Item 42 would amend section 7 of the Act to repeal the existing signpost definition of *SGG equipment* and replace it with a new substantive definition of *SGG equipment*.

91. Under the new definition, *SGG equipment* would mean equipment that contains an SGG or uses an SGG in its operation, and that does not contain, or use in its operation, a scheduled substance that is not an SGG. Section 7 of the Act defines an *SGG* (or *synthetic greenhouse gas*) as an HFC, a PFC, nitrogen trifluoride or sulfur hexafluoride.
92. The new definition of *SGG equipment* in section 7 would no longer contain a power to specify (in regulations or a legislative instrument) equipment that is not SGG equipment. The power in existing paragraph 8D(1)(d) that allows such a legislative instrument to specify such equipment has never been used and is no longer considered necessary or appropriate. In addition, as the regulations would be able to exclude kinds of SGG equipment from the relevant prohibitions in new sections 13, 13AA and 13AB (see item 52), it is no longer considered necessary or appropriate to carve out specific equipment from the definition of SGG equipment by regulations.
93. The note after the definition of SGG equipment would explain that if equipment contains both ozone depleting substances and synthetic greenhouse gas, it is not SGG equipment. Consistent with the definition of *ODS equipment* proposed to be inserted by item 29 of this Schedule, equipment that contains both ozone depleting substances and synthetic greenhouse gas would be classified as ODS equipment and would be subject to the more stringent requirements applying to such equipment. This is appropriate given the level of harm to the environment posed by ozone depleting substances and the fact that these substances are being phased out under the Montreal Protocol.

Item 43

94. Item 43 would amend section 7 of the Act to repeal the existing definitions of *stage-1 CFC*, *stage-2 CFC*, *stage-1 scheduled substance* and *stage-2 scheduled substance*.
95. These terms would no longer be used in the Act. The existing references in the Act to these terms would be repealed by item 103.
96. These existing definitions refer to a subset of the listed scheduled substances in Schedule 1 to the Act. Specifically, *stage-1 scheduled substances* are currently defined as a stage-1 CFC or a halon, while *stage-2 scheduled substances* are currently defined as a stage-2 CFC, carbon tetrachloride, methyl chloroform or bromochloromethane. Both stage-1 and stage-2 scheduled substances have now been phased out (and thus can only be imported with a licence in exceptional circumstances). Stage-1 scheduled substances were phased out first. Stage-2 scheduled substances were phased out later, the last of these in 2002. The remaining ozone depleting substances, being methyl bromide and HCFCs, are not included in the existing definitions of stage-1 scheduled substance or stage-2 scheduled substance, as they were phased out later or are yet to be completely phased out.
97. As all stage-1 and stage-2 scheduled substances have now been phased out, it is no longer necessary to refer to, and delineate between, the two groups in the Act. There is also no requirement under the Montreal Protocol to continue using this terminology.

Item 44

98. Item 44 would amend section 7 of the Act to insert new definitions for the term *State or Territory government body*, which would mean a Department of State, agency or authority of a State or Territory. This term would be relevant to new Part VIII B (concerning information sharing) proposed by item 145.

Item 45

99. Item 45 would amend the definition of *sulfur hexafluoride* in section 7 of the Act to omit “referred to in Part XI” and to substitute “covered by class 11”. This definition is a signpost definition to refer readers to where in the Act the term would be substantively defined.

100. This item would be consequential to amendments being made by items 157 to 162 which streamlines and simplifies Schedule 1 to the Act. This amendment would simply update the reference to where the substantive definition would be found in Schedule 1 to the Act.

Item 46

101. Item 46 would amend section 7 of the Act to insert new signpost definitions for the terms *suspended* and *used substance*.

102. The term *suspended* would relate to when a licence is suspended. A licence would be suspended if it is suspended under new subsection 19D(1) (inserted by item 84 of this Schedule).

103. The term *used substance* would have the meaning given by new section 9AA (see item 47).

Item 47

104. Item 47 would amend the Act to repeal existing sections 8C, 8D and 9, and substitute new sections 9 and 9AA.

105. Section 8C and 8D contained definitions for, respectively, the terms *ODS equipment* and *SGG equipment*. The definitions for these terms would be moved to section 7 of the Act by items 29 and 42, meaning sections 8C and 8D are now redundant and can be repealed.

Section 9 – References to scheduled substances and equipment

106. Item 47 would repeal existing section 9 of the Act and replace it with a new section 9. The purpose of this amendment would be to improve clarity, reduce complexity and adopt

modern drafting practices to improve readability of this section. The operation of section 9 would not be changed.

107. New section 9 is an interpretation provision. It would clarify how references in the Act to scheduled substances and equipment should be interpreted, including when a scheduled substance is contained in equipment and when it is not. The distinction between bulk scheduled substances and equipment is a key concept in the Act, as the regulatory controls (both prohibitions and licences) differ depending on whether a scheduled substance is being imported, exported or manufactured itself (i.e., in bulk), or whether it is contained in equipment.
108. In particular, the primary purpose of new section 9 is to clarify when the relevant prohibitions and licences pertaining to bulk scheduled substances (a controlled substances licence, an essential uses licence, a used substances licence or a feedstock licence) are relevant, and when the prohibitions and licences pertaining to equipment (an equipment licence) is relevant.
109. New subsection 9(1) would provide that a reference in the Act to a scheduled substance (or type of scheduled substance) is a reference to bulk scheduled substance (or a bulk scheduled substance of that type), except if the reference is in relation to equipment that contains a scheduled substance (or type of scheduled substance) or uses a scheduled substance (or type of scheduled substance) in its operation.
110. New subsection 9(2) would then define the concept of *bulk scheduled substance*. A scheduled substance is a *bulk scheduled substance* unless the substance is contained in equipment or used in the operation of equipment.
111. These two provisions have the combined effect that:
- wherever the term ‘scheduled substance’ appears in the Act, except where the term is used in the context of ‘equipment containing a scheduled substance’, or ‘equipment that uses a scheduled substance in its operation’, the relevant prohibitions, licences and other requirements are those that relate to bulk scheduled substances (such as a controlled substances licence);
 - wherever the term ‘scheduled substance’ appears in the Act in the context of ‘equipment containing a scheduled substance’ or ‘equipment that uses a scheduled substance in its operation’, the relevant prohibitions, licences and other requirements are those that relate to equipment (such as an equipment licence).
112. The example given following this subsection would illustrate that a scheduled substance that is used as a propellant in an aerosol spray or fire extinguisher is not a bulk scheduled substance, because it is contained in equipment. The import of such equipment would therefore require an equipment licence, not a controlled substances licence.
113. The first note following subsection 9(2) would clarify that subsection 9(3) would affect whether a scheduled substance is contained in, or used in the operation of,

equipment for the purposes of subsection 9(2). The second note would clarify that subsection 9(4) and regulations made for the purposes of paragraph 9(5)(a) may also affect whether a substance is a bulk scheduled substance.

114. New subsection 9(3) would clarify that a reference to equipment containing a scheduled substance (or a type of scheduled substance), or equipment using a scheduled substance (or a type of scheduled substance) in its operation, does not cover equipment that contains a scheduled substance, or is being used, for the sole purpose of storing or transporting the substance. The note following this subsection would clarify that subsection 9(4) and regulations made for the purposes of paragraphs 9(5)(b) or (c) may also affect whether a substance is contained in, or used in the operation of, equipment.
115. This would ensure that scheduled substances that are contained in equipment for the sole purpose of storing or transporting the scheduled substance are included in the definition of bulk scheduled substances, and are subject to the prohibitions, licences and other requirements in the Act that apply to bulk scheduled substances – rather than the prohibitions, licences and other requirements in the Act that apply to equipment – and reflects the fact that scheduled substances are generally either in liquid or gaseous form, so must be contained in something to be stored or moved.
116. New subsection 9(4) would clarify that a scheduled substance that is contained in equipment only because the substance was used in the process of manufacturing the equipment is neither a bulk scheduled substance, nor contained in, or used in the operation of, the equipment. The example given following this subsection would illustrate that a scheduled substance that remains in minute quantities in open cell foam after being used in the production of the foam would be covered by this subsection.
117. This would have the effect that such equipment would fall outside the scope of the Act entirely. It would not be necessary to obtain any licence, or comply with any other obligations, in respect of a scheduled substance that is contained in equipment only because the substance was used in the process of manufacturing the equipment. This is appropriate because the amount of scheduled substance left in such equipment is so small that it would not pose a real risk to environmental and human health. For this reason, regulating scheduled substances in these circumstances would be neither practical nor result in environmental benefits.
118. New subsection 9(5) would provide that the regulations may provide that, in prescribed circumstances, a scheduled substance is taken to be, or not to be:
- a bulk scheduled substance; or
 - contained in equipment; or
 - used in the operation of equipment; or
 - contained in equipment for the sole purpose of storing or transporting the substance; or

- contained in equipment only because the substance was used in the process of manufacturing the equipment.

119. New subsection 9(6) would clarify that regulations made for the purposes of subsection 9(5) have effect despite the operation of subsections 9(2) to 9(4).
120. The ability to prescribe such matters in regulations made under the Act is consistent with good regulatory practice and would ensure certainty for industry, as the regulations would be able to clarify those kinds of equipment or circumstances that are factually borderline between the categories (for instance, types of foam). This would, in turn, assist in ensuring Australia's continued compliance with its international obligations under the Montreal Protocol and other relevant international treaties.

Section 9AA – Used substances

121. Item 47 would also insert new section 9AA, which would substantively define the term *used substance*. The prohibitions in new sections 13, 13AA and 13AB of the Act would apply to scheduled substances that are used substances; however such substances are able to be imported, manufactured or exported with a used substances licence under section 13A that allows the relevant activity.
122. New subsection 9AA(1) would have the effect that a scheduled substance would be a *used substance* for the purposes of the Act if it is collected from a container or other equipment during servicing, or in connection with the disposal, of the container or other equipment, or if it is collected after an emissive use of the substance. An emissive use is a use that by its nature involves the emission of the substance to atmosphere, for instance, the fumigation of soil.
123. Both bulk scheduled substances and substances that were previously contained in equipment can be used substances for the purposes of the Act.
124. New subsection 9AA(2) would make it clear that the regulations can also prescribe additional circumstances where a scheduled substance is taken to be a used substance, or is taken not to be a used substance. This would allow the regulations to be used to provide clarity on the position of substances that are borderline, or where it is appropriate to treat a particular substance as a used substance (or not as a used substance), despite the general definition in subsection 9AA(1).

Item 48

125. Subsection 9A(1) of the Act provides that a reference in this Act to *CO₂e megatonnes*, in relation to an HCFC or HFC, is a reference to the quantity of the HCFC or HFC that results from multiplying its mass in megatonnes by its 100-year global warming potential.
126. Item 48 would amend subsection 9A(1) of the Act to remove the references to HCFCs, as the concept of CO₂e megatonnes is no longer used in relation to HCFCs.

Item 49

127. Subsection 9A(2) of the Act provides that if a substance is or contains a mixture of 2 or more HCFCs or HFCs, the quantity of the substance, expressed in *CO₂e megatonnes*, is the quantity that results from adding together the quantities of each of those HCFCs or HFCs, expressed in *CO₂e megatonnes*.
128. Item 49 would amend subsection 9A(2) of the Act to remove the references to HCFCs, as the concept of CO₂e megatonnes is no longer used in relation to HCFCs.

Item 50

129. Item 50 would repeal existing section 12A of the Act.
130. Existing section 12A of the Act has the effect that the import or manufacture of a scheduled substance used exclusively for feedstock is not regulated by the Act (other than for reporting and record-keeping purposes) and therefore does not require a licence (and, where relevant, quota), or the payment of a levy, for the import or manufacture.
131. *Feedstock* is defined in section 7 of the Act as an intermediate substance which is used to manufacture other chemicals. A feedstock is generally entirely consumed or transformed in the manufacturing of the new substance, and therefore is not emitted to the atmosphere.
132. However, given that:
- there is sometimes a factual issue as to whether the intended use of the scheduled substance is indeed feedstock use (i.e. whether the scheduled substance is completely transformed in the manufacturing process of the new chemical); and
 - there is a need for assurance that the new chemical being manufactured is not itself a scheduled substance; and
 - Article 7 of the Montreal Protocol imposes detailed reporting obligations on Australia in relation to the import and manufacture of feedstock; and
 - there is a need for assurance that scheduled substances that are being imported into, or manufactured in, Australia only by persons who meet the fit and proper person test set out in the Act,
- it is now considered appropriate that this exemption be removed, so that the import and manufacture of scheduled substances for use as a feedstock is subject to the ordinary licensing requirements of the Act.
133. Import and manufacture of scheduled substances for use as a feedstock would now require a feedstock licence but would continue to not require quota (for HFCs or HCFCs)

or payment of a levy. It is not anticipated that application for a feedstock licence would require payment of an application fee.

134. It is considered that removing the exemption for feedstock (by repealing section 12A) would assist Australia to accurately meet the reporting requirements in Article 7 of the Montreal Protocol, and in responsibly managing scheduled substances so as to minimise emissions and impact on the atmosphere. Broader benefits of licensing the import of feedstock would include better identification and control at the border of both genuine feedstock imports and unlawful imports.

Item 51

135. Item 51 would repeal the existing Division 1 (which consists of existing section 12B) and substitute a new heading 'Division 1 – Preliminary' and new sections 12A and 12B.

Section 12A – Simplified outline of this Part

136. New section 12A would provide a simplified outline to the Part III of the Act (Licences). The outline is not intended to be comprehensive and has been included to assist readers to understand the substantive provisions of the Part. It is intended that readers will rely on the substantive provisions of the Part.

Section 12B - Import or export of CFCs, halons, HCFCs, HFCs and PFCs for use on board ships or aircraft

137. Existing section 12B deals with ship stores. It excludes the import or export of scheduled substances that are CFCs, HCFCs or SGG that are on board a ship or aircraft, and that are intended for use exclusively in meeting the reasonable servicing requirements of refrigeration and air conditioning equipment on that ship or aircraft, from the requirements of Part III (licensing), Part VI (HCFC quotas) and Part VIA (HFC quotas). The exemption applies to journeys between Australia and another place, or between 2 places outside Australia.

138. New section 12B would have the same effect as existing section 12B but would update the relevant scheduled substances that can be included as ship stores to cover CFCs, HCFCs, HFCs, PFCs and halon. This would more accurately reflect the substances that are used in refrigeration and air conditioning equipment on ships and aircraft.

139. New section 12B would also insert a new definition of *refrigeration and air conditioning equipment* that would clarify that the term covers any equipment, used for the heating or cooling of anything, that uses any or all of CFC, HCFC, HFC, PFC and halon. This new definition would be consistent with how the term is defined in the regulations.

Item 52

140. Item 52 would repeal existing section 13 of the Act and substitute it with the following new sections:

- section 13 (prohibition - unlicensed manufacture of scheduled substances or equipment);
- section 13AA (prohibition - unlicensed import of scheduled substances or equipment);
- section 13AB (prohibition - unlicensed export of scheduled substances or equipment);
- section 13AC (penalties for unlicensed manufacture, import or export of scheduled substances or equipment).

141. These new provisions would replace the prohibitions in existing section 13, existing section 69G and existing Schedule 4 to:

- consolidate all prohibitions on unlicensed import, manufacture or export of scheduled substances or equipment in the same Part of the Act to streamline and reduce the complexity of the Act;
- maintain the existing prohibitions on the manufacture, import or export of scheduled substances without a licence;
- maintain the existing prohibition on the import of equipment containing a synthetic greenhouse gas without a licence;
- include a prohibition on the manufacture of equipment containing a synthetic greenhouse gas without a licence if the equipment or substance is prescribed in the regulations;
- extend the existing prohibitions on the import or manufacture of certain ODS equipment to cover the import or manufacture of all equipment containing an ozone depleting substance;
- maintain the existing powers to make regulations to prohibit the export of equipment containing a scheduled substance, or the import, export or manufacture of equipment that uses a scheduled substance in its operation, without a licence;
- streamline and simplify the exemptions to the above-mentioned prohibitions, and include additional exemptions for the temporary import of equipment or returned Australian equipment;
- update the drafting of the offence and civil penalty provisions to improve clarity, reduce complexity and adopt modern drafting practices to improve readability;
- add fault-based offences for relevant contraventions, in addition to strict liability offence and civil penalties to provide an escalating range of sanctions;

- adjust the penalties to appropriate amounts that are aligned to the *Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers 2011* (Commonwealth Guide to Framing Offences) to deter persons from contravening the Act.

Section 13 - Prohibition - unlicensed manufacture of scheduled substance or equipment

142. New section 13 of the Act would create prohibitions on:

- the unlicensed manufacture of a scheduled substance (subsection 13(1));
- the unlicensed manufacture of equipment containing a scheduled substance in certain circumstances (subsection 13(3)); and
- the unlicensed manufacture of equipment that uses a scheduled substance in its operation in certain circumstances (subsection 13(5)).

Unlicensed manufacture of scheduled substances

143. New subsection 13(1) would prohibit a person from manufacturing a scheduled substance if:

- the substance is a scheduled substance; and
- the person does not hold a licence that allows the manufacture.

144. This would be the basic contravention for persons who manufacture scheduled substances without a licence under the Act.

145. Note 1 following subsection 13(1) would refer the reader to existing section 13A of the Act for the activities allowed by each type of licence. Note 2 following subsection 13(1) would refer the reader to new subsection 19D(4) (see item 84) and would explain that while suspended, a licence does not allow the licensee to carry out any activity that the licence would otherwise allow.

146. New subsection 13(2) would have the effect that the prohibition in subsection 13(1) would not apply to a person manufacturing an SGG in circumstances, or for a purpose, prescribed by the regulations made for the purposes of this subsection. Any such regulations must be consistent with Australia's international obligations.

147. The exemption in new subsection 13(2) reflects the exemption in existing subsection 13(3). The ability to prescribe such matters in regulations made under the Act is consistent with good regulatory practice and ensures continued compliance with Australia's international obligations under the Montreal Protocol and other relevant international treaties. In the past, the Montreal Protocol has adopted decisions to exempt certain circumstances or purposes from the scope of the treaty. Over time, exemptions may be adopted or amended, and domestic requirements will need to be able to be quickly

updated to reflect these changes, in order to support decision-makers and ensure both compliance with international obligations and minimal disruptions to licence applicants and holders. Continuing to allow the regulations to prescribe such matters provides the necessary flexibility to quickly respond to changes in the international regulatory regime.

148. The note following subsection 13(2) would clarify that a person who wishes to rely on the exemption in that subsection bears an evidential burden in relation to the matter in this subsection, and would refer the reader to subsection 13.3(3) of the Criminal Code and section 96 of the Regulatory Powers Act. The reversal of the burden of proof is appropriate as the matter to be proved is a matter that would be peculiarly in the knowledge of the defendant. For instance, the defendant would be best placed to know the circumstance in which, or purpose for which, they manufactured a scheduled substance. Further, there may be a number of circumstances or purposes prescribed in the regulations for which a licence would not be required to manufacture a scheduled substance. In the event of a prosecution, it would be significantly more difficult and costly for the prosecution to disprove all possible circumstances than it would be for a defendant to establish the existence of one potential circumstance or purpose.

Unlicensed manufacture of equipment containing a scheduled substance

149. New subsection 13(3) would prohibit a person from manufacturing equipment if:

- the equipment contains a substance; and
- the substance is a scheduled substance; and
- if the equipment is SGG equipment – the substance or the equipment (or both) are prescribed in the regulations.
- the person does not hold a licence that allows the manufacture.

150. This would be the basic contravention for a person who manufactures equipment containing scheduled substances without a licence under the Act. It would have the effect that:

- manufacturing equipment that contains an ozone depleting substance will always be prohibited without a licence; and
- a licence will only be required to manufacture SGG equipment if the equipment or substance is prescribed in the regulations.

151. This is consistent with the current approach in the Act, which prohibits the unlicensed manufacture of ODS equipment in existing Schedule 4, and allows the regulations made for the purpose of existing section 69G to prohibit the manufacture of SGG equipment.

152. It further reflects the significant harm that ozone depleting substances can cause to the environment, while allowing the regulations to prohibit the manufacture of particular

SGG equipment that is considered harmful to the environment. The approach would also allow the regulations to prohibit the manufacture of SGG equipment if Australia's international obligations require it in the future.

153. New section 9 of the Act (see item 47) would make it clear that equipment that contains a scheduled substance only because the scheduled substance was used in the manufacture of the equipment is not considered 'equipment that contains a scheduled substance' for the purposes of the Act – and therefore would not require a licence to manufacture.
154. Note 1 following subsection 13(3) would refer the reader to existing section 13A of the Act for the activities allowed by each type of licence. Note 2 following subsection 13(3) would refer the reader to new subsection 19D(4) (see item 84) and would explain that while suspended, a licence does not allow the licensee to carry out any activity that the licence would otherwise allow.
155. New subsection 13(4) would provide that subsection 13(3) would not apply to a person manufacturing equipment of a kind prescribed by the regulations or in circumstances, or for a purpose, prescribed by the regulations.
156. The ability to prescribe such matters in regulations made under the Act is consistent with good regulatory practice and ensures continued compliance with Australia's international obligations under the Montreal Protocol and other relevant international treaties. Over time, international obligations may change, and domestic requirements will need to be able to be quickly updated to reflect these changes, in order to support decision-makers and ensure both compliance with international obligations and minimal disruptions to licence applicants and holders. In addition, technological advances are likely to necessitate changes to the equipment that can be safely manufactured in Australia. Allowing the regulations to prescribe such matters provides the necessary flexibility to quickly respond to changes in the international and domestic regulatory regimes.
157. The note following subsection 13(4) would clarify that a person who wishes to rely on the exemption in that subsection bears an evidential burden in relation to the matter in this subsection and would refer the reader to subsection 13.3(3) of the Criminal Code and section 96 of the Regulatory Powers Act. The reversal of the burden of proof is appropriate as the matter to be proved is a matter than would be peculiarly in the knowledge of the defendant. For instance, the defendant would be best placed to know the circumstance in which, or purpose for which, they manufactured equipment containing a scheduled substance. Further, there may be a number of circumstances or purposes prescribed in the regulations for which a licence would not be required to manufacture equipment. In the event of a prosecution, it would be significantly more difficult and costly for the prosecution to disprove all possible circumstances than it would be for a defendant to establish the existence of one potential circumstance.

Unlicensed manufacture of equipment that uses scheduled substances in its operation

158. New subsection 13(5) would prohibit a person manufacturing equipment if:
- the equipment uses a substance in its operation; and
 - the substance is a scheduled substance; and
 - the equipment or the substance (or both) is prescribed by the regulations; and
 - the person does not hold a licence that allows the manufacture.
159. This would be the basic contravention for person who manufactures equipment that uses scheduled substances in its operation without a licence under the Act. However, consistent with existing section 69G, it would only apply if the regulations prescribe either the substance or the equipment (or both). While there are no regulations made for the purposes of subsection 13(5), there would be no prohibition on the manufacturing of equipment that uses scheduled substances in its operation.
160. Note 1 following subsection 13(5) would refer the reader to existing section 13A of the Act for the activities allowed by each type of licence. Note 2 following subsection 13(5) would refer the reader to new subsection 19D(4) (see item 84) and would explain that while suspended, a licence does not allow the licensee to carry out any activity that the licence would otherwise allow.
161. New subsection 13(6) would provide that subsection 13(5) would not apply to a person manufacturing equipment of a kind prescribed by the regulations or in circumstances, or for a purpose, prescribed by the regulations.
162. It is appropriate for the regulations to be able to prescribe:
- equipment or substances for the purposes of subsection 13(5) (with the effect that the manufacturing of that equipment or equipment that uses that scheduled substance in its operation would be prohibited without a licence); and
 - equipment, or circumstances or purposes, for the purposes of subsection 13(6) (with the effect that certain equipment is carved out of a prohibition in subsection 13(5),
- as it is consistent with good regulatory practice and ensures continued compliance with Australia's international obligations under the Montreal Protocol and other relevant international treaties. Over time, international obligations and technology may change, and domestic requirements will need to be able to be quickly updated to reflect these changes, in order to support decision-makers and ensure both compliance with international obligations and minimal disruptions to licence applicants and holders. Allowing the regulations to prescribe matters for the purposes of subsections 13(5) and

13(6) provides the necessary flexibility to quickly respond to changes in the international and domestic regulatory regimes.

163. The note following subsection 13(6) would clarify that a person who wishes to rely on the exemption in that subsection bears an evidential burden in relation to the matter in this subsection and would refer the reader to subsection 13.3(3) of the Criminal Code and section 96 of the Regulatory Powers Act. The reversal of the burden of proof is appropriate as the matter to be proved is a matter than would be peculiarly in the knowledge of the defendant. For instance, the defendant would be best placed to know the circumstance in which, or purpose for which, they manufactured equipment. Further, there may be a number of circumstances or purposes prescribed in the regulations for which a licence would not be required to manufacture equipment. In the event of a prosecution, it would be significantly more difficult and costly for the prosecution to disprove all possible circumstances than it would be for a defendant to establish the existence of one potential circumstance or purpose.

Section 13AA - Prohibition - unlicensed import of scheduled substance or equipment

164. New section 13AA of the Act would create prohibitions on:

- the unlicensed import of a scheduled substance (subsection 13AA(1));
- the unlicensed import of equipment containing a scheduled substance (subsection 13AA(3)); and
- the unlicensed import of equipment that uses a scheduled substance in its operation in certain circumstances (subsection 13AA(5)).

Unlicensed import of scheduled substances

165. New subsection 13AA(1) would prohibit a person from importing a scheduled substance if:

- the substance is a scheduled substance; and
- the person does not hold a licence that allows the importation.

166. This would be the basic contravention for a person who imports scheduled substances without a licence under the Act.

167. Note 1 following subsection 13AA(1) would refer the reader to existing section 13A of the Act for the activities allowed by each type of licence. Note 2 following subsection 13AA(1) would refer the reader to new subsection 19D(4) (see item 84) and would explain that while suspended, a licence does not allow the licensee to carry out any activity that the licence would otherwise allow.

168. New subsection 13AA(2) would provide that subsection 13AA(1) would not apply to a person importing an SGG (other than an SGG that is a used substance) in

circumstances, or for a purpose, prescribed by the regulations for the purposes of this subsection. Any such regulations must be consistent with Australia's international obligations.

169. The exemption in new subsection 13AA(2) reflects the exemption in existing subsection 13(3). The ability to prescribe such matters in regulations made under the Act is appropriate as it is consistent with good regulatory practice and ensures continued compliance with Australia's international obligations under the Montreal Protocol and other relevant international treaties. In the past, the Montreal Protocol has adopted decisions to exempt certain circumstances or purposes from the scope of the treaty. Over time, exemptions may be adopted or amended, and domestic requirements will need to be able to be quickly updated to reflect these changes, in order to support decision-makers and ensure both compliance with international obligations and minimal disruptions to licence applicants and holders. Continuing to allow the regulations to prescribe such matters provides the necessary flexibility to quickly respond to changes in the international regulatory regime.

170. The note following subsection 13AA(2) would clarify that a person who wishes to rely on the exemption in that subsection bears an evidential burden in relation to the matter in this subsection and would refer the reader to subsection 13.3(3) of the Criminal Code and section 96 of the Regulatory Powers Act. The reversal of the burden of proof is appropriate as the matter to be proved is a matter that would be peculiarly in the knowledge of the defendant. For instance, the defendant would be best placed to know the circumstance in which, or purpose for which, they imported a scheduled substance. Further, there may be a number of circumstances or purposes prescribed in the regulations for which a licence would not be required to import a scheduled substance. In the event of a prosecution, it would be significantly more difficult and costly for the prosecution to disprove all possible circumstances than it would be for a defendant to establish the existence of one potential circumstance or purpose.

Unlicensed import of equipment containing a scheduled substance

171. New subsection 13AA(3) would prohibit a person from importing equipment if:

- the equipment contains a substance; and
- the substance is a scheduled substance; and
- the person does not hold a licence that allows the importations; and
- if the equipment contains an SGG - the person's importation of the equipment is not covered by the low volume imports exemption set out in subsection 13AA(4).

172. This would be the basic contravention for a person who imports equipment containing scheduled substances without a licence under the Act.

173. New section 9 of the Act (see item 47) would make it clear that equipment that contains a scheduled substance only because the scheduled substance was used in the manufacture of the equipment is not considered ‘equipment that contains a scheduled substance’ for the purposes of the Act – and therefore would not require a licence to import.
174. Note 1 following subsection 13AA(3) would refer the reader to existing section 13A of the Act for the activities allowed by each type of licence. Note 2 following subsection 13AA(3) would refer the reader to new subsection 19D(4) (see item 84) and would explain that while suspended, a licence does not allow the licensee to carry out any activity that the licence would otherwise allow.
175. Note 3 would refer readers to the exceptions to the prohibition on importing equipment that contains a scheduled substance, which are set out in new subsections 13AA(6) to (9).
176. New subsection 13AA(4) would set out the low volume import exemption. A person’s importation of equipment would be covered by this exemption (and therefore would not require a licence) if:
- the total amount of SGGs contained in the equipment is not greater than an amount prescribed by the regulations made for the purposes of paragraph 13AA(4)(a); and
 - any other conditions prescribed by the regulations in relation to the person, the equipment or the importation are satisfied.
177. It is appropriate for regulations to prescribe the amount of SGGs and any other conditions for the purposes of the low volume import exemption under subsection 13AA(4). Over time, changes in Australia’s international obligations, changes in technology and import trends may occur, and the requirements in the Act will need to reflect this to support decision-making, including the setting of different amounts and conditions for different SGGs based on such factors. This approach would also ensure minimal disruptions to licence applicants and holders. Allowing the regulations to prescribe such matters provides the necessary flexibility to quickly respond to changes in the international and domestic regulatory regime.

Unlicensed import of equipment that uses a scheduled substance in its operation

178. New subsection 13AA(5) would prohibit a person importing equipment if:
- the equipment uses a substance in its operation; and
 - the substance is a scheduled substance; and
 - the equipment or the substance (or both) is prescribed by the regulations; and

- the person does not hold a licence that allows the importation.

179. This would be the basic contravention for person who imports equipment that uses scheduled substances in its operation without a licence under the Act. However, consistent with existing section 69G, it would only apply if the regulations prescribe either the substance or the equipment (or both). While there are no regulations made for the purposes of subsection 13AA(5), there would be no prohibition on the import of equipment that uses scheduled substances in its operation.
180. Note 1 following subsection 13AA(5) would refer the reader to existing section 13A of the Act for the activities allowed by each type of licence. Note 2 following subsection 13AA(5) would refer the reader to new subsection 19D(4) (see item 84) and would explain that while suspended, a licence does not allow the licensee to carry out any activity that the licence would otherwise allow.
181. Note 3 would refer readers to the exceptions to the prohibition on importing equipment that uses scheduled substances in its operation, which are set out in new subsections 13AA(6) to (9).
182. It is appropriate for the regulations to be able to prescribe equipment or substances for the purposes of subsection 13AA(5) (with the effect that importing that equipment or equipment that uses that scheduled substance in its operation would be prohibited without a licence), as it is consistent with good regulatory practice and ensures continued compliance with Australia's international obligations under the Montreal Protocol and other relevant international treaties. Over time, international obligations may change, and domestic requirements will need to be able to be quickly updated to reflect these changes, in order to support decision-makers and ensure both compliance with international obligations and minimal disruptions to licence applicants and holders. In addition, technological advances are likely to necessitate changes to the equipment that can be safely imported into Australia. Allowing the regulations to prescribe matters for the purposes of subsections 13AA(5) provides the necessary flexibility to quickly respond to changes in the international and domestic regulatory regimes.

Exceptions from equipment import prohibitions

183. New subsections 13AA(6) to (9) would provide four exceptions to the general prohibitions on the import of equipment containing scheduled substances (in subsection 13AA(3)), and the import of equipment that uses scheduled substances in its operation (in subsection 13AA(5) – if that prohibition is activated by regulations made for the purposes of that subsection).
184. New subsection 13AA(6) would provide that the prohibitions in subsection 13AA(3) or 13AA(5) would not apply to a person importing equipment of a kind prescribed by the regulations or in circumstances, or for a purpose, prescribed by the regulations. The regulations would be able to prescribe the exempt equipment, the exempt circumstances, the exempt purposes, or any combination of the three. A licence would not be required to

import equipment that is covered by regulations made for the purposes of subsection 13AA(6).

185. New subsection 13AA(7) would provide an exception from the prohibitions in subsections 13AA(3) or 13AA(5) for certain equipment being imported for private or domestic use. This exception reflects existing section 13(5) of the Act. The effect would be that a licence would not be required to import relevant equipment if:

- the equipment is kept by the person, or by a member of the person's household, wholly or principally for private or domestic use; and
- the equipment is prescribed by the regulations for the purposes of this paragraph; and
- any other conditions prescribed by the regulations are satisfied.

186. New subsection 13AA(8) would provide an exception from the prohibition in subsection 13AA(3) or 13AA(5) for certain equipment that is being imported temporarily. The effect would be that a licence would not be required to import relevant equipment:

- for a purpose, or in circumstances, (if any) prescribed by the regulations; and
- with the intention of later exporting the equipment within a period not exceeding 12 months, or a longer period prescribed by the regulations; and
- any other conditions prescribed by the regulations in relation to the person, the equipment or the importation are satisfied.

187. New subsection 13AA(9) would provide an exception from the prohibitions in subsection 13AA(3) or 13AA(5) for certain returning Australian equipment. The effect would be that a licence would not be required to import relevant equipment if:

- the equipment is of a kind prescribed by the regulations; and
- the person had previously exported the equipment for a purpose, or in circumstances, (if any) prescribed by regulations; and
- while the equipment was outside Australia, no change was made to the type and quantity of scheduled substances contained in or used in the operation of the equipment, except in circumstances, or for the purposes, (if any) prescribed by regulations; and
- title to the equipment remains unchanged between the time of export and time of import of the equipment.

