



Hazardous Waste (Regulation of Exports and Imports) Act 1989

No. 6, 1990

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About this compilation

This compilation

This is a compilation of the *Hazardous Waste (Regulation of Exports and Imports) Act 1989* that shows the text of the law as amended and in force on 1 July 2017 (the **compilation date**).

The notes at the end of this compilation (the **endnotes**) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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An Act to provide for the regulation of the export, import and transit of hazardous waste, and for related purposes

Part 1—Preliminary

Division 1—Introductory

1 Short title

This Act may be cited as the *Hazardous Waste (Regulation of Exports and Imports) Act 1989*.

2 Commencement

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

3 Object and aims

Object

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

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Part 1Preliminary

Division 1Introductory

Section 3

Aims

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

Division 2—Interpretation

4 Interpretation—defined terms

In this Act, unless the contrary intention appears:

Antarctica means the area south of 60° South Latitude, including all ice shelves in that area.

application day, in relation to a permit application or variation application, means:

- (a) the day on which the Minister receives the application; or
- (b) if the Minister gives the applicant a notice under section 15 or 28 in relation to the application—the day on which the notice is complied with.

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

Australia includes the external Territories.

Australian aircraft means an aircraft:

- (a) that is owned or operated by:
 - (i) the Commonwealth or a State or Territory; or
 - (ii) an authority of the Commonwealth or a State or Territory; or
- (b) that is registered, or required to be registered, in Australia.

Australian platform means a platform:

- (a) that is fixed to:
 - (i) the seabed or subsoil beneath Australian waters; or
 - (ii) the continental shelf of Australia; or
- (b) that is otherwise operating in:
 - (i) Australian waters; or
 - (ii) a part of the sea above the continental shelf of Australia.

Australian vessel means a vessel:

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- (a) that is owned or operated by:
 - (i) the Commonwealth or a State or Territory; or
 - (ii) an authority of the Commonwealth or a State or Territory; or
- (b) that is registered, or required to be registered, in Australia.

Australian waters means:

- (a) the territorial sea of Australia; and
- (b) the sea on the landward side of the territorial sea of Australia and not within the limits of a State or Territory.

Basel Convention means the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, as amended and in force for Australia from time to time.

Note: The Convention is in Australian Treaty Series 1992 No. 7 ([1992] ATS 7) and could in 2017 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

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

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

Basel permit means:

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

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

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

- (a) if the country is a party to the Basel Convention—the competent authority of the country within the meaning of the Basel Convention; and

- (b) otherwise—a person or organisation that officially represents the country.

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

Court means the Federal Court of Australia.

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

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

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

export means export from Australia.

export permit means:

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

export proposal means a proposal to export hazardous waste and to deal with it outside Australia.

foreign country includes:

- (a) a colony, overseas territory, overseas province or protectorate of a foreign country; and
- (b) a territory outside Australia, where a foreign country is to any extent responsible for the international relations of the territory; and
- (c) a territory outside Australia that is to some extent self-governing, but that is not recognised as an independent sovereign state by Australia.

hazardous waste means:

- (a) waste prescribed by the regulations, where the waste has any of the characteristics mentioned in Annex III to the Basel Convention; or

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- (b) wastes covered by paragraph 1(a) of Article 1 of the Basel Convention; or
 - (c) household waste; or
 - (d) residues arising from the incineration of household waste;
- but does not include wastes covered by paragraph 4 of Article 1 of the Basel Convention.

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

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

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

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

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

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

holder, in relation to a Basel permit or a special permit, means the person to whom the permit was granted.

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

identity card means an identity card issued under section 43.

import means import into Australia.

import permit means:

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

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

inspector means a person appointed under section 42 as an inspector.

offence against a provision of Part 4 has the extended meaning given by paragraph 8(b).

offence against this Act has the extended meaning given by paragraph 8(a).

officer of Customs has the same meaning as in the *Customs Act 1901*.

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

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

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

permit application means an application for a Basel permit.

permit condition means a condition specified in:

- (a) a Basel permit under section 22; or
- (b) a notice under section 26 varying a Basel permit; or
- (c) a special permit; or
- (d) a notice under a set of Article 11 regulations varying a special permit.

platform includes any structure at sea (whether or not fixed), but does not include a vessel.

premises includes any place (whether or not enclosed or built on).

relevant authority, in relation to a searchable place, means:

- (a) in the case of premises in Australia—the occupier of the premises; and
- (b) in any other case—the person in command or control, or who appears to be in command or control, of the place.

searchable place means:

- (a) premises in Australia; or
- (b) an aircraft, vehicle or vessel within Australian jurisdiction; or
- (c) an Australian aircraft; or
- (d) an Australian platform; or
- (e) an Australian vessel.

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

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

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

special permit means:

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

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

this Act includes the regulations.

transit permit means:

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

transit proposal has the meaning given by section 4B.

variation, in relation to a Basel permit, includes a variation of the permit conditions imposed on the permit.

variation application means an application under section 27 for the variation of a Basel permit.

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

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

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

vessel means anything capable of carrying persons or goods through or on water, and includes an air-cushion vehicle or similar craft.

waste means a substance or object that:

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

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

within Australian jurisdiction means within or over Australia or Australian waters.

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

When this section has effect

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

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

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

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

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

Declaration has effect accordingly

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

Revocation of subsection (2) declaration

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

Revocation of subsection (3) declaration

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

Gazettal of declaration

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

4B Transit proposals

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

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

Transit proposal

- (2) A proposal:

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

Extension of time for carrying out proposal

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

Declaration has effect accordingly

- (4) The declaration has effect accordingly.

Notification of decision

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

Gazettal of declaration

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

Deemed export

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

Definitions

(8) In this section:

dispose of does not include store.

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

4C Article 11 arrangements

Declaration of Article 11 arrangement

(1) If:

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

Declaration has effect accordingly

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

Revocation of declaration

(3) If:

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

Gazettal of declaration

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

4D Treatment of colonies etc.

When colony etc. is a party to the Basel Convention

- (1) For the purposes of this Act, if:
- (a) a territory is covered by either of the following subparagraphs:
 - (i) a colony, overseas territory, overseas province or protectorate of a foreign country;
 - (ii) a territory outside Australia, where a foreign country is to any extent responsible for the international relations of the territory; and
 - (b) the foreign country is a party to the Basel Convention; and
 - (c) the territory is not specified in the regulations;
- the territory is taken to be a party to the Basel Convention.

Competent authority of colony etc.

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

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

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

4E Environmentally sound management of hazardous waste

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

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

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

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

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

7 Failure to comply with permit condition when required is breach of condition

- (1) For the purposes of this Act, if:
 - (a) under subsection 22(2) or 26(2), the Minister specifies the day on or before which a permit condition relating to a Basel permit is to be complied with; and
 - (b) the condition is not complied with on or before that day;the holder of the permit is to be taken to have breached the condition at the end of that day.
- (2) For the purposes of this Act, if:
 - (a) under a set of Article 11 regulations, the Minister specifies the day on or before which a permit condition relating to a special permit is to be complied with; and

(b) the condition is not complied with on or before that day;
the holder of the permit is taken to have breached that condition at
the end of that day.

8 Reference to offence against Act etc. includes reference to offence against certain provisions of Crimes Act

In this Act:

- (a) a reference to an offence against this Act includes a reference
to an offence against section 6 of the *Crimes Act 1914*, or
section 11.1, 11.4 or 11.5 of the *Criminal Code*, that relates to
an offence against this Act; and
- (b) a reference to an offence against a provision of Part 4
includes a reference to an offence against section 6 of the
Crimes Act 1914, or section 11.1, 11.4 or 11.5 of the
Criminal Code, that relates to an offence against that
provision.

Division 3—Operation of Act

9 Extension of Act to external Territories

This Act extends to every external Territory.

10 Act binds Crown

This Act binds the Crown in right of the Commonwealth, of each of the States, of the Australian Capital Territory and of the Northern Territory.

10A Application of the *Criminal Code*

Chapter 2 (other than Part 2.5) of the *Criminal Code* applies to all offences against this Act.

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

11 Relationship between Act and other Commonwealth laws

This Act is in addition to, and not in derogation of or substitution for, the *Customs Act 1901*, the *Environment Protection and Biodiversity Conservation Act 1999* or any other law of the Commonwealth, whether enacted before or after the commencement of this Act.

Part 2—Import permits, export permits and transit permits

Division 1—Applications for permits

12 Applications for import permits

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

13 Applications for export permits

- (1) A person who has one or more export proposals in relation to hazardous waste may apply to the Minister for a permit authorising the export of the waste.
- (2) The application must:
 - (a) be in the form approved by the Minister; and

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

13A Applications for transit permits

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

Note: If a transit proposal is in connection with the movement of hazardous waste from one OECD country to another OECD country, a transit permit may not be required for that proposal: see paragraph 40A(1)(b).

- (2) The application must:
 - (a) be in the form approved by the Minister; and
 - (b) set out, or be accompanied by, such information relating to the proposals as is required by the form.
- (3) The application may deal with 2 or more transit proposals in relation to hazardous waste only if:
 - (a) the following matters are common to each proposal:
 - (i) the physical and chemical characteristics of the waste;
 - (ii) the route over which the waste is to be transported;
 - (iii) the sender and recipient of the waste; and
 - (b) the proposals constitute a regular pattern; and

- (c) the proposals will all be carried out within 12 months of each other.

13B Basel permit or special permit

Statement in application

- (1) An application under section 12, 13 or 13A must state that the applicant is applying for:
- (a) a Basel permit; or
 - (b) a special permit under a specified set of Article 11 regulations;
- but not both.

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

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

Application specifying Basel permit—adjustment of application

- (2) If:
- (a) an application under section 12, 13 or 13A states that the applicant is applying for a Basel permit; and
 - (b) the Minister is satisfied that there are special circumstances relating to the application;
- the Minister may, by writing, determine that this Act has effect as if the applicant had applied instead for the corresponding type of special permit under a set of Article 11 regulations specified in the determination.

