



Hazardous Waste (Regulation of Exports and Imports) Amendment Act 2021

No. 73, 2021

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

Note: An electronic version of this Act is available on the Federal Register of Legislation (<https://www.legislation.gov.au/>)

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No. 73, 2021

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

[Assented to 30 June 2021]

The Parliament of Australia enacts:

1 Short title

This Act is the *Hazardous Waste (Regulation of Exports and Imports) Amendment Act 2021*.

No. 73, 2021 *Hazardous Waste (Regulation of Exports and Imports) Amendment Act* 1
2021

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	30 June 2021
2. Schedules 1, 2 and 3	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	30 December 2021
3. Schedule 4, Parts 1 and 2	At the same time as the provisions covered by table item 2.	30 December 2021
4. Schedule 4, Part 3	The later of: (a) immediately after the commencement of the provisions covered by table item 2; and (b) immediately after the commencement of the <i>Federal Circuit and Family Court of Australia Act 2021</i> .	30 December 2021 (paragraph (a) applies)
5. Schedule 5	At the same time as the provisions covered by table item 2.	30 December 2021

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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

Hazardous Waste (Regulation of Exports and Imports) Act 1989

1 Section 4 (after paragraph (d) of the definition of *hazardous waste*)

Insert:

or (e) plastic wastes, including mixtures of such wastes, covered by Annex II to the Basel Convention;

2 Section 4 (definition of *hazardous waste*)

Omit “paragraph 4”, substitute “paragraph 3 or 4”.

Schedule 2—Regulatory powers

Part 1—Amendments

Hazardous Waste (Regulation of Exports and Imports) Act 1989

1 Section 4

Insert:

audit means an audit under Subdivision B of Division 2 of Part 5.

Australian jurisdiction means Australia or Australian waters, including over Australia or Australian waters.

civil penalty provision has the same meaning as in the Regulatory Powers Act.

evidential material has the same meaning as in the Regulatory Powers Act.

2 Section 4 (definition of *identity card*)

Repeal the definition, substitute:

identity card, in relation to an inspector, means an identity card issued to the inspector under section 35 or 76 of the Regulatory Powers Act to the extent that either of those sections applies in relation to a provision of this Act.

3 Section 4 (definition of *offence against a provision of Part 4*)

Repeal the definition.

4 Section 4 (definition of *offence against this Act*)

Repeal the definition.

5 Section 4

Insert:

Regulatory Powers Act means the *Regulatory Powers (Standard Provisions) Act 2014*.

relevant person, for an audit, has the meaning given by section 52.

Secretary means the Secretary of the Department.

6 Section 4 (definition of *within Australian jurisdiction*)

Repeal the definition.

7 Section 8

Repeal the section.

8 Section 9 (heading)

Omit “of Act”.

9 Section 9

Omit “Act extends”, substitute “Act, and the Regulatory Powers Act to the extent that it applies in relation to a provision of this Act, extend”.

10 After section 9

Insert:

9A Extraterritorial operation

This Act and Regulatory Powers Act generally apply within and outside of Australian jurisdiction

- (1) Subject to this section, this Act, and the Regulatory Powers Act as it applies in relation to this Act, extend to acts, omissions, matters and things outside of Australian jurisdiction.

Note: Some searchable places will be outside of Australian jurisdiction.

Regulatory provisions applying outside of Australian jurisdiction apply only to Australian entities

- (2) Subject to subsections (4) and (5), to the extent that a provision of this Act, or a provision of the Regulatory Powers Act as it applies in relation to this Act, has effect in relation to anywhere outside of

Australian jurisdiction, that provision applies only in relation to relevant Australian entities.

Regulatory provisions apply to all entities etc. in Australian jurisdiction

- (3) Subject to subsection (4), to the extent that a provision of this Act, or a provision of the Regulatory Powers Act as it applies in relation to this Act, has effect in relation to Australian jurisdiction, that provision applies in relation to:
- (a) all relevant persons including foreign persons; and
 - (b) all relevant searchable places in that jurisdiction, including any owned or occupied by foreign persons.

This Act and the Regulatory Powers Act have effect subject to international law obligations

- (4) This Act, and the Regulatory Powers Act as it applies in relation to this Act, have effect subject to:
- (a) the obligations of Australia under international law, including obligations under any international agreement binding on Australia; and
 - (b) any law of the Commonwealth giving effect to such an agreement.
- (5) The exercise in a foreign country of a power under this Act, or the Regulatory Powers Act as it applies in relation to this Act, is subject to the consent of the foreign country, if such consent is required under international law (including requirements under any international agreement binding on Australia).

Definitions

- (6) In this section:

Australian entity means:

- (a) an Australian citizen; or
- (b) an individual who is a resident of Australia; or
- (c) a body corporate established by or under a law of the Commonwealth, of a State or of a Territory; or
- (d) an Australian aircraft; or

(e) an Australian vessel.

foreign person means a person other than:

- (a) an Australian citizen; or
- (b) an individual who is a resident of Australia; or
- (c) a body corporate established by or under a law of the Commonwealth, of a State or of a Territory.

9B Geographical application of offences

Division 14 (standard geographical jurisdiction) of the *Criminal Code* does not apply in relation to an offence against this Act.

Note: The extended geographical application that section 9A gives to this Act applies to the offences and civil penalty provisions of this Act.

11 Section 10A

After “Part 2.5”, insert “and Division 14”.

12 Subsection 17(2)

Omit “(4) or (5)”, substitute “(4), (5) or (5A)”.

13 After subsection 17(5)

Insert:

(5A) The Minister may decide not to grant the permit if the applicant has previously failed to provide, or to arrange to provide, an auditor with assistance that is reasonably necessary for the conduct of an audit.

Note 1: For the requirement to provide an auditor with assistance that is reasonably necessary for the conduct of an audit, see section 54.

Note 2: The audit need not relate to a permit. Assistance may be requested in relation to any audit of operations covered by a permit, an order under Part 3, a notification given under subsection 33G(1), or other prescribed operations: see section 50.

14 After subsection 17A(4)

Insert:

(4A) The Minister may decide not to grant the permit if the applicant has previously failed to provide, or to arrange to provide, an auditor

with assistance that is reasonably necessary for the conduct of an audit.

Note 1: For the requirement to provide an auditor with assistance that is reasonably necessary for the conduct of an audit, see section 54.

Note 2: The audit need not relate to a permit. Assistance may be requested in relation to any audit of operations covered by a permit, an order under Part 3, a notification given under subsection 33G(1), or other prescribed operations: see section 50.

15 Section 41

Repeal the section.

16 Part 5 (heading)

Repeal the heading, substitute:

Part 5—Compliance powers

17 Before section 42

Insert:

Division 1—Inspectors

18 After section 42

Insert:

Division 2—Powers of inspectors

Subdivision A—Monitoring and investigation powers

43 Monitoring powers

Provisions subject to monitoring

- (1) The following provisions are subject to monitoring under Part 2 of the Regulatory Powers Act:
 - (a) each provision of this Act;
 - (b) an offence against the *Crimes Act 1914* or the *Criminal Code* to the extent that it relates to this Act.

Schedule 2 Regulatory powers
Part 1 Amendments

Note: Part 2 of the Regulatory Powers Act creates a framework for monitoring whether the provisions have been complied with. It includes powers of entry and inspection.

Information subject to monitoring

- (2) Information given in compliance or purported compliance with a provision of this Act is subject to monitoring under Part 2 of the Regulatory Powers Act.

Note: Part 2 of the Regulatory Powers Act creates a framework for monitoring whether the information is correct. It includes powers of entry and inspection.

Related provisions, authorised applicant, issuing officer, relevant chief executive and relevant court

- (3) For the purposes of Part 2 of the Regulatory Powers Act, as it applies in relation to the provisions mentioned in subsection (1) and the information mentioned in subsection (2):
- (a) there are no related provisions; and
 - (b) an inspector is an authorised applicant; and
 - (c) a magistrate is an issuing officer; and
 - (d) the Secretary is the relevant chief executive; and
 - (e) the Court is the relevant court.

Authorised persons

- (4) For the purposes of Part 2 of the Regulatory Powers Act:
- (a) an inspector is an authorised person in relation to the provisions mentioned in subsection (1) and the information mentioned in subsection (2); and
 - (b) an officer of Customs is an authorised person in relation to either of sections 48 and 49 of this Act and the information given in compliance or purported compliance with either of those sections.

Person assisting

- (5) An authorised person may be assisted by other persons in exercising powers or performing functions or duties under Part 2 of

the Regulatory Powers Act in relation to the provisions mentioned in subsection (1) and the information mentioned in subsection (2).

44 Modifications of monitoring powers

Additional monitoring powers

- (1) For the purposes of determining:
 - (a) whether a provision mentioned in subsection 43(1) has been, or is being, complied with; or
 - (b) the correctness of information mentioned in subsection 43(2);the additional powers mentioned in subsection (2) of this section are taken to be included in the monitoring powers under Part 2 of the Regulatory Powers Act.
- (2) The additional monitoring powers are:
 - (a) the power to sample any thing in a searchable place entered under Part 2 of the Regulatory Powers Act; and
 - (b) the power to remove, test and analyse such samples; and
 - (c) the power to secure a searchable place entered under Part 2 of the Regulatory Powers Act; and
 - (d) the power to secure things in a searchable place entered under Part 2 of the Regulatory Powers Act for the purposes of sampling, testing or analysing those things; and
 - (e) the powers set out in sections 47, 48 and 49 of this Act.

Premises

- (3) Part 2 of the Regulatory Powers Act applies in relation to the provisions mentioned in subsection 43(1) of this Act, and the information mentioned in subsection 43(2) of this Act, as if a reference in that Part to “premises” were a reference to “searchable place” as defined in section 4 of this Act.

Occupier

- (4) Part 2 of the Regulatory Powers Act applies in relation to the provisions mentioned in subsection 43(1) of this Act, and the information mentioned in subsection 43(2) of this Act, as if a

reference in that Part to “occupier” were a reference to “relevant authority” as defined in section 4 of this Act.

Stopping or detaining a vessel, aircraft or vehicle

- (5) If an authorised person is authorised under section 18 of the Regulatory Powers Act, as it applies in relation to:
- (a) a provision mentioned in subsection 43(1) of this Act; and
 - (b) information mentioned in subsection 43(2) of this Act;
- to enter a searchable place that is a vessel, aircraft or vehicle, the monitoring powers under Part 2 of the Regulatory Powers Act are taken to include a power that the authorised person may stop and detain the vessel, aircraft or vehicle for the purposes of:
- (c) entering the vessel, aircraft or vehicle; and
 - (d) exercising monitoring powers under that Part.

Announcement before entry under a warrant

- (6) For the purposes of determining:
- (a) whether a provision mentioned in subsection 43(1) has been, or is being, complied with; or
 - (b) the correctness of information mentioned in subsection 43(2);
- paragraph 26(b) of the Regulatory Powers Act is taken not to apply to an authorised person if the authorised person reasonably believes that showing the authorised person’s identity card before entering a searchable place under Part 2 of that Act is not practical in the circumstances.
- (7) However, if either of the following persons is present at the searchable place when the authorised person so enters it:
- (a) the relevant authority in relation to the searchable place;
 - (b) another person who apparently represents the relevant authority in relation to the searchable place;
- the Regulatory Powers Act is taken to require the authorised person to show the authorised person’s identity card to the relevant authority, or other person, as soon as is practicable.

Use of force in executing a monitoring warrant

- (8) In executing a monitoring warrant under Part 2 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in subsection 43(1) of this Act and the information mentioned in subsection 43(2) of this Act:
- (a) an authorised person may use such force against things as is necessary and reasonable in the circumstances; and
 - (b) a person assisting the authorised person may use such force against things as is necessary and reasonable in the circumstances.

45 Investigation powers

Provisions subject to investigation

- (1) A provision is subject to investigation under Part 3 of the Regulatory Powers Act if it is:
- (a) an offence against this Act; or
 - (b) a civil penalty provision of this Act; or
 - (c) an offence against the *Crimes Act 1914* or the *Criminal Code* to the extent that it relates to this Act.

Note: Part 3 of the Regulatory Powers Act creates a framework for investigating whether a provision has been contravened. It includes powers of entry, search and seizure.

Related provisions, authorised applicant, issuing officer, relevant chief executive and relevant court

- (2) For the purposes of Part 3 of the Regulatory Powers Act, as it applies in relation to evidential material that relates to a provision mentioned in subsection (1):
- (a) there are no related provisions; and
 - (b) an inspector is an authorised applicant; and
 - (c) a magistrate is an issuing officer; and
 - (d) the Secretary is the relevant chief executive; and
 - (e) the Court is the relevant court.

Authorised persons

- (3) For the purposes of Part 3 of the Regulatory Powers Act:
- (a) an inspector is an authorised person in relation to evidential material that relates to a provision mentioned in subsection (1); and
 - (b) an officer of Customs is an authorised person in relation to evidential material that relates to either of sections 48 and 49 of this Act.

Person assisting

- (4) An authorised person may be assisted by other persons in exercising powers or performing functions or duties under Part 3 of the Regulatory Powers Act in relation to evidential material that relates to a provision mentioned in subsection (1).

46 Modifications of investigation powers

Additional investigation powers

- (1) The additional powers mentioned in subsection (2) are taken to be included in the investigation powers under Part 3 of the Regulatory Powers Act, as that Part applies in relation to evidential material that relates to a provision mentioned in subsection 45(1) of this Act.
- (2) The additional investigation powers are:
- (a) the power to sample any thing in a searchable place entered under Part 3 of the Regulatory Powers Act; and
 - (b) the power to remove, test and analyse such samples; and
 - (c) the power to secure a searchable place entered under Part 3 of the Regulatory Powers Act; and
 - (d) the power to secure things in a searchable place entered under Part 3 of the Regulatory Powers Act for the purposes of sampling, testing or analysing those things; and
 - (e) the powers set out in sections 47, 48 and 49 of this Act.

