



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

I, General the Honourable David Hurley AC DSC (Retd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 09 December 2021

David Hurley
Governor-General

By His Excellency's Command

Trevor Evans
Assistant Minister for Waste Reduction and Environmental Management
Parliamentary Secretary to the Minister for the Environment

Contents

1	Name.....	1
2	Commencement	1
3	Authority.....	1
4	Schedules.....	1
Schedule 1—Amendments		2
	<i>Hazardous Waste (Regulation of Exports and Imports) (Fees) Regulations 1990</i>	2
	<i>Hazardous Waste (Regulation of Exports and Imports) (Imports from East Timor) Regulations 2003</i>	4
	<i>Hazardous Waste (Regulation of Exports and Imports) (OECD Decision) Regulations 1996</i>	4
	<i>Hazardous Waste (Regulation of Exports and Imports) Regulations 1996</i>	20
	<i>Hazardous Waste (Regulation of Exports and Imports) (Waigani Convention) Regulations 1999</i>	25

1 Name

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

2 Commencement

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

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	The later of: (a) the day after this instrument is registered; and (b) the day Schedule 1 to the <i>Hazardous Waste (Regulation of Exports and Imports) Amendment Act 2021</i> commences.	30 December 2021 (paragraph (b) applies)

Note: This table relates only to the provisions of this instrument as originally made.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

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

3 Authority

This instrument is made under the *Hazardous Waste (Regulation of Exports and Imports) Act 1989*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1—Amendments

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

1 Before regulation 1

Insert:

Part 1—Preliminary

2 Regulation 2

Insert:

prescribed fee has the meaning given by regulations 3 and 3A.

3 Before regulation 3

Insert:

Part 2—Fees

4 Regulation 3

Omit “prescribed fees”, substitute “fees (the *prescribed fees*)”.

5 Paragraph 3A(1)(b)

Omit “section 15 or 28”, substitute “subsection 15(1) or 26A(1)”.

6 Subregulation 3A(1)

After “fee”, insert “(a *prescribed fee*)”.

7 Paragraph 3A(2)(a)

Omit “*East Timor*”, substitute “*the Democratic Republic of Timor-Leste*”.

8 Paragraph 3A(2)(b)

Repeal the paragraph, substitute:

(b) is given a request to provide information under subsection 15(1) or 26A(1) of the Act, as applied by the *Hazardous Waste (Regulation of Exports and Imports) (Imports from the Democratic Republic of Timor-Leste) Regulations 2003*, in relation to the application; and

9 Subregulation 3A(2)

After “fee”, insert “(a *prescribed fee*)”.

10 Paragraph 3A(3)(b)

Omit “section 15 or 28”, substitute “subsection 15(1) or 26A(1)”.

11 Subregulation 3A(3)

After “fee”, insert “(a *prescribed fee*)”.

12 Subregulation 3A(4)

Before “fee”, insert “prescribed”.

13 Regulations 4 and 5

Repeal the regulations, substitute:

4 Waiver or refund of prescribed fees*Waiver of prescribed fees*

- (1) For the purposes of subsection 32(5) of the Act, a circumstance in which the Minister may wholly or partly waive a prescribed fee to be paid by a person for an application, or for a request for information relating to an application, is that the Minister is satisfied that failure to grant such a waiver:
 - (a) would cause the person financial hardship; and
 - (b) could cause harm to human health or the environment.

Refund of prescribed fees

- (2) For the purposes of subsection 32(5) of the Act, the circumstances in which the Minister may wholly or partly refund a prescribed fee paid by a person for an application, or for a request for information relating to an application, are that:
 - (a) the person has paid the prescribed fee more than once in relation to the same application or request; or
 - (b) the person has paid an amount that is greater than the amount of the prescribed fee; or
 - (c) all of the following apply:
 - (i) the application has been made for the wrong kind of permit;
 - (ii) the application has not been decided;
 - (iii) the application has been withdrawn.

Part 3—Application and transitional provisions**Division 1—Transitional matters relating to the Hazardous Waste
(Regulation of Exports and Imports) Legislation
Amendment Regulations 2021****5 Transitional matters**

- (1) Regulation 4, as inserted by the *Hazardous Waste (Regulation of Exports and Imports) Legislation Amendment Regulations 2021*, applies in relation to the waiver or refund, or partial waiver or refund, of:
 - (a) a prescribed fee referred to in regulation 3 for an application if the application is made on or after the commencement day; and
 - (b) a prescribed fee referred to in regulation 3A 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.

