



Hazardous Waste (Regulation of Exports and Imports) Amendment Act 1996

No. 7, 1996

**An Act to amend the *Hazardous Waste (Regulation
of Exports and Imports) Act 1989*, and for related
purposes**

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An Act to amend the *Hazardous Waste (Regulation of Exports and Imports) Act 1989*, and for related purposes

[Assented to 11 June 1996]

The Parliament of Australia enacts:

1 Short title

*This Act may be cited as the *Hazardous Waste (Regulation of Exports and Imports) Amendment Act 1996*.*

Hazardous Waste (Regulation of Exports and Imports) Amendment Act 1996 No. 7, 1996

2 Commencement

- (1) Subject to subsection (2), this Act commences on a day to be fixed by Proclamation.
- (2) If this Act does not commence under subsection (1) within the period of 6 months beginning on the day on which this Act receives the Royal Assent, it commences on the first day after the end of that period.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments

Hazardous Waste (Regulation of Exports and Imports) Act 1989

1 Title

Omit “and import”, substitute “, import and transit”.

2 Section 3

Repeal the section, substitute:

3 Object and aims

Object

- (1) The object of this Act is to regulate the export, import and transit of hazardous waste to ensure that exported, imported or transited waste is managed in an environmentally sound manner so that human beings and the environment, both within and outside Australia, are protected from the harmful effects of the waste.

Aims

- (2) The aims of this Act are:
- (a) to give effect to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal; and
 - (b) to give effect to agreements and arrangements of the kind mentioned in Article 11 of that Convention.

3 Section 4 (definition of *Basel Convention*)

Add at the end “(a copy of the English text of which is set out in the Schedule)”.

4 Section 4 (definition of *dispose of safely*)

Repeal the definition.

5 Section 4 (definition of *export permit*)

Repeal the definition, substitute:

export permit means:

- (a) a Basel export permit; or
- (b) a special export permit.

6 Section 4 (definition of *export proposal*)

Omit “dispose of it safely”, substitute “deal with it”.

7 Section 4 (paragraph (a) of the definition of *hazardous waste*)

Omit “waste that has”, substitute “waste prescribed by the regulations, where the waste has”.

8 Section 4 (paragraphs (a) and (b) of the definition of *hazardous waste*)

Omit “(a copy of the English text of which annex is set out in the Schedule)”.

9 Section 4 (definition of *hazardous waste*)

Add at the end:

Note 1: Section 4A provides for an extended meaning of *hazardous waste*. The extended meaning relates to the following matters:

- (a) a case where a foreign country has classified a particular substance or object as hazardous waste;
- (b) a case where a foreign country has classified waste collected from households as hazardous waste.

Note 2: Section 4F provides for an extended meaning of *hazardous waste*. The extended meaning relates to substances or objects subject to notification or control under Article 11 arrangements.

Note 3: Section 4G provides for exclusions from the definition of *hazardous waste*. The exclusions relate to substances or objects not subject to notification or control under Article 11 arrangements.

Note 4: Before regulations are made for the purposes of paragraph (a) of the definition of *hazardous waste*, the Minister must consult the Hazardous Waste Technical Group: see section 58D.

10 Section 4 (definition of *holder*)

Omit “a statutory permit”, substitute “a Basel permit or a special permit”.

11 Section 4 (definition of *household waste*)

Repeal the definition, substitute:

household waste means waste collected from households, but does not include waste specified in the regulations.

12 Section 4 (definition of *import permit*)

Repeal the definition, substitute:

import permit means:

- (a) a Basel import permit; or
- (b) a special import permit.

13 Section 4 (definition of *import proposal*)

Repeal the definition, substitute:

import proposal means a proposal to import hazardous waste and to deal with it in Australia.

14 Section 4 (definition of *original export proposal*)

Omit “an export permit, means the”, substitute “a Basel export permit, means an”.

15 Section 4 (definition of *original import proposal*)

Omit “an import permit, means the”, substitute “a Basel import permit, means an”.

16 Section 4 (definition of *permit application*)

Omit “statutory”, substitute “Basel”.

17 Section 4 (paragraphs (a) and (b) of the definition of *permit condition*)

Omit “statutory”, substitute “Basel”.

18 Section 4 (paragraph (b) of the definition of *permit condition*)

Add at the end "or".

19 Section 4 (definition of *permit condition*)

Add at the end:

(c) a special permit; or

(d) a notice under a set of Article 11 regulations varying a special permit.

20 Section 4 (definition of *statutory permit*)

Repeal the definition.

21 Section 4 (definition of *variation*)

Omit "statutory", substitute "Basel".

22 Section 4 (definition of *variation application*)

Omit "statutory", substitute "Basel".

23 Section 4 (definition of *varied export proposal*)

Omit "an export permit", substitute "a Basel export permit".

24 Section 4 (definition of *varied import proposal*)

Omit "an import permit", substitute "a Basel import permit".

25 Section 4 (definition of *waste*)

Repeal the definition, substitute:

waste means a substance or object that:

(a) is proposed to be disposed of; or

(b) is disposed of; or

(c) is required by a law of the Commonwealth, a State or a Territory to be disposed of.

Note: *Disposed of* has a meaning corresponding to the meaning of *disposal*.
See the definition of *disposal*.

26 Section 4

Insert:

Article 11 arrangement has the meaning given by section 4C.

Basel export permit means a permit under section 17 permitting the export of hazardous waste.

Basel import permit means a permit under section 17 permitting the import of hazardous waste.

Basel permit means:

- (a) a Basel export permit; or
- (b) a Basel import permit; or
- (c) a Basel transit permit.

Basel transit permit means a permit under section 17A permitting the carrying out of one or more transit proposals relating to hazardous waste.

competent authority, in relation to a foreign country, means:

- (a) if the country is a party to the Basel Convention—the competent authority of the country within the meaning of the Basel Convention; and
- (b) otherwise—a person or organisation that officially represents the country.

Note: The operation of this definition is modified in relation to colonies etc. by section 4D.

deal with, in relation to hazardous waste, includes dispose of.

disposal means an operation specified in Annex IV to the Basel Convention.

environmentally sound management, in relation to hazardous waste, has the meaning given by section 4E.

foreign country includes:

- (a) a colony, overseas territory, overseas province or protectorate of a foreign country; and
- (b) a territory outside Australia, where a foreign country is to any extent responsible for the international relations of the territory; and

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- (c) a territory outside Australia that is to some extent self-governing, but that is not recognised as an independent sovereign state by Australia.

Hazardous Waste Technical Group means the Hazardous Waste Technical Group established under section 58E.

original transit proposal, in relation to a variation application relating to a Basel transit permit, means a transit proposal in relation to which the permit was granted, as affected by any variation of the permit that has already been made.

set of Article 11 regulations has the meaning given by section 13C.

special export permit means a permit under a set of Article 11 regulations permitting the export of hazardous waste.

special import permit means a permit under a set of Article 11 regulations permitting the import of hazardous waste.

special permit means:

- (a) a special export permit; or
- (b) a special import permit; or
- (c) a special transit permit.

special transit permit means a permit under a set of Article 11 regulations permitting the carrying out of one or more transit proposals relating to hazardous waste.

transit permit means:

- (a) a Basel transit permit; or
- (b) a special transit permit.

transit proposal has the meaning given by section 4B.

varied transit proposal, in relation to a variation application relating to a Basel transit permit, means the original transit proposal, as proposed to be affected by the proposed variation.

27 After section 4

Insert:

Hazardous Waste (Regulation of Exports and Imports) Amendment Act 1996 No. 7, 1996

4A Exports and transits to foreign countries—extended meaning of hazardous waste

When this section has effect

- (1) This section has effect for the purposes of the application of this Act:
- (a) to the export or proposed export of a substance or object to a particular foreign country; or
 - (b) to, or to the carrying out of, a transit proposal that involves the export of a substance or object to a particular foreign country.

Declaration extending the meaning of hazardous waste—classification under foreign laws

- (2) If:
- (a) the foreign country is a party to the Basel Convention; and
 - (b) the Minister is satisfied that, under a law of that country that gives effect to the Basel Convention, a particular substance or object is, in particular circumstances, classified as hazardous waste; and
 - (c) apart from this section, the waste is not hazardous waste;
- the Minister must, by writing, declare that that substance or object is, in those circumstances, hazardous waste for those purposes.

Declaration extending the meaning of hazardous waste—waste collected from households

- (3) If:
- (a) the Minister is satisfied that the foreign country classifies particular waste collected from households as hazardous waste; and
 - (b) apart from this section, the waste is not hazardous waste;
- the Minister must, by writing, declare that that waste is hazardous waste for those purposes.

Declaration has effect accordingly

- (4) A declaration under this section has effect accordingly.
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Revocation of subsection (2) declaration

- (5) If:
- (a) a declaration is in force under subsection (2); and
 - (b) the Minister ceases to be satisfied of the matter referred to in paragraph (2)(b);
- the Minister must revoke the declaration.

Revocation of subsection (3) declaration

- (6) If:
- (a) a declaration is in force under subsection (3); and
 - (b) the Minister ceases to be satisfied of the matter referred to in paragraph (3)(a);
- the Minister must revoke the declaration.

Gazettal of declaration

- (7) If a declaration under this section is made or revoked, the Minister must arrange for a copy of the declaration or revocation to be published in the *Gazette*.

4B Transit proposals

- (1) This section sets out the proposals that are *transit proposals* for the purposes of this Act.

Note: For the purposes of this section, *Australia* does not include Australian waters.

Transit proposal

- (2) A proposal:
- (a) to bring hazardous waste into Australia (whether or not by way of import); and
 - (b) to take the waste out of Australia within 30 days;
- is a *transit proposal* so long as it is not proposed to dispose of the waste in Australia.

Extension of time for carrying out proposal

- (3) If the Minister is satisfied that there are special circumstances relating to a particular proposal, the Minister may, by writing, declare that subsection (2) applies to the proposal as if a reference in that subsection to 30 days were a reference to such longer period as is specified in the declaration.

Declaration has effect accordingly

- (4) The declaration has effect accordingly.

Notification of decision

- (5) If the Minister decides to make, or not to make, a declaration under this section about a person's proposal, the Minister must give the person a written notification of the decision.

Gazettal of declaration

- (6) If the Minister makes a declaration under this section, the Minister must arrange for a copy of the declaration to be published in the *Gazette*.

Deemed export

- (7) For the purposes of this Act, if hazardous waste is taken out of Australia in the course of carrying out a transit proposal, the taking of the waste out of Australia is to be treated as the export of the waste.

Definitions

- (8) In this section:

dispose of does not include store.

take waste out of Australia means take waste out of Australia for the purpose of importing the waste into a foreign country (whether or not the waste will be transported through any other foreign countries).

4C Article 11 arrangements

Declaration of Article 11 arrangement

- (1) If:
- (a) Australia has entered into an agreement or arrangement; and
 - (b) the Minister is satisfied that the agreement or arrangement is of a kind mentioned in Article 11 of the Basel Convention;
- the Minister must, by writing, declare that the agreement or arrangement is an *Article 11 arrangement* for the purposes of this Act.

Declaration has effect accordingly

- (2) A declaration under this section has effect accordingly.

Revocation of declaration

- (3) If:
- (a) a declaration is in force under this section; and
 - (b) the Minister ceases to be satisfied of the matter referred to in paragraph (1)(b);
- the Minister must revoke the declaration.

Gazettal of declaration

- (4) If a declaration under this section is made or revoked, the Minister must arrange for a copy of the declaration or revocation to be published in the *Gazette*.

4D Treatment of colonies etc.

When colony etc. is a party to the Basel Convention

- (1) For the purposes of this Act, if:
- (a) a territory is covered by either of the following subparagraphs:
 - (i) a colony, overseas territory, overseas province or protectorate of a foreign country;

- (ii) a territory outside Australia, where a foreign country is to any extent responsible for the international relations of the territory; and
 - (b) the foreign country is a party to the Basel Convention; and
 - (c) the territory is not specified in the regulations;
- the territory is taken to be a party to the Basel Convention.

Competent authority of colony etc.

- (2) For the purposes of this Act, if a territory is covered by any of the following paragraphs:
- (a) a colony, overseas territory, overseas province or protectorate of a foreign country; or
 - (b) a territory outside Australia, where a foreign country is to any extent responsible for the international relations of the territory; or
 - (c) a territory outside Australia that is to some extent self-governing, but that is not recognised as an independent sovereign state by Australia;
- a person or organisation that officially represents the territory is taken to be a competent authority of the territory.

Subsection (2) has effect despite the definition of competent authority

- (3) Subsection (2) has effect despite anything in the definition of *competent authority* in section 4.

4E Environmentally sound management of hazardous waste

A reference in this Act to the *environmentally sound management* of hazardous waste is a reference to taking all practicable steps to ensure that the waste is managed in a manner that will protect human health, and the environment, against the adverse effects that may result from the waste.

4F Article 11 arrangements—substances taken to be hazardous waste

- (1) This section has effect for the purposes of the application of this Act:
- (a) to the import or proposed import of a substance or object from a particular foreign country; or
 - (b) to the export or proposed export of a substance or object to a particular foreign country; or
 - (c) to, or to the carrying out of, a transit proposal that involves the export of a substance or object to a particular foreign country.
- (2) If:
- (a) the country is a party to an Article 11 arrangement; and
 - (b) the substance or object is subject to notification or control under the arrangement; and
 - (c) apart from this section, the substance or object is not hazardous waste;
- the substance or object is taken to be hazardous waste for those purposes.

4G Article 11 arrangements—substances not classified as hazardous waste

- (1) This section has effect for the purposes of the application of this Act:
- (a) to the import or proposed import of a substance or object from a particular foreign country; or
 - (b) to the export or proposed export of a substance or object to a particular foreign country; or
 - (c) to, or to the carrying out of, a transit proposal that involves the export of a substance or object to a particular foreign country.
- (2) If:
- (a) the country is a party to an Article 11 arrangement; and

- (b) the arrangement expressly provides that the substance or object is not subject to notification or control under the arrangement;
the substance or object is taken not to be hazardous waste for those purposes.

28 Section 5

Repeal the section.

29 Paragraph 6(a)

Omit “or export proposal, or a varied import proposal or a varied export proposal,”, substitute “, an export proposal or a transit proposal or a varied import proposal, a varied export proposal or a varied transit proposal,”.

Note: The heading to section 6 of the *Hazardous Waste (Regulation of Exports and Imports) Act 1989* is altered by omitting “or export” and substituting “, export or transit”.

30 Paragraph 7(a)

After “condition”, insert “relating to a Basel permit”.

31 Section 7

Add at the end:

- (2) For the purposes of this Act, if:
- (a) under a set of Article 11 regulations, the Minister specifies the day on or before which a permit condition relating to a special permit is to be complied with; and
 - (b) the condition is not complied with on or before that day; the holder of the permit is taken to have breached that condition at the end of that day.

