

THE NORTHERN TERRITORY OF AUSTRALIA

Copy No.

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CABINET DECISION

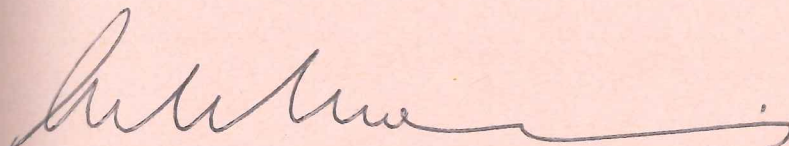
No. 6381

Submission No.: 5482

Title: OZONE PROTECTION LEGISLATION

Cabinet approved -

- (a) the Ozone Protection Bill for introduction in the February Sittings of the Legislative Assembly;
- (b) the Second Reading Speech and Committee Notes to the Bill; and
- (c) the immediate release of the advertisement to appropriate Territory newspapers.



A. G. MORRIS
Secretary to Cabinet.

23 February 1990

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FOR CABINET

SUBMISSION No: 5482

Title:	OZONE PROTECTION LEGISLATION
Minister	HON. S.P. HATTON, M.L.A.
Purpose:	TO SEEK CABINET APPROVAL FOR: · DRAFT OZONE PROTECTION BILL TO BE INTRODUCED TO THE LEGISLATIVE ASSEMBLY IN THE CURRENT SITTINGS · SECOND READING SPEECH · COMMITTEE NOTES · PUBLIC ADVERTISEMENT TO APPEAR IMMEDIATELY
Relation to existing policy:	CONSISTENT
Timing/legislative priority:	URGENT - TO ENABLE INTRODUCTION OF THE BILL IN THE FEBRUARY/MARCH LEGISLATIVE ASSEMBLY SITTINGS
Announcement of decision, tabling, etc:	THE ADVERTISEMENT TO BE IMMEDIATELY PLACED IN TERRITORY NEWSPAPERS
Action required before announcement:	DECISION BY CABINET
Staffing implications, numbers and costs, etc:	CCNT - RECLASSIFICATION WITHIN MSL AND BUDGET. HEALTH - THREE ADDITIONAL STAFF. WORK HEALTH AUTHORITY - TWO ADDITIONAL STAFF.
Total cost:	NOTIONAL SUBJECT TO DEVELOPMENT OF REGULATIONS TO BE SOUGHT IN 90/91 BUDGETARY PROCESS: CCNT - \$100,000 COMPENSATION PAYMENTS HEALTH - \$140,000 SALARIES, OPERATIONAL AND CAPITAL

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Department/Authority..NORTHERN..TERRITORY..TREASURY.....

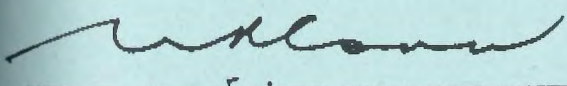
COMMENT ON CABINET SUBMISSION No.

TITLE: OZONE PROTECTION LEGISLATION

COMMENTS:

Treasury notes that the extent to which relevant departments and authorities will be supplemented for the costs foreshadowed in the Submission (up to \$345,000 in 1990/91) is to be addressed later in the normal budget context.

As to the matter of possible compensation for businesses affected by the strategy proposed in the draft legislation, Treasury considers that the grounds for any claims against the NT Government are weak and should be resisted. Businesses already have had considerable opportunity to wind down their stocks of ozone depleting substances and plan for any re-equipping, and they will have still more time as the phase-out proposed under the national strategy is not due to be completed until 1998. Moreover, were there any grounds for compensation, such claims would be more appropriately directed at the Commonwealth. As a result, consultations with business should be on the basis that compensation is unlikely to be warranted in the circumstances; and regulations giving effect to the national strategy in the NT should be formulated in a way which minimises the Territory's exposure to claims for compensation.



 SIGNED: N R CONN

DESIGNATION: UNDER TREASURER

DATE: 21 FEBRUARY 1990

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Department/Authority DEPARTMENT OF LABOUR AND ADMINISTRATIVE SERVICES

COMMENT ON CABINET SUBMISSION No.

TITLE: OZONE PROTECTION LEGISLATION

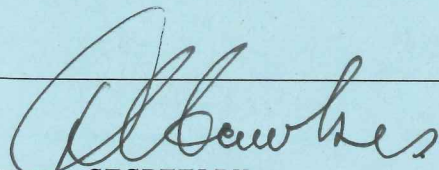
COMMENTS:

This Department supports the Submission.

The Submission contains insufficient detail to allow comment on the Employment and Industrial Relations considerations.

The intention to combine the monitoring/inspectorial role with functions already carried out by the Department of Health and Community Services and the Work Health Authority is noted and supported.

SIGNED:



DESIGNATION: SECRETARY

DATE: 20 February 1990

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Department/~~Authority~~ OF THE CHIEF MINISTER

COMMENT ON CABINET SUBMISSION No.

TITLE: OZONE PROTECTION LEGISLATION

COMMENTS:

The draft Bill and the proposals for a co-ordinated approach to the development and implementation of regulatory services outlined under the heading, Regulatory Impact, are supported.

However, the cost estimates identified by the Department of Health and Community Services and the Work Health Authority cannot be substantiated until there are some concrete proposals for regulations and their ramifications become known.

