

NORTHERN TERRITORY OF AUSTRALIA

OZONE PROTECTION ACT 1990

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No. 32 of 1990

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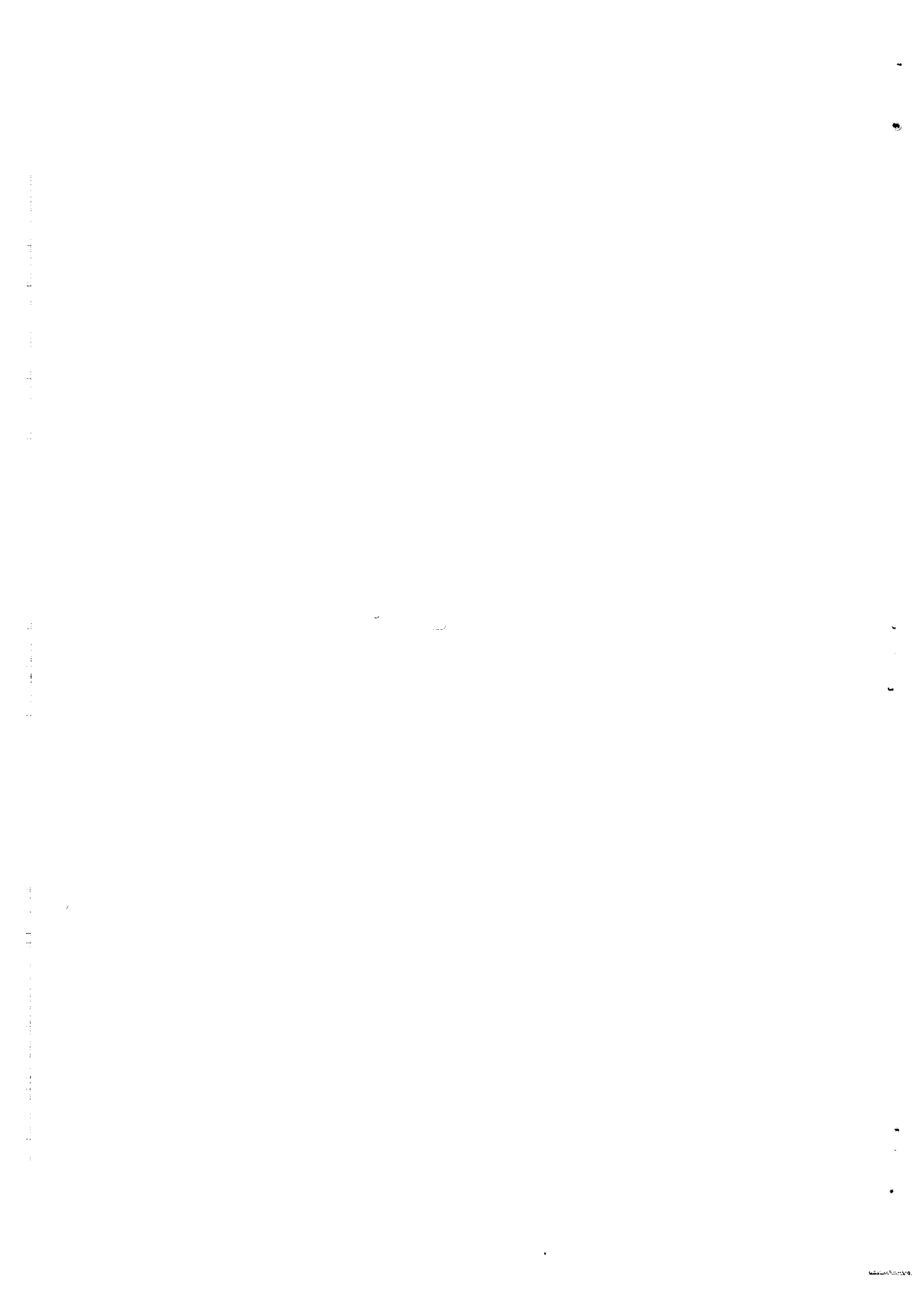
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# NORTHERN TERRITORY OF AUSTRALIA

