

## **EXPLANATORY STATEMENT**

Issued by authority of the Assistant Minister for Waste Reduction and Environmental Management and Parliamentary Secretary to the Minister for the Environment

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

*Hazardous Waste (Regulation of Exports and Imports) Legislation Amendment Regulations 2021*

### **Legislative Authority**

The *Hazardous Waste (Regulation of Exports and Imports) Act 1989* (the Act) implements Australia's obligations under the Basel Convention on the Control of Transboundary Movements of Hazardous Waste and their Disposal (the Basel Convention), an international treaty for the control of the movement of hazardous waste from one country to another and its disposal. The Act regulates the export, import and transit of hazardous waste to ensure it is managed in an environmentally sound manner to minimise harmful effects of hazardous waste on humans and the environment.

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

### **Purpose**

The *Hazardous Waste (Regulation of Exports and Imports) Legislation Amendment Regulations 2021* (the Amendment Regulations) amend the following regulations made under the Act:

- *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) (OECD Decision) Regulations 1996*
- *Hazardous Waste (Regulation of Exports and Imports) Regulations 1996*
- *Hazardous Waste (Regulation of Exports and Imports) (Waigani Convention) Regulations 1999.*

### **Impact and Effect**

The Amendment Regulations implement amendments to the Basel Convention to strengthen transboundary controls on plastic wastes and ensure Australia's compliance with international obligations. The amendments to the Basel Convention sought to strengthen transboundary controls on unsorted plastic wastes. The *Hazardous Waste (Regulation of Exports and Imports) Amendment Act 2021* (the Amending Act) partially implements the changes to the Basel Convention. Amendments to the regulations made under the Act are necessary to fully ensure Australia's compliance with its international obligations.

The Amendment Regulations also amend the regulations made under the Act to provide administrative detail for new processes introduced by the Amending Act and other minor consequential and technical amendments to update the regulations. These include:

- providing the detail for new recordkeeping requirements;
- providing the detail on the requirements of conducting an audit;
- providing the circumstances where a fee may be waived or refunded;
- aligning the processes for granting, revoking and suspending special import, export and transit permits with their equivalent processes for Basel permits that are detailed in the Act and amended by the Amending Act;
- updating references to sections of the Act which have been re-numbered; and
- making other minor amendments to streamline and reduce the complexity of the regulations while ensuring the standard of environmental and human health protection remains high.

### **Consultation**

The Attorney-General's Department, the Department of Foreign Affairs and Trade and Office of Best Practice Regulation were consulted on the development of the Amendment Regulations. Public consultation was not considered appropriate for the Amendment Regulations as the amendments are consequential to the Amending Act.

### **Details and Operation**

The Act specifies no conditions that need to be satisfied before the power to make the Amendment Regulations may be exercised.

The Amendment Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Amendment Regulations commence on the later of the day after registration on the Federal Register of Legislation, and the same day as Schedule 1 to the Amending Act. The Amending Act commences on a day set by Proclamation or 6 months after the day it received the Royal Assent.

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

The Amendment Regulations are compatible with the human rights and freedoms recognised or declared under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A full statement of compatibility is set out in [Attachment B](#).

**Details of the *Hazardous Waste (Regulation of Exports and Imports) Legislation Amendment Regulations 2021***

**Section 1 - Name**

1. This section provides that the name of the regulations is the *Hazardous Waste (Regulation of Exports and Imports) Legislation Amendment Regulations 2021* (the Amendment Regulations).

**Section 2 - Commencement**

2. This section provides that the Amendment Regulations commence on the later of the day after registration on the Federal Register of Legislation, or the same day as Schedule 1 to the *Hazardous Waste (Regulation of Exports and Imports) Amendment Act 2021* (the Amending Act). This day is a single day to be fixed by Proclamation or 6 months after the day that Act receives the Royal Assent, whichever occurs earlier. The Amending Act received the Royal Assent on 30 June 2021.

**Section 3 - Authority**

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

**Section 4 - Schedules**

4. This section provides that each instrument that is specified in a Schedule to the Amendment Regulations is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.
5. This enables the amendment of the following regulations made under the Act:
  - *Hazardous Waste (Regulation of Exports and Imports) (Fees) Regulations 1990* (the Fees Regulations);
  - *Hazardous Waste (Regulation of Exports and Imports) (Imports from East Timor) Regulations 2003* (the Timor-Leste Regulations);
  - *Hazardous Waste (Regulation of Exports and Imports) (OECD Decision) Regulations 1996* (the OECD Regulations);
  - *Hazardous Waste (Regulation of Exports and Imports) Regulations 1996* (the HW Regulations);
  - *Hazardous Waste (Regulation of Exports and Imports) (Waigani Convention) Regulations 1999* (the Waigani Regulations).

## Schedule 1 - Amendments

### ***Hazardous Waste (Regulation of Exports and Imports) (Fees) Regulations 1990***

#### **Item [1] - Before regulation 1**

6. Item 1 inserts a new heading “Part 1 - Preliminary” before regulation 1 of the Fees Regulations.

#### **Item [2] - Regulation 2**

7. Item 2 inserts a new definition into regulation 2 of the Fees Regulations for *prescribed fee*. The definition clarifies that a prescribed fee has the meaning given by regulations 3 and 3A of the Fees Regulations.

#### **Item [3] - Before regulation 3**

8. Item 3 inserts a new heading “Part 2 - Fees” before regulation 3 of the Fees Regulations.

#### **Item [4] - Regulation 3**

9. Item 4 omits the reference to “prescribed fees” in regulation 3 of the Fees Regulations and substitute “fees (the *prescribed fees*)”. The fees mentioned in regulation 3 apply to applications made under the Act.
10. This amendment does not change the operation of the regulation but clarifies that the fee mentioned in regulation 3 is a prescribed fee for the purposes of section 32 of the Act.

#### **Item [5] - Paragraph 3A(1)(b)**

11. Item 5 omits references to sections 15 and 28 of the Act in paragraph 3A(1)(b) of the Fees Regulations and substitute references to, respectively, new subsections 15(1) and 26A(1) of the Act. The fees mentioned in regulation 3A apply to requests for additional information under the Act.
12. This amendment is consequential to the Amending Act, which re-numbered the relevant sections of the Act mentioned in this paragraph. There is no change to the operation of paragraph 3A(1)(b) of the Fees Regulations.

#### **Item [6] - Subregulation 3A(1)**

13. Item 6 inserts a “(a *prescribed fee*)” after “fee” in subregulation 3A(1) of the Fees Regulations. This amendment does not change the operation of the subregulation but clarifies that the fee mentioned in subregulation 3A(1) is a prescribed fee for the purposes of section 32 of the Act.

#### **Item [7] - Paragraph 3A(2)(a)**

14. Item 7 replaces the reference to East Timor in paragraph 3A(2)(a) of the Fees Regulations with a reference to the Democratic Republic of Timor-Leste.

15. This amendment is consequential to the amendment made by item 14 of the Amendment Regulations which updates that country's official name.

**Item [8] - Paragraph 3A(2)(b)**

16. Item 8 repeals the existing paragraph 3A(2)(a) of the Fees Regulations and substitutes a new paragraph 3A(2)(a).
17. New paragraph 3A(2)(a) has the effect of specifying that, for the purposes of section 32 of the Act, a person who is given a request to provide information under subsection 15(1) or 26A(1) of the Act, as applied by the Timor-Leste Regulations in relation to the application, is liable to pay a specified fee.
18. This item does not change the scope of persons required to pay a specified fee by subregulation 3A(2). Rather, this item updates paragraph 3A(2)(a) as a consequence of both the Amending Act (which re-numbered the relevant sections of the Act mentioned in this paragraph) and the amendment made by item 14 of the Amendment Regulations (which updates that country's official name).

**Item [9] - Subregulation 3A(2)**

19. Item 9 inserts a “(a *prescribed fee*)” after “fee” in subregulation 3A(2) of the Fees Regulations.
20. This amendment does not change the operation of the subregulation but rather clarifies that the fee mentioned in subregulation 3A(2) is a prescribed fee for the purposes of section 32 of the Act.

**Item [10] - Paragraph 3A(3)(b)**

21. Item 10 omits references to sections 15 and 28 of the Act in paragraph 3A(3)(b) of the Fees Regulations and substitute references to, respectively, new subsections 15(1) and 26A(1) of the Act.
22. This amendment is consequential to the Amending Act, which re-numbered the relevant sections of the Act mentioned in this paragraph. There is no change to the operation of paragraph 3A(3)(b) of the Fees Regulations.

**Item [11] - Subregulation 3A(3)**

23. Item 11 inserts a “(a *prescribed fee*)” after “fee” in subregulation 3A(3) of the Fees Regulations.
24. This amendment does not change the operation of the subregulation but clarifies that the fee mentioned in subregulation 3A(3) is a prescribed fee for the purposes of section 32 of the Act.

**Item [12] - Subregulation 3A(4)**

25. Item 12 inserts “prescribed” before “fee” in subregulation 3A(4) of the Fees Regulations.

26. This amendment does not change the operation of the subregulation but clarifies that the fee mentioned in this subregulation is a prescribed fee for the purposes of section 32 of the Act.

### **Item [13] - Regulations 4 and 5**

27. Item 13 repeals existing regulations 4 and 5 of the Fees Regulations.

28. These regulations clarified that amendments made by the *Hazardous Waste (Regulation of Exports and Imports) (Fees) Amendment Regulations 2016* and *Hazardous Waste (Regulation of Exports and Imports) Legislation Amendment (2017 Measures) Regulations 2017* apply in relation to applications for permits or variation to permits that are made on or after a specified date. These dates have since passed, meaning regulations 4 and 5 are no longer necessary for the operation of the Act or Fees Regulations.

29. Item 13 also inserts:

- a new regulation 4 into the Fees Regulations to deal with waiver or refund of fees; and
- a new Part 3 (regulation 5) into the Fees Regulations to provide for application and transitional matters relating to the Amendment Regulations.

### **Regulation 4 - Waiver or refund of prescribed fees**

30. New regulation 4 of the Fees Regulations is made for the purposes of subsection 32(5) of the Act. Subsection 32(5) of the Act, as amended by the Amending Act, allows the Minister to wholly or partly waive, or wholly or partly refund, a prescribed fee in the circumstances prescribed by the regulations.

31. New regulation 4 prescribes the circumstances where the Minister may wholly or partly waive, or wholly or partly refund, a prescribed fee.

32. Subsection 4(1) allows the Minister to wholly or partly waive a prescribed fee if the Minister is satisfied that not granting the fee waiver would cause the person financial hardship and could cause harm to human health or the environment.

33. Subsection 4(2) allows the Minister to wholly or partly refund a prescribed fee where:

- the person has paid the prescribed fee more than once in relation to the same application or request; or
- the person has paid an amount that is greater than the amount of the prescribed fee; or

- the relevant application has been made for the wrong kind or permit, the application has not been decided, and that application has been withdrawn.
34. The criteria in new subregulations 4(1) (for fee waivers) and 4(2) (for fee refunds) is intended to provide sufficient flexibility to allow for refunds and waivers of fees where it is appropriate in order to provide equity and justness to applicants, and reflects where there are exceptional circumstances that are weighed against potential environmental harm. It is not considered appropriate to refund an application fee in the event that the permit application is refused.

### **Part 3 - Application and transitional provisions**

#### *Division 1 - Transitional matters relating to the Hazardous Waste (Regulation of Exports and Imports) Legislation Amendment Regulations 2021*

##### Regulation 5 - Transitional matters

35. New regulation 5 of the Fees Regulations deals with transitional matters relating to the Amendment Regulations, as it applies to the Fees Regulations.
36. Subregulation 5(1) provides that regulation 4 (waiver or refund of prescribed fees), as inserted by the Amendment Regulations, applies in relation to the waiver or refund, or partial waiver or refund, of:
- a prescribed fee referred to in regulation 3 of the Fees Regulations for an application, if the application is made on or after the commencement day; and
  - a prescribed fee referred to in regulation 3A of the Fees Regulations for providing information in response to a request, if the request is made on or after the commencement day, whether the request relates to an application made before, on or after the commencement day.
37. Subregulation 5(2) clarifies that in regulation 5, *commencement day* means the day the Amendment Regulations commences.

#### *Hazardous Waste (Regulation of Exports and Imports) (Imports from East Timor) Regulations 2003*

##### **Item [14] - Regulation 1**

38. Item 14 amends regulation 1 of the Timor-Leste Regulations to omit the reference to East Timor and substitute a reference to the Democratic Republic of Timor-Leste. This amendment simply updates that country's name to reflect its official name.
39. The effect of this amendment is to update the name of the Timor-Leste Regulations to the *Hazardous Waste (Regulation of Exports and Imports) (Imports from the Democratic Republic of Timor-Leste) Regulations 2003*.
40. The note to this item explains that this item amends the name of the instrument. If another amendment of the instrument is described by reference to the instrument's

previous name, that other amendment has effect after the commencement of this item as an amendment of the instrument under its amended name, in accordance with section 10 of the *Acts Interpretation Act 1901*.