188. It is appropriate for regulations to the relevant matters set out in the exceptions in subsections 13AA(6) to (9), as it is consistent with good regulatory practice and ensures continued compliance with Australia's international obligations under the Montreal Protocol and other relevant international treaties. Over time, international obligations may change, and domestic requirements will need to be able to be quickly updated to reflect these changes, in order to support decision-makers and ensure both compliance with international obligations and minimal disruptions to licence applicants and holders. In addition, technological advances are likely to necessitate changes to the equipment that can be safely imported into Australia. Allowing the regulations to prescribe matters for the purposes of subsections 13AA(6) to (9) provides the necessary flexibility to quickly respond to changes in the international and domestic regulatory regimes, without unduly affecting industry.

189. The note following subsection 13AA(9) would clarify that a person who wishes to rely on the exceptions in subsections 13AA(6), 13AA(7), 13AA(8) or 13AA(9) bears an evidential burden in relation to the matter in this subsection and would refer the reader to subsection 13.3(3) of the Criminal Code and section 96 of the Regulatory Powers Act. The reversal of the burden of proof is appropriate as the matter to be proved is a matter than would be peculiarly in the knowledge of the defendant. For instance, the defendant would be best placed to know the circumstances in which, or the purpose for which, they imported equipment, or matters relating to the title of the equipment or how long the equipment is intended to be in Australia. Further, there may a number of relevant circumstances or purposes prescribed in the regulations. In the event of a prosecution, it would be significantly more difficult and costly for the prosecution to disprove all possible circumstances than it would be for a defendant to establish the existence of one potential circumstance or purpose.

Section 13AB - Prohibition - unlicensed export of scheduled substance or equipment

190. New section 13AB of the Act would create prohibitions on:

- the unlicensed export of a scheduled substance (subsection 13AB(1));
- the unlicensed export of equipment containing a scheduled substance in certain circumstances (subsection 13AB(3)); and
- the unlicensed export of equipment that uses a scheduled substance in its operation in certain circumstances (subsection 13AB(5)).

Unlicensed export of a scheduled substance

191. New subsection 13AB(1) would prohibit a person from exporting a scheduled substance if:

- the substance is a scheduled substance; and
- the person does not hold a licence that allows the export.

192. This would be the basic contravention for a person who exports scheduled substances without a licence under the Act.
193. Note 1 following subsection 13AB(1) would refer the reader to existing section 13A of the Act for the activities allowed by each type of licence. Note 2 following subsection 13AB(1) would refer the reader to new subsection 19D(4) (see item 84) and would explain that while suspended, a licence does not allow the licensee to carry out any activity that the licence would otherwise allow.
194. New subsection 13AB(2) would provide that subsection 13AB(1) would not apply to a person exporting a substance if:
- the substance is an HCFC and the substance is exported in accordance with a direction given to the person by the Minister under section 35A of the Act; or
 - the substance is an HFC and the substance is exported in accordance with a direction given to the person by the Minister under section 36H of the Act; or
 - the substance is an SGG (other than an SGG that is a used substance) and the substance is exported in circumstances, or for a purpose, prescribed by the regulations. Any regulations made for the purpose of this subsection must be consistent with Australia's international obligations.
195. The exception for exports in accordance with directions given by the Minister under section 35A or 36H reflects the circumstances where HCFCs or HFCs have been imported into Australia without sufficient quota and need to be exported back, and would be consistent with Australia's international obligations under the Montreal Protocol concerning the phase out and phase down (respectively) of these substances.
196. The ability to prescribe in the regulations circumstances and purpose for which SGGs are able to be exported without a licence reflects the exemption in existing subsection 13(3) of the Act. This is appropriate as it is consistent with good regulatory practice and ensures continued compliance with Australia's international obligations under the Montreal Protocol and other relevant international treaties. In the past, the Montreal Protocol has adopted decisions to exempt certain circumstances or purposes from the scope of the treaty. Over time, exemptions may be adopted or amended, and domestic requirements will need to be able to be quickly updated to reflect these changes, in order to support decision-makers and ensure both compliance with international obligations and minimal disruptions to licence applicants and holders. Continuing to allow the regulations to prescribe such matters provides the necessary flexibility to quickly respond to changes in the international regulatory regime.
197. The note following subsection 13AB(2) would clarify that a person who wishes to rely on an exemption in this subsection bears an evidential burden in relation to the matter in this subsection and would refer the reader to subsection 13.3(3) of the Criminal Code and section 96 of the Regulatory Powers Act. The reversal of the burden of proof is

appropriate as the matter to be proved is a matter than would be peculiarly in the knowledge of the defendant. For instance, the defendant would be best placed to know the circumstances in which, or the purpose for which, they exported a scheduled substance. Further, there may be a number of purposes or circumstances prescribed in the regulations. In the event of a prosecution, it would be significantly more difficult and costly for the prosecution to disprove all possible circumstances than it would be for a defendant to establish the existence of one potential circumstance or purpose.

Unlicensed export of equipment containing a scheduled substance

198. New subsection 13AB(3) would prohibit a person from exporting equipment if:

- the equipment contains a substance; and
- the substance is a scheduled substance; and
- the equipment or the substance (or both) is prescribed by the regulations; and
- the person does not hold a licence that allows the export.

199. This would be the basic contravention for a person who exports equipment containing scheduled substances without a licence under the Act. However, unlike the import and manufacture of equipment containing scheduled substances, and consistent with existing section 69G, the prohibition on the export of equipment containing scheduled substances would only apply if the regulations prescribe either the substance or the equipment (or both). While there are no regulations made for the purposes of subsection 13AB(3), there would be no prohibition on the export of equipment that contains scheduled substances.

200. New section 9 of the Act (see item 47) would make it clear that equipment that contains a scheduled substance only because the scheduled substance was used in the manufacture of the equipment is not considered 'equipment that contains a scheduled substance' for the purposes of the Act – and therefore would not require a licence to export.

201. Note 1 following subsection 13AB(3) would refer the reader to existing section 13A of the Act for the activities allowed by each type of licence. Note 2 following subsection 13AB(3) would refer the reader to new subsection 19D(4) (see item 84) and would explain that while suspended, a licence does not allow the licensee to carry out any activity that the licence would otherwise allow.

202. New subsection 13AB(4) would provide that the prohibition in subsection 13AB(3) on exporting equipment containing a scheduled substance would not apply to a person exporting equipment of a kind prescribed by the regulations or in circumstances, or for a purpose, prescribed by the regulations. The effect would be that a licence would not be required to export equipment covered by regulations made for the purposes of subsection 13AB(4).

203. It is appropriate for the regulations to be able to prescribe:

- equipment or substances for the purposes of subsection 13AB(3) (with the effect that the export of that equipment or equipment that contains that scheduled substance, would be prohibited without a licence); and
- equipment, or circumstances or purposes, for the purposes of subsection 13AB(4) (with the effect that certain equipment is carved out of a prohibition in subsection 13AB(3),

as it is consistent with good regulatory practice and ensures continued compliance with Australia's international obligations under the Montreal Protocol and other relevant international treaties. Over time, international obligations may change, and domestic requirements will need to be able to be quickly updated to reflect these changes, in order to support decision-makers and ensure both compliance with international obligations and minimal disruptions to licence applicants and holders. In addition, technological advances are likely to necessitate changes to the equipment that can be safely exported from Australia. Allowing the regulations to prescribe matters for the purposes of subsections 13(5) and 13(6) provides the necessary flexibility to quickly respond to changes in the international and domestic regulatory regimes.

Unlicensed export of equipment that uses scheduled substances in its operation

204. New subsection 13AB(5) would prohibit a person exporting equipment if:

- the equipment uses a substance in its operation; and
- the substance is a scheduled substance; and
- the equipment or the substance (or both) is prescribed by the regulations; and
- the person does not hold a licence that allows the importation.

205. This would be the basic contravention for a person who exports equipment that uses scheduled substances in its operation without a licence under the Act. However, consistent with existing section 69G, the prohibition on the export of equipment that uses scheduled substances in its operation would only apply if the regulations prescribe either the substance or the equipment (or both). While there are no regulations made for the purposes of subsection 13AB(5), there would be no prohibition on the export of equipment that uses scheduled substances in its operation.

206. Note 1 following subsection 13AB(5) would refer the reader to existing section 13A of the Act for the activities allowed by each type of licence. Note 2 following subsection 13AB(5) would refer the reader to new subsection 19D(4) (see item 84) and would explain that while suspended, a licence does not allow the licensee to carry out any activity that the licence would otherwise allow.

207. New subsection 13AB(6) would provide that the prohibition in subsection 13AB(5) would not apply to a person exporting equipment of a kind prescribed by the regulations or in circumstances, or for a purpose, prescribed by the regulations. The effect would be that a licence would not be required to export equipment covered by regulations made for the purposes of 13AB(6).

208. It is appropriate for the regulations to be able to prescribe:

- equipment or substances for the purposes of subsection 13AB(5) (with the effect that the export of that equipment, or equipment that uses that scheduled substance in its operation, would be prohibited without a licence); and
- equipment, or circumstances or purposes, for the purposes of subsection 13AB(6) (with the effect that certain equipment is carved out of a prohibition in subsection 13AB(5),

as it is consistent with good regulatory practice and ensures continued compliance with Australia's international obligations under the Montreal Protocol and other relevant international treaties. Over time, international obligations may change, and domestic requirements will need to be able to be quickly updated to reflect these changes, in order to support decision-makers and ensure both compliance with international obligations and minimal disruptions to licence applicants and holders. In addition, technological advances are likely to necessitate changes to the equipment that can be safely exported from Australia. Allowing the regulations to prescribe matters for the purposes of subsections 13(5) and 13(6) provides the necessary flexibility to quickly respond to changes in the international and domestic regulatory regimes.

209. The note following subsection 13AB(6) would clarify that a person who wishes to rely on the exemption in this subsection bears an evidential burden in relation to the matter in this subsection and would refer the reader to subsection 13.3(3) of the Criminal Code and section 96 of the Regulatory Powers Act. The reversal of the burden of proof is appropriate as the matter to be proved is a matter than would be peculiarly in the knowledge of the defendant. For instance, the defendant would be best placed to know the circumstances in which, or the purposes for which, they exported equipment. Further, there may be a number of equipment or substances prescribed in the regulations for which a licence would not be required to export equipment. In the event of a prosecution, it would be significantly more difficult and costly for the prosecution to disprove all possible circumstances than it would be for a defendant to establish the existence of one potential circumstance or purpose.

Section 13AC - Penalties for unlicensed manufacture, import or export of scheduled substances or equipment

210. New section 13AC would set out the penalties for the prohibitions outlined in new sections 13, 13AA and 13AB which relate to unlicensed manufacture, import and export of scheduled substances or equipment.

211. New subsection 13AC(1) would have the effect that a person who contravenes a prohibition in subsections 13(1), 13(3), 13(5), 13AA(1), 13AA(3), 13AA(5), 13AB(1), 13AB(3) or 13AB(5) would be committing a fault-based offence. The maximum penalty for the offence would be 500 penalty units.
212. The note following subsection 13AC(1) would explain that the physical elements of the offence are found in the relevant subsection that is being contravened.
213. New subsection 13AC(2) would have the effect that a person who contravenes a prohibition in subsections 13(1), 13(3), 13(5), 13AA(1), 13AA(3), 13AA(5), 13AB(1), 13AB(3) or 13AB(5) would also be committing an offence of strict liability. The maximum penalty for the strict liability offence would be 60 penalty units.
214. Strict liability is proposed for these offences having regard to the Commonwealth Guide to Framing Offences and the *Senate Scrutiny of Bills Committee Sixth Report of 2002: Application of Absolute and Strict Liability Offences in Commonwealth Legislation* (Scrutiny of Bills Committee 6th Report). Consistent with these documents, strict liability is appropriate because:
- the offence is not punishable by imprisonment;
 - the offence is subject to a maximum penalty of 60 penalty units for an individual;
 - the actions which trigger the offence are simple, readily understood and easily defended. The offence is triggered if a person manufactures, imports or exports scheduled substances or equipment without a licence in contravention of one of the above mentioned prohibitions;
 - offences relating to unlicensed manufacture, import and export of scheduled substances or equipment need to be dealt with efficiently to ensure industry and community confidence in the regulatory regime;
 - the offence would be subject to an infringement notice (see new section 63);
 - the absence of strict liability may adversely affect the capacity to prosecute offenders. Whether or not a defendant intentionally, recklessly or negligently manufactured, imported or exported scheduled substances or equipment without a licence is generally a matter that is peculiarly within the knowledge of the defendant alone. Proving the contrary beyond reasonable doubt may require significant and difficult to obtain indirect and circumstantial evidence;
 - the requirement to obtain a licence under the Act to manufacture, import or export scheduled substances is a necessary part of ensuring that the Act remains an effective and efficient mechanism to both implement Australia's obligations under the Montreal Protocol and other relevant international treaties, and to realise its intended environmental benefits. The unlicensed manufacture, import and export

of scheduled substances or equipment may result in significant environmental harm and could damage Australia's international relations;

- the person affected would be placed on notice to guard against the possibility of contravention, which is likely to significantly enhance the effectiveness of the enforcement regime in deterring the conduct in question.

215. The defence of honest and reasonable mistake of fact is available for strict liability offences (see sections 6.1 and 9.2 of Schedule 1 to the Criminal Code) and the existence of strict liability does not make any other defence unavailable (see subsection 6.1(3) of Schedule 1 to the Criminal Code).

216. New subsection 13AC(3) would have the effect of establishing a mirror civil penalty provision which is contrived where a person contravenes any of the prohibitions set out in subsections 13(1), 13(3) or 13(5), 13AA(1), 13AA(3) or 13AA(5) or 13AB(1), 13AB(3) or 13AB(5). The maximum penalty would be 600 penalty units. A body corporate would be liable for five times this amount as a maximum penalty (see subsection 82(5) of the Regulatory Powers Act).

217. The combination of fault-based offence, strict liability offence and civil penalty provision would provide an adequate deterrent from person manufacturing, importing or exporting scheduled substances or equipment without a license, which has the potential to cause significant harm. It is also appropriate to include both civil and criminal penalties in order to provide flexibility for the Commonwealth to enforce the prohibition appropriately without always needing to pursue criminal penalties (noting that conviction for a criminal offence carries with it a range of consequences beyond the immediate penalty). It is expected criminal proceedings would be brought for conduct that is at the more serious end of the spectrum or that involves a higher degree of malfeasance.

218. The size of the maximum penalty for both the fault-based offence and the civil penalty provision is appropriate as a deterrent. It reflects the seriousness of manufacturing, importing or exporting scheduled substances or equipment without a license, which could in turn result in harm to human and environmental health. Such conduct may undermine the integrity of the regulatory framework provided for by the Act. This conduct may also result in the breach of Australia's obligations under the Montreal Protocol and other relevant international treaties which could damage Australia's international relations.

219. The maximum civil penalty of 600 penalty units is higher than the maximum penalty available for the criminal offence. This is intended to ensure that it will act as a deterrent, particularly for body corporates, and also recognises that being found liable to pay a civil penalty does not attract imprisonment or a criminal conviction.

Item 53

220. Section 13A deals with the different categories of licences and what they allow.

221. Item 53 would amend existing section 13A of the Act to repeal existing subsections 13A(2A), 13A (3), 13A (3A), 13A (4), 13A (5) and 13A (6) and substitute new subsections 13(2A), 13(3), 13 (3A), 13 (3B), 13 (4), 13 (4A), 13 (5) and 13(6).

Controlled substances licences

222. Subsection 13A(2) sets out the activities that are covered by a controlled substances licence. These activities relate to importing, exporting and manufacturing HCFCs, methyl bromide or SGGs, as specified in the licence. Subsection 13(2A) clarifies that certain activities are not covered by a controlled substances licence.

223. Item 53 would amend section 13A of the Act to repeal existing subsection 13(2A) (and the note following it) and replace it with a new subsection 13(2A). New subsection 13(2A) would clarify that a controlled substances licence does not apply to scheduled substances that are used substances, or to the import or manufacture of scheduled substances for use exclusively as a feedstock.

224. This amendment is consequential to the amendments in item 37 of this Schedule which would change the terminology in relation to used substances licences by removing the phrase 'recycled or used'. There would be no change to the substantive effect of subsection 13(2A).

Essential uses licences

225. Subsections 13A(3) and (3A) of the Act deals with essential uses licences.

226. Existing subsection 13A(3) has the effect that an essential uses licence allows the licensee to manufacture, import or export stage-1 or stage-2 scheduled substances, or import HBFCs for essential uses, as specified in the licence. Existing subsection 13A(3A) clarifies that an essential uses licence does not apply to recycled or used scheduled substances.

227. Item 53 would amend section 13A of the Act to repeal existing subsections 13A(3) and 13A (3A) and to substitute new subsections 13A(3), 13A(3A) and 13A (3B).

228. New subsections 13A(3) and 13A (3A) would have the combined effect that an essential uses licence would allow the licensee to, as specified in the licence, manufacture, import or export scheduled substances that are:

- ozone depleting substances (other than methyl bromide); or
- HFCs

for essential uses.

229. However, an essential use licence would not cover the import, export or manufacture of used substances for essential uses, or scheduled substances that are used exclusively as a feedstock.

230. The note after new subsection 13A(3A) would refer the reader to new subsections 13A(4) and 13A(5) concerning, respectively, used substances licences and feedstock licences.
231. New subsection 13A(3B) would define *essential uses*, for a scheduled substance, as an essential use identified in relation to the substance by a decision made by the Parties to the Montreal Protocol that applies to Australia.
232. The purpose of these amendments is to open up the essential uses licences to HCFCs and HFCs, to reflect the fact that the Parties to the Montreal Protocol are considering activating essential use provisions for HCFCs, and have also agreed to allow essential use exemptions for HFCs (although the mechanisms are yet to be activated). Essential uses licences would only be available for those substances if, and to the extent, that the Parties to the Montreal Protocol adopt a decision identifying particular uses as essential uses for that substance.
233. This means, in practice, that these substances would only be able to be imported to, manufactured in, and exported from, Australia under an essential uses licence for the essential uses approved by Montreal Protocol Parties.
234. This is important because the essential uses licence mechanism sits outside the controlled substances licence and import quota arrangements for HFCs and HCFCs, and would apply during and after the respective phase-downs (for HFCs) and phase-outs (for HCFCs) of the gases. No quota would be required to import HCFCs or HFCs for essential uses under an essential uses licence.
235. This is appropriate as use of HFCs and HCFCs for essential uses will not count towards Australia's consumption of those substances for the purposes of the Montreal Protocol, and therefore import or manufacture for essential uses does not need to be covered by the quota systems.
236. For this reason, it is important that there be a licence mechanism, outside of the quota system, for providing for essential uses approved by the Montreal Protocol in relation to HFCs and HCFCs. New subsections 13(3), 13(3A) and 13(3B) would achieve this policy intent, while maintaining strict controls on the import, manufacture or export of HCFCs and HFCs.
237. The amendments proposed by this item would also have the effect of extending the essential uses licence to the manufacture and export of HBFCs for essential uses. This would ensure consistency in how all ozone depleting substances (other than methyl bromide) are treated.
238. It is not considered appropriate to extend the essential uses licence to methyl bromide, as methyl bromide does not have essential use provisions under the Montreal Protocol. Instead, the import, export and manufacture of methyl bromide would continue to be

covered by the controlled substances licence, but with the additional restrictions imposed by the amendments made by item 64.

239. It is also not considered appropriate to extend the essential uses licence to synthetic greenhouse gas other than HFCs, as these substances are not covered by the Montreal Protocol.

Used substances licences

240. Subsection 13A(4) of the Act deals with used substances licences.
241. Existing subsection 13A(4) has the effect that a used substances licence allows the licensee to, as specified in the licence, import or export recycled or used stage-1 scheduled substances, recycled or used stage-2 scheduled substances, recycled or used HCFCs, recycled or used methyl bromide or recycled or used HFCs.
242. Item 53 would repeal existing subsection 13A(4) and replace it with new subsections 13A(4) and 13A(4A).
243. New subsection 13A(4) would clarify that a used substance licence would allow the licence to, as specified in the licence, import or export specified scheduled substances that are used substances. *Used substances* would be defined in section 9AA of the Act (see item 47).
244. This amendment is necessary as a consequence of the amendments in item 37, which would change the terminology in relation to used substances licences by removing the phrase ‘recycled or used’. The only change to the substantive effect of subsection 13A(4) would be to extend the used substances licence to used HBFCs. This is appropriate as it would result in consistent treatment of all used ozone depleting substances.
245. New subsection 13A(4A) would make it clear that a used substances licence does not apply to the import of used substances that are used exclusively as a feedstock. The import of used substances for use exclusively as a feedstock would instead require a feedstock licence.
246. The note following new subsection 13A(4A) would refer the reader to new subsection 13A(6) (dealing with feedstock licences).

Feedstock licences – new subsection 13A(6)

247. Item 53 would also insert substitute new subsection 13A(5). New subsection 13A(5) would provide for feedstock licences.
248. This would be a new category of licence, which would be consequential to the amendment made by item 51 to repeal existing section 12A and require the import and manufacture of scheduled substances for use as a feedstock to be subject to the licensing scheme in the Act.

249. A feedstock licence would allow the licensee to carry out one or more the following activities (as specified in the licence):

- the import of specified scheduled substances for use exclusively as a feedstock; or
- the manufacture of specified scheduled substances for use exclusively as a feedstock.

Equipment licences

250. Existing subsections 13A(5) and (6) of the Act deal with equipment licences.

251. Existing subsection 13A(5) has the effect that an equipment licence allows the licensee to import SGG equipment or to carry out any Schedule 4 activities or section 69G activities specified in the licence. Schedule 4 activities and section 69G activities primarily (but not always) relate to importing, exporting or manufacturing ODS equipment or, in some circumstances equipment that uses a scheduled substance in its operation. Existing subsection 13A(6) clarifies that a Schedule 4 activity or a section 69G activity specified in the licence could conceivably involve the importing of specified SGG equipment.

252. Item 53 would repeal existing subsections 13A(5) and (6) and substitute new subsections 13A(6).

253. The reason for repealing the existing subsection 13A(5) and 13A(6) is that it is proposed that both existing section 69G and existing Schedule 4 would be repealed (see items 155 and 163) so there would no longer be any such concept as Schedule 4 activities and section 69G activities.

254. Instead, all prohibitions on importing, exporting and manufacturing equipment without a licence would be contained in new sections 13, 13AA and 13AB (see item 52) and the regulations made for the purposes of those sections. This would significantly simplify and clarify the drafting of these provisions and make it easier for industry to know when they need a licence to import, export or manufacture equipment, without having to check multiple different parts of the Act.

255. New subsection 13A(6) would clarify what an equipment licence covers. It would provide that an equipment licence allows the licensee to carry out one or more the following activities (as specified in the licence):

- the import, export or manufacture of specified SGG equipment;
- the import, export or manufacture of specified ODS equipment;

256. Consistent with the new definitions of *ODS equipment* and *SGG equipment* in section 7 of the Act (see items 29 and 42), this would cover both equipment that contains scheduled substances and equipment that uses scheduled substances in its operation.

257. This would be consistent with the prohibitions listed in new section 13, 13AA and 13AB, and the fact that a person can only breach those prohibitions if they do not hold a licence that allows the relevant activity (see item 52).
258. An equipment licence would still only be able to be granted to carry out these activities if the Minister is satisfied that the relevant criteria for the licence in section 16 is met.

Item 54

259. Item 54 would insert new section 13B at the end of Division 2 of Part III of the Act.
260. New section 13B would set out a number of matters that the Minister must take into account when assessing whether a person is a fit and proper to hold a licence, for the purposes of Part III of the Act.
261. The requirements in this section would not prevent the Minister from also considering other matters they consider relevant to the question of whether a person is a fit and proper person to hold a licence.
262. The fit and proper person test is relevant to the following decisions in Part III of the Act:
- the decision whether to grant a licence under section 16 of the Act;
 - the decision whether to renew a licence under section 19AC of the Act;
 - the decision whether to transfer a licence under section 19B of the Act;
 - the decision whether to suspend a licence under new section 19D of the Act;
 - the decision whether to cancel a licence under new section 20 of the Act.
263. Under new subsection 13B(1), when determining whether a person is a fit and proper person to hold a licence, for the purposes of deciding whether to grant, renew, transfer, suspend or cancel a licence, the Minister would be required to consider:
- the person's history in relation to environmental matters;
 - whether the person is bankrupt, has applied to take the benefit of any law for the relief of bankrupt or insolvent debtors, has compounded with creditors or has made an assignment of remuneration for their benefit;
 - whether the person has made a statement in an application or report under the Act or regulations that was false or misleading in a material particular, and whether the person did so knowingly;

- whether the person has complied with their levy obligations in relation to the import or manufacture of scheduled substances or equipment;
- whether the person has complied with a requirement to give a report under the Act or regulations.

264. When determining whether a person is a fit and proper person to hold a licence, for the purposes of deciding whether to grant or transfer a licence, the Minister would also be required to consider:

- whether the person has contravened a condition of the licence;
- whether a licence held by the person has been suspended or cancelled.

265. When determining whether a person is a fit and proper person to hold a licence, for the purposes of deciding whether to cancel a licence, the Minister would also be required to consider whether a licence held by the person has been suspended.

266. It is intended that these factors would enable the Minister to gain a broader understanding of the compliance history of the person without being restricted to only considering those matters that resulted in a conviction or pecuniary penalty order. This would enable the Minister to make an informed decision as to whether the person is a fit and proper person.

267. Some of the matters listed above, particularly the person's history in relation to environmental matters, may involve the consideration of criminal record information. While criminal record information is sensitive information under the *Privacy Act 1988*, it is considered appropriate that the Minister have regard to relevant convictions of the person when determining whether the person is a fit and proper person to hold a licence. This is because knowledge of a person's history of compliance with relevant Australian environmental laws would assist in the Minister's assessment of whether the person is likely to comply, or be able to comply, with the requirements of the Act or regulations.

268. New subsection 13B(2) would set out additional mandatory considerations for the Minister where the person who is required to be a fit and proper person to hold a licence is a body corporate. These additional considerations are each of the matters mentioned in subsection 13B(1) (above) in relation to each person who is an executive officer of the body corporate. This is appropriate, as the executive officers will be controlling the actions of the body corporate under the relevant licence.

269. The Minister would also be able to consider whether the body corporate is a Chapter 5 body corporate within the meaning of the *Corporations Act 2001*. This includes consideration of whether the company is being wound up, whether a receiver (or a receiver and manager) has been appointed; whether the company is under administration, whether the company has executed a deed of company arrangement or has entered into a

compromise or arrangement with another person. However, this would not be a mandatory consideration.

270. New subsection 13B(3) would clarify that the requirements in new section 13B would not affect the operation of Part VIIC of the *Crimes Act 1914* (which includes provisions that, in certain circumstances, relieve persons from the requirement to disclose spent convictions and require persons aware of such convictions to disregard them).

Item 55

271. Section 14 of the Act sets out the application process for a licence under the Act. Subsection 14(1) provides that a person may apply to the Minister for all or any of the types of licences listed in that subsection.

272. Item 55 would insert new paragraph (e) into subsection 14(1) of the Act. New paragraph 14(1)(e) would list a feedstock licence as a type of licence that a person may apply for.

273. This item would be consequential to amendments being made by item 53 which introduces a feedstock licence as a new type of licence. This amendment would ensure that a person may apply for a feedstock licence under the existing licence application process set out in section 14 of the Act.

Item 56

274. Item 56 would amend paragraph 14(2)(aa) to omit the words ‘prescribed fee’ and substitute ‘fee prescribed by the regulations (if any)’.

275. This amendment would remove any doubt that a licence application can still be considered complete (and able to be assessed) if there is no application fee prescribed for the licence.

Item 57

276. Item 57 would update subsection 16(1) of the Act to refer to subsections 16(3A) to 16(6A) instead of 16(3A) to 16(6B). This item would be consequential to amendments made by item 61 which would repeal subsections 16(5), 16(6), 16(6A) and 16(6B) and replace with new subsections 16(5), 16(6) and 16(6A).

Item 58

277. Subsection 16(3AB) of the Act sets out what need to be included in an equipment licence. Existing paragraph 16(3AB)(a) has the effect that an equipment licence currently must state that it allows the person to import SGG equipment. Existing paragraph 16(3AB)(b) has the effect that an equipment licence currently must specify any Schedule 4 activities and any section 69G activities the licence allows.

278. Item 58 would repeal existing subsection 16(3AB) and substitute a new subsection 16(3AB). New subsection 16(3AB) provide that an equipment licence must specify which of the following activities it allows:

- import specified SGG equipment;
- manufacture specified SGG equipment;
- export specified SGG equipment;
- import specified ODS equipment;
- manufacture specified ODS equipment;
- export ODS equipment.

279. The licence may specify one or more of the above activities.

280. Consistent with the new definitions of *ODS equipment* and *SGG equipment* in section 7 of the Act (see items 29 and 42), these terms would cover both equipment that contains scheduled substances and equipment that uses scheduled substances in its operation

281. The amendment made by this item is necessary because the equipment licence is being expanded to cover activities other than importing SGG equipment, in line with the prohibitions in new sections 13-13AC (see item 52). In addition, the concepts of Schedule 4 activities and section 69G activities would no longer exist in the Act and therefore can be removed from section 16.

282. An equipment licence would only be relevant to the export of equipment containing scheduled substance, the manufacture of equipment containing an synthetic greenhouse gas, or the manufacture, import or export of equipment that uses scheduled substances in its operation, if regulations are made under new section 13, 13AA or 13AB prohibiting such activities. This is consistent with the current approach under existing section 69G.

Item 59

283. Section 16 of the Act allows the Minister to grant a licence to a person who has applied for it in accordance with section 14, subject to criteria outlined in that section. Existing subsection 16(4) provides that the Minister shall not grant a licence to a person unless the Minister is satisfied that the person is a fit and proper person to be granted a licence, within the meaning in the Act.

284. Item 59 would amend subsection 16(4) of the Act to omit “shall not” and to substitute it with “must not”. This amendment would update the drafting of the provision to adopt modern drafting conventions and would not change the effect of the provision.

Item 60

285. Subsection 16(4) of the Act has the effect that the Minister can only grant a licence to a person if the Minister is satisfied that the person is a fit and proper person to hold a licence.

286. Item 60 would amend section 16 of the Act to insert a new note following existing subsection 16(4). The new note would refer the reader to the mandatory considerations for the fit and proper person test in new section 13B (see item 54).

Item 61

287. Section 16 of the Act allows the Minister to grant a licence to a person who has applied for it in accordance with section 14 and sets out the criteria which must be satisfied for each category of licence.

288. Item 61 would repeal subsections 16(5), 16(6), 16(6A) and 16(6B) and substitute them with new subsections 16(5), 16(6) and 16(6A).

289. The purpose of the amendments made by this item is to streamline and simplify some of the criteria for granting a licence under section 16 of the Act and to remove references to concepts and parts of the Act which would be repealed by the Bill (such as Schedule 4 activity and section 69G activity). Further, some of the matters in existing section 16 have now been moved into the fit and proper test outlined in new section 13B, making it no longer necessary for those matters to also be included in section 16.

290. The existing criteria in subsections 16(3A) and 16(4) of the Act would continue to apply to all licence categories. Subsection 16(3A) requires the Minister, in deciding whether to grant a licence, to have regard to Australia's international obligations, and the policies of the Commonwealth Government, in relation to the manufacture, importation or consumption of scheduled substances, and allows the Minister to also have regard to any relevant matter. Subsection 16(4) prevents the Minister from granting a licence unless satisfied that the applicant is a fit and proper person to hold a licence.

291. New subsections 16(5), 16(6) and 16(6A) would set out additional criteria that would apply to granting equipment licences.

292. New subsection 16(5) would apply to an equipment licence that allows the manufacture, import or export of SGG equipment. Consistent with the new definition of *SGG equipment* in section 7 (see item 42), this would cover both equipment that contains a synthetic greenhouse gas and equipment that uses a synthetic greenhouse gas in its operation.

293. Such licences must not be granted unless the requirements (if any) prescribed by the regulations in relation to the activity, the equipment and the relevant type of scheduled substance are satisfied. This would allow the regulations to impose additional criteria in the future should Australia's international obligations or environmental concerns require Australia impose a stricter test for granting SGG equipment licences.

294. However, if no regulations have been made for the purposes of subsection 16(5), the Minister would continue to be able to grant an SGG equipment licence if satisfied of the matters in existing subsections 16(3A) and 16(4).

295. New subsection 16(6) would apply to an equipment licence that allows the manufacture, import or export of ODS equipment.
296. Paragraph 16(6)(b) would have the effect that provide that the Minister must not grant an equipment licence that allows the manufacture, import or export of ODS equipment unless the requirements (if any) prescribed by the regulations in relation to the activity, the equipment and the relevant type of scheduled substance are satisfied.
297. This would allow the regulations to impose additional criteria in the future should Australia's international obligations or environmental concerns require Australia impose a stricter test for granting ODS equipment licences. The requirement in paragraph 16(6)(b) would apply to both licences that allow the manufacture, import or export of equipment that contains an ozone depleting substance, and licences that allow the manufacture, import or export of equipment that uses a scheduled substance in its operation.
298. For equipment that contains an ozone depleting substance, new paragraph 16(6)(a) would impose an additional requirement. This requirement is that, in order for the Minister to grant a licence allowing the import, export or manufacture of such equipment, new subsection 16(6A) must apply in relation to the equipment.
299. New subsection 16(6A) would apply to the equipment if the Minister is satisfied of at least one of the following:
- the equipment is essential for medical, veterinary, defence, industrial safety, public safety, scientific testing or monitoring purposes or laboratory and analytical uses; and no practical alternative exists to the use of scheduled substances in the operation or manufacture (as the case requires) of the equipment if it is to continue to be effective for such a purpose;
 - because of the requirements of a law concerning the manufacture or use of the equipment, there is no practical alternative to the use of scheduled substances in the operation or manufacture (as the case requires) of the equipment;
 - in the case of the import or export of equipment, it would be impracticable to remove or retrofit the equipment because it is incidental to other equipment that is being imported or exported;
 - the equipment is for use in conjunction with the calibration of scientific, measuring or safety equipment;
 - exceptional circumstances justify granting the licence, and granting the licence in those circumstances would not be inconsistent with Australia's international obligations under the Montreal Protocol;

- the manufacture, import or export would occur in circumstances prescribed by the regulations.