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No. 32 of 1990

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## AN ACT

to regulate or prohibit the manufacture, sale, distribution, use, re-cycling, storage and disposal of certain substances believed to deplete stratospheric ozone and of articles which contain those substances, and for other purposes

[Assented to 11 June 1990]

**B**E it enacted by the Legislative Assembly of the Northern Territory of Australia, with the assent as provided by the *Northern Territory (Self-Government) Act 1978* of the Commonwealth, as follows:

### PART I - PRELIMINARY

#### 1. SHORT TITLE

This Act may be cited as the *Ozone Protection Act 1990*.

#### 2. COMMENCEMENT

This Act shall come into operation on a date to be fixed by the Administrator by notice in the *Gazette*.

#### 3. ACT TO BIND THE CROWN

This Act binds the Crown in the right of the Territory and, so far as is possible, the Crown in all its other capacities.

#### 4. INTERPRETATION

(1) In this Act, unless the contrary intention appears -

"authorized officer" means a person authorized pursuant to section 25 to perform a function under this Act;

"Commission" means the Conservation Commission of the Northern Territory established by the *Conservation Commission Act*;

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"controlled article" means an article or other thing (including plant and equipment) that -

- (a) contains a controlled substance; or
- (b) uses, or is designed or intended to use, a controlled substance in its operation;

"controlled substance" means any substance specified in the Schedule (ozone depleting substances) and includes any substance with which a controlled substance is mixed;

"ozone depleting substance" means a substance which, if released into or dispersed in the atmosphere -

- (a) will contribute to the depletion of stratospheric ozone; or
- (b) is reasonably likely to contribute to the depletion of stratospheric ozone;

"Ozone Protection Consultative Committee" means a committee established pursuant to section 7;

"premises" includes -

- (a) a structure, building, aircraft, hovercraft, vehicle or vessel; and
- (b) land or a place (whether enclosed or built on or not);

"sale" includes every method of disposition for valuable consideration, including barter, and includes the disposition to an agent for sale on consignment, and also includes offering or attempting to sell, or receiving or having in possession for sale, or exposing for sale, or sending or delivery for sale, or causing or permitting to be sold, offered or exposed for sale, and also includes disposal by way of raffle, lottery or other game of chance;

"use" includes -

- (a) operate;
- (b) use in the course of manufacture; and
- (c) have in possession for use.

(2) The Regulations may amend the Schedule by adding, omitting or amending the name of an ozone depleting substance.

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### PART II - CONTROLS

#### 5. PURPOSE OF PART

The purpose of this Part is to make provision for a system of controls on substances which, when released into or dispersed in the atmosphere, act as atmospheric pollutants that contribute to depletion of ozone in the stratospheric ozone layer.

#### 6. MINISTER SHALL CONSULT BEFORE REGULATIONS MADE

(1) Regulations may only be made pursuant to this Act on the recommendation of the Minister.

(2) Before recommending that regulations be made, the Minister -

- (a) shall consult the Ozone Protection Consultative Committee; and
- (b) may consult any other minister or person that the Minister thinks may have an interest in the content of the proposed regulations.

#### 7. OZONE PROTECTION CONSULTATIVE COMMITTEE

(1) The Minister may establish a committee to be known as the Ozone Protection Consultative Committee.

(2) The Committee shall consist of no more than 10 persons, appointed in writing by the Minister, to represent -

- (a) the retail, wholesale, manufacturing, re-cycling and service industry as far as they relate to the use of controlled articles or controlled substances; and
- (b) educational or Government interests, or the interests of municipal or community government councils.

