

EXPLANATORY STATEMENT

Subject – *Hazardous Waste (Regulation of Exports and Imports) Act 1989*

*Hazardous Waste (Regulation of Exports and Imports) Legislation Amendment
(2017 Measures) Regulations 2017*

The *Hazardous Waste (Regulation of Exports and Imports) Act 1989* (the Act) regulates the export, import and transit of hazardous waste to ensure that exported, imported, or transited waste is managed in an environmentally sound manner so that humans and the environment are protected from the harmful effects of the waste. The Act gives effect to the *Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal* (the Basel Convention) and agreements and arrangements made in accordance with the Convention.

Section 62 of the Act provides the Governor-General may make regulations, not inconsistent with the Act, prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed by carrying out or giving effect to the Act.

The Regulations amend the following instruments:

- a. *Hazardous Waste (Regulation of Exports and Imports) Regulations 1996* (the Primary Regulations);
- b. *Hazardous Waste (Regulation of Exports and Imports) (Fees) Regulations 1990* (the Fees Regulations);
- c. *Hazardous Waste (Regulation of Exports and Imports) (Imports from East Timor) Regulations 2003* (the East Timor Regulations);
- d. *Hazardous Waste (Regulation of Exports and Imports) (Waigani Convention) Regulations 1999* (the Waigani Regulations);
- e. *Hazardous Waste (Regulation of Exports and Imports) (OECD Decision) Regulations 1996* (the OECD Regulations); and
- f. *Hazardous Waste (Regulation of Exports and Imports) (Decision IV/9) Regulations 1999* (the Decision IV/9 Regulations).

Several of the amendments are consequential to amendments to the Act made by the *Hazardous Waste (Regulation of Exports and Imports) Amendment Act 2017* (the Amendment Act) and the *Hazardous Waste (Regulation of Exports and Imports) Levy Act 2017* (the Levy Act).

The Regulations, in conjunction with the Amendment Act and Levy Act, bring the Act and its regulations into compliance with the Australian Government Cost Recovery Guidelines by introducing measures to achieve full cost recovery of the permitting scheme under the Act. The details of the cost recovery arrangements are set out in the Cost Recovery Implementation Statement 2015-16, which was prepared in consultation with relevant industry stakeholders and in accordance with the Australian Government's Cost Recovery Guidelines.

These measures include amending the Fee Regulations to:

- allow a fee to be charged when the Minister makes a request for further information in relation to a permit application or variation request and to set that fee at \$1,498;
- increase existing fees in Schedule 1 to reflect the true costs of administering the permitting functions under the Act;
- provide that the fees under Schedule 1 would be subject to annual indexation in accordance with the CPI.

The Regulations also make a range of amendments to streamline and improve the administrative efficiency of the Act and its regulations, whilst ensuring the standard of environmental protection remains high. These measures include:

- amending the Primary Regulations, East Timor Regulations, and the Waigani Regulations to allow the Minister to request further information where that information is required to make a decision about the grant of a permit or a variation of a permit and provide for the application to be taken to have been withdrawn if the information is not provided within the required timeframe;
- amending the Waigani Regulations to allow information about the Competent Authority for the purposes of the Waigani Convention to be published on the Department's website (rather than in the Gazette);
- repealing the Schedule to the Waigani Regulations so that the Waigani Convention is no longer scheduled to the Regulations (a note providing a web address where the Convention is available would be included instead);
- amending the OECD Regulations to remove the requirement for the precise place of export to be specified in OECD export permits;
- amending the OECD Regulations to allow the Minister to delegate functions and powers under those Regulations down to Executive Level 2 departmental officers; and
- repealing the Decision IV/9 Regulations in full, as they are now redundant.

Details of the Regulations are set out in [Attachment A](#).

The Act does not specify any conditions that need to be satisfied before the power to make the Regulations is exercised.

Relevant industry stakeholders have been consulted in relation to the amendments. The Office of Best Practice Regulation (OBPR) was consulted in relation to the making of the Regulations. OBPR advised that a Regulation Impact Statement was not required, as the changes do not have more than a minor regulatory impact on business, community organisations or individuals.