32 Part 2 (heading)

Repeal the heading, substitute:

Part 2—Import permits, export permits and transit permits

33 Division 1 of Part 2 (heading)

Repeal the heading, substitute:

Division 1—Applications for permits

34 Subsection 12(1)

Repeal the subsection, substitute:

- (1) A person who has one or more import proposals in relation to hazardous waste may apply to the Minister for a permit authorising the import of the waste.

35 Paragraph 12(2)(b)

Omit “proposal”, substitute “proposals”.

36 Section 12

Add at the end:

- (3) The application may deal with 2 or more import proposals in relation to hazardous waste only if:
 - (a) the following matters are common to each proposal:
 - (i) the physical and chemical characteristics of the waste;
 - (ii) the route over which the waste is to be transported;
 - (iii) the sender of the waste; and
 - (b) the proposals constitute a regular pattern; and
 - (c) the proposals will all be carried out within 12 months of each other.

37 Subsection 13(1)

Repeal the subsection, substitute:

- (1) A person who has one or more export proposals in relation to hazardous waste may apply to the Minister for a permit authorising the export of the waste.

38 Paragraph 13(2)(b)

Omit “proposal”, substitute “proposals”.

39 Section 13

Add at the end:

- (3) The application may deal with 2 or more export proposals in relation to hazardous waste only if:
 - (a) the following matters are common to each proposal:
 - (i) the physical and chemical characteristics of the waste;
 - (ii) the route over which the waste is to be transported;
 - (iii) the recipient of the waste; and
 - (b) the proposals constitute a regular pattern; and
 - (c) the proposals will all be carried out within 12 months of each other.

40 After section 13

Insert:

13A Applications for transit permits

- (1) A person who has one or more transit proposals in relation to hazardous waste may apply to the Minister for a permit to carry out the proposals.
- (2) The application must:
 - (a) be in the form approved by the Minister; and
 - (b) set out, or be accompanied by, such information relating to the proposals as is required by the form.
- (3) The application may deal with 2 or more transit proposals in relation to hazardous waste only if:
 - (a) the following matters are common to each proposal:
 - (i) the physical and chemical characteristics of the waste;
 - (ii) the route over which the waste is to be transported;
 - (iii) the sender and recipient of the waste; and
 - (b) the proposals constitute a regular pattern; and
 - (c) the proposals will all be carried out within 12 months of each other.

13B Basel permit or special permit

Statement in application

(1) An application under section 12, 13 or 13A must state that the applicant is applying for:

- (a) a Basel permit; or
- (b) a special permit under a specified set of Article 11 regulations;

but not both.

Note 1: If the applicant has applied for a Basel permit, the application is to be dealt with in accordance with Division 3.

Note 2: If the applicant has applied for a special permit under a particular set of Article 11 regulations, the application is to be dealt with in accordance with that set of regulations.

Application specifying Basel permit—adjustment of application

(2) If:

- (a) an application under section 12, 13 or 13A states that the applicant is applying for a Basel permit; and
- (b) the Minister is satisfied that there are special circumstances relating to the application;

the Minister may, by writing, determine that this Act has effect as if the applicant had applied instead for the corresponding type of special permit under a set of Article 11 regulations specified in the determination.

Application specifying special permit—adjustment of application

(3) If:

- (a) an application under section 12, 13 or 13A states that the applicant is applying for a special permit under a particular set of Article 11 regulations; and
- (b) the Minister is satisfied that there are special circumstances relating to the application;

the Minister may, by writing:

- (c) determine that this Act has effect as if the applicant had applied instead for the corresponding type of Basel permit; or

- (d) determine that this Act has effect as if the applicant had applied instead for the corresponding type of special permit under another set of Article 11 regulations specified in the determination.

Determination has effect accordingly

- (4) A determination under this section has effect accordingly.

Applicant to be given copy of determination

- (5) As soon as practicable after the Minister makes a determination under this section, the Minister must give the applicant a copy of the determination.

Division 2—Special permits under a set of Article 11 regulations

13C Regulations may give effect to Article 11 arrangements

- (1) The regulations may provide for and in relation to:
 - (a) giving effect to an Article 11 arrangement; and
 - (b) giving effect to an amendment of an Article 11 arrangement.
- (2) Regulations made for the purposes of this section must not come into operation before:
 - (a) the arrangement enters into force, or comes into effect, for Australia; or
 - (b) the amendment enters into force, or comes into effect, for Australia;as the case requires.
- (3) Regulations made for the purposes of this section that give effect to a particular Article 11 arrangement (including regulations that give effect to an amendment of the Article 11 arrangement) are to be known as a *set of Article 11 regulations*.

13D Contents of a set of Article 11 regulations

- (1) Each set of Article 11 regulations may:
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- (a) specify the kinds of import proposals, export proposals and transit proposals that are within the scope of that set of regulations; and
- (b) provide for the granting of permits by the Minister authorising the import of hazardous waste, where the permit relates to an import proposal within the scope of that set of regulations; and
- (c) provide for the granting of permits by the Minister authorising the export of hazardous waste, where the permit relates to an export proposal within the scope of that set of regulations; and
- (d) provide for the granting of permits by the Minister authorising the carrying out of transit proposals within the scope of that set of regulations.

Note 1: A permit covered by paragraph (1)(b) is known as a *special import permit*—see the definition in section 4.

Note 2: A permit covered by paragraph (1)(c) is known as a *special export permit*—see the definition in section 4.

Note 3: A permit covered by paragraph (1)(d) is known as a *special transit permit*—see the definition in section 4.

- (2) A set of Article 11 regulations may provide for:
 - (a) conditions of special permits; and
 - (b) the revocation, surrender and variation of special permits.
- (3) This section does not, by implication, limit section 13C.

13E Special permit may be granted under a set of Article 11 regulations only if corresponding requirements of other sets of Article 11 regulations have been met

Import

- (1) If:
 - (a) a person applies for a special import permit in relation to an import proposal that is within the scope of a particular set of Article 11 regulations; and
 - (b) the proposal is within the scope of another set of Article 11 regulations;
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the Minister must not grant the permit unless the Minister is satisfied that the corresponding requirements of the other set of regulations have been met in relation to the proposal. For this purpose, a ***corresponding requirement*** of a particular set of Article 11 regulations is a requirement under that set of regulations:

- (c) that must be met before granting a special import permit under that set of regulations; and
 - (d) that is declared by the regulations to be a corresponding requirement for the purposes of this subsection.
- (2) Subsection (1) does not prevent the set of Article 11 regulations mentioned in paragraph (1)(a) from setting out other requirements that must be met before granting a special import permit under that set of regulations.

Export

- (3) If:
- (a) a person applies for a special export permit in relation to an export proposal that is within the scope of a particular set of Article 11 regulations; and
 - (b) the proposal is within the scope of another set of Article 11 regulations;

the Minister must not grant the permit unless the Minister is satisfied that the corresponding requirements of the other set of regulations have been met in relation to the proposal. For this purpose, a ***corresponding requirement*** of a particular set of Article 11 regulations is:

- (c) a requirement under that set of regulations to obtain the consent (whether actual or constructive) of an authority of a foreign country before granting a special export permit under that set of regulations authorising the export of hazardous waste to that country; or
- (d) another requirement under that set of regulations:
 - (i) that must be met before granting a special export permit under that set of regulations; and
 - (ii) that is declared by the regulations to be a corresponding requirement for the purposes of this subsection.

- (4) Subsection (3) does not prevent the set of Article 11 regulations mentioned in paragraph (3)(a) from setting out other requirements that must be met before granting a special export permit under that set of regulations.

Transit

- (5) If:
- (a) a person applies for a special transit permit in relation to a transit proposal that is within the scope of a particular set of Article 11 regulations; and
 - (b) the proposal is within the scope of another set of Article 11 regulations;
- the Minister must not grant the permit unless the Minister is satisfied that the corresponding requirements of the other set of regulations have been met in relation to the proposal. For this purpose, a *corresponding requirement* of a particular set of Article 11 regulations is:
- (c) a requirement under that set of regulations to obtain the consent (whether actual or constructive) of an authority of a foreign country before granting a special transit permit under that set of regulations authorising the carrying out of a transit proposal that involves the export of hazardous waste to that country; or
 - (d) another requirement under that set of regulations:
 - (i) that must be met before granting a special transit permit under that set of regulations; and
 - (ii) that is declared by the regulations to be a corresponding requirement for the purposes of this subsection.
- (6) Subsection (5) does not prevent the set of Article 11 regulations mentioned in paragraph (5)(a) from setting out other requirements that must be met before granting a special transit permit under that set of regulations.

13F Special permit—waste not to be brought into Antarctica

The Minister must not grant a special permit if the Minister is satisfied that the grant could result in hazardous waste being brought into Antarctica.

Division 3—Grant of Basel permits

41 Subsection 14(1)

Omit “statutory”, substitute “Basel”.

Note: The heading to section 14 of the *Hazardous Waste (Regulation of Exports and Imports) Act 1989* is altered by adding at the end “for Basel permits”.

42 After section 15

Insert:

15A Acknowledgment and notification

- (1) Within 7 days after receiving an application for a Basel permit, the Minister must give the applicant a written acknowledgment of the receipt.
- (2) Within 7 days after receiving an application for a Basel import permit authorising the import of hazardous waste from a foreign country, the Minister must give the competent authority of the country a written notification of the receipt.
- (3) Within 21 days after receiving an application for a Basel permit authorising the export of hazardous waste to a foreign country, the Minister must give the competent authority of the country such information about the application as is specified in the regulations.

43 Subsection 16(1)

Omit “statutory”, substitute “Basel”.

Note: The heading to section 16 of the *Hazardous Waste (Regulation of Exports and Imports) Act 1989* is altered by inserting “for Basel permits” after “applications”.

44 Subsections 16(2), (3) and (4)

Repeal the subsections, substitute:

- (2) If:
 - (a) the application is for a Basel export permit authorising the export of hazardous waste to a particular foreign country (the *receiving country*); and
 - (b) 46 days pass after the application day and, by the end of that period:
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- (i) the competent authority of the receiving country has neither given nor refused written consent to the grant of the permit; or
- (ii) if it is proposed that the hazardous waste will be transported through one or more other foreign countries (the *transit countries*)—the competent authorities of the transit countries have neither given nor refused written consent to the grant of the permit;

the period within which the decision is to be made is extended until whichever of the following comes first:

- (c) whichever of the following is applicable:
 - (i) the 14th day after the Ministerial receipt day;
 - (ii) if the Minister determines a later day that occurs on or before the 60th day after the Ministerial receipt day—that later day;
- (d) 12 months after the application day.

(2A) For the purposes of subsection (2), the *Ministerial receipt day* is whichever of the following applies:

- (a) if there is only one consent/refusal—the day on which the Minister receives that consent/refusal;
- (b) if there are 2 or more consents/refusals and the Minister receives them on the same day—that day;
- (c) if there are 2 or more consents/refusals and the Minister receives them on different days—the last of those days.

(3) If a foreign country is a party to the Basel Convention, a reference in subsection (2) to a consent given by the competent authority of the country is a reference to a consent given in accordance with Article 6 of the Basel Convention.

(4) If:

- (a) the application is for a Basel import permit or a Basel transit permit; and
- (b) the Minister thinks that it will take more than 60 days to decide whether to grant the permit;

the Minister may extend the period within which that decision is to be made by up to 60 days.

- (4A) As soon as practicable after the Minister makes a determination under subparagraph (2)(c)(ii), the Minister must give the applicant a written notification of the determination.
- (4B) As soon as practicable after the Minister makes a decision under subsection (4), the Minister must give the applicant a written notification of the decision.
- (4C) As soon as practicable after the Minister makes a decision under subsection (4) in relation to a permit authorising the import of hazardous waste from a particular foreign country, the Minister must give the competent authority of the country a written notification of the decision.
- (4D) If a period is extended under subsection (2) or (4), the Minister must decide whether to grant the permit concerned within the extended period. However, this rule has effect subject to subsections (5), (7) and (8).

45 Subsection 16(5)

After "(2)", insert "or (4)".

46 Paragraph 16(5)(a)

Omit "proposal or export proposal", substitute "proposals, export proposals or transit proposals".

47 Before subsection 17(1)

Insert:

- (1A) This section applies if the permit sought by a permit application is a Basel import permit or a Basel export permit.

Note: The heading to section 17 of the *Hazardous Waste (Regulation of Exports and Imports) Act 1989* is altered by omitting "permits" and substituting "Basel import permits and Basel export permits".

48 Paragraphs 17(1)(a) and (b)

Repeal the paragraphs, substitute:

- (a) that dealing with the hazardous waste concerned in accordance with the import proposals or export proposals would be consistent with the environmentally sound management of the hazardous waste; and
-

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- (b) if the permit sought is a Basel export permit authorising the export of hazardous waste to a particular foreign country:
 - (i) that the competent authority of the country has given written consent to the grant of the permit; and
 - (ii) that the consent was given in accordance with Article 6 of the Basel Convention; and
- (ba) if the permit sought is a Basel export permit—that the hazardous waste will be allowed to be transported through any foreign country through which the waste is proposed to be transported; and

49 Paragraph 17(1)(c)

Omit “statutory”, substitute “Basel”.

50 Subsection 17(1)

Add at the end:

Note: Section 18 specifies circumstances in which the applicant has appropriate insurance.

51 Subsection 17(2)

Before “(3),” insert “(2A),”.

52 After subsection 17(2)

Insert:

- (2A) The Minister may decide not to grant the permit if:
 - (a) the permit sought is a Basel export permit; and
 - (b) having regard to the requirements of paragraph 3(b) of Article 6 of the Basel Convention, the Minister thinks that it would not be appropriate to grant the permit.

53 Paragraph 17(4)(c)

Omit “proposal or export proposal”, substitute “proposals or export proposals”.

54 Subsection 17(5)

Omit “an export permit”, substitute “a Basel export permit”.

55 Paragraph 17(5)(a)

After “safely”, insert “and efficiently”.

56 After paragraph 17(5)(a)

Insert:

- (aa) such a disposal would be consistent with the environmentally sound management of the waste; and

57 Paragraph 17(5)(b)

Omit “proposal”, substitute “proposals”.

58 Subsection 17(6)

Repeal the subsection, substitute:

- (6) The Minister must not grant a Basel export permit or a Basel import permit if the Minister is satisfied that the grant could result in hazardous waste being brought into Antarctica.

59 Section 17

Add at the end:

- (7) The Minister must not grant a Basel export permit authorising the export of hazardous waste to a foreign country that is not a party to the Basel Convention.
- (8) The Minister must not grant a Basel import permit authorising the import of hazardous waste from a foreign country that is not a party to the Basel Convention.