#### 8. GENERAL REGULATORY PROVISIONS

(1) The Administrator may make regulations, not inconsistent with this Act, prescribing matters -

- (a) required or permitted to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

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(2) Without limiting the generality of subsection (1), the Regulations may make provision for or in relation to -

- (a) regulating or prohibiting the manufacture, sale, distribution, conveyance, storage, possession or use of controlled substances and controlled articles;
- (b) regulating the design, installation, operation, servicing, maintenance, repair, modification or decommissioning of any controlled article or any plant or equipment used to manufacture such an article;
- (c) requiring and regulating the recovery, re-cycling, disposal and destruction of controlled substances and controlled articles;
- (d) regulating or prohibiting the emission of controlled substances into the atmosphere;
- (e) prescribing offences in respect of contravention of or non-compliance with regulations made under this Act, prescribing penalties not exceeding \$5,000 in respect of an offence, and prescribing different penalties for different classes of offender; and
- (f) the payment of compensation in connection with the operation of this Act.

(3) Compensation payable pursuant to regulations made under subsection (2)(f) shall be paid from the Consolidated Fund, which is appropriated accordingly.

### 9. LICENCES AND REGISTRATION

Without limiting the generality of section 8(1), the Regulations may make provision for or in relation to -

- (a) the licensing of persons engaged in activities authorized to be regulated by the Regulations;
- (b) the registration of premises used for the carrying out of any activity authorized to be regulated by the Regulations;
- (c) the registration of controlled articles;
- (d) the fixing of and the payment of licence and registration fees; and
- (e) the suspension or cancellation of a licence or, as the case may be, a registration.

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### 10. RECOVERY, RE-CYCLING, &c.

Without limiting the generality of section 8(1), the Regulations may make provision for or in relation to the recovery, re-cycling, storage, disposal and destruction of controlled substances and controlled articles, including provision -

- (a) requiring the manufacturer or seller of any controlled article to take specified steps to recover any controlled substances that the article contains;
- (b) requiring the manufacturer or seller to institute specified measures to ensure or encourage the recovery of controlled substances (including, for example, measures for the payment and refund of deposits on controlled articles);
- (c) requiring the re-cycling of controlled substances so recovered;
- (d) requiring the destruction or storage of controlled substances;
- (e) authorizing the Commission to undertake or cause the undertaking of the recovery, storage and destruction of controlled substances and empowering the Commission or person authorized by the Commission to recover the costs of doing so from the manufacturer or seller of any article that contained the controlled substance so recovered; and
- (f) specifying the required means of disposal, storage and destruction of controlled substances and standards of the design and operation of, and permissible emissions by, disposal equipment.

### 11. CODES OF PRACTICE

Without limiting the generality of section 8(1), the Regulations may make provision for or in relation to -

- (a) the formulation, approval, adoption and revision of industry codes of practice relating to any activity that is authorized to be regulated by the Regulations; and
- (b) requiring compliance with those codes of practice.

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### 12. LABELLING, &c.

Without derogating from a law in force in the Territory relating to the labelling or identification of substances or articles, regulations under section 8(1) may make provision for or in relation to requiring controlled substances or controlled articles to be labelled or identified in a specified manner (including provision for the identification of substances by the addition of colours or odours).

### 13. EXEMPTIONS

(1) Regulations under section 8(1) may make provision for or in relation to exemptions (whether or not subject to conditions) from compliance with all or any specified regulations, including provisions -

- (a) authorizing the Commission or the Minister to grant an exemption; and
- (b) specifying circumstances in which an exemption granted under any law of the Commonwealth or of a State or another Territory of the Commonwealth relating to stratospheric ozone protection is to be considered to be an exemption granted under the Regulations.

(2) The Regulations may authorize the granting of an exemption by the Minister only if the exemption is -

- (a) granted on the recommendation of the Commission; or
- (b) granted to apply for a period not exceeding 60 days.

### 14. RECORDS AND RETURNS

(1) Without limiting the generality of section 8(1), the Regulations may make provision for or in relation to requiring persons who carry on activities that are authorized to be regulated by the Regulations to keep specified records and to furnish specified returns to the Commission concerning those activities within the time or at the time or times specified.