(2) In this regulation:

commencement day means the day the *Hazardous Waste (Regulation of Exports and Imports) Legislation Amendment Regulations 2021* commences.

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

14 Regulation 1

Omit “*East Timor*”, substitute “*the Democratic Republic of Timor-Leste*”.

Note: 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 (see section 10 of the *Acts Interpretation Act 1901*).

15 After regulation 1

Insert:

2 Authority

These Regulations are made under the *Hazardous Waste (Regulation of Exports and Imports) Act 1989*.

16 Regulation 5

After “*East Timor*”, insert “*(Timor-Leste)*”.

17 Subregulations 6(1) and (2)

Omit “*East Timor*”, substitute “*Timor-Leste*”.

18 Paragraph 7(a)

Omit “*East Timor*”, substitute “*Timor-Leste*”.

19 Regulation 8

Repeal the regulation.

20 Schedule 1 (heading)

After “**East Timor**”, insert “*(Timor-Leste)*”.

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

21 Subregulation 4(1)

Insert:

amending instrument means the *Hazardous Waste (Regulation of Exports and Imports) Legislation Amendment Regulations 2021*.

decision period means:

-
- (a) for an application for a special export permit—the period referred to in subregulation 13(1), but as paused or extended under regulation 11, 15, 15A or 15B; or
 - (b) for an application for a special import permit (other than a pre-consented recovery facility special import permit)—the period referred to in paragraph 19(1)(b), but as paused or extended under regulation 11, 21 or 22; or
 - (c) for an application for a pre-consented recovery facility special import permit—the period referred to in subregulation 19(1)(a), but as paused or extended under regulation 11 or 22; or
 - (d) for an application for a special transit permit—the period referred to in subregulation 26(1), but as paused or extended under regulation 11, 28 or 28A; or
 - (e) for an application to vary a special permit—the period referred to in subregulation 39(1), but as paused or extended under regulation 37, 40, 40A or 40B.

22 Subregulation 4(1) (definition of *OECD country*)

Repeal the definition.

23 Subregulation 4(1) (definition of *OECD Decision*)

Omit “a copy of the English text of which is set out in Schedule 1”, substitute “as in force or existing at the time when the amending instrument commences”.

24 Subregulation 4(1) (at the end of the definition of *OECD Decision*)

Add:

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

25 Subregulation 4(1)

Insert:

pre-consented recovery facility special import permit means a special import permit authorising the import of waste that is:

- (a) subject to the amber control procedure; and
- (b) proposed to undergo a recovery operation at a pre-consented recovery facility for Australia.

26 Subregulation 4(1) (definition of *recovery operation*)

Repeal the definition.

27 Subregulation 4(1) (definition of *wastes*)

Omit “OECD decision”, substitute “OECD Decision”.

28 Regulation 6

Omit “OECD decision” (wherever occurring), substitute “OECD Decision”.

29 Regulation 7 (heading)

Omit “OECD decision”, substitute “OECD Decision”.

30 Subregulation 7(1)

Repeal the subregulation, substitute:

- (1) The following wastes are also subject to the amber control procedure:
 - (a) 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;
 - (b) plastic wastes, including mixtures of such wastes, covered by Annex II to the Basel Convention.

31 Paragraph 7(2)(a)

Omit “OECD decision”, substitute “OECD Decision”.

32 Subregulation 8(1)

Omit “OECD decision”, substitute “OECD Decision”.

33 Regulation 11

Repeal the regulation, substitute:

11 Minister may request further information about an application

- (1) The Minister may:
 - (a) for an application for a special export permit—within the period of 40 days starting after the day the Minister receives the application; or
 - (b) 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, under subregulation 12(2) or (3), notice to the competent authority of the exporting country for the permit; or
 - (c) 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, under subregulation 12(2) or (3), notice to the competent authority of the exporting country for the permit; or
 - (d) 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;request the applicant to provide further information in writing to deal with the application.
- (2) If the Minister makes such a request of an applicant:
 - (a) the decision period for the application for the permit is paused until the request is complied with; and
 - (b) the application is taken to be withdrawn if the request is not complied with within 60 days after the day that the request is made.
- (3) As soon as practicable after the Minister makes such a request of an applicant, the Minister must give written notice that the decision period for the application is paused to:
 - (a) for an application for a special export permit—the following:
 - (i) the competent authority of the importing country for the permit;

-
- (ii) the competent authority of each transit country (if any) for the waste to which the application relates; or
 - (b) for an application for a special import permit—the competent authority of the exporting country for the permit; or
 - (c) for an application for a special transit permit—the competent authority of the OECD country from which the waste is to be exported.