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*. The Regulations commence on 1 July 2017.

Authority: Section 62 of the Hazardous Waste (Regulation of Exports and Imports) Act 1989

Statement of Compatibility with Human Rights

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

Hazardous Waste (Regulation of Exports and Imports) Legislation Amendment (2017 Measures) Regulations 2017

Overview of the Legislative Instrument

The *Hazardous Waste (Regulation of Exports and Imports) Legislation Amendment (2017 Measures) Regulations 2017* (the Regulations) amend the following instruments:

- *Hazardous Waste (Regulation of Exports and Imports) Regulations 1996;*
- *Hazardous Waste (Regulation of Exports and Imports) (Fees) Regulations 1990;*
- *Hazardous Waste (Regulation of Exports and Imports) (Imports from East Timor) Regulations 2003;*
- *Hazardous Waste (Regulation of Exports and Imports) (Waigani Convention) Regulations 1999;*
- *Hazardous Waste (Regulation of Exports and Imports) (OECD Decision) Regulations 1996;* and
- *Hazardous Waste (Regulation of Exports and Imports) (Decision IV/9) Regulations 1999 (the Decision IV/9 Regulations).*

A number of the amendments have the effect of bringing the Act and its regulations into compliance with the Australian Government Cost Recovery Guidelines by introducing measures to achieve full cost recovery of the permitting scheme under the Act.

The Regulations also make a range of amendments to streamline and improve the administrative efficiency of the Act and its regulations, whilst ensuring the standard of environmental protection remains high.

Human rights implications

This legislative instrument has been assessed against the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. This legislative instrument does not engage any of the applicable rights or freedoms.

Conclusion

This legislative instrument is compatible with human rights as it does not raise any human rights issues.

The Hon Josh Frydenberg MP, Minister for the Environment and Energy

Details of the *Hazardous Waste (Regulation of Exports and Imports) Legislation Amendment (2017 Measures) Regulations 2017*

Section 1 – Name of Regulation

This section provides that the title of the Regulations is the *Hazardous Waste (Regulation of Exports and Imports) Legislation Amendment (2017 Measures) Regulations 2017* (the Regulations).

Section 2 – Commencement

This section provides for the Regulations to commence on 1 July 2017.

Section 3 – Authority

This section provides that the Regulations are made under Section 62 of the *Hazardous Waste (Regulation of Exports and Imports) Act 1989* (the Act).

Section 4 – Schedules

This section provides that each instrument specified in a Schedule to the Regulations is amended or repealed as set out in the applicable terms in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1 – General Amendments

Schedule 1 Item 1 – The whole of the *Hazardous Waste (Regulation of Exports and Imports) (Decision IV/9) Regulations 1999*

Schedule 1 Item 1 repeals the whole of the *Hazardous Waste (Regulation of Exports and Imports) (Decision IV/9) Regulations 1999* (Decision IV/9 Regulations) because this instrument is now redundant. The Decision IV/9 Regulations would not otherwise be repealed, as the Regulations are not spent and are exempt from sunseting by the *Legislation (Exemptions and Other Matters) Regulation 2015*.

The purpose of the Decision IV/9 Regulations is to amend the Schedule to the Act to incorporate changes to the text of the Annexes to the *Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal* (the Basel Convention) made by Decision IV/9 of the fourth meeting of the Conference of Parties to that Convention in 1998. Following the repeal of the Basel Convention from the Schedule to the Act, the Decision IV/9 Regulations are no longer necessary.

Schedule 1 Items 2, 6, 7, 9, and 10 - Consequential amendments to the repeal of the Basel Convention from the Schedule to the Act

Hazardous Waste (Regulation of Exports and Imports) (Imports from East Timor) Regulations 2003;
Hazardous Waste (Regulation of Exports and Imports) Regulations 1996;
Hazardous Waste (Regulation of Exports and Imports) (Waigani Convention) Regulations 1999

These items are consequential amendments to the *Hazardous Waste (Regulation of Exports and Imports) Amendment Act 2016* (the Amendment Act) repealing the Schedule to the Act. The full text of the Basel Convention was removed from the Schedule to the Act to reduce the need to amend the Act whenever changes are made to the Convention text. Schedule 1, Items 2, 6, 7,

9 and 10 of the Regulations repeal notes that refer to the Basel Convention being scheduled to the Act. The notes are replaced with notes providing a link to the Austlii website, where the most current version of the Basel Convention can be accessed.