**Item [15] - After regulation 1**

41. Item 15 inserts a new regulation 2 into the Timor-Leste Regulations. New regulation 2 clarifies the authority of the Timor-Leste Regulations by providing that the Timor-Leste Regulations are made under the Act.

**Item [16] - Regulation 5**

42. Existing regulation 5 of the Timor-Leste Regulations provides that the Timor-Leste Regulations give effect to a bilateral arrangement between Australian and the (then named) Democratic Republic of East Timor, the text of which is set out in Schedule 1 to the Timor-Leste Regulations.
43. Item 16 amends regulation 5 to insert “(Timor-Leste)” after “East Timor”. This amendment does not change the name of the bilateral agreement, as it was made using Timor-Leste’s previous official name, but instead provides clarification on that country’s updated official name.

**Item [17] - Subregulations 6(1) and (2)**

44. Item 17 omits the references to East Timor in subregulations 6(1) and 6(2) of the Timor-Leste Regulations and substitutes references to Timor-Leste.
45. This amendment is consequential to the amendment made by item 14 of the Amendment Regulations, which updates that country’s official name.

**Item [18] - Paragraph 7(a)**

46. Item 18 omits the reference to East Timor in paragraph 7(a) of the Timor-Leste Regulations and substitutes a reference to Timor-Leste.
47. This amendment is consequential to the amendment made by item 14 of the Amendment Regulations, which updates that country’s official name.

**Item [19] - Regulation 8**

48. Item 19 repeals existing regulation 8 of the Timor-Leste Regulations. Existing regulation 8 provides for the process by which the Minister requests further information from the applicant in relation to an application for a special import permit application, or application to vary such a permit, under the Timor-Leste Regulations.
49. The Amending Act inserts new provisions into the Act relating to requests for further information on Basel permit applications. Relevantly, regulation 7 of the Timor-Leste Regulations applies Divisions 3 and 4 of Part 2 of the Act (concerning Basel permits) to special import permits issued under the Timor-Leste Regulations. This means the new provisions in the Act relating to requests for further information on Basel permit applications will automatically apply to Timor-Leste special import permit



applications, and applications to vary such permits. Existing regulation 8 of the Timor-Leste Regulations is therefore now redundant.

50. The amendment made by this item ensures there is no inconsistency in requirements between the Act and Timor-Leste Regulations.

**Item [20] - Schedule 1 (heading)**

51. Item 20 omits the reference to East Timor in the heading of Schedule 1 to the Timor-Leste Regulations and substitutes a reference to Timor-Leste.
52. This amendment is consequential to the amendment made by item 14 of the Amendment Regulations, which updates that country's official name.

***Hazardous Waste (Regulation of Exports and Imports) (OECD Regulations) Regulations 1996***

**Item [21] - Subregulation 4(1)**

53. Item 21 inserts new definitions into subregulation 4(1) of the OECD Regulations for terms that are used in this Schedule.
54. One of the new definitions is *decision period*. The definition of this term depends on the type of special permit application the term is used in relation to. The new definition defines *decision period* to mean:
- for an application for a special export permit - the period referred to in new subregulation 13(1), but as paused or extended under new regulations 11, 15, 15A or 15B;
  - for an application for a special import permit (other than a pre-consented recovery facility special import permit) - the period referred to in new paragraph 19(1)(b), but as paused or extended under new regulations 11, 21 or 22;
  - for an application for a pre-consented recovery facility special import permit - the period referred to in new paragraph 19(1)(a), but as paused or extended under new regulations 11 or 22;
  - for an application for a special transit permit - the period referred to in new subregulation 26(1), but as paused or extended under new regulations 11, 28 or 28A;
  - for an application to vary a special permit - the period referred to in new subregulation 39(1), but as paused or extended under new regulation 37, 40, 40A or 40B.

**Item [22] - Subregulation 4(1) (definition of *OECD country*)**

55. Item 22 amends subregulation 4(1) of the OECD Regulations to repeal the definition of *OECD country*. This definition is no longer required as this term will now be defined in the Act, as amended by the Amending Act.

**Item [23] - Subregulation 4(1) (definition of *OECD Decision*)**

56. Item 23 amends the definition of *OECD Decision* in subregulation 4(1) of the OECD Regulations to omit “a copy of the English text of which is set out in Schedule 1” and substitute it with “as in force or existing when the amending instrument commences”.

57. The effect of this amendment is to clarify that the OECD Decision is incorporated into the OECD Regulations, as that document is in force or existing when the Amendment Regulations commence. This item is also consequential to the amendment made by item 90 of the Amendment Regulations, which repeals existing Schedule 1 to the OECD Regulations (existing Schedule 1 sets out a now outdated version of the OECD Decision).

58. The term *amending instrument* means the Amendment Regulations, as defined in subregulation 4(1) as amended by item 21.

**Item [24] - Subregulation 4(1) (at the end of the definition of *OECD Decision*)**

59. Item 24 amends subregulation 4(1) of the OECD Regulations to add a note at the end of the definition of *OECD Decision*. The new note refers readers to where the OECD Decision could in 2021 be viewed on the OECD website. The OECD Decision is publicly available at <https://legalinstruments.oecd.org/>.

**Item [25] – Subregulation 4(1)**

60. Item 25 amends subregulation 4(1) of the OECD Regulations to insert a definition of *pre-consented recovery facility special import permit*. This definition refers to a subcategory of special import permits covering the import of wastes for recovery operations at a pre-consented recovery facility. Regulation 42 of the OECD Regulations allows the Minister to approve facilities to be pre-consented recovery facilities.

61. It is necessary to provide separately for this category of special import permits because in some cases the OECD Regulations set different requirements for this category of permits compared to the requirements for other special import permits.

**Item [26] - Subregulation 4(1) (definition of *recovery operation*)**

62. Item 26 amends subregulation 4(1) of the OECD Regulations to repeal the definition of *recovery operation*. This definition is no longer required as this term will now be defined in the Act, as amended by the Amending Act.

**Item [27] – Subregulation 4(1) (definition of *wastes*)**

63. Item 27 amends the definition of *wastes* in subregulation 4(1) of the OECD Regulations to omit ‘OECD decision’ and substitute ‘OECD Decision’.

64. This is an editorial amendment. It does not change the operation of the definition of *wastes*.

**Item [28] – Regulation 6**

65. Item 28 amends regulation 6 of the OECD Regulations to omit ‘OECD decision’ wherever it occurs, and substitute ‘OECD Decision’.

66. This is an editorial amendment. It does not change the operation of existing regulation 6.

**Item [29] – Regulation 7 (heading)**

67. Item 29 amends the heading of regulation 7 of the OECD Regulations to omit ‘OECD decision’, and substitute ‘OECD Decision’.

68. This is an editorial amendment. It does not change the operation of existing regulation 7.

**Item [30] - Subregulation 7(1)**

69. The OECD Decision sets out a two-tier system to delineate the procedures to be applied to movements of different types of waste. These procedures are the green control procedure and the amber control procedure.

70. Consistent with the OECD Decision, the OECD Regulations do not set controls on wastes subject to green control procedure. However, the movement of wastes subject to amber control procedure must be covered by a special permit granted under the OECD Regulations. The OECD Regulations provides for special export permits, special import permits and special transit permits for wastes that are subject to the amber control procedure.

71. Regulation 6 of the OECD Regulations has the effect that:

- wastes listed in Appendix 3 to the OECD Decision are subject to the green control procedure; and
- wastes listed in Appendix 4 to the OECD Decision are subject to the amber control procedure.

72. This means that, under the OECD Regulations, the import, export or transit for recovery operations of wastes listed in Appendix 4 of the OECD Decision requires a special permit, while the import, export or transit for recovery operations of wastes listed in Appendix 3 of the OECD Decision does not require a permit.

73. Regulation 7 of the OECD Regulations sets out additional categories of wastes that are subject to the amber control procedure even though they are not listed in Appendix 4 of the OECD Decision. The import, export or transit for recovery

operations of waste listed in regulation 7 requires a special permit under the OECD Regulations.

74. Item 30 repeals the existing subregulation 7(1) and substitutes new subregulation 7(1). New subregulation 7(1) has the effect that the following wastes are also subject to the amber control procedure:

- wastes not listed in Appendix 3 or 4 of the OECD Decision that exhibit a hazardous characteristic listed in Appendix 2 of the OECD Decision (paragraph 7(1)(a));
- plastic wastes, including mixtures of such wastes, covered by Annex II to the Basel Convention (paragraph 7(1)(b)).

75. New paragraph 7(1)(a) replicates the text of existing subregulation 7(1). There is no change in the requirements applying to such wastes.

76. The purpose of this item is to ensure that plastic wastes, as described in new paragraph 7(1)(b), are also subject to amber control procedure. This, in turn, has the effect that the transboundary movement of such wastes destined for recovery operations must be covered by a special permit granted under the OECD Regulations.

77. On 11 May 2019, the Conference of Parties to the Basel Convention decided to amend the Basel Convention to, among other things, add to Annex II of that Convention a new waste code representing ‘plastic wastes, including mixtures of such wastes’ other than specified categories of plastic waste, being the categories added to Annex IX of the Convention by that decision (the Plastics Decision). This had the effect of ensuring that such types of plastic wastes are now considered to be a controlled waste under the Basel Convention and its transboundary movement is subject to the controls and procedures under that Convention.

78. The Amending Act amends the definition of *hazardous waste* at section 4 of the Act to include plastic wastes, including mixtures of such wastes, covered by Annex II to the Basel Convention, in order to implement this change to the Basel Convention. This means that mixed plastic wastes will also be considered to be a hazardous waste under the Act and its transboundary movement will be regulated.

79. However, the OECD Decision was not amended to reflect the changes to the Basel Convention. Instead, it left individual OECD countries to decide if the OECD Decision, as it applied to each country, should regulate these types of plastic wastes. Australia has chosen to do so, in order to ensure consistency between the Basel permit regime under the Act and the special permit regime under the OECD Regulations, and to align requirements in Australia with those of its major trading partners. This minimises disruption and confusion for stakeholders and ensures Australia’s continued compliance with its international obligations.

### **Item [31] – Paragraph 7(2)(a)**

80. Item 31 amends paragraph 7(2)(a) of the OECD Regulations to omit ‘OECD decision’ and substitute ‘OECD Decision’.

81. This is an editorial amendment. It does change the operation of existing paragraph 7(2)(a).

### **Item [32] – Subregulation 8(1)**

82. Item 32 amends subregulation 8(1) of the OECD Regulations to omit ‘OECD decision’ and substitute ‘OECD Decision’.

83. This is an editorial amendment. It does not change the operation of existing subregulation 8(1).

### **Item [33] - Regulation 11**

84. Item 33 repeals existing regulation 11 of the OECD Regulations and substitutes a new regulation 11. The purpose of this amendment is to update and simplify the drafting of this provision, so as to allow readers to more easily understand the process if the Minister requests further information about an application.

85. This amendment also aligns the process for requesting further information to deal with an application for a special permit, so far as possible while maintaining consistency with the OECD Decision, to the equivalent process for requesting further information to deal with an application for a Basel permit under the Act (as amended by the Amending Act).

### **Regulation 11 - Minister may request further information about an application**

86. Regulation 11 sets out the process by which the Minister may request further information about an application and the effect that request may have on the application and its applicable decision period.

87. Subregulation 11(1) allows the Minister to request an applicant to provide further information in writing to deal with the application. The timeframes for the Minister to make such a request are as follows:

- for an application for a special export permit, within the period of 40 days starting after the day the Minister receives the application;
- for an application for a special import permit (other than a pre-consented recovery facility special import permit), within the period of 30 days starting after the day the Minister gives notice of the application to the competent authority of the exporting country;
- for an application for a pre-consented recovery facility special import permit, within the period of 7 days starting after the day the Minister gives notice of the application to the competent authority of the exporting country;

- for an application for a special transit permit - within the period of 30 days starting after the day the competent authority of the OECD country from which the waste is to be exported gives the Minister written notification of the export.
88. Subregulation 11(2) clarifies that if the Minister makes such a request of an applicant, the decision period for the permit application is paused until the request is complied with. If the request is not complied with within 60 days after the day that the request is made, the permit application is taken to be withdrawn.
89. If the decision period is paused under new regulation 11, the Minister is required, as soon as practicable, to notify the competent authority of the exporting country (for special import permits and special transit permits) and the competent authority of the importing country and any transit countries (for special export permits) of the pause (new subregulation 11(3)).