Premises

- (3) Part 3 of the Regulatory Powers Act applies in relation to evidential material that relates to a provision mentioned in subsection 45(1) of this Act as if a reference in that Part to “premises” were a reference to “searchable place” as defined in section 4 of this Act.

Occupier

- (4) Part 3 of the Regulatory Powers Act applies in relation to evidential material that relates to a provision mentioned in subsection 45(1) of this Act as if a reference in that Part to “occupier” were a reference to “relevant authority” as defined in section 4 of this Act.

Stopping or detaining a vessel, aircraft or vehicle

- (5) If an authorised person is authorised under section 48 of the Regulatory Powers Act, as it applies in relation to evidential material that relates to a provision mentioned in subsection 45(1) of this Act, to enter a searchable place that is a vessel, aircraft or vehicle, the investigation powers under Part 3 of the Regulatory Powers Act are taken to include a power that the authorised person may stop and detain the vessel, aircraft or vehicle for the purposes of:
- (a) entering the vessel, aircraft or vehicle; and
 - (b) exercising investigation powers under that Part.

Use of force in executing an investigation warrant

- (6) In executing an investigation warrant under Part 3 of the Regulatory Powers Act, as that Part applies in relation to evidential material that relates to a provision mentioned in subsection 45(1) of this Act:
- (a) an authorised person may use such force against things as is necessary and reasonable in the circumstances; and
 - (b) a person assisting the authorised person may use such force against things as is necessary and reasonable in the circumstances.

47 Additional monitoring and investigation powers—control movement of vessels and aircraft etc.

- (1) For the purposes of paragraph 44(2)(e) or 46(2)(e), the powers under Part 2 or 3 of the Regulatory Powers Act include the powers in this section if an authorised person acting under that Part has reasonable grounds for suspecting that there is in or on:
 - (a) an Australian vessel or Australian aircraft; or
 - (b) a vessel or aircraft that is within Australian jurisdiction; hazardous waste that is to be, or that has been, imported, exported or the subject of a transit proposal.
- (2) If this section applies in relation to a vessel, the authorised person may require the person in command or control, or who appears to be in command or control, of the vessel to do one or more of the following things:
 - (a) ensure the vessel does not remain, or does not come, as the case requires, within Australian jurisdiction;
 - (b) ensure the vessel is brought to a specified place to which it is safe and practicable to bring the vessel;
 - (c) ensure the vessel remains at a specified place until an authorised person permits the vessel to leave;
 - (d) arrange for goods being carried on the vessel to be unloaded;
 - (e) ensure that goods being carried on the vessel are not unloaded until an authorised person permits their unloading.
- (3) If this section applies in relation to an aircraft, the authorised person may require the person in command or control, or who appears to be in command or control, of the aircraft to do one or more of the following things:
 - (a) ensure the aircraft does not remain, or does not come, as the case requires, within Australian jurisdiction;
 - (b) ensure the aircraft is landed at a specified airport at which it is safe and practicable to land the aircraft;
 - (c) ensure the aircraft remains at a specified airport until an authorised person permits the aircraft to leave;
 - (d) arrange for goods being carried on the aircraft to be unloaded;

- (e) ensure that goods being carried on the aircraft are not unloaded until an authorised person permits their unloading.
- (4) An authorised person may communicate a requirement under this section by means of:
 - (a) an international signal code; or
 - (b) if the requirement relates to a vessel—any other internationally recognised means of communication with a vessel; or
 - (c) if the requirement relates to an aircraft—any other internationally recognised means of communication with an aircraft.

Complying with requirement

- (5) A person contravenes this subsection if:
 - (a) the person is subject to a requirement under this section; and
 - (b) the person fails to comply with the requirement.

Note: An example of failing to comply with a requirement is refusing to comply with it.

- (6) Subsection (5) does not apply if complying with the requirement would have endangered the person or any other person.

Note: A person who wishes to rely on this subsection bears an evidential burden in relation to the matters in this subsection (see subsection 13.3(3) of the *Criminal Code* and section 96 of the *Regulatory Powers Act*).

Strict liability offence

- (7) A person commits an offence of strict liability if the person contravenes subsection (5).

Penalty: 30 penalty units.

Civil penalty provision

- (8) A person is liable to a civil penalty if the person contravenes subsection (5).

Civil penalty: 240 penalty units.

48 Additional monitoring and investigation powers—production of permits and orders for import or export

- (1) For the purposes of paragraph 44(2)(e) or 46(2)(e), the powers under Part 2 or 3 of the Regulatory Powers Act include the powers in this section if an authorised person acting under that Part has reasonable grounds for suspecting that a person (the *suspected person*):
- (a) intends to import or export hazardous waste; or
 - (b) is importing or exporting hazardous waste; or
 - (c) has imported or exported hazardous waste.
- (2) The authorised person may require the suspected person to produce, or to produce evidence of the existence and contents of:
- (a) a Basel permit or special permit authorising the import or export; or
 - (b) an order under section 34, 35, 35A or 38 authorising or requiring the import or export.

Complying with requirement

- (3) A person contravenes this subsection if:
- (a) the person is subject to a requirement under subsection (2); and
 - (b) the person fails to comply with the requirement.

Note: An example of failing to comply with a requirement is refusing to comply with it.

Strict liability offence

- (4) A person commits an offence of strict liability if the person contravenes subsection (3).

Penalty: 30 penalty units.

Civil penalty provision

- (5) A person is liable to a civil penalty if the person contravenes subsection (3).

Civil penalty: 240 penalty units.

49 Additional monitoring and investigation powers—production of transit permits

- (1) For the purposes of paragraph 44(2)(e) or 46(2)(e), the powers under Part 2 or 3 of the Regulatory Powers Act include the powers in this section if an authorised person acting under that Part 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) a transit permit authorising the carrying out of the transit proposal; or
 - (b) a notification in force under subsection 33G(1) that a transit permit is not required for the transit proposal.

Complying with requirement

- (3) A person contravenes this subsection if:
- (a) the person is subject to a requirement under subsection (2); and
 - (b) the person fails to comply with the requirement.

Note: An example of failing to comply with a requirement is refusing to comply with it.

Strict liability offence

- (4) A person commits an offence of strict liability if the person contravenes subsection (3).

Penalty: 30 penalty units.

Civil penalty provision

- (5) A person is liable to a civil penalty if the person contravenes subsection (3).

Civil penalty: 240 penalty units.

Subdivision B—Audit powers

50 Audits

Operations in relation to which audit may be required

- (1) The Secretary may, in writing, require an audit to be conducted of any of the following:
 - (a) operations purportedly covered by an import proposal that is or was covered by an import permit;
 - (b) operations purportedly covered by an export proposal that is or was covered by an export permit;
 - (c) operations purportedly covered by a transit proposal that is or was covered by a transit permit;
 - (d) operations that are or were covered by an order under Part 3;
 - (e) operations that are or were purportedly covered by a notification under subsection 33G(1);
 - (f) operations that are or were carried out, or proposed to be carried out, in any other circumstances prescribed by the regulations for the purposes of this paragraph.

Matters to which audit must relate

- (2) An audit under subsection (1) must relate to whether operations referred to in a paragraph of subsection (1):
 - (a) are covered by any permit, order or notification referred to in that paragraph; or
 - (b) are complying, have complied, or will comply with any permit, order or notification referred to in that paragraph; or
 - (c) are complying, have complied, or will comply with any requirement of, or made under, this Act; or
 - (d) if a notification is referred to in that paragraph—would likely result in the Minister still being satisfied of the criteria in subsection 33G(1) were the Minister to consider making the notification again; or
 - (e) are complying, have complied, or will comply with any other matter relating to the operation of this Act prescribed by the regulations for the purposes of this paragraph.

- (3) An audit under subsection (1) may deal with anything that is:
- (a) reasonably necessary for the effective conduct of the audit; or
 - (b) incidental to the matter to which the audit relates.

Who may conduct audit

- (4) An audit under this section must be conducted by an inspector.

51 Single audit or program of audits may be required

The Secretary may require, under section 50, a single audit, or a program of audits, to be conducted in relation to a specified matter or matters included in a specified class of matters.

Note: If the Secretary has required a program of audits to be conducted in relation to a matter, the Secretary may also require additional audits to be conducted in relation to the matter (see subsection 33(1) of the *Acts Interpretation Act 1901*).

52 Relevant person for an audit

The *relevant person* for an audit is as follows:

- (a) for an audit of operations relating to a permit—the holder of the permit;
- (b) for an audit of operations relating to an order under Part 3—the person who is the subject of the order;
- (c) for an audit of operations relating to a notification under subsection 33G(1)—the person notified;
- (d) for an audit of operations that are, were, or proposed to be carried out in circumstances prescribed by the regulations for the purposes of paragraph 50(1)(f)—the person who is or was carrying out, or is proposing to carry out, the operations.

53 Conduct of audit

- (1) The Secretary need not give notice of an audit required under this Subdivision.
- (2) Before starting to conduct an audit, an auditor must give the relevant person for the audit a description of the scope of the audit.

Regulations may make provision in relation to other matters

- (3) Regulations made for the purposes of this subsection may make provision for and in relation to:
 - (a) other matters relating to the conduct of an audit; and
 - (b) the process to be followed after an audit has been completed.
- (4) Without limiting subsection (3), the regulations may make provision for and in relation to the following:
 - (a) information that must be provided to the relevant person for the audit before the audit, during the audit or after the audit is completed;
 - (b) requirements for reports to be provided in relation to an audit.

54 Relevant person for an audit must provide assistance

- (1) The relevant person for an audit must provide the auditor with assistance that is reasonably necessary for the conduct of the audit.
- (2) Without limiting subsection (1), providing assistance that is reasonably necessary includes complying with any request under subsection 55(1) for the audit.

Note: Failing to provide assistance that is reasonably necessary for the conduct of an audit may result in, for example, the revocation or variation of a permit or the revocation of notification given under subsection 33G(1).

55 Powers of auditors

- (1) For the purpose of conducting an audit, an auditor may request a person who the auditor reasonably believes has information or documents that are relevant to the audit to answer questions, provide information in writing, or produce the documents.

Note: A person may commit an offence or be liable to a civil penalty if the person provides false or misleading information or documents (see sections 137.1 and 137.2 of the *Criminal Code*).

- (2) An auditor may make copies of, or take extracts from, a document or record produced under subsection (1).

19 Sections 43 to 56

Repeal the sections.

20 After Part 5

Insert:

Part 5AA—Enforcement powers

Division 1—Civil penalty provisions

56AA Civil penalty provisions

Enforceable civil penalty provisions

- (1) Each civil penalty provision of this Act is enforceable under Part 4 of the Regulatory Powers Act.

Note: Part 4 of the Regulatory Powers Act allows a civil penalty provision to be enforced by obtaining an order for a person to pay a pecuniary penalty for the contravention of the provision.

Authorised applicant

- (2) For the purposes of Part 4 of the Regulatory Powers Act, the Secretary is an authorised applicant in relation to the civil penalty provisions of this Act.

Relevant court

- (3) For the purposes of Part 4 of the Regulatory Powers Act, the Court is a relevant court in relation to the civil penalty provisions of this Act.

Division 2—Infringement notices

56AB Infringement notices

Provisions subject to an infringement notice

- (1) A provision of this Act contravention of which is an offence of strict liability is subject to an infringement notice under Part 5 of the Regulatory Powers Act.

Note: Part 5 of the Regulatory Powers Act creates a framework for using infringement notices in relation to provisions.

Infringement officer

- (2) For the purposes of Part 5 of the Regulatory Powers Act, an inspector is an infringement officer in relation to the provisions mentioned in subsection (1).

Relevant chief executive

- (3) For the purposes of Part 5 of the Regulatory Powers Act, the Secretary is the relevant chief executive in relation to the provisions mentioned in subsection (1).

Division 3—Enforceable undertakings

56AC Enforceable undertakings

Enforceable provisions

- (1) The provisions of this Act are enforceable under Part 6 of the Regulatory Powers Act.

Note: Part 6 of the Regulatory Powers Act creates a framework for accepting and enforcing undertakings relating to compliance with provisions.

Authorised person

- (2) For the purposes of Part 6 of the Regulatory Powers Act, the Secretary is an authorised person in relation to the provisions mentioned in subsection (1).

Relevant court

- (3) For the purposes of Part 6 of the Regulatory Powers Act, the Court is a relevant court in relation to the provisions mentioned in subsection (1).

Division 4—Injunctions

56AD Injunctions

Enforceable provisions

- (1) The provisions of this Act are enforceable under Part 7 of the Regulatory Powers Act.

Note: Part 7 of the Regulatory Powers Act creates a framework for using injunctions to enforce provisions.

Authorised persons

- (2) For the purposes of Part 7 of the Regulatory Powers Act, each of the following persons is an authorised person:
- (a) in relation to the provisions mentioned in subsection (1)—the Secretary;
 - (b) in relation to:
 - (i) conduct or proposed conduct in contravention of a provision of this Act; or
 - (ii) a refusal or failure to do a thing that was, is or would be a contravention of a provision of this Act;
- a person who, or entity to which, subsection (3), (4), (5) or (6) applies.
- (3) This subsection applies to a person whose interests have, are or will be affected by the conduct, proposed conduct, refusal or failure mentioned in paragraph (2)(b).
- (4) This subsection applies to an individual 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 individual makes an application for an injunction,

the individual has engaged in one or more 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.