60 After section 17

Insert:

17A Grant of transit permits

- (1) This section applies if the permit sought by a permit application is a Basel transit permit.
- (2) The Minister must grant the permit sought by a permit application if the Minister is satisfied:

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- (a) that carrying out the transit proposals will not pose a significant risk of injury or damage to human beings or the environment; and
- (b) that, having regard to:
 - (i) the applicant's financial viability; and
 - (ii) the applicant's previous record in relation to environmental matters; and
 - (iii) any other relevant matters;the applicant is a suitable person to be granted a Basel transit permit; and
- (c) that the applicant has appropriate insurance.

Note: Section 18 specifies circumstances in which the applicant has appropriate insurance.

- (3) Subsection (2) has effect subject to this Division.
- (4) The Minister may decide not to grant the permit if the Minister thinks that it would not be in the public interest to grant it.
- (5) The Minister must not grant the permit if the Minister is satisfied that carrying out the transit proposals could result in hazardous waste being brought into Antarctica.

61 Section 18

Omit "statutory", substitute "Basel".

62 Section 18

After "17", insert "or 17A".

63 After section 18

Insert:

18A Export permits for final disposal may be granted only in exceptional circumstances

- (1) The Minister must not grant a Basel export permit authorising the export of hazardous waste if the applicant proposes that the hazardous waste will be disposed of by a method that is within the scope of Section A of Annex IV to the Basel Convention.

- (2) Despite subsection (1), the Minister may grant a Basel export permit in the circumstances described in that subsection if:
 - (a) at the time of the decision to grant the permit, particulars of the export are specified in the regulations; and
 - (b) the Minister is satisfied that there are exceptional circumstances.
- (3) Subsection (2) does not apply if the Minister is satisfied that carrying out the export proposals would be inconsistent with the environmentally sound management of the hazardous waste.
- (4) In deciding whether there are exceptional circumstances for the purposes of subsection (2), the Minister must have regard to the following:
 - (a) whether there will be a significant risk of injury or damage to human beings or the environment if the Minister decides not to grant the permit;
 - (b) whether the waste is needed for research into improving the management of hazardous waste;
 - (c) whether the waste is needed for testing for the purposes of improving the management of hazardous waste;
 - (d) matters prescribed for the purposes of this paragraph.

18B Basel permit may be granted only if the corresponding requirements of Article 11 regulations have been met

Import

- (1) If:
 - (a) a person applies for a Basel import permit in relation to an import proposal; and
 - (b) the proposal is within the scope of a particular set of Article 11 regulations;

the Minister must not grant the permit unless the Minister is satisfied that the corresponding requirements of that set of regulations have been met in relation to the proposal. For this purpose, a *corresponding requirement* of a particular set of Article 11 regulations is a requirement under that set of regulations:

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- (c) that must be met before granting a special import permit under that set of regulations; and
- (d) that is declared by the regulations to be a corresponding requirement for the purposes of this subsection.

Export

(2) If:

- (a) a person applies for a Basel export permit in relation to an export proposal; and
- (b) the proposal is within the scope of a particular set of Article 11 regulations;

the Minister must not grant the permit unless the Minister is satisfied that the corresponding requirements of that set of regulations have been met in relation to the proposal. For this purpose, a *corresponding requirement* of a particular set of Article 11 regulations is:

- (c) a requirement under that set of regulations to obtain the consent (whether actual or constructive) of an authority of a foreign country before granting a special export permit under that set of regulations authorising the export of hazardous waste to that country; or
- (d) another requirement under that set of regulations:
 - (i) that must be met before granting a special export permit under that set of regulations; and
 - (ii) that is declared by the regulations to be a corresponding requirement for the purposes of this subsection.

Transit

(3) If:

- (a) a person applies for a Basel transit permit in relation to a transit proposal; and
- (b) the proposal is within the scope of a particular set of Article 11 regulations;

the Minister must not grant the permit unless the Minister is satisfied that the corresponding requirements of that set of regulations have been met in relation to the proposal. For this

purpose, a *corresponding requirement* of a particular set of Article 11 regulations is:

- (c) a requirement under that set of regulations to obtain the consent (whether actual or constructive) of an authority of a foreign country before granting a special transit permit under that set of regulations authorising the carrying out of a transit proposal that involves the export of hazardous waste to that country; or
- (d) another requirement under that set of regulations:
 - (i) that must be met before granting a special transit permit under that set of regulations; and
 - (ii) that is declared by the regulations to be a corresponding requirement for the purposes of this subsection.

64 Subsection 19(1)

Omit "statutory", substitute "Basel".

65 Subsection 19(2)

Omit "statutory", substitute "Basel".

66 After section 19

Insert:

19A Foreign countries to be notified of decision about grant of import permit

- (1) As soon as practicable after the Minister makes a decision to grant, or not to grant, a Basel import permit authorising the import of hazardous waste from a particular foreign country, the Minister must give the competent authority of the country a written notification of the decision.
- (2) A contravention of this section in relation to a decision does not affect the validity of the decision.

67 Subsection 20(1)

Omit "An import permit", substitute "A Basel import permit".

Note: The heading to section 20 of the *Hazardous Waste (Regulation of Exports and Imports) Act 1989* is altered by inserting "Basel" after "specified in".

68 Paragraph 20(1)(f)

Repeal the paragraph, substitute:

- (f) the way in which the hazardous waste is to be dealt with after the import; and
- (g) if the hazardous waste is to be disposed of after the import—the facility to be used in the disposal and the process (if any) involved in the disposal.

69 Subsection 20(2)

Repeal the subsection.

70 Subsection 20(3)

Omit “An import permit”, substitute “A Basel import permit”.

71 Subsection 21(1)

Omit “An export permit”, substitute “A Basel export permit”.

Note: The heading to section 21 of the *Hazardous Waste (Regulation of Exports and Imports) Act 1989* is altered by inserting “Basel” after “specified in”.

72 Paragraph 21(1)(f)

Repeal the paragraph, substitute:

- (f) the way in which the hazardous waste is to be dealt with after the export; and
- (g) if the hazardous waste is to be disposed of after the export—the facility to be used in the disposal and the process (if any) involved in the disposal.

73 Subsection 21(2)

Repeal the subsection.

74 Subsection 21(3)

Omit “An export permit”, substitute “A Basel export permit”.

75 After section 21

Insert:

21A Matters to be specified in Basel transit permits

- (1) A Basel transit permit must specify particulars of the transit proposals concerned.
- (2) A Basel transit permit may also include conditions under section 22 and such other information as the Minister considers appropriate.

76 Subsection 22(1)

Omit "statutory", substitute "Basel".

Note: The heading to section 22 of the *Hazardous Waste (Regulation of Exports and Imports) Act 1989* is altered by omitting "Permits" and substituting "Basel permits".

77 Subsection 22(2)

Omit "statutory", substitute "Basel".

78 After subsection 22(2)

Insert:

- (2A) A Basel transit permit must be granted subject to such conditions as the Minister considers necessary or desirable for the purposes of ensuring that the transit proposals are carried out.
- (2B) A Basel permit may be granted subject to a condition relating to the giving of:
 - (a) one or more guarantees; or
 - (b) one or more security deposits;in respect of compliance by the permit holder with the permit holder's obligations under, or arising out of, this Act.
- (2C) The following are examples of cases where a guarantee or a security deposit might be given:
 - (a) a holding company gives the Minister a guarantee that a subsidiary of the holding company will pay any amounts owed by the subsidiary under subsection 37(2);
 - (b) a person gives the Minister a security deposit in respect of compliance by the person with the person's obligations to pay amounts owing under subsection 37(2).

(2D) Subsections (2A) and (2B) do not, by implication, limit subsection (1).

79 Section 23

Repeal the section.

80 Division 2 of Part 2 (heading)

Repeal the heading, substitute:

Division 4—Revocation, surrender and variation of Basel permits

81 Subsection 24(1)

Omit “statutory”, substitute “Basel”.

Note: The heading to section 24 of the *Hazardous Waste (Regulation of Exports and Imports) Act 1989* is altered by inserting “Basel” before “permits”.

82 Subsection 24(2)

Repeal the subsection, substitute:

(2) If a Basel permit authorises:

- (a) a single import or export of hazardous waste; or
- (b) the carrying out of a single transit proposal;

the Minister may not revoke the permit after that import or export has taken place, or after that transit proposal has been carried out, as the case may be.

(2A) If a Basel permit authorises:

- (a) 2 or more imports or exports of hazardous waste; or
- (b) the carrying out of 2 or more transit proposals;

a revocation of that permit applies only to an import or export, or the carrying out of a transit proposal, as the case may be, that has not begun at the time of the revocation.

83 Subsection 25(1)

Omit “subsection (2)”, substitute “this section”.

Note: The heading to section 25 of the *Hazardous Waste (Regulation of Exports and Imports) Act 1989* is altered by omitting “permits” and substituting “Basel permits”.

84 Subsection 25(1)

Omit "statutory", substitute "Basel".

85 Subsection 25(2)

Repeal the subsection, substitute:

- (2) If the permit is a Basel import permit, the permit may not be surrendered after any import authorised by the permit has begun.
- (2A) If the permit is a Basel export permit, the permit may not be surrendered after any export authorised by the permit has begun.
- (2B) If the permit is a Basel transit permit, the permit may not be surrendered after the carrying out of any transit proposal authorised by the permit has begun.

86 Subsection 26(1)

Omit "statutory", substitute "Basel".

Note: The heading to section 26 of the *Hazardous Waste (Regulation of Exports and Imports) Act 1989* is altered by omitting "permits" and substituting "Basel permits".

87 Subsection 26(4)

Omit all the words after "is to be complied", substitute:

with. The day may be a day before or after:

- (a) any import authorised by the permit; or
- (b) any export authorised by the permit; or
- (c) the carrying out of any transit proposal authorised by the permit;

as the case may be.

88 Subsection 27(1)

Omit "statutory", substitute "Basel".

Note: The heading to section 27 of the *Hazardous Waste (Regulation of Exports and Imports) Act 1989* is altered by omitting "permits" and substituting "Basel permits".

89 After section 28

Insert:

28A Acknowledgment and notification

- (1) Within 7 days after receiving a variation application, the Minister must give the applicant a written acknowledgment of the receipt.
- (2) Within 21 days after receiving an application to vary a Basel export permit authorising the export of hazardous waste to a foreign country, the Minister must give the competent authority of the country such information about the application as is specified in the regulations.

90 Subsections 29(2), (3) and (4)

Repeal the subsections, substitute:

- (2) If:
 - (a) the application is an application to vary a Basel export permit authorising the export of hazardous waste to a particular foreign country (the *receiving country*); and
 - (b) 46 days pass after the application day and, by the end of that period:
 - (i) the competent authority of the receiving country has neither given nor refused written consent to the variation; or
 - (ii) if it is proposed that the hazardous waste will be transported through one or more other foreign countries (the *transit countries*)—the competent authorities of the transit countries have neither given nor refused written consent to the variation;

the period within which the decision is to be made is extended until whichever of the following comes first:

 - (c) whichever of the following is applicable:
 - (i) the 14th day after the Ministerial receipt day;
 - (ii) if the Minister determines a later day that occurs on or before the 60th day after the Ministerial receipt day— that later day;
 - (d) 12 months after the application day.
- (2A) For the purposes of subsection (2), the *Ministerial receipt day* is whichever of the following applies:

- (a) if there is only one consent/refusal—the day on which the Minister receives that consent/refusal;
 - (b) if there are 2 or more consents/refusals and the Minister receives them on the same day—that day;
 - (c) if there are 2 or more consents/refusals and the Minister receives them on different days—the last of those days.
- (3) If a foreign country is a party to the Basel Convention, a reference in subsection (2) to a consent given by the competent authority of the country is a reference to a consent given in accordance with Article 6 of the Basel Convention.
- (4) If:
- (a) the application is an application to vary a Basel import permit or a Basel transit permit; and
 - (b) the Minister thinks that it will take more than 60 days to decide whether to make the variation;
- the Minister may extend the period within which that decision is to be made by up to 60 days.
- (4A) As soon as practicable after the Minister makes a determination under subparagraph (2)(c)(ii), the Minister must give the applicant a written notification of the determination.
- (4B) As soon as practicable after the Minister makes a decision under subsection (4), the Minister must give the applicant a written notification of the decision.
- (4C) As soon as practicable after the Minister makes a decision under subsection (4) varying a permit authorising the import of hazardous waste from a particular foreign country, the Minister must give the competent authority of the country a written notification of the decision.
- (4D) If a period is extended under subsection (2) or (4), the Minister must decide whether to vary the permit concerned within the extended period. However, this rule has effect subject to subsections (5), (7) and (8).

91 Subsection 29(5)

After “(2)”, insert “or (4)”.

92 Paragraph 29(5)(a)

Omit “proposal or varied export proposal”, substitute “proposals, varied export proposals or varied transit proposals”.

93 Section 30

Omit “statutory”, substitute “Basel”.

94 Division 3 of Part 2 (heading)

Repeal the heading, substitute:

Division 5—Miscellaneous

95 Section 32

After “this Part” (wherever occurring), insert “or under a set of Article 11 regulations”.

96 Section 32

Add at the end:

(5) The Minister may determine in writing that the prescribed fee payable in relation to a specified application or a specified notice is reduced by a specified amount.

(6) The determination has effect accordingly.

97 Paragraph 33(1)(a)

After “this Part”, insert “or under a set of Article 11 regulations”.

98 Subsection 33(1)

Omit “statutory” (wherever occurring), substitute “Basel permit or special”.

99 Paragraph 33(1)(f)

Omit “permit.”, substitute “permit; and”.

100 Subsection 33(1)

Add at the end:

; and (g) each determination under section 13B.

101 After section 35

Insert:

35A Orders where section 40A contravened

- (1) If a person brings hazardous waste into Australia (whether or not by way of import) in contravention of subsection 40A(1), the Minister may, in writing, order the person to deal with the waste in a specified way.

Note: For this purpose, *Australia* does not include Australian waters.

- (2) If:

- (a) a person contravenes subsection 40A(2) in relation to hazardous waste; and
- (b) the Minister is satisfied that:
- (i) the waste poses a significant risk of injury or damage to human beings or the environment that requires the waste to be dealt with in a particular way; or
 - (ii) Australia's international obligations require the waste to be dealt with in a particular way;

the Minister may, in writing, order the person to deal with the waste in that way.

- (3) The Minister may, under either of subsection (1) or (2):
- (a) order the waste to be exported; or
 - (b) specify the day on or before which anything required to be done in relation to the waste is to be done.

This subsection does not, by implication, limit subsection (1) or (2).

102 Paragraph 36(1)(a)

Omit "or 40", substitute ", 40 or 40A".

103 Paragraph 37(1)(a)

After "35", insert ", 35A".

Note: The heading to section 37 of the *Hazardous Waste (Regulation of Exports and Imports) Act 1989* is altered by inserting ", 35A" after "35".