**Item [34] - Subregulation 12(4)**

90. Subregulation 12(4) requires the Minister, within 5 working days after receiving an application for a special export permit, to give the competent authority of the importing country a written notice setting out certain information.
91. Item 34 repeals existing subregulation 12(4) and substitutes new subregulations 12(4) and (5). New subregulations 12(4) and (5):
- more clearly set out the information that is required to be provided by the Minister to the competent authority of the importing country;
  - add a requirement to also notify the competent authority of any transit countries for the special export permit;
  - repeal the requirement for the Minister to provide a facsimile number to the competent authority of an importing country. A facsimile is considered an outdated technology and it is no longer considered necessary for a facsimile number to be provided.
92. The required notification still needs to be provided to the relevant competent authority within 5 working days after the Minister receives the application for a special export permit.

**Item [35] - Regulation 13**

93. Item 35 repeals existing regulation 13 of the OECD Regulations and substitutes a new regulation 13.
94. The purpose of this amendment is to update and simplify the drafting of this provision, so as to allow readers to more easily understand the applicable timeframes for applications for special export permits to be decided. This amendment also aligns

the process for granting a special export permit, so far as possible while maintaining consistency with the OECD Decision, to the equivalent process for granting a Basel export permit under the Act (as amended by the Amending Act).

#### Regulation 13 - Period for making decision on permit application - default period

95. New regulation 13 sets out the default decision period for an application for a special export permit.
96. New subregulation 13(1) provides if the Minister receives an application for a special export permit, the Minister must decide whether to grant the permit within 40 days starting after the day the Minister receives the application. This is the default decision period.
97. The note following subregulation 13(1) clarifies that this period may be paused or extended under new regulations 11, 15, 15A or 15B.
98. Subregulation 13(2) has the effect that if the Minister has not decided whether to grant the permit by the end of the decision period (including as paused or extended under regulation 11, 15, 15A or 15B), the Minister is to be taken to have decided, on the last day of that period, to refuse the permit.
99. The deemed refusal of a special export permit where the decision is not made within the decision period reflects the operation of existing subregulation 15(7).

#### **Item [36] - Subregulation 14(1)**

100. Item 36 repeals existing subregulation 14(1) of the OECD Regulations. This provision is subsumed by new regulation 13, as inserted by item 35.

#### **Item [37] - Subregulation 14(2)**

101. Item 37 amends subregulation 14(2) of the OECD Regulations to omit the first occurring “the permit” and substituting “a special export permit”.
102. This is an editorial amendment to improve the clarity of this subregulation, as the provision is only referring to special export permits.

#### **Item [38] - Subregulation 14(2)**

103. Item 38 amends subregulation 14(2) of the OECD Regulations to insert “for the permit” after “importing country”.
104. This is an editorial amendment to improve the clarity of this subregulation.

#### **Item [39] - Paragraphs 14(2)(a) and (b)**

105. Item 39 amends paragraphs 14(2)(a) and (b) of the OECD Regulations to insert “for the permit” after “applicant”.
106. This is an editorial amendment to improve the clarity of these paragraphs.

#### **Item [40] - Subregulations 14(4) and (5)**

107. Item 40 amends regulation 14 of the OECD Regulations to repeal existing subregulations 14(4) and (5).
108. Existing subregulations 14(4) and (5) set out a requirement to invite the applicant for a special export permit to comment on any adverse material the Minister has that suggests their application should be refused.
109. This requirement already exists as a matter of general law. Natural justice (also known as procedural fairness) applies whenever an administrative decision might adversely affect the rights, interests or legitimate expectations of a person. It requires the decision-maker to give persons whose interests may be adversely affected by the decision an opportunity to see the evidence on which the decision-maker proposes to rely and have their views on that evidence taken into account by the decision-maker. As existing subregulations 14(4) and (5) do not purport to go further than, or limit in any way, the common law natural justice requirements, they are redundant and can be repealed.
110. The common law natural justice requirements will continue to apply to decisions of whether to grant a special export permit, which means the Minister will continue to be required to invite the applicant to comment on any adverse material the Minister has that suggests their application should be refused.

#### **Item [41] - Regulation 15**

111. Item 41 repeals regulation 15 of the OECD Regulations and substitutes new regulations 15, 15A and 15B.
112. Existing regulation 15 of the OECD Regulations sets out the circumstances that may affect the decision period for the Minister to grant or refuse an application for a special export permit. However, the drafting of regulation 15 is outdated and unnecessarily complicated, resulting in the requirements and operation of the regulation being difficult to understand.
113. The purpose of this amendment is to update and simplify the drafting of this provision, so as to allow readers to more easily understand the applicable timeframes for special export permit applications, and when the decision period may be paused or extended. This amendment also aligns the process for granting a special export permit, so far as possible while maintaining consistency with the OECD Decision, to the equivalent process for granting a Basel export permit under the Act (as amended by the Amending Act).
114. This item also makes three changes to the substantive operation of existing regulation 15. These changes are to:



- remove the ability to extend the decision period where an action under the EPBC Act has begun. This extension is redundant because an application for a special permit is not covered by the EPBC Act;
- remove the ability to extend the decision period for the applicant to comment on potentially adverse material to the application. This is consequential to the repeal of existing subregulation 14(4) in favour of ordinary common law procedural fairness requirements;
- add a new power for the Minister to extend the decision period with the agreement of the applicant.

Regulation 15 - Period for making a decision on a permit application - extension for competent authority consents

115. New regulation 15 provides for the decision period to be extended for an application for a special export permit where the competent authority of the importing country, or a transit country, has not yet given or refused consent to the grant of the permit.

116. This extension of the decision period recognises that:

- Australia's obligations under the Basel Convention and the OECD Decision prevent the Minister from granting an export permit unless both the importing country and any transit countries have consented to the export; and
- the timing of a competent authority's consent or refusal of consent is not within the control of the Minister or the applicant.

117. Regulation 15 has the effect that if the competent authority of either the importing country or any transit country has neither given nor refused consent by the end of the 35<sup>th</sup> day of the decision period, the decision period is extended until the end of 5 working days after the latest day such a refusal or consent is given by a competent authority.

118. The note following regulation 15 refers readers to new subregulation 12(4), which requires the Minister to notify the relevant competent authority of the importing country, and any transit countries, of a special export permit application.

Regulation 15A - Period for making a decision on a permit application - extension on Minister's initiative

119. New regulation 15A provides for the decision period for an application for a special export permit to be extended where the Minister thinks that a decision whether to grant the permit cannot be made within the decision period.

120. Where this is the case, the Minister may extend the decision period by up to 60 days (new subregulation 15A(1)).

121. If the Minister decides to extend the decision period for a special export permit under this regulation, the Minister is required to notify the applicant, the competent authority of the importing country, and the competent authority of any transit countries, of the extension as soon as practicable.

Regulation 15B - Period for making a decision on a permit application - extension agreed with applicant

122. New regulation 15B allows the Minister and the applicant to agree in writing to extend the decision period for a special export permit application. There is no time limit on the extension that may be agreed.
123. If the Minister extends the decision period for an application for a special export permit under new regulation 15B, the Minister is required to notify the competent authority of the importing country, and the competent authority of any transit countries, of the extension as soon as practicable.

**Item [42] - Subregulation 16(1)**

124. Section 16 of the OECD Regulations sets out the criteria that must be met before the Minister can grant a special export permit.
125. Item 42 amends subregulation 16(1) of the OECD Regulations to omit “the Minister is satisfied that”.
126. This is a consequential amendment to the amendments made by items 43 to 46 and 48 to 50, (which moves the requirement for the Minister to be satisfied of the relevant matters to each of the individual criteria in paragraphs 16(1)(a) to (h)) and item 51 (which inserts new paragraph 16(1)(i) to provide a requirement for the Minister to take into account any relevant public comments received on the permit application (or notice) in response to an invitation made under paragraph 33(1)(aa) of the Act).
127. This change is necessary because the new criterion in paragraph 16(1)(i) does not require the Minister to be satisfied of the relevant matter, only to take the relevant matter into account.

**Item [43] - Paragraph 16(1)(a)**

128. Item 43 amends paragraph 16(1)(a) of the OECD Regulations to insert “the Minister is satisfied that” before “the application” at the start of the paragraph.
129. This is a consequential amendment to the amendments made by items 42 and 51. There is no change in the operation of paragraph 16(1)(a).

**Item [44] - Paragraph 16(1)(b)**

130. Item 44 amends paragraph 16(1)(b) of the OECD Regulations to insert “the Minister is satisfied that” before “dealing” at the start of the paragraph.

131. This is a consequential amendment to the amendments made by items 42 and 51. There is no change in the operation of paragraph 16(1)(b).

**Item [45] - Paragraph 16(1)(c)**

132. Item 45 amends paragraph 16(1)(c) of the OECD Regulations to insert “the Minister is satisfied that” before “the competent authority” at the start of the paragraph.

133. This is a consequential amendment to the amendments made by items 42 and 51. There is no change in the operation of paragraph 16(1)(c).

**Item [46] - Paragraph 16(1)(d)**

134. Item 46 amends paragraph 16(1)(d) of the OECD Regulations to insert “the Minister is satisfied that” before “the waste” at the start of the paragraph.

135. This is a consequential amendment to the amendments made by items 42 and 51. There is no change in the operation of paragraph 16(1)(d).

**Item [47] – Paragraph 16(1)(e)**

136. Item 47 amends paragraph 16(1)(e) of the OECD Regulations to omit ‘OECD decision’ and substitute ‘OECD Decision’.

137. This is an editorial amendment. It does not change the operation of paragraph 16(1)(e).

**Item [48] - Paragraph 16(1)(e)**

138. Item 48 amends paragraph 16(1)(e) of the OECD Regulations to insert “the Minister is satisfied that” before “it is appropriate” at the start of the paragraph.

139. This is a consequential amendment to the amendments made by items 42 and 51. There is no change to the operation of paragraph 16(1)(e).

**Item [49] - Paragraphs 16(1)(f) and (g)**

140. Item 49 amends paragraphs 16(1)(f) and (g) of the OECD Regulations to insert “the Minister is satisfied that” before “the waste will” at the start of the paragraph.

141. This is a consequential amendment to the amendments made by items 42 and 51. There is no change to the operation of paragraphs 16(1)(f) and (g).

**Item [50] - Paragraph 16(1)(h)**

142. Item 50 amends paragraph 16(1)(h) of the OECD Regulations to insert “the Minister is satisfied that” before “the applicant” at the start of the paragraph.

143. This is a consequential amendment to the amendments made by items 42 and 51. There is no change to the operation of paragraph 16(1)(h).

**Item [51] - At the end of subregulation 16(1)**

144. Subsection 33(1) of the Act, as amended by the Amending Act, requires the Minister to cause to be published certain information on the Department's website as soon as practicable after the relevant circumstances arise.
145. Some of that information includes each permit application, or notice to vary a permit application, that the Minister receives (paragraph 33(1)(a) of the Act) and, for each application or notice, an invitation for members of the public to comment on the application or notice within 15 business days of it being published (paragraph 33(1)(aa)).
146. Item 51 amends subsection 16(1) of the OECD Regulations to add a new paragraph 16(1)(i). New paragraph 16(1)(i) has the effect that the Minister must not grant a special export permit unless the Minister has taken into account any relevant public comments received in response to an invitation under paragraph 33(1)(aa) of the Act about the application for the permit, or any notice relating to that application.
147. This ensures that the Minister is required to take into account all relevant information when deciding whether to grant a special export permit.

**Item [51] - Subparagraphs 18(1)(a)(iv) and (b)(i)**

148. Subregulation 18(1) of the OECD Regulations requires a special export permit to set out certain information.
149. Item 51 amends subparagraphs 18(1)(a)(iv) and (b)(i) of the OECD Regulations to omit “, telephone number and facsimile number” and substitute “and telephone number”. This amendment has the effect of ensuring that the facsimile number of the permit holder and the proposed recipient of the waste no longer needs to be set out in the special export permit.
150. The facsimile is an outdated technology. It is no longer considered necessary for special permits to include facsimile numbers.

**Item [53] - Regulation 19**

151. Item 53 repeals existing regulation 19 of the OECD Regulations and substitute a new regulation 19.
152. The purpose of this amendment is to update and simplify the drafting of this regulation (and related provisions dealing with the decision period for special import permits), so as to allow readers to more easily understand the applicable timeframes for applications for special import permits.
153. This amendment also aligns the process for granting a special import permit, so far as possible while maintaining consistency with the OECD Decision, to the equivalent process for granting Basel import permits under the Act (as amended by the Amending Act).