(5) This subsection applies to a body corporate if:

- (a) the body corporate is incorporated in Australia; and
- (b) at any time during the 2-year period ending immediately before the body corporate makes an application for an injunction, the body corporate has engaged in one or more 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 body corporate include 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.
- (6) This subsection applies to an unincorporated organisation or unincorporated association if:
- (a) the organisation or association was established in Australia; and
 - (b) at any time during the 2-year period ending immediately before the organisation or association makes an application for an injunction, the organisation or association has engaged in one or more 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 include 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.
- (7) Part 7 of the Regulatory Powers Act, as that Part applies in relation to a provision mentioned in subsection (1), applies as if a reference in subsections 119(1) and 119(2) of that Act to “a person” included

references to “an unincorporated organisation” and “an unincorporated association”.

- (8) Subparagraphs (4)(b)(i) to (iv), (5)(b)(i) to (iv) and (6)(b)(i) to (iv) do not apply to activities unless:
- (a) the activities are carried on within Australian jurisdiction; or
 - (b) the activities relate to the effects of hazardous waste of Australian origin on human beings, or the environment, outside of Australian jurisdiction.
- (9) For the purposes of subsections (4), (5) and (6), in interpreting the expression *hazardous waste*, sections 4A, 4F and 4G are to be ignored.

Relevant court

- (10) For the purposes of Part 7 of the Regulatory Powers Act, the Court is a relevant court in relation to the provisions mentioned in subsection (1).

Certain limits on granting injunctions do not apply

- (11) Subsection 124(1) of the Regulatory Powers Act applies in relation to the provisions mentioned in subsection (1) of this section as if paragraph 124(1)(c) of that Act were replaced by the following paragraph:
- “(c) whether or not there is a significant risk of injury or damage to an individual or the environment if the person engages in conduct of that kind.”.
- (12) Subsection 124(2) of the Regulatory Powers Act applies in relation to the provisions mentioned in subsection (1) as if paragraph 124(2)(c) of that Act were replaced by the following paragraph:
- “(c) whether or not there is a significant risk of injury or damage to an individual or the environment if the person refuses or fails to do the thing.”.

21 Subsection 59(1)

Omit “an offence against this Act”, substitute “a designated offence”.

22 Subsection 59(1)

Omit “particular conduct”, substitute “a particular act or omission”.

23 Paragraph 59(1)(a)

Omit “conduct was engaged in”, substitute “act or omission was done”.

24 Subsection 59(2)

Omit “Any conduct engaged in”, substitute “Any act or omission done”.

25 Subsection 59(2)

Omit “an offence against this Act”, substitute “a designated offence”.

26 Subsection 59(2)

Omit “engaged in also”, substitute “done also”.

27 Subsection 59(2)

Omit “the conduct”, substitute “the act or omission”.

28 Subsection 59(3)

Omit “an offence against this Act”, substitute “a designated offence”.

29 Subsection 59(3)

Omit “particular conduct”, substitute “a particular act or omission”.

30 Paragraph 59(3)(a)

Omit “conduct was engaged in”, substitute “act or omission was done”.

31 Subsection 59(4)

Omit “Any conduct engaged in”, substitute “Any act or omission done”.

32 Subsection 59(4)

Omit “an offence against this Act”, substitute “a designated offence”.

33 Subsection 59(4)

Omit “engaged in also”, substitute “done also”.

34 Subsection 59(4)

Omit “the conduct”, substitute “the act or omission”.

35 Subsection 59(8)

Repeal the subsection, substitute:

(8) In this section:

designated offence means one or more of the following:

- (a) an offence against this Act;
- (b) an offence against section 6 of the *Crimes Act 1914* to the extent that it relates to an offence against this Act;
- (c) an offence against section 11.1, 11.4 or 11.5 of the *Criminal Code* to the extent that it relates to an offence against this Act.

36 After section 60

Insert:

60A Delegation by Secretary

- (1) The Secretary may, in writing, delegate all or any of the Secretary’s functions or powers under this Act to an SES employee, or acting SES employee, in the Department.
- (2) The functions or powers that may be delegated under subsection (1) include functions or powers the Secretary has as a relevant chief executive, authorised applicant or authorised person for the purposes of a provision of the Regulatory Powers Act because of this Act.
- (3) In performing functions or exercising powers under a delegation, the delegate must comply with any directions of the Secretary.

Part 2—Application and saving provisions

37 Definitions

In this Part:

Hazardous Waste Act means the *Hazardous Waste (Regulation of Exports and Imports) Act 1989*.

new information monitoring provision means a provision mentioned in subsection 43(2) of the new law.

new injunction provision means a provision mentioned in subsection 56AD(1) of the new law.

new investigation provision means a provision mentioned in subsection 45(1) of the new law.

new law means the Hazardous Waste Act as in force on or after the commencement of this Part.

new monitoring provision means a provision mentioned in subsection 43(1) of the new law.

old law means the Hazardous Waste Act as in force immediately before the commencement of this Part.

old law provision means a provision of the Hazardous Waste Act as in force before, or continued in force by this Act on or after, the commencement of this Part.

Note: A provision of the Hazardous Waste Act in force before the commencement of this Part may continue in force on and after that commencement: for example, see Part 2 of Schedule 4 to this Act.

old monitoring and investigation provision means:

- (a) an old law provision; or
- (b) an offence against the *Crimes Act 1914* or the *Criminal Code* to the extent that it relates to the Hazardous Waste Act as in force before the commencement of this Part.

38 Application of amendments—identity cards

An identity card issued under section 43 of the old law is taken to be an identity card issued under sections 35 and 76 of the Regulatory Powers Act (as those sections apply as described in the Hazardous Waste Act).

39 Application and saving provisions—monitoring and investigation

Application of regulatory powers

- (1) Part 2 of the Regulatory Powers Act applies as described in the new law (including section 9A of the new law) in relation to determining, on or after the commencement of this Part:
 - (a) whether a new monitoring provision has been or is being complied with on or after that commencement; or
 - (b) whether an old monitoring and investigation provision has been or is being complied with before, on or after that commencement; or
 - (c) the correctness of information given on or after that commencement in compliance, or purported compliance, with a new information monitoring provision; or
 - (d) the correctness of information given before, on or after that commencement in compliance, or purported compliance, with an old law provision.
- (2) Part 3 of the Regulatory Powers Act applies as described in the new law (including section 9A of the new law) in relation to evidential material that relates to:
 - (a) a contravention or suspected contravention, on or after the commencement of this Part, of a new investigation provision; or
 - (b) a contravention or suspected contravention, before, on or after the commencement of this Part, of an old monitoring and investigation provision.

Saving old law provisions

- (3) Part 5 (other than sections 45, 52 and 52A) of the old law continues to apply on and after the commencement of this Part in relation to the following:

- (a) an application for a warrant made, but not decided, under that Part before that commencement;
- (b) a warrant issued, or completed and signed, under that Part before, on or after that commencement as a result of an application made before that commencement;
- (c) powers exercised, rights created and duties imposed under provisions of that Part before, on or after that commencement as a result of:
 - (i) an entry or boarding of a searchable place before that commencement with the consent of the relevant authority in relation to the place; or
 - (ii) an entry or boarding of a searchable place before, on or after that commencement as a result of a warrant referred to in paragraph (b);
- (d) things seized under provisions of that Part before, on or after that commencement as a result of:
 - (i) an entry or boarding of a searchable place before that commencement with the consent of the relevant authority in relation to the place; or
 - (ii) an entry or boarding of a searchable place before, on or after that commencement as a result of a warrant referred to in paragraph (b).

Note: For the continued obligation to comply with a requirement made under subsection 45(2) or (3), 52(2) or 52A(2) of the *Hazardous Waste (Regulation of Exports and Imports) Act 1989*, as in force immediately before the commencement of this Part, see section 7 of the *Acts Interpretation Act 1901*.

40 Application of amendments—audits

Subdivision B of Division 2 of Part 5 of the new law (as that Subdivision applies under section 9A of the new law) applies to audits of the following:

- (a) operations relating to a permit or order:
 - (i) mentioned in subsection 50(1) of the new law; and
 - (ii) in force at any time before the commencement of this Part;
- (b) operations relating to a notification:
 - (i) given under paragraph 40A(1)(b) of the *Hazardous Waste Act* as in force before that commencement; and

- (ii) in force at any time before, on or after that commencement;
- (c) operations relating to a permit, order or notification:
 - (i) mentioned in subsection 50(1) of the new law; and
 - (ii) in force at any time on or after that commencement;
- (d) operations covered by paragraph 50(1)(f) of the new law carried out, or proposed to be carried out, on or after that commencement.

Note 1: For paragraph (b), a notification given under paragraph 40A(1)(b) of the Hazardous Waste Act as in force before that commencement may continue in force on or after that commencement: see Part 2 of Schedule 4 to this Act.

Note 2: For paragraph (c), an order may be in force on or after that commencement under a continuation of the old law: see Part 2 of Schedule 4 to this Act.

41 Application and saving provisions—injunctions

- (1) Part 7 of the Regulatory Powers Act applies as described in the new law (including section 9A of the new law) in relation to:
 - (a) a contravention or possible contravention, on or after the commencement of this Part, of a new injunction provision; or
 - (b) a contravention or possible contravention, before, on or after that commencement, of an old law provision.
- (2) Section 41 of the old law continues to apply on or after the commencement of this Part in relation to an application made, but not decided, under that section before that commencement.

Schedule 3—Record keeping, information and confidentiality

Part 1—Amendments

Hazardous Waste (Regulation of Exports and Imports) Act 1989

1 Section 4

Insert:

Commonwealth entity has the same meaning as in the *Public Governance, Performance and Accountability Act 2013*.

entrusted person means:

- (a) the Minister; or
- (b) the Secretary; or
- (c) an APS employee in the Department; or
- (d) any other person employed in, or engaged by, the Department.

official has the same meaning as in the *Public Governance, Performance and Accountability Act 2013*.

protected information means information of any of the following kinds obtained by an entrusted person:

- (a) information the disclosure of which by the entrusted person could reasonably be expected to found an action by a person (other than the Commonwealth) for breach of a duty of confidence;
- (b) information the disclosure of which could reasonably be expected to prejudice the effective working of government;
- (c) information the disclosure of which could reasonably be expected to prejudice the prevention, detection, investigation, prosecution or punishment of one or more offences;
- (d) information the disclosure of which could reasonably be expected to endanger a person's life or physical safety;

- (e) information the disclosure of which could reasonably be expected to prejudice the protection of public safety or the environment.

relevant information means information obtained by an entrusted person under, or in accordance with, this Act or the Regulatory Powers Act as it applies in relation to this Act.

State or Territory government body means:

- (a) a Department of State of a State or Territory; or
- (b) an agency of a State or Territory; or
- (c) an authority of a State or Territory.

2 After Part 4A

Insert:

Part 4B—Record keeping, information and confidentiality

Division 1—Record keeping and information gathering

41D Requirement to make and retain records

Records

- (1) The regulations may make provision for and in relation to requiring records to be made and retained by the following:
 - (a) a person who holds a permit under this Act in relation to the import, export or transit of hazardous waste;
 - (b) a person who has been notified under subsection 33G(1) that a transit permit is not required for carrying out a transit proposal;
 - (c) a person who has been given an order under Part 3 of this Act.
- (2) Without limiting subsection (1), regulations made for the purposes of that subsection may make provision for and in relation to one or more of the following:
 - (a) the kind of records that must be made and retained;

- (b) the form in which records must be retained;
 - (c) the period for which records must be retained.
- (3) A person contravenes this subsection if:
- (a) the person is required to make or retain a record in accordance with regulations made for the purposes of subsection (1); and
 - (b) the person fails to comply with the requirement.

Strict liability offence

- (4) A person commits an offence of strict liability if the person contravenes subsection (3).

Penalty: 30 penalty units.

Civil penalty provision

- (5) A person is liable to a civil penalty if the person contravenes subsection (3).

Civil penalty: 240 penalty units.

41E Requirement to give information or produce documents

- (1) The Secretary may, by written notice, require a person to give a specified inspector or entrusted person, in the manner and within the period specified in the notice, any:
- (a) specified information; or
 - (b) specified documents;
- that the Secretary reasonably believes that the person is capable of giving for the purposes of investigating or preventing a contravention of a provision of this Act.
- (2) The period specified in a notice given under subsection (1) must be at least 14 days after the day the notice is given.
- (3) A notice given under subsection (1) must set out the effect of subsection (4) and sections 137.1 and 137.2 of the *Criminal Code*.
- (4) A person contravenes this subsection if:
- (a) the person is given a notice under subsection (1); and

(b) the person fails to comply with the notice.

Strict liability offence

(5) A person commits an offence of strict liability if the person contravenes subsection (4).

Penalty: 30 penalty units.

Civil penalty provision

(6) A person is liable to a civil penalty if the person contravenes subsection (4).

Civil penalty: 240 penalty units.

41F Self-incrimination

(1) An individual is not excused from giving information or producing a document under section 41E on the ground that giving the information or producing the document might tend to incriminate the individual in relation to an offence.

Note: A body corporate is not entitled to claim the privilege against self-incrimination.

(2) However:

- (a) the information given or document produced; and
- (b) the giving of the information or the production of the document; and
- (c) any information, document or thing obtained as a direct or indirect consequence of the giving of the information or the production of the document;

are not admissible in evidence against the individual in criminal proceedings other than proceedings for an offence against:

- (d) section 41E of this Act; or
- (e) section 137.1 or 137.2 of the *Criminal Code* in relation to giving the information or producing the document.