34 Subregulation 12(4)

Repeal the subregulation, substitute:

- (4) Within 5 working days after receiving an application for a special export permit, the Minister must give:
 - (a) the competent authority of the importing country for the permit; and
 - (b) the competent authority of each transit country (if any) for the waste to which the application relates;a written notice that sets out the information mentioned in subregulation (5) about the application.
- (5) For the purposes of subregulation (4), the information about an application for a special export permit is the following:
 - (a) the fact that the application has been received;
 - (b) the waste to which the application relates;
 - (c) full details (including name, business address and telephone number) of:
 - (i) the applicant; and
 - (ii) the proposed recipient of the waste; and
 - (iii) if the proposed recipient is not a recovery facility—the recovery facility at which the waste is proposed to undergo a recovery operation;
 - (d) for a notice to the competent authority of the importing country for the permit—the transit countries for the waste;
 - (e) for a notice to the competent authority of a transit country for the waste—the importing country for the permit and any other transit countries for the waste;
 - (f) the time when, or period during which, the export is proposed to occur.

35 Regulation 13

Repeal the regulation, substitute:

13 Period for making decision on permit application—default period

- (1) If the Minister receives an application for a special export permit, the Minister must decide whether to grant the permit within the period of 40 days starting after the day the Minister receives the application (the *decision period*).

Note: This period may be paused or extended under regulation 11, 15, 15A or 15B.

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

36 Subregulation 14(1)

Repeal the subregulation.

37 Subregulation 14(2)

Omit “the permit” (first occurring), substitute “a special export permit”.

38 Subregulation 14(2)

After “importing country”, insert “for the permit”.

39 Paragraphs 14(2)(a) and (b)

After “applicant”, insert “for the permit”.

40 Subregulations 14(4) and (5)

Repeal the subregulations.

41 Regulation 15

Repeal the regulation, substitute:

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

If, at the end of the 35th day of the decision period for an application for a special export permit, either:

- (a) the competent authority of the importing country for the permit has neither given nor refused written consent to the grant of the permit; or
- (b) a competent authority of a transit country (if any) for the waste to which the application relates has neither given nor refused written consent to the grant of the permit;

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 covered by paragraph (a) or (b).

Note: For the requirement to notify the competent authority of the importing country and the competent authority of any transit countries, see subregulation 12(4).

15A Period for making a decision on a permit application—extension on Minister’s initiative

- (1) The Minister may extend the decision period for an application for a special export permit by up to 60 days if the Minister thinks that a decision whether to grant the permit cannot be made within the decision period.
- (2) The Minister must give written notice of any extension under subregulation (1) to each of the following as soon as practicable:
 - (a) the applicant;
 - (b) the competent authority of the importing country for the permit;
 - (c) the competent authority of each transit country (if any) for the waste to which the application relates.

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

- (1) The decision period for an application for a special export permit is extended if the Minister and applicant agree in writing to the extension.
- (2) The Minister must give written notice of any extension under subregulation (1) to each of the following as soon as practicable:
 - (a) the competent authority of the importing country for the permit;
 - (b) the competent authority of each transit country (if any) for the waste to which the application relates.

42 Subregulation 16(1)

Omit “the Minister is satisfied that”.

43 Paragraph 16(1)(a)

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

44 Paragraph 16(1)(b)

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

45 Paragraph 16(1)(c)

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

46 Paragraph 16(1)(d)

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

47 Paragraph 16(1)(e)

Omit “OECD decision”, substitute “OECD Decision”.

48 Paragraph 16(1)(e)

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

49 Paragraphs 16(1)(f) and (g)

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

50 Paragraph 16(1)(h)

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

51 At the end of subregulation 16(1)

Add:

- ; and (i) 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).