Margaret P. Lyons

SIGNED: MARGARET P LYONS

DESIGNATION: DEPUTY SECRETARY

DATE:

21 FEB 1990

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Department/Authority: LAW

COMMENT ON CABINET SUBMISSION No.

TITLE: ..OZONE PROTECTION LEGISLATION

COMMENTS:

The submission is supported.

Peter Conran

SIGNED: Peter Conran
DESIGNATION: Secretary, Department of Law
DATE: 21 February 1990

16/2/90

Department/Authority INDUSTRIES & DEVELOPMENT

COMMENT ON CABINET SUBMISSION No.

TITLE: OZONE PROTECTION LEGISLATION

COMMENTS:

This submission is supported.



SIGNED: O ALDER

DESIGNATION: SECRETARY

DATE: 20 February 1990

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Department/Authority POWER AND WATER AUTHORITY

COMMENT ON CABINET SUBMISSION No.

TITLE: OZONE PROTECTION LEGISLATION.

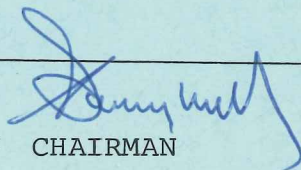
COMMENTS:

The Authority supports in principle the proposed legislation.

However, it should be recognised that the legislation gives very broad powers in terms of control of the use of "controlled substances." Such legislation might be considered somewhat Draconian.

The Authority requests representation on the Ozone Protection Consultative Committee due to the Authority's use of halons.

SIGNED:



DESIGNATION: CHAIRMAN

DATE: 20/02/90

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Department/Authority DEPARTMENT OF MINES & ENERGY

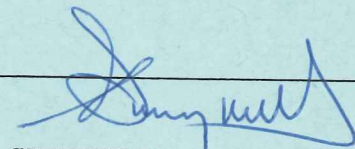
COMMENT ON CABINET SUBMISSION No.

TITLE: OZONE PROTECTION LEGISLATION

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COMMENTS:

The Department supports the proposed legislation.

SIGNED: 

DESIGNATION: SECRETARY

DATE: 20/2/90

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Department/Authority WORK HEALTH AUTHORITY

COMMENT ON CABINET SUBMISSION No.
OZONE PROTECTION LEGISLATION

TITLE:

COMMENTS:

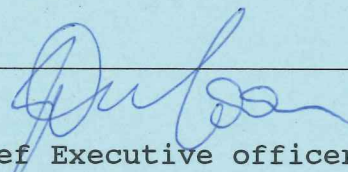
The Work Health Authority:

1. Supports the legislation in principle.
2. Supports the recommendation that the Conservation Commission of the Northern Territory be the administering authority.
3. Supports a co-ordinated government approach to formulation and implementation of Regulations.
4. Has not formally agreed that it would need extra staff and funds as indicated in the Submission.
5. Believes that it is premature to decide which organisation will be the inspecting/licensing agency and that the indications given as to expected extra staff and funding cannot be substantiated prior to Regulations being formulated.
6. Is willing to discuss playing a part in the implementation of the legislation but will need to be convinced that the additional function would not detract from its prime role as the Territory's occupational health and safety body.
7. Submits that, at the appropriate time, Cabinet would need to be presented with options as to how the implementation of the legislation should be carried out.

SIGNED:

DESIGNATION:

DATE:


Chief Executive officer

20/2/90

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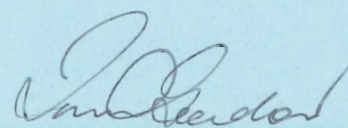
Department/Authority.....^{XXXXXX} TRANSPORT AND WORKS.....

COMMENT ON CABINET SUBMISSION No.

TITLE: OZONE PROTECTION LEGISLATION.....

COMMENTS:

Submission supported.



SIGNED: I D GORDON

DESIGNATION: SECRETARY

DATE: 20/1/90

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Department/~~Authority~~ EDUCATION

COMMENT ON CABINET SUBMISSION No.

TITLE: CONSERVATION COMMISSION OF THE NORTHERN TERRITORY

COMMENTS:

The Department of Education supports the submission.

SIGNED: _____

Allyson P. C. SPRING

DESIGNATION: SECRETARY

DATE: *20/2/90*

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Department/~~Authority~~..... LANDS AND HOUSING.....

COMMENT ON CABINET SUBMISSION No.

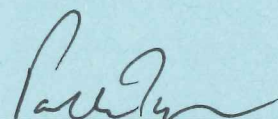
TITLE: OZONE PROTECTION LEGISLATION.....

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COMMENTS:

The Submission is supported.



SIGNED: Paul Tyrrell

DESIGNATION: Secretary

DATE: 20/1/90

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Department/Authority NORTHERN TERRITORY POLICE, FIRE AND EMERGENCY SERVICES

COMMENT ON CABINET SUBMISSION No.

TITLE: OZONE PROTECTION LEGISLATION

COMMENTS:

The recommendations of the Submission are supported.

The Fire Service uses very small amounts of ozone depleting substances and is in the process of phasing them out entirely. However, the Fire Service may require an exemption under Clause 13 of the Bill for a short period.



SIGNED:

M J PALMER

DESIGNATION:

COMMISSIONER OF POLICE

DATE:

February 1990

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Department/Authority HEALTH AND COMMUNITY SERVICES

COMMENT ON CABINET SUBMISSION No.

TITLE: OZONE PROTECTION LEGISLATION

COMMENTS:

The Department of Health and Community Services concurs with the draft Cabinet Submission.