Application specifying special permit—adjustment of application

- (3) If:

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Part 2 Import permits, export permits and transit permits

Division 1 Applications for permits

Section 13B

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

the Minister may, by writing:

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

Determination has effect accordingly

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

Applicant to be given copy of determination

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

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

13C Regulations may give effect to Article 11 arrangements

- (1) The regulations may provide for and in relation to:
 - (a) giving effect to an Article 11 arrangement; and
 - (b) giving effect to an amendment of an Article 11 arrangement.
- (2) Regulations made for the purposes of this section may be expressed to take effect on the day the arrangement or amendment enters into force, or comes into effect, for Australia (but must not be expressed to take effect before then).
- (2A) As soon as practicable after the arrangement or amendment enters into force, or comes into effect, for Australia, the Minister must publish a notice in the *Gazette* giving details of that fact.
- (3) Regulations made for the purposes of this section that give effect to a particular Article 11 arrangement (including regulations that give effect to an amendment of the Article 11 arrangement) are to be known as a *set of Article 11 regulations*.

13D Contents of a set of Article 11 regulations

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

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relates to an export proposal within the scope of that set of regulations; and

- (d) provide for the granting of permits by the Minister authorising the carrying out of transit proposals within the scope of that set of regulations.

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

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

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

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

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

Import

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

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

Export

- (3) If:
- (a) a person applies for a special export permit in relation to an export proposal that is within the scope of a particular set of Article 11 regulations; and
 - (b) the proposal is within the scope of another set of Article 11 regulations;
- the Minister must not grant the permit unless the Minister is satisfied that the corresponding requirements of the other set of regulations have been met in relation to the proposal. For this purpose, a *corresponding requirement* of a particular set of Article 11 regulations is:
- (c) a requirement under that set of regulations to obtain the consent (whether actual or constructive) of an authority of a foreign country before granting a special export permit under that set of regulations authorising the export of hazardous waste to that country; or
 - (d) another requirement under that set of regulations:
 - (i) that must be met before granting a special export permit under that set of regulations; and
 - (ii) that is declared by the regulations to be a corresponding requirement for the purposes of this subsection.
- (4) Subsection (3) does not prevent the set of Article 11 regulations mentioned in paragraph (3)(a) from setting out other requirements

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that must be met before granting a special export permit under that set of regulations.

Transit

(5) If:

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

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

- (c) a requirement under that set of regulations to obtain the consent (whether actual or constructive) of an authority of a foreign country before granting a special transit permit under that set of regulations authorising the carrying out of a transit proposal that involves the export of hazardous waste to that country; or
 - (d) another requirement under that set of regulations:
 - (i) that must be met before granting a special transit permit under that set of regulations; and
 - (ii) that is declared by the regulations to be a corresponding requirement for the purposes of this subsection.
- (6) Subsection (5) does not prevent the set of Article 11 regulations mentioned in paragraph (5)(a) from setting out other requirements that must be met before granting a special transit permit under that set of regulations.

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Import permits, export permits and transit permits**Part 2**
Special permits under a set of Article 11 regulations**Division 2**

Section 13F

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

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

Division 3—Grant of Basel permits

14 Variation of applications for Basel permits

- (1) An applicant for a Basel permit may, at any time before the Minister has decided whether to grant the permit, give the Minister a notice stating that the permit application is varied as set out in the notice.
- (2) The notice must:
 - (a) be in the form approved by the Minister; and
 - (b) set out, or be accompanied by, such information relating to the variation as is required by the form.
- (3) If the Minister receives a notice under subsection (1) from the applicant:
 - (a) the application is to be taken to have been varied in accordance with the notice; and
 - (b) the application, as varied, is to be taken to have been received by the Minister on the day on which the Minister received the notice.

15 Further information may be requested

- (1) If the Minister needs further information to deal with a permit application, the Minister may ask the applicant to provide the information in writing.
- (2) The request must be made by written notice given to the applicant not later than 60 days after the Minister receives the application.

15A Acknowledgment and notification

- (1) Within 7 days after receiving an application for a Basel permit, the Minister must give the applicant a written acknowledgment of the receipt.

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

16 Time within which applications for Basel permits are to be decided

- (1) Subject to this section, where the Minister receives a permit application, the Minister must decide whether to grant the Basel permit within 60 days after the application day.
- (2) If:
 - (a) the application is for a Basel export permit authorising the export of hazardous waste to a particular foreign country (the *receiving country*); and
 - (b) 46 days pass after the application day and, by the end of that period:
 - (i) the competent authority of the receiving country has neither given nor refused written consent to the grant of the permit; or
 - (ii) if it is proposed that the hazardous waste will be transported through one or more other foreign countries (the *transit countries*)—the competent authorities of the transit countries have neither given nor refused written consent to the grant of the permit;the period within which the decision is to be made is extended until whichever of the following comes first:
 - (c) whichever of the following is applicable:
 - (i) the 14th day after the Ministerial receipt day;

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- (ii) if the Minister determines a later day that occurs on or before the 60th day after the Ministerial receipt day—that later day;
 - (d) 12 months after the application day.
- (2A) For the purposes of subsection (2), the *Ministerial receipt day* is whichever of the following applies:
 - (a) if there is only one consent/refusal—the day on which the Minister receives that consent/refusal;
 - (b) if there are 2 or more consents/refusals and the Minister receives them on the same day—that day;
 - (c) if there are 2 or more consents/refusals and the Minister receives them on different days—the last of those days.
- (3) If a foreign country is a party to the Basel Convention, a reference in subsection (2) to a consent given by the competent authority of the country is a reference to a consent given in accordance with Article 6 of the Basel Convention.
- (4) If:
 - (a) the application is for a Basel import permit or a Basel transit permit; and
 - (b) the Minister thinks that it will take more than 60 days to decide whether to grant the permit;the Minister may extend the period within which that decision is to be made by up to 60 days.
- (4A) As soon as practicable after the Minister makes a determination under subparagraph (2)(c)(ii), the Minister must give the applicant a written notification of the determination.
- (4B) As soon as practicable after the Minister makes a decision under subsection (4), the Minister must give the applicant a written notification of the decision.
- (4C) As soon as practicable after the Minister makes a decision under subsection (4) in relation to a permit authorising the import of

hazardous waste from a particular foreign country, the Minister must give the competent authority of the country a written notification of the decision.

- (4D) If a period is extended under subsection (2) or (4), the Minister must decide whether to grant the permit concerned within the extended period. However, this rule has effect subject to subsections (5), (7) and (8).
- (5) If, within the period specified in subsection (1) (or that period as extended under subsection (2) or (4)), the proposal to grant the Basel permit is referred under Subdivision A of Division 4 of Part 11 of the *Environment Protection and Biodiversity Conservation Act 1999*, the Minister must either grant or refuse to grant the permit within 30 days after he or she receives advice under that Subdivision on the proposed grant.
- Note: Under Subdivision A of Division 4 of Part 11 of the *Environment Protection and Biodiversity Conservation Act 1999*, persons considering whether to authorise certain actions must get advice on environmental matters from the Minister administering that Subdivision.
- (6) The applicant may, by writing and before the end of the period of 30 days referred to in subsection (5), agree to extend the period.
- (7) If the applicant agrees to extend the period under subsection (6), the Minister must decide whether to grant the permit within the extended period.
- (8) If the Minister has not decided whether to grant the permit:
- (a) the Minister and the applicant may, by writing and before the end of the period provided for by subsections (1) to (7), agree to extend the period; and
 - (b) the Minister must decide whether to grant the permit within the extended period.
- (9) If the Minister has not decided whether to grant the permit by the end of the day by which the Minister is required by this section to

have made the decision, the Minister is to be taken to have decided, at the end of that day, not to grant the permit.

17 Grant of Basel import permits and Basel export permits

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

(1) Subject to this Division, the Minister must grant the permit sought by a permit application if the Minister is satisfied:

- (a) that dealing with the hazardous waste concerned in accordance with the import proposals or export proposals would be consistent with the environmentally sound management of the hazardous waste; and
- (b) if the permit sought is a Basel export permit authorising the export of hazardous waste to a particular foreign country:
 - (i) that the competent authority of the country has given written consent to the grant of the permit; and
 - (ii) that the consent was given in accordance with Article 6 of the Basel Convention; and
- (ba) if the permit sought is a Basel export permit—that the hazardous waste will be allowed to be transported through any foreign country through which the waste is proposed to be transported; and
- (c) that, having regard to:
 - (i) the applicant's financial viability; and
 - (ii) the applicant's previous record in relation to environmental matters; and
 - (iii) any other relevant matters;the applicant is a suitable person to be granted a Basel permit; and
- (d) that the applicant has appropriate insurance.

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

- (2) Even if the Minister is satisfied as mentioned in subsection (1), the Minister may decide under subsection (2A), (3), (4) or (5) not to grant the permit.
- (2A) The Minister may decide not to grant the permit if:
- (a) the permit sought is a Basel export permit; and
 - (b) having regard to the requirements of paragraph 3(b) of Article 6 of the Basel Convention, the Minister thinks that it would not be appropriate to grant the permit.
- (3) The Minister may decide not to grant the permit if the Minister thinks that it would not be in the public interest to grant the permit.
- (4) The Minister may decide not to grant the permit if the Minister thinks that:
- (a) there is another way in which the hazardous waste could be dealt with; and
 - (b) dealing with the waste in the other way would not pose a significant risk of injury or damage to human beings or the environment; and
 - (c) having regard to Australia's international obligations, the waste should be dealt with in the other way rather than in accordance with the import proposals or export proposals.
- (5) The Minister may decide not to grant the permit if the permit sought is a Basel export permit and the Minister thinks that:
- (a) the hazardous waste could be disposed of safely and efficiently by using a facility in Australia; and
 - (aa) such a disposal would be consistent with the environmentally sound management of the waste; and
 - (b) having regard to the desirability of using facilities in Australia for the disposal of hazardous waste, the waste should be disposed of by using that facility rather than in accordance with the export proposals.