These items amend the following regulations:

- Regulation 5 (note 2) of the *Hazardous Waste (Regulation of Exports and Imports) (Imports from East Timor) Regulations 2003* (the East Timor Regulations) (Schedule 1, Item 2 of these Regulations);
- Regulation 5 (note), regulation 6 (note) and Schedule 1 (note) of the *Hazardous Waste (Regulation of Exports and Imports) Regulations 1996* (the Primary Regulations) (Schedule 1 Item 6, Schedule 1 Item 7 and Schedule 1 Item 9 of these Regulations); and
- Regulation 3 (note 1) of the *Hazardous Waste (Regulation of Exports and Imports) (Waigani Convention) Regulations 1999* (the Waigani Regulations) (Schedule 1, Item 10 of these Regulations).

Schedule 1 Items 3, 8 and 14- Amendments relating to requests for further information.

Items 3, 8 and 14 apply where the Minister makes a request for further information in relation to a permit or permit variation application under section 15 or section 28 of the Act.

Item 3 inserts a new regulation 8 into the East Timor Regulations. The regulation applies where the Minister gives a request for further information to a person where the person has applied for a special import permit, or a variation of such a permit, under Part 2 of the Act as applied by regulation 7 of the East Timor Regulations (subregulation 8(1)).

Subregulation 8(2) provides that the person must comply with the request within 30 days or within a longer period if such a period is prescribed by the Minister. Subregulation 8(4) provides that a decision by the Minister to refuse to allow a longer period for the person to respond to a request would be subject to review by the Administrative Appeals Tribunal (AAT).

Subregulation 8(3) provides that where the further information is not provided by the applicant within the relevant period (30 days or such longer period as prescribed by the Minister), then the application is taken to be withdrawn.

Item 8 inserts a new regulation 9 into the Primary Regulations that has the same substantive effect as Item 3, but in respect of permit and permit variation applications made under the Act for movements under the Basel Convention (other than applications relating to movements subject to arrangements made under Article 11 of the Basel Convention that Australia has ratified e.g. the *Convention to Ban the Importation into Forum Island Countries of Hazardous and Radioactive Wastes and to Control the Transboundary Movement and Management of Hazardous Wastes within the South Pacific Region* (the Waigani Convention) as given effect in the Waigani Regulations).

Item 14 inserts regulation 11A into the Waigani Regulations, which has the same substantive effect as Items 3 and 8, but in respect of permit and permit variation applications made under Part 2 of the Act as applied by regulation 10 of the Waigani Regulations.

It is anticipated that formal requests for information under these provisions would be infrequent and would only be made in situations where applicants fail to submit a complete application in the first instance then fail to address the deficiencies in their applications despite assistance from the Department.

Schedule 1 Item 4 – Subparagraph 18(1)(b)(vii) of the Hazardous Waste (Regulation of Exports and Imports) (OECD Decision) Regulations 1996

Schedule 1 Item 4 repeals subparagraph 18(1)(b)(vii) of the *Hazardous Waste (Regulation of Exports and Imports) (OECD Decision) Regulations 1996* (the OECD Regulations).

Subparagraph 18(1)(b)(vii) provides that a special export permit must set out the port or ports from which the waste is to be exported.

This amendment is complementary to the repeal of paragraph 21(1)(e) of the Act by the Amendment Act. Item 4 removes the obligation to specify the port or place of export in export permits under the OECD Regulations, so that it is consistent with repeal of that requirement in Basel export permits under the Act. This information is not necessary to ensure the movement is appropriately controlled. By removing this requirement, small changes to arrangements regarding the specific place from which an export will commence will no longer trigger the need for a formal variation of the permit. This will reduce regulatory burden for industry and the Government.