104 Part 4 (heading)

Repeal the heading, substitute:

Part 4—Regulation of import, export and transit of hazardous waste

105 Sections 39 and 40

Repeal the sections, substitute:

39 Regulation of import of hazardous waste

Prohibition of imports

- (1) A person must not import hazardous waste unless:
 - (a) the person is the holder of an import permit authorising the person to import the waste; or
 - (b) the person is the holder of a transit permit authorising the person to import the waste; or
 - (c) the import is authorised by an order under section 38; or
 - (d) the import has been ordered under section 35.

Compliance with import permits

- (2) The holder of an import permit must not:
 - (a) import the hazardous waste to which the permit relates except in accordance with the permit; or
 - (b) whether before or after importing the hazardous waste to which the permit relates, breach any of the permit conditions.

Compliance with section 38 orders

- (3) A person authorised by an order under section 38 to import hazardous waste must not import or deal with the waste except in accordance with the order.

Offence—knowledge, recklessness or negligence

- (4) A person who knowingly, recklessly or negligently contravenes subsection (1), (2) or (3) is guilty of an offence punishable on conviction by:
- (a) in the case of a body corporate—a fine not exceeding 2,500 penalty units; or
 - (b) in the case of an individual—imprisonment for a term not exceeding 2 years.

Note: This penalty does not, by implication, affect the operation of subsection 4B(2) of the *Crimes Act 1914*.

Meaning of negligence

- (5) A person is taken to contravene subsection (1), (2) or (3) **negligently** if, and only if, the person's conduct involves:
- (a) such a great falling short of the standard of care that a reasonable person would exercise in the circumstances; and
 - (b) such a high risk that the person's conduct would contravene the subsection;
- that the conduct merits criminal punishment.

Offence—knowledge or recklessness

- (6) If:
- (a) a person knowingly or recklessly contravenes subsection (1), (2) or (3); and
 - (b) the contravention injures or damages, or is likely to injure or damage, human beings or the environment;
- the person is guilty of an offence punishable on conviction by:
- (c) in the case of a body corporate—a fine not exceeding 10,000 penalty units; or
 - (d) in the case of an individual—imprisonment for a term not exceeding 5 years.

Note: This penalty does not, by implication, affect the operation of subsection 4B(2) of the *Crimes Act 1914*.

40 Regulation of export of hazardous waste

Prohibition of exports

- (1) A person must not export hazardous waste unless:
 - (a) the person is the holder of an export permit authorising the person to export the waste; or
 - (b) the person is the holder of a transit permit authorising the person to export the waste; or
 - (c) the export has been ordered under section 34 or 35A.

Compliance with export permits

- (2) The holder of an export permit must not:
 - (a) export the hazardous waste to which the permit relates except in accordance with the permit; or
 - (b) whether before or after exporting the hazardous waste to which the permit relates, breach any of the permit conditions.

Offence—knowledge, recklessness or negligence

- (3) A person who knowingly, recklessly or negligently contravenes subsection (1) or (2) is guilty of an offence punishable on conviction by:
 - (a) in the case of a body corporate—a fine not exceeding 2,500 penalty units; or
 - (b) in the case of an individual—imprisonment for a term not exceeding 2 years.

Note: This penalty does not, by implication, affect the operation of subsection 4B(2) of the *Crimes Act 1914*.

Meaning of negligence

- (4) A person is taken to contravene subsection (1) or (2) **negligently** if, and only if, the person's conduct involves:
 - (a) such a great falling short of the standard of care that a reasonable person would exercise in the circumstances; and
 - (b) such a high risk that the person's conduct would contravene the subsection;that the conduct merits criminal punishment.
-

Offence—knowledge or recklessness

- (5) If:
- (a) a person knowingly or recklessly contravenes subsection (1) or (2); and
 - (b) the contravention injures or damages, or is likely to injure or damage, human beings or the environment;
- the person is guilty of an offence punishable on conviction by:
- (c) in the case of a body corporate—a fine not exceeding 10,000 penalty units; or
 - (d) in the case of an individual—imprisonment for a term not exceeding 5 years.

Note: This penalty does not, by implication, affect the operation of subsection 4B(2) of the *Crimes Act 1914*.

40A Regulation of transit of hazardous waste

Prohibition of bringing waste into Australia

- (1) A person must not bring hazardous waste into Australia (whether or not by way of import) in the course of carrying out a transit proposal unless the person is the holder of a transit permit authorising the person to bring the waste into Australia.

Note: For this purpose, *Australia* does not include Australian waters.

Compliance with transit permits

- (2) The holder of a transit permit must not:
- (a) bring the hazardous waste to which the permit relates into Australia (whether or not by way of import) except in accordance with the permit; or
 - (b) export the hazardous waste to which the permit relates except in accordance with the permit; or
 - (c) whether before or after bringing the hazardous waste to which the permit relates into Australia, breach any of the permit conditions.

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Offence—knowledge, recklessness or negligence

- (3) A person who knowingly, recklessly or negligently contravenes subsection (1) or (2) is guilty of an offence punishable on conviction by:
- (a) in the case of a body corporate—a fine not exceeding 2,500 penalty units; or
 - (b) in the case of an individual—imprisonment for a term not exceeding 2 years.

Note: This penalty does not, by implication, affect the operation of subsection 4B(2) of the *Crimes Act 1914*.

Meaning of negligence

- (4) A person is taken to contravene subsection (1) or (2) *negligently* if, and only if, the person's conduct involves:
- (a) such a great falling short of the standard of care that a reasonable person would exercise in the circumstances; and
 - (b) such a high risk that the person's conduct would contravene the subsection;
- that the conduct merits criminal punishment.

Offence—knowledge or recklessness

- (5) If:
- (a) a person knowingly or recklessly contravenes subsection (1) or (2); and
 - (b) the contravention injures or damages, or is likely to injure or damage, human beings or the environment;
- the person is guilty of an offence punishable on conviction by:
- (c) in the case of a body corporate—a fine not exceeding 10,000 penalty units; or
 - (d) in the case of an individual—imprisonment for a term not exceeding 5 years.

Note: This penalty does not, by implication, affect the operation of subsection 4B(2) of the *Crimes Act 1914*.

40B Liability of executive officers of bodies corporate

Offence—knowledge, recklessness or negligence

(1) If:

- (a) a body corporate contravenes section 39, 40 or 40A; and
- (b) an executive officer of the body knew that, or was reckless or negligent as to whether, the contravention would occur; and
- (c) the officer was in a position to influence the conduct of the body in relation to the contravention; and
- (d) the officer failed to take all reasonable steps to prevent the contravention;

the officer is guilty of an offence punishable on conviction by imprisonment for a term not exceeding 2 years.

Meaning of negligence

(2) The officer is taken to have been *negligent* as to whether the contravention would occur if, and only if, the officer's conduct involves:

- (a) such a great falling short of the standard of care that a reasonable person would exercise in the circumstances; and
- (b) such a high risk that the contravention would occur; that the conduct merits criminal punishment.

Offence—knowledge or recklessness

(3) If:

- (a) a body corporate contravenes section 39, 40 or 40A; and
- (b) an executive officer of the body knew that, or was reckless as to whether, the contravention would occur; and
- (c) the officer was in a position to influence the conduct of the body in relation to the contravention; and
- (d) the officer failed to take all reasonable steps to prevent the contravention; and
- (e) the contravention injures or damages, or is likely to injure or damage, human beings or the environment;

the officer is guilty of an offence punishable on conviction by imprisonment for a term not exceeding 5 years.

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Reasonable steps to prevent contravention

- (4) For the purposes of this section, in determining whether the officer failed to take all reasonable steps to prevent the contravention, a court is to have regard to whether the officer took any action directed towards ensuring the following (to the extent that the action is relevant to the contravention):
- (a) that the body arranges regular professional assessments of the body's compliance with this Act;
 - (b) that the body implements any appropriate recommendations arising from such an assessment;
 - (c) that the body implements an effective system of hazardous waste management, where the system is consistent with the environmentally sound management of hazardous waste;
 - (d) that the body has contingency procedures for dealing with an emergency involving hazardous waste, where the procedures are directed towards:
 - (i) reducing the risk of injury or damage to human beings or the environment; and
 - (ii) mitigating any such injury or damage;
 - (e) that the body's employees, agents and contractors have a reasonable knowledge and understanding of the requirements of this Act, in so far as those requirements affect the employees, agents or contractors concerned.
- (5) Subsection (4) does not, by implication, limit the generality of paragraph (1)(d) or (3)(d).

Definition of executive officer

- (6) In this section:

executive officer, in relation to a body corporate, means a person, by whatever name called and whether or not a director of the body, who is concerned in, or takes part in, the management of the body.

106 Subsections 41(1) and (2)

Omit "a provision of this Part", substitute "section 39, 40 or 40A".

107 After section 41

Insert:

**Part 4A—Transportation of waste substances
through transit countries where an export
permit under this Act is not required**

**41A Offence of transporting substance through transit country
without approval**

- (1) A person must not export a substance or object to a foreign country (the *destination country*) if:
 - (a) the substance or object is transported through a third country (the *transit country*) on its way to the destination country; and
 - (b) the substance or object is not hazardous waste for the purposes of the application of this Act to the export; and
 - (c) under section 41C, the substance or object is a notifiable substance in relation to the transit country; and
 - (d) at the time when the substance or object was brought into the transit country, the transportation had not been approved under section 41B.
- (2) A person who knowingly or recklessly contravenes subsection (1) is guilty of an offence punishable on conviction by a fine not exceeding 200 penalty units.

**41B Approval of transportation of substances through transit
countries**

Application for approval

- (1) A person may apply to the Minister for an approval under this section to transport a substance or object through a foreign country.

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Form of application

- (2) The application must:
- (a) be in the form approved by the Minister; and
 - (b) set out, or be accompanied by, such information relating to the proposed transportation as is required by the form.

Minister must notify foreign country of application

- (3) Within 21 days after receiving the application, the Minister must give the competent authority of the foreign country a written notification of the application. For the purposes of this section, the *competent authority's decision period* is the period of 60 days beginning when the notification was given to the competent authority.

If the foreign country consents, Minister must approve transportation

- (4) If, during the competent authority's decision period, the competent authority notifies the Minister that it consents to the transportation, the Minister must, as soon as practicable after receiving that notification, give the applicant a written notice approving the transportation.

If the foreign country refuses consent, Minister must refuse approval of transportation

- (5) If, during the competent authority's decision period, the competent authority notifies the Minister that it does not consent to the transportation, the Minister must, as soon as practicable after receiving that notification, give the applicant a written notice refusing to approve the transportation.

If the foreign country does not reply within 60 days, Minister must refuse approval of transportation

- (6) If, by the end of the competent authority's decision period, the competent authority has neither:
- (a) notified the Minister that it consents to the transportation; nor

- (b) notified the Minister that it does not consent to the transportation;
- the Minister must, as soon as practicable, give the applicant a written notice refusing to approve the transportation.

41C Notifiable substances in relation to transit countries

- (1) This section has effect for the purposes of the application of this Part to the export of a substance or object to a foreign country if:
 - (a) the substance or object is not hazardous waste for the purposes of the application of this Act to the export; and
 - (b) the substance or object is, or is proposed to be, transported through a third country (the *transit country*).

Notifiable substance—Annex I/III waste

- (2) If a substance or object is Annex I/III waste, the substance or object is a *notifiable substance* in relation to the transit country for those purposes. However, this rule does not apply if the substance or object is declared to be exempt in relation to the transit country by the regulations.

Note: *Annex I/III waste* is defined by subsection (7).

Declaration that substance is notifiable substance

- (3) If:
 - (a) the transit country is a party to the Basel Convention; and
 - (b) the Minister is satisfied that, under a law of that country that gives effect to the Basel Convention, a particular substance or object is classified as hazardous waste; and
 - (c) the substance or object is not Annex I/III waste;the Minister must, by writing, declare that the substance or object is a *notifiable substance* in relation to the transit country for those purposes.

Note: *Annex I/III waste* is defined by subsection (7).

Declaration has effect accordingly

- (4) A declaration under subsection (3) has effect accordingly.

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Revocation of declaration

- (5) If:
- (a) a declaration is in force under subsection (3); and
 - (b) the Minister ceases to be satisfied of the matter referred to in paragraph (3)(b);
- the Minister must revoke the declaration.

Gazettal of declaration

- (6) If a declaration under subsection (3) is made or revoked, the Minister must arrange for a copy of the declaration or revocation to be published in the *Gazette*.

Definition

- (7) In this section:

Annex VIII waste means waste that belongs to any category contained in Annex I to the Basel Convention, unless it does not possess any of the characteristics contained in Annex III to that Convention.

108 Subsection 42(3)

Add at the end:

Note: Paragraph (a) includes, for example, staff of the Australian Customs Service and of the Australian Maritime Safety Authority.

109 Subsection 45(1)

Omit “or exported”, substitute “, exported or the subject of a transit proposal”.

110 Paragraph 52(2)(a)

Omit “statutory”, substitute “Basel permit or special”.

Note: The heading to section 52 of the *Hazardous Waste (Regulation of Exports and Imports) Act 1989* is altered by adding at the end “—import or export”.

111 Paragraph 52(2)(b)

After “35”, insert “, 35A”.

112 After section 52

Insert:

52A Production of transit permits

- (1) This section applies if an inspector or an officer of Customs (the *authorised person*) has reasonable grounds for suspecting that a person (the *suspected person*):
 - (a) intends to carry out a transit proposal; or
 - (b) is carrying out a transit proposal; or
 - (c) has carried out a transit proposal.
- (2) The authorised person may require the suspected person to produce, or to produce evidence of the existence and contents of, a transit permit authorising the carrying out of the transit proposal.
- (3) The suspected person must not, without reasonable excuse, refuse or fail to comply with the requirement.

Penalty: 30 penalty units.

113 Section 55

After “Part 2” (wherever occurring), insert “or under a set of Article 11 regulations”.

114 Section 56

Omit “statutory”, substitute “Basel permit or special”.

115 After section 56

Insert:

Part 5A—Arrangements by Minister

56A Arrangements by Minister

Arrangements

- (1) The Minister may make arrangements directed towards any or all of the following:

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- (a) discouraging the unlawful import or export of hazardous waste;
- (b) collecting statistics relating to the import and export of hazardous waste;
- (c) helping to reduce the generation of hazardous waste in Australia;
- (d) developing adequate disposal facilities for the environmentally sound management of hazardous waste in Australia;
- (e) encouraging persons involved in the management of hazardous waste in Australia to take steps:
 - (i) to prevent or reduce pollution arising from the management of the waste; and
 - (ii) to prevent or reduce the adverse consequences of any such pollution for human health and the environment.

Achievement of object or aims of this Act

- (2) An arrangement may only be made under subsection (1) to the extent necessary to achieve the object or aims of this Act.