SIGNED: *R. J. Morrison*
DESIGNATION: *Secretary*
DATE: *22/2/90*

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RECOMMENDATION

1. It is recommended that Cabinet approve:
 - (a) a draft Ozone Protection Bill to be introduced to the Legislative Assembly in the current Sittings,
 - (b) the second Reading Speech and Committee Notes attached; and
 - (c) immediate release of the advertisement at Attachment C to appropriate Territory newspapers.

BACKGROUND

2. Ozone in the stratosphere has a critical role in the screening of ultra-violet (UV) radiation from the Earth. Chlorofluorocarbons (CFCs) and bromofluorocarbons (halons) are substances which are widely used in a variety of domestic and industrial applications. On reaching the stratosphere, they increase the rate of ozone decay, with an estimated 2% increase in UV radiation reaching the Earth for every 1% decrease in ozone. UV radiation is a significant cause of skin cancer, some eye diseases and may suppress some immune response systems. It may also adversely impact on plant production. Data collected since 1979 shows global ozone loss of about 2%.
3. Cabinet, by Decision 6334 of 23 January 1990, noted the Australia and New Zealand Environment Council

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(ANZEC) National Strategy for Ozone Protection; approved a programme of consultation with all appropriate industry groups on appropriate measures and a timetable for implementation in the Northern Territory; and approved as a high priority the drafting of a Northern Territory Ozone Protection Act to establish the framework for early introduction of measures appropriate to the Northern Territory. The Chief Minister further directed on 25 January 1990 that a formal and genuine consultative process be implemented quickly with relevant groups.

CONSIDERATION OF THE ISSUES

4. The ANZEC Strategy for Ozone Protection contains some 106 recommendations and has been endorsed by the Commonwealth and all State and Territory Governments. Implementation of the Strategy requires complementary Commonwealth, State and Territory legislation, together with co-ordinated action across the country.

5. The draft NT Ozone Protection Bill closely follows the New South Wales model and provides a framework within which Regulations can be developed for the implementation of relevant recommendations of the Strategy. The draft Bill is to be found attached, together with the Second Reading Speech and Committee Notes.

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6. Administration of the Bill, together with formulation and implementation of Regulations yet to be developed in accordance with an action plan relevant to the Territory, will require co-ordinated Government action involving in particular, the Conservation Commission, the Treasury Department, the Departments of the Chief Minister, Health and Community Services, Industries and Development, the Work Health Authority and the NT Fire Service. As major Government "users", the Departments of Transport and Works, Mines and Energy and the Power and Water Authority should also be involved. Education and training forms a major component of the Strategy and the Department of Education, NT University, TAFE and Open Colleges would also need to be involved.

7. Involvement by industry from the retailing, wholesaling, manufacturing and service areas will be critical to the development of a Territory action plan and regulations to give effect to the recommendations.

OPTIONS

8. The options open to Government are to either approve the Bill and its accompanying Second Reading Speech and Committee Notes, or not to approve the Bill and accompanying papers. It is strongly recommended that approval be given for the Territory Ozone Protection Bill in order that co-ordinated action can be taken by

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the Territory in conjunction with the Commonwealth and all States and Territories in order to implement the National Strategy to which the Territory is already a party.

PUBLIC IMPACT OF THE RECOMMENDATIONS

9. Public response to the introduction of ozone protection legislation is likely to be favourable. Following tabling of the Bill in the Assembly, Commission officers will brief the Environment Centre on the proposals of the Bill and the intent of its implementation. Subject to Cabinet approval, the advertisement at Attachment C will appear in the Press in the week commencing 25 February.

10. Whilst the Bill itself will not have an impact on industry, subsequent Regulations will. Some impact on local industry will also flow from legislation introduced by the Commonwealth to control imports and from legislation introduced by other States where major manufacturing occurs. Consultations with industry groups have commenced and a list of groups contacted and subsequently consulted is at Attachment A. Industry comments on the draft Bill, together with advice on how these comments have been dealt with, is at Attachment B. The Australian Association of Fluorocarbon Manufacturers has been in touch with key industry groups in the Territory in order to recommend

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that they support the national strategy for ozone protection and its implementation in the Territory.

11. At the request of a majority of industry representatives attending the first consultation, the Bill provides for the formation of an Ozone Protection Consultative Committee which it is envisaged will play a key role in developing an action plan for the Territory and recommending the matters to be addressed by Regulation.

REGULATORY IMPACT

12. The draft Bill allows for the development of industry Codes of Practice and, subject to their approval by Government, incorporation of same within the Regulations. The Ozone Protection Consultative Committee, incorporating key industry representatives, will provide valuable NT input to the development of the industry Codes of Practice and should, through consultation on the nature and content of the required Regulations, facilitate a significant level of self-regulation, particularly in industrial activities.
13. Regulatory services will still be required and it is proposed that these be developed through reinforcement and support for existing inspectorial services within the Department of Health and Community Services and the Work Health Authority, noting in particular, that

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regulatory requirements in the retail industry dealing with matters such as sale of aerosols, will diminish over the next five years. Industry groups consulted have no problems with this approach and in fact, prefer it to the development of yet another inspectorial service. The Conservation Commission, as administering authority for the legislation, would coordinate the necessary action. Options for regulatory services will be canvassed further during development of regulations and will be the subject of further advice to Cabinet, noting that the Work Health Authority is not yet convinced that this additional function is appropriate to that Authority.