52 Subparagraphs 18(1)(a)(iv) and (b)(i)

Omit “, telephone number and facsimile number”, substitute “and telephone number”.

53 Regulation 19

Repeal the regulation, substitute:

19 Period for making a decision on a permit application—default period

- (1) If the Minister receives an application for a special import permit, the Minister must decide whether to grant the permit:
 - (a) for a pre-consented recovery facility special import permit—within the period of 7 days starting after the day the Minister gives, under subregulation 12(2) or (3), notice to the competent authority of the exporting country for the permit (the *decision period*); or
 - (b) otherwise—within the period of 30 days starting after the day the Minister gives such notice to the competent authority of the exporting country for the permit (the *decision period*).
- Note 1: The decision period for a pre-consented recovery facility special import permit may be paused or extended under regulation 11 or 22.
- Note 2: The decision period for other special import permits may be paused or extended under regulation 11, 21 or 22.
- (2) If the Minister has not decided whether to grant the permit by the end of the decision period for the permit, the Minister is to be taken to have decided, on the last day of that period, to grant the permit.

54 Subregulation 20(1)

Repeal the subregulation.

55 Subregulation 20(2)

Omit “the permit” (first occurring), substitute “a special import permit”.

56 Subregulation 20(2)

After “exporting country”, insert “for the permit”.

57 Paragraphs 20(2)(a) and (b)

After “applicant”, insert “for the permit”.

58 Subregulations 20(4) and (5)

Repeal the subregulations.

59 Regulations 21 and 22

Repeal the regulations, substitute:

21 Period for making a decision on a permit application—extension on Minister’s initiative

- (1) The Minister may extend the decision period for an application for a special import permit (other than a pre-consented recovery facility special import permit) by up to 60 days if the Minister thinks that a decision whether to grant the permit cannot be made within the decision period.
- (2) The Minister must give written notice of any extension under subregulation (1) to each of the following as soon as practicable:

-
- (a) the applicant;
 - (b) the competent authority of the exporting country for the permit.

22 Period for making a decision on a permit application—extension agreed with applicant

- (1) The decision period for an application for a special import permit is extended if the Minister and applicant agree in writing to the extension.
- (2) The Minister must give written notice of any extension under subregulation (1) to the competent authority of the exporting country for the permit as soon as practicable.

60 Subregulation 23(3)

Omit “the Minister is satisfied that”.

61 Paragraph 23(3)(a)

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

62 Paragraph 23(3)(b)

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

63 Paragraph 23(3)(c)

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

64 Paragraph 23(3)(d)

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

65 Paragraph 23(3)(e)

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

66 Paragraph 23(3)(f)

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

67 At the end of subregulation 23(3)

Add:

- ; and (g) 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).

68 Subparagraphs 25(1)(a)(iv) and (b)(i)

Omit “, telephone number and facsimile number”, substitute “and telephone number”.

69 Regulation 26

Repeal the regulation, substitute:

26 Period for making a decision on a permit application—default period

- (1) If the Minister receives an application for a special transit permit, the Minister must decide whether to grant the 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 (the *decision period*).

Note: This period may be paused or extended under regulation 11, 28 or 28A.

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

70 Subregulation 27(1)

Repeal the subregulation.

71 Subregulation 27(2)

Omit “the permit” (first occurring), substitute “a special transit permit”.

72 Subregulation 27(2)

After “OECD country”, insert “from which the waste is to be exported for the permit”.

73 Paragraphs 27(2)(a) and (b)

After “applicant”, insert “for the permit”.

74 Subregulations 27(4) and (5)

Repeal the subregulations.

75 Regulation 28

Repeal the regulation, substitute:

28 Period for making a decision on a permit application—extension on Minister’s initiative

- (1) The Minister may extend the decision period for an application for a special transit permit by up to 60 days if the Minister thinks that a decision whether to grant the permit cannot be made within the decision period.
- (2) The Minister must give written notice of any extension under subregulation (1) to each of the following as soon as practicable:
 - (a) the applicant;
 - (b) the competent authority of the OECD country from which the waste is to be exported.

28A Period for making a decision on a permit application—extension agreed with applicant

- (1) The decision period for an application for a special transit permit is extended if the Minister and applicant agree in writing to the extension.
- (2) The Minister must give written notice of any extension under subregulation (1) to the competent authority of the OECD country from which the waste is to be exported as soon as practicable.