### Regulation 19 - Period for making decision on permit application - default period

154. New regulation 19 sets out the default decision period for an application for a special import permit.
155. New subregulation 19(1) provides that if the Minister receives an application for a special import permit, the Minister must decide whether to grant the permit:
- for a pre-consented recovery facility special import permit - within 7 days starting after the day the Minister gives notice of the application to the competent authority of the exporting country for the permit; or
  - otherwise - within 30 days starting the day the Minister gives notice of the application to the competent authority of the exporting country for the permit.

This is the default decision period.

156. Note 1 following subregulation 19(1) explains that the decision period for a pre-consented recovery facility special import permit may be paused or extended under new regulations 11 or 22.
157. Note 2 following subregulation 19(1) explains that the decision period for a special import permit that is not a pre-consented recovery facility special import permit may be paused or extended under new regulations 11, 21 or 22.
158. New subregulation 19(2) has the effect if the Minister has not decided whether to grant the permit by the end of the decision period (including as paused or extended under new regulation 11, 21 or 22), the Minister is to be taken to have decided, on the last day of that period, to grant the permit.
159. The deemed grant of a special import permit if the decision is not made within the decision period reflects the operation of existing subregulations 21(5) and 22(1).

#### **Item [54] - Subregulation 20(1)**

160. Item 54 amends regulation 20 of the OECD Regulations to repeal existing subregulation 20(1). This provision is subsumed by new regulation 19, as inserted by item 53.

#### **Item [55] - Subregulation 20(2)**

161. Item 55 amends subregulation 20(2) of the OECD Regulations to omit the first occurring “the permit” and substituting “a special import permit”.
162. This is an editorial amendment to improve the clarity of this subregulation, as the provision is only referring to special import permits.

### **Item [56] - Subregulation 20(2)**

163. Item 56 amends subregulation 20(2) of the OECD Regulations to insert “for the permit” after “exporting country”.
164. This is an editorial amendment to improve the clarity of this subregulation.

### **Item [57] - Paragraphs 20(2)(a) and (b)**

165. Item 57 amends paragraphs 20(2)(a) and (b) of the OECD Regulations to insert “for the permit” after “applicant”.
166. This is an editorial amendment to improve the clarity of these paragraphs.

### **Item [58] - Subregulations 20(4) and (5)**

167. Item 58 amends regulation 20 of the OECD Regulations to repeal existing subregulations 20(4) and (5).
168. Existing subregulations 20(4) and (5) set out a requirement to invite the applicant for a special import permit to comment on any adverse material the Minister has that suggests their application should be refused.
169. This requirement already exists as a matter of general law. Natural justice (also known as procedural fairness) applies whenever an administrative decision might adversely affect the rights, interests or legitimate expectations of a person. It requires the decision-maker to give persons whose interests may be adversely affected by the decision an opportunity to see the evidence on which the decision-maker proposes to rely on and have their views on that evidence taken into account by the decision-maker. As existing subregulations 20(4) and (5) do not purport to go further than, or limit in any way, the common law natural justice requirements, they are redundant and can be repealed.
170. The common law natural justice requirements will continue to apply to decisions of whether to grant a special import permit, which means the Minister will continue to be required to invite the applicant to comment on any adverse material the Minister has that suggests their application should be refused.

### **Item [59] - Regulations 21 and 22**

171. Item 59 repeals regulations 21 and 22 of the OECD Regulations and substitutes new regulations 21 and 22.
172. Existing regulations 21 and 22 of the OECD Regulations set out the circumstances that may affect the decision period for the Minister to grant or refuse an application for a special import permit. However, the drafting of regulations 21 and 22 is outdated and unnecessarily complicated, resulting in the requirements and operation of the regulation being difficult to understand.

173. The purpose of this amendment is to update and simplify the drafting of this provision, so as to allow readers to more easily understand the applicable timeframes for special import permit applications, and when the decision period may be paused or extended. This amendment also aligns the process for granting a special import permit, so far as possible while maintaining consistency with the OECD Decision, to the equivalent process for granting a Basel import permit under the Act (as amended by the Amending Act).

174. This item also makes three changes to the substantive operation of existing regulations 21 and 22. These changes are to:

- remove the ability to extend the decision period where an action under the EPBC Act has begun. This extension is redundant because an application for a special permit is not covered by the EPBC Act;
- remove the ability to extend the decision period for the applicant to comment on potentially adverse material to the application. This is consequential to the repeal of existing subregulation 20(4) in favour of ordinary common law procedural fairness requirements;
- add a new power for the Minister to extend the decision period with the agreement of the applicant.

#### Regulation 21 - Period for making a decision on a permit application - extension on Minister's initiative

175. New regulation 21 provides for the decision period for an application for a special import permit (other than a pre-consented recovery facility special import permit) to be extended where the Minister thinks that a decision whether to grant the permit cannot be made within the decision period.

176. Where this is the case, the Minister may extend the decision period by up to 60 days (new subregulation 21(1)).

177. If the Minister decides to extend the decision period for a special import permit under this regulation, the Minister is required to notify the applicant and the competent authority of the exporting country of the extension as soon as practicable (new subregulation 21(2)).

#### Regulation 22 - Period for making a decision on a permit application - extension agreed with applicant

178. New regulation 22 allows the Minister and the applicant to agree in writing to extend the decision period for an application for a special import permit. This includes an application for a pre-consented recovery facility special import permit. There is no time limit on the extension that may be agreed.

179. If the Minister extends the decision period under new subregulation 22, the Minister is required to notify the competent authority of the exporting country as soon as practicable.

**Item [60] - Subregulation 23(3)**

180. Subregulation 23(3) of the OECD Regulations sets out the criteria that must be met before the Minister can grant a special import permit.
181. Item 60 amends subregulation 23(3) of the OECD Regulations to omit “the Minister is satisfied that”. This is a consequential amendment to the amendments made by items 61 to 66 (which moves the requirement for the Minister to be satisfied of the relevant matters to each of the individual criteria in subsection 23(3)(a) to (f)) and item 67 (which inserts new paragraph 23(3)(g) to provide a requirement for the Minister to take into account any relevant public comments received on the permit application (or notice) in response to an invitation made under paragraph 33(1)(aa) of the Act).
182. This change is necessary because the new criterion in paragraph 23(3)(g) does not require the Minister to be satisfied of the relevant matter, only to take the relevant matter into account.

**Item [61] - Paragraph 23(3)(a)**

183. Item 61 amends paragraph 23(3)(a) of the OECD Regulations to insert “the Minister is satisfied that” before “the application” at the start of the paragraph.
184. This is a consequential amendment to the amendments made by items 60 and 67. There is no change to the operation of existing paragraph 23(3)(a).

**Item [62] - Paragraph 23(3)(b)**

185. Item 62 amends paragraph 23(3)(b) of the OECD Regulation to insert “the Minister is satisfied that” before “dealing” at the start of the paragraph.
186. This is a consequential amendment to the amendments made by items 60 and 67. There is no change to the operation of existing paragraph 23(3)(b).

**Item [63] - Paragraph 23(3)(c)**

187. Item 63 amends paragraph 23(3)(c) of the OECD Regulation to insert “the Minister is satisfied that” before “the waste” at the start of the paragraph.
188. This is a consequential amendment to the amendments made by items 60 and 67. There is no change to the operation of existing paragraph 23(3)(c).

**Item [64] - Paragraph 23(3)(d)**

189. Item 64 amends paragraph 23(3)(d) of the OECD Regulation to insert “the Minister is satisfied that” before “it is appropriate” at the start of the paragraph.



190. This is a consequential amendment to the amendments made by items 60 and 67. There is no change to the operation of existing paragraph 23(3)(d).

**Item [65] - Paragraph 23(3)(e)**

191. Item 65 amends paragraph 23(3)(e) of the OECD Regulation to insert “the Minister is satisfied that” before “the waste will” at the start of the paragraph.
192. This is a consequential amendment to the amendments made by items 60 and 67. There is no change to the operation of existing paragraph 23(3)(e).

**Item [66] - Paragraph 23(3)(f)**

193. Item 66 amends paragraph 23(3)(f) of the OECD Regulation to insert “the Minister is satisfied that” before “the applicant” at the start of the paragraph.
194. This is a consequential amendment to the amendments made by items 60 and 67. There is no change to the operation of existing paragraph 23(3)(f).

**Item [67] - At the end of subregulation 23(3)**

195. Subsection 33(1) of the Act, as amended by the Amending Act, requires the Minister to cause to be published certain information on the Department’s website as soon as practicable after the relevant circumstances arise.
196. Some of that information includes each permit application, or notice to vary a permit application, that the Minister receives (paragraph 33(1)(a) of the Act) and, for each application or notice, an invitation for members of the public to comment on the application or notice within 15 business days of it being published (paragraph 33(1)(aa)).
197. Item 67 adds a new paragraph 23(3)(g) to subregulation 23(3) of the OECD Regulations. New paragraph 23(3)(g) has the effect that the Minister must not grant a special import permit unless the Minister has taken into account any relevant public comments received in response to an invitation under paragraph 33(1)(aa) of the Act about the application for the permit, or any notice relating to that application.
198. This ensures that the Minister is required to take into account all relevant information when deciding whether to grant a special import permit.

**Item [68] - Subparagraph 25(1)(a)(iv) and (b)(i)**

199. Subregulation 25(1) of the OECD Regulations requires a special import permit to set out certain information.
200. Item 68 amends subparagraphs 25(1)(a)(iv) and (b)(i) of the OECD Regulations to omit “, telephone number and facsimile number” and substitute “and telephone number”. This amendment has the effect of ensuring that the facsimile number of the permit holder and the exporter does not need to be set out in the special import permit.

201. The facsimile is an outdated technology. It is no longer considered necessary for special permits to include facsimile numbers.

#### **Item [69] - Regulation 26**

202. Item 69 repeals existing regulation 26 of the OECD Regulations and substitutes a new regulation 26. The purpose of this amendment is to update and simplify the drafting of this provision and existing regulation 28, so as to allow readers to more easily understand the applicable timeframes for special transit permit applications to be decided. It does not change the operation of existing regulation 26.

#### **Regulation 26 - Period for making decision on permit application - default period**

203. New regulation 26 sets out the default decision period for an application for a special transit permit.
204. New subregulation 26(1) provides if the Minister receives an application for a special transit permit, the Minister must decide whether to grant the permit within 30 days starting after the day the competent authority of the OECD country from which the waste is to be exported gives the Minister written notification of the export. This is the default decision period.
205. The note following subregulation 26(1) clarifies that the decision period may be paused or extended under new regulation 11, 28 or 28A.
206. Subregulation 26(2) has the effect if the Minister has not decided whether to grant the permit by the end of the decision period (including as paused or extended under new regulation 11, 28 or 28A), the Minister is to be taken to have decided, on the last day of that period, to grant the permit.
207. The deemed grant of a special transit permit if a decision is not made within the decision period reflects the current the operation of existing subregulation 28(5).

#### **Item [70] - Subregulation 27(1)**

208. Item 70 repeals existing subregulation 27(1) of the OECD Regulations. This provision is subsumed by new regulation 26, as inserted by item 69.

#### **Item [71] - Subregulation 27(2)**

209. Item 71 amends subregulation 27(2) of the OECD Regulations to omit the first occurring “the permit” and substitute “a special transit permit”.
210. This is an editorial amendment to improve the clarity of this subregulation.

#### **Item [72] - Subregulation 27(2)**

211. Item 72 amends subregulation 27(2) of the OECD Regulations to insert “from which the waste is to be exported for the permit” after “OECD country”.

212. This is an editorial amendment to improve the clarity of this subregulation.

**Item [73] - Paragraphs 27(2)(a) and (b)**

213. Item 73 amends paragraphs 27(2)(a) and (b) of the OECD Regulations to insert “for the permit” after “applicant”.

214. This is an editorial amendment to improve the clarity of these paragraphs.

**Item [74] - Subregulations 27(4) and (5)**

215. Item 74 amends regulation 27 of the OECD Regulations to repeal existing subregulations 27(4) and (5).

216. Existing subregulation 27(4) and (5) set out a requirement to invite the applicant for a special transit permit to comment on any adverse material the Minister has that suggests the application should be refused.

217. This requirement already exists as a matter of general law. Natural justice (also known as procedural fairness) applies whenever an administrative decision might adversely affect the rights, interests or legitimate expectations of a person. It requires the decision-maker to give persons whose interests may be adversely affected by the decision an opportunity to see the evidence on which the decision-maker proposes to rely on and have their views on that evidence taken into account by the decision-maker. As existing subsections 27(4) and (5) do not purport to go further than, or limit in any way, the common law natural justice requirements, they are redundant and can be repealed.

218. The common law natural justice requirements will continue to apply to decisions of whether to grant a special transit permit, which means the Minister will continue to be required to invite the applicant to comment on any adverse material the Minister has that suggests their application should be refused.