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- (6) The Minister must not grant a Basel export permit or a Basel import permit if the Minister is satisfied that the grant could result in hazardous waste being brought into Antarctica.
- (7) The Minister must not grant a Basel export permit authorising the export of hazardous waste to a foreign country that is not a party to the Basel Convention.
- (8) The Minister must not grant a Basel import permit authorising the import of hazardous waste from a foreign country that is not a party to the Basel Convention.

17A Grant of transit permits

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

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

- (3) Subsection (2) has effect subject to this Division.
- (4) The Minister may decide not to grant the permit if the Minister thinks that it would not be in the public interest to grant it.

- (5) The Minister must not grant the permit if the Minister is satisfied that carrying out the transit proposals could result in hazardous waste being brought into Antarctica.

18 Determination of whether applicant has appropriate insurance

An applicant for a Basel permit has appropriate insurance for the purposes of section 17 or 17A if:

- (a) the applicant is reasonably insured against risks that might arise in relation to the hazardous waste concerned if the permit were granted; or
- (b) the applicant, whether because of arrangements made by the applicant or otherwise, will be able to discharge any liability of the applicant that might arise in relation to the hazardous waste concerned if the permit were granted.

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

- (1) The Minister must not grant a Basel export permit authorising the export of hazardous waste if the applicant proposes that the hazardous waste will be disposed of by a method that is within the scope of Section A of Annex IV to the Basel Convention.
- (2) Despite subsection (1), the Minister may grant a Basel export permit in the circumstances described in that subsection if the Minister is satisfied that there are exceptional circumstances.
- (3) Subsection (2) does not apply if the Minister is satisfied that carrying out the export proposals would be inconsistent with the environmentally sound management of the hazardous waste.
- (4) In deciding whether there are exceptional circumstances for the purposes of subsection (2), the Minister must have regard to the following:

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- (a) whether there will be a significant risk of injury or damage to human beings or the environment if the Minister decides not to grant the permit;
- (b) whether the waste is needed for research into improving the management of hazardous waste;
- (c) whether the waste is needed for testing for the purposes of improving the management of hazardous waste;
- (d) matters prescribed for the purposes of this paragraph.

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

Import

(1) If:

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

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

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

Export

(2) If:

- (a) a person applies for a Basel export permit in relation to an export proposal; and

- (b) the proposal is within the scope of a particular set of Article 11 regulations;

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

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

Transit

- (3) If:

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

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

- (c) a requirement under that set of regulations to obtain the consent (whether actual or constructive) of an authority of a foreign country before granting a special transit permit under that set of regulations authorising the carrying out of a transit proposal that involves the export of hazardous waste to that country; or

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

19 Applicants to be notified of decisions

- (1) If the Minister decides to grant a Basel permit, the Minister must give the permit to the applicant as soon as practicable after making the decision.
- (2) If the Minister decides not to grant a Basel permit, the Minister must give the applicant a written statement setting out the decision and the reasons for it as soon as practicable after making the decision.
- (3) A contravention of this section in relation to a decision does not affect the validity of the decision.

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

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

20 Matters to be specified in Basel import permits

- (1) A Basel import permit must specify particulars of:
 - (a) the kind of hazardous waste to be imported; and
 - (b) the quantity of hazardous waste to be imported; and

- (c) the method of transport by which the hazardous waste is to be imported; and
 - (d) the time at which, or period during which, the hazardous waste is to be imported; and
 - (e) the place to which the hazardous waste is to be imported; and
 - (f) the way in which the hazardous waste is to be dealt with after the import; and
 - (g) if the hazardous waste is to be disposed of after the import—the facility to be used in the disposal and the process (if any) involved in the disposal.
- (3) A Basel import permit may also include conditions under section 22 and such other information as the Minister considers appropriate.

21 Matters to be specified in Basel export permits

- (1) A Basel export permit must specify particulars of:
- (a) the kind of hazardous waste to be exported; and
 - (b) the quantity of hazardous waste to be exported; and
 - (c) the method of transport by which the hazardous waste is to be exported; and
 - (d) the time at which, or period during which, the hazardous waste is to be exported; and
 - (f) the way in which the hazardous waste is to be dealt with after the export; and
 - (g) if the hazardous waste is to be disposed of after the export—the facility to be used in the disposal and the process (if any) involved in the disposal.
- (3) A Basel export permit may also include conditions under section 22 and such other information as the Minister considers appropriate.

21A Matters to be specified in Basel transit permits

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

22 Basel permits may be granted subject to conditions

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

- (2D) Subsections (2A) and (2B) do not, by implication, limit subsection (1).
- (3) A condition is not to be taken to be intended to exclude the operation of a State or Territory law unless an intention to exclude State or Territory laws, or to exclude the particular State or Territory law, is expressed in the permit.

Division 4—Revocation, surrender and variation of Basel permits

24 Revocation of Basel permits

- (1) Subject to subsection (3), the Minister may, by written notice given to a person who is the holder of a Basel permit, revoke the permit if:
 - (a) the Minister is satisfied that the person in, or in relation to, an application or notice concerning the permit made a statement that the person knew was false or misleading in a material particular; or
 - (b) the Minister is satisfied that the person in, or in relation to, an application or notice concerning the permit gave to the Minister a document containing information that the person knew was false or misleading in a material particular without:
 - (i) indicating to the Minister that the document was false or misleading and the respect in which the document was false or misleading; and
 - (ii) providing correct information to the Minister if the person had, or could reasonably have obtained, the correct information; or
 - (c) the Minister is satisfied that the person in, or in relation to, an application or notice concerning the permit failed to disclose all the information that should have been disclosed; or
 - (d) the Minister is satisfied that the person has breached any of the permit conditions; or
 - (e) having considered information that was not considered before granting the permit, the Minister is satisfied that if the Minister were now asked to grant the permit, the Minister would decide not to grant the permit.
- (2) If a Basel permit authorises:

- (a) a single import or export of hazardous waste; or
 - (b) the carrying out of a single transit proposal;
- the Minister may not revoke the permit after that import or export has taken place, or after that transit proposal has been carried out, as the case may be.
- (2A) If a Basel permit authorises:
- (a) 2 or more imports or exports of hazardous waste; or
 - (b) the carrying out of 2 or more transit proposals;
- a revocation of that permit applies only to an import or export, or the carrying out of a transit proposal, as the case may be, that has not begun at the time of the revocation.
- (3) The revocation of the permit takes effect on the day on which the notice revoking the permit is given to the person.
- (4) If the Minister revokes the permit, the Minister must:
- (a) if it is practicable to do so—include in the notice revoking the permit a statement of the reasons for the revocation; or
 - (b) in any other case—as soon as practicable after giving the notice revoking the permit, give the person a written statement of the reasons for the revocation.
- (5) In this section:
- application or notice concerning the permit*** means:
- (a) the application for the permit; or
 - (b) a notice under section 14 relating to the application for the permit; or
 - (c) an application for a variation of the permit pursuant to which the Minister has varied the permit.

25 Surrender of Basel permits

- (1) Subject to this section, the holder of a Basel permit may, at any time, surrender the permit by:

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- (a) returning the permit to the Minister; and
 - (b) giving the Minister written notice that the permit is surrendered.
- (2) If the permit is a Basel import permit, the permit may not be surrendered after any import authorised by the permit has begun.
- (2A) If the permit is a Basel export permit, the permit may not be surrendered after any export authorised by the permit has begun.
- (2B) If the permit is a Basel transit permit, the permit may not be surrendered after the carrying out of any transit proposal authorised by the permit has begun.
- (3) The surrender of the permit takes effect on the day on which subsection (1) is satisfied.

26 Variation of Basel permits

- (1) Subject to subsection (5), the Minister may, by written notice given to a person who is the holder of a Basel permit, vary the permit.
- (2) Without limiting subsection (1), the ways in which the Minister may vary the permit include:
 - (a) imposing a condition to which the permit is to be subject; and
 - (b) varying or revoking a permit condition; and
 - (c) if a permit condition is to be complied with on or before a particular day—varying the day.
- (3) Subsection 22(3) applies in relation to a condition specified in a notice under subsection (1) relating to the permit as if the condition were specified in the permit.
- (4) If the Minister varies the permit by imposing a condition, the Minister may also, in the notice making the variation, specify a day on or before which the condition is to be complied with. The day may be a day before or after:
 - (a) any import authorised by the permit; or

- (b) any export authorised by the permit; or
 - (c) the carrying out of any transit proposal authorised by the permit;
- as the case may be.
- (5) The Minister must not vary the permit in a particular way unless:
 - (a) the person has made a variation application for the variation of the permit in that way and the Minister is satisfied as mentioned in section 30 in relation to the application; or
 - (b) the Minister is permitted by subsection (6) to make the variation.
- (6) The Minister may vary the permit in a particular way, otherwise than pursuant to a variation application, only if:
 - (a) the Minister is satisfied that the person in, or in relation to, an application or notice concerning the permit made a statement that the person knew was false or misleading in a material particular; or
 - (b) the Minister is satisfied that the person in, or in relation to, an application or notice concerning the permit gave to the Minister a document containing information that the person knew was false or misleading in a material particular without:
 - (i) indicating to the Minister that the document was false or misleading and the respect in which the document was false or misleading; and
 - (ii) providing correct information to the Minister if the person had, or could reasonably have obtained, the correct information; or
 - (c) the Minister is satisfied that the person in, or in relation to, an application or notice concerning the permit failed to disclose all the information that should have been disclosed; or
 - (d) having considered information that was not considered before granting the permit, the Minister is satisfied that the variation is required to protect human beings or the environment from a significant risk of injury or damage.