FINANCIAL CONSIDERATIONS

14. It is likely that there will be a need for additional resources in order to implement the regulations. Requirements will not be clearly known until regulations are prepared in consultation with industry. Department of Health have notionally identified a need for an additional \$140,000 to be sought in budget estimates for 1990/91, with \$95,000 in subsequent years. Preliminary discussions with Work Health Authority identified the need for \$105,000, but it should be noted that the Authority is not yet convinced of this need.

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15. There will be implications for Government in terms of compensation payments that may be required as a result of the implementation of Regulations. It is impossible to forecast these until detailed consultations have been held with industry on the content and implications of the Regulations. A notional figure of \$100,000 will be sought in the Conservation Commission's estimates for 90/91 for compensation payments in that financial year. Wherever possible, flexibility will be sought in implementation of the national strategy at the Territory level in order to minimise the exposure for compensation. Participation by Treasury officers in the Government Ozone Protection Working Group is essential.

EMPLOYMENT AND INDUSTRIAL RELATIONS

16. Additional staffing requirements for the implementation of regulations are difficult to predict in advance of further industry consultations. In discussion with the Department of Health, it is considered that an additional three regulatory staff are likely to be required.

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COMMONWEALTH, STATE AND LOCAL GOVERNMENT RELATIONS

17. The Territory Bill is consistent with the requirements of the ANZEC Strategy and with legislation implemented or being implemented by the Commonwealth and other States. The impact on Local Government should be minimal, but provision is made for Local Government consultation within the draft Bill.

CO-ORDINATION AND CONSULTATION

18. This Cabinet Submission has been circulated to the Departments of Law, Chief Minister, Health and Community Services, Lands and Housing, Mines and Energy, Industries and Development, Transport and Works, Education, NT Police (NT Fire Service), Work Health Authority, Power and Water Authority, NT Treasury and the Public Service Commissioner. A Working Group of Departments also provided comment on the provisions of the draft Bill.

19. It is essential that the current Government Ozone Protection Working Group involve representation from a number of key Government Departments and it should continue to meet in order to provide direction for the development and implementation of a Territory action plan. Details of the proposed Working Group composition have been provided in paragraph 6.

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LEGISLATION

20. The draft bill for Ozone Protection in the NT is to be found attached. It is intended that the first set of draft Regulations will be available for tabling in the May Sittings of the Assembly with proposed commencement June/July this year. A further set of Regulations will be intended for tabling in the November Sittings for commencement December 1990/January 1991.

TIMING

21. It is strongly recommended that the Bill be introduced to the current Assembly Sittings.



22.2.90

STEVE HATTON

Minister for Conservation

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ATTACHMENT AINDUSTRY CONSULTATIONS - ORGANISATIONS CONTACTED

Confederation of Industry & Commerce Raphael Crowe	815755
Institute of Engineers Yvonne Lee	814137
PK Kitchens (NT) Pty. Ltd. Bob Hein	844844
Association of Fluorocarbon Consumers and Manufacturers Steve Anderson	(062) 956418
GHD Clive Weeks	815922
ICI Tony Thorsen	470965
Liquid Air (WA) Pty. Ltd. Bruce Newham, Len Velish	(09) 3307422
Hoechst Ray Williamson	(08) 3522655
Australian Institute of Refrigeration, Airconditioning and Heating R. Kaernohan	815755
Small Business Association Max Ortmann	844822
CIG David Evans	843811
CTM Refrigeration	279385
Climatemaster, Alice Springs	523683
Darwin Cold Stores	843300
Electrolux Mike Meech	843733
C.J. Mansfield, Nhulunbuy	811799
Pine Creek Electrical & Refrigeration	761349
Mobile Refrigeration	813302
Industrial Supplies Office	411130

Motor Traders' Association	814066
Australian Automotive Industrial Training Council Bronti Cooper	470655
Darwin City Business Association John Gilbert	818242
Hibiscus Shopping Centre Julie Milne	274127
Lovelock Luke Pty. Ltd.	843840
Email Russell Hawkin	843777
Actrol Parts Brian Inns	(08) 2341191
Casuarina Shopping Square Michael O'Brien	273277
Wormald Larry Oakeshott (omitted from group consultation, contacted separately)	843488

ATTACHMENT A (cont.) - INDUSTRY CONSULTATIONS ON 14/2/90REPRESENTATIVES IN ATTENDANCEINDUSTRY GROUP

Nick Porter	Actrol
Keith Bremner	GHD
Doug Boog	Email York
Russell Hawkins	Email CPD
Michael Tartì	CIG
David Evans	CIG
Rick Conlon	Mobile Refrigeration
Mike Hall	NTU
Paul Morrison	Lovelock Luke
Tony Thompson	ICI
Leigh Wilson	Radiant Drycleaners
Peter Brown	Motor Traders' Association
Peter Harbrow	Pine Creek Electrical
Chris Kirwin	Darwin Coldstores/CTM
Larry Oakeshott (contacted separately on 19 Feb.)	Wormalds

INDUSTRY COMMENTS ON DRAFT BILLATTACHMENT BCOMMENTRESPONSE

All industry groups involved in the discussions requested that the Minister should consult with industry in the formulation of Regulations. The majority required that a formal structure be provided for such consultation.