**Item [75] - Regulation 28**

219. Item 75 repeals regulation 28 of the OECD Regulations and substitutes new regulations 28, 28A and 28B.

220. Existing regulations 28 of the OECD Regulations sets out the circumstances that may affect the decision period for the Minister to grant or refuse an application for a special transit permit. However, the drafting of regulation 28 is outdated and unnecessarily complicated, resulting in the requirements and operation of the regulation being difficult to understand.

221. The purpose of this amendment is to update and simplify the drafting of this provision, so as to allow readers to more easily understand the applicable timeframes for special transit permit applications, and when the decision period may be paused or extended. This amendment also aligns the process for granting a special transit permit, so far as possible while maintaining consistency with the OECD Decision, to the

equivalent process for granting a Basel transit permit under the Act (as amended by the Amending Act).

222. This item also makes three changes to the substantive operation of existing regulation 28. These changes are to:

- remove the ability to extend the decision period where an action under the EPBC Act has begun. This extension is redundant because an application for a special permit is not covered by the EPBC Act;
- remove the ability to extend the decision period for the applicant to comment on potentially adverse material to the application. This is consequential to the repeal of existing subregulation 27(4) in favour of ordinary common law procedural fairness requirements;
- add a new power for the Minister to extend the decision period with the agreement of the applicant.

#### Regulation 28 - Period for making a decision on a permit application - extension on Minister's initiative

223. New regulation 28 provides for the decision period for an application for a special transit permit to be extended where the Minister thinks that a decision whether to grant the permit cannot be made within the decision period.

224. Where this is the case, the Minister may extend the decision period by up to 60 days (new subregulation 28(1)).

225. If the Minister decides to extend the decision period for a special transit permit under this regulation, the Minister is required to notify the applicant and the competent authority of the exporting country for the permit of the extension as soon as practicable.

#### Regulation 28A - Period for making a decision on a permit application - extension agreed with applicant

226. New regulation 28A allows the Minister and the applicant to agree in writing to extend the decision period for a special transit permit application. There is no time limit on the extension that may be agreed.

227. If the decision period is extended under regulation 28A, the Minister is required to notify the competent authority of the of the OECD country from which the waste is to be exported as soon as practicable.

#### **Item [76] - Subregulation 29(1)**

228. Subsection 29(1) of the OECD Regulations sets out the criteria that must be met before the Minister can grant a special transit permit.

229. Item 76 amends subregulation 29(1) of the OECD Regulations to omit “the Minister is satisfied that”. This is a consequential amendment to the amendments made by items 77 to 80 (which move the requirement for the Minister to be satisfied of the relevant matters to each of the individual criteria in paragraphs 29(1)(a) to (d)) and item 81 (which inserts new paragraph 29(1)(e) to provide a requirement for the Minister to take into account any relevant public comments received on the permit application (or notice) in response to an invitation made under paragraph 33(1)(aa) of the Act).

230. This change is necessary because the new criterion in paragraph 29(1)(e) does not require the Minister to be satisfied of the relevant matter, only to take the relevant matter into account.

**Item [77] - Paragraph 29(1)(a)**

231. Item 77 amends paragraph 29(1)(a) of the OECD Regulations to insert “the Minister is satisfied that” before “the application” at the start of the paragraph.

232. This is a consequential amendment to the amendments made by items 76 and 81. There is no change to the operation of existing paragraph 29(1)(a).

**Item [78] - Paragraph 29(1)(b)**

233. Item 78 amends paragraph 29(1)(b) of the OECD Regulations to insert “the Minister is satisfied that” before “carrying” at the start of the paragraph.

234. This is a consequential amendment to the amendments made by items 76 and 81. There is no change to the operation of existing paragraph 29(1)(b).

**Item [79] - Paragraph 29(1)(c)**

235. Item 79 amends paragraph 29(1)(c) of the OECD Regulations to insert “the Minister is satisfied that” before “the waste will” at the start of the paragraph.

236. This is a consequential amendment to the amendments made by items 76 and 81. There is no change to the operation of existing paragraph 29(1)(c).

**Item [80] - Paragraph 29(1)(d)**

237. Item 80 amends paragraph 29(1)(d) of the OECD Regulations to insert “the Minister is satisfied that” before “the applicant” at the start of the paragraph.

238. This is a consequential amendment to the amendments made by items 76 and 81. There is no change to the operation of existing paragraph 29(1)(d).

**Item [81] - At the end of subregulation 29(1)**

239. Subsection 33(1) of the Act, as amended by the Amending Act, requires the Minister to cause to be published certain information on the Department’s website as soon as practicable after the relevant circumstances arise.

240. Some of that information includes each permit application, or notice to vary a permit application, that the Minister receives (paragraph 33(1)(a) of the Act) and, for each application or notice, an invitation for members of the public to comment on the application or notice within 15 business days of it being published (paragraph 33(1)(aa)).

241. Item 81 adds a new paragraph 29(1)(e) to subregulation 29(1) of the OECD Regulations. New paragraph 29(1)(e) has the effect that the Minister must not grant a special transit permit unless the Minister has taken into account any relevant public comments received in response to an invitation under paragraph 33(1)(aa) of the Act about the application for the permit, or any notice relating to that application.

242. This ensures that the Minister is required to take into account all relevant information when deciding whether to grant a special transit permit.

#### **Item [82] - Subparagraph 31(1)(a)(iv) and (b)(v)**

243. Subregulation 31(1) of the OECD Regulations requires a special transit permit to set out certain information.

244. Item 82 amends subparagraphs 31(1)(a)(iv) and (b)(v) of the OECD Regulations to omit “, telephone number and facsimile number” and substitute “and telephone number”. This amendment has the effect of ensuring that the facsimile number of the permit holder and the carrier transporting the waste does not need to be set out in the special transit permit.

245. The facsimile is an outdated technology. It is no longer considered necessary for special permits to include facsimile numbers.

#### **Item [83] - Subregulation 33(2)**

246. Regulation 33 of the OECD Regulations allows the Minister to impose conditions on special permits and sets out relevant matters for such conditions.

247. Item 83 repeals existing subregulation 33(2) of the OECD Regulations and substitutes a new subregulation 33(2). New subregulation 33(2) provides that a condition that specifies a day by which the permit holder must comply with the condition cannot specify a date that is before the date the Minister granted the permit. However, the specified date can be before or after the relevant import, export or transit proposal covered by the special permit.

248. The amendment made by this item does not change the operation of existing subregulation 33(2) but clarifies that conditions with retrospective effect are not permitted.

#### **Item [84] - Regulation 34**

249. Item 84 repeals regulation 34 of the OECD Regulations and substitutes new Division 1 of Part 4 (new regulations 34, 34A, 34B and 34C).

250. Item 84 also inserts a new heading after new regulation 34C for “Division 2 - Surrendering special permits”. Division 2 of Part 4 covers existing regulation 35 (which is not amended).
251. Existing regulation 34 of the OECD Regulations sets out the processes and requirements for revoking a special permit. However, the drafting of existing regulation 34 is outdated and unnecessarily complicated, resulting in the requirements and operation of the provisions being difficult to understand.
252. The purpose of the amendment made by this item is to update and simplify the drafting of this provision, so as to allow readers to more easily understand the processes and requirements for revoking special permits. The provisions are also intended to streamline, so far as possible while maintaining consistency with the OECD Decision, the processes and requirements of revoking a special permit, with the process and requirements for revoking a Basel permit under the Act (as amended by the Amending Act).

#### Regulation 34 - Revoking special permits - grounds

253. New regulation 34 allows the Minister to revoke a special permit. This is an important safeguard if, for example, a matter is brought to the attention of the Minister that is relevant to the special permit. It is also intended to be available as a compliance tool.
254. New subregulation 34(1) has the effect that the Minister may, in writing, only revoke a special permit if the Minister is satisfied that any of the following grounds exist:
- the permit holder gave the Minister false, misleading or incomplete information, and when doing so, failed to either give the Minister an explanation for doing so or give the Minister the correct or completed information, if the holder were reasonably able to do so;
  - the permit holder is failing to comply, or has failed to comply, with a condition of the permit or a provision of the Act (including the regulations) that relates to the permit;
  - the permit holder is failing, or has failed after the granting of the permit, to provide or arrange to provide an auditor with assistance that is reasonably necessary for the conduct of an audit;
  - 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;

- 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.
255. The first note following subregulation 34(1) explains to readers that the requirement to provide an auditor with assistance that is reasonably necessary for the conduct of an audit is in section 54 of the Act, as amended by the Amending Act.
256. The second note following subregulation 34(1) explains that the relevant audit need not relate to the permit, as the requirement imposed by section 54 of the Act applies to any audit of an operation covered by either a permit, a ministerial order under Part 3 of the Act, a notification given under subsection 33G(1) of the Act that no transit permit is required, or other prescribed operations (see section 50 of the Act).
257. The Minister is also required to take into account any relevant comments made by the permit holder in response to a notice provided under new regulation 34A (see new paragraph 34A(1)(b)) before deciding whether to revoke the special permit. This is an essential aspect of the requirements of procedural fairness.
258. New subregulation 34(2) clarifies that a revocation of a special permit can only apply to an import, export or transit proposal authorised by the permit if the import, export or transit proposal has yet to begin. This ensures that special permits cannot be revoked after the waste is, for example, already on a ship that has left the exporting country.
259. The first note following subregulation 34(2) clarifies that where a special permit authorises two or more import, export or transit proposals, revocation of that permit only applies to import, export or transit proposals that are covered by the permit and have not yet begun.
260. The second note following subregulation 34(2) clarifies that a special permit cannot be revoked if it only authorises one proposal and that proposal has already begun.

#### Regulation 34A - Revoking special permits - notice of proposed revocation

261. New regulation 34A prevents the Minister from revoking a special permit under regulation 34 unless the Minister has:
- given notice of the proposed revocation to the holder of the permit in accordance with this regulation; and
  - taken into account any information given to the Minister in response to the notice, within 14 days of the notice being given to the permit holder.
262. The notice is required to:



- specify the proposed revocation and the grounds for the proposed revocation; and
- invite the permit holder to provide a written statement within 14 days showing cause why the permit should not be revoked; and
- include a statement setting out the permit holder's review rights in respect of a decision to revoke the permit.

263. This regulation sets out a natural justice requirement, which is consistent with both administrative law principles and Commonwealth policy. Natural justice (also known as procedural fairness) applies whenever an administrative decision might adversely affect the rights, interests or legitimate expectations of a person. It requires the decision-maker to give persons whose interests may be adversely affected by the decision an opportunity to see the evidence on which the decision-maker proposes to rely on and have their views on that evidence taken into account by the decision-maker.

264. New subregulation 34A(3) has the effect that the notice described in this regulation is not required if the Minister reasonably believes the proposed revocation is necessary to prevent or lessen a serious and imminent threat to human health or the environment. While this provision is intended to have the effect of excluding natural justice in such circumstances, it is appropriate as it only applies in exceptional circumstances where there is credible and relevant evidence of a threat to human or environmental health that is both serious and imminent.

#### Regulation 34B - Notice of revocation

265. New regulation 34B requires the Minister, after deciding to revoke a special permit, to give the permit holder a written notice stating the following:

- that the permit is to be revoked and the reasons for the revocation; and
- the day the revocation takes effect (which must be on or after the day the notice is given to the permit holder); and
- information about the permit holder's review rights in respect of the decision.

266. The note following subregulation 34B(1) refers the reader to section 58 of the Act for further statements the notice must include. The decision to revoke a special permit is reviewable by the Administrative Appeals Tribunal under section 57 of the Act.

267. New subregulation 34B(2) clarifies that, where a show cause notice was given to the permit holder under new regulation 34A, the revocation cannot take effect before the end of 14 days after the day the show cause notice was given.

268. This is intended to ensure that the Minister is able to take account of any relevant comments received from the permit holder in response to a notice given under regulation 34A, as required by paragraph 34A(1)(b). This is consistent with the requirements of natural justice.

#### Regulation 34C - Exhaustive statement of natural justice hearing rule

269. New regulation 34C has the effect that the statutory procedural fairness process set out in Division 1 of Part 4 of the OECD Regulations (new regulations 34, 34A and 34B) is an exhaustive statement of the requirements of the natural justice hearing rule in relation to decisions to revoke a special permit. This is appropriate to provide clarity and certainty of the natural justice rules to both decision-makers and permit holders. The process set out in new regulations 34, 34A and 34B is appropriate for the kind of decision involved as it only limits natural justice in the event of a serious and imminent threat to human health or the environment.