(3) If, at general law, an individual would otherwise be able to claim the privilege against self-exposure to a penalty (other than a penalty for an offence) in relation to giving information or

producing a document under section 41E, the individual is not excused from giving the information or producing the document under that provision on that ground.

Note: A body corporate is not entitled to claim the privilege against self-exposure to a penalty.

Division 2—Authorised uses and disclosures of relevant information

Subdivision A—Authorised uses and disclosures by Minister

41G Disclosure of relevant information to Commonwealth entities

The Minister may disclose relevant information to a Commonwealth entity if the Minister is satisfied the disclosure is for the purposes of assisting the entity to perform its functions or exercise its powers.

41H Disclosure of relevant information to State or Territory government body

The Minister may disclose relevant information to a State or Territory government body if:

- (a) the Minister reasonably believes that the disclosure of the information is necessary for the purposes of:
 - (i) the Minister performing functions, or exercising powers, under this Act; or
 - (ii) the administration of a State or Territory law; and
- (b) the State or Territory government body has undertaken not to use or further disclose the information except in accordance with an agreement that:
 - (i) is in force between the Commonwealth and the State or Territory; and
 - (ii) applies in relation to the information; and
- (c) the Minister is satisfied that the information will be used and further disclosed only in accordance with the agreement.

41J Disclosure for the purposes of law enforcement

- (1) The Minister may disclose relevant information to an enforcement body if:
 - (a) the Minister reasonably believes that the disclosure of the information is necessary for:
 - (i) the enforcement of the criminal law; or
 - (ii) the enforcement of a law imposing a pecuniary penalty; or
 - (iii) the protection of public revenue; and
 - (b) the functions of that body include that enforcement or protection.
- (2) Each of the following is an *enforcement body*:
 - (a) a Commonwealth entity;
 - (b) a State or Territory government body;
 - (c) the Australian Federal Police;
 - (d) the police force or police service of a State or Territory.

41K Disclosure to reduce serious risk to human health

The Minister may disclose relevant information if the Minister reasonably believes that the disclosure is necessary to prevent or lessen a serious risk to human health.

41L Disclosure to reduce serious risk to the environment

The Minister may disclose relevant information if the Minister reasonably believes that the disclosure is necessary to prevent or lessen a serious risk to the environment.

Subdivision B—Authorised uses and disclosures by entrusted person

41M Disclosure for the purposes of an Act

An entrusted person may use or disclose relevant information if the use or disclosure is for the purposes of this Act or another Act administered by the Minister.

41N Publicly available information

An entrusted person may use and disclose relevant information if the information has already been lawfully made available to the public.

41P Person to whom information relates

An entrusted person may disclose relevant information to the person to whom the information relates.

41Q Disclosure with consent

An entrusted person may use or disclose relevant information that relates to a person if:

- (a) the person has consented to the use or disclosure; and
- (b) the use or disclosure is in accordance with that consent.

41R Person who provided information

An entrusted person may disclose relevant information to the person who provided the information.

41S Summaries or statistics

An entrusted person may disclose:

- (a) summaries of relevant information; or
- (b) statistics derived from relevant information;

if those summaries or statistics do not enable the identification of a person.

41T Disclosure to a court, tribunal etc.

An entrusted person may disclose relevant information, or a document containing relevant information:

- (a) for the purposes of proceedings before:
 - (i) a court; or
 - (ii) a tribunal, authority or person that has the power to require the answering of questions or the production of documents; or

- (b) in accordance with an order of a court or such a tribunal, authority or person.

41U Use for the purposes of disclosure

An entrusted person may use relevant information for the purpose of disclosing the relevant information under this Division.

Subdivision C—Offences

41V Unauthorised use or disclosure of protected information—entrusted person

Unauthorised use or disclosure

- (1) A person contravenes this subsection if:
- (a) the person is, or has been, an entrusted person; and
 - (b) the person has obtained relevant information in the person's capacity as an entrusted person; and
 - (c) the information is protected information; and
 - (d) the person uses or discloses the information.

Note: The physical elements of an offence against subsection (3) are set out in this subsection (see section 58F).

Exceptions

- (2) However, subsection (1) does not apply if the use or disclosure is authorised or required by:
- (a) this Act; or
 - (b) any other law of the Commonwealth; or
 - (c) a prescribed law of a State or a Territory.

Note: A person who wishes to rely on this subsection bears an evidential burden in relation to the matters in this subsection (see subsection 13.3(3) of the *Criminal Code* and section 96 of the *Regulatory Powers Act*).

Fault-based offence

- (3) A person commits an offence if the person contravenes subsection (1).

Penalty: Imprisonment for 2 years or 180 penalty units, or both.

Strict liability offence

- (4) A person commits an offence of strict liability if the person contravenes subsection (1).

Penalty: 60 penalty units.

Civil penalty provision

- (5) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 360 penalty units.

**41W Unauthorised use or disclosure of protected information—
official of Commonwealth entity**

- (1) A person contravenes this subsection if:
- (a) the person is, or has been, an official of a Commonwealth entity; and
 - (b) the person has obtained relevant information in the person's capacity as an official of the entity; and
 - (c) the information is protected information that was disclosed to the entity under section 41G; and
 - (d) the person uses or discloses the information other than for the purpose for which it was disclosed to the entity.

Note: The physical elements of an offence against subsection (2) are set out in this subsection (see section 58F).

Fault-based offence

- (2) A person commits an offence if the person contravenes subsection (1).

Penalty: Imprisonment for 2 years or 180 penalty units, or both.

Strict liability offence

- (3) A person commits an offence of strict liability if the person contravenes subsection (1).

Schedule 3 Record keeping, information and confidentiality
Part 1 Amendments

Penalty: 60 penalty units.

Civil penalty provision

- (4) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 360 penalty units.

Part 2—Application provisions

3 Application provision—notice to produce

Section 41E of the *Hazardous Waste (Regulation of Exports and Imports) Act 1989*, as inserted by this Schedule, applies in relation to notices given under that section on or after the commencement of this Part, whether the contravention mentioned in subsection 41E(1) occurred before, on or after that commencement.

4 Application provision—use or disclosure of relevant information and protected information

Division 2 of Part 4B of the *Hazardous Waste (Regulation of Exports and Imports) Act 1989*, as inserted by this Schedule, applies in relation to the use or disclosure of relevant information and protected information on or after the commencement of this Part, whether the information was obtained before, on or after that commencement.

Schedule 4—Offence and civil penalty provisions

Part 1—Amendments

Hazardous Waste (Regulation of Exports and Imports) Act 1989

1 Section 4

Insert:

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 with, or takes part in, the management of the body.

OECD country means a country that is a member of the Organisation for Economic Cooperation and Development under the Convention on the Organisation for Economic Cooperation and Development done at Paris on 14 December 1960.

Note: The Convention is in Australian Treaty Series 1971 No. 11 ([1971] ATS 11) and could in 2021 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

recovery operation means an operation mentioned in Appendix 5.B to the OECD Decision C(2001)107, being Revision of Decision C(92)39/FINAL on the control of transboundary movements of wastes destined for recovery operations, made on 14 June 2001 by the Council of the Organisation for Economic Cooperation and Development, as in force from time to time.

Note: The OECD Decision could in 2021 be viewed on the OECD website (<https://legalinstruments.oecd.org/>).

2 Subsection 13A(1) (note)

Omit “paragraph 40A(1)(b)”, substitute “subsection 33G(1)”.

3 Paragraphs 22(2C)(a) and (b)

Omit “subsection 37(2)”, substitute “subsection 38B(2)”.

4 After Part 2

Insert:

Part 2A—Regulation of import, export, transit and sale of hazardous waste

Division 1—Regulation of import of hazardous waste

33A Import of hazardous waste—basic contravention

Prohibition of imports

- (1) A person contravenes this subsection if:
- (a) the person imports waste; and
 - (b) the waste is hazardous waste; and
 - (c) the person is not the holder of an import permit authorising the person to import the hazardous waste; and
 - (d) the person is not the holder of a transit permit authorising the person to import the hazardous waste; and
 - (e) there is no notification in force under subsection 33G(1) that the person does not require a transit permit to import the hazardous waste; and
 - (f) the import has not been ordered under section 35; and
 - (g) the import is not authorised by an order under section 38.

Note 1: For paragraph (e), a notification under subsection 33G(1) may cease to be in force if it is revoked under subsection 33G(4).

Note 2: The physical elements of an offence against subsection (4) are set out in this subsection (see section 58F).

Compliance with import permits

- (2) A person contravenes this subsection if:
- (a) the person imports waste; and
 - (b) the waste is hazardous waste; and
 - (c) the person is the holder of an import permit authorising the person to import the hazardous waste; and
 - (d) the import is not in accordance with the permit.

Schedule 4 Offence and civil penalty provisions
Part 1 Amendments

Note: The physical elements of an offence against subsection (4) are set out in this subsection (see section 58F).

Compliance with permit conditions

- (3) A person contravenes this subsection if:
- (a) the person imports waste; and
 - (b) the waste is hazardous waste; and
 - (c) the person is the holder of an import permit authorising the person to import the hazardous waste; and
 - (d) the permit is subject to a permit condition; and
 - (e) the person does an act or omits to do an act; and
 - (f) the act or omission does not comply with the permit condition in relation to the import (whether before, during or after the import).

Note: The physical elements of an offence against subsection (4) are set out in this subsection (see section 58F).

Fault-based offence

- (4) A person commits an offence if the person contravenes subsection (1), (2) or (3).

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

Strict liability offence

- (5) A person commits an offence of strict liability if the person contravenes subsection (1), (2) or (3).

Penalty: 60 penalty units.

Civil penalty provision

- (6) A person is liable to a civil penalty if the person contravenes subsection (1), (2) or (3).

Civil penalty: 600 penalty units.

33B Import of hazardous waste—injury or damage to human beings or the environment

Prohibition of imports

- (1) A person contravenes this subsection if:
- (a) the person imports waste; and
 - (b) the waste is hazardous waste; and
 - (c) the person is not the holder of an import permit authorising the person to import the hazardous waste; and
 - (d) the person is not the holder of a transit permit authorising the person to import the hazardous waste; and
 - (e) there is no notification in force under subsection 33G(1) that the person does not require a transit permit to import the hazardous waste; and
 - (f) the import has not been ordered under section 35; and
 - (g) the import is not authorised by an order under section 38; and
 - (h) the import, or the presence of the hazardous waste in Australia after the import, injures or damages, or is likely to injure or damage, human beings or the environment.

Note 1: For paragraph (e), a notification under subsection 33G(1) may cease to be in force if it is revoked under subsection 33G(4).

Note 2: The physical elements of an offence against subsection (4) are set out in this subsection (see section 58F).

Compliance with import permits

- (2) A person contravenes this subsection if:
- (a) the person imports waste; and
 - (b) the waste is hazardous waste; and
 - (c) the person is the holder of an import permit authorising the person to import the hazardous waste; and
 - (d) the import is not in accordance with the permit; and
 - (e) the import, or the presence of the hazardous waste in Australia after the import, injures or damages, or is likely to injure or damage, human beings or the environment.

Note: The physical elements of an offence against subsection (4) are set out in this subsection (see section 58F).

Compliance with permit conditions

- (3) A person contravenes this subsection if:
- (a) the person imports waste; and
 - (b) the waste is hazardous waste; and
 - (c) the person is the holder of an import permit authorising the person to import the hazardous waste; and
 - (d) the permit is subject to a permit condition; and
 - (e) the person does an act or omits to do an act; and
 - (f) the act or omission does not comply with the permit condition in relation to the import (whether before, during or after the import); and
 - (g) the non-compliance with the permit condition injures or damages, or is likely to injure or damage, human beings or the environment.

Note: The physical elements of an offence against subsection (4) are set out in this subsection (see section 58F).

Fault-based offence

- (4) A person commits an offence if the person contravenes subsection (1), (2) or (3).

Penalty: Imprisonment for 8 years or 500 penalty units, or both.

Alternative verdict

- (5) In a trial for an offence against subsection (4), the trier of fact may find the defendant not guilty of that offence, but guilty of an offence against subsection 33A(4), if:
- (a) the trier of fact is not satisfied that the defendant is guilty of the offence against subsection (4) of this section; and
 - (b) the trier of fact is satisfied that the defendant is guilty of the offence against subsection 33A(4); and
 - (c) the defendant has been accorded procedural fairness in relation to that finding of guilt.

Strict liability offence

- (6) A person commits an offence of strict liability if the person contravenes subsection (1), (2) or (3).

Penalty: 60 penalty units.

Civil penalty provision

- (7) A person is liable to a civil penalty if the person contravenes subsection (1), (2) or (3).

Civil penalty: 1,000 penalty units.

Division 2—Regulation of export of hazardous waste

33C Export of hazardous waste—basic contravention

Prohibition of exports

- (1) A person contravenes this subsection if:
- (a) the person exports waste; and
 - (b) the waste is hazardous waste; and
 - (c) the person is not the holder of an export permit authorising the person to export the hazardous waste; and
 - (d) the person is not the holder of a transit permit authorising the person to export the hazardous waste; and
 - (e) there is no notification in force under subsection 33G(1) that the person does not require a transit permit to export the hazardous waste; and
 - (f) the export has not been ordered under section 34 or 35A.

Note 1: For paragraph (e), a notification under subsection 33G(1) may cease to be in force if it is revoked under subsection 33G(4).

Note 2: The physical elements of an offence against subsection (4) are set out in this subsection (see section 58F).

Compliance with export permits

- (2) A person contravenes this subsection if:
- (a) the person exports waste; and

- (b) the waste is hazardous waste; and
- (c) the person is the holder of an export permit authorising the person to export the hazardous waste; and
- (d) the export is not in accordance with the permit.