76 Subregulation 29(1)

Omit “the Minister is satisfied that”.

77 Paragraph 29(1)(a)

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

78 Paragraph 29(1)(b)

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

79 Paragraph 29(1)(c)

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

80 Paragraph 29(1)(d)

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

81 At the end of subregulation 29(1)

Add:

- ; and (e) 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).

82 Subparagraphs 31(1)(a)(iv) and (b)(v)

Omit “, telephone number and facsimile number”, substitute “and telephone number”.

83 Subregulation 33(2)

Repeal the subregulation, substitute:

- (2) The day specified:
 - (a) may be before or after the particular export or import, or before or after the carrying out of the particular transit proposal, authorised by the permit; but
 - (b) must not be before the day the Minister grants the permit.

84 Regulation 34

Repeal the regulation, substitute:

Division 1—Revoking special permits**34 Revoking special permits—grounds**

- (1) The Minister may, in writing, decide to revoke a special permit if the Minister is satisfied that:
 - (a) the holder of the permit:
 - (i) gave the Minister false, misleading or incomplete information; and
 - (ii) when doing so, failed to give the Minister an explanation for doing so, or failed to give the Minister the correct or complete information if the holder was reasonably able to have done so; or
 - (b) the holder of the permit:
 - (i) is failing, or has failed, to comply with a condition to which the permit is subject; or

- (ii) is failing, or has failed, to comply with a provision of the Act relating to the permit; or
- (iii) is failing, or has failed after the granting of the permit, to provide or to arrange to provide an auditor with assistance that is reasonably necessary for the conduct of an audit; or
- (c) after considering information that was not considered when granting the permit, the permit would not be granted if the Minister were now asked to grant it; or
- (d) after considering information that was not considered when granting the permit, the revocation is necessary to prevent or lessen a threat of serious harm to human health or the environment.

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

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

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

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

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

34A Revoking special permits—notice of proposed revocation

- (1) Despite subregulation 34(1), the Minister must not revoke a special permit under that subregulation unless:
 - (a) the Minister has given a written notice to the holder of the permit in accordance with subregulation (2) of this regulation; and
 - (b) the Minister has taken into account any information given, within 14 days after the day the notice is given to the holder, to the Minister in response to the notice.
- (2) A notice under paragraph (1)(a) must:
 - (a) specify the proposed revocation of the permit; and
 - (b) specify the grounds for the proposed revocation; and
 - (c) invite the holder of the permit to give the Minister, within 14 days after the day the notice is given, a written statement showing cause why the permit should not be revoked; and
 - (d) include a statement setting out the holder's right to seek review of a decision to revoke the permit.
- (3) A notice under paragraph (1)(a) is not required if the Minister reasonably believes that the proposed revocation is necessary to prevent or lessen a serious and imminent threat to human health or the environment.

34B Notice of revocation

- (1) If the Minister decides under subregulation 34(1) to revoke a special permit, the Minister must give the holder of the permit a written notice stating the following:
 - (a) that the permit is to be revoked;
 - (b) the reasons for the revocation;
 - (c) the day the revocation is to take effect (which must not be before the day the notice is given to the holder);
 - (d) information about the holder's right to seek review of the decision.

Note: For further statements the notice must include, see section 58 of the Act.

- (2) If the holder of the permit was given a notice (a *show cause notice*) under paragraph 34A(1)(a) that included the invitation referred to in paragraph 34A(2)(c), the revocation must not take effect before the end of 14 days after the day the show cause notice was given.

34C Exhaustive statement of natural justice hearing rule

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

Division 2—Surrendering special permits**85 Regulations 36 and 37**

Repeal the regulations, substitute:

Division 3—Varying special permits**Subdivision A—Varying special permits: on application****36 Varying special permits on application**

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

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

- (2) The application must:
 - (a) be in the form approved by the Minister; and
 - (b) set out, or be accompanied by, such information in relation to the proposed variation as is required by the form.
- (3) Regulation 33 applies to the imposition or variation of a condition under this regulation as if a reference in regulation 33 to the grant of a special permit were a reference to a variation of a special permit.