Schedule 1 Item 5 – Paragraph 44(b) of the OECD Regulations

Schedule 1 Item 5 amends paragraph 44(b) of the OECD Regulations to provide that the Minister's functions and powers can be delegated to an APS employee who holds, or is acting in, an Executive Level 2 (or equivalent) position in the Department. This is complementary to a similar provision in the Amendment Act, which extended delegations under section 60 of the Act to Executive Level 2 officers.

The Minister would only delegate powers and functions to an Executive Level 2 officer where the officer had day-to-day responsibility for the administration of the Act (including the OECD Regulations). This would not prevent significant decisions being made by persons of a higher classification, but would enable Executive Level 2 officers to exercise Ministerial functions and powers where it was appropriate for decisions to be made at this level. This may include:

- administrative actions that are required under the OECD Regulations (some of which are required within relatively short statutory timeframes) that do not influence how hazardous wastes are to be managed, such as the notification and acknowledgement of permit applications; and
- permitting decisions that are routine in nature, non-controversial, and low-risk.

Delegating functions and powers to Executive Level 2 officers is consistent with other regulatory regimes, including the *Environment Protection and Biodiversity Conservation Act 1999*. It is also consistent with the *Australian Administrative Law Guide*, which states that it may be appropriate for junior officers to make decisions involving a limited exercise of discretion, or under provisions that will give rise to a high volume of decisions.

Item 5 also amends paragraph 44(b) to allow the Minister to delegate to acting, rather than only substantive, SES employees, under the OECD Regulations, consistent with paragraph 60(1)(b) of the Act.

Schedule 1 Item 13 – Subregulation 8(1) of the Waigani Regulations

Schedule 1 Item 13 amends subregulation 8(1) of the Waigani Regulations to allow notices under the Regulations to be published on the Department's website, rather than in the Gazette. This is complementary to the amendment to section 33 in the Act, which allowed the Minister to publish particulars of permitting decisions on the website, rather than in the Gazette. This amendment provides that the Minister may publish a notice on the website setting out the

address and acceptable language of a Competent Authority for a movement of hazardous waste under the Waigani Regulations. This will improve the speed with which notices are published.

Schedule 1 Items 15 and 16 – Regulation 15 and note to regulation 15 of the Waigani Regulations

Items 15 and 16 amend regulation 15 and the note to regulation 15 of the Waigani Regulations to provide the correct details of the Department that administers the Act. Regulation 15 and the note previously referred to ‘the Department of the Environment’, which was no longer correct. These Items amend regulation 15 and the note to provide that the term ‘Department’ means the Department administered by the Minister who administers these Regulations, and that in 2017 this is the Department of Environment and Energy.

Schedule 1 Items 17, 11, and 12 – Schedule 1 and regulation 3 (note 2) of the Waigani Regulations

Item 17 repeals Schedule 1 of the Waigani Regulations, which contains the text of the Waigani Convention. This amendment significantly shortens the Regulations and eliminates the need for republication of the Waigani Convention as part of the Regulations. This amendment is consistent with amendments from the Amendment Act which removed the text of the Basel Convention from the Act.

Item 11 repeals the second note to regulation 3 of the Waigani Regulations, which stated that the text of the Waigani Convention was set out in Schedule 1 of the Waigani Regulations. Item 11 inserts a new note providing a link to the Austlii website, where the most current version of the Waigani Convention can be accessed.

Item 12 amends the definition of *Convention* in regulation 4 of the Waigani Regulations, which referred to the text of the Waigani Convention set out in Schedule 1 to the Regulations.