Co-operation by the Commonwealth

- (3) Arrangements under subsection (1) may include, but are not limited to, arrangements involving co-operation by the Commonwealth with any or all of the following:
 - (a) the government of a foreign country, of a State or of a Territory;
 - (b) the administration of an external Territory;
 - (c) an organisation;
 - (d) a person.

Consultation with States/Territories

- (4) Before making an arrangement covered by paragraph (1)(c), (d) or (e), the Minister must consult the government or administration of a State or Territory if:

- (a) the arrangement relates, in whole or in part, to an activity carried on, or proposed to be carried on, in the State or Territory; and
- (b) the government or administration of the State or Territory is not a party to the arrangement.

Constitutional limitations

- (5) The Minister may perform functions conferred by subsection (1) to the extent only that they do not exceed the functions that may be conferred on the Minister by virtue of any of the legislative powers of the Parliament. In particular, the Minister may perform functions under subsection (1) for purposes related to:
 - (a) trade or commerce with other countries, or among the States; and
 - (b) external affairs; and
 - (c) the spending of money appropriated by the Parliament; and
 - (d) the granting of financial assistance to a State on such terms and conditions as the Minister determines; and
 - (e) the executive power of the Commonwealth; and
 - (f) statistics; and
 - (g) a Territory; and
 - (h) the activities of a corporation to which paragraph 51(xx) of the Constitution applies.

116 Paragraphs 57(a), (d) and (e)

Omit "statutory", substitute "Basel permits or special".

117 Paragraph 57(b)

Omit "statutory", substitute "Basel permit or special".

118 Paragraph 57(f)

After "35", insert ", 35A".

119 Section 57

Add at the end:

- (h) decisions under section 4A (which deals with declarations of hazardous waste);
-

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- (i) decisions under section 4B (which deals with extensions of time for carrying out transit proposals);
- (j) decisions under section 13B (which deals with the classification of applications for permits);
- (k) decisions under subsection 32(5) (which deals with reduction of fees);
- (l) decisions under section 41B (which deals with the approval of the transportation of notifiable substances through transit countries);
- (m) decisions under section 41C (which deals with declarations of notifiable substances).

120 After section 58

Insert:

58A Extended standing of individuals and organisations to seek judicial review

- (1) This section has effect for the purposes of the application of the *Administrative Decisions (Judicial Review) Act 1977* to a decision under this Act.
- (2) An individual is taken to be a person aggrieved by the decision if:
 - (a) the individual is an Australian citizen or ordinarily resident in Australia; and
 - (b) at any time during the 2-year period ending immediately before the decision was made, the individual has engaged in a series of activities relating to any of the following:
 - (i) research into hazardous waste;
 - (ii) the protection of human beings or the environment from the harmful effects of hazardous waste;
 - (iii) research into pollution of the air, water or soil, where the pollution results from the disposal of hazardous waste;
 - (iv) the protection of human beings or the environment from the harmful effects of pollution of the air, water or soil, where the pollution results from the disposal of hazardous waste.

- (3) An organisation or association (whether incorporated or not) is taken to be a person aggrieved by the decision if:
- (a) the organisation or association is incorporated, or was otherwise established, in Australia; and
 - (b) at any time during the 2-year period ending immediately before the decision was made, the organisation or association has engaged in a series of activities relating to any of the following:
 - (i) research into hazardous waste;
 - (ii) the protection of human beings or the environment from the harmful effects of hazardous waste;
 - (iii) research into pollution of the air, water or soil, where the pollution results from the disposal of hazardous waste;
 - (iv) the protection of human beings or the environment from the harmful effects of pollution of the air, water or soil, where the pollution results from the disposal of hazardous waste; and
 - (c) the objects or purposes of the organisation or association included any of the following:
 - (i) research into hazardous waste;
 - (ii) the protection of human beings or the environment from the harmful effects of hazardous waste;
 - (iii) research into pollution of the air, water or soil, where the pollution results from the disposal of hazardous waste;
 - (iv) the protection of human beings or the environment from the harmful effects of pollution of the air, water or soil, where the pollution results from the disposal of hazardous waste.
- (4) Subsection (3) does not apply in relation to a decision made before the objects or purposes of the organisation or association included the matter concerned.
- (5) Subparagraphs (2)(b)(i), (ii), (iii) and (iv) and (3)(b)(i), (ii), (iii) and (iv) do not apply to activities unless:
- (a) the activities are carried on in Australia; or
-

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- (b) the activities relate to the effects of hazardous waste of Australian origin on human beings, or the environment, outside Australia.
- (6) For the purposes of this section, in interpreting the expression *hazardous waste*, the effect of sections 4A, 4F and 4G is to be ignored.
- (7) A reference in this section to a *decision under this Act* includes a reference to:
 - (a) conduct for the purpose of making a decision under this Act; or
 - (b) a failure to make a decision under this Act.
- (8) To avoid doubt, this section is intended to extend, but not limit, the meaning of the expression *person aggrieved by a decision*.

58B Evidentiary certificate—classification of hazardous waste

Hazardous waste

- (1) The Minister may issue a written certificate stating that a specified substance or object is, or is not, in specified circumstances, hazardous waste:
 - (a) for the purposes of this Act; or
 - (b) for the purposes of the application of this Act to a specified matter.

Consultation with Hazardous Waste Technical Group

- (2) Before issuing a certificate under subsection (1), the Minister must:
 - (a) convene a meeting of the Hazardous Waste Technical Group; and
 - (b) consult the members of the Group who are present at that meeting.

This subsection does not prevent the Minister from consulting other persons.

Prima facie evidence

- (3) In any proceedings relating to this Act, a certificate under subsection (1) is prima facie evidence of the matters in the certificate.

Gazetal

- (4) A copy of a certificate under subsection (1) must be published in the *Gazette*.

58C Evidentiary certificate—environmentally sound management of hazardous waste

Environmentally sound management of hazardous waste

- (1) The Minister may issue a written certificate stating that engaging, or failing to engage, in specified conduct in relation to specified hazardous waste is, or is not, environmentally sound management of that hazardous waste for the purposes of this Act.

Consultation with Hazardous Waste Technical Group

- (2) Before issuing a certificate under subsection (1), the Minister must:
- (a) convene a meeting of the Hazardous Waste Technical Group; and
 - (b) consult the members of the Group who are present at that meeting.

This subsection does not prevent the Minister from consulting other persons.

Prima facie evidence

- (3) In any proceedings relating to this Act, a certificate under subsection (1) is prima facie evidence of the matters in the certificate.

Gazetal

- (4) A copy of a certificate under subsection (1) must be published in the *Gazette*.

58D Regulations defining *hazardous waste*—Minister to consult Hazardous Waste Technical Group

Before regulations are made for the purposes of paragraph (a) of the definition of *hazardous waste* in section 4, the Minister must:

- (a) convene a meeting of the Hazardous Waste Technical Group; and
- (b) consult the members of the Group who are present at that meeting.

This section does not prevent the Minister from consulting other persons.

58E Hazardous Waste Technical Group

Technical Group

- (1) The Minister must establish a committee, to be known as the Hazardous Waste Technical Group, consisting of such persons as the Minister determines.

Qualifications of members

- (2) Before appointing a person as a member of the Hazardous Waste Technical Group, the Minister must have regard to:
- (a) the person's expertise in, or experience of, matters relevant to the scientific and/or technical aspects of the management of hazardous waste; or
 - (b) the person's expertise in, or experience of, matters relevant to the social and/or economic aspects of the management of hazardous waste; or
 - (c) the person's expertise in, or experience of, matters relevant to the environmental aspects of the management of hazardous waste; or

- (d) the person's expertise in, or experience of, matters relevant to the public health and public safety aspects of the management of hazardous waste.

Procedures

- (3) The Minister may determine:
 - (a) the manner in which the Hazardous Waste Technical Group is to perform its functions; and
 - (b) the procedure to be followed at or in relation to meetings of the Group, including (but not limited to) matters with respect to:
 - (i) the number of members of the Group who are to constitute a quorum; and
 - (ii) the selection of a member of the Group to preside at meetings of the Group; and
 - (iii) the manner in which questions arising at a meeting of the Group are to be decided.

Remuneration

- (4) A member of the Hazardous Waste Technical Group is to be paid such remuneration (if any) as is determined by the Remuneration Tribunal.
- (5) If no determination of that remuneration by the Remuneration Tribunal is in operation, a member of the Hazardous Waste Technical Group is to be paid such remuneration as is specified in the regulations.
- (6) A member of the Hazardous Waste Technical Group is to be paid such allowances as are prescribed.
- (7) Subsections (4), (5) and (6) have effect subject to the *Remuneration Tribunal Act 1973*.

121 After section 59

Insert:

59A Nomination of address for service of documents

- (1) For the purposes of this Act, a person may nominate an address for service in:
 - (a) a permit application made by the person; or
 - (b) any other document given by the person to, or to a delegate of, the Minister.
- (2) For the purposes of this Act, a document may be given to the person by leaving it at, or by sending it by pre-paid post to, the nominated address for service.
- (3) Subsection (2) has effect in addition to section 28A of the *Acts Interpretation Act 1901*.

59B Service of summons or process on foreign corporations— criminal proceedings

- (1) This section applies to a summons or process in any criminal proceedings under this Act, where:
 - (a) the summons or process is required to be served on a body corporate incorporated outside Australia; and
 - (b) the body corporate does not have a registered office or a principal office in Australia; and
 - (c) the body corporate has an agent in Australia.
- (2) Service of the summons or process may be effected by serving it on the agent.
- (3) Subsection (2) has effect in addition to section 28A of the *Acts Interpretation Act 1901*.

Note: Section 28A of the *Acts Interpretation Act 1901* deals with the service of documents.

- (4) In this section:

criminal proceeding includes a proceeding to determine whether a person should be tried for an offence.

122 Subsection 62(2)

Omit "Annexes I to III to".

123 Part 7

Repeal the Part.

124 Schedule

Omit "ANNEXES I TO IV TO THE BASEL CONVENTION",
substitute:

BASEL CONVENTION ON THE CONTROL OF TRANSBOUNDARY MOVEMENTS OF HAZARDOUS WASTES AND THEIR DISPOSAL

Note: The following text incorporates corrections made by the Rectifications of 4
November 1992 and 16 May 1994.

PREAMBLE

The Parties to this Convention,

Aware of the risk of damage to human health and the environment caused by
hazardous wastes and other wastes and the transboundary movement thereof,

Mindful of the growing threat to human health and the environment posed by
the increased generation and complexity, and transboundary movement of
hazardous wastes and other wastes,

Mindful also that the most effective way of protecting human health and the
environment from the dangers posed by such wastes is the reduction of their
generation to a minimum in terms of quantity and/or hazard potential,

Convinced that States should take necessary measures to ensure that the
management of hazardous wastes and other wastes including their transboundary
movement and disposal is consistent with the protection of human health and the
environment whatever the place of their disposal,

Noting that States should ensure that the generator should carry out duties with
regard to the transport and disposal of hazardous wastes and other wastes in a
manner that is consistent with the protection of the environment, whatever the place
of disposal,

Fully recognizing that any State has the sovereign right to ban the entry or
disposal of foreign hazardous wastes and other wastes in its territory,

Recognizing also the increasing desire for the prohibition of transboundary
movements of hazardous wastes and their disposal in other States, especially
developing countries,

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Convinced that hazardous wastes and other wastes should, as far as is compatible with environmentally sound and efficient management, be disposed of in the State where they were generated,

Aware also that transboundary movements of such wastes from the State of their generation to any other State should be permitted only when conducted under conditions which do not endanger human health and the environment, and under conditions in conformity with the provisions of this Convention,

Considering that enhanced control of transboundary movement of hazardous wastes and other wastes will act as an incentive for their environmentally sound management and for the reduction of the volume of such transboundary movement,

Convinced that States should take measures for the proper exchange of information on and control of the transboundary movement of hazardous wastes and other wastes from and to those States,

Noting that a number of international and regional agreements have addressed the issue of protection and preservation of the environment with regard to the transit of dangerous goods,

Taking into account the Declaration of the United Nations Conference on the Human Environment (Stockholm, 1972), the Cairo Guidelines and Principles for the Environmentally Sound Management of Hazardous Wastes adopted by the Governing Council of the United Nations Environment Programme (UNEP) by decision 14/30 of 17 June 1987, the Recommendations of the United Nations Committee of Experts on the Transport of Dangerous Goods (formulated in 1957 and updated biennially), relevant recommendations, declarations, instruments and regulations adopted within the United Nations system and the work and studies done within other international and regional organizations,

Mindful of the spirit, principles, aims and functions of the World Charter for Nature adopted by the General Assembly of the United Nations at its thirty-seventh session (1982) as the rule of ethics in respect of the protection of the human environment and the conservation of natural resources,

Affirming that States are responsible for the fulfilment of their international obligations concerning the protection of human health and protection and preservation of the environment, and are liable in accordance with international law,

Recognizing that in the case of a material breach of the provisions of this Convention or any protocol thereto the relevant international law of treaties shall apply,

Aware of the need to continue the development and implementation of environmentally sound low-waste technologies, recycling options, good house-

keeping and management systems with a view to reducing to a minimum the generation of hazardous wastes and other wastes,

Aware also of the growing international concern about the need for stringent control of transboundary movement of hazardous wastes and other wastes, and of the need as far as possible to reduce such movement to a minimum,

Concerned about the problem of illegal transboundary traffic in hazardous wastes and other wastes,

Taking into account also the limited capabilities of the developing countries to manage hazardous wastes and other wastes,

Recognizing the need to promote the transfer of technology for the sound management of hazardous wastes and other wastes produced locally, particularly to the developing countries in accordance with the spirit of the Cairo Guidelines and decision 14/16 of the Governing Council of UNEP on Promotion of the transfer of environmental protection technology,

Recognizing also that hazardous wastes and other wastes should be transported in accordance with relevant international conventions and recommendations,

Convinced also that the transboundary movement of hazardous wastes and other wastes should be permitted only when the transport and the ultimate disposal of such wastes is environmentally sound, and

Determined to protect, by strict control, human health and the environment against the adverse effects which may result from the generation and management of hazardous wastes and other wastes,

HAVE AGREED AS FOLLOWS:

Article 1

Scope of the Convention

1. The following wastes that are subject to transboundary movement shall be "hazardous wastes" for the purposes of this Convention:
 - (a) Wastes that belong to any category contained in Annex I, unless they do not possess any of the characteristics contained in Annex III; and
 - (b) Wastes that are not covered under paragraph (a) but are defined as, or are considered to be, hazardous wastes by the domestic legislation of the Party of export, import or transit.
2. Wastes that belong to any category contained in Annex II that are subject to transboundary movement shall be "other wastes" for the purposes of this Convention.

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3. Wastes which, as a result of being radioactive, are subject to other international control systems, including international instruments, applying specifically to radioactive materials, are excluded from the scope of this Convention.
4. Wastes which derive from the normal operations of a ship, the discharge of which is covered by another international instrument, are excluded from the scope of this Convention.