Note: The physical elements of an offence against subsection (4) are set out in this subsection (see section 58F).

Compliance with permit conditions

- (3) A person contravenes this subsection if:
- (a) the person exports waste; and
 - (b) the waste is hazardous waste; and
 - (c) the person is the holder of an export permit authorising the person to export the hazardous waste; and
 - (d) the permit is subject to a permit condition; and
 - (e) the person does an act or omits to do an act; and
 - (f) the act or omission does not comply with the permit condition in relation to the export (whether before, during or after the export).

Note: The physical elements of an offence against subsection (4) are set out in this subsection (see section 58F).

Fault-based offence

- (4) A person commits an offence if the person contravenes subsection (1), (2) or (3).

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

Strict liability offence

- (5) A person commits an offence of strict liability if the person contravenes subsection (1), (2) or (3).

Penalty: 60 penalty units.

Civil penalty provision

- (6) A person is liable to a civil penalty if the person contravenes subsection (1), (2) or (3).

Civil penalty: 600 penalty units.

33D Export of hazardous waste—injury or damage to human beings or the environment

Prohibition of exports

- (1) A person contravenes this subsection if:
- (a) the person exports waste; and
 - (b) the waste is hazardous waste; and
 - (c) the person is not the holder of an export permit authorising the person to export the hazardous waste; and
 - (d) the person is not the holder of a transit permit authorising the person to export the hazardous waste; and
 - (e) there is no notification in force under subsection 33G(1) that the person does not require a transit permit to export the hazardous waste; and
 - (f) the export has not been ordered under section 34 or 35A; and
 - (g) the export, or the presence of the hazardous waste outside of Australia after the export, injures or damages, or is likely to injure or damage, human beings or the environment.

Note 1: For paragraph (e), a notification under subsection 33G(1) may cease to be in force if it is revoked under subsection 33G(4).

Note 2: The physical elements of an offence against subsection (4) are set out in this subsection (see section 58F).

Compliance with export permits

- (2) A person contravenes this subsection if:
- (a) the person exports waste; and
 - (b) the waste is hazardous waste; and
 - (c) the person is the holder of an export permit authorising the person to export the hazardous waste; and
 - (d) the export is not in accordance with the permit; and
 - (e) the export, or the presence of the hazardous waste outside of Australia after the export, injures or damages, or is likely to injure or damage, human beings or the environment.

Note: The physical elements of an offence against subsection (4) are set out in this subsection (see section 58F).

Compliance with permit conditions

- (3) A person contravenes this subsection if:
- (a) the person exports waste; and
 - (b) the waste is hazardous waste; and
 - (c) the person is the holder of an export permit authorising the person to export the hazardous waste; and
 - (d) the permit is subject to a permit condition; and
 - (e) the person does an act or omits to do an act; and
 - (f) the act or omission does not comply with the permit condition in relation to the export (whether before, during or after the export); and
 - (g) the non-compliance with the permit condition injures or damages, or is likely to injure or damage, human beings or the environment.

Note: The physical elements of an offence against subsection (4) are set out in this subsection (see section 58F).

Fault-based offence

- (4) A person commits an offence if the person contravenes subsection (1), (2) or (3).

Penalty: Imprisonment for 8 years or 500 penalty units, or both.

Alternative verdict

- (5) In a trial for an offence against subsection (4), the trier of fact may find the defendant not guilty of that offence, but guilty of an offence against subsection 33C(4), if:
- (a) the trier of fact is not satisfied that the defendant is guilty of the offence against subsection (4) of this section; and
 - (b) the trier of fact is satisfied that the defendant is guilty of the offence against subsection 33C(4); and
 - (c) the defendant has been accorded procedural fairness in relation to that finding of guilt.

Strict liability offence

- (6) A person commits an offence of strict liability if the person contravenes subsection (1), (2) or (3).

Penalty: 60 penalty units.

Civil penalty provision

- (7) A person is liable to a civil penalty if the person contravenes subsection (1), (2) or (3).

Civil penalty: 1,000 penalty units.

Division 3—Regulation of transit of hazardous waste

33E Transit of hazardous waste—basic contravention

Prohibition of bringing waste into Australia

- (1) A person contravenes this subsection if:
- (a) in the course of carrying out a transit proposal, the person brings waste into Australia (whether or not by way of import); and
 - (b) the waste is hazardous waste; and
 - (c) the person is not the holder of a transit permit authorising the person to bring the hazardous waste into Australia; and
 - (d) there is no notification in force under subsection 33G(1) that the person does not require a transit permit for the transit proposal.

Note 1: For paragraph (d), a notification under subsection 33G(1) may cease to be in force if it is revoked under subsection 33G(4).

Note 2: The physical elements of an offence against subsection (5) are set out in this subsection (see section 58F).

Compliance with transit permits—bringing waste into Australia

- (2) A person contravenes this subsection if:
- (a) in the course of carrying out a transit proposal, the person brings waste into Australia (whether or not by way of import); and

- (b) the waste is hazardous waste; and
- (c) the person is the holder of a transit permit authorising the person to bring the hazardous waste into Australia; and
- (d) the bringing of the hazardous waste into Australia is not in accordance with the permit.

Note: The physical elements of an offence against subsection (5) are set out in this subsection (see section 58F).

Compliance with transit permits—exporting waste

- (3) A person contravenes this subsection if:
 - (a) in the course of carrying out a transit proposal, the person exports waste; and
 - (b) the waste is hazardous waste; and
 - (c) the person is the holder of a transit permit authorising the person to export the hazardous waste; and
 - (d) the export is not in accordance with the permit.

Note: The physical elements of an offence against subsection (5) are set out in this subsection (see section 58F).

Compliance with permit conditions

- (4) A person contravenes this subsection if:
 - (a) in the course of carrying out a transit proposal, the person brings waste into Australia (whether or not by way of import); and
 - (b) the waste is hazardous waste; and
 - (c) the person is the holder of a transit permit authorising the person to bring the hazardous waste into Australia; and
 - (d) the permit is subject to a permit condition; and
 - (e) the person does an act or omits to do an act; and
 - (f) the act or omission does not comply with the permit condition in relation to the transit of the hazardous waste (whether before, during or after bringing it into Australia).

Note: The physical elements of an offence against subsection (5) are set out in this subsection (see section 58F).

Fault-based offence

- (5) A person commits an offence if the person contravenes subsection (1), (2), (3) or (4).

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

Strict liability offence

- (6) A person commits an offence of strict liability if the person contravenes subsection (1), (2), (3) or (4).

Penalty: 60 penalty units.

Civil penalty provision

- (7) A person is liable to a civil penalty if the person contravenes subsection (1), (2), (3) or (4).

Civil penalty: 600 penalty units.

33F Transit of hazardous waste—injury or damage to human beings or the environment

Prohibition of bringing waste into Australia

- (1) A person contravenes this subsection if:
- (a) in the course of carrying out a transit proposal, the person brings waste into Australia (whether or not by way of import); and
 - (b) the waste is hazardous waste; and
 - (c) the person is not the holder of a transit permit authorising the person to bring the hazardous waste into Australia; and
 - (d) there is no notification in force under subsection 33G(1) that the person does not require a transit permit for the transit proposal; and
 - (e) the bringing into Australia, or the presence in Australia, of the hazardous waste injures or damages, or is likely to injure or damage, human beings or the environment.

Note 1: For paragraph (d), a notification under subsection 33G(1) may cease to be in force if it is revoked under subsection 33G(4).

Note 2: The physical elements of an offence against subsection (5) are set out in this subsection (see section 58F).

Compliance with transit permits—bringing waste into Australia

- (2) A person contravenes this subsection if:
- (a) in the course of carrying out a transit proposal, the person brings waste into Australia (whether or not by way of import); and
 - (b) the waste is hazardous waste; and
 - (c) the person is the holder of a transit permit authorising the person to bring the hazardous waste into Australia; and
 - (d) the bringing of the hazardous waste into Australia is not in accordance with the permit; and
 - (e) the bringing into Australia, or the presence in Australia, of the hazardous waste injures or damages, or is likely to injure or damage, human beings or the environment.

Note: The physical elements of an offence against subsection (5) are set out in this subsection (see section 58F).

Compliance with transit permits—exporting waste

- (3) A person contravenes this subsection if:
- (a) in the course of carrying out a transit proposal, the person exports waste; and
 - (b) the waste is hazardous waste; and
 - (c) the person is the holder of a transit permit authorising the person to export the hazardous waste; and
 - (d) the export is not in accordance with the permit; and
 - (e) the export, or the presence of the hazardous waste outside of Australia after the export, injures or damages, or is likely to injure or damage, human beings or the environment.

Note: The physical elements of an offence against subsection (5) are set out in this subsection (see section 58F).

Compliance with permit conditions

- (4) A person contravenes this subsection if:
-

- (a) in the course of carrying out a transit proposal, the person brings waste into Australia (whether or not by way of import); and
- (b) the waste is hazardous waste; and
- (c) the person is the holder of a transit permit authorising the person to bring the hazardous waste into Australia; and
- (d) the permit is subject to a permit condition; and
- (e) the person does an act or omits to do an act; and
- (f) the act or omission does not comply with the permit condition in relation to the transit of the hazardous waste (whether before, during or after bringing it into Australia); and
- (g) the non-compliance with the permit condition injures or damages, or is likely to injure or damage, human beings or the environment.

Note: The physical elements of an offence against subsection (5) are set out in this subsection (see section 58F).

Fault-based offence

- (5) A person commits an offence if the person contravenes subsection (1), (2), (3) or (4).

Penalty: Imprisonment for 8 years or 500 penalty units, or both.

Alternative verdict

- (6) In a trial for an offence against subsection (5), the trier of fact may find the defendant not guilty of that offence, but guilty of an offence against subsection 33E(5), if:
 - (a) the trier of fact is not satisfied that the defendant is guilty of the offence against subsection (5) of this section; and
 - (b) the trier of fact is satisfied that the defendant is guilty of the offence against subsection 33E(5); and
 - (c) the defendant has been accorded procedural fairness in relation to that finding of guilt.

Strict liability offence

- (7) A person commits an offence of strict liability if the person contravenes subsection (1), (2), (3) or (4).

Penalty: 60 penalty units.

Civil penalty provision

- (8) A person is liable to a civil penalty if the person contravenes subsection (1), (2), (3) or (4).

Civil penalty: 1,000 penalty units.

33G Notice that transit permit not required

- (1) The Minister may notify a person, in writing, that the person does not require a transit permit for a transit proposal if the Minister is satisfied:
- (a) that carrying out the transit proposal is in connection with the movement of hazardous waste from one OECD country to another OECD country; and
 - (b) that the hazardous waste is destined for recovery operations; and
 - (c) that carrying out the transit proposal will not pose a significant risk of injury or damage to human beings or the environment; and
 - (d) of any other matters prescribed by the regulations for the purposes of this paragraph; and
 - (e) of any other matters the Minister considers relevant.
- (2) Even if the Minister is satisfied as mentioned in subsection (1), the Minister may decide not to give a notification under that subsection if the applicant has previously failed to provide, or to arrange to provide, an auditor with assistance that is reasonably necessary for the conduct of an audit.

Note 1: For the requirement to provide an auditor with assistance that is reasonably necessary for the conduct of an audit, see section 54.

Note 2: The audit need not relate to a notification. Assistance may be requested in relation to any audit of operations covered by a permit, an

order under Part 3, a notification given under subsection 33G(1), or other prescribed operations: see section 50.

- (3) The Minister must, as soon as practicable after giving a notification under subsection (1), cause to be published, on the Department's website, particulars of the notification.
- (4) The Minister may, by notifying a person in writing, revoke a notification of the person under subsection (1) for a transit proposal if the Minister:
 - (a) is no longer satisfied of the matters in paragraphs (1)(a) to (d) in relation to the transit proposal and the person; or
 - (b) is satisfied that the person is failing, or has failed after the notice was given, to provide, or to arrange to provide, an auditor with assistance that is reasonably necessary for the conduct of an audit.
- (5) However, a revocation of a notification only applies to the carrying out of a transit proposal if the carrying out of the transit proposal has yet to begin.

Division 4—Regulation of sale of hazardous waste

33H Regulation of sale of hazardous waste

- (1) A person contravenes this subsection if:
 - (a) the person sells waste to a body corporate incorporated outside Australia (whether the sale occurs within or outside Australia); and
 - (b) the waste is hazardous waste; and
 - (c) the body corporate:
 - (i) does not have a registered office in Australia; or
 - (ii) does not have a principal office, and at least one executive officer, in Australia; and
 - (d) the person sells the waste knowing, or being reckless as to whether, the waste is to be exported by the body corporate; and
 - (e) an export permit authorising the export of the waste is not in force when the sale occurs.

Schedule 4 Offence and civil penalty provisions
Part 1 Amendments

Note: The physical elements of an offence against subsection (3) are set out in this subsection (see section 58F).

- (2) A person contravenes this subsection if:
- (a) the person sells waste to another person who is located outside Australia; and
 - (b) the waste is hazardous waste; and
 - (c) the person sells the waste knowing, or being reckless as to whether, the waste is to be exported; and
 - (d) an export permit authorising the export of the waste is not in force when the sale occurs.

Note: The physical elements of an offence against subsection (3) are set out in this subsection (see section 58F).

Fault-based offence

- (3) A person commits an offence if the person contravenes subsection (1) or (2).

Penalty: Imprisonment for 3 years or 180 penalty units, or both.

Civil penalty provision

- (4) A person is liable to a civil penalty if the person contravenes subsection (1) or (2).