(2) The Regulations may require a person referred to in subsection (1) to maintain records for a specified period even if the person ceases to carry on the activities concerned.

## PART III - ENFORCEMENT

### 15. POWERS OF COMMISSION TO REQUIRE INFORMATION, &c.

(1) This section applies to any person who carries on, or who apparently carries on or is in charge of, a



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business that involves the manufacture, sale or use of a controlled substance or controlled article.

(2) The Commission may, by notice in writing given to a person to whom this section applies, require the person -

(a) to furnish to the Commission specified information or information of a specified kind relating to the business activities carried on by the person in so far as they relate to controlled substances or controlled articles; and

(b) to confer with the Commission in relation to the manner in which the person carries on those activities.

(3) A person given a notice under subsection (2) shall comply with the notice within the time required by the notice.

Penalty: In the case of a body corporate - \$5,000.

In any other case - \$1,000.

(4) A statement to the Commission pursuant to a requirement made under this section is not admissible in evidence in any proceedings against a natural person for an offence, except the offence of failing to comply with the requirement.

### 16. DISCLOSURE OF INFORMATION

(1) A person must not disclose any information relating to any manufacturing or other industrial or commercial secrets or working processes obtained in connection with the administration of this Act or the Regulations, unless the disclosure -

(a) is made with the consent of the person from whom the information was obtained;

(b) is made in connection with the administration or execution of this Act or the Regulations;

(c) subject to subsection (2), is made with the prior permission of the Minister;

(d) is ordered by a court, or by any other body or person authorized by law to examine witnesses, in the course of, and for the purpose of, the hearing and determination by that court, body or person of any matter; or

(e) is made by an authorized officer to an officer or authority engaged in administering or executing a law of the Commonwealth or of a

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State or another Territory of the Commonwealth relating to stratospheric ozone protection.

Penalty: \$2,000.

(2) The Minister shall not grant the permission referred to in subsection (1)(c) unless satisfied that to do so would be in the public interest.

### 17. POWERS OF INSPECTION, &c.

(1) An authorized officer may enter premises at all reasonable times if the authorized officer suspects on reasonable grounds that -

- (a) an offence against this Act or the Regulations is about to be, is being or has been committed on the premises; or
- (b) the premises are being used for the carrying on of a business in the course of which any controlled substance or controlled article is manufactured, sold or used.

(2) An authorized officer is not entitled to enter -

- (a) any premises other than at the times specified in subsection (1); or
- (b) a part of premises used for residential purposes,

except with the consent of the occupier or where accompanied by a member of the Police Force acting under the authority of a search warrant.

(3) An authorized officer who enters premises under this section may -

- (a) search the premises and inspect any plant, equipment, substance or article found there;
- (b) require any person there to answer questions (but not if the answer might tend to incriminate the person) or produce records under the person's control concerning any business apparently carried on there;
- (c) make copies of or take extracts from records so produced;
- (d) make such examination and inquiry and such tests as the authorized officer considers necessary to ascertain whether the provisions of this Act or the Regulations are being or have been complied with;

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- (e) take such photographs as the authorized officer considers necessary in connection with the administration of this Act;
- (f) take without payment, for the purpose of examination or testing, samples of any substance that the authorized officer suspects on reasonable grounds is a controlled substance in respect of which an offence against this Act or the Regulations has been or is being committed; and
- (g) seize and remove anything the authorized officer suspects on reasonable grounds to be a controlled substance or controlled article in respect of which an offence against this Act or the Regulations is being or has been committed.

(4) A requirement under this section to produce a record includes, where the record is not written at all (as, for example, in the case of records stored electronically) or not written wholly in the English language, a requirement to produce a statement, written in the English language, setting out such of the particulars in the record as are not written in the English language.

(5) An authorized officer is not authorized to take a sample of any substance or to remove anything that appears to the authorized officer to be in the custody of a person unless the authorized officer makes out and tenders to the person a receipt for the substance or thing.