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- (7) A variation of the permit takes effect:
 - (a) if a prospective date of effect is specified in the notice making the variation—on that day; or
 - (b) in any other case—on the day on which the notice making the variation is given to the person.
- (8) If the Minister varies the permit otherwise than pursuant to a variation application, the Minister must:
 - (a) if it is practicable to do so—include in the notice making the variation a statement of the reasons for the variation; or
 - (b) in any other case—as soon as practicable after giving the notice varying the permit, give the person a written statement of the reasons for the variation.
- (9) In this section:
 - application or notice concerning the permit*** means:
 - (a) the application for the permit; or
 - (b) a notice under section 14 relating to the application for the permit; or
 - (c) an application for a variation of the permit pursuant to which the Minister has varied the permit.

27 Applications for variations of Basel permits

- (1) The holder of a Basel permit may apply to the Minister for the permit to be varied in a particular way.
- (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.

28 Further information may be requested

- (1) If the Minister needs further information to deal with a variation application, the Minister may ask the applicant to provide the information in writing.
- (2) The request must be made by written notice given to the applicant not later than 60 days after the Minister receives the application.

28A Acknowledgment and notification

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

29 Time within which applications are to be decided

- (1) Subject to this section, where the Minister receives a variation application, the Minister must decide whether to make the variation within 60 days after the application day.
- (2) If:
 - (a) the application is an application to vary a Basel export permit authorising the export of hazardous waste to a particular foreign country (the *receiving country*); and
 - (b) 46 days pass after the application day and, by the end of that period:
 - (i) the competent authority of the receiving country has neither given nor refused written consent to the variation; or
 - (ii) if it is proposed that the hazardous waste will be transported through one or more other foreign countries

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(the *transit countries*)—the competent authorities of the transit countries have neither given nor refused written consent to the variation;

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

(c) whichever of the following is applicable:

- (i) the 14th day after the Ministerial receipt day;
- (ii) if the Minister determines a later day that occurs on or before the 60th day after the Ministerial receipt day—that later day;

(d) 12 months after the application day.

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

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

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

(4) If:

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

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

- (4A) As soon as practicable after the Minister makes a determination under subparagraph (2)(c)(ii), the Minister must give the applicant a written notification of the determination.
- (4B) As soon as practicable after the Minister makes a decision under subsection (4), the Minister must give the applicant a written notification of the decision.
- (4C) As soon as practicable after the Minister makes a decision under subsection (4) varying a permit authorising the import of hazardous waste from a particular foreign country, the Minister must give the competent authority of the country a written notification of the decision.
- (4D) If a period is extended under subsection (2) or (4), the Minister must decide whether to vary the permit concerned within the extended period. However, this rule has effect subject to subsections (5), (7) and (8).
- (5) If, within the period specified in subsection (1) (or that period as extended under subsection (2) or (4)), the proposal to vary the Basel permit is referred under Subdivision A of Division 4 of Part 11 of the *Environment Protection and Biodiversity Conservation Act 1999*, the Minister must decide whether to make the variation within 30 days after he or she receives advice under that Subdivision on the proposed variation.
- Note: Under Subdivision A of Division 4 of Part 11 of the *Environment Protection and Biodiversity Conservation Act 1999*, persons considering whether to authorise certain actions must get advice on environmental matters from the Minister administering that Subdivision.
- (6) The applicant may, by writing and before the end of the period of 30 days referred to in subsection (5), agree to extend the period.
- (7) If the applicant agrees to extend the period under subsection (6), the Minister must decide whether to make the variation within the extended period.

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- (8) If the Minister has not decided whether to make the variation:
 - (a) the Minister and the applicant may, by writing and before the end of the period provided for by subsections (1) to (7), agree to extend the period; and
 - (b) the Minister must decide whether to make the variation within the extended period.
- (9) If the Minister has not decided whether to make the variation by the end of the day by which the Minister is required by this section to have made the decision, the Minister is to be taken to have decided, at the end of that day, not to make the variation.

30 Making of variations

The Minister must make the variation sought by a variation application if the Minister is satisfied that if the Minister were asked to grant the Basel permit, as proposed to be varied, the Minister would decide to grant the permit.

31 Applicants to be notified of decisions

- (1) If the Minister decides to make the variation applied for in a variation application, the Minister must give the notice varying the permit to the applicant as soon as practicable after making the decision.
- (2) If the Minister decides not to make the variation applied for in a variation application, the Minister must give the applicant a written statement setting out the decision and the reasons for it as soon as practicable after making the decision.
- (3) A contravention of this section in relation to a decision does not affect the validity of the decision.

Division 5—Miscellaneous

32 Applications and notices to be accompanied by fees

- (1) The regulations may prescribe fees to be paid in relation to applications and notices given to the Minister under this Part or under a set of Article 11 regulations.
- (2) An application or notice given to the Minister under this Part or under a set of Article 11 regulations must be accompanied by the prescribed fee (if any).
- (3) If an application or notice given to the Minister under this Part or under a set of Article 11 regulations is not accompanied by the prescribed fee (if any), the application or notice is to be taken not to have been received by the Minister until the fee has been paid.
- (4) The amount or rate of a fee must be reasonably related to the expenses incurred or to be incurred by the Commonwealth in relation to the application or notice to which it relates, and must not be such as to amount to taxation.
- (5) The Minister may determine in writing that the prescribed fee payable in relation to a specified application or a specified notice is reduced by a specified amount.
- (6) The determination has effect accordingly.
- (7) The regulations may make provision for and in relation to the indexation of prescribed fees.

32A Applications to be accompanied by levy

- (1) An application under section 12, 13 or 13A must be accompanied by the levy imposed by the *Hazardous Waste (Regulation of Exports and Imports) Levy Act 2017*.

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Note: An application under section 12, 13 or 13A must be for a Basel permit or a special permit under a specified set of Article 11 regulations: see section 13B.

- (2) If the application is not accompanied by the levy, the application is taken not to have been received by the Minister until the levy has been paid.

33 Publication of certain particulars on Department's website

- (1) Subject to subsection (2), the Minister must cause to be published on the Department's website particulars of:
- (a) each application and notice received by the Minister under this Part or under a set of Article 11 regulations; and
 - (b) each Basel permit or special permit granted; and
 - (c) each decision not to grant a Basel permit or special permit; and
 - (d) each revocation of a Basel permit or special permit; and
 - (e) each surrender of a Basel permit or special permit; and
 - (f) each variation of a Basel permit or special permit; and
 - (g) each determination under section 13B.
- (2) The Minister is not required to publish particular information if the Minister determines, in writing, that to publish the information would be contrary to the public interest because the publication would, or could reasonably be expected to:
- (a) endanger public safety; or
 - (b) cause damage to:
 - (i) the security of Australia; or
 - (ii) the defence of Australia; or
 - (iii) the international relations of Australia.
- (3) The Minister must cause a publication required by this section to be made as soon as practicable after the requirement arises.

Part 3—Ministerial orders in relation to hazardous waste

34 Orders where section 39 contravened

- (1) If a person imports hazardous waste in contravention of subsection 39(1), the Minister may, in writing, order the person to deal with the waste in a specified way.
- (2) If:
 - (a) a person contravenes subsection 39(2) or (3) in relation to hazardous waste; and
 - (b) the Minister is satisfied that the hazardous waste poses a significant risk of injury or damage to human beings or the environment that requires the waste to be dealt with in a particular way;the Minister may, in writing, order the person to deal with the waste in that way.
- (3) Without limiting subsections (1) and (2), the Minister may, under either of those subsections:
 - (a) order the waste to be exported; or
 - (b) specify the day on or before which anything required to be done in relation to the waste is to be done.
- (4) An order under this section may also require the person to give the Minister (by a specified time and in a specified manner) specified information relating to the dealing with the waste.

35 Orders where section 40 contravened

- (1) If a person exports hazardous waste in contravention of subsection 40(1), the Minister may, in writing, order the person to deal with the waste in a specified way.

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- (2) If:
- (a) a person contravenes subsection 40(2) in relation to hazardous waste; and
 - (b) the Minister is satisfied that:
 - (i) the waste poses a significant risk of injury or damage to human beings or the environment that requires the waste to be dealt with in a particular way; or
 - (ii) Australia's international obligations require the waste to be dealt with in a particular way;
- the Minister may, in writing, order the person to deal with the waste in that way.
- (3) Without limiting subsections (1) and (2), the Minister may, under either of those subsections:
- (a) order the waste to be imported; or
 - (b) specify the day on or before which anything required to be done in relation to the waste is to be done.
- (4) An order under this section may also require the person to give the Minister (by a specified time and in a specified manner) specified information relating to the dealing with the waste.

35A Orders where section 40A contravened

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

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

- (2) If:
- (a) a person contravenes subsection 40A(2) in relation to hazardous waste; and
 - (b) the Minister is satisfied that:

- (i) the waste poses a significant risk of injury or damage to human beings or the environment that requires the waste to be dealt with in a particular way; or
 - (ii) Australia's international obligations require the waste to be dealt with in a particular way;
- the Minister may, in writing, order the person to deal with the waste in that way.
- (3) The Minister may, under either of subsection (1) or (2):
 - (a) order the waste to be exported; or
 - (b) specify the day on or before which anything required to be done in relation to the waste is to be done.
- This subsection does not, by implication, limit subsection (1) or (2).
- (4) An order under this section may also require the person to give the Minister (by a specified time and in a specified manner) specified information relating to the dealing with the waste.

36 Orders to remedy or mitigate damage

- (1) If:
 - (a) a person has contravened section 39, 40 or 40A in relation to hazardous waste; and
 - (b) the Minister is satisfied that the contravention resulted in the waste causing significant injury or damage to human beings or the environment;
- the Minister may, in writing, order the person to take such steps as the Minister thinks proper to remedy or mitigate the damage.
- (2) Without otherwise limiting subsection (1), the Minister must not, under that subsection, order the person to pay compensation.