Civil penalty: 360 penalty units.

5 Before section 34

Insert:

Division 1—Ministerial orders

6 Section 34 (heading)

Omit “where section 39 contravened”, substitute “relating to import of hazardous waste”.

7 Subsections 34(1) and (2)

Repeal the subsections, substitute:

- (1) If a person contravenes one or more of the provisions mentioned in subsection (2) in relation to hazardous waste, the Minister may, in writing, order the person to deal with the waste in a specified way.
- (2) For the purposes of subsection (1), the provisions are the following:
 - (a) subsection 33A(1) (import of hazardous waste—basic contravention);
 - (b) subsection 33A(2) (import in accordance with permit—basic contravention);
 - (c) subsection 33A(3) (compliance with permit conditions—basic contravention);
 - (d) subsection 33B(1) (import of hazardous waste—injury or damage);
 - (e) subsection 33B(2) (import in accordance with permit—injury or damage);
 - (f) subsection 33B(3) (compliance with permit conditions—injury or damage);
 - (g) subsection 38F(1) (contravention of order to import hazardous waste—basic contravention);
 - (h) subsection 38G(1) (contravention of order to import hazardous waste—injury or damage).

8 Subsection 34(3)

Omit “subsections (1) and (2), the Minister may, under either of those subsections”, substitute “subsection (1), the Minister may, under that subsection”.

9 Section 35 (heading)

Omit “**where section 40 contravened**”, substitute “**relating to export of hazardous waste**”.

10 Subsections 35(1) and (2)

Repeal the subsections, substitute:

- (1) If a person contravenes one or more of the provisions mentioned in subsection (2) in relation to hazardous waste, the Minister may, in writing, order the person to deal with the waste in a specified way.

- (2) For the purposes of subsection (1), the provisions are the following:
- (a) subsection 33C(1) (export of hazardous waste—basic contravention);
 - (b) subsection 33C(2) (export in accordance with permit—basic contravention);
 - (c) subsection 33C(3) (compliance with permit conditions—basic contravention);
 - (d) subsection 33D(1) (export of hazardous waste—injury or damage);
 - (e) subsection 33D(2) (export in accordance with permit—injury or damage);
 - (f) subsection 33D(3) (compliance with permit conditions—injury or damage).

11 Subsection 35(3)

Omit “subsections (1) and (2), the Minister may, under either of those subsections”, substitute “subsection (1), the Minister may, under that subsection”.

12 Section 35A (heading)

Omit “**where section 40A contravened**”, substitute “**relating to transit of hazardous waste**”.

13 Subsections 35A(1) and (2)

Repeal the subsections, substitute:

- (1) If a person contravenes one or more of the provisions mentioned in subsection (2) in relation to hazardous waste, the Minister may, in writing, order the person to deal with the waste in a specified way.
- (2) For the purposes of subsection (1), the provisions are the following:
 - (a) subsection 33E(1) (transit of hazardous waste—basic contravention);
 - (b) subsection 33E(2) (compliance with transit permit to bring waste into Australia—basic contravention);
 - (c) subsection 33E(3) (compliance with transit permit to export waste—basic contravention);

- (d) subsection 33E(4) (compliance with transit permit conditions—basic contravention);
- (e) subsection 33F(1) (transit of hazardous waste—injury or damage);
- (f) subsection 33F(2) (compliance with transit permit to bring waste into Australia—injury or damage);
- (g) subsection 33F(3) (compliance with transit permit to export waste—injury or damage);
- (h) subsection 33F(4) (compliance with transit permit conditions—injury or damage).

14 Subsection 35A(3)

Repeal the subsection, substitute:

- (3) Without limiting subsection (1), the Minister may, under that subsection:
 - (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.

15 Paragraph 36(1)(a)

Repeal the paragraph, substitute:

- (a) a person contravenes one or more of the following provisions in relation to hazardous waste:
 - (i) subsection 33A(1), (2) or (3) (import of hazardous waste—basic contravention);
 - (ii) subsection 33B(1), (2) or (3) (import of hazardous waste—injury or damage);
 - (iii) subsection 33C(1), (2) or (3) (export of hazardous waste—basic contravention);
 - (iv) subsection 33D(1), (2) or (3) (export of hazardous waste—injury or damage);
 - (v) subsection 33E(1), (2), (3) or (4) (transit of hazardous waste—basic contravention);
 - (vi) subsection 33F(1), (2), (3) or (4) (transit of hazardous waste—injury or damage); and

16 Section 37

Repeal the section.

17 Sections 38A and 38B

Repeal the sections, substitute:

Division 2—Contravention of orders

38A Orders to remedy or mitigate damage if order under section 34, 35, 35A or 38 not complied with

- (1) If:
- (a) the person has been given an order under section 34, 35, 35A or 38 requiring the person:
 - (i) to deal with hazardous waste in a specified way; or
 - (ii) to deal with hazardous waste by a specified time; and
 - (b) the person does an act or omits to do an act; and
 - (c) the act or omission contravenes the requirement; and
 - (d) the Minister is satisfied that the non-compliance with the requirement resulted in the waste causing significant injury or damage to human beings or the environment;
- the Minister may, in writing, order the person to take such steps as the Minister thinks proper to remedy or mitigate the damage.

Note: A requirement to deal with hazardous waste in a specified way includes a requirement to import or export the waste.

- (2) The Minister must not, under subsection (1), order the person to pay compensation.

38B Minister may take action and recover costs if order under section 34, 35, 35A, 36, 38 or 38A not complied with

- (1) If:
- (a) the Minister makes an order under section 34, 35, 35A, 36, 38 or 38A requiring a person to do something; and
 - (b) the person does not do the thing as and when required by the order;
- the Minister may arrange for the thing to be done.

- (2) If the Commonwealth incurs costs because of arrangements made by the Minister under subsection (1), the person is liable to pay to the Commonwealth an amount equal to so much of those costs as are reasonable and the amount may be recovered by the Commonwealth as a debt due to the Commonwealth in:
- (a) the Court; or
 - (b) the Federal Circuit Court; or
 - (c) a court of a State or Territory that has jurisdiction in relation to the matter.

38C Failure to deal with waste in contravention of order under section 34, 35 or 35A—basic contravention

Failure to deal with waste

- (1) A person contravenes this subsection if:
- (a) the person has been given an order under section 34, 35 or 35A requiring the person:
 - (i) to deal with hazardous waste in a specified way; or
 - (ii) to deal with hazardous waste by a specified time; and
 - (b) the person does an act or omits to do an act; and
 - (c) the act or omission contravenes the requirement.

Note 1: The physical elements of an offence against subsection (2) are set out in this subsection (see section 58F).

Note 2: A requirement to deal with hazardous waste in a specified way includes a requirement to import or export the waste.

Fault-based offence

- (2) A person commits an offence if the person contravenes subsection (1).

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

Strict liability offence

- (3) A person commits an offence of strict liability if the person contravenes subsection (1).

Penalty: 60 penalty units.

Civil penalty provision

- (4) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 600 penalty units.

38D Failure to deal with waste in contravention of order under section 34, 35 or 35A—injury or damage to human beings or the environment

Failure to deal with waste

- (1) A person contravenes this subsection if:
- (a) the person has been given an order under section 34, 35 or 35A requiring the person:
 - (i) to deal with hazardous waste in a specified way; or
 - (ii) to deal with hazardous waste by a specified time; and
 - (b) the person does an act or omits to do an act; and
 - (c) the act or omission contravenes the requirement; and
 - (d) the non-compliance with the requirement injures or damages human beings or the environment.

Note 1: The physical elements of an offence against subsection (2) are set out in this subsection (see section 58F).

Note 2: A requirement to deal with hazardous waste in a specified way includes a requirement to import or export the waste.

Fault-based offence

- (2) A person commits an offence if the person contravenes subsection (1).

Penalty: Imprisonment for 8 years or 500 penalty units, or both.

Alternative verdict

- (3) In a trial for an offence against subsection (2), the trier of fact may find the defendant not guilty of that offence, but guilty of an offence against subsection 38C(2), if:
- (a) the trier of fact is not satisfied that the defendant is guilty of the offence against subsection (2) of this section; and

- (b) the trier of fact is satisfied that the defendant is guilty of the offence against subsection 38C(2); and
- (c) the defendant has been accorded procedural fairness in relation to that finding of guilt.

Strict liability offence

- (4) A person commits an offence of strict liability if the person contravenes subsection (1).

Penalty: 60 penalty units.

Civil penalty provision

- (5) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 1,000 penalty units.

38E Failure to deal with waste in contravention of order under section 36 or 38A

Failure to deal with waste

- (1) A person contravenes this subsection if:
 - (a) the person has been given an order under section 36 or 38A requiring the person to take steps to remedy or mitigate damage; and
 - (b) the person does an act or omits to do an act; and
 - (c) the act or omission contravenes the requirement.

Note: The physical elements of an offence against subsection (2) are set out in this subsection (see section 58F).

Fault-based offence

- (2) A person commits an offence if the person contravenes subsection (1).

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

Strict liability offence

- (3) A person commits an offence of strict liability if the person contravenes subsection (1).

Penalty: 60 penalty units.

Civil penalty provision

- (4) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 600 penalty units.

38F Failure to deal with waste in contravention of order under section 38—basic contravention

Failure to deal with waste

- (1) A person contravenes this subsection if:
- (a) the person has been given an order under section 38 requiring the person to deal with hazardous waste in a specified way; and
 - (b) the person does an act or omits to do an act; and
 - (c) the act or omission contravenes the requirement.

Note 1: The physical elements of an offence against subsection (2) are set out in this subsection (see section 58F).

Note 2: A requirement to deal with hazardous waste in a specified way includes a requirement to import the waste or a requirement to deal with the waste within a specified time.

Fault-based offence

- (2) A person commits an offence if the person contravenes subsection (1).

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

Strict liability offence

- (3) A person commits an offence of strict liability if the person contravenes subsection (1).
-

Penalty: 60 penalty units.

Civil penalty provision

- (4) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 600 penalty units.

38G Failure to deal with waste in contravention of order under section 38—injury or damage to human beings or the environment

Failure to deal with waste

- (1) A person contravenes this subsection if:
- (a) the person has been given an order under section 38 requiring the person to deal with hazardous waste in a specified way; and
 - (b) the person does an act or omits to do an act; and
 - (c) the act or omission contravenes the requirement; and
 - (d) the act or omission injures or damages, or is likely to injure or damage, human beings or the environment.

Note 1: The physical elements of an offence against subsection (2) are set out in this subsection (see section 58F).

Note 2: A requirement to deal with hazardous waste in a specified way includes a requirement to import the waste or a requirement to deal with the waste within a specified time.

Fault-based offence

- (2) A person commits an offence if the person contravenes subsection (1).

Penalty: Imprisonment for 8 years or 500 penalty units, or both.

Alternative verdict

- (3) In a trial for an offence against subsection (2), the trier of fact may find the defendant not guilty of that offence, but guilty of an offence against subsection 38F(2), if:

- (a) the trier of fact is not satisfied that the defendant is guilty of the offence against subsection (2) of this section; and
- (b) the trier of fact is satisfied that the defendant is guilty of the offence against subsection 38F(2); and
- (c) the defendant has been accorded procedural fairness in relation to that finding of guilt.

Strict liability offence

- (4) A person commits an offence of strict liability if the person contravenes subsection (1).

Penalty: 60 penalty units.

Civil penalty provision

- (5) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 1,000 penalty units.

38H Failure to give information in contravention of order under this Part

Failure to give information

- (1) A person contravenes this subsection if:
 - (a) a person has been given an order under this Part requiring the person to give the Minister specified information by a specified time and in a specified manner; and
 - (b) the person does an act or omits to do an act; and
 - (c) the act or omission contravenes the requirement.

Strict liability offence

- (2) A person commits an offence of strict liability if the person contravenes subsection (1).

Penalty: 30 penalty units.

Civil penalty provision

- (3) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 240 penalty units.

18 Part 4 (heading)

Repeal the heading.

19 Sections 39 to 40B

Repeal the sections.

20 Section 41A

Repeal the section, substitute:

41A Transporting substance through transit country without approval

Transporting substance through transit country without approval

- (1) A person contravenes this subsection if:
- (a) the person exports a substance or object to a foreign country (the *destination country*); and
 - (b) the substance or object is transported through a third country (the *transit country*) on its way to the destination country; and
 - (c) the substance or object is not hazardous waste for the purposes of the application of this Act to the export; and
 - (d) under section 41C the substance or object is a notifiable substance in relation to the transit country; and
 - (e) at the time when the substance or object was brought into the transit country, the transportation had not been approved under section 41B.

Note: The physical elements of an offence against subsection (2) are set out in this subsection (see section 58F).

Fault-based offence

- (2) A person commits an offence if the person contravenes subsection (1).

Penalty: Imprisonment for 3 years or 180 penalty units, or both.

Strict liability offence

- (3) A person commits an offence of strict liability if the person contravenes subsection (1).

Penalty: 60 penalty units.

Civil penalty provision

- (4) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 360 penalty units.

21 After paragraph 57(e)

Insert:

- (ea) decisions to give a notice under subsection 33G(1);
(eb) decisions to revoke a notice under subsection 33G(4);

22 Paragraph 57(f)

Omit “35A and 36”, substitute “35A, 36 and 38A”.

23 After section 58E

Insert:

58F Contravening an offence provision or a civil penalty provision

- (1) This section applies if a provision of this Act provides that a person contravening another provision of this Act (the *conduct provision*) commits an offence or is liable to a civil penalty.
- (2) For the purposes of this Act, and the Regulatory Powers Act to the extent that it relates to this Act, a reference to a contravention of an offence provision or a civil penalty provision includes a reference to a contravention of the conduct provision.