#### **Item [85] - Regulations 36 and 37**

270. Item 85 repeals existing regulations 36 and 37 of the OECD Regulations and substitutes:
- new headings for “Division 3 - Varying special permits” and “Subdivision A - Varying special permits: on application”;
  - new regulations 36 and 37 (which is part of the new Subdivision A of Division 3 of Part 4).
271. Existing regulations 36 and 37 of the OECD Regulations set out the processes and requirements for applying to vary a special permit and for requesting additional information to deal with an application to vary a special permit.
272. However, the drafting of regulations 36 and 37 is outdated and unnecessarily complicated, resulting in the requirements and operation of the provisions being difficult to understand.
273. The purpose of the amendments made by this item is to update and simplify the drafting of these provisions, so as to allow readers to more easily understand how to apply for a variation of a special permit, and the process if the Minister requests further information about an application to vary a special permit. The provisions are also intended to streamline, so far as possible while maintaining consistency with the OECD Decision, the processes and requirements of varying a special permit, with the process and requirements for varying a Basel permit under the Act (as amended by the Amending Act).

#### Regulation 36 - Varying special permits on application

274. New subregulation 36(1) allows the Minister, on application by the holder of the permit, to vary a special permit if the Minister:

- is satisfied that, if the Minister were asked to grant the special permit as it was proposed to be varied, the Minister would decide to grant to permit; and
- has taken into account any relevant public comments received in response to an invitation under paragraph 33(1)(aa) of the Act about the application.

275. The note following subregulation 36(1) provides examples of variations to a special permit that may be requested by the permit holder.
276. New subregulation 36(2) requires an application to vary a special permit to be made in the form approved by the Minister and set out, or be accompanied by, such information in relation to the proposed variation as is required by the form.
277. New subregulation 36(3) provides that regulation 33, which deals with other conditions that may be specified in special permits, applies to the imposition or variation of a condition under this regulation as if it were imposed at the time of granting the permit.

#### Regulation 37 - Minister may request further information about application

278. New regulation 37 is the equivalent of new regulation 11 (see item 33) in respect of applications to vary a special permit.
279. New subregulation 37(1) allows the Minister to request the applicant provide further information in relation to an application. The request must be made within 60 days after the day of the Minister receiving the application.
280. If the Minister requests additional information of an applicant under this regulation, the decision period for the application is paused until the request is complied with. If the request is not complied within 60 days after the day the request is made, the application would be taken to be withdrawn (new subregulation 37(2)).
281. If the decision period is paused under new regulation 37, the Minister is required, as soon as practicable, to notify the competent authority of the exporting country (for special import permits and special transit permits) and the competent authority of the importing country and any transit countries (for special export permits) of the pause (new subregulation 37(3)).

#### **Item [86] - Subregulation 38(1)**

282. Item 86 amends subregulation 38(1) of the OECD Regulations to omit “a variation application” and substitutes it with “an application to vary a special permit”.
283. This is an editorial amendment to improve the clarity of this subregulation.

### **Item [87] – Paragraph 38(2)(a)**

284. Regulation 38 of the OECD Regulations sets out the acknowledgement and notification requirements for the Minister once an application to vary a special permit has been received.

285. Item 87 repeals existing paragraph 38(2)(a) of the OECD Regulations and substitutes a new paragraph 38(2)(a). New paragraph 38(2)(a) has the effect that where the application is to vary a special export permit, the Minister must give written notice of the receipt and full details of the proposed variation to the competent authority of the importing country, and of any transit countries, for the permit.

286. It is appropriate that both the relevant importing and transit countries are notified of proposed variations to special export permits, in order to ensure compliance with Australia's international obligations and maintain Australia's international relations.

### **Item [88] - Regulations 39 to 41**

287. Item 88 repeals existing regulations 39 to 41 of the OECD Regulations and substitutes:

- new regulations 39, 40, 40A, 40B and 40C relating to the timeframes for an application to vary a special permit; and
- new Subdivision B (regulations 41, 41A, 41B and 41C) relating to varying special permits on the Minister's initiative.

288. Existing regulations 39 and 40 of the OECD Regulations set out the circumstances that may affect the decision period for the Minister to grant or refuse an application to vary a special permit. Existing regulation 41 of the OECD Regulations set out the processes and requirements for the Minister to vary a special permit on the Minister's initiative.

289. However, the drafting of regulations 39 to 41 is outdated and unnecessarily complicated, resulting in the requirements and operation of these regulations being difficult to understand.

290. The purpose of the amendments made by this item is to update and simplify the drafting of these provisions, so as to allow readers to more easily understand the applicable timeframes for applications to vary special permits (including when the decision period may be paused or extended) and the processes and requirements for varying special permits on the Minister's initiative. The new provisions are also intended to streamline, so far as possible while maintaining consistency with the OECD Decision, the processes and requirements for varying a special permit with the processes and requirements for varying a Basel permit under the Act (as amended by the Amending Act).

291. This item also makes two changes to the substantive operation of existing regulation 40 (concerning when the decision period for applications to vary a special permit can be extended). These changes are to:
- remove the ability to extend the decision period where an action under the EPBC Act has begun. This extension is redundant because an application to vary a special permit is not covered by the EPBC Act; and
  - add a new power for the Minister to extend the decision period with the agreement of the applicant.

Regulation 39 - Period for making a decision on an application to vary a special permit - default period

292. New regulation 39 sets out the default decision period for an application to vary a special permit.
293. New subregulation 39(1) provides if the Minister receives an application to vary a special permit, the Minister must decide whether to make the variation within 60 days starting after the day the Minister receives the application. This is the default decision period.
294. The note following subregulation 39(1) clarifies that this period may be paused or extended under regulation 37, 40, 40A or 40B.
295. New subregulation 39(2) has the effect if the Minister has not decided whether to make the variation by the end of the decision period (including as paused or extended under regulation 37, 40, 40A or 40B), the Minister is to be taken to have decided, on the last day of that period:
- for an application to vary a special import or special transit permit - to make the variation; or
  - for an application to vary a special export permit - not to make the variation.
296. This subregulation reflects the current the operation of existing subregulation 40(7).
297. New subregulation 39(3) has the effect that a variation to a special permit that is taken to be made under subregulation 39(2) takes effect on the day after the last day of the decision period.

Regulation 40 - Period for making a decision on an application to vary a special permit - extension for special export permits

298. New regulation 40 provides for the decision period for an application to vary a special export permit to be extended where the competent authority of the importing

country, or a transit country, has not yet given or refused consent to the grant of the permit.

299. This extension of the decision period recognises that:

- Australia's obligations under the Basel Convention and the OECD Decision prevent the Minister from granting a variation unless both the importing country and any transit countries have consented to the export; and
- the timing of a competent authority's consent or refusal of consent is not within the control of the Minister or the applicant.

300. Regulation 40 has the effect that if the competent authority of either the importing country or any transit country has neither given nor refused consent by the end of the decision period, the decision period is extended until the end of 5 working days after the latest day such a refusal or consent is given by a competent authority.

301. The note following regulation 40 refers readers to paragraph 38(2)(a) which requires the Minister to notify the competent authority of the importing country of an application to vary a special export permit.

#### Regulation 40A - Period for making a decision on an application to vary a special permit - extension on Minister's initiative

302. New regulation 40A provides for the decision period to be extended for an application to vary a special permit where the Minister thinks that a decision whether to make the variation cannot be made within the decision period.

303. Where this is the case, the Minister may extend the decision period by up to 60 days (new subregulation 40A(1)).

304. New subregulation 40A(2) sets out the notification requirements where the decision period is extended under regulation 40A. In these circumstances, the Minister must notify the following persons of the extension as soon as practicable:

- the applicant; and
- where the permit is a special export permit – the competent authority of the importing country and any transit countries for the permit;
- where the permit is a special import permit – the competent authority of the exporting country;
- where the permit is a special transit permit - the competent authority of the OECD country from which the waste is to be exported.

Regulation 40B - Period for making a decision on an application to vary a special permit - extension agreed with applicant

305. New regulation 40B allows the Minister and the applicant to agree in writing to extend the decision period for an application to vary a special permit. There is no time limit on the extension that may be agreed.
306. New subregulation 40B(2) sets out the notice requirements if the Minister extended the decision period for an application to vary a special permit under regulation 40B. If the application is to vary a special export permit, the Minister must, as soon as practicable, notify the competent authority of the exporting country and of any transit countries. If the application is to vary a special import permit, the Minister must, as soon as practicable, notify the competent authority of the exporting country. If the application is to vary a special transit permit, the Minister must, as soon as practicable, notify the competent authority of the OECD country from which the waste is to be exported.

Regulation 40C - Notice of variation

307. New regulation 40C sets out the notice requirements for a decision by the Minister whether to make a requested variation to a special permit.
308. If the Minister makes a decision in relation to an application to vary a special permit, the Minister must give the permit holder a written notice stating:
- whether the permit is to be varied;
  - if the decision is that the permit is to be varied - the day the variation is to take effect;
  - if the decision is that the permit is not to be varied - the reasons for the decision and information about the holder's right to seek review of the decision.
309. A decision under the OECD Regulations to refuse to vary a special permit as requested is reviewable by the Administrative Appeals Tribunal under section 57 of the Act. The note following new regulation 40C explains that further information on what a notice is required to include (in relation to review rights) is set out in section 58 of the Act.

*Subdivision B - Varying special permits: on Minister's initiative*

Regulation 41 - Varying special permits on Minister's initiative - grounds

310. New regulation 41 allows the Minister to vary a special permit on the Minister's own initiative (without having received an application from the permit holder). This is an important safeguard if, for example, a matter is brought to the attention of the Minister that is relevant to the special permit. It is also intended to be available as a compliance tool.

311. Subregulation 41(1) has the effect that the Minister may, in writing, only vary a special permit if the Minister is satisfied that any of the following grounds exist:

- the permit holder gave the Minister false, misleading or incomplete information, and when doing so, failed to either give the Minister an explanation for doing so or give the Minister the correct or completed information, if the holder were reasonably able to do so;
- the permit holder is failing to comply, or has failed to comply, with a condition of the permit or a provision of the Act (including the regulations) that relates to the permit;
- the permit holder is failing, or has failed after the granting of the permit, to provide or arrange to provide an auditor with assistance that is reasonably necessary for the conduct of an audit;
- 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.

312. The first note following subregulation 41(1) gives examples of a variation, which may include imposing a condition on the permit, or varying or revoking a permit condition.

313. The second note explains to readers that the requirement to provide an auditor with assistance that is reasonably necessary for the conduct of an audit is in section 54 of the Act, as amended by the Amending Act.

314. The third note following subregulation 41(1) explains that the relevant audit need not relate to the permit, as the requirement imposed by section 54 of the Act applies to any audit of an operation covered either by a permit, a ministerial order under Part 3 of the Act, a notification given under subsection 33G(1) of the Act that no transit permit is required, or other prescribed operations (see section 50 of the Act).

315. Subregulation 41(2) provides that regulation 33, which deals with other conditions that may be specified in special permits, applies to the imposition or variation of a condition under this regulation as if it were imposed at the time of granting the permit.

#### Regulation 41A - Varying special permits on Minister's initiative - notice of proposed variation

316. New regulation 41A prevents the Minister from varying a special permit under regulation 41 unless the Minister has:

- given notice of the proposed variation to the holder of the permit in accordance with this regulation; and



- taken into account any information given to the Minister in response to the notice, within 14 days of the notice being given to the permit holder.

317. The notice is required to:

- specify the proposed variation and the grounds for the proposed variation; and
- invite the permit holder to provide a written statement within 14 days showing cause why the permit should not be varied; and
- include a statement setting out the permit holder's review rights in respect of a decision to vary the permit.

318. This regulation sets out a natural justice requirement, which is consistent with both administrative law principles and Commonwealth policy. Natural justice (also known as procedural fairness) applies whenever an administrative decision might adversely affect the rights, interests or legitimate expectations of a person. It requires the decision-maker to give persons whose interests may be adversely affected by the decision an opportunity to see the evidence on which the decision-maker proposes to rely on and have their views on that evidence taken into account by the decision-maker.

319. New subregulation 41A(3) has the effect that the notice described in this regulation is not required if the Minister reasonably believes the proposed variation is necessary to prevent or lessen a serious and imminent threat to human health or the environment. While this provision is intended to have the effect of excluding natural justice in such circumstances, it is appropriate as it only applies in exceptional circumstances where there is credible and relevant evidence of a threat to human or environmental health that is both serious and imminent.

#### Regulation 41B - Notice of variation

320. New regulation 41B requires the Minister, after deciding to vary a special permit, to give the permit holder a written notice stating the following:

- that the permit is to be varied and the reasons for the variation; and
- the day the variation takes effect (which must be on or after the day the notice is given to the permit holder); and
- information about the permit holder's review rights in respect of the decision.