300. New subsection 16(6A) is an updated version of existing subsection 16(6B) and is considered more fit for purpose given technological advancements in recent years, and Australia's international obligations. It would reflect that ozone depleting substances are being, or have already been, phased out globally and therefore should only be used for essential uses, or in exceptional circumstances, where there are no other practical alternatives.

301. The limitations in subsection 16(6A) would apply to licences to manufacture, import or export equipment containing ozone depleting substances in addition to any requirements prescribed in regulations made for the purposes of new paragraph 16(6)(b), and the criteria in existing subsections 16(3A) and (4) of the Act.

Item 62

302. Section 17 of the Act deals with the deemed refusal of a licence.

303. Under subsection 17(1), if, at the end of 60 days after a licence application is made, the Minister has not made a decision to grant or refuse the licence, and has not requested further information from the applicant under section 15 of the Act, the Minister is taken to have refused the licence.

304. Subsection 17(2) has the effect that, where the Minister has requested further information from an applicant under section 15 of the Act, the Minister is taken to have refused the licence if they have not made a decision on the application at the end of 60 days after the further information is provided.

305. Under subsection 17(4), the deemed refusals in subsections 17(1) or 17(2) do not apply if the licence application is subject to Subdivision A of Division 4 of Part 11 of the *Environment Protection and Biodiversity Conservation Act 1989* (EPBC Act), where advice on the environmental impacts of the application is required. Instead, under subsection 17(3), such applications are deemed to have been refused if the Minister has not made a decision on the application at the end of 30 days after the required advice under the EPBC Act has been received.

306. Item 62 would amend existing subsections 17(1) and (2) of the Act to remove the words 'for the purposes of section 66'. This amendment is a technical amendment that recognises that the deemed refusal is for the purposes of the Act as a whole, not just existing section 66 (concerning internal review). There would be no change to the effect of these provisions.

Item 63

307. Item 63 would amend existing subsection 17(3) of the Act to remove the words 'for the purposes of section 66'. As with the amendments made by item 62, this is a technical amendment that recognises that the deemed refusal is for the purposes of the Act as a

whole, not just existing section 66 (concerning internal review). There would be no change to the effect of this provision.

Item 64

308. Section 18 of the Act deals with the conditions imposed on licences granted under section 16 of the Act. The table in subsection 18(1) sets out the mandatory conditions that apply to different types of licences. Subsection 18(4) allows the Minister to also impose additional conditions on licences on a case-by-case basis.
309. Item 64 would amend the table in existing subsection 18(1) of the Act to insert new table item 1A. New table item 1A would impose a mandatory licence condition on a controlled substances licence that allows the licensee to manufacture, export or import methyl bromide.
310. The new mandatory condition for these licences is that the manufacture, import or export of methyl bromide under the licence can only be for one of the following purposes (as set out in the licence): critical uses (including laboratory and analytical uses), an emergency use, a QPS use, and (for export only) for use as a feedstock.
311. The terms *critical uses*, *emergency use* and *laboratory and analytical uses* would be defined in new subsection 18(10), while *QPS use* would be defined in new subsection 18(11) (see item 70). The person's licence would state which of these purposes applies in their particular case and, for critical uses or emergency uses, would state the relevant use that is allowed.
312. The purpose of these limitations is to make it clear on the face of the Act that methyl bromide can only be imported, exported or manufactured for the purposes for which it can be used and supplied under the regulations, and to align more closely with the wording in decisions of the Montreal Protocol Meeting of the Parties in relation to the use and supply of methyl bromide. This, in turn, would assist in minimising the environmental harm caused by methyl bromide.
313. In addition, aligning the purposes for which methyl bromide to be imported into, or manufactured in, Australia to the purposes for which the methyl bromide can be used or supplied in Australia would reduce the possibility of stockpiles or unauthorised use of methyl bromide in Australia, which is consistent with Australia's international obligations.
314. The new mandatory licence condition would formalise the existing policy, which imposes these same limitations on the holders of controlled substances licences for methyl bromide by way of the discretionary condition setting power in subsection 18(4). As such, these changes would not involve a change in policy or administration of the licence scheme for methyl bromide but would increase transparency for licence holders and applicants.

Item 65

315. Item 65 would update table items 2 and 3 in the table under subsection 18(1) to omit “Montreal Protocol country for the purposes of Part VI for the substance” and substitute “party to the Montreal Protocol”.

316. This item is consequential to amendments made by item 103 to repeal Part VI of the Act. Existing Part VI of the Act identifies a ‘Montreal Protocol country’ for the purposes of that Part and the relevant substances in relation to that country. As the Montreal Protocol has achieved universal ratification, Part VI of the Act is now redundant.

Item 66

317. Item 66 would update table items 5 and 6 in the table under subsection 18(1) to omit “Montreal Protocol country for the purposes of Part VI for HFCs” and substitute “party to the Montreal Protocol”.

318. This item is consequential to amendments made by item 103 to repeal Part VI of the Act. Existing Part VI of the Act identifies a ‘Montreal Protocol country’ for the purposes of that Part and the relevant substances in relation to that country. As the Montreal Protocol has achieved universal ratification, Part VI of the Act is now redundant.

Item 67

319. Item 67 would amend the table in existing subsection 18(1) of the Act to insert new table items 7 and 8.

320. New table item 7 would impose a mandatory licence condition on a licence (other than an equipment licence) that allows the licensee to import a scheduled substance. This condition would apply to controlled substances licences, essential uses licences, used substances licences and feedstock licences.

321. The condition is that the licensee must not import the substance in a non-refillable container, unless the import is permitted by regulations made for the purposes of item 7 of the table. The regulations may exempt kinds of non-refillable containers, provide circumstances in which licensee may use a non-refillable container, or provide that particular kinds of non-refillable container are exempt in particular circumstances.

322. Non-refillable cylinders containers are specifically manufactured, single use cylinders that are filled with ozone depleting substances or synthetic greenhouse gases and used for servicing or commissioning particular equipment. Being designed to be disposed of after a single use, non-refillable containers are environmentally wasteful and harmful. Most relevantly for the objectives of the Act, around 5% of the gas remains in the container once it reaches equal pressure. When the container is disposed of it is deliberately punctured, in accordance with pressure vessel regulations, and this residual amount of ozone depleting substance or synthetic greenhouse gas is emitted to the atmosphere, which results in further harm to the environment.

323. New table item 8 would impose a mandatory licence condition on a suspended licence. The concept of a licence being suspended would be inserted into the Act by item 84. A suspended licence would remain in force (and would therefore still be subject to conditions), but would not allow the licensee to carry out activities (including importing or exporting scheduled substances) during the period of suspension (other than in compliance with a direction of the Minister).
324. The new condition would be that the licensee of a suspended licence must comply with any directions the Minister gives to the licensee under section 35A (directions to export HCFCs if quota exceeded) or section 36H (directions to export HFCs if quota exceeded).
325. This new condition is necessary to make it clear to holders of suspended licences that they are still obliged to comply with any direction of the Minister under sections 35A or 36H. The equivalent condition in table item 1 in subsection 18(1) only applies to a controlled substances licence that allows the import or manufacture of HCFCs, and a suspended licence would not fit this description.

Item 68

326. Subsection 18(4) of the Act allows the Minister, when granting a licence or at any time afterwards, to impose other conditions on a licence. These conditions apply to the licence in addition to the mandatory conditions in subsection 18(1).
327. Subsection 18(6) sets out examples of the kinds of conditions that the Minister may impose under subsection 18(4). These include conditions about the quantity of particular scheduled substances that the licensee may manufacture, import or export under the licence, and conditions about the purpose or purposes for which particular scheduled substances may be manufactured, imported or exported under the licence.
328. Item 68 would amend existing subsection 18(6) to insert new paragraph 18(6)(ca). New paragraph 18(6)(ca) would provide an additional example of a condition that the Minister would be able to impose on a licence under subsection 18(4). The example is conditions requiring the licensee to enter into an arrangement for the recovery, recycling or destruction of scheduled substances with a person approved by the Minister under the regulations. New paragraph 45A(1)(b) of the Act (proposed by item 107) would allow the regulations to provide for the Minister to approve persons to conduct recovery, recycling or destruction of scheduled substances.
329. The purpose of this amendment is to make it clear that the Minister can require a licensee to enter into a product stewardship scheme with a person approved by the Minister as a condition of their licence.
330. Australia's only product stewardship scheme for waste refrigerants voluntarily meets suitable recovery and reporting arrangements, so it is not intended to impose such conditions at this time. However if, in the future, the voluntary nature of the existing arrangement results, or could result, in undesirable environmental outcomes, the

regulations would be able to approve appropriate arrangements in order to minimise the harm caused to the environment by scheduled substances.

331. The arrangement would be able to relate to any one of recovery, recycling or destruction; it does not have to be all three.

Item 69

332. Section 18 of the Act deals with conditions to be imposed on licences. The table in subsection 18(1) sets out the mandatory conditions that apply to certain licences to import, export or manufacture scheduled substances. Subsection 18(4) also allows the Minister to impose other conditions on a licence.

333. Under existing subsections 18(7) to (7F), failure by a licensee to comply with a condition of their licence is both a strict liability offence and the contravention of a civil penalty provision.

334. Item 69 would amend section 18 of the Act to repeal existing subsections 18(7) to 18(7F) and substitute new subsections 18(7), 18(7A) and 18(7B). The purpose of this amendment would be to clarify and update the drafting of the offence and civil penalty provisions so that they are easier to understand and adopt a modern drafting style.

335. New subsection 18(7) would have the effect that a person who contravenes a condition of their licence would be committing a fault-based offence. The maximum penalty for the offence would be 500 penalty units. A body corporate would be liable for five times this amount as a maximum penalty (see subsection 4B(3) of the Crimes Act).

336. New subsection 18(7A) would have the effect that a person who contravenes a condition of their licence would also be committing an offence of strict liability with a maximum penalty of 60 penalty units.

337. Strict liability is proposed for this offence having regard to the Commonwealth Guide to Framing Offences and the Scrutiny of Bills Committee 6th Report. Consistent with these documents, strict liability is appropriate as:

- the offence is not punishable by imprisonment;
- the offence is subject to a maximum penalty of 60 penalty units for an individual;
- the actions which trigger the offence are simple, readily understood and easily defended. The offence is triggered if a person fails to comply with a condition of their licence;
- offences relating to the non-compliance with licence conditions need to be dealt with efficiently to ensure industry and community confidence in the regulatory regime;

- the offence would be subject to an infringement notice (see new section 63, as inserted by item 138);
- the absence of strict liability may adversely affect the capacity to prosecute offenders. Whether or not a defendant intentionally, recklessly or negligently did not comply with their licence conditions is generally a matter that is peculiarly within the knowledge of the defendant alone. Proving the contrary beyond reasonable doubt may require significant and difficult to obtain indirect and circumstantial evidence;
- compliance with licence conditions plays an important role in ensuring compliance with the Act and regulations (particularly concerning the import of scheduled substances), which is a necessary part of ensuring that the Act remains an effective and efficient mechanism to both implement Australia's obligations under the Montreal Protocol and to realise its intended environmental benefits. As such, failure to comply with such requirements may result in significant environmental harm and could damage Australia's international relations;
- the person affected will be placed on notice to guard against the possibility of contravention, which is likely to significantly enhance the effectiveness of the enforcement regime in deterring the conduct in question.

338. The defence of honest and reasonable mistake of fact is available for strict liability offences (see sections 6.1 and 9.2 of Schedule 1 to the Criminal Code) and the existence of strict liability does not make any other defence unavailable (see subsection 6.1(3) of Schedule 1 to the Criminal Code).

339. New subsection 18(7B) would have the effect of establishing a mirror civil penalty provision which is contravened in circumstances where a person fails to comply with the conditions of their licence. The maximum penalty would be 600 penalty units. A body corporate would be liable for five times this amount as a maximum penalty (see subsection 82(5) of the Regulatory Powers Act).

340. The combination of fault-based offence, strict liability offence and civil penalty provision would provide an adequate deterrent from person not complying with their licence conditions, which has the potential to cause significant harm. It is also appropriate to include both civil and criminal penalties in order to provide flexibility for the Commonwealth to enforce the prohibition appropriately without always needing to pursue criminal penalties (noting that conviction for a criminal offence carries with it a range of consequences beyond the immediate penalty). It is expected criminal proceedings would be brought for conduct that contravenes a person's licence conditions and is at the more serious end of the spectrum or that involves a higher degree of malfeasance.

341. The size of the maximum penalty for both the fault-based offence and the civil penalty provision is appropriate as a deterrent. It reflects the seriousness of failing to comply with a person's licence conditions, which could in turn result in serious harm to

human and environmental health. Such conduct may undermine the integrity of the regulatory framework provided for by the Act. This conduct may also result in the breach of Australia's obligations under the Montreal Protocol which could damage Australia's international relations.

342. The maximum civil penalty of 600 penalty units is higher than the maximum penalty available for the criminal offence. This is intended to ensure that it will act as a deterrent, particularly for body corporates, and also recognises that being found liable to pay a civil penalty does not attract imprisonment or a criminal conviction.

Item 70

343. Item 70 would amend existing section 18 of the Act to insert new subsections 18(10) and 18(11). New subsection 18(10) would insert new definitions into the Act for *critical uses*, *emergency use*, *laboratory* and *analytical uses* that apply in relation to methyl bromide. New subsection 18(11) would insert a new definition into the Act for *QPS use* in relation to methyl bromide.

344. These terms are relevant to the new mandatory licence condition that would be inserted into subsection 18(1) by item 64. That condition would limit the purposes for which methyl bromide could be imported, exported or manufactured under a controlled substances licence to these purposes (as well as for use as a feedstock, for export of methyl bromide only), as set out in the licence.

345. New subsection 18(10) would provide that, for the purposes of the Act, methyl bromide is used for *critical uses*, for an *emergency use* or for *laboratory and analytical uses*, if the use is:

- exempt from a provision of the Montreal Protocol, under any decision made by the Parties to the Montreal Protocol that applies to Australia, on account of being critical uses, an emergency use or laboratory or analytical uses (as the case requires); and
- in compliance with the conditions of any such decision.

346. Under the Montreal Protocol, non-QPS (non-quarantine and pre-shipment) uses of methyl bromide were phased out from 1 January 2005, except where critical use exemptions are agreed by Parties to the Montreal Protocol or where an emergency use is allowed by the Minister and subsequently reported to the Montreal Protocol.

347. As such, under the Montreal Protocol, critical uses of methyl bromide are agreed by the Montreal Protocol parties. Individual party's specific allocation of methyl bromide for specific critical uses are negotiated and decided by parties on a year by year basis. The definition of critical uses would align with the concept of non-QPS uses of methyl bromide under the *Ozone Protection and Synthetic Greenhouse Gas Management Regulations 1995* (the Regulations); a person who wants to use methyl bromide for a non-QPS use must apply under the Regulations for a non-QPS permit for a specified calendar

year and must nominate their supplier of methyl bromide. This application is generally required to be made at least 18 months before the start of the calendar year for which the person intends to use the methyl bromide. This is because the process of deciding whether to grant the permit involves the Minister consulting with the Montreal Protocol parties and having regard to any advice provided by the parties.

348. The note following subsection 18(10) explains that under the Montreal Protocol, critical uses includes laboratory and analytical uses.
349. While laboratory and analytical uses are a type of critical use for methyl bromide under the Montreal Protocol, decisions of the Montreal Protocol Parties have resulted in such uses having a standing exemption from provisions of the Protocol. They are not subject to the yearly allocation process for each party that applies to other critical uses.
350. Under the Montreal Protocol, an emergency use of methyl bromide covers the situation where it is not practical to seek (and have Montreal Protocol Parties agree) a critical use – for instance, emergency fumigation to combat a pest/disease event not covered by a QPS use. The Montreal Protocol requires Parties to report after the fact any emergency uses the Party has approved; but does not require agreement from the Montreal Protocol Parties before the approval has been given.
351. These definitions make it clear that the terms take their meaning from the context of the Montreal Protocol and the decisions made by its parties.
352. New subsection 18(11) would provide that methyl bromide is used for a *QPS use* if it is applied by, or with the authorisation of, a Commonwealth, State or Territory authority to prevent the introduction, establishment or spread of a pest or disease in Australia, a State or a Territory, or if it is applied to a commodity, before it is exported, to meet the requirements of the importing country or a law of the Commonwealth. This definition would align with the definition of QPS use in the Regulations; under the Regulations, a person can use or supply methyl bromide for a QPS use without needing a permit.
353. The note following the definition of *QPS use* would explain that QPS use is short for quarantine and pre-shipment use.
354. The amendments to the Act made by this item and item 64 would thereby formalise the link between the permitted uses of methyl bromide in Australia in the Regulations, and the import into, manufacture of, and export from, Australia of methyl bromide.

Item 71

355. Subsection 19(2) of the Act deals with when certain types of licences stop being in force.
356. Item 71 would amend subsection 19(2) to omit “controlled substances licence, an essential uses licence or a used substances licence” and substitute “licence, other than an equipment licence”.

357. This would ensure that all types of licence types (including the new types introduced by this Bill) except for equipment licences would be covered by subsection 19(2). Equipment licences would continue to be dealt with by subsection 19(3).

Item 72

358. Item 72 would insert a new note at the end of existing section 19. The new note would explain that a licence does not stop being in force only because it is suspended and reference new subsection 19D(4) (see item 84).

Item 73

359. Section 19AA of the Act deals with applications to renew a licence.

360. Subsection 19AA(1) allows the holder of a licence to apply to the Minister for a renewal of the licence.

361. Item 73 would amend existing subsection 19AA(1) to insert the words ‘subject to subsection 4’ at the end of the subsection. This would be a consequential amendment to the amendment proposed by item 75.

Item 74

362. Item 74 would amend paragraph 19AA(3)(b) to insert ‘if any’ after ‘prescribed by the regulations’.

363. This amendment would remove any doubt that a licence renewal application can still be considered complete (and able to be assessed) if there is no application fee prescribed for renewing the licence.

Item 75

364. Item 75 would amend existing subsection 19AA of the Act to insert a new subsection 19AA(4).

365. New subsection 19AA(4) would make it clear that the holder of a suspended licence is not able to apply to the Minister to renew the suspended licence or any other licence held by the person under the Act.

366. This amendment reflects the fact that it is not considered appropriate for a person whose licence has been suspended (due to non-compliance) to be able to renew that licence or any other licence during the period of the suspension. It is also intended to create a further incentive for the holder of a suspended licence to perform the required actions to have the suspension of their licence revoked.

367. Once the holder of the licence is back in compliance with the Act and their suspension has been revoked, they would be able to apply to the Minister under section 19AA to renew the licence (or any other licence). If the period in which a renewal application may

be made has passed and their existing licence is due to expire, they would be able to apply for a new licence under section 14.

Item 76

368. Item 76 would update subsections 19AC(2) and (3) of the Act to refer to subsections 16(3A) to 16(6A) instead of 16(3A) to 16(6B).

369. This item would be consequential to amendments made by item 61 which would repeal subsections 16(5), 16(6), 16(6A) and 16(6B) and replace with new subsections 16(5), 16(6) and 16(6A).

Item 77

370. Section 19AD deals with the deemed refusal of an application to renew a licence.

371. Under subsection 19AD(1) of the Act, if, at the end of 60 days after an application to renew a licence is made, the Minister has not made a decision whether to renew the licence, and has not requested further information from the applicant under section 19AB of the Act, the Minister is taken to have refused to renew the licence.

372. Subsection 19AD(2) has the effect that, where the Minister has requested further information from an applicant under section 19AB of the Act, the Minister is taken to have refused to renew the licence if they have not made a decision on the application at the end of 60 days after the further information is provided.

373. Item 77 would amend existing subsections 19AD(1) and (2) to remove the words ‘for the purpose of section 19AE and 66, to have refused the application’ and substitute ‘to have refused the application under section 19AC’. This amendment would be a technical amendment that corrects a typographical error, and also recognises that the deemed refusal is for the purposes of the Act as a whole, not just existing section 66 (concerning internal review). There would be no change to the effect of these provisions.

Item 78

374. Section 19A of the Act deals with the termination of licences.

375. Subsection 19A(1) provides that the Minister may, by written notice given to a licensee, terminate all licences of the kind specified in the notice that are held by the licensee. Under subsection 19A(2), the Minister can only exercise this power if satisfied that it is necessary to do so for the purposes of giving effect to an adjustment or amendment of the Montreal Protocol, the Framework Convention on Climate Change, or the Kyoto Protocol.

376. Item 78 would amend existing subsection 19A(1) to clarify that the reference to ‘all licences’ in this subsection includes a suspended licence.

Item 79

377. Section 19A of the Act allows the Minister to terminate a licence held by a licensee by written notice. However, the Minister must not terminate a licence unless satisfied that it is necessary to do so for the purpose of giving effect to an adjustment or amendment of the international agreements listed in subsection 19A(2).
378. Item 79 would amend subsection 19A(2) by inserting a new paragraph 19A(2)(d) to include the Paris Agreement. This inclusion is appropriate as item 1 would include Australia's international obligations under the Paris Agreement as one of the international agreements that the Act seeks to give effect to.

Item 80

379. Section 19B of the Act deals with the transfer of licences.
380. Subsection 19B(1) provides that the Minister may transfer a licence from the licensee to another person (the transferee) on a joint application by the licensee and the transferee.
381. Item 80 would amend subsection 19B(1) to clarify that the reference to a licence in this subsection does not include a suspended licence. This would mean a licence that is suspended is not able to be transferred to a different person.

Item 81

382. Under subsection 19B(4) of the Act, the Minister can only exercise the power to transfer a licence if satisfied that the transferee is a fit and proper person to be granted a licence.
383. Item 81 would insert a note following subsection 19B(4) explaining that the mandatory fit and proper person considerations are set out in section 13B.

Item 82

384. Item 82 would repeal existing subsection 19B(5) of the Act. Existing subsection 19B(5) sets out the matters the Minister must consider when deciding whether the transferee is a fit and proper person to hold a licence. This would now be covered by the new fit and proper person test in new section 13B (see amendments made by item 54).

Item 83

385. Section 19C of the Act deals with the amendment of a licence at the request of the licensee.
386. Subsection 19C(1) provides that the Minister may amend a licence at the written request of the licensee. Under subsection 19C(2), the amendment cannot be to a condition of the licence.
387. Item 83 would amend existing subsection 19C(1) of the Act to clarify that the reference to a licence in this subsection includes a reference to a suspended licence. This

means that the Minister would be able to amend a suspended licence (other than in relation to a condition of that licence) at the written request of the licensee.

Item 84

388. Item 84 would insert new section 19D into the Act to allow the Minister to suspend a licence. This amendment would provide the Minister with additional power to take action in the event of minor breaches, or where it is felt that the licensee may be able to return to compliance, rather than the more serious action of cancelling a licence. A suspension may be for a fixed period, or until the licensee takes certain action to bring them back into compliance.

389. New subsection 19D(1) would allow the Minister to suspend a licence if satisfied that any of the following grounds exists:

- the licensee is no longer a fit and proper person to hold a licence;
- the licensee has contravened a condition of the licence;
- the licensee is uncontactable.

390. The note following subsection 19D(1) would refer readers to new section 13B for the mandatory fit and proper person considerations.

391. New subsection 19D(2) would clarify that a licensee is uncontactable if, and only if, the Minister has made 2 or more reasonable attempts to contact the licensee during a period of 6 months ending immediately before the decision to suspend the licence, but has not be able to contact the licensee.

392. New subsection 19D(3) would require the Minister to give the licensee written notice of the suspension. The suspension notice must specify the reasons for the suspension, the day the suspension takes effect, and either or both of the actions the licensee must take for the suspension to end or a fixed period for the suspension.

393. New subsection 19D(4) would provide that while suspended, a licence does not allow the licensee to carry out any activity that the licence would otherwise allow. However, the licence remains in force despite the suspension. This would have the effect that obligations required under the licence, such as reporting and record keeping requirements and levy payments, would still apply.

394. New subsection 19D(5) would provide that if the suspension notice specifies actions the licensee must take for the suspension to end, the Minister must give written notice to the licensee when satisfied that the licensee has taken the specified actions. This is intended to ensure the licensee has certainty concerning the status of their licence and when their suspension ends.

395. New subsection 19D(6) would set out when a suspension ends:

- if the Minister's decision is that the licence is suspended until the licensee has taken specified actions – the suspension of the licence ends at the start of the day the Minister gives the licensee the notice under subsection 19D(5) (stating they are satisfied the licensee has taken the specified actions);
- if the Minister's decision is that the licence is suspended for a fixed term – the suspension of the licence ends immediately following the end of that fixed term;
- if the Minister's decision is that the licence is suspended both for a fixed period and until the licensee has taken specified actions – the suspension of the licence ends on the later of the end of the fixed term or the start of the day the Minister gives the licensee notice under subsection 19D(5) stating that they are satisfied the licensee has taken the specified actions.

396. New subsection 19D(7) would allow the Minister to vary or revoke a suspension notice if the Minister considers it appropriate to do so. The variation or revocation must be made by written notice to the licensee.

Item 85

397. Section 20 of the Act deals with the cancellation of a licence.

398. Under subsection 20(1) of the Act, the Minister may cancel a licence if satisfied that the licensee is no longer a fit and proper person to hold a licence, or has contravened a condition of the licence.

399. Item 85 would amend existing subsection 20(1) of the Act to clarify that the reference to a licence in this subsection includes a reference to a suspended licence. This would ensure that the fact that a licence is suspended would not prevent it being cancelled if the Minister considers that the criteria in subsection 20(1) is met. Licence cancellation may be necessary where a licence is already suspended if, for example, a licensee does not take the appropriate required actions to fix the issues that caused the suspension, or if new information comes to light that would cause the Minister to be satisfied that cancellation is warranted.

Item 86

400. Item 86 would amend existing section 20 of the Act to insert a new note after subsection 20(1). The note would explain that the mandatory fit and proper person considerations are set out in section 13B.

Item 87

401. Item 87 would repeal subsections 20(2) and 20(3) of the Act.

402. Existing subsections 20(2) and 20(3) set out the matters to which the Minister must have regard when deciding whether a licensee is no longer a fit and proper person to hold a licence (in the context of a decision whether to cancel the licence under subsection

20(1). This would now be covered by the new fit and proper person test in new section 13B (see amendments made by item 54). Accordingly, subsections 20(2) and 20(3) of the Act would now be redundant.

Item 88

403. Section 21 of the Act deals with the surrender of licences.

404. Subsection 21(1) provide that a licensee may, at any time, surrender a licence by giving the Minister written notice that the licence is surrendered.

405. Item 88 would amend existing subsection 21(1) of the Act to clarify that the reference to licence in this subsection would include a suspended licence. This means the holder of a suspended licence would be able to surrender that licence to the Minister.

406. It would not be necessary for the person to first take the actions required by suspension notice before they can surrender the licence. This is because the purpose of introducing a suspension of the licence is to encourage non-compliant licence holders to fix whatever the problem is so that they can continue to carry out the activities covered by their licence (for example, importing scheduled substances or equipment), rather than going down the more serious route of licence cancellation. A person who wants to surrender their licence obviously does not want to continue to carry out these activities, so it is appropriate that they are able to surrender their licence at the earliest opportunity.

407. A person who surrenders a licence to the Minister would still be required to comply with the other obligations they incurred under the Act during the period they held the licence – for example, reporting and levy obligations from the relevant period.

Item 89

408. Item 89 would amend paragraph 22(a) to add the word “and” to the end of that paragraph. This would be an editorial amendment to clarify that regulations may make provision for the periodic publication of details of all of the matters outlined in the paragraphs of that section.

Item 90

409. Section 22 of the Act allows the regulations to make provision for the periodic publication of details of licences granted, applications for licences refused and licences cancelled or surrendered.

410. Item 90 would amend existing section 22(c) of the Act to add a reference to licences that are suspended. This would mean the regulations would be able to provide for the publication of details of licences that have been suspended.

411. It is intended that publishing these matters would act as a deterrent to contravention and therefore assist with ensuring the integrity of the regulatory regime. While it is acknowledged that the amendment made by this item would authorise the Minister to publish personal information:

- it is expected that most persons whose name would be published will be body corporates, for which the *Privacy Act 1988* (Privacy Act) does not apply;
- to the extent that any information published under this provision constitutes personal information under the Privacy Act, the deterrent effect of publishing the information, and the need to ensure the integrity of the regulatory regime, outweighs the potential adverse consequences to the individuals concerned; and
- the regulations would be able to set further limits on the publication of such information, including not allowing publication if, in the particular circumstances, the potential adverse consequences of publishing the information outweigh the intended deterrence effect.

Item 91

412. Subsection 25A(1) of the Act substantively defines the term *regulated HCFC activity*. This is an important concept in the Act as the amount of HCFCs involved in regulated HCFC activities engaged in by a licensee in a quota period is used to work out the licensee's HCFC quota allocation for the next quota period.

413. Item 91 would amend subsection 25A(1) to clarify that *regulated HCFC activity* only includes the manufacture or import of HCFCs under a controlled substances licence. This would have the effect of ensuring that where HCFC that is imported or manufactured for use as a feedstock or under an essential uses licence, or is imported under a used substances licence, it is exempt from the HCFC quota requirements under Part IV of the Act.

Item 92

414. Section 34 of the Act deals with when HCFC quotas cease. A quota allocated to a licensee stops being in force when the licensee's licence is cancelled, or stops being in force for any other reason.

415. Item 92 would amend existing section 34 of the Act to insert a new note following the section. The new note would explain that under new subsection 19D(4), a licence does not stop being in force just because it is suspended. Rather, a suspended licence would remain in force but would not allow the relevant activities covered by the licence (such as importing HCFCs) to be carried out during the period of suspension. However, since the licence would remain in force during that period, any quota attached to the licence would also remain in force during the period.

Item 93

416. Section 35 of the Act deals with the transfer of HCFC quota.

417. Subsection 35(2) allows a licensee to transfer their unused HCFC quota for a quota period to another licensee without transferring the licence itself. Subsection 35(2A) clarifies that the transfer may be of the whole of their unused HCFC quota for the quota

period, a particular percentage of their unused quota for the quota period, or the remainder of their unused quota for the quota period after keeping a particular percentage.

418. Item 93 would amend existing subsections 35(2) and 35(2A) to clarify that the reference to a licence in these subsections includes a reference to a suspended licence. This means a person whose licence is suspended may decide to transfer their unused HCFC quota (or a portion of their unused HCFC quota) for that quota period to another licensee.

Item 94

419. Section 35A of the Act allows the Minister to, by written notice to a licensee, direct the licensee to export a specified quantity of HCFCs by a specified time if they have imported or manufactured the HCFC without sufficient HCFC quota (or reserve HCFC quota) to cover the amount. Under section 18 of the Act, it is a condition of the person's licence that they comply with any direction given by the Minister under section 35A.

420. Item 94 would amend existing subsection 35A(1) to clarify that a reference to a licensee in that subsection includes a reference to a licensee of a suspended licence. This means that the Minister could give a direction to export excess HCFCs to a licensee even if their licence is suspended. The licensee would be required to comply with the direction under their licence conditions, and would not be committing an offence or breach of a civil penalty provision for exporting the HCFC with a suspended licence, provided that they do so in accordance with the direction (see item 67).

Item 95

421. Item 95 would amend existing section 35A of the Act to insert new subsection 35A(1A). New subsection 35A(1A) would allow the Minister to, by written notice, extend the timeframe within which the licensee must comply with the direction given under subsection 35A(1) to export a specified quantity of HCFCs.

422. The purpose of this amendment is to provide sufficient flexibility to cover situations where the export cannot be completed by the original deadline for reasons out of the licensee's control, or where the decision to give the original direction is being internally or externally reviewed on the merits and the review has not yet been completed.

Item 96

423. Section 36B of the Act sets out what is a *regulated HFC activity*. This is an important concept in the context of the HFC phase-down implemented by the Act and regulations, as a person can only engage in a regulated HFC activity if they both hold a licence that allows the activity, and hold sufficient HFC quota (or reserve HFC quota) for the relevant quota allocation period to cover the activity (see item 4 of the table in subsection 18(1) of the Act).

424. Item 96 would repeal existing subsection 36B(1) and substitute a new subsection 36B(1). New subsection 36B(1) would provide that a *regulated HFC activity* is the manufacture or import of HFCs under an SGG licence. An SGG licence is a controlled

substances licence that relates to SGGs (see definition of *SGG licence* in section 7 of the Act).

425. The amendment made by this item is necessary to remove the term recycled or used substance (which would no longer be used in the Act) and to clarify and simplify the drafting. There would be no substantive change to the definition of *regulated HFC activity*.
426. The first note following new subsection 36B(1) would explain that a licence is not required for the manufacture or import of HFCs and other SGGs in certain circumstances, or for certain purposes, prescribed by the regulations, and would refer the reader to new subsections 13(2) and 13AA(2) of the Act.
427. The second note following new subsection 36B(1) would explain that Part VIA of the Act (dealing with HFC quotas) does not apply to the import or export of HFCs for ship stores, in accordance with new section 12B of the Act.

Item 97

428. Section 36E of the Act deals with when HFC quotas cease. A HFC quota allocated to a licensee stops being in force when the licensee's licence is cancelled, or stops being in force for any other reason.
429. Item 97 would amend existing section 36E of the Act to insert a new note following the section. The new note would explain that under new subsection 19D(4), an SGG licence does not stop being in force just because it is suspended. Rather, a suspended SGG licence remains in force but does not allow the relevant activities covered by the licence (such as importing HFCs) to be carried out during the period of suspension. However, since the licence remains in force during that period, any quota attached to the licence also remains in force during the period.

Item 98

430. Section 36F of the Act deals with the transfer of HFC quota.
431. Subsection 36F(2) allows an SGG licensee to transfer their unused HFC quota for a particular calendar year to another SGG licensee without transferring the licence itself. Subsection 36F(3) clarifies that the transfer may be of the whole of their unused HFC quota for the calendar year, a particular percentage of their unused quota for the calendar year, or the remainder of their unused quota for the calendar year after keeping a particular percentage.
432. Item 98 would amend existing subsections 36F(2) and 36F(3) of the Act to clarify that the reference to an SGG licence in these subsections includes a reference to a suspended SGG licence. This would mean a person whose SGG licence is suspended may decide to transfer their unused HFC quota (or a portion of their unused HFC quota) for that calendar year to another licensee.