Provision is made for the formation of an Ozone Protection Consultative Committee. It is envisaged that representation will be drawn from the retail, wholesale, manufacturing, recycling and service industries, together with representatives of the Commission, Departments of Industries and Development and Education, and Local Government where appropriate.

Licences and Registration industry agreed that provision should be made for suspension or cancellations of licences or registration in the event of serious offences.

Incorporated in revised draft Bill.

Industry required that records and returns should be prescribed by Regulation in order to ensure consultation.

Incorporated in a revised draft Bill.

Industry queried the potential conflict between provisions allowing that statements made in writing to the Commission by natural persons were not admissible in evidence and the provision for the powers of the court to require disclosure of any information.

Industry have been advised that there is no potential conflict, in fact the two provisions of the draft Bill are complementary. Whilst the courts can require any information the Bill provides that such information could not be used as evidence against the person who provides it in a written statement when required by the Commission.

Industry requested that the disclosure of information made with the prior permission of the Minister should only be made with the consent of the person from whom the information is obtained.

Industry has been advised that the Bill cannot constrain the powers of Government to act in the public interest. The Bill has been amended to clarify this.

Industry queried penalty rates.

Industry were advised that penalty rates were consistent with those introduced in New South Wales in order to maintain uniformity with legislation across the States.

Industry requested that inspections be made at reasonable times.

Bill now provides for this.

Industry sought advice on whose risk entry would be undertaken by an authorised officer.

Industry has been advised that depending on the circumstances, liability would be determined by the courts subject to whether the authorised officer was acting within the requirements of his duties.

Industry sought provision for an authorised officer to be accompanied by the occupier during inspection of premises.

Provision has now been made.

Industry queried compensation payable for false entry, damage or loss of income.

Industry was advised that there is no statutory power for forcible entry within the Bill except under the provisions of a search warrant. Any liability for compensation is a matter that should be decided by the Courts.

Under forfeiture provisions, industry requested clarification that in disposing of substances seized, the Minister would need to act within the requirements of the Act.

Industry has been advised that the Act is binding on the Crown.

Recognition of third party equity was sought for the forfeiture and disposal of any substances or equipment seized.

Provision has now been made.

Industry expressed concern that authorised officers should have appropriate qualifications or experience.

Provisions have now been made in the Miscellaneous section of the Act for the Minister to authorize a suitably qualified or experienced employee.

Industry sought clarification as to whether an employer could be prosecuted for a breach of the Act in the absence of similar prosecution proceeding against the employee responsible for the offence.

Industry has been advised that the employer is deemed to be liable and that a prosecution could proceed against the employer, in the absence of similar action against the employee. It is however a defence to prosecution if the employer had no knowledge of the offence, and could not have prevented it occurring.

ATTACHMENT C

(NT Government Crest)

Ozone Protection Bill 1990

During the next week of the Legislative Assembly sittings, the Northern Territory Government will enact Ozone Legislation.

The legislation being introduced will be enabling legislation, to allow the Government to introduce regulations concerning the control of ozone depleting substances in the future.

In developing these regulations, the Government will embark on a consultative process with interested persons and industry groups, to reduce ozone depleting substances in keeping with the National Strategy for Ozone Protection.

The Northern Territory Government
Improving your environment.

For further information about Ozone Legislation and ozone protection, contact Mr Andrew Read, Conservation Commission of the Northern Territory on 89 4415.

NORTHERN TERRITORY OF AUSTRALIA

OZONE PROTECTION BILL 1990

TABLE OF PROVISIONS

Clause

PART I - PRELIMINARY

1. Short title
2. Commencement
3. Act to bind the Crown
4. Interpretation

PART II - CONTROLS

5. Purpose of Part
6. Minister shall consult before regulations made
7. Ozone Protection Consultative Committee
8. General regulatory provisions
9. Licences and registration
10. Recovery, re-cycling, &c.
11. Codes of practice
12. Labelling, &c.
13. Exemptions
14. Records and returns

PART III - ENFORCEMENT

15. Powers of Commission to require information, &c.
16. Disclosure of information
17. Powers of inspection, &c.
18. Forfeiture, &c.
19. Infringement offences and notices
20. Regulatory offences
21. Obstructing authorized officers
22. Offences by corporations
23. Offences by employers and employees
24. Proceedings for offences

PART IV - MISCELLANEOUS

25. Authorized officers
26. Accreditation of courses, &c.
27. Delegation

SCHEDULE



NORTHERN TERRITORY OF AUSTRALIA

A BILL for 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

BE 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 exercise a function under this Act;

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

Ozone Protection

"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.

Ozone Protection

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.

Ozone Protection

(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 a State, another Territory or 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 and 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 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 exercising 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 under 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 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 commits an offence 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.

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 exercise 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 exercising 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 for the time being 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, function or authority by the Commission.

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)

SECOND READING SPEECH

OZONE PROTECTION ACT

Mr Speaker, I move that the Bill be read for the second time.

Mr Speaker, the depletion of the ozone protection layer is of major international concern. Over the last ten years, there has been growing concern about the release of certain chemicals, mainly chlorofluorocarbons (CFCs) and bromofluorocarbons (halons) which are depleting the ozone protection layer of the Earth, especially over Antarctica.

The Australian and New Zealand Environment Council (ANZEC) advises that these ozone depleting substances eventually reach the stratosphere where they gradually break down, releasing halogens which destroy the Earth's protective layer. Satellite data collected since 1979 shows global ozone loss at $2.5 \pm 0.6\%$ up to 1987, including solar cycle effects.