Article 2

Definitions

For the purposes of this Convention:

1. "Wastes" are substances or objects which are disposed of or are intended to be disposed of or are required to be disposed of by the provisions of national law;
 2. "Management" means the collection, transport and disposal of hazardous wastes or other wastes, including after-care of disposal sites;
 3. "Transboundary movement" means any movement of hazardous wastes or other wastes from an area under the national jurisdiction of one State to or through an area under the national jurisdiction of another State or to or through an area not under the national jurisdiction of any State, provided at least two States are involved in the movement;
 4. "Disposal" means any operation specified in Annex IV to this Convention;
 5. "Approved site or facility" means a site or facility for the disposal of hazardous wastes or other wastes which is authorized or permitted to operate for this purpose by a relevant authority of the State where the site or facility is located;
 6. "Competent authority" means one governmental authority designated by a Party to be responsible, within such geographical areas as the Party may think fit, for receiving the notification of a transboundary movement of hazardous wastes or other wastes, and any information related to it, and for responding to such a notification, as provided in Article 6;
 7. "Focal point" means the entity of a Party referred to in Article 5 responsible for receiving and submitting information as provided for in Articles 13 and 16;
 8. "Environmentally sound management of hazardous wastes or other wastes" means taking all practicable steps to ensure that hazardous wastes or other wastes are managed in a manner which will protect human health and the environment against the adverse effects which may result from such wastes;
 9. "Area under the national jurisdiction of a State" means any land, marine area or airspace within which a State exercises administrative and regulatory responsibility in accordance with international law in regard to the protection of human health or the environment;
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10. "State of export" means a Party from which a transboundary movement of hazardous wastes or other wastes is planned to be initiated or is initiated;
11. "State of import" means a Party to which a transboundary movement of hazardous wastes or other wastes is planned or takes place for the purpose of disposal therein or for the purpose of loading prior to disposal in an area not under the national jurisdiction of any State;
12. "State of transit" means any State, other than the State of export or import, through which a movement of hazardous wastes or other wastes is planned or takes place;
13. "States concerned" means Parties which are States of export or import, or transit States, whether or not Parties;
14. "Person" means any natural or legal person;
15. "Exporter" means any person under the jurisdiction of the State of export who arranges for hazardous wastes or other wastes to be exported;
16. "Importer" means any person under the jurisdiction of the State of import who arranges for hazardous wastes or other wastes to be imported;
17. "Carrier" means any person who carries out the transport of hazardous wastes or other wastes;
18. "Generator" means any person whose activity produces hazardous wastes or other wastes or, if that person is not known, the person who is in possession and/or control of those wastes;
19. "Disposer" means any person to whom hazardous wastes or other wastes are shipped and who carries out the disposal of such wastes;
20. "Political and/or economic integration organization" means an organization constituted by sovereign States to which its member States have transferred competence in respect of matters governed by this Convention and which has been duly authorized, in accordance with its internal procedures, to sign, ratify, accept, approve, formally confirm or accede to it;
21. "Illegal traffic" means any transboundary movement of hazardous wastes or other wastes as specified in Article 9.

Article 3

National Definitions of Hazardous Wastes

1. Each Party shall, within six months of becoming a Party to this Convention, inform the Secretariat of the Convention of the wastes, other than those listed in Annexes I and II, considered or defined as hazardous under its national legislation
-

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and of any requirements concerning transboundary movement procedures applicable to such wastes.

2. Each Party shall subsequently inform the Secretariat of any significant changes to the information it has provided pursuant to paragraph 1.
3. The Secretariat shall forthwith inform all Parties of the information it has received pursuant to paragraphs 1 and 2.
4. Parties shall be responsible for making the information transmitted to them by the Secretariat under paragraph 3 available to their exporters.

Article 4

General Obligations

1. (a) Parties exercising their right to prohibit the import of hazardous wastes and other wastes for disposal shall inform the other Parties of their decision pursuant to Article 13.
 - (b) Parties shall prohibit or shall not permit the export of hazardous wastes and other wastes to the Parties which have prohibited the import of such wastes, when notified pursuant to subparagraph (a) above.
 - (c) Parties shall prohibit or shall not permit the export of hazardous wastes and other wastes if the State of import does not consent in writing to the specific import, in the case where that State of import has not prohibited the import of such wastes.
 2. Each Party shall take the appropriate measures to:
 - (a) Ensure that the generation of hazardous wastes and other wastes within it is reduced to a minimum, taking into account social, technological and economic aspects;
 - (b) Ensure the availability of adequate disposal facilities, for the environmentally sound management of hazardous wastes and other wastes, that shall be located, to the extent possible, within it, whatever the place of their disposal;
 - (c) Ensure that persons involved in the management of hazardous wastes and other wastes within it take such steps as are necessary to prevent pollution due to hazardous wastes and other wastes arising from such management and, if such pollution occurs, to minimize the consequences thereof for human health and the environment;
 - (d) Ensure that the transboundary movement of hazardous wastes and other wastes is reduced to the minimum consistent with the environmentally sound and efficient management of such wastes, and is conducted in a manner which will protect human health and the environment against the adverse effects which may result from such movement;
-

- (e) Not allow the export of hazardous wastes or other wastes to a State or group of States belonging to an economic and/or political integration organization that are Parties, particularly developing countries, which have prohibited by their legislation all imports, or if it has reason to believe that the wastes in question will not be managed in an environmentally sound manner, according to criteria to be decided on by the Parties at their first meeting.
- (f) Require that information about a proposed transboundary movement of hazardous wastes and other wastes be provided to the States concerned, according to Annex V A, to state clearly the effects of the proposed movement on human health and the environment;
- (g) Prevent the import of hazardous wastes and other wastes if it has reason to believe that the wastes in question will not be managed in an environmentally sound manner;
- (h) Co-operate in activities with other Parties and interested organizations, directly and through the Secretariat, including the dissemination of information on the transboundary movement of hazardous wastes and other wastes, in order to improve the environmentally sound management of such wastes and to achieve the prevention of illegal traffic.

3. The Parties consider that illegal traffic in hazardous wastes or other wastes is criminal.

4. Each Party shall take appropriate legal, administrative and other measures to implement and enforce the provisions of this Convention, including measures to prevent and punish conduct in contravention of the Convention.

5. A Party shall not permit hazardous wastes or other wastes to be exported to a non-Party or to be imported from a non-Party.

6. The Parties agree not to allow the export of hazardous wastes or other wastes for disposal within the area south of 60°S latitude, whether or not such wastes are subject to transboundary movement.

7. Furthermore, each Party shall:

- (a) Prohibit all persons under its national jurisdiction from transporting or disposing of hazardous wastes or other wastes unless such persons are authorized or allowed to perform such types of operations;
- (b) Require that hazardous wastes and other wastes that are to be the subject of a transboundary movement be packaged, labelled, and transported in conformity with generally accepted and recognized international rules and standards in the field of packaging, labelling, and transport, and that due account is taken of relevant internationally recognized practices;

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- (c) Require that hazardous wastes and other wastes be accompanied by a movement document from the point at which a transboundary movement commences to the point of disposal.
8. Each Party shall require that hazardous wastes or other wastes, to be exported, are managed in an environmentally sound manner in the State of import or elsewhere. Technical guidelines for the environmentally sound management of wastes subject to this Convention shall be decided by the Parties at their first meeting.
9. Parties shall take the appropriate measures to ensure that the transboundary movement of hazardous wastes and other wastes only be allowed if:
- (a) The State of export does not have the technical capacity and the necessary facilities, capacity or suitable disposal sites in order to dispose of the wastes in question in an environmentally sound and efficient manner; or
 - (b) The wastes in question are required as a raw material for recycling or recovery industries in the State of import; or
 - (c) The transboundary movement in question is in accordance with other criteria to be decided by the Parties, provided those criteria do not differ from the objectives of this Convention.
10. The obligation under this Convention of States in which hazardous wastes and other wastes are generated to require that those wastes are managed in an environmentally sound manner may not under any circumstances be transferred to the States of import or transit.
11. Nothing in this Convention shall prevent a Party from imposing additional requirements that are consistent with the provisions of this Convention, and are in accordance with the rules of international law, in order better to protect human health and the environment.
12. Nothing in this Convention shall affect in any way the sovereignty of States over their territorial sea established in accordance with international law, and the sovereign rights and the jurisdiction which States have in their exclusive economic zones and their continental shelves in accordance with international law, and the exercise by ships and aircraft of all States of navigational rights and freedoms as provided for in international law and as reflected in relevant international instruments.
13. Parties shall undertake to review periodically the possibilities for the reduction of the amount and/or the pollution potential of hazardous wastes and other wastes which are exported to other States, in particular to developing countries.
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Article 5

Designation of Competent Authorities and Focal Point

To facilitate the implementation of this Convention, the Parties shall:

1. Designate or establish one or more competent authorities and one focal point. One competent authority shall be designated to receive the notification in case of a State of transit.
2. Inform the Secretariat, within three months of the date of the entry into force of this Convention for them, which agencies they have designated as their focal point and their competent authorities.
3. Inform the Secretariat, within one month of the date of decision, of any changes regarding the designation made by them under paragraph 2 above.

Article 6

Transboundary Movement between Parties

1. The State of export shall notify, or shall require the generator or exporter to notify, in writing, through the channel of the competent authority of the State of export, the competent authority of the States concerned of any proposed transboundary movement of hazardous wastes or other wastes. Such notification shall contain the declarations and information specified in Annex V A, written in a language acceptable to the State of import. Only one notification needs to be sent to each State concerned.
 2. The State of import shall respond to the notifier in writing, consenting to the movement with or without conditions, denying permission for the movement, or requesting additional information. A copy of the final response of the State of import shall be sent to the competent authorities of the States concerned which are Parties.
 3. The State of export shall not allow the generator or exporter to commence the transboundary movement until it has received written confirmation that:
 - (a) The notifier has received the written consent of State of import; and
 - (b) The notifier has received from the State of import confirmation of the existence of a contract between the exporter and the disposer specifying environmentally sound management of the wastes in question.
 4. Each State of transit which is a Party shall promptly acknowledge to the notifier receipt of the notification. It may subsequently respond to the notifier in writing, within 60 days, consenting to the movement with or without conditions, denying permission for the movement, or requesting additional information. The State of export shall not allow the transboundary movement to commence until it has received the written consent of the State of transit. However, if at any time a Party
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decides not to require prior written consent, either generally or under specific conditions, for transit transboundary movements of hazardous wastes or other wastes, or modifies its requirements in this respect, it shall forthwith inform the other Parties of its decision pursuant to Article 13. In this latter case, if no response is received by the State of export within 60 days of the receipt of a given notification by the State of transit, the State of export may allow the export to proceed through the State of transit.

5. In the case of a transboundary movement of wastes where the wastes are legally defined as or considered to be hazardous wastes only:

- (a) By the State of export, the requirements of paragraph 9 of this Article that apply to the importer or disposer and the State of import shall apply mutatis mutandis to the exporter and State of export, respectively;
- (b) By the State of import, or by the States of import and transit which are Parties, the requirements of paragraphs 1, 3, 4 and 6 of this Article that apply to the exporter and State of export shall apply mutatis mutandis to the importer or disposer and State of import, respectively; or
- (c) By any State of transit which is a Party, the provisions of paragraph 4 shall apply to such State.

6. The State of export may, subject to the written consent of the States concerned, allow the generator or the exporter to use a general notification where hazardous wastes or other wastes having the same physical and chemical characteristics are shipped regularly to the same disposer via the same customs office of exit of the State of export via the same customs office of entry of the State of import, and, in the case of transit, via the same customs office of entry and exit of the State or States of transit.

7. The States concerned may make their written consent to the use of the general notification referred to in paragraph 6 subject to the supply of certain information, such as the exact quantities or periodical lists of hazardous wastes or other wastes to be shipped.

8. The general notification and written consent referred to in paragraphs 6 and 7 may cover multiple shipments of hazardous wastes or other wastes during a maximum period of 12 months.

9. The Parties shall require that each person who takes charge of a transboundary movement of hazardous wastes or other wastes sign the movement document either upon delivery or receipt of the wastes in question. They shall also require that the disposer inform both the exporter and the competent authority of the State of export of receipt by the disposer of the wastes in question and, in due course, of the completion of disposal as specified in the notification. If no such information is received within the State of export, the competent authority of the State of export or the exporter shall so notify the State of import.

10. The notification and response required by this Article shall be transmitted to the competent authority of the Parties concerned or to such governmental authority as may be appropriate in the case of non-Parties.

11. Any transboundary movement of hazardous wastes or other wastes shall be covered by insurance, bond or other guarantee as may be required by the State of import or any State of transit which is a Party.

Article 7

Transboundary Movement from a Party through States which are not Parties

Paragraph 1 of Article 6 of the Convention shall apply *mutatis mutandis* to transboundary movement of hazardous wastes or other wastes from a Party through a State or States which are not Parties.

Article 8

Duty to Re-import

When a transboundary movement of hazardous wastes or other wastes to which the consent of the States concerned has been given, subject to the provisions of this Convention, cannot be completed in accordance with the terms of the contract, the State of export shall ensure that the wastes in question are taken back into the State of export, by the exporter, if alternative arrangements cannot be made for their disposal in an environmentally sound manner, within 90 days from the time that the importing State informed the State of export and the Secretariat, or such other period of time as the States concerned agree. To this end, the State of export and any Party of transit shall not oppose, hinder or prevent the return of those wastes to the State of export.

Article 9

Illegal Traffic

1. For the purpose of this Convention, any transboundary movement of hazardous wastes or other wastes:

- (a) without notification pursuant to the provisions of this Convention to all States concerned; or
- (b) without the consent pursuant to the provisions of this Convention of a State concerned; or
- (c) with consent obtained from States concerned through falsification, misrepresentation or fraud; or
- (d) that does not conform in a material way with the documents; or

Schedule 1 Amendments

- (e) that results in deliberate disposal (e.g. dumping) of hazardous wastes or other wastes in contravention of this Convention and of general principles of international law,
shall be deemed to be illegal traffic.
2. In case of a transboundary movement of hazardous wastes or other wastes deemed to be illegal traffic as the result of conduct on the part of the exporter or generator, the State of export shall ensure that the wastes in question are:
- (a) taken back by the exporter or the generator or, if necessary, by itself into the State of export, or, if impracticable,
 - (b) are otherwise disposed of in accordance with the provisions of this Convention,
- within 30 days from the time the State of export has been informed about the illegal traffic or such other period of time as States concerned may agree. To this end the Parties concerned shall not oppose, hinder or prevent the return of those wastes to the State of export.
3. In the case of a transboundary movement of hazardous wastes or other wastes deemed to be illegal traffic as the result of conduct on the part of the importer or disposer, the State of import shall ensure that the wastes in question are disposed of in an environmentally sound manner by the importer or disposer or, if necessary, by itself within 30 days from the time the illegal traffic has come to the attention of the State of import or such other period of time as the States concerned may agree. To this end, the Parties concerned shall co-operate, as necessary, in the disposal of the wastes in an environmentally sound manner.
4. In cases where the responsibility for the illegal traffic cannot be assigned either to the exporter or generator or to the importer or disposer, the Parties concerned or other Parties, as appropriate, shall ensure, through co-operation, that the wastes in question are disposed of as soon as possible in an environmentally sound manner either in the State of export or the State of import or elsewhere as appropriate.
5. Each Party shall introduce appropriate national/domestic legislation to prevent and punish illegal traffic. The Parties shall co-operate with a view to achieving the objects of this Article.