Item 99

433. Section 36H of the Act allows the Minister to, by written notice to an SGG licensee, direct the licensee to export a specified quantity of HFCs by a specified time if they have imported or manufactured the HFC without sufficient HFC quota (or reserve HFC quota) to cover the amount. Under section 18 of the Act, it is a condition of the person's SGG licence that they comply with any direction given by the Minister under section 36H.
434. Item 99 would amend existing subsection 36H(1) of the Act to clarify that a reference to an SGG licensee in that subsection includes a reference to an SGG licensee of a suspended licence. This would mean the Minister could give a direction to export excess HFCs to an SGG licensee even if their SGG licence is suspended. The SGG licensee would be required to comply with the direction under their licence conditions, and would not be committing an offence or breach of a civil penalty provision for exporting the HFC with a suspended licence, provided that they do so in accordance with the direction (see item 67).

Item 100

435. Item 100 would amend the first note following subsection 36H(1) to remove the number 1, as it would now be the sole note after this provision. There would be no substantive change to the note.

Item 101

436. Item 101 would repeal note 2 following subsection 36H(1). This note would no longer be necessary due to amendments being made by item 52.

Item 102

437. Item 102 would amend existing section 36H of the Act to insert new subsection 36H(1A). New subsection 36H(1A) would allow the Minister to, by written notice, extend the timeframe within which the SGG licensee must comply with the direction given under subsection 36H(1) to export a specified quantity of HFCs.
438. The purpose of this amendment is to provide sufficient flexibility to cover situations where the export cannot be completed by the original deadline for reasons out of the licensee's control, or where the decision to give the original direction is being internally or externally reviewed on the merits and the review has not yet been completed.

Item 103

439. Item 103 would repeal existing Part VI of the Act (sections 41, 44 and 45).
440. Existing Part VI of the Act deals with the control of importation of equipment containing, or manufactured with, scheduled substances from non-parties.
441. Existing section 41 requires the Minister to maintain a publicly available Register of Montreal Protocol Countries, listing each country that is to be treated as a Montreal Protocol country for the purpose of Part VI and, for each such country, the substance or

substances for which it is to be treated as a Montreal Protocol country for the purposes of Part VI.

442. Existing section 44 prohibits a person from importing equipment containing certain a stage-1 substance from a non-Montreal protocol party (see subsections 44(1) and 44(2A)). However, this prohibition only applies to equipment declared, in writing, by the Minister to be equipment to which subsections 44(1) and 44(2A) apply, being equipment listed in the annex referred to in paragraph 3 of Article 4 of the Montreal Protocol (see subsection 44(3)). Section 44 also prohibits a person from importing equipment containing a stage-2 scheduled substance from a non-Montreal protocol party (see subsection 44(5) and 44(5B)). This prohibition only applies to equipment declared, in writing, by the Minister to be equipment to which subsections 44(5) and 44(5B) apply, being equipment listed in the annex referred to in paragraph 3 bis of Article 4 of the Montreal Protocol (see subsection (6)).
443. Existing section 45 prohibits a person from importing equipment in the manufacture of which a stage-1 scheduled substance was used from a non-Montreal protocol party (see subsections 45(1) and 45(2A)). However, this prohibition only applies to equipment declared, in writing, by the Minister to be equipment to which subsections 45(1) and 45(2A) apply, being equipment listed in the annex referred to in paragraph 4 of Article 4 of the Montreal Protocol (see subsection 45(3)). Section 45 also prohibits a person from importing equipment in the manufacture of which a stage-2 scheduled substance was used from a non-Montreal protocol party (see subsection 45(3A) and 45(3AB)). This prohibition only applies to equipment declared, in writing, by the Minister to be equipment to which subsections 45(3A) and 45(3AB) apply, being equipment listed in the annex referred to in paragraph 4 bis of Article 4 of the Montreal Protocol.
444. There are no longer any countries that are not party to the Montreal Protocol. In addition:
- the proposed amendments in item 52 would have the effect of expanding the prohibition on importing equipment without a licence to cover all equipment containing a scheduled substance (other than for certain limited exceptions). The Minister must have regard to Australia's international obligations when deciding whether or not to grant a licence (see section 16(3A)). In addition, under section 18 of the Act conditions may be imposed on a licence. Accordingly, these mechanisms would be available to prevent the import of equipment containing the relevant scheduled substances from a non-Montreal Protocol party, should such a party exist sometime in the future (because there is a new country or an existing country leaves the Protocol); and
 - no Annex referred to in paragraph 4 of Article 4 of the Montreal Protocol has ever been made. Accordingly, Australia does not have any international obligations in respect of the import of equipment that was manufactured using any of the listed scheduled substances from non-Montreal Protocol countries; and

- the categorisation of scheduled substances into stage-1 and stage-2 substances is outdated and no longer consistent with Australia’s obligations under the Montreal Protocol. This categorisation would be removed by this Schedule to the Bill.

445. For these reasons, sections 41, 44 and 45 of the Act are now redundant and can be repealed.

Item 104

446. Item 104 would insert new section 45AA into the Act. New section 45AA would provide a simplified outline to the Part VIA of the Act (Controls on disposal, use etc of scheduled substances). The outline is not intended to be comprehensive and has been included to assist readers to understand the substantive provisions of the Part. It is intended that readers will rely on the substantive provisions of the Part.

Item 105

447. Section 45A of the Act allows the regulations to make provision for matters outlined in subsection 45A(1) concerning the end use of scheduled substances.

448. Item 105 would repeal paragraph 45A(1)(a) and substitute it with a new paragraph 45A(1)(a). New paragraph 45(1)(a) would allow the regulations to make provision for prohibiting or regulating the distribution, purchase, acquisition or disposal of scheduled substances.

449. The purpose of this amendment is to improve the clarity of the provision and adopt modern drafting practice. It would also clarify that regulations may prohibit absolutely, in addition to regulating, certain matters relating to the end use of scheduled substances.

Item 106

450. Item 106 would amend paragraph 45(1)(b) to insert “prohibiting or” before the word “regulating”. This would remove any doubt that the regulations can make provision for prohibiting absolutely, in addition to regulating, the storage, use or handling of scheduled substances (other than a use prohibited by section 45C).

Item 107

451. Item 107 would amend existing subsection 45A(1) to insert a new paragraph 45A(1)(ba).

452. New paragraph 45A(1)(ba) would allow the regulations to make provision for prohibiting or regulating the recovery, recycling or destruction of scheduled substances. This would allow the regulations to include, for example, a mechanism for the Minister to approve arrangements for the recovery, recycling or destruction of scheduled substances and ensure scheduled substances are disposed of in an environmentally sound manner when they reach their end-of-life.

Item 108

453. Item 108 would insert a reference to new paragraph 45A(1)(ba) into existing paragraph 45A(1)(d). This item would be consequential to the amendment made by item 107.

Item 109

454. Item 109 would insert a reference to new paragraph 45A(1)(ba) into existing paragraph 45A(1)(e). This item would be consequential to the amendment made by item 107.

Item 110

455. Section 45A of the Act is a regulation-making power. It allows the regulations to make provision for various matters relating to the end use of scheduled substances. In particular, paragraph 45A(1)(a) allows the regulations to make provision for regulating the sale and purchase, or any other acquisition or disposal of scheduled substances, while paragraph 45A(1)(b) allows the regulations to make provision for regulating the storage, use or handling of scheduled substances (other than a use of HCFCs that is prohibited under section 45C). Subsection 45A(2) provides that, for the avoidance of doubt, the regulations may make provision for regulating something by providing that it must not be done unless specified conditions are met.

456. Item 110 would amend existing section 45A of the Act to insert new subsections 45A(3), 45A(4) and 45A(5).

457. Regulations made for the purposes of paragraphs 45A(1)(a) and (b) of the Act currently prescribe permitting requirements for the possession, use, handling, storage, supply and disposal of certain scheduled substances.

458. New subsection 45A(3) would provide that the regulations may make provision for regulating something by providing for it, or anything relating to it, to be determined by the Minister, including by legislative instrument.

459. In order to be eligible for a permit (such as a handling licence) a person must meet specific qualifications. These qualifications are listed in the regulations and reflect the relevant (subject-matter specific) certificates granted by a registered training organisation (within the meaning of the *National Vocational Education and Training Regulator Act 2011*). Once a permit is granted, the relevant permit holder must comply (as a condition of their permit) with the standards that are listed in the regulations. These standards are subject-matter specific and reflect appropriate industry practice in Australia in relation to (for example) the use, handling or storage of the relevant scheduled substance. Most of the listed standards are official Australia and New Zealand standards.

460. Both the listed qualifications and standards are updated or replaced to account for developments and changes in technology and best practice. There have been instances where the regulations have not been able to keep up with the changes in qualifications or standards, which has result in end use permit holders or applicants being required to

comply with qualifications or standards that do not reflect best practice in Australia. This could result in unintentional harm to the environment.

461. The purpose of this amendment is to allow the Minister to decide to list relevant qualifications or standards that must be met by permit applicants or holders in a legislative instrument where it is considered appropriate, rather than regulations. This would allow these lists to be more easily updated to add new standards, so as to ensure that end use permit holders and applicants are at all times required to comply with the most up to date and appropriate qualifications and standards for the substance they are using. The legislative instrument would be subject to ordinary Parliamentary scrutiny processes, including disallowance and sunseting.

462. New subsection 45A(4) would override subsection 14(2) of the *Legislation Act 2003* to allow regulations made for the purposes of subsection 45A(1) to make provision in relation to a matter by applying, adopting or incorporating any matter contained in an instrument or other writing as in force or existing from time to time.

463. The purpose of this amendment is to allow the regulations concerning the end use of scheduled substances to incorporate documents (such as standards or qualifications) as existing from time to time. This is appropriate as such documents are regularly updated and amended, and it is important that end use permit holders and applicants are at all times required to comply with the most up to date and appropriate qualifications and standards for the substance they are using. It is anticipated that this power would be used where the relevant standards or qualifications remain in regulations and are updated on a regular basis (rather than in a legislative instrument under new subsection 45A(3), which is expected to be used to add new standards or qualifications quickly as needed).

464. New subsection 45A(5) would make it clear that regulations made for the purposes of section 45A must be consistent with Australia's international obligations.

Item 111

465. Sections 45B and 45C of the Act contain offences relating to, respectively, the discharge of scheduled substances and the use of HCFCS.

466. Item 111 would repeal existing sections 45B and 45C and substitute new sections 45B and 45C. The purpose of this amendment would be to update the drafting of the prohibitions in sections 45B and 45C to clarify when they apply, adopt a modern drafting style, and provide for an escalating range of sanctions by including a fault-based offence, a strict liability offence and a civil penalty provision.

Section 45B – Discharge of scheduled substances

467. New subsection 45B(1) would prohibit a person from engaging in conduct that results in the discharge of a scheduled substance in circumstances where it is likely that the scheduled substance will enter the atmosphere, and the discharge is not in accordance with the regulations.

468. New subsection 45B(2) would provide that the prohibition in subsection 45B(1) would not apply if the discharge occurs as a result of using equipment, that contains a scheduled substance, for the purpose for which the equipment was designed. New subsection 45B(3) would clarify the use of a halon fire extinguisher during, or in connection with, a training exercise is taken not to be a use of the extinguisher for the purpose for which it was designed.
469. The note after new subsection 45B(2) would explain that the defendant bears an evidential burden in relation to showing that their discharge occurs as a result of using equipment, that contains a scheduled substance, for the purpose for which the equipment was designed. This is because section 13.3 of Schedule 1 to the Criminal Code and section 96 of the Regulatory Powers Act provide that if a defendant wishes to rely on an exception to, respectively, an offence or a civil penalty provision, the defendant bears an evidential burden of proof in relation to that matter. This is appropriate on the basis that knowledge of that matter would be peculiar to that person. Consistent with this, it is appropriate to reverse the evidential burden of proof in this matter, as the purpose for which a person discharged a scheduled substance is generally a matter that is peculiarly within the knowledge of that person.
470. New subsection 45B(4) would have the effect that a person who contravenes the prohibition in subsection 45B(1) would be committing a fault-based offence. The maximum penalty for the offence would be 300 penalty units. A body corporate would be liable for five times this amount as a maximum penalty (see subsection 4B(3) of the Crimes Act).
471. The note following new subsection 45B(4) would explain that the physical elements of the offence are set out in subsection 45B(1).
472. New subsection 45B(5) would have the effect that a person who contravenes the prohibition in subsection 45B(1) would also be committing an offence of strict liability with a maximum penalty of 60 penalty units.
473. Strict liability is proposed for this offence having regard to the Commonwealth Guide to Framing Offences and the Scrutiny of Bills Committee 6th Report. Consistent with these documents, strict liability is appropriate as:
- the offence is not punishable by imprisonment;
 - the offence is subject to a maximum penalty of 60 penalty units for an individual;
 - the actions which trigger the offence are simple, readily understood and easily defended. The offence is triggered if a person discharges a scheduled substance other than in accordance with the regulations;
 - offences relating to the discharge of scheduled substances need to be dealt with efficiently to ensure industry and community confidence in the regulatory regime;

- the offence would be subject to an infringement notice (see new section 63, as inserted by item 138);
- the absence of strict liability may adversely affect the capacity to prosecute offenders. Whether or not a defendant intentionally, recklessly or negligently discharged a scheduled substance other than in accordance with the regulations is generally a matter that is peculiarly within the knowledge of the defendant alone. Proving the contrary beyond reasonable doubt may require significant and difficult to obtain indirect and circumstantial evidence;
- controlling the discharge of scheduled substances is a necessary part of ensuring that the Act remains an effective and efficient mechanism to both implement Australia's obligations under the Montreal Protocol and to realise its intended environmental benefits. As such, discharging a scheduled substance in circumstances other than those set out in the regulations may result in significant environmental harm and could damage Australia's international relations;
- the person affected will be placed on notice to guard against the possibility of contravention, which is likely to significantly enhance the effectiveness of the enforcement regime in deterring the conduct in question.

474. The defence of honest and reasonable mistake of fact is available for strict liability offences (see sections 6.1 and 9.2 of Schedule 1 to the Criminal Code) and the existence of strict liability does not make any other defence unavailable (see subsection 6.1(3) of Schedule 1 to the Criminal Code).

475. New subsection 45B(6) would have the effect of establishing a mirror civil penalty provision which is contravened in circumstances where a person breaches the prohibition in subsection 45B(1). The maximum penalty would be 400 penalty units. A body corporate would be liable for five times this amount as a maximum penalty (see subsection 82(5) of the Regulatory Powers Act).

476. The combination of fault-based offence, strict liability offence and civil penalty provision would provide an adequate deterrent from a person engaging in uncontrolled discharge of scheduled substances, which has the potential to cause significant harm. It is also appropriate to include both civil and criminal penalties in order to provide flexibility for the Commonwealth to enforce the prohibition appropriately without always needing to pursue criminal penalties (noting that conviction for a criminal offence carries with it a range of consequences beyond the immediate penalty). It is expected criminal proceedings would be brought for conduct that contravenes subsection 45B(1) and is at the more serious end of the spectrum or that involves a higher degree of malfeasance.

477. The size of the maximum penalty for both the fault-based offence and the civil penalty provision is appropriate as a deterrent. It reflects the seriousness of discharging a scheduled substance in circumstances other than those set out in the regulations, which

could in turn result in serious harm to human and environmental health. Such conduct may undermine the integrity of the regulatory framework provided for by the Act. This conduct may also result in the breach of Australia's obligations under the Montreal Protocol which could damage Australia's international relations.

478. The maximum civil penalty of 400 penalty units is higher than the maximum penalty available for the criminal offence. This is intended to ensure that it will act as a deterrent, particularly for body corporates, and also recognises that being found liable to pay a civil penalty does not attract imprisonment or a criminal conviction.

Section 45C – Use of HCFC

479. New subsection 45C(1) would prohibit a person from using a HCFC that was manufactured or imported on or before 1 January 2020 other than for a use prescribed by the regulations. This is consistent with Australia's obligations under the Montreal Protocol to phase out HCFCs except for particular purposes considered exempt or essential.

480. New subsection 45C(2) would have the effect that a person who contravenes the prohibition in subsection 45C(1) would be committing a fault-based offence. The maximum penalty for the offence would be 300 penalty units. A body corporate would be liable for five times this amount as a maximum penalty (see subsection 4B(3) of the Crimes Act).

481. The note following new subsection 45C(2) would explain that the physical elements of the offence are set out in subsection 45C(1).

482. New subsection 45C(3) would have the effect that a person who contravenes the prohibition in subsection 45C(1) would also be committing an offence of strict liability with a maximum penalty of 60 penalty units.

483. Strict liability is proposed for this offence having regard to the Commonwealth Guide to Framing Offences and the Scrutiny of Bills Committee 6th Report. Consistent with these documents, strict liability is appropriate as:

- the offence is not punishable by imprisonment;
- the offence is subject to a maximum penalty of 60 penalty units for an individual;
- the actions which trigger the offence are simple, readily understood and easily defended. The offence is triggered if a person uses a HCFC that was imported or manufactured before 1 January 2020 for a purpose that is not prescribed in the regulations;
- offences relating to the unauthorised use of HCFCs need to be dealt with efficiently to ensure industry and community confidence in the regulatory regime;

- the offence would be subject to an infringement notice (see new section 63, as inserted by item 138);
- the absence of strict liability may adversely affect the capacity to prosecute offenders. Whether or not a defendant intentionally, recklessly or negligently uses a HCFC that was imported or manufactured before 1 January 2020 for a purpose that is not prescribed in the regulations is generally a matter that is peculiarly within the knowledge of the defendant alone. Proving the contrary beyond reasonable doubt may require significant and difficult to obtain indirect and circumstantial evidence;
- limiting uses of HCFCs to essential uses is a necessary part of ensuring that the Act remains an effective and efficient mechanism to both implement Australia's obligations under the Montreal Protocol (including its obligations to phase out HCFCs) and to realise its intended environmental benefits. As such, the unauthorised use of HCFCs may result in significant environmental harm and could damage Australia's international relations;
- the person affected will be placed on notice to guard against the possibility of contravention, which is likely to significantly enhance the effectiveness of the enforcement regime in deterring the conduct in question.

484. The defence of honest and reasonable mistake of fact is available for strict liability offences (see sections 6.1 and 9.2 of Schedule 1 to the Criminal Code) and the existence of strict liability does not make any other defence unavailable (see subsection 6.1(3) of Schedule 1 to the Criminal Code).

485. New subsection 45C(4) would have the effect of establishing a mirror civil penalty provision which is contravened in circumstances where a person breaches the prohibition in subsection 45B(1). The maximum penalty would be 400 penalty units. A body corporate would be liable for five times this amount as a maximum penalty (see subsection 82(5) of the Regulatory Powers Act).

486. The combination of fault-based offence, strict liability offence and civil penalty provision would provide an adequate deterrent from a person engaging in unauthorised uses of HCFCs, which has the potential to cause significant harm. It is also appropriate to include both civil and criminal penalties in order to provide flexibility for the Commonwealth to enforce the prohibition appropriately without always needing to pursue criminal penalties (noting that conviction for a criminal offence carries with it a range of consequences beyond the immediate penalty). It is expected criminal proceedings would be brought for conduct that contravenes subsection 45C(1) and is at the more serious end of the spectrum or that involves a higher degree of malfeasance.

487. The size of the maximum penalty for both the fault-based offence and the civil penalty provision is appropriate as a deterrent. It reflects the seriousness of using a HCFC that was imported or manufactured before 1 January 2020 for a purpose that is not

prescribed in the regulations, which could in turn result in serious harm to human and environmental health. Such conduct may undermine the integrity of the regulatory framework provided for by the Act. This conduct may also result in the breach of Australia's obligations under the Montreal Protocol which could damage Australia's international relations.

488. The maximum civil penalty of 400 penalty units is higher than the maximum penalty available for the criminal offence. This is intended to ensure that it will act as a deterrent, particularly for body corporates, and also recognises that being found liable to pay a civil penalty does not attract imprisonment or a criminal conviction.

Item 112

489. Item 112 would insert new section 46AA into the Act. New section 46AA would provide a simplified outline to the Part VII of the Act (Reports and records). The outline is not intended to be comprehensive and has been included to assist readers to understand the substantive provisions of the Part. It is intended that readers will rely on the substantive provisions of the Part.

Item 113

490. Item 113 would repeal the existing heading for section 46 of the Act and substitute a new heading that is clearer and more accurately describes the content of the section.

Item 114

491. Section 46 of the Act deals with periodic reports in relation to scheduled substances. Subsection 46(1) sets out the requirement to report for a person depending on the type of activity that person engages in during the reporting period. Failure to comply with reporting obligations is an offence and breach of a civil penalty provision (see new subsections 46(2) and 46(3), inserted by item 116).

492. Item 114 would repeal subsection 46(1) and substitute it with a new subsection 46(1). The purpose of this amendment would be to simplify reporting obligations for industry and more closely align with Australia's Montreal Protocol obligations.

493. New subsection 46(1) would require a person who carries out any of the following activities during a reporting period to give to the Minister a report in relation to the activity, in accordance with subsection 46(1A) and the regulations:

- manufacturing, importing or exporting a scheduled substance;
- manufacturing, importing or exporting equipment under an equipment licence.

494. Reporting is required for all import, export and manufacturing of scheduled substances (regardless of whether a licence is required) in order to ensure that Australia meets its reporting obligations under the Montreal Protocol in respect of these substances.

495. As the Montreal Protocol does not impose reporting obligations on Australia in respect of the import, export or manufacture of equipment, it is appropriate to only require those persons who require a licence to import, export or manufacture such equipment, for compliance purposes and, for the import of SGG equipment, to allow calculation of the relevant levy.

Item 115

496. Section 46 of the Act deals with reporting requirements. Subsection 46(1A) requires the report to be given to the Minister before the 15th day after the end of the reporting period.

497. Item 115 would amend subsection 46(1A) of the Act to change the timeframe so that a person must give the report referred to in subsection 46(1) to the Minister before the 31st day after the end of the reporting period. This would provide industry with additional time to ensure that all required reports are submitted accurately, and increase flexibility for businesses to manage their workload and cash flow, without compromising Australia's ability to comply with Montreal Protocol reporting requirements.

Item 116

498. New subsection 46(1) of the Act would require a person who has carried out certain activities during a reporting period to give the Minister a report in relation to that activity, in accordance with the regulations (see item 114). This includes the importing, manufacturing or exporting of scheduled substances (regardless of whether a licence is required) or the importing, manufacturing or exporting of ODS equipment or SGG equipment (where a licence is required). Under new subsection 46(1A), the required reports must be given to the Minister before the 31st day after the end of the reporting period (see item 115).

499. Under existing subsections 46(2) to 46(2G), failure to comply with this requirement is both a strict liability offence and the contravention of a civil penalty provision.

500. Item 116 would amend section 46 of the Act to repeal existing subsections 46(2) to 46(2G) and substitute new subsections 46(2) and 46(3). The purpose of this amendment would be to clarify and update the drafting of the offence and civil penalty provisions so that they are easier to understand and adopt a modern drafting style.

501. New subsection 46(2) would have the effect that a person who contravenes the prohibition in subsection 46(1) would be committing an offence of strict liability with a maximum penalty of 40 penalty units.

502. Strict liability is proposed for this offence having regard to the Commonwealth Guide to Framing Offences and the Scrutiny of Bills Committee 6th Report. Consistent with these documents, strict liability is appropriate as:

- the offence is not punishable by imprisonment;

- the offence is subject to a maximum penalty of 40 penalty units for an individual;
- the actions which trigger the offence are simple, readily understood and easily defended. The offence is triggered if a person fails to comply with their reporting obligations under subsection 46(1) of the Act;
- offences relating to the non-compliance with reporting requirements need to be dealt with efficiently to ensure industry and community confidence in the regulatory regime;
- the offence would be subject to an infringement notice (see new section 63, as inserted by item 138);
- the absence of strict liability may adversely affect the capacity to prosecute offenders. Whether or not a defendant intentionally, recklessly or negligently did not comply with their reporting obligations is generally a matter that is peculiarly within the knowledge of the defendant alone. Proving the contrary beyond reasonable doubt may require significant and difficult to obtain indirect and circumstantial evidence;
- consistent and accurate reporting of activities such as scheduled substances imported into, or manufactured in, Australia plays an important role in ensuring compliance with the Act and regulations (particularly in relation to importing scheduled substances without a licence, or compliance with conditions of a licence), which is a necessary part of ensuring that the Act remains an effective and efficient mechanism to both implement Australia's obligations under the Montreal Protocol and to realise its intended environmental benefits. Such reporting is also necessary to ensure that Australia can accurately report its activities to relevant international bodies as required under the Montreal Protocol. As such, failure to comply with such requirements may result in significant environmental harm and could damage Australia's international relations;
- the person affected will be placed on notice to guard against the possibility of contravention, which is likely to significantly enhance the effectiveness of the enforcement regime in deterring the conduct in question.

503. The defence of honest and reasonable mistake of fact is available for strict liability offences (see sections 6.1 and 9.2 of Schedule 1 to the Criminal Code) and the existence of strict liability does not make any other defence unavailable (see subsection 6.1(3) of Schedule 1 to the Criminal Code).

504. New subsection 46(3) would have the effect of establishing a mirror civil penalty provision which is contravened in circumstances where a person fails to comply with the requirement in subsection 46(1). The maximum penalty would be 60 penalty units. A body corporate would be liable for five times this amount as a maximum penalty (see subsection 82(5) of the Regulatory Powers Act).

Item 117

505. Subsection 48(1) of the Act provides that the regulations may make provision for record-keeping requirements for licensees in relation to the manufacture, import, export, or destruction of scheduled substances by the licensee.
506. Item 117 would amend subsection 48(1) of the Act to clarify that the reference to licensee in this subsection includes a licensee for a suspended licence. This would ensure that the record-keeping requirements in the regulations continue to apply to a person whose licence has been suspended.

Item 118

507. Section 48 of the Act deals with record-keeping requirements. Subsection 48(1) of the Act provides that the regulations may make provision as to the keeping by a licensee of records relating to the manufacture, import, export or destruction of scheduled substances by the licensee.
508. Item 118 would amend existing subsection 48(1) to remove the reference to ‘destruction’. The purpose of this amendment is to reduce duplication, as regulations made for the purposes of section 45A can already make provision for the keeping of records in relation to the destruction of a scheduled substance.

Item 119

509. Item 119 would insert a note after subsection 48(1) that would explain that a licensee may also have obligations in relation to the keeping and production of records, in relation to activities covered by section 45A, under regulations made for the purposes of that section. This includes the storage, handling, disposal, acquisition, destruction, recycling or recovery of a scheduled substance.

Triggering the Regulatory Powers Act

General outline

510. Items 120 to 138 would amend the compliance and enforcement regime of the Act by adopting the standard suite of provisions under the Regulatory Powers Act, inserting new notice to produce powers and aligning the Act with Commonwealth regulatory best practice. The new compliance and enforcement regime would consist of monitoring and investigation powers, as well as enforcement provisions through the use of civil penalties, infringement notices, enforceable undertakings and injunctions.
511. A comprehensive compliance and enforcement framework would enable Australia to more effectively manage the import, export and manufacture and end use of ozone-depleting substances and synthetic greenhouse gases, and equipment containing those substances, to ensure both that human beings and the environment are protected from the harmful effects of such substances and that Australia’s international obligations are met.

512. Triggering the standard provisions of the Regulatory Powers Act would also provide a consistent framework, streamline Commonwealth regulatory powers and increase legal certainty for industry and individuals who are subject to the Act.

513. These items would also make modifications to the operation of the Regulatory Powers Act in order to retain existing powers in the Act and to provide for a number of additional powers to ensure a robust compliance and enforcement scheme. These modifications would ensure that the regulatory powers in the Act are appropriately adapted to provide effective regulation in the context of non-compliance in relation to the import, export, manufacture and end use of ozone-depleting substances and synthetic greenhouse gases, and equipment containing those substances, consistent with Australia’s international obligations.

Comparison of provisions

514. The below table identifies the corresponding provisions of the Regulatory Powers Act for the sections of the Act that would be repealed by items 120 to 138. As set out below, existing powers in the Act would be either retained by, or aligned with, standard provisions in the Regulatory Powers Act or by modifications to standard provisions of the Regulatory Powers Act. New powers are listed as gains.

Provision	Current provision in the Act	Provision as amended by this Schedule	Applicable provision (Regulatory Powers Act)
Monitoring powers	Part VIII, Division 1		Part 2-Monitoring
Identity cards	50	Retained through modification to the operation of the Regulatory Powers Act	35
Entry and search of premises – monitoring compliance	51(1), (2)	Aligned	18
Entry of premises - production of identity card	51(3)	Aligned	25(6)
Power to search the premises and anything on the premises	51A(1)(a)	Retained	19(a)
Power to examine or observe any activity conducted on the premises	N/A	Gained	19(b)
Power to inspect, examine, take measurements, conduct tests (including by taking samples) concerning any gas or other substances on the premises	51A(1)(b)	Retained through modification to the operation of the Regulatory Powers Act	19(c)

Provision	Current provision in the Act	Provision as amended by this Schedule	Applicable provision (Regulatory Powers Act)
Power to take photographs, make video or audio recordings or make sketches of the premises or any thing on the premises	51A(1)(c)	Retained	19(d)
Power to inspect any book, record or document on the premises	51A(1)(d)	Aligned	19(e)
Power to remove, take extracts from, or make copies of, any book, record or document on the premises	51A(1)(e)	Aligned	19(f)
Power to take such equipment and materials onto premises as required for purposes of exercising powers	51A(1)(f)	Retained	19(g)
Power to operate electronic equipment	51A(2)	Aligned	20(1), (2), (3)
Power to operate electronic equipment - transfer of information	51A(3)	Retained	20(4)
Power to operate electronic equipment - no damage to equipment	51A(4)	Retained	20(5)
Power to secure a thing on the premises	51A(5), (6)	Aligned	22(1)
Power to secure a thing on the premises - extension of time	51A(7), (8), (9)	Aligned	22(2), (3), (4), 35
Offence - person who moves, alters or interferes with the thing that has been secured	51A(10)	Repealed as covered by Criminal Code	N/A
Persons assisting inspectors	51B	Aligned	23
Entry of premises - consent from the occupier	53M	Retained	25(1), (2)
Entry of premises - withdrawal of consent	N/A	Gained	25(3), (4)
Entry of premises - ceasing of consent	N/A	Gained	25(5)

Provision	Current provision in the Act	Provision as amended by this Schedule	Applicable provision (Regulatory Powers Act)
Power to require person to answer questions and to produce books, records and documents - entry with consent	54, 64	Aligned	24(2)
Power to require person to answer questions and to produce books, records and documents - entry under a warrant	N/A	Gained	24(3), (4)
Offence - failure to answer questions and produce documents under warrant	N/A	Gained	24(5)
Inspection by person of books, records of documents removed by, or produced to, inspectors	55	Repealed	N/A
Securing electronic equipment to obtain expert assistance	55C	Aligned	21
Compensation for damage to electronic equipment	55D	Retained	29
Announcement before entry under warrant	N/A	Gained	26
Authorised person to be in possession of warrant	N/A	Gained	27
Details of warrant to be given to occupier	N/A	Gained	28
Occupier's right to observe execution of warrant	N/A	Gained	30
Occupier's responsibility to provide facilities and assistance	N/A	Gained	31
Monitoring warrants	N/A	Gained	32
Extension of periods in which things secured	N/A	Gained	33
Powers of issuing officers	55H	Retained	34

Provision	Current provision in the Act	Provision as amended by this Schedule	Applicable provision (Regulatory Powers Act)
Investigation powers	Part VIII, Division 1		Part 3-Investigation
Identity cards	50	Retained through modification to the operation of the Regulatory Powers Act	76
Entering premises by consent or under warrant only	52	Retained	48
Power to search the premises or any thing on the premises	53(1)(a)	Retained	49(a), 49(b)(i)
Power to inspect, examine, take measurement of, conduct tests on, or take samples	53(1)(b)	Retained through modification to the operation of the Regulatory Powers Act	49(c)
Power to take photographs, make video or audio recordings or make sketches	53(1)(c)	Retained	49(d)
Power to take onto premises equipment and materials required to exercise powers	53(1)(d)	Retained	49(e)
Powers to seize evidence	53(2)	Retained	49(b)(ii)
Power to operate electronic equipment at premises	53(3)	Retained through modification to the operation of the Regulatory Powers Act	50(1)
Power to seize equipment, disk, tape or other device	53(4)(a)	Aligned	50(2)(a)
Power to operate electronic equipment to put information in documents and seize documents produced	53(4)(b)	Retained	50(2)(b)
Power to operate electronic equipment to transfer information to a desk, tape or other device and remove it from the premises	53(4)(c)	Retained	50(2)(c)
Reasonable grounds that operation of equipment can be carried out without damage	53(5)	Retained	50(3)
Seizing equipment	53(6)	Retained	50(4)

Provision	Current provision in the Act	Provision as amended by this Schedule	Applicable provision (Regulatory Powers Act)
Seizing other evidential material (including for other offences)	53(8)	Aligned	52
Power to seize containers and return seized containers	53(9), (10), (11)	Retained through modification of the operation of the Regulatory Powers Act	N/A
Persons assisting inspector	53A	Aligned	53
Announcement before entry under warrant unless reasonable grounds to believe immediate entry is required to prevent serious damage to the environment	53B	Retained through modification of the operation of the Regulatory Powers Act	56
Inspector to be in possession of warrant	N/A	Gained	57
Details of warrant to be given to occupier	53C	Aligned	58
Completing execution of warrant after temporary cessation	N/A	Gained	59
Completing execution of warrant stopped by court order	N/A	Gained	60
Occupier's right to observe execution of warrant	N/A	Gained	62
Occupier's responsibility to provide facilities and assistance	N/A	Gained	63
Receipts for seized things and seizure notice	53D	Aligned	65
Copy of seized things to be provided	53E	Aligned	64
Inspection by person of seized books, records or documents	53F	Repealed	N/A
Return of seized things	53G	Retained through modification of the operation of the Regulatory Powers Act	66
Retain seized things for further period	53H	Retained	67

Provision	Current provision in the Act	Provision as amended by this Schedule	Applicable provision (Regulatory Powers Act)
Power to take samples and conduct tests of seized things	53J	Retained through modification of the operation of the Regulatory Powers Act	N/A
Directions about dealing with pressurised container	53K	Retained	N/A
Disposal of goods if person cannot be located	53L	Aligned	68
Compensation for acquisition of property	69E	Retained	69
Entry of premises – inform occupier that they may refuse	53M(1)	Retained	55(1), (2)
Entry of premises - withdrawal of consent	N/A	Gained	55(3), (4)
Entry of premises - ceasing of consent	N/A	Gained	55(5)
Entry of premises - production of identity card	54	Aligned	55(6)
Power to require information	54, 64	Aligned	54
Inspection by person of books, records or documents removed by, or produced to, inspectors	55	Repealed	N/A
Return of books, records or documents removed by, or produced to, inspectors	55A	Aligned	66
Retain books, records or documents for a further period	55B	Aligned	67
Securing electronic equipment for use by experts	55C(1), (2), (3)	Aligned	51
Securing electronic equipment for use by experts - extension of period secured	55C(4), (5), (6)	Aligned	74
Compensation for damage to electronic equipment	55D	Retained	61
Investigation warrants – issue and content of warrant	55E	Aligned	70
Warrant by telephone, fax etc - application, issue and obligations	55F(1) to 55F(8)	Aligned	71

Provision	Current provision in the Act	Provision as amended by this Schedule	Applicable provision (Regulatory Powers Act)
Warrant by telephone, fax etc - authority of warrant	55F(9), (10)	Aligned	72
Offence relating to warrants – false and misleading statement by inspector	55G(1), (2)	Repealed as covered by Criminal Code	N/A
Offence relating to warrants by telephone, fax etc	55G(3) to (8)	Aligned	73
Powers of issuing officers	55H	Retained	75
Civil penalty provisions	Part VIII, Divisions 6 and 7		Part 4-Civil Penalty Provisions
Ancillary contravention of civil penalty provision	65AB	Retained	92
Order to pay pecuniary penalty	65AC(1), (2)	Retained	82(3), (4)
Determining amount of pecuniary penalty	65AC(3)	Aligned	82(6)
Maximum pecuniary penalty	65AC(4), (4A), (5)	Aligned	82(5)
Civil enforcement of penalty	65AC(6)	Retained	83
Power to apply for a civil penalty order	65AD	Aligned	82(1)
Conduct contravening more than one civil penalty provision	N/A	Gained	84
Single order for multiple contraventions	N/A	Gained	85
Multiple proceedings may be heard together	65AE	Retained	86
Time limit for application for an order	65AF	Retained	82(2)
Civil evidence and procedure rules	65AG	Retained	87
Civil proceedings after criminal proceedings	65AH	Retained	88
Criminal proceedings during civil proceedings	65AI	Aligned	89
Criminal proceedings after civil proceedings	65AJ	Retained	90
Evidence given in proceedings for a civil penalty order not admissible in criminal proceedings	65AK	Retained	91

Provision	Current provision in the Act	Provision as amended by this Schedule	Applicable provision (Regulatory Powers Act)
Continuing contraventions of civil penalty provisions	N/A	Gained	93
Mistake of fact	65AL	Retained	95
State of mind	65AM	Aligned	94
Infringement notices	Part VIII, Division 5		Part 5-Infringement Notices
Infringement notices	65AA and regulations	Aligned	95 to 108
Enforceable undertakings	N/A	Gained	Part 6-Enforceable Undertakings
Injunctions	Part VIII, Division 2		Part 7-Injunctions
Grant restraining injunctions	56(1)	Retained	121(1)
Grant performance injunctions	56(2)	Retained	121(2)
Grant of interim restraining injunctions	56(3)	Retained	122(1)(a)
Grant of interim performance injunctions	N/A	Gained	122(1)(b)
Discharging or varying injunctions	56(4)	Retained	123
Certain limits on granting injunctions do not apply – restraining injunctions	56(5)	Retained	124(1)
Certain limits on granting injunctions do not apply – performance injunctions	56(6)	Retained	124(2)
No undertakings as to damages	56(7)	Retained	122(2)
Other powers of a relevant court unaffected	58(8)	Retained	125

Item 120

515. Item 120 would repeal the existing heading at Division 1 of Part VIII and substitute it for ‘Division 1 - Preliminary’. This new heading would more accurately describe the provisions in this Part.