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

- (1) If:
 - (a) the Minister makes an order under section 34, 35, 35A or 36 requiring a person to do something; and
 - (b) the person does not do the thing as and when required by the order;the Minister may arrange for the thing to be done.
- (2) If the Commonwealth incurs costs because of arrangements made by the Minister under subsection (1), the person is liable to pay to the Commonwealth an amount equal to the costs and the amount may be recovered by the Commonwealth as a debt due to the Commonwealth in a court of competent jurisdiction.

38 Orders authorising import of exported hazardous waste where it cannot be dealt with as intended

- (1) If:
 - (a) a person has exported hazardous waste in accordance with the requirements of this Act; and
 - (b) the waste cannot be dealt with in accordance with:
 - (i) if the export was authorised by an export permit—the permit (including the permit conditions); or
 - (ii) if the export was ordered by the Minister under section 34—the order;the person may apply to the Minister, in writing, for an order authorising the person to import the waste.
- (2) If the Minister receives an application under subsection (1), the Minister may make the order.
- (3) The Minister may, in the order, require that the waste be imported and dealt with in a specified way.

- (4) Without limiting subsection (3), the Minister may, under that subsection, specify the day on or before which anything required to be done in relation to the waste is to be done.
- (5) An order under this section may also require the person to give the Minister (by a specified time and in a specified manner) specified information relating to the dealing with the waste.

38A Persons to be given a reasonable time to comply with orders

If an order under this Part requires a person to do a thing by a specified time, then that time must be reasonable having regard to the circumstances.

38B Contravention of orders under section 34, 35 or 35A

Offence: failure to deal with waste

- (1) A person commits an offence if:
 - (a) the person has been given an order under section 34, 35 or 35A requiring the person to deal with waste in a specified way and by a specified time; and
 - (b) the person contravenes that requirement.

Penalty:

- (a) if the offender is an individual—imprisonment for a term not exceeding 2 years; or
- (b) if the offender is a body corporate—a fine not exceeding 2,500 penalty units.

Offence: failure to give information

- (2) If:
 - (a) a person has been given an order under this Part requiring the person to give the Minister specified information by a specified time and in a specified manner; and
 - (b) the person contravenes that requirement;

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Part 3 Ministerial orders in relation to hazardous waste

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the person commits an offence punishable, on conviction, by a fine not exceeding 30 penalty units.

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

39 Regulation of import of hazardous waste

Prohibition of imports

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

Compliance with import permits

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

Compliance with section 38 orders

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

Offence—intention, recklessness or negligence

- (4) A person who intentionally, recklessly or negligently contravenes subsection (1), (2) or (3) commits an offence punishable on conviction by:

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

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- (a) in the case of a body corporate—a fine not exceeding 2,500 penalty units; or
- (b) in the case of an individual—imprisonment for a term not exceeding 2 years.

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

Meaning of negligence

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

Offence—intention or recklessness

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

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

40 Regulation of export of hazardous waste

Prohibition of exports

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

Compliance with export permits

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

Offence—intention, recklessness or negligence

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

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

*Meaning of **negligence***

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

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- (b) such a high risk that the person's conduct would contravene the subsection;
that the conduct merits criminal punishment.

Offence—intention or recklessness

(5) If:

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

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

40A Regulation of transit of hazardous waste

Prohibition of bringing waste into Australia

- (1) A person must not bring hazardous waste into Australia (whether or not by way of import) in the course of carrying out a transit proposal unless:
 - (a) the person is the holder of a transit permit authorising the person to bring the waste into Australia; or
 - (b) the carrying out of the transit proposal is in connection with the movement of hazardous waste from one OECD country to another OECD country and the Minister has notified the person in writing that the person does not require a transit permit for that proposal.

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

- (1A) Before notifying a person under paragraph (1)(b), the Minister must be satisfied:
- (a) that carrying out the transit proposal will not pose a significant risk of injury or damage to human beings or the environment; and
 - (b) of any other matters prescribed by the regulations for the purposes of this paragraph.
- (1B) Subsection (1A) does not limit the matters that the Minister may take into account in deciding whether to give a notification under paragraph (1)(b).
- (1C) The Minister must, as soon as practicable after giving a notification under paragraph (1)(b), cause to be published, on the Department's website, particulars of the notification.

Compliance with transit permits

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

Offence—intention, recklessness or negligence

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

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

Division 5Miscellaneous

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

Meaning of negligence

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

Offence—intention or recklessness

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

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

OECD country definition

- (6) In this section:

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

Note: The Convention is in Australian Treaty Series 1971 No. 11 ([1971] ATS 11) and could in 2017 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

40AA Regulation of sale of hazardous waste

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

Penalty:

- (a) if the offender is an individual—imprisonment for a term not exceeding 2 years; or
- (b) if the offender is a body corporate—a fine not exceeding 2,500 penalty units.

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

Penalty:

- (a) if the offender is an individual—imprisonment for a term not exceeding 2 years; or

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- (b) if the offender is a body corporate—a fine not exceeding 2,500 penalty units.

40B Liability of executive officers of bodies corporate

Offence—knowledge, recklessness or negligence

(1) If:

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

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

Meaning of negligence

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

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

Offence—knowledge or recklessness

(3) If:

- (a) a body corporate contravenes section 39, 40, 40A or 40AA; and
- (b) an executive officer of the body knew that, or was reckless as to whether, the contravention would occur; and

- (c) the officer was in a position to influence the conduct of the body in relation to the contravention; and
 - (d) the officer failed to take all reasonable steps to prevent the contravention; and
 - (e) the contravention injures or damages, or is likely to injure or damage, human beings or the environment;
- the officer commits an offence punishable on conviction by imprisonment for a term not exceeding 5 years.

Reasonable steps to prevent contravention

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

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Definition of executive officer

(6) In this section:

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

41 Injunctions

- (1) Where a person has engaged, is engaging, or is proposing to engage, in any conduct that constituted, constitutes or would constitute an offence against section 39, 40, 40A or 40AA, the Court may, on the application of the Minister or any other person, grant an injunction restraining the person from engaging in the conduct and, if in the Court's opinion it is desirable to do so, requiring the person to do anything.
- (2) Where:
 - (a) a person has refused or failed, is refusing or failing, or is proposing to refuse or fail, to do anything; and
 - (b) the refusal or failure was, is, or would be, an offence against section 39, 40 or 40A;the Court may, on the application of the Minister or any other person, grant an injunction requiring the person to do the thing.
- (3) If, in the opinion of the Court, it is desirable to do so, the Court may grant an interim injunction pending determination of an application under subsection (1).
- (4) The Court may discharge or vary an injunction granted under this section.
- (5) The power of the Court to grant an injunction restraining a person from engaging in conduct may be exercised:
 - (a) whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind; and

- (b) whether or not the person has previously engaged in conduct of that kind; and
 - (c) whether or not there is a significant risk of injury or damage to human beings or the environment if the person engages, or continues to engage, in conduct of that kind.
- (6) The power of the Court to grant an injunction requiring a person to do a thing may be exercised:
 - (a) whether or not it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to do the thing; and
 - (b) whether or not the person has previously refused or failed to do the thing; and
 - (c) whether or not there is a significant risk of injury or damage to human beings or the environment if the person refuses or fails, or continues to refuse or fail, to do the thing.
- (7) Where the Minister makes an application to the Court for the grant of an injunction under this section, the Court is not to require the Minister or any other person, as a condition of the granting of an interim injunction, to give any undertakings as to damages.
- (8) The powers conferred on the Court under this section are in addition to, and not in derogation of, any other powers of the Court.
- (9) Jurisdiction is conferred on the Court to hear and determine applications for injunctions under this section.

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Part 4ATransportation of waste substances through transit countries where an export permit under this Act is not required

Division 5Miscellaneous

Section41A

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

41A Offence of transporting substance through transit country without approval

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

41B Approval of transportation of substances through transit countries

Application for approval

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

Form of application

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

Minister must notify foreign country of application

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

If the foreign country consents, Minister must approve transportation

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

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

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

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Part 4ATransportation of waste substances through transit countries where an export permit under this Act is not required

Division 5Miscellaneous

Section41C

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

- (6) If, by the end of the competent authority's decision period, the competent authority has neither:
- (a) notified the Minister that it consents to the transportation; nor
 - (b) notified the Minister that it does not consent to the transportation;
- the Minister must, as soon as practicable, give the applicant a written notice refusing to approve the transportation.

41C Notifiable substances in relation to transit countries

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

Notifiable substance—Annex I/III waste

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

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

Declaration that substance is notifiable substance

- (3) If:
- (a) the transit country is a party to the Basel Convention; and

(b) the Minister is satisfied that, under a law of that country that gives effect to the Basel Convention, a particular substance or object is classified as hazardous waste; and

(c) the substance or object is not Annex I/III waste;
the Minister must, by writing, declare that the substance or object is a **notifiable substance** in relation to the transit country for those purposes.

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

Declaration has effect accordingly

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

Revocation of declaration

(5) If:

(a) a declaration is in force under subsection (3); and

(b) the Minister ceases to be satisfied of the matter referred to in paragraph (3)(b);

the Minister must revoke the declaration.

Gazettal of declaration

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

Definition

(7) In this section:

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

Part 5—Administration

42 Appointment of inspectors

- (1) The Minister may, by writing:
 - (a) appoint an eligible person to be an inspector; or
 - (b) appoint a class of eligible persons to be inspectors.
- (2) A person who is an inspector stops being an inspector if the person stops being an eligible person.
- (3) For the purposes of this section, the following persons are eligible persons:
 - (a) officers and employees of the Commonwealth and of authorities of the Commonwealth;
 - (b) officers and employees of a State or Territory whom a Minister of the Crown of the State, or Minister of the Territory, has agreed may be appointed as inspectors;
 - (c) members and special members of the Australian Federal Police;
 - (d) members of the police force of a State or Territory whom a Minister of the Crown of the State, or Minister of the Territory, has agreed may be appointed as inspectors.

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

43 Identity cards

- (1) The Minister may cause an identity card to be issued to an inspector.
- (2) The identity card must:
 - (a) contain a recent photograph of the inspector; and
 - (b) be in a form approved, in writing, by the Minister.