- (3) For the purposes of applying Chapter 2 of the *Criminal Code* to the offence, the physical elements of the offence are set out in the conduct provision.

Note: Chapter 2 of the *Criminal Code* sets out general principles of criminal responsibility.

Part 2—Transitional and saving provisions

24 Saving provision—contraventions, orders and contraventions of orders

- (1) Despite the amendments made by Part 1 of this Schedule, the old law continues to apply, on or after the commencement of that Part, in relation to:
- (a) a contravention of Part 4 of the old law before that commencement; or
 - (b) an order under Part 3 of the old law made:
 - (i) before that commencement; or
 - (ii) on or after that commencement as a result of this item in relation to a contravention covered by paragraph (a) of this item;

as if those amendments were not made.

Note: The amendments made by Part 1 of this Schedule apply in relation to contraventions of Part 2A, or orders made under Part 3, of the *Hazardous Waste (Regulation of Exports and Imports) Act 1989* (as amended by Part 1 of this Schedule) on or after the commencement of those amendments.

- (2) In this item:
- old law** means the following provisions of the *Hazardous Waste (Regulation of Exports and Imports) Act 1989* as in force immediately before the commencement of this Part:
- (a) Part 3;
 - (b) Part 4 (other than section 41);
 - (c) any other provision to the extent that it relates to Parts 3 or 4 (other than section 41 and the provisions of Part 5).

Note: For application and saving rules dealing with monitoring powers, investigation powers, audit powers and injunctions in relation to contraventions of Part 4 of the old law, and contraventions of orders under Part 3 of the old law, see Part 2 of Schedule 2 to this Act.

25 Transitional provision—notification of transit proposals that do not require a transit permit

A notification:

- (a) given under paragraph 40A(1)(b) of the *Hazardous Waste (Regulation of Exports and Imports) Act 1989*, as in force before the commencement of this Part; and
- (b) that is in force immediately before that commencement;
- continues in force (and may be dealt with) in relation to the import, export or transit of hazardous waste occurring on or after that commencement as if the notification were a notification given under subsection 33G(1) of the *Hazardous Waste (Regulation of Exports and Imports) Act 1989*, as inserted by this Schedule.

Part 3—Contingent amendments

Hazardous Waste (Regulation of Exports and Imports) Act 1989

26 Paragraph 38B(2)(b)

Repeal the paragraph, substitute:

- (b) the Federal Circuit and Family Court of Australia
(Division 2); or

Schedule 5—Other amendments

Part 1—Australian waters

Hazardous Waste (Regulation of Exports and Imports) Act 1989

1 Section 4 (definition of *Australia*)

Repeal the definition, substitute:

Australia, when used in a geographical sense:

- (a) includes the external Territories; but
- (b) does not include Australian waters.

2 Section 4 (definition of *Australian waters*)

Repeal the definition, substitute:

Australian waters means the following:

- (a) the coastal sea of Australia;
 - (b) the coastal sea of each external Territory;
- which have the same meanings as in section 15B of the *Acts Interpretation Act 1901*.

3 Subsection 4B(1) (note)

Repeal the note, substitute:

Note: Australia does not include Australian waters (see section 4).

Part 2—Commenting on permit applications

Division 1—Amendments

Hazardous Waste (Regulation of Exports and Imports) Act 1989

4 Subsection 17(1)

Omit “the Minister is satisfied”.

5 Paragraph 17(1)(a)

Before “that dealing”, insert “the Minister is satisfied”.

6 Paragraph 17(1)(b)

Omit “if the permit sought is”, substitute “in the case of”.

7 Subparagraphs 17(1)(b)(i) and (ii)

Before “that the”, insert “the Minister is satisfied”.

8 Paragraph 17(1)(ba)

Omit “if the permit sought is”, substitute “in the case of”.

9 Paragraph 17(1)(ba)

Before “that the”, insert “the Minister is satisfied”.

10 Paragraphs 17(1)(c) and (d)

Before “that”, insert “the Minister is satisfied”.

11 After paragraph 17(1)(d)

Insert:

; and (e) the Minister has taken into account any relevant public comments received in response to an invitation under paragraph 33(1)(aa) about the permit application (or any notice relating to that application).

12 Subsection 17A(2)

Omit “the Minister is satisfied”.

13 Paragraphs 17A(2)(a) to (c)

Before “that”, insert “the Minister is satisfied”.

14 After paragraph 17A(2)(c)

Insert:

; and (d) the Minister has taken into account any relevant public comments received in response to an invitation under paragraph 33(1)(aa) about the permit application (or any notice relating to that application).

15 Before subsection 33(1)

Insert:

Requirement to publish information

16 Subsection 33(1)

Omit “Subject to subsection (2), the”, substitute “The”.

17 After paragraph 33(1)(a)

Insert:

(aa) for each application or notice described in paragraph (a)—an invitation for members of the public to comment on the application or notice within 15 business days after being published under this subsection; and

18 Before subsection 33(2)

Insert:

Exception—contrary to the public interest

19 Subsection 33(2)

Omit “The Minister is not required to publish”, substitute “Subsection (1) does not apply to”.

20 After subsection 33(2)

Insert:

Exception—invitations for public comment

- (2A) Subsection (1) does not apply to publishing an invitation described in paragraph (1)(aa) for public comment on an application or notice if the Minister is satisfied that:
- (a) the existence of exceptional circumstances means it is inappropriate to do so; or
 - (b) it would not be in the public interest to do so; or
 - (c) the application, or notice, is for a variation that is of a minor or technical nature.

Division 2—Application of amendments

21 Application provision—commenting on permit applications

The amendments of the *Hazardous Waste (Regulation of Exports and Imports) Act 1989* made by this Part apply in relation to an application or notice described in paragraph 33(1)(a) of that Act that is received by the Minister on or after the commencement of this Part.

Part 3—Granting, revoking or varying Basel permits

Division 1—Main amendments

Hazardous Waste (Regulation of Exports and Imports) Act 1989

22 Section 4 (definition of *application day*)

Repeal the definition.

23 Section 4

Insert:

decision period means:

- (a) in relation to a permit application—the period referred to in subsection 16(1), but as paused or extended under section 15, 16A, 16B, 16C or 16D; or
- (b) in relation to a variation application—the period referred to in subsection 26B(1), but as paused or extended under Subdivision C of Division 4 of Part 2.

24 Section 15

Repeal the section, substitute:

15 Minister may request further information about an application

- (1) Within 60 days after the day of receiving an application for a Basel permit, the Minister may request the applicant to provide further information in writing to deal with the application.
- (2) If the Minister makes such a request of an applicant:
 - (a) the period in subsection 16(1) for the Minister to decide whether to grant the Basel permit is paused until the request is complied with; and
 - (b) the application is taken to be withdrawn if the request is not complied with within 60 days after the day that the request is made.

25 Subsection 15A(3)

Repeal the subsection.

26 Section 16

Repeal the section, substitute:

16 Period for making decision on application for Basel permit— default period

- (1) The Minister must decide whether to grant the Basel permit within 60 days starting on the day after the Minister receives the application (the *decision period*).

Note: This period may be paused or extended under section 15, 16A, 16B, 16C or 16D.

- (2) If the Minister has not decided whether to grant the permit by the end of the decision period, the Minister is to be taken to have decided, on the last day of that period, not to grant the permit.

16A Period for making decision on application for Basel permit— extensions for Basel export permits

- (1) If the application is for a Basel export permit, then within 21 days after the day of receiving the application, the Minister must notify:
 - (a) the competent authority of the country to which hazardous waste is to be exported under the permit (the *receiving country*); and
 - (b) the competent authority of each country (if any) (a *transit country*) through which the hazardous waste is to be transported in order to export it to the receiving country;of such information about the application as is required by regulations made for the purposes of this subsection.
- (2) If, at the end of the 46th day of the decision period, either:
 - (a) the competent authority of the receiving country has neither given nor refused written consent to the grant of the permit;
 - or

- (b) a competent authority of a transit country notified under paragraph (1)(b) has neither given nor refused written consent to the grant of the permit;
the decision period is paused until the earlier of:
 - (c) the latest day such a refusal or consent is given by a competent authority covered by paragraph (a) or (b); and
 - (d) 12 months after the day the Minister receives the application.
- (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.

**16B Period for making decision on application for Basel permit—
extensions for Basel permits**

- (1) If:
 - (a) the application is for a Basel 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 decision period by up to a further 60 days.
- (2) The Minister must give written notice of any extension under subsection (1) to each of the following as soon as practicable:
 - (a) the applicant;
 - (b) in the case of an application for a Basel import permit—the competent authority of the country from which the permit authorises the import of hazardous waste;
 - (c) in the case of a Basel export permit—the following:
 - (i) the competent authority of the country to which the permit authorises the export of hazardous waste (the **receiving country**);
 - (ii) the competent authority of each country (if any) through which the permit authorises the hazardous waste to be transported in order to export it to the receiving country.

**16C Period for making decision on application for Basel permit—
referrals under the Environment Protection and
Biodiversity Conservation Act 1999**

If, within the decision period, the proposal to grant the Basel permit is referred under Subdivision A of Division 4 of Part 11 of the *Environment Protection and Biodiversity Conservation Act 1999*, the decision period is paused until:

- (a) the Minister administering that Subdivision gives, under section 163 of that Act, advice on the proposed grant; or
- (b) the Minister administering that Subdivision decides, under section 161A of that Act, that that Subdivision does not apply to the referral.

Note: Under Subdivision A of Division 4 of Part 11 of the *Environment Protection and Biodiversity Conservation Act 1999*, persons considering whether to authorise certain actions must get advice on environmental matters from the Minister administering that Subdivision.

**16D Period for making decision on application for Basel permit—
extension agreed with applicant**

The decision period is extended if the Minister and applicant agree in writing to the extension.

27 At the end of subsection 22(2D)

Add:

- Note 1: Another example of a condition is one that includes a day on or before which it needs to be complied with.
- Note 2: The condition could be imposed under this section or under Division 4 as a variation of the permit.

28 Section 24

Repeal the section, substitute:

Subdivision A—Revoking Basel permits

24 Revoking Basel permits—grounds

- (1) The Minister may, in writing, decide to revoke a Basel permit if the Minister is satisfied that:
- (a) the holder of the permit:
 - (i) gave the Minister false, misleading or incomplete information; and
 - (ii) when doing so, failed to give the Minister an explanation for doing so, or failed to give the Minister the correct or complete information if the person was reasonably able to have done so; or
 - (b) the holder of the permit:
 - (i) is failing, or has failed, to comply with a condition to which the permit is subject; or
 - (ii) is failing, or has failed, to comply with a provision of this Act relating to the permit; or
 - (iii) is failing, or has failed after the granting of the permit, to provide or to arrange to provide an auditor with assistance that is reasonably necessary for the conduct of an audit; or
 - (c) after considering information that was not considered when granting the permit, the permit would not be granted if the Minister were now asked to grant it; or
 - (d) after considering information that was not considered when granting the permit, the revocation is necessary to prevent or lessen a threat of serious harm to human health or the environment; or
 - (e) a ground prescribed by the regulations for the purposes of this paragraph is satisfied for the holder and the permit.

Note 1: For the requirement to provide an auditor with assistance that is reasonably necessary for the conduct of an audit, see section 54.

Note 2: The audit need not relate to the permit. Assistance may be requested in relation to any audit of operations covered by a permit, an order under Part 3, a notification given under subsection 33G(1), or other prescribed operations: see section 50.

- (2) However, a revocation of a Basel permit only applies to an import, export or the carrying out of a transit proposal authorised by the permit if the import, export or the carrying out of the transit proposal has yet to begin.

Note 1: This subsection means that a Basel permit that authorises 2 or more imports or exports of hazardous waste, or the carrying out of 2 or more transit proposals, only applies to an import or export, or the carrying out of a transit proposal, that has not begun at the time of the revocation.

Note 2: This subsection also means a Basel permit cannot be revoked if it only authorises a single import or export that has already begun or the carrying out of a single transit proposal that has already begun.

24A Revoking Basel permits—notice of proposed revocation

- (1) Despite subsection 24(1), the Minister must not revoke a Basel permit under that subsection unless:
- (a) the Minister has given a written notice to the holder of the permit in accordance with subsection (2) of this section; and
 - (b) the Minister has taken into account any information given, within 14 days after the day the notice is given to the permit holder, to the Minister in response to the notice.
- (2) A notice under paragraph (1)(a) must:
- (a) specify the proposed revocation of the permit; and
 - (b) specify the grounds for the proposed revocation; and
 - (c) invite the holder of the permit to give the Minister, within 14 days after the day the notice is given, a written statement showing cause why the permit should not be revoked; and
 - (d) include a statement setting out the holder's right to seek review of a decision to revoke the permit.
- (3) A notice under paragraph (1)(a) is not required if the Minister reasonably believes that the proposed revocation is necessary to prevent or lessen a serious and imminent threat to human health or the environment.

24B Notice of revocation

- (1) If the Minister decides under subsection 24(1) to revoke a Basel permit, the Minister must give the holder of the permit a written notice stating the following:
 - (a) that the permit is to be revoked;
 - (b) the reasons for the revocation;
 - (c) the day the revocation is to take effect (which must not be before the day the notice is given to the holder);
 - (d) information about the holder's right to seek review of the decision.
- (2) If the holder of the permit was given a notice (a *show cause notice*) under paragraph 24A(1)(a) that included the invitation referred to in paragraph 24A(2)(c), the revocation must not take effect before the end of 14 days after the day the show cause notice was given.