Item 121

516. Item 121 would repeal the existing heading at Subdivision A of Division 1 of Part VIII. This would be consequential to the changes that would be made by item 122 of this Schedule.

Item 122

517. Item 122 would repeal existing section 48A, which defines the term *inspector* for the purposes of Part VIII of the Act. This definition is no longer needed as item 24 of this Schedule would insert a new definition for *inspector* into section 7 of the Act. The new definition would apply for the whole Act, not just Part VIII.

518. Item 122 would also insert new section 48A into the Act. New section 48A would provide a simplified outline to the Part VIII of the Act (Enforcement). The outline is not intended to be comprehensive and has been included to assist readers to understand the substantive provisions of the Part. It is intended that readers will rely on the substantive provisions of the Part.

Item 123

519. Item 123 would omit the reference to Minister in subsection 49(1) and substitute it with a reference to the Secretary. This would vest the Secretary with the power to appoint inspectors, rather than the Minister. This change is consistent with the approach taken by the Regulatory Powers Act, as it applies to this Act, to vest compliance and enforcement related powers in the Secretary (see items 128 and 138 of this Schedule). Item 151 would allow the Secretary to delegate his or her powers under the Act or under the Regulatory Powers Act (as it applies to this Act) to an SES level employee in the Department.

Item 124

520. Item 124 would omit the reference to the Minister in subsection 49(2) and substitute it with a reference to the Secretary. This amendment would be consequential to the amendment made by item 123.

Item 125

521. Item 125 would omit the reference to Minister, wherever it occurs, in subsections 49(3) and 49A(1) and substitute it with Secretary. This amendment would be consequential to the amendment made by item 123.

Item 126

522. Item 126 would repeal section 50 of the Act. This existing section provides for identity cards for inspectors. This section would no longer be necessary as item 128 of this Schedule would amend the Act to apply the standard identity card provisions in Parts 2 and 3 of the Regulatory Powers Act, with minor modifications.

523. The comparison table provided above identifies that sections 35 and 76 are corresponding provisions of the Regulatory Powers Act for existing section 50 of the Act.

Item 127

524. Item 127 would repeal Subdivisions B, C, D, E, F and G of Division 1 of Part VIII.
525. These subdivisions deal with existing powers of inspectors. These provisions would no longer be necessary as item 128 of this Schedule would amend the Act to apply the standard monitoring and investigation provisions in Parts 2 and 3 of the Regulatory Powers Act.
526. The comparison table provided below identifies the corresponding provisions of the Regulatory Powers Act for the provisions of the Act that would be repealed by this item.

Item 128

527. Item 128 would repeal existing Division 2 of Part VIII. This Division deals with injunctions and would no longer be necessary as item 138 of this Schedule would amend the Act to apply the standard injunction provisions in Part 7 of the Regulatory Powers Act.
528. The comparison table provided above identifies the corresponding provisions of the Regulatory Powers Act for the provisions of the Act that are repealed by this item.
529. Item 128 would also amend the Act to substitute new Divisions 2 and 2A into Part VIII of the Act. New Divisions 2 and 2A (new sections 50 to 54) would outline the powers of inspectors, who would be appointed by the Secretary under section 49 of the Act. This item would trigger Parts 2 and 3 of the Regulatory Powers Act and insert additional monitoring and investigation powers to provide a comprehensive compliance regime for the Act.

Division 2 - Monitoring powers

Section 50 - Monitoring powers

530. New section 50 would trigger the standard monitoring powers in Part 2 of the Regulatory Powers Act. The notes following subsections 50(1) and 50(2) would explain that Part 2 of the Regulatory Powers Act creates a framework for monitoring compliance with the Act. This would include powers of entry and inspection.
531. New subsections 50(1) and (2) would have the combined effect that the monitoring powers triggered under Part 2 of the Regulatory Powers Act would be able to be exercised for the purposes of:
- monitoring compliance with provisions in the Act and the regulations, and offence provisions of the Crimes Act or the Criminal Code; and
 - determining whether information given in compliance, or purported compliance, with those provisions is correct.

532. New paragraph 50(3)(a) would provide that, for the purposes of Part 2 of the Regulatory Powers Act, the related provisions and information are subsections 50(4), 50(7), 112(2B) and 112(2BC) of the *Customs Act 1901* (Customs Act), dealing with prohibited imports and exports. This is appropriate as scheduled substances regulated by the Act are also prohibited imports and exports under the Customs Act. The effect of listing these provisions as ‘related provisions’ is that evidence obtained exercising the powers in Part 2 of the Regulatory Powers Act for the purposes of monitoring compliance with the Act could also be used to investigate or enforce compliance with the prohibited import and export provisions under the Customs Act. This would assist in ensuring more efficient and effective administration of Commonwealth legislation.
533. New paragraphs 50(3)(b) and (c) would have the combined effect that, for the purposes of Part 2 of the Regulatory Powers Act, an inspector (appointed under section 49 of the Act) is both an authorised applicant and an authorised person. This means that an inspector would be able to exercise the monitoring powers set out in Part 2 of the Regulatory Powers Act.
534. New paragraphs 50(3)(d), (e) and (f) would provide that, for the purposes of Part 2 of the Regulatory Powers Act, an issuing officer is a magistrate, the Secretary is the relevant chief executive, and a designated court (defined in section 7 of the Act) is the relevant court.
535. Unlike the exercise of investigation powers, inspectors would not need to suspect on reasonable grounds that there may be material on the premises related to a contravention of an offence or civil penalty provision before exercising relevant monitoring powers. However, an inspector would need to have either the consent of the occupier or a monitoring warrant to enter premises to exercise the monitoring powers under Part 2 of the Regulatory Powers Act (subsection 18(2) of the Regulatory Powers Act).
536. The general monitoring powers set out in Part 2 of the Regulatory Powers Act would also permit an inspector to, among other things:
- search premises, measure or test anything on the premises, photograph things or make copies of documents;
 - take necessary equipment onto the premises;
 - ask persons on the premises questions and request the production of documents;
 - operate electronic equipment;
 - secure electronic evidence for 24 hours in order to obtain expert assistance.
537. New subsection 50(4) would have the effect that an inspector may be assisted by other persons in exercising powers or performing functions or duties under Part 2 of the Regulatory Powers Act as it applies to the Act.

538. It is necessary to allow other persons to assist inspectors to exercise powers or perform functions under Part 2 of the Regulatory Powers Act (as it applies to the Act) because there may be circumstances where no other inspector is available to assist, or because special skills are required for the assistance needed (for example, locksmiths). Subsection 50(4) would not impose specific training requirements for a person assisting an inspector, as the relevant expertise required would differ depending on the purpose of the assistance. However, under paragraph 23(1)(a) of the Regulatory Powers Act, a person exercising monitoring powers may only be assisted by another person if it is necessary and reasonable to do so. In addition, a person assisting an inspector would be subject to any directions given by the inspector under paragraph 23(2)(d) of the Regulatory Powers Act and a power exercised by a person assisting an inspector would be taken to have been exercised by the inspector in accordance with subsection 23(3) of the Regulatory Powers Act. The inspector would have direct responsibility and oversight of the powers exercised and functions performed under Part 2 of the Regulatory Powers Act (as it applies to this Act).

539. New subsection 50(5) would extend the operation of Part 2 of the Regulatory Powers Act to every external Territory as it relates to the Act. This is necessary because the Regulatory Powers Act does not apply to external territories of its own accord. It would also ensure that Part 2 of the Regulatory Powers Act (as it applies to the Act) would operate consistently with the Act, which applies to all external Territories (see section 6).

Section 51 - Modifications of Parts 2 of the Regulatory Powers Act

540. New section 51 would provide for additional monitoring powers beyond those provided for under Part 2 of the Regulatory Powers Act and modify the operation of some of the provisions in Part 2 of the Regulatory Powers Act as it applies to the Act. These additional powers and modifications are necessary to retain existing powers in the Act, and to ensure the effective operation of the Regulatory Powers Act, as it applies to the Act.

541. Consistent with new section 50, the additional monitoring powers in new section 51 would be able to be exercised for the purposes of:

- monitoring compliance with provisions in the Act and offence provisions of the Crimes Act and the Criminal Code; and
- determining whether information given in compliance, or purported compliance, with those provisions is correct.

542. New subsection 51(2) would provide for the following additional monitoring powers:

- the power to take samples of any thing on premises entered under Part 2 of the Regulatory Powers Act;
- the power to remove, test and analyse such samples;

- the power to secure a premise entered under Part 2 of the Regulatory Powers Act;
- the power to secure things on a premises entered under Part 2 of the Regulatory Powers Act for the purpose of sampling, testing or analysing those things;
- the power to secure a container on premises entered under Part 2 of the Regulatory Powers Act that contains a thing if the inspector reasonably believes that it is not reasonably practicable to secure the thing without also securing the container (whether or not the container contains any other thing).

543. These additional monitoring powers are appropriate because it may be necessary to secure things and premises, and to take and test samples of things, in order to facilitate compliance with the Act.

544. For example, if a licence allowed for the import of a certain scheduled substance, testing and analysing a sample of that substance may be necessary to confirm that the imported substance was the type allowed under the permit. Similarly, if an inspector entered premises under Part 2 of the Regulatory Powers Act and needed to secure a thing that was liquid or gas, it may not be reasonably practicable to secure the thing without also securing the container the thing is in.

545. New subsection 51(3) would have the effect that an authorised person, or a person assisting an authorised person, when executing a monitoring warrant, may use necessary and reasonable force against things. This would ensure that inspectors can take the necessary measures to monitor compliance with the Act and takes into consideration the special requirements that may be needed for effective monitoring. An example of where use of force may be necessary is opening locked cabinets to access records relating to manufacture, import or export of scheduled substances, or opening locked containers containing ODS equipment or SGG equipment that were imported, in order to ascertain whether a licence is being, or has been, complied with. This subsection does not authorise the use of force against a person in executing a monitoring warrant.

546. New subsections 51(4) to 51(6) would modify powers in Part 2 of the Regulatory Powers Act for the purposes of their application to the Act.

547. New subsection 51(4) would have the effect that references to an ‘identity card’ in sections 25 and 26 and subsection 35(6) of the Regulatory Powers Act should be taken to include a reference to written evidence identifying the authorised person as a member or special member of the Australian Federal Police, or an officer of Customs, as the case may be.

548. New subsection 51(5) would have the effect that subsection 35(1) of the Regulatory Powers Act does not require the relevant chief executive to issue an identity card to an authorised person who is a member or special member of the Australian Federal Police or an officer of Customs.

549. New subsections 51(4) and 51(5) are appropriate because an inspector, who is the authorised person for the purposes of Part 2 of the Regulatory Powers Act as it applies to the Act, would include a member or special member of the Australian Federal Police or an officer of Customs. A member or special member of the Australian Federal Police or an officer of Customs would ordinarily have written evidence identifying them as such. These modifications would remove unnecessary duplication by removing the requirement to issue such persons with additional identity cards.
550. New subsection 51(6) would have the effect that the reference to 3 months in paragraph 32(4)(g) of the Regulatory Powers Act should be taken to be a reference to 6 months. This would mean that a warrant issued under section 32 of the Regulatory Powers Act, as it relates to the Act, could potentially be in force for up to 6 months, rather than 3 months. This is appropriate to ensure that scheduled substances that are imported in multiple shipments covered by the same licence can be effectively monitored for compliance with the Act.
551. As is the case for the general monitoring powers in Part 2 of the Regulatory Powers Act, the additional monitoring powers in section 51 would only be able to be exercised with the consent of the occupier of the premises or under a monitoring warrant.

Section 52 - Investigation powers

552. New section 52 would trigger the standard investigation powers in Part 3 of the Regulatory Powers Act. The first note following new subsection 52(1) would explain that Part 3 of the Regulatory Powers Act creates a framework for investigating compliance with the Act. This would include powers of entry and inspection.
553. The investigation powers triggered under Part 3 of the Regulatory Powers Act would be able to be exercised for the purposes of investigating compliance with a provision that creates an offence against the Act or the regulations, or a civil penalty provision of the Act or the regulations (new subsection 52(1)).
554. The second note following new subsection 52(1) would refer the reader to the definition of offence against this Act or the regulations in section 7.
555. New paragraph 52(2)(a) would provide that, for the purposes of Part 3 of the Regulatory Powers Act, the related provisions are subsections 50(4), 50(7), 112(2B) and 112(2BC) of the Customs Act, dealing with prohibited imports and exports. This is appropriate as scheduled substances regulated by the Act are also prohibited imports and exports under the Customs Act. The effect of listing these provisions as ‘related provisions’ is that evidence obtained exercising the powers in Part 3 of the Regulatory Powers Act for the purposes of investigating or enforcing compliance with the Act could also be used to investigate or enforce compliance with the prohibited import and export provisions under the Customs Act. This would assist in ensuring more efficient and effective administration of Commonwealth legislation.

556. New paragraphs 52(2)(b) and (c) would have the combined effect that, for the purposes of Part 3 of the Regulatory Powers Act, an inspector (appointed under section 49 of the Act) is both an authorised applicant and an authorised person. This means that an inspector would be able to exercise the investigation powers set out in Part 3 of the Regulatory Powers Act.
557. New paragraphs 52(2)(d), (e) and (f) would provide that, for the purposes of Part 3 of the Regulatory Powers Act, an issuing officer is a magistrate, the Secretary is the relevant chief executive, and the designated court (defined in section 7 of the Act) is the relevant court.
558. The investigation powers triggered under Part 3 of the Regulatory Powers Act would allow an authorised person to enter a premise to exercise investigation powers if they suspect on reasonable grounds that there is evidential material on the premises (subsection 48(1) of the Regulatory Powers Act). However, they can only do so with the consent of the occupier or under an investigation warrant (subsection 48(2) of the Regulatory Powers Act).
559. The investigation powers set out in Part 3 of the Regulatory Powers Act would also permit an authorised person to, among other things:
- search the premises and seize evidential material;
 - inspect, test and copy evidential material;
 - take necessary equipment onto the premises;
 - ask persons on the premises questions and request the production of documents;
 - operate electronic equipment found on the premises and secure electronic evidence for 24 hours in order to obtain expert assistance.
560. These investigation powers would allow non-compliance to be more easily detected and ultimately reduced, leading to greater compliance with the Act. This would support better environmental outcomes and assist in ensuring compliance with Australia's obligations under the Montreal Protocol and other relevant international conventions.
561. New subsection 52(3) would have the effect that an inspector may be assisted by other persons in exercising powers or performing functions or duties under Part 3 of the Regulatory Powers Act as it applies to the Act.
562. It is necessary to allow other persons to assist inspectors to exercise powers or perform functions under Part 3 of the Regulatory Powers Act (as it applies to the Act) because there may be circumstances where no other inspector is available to assist, or because special skills are required for the assistance needed (for example, locksmiths). Subsection 52(3) would not impose specific training requirements for a person assisting

an inspector, as the relevant expertise required would differ depending on purpose of the assistance. However, under paragraph 53(1)(a) of the Regulatory Powers Act, a person exercising investigation powers may only be assisted by another person if it is necessary and reasonable to do so. In addition, a person assisting an inspector would be subject to any directions given by the inspector under paragraph 53(2)(d) of the Regulatory Powers Act and a power exercised by a person assisting an inspector would be taken to have been exercised by the inspector in accordance with subsection 53(3) of the Regulatory Powers Act. The inspector would have direct responsibility and oversight of the powers exercised and functions performed under Part 3 of the Regulatory Powers Act (as it applies to this Act).

563. New subsection 52(4) would extend the operation of Part 3 of the Regulatory Powers Act to every external Territory as it relates to the Act. This is necessary because the Regulatory Powers Act does not apply to external territories of its own accord. It would also ensure that Part 3 of the Regulatory Powers Act (as it applies to the Act) would operate consistently with the Act, which applies to all external Territories (see section 6).

Section 53 - Modifications of Part 3 of the Regulatory Powers Act

564. New section 53 would provide for additional investigation powers beyond those provided for under Part 3 of the Regulatory Powers Act and modify the operation of some of the provisions in Part 3 of the Regulatory Powers Act as it applies to the Act. These additional powers and modifications are necessary to retain existing powers in the Act, and also to ensure the effective operation of the Regulatory Powers Act, as it applies to the Act.

565. Consistent with new section 52, the additional investigation powers in new section 53 would be able to be exercised for the purpose of investigating compliance with a provision that creates an offence against the Act or the regulations, or a civil penalty provision of the Act or the regulations (subsection 53(1)).

566. New subsection 53(2) would provide for the following additional investigation powers:

- the power to take samples of any thing on premises entered under Part 3 of the Regulatory Powers Act;
- the power to remove, test and analyse such samples;
- the power to secure a premises entered under Part 3 of the Regulatory Powers Act;
- the power to secure things on premises entered under Part 3 of the Regulatory Powers Act for the purpose of sampling, testing or analysing those things;
- the power to secure a container on premises entered under Part 3 of the Regulatory Powers Act that contains a thing if the inspector reasonably believes that it is not

reasonably practicable to secure the thing without also securing the container (whether or not the container contains any other thing);

- if the authorised person has the power to seize a thing under Part 3 of the Regulatory Powers Act – the power to seize a container that contains a seizable thing, and any other thing contained in the container, if the inspector reasonably believes that it is not reasonably practicable to seize the seizable thing without also seizing the container.

567. These additional investigation powers are appropriate because it may be necessary to secure things and premises, and to take and test samples of things, in order to facilitate compliance with the Act.

568. For example, if a licence allowed for the import of a certain scheduled substance, testing and analysing a sample of that substance may be necessary to confirm that the imported substance was the type allowed under the permit. Similarly, if an inspector entered premises under Part 3 of the Regulatory Powers Act and needed to secure a thing that was liquid or gas, it may not be reasonably practicable to secure the thing without also securing the container the thing is in.

569. New subsection 53(3) would modify the operation of subsection 66(1) of the Regulatory Powers Act, as it applies to the Act, where an authorised person has seized a container (or other thing) that contains a seizable thing under new paragraph 53(2)(f). The modification is that the requirement for the relevant chief executive to take reasonable steps to return the seized container would only apply from the time that requirement applies in relation to the seizable thing.

570. However, if the seizable thing is the subject of a forfeiture notice under section 60A of the Act, then the requirement at subsection 66(1) of the Regulatory Powers Act to take reasonable steps to return the container would apply at the time the seizable thing in the container is returned under subsection 60B(5) of the Act, or at the time the seizable thing in the container is forfeited to the Commonwealth under section 60C of the Act.

571. This would ensure the Secretary is not required to return a container containing a seized thing while the seized thing in the container (such as the gas or liquid) is still required as evidential material.

572. The note following subsection 53(3) would refer the reader to new subsection 53(4) regarding the application of section 66 of the Regulatory Powers Act where it is the container (or other thing) itself (as opposed to a seizable thing in the container) that is the subject of a forfeiture notice issued under section 60A of the Act.

573. New subsection 53(4) would have the effect that sections 66 to 69 of the Regulatory Powers Act do not apply to a thing seized under Part 3 of that Act if the thing is the subject of a forfeiture notice under section 60A of this Act. Sections 66 to 69 of the Regulatory Powers Act deal with returning, retaining and disposing of seized things and

compensation for acquisition of property. Subdivision C of Division 3 of Part VIII of the Act would instead deal with these matters in relation to the forfeiture of seized goods.

574. This means that where, for example, it is the container itself that is the subject of a forfeiture notice, rather than the gas or liquid in the container, existing sections 60A to 60D of the Act would apply rather than sections 66 to 69 of the Regulatory Powers Act.

575. New subsection 53(5) would modify the operation of subsection 50(1) of the Regulatory Powers Act, as it applies to the Act.

576. Subsection 50(1) of the Regulatory Powers Act provides that the standard investigation powers include the power to operate electronic equipment on the premises, and the power to use a disk, tape or storage device that is on the premises and can be used with the equipment or associated with it, provided that the authorised person suspects on reasonable grounds that the electronic equipment, disk, tape or other storage device is or contains evidence material. New subsection 53(5) would have the effect of extending this power to also include the power to operate such electronic equipment, disk, tape or storage device to find out whether the equipment, disk, tape or storage device contains such evidential material. This modification is appropriate because it will often not be apparent that some equipment or storage devices contain evidential material until they are operated, due to their nature.

577. New subsection 53(6) would modify subsection 56(1) of the Regulatory Powers Act, as it applies to the Act.

578. Subsection 56(1) of the Regulatory Powers Act requires an authorised person, before entering premises under an investigation warrant to announce that he or she is authorised to enter the premises, show his or her identity card to the occupier of the premises, and give a person at the premises the opportunity to allow entry onto the premises. New subsection 53(6) would have the effect that an inspector (being an authorised person for the purposes of the Regulatory Powers Act) would not have to comply with the requirements in subsection 56(1) of the Regulatory Powers Act if he or she believes on reasonable grounds that immediate entry to the premises is required to prevent serious damage to the environment.

579. This modification of the Regulatory Powers Act would be necessary and appropriate to reduce the risk of serious environmental harm arising from non-compliance with the Act. It involves a matter of public interest with a high bar to satisfy (there must be reasonable grounds and the potential damage must be serious) and is likely to only be applicable in exceptional circumstances. In addition, the modification only removes the requirement to announce entry before entering with an investigation warrant, it does not remove the requirement to first obtain the investigation warrant.

580. New subsection 53(7) would have the effect that an authorised person, or a person assisting an authorised person, when executing an investigation warrant, may use necessary and reasonable force against things. This would ensure that inspectors can take

the necessary measures to investigate compliance with the Act and takes into consideration the special requirements that may be needed for effective investigation. An example of where use of force may be necessary is opening locked cabinets to access records relating to manufacture, import or export of scheduled substances, or opening locked containers containing ODS equipment or SGG equipment that is proposed to be exported, in order to ascertain whether a licence is being, or has been, complied with. This subsection does not authorise the use of force against a person in executing an investigation warrant.

581. New subsection 53(8) would have the effect that references to an ‘identity card’ in sections 55 and 56 and subsection 76(6) of the Regulatory Powers Act should be taken to include a reference to written evidence identifying the authorised person as a member or special member of the Australian Federal Police or an officer of Customs, as the case may be.
582. New subsection 53(9) would have the effect that subsection 76(1) of the Regulatory Powers Act does not require the relevant chief executive to issue an identity card to an authorised person who is a member or special member of the Australian Federal Police or an officer of Customs.
583. New subsections 53(8) and 53(9) are appropriate because an inspector, who is the authorised person for the purposes of Part 3 of the Regulatory Powers Act as it applies to the Act, would include a member or special member of the Australian Federal Police or an officer of Customs. A member or special member of the Australian Federal Police or an officer of Customs would ordinarily have written evidence identifying them as such. These modifications would remove unnecessary duplication by removing the requirement to issue such persons with additional identity cards.

Section 54 - Directions about dealing with pressurised containers

584. New section 54 would replicate existing section 53K of the Act and would apply where an inspector seizes a pressurised container under Part 3 of the Regulatory Powers Act, as it applies to the Act. Ozone depleting substances and synthetic greenhouse gases are often stored under pressure, including in non-refillable containers. The seizure, movement and storage of a pressurised container that is not in a safe condition presents a serious risk to health and safety and to the environment.
585. New subsection 54(1) would allow the Secretary to, in writing, direct an inspector to deal with the pressurised container, and its contents, in a manner specified in the direction. The inspector must comply with the direction.
586. The direction may require the pressurised container and its contents to be destroyed (new subsection 54(2)).
587. The direction may only be given on application by an inspector and where the Secretary is satisfied that the pressurised container constitutes a danger to public health and safety, or may cause damage to the environment (new subsection 54(3)).

588. New subsection 54(4) would provide that if the Secretary gives a direction, then sections 66 to 69 of the Regulatory Powers Act would not apply to the container or its contents. These provisions deal with returning, retaining and disposing of seized things and compensation for acquisition of property. It would not be appropriate to apply these standard provisions if there is likely to be danger to public health and safety or the environment by doing so.

589. New subsection 54(5) would clarify that a direction issued under subsection 54(1) would not be a legislative instrument for the purposes of the *Legislation Act 2003*. This is declaratory of the law and included to assist readers. It is not an exemption from the operation of that Act.

590. New subsections 54(6) to 54(8) would deal with compensation for a pressurised container and its contents that is destroyed in compliance with a direction given under this section. The owner of the container would be allowed to apply to a designated court (as defined in section 7 of the Act) for compensation. On application, the designated court would be required to order the Commonwealth to pay compensation if satisfied that the pressurised container is not, or did not contain, forfeitable goods as defined in section 57. The amount of compensation ordered by the court would be the market value of the pressurised container and its contents at the time it was destroyed.

Item 129

591. Subsection 57(1) outlines the types of goods that are *forfeitable goods* under the Act. Goods that are forfeitable goods can be forfeited to the Commonwealth following conviction or the making of a civil penalty order (see Subdivision B of Division 3 of Part VIII of the Act) or as a result of the forfeiture notification and seizure process in Subdivision C of Division 3 of Part VIII of the Act.

592. Item 129 would repeal existing subsection 57(1) and substitute new subsections 57(1) and (1A). The purpose of this amendment would be to update the drafting style so that it reflects modern drafting practices, improve the clarity of the provision to make it easier to read, and to add in non-refillable containers that are imported in contravention of the new mandatory licence condition inserted by item 67.

593. New subsection 57(1) would have the effect that the following are *forfeitable goods*:

- scheduled substances that are manufactured in contravention of new subsection 13(1) (manufacturing scheduled substances without a licence);
- scheduled substances that are imported in contravention of new subsection 13AA(1) (importing scheduled substances without a licence);
- scheduled substances that are exported in contravention of new subsection 13AB(1) (exporting scheduled substances without a licence);

- equipment that contains a scheduled substance (and the scheduled substance itself) that has been manufactured, imported or exported in contravention of new subsections 13(3), 13AA(4) or 13AB(3) (manufacturing, importing or exporting equipment that contains a scheduled substance without a licence);
- equipment that uses a scheduled substance in its operation that has been manufactured, imported or exported in contravention of new subsections 13(5), 13AA(5) or 13AB(5) (manufacturing, importing or exporting equipment that uses scheduled substances in its operation without a licence);
- a non-refillable container (and any substance it contains) that has been imported in contravention of the person’s licence conditions in new item 7 of subsection 18(1);
- prescribed goods in respect of which a person has contravened a prescribed provision of the regulations.

594. New subsection 57(1A) would provide that without limiting subsection 57(1), a person is taken to have contravened if the person is convicted of an offence against the Act or the regulations for a contravention of the provision, or a civil penalty order is made against the person for a contravention of the provision. This would remove the need to factually establish a contravention in proceedings concerning the forfeiture of goods once a conviction or civil penalty order has been made in respect of those goods.

Item 130

595. Item 130 would update subsection 58(1) to omit “Where a person is convicted of an offence against a provision of this Act or the regulations” and substitute “If a person is convicted of an offence against this Act or the regulations for a contravention of a provision”. This amendment would update the drafting of the provision in line with modern drafting conventions and would not change the effect of the provision.

Item 131

596. Item 131 would update subsection 58(2) to omit “has been made against a person for a contravention of a civil penalty provision” and substitute “is made against a person for a contravention of a provision”. This amendment would update the drafting of the provision in line with modern drafting conventions and would not change the effect of the provision.

Item 132

597. Item 132 would repeal existing section 60 and replace it with a new section 60.

598. Existing section 60 is an offence provision that applies when a person engages in conduct that causes forfeited goods that have been seized under section 59 to be moved, altered or interfered with. The purpose of new section 60 would be to update the drafting of this prohibition to clarify when it applies, as well as provide for an escalating range of

sanctions by including a fault-based offence, a strict liability offence and a civil penalty provision.

599. New subsection 60(1) would prohibit a person from engaging in conduct that causes goods to be moved, altered or interfered with when the goods are the subject of a notice under subsection 59(2). Subsection 59(2) allows an inspector to seize forfeited goods by attaching a notice to the goods or the container in which the goods are held.
600. New subsection 60(2) would provide that the prohibition in subsection 60(1) would not apply if the person engages in the conduct is in accordance with a direction given to the person by the Secretary.
601. The note after subsection 60(2) would explain that the defendant bears an evidential burden in relation to showing that their conduct was in accordance with a direction given by the Secretary. This is because section 13.3 of Schedule 1 to the Criminal Code and section 96 of the Regulatory Powers Act provide that if a defendant wishes to rely on an exception to, respectively, an offence or a civil penalty provision, the defendant bears an evidential burden of proof in relation to that matter. This is appropriate on the basis that knowledge of that matter would be peculiar to that person. Consistent with this, it is appropriate to reverse the evidential burden of proof in this matter, as the reason why a person has moved, altered or interfered with forfeited goods that have been seized (including whether moving, altering or interfering with the goods was because they have been given a direction to do so) is a matter that is peculiarly within the knowledge of that person.
602. New subsection 60(3) would create a new prohibition. A person would contravene subsection 60(3) if, having been given a copy of a notice made under subsection 59(2) (that forfeited goods are being seized by an inspector), the person fails to take all reasonable precautions, or to exercise all due diligence, to prevent the moving, alteration or interference with the goods to which the notice relates, except in accordance with a direction given by the Secretary. This prohibition is necessary to ensure that the seizure of forfeited goods is not prevented or otherwise interfered with, which would undermine the effectiveness of the Act's compliance and enforcement regime.
603. New subsection 60(4) would have the effect that a person who contravenes the prohibition in either subsection 60(1) or 60(3) would be committing a fault-based offence. The maximum penalty for the offence would be 500 penalty units. A body corporate would be liable for five times this amount as a maximum penalty (see subsection 4B(3) of the Crimes Act).
604. The note after subsection 60(4) would explain that the physical elements of the offence are found in subsection 60(1) or 60(3) (as relevant).
605. New subsection 60(5) would have the effect that a person who contravenes the prohibition in either subsection 60(1) or 60(3) would also be committing an offence of strict liability with a maximum penalty of 60 penalty units.