37 Minister may request further information about application

- (1) Within 60 days after the day an application to vary a special permit is received, the Minister may request the applicant to provide further information in writing to deal with the application.
- (2) If the Minister makes such a request of an applicant:
 - (a) the decision period for the application is paused until the request is complied with; and
 - (b) the application is taken to be withdrawn if the request is not complied with within 60 days after the day the request is made.
- (3) As soon as practicable after the Minister makes such a request of an applicant, the Minister must give written notice that the decision period for the application is paused to:
 - (a) for an application to vary a special export permit—the following:
 - (i) the competent authority of the importing country for the permit;
 - (ii) the competent authority of each transit country (if any) for the waste to which the application relates; or
 - (b) for an application to vary a special import permit—the competent authority of the exporting country for the permit; or
 - (c) for an application to vary a special transit permit—the competent authority of the OECD country from which the waste is to be exported.

86 Subregulation 38(1)

Omit “a variation application”, substitute “an application to vary a special permit”.

87 Paragraph 38(2)(a)

Repeal the paragraph, substitute:

- (a) for a proposed variation of a special export permit—give written notice of the receipt and full details of the proposed variation to:
 - (i) the competent authority of the importing country for the permit; and
 - (ii) the competent authority of each transit country (if any) for the waste to which the application relates; or

88 Regulations 39 to 41

Repeal the regulations, substitute:

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

- (1) If the Minister receives an application to vary a special permit, the Minister must decide whether to make the variation within the period of 60 days starting after the day the Minister receives the application (the *decision period*).

Note: This period may be paused or extended under regulation 37, 40, 40A or 40B.

- (2) If the Minister does not decide whether to make the variation by the end of the decision period, the Minister is to be taken to have decided, on the last day of that period:
 - (a) for an application to vary a special import permit or special transit permit—to vary the permit; or

- (b) for an application to vary a special export permit—not to make the variation.
- (3) A variation under paragraph (2)(a) takes effect on the day after the day mentioned in subregulation (2).

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

If the holder of a special export permit applies to vary the permit and, at the end of the decision period for the application, either:

- (a) the competent authority of the importing country for the permit has neither given nor refused written consent to the variation; or
- (b) a competent authority of a transit country (if any) for the waste to which the application relates has neither given nor refused written consent to the variation;

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 covered by paragraph (a) or (b).

Note: For the requirement to notify the competent authority of the importing country of the application to vary a special export permit, see paragraph 38(2)(a).

40A Period for making a decision on an application to vary a special permit—extension on Minister’s initiative

- (1) The Minister may extend the decision period for an application to vary a special permit by up to 60 days if the Minister thinks that a decision whether to vary the permit cannot be made within the decision period.
- (2) As soon as practicable after extending the period under subregulation (1), the Minister must give written notice of the extension to the applicant and to:
 - (a) if the extension relates to a special export permit—the following:
 - (i) the competent authority of the importing country for the permit;
 - (ii) the competent authority of each transit country (if any) for the waste to which the application relates; or
 - (b) if the extension relates to a special import permit—the competent authority of the exporting country for the permit; or
 - (c) if the decision relates to a special transit permit—the competent authority of the OECD country from which the waste is to be exported.

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

- (1) The decision period for an application to vary a special permit is extended if the Minister and applicant agree in writing to the extension.
- (2) As soon as practicable after extending the period under subregulation (1), the Minister must give written notice of the extension to:
 - (a) if the extension relates to a special export permit—the following:
 - (i) the competent authority of the importing country for the permit;
 - (ii) the competent authority of each transit country (if any) for the waste to which the application relates; or

- (b) if the extension relates to a special import permit—the competent authority of the exporting country for the permit; or
- (c) if the decision relates to a special transit permit—the competent authority of the OECD country from which the waste is to be exported.

40C Notice of variation

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

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

Note: For further statements the notice must include, see section 58 of the Act.

Subdivision B—Varying special permits: on Minister's initiative

41 Varying special permits on Minister's initiative—grounds

- (1) The Minister may, in writing, decide to vary a special permit if the Minister is satisfied that:
 - (a) the holder of the permit:
 - (i) gave the Minister false, misleading or incomplete information; and
 - (ii) when doing so, failed to give the Minister an explanation for doing so, or failed to give the Minister the correct or complete information if the holder was reasonably able to have done so; or
 - (b) the holder of the permit:
 - (i) is failing, or has failed, to comply with a condition to which the permit is subject; or
 - (ii) is failing, or has failed, to comply with a provision of the Act relating to the permit; or
 - (iii) is failing, or has failed after the granting of the permit, to provide or to arrange to provide an auditor with assistance that is reasonably necessary for the conduct of an audit; or
 - (c) after considering information that was not considered when granting the permit, the variation is necessary to prevent or lessen a threat of serious harm to human health or the environment.