Article 10

International Co-operation

1. The Parties shall co-operate with each other in order to improve and achieve environmentally sound management of hazardous wastes and other wastes.

2. To this end, the Parties shall:

- (a) Upon request, make available information, whether on a bilateral or multilateral basis, with a view to promoting the environmentally sound management of hazardous wastes and other wastes, including harmonization of technical standards and practices for the adequate management of hazardous wastes and other wastes;
- (b) Co-operate in monitoring the effects of the management of hazardous wastes on human health and the environment;
- (c) Co-operate, subject to their national laws, regulations and policies, in the development and implementation of new environmentally sound low-waste technologies and the improvement of existing technologies with a view to eliminating, as far as practicable, the generation of hazardous wastes and other wastes and achieving more effective and efficient methods of ensuring their management in an environmentally sound manner, including the study of the economic, social and environmental effects of the adoption of such new or improved technologies;
- (d) Co-operate actively, subject to their national laws, regulations and policies, in the transfer of technology and management systems related to the environmentally sound management of hazardous wastes and other wastes. They shall also co-operate in developing the technical capacity among Parties, especially those which may need and request technical assistance in this field;
- (e) Co-operate in developing appropriate technical guidelines and/or codes of practice.

3. The Parties shall employ appropriate means to co-operate in order to assist developing countries in the implementation of subparagraphs a, b, c and d of paragraph 2 of Article 4.

4. Taking into account the needs of developing countries, co-operation between Parties and the competent international organizations is encouraged to promote, inter alia, public awareness, the development of sound management of hazardous wastes and other wastes and the adoption of new low-waste technologies.

Article 11

Bilateral Multilateral and Regional Agreements

1. Notwithstanding the provisions of Article 4 paragraph 5, Parties may enter into bilateral, multilateral, or regional agreements or arrangements regarding transboundary movement of hazardous wastes or other wastes with Parties or non-Parties provided that such agreements or arrangements do not derogate from the environmentally sound management of hazardous wastes and other wastes as required by this Convention. These agreements or arrangements shall stipulate

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provisions which are not less environmentally sound than those provided for by this Convention in particular taking into account the interests of developing countries.

2. Parties shall notify the Secretariat of any bilateral, multilateral or regional agreements or arrangements referred to in paragraph 1 and those which they have entered into prior to the entry into force of this Convention for them, for the purpose of controlling transboundary movements of hazardous wastes and other wastes which take place entirely among the Parties to such agreements. The provisions of this Convention shall not affect transboundary movements which take place pursuant to such agreements provided that such agreements are compatible with the environmentally sound management of hazardous wastes and other wastes as required by this Convention.

Article 12

Consultations on Liability

The Parties shall co-operate with a view to adopting, as soon as practicable, a protocol setting out appropriate rules and procedures in the field of liability and compensation for damage resulting from the transboundary movement and disposal of hazardous wastes and other wastes.

Article 13

Transmission of Information

1. The Parties shall, whenever it come to their knowledge, ensure that, in the case of an accident occurring during the transboundary movement of hazardous wastes or other wastes or their disposal, which are likely to present risks to human health and the environment in other States, those States are immediately informed.

2. The Parties shall inform each other, through the Secretariat, of:

- (a) Changes regarding the designation of competent authorities and/or focal points, pursuant to Article 5;
- (b) Changes in their national definition of hazardous wastes, pursuant to Article 3;

and, as soon as possible,

- (c) Decisions made by them not to consent totally or partially to the import of hazardous wastes or other wastes for disposal within the area under their national jurisdiction;
- (d) Decisions taken by them to limit or ban the export of hazardous wastes or other wastes;
- (e) Any other information required pursuant to paragraph 4 of this Article.

3. The Parties, consistent with national laws and regulations, shall transmit, through the Secretariat, to the Conference of the Parties established under Article 15, before

the end of each calendar year, a report on the previous calendar year, containing the following information:

- (a) Competent authorities and focal points that have been designated by them pursuant to Article 5;
- (b) Information regarding transboundary movements of hazardous wastes or other wastes in which they have been involved, including:
 - (i) The amount of hazardous wastes and other wastes exported, their category, characteristics, destination, any transit country and disposal method as stated on the response to notification;
 - (ii) The amount of hazardous wastes and other wastes imported, their category, characteristics, origin, and disposal methods;
 - (iii) Disposals which did not proceed as intended;
 - (iv) Efforts to achieve a reduction of the amount of hazardous wastes or other wastes subject to transboundary movement;
- (c) Information on the measures adopted by them in implementation of this Convention;
- (d) Information on available qualified statistics which have been compiled by them on the effects of human health and the environment of the generation, transportation and disposal of hazardous wastes or other wastes;
- (e) Information concerning bilateral, multilateral and regional agreements and arrangements entered into pursuant to Article 11 of this Convention;
- (f) Information on accidents occurring during the transboundary movement and disposal of hazardous wastes and other wastes and on the measures undertaken to deal with them;
- (g) Information on disposal options operated within the area of their national jurisdiction;
- (h) Information on measures undertaken for development of technologies for the reduction and/or elimination of production of hazardous wastes and other wastes; and
- (i) Such other matters as the Conference of the Parties shall deem relevant.

4. The Parties, consistent with national laws and regulations, shall ensure that copies of each notification concerning any given transboundary movement of hazardous wastes or other wastes, and the response to it, are sent to the Secretariat when a Party considers that its environment may be affected by that transboundary movement has requested that this should be done.

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Article 14

Financial Aspects

1. The Parties agree that, according to the specific needs of different regions and subregions, regional or sub-regional centres for training and technology transfers regarding the management of hazardous wastes and other wastes and the minimization of their generation should be established. The Parties shall decide on the establishment of appropriate funding mechanisms of a voluntary nature.
2. The Parties shall consider the establishment of a revolving fund to assist on an interim basis in case of emergency situations to minimize damage from accidents arising from transboundary movements of hazardous wastes and other wastes or during the disposal of those wastes.

Article 15

Conference of the Parties

1. A Conference of the Parties is hereby established. The first meeting of the Conference of the Parties shall be convened by the Executive Director of UNEP not later than one year after the entry into force of this Convention. Thereafter, ordinary meetings of the Conference of the Parties shall be held at regular intervals to be determined by the Conference at its first meeting.
2. Extraordinary meetings of the Conference of the Parties shall be held at such other times as may be deemed necessary by the Conference, or at the written request of any Party, provided that, within six months of the request being communicated to them by the Secretariat, it is supported by at least one third of the Parties.
3. The Conference of the Parties shall by consensus agree upon and adopt rules of procedure for itself and for any subsidiary body it may establish, as well as financial rules to determine in particular the financial participation of the Parties under this Convention.
4. The Parties at their first meeting shall consider any additional measures needed to assist them in fulfilling their responsibilities with respect to the protection and the preservation of the marine environment in the context of this Convention.
5. The Conference of the Parties shall keep under continuous review and evaluation the effective implementation of this Convention, and, in addition, shall:
 - (a) Promote the harmonization of appropriate policies, strategies and measures for minimizing harm to human health and the environment by hazardous wastes and other wastes;

- (b) Consider and adopt, as required, amendments to this Convention and its annexes, taking into consideration, inter alia, available scientific, technical, economic and environmental information;
- (c) Consider and undertake any additional action that may be required for the achievement of the purposes of this Convention in the light of experience gained in its operation and in the operation of the agreements and arrangements envisaged in Article 11;
- (d) Consider and adopt protocols as required; and
- (e) Establish such subsidiary bodies as are deemed necessary for the implementation of this Convention.

6. The United Nations, its specialized agencies, as well as any State not party to this Convention, may be represented as observers at meetings of the Conference of the Parties. Any other body or agency, whether national or international, governmental or non-governmental, qualified in fields relating to hazardous wastes or other wastes which has informed the Secretariat of its wish to be represented as an observer at a meeting of the Conference of the Parties, may be admitted unless at least one third of the Parties present object. The admission and participation of observers shall be subject to the rules of procedure adopted by the Conference of the Parties.

7. The Conference of the Parties shall undertake three years after the entry into force of this Convention, and at least every six years thereafter, an evaluation of its effectiveness and, if deemed necessary, to consider the adoption of a complete or partial ban of transboundary movements of hazardous wastes and other wastes in light of the latest scientific, environmental, technical and economic information.

Article 16

Secretariat

1. The functions of the Secretariat shall be:

- (a) To arrange for and service meetings provided for in Article 15 and 17;
 - (b) To prepare and transmit reports based upon information received in accordance with Articles 3, 4, 6, 11 and 13 as well as upon information derived from meetings of subsidiary bodies established under Article 15 as well as upon, as appropriate, information provided by relevant intergovernmental and non-governmental entities;
 - (c) To prepare reports on its activities carried out in implementation of its functions under this Convention and present them to the Conference of the Parties;
 - (d) To ensure the necessary coordination with relevant international bodies, and in particular to enter into such administrative and contractual arrangements as may be required for the effective discharge of its functions;
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Schedule 1 Amendments

- (e) To communicate with focal points and competent authorities established by the Parties in accordance with Article 5 of this Convention;
 - (f) To compile information concerning authorized national sites and facilities of Parties available for the disposal of their hazardous wastes and other wastes and to circulate this information among Parties;
 - (g) To receive and convey information from and to Parties on;
 - sources of technical assistance and training;
 - available technical and scientific know-how;
 - sources of advice and expertise; and
 - availability of resourceswith a view to assisting them, upon request, in such areas as:
 - the handling of the notification system of this Convention;
 - the management of hazardous wastes and other wastes;
 - environmentally sound technologies relating to hazardous wastes and other wastes, such as low- and non-waste technology;
 - the assessment of disposal capabilities and sites;
 - the monitoring of hazardous wastes and other wastes; and
 - emergency responses;
 - (h) To provide Parties, upon request, with information on consultants or consulting firms having the necessary technical competence in the field, which can assist them to examine a notification for a transboundary movement, the concurrence of a shipment of hazardous wastes or other wastes with the relevant notification, and/or the fact that the proposed disposal facilities for hazardous wastes or other wastes are environmentally sound, when they have reason to believe that the wastes in question will not be managed in an environmentally sound manner. Any such examination would not be at the expense of the Secretariat;
 - (i) To assist Parties upon request in their identification of cases of illegal traffic and to circulate immediately to the Parties concerned any information it has received regarding illegal traffic;
 - (j) To co-operate with Parties and with relevant and competent international organizations and agencies in the provision of experts and equipment for the purpose of rapid assistance to States in the event of an emergency situation; and
 - (k) To perform such other functions relevant to the purposes of this Convention as may be determined by the Conference of the Parties.
2. The secretariat functions will be carried out on an interim basis by UNEP until the completion of the first meeting of the Conference of the Parties held pursuant to Article 15.
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3. At its first meeting, the Conference of the Parties shall designate the Secretariat from among those existing competent intergovernmental organizations which have signified their willingness to carry out the secretariat functions under this Convention. At this meeting, the Conference of the Parties shall also evaluate the implementation by the interim Secretariat of the functions assigned to it, in particular under paragraph 1 above, and decide upon the structures appropriate for those functions.

Article 17

Amendment of the Convention

1. Any Party may propose amendments to this Convention and any Party to a protocol may propose amendments to that protocol. Such amendments shall take due account, inter alia, of relevant scientific and technical considerations.

2. Amendments to this Convention shall be adopted at a meeting of the Conference of the Parties. Amendments to any protocol shall be adopted at a meeting of the Parties to the protocol in question. The text of any proposed amendment to this Convention or to any protocol, except as may otherwise be provided in such protocol, shall be communicated to the Parties by the Secretariat at least six months before the meeting at which it is proposed for adoption. The Secretariat shall also communicate proposed amendments to the Signatories to this Convention for information.

3. The Parties shall make every effort to reach agreement on any proposed amendment to this Convention by consensus. If all efforts at consensus have been exhausted, and no agreement reached, the amendment shall as a last resort be adopted by a three-fourths majority vote of the Parties present and voting at the meeting, and shall be submitted by the Depositary to all Parties for ratification, approval, formal confirmation or acceptance.

4. The procedure mentioned in paragraph 3 above shall apply to amendments to any protocol, except that a two-thirds majority of the Parties to that protocol present and voting at the meeting shall suffice for their adoption.

5. Instruments of ratification, approval, formal confirmation or acceptance of amendments shall be deposited with the Depositary. Amendments adopted in accordance with paragraphs 3 or 4 above shall enter into force between Parties having accepted them on the ninetieth day after the receipt by the Depositary of their instrument of ratification, approval, formal confirmation or acceptance by at least three-fourths of the Parties who accepted them or by at least two thirds of the Parties to the protocol concerned who accepted them, except as may otherwise be provided in such protocol. The amendments shall enter into force for any other Party on the ninetieth day after that Party deposits its instrument of ratification, approval, formal confirmation or acceptance of the amendments.

Schedule 1 Amendments

6. For the purpose of this Article, "Parties present and voting" means Parties present and casting an affirmative or negative vote.

Article 18

Adoption and Amendment of Annexes

1. The annexes to this Convention or to any protocol shall form an integral part of this Convention or of such protocol, as the case may be and, unless expressly provided otherwise, a reference to this Convention or its protocols constitutes at the same time a reference to any annexes thereto. Such annexes shall be restricted to scientific, technical and administrative matters.

2. Except as may be otherwise provided in any protocol with respect to its annexes, the following procedure shall apply to the proposal, adoption and entry into force of additional annexes to this Convention or of annexes to a protocol:

- (a) Annexes to this Convention and its protocols shall be proposed and adopted according to the procedure laid down in Article 17, paragraphs 2, 3 and 4;
- (b) Any Party that is unable to accept an additional annex to this Convention or an annex to any protocol to which it is party shall so notify the Depositary, in writing, within six months from the date of the communication of the adoption by the Depositary. The Depositary shall without delay notify all Parties of any such notification received. A Party may at any time substitute an acceptance for a previous declaration of objection and the annexes shall thereupon enter into force for that Party;
- (c) On the expiry of six months from the date of the circulation of the communication by the Depositary, the annex shall become effective for all Parties to this Convention or to any protocol concerned, which have not submitted a notification in accordance with the provision of subparagraph (b) above.