606. Strict liability is proposed for this offence having regard to the Commonwealth Guide to Framing Offences and the Scrutiny of Bills Committee 6th Report. Consistent with these documents, strict liability is appropriate as:

- the offence is not punishable by imprisonment;
- the offence is subject to a maximum penalty of 60 penalty units for an individual;
- the actions which trigger the offence are simple, readily understood and easily defended. The offence is triggered if a person moves, alters or interferes with forfeited goods that have been seized, or fails to take all reasonable precautions, or to exercise all due diligence, to prevent the moving, alteration or interference with forfeited goods that have been seized (except in accordance with a direction given by the Secretary);
- the person affected would have previously been put on notice that the goods have been forfeited to the Commonwealth and seized;
- offences relating to the non-compliance with seizure notices need to be dealt with efficiently to ensure industry and community confidence in the regulatory regime;
- the offence would be subject to an infringement notice (see new section 63, as inserted by item 138);
- the absence of strict liability may adversely affect the capacity to prosecute offenders. Whether or not a defendant intentionally, recklessly or negligently moves, alters or interferes with forfeited goods that have been seized, or fails to take all reasonable precautions, or to exercise all due diligence, to prevent the moving, alteration or interference with forfeited goods that have been seized, is generally a matter that is peculiarly within the knowledge of the defendant alone. Proving the contrary beyond reasonable doubt may require significant and difficult to obtain indirect and circumstantial evidence;
- the forfeiture of goods following either a conviction or a civil penalty order, and the seizure of such goods play an important role in ensuring compliance with the Act and regulations (particularly in relation to importing scheduled substances without a licence), which is a necessary part of ensuring that the Act remains an effective and efficient mechanism to both implement Australia's obligations under the Montreal Protocol and to realise its intended environmental benefits. Given goods can only be forfeited to the Commonwealth once a contravention of the Act has already occurred, interference with the seizure of such goods may result in significant environmental harm and could damage Australia's international relations;

- the person affected will be placed on notice to guard against the possibility of contravention, which is likely to significantly enhance the effectiveness of the enforcement regime in deterring the conduct in question.

607. The defence of honest and reasonable mistake of fact is available for strict liability offences (see sections 6.1 and 9.2 of Schedule 1 to the Criminal Code) and the existence of strict liability does not make any other defence unavailable (see subsection 6.1(3) of Schedule 1 to the Criminal Code).
608. New subsection 60(6) would have the effect of establishing a mirror civil penalty provision which is contravened in circumstances where a person contravenes the prohibition in either subsection 60(1) or 60(3). The maximum penalty would be 600 penalty units. A body corporate would be liable for five times this amount as a maximum penalty (see subsection 82(5) of the Regulatory Powers Act).
609. The combination of fault-based offence, strict liability offence and civil penalty provision would provide an adequate deterrent from a person interfering with the seizure of forfeited goods, which has the potential to cause significant harm. It is also appropriate to include both civil and criminal penalties in order to provide flexibility for the Commonwealth to enforce the prohibition appropriately without always needing to pursue criminal penalties (noting that conviction for a criminal offence carries with it a range of consequences beyond the immediate penalty). It is expected criminal proceedings would be brought for conduct that contravenes subsection 60(1) or 60(3) and is at the more serious end of the spectrum or that involves a higher degree of malfeasance.
610. The size of the maximum penalty for both the fault-based offence and the civil penalty provision is appropriate as a deterrent. It reflects the seriousness of interfering with the seizure of goods that have been forfeited to the Commonwealth, which could in turn result in serious harm to human and environmental health. Such conduct may undermine the integrity of the regulatory framework provided for by the Act. This conduct may also result in the breach of Australia's obligations under the Montreal Protocol which could damage Australia's international relations.
611. The maximum civil penalty of 600 penalty units is higher than the maximum penalty available for the criminal offence. This is intended to ensure that it will act as a deterrent, particularly for body corporates, and also recognises that being found liable to pay a civil penalty does not attract imprisonment or a criminal conviction.

Item 133

612. Item 133 would amend paragraph 60A(1)(a) of the Act to replace the references to section 53 with references to sections 49 or 52 of the Regulatory Powers Act. This amendment is consequential to the amendments made by item 128 of this Schedule, which triggers the investigation powers in Part 3 of the Regulatory Powers Act.

Item 134

613. Item 134 would amend paragraph 60D(1)(a) of the Act to replace references to section 53 with references to sections 49 or 52 of the Regulatory Powers Act. This amendment would be consequential to the amendments made by item 128 of this Schedule, which triggers the investigation powers in Part 3 of the Regulatory Powers Act.

Item 135

614. Item 135 would amend paragraph 60D(1)(b) of the Act to clarify that the reference to section 60C is a reference to section 60C of the Act. This amendment would provide clarification only and would not change the operation of this paragraph.

Item 136

615. Item 136 would amend subparagraph 60D(2)(b)(i) of the Act to replace the reference to Division 1 of Part VIII (relating to the powers of inspectors) with a reference to Part 3 of the Regulatory Powers Act. This amendment would be consequential to the amendments made by item 128 which, relevantly, provides for the investigation powers in Part 3 of the Regulatory Powers Act to apply instead.

Item 137

616. Item 137 would add a note at the end of Division 3 of Part VIII of the Act to clarify that sections 66 to 69 of the Regulatory Powers Act do not apply to goods that are subject of a forfeiture notice under section 60A of the Act. Instead, such goods would continue to be regulated by existing Division 3 (sections 57 to 61 of the Act).
617. The note would also refer readers to new subsection 53(4) of the Act (as inserted by item 128) which would modify the operation of the Regulatory Powers Act (as it applies to the Act) to this effect.

Item 138

618. Item 138 would repeal Division 4, 5, 6 and 7 of Part VIII, which deal with offences, infringement notices and civil penalty orders. Existing Division 4 (offences) would no longer be required as the offences dealt with in this Division are covered by the Criminal Code. Existing Divisions 5 to 7 (infringement notices and civil penalty orders) would no longer be necessary as the standard civil penalty and infringement notice provisions in Parts 4 and 5 of the Regulatory Powers Act would be applied to the Act (see below).
619. The comparison table provided above identifies the corresponding provisions of the Regulatory Powers Act for the provisions of the Act that are repealed by this item.
620. Item 138 would also amend the Act to insert new Divisions 4, 5, 6, 7 and 8 into Part VIII of the Act. The effect of these new Divisions would be to trigger Parts 4 (civil penalties), 5 (infringement notices), 6 (enforceable undertakings) and 7 (injunctions) of the Regulatory Powers Act, as well as inserting new notice to produce powers, to provide a comprehensive compliance and enforcement regime for the Act.

Division 4 - Civil penalties

Section 62 - Civil penalty provisions

621. New section 62 would trigger the standard provisions of Part 4 of the Regulatory Powers Act.
622. Part 4 of the Regulatory Powers Act creates a framework for allowing the civil penalty provisions of the Act to be enforced by obtaining an order for a person to pay a pecuniary penalty. This would be explained by the note following new subsection 65AB(1).
623. New subsection 62(2) would provide that the Secretary is the authorised applicant for the purposes of Part 4 of the Regulatory Powers Act. This means it is the Secretary who would be able to apply to a court for an order for a person to pay a civil penalty in relation to a contravention of a civil penalty provision in the Act.
624. New subsection 62(3) would provide that the designated court (as defined in section 7 of the Act) is a relevant court in relation to the civil penalty provisions of this Act.
625. New subsection 62(4) would extend the operation of Part 4 of the Regulatory Powers Act to every external Territory as it relates to the Act. This is necessary because the Regulatory Powers Act does not apply to external territories of its own accord. It would also ensure that Part 4 of the Regulatory Powers Act (as it applies to the Act) would operate consistently with the Act, which applies to all external territories (see section 6).
626. New subsection 62(5) would clarify that subsection 5(2) of the Act does not prevent the Crown from being liable to pay a pecuniary penalty under a civil penalty order under Part 4 of the Regulatory Powers Act as it applies in relation to the Act.

Division 5 - Infringement notices

Section 63 - Infringement notices

627. New section 63 would trigger the standard provisions of Part 5 of the Regulatory Powers Act.
628. Part 5 of the Regulatory Powers Act creates a framework under which infringement notices can be issued for specified contraventions against the Act. This would be explained by the note following new subsection 63(1). Infringement notices are appropriate to provide an alternative means of managing high-volume, low-penalty contraventions. They do not constitute more than an allegation of contravention and provide an administrative means of disposing of a matter.
629. New subsection 63(1) would provide that all strict liability offences and all civil penalty provisions in the Act and the regulations would be subject to the infringement notice scheme in Part 5 of the Regulatory Powers Act. Strict liability offences and civil penalty provisions are appropriate to have in an infringement notice scheme attached as they do not contain proof of a fault element or state of mind.

630. A person who is given an infringement notice may choose to pay an amount as an alternative to having court proceedings brought against them for contravention against the Act. The infringement notice amount is one fifth of the maximum penalty for the contravention.
631. New subsection 63(2) would provide that an inspector is the infringement officer for the purposes of Part 5 of the Regulatory Powers Act.
632. New subsection 63(3) would provide that the Secretary is the relevant chief executive for the purposes of Part 5 of the Regulatory Powers Act.
633. New subsection 63(4) would extend the operation of Part 5 of the Regulatory Powers Act to every external Territory as it relates to the Act. This is necessary because the Regulatory Powers Act does not apply to external territories of its own accord. It would also ensure that Part 5 of the Regulatory Powers Act (as it applies to the Act) would operate consistently with the Act, which applies to all external Territories (see section 6).

Division 6 - Enforceable undertakings

Section 64 - Enforceable undertakings

634. New section 64 would trigger the standard provisions of Part 6 of the Regulatory Powers Act for all provisions of the Act and the regulations.
635. Triggering Part 6 of the Regulatory Powers Act would allow an enforceable undertaking to be sought, agreed to, and enforced in relation to provisions of the Act. This would be explained by the note following new subsection 64(1). An enforceable undertaking is a written undertaking agreed to by a person to, for example, take a specified action, that can be enforced in the relevant court.
636. New subsection 64(2) would provide that the Secretary is the authorised person for the purposes of Part 6 of the Regulatory Powers Act. This means it is the Secretary who can seek an enforceable undertaking under Part 6 in relation to a provision of the Act.
637. New subsection 64(3) would provide that the relevant court in relation to the provisions of the Act that are subject to Part 6 of the Regulatory Powers Act is the designated court, as defined in section 7 of the Act.
638. New subsection 64(4) would allow the Minister to cause an undertaking given under Part 6 of the Regulatory Powers Act in relation to the Act or regulations to be published on the Department's website.
639. It is intended that publishing any undertaking given by a person would act as a deterrent to contravention and therefore assist with ensuring the integrity of the regulatory regime. While it is acknowledged that this subsection would authorise the Minister to publish personal information within the meaning of the Privacy Act:

- it is expected that most persons, to whom the information would relate, would be a body corporate, for which the Privacy Act does not apply;
- to the extent that any information published constitutes personal information under the Privacy Act, the deterrent effect of publishing the information, and the need to ensure the integrity of the regulatory regime, outweighs the potential adverse consequences to the individuals concerned; and
- the power in this subsection would be discretionary, and as such the Minister would retain the ability to decide not to publish any of the information relating to an undertaking if they consider that, in the particular circumstances, the potential adverse consequences of publishing the information outweigh the intended deterrence effect.

640. New subsection 64(5) would extend the operation of Part 6 of the Regulatory Powers Act to every external Territory as it relates to the Act. This is necessary because the Regulatory Powers Act does not apply to external territories of its own accord. It would also ensure that Part 6 of the Regulatory Powers Act (as it applies to the Act) would operate consistently with the Act, which applies to all external Territories (see section 6).

Division 7 - Injunctions

Section 64A - Injunctions

641. New section 64A would trigger the standard provisions of Part 7 of the Regulatory Powers Act for all provisions of the Act and the regulations.

642. Triggering Part 7 of the Regulatory Powers Act would allow an injunction to be sought to enforce the provisions of the Act. This would be explained by the note following new subsection 64A(1). An injunction (including an interim injunction) is a court order that may be used to restrain a person from contravening a provision of the Act or regulations, or to compel compliance with a provision of the Act or regulations.

643. New subsection 64A(2) would provide that the Secretary is an authorised person for the purposes of Part 7 of the Regulatory Powers Act for all the provisions of the Act and regulations. This means the Secretary can seek an injunction from the Court in relation to any provision of the Act or regulations.

644. New subsection 64A(3) would provide that a designated court (as defined in section 7) is a relevant court in relation to the provisions of the Act that are subject to Part 7 of the Regulatory Powers Act (being all provisions of the Act and regulations).

645. New subsection 64A(5) would extend the operation of Part 7 of the Regulatory Powers Act to every external Territory as it relates to the Act. This is necessary because the Regulatory Powers Act does not apply to external territories of its own accord. It would also ensure that Part 7 of the Regulatory Powers Act (as it applies to the Act) would operate consistently with the Act, which applies to all external Territories (see section 6).

Division 8 - Notices to produce

Section 64B - Secretary may require person to provide information etc

646. New section 64B would allow the Secretary, by written notice, to require a person to give information, or produce a document, to an inspector.
647. The Secretary would only be able to exercise the power in section 64B to give a notice to a person if the Secretary believes, on reasonable grounds, that a person is capable of giving information or producing a document that is relevant for the purposes of investigating or preventing:
- an offence against the Act or the regulations; or
 - a contravention of a civil penalty provision of the Act or the regulations.
648. The note following new subsection 64B(1) refers the reader to the definition of an offence against the Act or the regulations in section 7 of the Act.
649. A notice given under this section must relate to particular information or documents that are specified in the notice and must relate to a specific investigation or prevention of a contravention of the Act or the regulations. It would not be able to be used to determine whether a person possessed incriminating documents or to ensure that the person's operations were in compliance with the Act. In such circumstances, it would be appropriate for the Secretary to instead use the monitoring or investigation powers under the Regulatory Powers Act (as applied to the Act by item 128).
650. The documents or information must be given in the manner and within the timeframe specified in the notice. Paragraph 64B(3)(b) would require the period specified in the notice must be no less than 14 days after the notice is given. The notice must also set out the effect of subsection 64B(5) (relating to failure to comply with the notice within the period specified) and sections 137.1 and 137.2 of the Criminal Code (relating to false and misleading information or documents).
651. New subsections 64B(4) and (5) would have the combined effect that a person would commit a strict liability offence if the person is given a notice under subsection 64B(2) and the person fails to comply with the notice. The maximum penalty for the offence is 30 penalty units for individuals or 150 penalty units for a body corporate (using the body corporate multiplier rule at subsection 4B(3) of the Crimes Act).
652. Strict liability is proposed for this offence having regard to the Commonwealth Guide to Framing Offences and the Scrutiny of Bills Committee 6th Report. Consistent with these documents, strict liability is appropriate as:
- the offence is not punishable by imprisonment;

- the offence is subject to a maximum penalty unit of 30 penalty units for an individual;
- the actions which trigger the offence are simple, readily understood and easily defended. The offence is triggered if a person who is given a notice to produce information or documents fails to do so;
- it is necessary to ensure the integrity of the regulatory regime;
- the offence would be subject to an infringement notice (see new section 63, as inserted by this item);
- the absence of strict liability may adversely affect the capacity to prosecute offenders. Whether or not a defendant intentionally or negligently did not comply with a notice to produce documents or information is a matter peculiarly within the knowledge of the defendant alone. Proving the contrary beyond reasonable doubt would require significant and difficult to obtain indirect and circumstantial evidence.

653. The defence of honest and reasonable mistake of fact is available for strict liability offences (see sections 6.1 and 9.2 of Schedule 1 to the Criminal Code) and the existence of strict liability does not make any other defence unavailable (see subsection 6.1(3) of Schedule 1 to the Criminal Code).

654. New subsection 64B(6) would establish a mirror civil penalty provision which would be contravened in circumstances where a person is given a notice under subsection 65AF(2) and does not comply with the notice. The maximum penalty is 30 penalty units.

655. The combination of a strict liability offence and civil penalty provision would provide an adequate deterrent from failing to comply with a notice given under section 64B, which could undermine the compliance and enforcement mechanisms in the Act. It is also appropriate to include both civil and criminal penalties in order to provide flexibility for the Commonwealth to enforce the prohibition appropriately without always needing to pursue criminal penalties (noting that conviction for a criminal offence carries with it a range of consequences beyond the immediate penalty).

656. New subsections 64B(7) to (9) relate to an individual providing information to the Minister in response to a notice given under new section 64B, where the information may tend to incriminate or expose that person to a criminal offence, or to a penalty.

657. New subsection 64B(7) would provide that an individual is not excused from giving information or producing a document under section 64B on the ground that giving the information or producing the document might tend to incriminate the individual in relation to an offence.

658. This subsection would therefore have the effect of overriding the common law privilege against self-incrimination. The intention is to support the compliance and enforcement functions in the Act and better equip the Commonwealth with powers to ensure that Australia is able to properly comply with its international obligations. It also gives weight to the public and environmental benefit in limiting potential non-compliance with the Act, given the significant harm to the environment that may result from ozone depleting substances, synthetic greenhouse gases, and equipment containing such substances, not being properly regulated.
659. The note to subsection 64B(7) would clarify that a body corporate cannot claim the privilege against self-incrimination.
660. The abrogation of the privilege against self-incrimination would operate alongside subsection 64B(8), which would prevent the use of potentially self-incriminating information or documents, or any other information, document or thing obtained as direct or indirect consequence of giving the potentially self-incriminating information or documents, in all criminal proceedings except for those in relating to giving false information in the notice under subsection 64B(2). The inclusion of this immunity provision is consistent with the Commonwealth Guide to Framing Offences, which provides that ‘if the privilege against self-incrimination is overridden; the use of incriminating evidence should be constrained’.
661. Subsection 64B(9) would have the effect that an individual is not excused from giving information, or producing a document, in response to a notice given under subsection 64B(2), on the basis that at general law, the person would otherwise be able to claim the privilege against self-exposure to a penalty (other than a penalty for an offence). The note to this subsection clarifies that a body corporate cannot claim the privilege against self-exposure to a penalty.
662. Penalty privilege is the privilege against self-exposure to a civil or administrative penalty. It is a common law privilege that applies in the context of judicial proceedings and may be claimed by an individual to resist compulsion in the course of such proceedings. Subsection 64B(9) would have the effect of overriding that privilege and ensures that compliance with a notice given under subsection 64B(2) is mandatory. The privilege against self-exposure has been overridden to ensure the Commonwealth may access all relevant information to fully inform an investigation into suspected non-compliance with the Act, given both the significant harm to the environment that could ensue from such a breach, and the fact that such non-compliance may result in Australia being in breach of its international obligations.

Item 139

663. Item 139 would insert new section 65 into the Act. New section 65 would provide a simplified outline to the Part VIIIA of the Act (Ozone Protection and SGG Special Account). The outline is not intended to be comprehensive and has been included to assist readers to understand the substantive provisions of the Part. It is intended that readers will rely on the substantive provisions of the Part.

Item 140

664. Part VIIIA of the Act (sections 65A to 65D) deals with the Ozone Protection and SGG Account.

665. Section 65A of the Act contains a number of definitions that apply to Part VIIIA of the Act. This includes a definition of *ODS*.

666. Item 140 would amend section 65A of the Act to repeal the existing definition of *ODS*. This amendment is consequential to the amendment made by item 142, which would repeal existing subparagraph 65D(b)(i). As subparagraph 65D(b)(i) is the only provision in Part VIIIA that used the term *ODS*, the definition would no longer have any effect once that provision is repealed, and therefore can be repealed.

Item 141

667. Section 65C of the Act sets out the amounts that are to be credited to the Ozone Protection and SGG Account. This currently includes:

- amounts received by the Commonwealth under section 3A of the *Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Act 1995* (Import Levy Act) (paragraph 65C(1)(aa));
- amounts received by the Commonwealth under section 4A of the Import Levy Act (paragraph 65C(1)(ab)); and
- amounts received by the Commonwealth under section 3A of the *Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Act 1995* (Manufacture Levy Act) (paragraph 65C(1)(ac));
- amounts received by the Commonwealth under sections 4 or 4B of the Import Levy Act, or under section 4 of the Manufacture Levy Act (paragraph 65C(1)(a)).

668. Item 141 would amend section 65C of the Act to repeal existing paragraphs 65C(1)(aa), 65C(1)(ab), 65C(ac) and 65C(a), substitute a new paragraph 65C(a). New paragraph 65C(a) would have the effect that all amounts received by the Commonwealth under the Import Levy Act and the Manufacture Levy Act are credited to the Ozone Protection and SGG Account. This would consolidate the existing paragraphs and repeal spent provisions. There would be no change to the operation of section 65C.

Item 142

669. Section 65D of the Act sets out the purposes of the Ozone Protection and SGG Account. Monies can only be paid out of the special account consistently with the purposes in section 65D.

670. Existing subparagraph 65D(b)(i) has the effect that one of the purposes of the special account is paying or reimbursing the Commonwealth's costs associated with furthering *ODS* phaseout programs (including providing information about these programs).

671. Item 142 would repeal existing subparagraph 65D(b)(i) and substitute a new subparagraph 65D(b)(i). New subparagraph 65D(b)(i) would have the effect that one of the purposes of the special account is paying or reimbursing the Commonwealth's costs associated with furthering programs to phase out or phase down scheduled substances.

672. Ensuring this purpose expressly covers all scheduled substances (rather than just ozone depleting substances), and phase downs as well as phase outs, would be consistent with Australia's obligations under the Montreal Protocol and updated Montreal Protocol terminology. It reflects the fact that the Montreal Protocol has adopted phase down programs for some scheduled substances (rather than phase out) – including the phase down of HFCs that is currently underway. As Australia is obliged under international law to phase down HFCs, the amendment made by this item would remove any doubt that monies from that account are able to be used to cover the costs of such programs.

Item 143

673. Existing subparagraph 65D(b)(ii) has the effect that one of the purposes of the special account is paying or reimbursing the Commonwealth's costs associated with furthering emission minimisation programs for ODSs and SGGs (including information about those programs).

674. Item 143 would amend existing subparagraph 65D(b)(ii) of the Act to replace the reference to 'ODSs and SGGs' with a reference to 'scheduled substances'. This terminology would more accurately reflect the scope of the regulatory scheme under the Act, and the scope of Australia's obligations under relevant international treaties (including the Montreal Protocol).

Item 144

675. Item 144 would amend existing section 65D of the Act to insert new paragraph 65D(e). New paragraph 65D(e) would add a new purpose of the Ozone Protection and SGG Account. The new purpose would allow monies to be paid out of the special account for the purposes refunding or remitting, in accordance with regulations made for the purposes of subsection 70(4), amounts received by the Commonwealth as fees for applications under this Act or the regulations.

676. This would allow the refunds of application fees that were paid in error (for example, where the wrong licence was applied for) to be paid out of the special account.

Item 145

677. Item 145 would insert new Parts VIII B and VIII C into the Act, after Part VIII A of the Act.

Part VIII B – Information sharing

678. New Part VIII B would deal with information sharing. It would set out a number of statutory authorisations for the use and disclosure of relevant information. These

authorisations are divided into authorisations that apply to the Minister only (Division 2) and authorisations that apply to all entrusted persons (Division 3).

679. The authorisations are reasonable, necessary and proportionate because they are generally directed at the performance of functions and powers under legislation (including the Act), the enforcement of Australian laws, or are matters of public interest with a high threshold that must be met in order to rely on them (such as being necessary to prevent or lessen a serious threat to human health or the environment).
680. It is not expected that relevant information would generally include personal information within the meaning of the Privacy Act. However, should that be the case the circumstances set out in new Divisions 2 and 3 are intended to constitute an authorisation for the purposes of Australian Privacy Principle 6.2 (see Schedule 1 to the Privacy Act). The circumstances set out in new Divisions 2 and 3 would also constitute authorisation for the purposes of other relevant laws including common law and equitable protections for confidentiality, because the relevant clauses would authorise the use or disclosure of the information by or under an Australian law.
681. Division 4 contains prohibitions applying to the unauthorised use or disclosure of the subset of relevant information that is protected information. An entrusted person would not be able to use or disclose protected information in those circumstances unless the use or disclosure is authorised by the Act, another Commonwealth law or a prescribed State or Territory law.
682. Use or disclosure in accordance with the statutory authorisations in Divisions 2 or 3 would therefore be a defence to the prohibitions in Division 4.

Division 1 – Outline of this Part

Section 65E – Simplified outline of this Part

683. New section 65E would provide a simplified outline to the Part VIIIB of the Act (Information sharing). The outline is not intended to be comprehensive and has been included to assist readers to understand the substantive provisions of the Part. It is intended that readers will rely on the substantive provisions of the Part.

Division 2 - Authorised uses and disclosures by Minister

684. Division 2 would list a number of statutory authorisations for the use and disclosure of relevant information where the power to use or disclose the information is vested in the Minister. This would include disclosure to Commonwealth, State and Territory government bodies, disclosure to law enforcement bodies, and use or disclosure to reduce a serious risk to human health or the environment.
685. It is appropriate that the power to disclose relevant information in these circumstances be vested in the Minister rather than an entrusted person. This is because these authorisations involve either:

- disclosure for the purpose of another entity's function or powers; or

- a matter of public interest with a high bar to satisfy and that is only likely to be applicable in exceptional circumstances.

Section 65F - Disclosure of relevant information to Commonwealth entities

686. New section 65F would authorise the disclosure of relevant information to a Commonwealth entity if the Minister is satisfied that the disclosure is for the purposes of assisting the entity to perform its functions or powers.
687. Section 7 of the Act would define a *Commonwealth entity* as having the same meaning as in the *Public Governance, Performance and Accountability Act 2013*, being a Department of State, a Parliamentary Department, a listed entity or a body corporate established by a Commonwealth law (see item 11).
688. For example, the Minister may decide to disclose relevant information to a Department if satisfied that the particular information would assist in the administration of legislation under that portfolio, such as the Customs Act.
689. Where relevant information that is also protected information is disclosed to another Commonwealth entity under this new section, new section 65V would have the effect that the recipient of that information would be prohibited from using that information other than for the purpose for which it was disclosed (see below). This ensures, so far as possible, that protected information is not misused by officials in the Commonwealth entity to which it was disclosed.

Section 65G - Disclosure of relevant information to State or Territory government body

690. New section 65G would authorise the Minister to disclose relevant information to States and Territories in certain circumstances.
691. The disclosure would need to be to a State or Territory government body. A *State or Territory government body* would be defined in section 7 of the Act as a Department of State, or an agency or authority of a State or Territory (see amendments made by item 44).
692. Relevant information would only be able to be disclosed under section 65G if each of the following conditions are met:
- the Minister reasonably believes the disclosure is necessary for the purposes of performing his or her functions or powers under the Act, or for the purposes of administering a State or Territory law;
 - the relevant State or Territory government body has given an undertaking only to use or disclose that information consistently with a relevant agreement between the Commonwealth and the State or Territory that is in force and applies to the information;

- the Minister is satisfied that the information will only be used or disclosed in accordance with such an agreement.

693. The purpose of this provision is to ensure that relevant information is able to be shared with State or Territory governments where it is necessary to do so in order to properly perform functions and powers under the Act or under State or Territory law, while maintaining appropriate protections for that information. It is necessary to provide such protections via an agreement because of constitutional limitations in imposing offence provisions on State governments or State government officials.

Section 65H - Disclosure for the purposes of law enforcement

694. New section 65H would authorise the disclosure of relevant information by the Minister to an enforcement body if:

- the Minister reasonably believes the disclosure is necessary for the enforcement of a criminal law or a law imposing a pecuniary penalty (such as a civil penalty provision), or for the protection of the public revenue; and
- the relevant enforcement body's functions include that enforcement or protection.

695. An enforcement body, for the purposes of section 65H, would include a Commonwealth entity, a State or Territory government body, the Australian Federal Police or a State or Territory police force or service (see new subsection 65H(2)).

696. It is appropriate that the power to disclose relevant information in these circumstances be vested in the Minister, rather than an entrusted person. This is because the authorisation in new section 65H involves a matter of public interest, being the enforcement of Australian laws.

Section 65J – Use or disclosure to reduce serious risk to human health

697. New section 65J would authorise the use or disclosure of relevant information by the Minister if he or she reasonably believes that the use or disclosure is necessary to prevent or lessen a serious risk to human health.

698. It is appropriate that the power to use or disclose relevant information in these circumstances be vested in the Minister, rather than an entrusted person. This is because the authorisation in section 65J involves a matter of public interest with a high bar to satisfy (being the risk must be serious and there must be a reasonable belief the disclosure is necessary to prevent or lessen the risk) and is likely to only be applicable in exceptional circumstances.

Section 65K – Use or disclosure to reduce serious risk to the environment

699. New section 65K would authorise the use or disclosure of relevant information by the Minister if he or she reasonably believes that the use or disclosure is necessary to prevent or lessen a serious risk to the environment.

700. It is appropriate that the power to use or disclose relevant information in these circumstances be vested in the Minister, rather than an entrusted person. This is because the authorisation in section 65K involves a matter of public interest with a high bar to satisfy (being the risk must be serious and there must be a reasonable belief the disclosure is necessary to prevent or lessen the risk) and is likely to only be applicable in exceptional circumstances.

Division 3 - Authorised uses and disclosures by entrusted persons

701. Division 3 would list a number of statutory authorisations for the use or disclosure of relevant information by an entrusted person. As set out above, an *entrusted person* would be defined in section 7 of the Act and would include the Minister, the Secretary, an APS employee of the Department and any other person employed or engaged by the Department.

Section 65L - Disclosure for the purposes of an Act

702. New section 65L would authorise the use or disclosure of relevant information by an entrusted person for the purposes of the Act or another Act administered by the Minister.

703. The purpose of this authorisation is to allow persons performing, or assisting in the performance of, powers and functions under the Act, or another Act administered by the Minister, to use and disclose relevant information as necessary for the performance of those powers and functions. This would help ensure effective and efficient administration of the Act or other relevant legislation in the Minister's portfolio.

Section 65M - Publicly available information

704. New section 65M would authorise the use or disclosure of relevant information by an entrusted person if the information has already lawfully been made public.

705. This authorisation recognises that there is no justifiable reason to prevent the use or disclosure of information that is publicly available and therefore already accessible.

Section 65N - Person to whom information relates

706. New section 65N would authorise the disclosure of relevant information by an entrusted person to the person to whom the information relates.

707. This authorisation recognises that the interests of the person to whom relevant information relates will not be adversely affected by disclosure of the information to themselves.

Section 65P - Disclosure with consent

708. New section 65P would authorise the use or disclosure of relevant information by an entrusted person if the person to whom the information relates has consented to the use or disclosure, and provided the use or disclosure is in accordance with the consent provided.

709. This authorisation recognises that there is no justifiable reason to prevent the use or disclosure of information where the person concerned consents to the use or disclosure.

Section 65Q - Person who provided information

710. New section 65Q would authorise the disclosure of relevant information by an entrusted person to the person who provided the information.

711. This authorisation recognises that there is no justifiable reason to prevent the disclosure of information to the person who provided it in the first place, as that person would have already seen the information.

Section 65R - Summaries or statistics

712. New section 65R would authorise the use or disclosure of summaries of relevant information or statistics derived from relevant information if those summaries or statistics would not allow the identification of a person.

713. This authorisation recognises that the disclosure of summaries and statistics that contain no identifying information are unlikely to cause harm to any person.

Section 65S - Disclosure to a court, tribunal etc.

714. New section 65S would authorise the disclosure of relevant information by an entrusted person for the purposes of court proceedings, or proceedings of a tribunal, authority or person that has the power to require the answering of questions or the production of documents. Section 65S would also authorise the disclosure of relevant information by an entrusted person in accordance with a court order, or an order of such a tribunal, authority or person.

715. This authorisation is not intended to have the effect of requiring an entrusted person to disclose relevant information to a court, tribunal, authority or person. Rather, its intent is to ensure that persons who are required or permitted to provide such information to a court, or to a tribunal, authority or person with the power to require or request the information, would not be committing an offence or the contravention of a civil penalty provision if they do so.

Section 65T - Use for the purposes of disclosure

716. New section 65T would remove any doubt that a person who discloses relevant information consistently with this Division is not committing an offence or the contravention of a civil penalty provision (under new sections 65U and 65V) in relation to the use of the protected information for such purposes.

Division 4 - Offences

717. Division 4 would list offences and civil penalty provisions relevant to the unauthorised use or disclosure of protected information.

718. *Protected information* would be defined in section 7 of the Act and would be a subset of relevant information where unauthorised use or disclosure of the information could reasonably be expected to lead to certain harmful consequences, including to Australia. As such, it is considered appropriate that the use and disclosure of protected information be strictly regulated.

719. The prohibition in section 65U would apply to entrusted persons. The prohibition in section 65V would apply to officials of a Commonwealth entity to whom protected information was disclosed under section 65F and is intended to ensure that, so far as possible, protected information is not misused after it leaves the Department.

Section 65U - Unauthorised use or disclosure of protected information - entrusted person

720. New subsection 65U(1) would set out a general prohibition on the use or disclosure of protected information by a person who is, or has been, an entrusted person and who obtained the protected information in his or her capacity as an entrusted person.

721. New subsection 65U(2) would provide that the prohibition in subsection 65U(1) does not apply if the use or disclosure is authorised or required by the Act, another law of the Commonwealth or a prescribed law of a State or a Territory.

722. The note to this subsection would explain that the defendant bears an evidential burden to show that the use or disclosure of information was authorised. The reversal of the burden of proof is justified in this instance as the matter to be proved (that is, that the use or disclosure of protected information was authorised by a Commonwealth law or a prescribed State or Territory law) is a matter that would be peculiarly in the knowledge of the defendant. Further, there would be a number of authorised uses and disclosures set out in Division 3 of Part VIII B of the Act (as inserted by this Bill) and across Commonwealth law generally. In the event of a prosecution, it would be significantly more difficult and costly for the prosecution to disprove all possible circumstances than it would be for a defendant to establish the existence of one potential circumstance. Consequently, in order to effectively protect information under new section 65U, it is reasonable, necessary and proportionate to reverse the burden of proof and limit the right to the presumption of innocence.

723. The authorised uses and disclosures in the Act would be set out in new Divisions 2 and 3 (see new sections 65F to 65T above), the authorised uses and disclosures in these clauses are reasonable, necessary and proportionate because they are generally directed at the performance of functions and exercise of powers under legislation (including this Act), the enforcement of Australian laws, or are matters of public interest with a high threshold that must be met in order to rely on them, such as being necessary to prevent or lessen a serious threat to human health or the environment.