- (3) A person who stops being an inspector must, as soon as practicable, return his or her identity card to the Minister.

Penalty: 1 penalty unit.

- (4) An offence under subsection (3) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

44 Proof of authority

- (1) An inspector is not entitled to exercise powers under this Act in relation to a person unless the inspector first produces the inspector's identity card for inspection by the person.
- (2) Subsection (1) does not apply in relation to the exercise of a power under section 45, 49, 50 or 51.

45 Power to control movement of vessels and aircraft etc.

- (1) This section applies if an inspector has reasonable grounds for suspecting that there is in or on:
- (a) an Australian vessel or Australian aircraft; or
 - (b) a vessel or aircraft that is within Australian jurisdiction;
- hazardous waste that is to be, or that has been, imported, exported or the subject of a transit proposal.
- (2) If this section applies in relation to a vessel, the inspector may require the person in command or control, or who appears to be in command or control, of the vessel to do one or more of the following things:
- (a) ensure the vessel does not remain within, or does not come within, as the case requires, Australian jurisdiction;
 - (b) ensure the vessel is brought to a specified place to which it is safe and practicable to bring the vessel;
 - (c) ensure the vessel remains at a specified place until an inspector permits the vessel to leave;
 - (d) arrange for goods being carried on the vessel to be unloaded;

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- (e) ensure that goods being carried on the vessel are not unloaded until an inspector permits their unloading.
- (3) If this section applies in relation to an aircraft, the inspector may require the person in command or control, or who appears to be in command or control, of the aircraft to do one or more of the following things:
 - (a) ensure the aircraft does not remain within, or does not come within, as the case requires, Australian jurisdiction;
 - (b) ensure the aircraft is landed at a specified airport at which it is safe and practicable to land the aircraft;
 - (c) ensure the aircraft remains at a specified airport until an inspector permits the aircraft to leave;
 - (d) arrange for goods being carried on the aircraft to be unloaded;
 - (e) ensure that goods being carried on the aircraft are not unloaded until an inspector permits their unloading.
- (4) An inspector may communicate a requirement under this section by means of:
 - (a) an international signal code; or
 - (b) if the requirement relates to a vessel—any other internationally recognised means of communication with a vessel; or
 - (c) if the requirement relates to an aircraft—any other internationally recognised means of communication with an aircraft.
- (5) A person must not refuse or fail to comply with a requirement made under this section.

Penalty: 60 penalty units.

- (5A) Subsection (5) does not apply if the person has a reasonable excuse.

Note: The defendant bears an evidential burden in relation to the matter in subsection (5A). See subsection 13.3(3) of the *Criminal Code*.

- (6) It is a reasonable excuse for the person to refuse or fail to comply with the requirement if complying with the requirement would have endangered the person or any other person.

46 Entry and search of searchable places—monitoring compliance

- (1) Subject to subsection (2), an inspector may, for the purpose of finding out whether the requirements of this Act (including the requirements of any permit conditions or order under Part 3) are being complied with:
- (a) enter or board a searchable place; and
 - (b) exercise the powers set out in subsection 48(1).
- (2) An inspector must not enter or board a searchable place, or exercise a power, under subsection (1) unless:
- (a) the relevant authority in relation to the place consents to the entry or boarding, or the exercise of the power; or
 - (b) a warrant under section 49 authorises the entry or boarding, or the exercise of the power.
- (3) An inspector who is permitted by this section to enter or board a vessel, aircraft or vehicle may, for the purpose of effecting the entry or boarding and for the purpose of exercising any powers that the inspector is permitted to exercise, stop and detain the vessel, aircraft or vehicle.

47 Entry and search of searchable places—evidence of offences

- (1) Subject to subsection (3), an inspector who has reasonable grounds for suspecting that there is in or on a searchable place a particular thing (in this section called the *evidence*) that may afford evidence of the commission of an offence against this Act, the inspector may:
- (a) enter or board the searchable place; and
 - (b) exercise the powers set out in subsection 48(1).

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- (2) If the inspector enters or boards the searchable place and finds the evidence, the following provisions have effect:
 - (a) the inspector may seize the evidence;
 - (b) the inspector may keep the evidence for 60 days, or, if a prosecution for an offence against this Act in the commission of which the evidence may have been used or otherwise involved is instituted within that period, until the completion of the proceedings for the offence and of any appeal from the decision in relation to the proceedings;
 - (c) if the evidence is a book, record or document—while the inspector has possession of the book, record or document, the inspector must allow the book, record or document to be inspected at any reasonable time by a person who would be entitled to inspect it if it were not in the inspector's possession.
- (3) The inspector must not enter or board the searchable place, or exercise a power, under subsection (1) unless:
 - (a) the relevant authority in relation to the place consents to the entry or boarding, or the exercise of the power; or
 - (b) a warrant under section 50 that was issued in relation to the evidence authorises the entry or boarding, or the exercise of the power.
- (4) If, in the course of searching the searchable place under subsection (1) pursuant to a warrant under section 50, the inspector:
 - (a) finds a thing that the inspector believes, on reasonable grounds to be:
 - (i) a thing (other than the evidence) that will afford evidence of the commission of the offence mentioned in subsection (1); or
 - (ii) a thing that will afford evidence of the commission of another offence against this Act; and
 - (b) the inspector believes, on reasonable grounds, that it is necessary to seize the thing to prevent:

- (i) its concealment, loss or destruction; or
 - (ii) its use in committing, continuing or repeating the offence mentioned in subsection (1), or the other offence, as the case may be;
- subsection (2) applies to the thing as if it were the evidence.
- (5) An inspector who is permitted by this section to enter or board a vessel, aircraft or vehicle may, for the purpose of effecting the entry or boarding and for the purpose of exercising any powers that the inspector is permitted to exercise, stop and detain the vessel, aircraft or vehicle.

48 General powers of inspectors in relation to searchable places

- (1) The powers an inspector may exercise under paragraph 46(1)(b) or 47(1)(b) in relation to a searchable place are as follows:
- (a) to search any part of the place;
 - (b) to inspect, examine, take measurements of, or conduct tests (including by the taking of samples) concerning, any structure, plant, substance or other thing in or on the place;
 - (c) to take extracts from, and make copies of, any documents relating to any hazardous waste in or on the place;
 - (d) if the inspector was only authorised to enter or board the place because the relevant authority in relation to the place consented to the entry or boarding—to require the relevant authority to:
 - (i) answer any questions put by the inspector; and
 - (ii) produce any books, records or documents requested by the inspector;
 - (e) if the inspector was authorised to enter or board the place by a warrant under section 49 or 50—to require any person in or on the place to:
 - (i) answer any questions put by the inspector; and
 - (ii) produce any books, records or documents requested by the inspector;

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- (f) to take into or onto the place such equipment and materials as the inspector requires for the purpose of exercising any powers in relation to the place.
- (2) Subsection (1) has effect subject to subsections 46(2) and 47(3).
- (3) A person must not refuse or fail to comply with a requirement made under paragraph (1)(d) or (e).
- Penalty: 30 penalty units.
- (3A) Subsection (3) does not apply if the person has a reasonable excuse.
 - Note: The defendant bears an evidential burden in relation to the matter in subsection (3A). See subsection 13.3(3) of the *Criminal Code*.
- (4) It is a reasonable excuse for a person to refuse or fail to answer a question or produce a document if answering the question, or producing the document, might tend to incriminate the person.

49 Monitoring warrants

- (1) An inspector may apply to a magistrate for a warrant under this section in relation to a particular searchable place.
- (2) Subject to subsection (3), the magistrate may issue the warrant if the magistrate is satisfied, by information on oath, that it is reasonably necessary that the inspector should have access to the place for the purpose of finding out whether the requirements of this Act (including the requirements of any permit conditions or order under Part 3) are being complied with.
- (3) The magistrate must not issue the warrant unless the inspector or some other person has given to the magistrate, either orally or by affidavit, such further information (if any) as the magistrate requires concerning the grounds on which the issue of the warrant is being sought.
- (4) The warrant must:

- (a) authorise an inspector (whether or not named in the warrant), with such assistance and by such force as is necessary and reasonable:
 - (i) to enter the place; and
 - (ii) to exercise the powers set out in subsection 48(1); and
- (b) state whether the entry is authorised to be made at any time of the day or night or during specified hours of the day or night; and
- (c) specify the day (not more than 6 months after the issue of the warrant) on which the warrant ceases to have effect; and
- (d) state the purpose for which the warrant is issued.

50 Offence related warrants

- (1) An inspector may apply to a magistrate for a warrant under this section in relation to a particular searchable place.
- (2) Subject to subsection (3), the magistrate may issue the warrant if the magistrate is satisfied, by information on oath, that there are reasonable grounds for suspecting that there is, or there may be within the next 72 hours, in or on the place a particular thing (in this section called the *evidence*) that may afford evidence of the commission of an offence against this Act.
- (3) The magistrate must not issue the warrant unless the inspector or some other person has given to the magistrate, either orally or by affidavit, such further information (if any) as the magistrate requires concerning the grounds on which the issue of the warrant is being sought.
- (4) The warrant must:
 - (a) state the name of the inspector; and
 - (b) authorise the inspector, with such assistance and by such force as is necessary and reasonable:
 - (i) to enter the place; and
 - (ii) to exercise the powers set out in subsection 48(1); and

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- (iii) to seize the evidence; and
- (c) state whether the entry is authorised to be made at any time of the day or night or during specified hours of the day or night; and
- (d) specify the day (not more than 7 days after the issue of the warrant) on which the warrant ceases to have effect; and
- (e) state the purpose for which the warrant is issued.