(6) Every authorized officer is to be provided with a certificate of authority and on applying for admission to any premises, if requested to do so, produce the certificate to the occupier of the premises.

(7) An authorized officer shall not prevent or hinder the occupier of any premises, or the occupier's delegate, from accompanying the authorized officer when performing a function under this Act on those premises.

### 18. FORFEITURE, &c.

(1) Where a person is found guilty of an offence against this Act or the Regulations, then, whether a conviction is entered or not or a penalty imposed or not, any controlled substance or controlled article used in or in relation to the commission of the offence is forfeit to the Crown, and may be kept, sold, destroyed or otherwise disposed of as the Minister thinks fit.

(2) If a person (not being the person under subsection (1) found guilty of an offence) had, immediately before a forfeiture under that subsection, a legal or equitable interest in the property forfeited and advises the Minister of that interest, the Minister shall take the

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interest into account before exercising the power of keeping, selling, destroying or otherwise disposing of the forfeited property.

(3) A forfeiture imposed by subsection (1) is in addition to, and not in substitution for, any other penalty imposed by a court in relation to the offence.

(4) Where the ownership of a controlled substance or a controlled article cannot, at the time of its seizure pursuant to section 17(3)(g), be ascertained, the property seized shall be forfeit to the Crown and may be sold, destroyed or otherwise disposed of as the Minister thinks fit after 90 days from the date of seizure if, within that time, it has not been possible after reasonable inquiry to establish ownership of the property.

(5) A person found guilty of an offence relating to a controlled substance or controlled article shall be liable to pay to the Crown the reasonable costs of handling, securing, maintaining or storing the controlled substance or controlled article seized pursuant to this Act in relation to the offence, which costs may be assessed by the court and collected in like manner to a monetary penalty.

### 19. INFRINGEMENT OFFENCES AND NOTICES

(1) An authorized officer may serve an infringement notice on a person if it appears to the officer that the person has committed an offence against this Act or the Regulations, being an offence prescribed as an infringement offence.

(2) An infringement notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person may, within the time and to the person specified in the notice, pay the prescribed penalty for the offence.

(3) If the prescribed penalty for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.

(4) Payment under this section is not to be regarded as an admission of liability for the purpose of, nor in any way to affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.

(5) The penalty prescribed for an infringement offence shall not exceed the maximum penalty that could be imposed for the offence by a court.

(6) Where a law of the Territory provides generally for the issuing, serving or content of infringement notices, those provisions shall apply to the issuing, serving and content of infringement notices under this section.

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20. REGULATORY OFFENCES

(1) Subject to this Act, an offence against this Act or the Regulations is a regulatory offence.

(2) It is a defence to a prosecution for an offence referred to in subsection (1) if the defendant proves on the balance of probabilities that -

- (a) any contravention or failure to comply constituting the offence occurred in an emergency and was necessary to preserve life or prevent injury or to protect property in the defendant's possession;
- (b) the defendant did not intend to commit the offence, and that -
  - (i) in any case where it is alleged that anything required to be done was not done, the defendant took all reasonable steps to ensure that it was done; or
  - (ii) in any case where it is alleged that anything prohibited was done, that the defendant took all reasonable steps to ensure that it was not done; or
- (c) any contravention or failure to comply constituting the offence was authorized by being -
  - (i) in the exercise of a right granted or recognized by law;
  - (ii) in execution of the law or in obedience to, or in conformity with, the law;
  - (iii) in obedience to the order of a competent authority whom the defendant is bound by law to obey unless the order is manifestly unlawful (the determination of which is a matter of law); or
  - (iv) pursuant to an authority, permission or licence lawfully granted.