724. New subsection 65U(3) would have the effect that a person who contravenes the prohibition in subsection 65U(1) and where the use or disclosure is not authorised or required by a Commonwealth law or a prescribed State or Territory law, would be committing a fault-based offence. The maximum penalty for the offence would be 2 years imprisonment or 180 penalty units, or both.

725. The note following subsection 65U(3) would explain that the physical elements of the offence are found in subsection 65U(1).

726. New subsection 65U(4) would have the effect that a person who contravenes the prohibition in subsection 65U(1) and where the use or disclosure is not authorised or required by a Commonwealth law or a prescribed State or Territory law, would also be committing an offence of strict liability with a maximum penalty of 60 penalty units.

727. Strict liability is proposed for this offence having regard to the Commonwealth Guide to Framing Offences and the Scrutiny of Bills Committee 6th Report. Consistent with these documents, strict liability is appropriate as:

- the offence is not punishable by imprisonment;
- the offence is subject to a maximum penalty of 60 penalty units for an individual;
- the actions which trigger the offence are simple, readily understood and easily defended. The offence is triggered if an entrusted person uses or discloses protected information and the use or disclosure is not authorised by a Commonwealth law or a prescribed State or Territory law;
- offences relating to the unauthorised use or disclosure of protected information need to be dealt with efficiently to ensure industry and community confidence in the regulatory regime, and to reduce the risk of the potentially damaging consequences of unauthorised use or disclosure of protected information;
- the offence would be subject to an infringement notice (see new section 63, as inserted by item 138);
- the absence of strict liability may adversely affect the capacity to prosecute offenders. Whether or not a defendant intentionally, recklessly or negligently used or disclosed protected information without a relevant authorisation is generally a matter that is peculiarly within the knowledge of the defendant alone. Proving the contrary beyond reasonable doubt may require significant and difficult to obtain indirect and circumstantial evidence;
- the use of protected information would play an important role in informing the Minister in relation to those matters covered by the Act (particularly in relation to granting of licences under the Act), which is a necessary part of ensuring that the Act remains an effective and efficient mechanism to both implement Australia's obligations under the relevant international treaties and to realise its intended environmental benefits. If protected information is used or disclosed without authorisation it may deter other persons from providing such information to the Commonwealth in the future;
- the person affected would be placed on notice to guard against the possibility of contravention, which is likely to significantly enhance the effectiveness of the enforcement regime in deterring the conduct in question.

728. The defence of honest and reasonable mistake of fact is available for strict liability offences (see sections 6.1 and 9.2 of Schedule 1 to the Criminal Code) and the existence of strict liability does not make any other defence unavailable (see subsection 6.1(3) of Schedule 1 to the Criminal Code).
729. New subsection 65U(5) would have the effect of establishing a mirror civil penalty provision which is contravened in circumstances where a person contravenes the prohibition in subsection 65U(1) and where the use or disclosure is not authorised by a Commonwealth law or a prescribed State or Territory law. The maximum penalty would be 300 penalty units.
730. The combination of fault-based offence, strict liability offence and civil penalty provision would provide an adequate deterrent from officials using or disclosing protected information without authorisation, which has the potential to cause significant harm. It is also appropriate to include both civil and criminal penalties in order to provide flexibility for the Commonwealth to enforce the prohibition appropriately without always needing to pursue criminal penalties (noting that conviction for a criminal offence carries with it a range of consequences beyond the immediate penalty). It is expected criminal proceedings would be brought for conduct that contravenes subsection 65U(1) and is at the more serious end of the spectrum or that involves a higher degree of malfeasance.

Section 65V - Unauthorised use or disclosure of protected information - official of Commonwealth entity

731. New subsection 65V(1) would provide a general prohibition for a person who is, or has been, an official of a Commonwealth entity, and who obtained protected information in that capacity when the information was disclosed to their entity under new section 65F, to use or disclose the information other than for the purposes for which it was disclosed to the entity. This prohibition ensures, so far as possible, that protected information disclosed to another Commonwealth entity under section 65F is not misused by an official of that entity.
732. New subsection 65V(2) would have the effect that a person who contravenes the prohibition in subsection 65V(1) would be committing a fault-based offence. The maximum penalty for the offence would be 2 years imprisonment or 180 penalty units, or both.
733. The note following subsection 65V(2) would explain that the physical elements of the offence are found in subsection 65V(1).
734. New subsection 65V(3) would have the effect that a person who contravenes the prohibition in subsection 65V(1) would also be committing an offence of strict liability with a maximum penalty of 60 penalty units.
735. Strict liability is proposed for this offence having regard to the Commonwealth Guide to Framing Offences and the Scrutiny of Bills Committee 6th Report. Consistent with these documents, strict liability is appropriate as:

- the offence is not punishable by imprisonment;
- the offence is subject to a maximum penalty of 60 penalty units for an individual;
- the actions which trigger the offence are simple, readily understood and easily defended. The offence is triggered if an official of a Commonwealth entity uses or discloses protected information for a person other than the purpose that the information was disclosed to the entity under section 65F;
- offences relating to the unauthorised use or disclosure of protected information need to be dealt with efficiently to ensure industry and community confidence in the regulatory regime, and to reduce the risk of the potentially damaging consequences of unauthorised use or disclosure of protected information;
- the offence would be subject to an infringement notice (see new section 63, as inserted by item 138);
- the absence of strict liability may adversely affect the capacity to prosecute offenders. Whether or not a defendant intentionally, recklessly or negligently used or disclosed protected information without a relevant authorisation is generally a matter that is peculiarly within the knowledge of the defendant alone. Proving the contrary beyond reasonable doubt may require significant and difficult to obtain indirect and circumstantial evidence;
- the use of protected information would play an important role in informing the Minister in relation to those matters covered by the Act (particularly in relation to granting of licences under the Act), which is a necessary part of ensuring that the Act remains an effective and efficient mechanism to both implement Australia's obligations under the relevant international treaties and to realise its intended environmental benefits. If protected information is used or disclosed without authorisation it may deter other persons from providing such information to the Commonwealth in the future;
- the person affected would be placed on notice to guard against the possibility of contravention, which is likely to significantly enhance the effectiveness of the enforcement regime in deterring the conduct in question.

736. The defence of honest and reasonable mistake of fact is available for strict liability offences (see sections 6.1 and 9.2 of Schedule 1 to the Criminal Code) and the existence of strict liability does not make any other defence unavailable (see subsection 6.1(3) of Schedule 1 to the Criminal Code).

737. New subsection 65V(4) would have the effect of establishing a mirror civil penalty provision which is contravened in circumstances where a person contravenes the prohibition in subsection 65V(1). The maximum penalty would be 300 penalty units.

738. The combination of fault-based offence, strict liability offence and civil penalty provision would provide an adequate deterrent from Commonwealth officials using or disclosing protected information without authorisation, which has the potential to cause significant harm. It is also appropriate to include both civil and criminal penalties in order to provide flexibility for the Commonwealth to enforce the prohibition appropriately without always needing to pursue criminal penalties (noting that conviction for a criminal offence carries with it a range of consequences beyond the immediate penalty). It is expected criminal proceedings would be brought for conduct that contravenes subsection 65U(1) and is at the more serious end of the spectrum or that involves a higher degree of malfeasance.

Part VIIC – Review of decisions

739. New Part VIIC deals with review of decisions made under the Act. Reviewable decisions would need to be reviewed internally before they could be reviewed externally by the Administrative Appeals Tribunal, unless the original decision was made personally by the Minister.

Section 65W – Simplified outline of this Part

740. New section 65W would provide a simplified outline to the Part VIIC of the Act (Review of decisions). The outline is not intended to be comprehensive and has been included to assist readers to understand the substantive provisions of the Part. It is intended that readers will rely on the substantive provisions of the Part.

Section 65X– Reviewable decisions

741. New section 65X would list all the decisions under the Act that are reviewable decisions. The listed decisions would cover all decisions listed in existing Parts III and IV of the Act, which relate to licences and HCFC quotas respectively, plus the new administrative decisions relating to licenses that would be introduced by this Bill, being:

- a decision to suspend a licence under new subsection 19D(1);
- a decision under new subsection 19D(3) to specify either a fixed term for a licence suspension, or actions the licensee must take for the suspension to end;
- a decision to vary a suspension notice under new paragraph 19D(7)(a).

742. Consistent with Commonwealth policy, it is appropriate that these kinds of decisions be merits reviewable.

Section 65Y – Notification of reviewable decisions etc

743. New section 65Y would require the Minister, as soon as practicable after making a reviewable decision, to give the applicant or licensee concerned a written notice of the decision.

744. The notice must contain the reasons for the decision and the details of the person's right to have the decision reconsidered by the internal review mechanism in new sections 65Z to 65ZB (for decisions not made by the Minister personally) or reviewed by the Administrative Appeals Tribunal (for decisions made by the Minister personally).
745. Subsection 65Y(2) would clarify that the required notice is taken to have been given if the reasons and review rights are contained in a written notice of the reviewable decision provided under another provision of the Act. This would prevent unnecessary duplication of notices.
746. Subsection 65Y(3) would have the effect that failure to provide the notice required under subsection 65Y(1) would not affect the validity of the original reviewable decision. This would provide the necessary certainty for both industry and the Commonwealth as to whether a licence is in force and covers a relevant import, manufacture or export.

Section 65Z – Reconsideration of reviewable decisions – application for reconsideration

747. New section 66Z(1) would allow an applicant or licensee apply to the Minister to reconsider a reviewable decision that has been made in relation to the applicant or licensee, other than a decision that was made by the Minister personally or a decision that has already been reconsidered.
748. New subsection 66Z(2) would require a request for reconsideration under subsection 66Z(1) to be made in writing within 21 days of the original decision being made. However, the Minister would be able to allow a longer period.
749. The application must set out the reasons why the applicant or licensee wants the original decision reconsidered.

Section 65ZA – Reconsideration of reviewable decisions – conducting the reconsideration

750. New section 65AZ would set out the process for reconsidering a decision that is the subject of an application made under new section 65Z.
751. Subsection 65ZA(1) would require the Minister, on receiving an application under section 65Z to reconsider a reviewable decision, to reconsider the decision.
752. Subsection 65ZA(2) would apply where the reconsideration is to be undertaken by a delegate of the Minister, rather than the Minister personally. The delegate must not have been involved in making the original decision, and must be at least as senior as the delegate who made the original decision. This limitation does not apply to decisions that have deemed to have been made by the Minister under section 17 or 19AD.
753. Subsections 65ZA(3) and (4) would allow the Minister to, by written notice, require the applicant or licensee to provide additional information about the application for reconsideration. The information must be provided within 30 days after the notice is given.

Section 65ZB – Reconsideration of reviewable decisions – reconsideration decision

754. New section 65ZB would set out the requirements of the reconsideration decision.
755. Subsection 65ZB(1) would require the Minister, after reconsidering the decision, to affirm, vary or set aside the original decision. If the Minister sets aside the original decision, the Minister would also be able to make such other decision as the Minister considers appropriate.
756. Subsection 65ZB(2) would require the Minister, as soon as practicable after making a reconsideration decision, to give the applicant or licensee concerned a written notice of the decision. The notice must contain the reasons for the decision and the details of the person's right to have the decision reviewed by the Administrative Appeals Tribunal
757. Subsection 65ZB(3) would have the effect that failure to provide the notice required under subsection 65ZB(2) would not affect the validity of the original reviewable decision. This would provide the necessary certainty for both industry and the Commonwealth as to whether a licence is in force and covers a relevant import, manufacture or export.
758. Subsection 65ZB(4) would provide that the reconsideration decision would take effect on the day specified in the notice given under new subsection 65ZB or, if that notice does not specify a day, the day the reconsideration decision was made.
759. Subsection 65ZB(5) would deal with deemed reconsiderations decisions. If the Minister has not made a reconsideration decision within 60 days of the application being made, the Minister is taken to have made a decision affirming the original decision.
760. However, that timeframe would differ if the Minister has requested further information from the applicant or licensee under subsection 65ZA(3). If the person provided the requested additional information, the 60 day timeframe commences on the day the additional information is provided to the Minister. If the person does not provide the requested additional information, the Minister is taken to have made a decision affirming the original decision 90 days after the notice under subsection 65ZA(3) is given.

Section 65ZC – Review of Decisions by Administrative Appeals Tribunal

761. New section 65ZC would allow applications to be made to the Administrative Appeals Tribunal for review of a reconsideration decision, or a reviewable decision that was made by the Minister personally.
762. This would have the effect of preserving the existing right to AAT review for reviewable decisions, provided that, where available, the applicant makes use of the internal review process first.
763. Subsection 27(1) of the *Administrative Appeals Tribunal Act 1975* will operate to limit the persons who may apply to the Administrative Appeals Tribunal for review of a reconsideration decision to those persons whose interests are affected by the decision. An

application may be made to the Administrative Appeals Tribunal by or on behalf of such persons.

Item 145

764. Item 145 would repeal existing section 66, which relates to review of decisions and statements to accompany notification of decisions. This provision would be replaced with new Part VIIC, as inserted by item 145, which deal with these same matters.

765. Item 145 would also insert new section 66. New section 66 would provide a simplified outline to the Part IX of the Act (Miscellaneous). The outline is not intended to be comprehensive and has been included to assist readers to understand the substantive provisions of the Part. It is intended that readers will rely on the substantive provisions of the Part.

Item 147

766. Item 147 would repeal existing section 67, which relates to review of decisions and statements to accompany notification of decisions. This provision would be replaced with new Part VIIC, as inserted by item 145, which deal with these same matters.

Item 148

767. Item 148 would amend the heading of section 67A of the Act to add the words ‘of the Minister’ at the end. Section 67A of the Act contains a power that allows the Minister to delegate most of his or her powers and functions under the Act or regulations to certain Departmental officers.

768. The purpose of this amendment is to clearly distinguish between the delegations power in section 67A (which applies to powers and functions of the Minister) and new section 67AA (inserted by item 151) which would contain a separate delegations power allowing the Secretary to delegate his or her powers and functions under the Act (and the Regulatory Powers Act as it applies to the Act) or the regulations.

Item 149

769. Item 149 would amend subsection 67A(1) of the Act to insert new paragraph 67(1)(aa). New paragraph 67(1)(aa) would have the effect of allowing the Minister to delegate his or her powers under the Act or regulations to the Secretary, in addition to Senior Executive Service employees and certain APS employees in the Department. This amendment is intended to correct an oversight in the existing provision.

Item 150

770. Item 150 would amend subsection 67A(2) to remove the reference to section 53K. This amendment is consequential to the amendments made by item 127 of this Schedule which would have the effect of repealing existing section 53K.

Item 151

771. Item 151 would insert a new section 67AA into the Act. New section 67AA would allow the Secretary to delegate their functions or powers under the Act, or under the Regulatory Powers Act (as it applies to the Act) to a SES employee, or acting SES employee, in the Department. It would also allow the Secretary to delegate their powers under section 66 or 67 of the Regulatory Powers Act (concerning the return of seized things) to an inspector.

772. This power is necessary because the Bill would amend the Act to vest powers in the Secretary for the first time. The powers that would be vested in the Secretary, rather than the Minister, relate to compliance and enforcement matters including under the Regulatory Powers Act (as it applies to the Act). For this reason, it is appropriate that the delegation of such powers be limited to the Departmental officials at (or acting at) SES level or, in the case of the powers in sections 66 and 67 of the Regulatory Powers Act, inspectors.

773. In performing functions or exercising powers, delegates must comply with any directions of the Secretary to ensure that powers exercised by delegates are exercised appropriately and consistently (new subsection 67AA(3)).

774. As an additional safeguard to ensure the appropriate and reasonable use of delegations, the giving of delegations and the exercise of delegated powers are also subject to fraud control procedures, risk management processes and other protocols. These are designed to ensure delegated decision-making is made at the appropriate level and in a transparent and accountable manner.

Item 152

775. Item 152 would amend existing paragraph 69(1)(a) of the Act to change the time by which a licence levy is due and payable from 60 days after the end of the reporting period to which the levy relates to 90 days after the end of the reporting period to which the levy relates (unless the Minister allows a longer period).

776. This change would allow licensees additional time to ensure that they have paid the relevant levies for the import or manufacture of scheduled substances or SGG equipment, and increase flexibility for businesses to manage their workload and cash flow, without compromising on environmental outcomes.

Item 153

777. Item 153 would repeal existing section 69B and substitute new sections 69B and 69BA.

778. New section 69B would make it clear that the main constitutional basis for the Act (other than Part VIII B concerning information sharing) is the treaty implementation aspect of the external affairs power in section 51(xxix) of the Constitution, in reliance on Australia's obligations under the following international agreements:

- the Vienna Convention;

- the Montreal Protocol;
- the Framework Convention on Climate Change;
- the Kyoto Protocol;
- the Paris Agreement.

779. The note after subsection 69B(1) explains that Part VIII B of the Act, concerning information sharing, relies on a range of legislative powers of the Commonwealth.

780. New section 69BA would set out alternative constitutional bases that would apply in relation to the following activities:

- manufacturing, importing or exporting a substance, scheduled substance or type of scheduled substance;
- distributing, disposing of, purchasing or acquiring a substance, scheduled substance or type of scheduled substance;
- storing, using or handling a substance, scheduled substance or type of scheduled substance;
- engaging in conduct that results in the discharge of a substance, scheduled substance or type of scheduled substance;
- recovering, recycling or destroying a substance, scheduled substance or type of scheduled substance.

781. The additional constitutional powers that would support the regulation of these activities by the Act are the corporations power, the territories power, the trade and commerce power, the communications power and the Commonwealth's executive power.

Item 154

782. Section 69E of the Act provides that if the operation of the Act or the regulations would result in an acquisition of property from a person otherwise than on just terms, the Commonwealth is liable to pay a reasonable amount of compensation to the person. If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in a court of competent jurisdiction for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

783. Item 154 would amend existing subsection 69E(1) to insert 'or the Regulatory Powers Act as that Act operates because of this Act' after 'the regulations'. This amendment would remove any doubt that any acquisition of property from a person, otherwise than

on just terms, that results from the operation of the Regulatory Powers Act as that Act applies to the Act would be covered by section 69F.

Item 155

784. Item 155 would repeal existing sections 69F and 69G of the Act.

Section 69F

785. Existing section 69F allows the Minister to make arrangements with a Minister of a State or the Australian Capital Territory in relation to the performance of the functions of a magistrate under this Act by a magistrate of that State (or the Australian Capital Territory).

786. This provision is no longer needed as the application of the Regulatory Powers Act to this Act (see items 128 and 138) would mean that magistrates would no longer have functions under this Act.

Section 69G

787. Existing section 69G of the Act allows the regulations to prohibit or regulate the manufacture, import export, distribution or use of equipment that:

- contains scheduled substances; or
- uses scheduled substances in its operation.

788. A prohibition in regulations made under s 69G does not apply if a person holds a licence (see subsection 69G(4)).

789. The amendments to section 13 and the inclusion of new sections 13AA and 13AB (see item 52), and the amendments to section 45A (see items 105 to 110) would mean that section 69G is no longer necessary, as the relevant prohibitions that could potentially be included in regulations made under section 69G would now be included in these new provisions (whether directly, or by way of regulations made under the relevant provision).

790. In particular:

- new subsection 13(3) would prohibit the manufacture of equipment containing an ozone depleting substance, and would prohibit the manufacture of equipment containing an synthetic greenhouse gas if the equipment or substance is prescribed in the regulations;
- new subsection 13AA(3) would prohibit the import of equipment containing scheduled substances without a licence;
- new subsection 13AB(3) would prohibit the export of equipment containing scheduled substances without a licence, if the equipment or substance is prescribed in the regulations;

- new subsections 13(4), 13AA(5) and 13AB(5) would prohibit the manufacture, import or export of equipment that uses scheduled substances in its operation without a licence, if the equipment or substance is prescribed in the regulations;
- new subsection 45A(1) would allow the regulations to prohibit or regulate the distribution and use of equipment containing scheduled substances, or equipment that uses scheduled substances in its operation (including requiring a licence).

791. This approach would ensure that:

- all prohibitions concerning the import, export and manufacture of equipment that contains scheduled substances, or that uses scheduled substances in its operation are located in the same part of the Act; and
- all prohibitions concerning the end use of equipment that contains scheduled substances, or that uses scheduled substances in its operation, are located in regulations made for the purposes of the same section; and
- the licence requirements and exemptions apply consistently.

792. This would make the legislation easier and clearer for industry to navigate, which is likely to lead to better compliance with the Act and better environmental outcomes.

Item 156

793. Item 156 would repeal existing section 70 of the Act and substitute a new section 70. The purpose of this amendment is to update and modernise the regulation-making power and ensure that it remains fit for purpose to ensure Australia's international obligations are properly implemented.

794. Subsection 70(1) would enable the Governor-General to make regulations, not inconsistent with the Act, prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

795. Regulations made under this section would be able to prescribe:

- penalties, not exceeding a fine of 50 penalty units, for offences against the regulations (see subsection 70(2)); and
- pecuniary penalties, not exceeding 60 penalty units, for contravening civil penalty provisions in the regulations (see subsection 70(3)).

796. New paragraph 70(4)(a) would make it clear that the regulations can provide for the charging and recovery of application fees under the Act and the regulations (including by non-government bodies). The purpose of this amendments is to remove any doubt that application fees can be charged for end use permits granted under the regulations

(including by bodies that are engaged to implement those permits schemes), in addition to licences granted under the Act for the import, export and manufacture of scheduled substances and equipment.

797. New paragraph 70(4)(b) would allow the regulations to provide for the remission, refund or waiver of application fees, or the exemption of persons from payment of application fees. The purpose of this amendment is to ensure that a mechanism can be inserted into the regulations that allows application fees charged under the Act or regulations to be waived or subject to an exemption in appropriate circumstances (such as where the applicant is in financial hardship), or be refunded where appropriate (for instance, where the fee has been paid in error).

798. New subsection 70(5) would require fees charged under the Act or regulations to not amount to taxation, consistent with the Constitution.

799. New subsection 70(6) would have the effect of overriding subsection 14(2) of the *Legislation Act 2003* so that the regulations can make provision in relation to a matter by applying, adopting or incorporating the Vienna Convention, the Montreal Protocol, the United Nations Framework Convention on Climate Change, the Kyoto Protocol or the Paris Agreement, or a decision adopted or made under one of these international agreements, as the agreement or decision exists from time to time. This would ensure the regulations can continue to be used to implement Australia's obligations under these international agreements, including where new obligations under those agreements come into force for Australia.

Item 157

800. Schedule 1 to the Act lists the scheduled substances that are regulated by the Act.

801. Item 157 would repeal Parts I to IV of Schedule 1 to the Act and substitute new clauses 1 to 4.

802. These amendments would remove redundant references to stage-1 and stage-2 categories of scheduled substances. As stage-1 and stage-2 substances have now been phased out under the Montreal Protocol, it would be no longer necessary to refer to and delineate between the two categories. The amendments would also streamline and simplify Schedule 1 and adopt a more modern drafting style.

Clause 1 - CFCs

803. New clause 1 of Schedule 1 to the Act would set out the substances that are types of chlorofluorocarbon and would be covered by the definition of *CFC* and *scheduled substance* in section 7 of the Act. Column 1 of the table in this clause would list the name or chemical formula of each of the substances. Column 2 of the table in this clause would list the ozone depleting potential for each of the substances included in the table.

Clause 2 - Halons

804. New clause 2 of Schedule 1 to the Act would set out the substances that are types of halon and would be covered by the definition of *halon* and *scheduled substance* in section 7 of the Act. Column 1 of the table in this clause would list the name of each of the substances. Column 2 of the table in this clause would list the ozone depleting potential for each of the substances included in the table.

Clause 3 - Carbon tetrachloride

805. New clause 3 of Schedule 1 to the Act would set out the substance that is carbon tetrachloride and would be covered by the definition of *scheduled substance* in section 7 of the Act. Column 1 of the table in this clause would list the name and chemical formula of the substance. Column 2 of the table in this clause would list the ozone depleting potential for the substance included in the table.

Clause 4 - Methyl chloroform

806. New clause 4 would set out the substance that is methyl chloroform and would be covered by the definition of *scheduled substance* in section 7 of the Act. Column 1 of the table in this clause would list the name and chemical formula of the substance. Column 2 of the table in this clause would list the ozone depleting potential for the substance included in the table. The note under the table would clarify that the formula C₂H₃Cl₃ does not refer to 1,1,2-trichloroethane.

Item 158

807. Item 158 would repeal the heading to Part V of Schedule 1 and substitute a new clause 5.

Clause 5 - HCFCs

808. New clause 5 of Schedule 1 would set out the substances that are types of hydrochlorofluorocarbon that would be covered by the definitions of *HCFCs* and *scheduled substance* in section 7 of the Act. The existing table in this clause listing the types of substances, the ozone depleting potential for each of the substances, and the 100-year global warming potential for each of the substances (where applicable) would remain unchanged.

Item 159

809. Item 159 would repeal Parts VI to VIII of Schedule 1 to the Act and substitute new clauses 6 to 8. These amendments would streamline and simplify Schedule 1 and adopt a more modern drafting style.

Clause 6 - HBFCs

810. New clause 6 of Schedule 1 would set out the substances that are types of hydrobromofluorocarbon and would be covered by the definitions of *HBFC* and *scheduled substance* in section 7 of the Act. Column 1 of the table in this clause would list the chemical formula of each of the substances. Column 2 of the table in this clause would list the ozone depleting potential for each of the substances included in the table.

Clause 7- Methyl bromide

811. New clause 7 of Schedule 1 would set out the substance that is methyl bromide and would be covered by the definitions of *methyl bromide* and *scheduled substance* in section 7 of the Act. Column 1 of the table in this clause would list the chemical formula of the substance. Column 2 of the table in this clause would list the ozone depleting potential for the substance included in the table.

Clause 8 - Bromochloromethane

812. New clause 8 of Schedule 1 would set out the substance that is bromochloromethane and would be covered by the definition of *scheduled substance* in section 7 of the Act. Column 1 of the table in this clause would list the chemical formula of the substance. Column 2 of the table in this clause would list the ozone depleting potential for the substance included in the table.

Item 160

813. Item 160 would repeal the heading to Part IX of Schedule 1 and substitute it with a new clause 9.

Clause 9 - HFCs

814. New clause 9 of Schedule 1 would set out the substances that are types of hydrofluorocarbon that would be covered by the definitions of *HFC* and *scheduled substance* in section 7 of the Act. The existing table in this clause listing the types of substances and the 100-year global warming potential for each of the substances would remain unchanged.

Item 161

815. Item 161 would repeal the heading to Part X of Schedule 1 and substitute it with a new clause 10.

Clause 10 - PFCs

816. New clause 10 of Schedule 1 would set out the substances that are types of perfluorocarbon that would be covered by the definitions of *PFC* and *scheduled substance* in section 7 of the Act. The existing table in this clause listing the chemical formula of the types of substances would remain unchanged.

Item 162

817. Item 162 would repeal Parts XI to XII of Schedule 1 to the Act and substitute with new clauses 11 and 12. These amendments would streamline and simplify Schedule 1 and adopt a more modern drafting style.

Clause 11 - Sulfur hexafluoride

818. New clause 11 of Schedule 1 would set out that sulfur hexafluoride, which has the chemical formula SF₆, is covered by the definitions of *sulfur hexafluoride* and *scheduled substance* in section 7 of the Act.

Clause 12 - Nitrogen trifluoride

819. New clause 12 of Schedule 1 would set out that nitrogen trifluoride, which has the chemical formula NF₃, is covered by the definition of *nitrogen trifluoride* and *scheduled substance* in section 7 of the Act.

Item 163

820. Item 163 would repeal Schedule 4 from the Act.

821. Schedule 4 of the Act currently contains a number of prohibitions concerning the import and manufacture of certain equipment that contains, or uses in its operation, particular ozone depleting substances. Under existing section 13 of the Act, a person can obtain a licence to carry out activities that are prohibited by Schedule 4 of the Act (schedule 4 activities) in certain circumstances.

822. The prohibitions that are currently in Schedule 4 would be transferred to new sections 13 and 13AA by the amendments in item 52. New sections 13 would prohibit the manufacture of equipment containing an ozone depleting substance without a licence, and would also prohibit the manufacture of equipment containing a synthetic greenhouse gas without a licence if regulations are made prescribing the equipment or substance. New section 13AA would prohibit the import of equipment containing scheduled substances (including ozone depleting substances) without a licence. New sections 13 and 13AA would also allow regulations to be made that would have the effect of prohibiting the manufacture or import of equipment that uses scheduled substances (including ozone depleting substance) in its operation without a licence. Having these prohibitions upfront in the Act with the other prohibitions on importing, exporting or manufacturing scheduled substances, and using the same licences for all equipment, will make the legislation easier and clearer for industry to navigate, which is likely to lead to better compliance with the Act and better environmental outcomes.

PART 2 – APPLICATION AND TRANSITIONAL PROVISIONS

Division 1 – Definitions

Item 164

823. Item 164 would define a number of terms for the purposes of Part 2 of this Schedule (dealing with application and transitional provisions).

824. This includes the term *pre-commencement licence*, which would mean a licence that was granted before Schedule 1 to the Bill commences and, immediately before that commencement, either was in force, or was yet to come into force and was not terminated or cancelled.

Division 2 – General provisions

Item 165

825. Item 165 is an application provision that deals with the changes to section 13A (see item 53) relating to what licences allow.

826. Sub-item 165(1) would have the effect that the amendments to section 13A apply to licences granted or renewed on or after the commencement of the Bill.

827. Sub-item 165(2) would have the effect that a pre-commencement licence would continue in effect, and would continue to allow the activities specified in it, until it stops being in force or is renewed.

Item 166

828. Item 166 is an application provision which deals with the changes made to the criteria for granting or renewing a licence in, respectively, sections 16 and 19AC (see items 61 and 76).

829. Sub-item 166(1) would have the effect that the Minister must apply the criteria in section 16, as amended by the Bill, when deciding whether to grant a licence on or after the Bill commences. This would be the case whether the application for a licence was made before, on or after commencement of the Bill.

830. Sub-item 166(2) would have the effect that the Minister must apply the criteria in section 19AC, as amended by the Bill, when deciding whether to renew a licence on or after the Bill commences. This would be the case whether the application for a licence renewal was made before, on or after commencement of the Bill.

831. The note following sub-item 166(2) explains that, as a result of that sub-item, the criteria that apply for granting a licence on or after the commencement of this item (i.e., new subsections 16(3A) to (6A)) would also apply for renewing a licence on or after that commencement.

832. Sub-item 166(3) provides that sub-item 166(2) applies in relation to a pre-commencement licence subject to item 167.

Item 167

833. Item 167 is a transitional provision that would deal with the renewal of pre-commencement licences and the amendments to section 13A concerning what each category of licence covers (see item 53).

834. A pre-commencement licence would be able to be renewed.

835. However, if the changes to section 13A mean that none of the activities allowed by the pre-commencement licence would still be allowed by that category of licence after the Bill commences, the Minister must refuse to renew the licence. In these circumstances, the licensee would need to apply for a new licence in the category that, after the commencement of the Bill, would cover the activities they intend to carry out.

836. Similarly, if the changes to section 13A mean that one or more of the activities allowed by the pre-commencement licence would no longer be allowed by that category

of licence after the Bill commences, the Minister can renew the licence but must amend it to remove the activities that would no longer be allowed by the category of licence. In these circumstances, if the licensee still wishes to carry out such activities, they would need to apply for a new licence in the category that, after the commencement of the Bill, would cover the relevant activities.

837. Existing subsection 19AC(3) of the Act has the effect that, when considering the mandatory matters specified in subsections 16(3A) to (6B) for the purpose of deciding whether to renew a licence, the Minister can take into account his or her previous consideration of those matters. Sub-item 167(4) would have the effect that the Minister can, after the Bill commences, continue to take account of his or her previous consideration of the matters in old subsections 16(3A) to (6B) when deciding whether to renew a pre-commencement licence, even though subsection 19AC(3) is being amended to refer to subsections 16(3A) to (6A) (in line with the amendments to section 16 in item 61).

838. Sub-item 167(5) sets out the types of pre-commencement licences to which item 167 applies, being controlled substances licence, essential uses licences, used substances licences and equipment licences.

Item 168

839. Item 168 is an application provision which would have the effect that the amendments to the fit and proper person test in section 13B (see item 54) would apply to all decisions whether to grant, renew, transfer, suspend or cancel a licence that are made on or after the commencement of the Bill.

840. This would include where the application for a licence or renewal was made before the Bill commences, and where the licence that is being transferred, suspended or cancelled was granted before the Bill commences.

Item 169

841. Item 169 is an application provision would make it clear that:

- the new mandatory licence conditions in subsection 18(1) apply to licences from the date the Bill commences, whether the licence was granted before, on or after commencement of the Bill;
- licences can be suspended under new section 19D from the date the Bill commences, whether the licence was granted before, on or after commencement of the Bill;
- the consequential changes to sections 19A, 19B and 19C to incorporate suspended licences apply from the date the Bill commences, whether the licence was granted before, on or after commencement;

- for the purposes of deciding whether to suspend a licence under new section 19D, the criteria in subsections 19D(1) and (2) would be satisfied if the licensee is no longer a fit and proper person to hold a licence, or has contravened a licence condition, because of conduct engaged in before, on or after commencement of the Bill.

Item 170

842. Item 170 is an application provision that deals with directions by the Minister to export HCFCs or HFCs that have been imported by a person without quota.

843. Sub-item 170(1) would ensure that a person would not require a licence to export the HCFCs or HFCs in these circumstances, whether the Minister gave the relevant direction before, on or after the commencement of the Bill.

844. Sub-item 170(2) would allow the Minister to give a person a notice to extend the period in which the person must comply with a direction to export the HCFCs or HFCs, whether the Minister gave the relevant direction before, on or after the commencement of the Bill.

Item 171

845. Item 171 is an application provision that would have the effect that the changes to reporting obligations in section 46 (see item 114) would apply to reporting periods ending on or after commencement of the Bill.

846. This is appropriate, as reports are due until after the end of the reporting period, so the changes would only apply to reports that are due after the Bill commences.