Schedule 2 – Amendments relating to fees

The amendments in Schedule 2 relate to the cost recovery arrangements for permits under the Act and its various Regulations. The details of the cost recovery arrangements are set out in the Cost Recovery Implementation Statement 2015-16 (the CRIS), which was prepared in consultation with relevant industry stakeholders and in accordance with the Australian Government’s Cost Recovery Guidelines. The amendments in these Regulations include the final changes to implement the cost recovery arrangements set out in the CRIS. Other amendments to the arrangements were made by amendments to the *Hazardous Waste (Regulations of Exports and Imports) Fees Regulations 1990* (Fees Regulations) on 1 July 2016 and in the Amendment Act and *Hazardous Waste (Regulation of Exports and Imports) Levy Act 2017* (the Levy Act) in 2016.

Section 32(1) of the Act enables the Regulations to prescribe fees to be paid in relation to applications and notices given to the Minister under the Act and some of its regulations. Section 32(4) of the Act provides that the amount or rate of a fee must be reasonably related to the expenses incurred or to be incurred by the Commonwealth in relation to the application or notice to which it relates. The CRIS explains how the amount for each fee was determined.

Schedule 2 Items 2 and 5 – Regulation 3 and Schedule 1 (heading) of the *Hazardous Waste (Regulation of Exports and Imports) (Fees) Regulations 1990*

Schedule 2 Item 2 and Schedule 2 Item 5 are consequential to the amendments in Item 3 (to introduce an information fee) and Item 15 (to insert clause 2 into Schedule 1 to the Fees Regulations to include an information fee).

Schedule 2 Item 2 provides that permit and permit variation application fees are specified in clause 1 of Schedule 1 to the Fees Regulations. Schedule 2 Item 5 repeals Schedule 1's heading 'Application Fees' and replaces it with 'Prescribed Fees', as Schedule 1 has been amended to include an information fee in addition to application fees.

Schedule 2 Item 3 – 3A Information fees in Fees Regulations; Primary Regulations; Waigani Regulations; East Timor Regulations

Schedule 2 Item 3 inserts regulation 3A in the Fee Regulations to introduce a fee for requests for information made by the Minister or a delegate under the Act or its regulations.

Subregulation 3A(1) requires persons who have made a permit or permit variation application under the Act for movements under the Basel Convention (other than applications relating to movements subject to arrangements made under Article 11 of the Basel Convention that Australia has ratified e.g. the Waigani Convention and Waigani Regulations) and have been requested to provide further information under section 15 or 28 of the Act in relation to the application to pay an information fee (specified in the clause 2 of Schedule 1 to the Fees Regulations) once they provide the requested further information.

The information fee is one of a broad range of cost recovery measures set out in the CRIS. The information fee allows the Department to recover its costs of requesting further information from applicants, where the Minister is unable to make a decision in relation to permit or permit variation applications without the additional information. It is reasonable for the Department to recover the costs of administering information requests under section 15 or 28 through an information fee, as substantial staffing resources are required to administer these requests. The fee is reasonably related to the expenses incurred or to be incurred by the Commonwealth in relation to the relevant application. The amount of the fee has been set through Schedule 2 Item 15 below and was determined through the CRIS.

The information fee is prescribed under section 32(1) of the Act, which enables the Regulations to prescribe fees to be paid in relation to applications. Regulations associated with the information fee are prescribed under section 62(b) of the Act, which provides the Minister may make regulations that are 'necessary or convenient to be prescribed for carrying out or giving effect to this Act'.

Subregulation 3A(2) allows for an information fee to be charged where a request for information is made in relation to an application for a special import permit or permit variation under the East Timor Regulations.

Subregulation 3A(3) allows for an information fee to be charged where a request for information is made in relation to an application for a special import permit, special transit permit, or for a variation of such a permit under the Waigani Regulations.

Paragraphs 3A(1)(c), 3A(2)(c), and 3A(3)(c) have the effect that the fee is not be payable until the applicant complies with the request for further information.

Subregulation 3A(4) provides that a fee under subregulation 3A(1), 3A(2) or 3A(3) becomes due to the Commonwealth at the time the person complies with the request for information and may be recovered as a debt due to the Commonwealth by action in a court of competent jurisdiction.