21. OBSTRUCTING AUTHORIZED OFFICERS

- (1) A person who -
  - (a) resists or obstructs, or incites or encourages any other person to resist or obstruct, any authorized officer while carrying out the authorized officer's functions, or any person lawfully assisting the authorized officer;

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- (b) uses threatening language or behaves in a threatening manner towards any authorized officer while carrying out the authorized officer's functions, or any person lawfully assisting the authorized officer;
- (c) fails to comply with the lawful requirements of an authorized officer;
- (d) furnishes to an authorized officer any particulars which are false or misleading in any material respect; or
- (e) personates or falsely claims to be an authorized officer, or who falsely claims to be a person lawfully assisting an authorized officer,

is guilty of an offence.

Penalty: \$5,000.

(2) For the purposes of subsection (1), a person who refuses to allow an authorized officer, or any person lawfully assisting an authorized officer, to carry out the functions of an authorized officer, shall be deemed to be obstructing that authorized officer or person.

### 22. OFFENCES BY CORPORATIONS

(1) Where a body corporate commits an offence against this Act or the Regulations, every person who is a director of or who is concerned in the management of the body corporate shall be taken to have committed the same offence if it is established that the act or omission that constituted the offence took place with the person's authority, permission or consent, or that the person knew the offence was to be or was being committed and failed to take all reasonable steps to prevent or stop it.

(2) A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the body corporate has been proceeded against or convicted under that provision.

### 23. OFFENCES BY EMPLOYERS AND EMPLOYEES

(1) Where an employee commits an offence against this Act or the Regulations, the employer is to be taken to have committed the same offence (whether or not the employee committed the offence without the employer's authority or contrary to the employer's orders or instructions).

(2) It is a defence in proceedings against an employer for such an offence if it is established -

- (a) that the employer had no knowledge of the act or omission that constituted the offence; and

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- (b) that the employer could not, by the exercise of due diligence, have prevented the commission of the offence.

(3) An employer may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the employee has been proceeded against or convicted under that provision.

### 24. PROCEEDINGS FOR OFFENCES

(1) Proceedings for an offence against this Act or the Regulations may be commenced not later than 3 years after the date alleged to be the date on which the offence was committed.

(2) Proceedings may be taken and prosecuted only by a person acting with the authority of the Commission or the Minister.

(3) In proceedings for an offence, a certificate by the Commission or the Minister authorizing a prosecution is evidence of that authority.

## PART IV - MISCELLANEOUS

### 25. AUTHORIZED OFFICERS

(1) The Minister may, in relation to a function under this Act, authorize in writing an employee (within the meaning of the *Public Service Act*) who is suitably qualified to perform that function.

(2) Authorization may be given under subsection (1) either generally or specifically or subject to conditions.

(3) Subject to this Act and the Regulations, an authorized officer shall, in performing a function, be subject to the direction and control of the Commission.

### 26. ACCREDITATION OF COURSES, &c.

The Commission may -

- (a) approve and accredit, or authorize persons or bodies (whether incorporated or not) to approve and accredit, training courses, training institutions and examining bodies; and
- (b) set up or authorize the setting up of examining bodies and conduct examinations,

for or in relation to the qualifications prescribed in the Regulations of persons engaged in the design, installation, operation, servicing, maintenance, repair, modification or decommissioning of plant or equipment to which this Act applies.

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27. DELEGATION

(1) The Commission may, by instrument in writing, delegate to a named person or to a person from time to time holding, acting in or performing the duties of a named office, designation or position any of the Commission's powers, functions or authorities under this Act, except this power of delegation.

(2) A delegation under subsection (1) may be revoked at any time, and does not prevent the exercise of a power or authority, or the performance of a function, by the Commission.

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SCHEDULE

OZONE DEPLETING SUBSTANCES

Section 4

Trichlorofluoromethane (CFC-11)  
Dichlorodifluoromethane (CFC-12)  
Trichlorotrifluoroethane (CFC-113)  
Dichlorotetrafluoroethane (CFC-114)  
(Mono) chloropentafluoroethane (CFC-115)  
Bromochlorodifluoromethane (Halon-1211)  
Bromotrifluoromethane (Halon-1301)  
Dibromotetrafluoroethane (Halon-2402)

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