321. The note following new subregulation 41B(1) refers the reader to section 58 of the Act for further statements the notice must include. A decision to vary a special permit on the Minister's initiative is reviewable by the Administrative Appeals Tribunal under section 57 of the Act.

322. New subregulation 41B(2) clarifies that, where a show cause notice was given to the permit holder under regulation 41A, the variation cannot take effect before the end of 14 days after the day the show cause notice was given.

323. This is intended to ensure that the Minister is able to take account of any relevant comments received from the permit holder in response to a notice given under regulation 41A, as required by paragraph 41A(1)(b). This is consistent with the requirements of natural justice.

#### Regulation 41C - Exhaustive statement of natural justice hearing rule

324. New regulation 41C has the effect that the statutory procedural fairness process set out in new Subdivision 2, Division 3 of Part 4 of the OECD Regulations (regulations 41A and 41B) is an exhaustive statement of the requirements of the natural justice hearing rule in relation to decisions to vary a special permit.

325. This is appropriate to provide clarity and certainty of the natural justice rules to both decision-makers and permit holders. The process set out in new sections 41A and 41B is appropriate for the kind of decision involved as it only limits natural justice in the event of a serious and imminent threat to human health or the environment.

#### **Item [89] - Regulation 44**

326. Item 89 amends regulation 44 to repeal existing regulation 44 of the OECD Regulations and substitute new Part 6 to deal with application and transitional provisions. Division 1 of new Part 6 deals with transitional matters relating to the Amendment Regulations.

327. Existing regulation 44 enables the Minister to delegate the Minister's functions and powers under the OECD Regulations. Section 66 of the Act already allows for the delegation of the Minister's functions and powers under the Act. Because section 4 of the Act defines "this Act" to include regulations made under the Act, the Minister's power to delegate under section 66 of the Act also applies to the Minister's functions and powers in all the regulations made under the Act (including the OECD Regulations). Existing section 44 is therefore redundant and can be repealed.

#### ***Part 6 - Application and transitional provisions***

##### *Division 1 - Transitional matters relating to the Hazardous Waste (Regulation of Exports and Imports) Legislation Amendment Regulations 2021*

#### Regulation 44 - Application of amendments - special permits

328. New regulation 44 of the OECD Regulations deals with the application of amendments in the Amendment Regulations, as they relate to special permits under the OECD Regulations.

329. Subregulation 44(1) has the effect that the amendments to Parts 2 (Applications for special permits) and 3 (Grant of special permits) of the OECD Regulations made by the Amendment Regulations apply in relation to the following:

- an application for a special permit made on or after the commencement day;
- an application for a special permit made before the commencement day if the application is varied on or after that day.

330. Subregulation 44(2) has the effect that the amendments to Part 4 (Revocation, surrender and variation of special permits) of the OECD Regulations made by the Amendment Regulations apply in relation to the following:

- a decision on or after the commencement day whether to revoke a special permit;
- an application made on or after the commencement day to vary a special permit;
- a decision, on the Minister's own initiative, on or after the commencement day whether to vary a special permit;

whether the permit was granted before, on or after the commencement day.

331. Subregulation 44(3) provides that for the purposes of this regulation, *commencement day* means the day the Amendment Regulations commence.

#### **Item [90] - Schedule 1**

332. Item 90 repeals Schedule 1 to the OECD Regulations.

333. Existing Schedule 1 sets out the text of the OECD Decision. However, this was inserted into the OECD Regulations in 2004, meaning that the version of the OECD Decision relied on by the OECD Regulations is out of date and no longer reflects the current text of that international agreement.

334. It is no longer necessary to set out the text of the OECD Decision in the OECD Regulations, as the new definition of *OECD Decision* (as inserted by item 23) incorporates the OECD Decision as in force or existing at the time when the Amendment Regulations commence. The text of the OECD Decision is available on the OECD website at: <https://legalinstruments.oecd.org/>.

#### ***Hazardous Waste (Regulation of Exports and Imports) Regulations 1996***

##### **Item [91] - Before regulation 1**

335. Item 91 inserts a new heading "Part 1 - Preliminary" before regulation 1 of the HW Regulations.

##### **Item [92] - Regulation 1 (heading)**

336. Item 92 amends the heading of regulation 1 of the HW Regulations to omit “of Regulations”.
337. This item updates and modernises the drafting style of the regulations. It does not change the title of the HW Regulations.

#### **Item [93] - Regulation 1**

338. Item 93 amends regulation 1 of the HW Regulations by omitting “These Regulations are” and substituting “This instrument is”.
339. This item updates and modernises the drafting style of the regulations. It does not change the title of the HW Regulations.

#### **Item [94] - Regulations 3 to 9**

340. Item 94 repeals existing regulations 3 to 9 of the HW Regulations and substitutes with new regulations 2 to 4 and Parts 2, 3 and 4 (regulations 5 to 9). The new regulations more clearly deal with preliminary matters, set out notification requirements for Basel export permits, provide detail for new recordkeeping requirements, provide detail on the requirements on conducting an audit and deal with transitional matters. This item also has the effect of updating and modernising the drafting style of the HW Regulations while removing regulations that are no longer considered necessary or appropriate.

#### Regulation 2 - Authority

341. New regulation 2 of the HW Regulations clarifies the authority of the HW Regulations by providing that the HW Regulations are made under the Act.

#### Regulation 3 - Definitions

342. New regulation 3 of the HW Regulations defines key terms used in the HW Regulations. New regulation 3 replicates the existing regulation 3, but without the definition of *recovery operation*. This definition is no longer required as this term will now be defined in the Act, as inserted by the Amending Act.

#### Regulation 4 - Meaning of *household waste*

343. New regulation 4 of the HW Regulations clarifies the definition of *household waste* for the purposes of section 4 of the Act.
344. The regulatory regime prescribed by the Act and regulations made under the Act, including the requirement to obtain an export, import or transit permit, only applies to *hazardous waste* as defined by section 4 of the Act (unless an extended definition applies). The term *hazardous waste* is defined with reference to the scope of the Basel Convention, in order to implement Australia’s obligations under that treaty. The annexes to the Basel Convention provide the basis for determining the types of waste that fall within the scope of the Convention. To enable this, section 4 of the Act defines the Basel Convention as that Convention as in force for Australia from time to time.

345. Section 4 of the Act, as amended by the Amending Act, defines *hazardous waste* as:
- wastes prescribed by the regulations, where the waste has any of the characteristics mentioned in Annex III to the Basel Convention (paragraph (a)); or
  - wastes covered by paragraph 1(a) of Article 1 of the Basel Convention (paragraph (b)); or
  - household waste (paragraph (c)); or
  - residues arising from the incineration of household wastes (paragraph (d)); or
  - plastic wastes, including mixtures of such wastes, covered by Annex II to the Basel Convention (paragraph (e)).
346. New regulation 4 of the HW Regulations provides that for the purposes of the definition of *household waste* in section 4 of the Act, *household waste* does not include waste listed in Annex IX (List B) to the Basel Convention, unless the waste is mixed with other waste listed in Annex IX (List B) to that Convention.
347. The exclusion of waste listed in Annex IX (List B) of the Basel Convention from *household waste* in turn excludes these wastes from the definition of *hazardous waste* and the scope of the regulatory regime. However, consistent with Annex IX (List B), this exclusion does not apply if the waste contained Annex I material to an extent causing it to exhibit an Annex III characteristic.
348. Annex IX (List B) wastes do not ordinarily fall within the definition of *hazardous waste* in section 4 of the Act, as they are not covered by paragraph 1(a) of Article 1 of the Basel Convention (unless the waste contained Annex I material to an extent causing it to exhibit an Annex III characteristic).
349. Therefore, when such wastes are not collected from households, they are not *hazardous waste*. The purpose of new regulation 4 is to also exclude such wastes from being *household waste*, so that they do not become hazardous waste (and thus subject to the Act) in that context only. This ensures consistency in how such wastes are treated, with the effect that Annex IX (List B) wastes is not hazardous waste for the purposes of the Act regardless of whether they are collected from households, or from commercial or other entities.
350. New regulation 4 of the HW Regulations has the effect of implementing paragraphs 3 and 4 of the Plastics Decision by incorporation. The Basel Convention is defined by section 4 of the Act as that Convention as in force for Australia for time to time. This means that by defining what is not *household waste* by reference to Annex IX (List B) in regulation 4, this definition automatically adopts the new waste entry

B3011 and remove the expired B3010, as those changes are made to Annex IX (List B) to the Basel Convention.

## ***Part 2 - Basel export permits***

### **Regulation 5 - Application for Basel export permit - information to be given to foreign country**

351. Subsection 16A(1) of the Act, as inserted by the Amending Act, requires the Minister, within 21 days after received an application for a Basel export permit, to notify the competent authority of the receiving country and of any transit countries of such information as is prescribed in the regulations made for the purposes of this subsection. The same requirement applies in relation to applications for a variation of a Basel export permit (see subsection 26C(1) of the Act, as inserted by the Amending Act).

352. New regulation 5 of the HW Regulations prescribes such information for the purposes of subsections 16A(1) and 26C(1) of the Act in relation to an application for Basel export permit or an application for a variation of a Basel permit. New regulation 5 provides that the information the Minister is required to notify a competent authority of a foreign country is the information about the application mentioned in Annex VA to the Basel Convention.

353. The purpose of new regulation 5 is to improve the clarity of the provision and is consequential to the Amending Act, which re-numbered the relevant sections of the Act mentioned in this regulation. There is no change to the substantive requirement covered by the existing regulation 5 of the HW Regulations.

## ***Part 3 - Record keeping and audits***

### **Regulation 6 - Record keeping**

354. Subsection 41D(1) of the Act, as inserted by the Amending Act, allows the regulations to make provision for and in relation to requiring records to be made and retained by the following persons:

- a person who holds an import, export or transit permit under the Act. This includes both the holders of Basel permits granted under the Act and holders of special permits granted under a set of regulations made under the Act;
- a person who has been notified under subsection 33G(1) of the Act that a transit permit is not required for carrying out a transit proposal. Transit proposals for which a notification may be given under subsection 33G(1) of the Act can only relate to the transboundary movement of hazardous waste between OECD countries for recovery operations, consistent with the OECD Decision;
- a person who has been given a ministerial order under Part 3 of the Act.

355. New regulation 6 of the HW Regulations provides the detailed requirements relating to making and retaining records, including the types of records that must be made and retained, the period for which records must be retained and the form in which records must be retained.
356. Subregulation 6(1) outlines the types of records that must be made and retained for different persons as outlined in subsection 41D(1) of the Act, as inserted by the Amending Act.
357. For a person who holds a permit under the Act in relation to the import, export or transit of hazardous waste, the following documents must be made and retained:
- each document (if any) that the person is required to keep in accordance with a condition of the permit (subparagraph 6(1)(a)(i));
  - each other document that is made by the person, or that comes into the person's possession, and is relevant to showing whether the person has complied, or is complying, with the permit or any requirements of the Act (subparagraph 6(1)(a)(ii)).
358. A person who has been notified under subsection 33G(1) of the Act that a transit permit is not required for carrying out a transit proposal must make and retain each document that is made by the person or that comes into the person's possession and is relevant to showing whether the criteria mentioned in paragraphs 33G(1)(a), (b), (c) and (d) of the Act are satisfied, or continue to be satisfied, for the transit proposal (paragraph 6(1)(b)).
359. For a person who has been given an order under Part 3 of the Act, the following documents must be made and retained:
- each document (if any) that the person is required to keep in accordance with the order (subparagraph 6(1)(c)(i));
  - each other document that is made by the person, or that comes into the person's possession, and is relevant to showing whether the person has complied, or is complying, with the order or any requirements of the Act.
360. Subregulation 6(2) requires a person who is required to retain records under this regulation to retain each such record for at least the period of 5 years starting on the day the record is made by the person, or comes into the person's possession.
361. Subregulation 6(3) provides that if a person is required to retain records, that person must retain each such record in a form that is:
- dated with the date the document is created or with the date the document comes into the person's possession; and

- for a document created by that person - accurate and legible; and
- able to be audited; and
- in electronic or paper form.

362. Subregulation 6(4) provides that if a record is not in English, the person must obtain a translation of the record into English and retain the translation for at least the period of 5 years starting on the day the translation is obtained.

363. Subregulation 6(5) provides that a person who is required to retain a record must not alter or deface the records, and must take reasonable steps to prevent the record from being altered or defaced by another person. However, this does not prevent a person from making notations or marking on the record in accordance with any ordinary practice (see subsection 6(6)). Such ordinary practice may include, for example, making notations in the usual course of business.