Item 172

847. Item 172 is an application provision that would have the effect that new Part VIII B of the Act (concerning information sharing), would regulate all uses and disclosures of relevant information on and after the commencement of the Bill. This would be the case whether or not the particular information being used or disclosed was obtained prior to, on or after the Bill commencing.

848. The purpose of this application provision is to provide certainty for both industry and government officials concerning how relevant information, including the subset that is protected information, is to be dealt with in the future.

Item 173

849. Item 173 is an application provision that would have the effect that new Part VIII C of the Act (including the new internal review mechanism) would only apply to reviewable decisions made on or after commencement of the Bill.

Item 174

850. Item 174 is an application provision that deals with the changes to when a licence levy is due (see item 152).

851. It would have the effect that the amendment to section 69(1) to increase the timeframe to pay a licence levy from 60 days after the end of the relevant reporting period to 90 days after the end of the relevant reporting period would apply to reporting periods that end on or after the commencement of the Bill.

Item 175

852. Item 175 is an application provision that would ensure that all amounts received by the Commonwealth under the Import Levy Act and the Manufacture Levy Act before, on or after commencement of the Bill would be credited to the Ozone Protection and SGG Special Account, despite the amendments to section 65C of the Act in item 141.

Item 176

853. Item 176 is an application provision that deals with the amendments to the general regulation-making power in section 70 of the Act (see item 156). It would have the effect that regulations made under section 70 of the Act that were in force immediately before the commencement of the Bill, would continue in force after the Bill commences, as if they had been made under new section 70 (i.e. section 70 as amended by the Bill).

854. This would remove the need to remake such regulations just because the source of power for those regulations has been amended.

Division 2 – Enforcement

Item 177

855. Item 177 is an application provision that would have the effect that a person who was an inspector under the Act immediately before the commencement of the Bill, continues to be an inspector under the Act after the Bill commences as if the person had been appointed by the Secretary under subsection 49(1) of the Act, as amended by this Schedule. This would ensure continuity for existing inspectors.

Item 178

856. Item 178 is an application provision that deals with identity cards issued under the Act before the commencement of the Bill.

857. Sub-item 178(1) would have the effect that identity cards that were issued under section 50 of the Act and are in force immediately before the commencement of the Bill, continue in force after the Bill commences and are taken to be an identity card issued under section 35 or 76 of the Regulatory Powers Act.

858. Sub-item 178(2) would have the effect that, despite its repeal, existing section 50 of the Act would, after the commencement of the Bill, continue to apply to persons who ceased to be an inspector before the Bill commenced. This would ensure that such persons would still be subject to the offence in existing subsections 50(3) and (4) if they fail to return their identity card to the Minister as soon as practicable.

Item 179

859. Item 179 is an application provision that relates to the monitoring and enforcement powers in Parts 2 and 3 of the Regulatory Powers Act.

860. Sub-items 179(1) and (2) would have the combined effect that:

- the monitoring and investigation powers under the Regulatory Powers Act triggered by new sections 50 and 52 (see amendments made by item 128); and
- the additional monitoring powers and investigation powers listed in new sections 51 and 53 (see amendments made by item 128);

would be able to be used to monitor compliance with the Act, determine whether information given in compliance (or purported compliance) with the Act is correct, and investigate suspected contraventions of the Act that occurred before, on or after the commencement of the Bill.

861. Sub-item 179(3) would have the effect that Part VIII of the Act, as it was immediately before the commencement of the Bill, continues to apply on and after that date in respect of:

- applications for warrants that were made but not decided before that date;
- warrants issued (or completed and signed) as a result of applications that were made before that date;
- powers exercised, rights created, duties imposed, and things seized or secured before that date as a result of entering a premises either under existing section 51 or 52, or under a warrant issued (or completed and signed) as a result of an application that was made before that date.

Item 180

862. Item 180 is an application provision that relates to the civil penalty regime in Part 4 of the Regulatory Powers Act.

863. Sub-item 180(1) would have the effect that Part 4 of the Regulatory Powers Act, as applied to the Act, applies to contraventions of civil penalty provisions in the Act or the regulations occurring on or after commencement of the Bill.

864. Sub-item 180(2) would have the effect that Division 7 of Part VIII of the Act, as in force immediately prior to the commencement of the Bill, continues to apply to contraventions of civil penalty provisions in the Act or the regulations occurring before the Bill commences.

Item 181

865. Item 181 is an application provision that relates to the infringement notice regime in Part 5 of the Regulatory Powers Act.

866. Sub-item 181(1) would have the effect that Part 5 of the Regulatory Powers Act, as it applies to the Act, applies in relation to alleged contraventions to strict liability offence or civil penalty provisions the Act or the regulations occurring on or after commencement of the Bill.

867. Sub-item 181(2) would have the effect that Division 5 of Part VIII of the Act, and any regulations made for the purpose of that, as in force immediately prior to the commencement of the Bill, continues to apply in relation to:

- alleged contraventions of offence provisions referred to in existing paragraph 65AA(1)(a) or (b) of the Act; and
- alleged contraventions of civil penalty provisions referred to in existing subsection 65AA(3) of the Act

occurring before the commencement of the Bill.

Item 182

868. Item 182 is an application provision that would have the effect that Part 6 of the Regulatory Powers Act, as it applies to the Act, would apply to undertakings given on or after the commencement of the Bill.

Item 183

869. Item 183 is an application provision that would ensure that:

- all injunctions sought on or after the commencement of the Bill would be sought under Part 7 of the Regulatory Powers Act, as it applies to this Act – whether or not the relevant contravention occurs before, on or after that date; and
- any injunction application made prior to the commencement of the Bill and that has not been decided by that date, will continue to be assessed under section 56 of the Act, as it was immediately before that date.

Item 184

870. Item 184 is a transitional provision that deals with the forfeiture of goods and the amendments to section 57 (concerning what are forfeitable goods) made by item 129.

871. The effect would be that:

- a person who is convicted of an offence, or is subject to a civil penalty order, in relation to a contravention that occurred prior to commencement of the Bill

would be subject to section 58 of the Act (concerning forfeiture of goods following conviction or civil penalty order) as amended by the Bill. This would mean forfeitable goods that are the subject of the offence or civil penalty order are forfeited to the Commonwealth, regardless of when the relevant contravention occurred;

- where an inspector seizes goods that relate to an alleged contravention of an offence or civil penalty provision that occurred prior to the commencement of the Bill, new Subdivision C of Division 3 would apply to the goods. This would mean that the process for forfeiture notices in sections 60A to 60D (as amended by the Bill) would apply to all goods seized section 49 or 52 of the Regulatory Powers Act, regardless of when the alleged contravention occurred.

Item 185

872. Sub-item 185(1) is an application provision that would ensure that the amendments to section 60 of the Act (concerning the movement of seized goods) (see item 132) would only apply in respect of seizure notices given on or after the commencement of the Bill.

873. Sub-item 185(2) is a savings provision that would have the effect that any direction given to a person by the Minister under section 60 of the Act (concerning the movement, alteration or interference with seized goods) that was in force immediately before the commencement of the Bill, continues in force after the Bill commences as if the direction had been given by the Secretary under that section as amended.

Item 186

874. Item 186 is an application provision that would have the effect that a notice to produce, in accordance with new section 64B of the Act (as inserted by item 138), can be given in relation to a suspected contravention of an offence or civil penalty provision that occurred before, on or after the Bill commences.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

**Ozone Protection and Synthetic Greenhouse Gas Management Amendment
(Miscellaneous Measures) Bill 2021**

This Bill is compatible with human rights and freedom recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Bill

The Ozone Protection and Synthetic Greenhouse Gas Management (Miscellaneous Measures) Amendment Bill 2021 (the Bill) would amend the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* (the Act).

The Act implements Australia's international obligations under the Montreal Protocol on Substances that Deplete the Ozone Layer (the Montreal Protocol), the Vienna Convention for the Protection of the Ozone Layer and other international treaties. The Act controls the import, export and manufacture of specified substances, known as scheduled substances, and the import and manufacture of specified products containing scheduled substances.

The purpose of this bill is to improve the effectiveness and efficiency of the Ozone Protection and Synthetic Greenhouse Gas Management Program (the Program) in order to reduce the burden on business and ensure the program can continue to achieve important environmental outcomes.

The Bill would make amendments to the Act to:

- bring into the legislation controls that are currently imposed through licence conditions, such as the ban on import of bulk gas in non-refillable containers. These changes provide clarity for business and improve protection of the environment;
- clarify licence and exemption requirements, including changes to make the legislation easier to understand and reduce unintentional non-compliance;
- increase the time allowed for submitting reports and paying levies, which reduces the burden on business and maximises compliance with program requirements by increasing flexibility for business to manage their workload and cash flow without compromising on environmental standards;
- reform the compliance and enforcement approach provisions of the Act to provide for consistent Commonwealth regulatory powers and increase legal certainty for industry and individuals who are subject to the Act, including:

- adopting the standard provisions of the *Regulatory Powers (Standard Provisions) Act 2014* (Regulatory Powers Act), including minor modifications appropriate to the Program;
- modernising the offence and penalty structure in the Act to provide flexibility in enforcement while also providing deterrence against non-compliance;
- introducing information gathering powers to ensure compliance with the Act including the ability to issue a notice to produce;
- adding the option of licence suspension as an alternative to immediate cancellation or financial penalties;
- introducing an internal review mechanism for reviewable decisions;
- allowing the use or disclosure of information collected under the Act to facilitate compliance with state and territory and other Australian Government legislation, while maintaining appropriate protections for certain sensitive information.

Human Rights implications

This Bill engages the following human rights:

- the right to health in Article 12(1) of the International Covenant on Economic, Social and Cultural Rights (the ICESCR);
- the right to a fair trial and fair hearing in Article 14(1) of the International Covenant on Civil and Political Rights (the ICCPR);
- the right to the presumption of innocence in Article 14(2) of the ICCPR;
- the right to privacy in Article 17 of the ICCPR;
- the right to freedom of expression in Article 19(2) of the ICCPR.

Right to health

Article 12(1) of the ICESCR makes provision in relation to the right to health, specifically the right to the enjoyment of the highest attainable standard of physical and mental health.

Article 12(2)(b) includes the improvement of all aspects of environmental hygiene as a step to be taken to achieve the full realisation of the right to health. In its *General Comment No 14 (August 2000)*, the United Nations Committee on Economic, Social and Cultural Rights stated that this encompasses the prevention and reduction of human exposure to harmful substances (at [15]).

The Bill would seek to promote the right to health by reducing the impact on human and environmental health of scheduled substances and equipment containing such substances, which include various types of ozone depleting substances and synthetic greenhouse gases. The Bill would achieve this by:

- extending the licensing scheme to cover all equipment containing scheduled substances in certain circumstances (see item 52). In particular:
 - expanding the prohibition on import without a licence to cover all equipment containing a scheduled substance; and
 - including a new prohibition on manufacture without a licence to cover all equipment containing an ozone depleting substance and, if regulations prescribe it, equipment containing a synthetic greenhouse gas;
- extending the licensing scheme to scheduled substances that are manufactured or imported for feedstock uses (see item 51). This would formalise existing administrative processes and reporting requirements, ensure better oversight and allow for enforcement action where non-compliance occurs;
- limiting the circumstances in which the Minister can grant an equipment licence for the import or manufacture of ODS equipment (see item 61). This is consistent with the fact that ODS equipment is currently being phased out due to its adverse impact on the environment;
- extending the essential uses licensing scheme to cover import, export and manufacture of HFCs and HCFCs (see item 53). This would support the respective phase-down (for HFCs) and phase-out (for HCFCs) of the substances while still allowing essential uses, as and when available under the Montreal Protocol;
- extending the essential uses licensing scheme to cover the export and manufacture of HBFCs (see item 53). This would assist in controlling the production and consumption of HBFCs while still allowing essential uses, consistent with Australia's obligations under the Montreal Protocol;
- limiting the purposes for which methyl bromide can be imported, exported or manufactured (see item 64). This would assist in controlling and limiting the use of methyl bromide to a specified number of uses, consistent with Australia's obligations under the Montreal Protocol;
- prohibiting the import of scheduled substances in non-refillable, disposable containers (see item 67). Such containers cannot easily be fully emptied of refrigerant and emit residual amounts of refrigerant to the atmosphere when disposed of;
- allowing for licence conditions to be imposed requiring a licence holder to enter into an approved product stewardship scheme and allowing the regulations to make

provision for approving product stewardship schemes (see item 68). This would encourage the recovery, recycling and responsible disposal of scheduled substances.

Therefore, the Bill promotes the right to health under Article 12 of the ICESCR. It positively engages this right by ensuring that emissions of ozone depleting substances and synthetic greenhouse gases are regulated. This protects the ozone layer and the climate system.

Right to a fair trial and fair hearing

Article 14(1) of the ICCPR guarantees the right to a fair trial and fair hearing in relation to both criminal and civil proceedings.

Civil penalty provisions

The Bill would make amendments to existing civil penalty provisions in the Act to update and modernise the drafting and, in most cases, to increase the amount of the penalty. This includes civil penalty provisions relating to importing, manufacturing or exporting scheduled substances without a licence, contravening licence conditions, discharging of scheduled substances, use of HCFCs, moving seized goods and failure to comply with reporting requirements. The Bill would also include new civil penalty provisions relating to the unauthorised use or disclosure of protected information.

Civil penalty provisions may engage criminal process rights under Articles 14 and 15 of the ICCPR, regardless of the distinction between criminal and civil penalties in domestic law. When a provision imposes a civil penalty, an assessment is required as to whether it amounts to a criminal penalty for the purposes of the ICCPR, so that an assessment can be made as to whether the provision is consistent with the requirements of the ICCPR.

Determining whether penalties could be considered criminal under international human rights law requires consideration of the classification of the penalty provisions under Australian domestic law, the nature and purpose of the penalties, and the severity of the penalties.

The civil penalty provisions of the Bill would expressly classify the penalties as civil penalties. Those provisions create solely pecuniary penalties in the form of a debt payable to the Commonwealth. The purpose of these penalties would be to encourage compliance with the requirements for the import, export and manufacture of scheduled substances, the import and manufacture of specified products containing scheduled substances, and effective administration of the Act. The civil penalty provisions would not impose criminal liability and a finding by a court that they have been contravened would not lead to the creation of a criminal record. The civil penalties would only apply to the participants of the regulatory regime, rather than the public in general. These factors all suggest that the civil penalties imposed by the Bill are civil rather than criminal in nature.

The maximum penalties that may be imposed by civil penalty orders are between 60 and 600 penalty units. Where the penalties are higher, this reflects the more serious implications or results of the contravention. Under subsection 82(5) of the Regulatory Powers Act, as applied to the Act by item 138 of the Bill (see new section 62), the maximum penalties that apply to individuals would be those specified in the civil penalty provisions of the Bill. Due to the proposed application of the standard provisions in Part 4 of the Regulatory Powers Act, the corporate multiplier provision in subsection 82(5) of the Regulatory Powers Act would apply

to the proposed civil penalty provisions in the Bill. Consequently, for bodies corporate, the penalties will be no more than five times the penalty specified in the civil penalty provision, i.e., the maximum penalties will be between 300 and 3000 penalty units.

These civil pecuniary penalties for the proposed civil penalty provisions in the Bill have been set by reference to *A Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers* (the Guide). They seek to reflect the seriousness of the contravening conduct and the threat that the conduct may pose to human and environmental health.

In light of the matters discussed above, the civil penalties provided for by the Bill would not amount to a criminal penalty for the purposes of the ICCPR, so criminal process rights provided for by Articles 14 and 15 of the ICCPR are not engaged by the provisions of the Bill (and the Regulatory Powers Act) relating to civil penalties.

Overlap of criminal and civil penalties

Sections 90 and 91 of the Regulatory Powers Act would apply in relation to civil penalty proceedings brought under the Act as a result of item 138 of the Bill (see new section 62). These provisions concern the relationship between criminal and civil penalty proceedings.

Section 90 of the Regulatory Powers Act clarifies that criminal proceedings may be commenced against a person for conduct that is the same, or substantially the same, as conduct that would constitute a contravention of a civil penalty provision, regardless of whether a civil penalty order has been made against the person in relation to the contravention. This section recognises the importance of criminal proceedings and criminal penalties in sanctioning contraventions of a triggering Act (i.e. an Act that seeks to apply the standard provisions of the Regulatory Powers Act) and ensures that criminal remedies are not precluded by earlier civil action.

Section 90 of the Regulatory Powers Act engages the criminal process rights in Article 14 of the ICCPR, but does not limit those rights. Article 14(7) of the ICCPR provides that “no one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country”. This prohibition on double jeopardy is a fundamental safeguard in the common law of Australia. It means that a person who has been convicted or acquitted of a criminal charge is not to be re-tried for the same or substantially the same offence.

As section 90 of the Regulatory Powers Act permits both civil and criminal proceedings, but not multiple criminal proceedings for the same conduct, Article 14(7) of the ICCPR is not infringed. Further, section 88 of the Regulatory Powers Act provides a safeguard against potential double jeopardy by stating that a court cannot make a civil penalty order against a person for a contravention of a civil penalty provision if the person has been convicted of an offence constituted by conduct that is the same, or substantially the same, as the conduct constituting the contravention.

Section 91 of the Regulatory Powers Act provides that evidence of information given, or evidence of production of documents, by an individual is not admissible in criminal proceedings against the individual if:

- the individual previously gave the information or produced the documents in proceedings for a civil penalty order against the individual for an alleged contravention of a civil penalty provision (whether or not the order was made); and
- the conduct alleged to constitute the offence is the same, or substantially the same, as the conduct alleged to constitute the contravention.

Section 91 of the Regulatory Powers Act ensures that information or documents produced during civil proceedings are not relied upon to support subsequent criminal proceedings, unless those proceedings are criminal proceedings relating to falsifying evidence in civil proceedings. Accordingly, that section engages, but does not limit, the criminal process rights in Article 14 of the ICCPR.

In summary, item 138 of the Bill, which triggers Part 4 of the Regulatory Powers Act, engages, but does not limit, the right to a fair and public hearing and the other criminal process rights and minimum guarantees in Article 14 of the ICCPR.

Notice to produce

New section 64B would provide for notices to produce. Subsection 64B(1) would allow the Secretary, by written notice, to require a person to give an inspector or an entrusted person specified documents or information, if the Secretary reasonably believes that the person is capable of giving the specified information or documents for the purpose of investigating or preventing a contravention of the Act. New subsection 64B(7) would provide that an individual is not excused from giving information, or producing a document, under subsection 64B(2) on the basis that giving that information might tend to incriminate the individual in relation to an offence, or on the basis that at general law, the person would otherwise be able to claim the privilege against self-exposure to a penalty, other than a penalty for an offence (see also subsection 64B(9)).

New subsections 64B(7) and 64B(9) therefore have the effect of overriding the common law privilege against self-incrimination and the penalty privilege. This engages with the fair hearing right under Article 14 as an affected person would not have the opportunity to refuse to provide information or documents on the basis that the information or documents would tend to incriminate the individual in relation to an offence or civil penalty provision.

The intention of overriding the privilege against self-incrimination is to support the compliance and enforcement functions in the Act and better equip the Commonwealth with powers to ensure that Australia is able to properly comply with its international obligations under the Montreal Protocol and other treaties. It also gives weight to the public and environmental benefit in limiting potential non-compliance with the Act, given the significant harm to the environment that may result from ozone depleting substances or synthetic greenhouse gas that is not being properly regulated.

The abrogation of the privilege against self-incrimination would operate alongside subsection 64B(8), which would prevent the use of potentially self-incriminating information, or any other information, document or thing obtained as a direct or indirect consequence of giving the potentially self-incriminating information, in all criminal proceedings except for those in relation to giving false information in the notice under subsection 64B(2).

This means that while a person will be required to provide any incriminating information or documents specified in a notice under subsection 64B(2), such information or documents, or other evidence directly or indirectly derived from that information or documents, cannot then be used against that person in any criminal proceedings, other than proceedings arising out of the notice itself. The inclusion of this immunity provision is consistent with the Guide, which provides that ‘if the privilege against self-incrimination is overridden; the use of incriminating evidence should be constrained’.

Consequently, to the extent that the abrogating of the privilege against self-incrimination limits the right to a fair hearing, it is reasonable, necessary and proportionate.

Right to the presumption of innocence

Strict liability offences

Strict liability offences engage and limit the presumption of innocence as they allow for the imposition of criminal liability without the need to prove fault. However, strict liability offences will not necessarily be inconsistent with the presumption of innocence, provided that the removal of the presumption of innocence pursues a legitimate objective and is reasonable, necessary and proportionate to achieving that objective. It is also important to note that the defence of honest and reasonable mistake of fact is still available and the existence of strict liability does not make any other defence unavailable.

Application of strict liability to offences in the Bill has been set out having regard to the Guide and the *Senate Scrutiny of Bills Committee Sixth Report of 2002: Application of Absolute and Strict Liability Offences in Commonwealth Legislation*. Consistent with these documents, strict liability is considered appropriate as the penalties for the offences do not include imprisonment and do not exceed 60 penalty units for an individual.

The Bill would insert strict liability offences into the Act relating to reporting, confidentiality and information disclosure, specifically:

- Failure to give a periodic report by manufacturers, importers and exports of scheduled substances when required to do so (new subsection 46(2));
- Failure to give information or produce documents when the secretary has issued a notice to produce (new subsection 64B(5));
- the unauthorised use or disclosure of protected information by an entrusted person or an official of a Commonwealth entity who obtained that information in their capacity as an entrusted person or an official of the entity (new subsections 65U(4) and 65V(3)).

Reporting requirements and powers to issue a notice to produce documents or give information are important compliance mechanisms to ensure that those who are regulated by the Act comply with their obligations under the Act and may be held accountable for their actions or omissions. Removing the requirement to prove fault would provide a strong incentive for such to report as required, and to produce documents or give information where required. The existence of the offence is likely to place relevant persons on notice to guard against the possibility of any contravention of the Act.

Information collected under the Act plays an important role in informing the Commonwealth in relation to matters covered by the objects of the Act, which is a necessary part of ensuring that the Bill remains an effective and efficient mechanism to realise its intended human and environmental health benefits. If protected information is used or disclosed for purposes other than those authorised, and in the situations set out in subsections 65U(4) and 65V(3) (see above), it may result in significant harm to, among other things, Australia's international relations, or to public order or public health, as well as deter persons from providing such information to the Commonwealth in the future. Strict liability offences would ensure that any such unauthorised disclosures are able to be dealt with efficiently to ensure confidence in the regulatory regime.

The Bill would also make changes to existing strict liability offences into the Act, specifically the strict liability offences relating to:

- the prohibition of unlicensed manufacture, import or export of a scheduled substance or equipment containing a scheduled substance (new subsection 13AC(2));
- non-compliance with a licence to manufacture, import or export, and non-compliance with conditions of a licence to manufacture, import or export (new subsection 18(7A));
- the prohibition of discharge of scheduled substances where it is likely that the scheduled substance will enter the atmosphere (new subsection 45B(5));
- the prohibition of use of HCFC that was manufactured or imported on or after 1 January 2020 and the use is not for a prescribed purpose (new subsection 45C(3)).

Strict liability offences are necessary to ensure the integrity of the regulatory regime and effectively regulate the manufacture and import of scheduled substances and equipment containing such substances to prevent potential harm to the environment and human health. These strict liability offences would be amended so that they have a penalty of 30 to 60 penalty units, which is consistent with the Guide's recommendation for an appropriate maximum penalty for a strict liability offence. In addition, the actions that trigger the offences are simple, readily understood and easily defended. The continued inclusion of these strict liability offences (with appropriate penalties) will, therefore, ensure the Minister can deal with non-compliance efficiently to ensure public confidence in the regulatory regime and also ensure Australia continues to meet its international obligations under the Montreal Protocol and other international treaties.

Therefore, to the extent that strict liability offences included or amended by the Bill limit the right to the presumption of innocence, the limitations are reasonable, necessary and proportionate.

Reversal of the burden of proof

Laws that shift the burden of proof to a defendant can be considered a limitation of the presumption of innocence. Where a defendant bears an evidential burden in relation to an exception to an offence, it means the defendant bears the burden of adducing or pointing to

evidence that suggests a reasonable possibility that the exception has been met. Reversing the burden of proof is not necessarily inconsistent with the presumption of innocence, provided that the reversal pursues a legitimate objective and is reasonable, necessary and proportionate to achieving that object. Whether the right to the presumption of innocence is limited will depend on the circumstances and justification for the reverse burden.

New Part VIII B into the Act would set out a general prohibition on the use or disclosure of protected information by a person who is or has been an entrusted person or an official of a Commonwealth entity and who obtained the protected information in his or her capacity as an entrusted person or official of the entity.

The prohibition would not apply if the use or disclosure is authorised by the Act, by another law of the Commonwealth, or by a prescribed law of a State or Territory. The note to this provision would clarify that the defendant bears an evidential burden to show that the use or disclosure of information was authorised.

The reversal is justified in this instance, as the matter to be proved (that is, that the use or disclosure of information was authorised) is a matter that would be peculiarly in the knowledge of the defendant. Further, there are a number of authorised uses and disclosures set out in this item and across Commonwealth law generally. In the event of a prosecution, it would be significantly more difficult and costly for the prosecution to disprove all possible circumstances than it would be for a defendant to establish the existence of one potential circumstance.

New sections 13-13AC of the Act would include general prohibitions on the import, manufacture or export of scheduled substances, equipment containing scheduled substances and, in some circumstances, equipment that uses scheduled substances in its operation, without a licence.

The prohibition on manufacturing, importing or exporting scheduled substances without a licence would not apply to a person manufacturing, importing or exporting an SGG in circumstances or for purposes prescribed by the regulations. The note to these provisions would clarify that the defendant bears an evidential burden to show that the activity was in circumstances or for purposes prescribed by the regulations.

The prohibition on importing equipment without a licence would not apply to a person importing equipment for household use, a person importing equipment for a period of less than 12 months, or a person reimporting returned Australian equipment. It would also not apply to a person importing SGG equipment that is below the low volume threshold. The note to these provisions would clarify that the defendant bears an evidential burden to show that the importing meets these requirements.

The prohibition on manufacturing or exporting equipment without a licence would not apply to a person manufacturing or exporting equipment in circumstances or for purposes prescribed by the regulations. The note to these provisions would clarify that the defendant bears an evidential burden to show that the activity was in circumstances or for purposes prescribed by the regulations.

The prohibition on exporting a scheduled substance without a licence would not apply to a person exporting a HCFC or HFC in accordance with a direction given by the Minister under (respectively) sections 35A or 36H of the Act (dealing with exceeding quota). The note to these provisions would clarify that the defendant bears an evidential burden to show that the export was in accordance with a direction given by the Minister.

The reversal is justified in these instances, as the matter to be proved is a matter that would be peculiarly in the knowledge of the defendant. For instance, the defendant would be best placed to know matters relating to the purpose for which they imported, exported or manufactured a scheduled substance or equipment, or whether the import of equipment is intended to be temporary or involve returned Australian equipment. Further, there are likely to be a number of circumstances or purposes prescribed in the regulations for which a licence would not be required to import, manufacture or export a scheduled substance or equipment. In the event of a prosecution, it would be significantly more difficult and costly for the prosecution to disprove all possible circumstances than it would be for a defendant to establish the existence of one potential circumstance. Similarly, it would be significantly more difficult and costly for the prosecution to prove that a direction was not given than it would be for the defendant to show that they were acting in accordance with a direction given by the Minister.

New section 45B would contain a general prohibition on engaging in conduct that results in the discharge of a scheduled substance in circumstances where it is likely that the scheduled substance will enter the atmosphere, and the discharge is not in accordance with the regulations. The prohibition would not apply if the discharge occurs as a result of using equipment, that contains a scheduled substance, for the purpose for which the equipment was designed. The note after this provision would explain that the defendant bears an evidential burden in relation to showing that their discharge occurs as a result of using equipment, that contains a scheduled substance, for the purpose for which the equipment was designed. This is appropriate on the basis that knowledge of that matter would be peculiar to that person. Consistent with this, it is appropriate to reverse the evidential burden of proof in this matter, as the purpose for which a person discharged a scheduled substance is generally a matter that is peculiarly within the knowledge of that person.

Consequently, in order to effectively protect the environment from the harm caused by unlicensed importing, manufacturing or exporting or discharging of scheduled substances, and to effectively protect information, it is reasonable, necessary and proportionate to reverse the burden of proof in these circumstances and limit the right to the presumption of innocence.

Right to privacy

Article 17 of the ICCPR prohibits arbitrary or unlawful interferences with an individual's privacy, family, home or correspondence. The right to privacy can be limited to achieve a legitimate objective where the limitations are lawful and not arbitrary. In order for an interference with the right to privacy to be permissible, the interference must be authorised by law, be for a reason consistent with the ICCPR and be reasonable in the circumstances.

Monitoring and investigation powers

New sections 50 and 52 would trigger the monitoring and investigation powers that are provided for in the Regulatory Powers Act, including powers relating to entry, inspection, search and seizure. The monitoring and investigation powers are necessary for the legitimate purpose of enabling the monitoring of compliance with the Act and the collection of evidential material relating to contraventions of the Act. The use of these powers is constrained, ensuring that their use is not arbitrary, as follows:

- the powers cannot be exercised without consent being given to the entry to the premises, or under warrant granted by an issuing officer. Where entry is by the consent of the occupier, consent must be informed and voluntary, and can be withdrawn at any time;
- monitoring and investigation warrants can only be issued where the issuing officer is satisfied of certain matters, by information on oath or affirmation, of an inspector;
- an inspector cannot enter premises under warrant unless their identity card is shown to the occupier of the premises and they provide the occupier with a copy of the warrant, unless immediate entry to the premises is required to prevent serious damage to the environment.

In summary, the monitoring and investigation powers are necessary, proportionate and reasonable in the pursuance of the legitimate objectives of the Bill.

Publication of suspended licences

The proposed amendments to section 22 of the Act would allow the Minister to publicise the details of suspended licences, which may include the name of the person concerned. The matters that may be publicised are clearly set out. Many of the matters would already be publicly available.

It is expected that most persons whose names would be published will be body corporates, for which the protections in the *Privacy Act 1988* will not apply. Also, this publishing power is discretionary and as such the Minister would retain the ability to decide not to publish any of the information

if they consider that, in the particular circumstances the potential adverse consequences of publishing the information outweigh the intended deterrence effect.

The purpose of permitting such publication is to act as a deterrent to contravention and therefore assist with ensuring the integrity of the regulatory regime. In addition, the publishing of the names of the persons concerned is intended to provide transparency and assist industry in understanding who had their licence suspended under the Act. Publishing the names of persons who have had their licences suspended can assist entities to confirm that the person they are dealing with is complying with the requirements of the Act.

For these reasons, this limitation to the right to privacy is reasonable, necessary and proportionate to achieve legitimate objectives and is consistent with the right to privacy in Article 17 of the ICCPR.

Use and disclosure of information

New Part VIII B of the Act would deal with confidentiality, and disclosure of *relevant information* (including *protected information*) and other information sharing matters.

Divisions 2 and 3 of new Part VIII B would set out a number of authorised uses and disclosures for relevant information (including protected information). Examples of such circumstances include disclosure to other Commonwealth or State and Territory government agencies; disclosure to a law enforcement agency; disclosure of protected information that is already publicly available; or where the Minister reasonably believes that the disclosure is necessary to prevent or lessen a serious risk to human health or the environment, and the disclosure is for the purposes of preventing or lessening that risk.

These circumstances are clearly defined and are generally aimed at either assisting with the effective operation and enforcement of the Act, public interest matters where there is a high bar to satisfy, or instances where there is no justifiable reason to prevent use or disclosure of information.

Therefore, and noting that many licence holders will be body corporates for which the protections in the Privacy Act will not apply, this limitation to the right to privacy is reasonable, necessary and proportionate to achieve legitimate objectives and is consistent with the right to privacy in Article 17 of the ICCPR.

Right to freedom of expression

Article 19(2) protects the right to freedom of expression, and provides that this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

Article 19(3) provides that the right to freedom of expression may be subject to certain restrictions, where such restrictions are necessary for the respect of the rights of others or for the protection of national security or public order or of public health or morals. Any such restrictions must be prescribed by law and be reasonable, necessary and proportionate to achieving a legitimate objective.

Division 4 of new Part VIII B would set out a general prohibition on the use or disclosure of protected information by a person who is or has been an entrusted person or an official of a Commonwealth entity and who obtained the protected information in his or her capacity as an entrusted person. Information would be *protected information* only if the disclosure of the information could reasonably be expected to:

- found an action by a person other than the Commonwealth for a breach of a duty of confidence;
- prejudice the effective working of government;
- prejudice the prevention, detection, investigation, prosecution or punishment of one or more offences;

- endanger a person's life or physical safety;
- prejudice the protection of public safety or the environment.

An entrusted person would be limited to certain Commonwealth officials, being the Minister, the Secretary, an APS employee of the Department or another person employed or engaged by the Department. As such, the prohibition would not apply to the public at large. In addition, Division 4 of new Part VIII B would only restrict the right to freedom of expression if one or more of the circumstances set out above are satisfied. These circumstances directly relate to the objectives set out in Article 19(3), including the rights of others (such as persons who submitted the information in confidence), national security and international relations, public order and public health.

The prohibition will not apply if the use or disclosure is authorised by the Act, another Commonwealth law or a prescribed State or Territory law. The statutory authorisations set out in Divisions 2 and 3 of new Part VIII B would allow for legitimate disclosure of protected information in a number of circumstances, including with consent, to reduce a serious risk to human health or the environment, or to other government agencies for the purpose of their powers and functions.

For these reasons, the prohibitions in Division 4 of new Part VIII B are reasonable, necessary and proportionate to achieving a legitimate objective, and is consistent with the right to freedom of expression in Article 19(2) of the ICCPR.

Conclusion

The Bill is compatible with human rights. It promotes the right to health under Article 12(1) of the ICESCR. To the extent that it engages and limits other human rights (including those under Articles 14(1), 14(2) and 17 of the ICCPR), those limitations are reasonable, necessary and proportionate to achieve the legitimate aims of the Bill.

**(Circulated by authority of the Minister for the Environment,
the Hon. Sussan Ley MP)**