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

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

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

-
- (2) Regulation 33 applies to the imposition or variation of a condition under this regulation as if a reference in regulation 33 to the grant of a special permit were a reference to a variation of a special permit.

41A Varying special permits—notice of proposed variation

- (1) Despite regulation 41, the Minister must not vary a special permit under that regulation unless:
- (a) the Minister has given a written notice to the holder of the permit in accordance with subregulation (2) of this regulation; and
 - (b) the Minister has taken into account any information given, within 14 days after the day the notice is given to the permit holder, to the Minister in response to the notice.
- (2) A notice under paragraph (1)(a) must:
- (a) specify the proposed variation of the permit; and
 - (b) specify the grounds for the proposed variation; and
 - (c) invite the holder of the permit to give the Minister, within 14 days after the day the notice is given, a written statement showing cause why the permit should not be varied; and
 - (d) include a statement setting out the holder's right to seek review of a decision to vary the permit.
- (3) A notice under paragraph (1)(a) is not required if the Minister reasonably believes that the proposed variation is necessary to prevent or lessen a serious and imminent threat to human health or the environment.

41B Notice of variation

- (1) If the Minister decides under regulation 41 to vary a special permit, the Minister must give the holder of the permit a written notice stating the following:
- (a) that the permit is to be varied;
 - (b) the reasons for the variation;
 - (c) the day the variation is to take effect (which must not be before the day the notice is given to the holder);
 - (d) information about the holder's right to seek review of the decision.

Note: For further statements the notice must include, see section 58 of the Act.

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

- (2) If the holder of the permit was given a notice (a **show cause notice**) under paragraph 41A(1)(a) that included the invitation referred to in paragraph 41A(2)(c), the day stated under paragraph (1)(c) of this regulation when the variation is to take effect must not be before the end of 14 days after the day the show cause notice was given.

41C Exhaustive statement of natural justice hearing rule

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

89 Regulation 44

Repeal the regulation, substitute:

Part 6—Application and transitional provisions

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

44 Application of amendments—special permits

Granting special permits

- (1) The amendments of Parts 2 and 3 made by the amending instrument apply in relation to the following:
 - (a) an application for a special permit made on or after the commencement day;
 - (b) an application for a special permit made before that day if the application is varied on or after that day.

Revoking or varying special permits

- (2) The amendments of Part 4 made by the amending instrument apply in relation to the following:
 - (a) a decision on or after the commencement day whether to revoke a special permit;
 - (b) an application made on or after that day for a variation of a special permit;
 - (c) a decision, on the Minister's own initiative, on or after that day whether to vary a special permit;whether the permit was granted before, on or after that day.

Definitions

- (3) In this regulation:

commencement day means the day the amending instrument commences.

90 Schedule 1

Repeal the Schedule.

Hazardous Waste (Regulation of Exports and Imports) Regulations 1996

91 Before regulation 1

Insert:

Part 1—Preliminary

92 Regulation 1 (heading)

Omit “of Regulations”.

93 Regulation 1

Omit “These Regulations are”, substitute “This instrument is”.

94 Regulations 3 to 9

Repeal the regulations, substitute:

2 Authority

This instrument is made under the *Hazardous Waste (Regulation of Exports and Imports) Act 1989*.

3 Definitions

Note: A number of expressions used in this instrument are defined in the Act, including the following:

- (a) Basel Convention;
- (b) Basel export permit;
- (c) competent authority;
- (d) foreign country;
- (e) relevant person.

In this instrument:

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

4 Meaning of *household waste*

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.

Part 2—Basel export permits

5 Basel export permit—information to be notified to competent authority of a foreign country

For the purposes of subsections 16A(1) and 26C(1) of the Act, the information about:

- (a) an application for a Basel export permit; or
- (b) an application for a variation of a Basel export permit;

that the Minister is required to notify to a competent authority of a foreign country is the information mentioned in Annex VA to the Basel Convention about the application.