364. Subregulation 6(7) requires that if a person makes notations or markings on the record in accordance with ordinary practice, the person who is required to retain the record must also retain, for the same period that the original record must be retained:

- if reasonably practicable - a copy of the original record without notations or markings; and
- copies of the record that show how the record has changed over time.

365. The note to regulation 6 alerts the reader to subsections 41D(4) and (5) of the Act. Under those subsections, a person may commit an offence of strict liability or be liable to a civil penalty if the person is required to retain a record in accordance with this provision and the person fails to comply with the requirement.

366. Providing the details of record keeping requirements in the HW Regulations rather than the Act allows flexibility to prescribe specific record keeping requirements for different regulatory regimes, in line with good regulatory practice. For example, a permit holder must make and retain records that relate to how they are complying with their permit, while the recipient of a notification under subsection 33G(1) of the Act must keep records about matters that go to whether the notification should be revoked, such as whether the transit proposal is likely to cause significant harm to the environment. Having records which are relevant and up to date for each different type of permission for transboundary movement of hazardous waste under the Act ensures that those regulated are held accountable for their acts or omissions and that any non-compliance with the Act can be dealt with appropriately.



367. Further, the ability to ensure that a variety of records can be kept in a variety of forms and for specific requirements that can be updated with changes in technology, is important in ensuring compliance with the Act and in minimising regulatory burden for industry.
368. It is anticipated that most records required to be made and retained are likely made or retained in the normal course of business. This minimises the imposition of additional regulatory obligations on industry.

#### Regulation 7 - Conduct of audit

369. Section 53 of the Act, as amended by the Amending Act, sets out the requirements for the conduct of an audit. This will include permitting the Secretary to require an audit without notice in certain circumstances, and a requirement that an auditor, before starting to conduct an audit, must give the relevant person for the audit a description of the scope of the audit. Paragraph 53(3)(a) of the Act will allow the regulations to make provision for and in relation to other matters relating to the conduct of an audit.
370. New regulation 7 of the HW Regulations provides that an auditor must conduct an audit as expeditiously as reasonably practicable, and in a way that results in minimal interference to the operations in relation to which the audit is conducted. This requirement applies to auditors, who must be inspectors appointed under the Act (see subsection 50(4) of the Act, as inserted by the Amending Act).
371. It is appropriate for the HW Regulations to prescribe matters relating to the conduct of an audit. This provides the necessary flexibility for the compliance framework in the regulatory regime to respond to changes to the regulatory environment, changes in the content of Australia's international obligations and changes in technology. This necessary flexibility minimises the impact of hazardous waste on human health and the environment and ensures that the regulatory burden to industry is minimised so far as possible.

#### Regulation 8 - Process after audit completed

372. Paragraph 53(3)(b) of the Act (as inserted by the Amending Act) allows the regulations to make provision for and in relation to the process to be followed after an audit has been completed.
373. New regulation 8 of the HW Regulations outlines the process that an auditor must follow after an audit is completed.
374. Subregulation 8(1) provides that an auditor who completes an audit must:
- as soon as reasonably practicable after the audit is completed, notify the relevant person for the audit, orally or in writing, that the audit is completed; and

- within 14 days after the day the audit is completed, make a written report (an *audit report*) of the audit and give a copy of the audit report to the Secretary, in the manner approved by the Secretary, and the relevant person for the audit.

375. Subregulation 8(2) sets out the matters that must be included in the audit report. These matters are:

- the name of the auditor;
- the day the audit commenced, the day the audit was completed and the total time spent (in hours) conducting the audit;
- the name of the relevant person for the audit;
- a description of the scope of the audit;
- the findings of the audit including whether, in the auditor's opinion, there is, or there has been, a failure to comply with the requirements of the Act in relation to a matter to which the audit relates, including a contravention of the conditions of a permit (if any);
- the reasons for the auditor's findings.

376. Subregulation 8(3) provides that the audit report may also:

- identify any risk of a potential non-compliance with a requirement of the Act in relation to a matter to which the audit relates; and
- include recommendations that action be taken to address any non-compliance, or risk of potential non-compliance, with any of the requirements of the Act.

377. It is appropriate for the HW Regulations to prescribe matters relating to the process that must be followed after an audit is completed. This provides the necessary flexibility for the compliance framework in the regulatory regime to respond to changes to the regulatory environment, changes in the content of Australia's international obligations and changes in technology. This necessary flexibility thereby minimises the impact of hazardous waste on human health and the environment and ensures that the regulatory burden to industry is minimised so far as possible.

#### ***Part 4 - Application and transitional provisions***

*Division 1 - Transitional matters relating to the Hazardous Waste (Regulation of Exports and Imports) Legislation Amendment Regulation 2021*

#### **Regulation 9 - Application of amendments**

378. New regulation 9 of the HW Regulations deals with transitional matters relating to the Amendment Regulations, as it applies to the HW Regulations.

379. Subregulation 9(1) clarifies that new regulation 4, which relates to the meaning of *household waste*, applies in relation to the import, export or transit of hazardous waste occurring on or after the commencement day.
380. Subregulation 9(2) clarifies that new regulation 5, which relates to the information that must be contained in a notification to a competent authority, applies in relation to:
- an application for a Basel permit made on, and after the commencement day;
  - an application for a Basel permit made before the commencement day if the application is varied on or after the commencement day;
  - an application made on or after the commencement day for a variation of a Basel permit, whether the permit was granted before, on or after the commencement day.
381. Subregulation 9(3) clarifies that new regulation 6, which relates to record keeping, applies to a permit granted under the Act on or after the commencement day, a notification given under subsection 33G(1) of the Act on or after the commencement day, and an order given under Part 3 of the Act on or after the commencement day.
382. Subregulation 9(4) clarifies that in regulation 9, *amending instrument* means the Amendment Regulations and *commencement day* means the day the Amendment Regulations commences.

#### **Item [95] - Schedule 1**

383. Item 95 repeals Schedule 1 to the HW Regulations. Existing Schedule 1 lists the waste codes in Annex IX (List B) to the Basel Convention to show the types of wastes that were taken not to be *household waste* for the purpose of existing regulation 4. This list was required as existing subregulation 4(2) modified one of the waste codes in Annex IX (List B).
384. Amendments made by item 94 of the Amendment Regulations repeals existing regulation 4 and replaces it with a new regulation 4. The new regulation 4 does not modify the wastes codes in Annex IX (List B) to the Basel Convention. Therefore, Schedule 1 is no longer needed and can be repealed. Annex IX to the Basel Convention is available on the Basel Convention website at <http://www.basel.int/>.

***Hazardous Waste (Regulation of Exports and Imports) (Waigani Convention) Regulations 1999***

**Item [96] - After regulation 1**

Item 96 inserts a new regulation 2 into the Waigani Regulations. New regulation 2 clarifies the authority of the Waigani Regulations by providing that the Waigani Regulations are made under the Act.

**Item [97] - Regulation 11A**

Item 97 repeals regulation 11A of the Waigani Regulations. Existing regulation 11A provides for the process by which the Minister requests further information from the applicant in relation to an application for special import permit or special transit permit, or an application to vary such a permit, under the Waigani Regulations.

However, amendments made by the Amending Act insert new provisions relating to requests for further information on Basel permit applications. Relevantly, subregulations 10(1) and 11(1) of the Waigani Regulations applies Divisions 3 and 4 of Part 2 of the Act (concerning Basel permits) to special import and transit permits issued under the Waigani Regulations. This means that new provisions in the Act relating to requests for further information on Basel permit applications will also apply to Waigani special import and transit permit applications, and applications to vary such permits. Existing regulation 11A of the Waigani Regulations is therefore now redundant.

The amendment made by this item ensures there is no inconsistency of requirements between the Act and Waigani Regulations.

**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 Regulations 2021**

This Legislative Instrument is compatible with human rights and freedom recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

**Overview of the Legislative Instrument**

The *Hazardous Waste (Regulation of Exports and Imports) Legislation Amendment Regulations 2021* (the Amendment Regulations) amend the following regulations made under the *Hazardous Waste (Regulation of Exports and Imports) Act 1989*:

- *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) (OECD Decision) Regulations 1996*
- *Hazardous Waste (Regulation of Exports and Imports) Regulations 1996*
- *Hazardous Waste (Regulation of Exports and Imports) (Waigani Convention) Regulations 1999*.

The Amendment Regulations implement amendments to the *Basel Convention on the Control of Transboundary Movements of Hazardous Waste and their Disposal* (the Basel Convention) to strengthen transboundary controls on plastic wastes and ensure Australia's compliance with international obligations. The amendments to the Basel Convention sought to strengthen transboundary controls on unsorted plastic wastes containing hazardous substances. The *Hazardous Waste (Regulation of Exports and Imports) Amendment Act 2021* (the Amending Act) partially implement the changes to the Basel Convention and amendments to the regulations made under the Act are necessary to fully ensure Australia's compliance with its international obligations.

The Amendment Regulations also amend the regulations made under the Act to provide administrative detail for new processes introduced by the Amending Act and other minor consequential and technical amendments to update the regulations. These include:

- providing the detail for new recordkeeping requirements;
- providing the detail on the requirements of conducting an audit;
- providing the circumstances where a fee may be waived or refunded;
- aligning the processes for granting, revoking and suspending special import, export and transit permits with their equivalent processes for Basel permits that are detailed in the Act and amended by the Amending Act;
- updating references to sections of the Act which have been re-numbered; and

- making other minor updates to streamline and reduce the complexity of the regulations while ensuring the standard of environmental and human health protection remains high.

## **Human Rights Implications**

The Amendment Regulations engages the following rights:

- the right to health in Article 12(1) of the International Covenant on Economic, Social and Cultural Rights (the ICESCR); and
- The right to privacy in Article 17 of the International Covenant on Civil and Political Rights (the ICCPR).

### Right to health

Article 12(1) of the ICESCR makes provision in relation to the right to health, specifically the right to the enjoyment of the highest attainable standard of physical and mental health. Article 12(2)(b) includes the improvement of all aspects of environmental hygiene as a step to be taken to achieve the full realisation of the right to health. In its *General Comment No 14 (August 2000)*, the United Nations Committee on Economic, Social and Cultural Rights stated that this encompasses the prevention and reduction of human exposure to harmful substances (at [15]).

Item 30 amends the OECD Regulations to add plastic waste, including mixtures of such waste, covered by Annex II to the Basel Convention to the types of wastes destined for recovery operations that require amber control procedures (see new subregulation 7(1) of the OECD Regulations). The effect of this item is that these types of plastic waste destined for recovery operations in OECD countries would be subject to the transboundary movement controls under the OECD Regulations, including the requirement to obtain a special permit. Each special permit application is assessed, and conditions may be imposed on special permits granted under the OECD Regulations, to ensure that the import, export, transit and disposal of hazardous waste is done in an environmentally sound way.

Therefore, the Amendment Regulations promote the right to health under Article 12 of the ICESCR. It positively engages this right by ensuring that, where relevant, environmental risks are considered in decision-making relating to plastics wastes destined for recovery operations. This would ensure that harmful human exposure to plastics is minimised.

### Right to privacy

Article 17 of the ICCPR prohibits arbitrary or unlawful interferences with an individual's privacy, family, home or correspondence. The right to privacy can be limited to achieve a legitimate objective where the limitations are lawful and not arbitrary. In order for an interference with the right to privacy to be permissible, the interference must be authorised by law, be for a reason consistent with the ICCPR and be reasonable in the circumstances.

Item 94 amends the HW Regulations to provide the detailed requirements relating to making and retaining records, including the types of records that must be made and retained, the period for which records must be retained and the form in which records must be retained (see new regulation 6 of the HW Regulations). Under the Act, as amended by the Amending Act, the records may be audited or required to be given or produced to the Minister in certain circumstances.

Recordkeeping requirements are an important compliance mechanism to ensure that those who are regulated by the Act and the regulations made under it comply with their obligations and may be held accountable for their actions or omissions.

It is expected that only a very limited amount of information in records will be personal information. A person who is required to provide information will have 'opted in' to the regulatory regime and should expect that some personal information may need to be provided in order to gain the benefits of that system. It is also expected that most persons who will be required to make and retain records under the Act will be body corporates, for which the protections of the *Privacy Act 1988* do not apply.

Therefore, any limitation on the right to privacy is necessary, proportionate and reasonable in the pursuance of the legitimate objectives of the hazardous waste regulatory regime.

### **Conclusion**

The Amendment Regulations is compatible with human rights because it promotes the right to health under Article 12(1) of the ICESCR. To the extent that it engages and limits the right to privacy under Article 17 of the ICCPR, that limitation is reasonable, necessary and proportionate to achieve the legitimate aims of the regulatory regime.

**The Hon. Trevor Evans MP**  
**Assistant Minister for Waste Reduction and Environmental Protection**  
**Parliamentary Secretary to the Minister for the Environment**