51 Offence related warrants may be granted by telephone

- (1) If, because of circumstances of urgency, an inspector considers it necessary to do so, the inspector may, under this section, apply by telephone for a warrant under section 50.
- (2) Before applying for the warrant, the inspector must prepare an information of a kind mentioned in subsection 50(2) that sets out the grounds on which the issue of the warrant is sought.
- (3) If it is necessary to do so, the inspector may apply for the warrant before the information has been sworn.
- (4) If the magistrate is satisfied:
 - (a) after having considered the terms of the information; and
 - (b) after having received such further information (if any) as the magistrate requires concerning the grounds on which the issue of the warrant is being sought;that there are reasonable grounds for issuing the warrant, the magistrate may, under section 50, complete and sign such warrant as the magistrate would issue under that section if the application had been made under that section.
- (5) If the magistrate completes and signs the warrant:
 - (a) the magistrate must:
 - (i) tell the inspector what the terms of the warrant are; and
 - (ii) tell the inspector the date on which and time at which the warrant was signed; and

- (iii) record on the warrant the reasons for the granting of the warrant; and
- (b) the inspector must:
 - (i) complete a form of warrant in the same terms as the warrant completed and signed by the magistrate; and
 - (ii) write on the form of warrant the name of the magistrate and the date on which and the time at which the magistrate signed the warrant.
- (6) The inspector must also, not later than the day after the day of expiry or execution of the warrant (whichever is the earlier), send to the magistrate:
 - (a) the form of warrant completed by the inspector; and
 - (b) the information referred to in subsection (2), which must have been duly sworn.
- (7) When the magistrate receives the documents mentioned in subsection (6), the magistrate must:
 - (a) attach them to the warrant that the magistrate completed and signed; and
 - (b) deal with them in the way in which the magistrate would have dealt with the information if the application for the warrant had been made under section 50.
- (8) A form of warrant duly completed by the inspector under subsection (5) is authority for any entry, search, seizure or other exercise of a power that the warrant signed by the magistrate authorises.
- (9) If:
 - (a) it is material, in any proceedings, for a court to be satisfied that an entry, search, seizure or other exercise of power was authorised by this section; and

- (b) the warrant completed and signed by the magistrate authorising the exercise of power is not produced in evidence;

the court must assume, unless the contrary is proved, that the exercise of power was not authorised by such a warrant.

52 Production of permits and orders—import or export

- (1) This section applies if an inspector or an officer of Customs (in this section called the *authorised person*) has reasonable grounds for suspecting that a person (in this section called the *suspected person*):
 - (a) intends to import or export hazardous waste; or
 - (b) is importing or exporting hazardous waste; or
 - (c) has imported or exported hazardous waste.
- (2) The authorised person may require the suspected person to produce, or to produce evidence of the existence and contents of:
 - (a) a Basel permit or special permit authorising the import or export; or
 - (b) an order under section 34, 35, 35A or 38 authorising or requiring the import or export.
- (3) The suspected person must not refuse or fail to comply with the requirement.

Penalty: 30 penalty units.

- (4) Subsection (3) does not apply if the person has a reasonable excuse.

Note: The defendant bears an evidential burden in relation to the matter in subsection (4). See subsection 13.3(3) of the *Criminal Code*.

52A Production of transit permits

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

Penalty: 30 penalty units.

53 Assistance of inspectors

- (1) An inspector who proposes to exercise powers under this Part in relation to a searchable place may require the relevant authority in relation to the place to provide reasonable assistance to the inspector in relation to the exercise of those powers.
- (2) The relevant authority must not refuse or fail to comply with the requirement.

Penalty: 30 penalty units.

- (3) Subsection (2) does not apply if the person has a reasonable excuse.

Note: The defendant bears an evidential burden in relation to the matter in subsection (3). See subsection 13.3(3) of the *Criminal Code*.

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Part 5Administration

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Section56

56 Part does not limit power to impose permit conditions

This Part is not to be taken to limit the Minister's power to impose permit conditions on a Basel permit or special permit (including, for example, a condition requiring the holder of the permit to allow inspectors to enter or board a place and exercise powers in relation to the place).

Part 5A—Arrangements by Minister

56A Arrangements by Minister

Arrangements

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

Achievement of object or aims of this Act

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

Co-operation by the Commonwealth

- (3) Arrangements under subsection (1) may include, but are not limited to, arrangements involving co-operation by the Commonwealth with any or all of the following:

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- (a) the government of a foreign country, of a State or of a Territory;
- (b) the administration of an external Territory;
- (c) an organisation;
- (d) a person.

Consultation with States/Territories

- (4) Before making an arrangement covered by paragraph (1)(c), (d) or (e), the Minister must consult the government or administration of a State or Territory if:
 - (a) the arrangement relates, in whole or in part, to an activity carried on, or proposed to be carried on, in the State or Territory; and
 - (b) the government or administration of the State or Territory is not a party to the arrangement.

Constitutional limitations

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

Part 6—Miscellaneous

57 Review of decisions

Applications may be made to the Administrative Appeals Tribunal for the review of decisions of the following kinds:

- (a) decisions whether to grant Basel permits or special permits;
- (b) decisions to impose permit conditions on a Basel permit or special permit;
- (c) decisions to require permit conditions to be complied with on or before particular days;
- (d) decisions whether to vary Basel permits or special permits;
- (e) decisions to revoke Basel permits or special permits;
- (f) decisions under sections 34, 35, 35A and 36 to order people to do things;
- (g) decisions whether to make orders under section 38;
- (h) decisions under section 4A (which deals with declarations of hazardous waste);
- (i) decisions under section 4B (which deals with extensions of time for carrying out transit proposals);
- (j) decisions under section 13B (which deals with the classification of applications for permits);
- (k) decisions under subsection 32(5) (which deals with reduction of fees);
- (l) decisions under section 41B (which deals with the approval of the transportation of notifiable substances through transit countries);
- (m) decisions under section 41C (which deals with declarations of notifiable substances).

58 Statement to accompany notification of decision

- (1) Where a decision of a kind referred to in section 57 is made and a written notice of the decision is given to a person whose interests are affected by the decision, the notice must include:
 - (a) a statement to the effect that application may be made to the Administrative Appeals Tribunal under the *Administrative Appeals Tribunal Act 1975* for review of the decision; and
 - (b) a statement to the effect that a person who is entitled to apply to the Administrative Appeals Tribunal for the review of a decision may, under section 28 of that Act, request a statement that includes reasons for the decision.
- (2) Paragraph (1)(b) does not apply in relation to a case to which subsection 28(4) of the *Administrative Appeals Tribunal Act 1975* applies.
- (3) A contravention of subsection (1) in relation to a decision does not affect the validity of the decision.

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

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

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

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- (iv) the protection of human beings or the environment from the harmful effects of pollution of the air, water or soil, where the pollution results from the disposal of hazardous waste.
- (4) Subsection (3) does not apply in relation to a decision made before the objects or purposes of the organisation or association included the matter concerned.
- (5) Subparagraphs (2)(b)(i), (ii), (iii) and (iv) and (3)(b)(i), (ii), (iii) and (iv) do not apply to activities unless:
 - (a) the activities are carried on in Australia; or
 - (b) the activities relate to the effects of hazardous waste of Australian origin on human beings, or the environment, outside Australia.
- (6) For the purposes of this section, in interpreting the expression ***hazardous waste***, the effect of sections 4A, 4F and 4G is to be ignored.
- (7) A reference in this section to a ***decision under this Act*** includes a reference to:
 - (a) conduct for the purpose of making a decision under this Act; or
 - (b) a failure to make a decision under this Act.
- (8) To avoid doubt, this section is intended to extend, but not limit, the meaning of the expression ***person aggrieved by a decision***.

58B Evidentiary certificate—classification of hazardous waste

Hazardous waste

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

- (b) for the purposes of the application of this Act to a specified matter.

Consultation with Hazardous Waste Technical Group

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

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

Prima facie evidence

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

Gazettal

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

58C Evidentiary certificate—environmentally sound management of hazardous waste

Environmentally sound management of hazardous waste

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

Consultation with Hazardous Waste Technical Group

- (2) Before issuing a certificate under subsection (1), the Minister must:

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

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

Prima facie evidence

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

Gazettal

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

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

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

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

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

58E Hazardous Waste Technical Group

Technical Group

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

Qualifications of members

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

Procedures

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

Section 59

Remuneration

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

59 Conduct of directors, employees and agents

- (1) Where, in proceedings for an offence against this Act, it is necessary to establish the state of mind of a body corporate in relation to particular conduct, it is sufficient to show:
 - (a) that the conduct was engaged in by a director, employee or agent of the body corporate within the scope of his or her actual or apparent authority; and
 - (b) that the director, employee or agent had the state of mind.
- (2) Any conduct engaged in on behalf of a body corporate by a director, employee or agent of the body corporate within the scope of his or her actual or apparent authority is to be taken, in proceedings for an offence against this Act, to have been engaged in also by the body corporate unless the body corporate establishes that the body corporate took reasonable precautions and exercised due diligence to avoid the conduct.
- (3) Where, in proceedings for an offence against this Act, it is necessary to establish the state of mind of a person other than a

body corporate in relation to particular conduct, it is sufficient to show:

- (a) that the conduct was engaged in by an employee or agent of the person within the scope of his or her actual or apparent authority; and
 - (b) that the employee or agent had the state of mind.
- (4) Any conduct engaged in on behalf of a person other than a body corporate by an employee or agent of the person within the scope of his or her actual or apparent authority is to be taken, in proceedings for an offence against this Act, to have been engaged in also by the first-mentioned person unless the person establishes that the person took reasonable precautions and exercised due diligence to avoid the conduct.
- (5) Where:
 - (a) a person other than a body corporate is convicted of an offence; and
 - (b) the person would not have been convicted of the offence if subsections (3) and (4) had not been enacted;the person is not liable to be punished by imprisonment for the offence.
- (6) A reference in subsection (1) or (3) to the state of mind of a person includes a reference to:
 - (a) the knowledge, intention, opinion, belief or purpose of the person; and
 - (b) the person's reasons for the intention, opinion, belief or purpose.
- (7) A reference in this section to a director of a body corporate includes a reference to a constituent member of a body corporate incorporated for a public purpose by a law of the Commonwealth or of a State or Territory.
- (8) A reference in this section to engaging in conduct includes a reference to failing or refusing to engage in conduct.