Part 3—Record keeping and audits

6 Record keeping

Requirement to make and retain records

- (1) For the purposes of subsection 41D(1) of the Act, the following persons must make and retain the following records:
 - (a) for a person who holds a permit under the Act in relation to the import, export or transit of hazardous waste:
 - (i) each document (if any) that the person is required to keep in accordance with a condition of the permit; and
 - (ii) 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 or regulations made under the Act;
 - (b) for 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—each document that:
 - (i) is made by the person or that comes into the person's possession; and
 - (ii) 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;
 - (c) for a person who has been given an order under Part 3 of the Act:
 - (i) each document (if any) that the person is required to keep in accordance with the order; and
 - (ii) 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 or regulations made under the Act.

Period for which records must be retained

- (2) A person who is required to retain records under this section must 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.

Form in which records must be retained

- (3) A person who is required to retain records under this section must retain each such record in a form that is:
 - (a) dated with the date the document is created or with the date the document comes into the person's possession; and
 - (b) for a document created by the person—accurate and legible; and
 - (c) able to be audited; and
 - (d) in electronic or paper form.
- (4) 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.

Alteration or defacing of records

- (5) A person who is required to retain a record under this section must:
 - (a) not alter or deface the record; and
 - (b) take reasonable steps to prevent the record from being altered or defaced by another person.
- (6) However, subsection (5) does not prevent a person from making notations or marking on the record in accordance with any ordinary practice.
- (7) If a person makes notations or markings on the record in accordance with ordinary practice, the person required to retain the record under this section must also retain, for at least the period mentioned in subregulation (2) or (4) (as applicable):
 - (a) if reasonably practicable—a copy of the original record without notations or markings; and
 - (b) copies of the record that show how the record has changed over time.

Note: 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 (see subsections 41D(4) and (5) of the Act).

7 Conduct of audit

For the purposes of paragraph 53(3)(a) of the Act, an auditor must conduct an audit:

- (a) as expeditiously as reasonably practicable; and
- (b) in a way that results in minimal interference to the operations in relation to which the audit is conducted.

8 Process after audit completed

- (1) For the purposes of subsection 53(3) of the Act, an auditor who completes an audit must:
 - (a) 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
 - (b) 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:
 - (i) the Secretary, in the manner approved by the Secretary; and
 - (ii) the relevant person for the audit.
- (2) The audit report must include the following:
 - (a) the name of the auditor;
 - (b) the day the audit commenced, the day the audit was completed, and the total time spent (in hours) conducting the audit;
 - (c) the name of the relevant person for the audit;
 - (d) a description of the operations to which the audit relates;
 - (e) a description of the scope of the audit;
 - (f) 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);

(g) the reasons for the auditor's findings.

(3) The audit report may also:

- (a) 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
- (b) include recommendations that any of the following actions be taken:
 - (i) action to address any non-compliance with any of those requirements;
 - (ii) action to address the risk of a potential non-compliance with any of those requirements.

Part 4—Application and transitional provisions

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

9 Application of amendments

Household waste

- (1) Section 4, as inserted by the amending instrument, applies in relation to the import, export or transit of hazardous waste on or after the commencement day.

Notification to competent authority

- (2) Section 5, as inserted by the amending instrument, applies in relation to the following:
- (a) an application for a Basel permit made on or after the commencement day;
 - (b) an application for a Basel permit made before the commencement day if the application is varied on or after that day;
 - (c) 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.

Record-keeping

- (3) Section 6, as inserted by the amending instrument, applies in relation to the following:
- (a) a permit granted, under the Act, on or after the commencement day in relation to the import, export or transit of hazardous waste;
 - (b) a notification given, under subsection 33G(1) of the Act, on or after the commencement day;
 - (c) an order given, under Part 3 of the Act, on or after the commencement day.
- (4) In this section:

amending instrument means the *Hazardous Waste (Regulation of Exports and Imports) Legislation Amendment Regulations 2021*.

commencement day means the day the amending instrument commences.

95 Schedule 1

Repeal the Schedule.

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

96 After regulation 1

Insert:

2 Authority

These Regulations are made under the *Hazardous Waste (Regulation of Exports and Imports) Act 1989*.

97 Regulation 11A

Repeal the regulation.