24C Exhaustive statement of natural justice hearing rule

This Subdivision is taken to be an exhaustive statement of the requirements of the natural justice hearing rule in relation to the matters it deals with.

Subdivision B—Surrendering Basel permits

29 Sections 26 to 31

Repeal the sections, substitute:

Subdivision C—Varying Basel permits: on application

26 Varying Basel permits on application

- (1) The Minister may, on application by the holder of a Basel permit, vary the permit if:
 - (a) the Minister is satisfied that, if the Minister were asked to grant the Basel permit (as proposed to be varied), the Minister would decide to grant the permit; and

- (b) the Minister has taken into account any relevant public comments received in response to an invitation under paragraph 33(1)(aa) about the application.

Note: Examples of a variation include varying or revoking a permit condition.

- (2) The application must:
 - (a) be in the form approved by the Minister; and
 - (b) set out, or be accompanied by, such information in relation to the proposed variation as is required by the form.
- (3) The Minister must give the applicant written notice of having received an application within 7 days after the day of receiving it.

26A Minister may request further information about an application

- (1) Within 60 days after the day of receiving the application, the Minister may request the applicant to provide further information in writing to deal with the application.
- (2) If the Minister makes such a request of an applicant:
 - (a) the period in subsection 26B(1) for the Minister to decide whether to make the variation is paused until the request is complied with; and
 - (b) the application is taken to be withdrawn if the request is not complied with within 60 days after the day the request is made.

26B Period for making a decision on an application—default period

- (1) The Minister must decide whether to make the variation within the period of 60 days starting on the day after the Minister receives the application (the *decision period*).

Note: This period may be paused or extended under section 26A, 26C, 26D, 26E or 26F.
- (2) If the Minister does not decide whether to make the variation by the end of the decision period, the Minister is to be taken to have decided, on the last day of that period, not to make the variation.

26C Period for making a decision on an application—extensions for Basel export permits

- (1) If the application is for a variation of a Basel export permit, then within 21 days after the day of receiving the application, the Minister must notify:
 - (a) the competent authority of the country to which hazardous waste is to be exported under the permit (the *receiving country*); and
 - (b) the competent authority of each country (if any) (a *transit country*) through which the hazardous waste is to be transported in order to export it to the receiving country;of such information about the application as is required by regulations made for the purposes of this subsection.
- (2) If, at the end of the 46th day of the decision period, either:
 - (a) the competent authority of the receiving country has neither given nor refused written consent to the variation; or
 - (b) a competent authority of a transit country notified under paragraph (1)(b) has neither given nor refused written consent to the variation;the decision period is paused until the earlier of:
 - (c) the latest day such a refusal or consent is given by a competent authority covered by paragraph (a) or (b); and
 - (d) 12 months after the day the Minister receives the application.
- (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.

26D Period for making a decision on an application—extensions for Basel permits

- (1) If:
 - (a) the application is for a variation of a Basel 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 decision period by up to a further 60 days.
- (2) The Minister must give written notice of any extension under subsection (1) to each of the following as soon as practicable:
- (a) the applicant;
 - (b) in the case of a variation of a Basel import permit—the competent authority of the country from which the permit authorises the import of hazardous waste;
 - (c) in the case of a variation of a Basel export permit—the following:
 - (i) the competent authority of the country to which the permit authorises the export of hazardous waste (the *receiving country*);
 - (ii) the competent authority of each country (if any) through which the permit authorises the hazardous waste to be transported in order to export it to the receiving country.

26E Period for making a decision on an application—referrals under the Environment Protection and Biodiversity Conservation Act 1999

If, within the decision period, the proposal to vary the Basel permit is referred under Subdivision A of Division 4 of Part 11 of the *Environment Protection and Biodiversity Conservation Act 1999*, the decision period is paused until:

- (a) the Minister administering that Subdivision gives, under section 163 of that Act, advice on the proposed variation; or
- (b) the Minister administering that Subdivision decides, under section 161A of that Act, that that Subdivision does not apply to the referral.

Note: Under Subdivision A of Division 4 of Part 11 of the *Environment Protection and Biodiversity Conservation Act 1999*, persons considering whether to authorise certain actions must get advice on environmental matters from the Minister administering that Subdivision.

26F Period for making a decision on an application—extension agreed with applicant

The decision period is extended if the Minister and applicant agree in writing to the extension.

26G Notice of variation

If the Minister makes a decision in relation to an application to vary a Basel permit, the Minister must give the holder of the permit a written notice stating the following:

- (a) whether the permit is to be varied;
- (b) if the decision is that the permit is to be varied—the day the variation is to take effect;
- (c) if the decision is that the permit is not to be varied:
 - (i) the reasons for the decision; and
 - (ii) information about the holder’s right to seek review of the decision.

Subdivision D—Varying Basel permits: on Minister’s initiative

26H Varying Basel permits on Minister’s initiative—grounds

The Minister may, in writing, decide to vary a Basel permit if the Minister is satisfied that:

- (a) the holder of the permit:
 - (i) gave the Minister false, misleading or incomplete information; and
 - (ii) when doing so, failed to give the Minister an explanation for doing so, or failed to give the Minister the correct or complete information if the person was reasonably able to have done so; or
- (b) the holder of the permit:
 - (i) is failing, or has failed, to comply with a condition to which the permit is subject; or
 - (ii) is failing, or has failed, to comply with a provision of this Act relating to the permit; or
 - (iii) is failing, or has failed after the granting of the permit, to provide or to arrange to provide an auditor with

assistance that is reasonably necessary for the conduct of an audit; or

- (c) after considering information that was not considered when granting the permit, the variation is necessary to prevent or lessen a threat of serious harm to human health or the environment; or
- (d) a ground prescribed by the regulations for the purposes of this paragraph is satisfied for the holder and the permit.

Note 1: Examples of a variation include imposing a condition on the permit, or varying or revoking a permit condition.

Note 2: For the requirement to provide an auditor with assistance that is reasonably necessary for the conduct of an audit, see section 54.

Note 3: The audit need not relate to the permit. Assistance may be requested in relation to any audit of operations covered by a permit, an order under Part 3, a notification given under subsection 33G(1), or other prescribed operations: see section 50.

26J Varying Basel permits—notice of proposed variation

- (1) Despite section 26H, the Minister must not vary a Basel permit under that section unless:
 - (a) the Minister has given a written notice to the holder of the permit in accordance with subsection (2) of this section; and
 - (b) the Minister has taken into account any information given, within 14 days after the day the notice is given to the permit holder, to the Minister in response to the notice.
 - (2) A notice under paragraph (1)(a) must:
 - (a) specify the proposed variation of the permit; and
 - (b) specify the grounds for the proposed variation; and
 - (c) invite the holder of the permit to give the Minister, within 14 days after the day the notice is given, a written statement showing cause why the permit should not be varied; and
 - (d) include a statement setting out the holder's right to seek review of a decision to vary the permit.
 - (3) A notice under paragraph (1)(a) is not required if the Minister reasonably believes that the proposed variation is necessary to prevent or lessen a serious and imminent threat to human health or the environment.
-

26K Notice of variation

- (1) If the Minister decides under section 26H to vary a Basel permit, the Minister must give the holder of the permit a written notice stating the following:
 - (a) that the permit is to be varied;
 - (b) the reasons for the variation;
 - (c) the day the variation is to take effect (which must not be before the day the notice is given to the holder);
 - (d) information about the holder's right to seek review of the decision.

Example: A variation could impose a condition to be complied with on or after the day the variation takes effect in relation to an import that has already happened.

- (2) If the holder of the permit was given a notice (a *show cause notice*) under paragraph 26J(1)(a) that included the invitation referred to in paragraph 26J(2)(c), the day stated under paragraph (1)(c) of this section when the variation is to take effect must not be before the end of 14 days after the day the show cause notice was given.

26L Exhaustive statement of natural justice hearing rule

This Subdivision is taken to be an exhaustive statement of the requirements of the natural justice hearing rule in relation to the matters it deals with.

Division 2—Consequential amendments

Environment Protection and Biodiversity Conservation Act 1999

30 Section 161B (note)

Omit “and subsections 16(5) and 29(5) of the *Hazardous Waste (Regulation of Exports and Imports) Act 1989*”.

Division 3—Application and transitional provisions

31 Application and transitional provisions—Basel permits

Granting Basel permits

- (1) The amendments of Division 3 of Part 2 of the *Hazardous Waste (Regulation of Exports and Imports) Act 1989*, made by this Part, apply in relation to the following:
 - (a) an application for a Basel permit made on or after the commencement of this Part;
 - (b) an application for a Basel permit made before the commencement of this Part if the application is varied on or after the commencement of this Part.
- (2) Any regulations:
 - (a) made for the purposes of subsection 15A(3) of the *Hazardous Waste (Regulation of Exports and Imports) Act 1989*, as in force immediately before the commencement of this Part; and
 - (b) in force immediately before that commencement;continue in force (and may be dealt with) as if they had been made for the purposes of subsection 16A(1) of that Act as inserted by this Act.

Revoking or varying Basel permits

- (3) The amendments of Division 4 of Part 2 of the *Hazardous Waste (Regulation of Exports and Imports) Act 1989*, made by this Part, apply in relation to the following:
 - (a) a decision on or after the commencement of this Part whether to revoke a Basel permit;
 - (b) an application made on or after the commencement of this Part for a variation of a Basel permit;
 - (c) a decision, on the Minister's own initiative, on or after the commencement of this Part whether to vary a Basel permit.
- (4) Any regulations:
 - (a) made for the purposes of subsection 28A(2) of the *Hazardous Waste (Regulation of Exports and Imports) Act*

1989, as in force immediately before the commencement of this Part; and

(b) in force immediately before that commencement; continue in force (and may be dealt with) as if they had been made for the purposes of subsection 26C(1) of that Act as inserted by this Act.

Part 4—Publication of certain particulars

Division 1—Amendments

Hazardous Waste (Regulation of Exports and Imports) Act 1989

32 Paragraph 33(1)(g)

Repeal the paragraph, substitute:

(g) each determination under section 13B.

The particulars may include the name of the person concerned.

33 Before subsection 33(3)

Insert:

Exception—minor or technical variations of a permit

(2B) Subsection (1) does not apply to:

(a) a variation of a kind described in paragraph (1)(f); or

(b) an application for such a variation;

if the variation is of a minor or technical nature.

Publishing must happen as soon as practicable after it is required

34 At the end of section 33

Add:

Publishing other information

(4) The Minister may cause to be published on the Department's website particulars of:

(a) any offence against this Act for which a person has been convicted; and

(b) any order under section 82 of the Regulatory Powers Act against a person for contravening a civil penalty provision of this Act; and

- (c) any undertaking given under section 114 of the Regulatory Powers Act by a person in relation to a provision of this Act; and
 - (d) any order under section 115 of the Regulatory Powers Act against a person for a breach of an undertaking given in relation to a provision of this Act; and
 - (e) any injunction under section 121 or 122 of the Regulatory Powers Act against a person in relation to a provision of this Act; and
 - (f) any order under Part 3 of this Act by the Minister to a person.
- The particulars may include the name of the person concerned.

Division 2—Application provisions

35 Application provisions—publication

- (1) Subsection 33(1) of the *Hazardous Waste (Regulation of Exports and Imports) Act 1989*, as amended by this Part, applies in relation to particulars published on or after the commencement of this Part.
- (2) Subsection 33(2B) of the *Hazardous Waste (Regulation of Exports and Imports) Act 1989*, as inserted by this Part, applies in relation to the following:
 - (a) a variation of a kind described in paragraph 33(1)(f) of that Act that is made on or after the commencement of this Part;
 - (b) an application for such a variation if the application is made on or after that commencement.
- (3) Subsection 33(4) of the *Hazardous Waste (Regulation of Exports and Imports) Act 1989*, as inserted by this Part, applies in relation to the following:
 - (a) an offence against that Act for which the person is convicted, whether the person is convicted before, on or after the commencement of this Part;
 - (b) an order under section 82 or 115 of the Regulatory Powers Act made on or after that commencement,
 - (c) an undertaking given on or after that commencement;
 - (d) an injunction granted on or after that commencement;

Schedule 5 Other amendments

Part 4 Publication of certain particulars

- (e) an order under Part 3 of the *Hazardous Waste (Regulation of Exports and Imports) Act 1989* made before, on or after that commencement.

Part 5—Fees

Hazardous Waste (Regulation of Exports and Imports) Act 1989

36 Subsections 32(5) and (6)

Repeal the subsections, substitute:

- (5) The Minister may wholly or partly waive, or wholly or partly refund, a prescribed fee in circumstances prescribed by the regulations.

Part 6—New consultation mechanism

Hazardous Waste (Regulation of Exports and Imports) Act 1989

37 Section 4 (note 4 to the definition of *hazardous waste*)

Repeal the note.

38 Section 4 (definition of *Hazardous Waste Technical Group*)

Repeal the definition.

39 Subsections 58B(2) and 58C(2)

Repeal the subsections, substitute:

Consultation with relevant experts

- (2) When deciding whether to issue a certificate under subsection (1), the Minister must consult one or more of the following:
- (a) a person who the Minister considers has expertise or qualifications relevant to the decision;
 - (b) an industry group;
 - (c) an environmental group;
 - (d) a State or Territory government body.

40 Sections 58D and 58E

Repeal the sections, substitute:

58D Regulations defining hazardous waste—Minister must consult

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

- (a) a person who the Minister considers has expertise or qualifications relevant to those regulations;
- (b) an industry group;
- (c) an environmental group;

(d) a State or Territory government body.

*[Minister's second reading speech made in—
House of Representatives on 18 March 2021
Senate on 24 June 2021]*

(26/21)

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