An area of severe depletion in ozone concentration over Antarctica up to 50% in Spring each year has occurred. While this is commonly called a "hole" in the ozone layer, it is in fact an area of severe seasonal depletion. After the hole closes in early Summer, there is some dilution of the ozone layer outside the Antarctic region while ozone moves back to fill the hole with concentrations returning to near normal levels by Summer.

The decrease in ozone over Antarctica between 1979 and until 1988 has generally been increasing, with the hole getting progressively deeper each year until 1987. A shallower hole was recorded in 1988 and it is believed that this was due to the warmer temperatures in the stratosphere over Antarctica at that time. Seasonal decreases in ozone levels over southern Australia in the last 8-10 years have occurred at a greater rate than the global average.

Mr Speaker, the ANZEC advises that the ozone layer absorbs harmful ultra-violet (UV) radiation and prevents most of it from reaching the Earth. It is calculated that on average a 1% decrease in ozone concentration will lead to a 2% increase in UV radiation. UV radiation can damage both protein and genetic material in living organisms. It can cause skin cancer, of which Australia has the highest incidence in the world.

In addition, eye diseases and suppression of some human and animal immune response mechanisms is predicted to occur from greater UV radiation. Decrease in agricultural productivity and marine plant productivity may also result from greater UV radiation, however more research is required to establish these links.

Mr Speaker, I am sure that all Members of this House share my concerns and the concerns of the Northern Territory Government at this potential for environmental disaster.

Further to this, CFCs and halons are also known to contribute significantly to the Greenhouse Effect. Greenhouse Effect is the name given to global warming expected to be brought about by an increase in certain trace gases in the atmosphere, carbon dioxide being the principal one. However, it is estimated that unless we take immediate action to reduce if not eliminate the discharge of CFCs and halons into the atmosphere, by the Year 2030 CFCs and halons will contribute approximately 20% to the Greenhouse Effect.

Greenhouse gases allow heat from the sun to reach the Earth's surface but prevent some of the reflected infra-red or heat radiation gases escaping into space. It is on this basis that scientists are predicting a global warming will result as a consequence of which there will be changes in the Earth's climate, with sea levels expected to rise and major social and economic disruption as a result.

Mr Speaker, CFCs and halons are widely used in diverse applications throughout industry and the community. Although in total Australia's usage of CFCs and halons is only a fraction of global consumption, unfortunately our use on a per capita basis is one of the highest in the world. As a consequence, it would be difficult for us to expect other nations to significantly reduce their use of these ozone depleting substances unless we can similarly demonstrate that we are making genuine attempts to reduce our consumption of these products.

CFCs are stable, odourless, non-toxic and colourless, they do not conduct electricity, they are non-flammable and produce a fine even spray. As a consequence of which they have been used as aerosol products, in refrigerants, as solvents, in foam production, the packaging industry and fire fighting.

Mr Speaker, I am advised that it is estimated that in 1987/88 the Northern Territory used approximately 160 tonnes of CFCs, about 1.2% of the total Australian consumption, and approximately 0.02% of the total world consumption. Halons are chemicals used in BCF type fire extinguishers and I am advised that during the same period, the NT used an estimated 14.5 tonnes of halons, calculated as 1.7% of the total Australian use. This very high per capita use is believed to be due primarily to the large building programme after Cyclone Tracy when many halon fire protection systems were installed during rebuilding programmes.

Mr Speaker, the potential for destruction that we humans as a species are capable of wreaking on our planet is of sufficient international concern that a Convention for the Protection of the Ozone Layer was signed in Vienna in 1985 by 16 countries including Australia. Under the provisions of the Convention, a separate agreement known as the Montreal Protocol on substances that deplete the ozone

layer, was finalised in September 1987 and Australia signed the Protocol in June 1988.

The Montreal Protocol has called for a 50% reduction in the consumption and production of certain CFCs by 1998. The Protocol also calls for a freeze in halon usage at 1986 levels beginning in 1992. It was framed in the light of current knowledge available in mid-1987. However, by March 1988, an international group of scientists released a report showing that a 3% decrease in stratospheric ozone had already occurred over heavily populated portions of North America and Europe.

Mr Speaker, a review of the Protocol is to be completed by 1990 and there is a strong possibility that the new requirements may be more stringent, and may include more chemicals than the original version.

Mr Speaker, as a consequence of the reportedly deteriorating situation, the ANZEC, with full agreement of the Commonwealth and all State and Territory Governments, has prepared a National Strategy to provide for advancing a timetable for the phase-out of ozone depleting substances in Australia. This Strategy requires a consistent approach to be adopted by the Commonwealth, States and Territories for its effective implementation.

The National Strategy was adopted by the then Australian Environment Council at its meeting of Ministers held in New Zealand in July 1989. The National Strategy aims for a total phase-out of all ozone depleting substances in Australia by 1998. Legislation has been implemented to control the import and export of CFCs and halons by the Commonwealth Government. Legislation to control the manufacture, sale, disposal and emission of ozone depleting substances has either been implemented or is in the process of being implemented by all States and Territories. The

Territory Bill for ozone protection provides for the control of the manufacture, sale, disposal and emission of chemical substances which destroy ozone.