Schedule 2, Item 3 - 3B Indexation of fees and Item 1 – Regulation 2 of the Fees Regulations

Schedule 2 Item 3 inserts a new regulation 3B into the Fees Regulations that would allow for the indexation of fees. This amendment follows section 7 of the Amendment Act which introduced subsection 32(7) into the Act, which enabled all application and notice fees to be indexed by a method prescribed by the regulations.

Including an indexation method in the Fees Regulations ensures that all relevant information regarding the amount of the fees for applications and notices, and the method for their indexation, is situated in the same place.

Subregulation 3B(2) provides for the *indexation factor* to apply, which is defined in accordance with the Consumer Price Index (CPI). The CRIS demonstrated that the CPI indexation would be the most appropriate method of indexation, as it would reflect the most current increases to charges resulting from market and consumer influences.

Subregulation 3B(2) refers to the *indexation day*, which allows the CPI adjustments to occur annually. The indexation day commences on 1 July 2018, and is then applied each 1 July thereafter (See Schedule 2 Item 1).

Subregulation 3B(2) sets out the formula for calculating the amount of each fee. The formula is:

Amount of the fee on the day before the indexation day X Indexation factor for the indexation day

Subregulation 3B(3) provides that the amount calculated under the formula in subregulation 3B(2) is rounded to the nearest dollar.

Subregulation 3B(4) sets out the formula for calculating the *indexation factor*, which is as follows:

Index number for the reference March quarter

Index number for the base March quarter

For this formula *reference March quarter* means the last March quarter before the indexation day and *base March quarter* means the last March quarter before the reference March quarter.

Subregulations 3B(5)–(7) provide for the formulation of the *index number*. The *index number* is defined according to the index reference period for the Consumer Price Index provided by the Australian Statistician.

Subregulation 3B(6) provides that the Regulations will disregard any index numbers published by the Australian Statistician that are a substitution for an index number previously published by the Australian Statistician for the same quarter.

Subregulation 3B(7) provides that if the Australian Statistician changes the index reference period for CPI, then the Regulation will be applied only to index numbers published in terms of the new index reference period.

Schedule 2 Item 1 inserts definitions for the terms *indexation day*, *index number*, and *March quarter* (which would be used in regulation 3B) into regulation 2 of the Fees Regulations.

Indexation day is defined as 1 July 2018 and each 1 July thereafter.

Index number is defined as the All Groups Consumer Price Index number that is the weighted average of the 8 capital cities and is published by the Australian Statistician for each quarter.

March quarter is defined as the period of 3 months starting on 1 January.

Schedule 2, Item 4 – Application of amendments made by Schedule 2 of the Regulations

This item provides that amendments made by Schedule 2 of the Regulations apply in relation to applications for permits or applications for variations of permits that are made on or after 1 July 2017.

Schedule 2 Items 6 – 14 Updating fees in Schedule 1 of the Fees Regulations (table items 1 – 8)

Items 6 to 14 amend the fee amounts in Schedule 1 of the Fees Regulations, as set out in table items 1 – 8, to give effect to some of the cost recovery measures in the CRIS. Amendments to subsection 32(1) of the Act in 2016 removed the cap on permit fees to allow for applicants to be charged application fees that align with the service they receive.

Substantial increases to fees are required to reflect the true costs of administering the permitting scheme under the Act. The methods used to calculate the new fees are set out in the CRIS.

The fee amounts are set out in the table below.

Item	Application or notice	Fee
	New Permits	\$
1	Transit permits	5,225
2	Import permits	7,088
3	Export for further processing	12,667
4	Export for final disposal	35,035
	Variations	
5	Transit permits	2,244
6	Import permits	2,616
7	Export for further processing	5,970
8	Export for final disposal	14,913
	Other	
9	Information request fee	1,498

Schedule 2 Item 15 - Information fee amount

Schedule 2 Item 15 amends the Schedule of the Fees Regulations to state that the information fee is \$1,498.

The amount of \$1,498 has been determined by an assessment of the direct costs to the Department of processing and sending the request for further information. The method by which the fee amount has been calculated is outlined in the CRIS. The amount of the information fee would remain under review to ensure it remains cost reflective, as required by the Guidelines.