3. The proposal, adoption and entry into force of amendments to annexes to this Convention or to any protocol shall be subject to the same procedure as for the proposal, adoption and entry into force of annexes to the Convention or annexes to a protocol. Annexes and amendments thereto shall take due account, inter alia, of relevant scientific and technical considerations.

4. If an additional annex or an amendment to an annex involves an amendment to this Convention or to any protocol, the additional annex or amended annex shall not enter into force until such time as the amendment to this Convention or to the protocol enters into force.

Article 19

Verification

Any Party which has reason to believe that another Party is acting or has acted in breach of its obligations under this Convention may inform the Secretariat thereof, and in such an event, shall simultaneously and immediately inform, directly or through the Secretariat, the Party against whom the allegations are made. All relevant information should be submitted by the Secretariat to the Parties.

Article 20

Settlement of Disputes

1. In case of a dispute between Parties as to the interpretation or application of, or compliance with, this Convention or any protocol thereto, they shall seek a settlement of the dispute through negotiation or any other peaceful means of their own choice.

2. If the Parties concerned cannot settle their dispute through the means mentioned in the preceding paragraph, the dispute, if the parties to the dispute agree, shall be submitted to the International Court of Justice or to arbitration under the conditions set out in Annex VI on Arbitration. However, failure to reach common agreement on submission of the dispute to the International Court of Justice or to arbitration shall not absolve the Parties from the responsibility of continuing to seek to resolve it by the means referred to in paragraph 1.

3. When ratifying, accepting, approving, formally confirming or acceding to this Convention, or at any time thereafter, a State or political and/or economic integration organization may declare that it recognizes as compulsory ipso facto and without special agreement, in relation to any Party accepting the same obligation:

- (a) submission of the dispute to the International Court of Justice; and/or
- (b) arbitration in accordance with the procedures set out in Annex VI.

Such declaration shall be notified in writing to the Secretariat which shall communicate it to the Parties.

Article 21

Signature

This Convention shall be open for signature by States, by Namibia, represented by the United Nations Council for Namibia, and by political and/or economic integration organizations, in Basel on 22 March 1989, at the Federal Department of Foreign Affairs of Switzerland in Berne from 23 March 1989 to 30 June 1989, and at United Nations Headquarters in New York from 1 July 1989 to 22 March 1990.

Schedule 1 Amendments

Article 22

Ratification, Acceptance, Formal Confirmation or Approval

1. This Convention shall be subject to ratification, acceptance or approval by States and by Namibia, represented by the United Nations Council for Namibia, and to formal confirmation or approval by political and/or economic integration organizations. Instruments of ratification, acceptance, formal confirmation, or approval shall be deposited with the Depositary.
2. Any organization referred to in paragraph 1 above which becomes a Party to this Convention without any of its member States being a Party shall be bound by all the obligations under the Convention. In the case of such organizations, one or more of whose member States is a Party to the Convention, the organization and its member States shall decide on their respective responsibilities for the performance of their obligations under the Convention. In such cases, the organization and the member States shall not be entitled to exercise rights under the Convention concurrently.
3. In their instruments of formal confirmation or approval, the organizations referred to in paragraph 1 above shall declare the extent of their competence with respect to the matters governed by the Convention. These organizations shall also inform the Depositary, who will inform the Parties of any substantial modification in the extent of their competence.

Article 23

Accession

1. This Convention shall be open for accession by States, by Namibia, represented by the United Nations Council for Namibia, and by political and/or economic integration organizations from the day after the date on which the Convention is closed for signature. The instruments of accession shall be deposited with the Depositary.
2. In their instruments of accession, the organizations referred to in paragraph 1 above shall declare the extent of their competence with respect to the matters governed by the Convention. These organizations shall also inform the Depositary of any substantial modification in the extent of their competence.
3. The provisions of Article 22 paragraph 2, shall apply to political and/or economic integration organizations which accede to this Convention.

Article 24

Right to Vote

1. Except as provided for in paragraph 2 below, each Contracting Party to this Convention shall have one vote.
2. Political and/or economic integration organizations, in matters within their competence, in accordance with Article 22, paragraph 3, and Article 23, paragraph 2, shall exercise their right to vote with a number of votes equal to the number of their member States which are Parties to the Convention or the relevant protocol. Such organizations shall not exercise their right to vote if their member States exercise theirs, and vice versa.

Article 25

Entry into Force

1. This Convention shall enter into force on the ninetieth day after the date of deposit of the twentieth instrument of ratification, acceptance, formal confirmation, approval or accession.
2. For each State or political and/or economic integration organization which ratifies, accepts, approves or formally confirms this Convention or accedes thereto after the date of the deposit of the twentieth instrument of ratification, acceptance, approval, formal confirmation or accession, it shall enter into force on the ninetieth day after the date of deposit by such State or political and/or economic integration organization of its instrument of ratification, acceptance, approval, formal confirmation or accession.
3. For the purposes of paragraphs 1 and 2 above, any instrument deposited by a political and/or economic integration organization shall not be counted as additional to those deposited by member States of such organization.

Article 26

Reservations and Declarations

1. No reservation or exception may be made to this Convention.
2. Paragraph 1 of this Article does not preclude a State or political and/or economic integration organization, when signing, ratifying, accepting, approving, formally confirming or acceding to this Convention, from making declarations or statements, however phrased or named, with a view, inter alia, to the harmonization of its laws and regulations with the provisions of this Convention, provided that such declarations or statements do not purport to exclude or to modify the legal effects of the provisions of the Convention in their application to that State.

Schedule 1 Amendments

Article 27

Withdrawal

1. At any time after three years from the date on which this Convention has entered into force for a Party, that Party may withdraw from the Convention by giving written notification to the Depository.
2. Withdrawal shall be effective one year from receipt of notification by the Depository, or on such later date as may be specified in the notification.

Article 28

Depository

The Secretary-General of the United Nations shall be the Depository of this Convention and of any protocol thereto.

Article 29

Authentic texts

The original Arabic, Chinese, English, French, Russian and Spanish texts of this Convention are equally authentic.

IN WITNESS WHEREOF the undersigned, being duly authorized to that effect, have signed this Convention.

DONE at Basel on the 22nd day of March 1989.

125 Schedule

Add at the end:

Annex V A

INFORMATION TO BE PROVIDED ON NOTIFICATION

1. Reason for waste export
2. Exporter of the waste¹
3. Generator(s) of the waste and site of generation¹
4. Disposer of the waste and actual site of disposal¹
5. Intended carrier(s) of the waste or their agents, if known¹
6. Country of export of the waste
Competent authority²
7. Expected countries of transit
Competent authority²

8. Country of import of the waste
Competent authority²
9. General or single notification
10. Projected date(s) of shipment(s) and period of time over which waste is to be exported and proposed itinerary (including point of entry and exit)³
11. Means of transport envisaged (road, rail, sea, air, inland waters)
12. Information relating to insurance⁴
13. Designation and physical description of the waste including Y number and UN number and its composition⁵ and information on any special handling requirements including emergency provisions in case of accidents
14. Type of packaging envisaged (e.g. bulk, drummed, tanker)
15. Estimated quantity in weight/volume⁶
16. Process by which the waste is generated⁷
17. For wastes listed in Annex I, classifications from Annex III: hazardous characteristic, H number, and UN class
18. Method of disposal as per Annex IV
19. Declaration by the generator and exporter that the information is correct
20. Information transmitted (including technical description of the plant) to the exporter or generator from the disposer of the waste upon which the latter has based his assessment that there was no reason to believe that the wastes will not be managed in an environmentally sound manner in accordance with the laws and regulations of the country of import
21. Information concerning the contract between the exporter and disposer.

Notes

- 1 Full name and address, telephone, telex or telefax number and the name, address, telephone, telex or telefax number of the person to be contacted.
 - 2 Full name and address, telephone, telex or telefax number.
 - 3 In the case of a general notification covering several shipments, either the expected dates of each shipment or, if this is not known, the expected frequency of the shipments will be required.
 - 4 Information to be provided on relevant insurance requirements and how they are met by exporter, carrier and disposer.
 - 5 The nature and the concentration of the most hazardous components, in terms of toxicity and other dangers presented by the waste both in handling and in relation to the proposed disposal method.
 - 6 In the case of a general notification covering several shipments, both the estimated total quantity and the estimated quantities for each individual shipment will be required.
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Schedule 1 Amendments

- 7 Insofar as this is necessary to assess the hazard and determine the appropriateness of the proposed disposal operation.

Annex V B

INFORMATION TO BE PROVIDED ON THE MOVEMENT DOCUMENT

1. Exporter of the waste¹
2. Generator(s) of the waste and site of generation¹
3. Disposer of the waste and actual site of disposal¹
4. Carrier(s) of the waste¹ or his agent(s)
5. Subject of general or single notification
6. The date the transboundary movement started and date(s) and signature on receipt by each person who takes charge of the waste
7. Means of transport (road, rail, inland waterway, sea, air) including countries of export, transit and import, also point of entry and exit where these have been designated
8. General description of the waste (physical state, proper UN shipping name and class, UN number, Y number and H number as applicable)
9. Information on special handling requirements including emergency provision in case of accidents
10. Type and number of packages
11. Quantity in weight/volume
12. Declaration by the generator or exporter that the information is correct
13. Declaration by the generator or exporter indicating no objection from the competent authorities of all States concerned which are Parties
14. Certification by disposer of receipt at designated disposal facility and indication of method of disposal and of the approximate date of disposal.

Notes

The information required on the movement document shall where possible be integrated in one document with that required under transport rules. Where this is not possible the information should complement rather than duplicate that required under the transport rules. The movement document shall carry instructions as to who is to provide information and fill-out any form.

- 1 Full name and address, telephone, telex or telefax number and the name, address, telephone, telex or telefax number of the person to be contacted in case of emergency.

Annex VI

ARBITRATION

Article 1

Unless the agreement referred to in Article 20 of the Convention provides otherwise, the arbitration procedure shall be conducted in accordance with Articles 2 to 10 below.

Article 2

The claimant party shall notify the Secretariat that the parties have agreed to submit the dispute to arbitration pursuant to paragraph 2 or paragraph 3 of Article 20 and include, in particular, the Articles of the Convention the interpretation or application of which are at issue. The Secretariat shall forward the information thus received to all Parties to the Convention.

Article 3

The arbitral tribunal shall consist of three members. Each of the Parties to the dispute shall appoint an arbitrator, and the two arbitrators so appointed shall designate by common agreement the third arbitrator, who shall be the chairman of the tribunal. The latter shall not be a national of one of the parties to the dispute, nor have his usual place of residence in the territory of one of these parties, nor be employed by any of them, nor have dealt with the case in any other capacity.

Article 4

1. If the chairman of the arbitral tribunal has not been designated within two months of the appointment of the second arbitrator, the Secretary-General of the United Nations shall, at the request of either party, designate him within a further two months period.
2. If one of the parties to the dispute does not appoint an arbitrator within two months of the receipt of the request, the other party may inform the Secretary-General of the United Nations who shall designate the chairman of the arbitral tribunal within a further two months' period. Upon designation, the chairman of the arbitral tribunal shall request the party which has not appointed an arbitrator to do so within two months. After such period, he shall inform the Secretary-General of the United Nations, who shall make this appointment within a further two months' period.

Article 5

1. The arbitral tribunal shall render its decision in accordance with international law and in accordance with the provisions of this Convention.
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Schedule 1 Amendments

2. Any arbitral tribunal constituted under the Provisions of this Annex shall draw up its own rules of procedure.

Article 6

1. The decisions of the arbitral tribunal both on procedure and on substance, shall be taken by majority vote of its members.
2. The tribunal may take all appropriate measures in order to establish the facts. It may, at the request of one of the parties, recommend essential interim measures of protection.
3. The parties to the dispute shall provide all facilities necessary for the effective conduct of the proceedings.
4. The absence or default of a party in the dispute shall not constitute an impediment to the proceedings.

Article 7

The tribunal may hear and determine counter-claims arising directly out of the subject-matter of the dispute.

Article 8

Unless the arbitral tribunal determines otherwise because of the particular circumstances of the case, the expenses of the tribunal, including the remuneration of its members, shall be borne by the parties to the dispute in equal shares. The tribunal shall keep a record of all its expenses, and shall furnish a final statement thereof to the parties.

Article 9

Any Party that has an interest of a legal nature in the subject-matter of the dispute which may be affected by the decision in the case, may intervene in the proceedings with the consent of the tribunal.

Article 10

1. The tribunal shall render its award within five months of the date on which it is established unless it finds it necessary to extend the time-limit for a period which should not exceed five months.
2. The award of the arbitral tribunal shall be accompanied by a statement of reasons. It shall be final and binding upon the parties to the dispute.
3. Any dispute which may arise between the parties concerning the interpretation or execution of the award may be submitted by either party to the arbitral tribunal

which made the award or, if the latter cannot be seized thereof, to another tribunal constituted for this purpose in the same manner as the first.

126 Transitional—continued application of old law to pre-commencement applications and permits etc.

- (1) This item applies to:
 - (a) an application under Part 2 of the *Hazardous Waste (Regulation of Exports and Imports) Act 1989* if:
 - (i) the application was received by the Minister before the commencement of this item; and
 - (ii) the Minister did not make a decision on the application before the commencement of this item; and
 - (b) a statutory permit granted before the commencement of this item.
- (2) Despite the following amendments made by this Act;
 - (a) the amendments of Part 2 of the *Hazardous Waste (Regulation of Exports and Imports) Act 1989* (other than the amendments made by items 82 and 85);
 - (b) the amendments of Part 1 of that Act, in so far as they relate to Part 2 of that Act;

that Act continues to apply, in relation to such an application or permit, as if those amendments had not been made.

127 Transitional—pre-commencement permits etc. to lapse after 12 months

- (1) This item applies to a statutory permit if the permit was:
 - (a) granted before the commencement of this item; or
 - (b) applied for before the commencement of this item and granted after the commencement of this item.
- (2) Despite anything in the *Hazardous Waste (Regulation of Exports and Imports) Act 1989*, the permit does not authorise an import or export that takes place more than 12 months after the commencement of this item.

128 Transitional—revocation and surrender of permits

To avoid doubt, the amendments made by items 82 and 85 do not affect the interpretation of subsection 24(2) or 25(2) of the *Hazardous Waste (Regulation of Exports and Imports) Act 1989* as in force at any time before the commencement of those items.

129 Transitional—amendment of the *Customs Act 1901* not affected by repeal of Part 7 of the *Hazardous Waste (Regulation of Exports and Imports) Act 1989*

The repeal of Part 7 of the *Hazardous Waste (Regulation of Exports and Imports) Act 1989* made by this Act does not affect the operation of an amendment made by the repealed Part.

*[Minister's second reading speech made in—
Senate on 1 May 1996
House of Representatives on 23 May 1996]*