Mr Speaker, the Territory Bill is modelled on similar legislation introduced in New South Wales. It provides a legislative framework within which regulations can be developed for specific activities such as controlling or prohibiting manufacture, sale, disposal and emission of chemical substances which destroy ozone. Regulations may also be made prescribing offences and penalties, in addition to prescribing offences to be dealt with as infringement offences which could be actioned by an infringement notice if the person concerned did not wish to have the matter determined by a court.

The regulation-making provisions of the Bill would also provide for the licensing or registration of persons and premises engaged in activities authorised to be regulated and in the event of serious offences, for the suspension or cancellation of such licences or registration.

Mr Speaker, the Bill also allows for the making of regulations to require or control the recovery, recycling and destruction of controlled substances and controlled articles, with controlled substances being defined as those substances which have a potential to deplete ozone. These substances are specified in the Schedule. These controlled substances may be amended, added to or deleted by regulation in accordance with any new agreements at international or national levels.

A controlled article includes plant or equipment which contains, uses or is designed or intended to use ozone depleting substances.

Mr Speaker, the regulation making powers of the Bill are extremely broad. They allow for the development of Codes of Practice and for the incorporation of these in the regulations, together with provisions for ensuring that these Codes of Practice are complied with.

The Bill allows for the formation of an Ozone Protection Consultative Committee with representation drawn from the retail, wholesale, manufacturing, recycling and service sectors of industry, together with Government representatives from the Conservation Commission, the Departments of Industries and Development and Education. It is envisaged that this Committee will develop an action plan for the implementation of the Ozone Protection Strategy in the Territory, would be consulted with in the development and formulation of regulations, would assist in the formation of relevant Codes of Practice, and would advise on the need for appropriate courses and accreditation of such courses for such people as air conditioner service mechanics and other trades who may have cause to use CFCs and halons. The Bill also allows for other persons with an interest in the content of the regulations to be consulted during their formulation.

The involvement of industry in the development of the action plan, in the formulation of regulations and in the incorporation of Codes of Practice in the Regulations, will mean Mr Speaker, that implementation of requirements for ozone protection will include a significant component of self-regulation by appropriate industry groups.

There will be a requirement for inspectorial services and these will be provided through existing structures within the Department of Health and Community Service and the Work Health Authority, with co-ordination being provided by the Conservation Commission.

Mr Speaker, the Bill provides for exemptions to be made under the regulations, with or without qualifications. Obvious exemptions would need to include aerosol sprays used for medicinal purposes, for people such as asthma sufferers for whom there is no alternative. There has been some recent controversy in relation to exemptions that have currently been made by the Commonwealth. However, the Assembly should note Mr Speaker, that there is a requirement for exemptions to be consistent across the Commonwealth, all States and the Territories. In this regard, we will have little option but to adopt those exemptions agreed on a nation-wide basis.

Mr Speaker, the regulation making power of the Bill also allows for the keeping of records and returns. This will be critical in order to assess the success or otherwise of the implementation of the Territory's actions in controlling ozone depleting substances.

Mr Speaker, the enforcement provisions of the Bill are very strong and quite exhaustive. The Conservation Commission is the authority charged with the enforcement of the Bill but provisions are made for the Minister to authorise officers of other Government Departments such as the Department of Health and Community Services and the Work Health Authority to carry out specific or general functions under the Bill, whilst similar provisions are made for the Conservation Commission to provide direction to such officers and for the Commission to delegate its powers to other Government officers.

The enforcement provisions under the Bill also provide confidentiality and protection for commercial or manufacturing information that is required by the Commission in order to implement the Bill and the regulations. It provides for powers of entry and inspection, for examination, inquiry, testing, seizure, removal and forfeiture.

Mr Speaker, as the offences are regulatory offences, the Bill also establishes as defence to prosecution, the grounds of preserving life or property, accidents, or lawful actions. It provides for penalties for offences including obstruction of authorised officers and allows for employers together with corporate bodies and their Directors to also be prosecuted in appropriate circumstances.

Mr Speaker, passage of this Bill through this Assembly will allow for the formation of the Ozone Protection Consultative Committee and will facilitate commencement of drafting of regulations necessary to implement the first steps of the Strategy.

Mr Speaker, I am sure that all Members of this Assembly will share my concerns for the need for this legislation to control ozone depleting substances.

Mr Speaker, I commend the Bill to the House.

COMMITTEE NOTES - OZONE PROTECTION BILL 1990

The object of this Bill is to provide a framework for the making of regulations to control or prohibit the production, use, sale, distribution, recycling, storage and disposal of

- (a) substances that deplete stratospheric ozone when emitted into the atmosphere; and
- (b) articles including plant and equipment that contain or use those substances in their operation.

PART 1 - PRELIMINARY

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the proposed Act to commence on a day or days to be fixed by the Administrator by notice in the Gazette.

Clause 3 binds the Crown.

Clause 4 contains definitions. Important definitions are

authorised officer allows a suitably qualified or experienced employee of the NTPS to be authorised by the Minister pursuant to Section 25 to exercise a function under the Act. The intention is to utilise

existing infrastructure and services within Departments such as Health and the Work Health Authority.

Controlled substance which means the ozone depleting substances listed in Schedule 1 to the proposed Act and substances prescribed as ozone depleting substances by the regulations. (See also section 4(2)).

Controlled article means an article or other thing that contains a controlled substance or uses or is designed or is intended to use a controlled substance in its operation.

PART II - CONTROLS

Clause 5 defines the purpose of the part and is self-explanatory.

Clause 6 allows for consultation before regulations are made. Under this clause the Minister shall consult with the Ozone Protection Consultative Committee, and may consult any other Minister or person that the Minister thinks may have an interest in the content of the proposed regulations. Such consultation will be essential in order to ensure that regulations are both practical and effective.

Clause 7 allows the Minister to establish an Ozone Protection Consultative Committee comprising representatives from retail, wholesale, manufacturing, recycling and service industries, together with educational, Government and Local Government interests.

Clause 8 empowers the making of regulations covering a wide range of matters involving controlled substances and controlled articles including the manufacture, sale, distribution, installation, operation, maintenance, conveyance, storage, possession, use, recycling and disposal.

The clause also empowers the prescribing of offences and penalties by regulation and allows the prescribing of compensation levels that would be payable in connection with the operation of the Act.

Clause 9 specifies that regulations can make provision to licence persons and can require premises, vehicles and vessels to be registered. The Clause also makes it clear that licences and registration can be suspended or cancelled for serious breaches or offences, and makes provision for fixing and payment of fees.

Clause 10 provides specific regulation making powers for recovery, recycling, destruction or disposal of controlled substances. It also allows for cost recovery where such action needs to be taken by the Commission.

Clause 11 provides for the regulations to adopt codes of practice and requires compliance with such industry codes of practice. This is essential in order to gain the support of industry and will facilitate significant self-regulation.

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

Clause 13 makes it clear that the regulations can provide for the granting of exemptions from the requirements of the regulations by the Commission or the Minister. Such exemptions would include essential purposes such as medicinal uses, for which there is no alternative and would need to be consistent with similar exemptions granted by the Commonwealth and other States.

Clause 14 makes provision for persons engaged in activities covered by the regulations to keep records and furnish returns to the Commission. Such records would be prescribed by regulation in order to allow consultation on the nature of the records required.

PART III - ENFORCEMENT

Clause 15 authorises the Commission to require a person carrying on a business involving controlled substances or controlled articles to furnish information to the Commission and to confer with the Commission on relevant matters. It provides that such information would not be admissible in evidence against a natural person.

Clause 16 protects from disclosure information obtained under the proposed Act concerning industrial or commercial secrets or working processes. Disclosure is only allowed in certain limited circumstances, including the public interest, permission of the owner, or as a requirement of a court.

Clause 17 empowers an authorised officer to enter and search premises if an offence is suspected of having been committed there, or if the premises are used for the carrying on of a business involving controlled substances or controlled articles. The officer is empowered to ask questions of persons on the premises, to require the production of records, make tests, take photographs, and take samples. Entry to residential premises cannot be demanded without a search warrant. An officer must carry a certificate of authority and can not refuse a request by the occupant to accompany the inspection.

Clause 18 provides for the forfeiture of controlled substances or controlled articles used in or relation to the commission of the offence, and allows for the substances or articles to be disposed of, to be sold, destroyed or kept as the Minister thinks fit. Where an owner of the the controlled substance or controlled article cannot at the time of seizure be ascertained the property shall be forfeited to the Crown and maybe sold, destroyed or disposed of after 90 days from the date of seizure. If a person is found guilty of an offence relating to the controlled substance or article they shall be liable to pay the Crown reasonable costs of handling, securing or maintaining or storing a controlled substance or controlled article that has been seized. Where an application is made by a third party with an equity interest in the forfeited substance or article that interest shall be taken into account in determining its disposal.

Clause 19 powers an authorised officer to serve an infringement notice on a person if it appears to the officer that the person has committed an offence against the Act or the regulations, if the person concerned does not wish to have the matter determine by court. Repeat or serious offences would be prescribed by regulation not to be infringement offences.

Clause 20 points out that subject to this Act an offence against this Act or the regulations is a regulatory offence. It makes it clear that it is a defence to a prosecution if a defendant proves on a balance of probabilities certain circumstances outlined in the Act including:

- emergencies to prevent injury or damage to property
- reasonable steps to ensure something was carried out,
- lawfulness of the activity or permission by a competent authority or licence lawfully granted.

Clause 21 creates an offence of obstruction or failing to comply with the lawful requirement made by an authorised officer.

Clause 22 makes Directors of a Corporation liable for prosecution for an offence committed by the body corporate if the Directors knowingly authorised or allowed the offence.

Clause 23 makes an employer liable for an offence committed by his or her employee under the proposed Act or regulations unless the employer can establish no knowledge of the offence and that their reasonable diligence could not have prevented the commission of the offence.

Clause 24 provides for the taking of proceedings under the proposed Act before a court not later than three years after the date in which the offence was committed. Proceedings can only be taken if prosecuted by a person acting with the authority of the Commission or the Minister.

PART IV - MISCELLANEOUS

Clause 25 provides that the Minister may authorise a suitably qualified or experienced employee to carry out functions under the Act and that such employee shall be subject to the direction and control of the Commission.

Clause 26 provides for the accreditation of courses in relation to the qualifications described in the regulations of persons engaged in design, installation, operation, servicing, maintenance, repair, modification or decommissioning of plant or equipment. These would be developed by bodies such as TAFE in consultation with industry.

Clause 27 provides for the Commission to delegate to a person or a designated officer any of the Commission's powers, functions or authorities under the Act except the Commission's power of delegation itself.

SCHEDULE - OZONE DEPLETING SUBSTANCES

The known ozone depleting substances being those controlled substances to which the Act shall apply initially.