59A Nomination of address for service of documents

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

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

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

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

- (4) In this section:

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

60 Delegation by Minister

- (1) The Minister may, by signed writing, delegate any or all of the Minister's functions and powers under this Act to:
 - (a) the Secretary of the Department; or
 - (b) an SES employee, or acting SES employee, in the Department; or
 - (c) an APS employee who holds, or is acting in, an Executive Level 2, or equivalent, position in the Department.
- (2) In performing functions or exercising powers under a delegation, the delegate must comply with any directions of the Minister.

61 Annual report

- (1) The Minister must:
 - (a) as soon as practicable after the end of each financial year, prepare a report on the operation of this Act during that year; and
 - (b) cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House after completion of the report.
- (2) If this Act does not commence at the beginning of a financial year, this section has effect in relation to the period beginning at the commencement of this Act and ending on the next 30 June as if:
 - (a) if the period is less than 6 months—the period were included in the next financial year; or
 - (b) in any other case—the period were a financial year.

62 Regulations

The Governor-General may make regulations, not inconsistent with this Act, prescribing matters:

- (a) required or permitted by this Act to be prescribed; or

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Division 5Miscellaneous

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- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

Editorial changes

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can

Endnotes

Endnote 1—About the endnotes

be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation “(md not incorp)” is added to the details of the amendment included in the amendment history.

Endnote 2—Abbreviation key

ad = added or inserted	o = order(s)
am = amended	Ord = Ordinance
amdt = amendment	orig = original
c = clause(s)	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
C[x] = Compilation No. x	pres = present
Ch = Chapter(s)	prev = previous
def = definition(s)	(prev...) = previously
Dict = Dictionary	Pt = Part(s)
disallowed = disallowed by Parliament	r = regulation(s)/rule(s)
Div = Division(s)	reloc = relocated
ed = editorial change	renum = renumbered
exp = expires/expired or ceases/ceased to have effect	rep = repealed
F = Federal Register of Legislation	rs = repealed and substituted
gaz = gazette	s = section(s)/subsection(s)
LA = <i>Legislation Act 2003</i>	Sch = Schedule(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sdiv = Subdivision(s)
(md) = misdescribed amendment can be given effect	SLI = Select Legislative Instrument
(md not incorp) = misdescribed amendment cannot be given effect	SR = Statutory Rules
mod = modified/modification	Sub-Ch = Sub-Chapter(s)
No. = Number(s)	SubPt = Subpart(s)
	<u>underlining</u> = whole or part not commenced or to be commenced

Endnotes

Endnote 3—Legislation history

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Hazardous Waste (Regulation of Exports and Imports) Act 1989	6, 1990	17 Jan 1990	17 July 1990 (s 2(2))	
Arts, Sport, Environment, Tourism and Territories Legislation Amendment Act (No. 2) 1991	179, 1991	25 Nov 1991	s 3(2) and Sch: 25 Nov 1991 (s 2)	s 3(2)
Hazardous Waste (Regulation of Exports and Imports) Amendment Act 1996	7, 1996	11 June 1996	11 Dec 1996 (s 2(2))	Sch 1 (items 126-129)
as amended by				
Environmental Reform (Consequential Provisions) Act 1999	92, 1999	16 July 1999	Sch 7 (item 16): (s 2(3))	—
Environmental Reform (Consequential Provisions) Act 1999	92, 1999	16 July 1999	Sch 3 (items 41–45): 16 July 2000 (s 2(1))	Sch 3 (item 45)
Public Employment (Consequential and Transitional) Amendment Act 1999	146, 1999	11 Nov 1999	Sch 1 (item 505): 5 Dec 1999 (s 2(1), (2))	—
Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000	137, 2000	24 Nov 2000	Sch 1 (items 217, 218) and Sch 2 (items 418, 419): 24 May 2001 (s 2(3))	Sch 2 (items 418, 419)

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Environment and Heritage Legislation Amendment (Application of Criminal Code) Act 2001	15, 2001	22 Mar 2001	s 4 and Sch 1 (items 73–95): 24 May 2001 (s 2(1)(c))	s 4
Environmental Legislation Amendment Act 2001	118, 2001	18 Sept 2001	s 4 and Sch 1: 16 Oct 2001 (s 2(2))	s 4
Customs Legislation Amendment (Name Change) Act 2009	33, 2009	22 May 2009	Sch 2 (item 35): 23 May 2009 (s 2)	—
Territories Law Reform Act 2010	139, 2010	10 Dec 2010	Sch 1 (item 67): 11 Dec 2010 (s 2(1) item 2)	—
Statute Law Revision Act 2011	5, 2011	22 Mar 2011	Sch 7 (item 62): 19 Apr 2011 (s 2(1) item 18)	—
Statute Law Revision Act (No. 1) 2015	5, 2015	25 Feb 2015	Sch 3 (items 88–92): 25 Mar 2015 (s 2(1) item 10)	—
Customs and Other Legislation Amendment (Australian Border Force) Act 2015	41, 2015	20 May 2015	Sch 5 (item 80) and Sch 9: 1 July 2015 (s 2(1) items 2, 7)	Sch 9
Norfolk Island Legislation Amendment Act 2015	59, 2015	26 May 2015	Sch 2 (item 210): 1 July 2016 (s 2(1) item 5) Sch 2 (item 356–396): 18 June 2015 (s 2(1) item 6)	Sch 2 (items 356–396)
as amended by				
Territories Legislation Amendment Act 2016	33, 2016	23 Mar 2016	Sch 2: 24 Mar 2016 (s 2(1) item 2)	—
Statute Law Revision Act (No. 1) 2016	4, 2016	11 Feb 2016	Sch 4 (items 1, 180): 10 Mar 2016 (s 2(1) item 6)	—

Endnotes

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Statute Update Act 2016	61, 2016	23 Sept 2016	Sch 1 (items 250–252): 21 Oct 2016 (s 2(1) item 1)	—
Hazardous Waste (Regulation of Exports and Imports) Amendment Act 2017	8, 2017	22 Feb 2017	Sch 1 (item 1–18): 23 Feb 2017 (s 2(1) item 2) Sch 1 (items 19, 20): 1 July 2017 (s 2(1) item 3)	Sch 1 (item 18) and Sch 1 (item 20)
Number and year	FRLI registration	Commencement	Application, saving and transitional provisions	
102, 1999	1 Jan 2005 (F1999B00102)	6 Nov 1998 (r 3)	—	

Endnote 4—Amendment history

Endnote 4—Amendment history

Provision affected	How affected
Title.....	am No 7, 1996
Part 1	
Division 1	
s 3.....	rs No 7, 1996
Division 2	
s 4.....	am No 7, 1996; No 118, 2001; No 8, 2017
s 4A.....	ad No 7, 1996
s 4B.....	ad No 7, 1996
s 4C.....	ad No 7, 1996
s 4D.....	ad No 7, 1996
s 4E.....	ad No 7, 1996
s 4F.....	ad No 7, 1996
s 4G.....	ad No 7, 1996
s 5.....	rep No 7, 1996
s 6.....	am No 7, 1996
	rep No 92, 1999
s 7.....	am No 7, 1996
s 8.....	am No 15, 2001
Division 3	
s 10.....	am No 59, 2015
s 10A.....	ad No 15, 2001
s 11.....	am No 92, 1999
Part 2	
Division 1	
Part 2 heading.....	rs No 7, 1996
Division 1 heading.....	rs No 7, 1996
s 12.....	am No 7, 1996
s 13.....	am No 7, 1996

Endnotes

Endnote 4—Amendment history

Provision affected	How affected
s 13A.....	ad No 7, 1996 am No 8, 2017
s 13B	ad No 7, 1996
Division 2	
Division 2	ad No 7, 1996
s 13C	ad No 7, 1996 am No 118, 2001
s 13D	ad No 7, 1996
s 13E	ad No 7, 1996
s 13F.....	ad No 7, 1996
Division 3	
Division 3 heading	ad No 7, 1996
s 14.....	am No 7, 1996
s 15A.....	ad No 7, 1996
s 16.....	am No 7, 1996; No 92, 1999
s 17.....	am No 7, 1996
s 17A.....	ad No 7, 1996
s 18.....	am No 7, 1996
s 18A.....	ad No 7, 1996 am No 8, 2017
s 18B	ad No 7, 1996
s 19.....	am No 7, 1996
s 19A.....	ad No 7, 1996
s 20.....	am No 7, 1996
s 21.....	am No 7, 1996; No 8, 2017
s 21A.....	ad No 7, 1996
s 22.....	am No 7, 1996
s 23.....	rep No 7, 1996
Division 4	
Division 2 heading	rep No 7, 1996
Division 4 heading	ad No 7, 1996

Endnote 4—Amendment history

Provision affected	How affected
s 24.....	am No 7, 1996
s 25.....	am No 7, 1996
s 26.....	am No 7, 1996
s 27.....	am No 7, 1996
s 28A.....	ad No 7, 1996
s 29.....	am No 7, 1996; No 92, 1999
s 30.....	am No 7, 1996
Division 5	
Division 3 heading	rep No 7, 1996
Division 5 heading	ad No 7, 1996
s 32.....	am No 179, 1991; No 7, 1996; No 8, 2017
s 32A.....	ad No 8, 2017
s 33.....	am No 7, 1996 (as am by No 92, 1999); No 8, 2017
Part 3	
s 34.....	am No 118, 2001
s 35.....	am No 118, 2001
s 35A.....	ad No 7, 1996
	am No 118, 2001
s 36.....	am No 7, 1996
s 37.....	am No 7, 1996
s 38.....	am No 118, 2001
s 38A.....	ad No 118, 2001
s 38B	ad No 118, 2001
	am No 4, 2016
Part 4	
Part 4 heading.....	rs No 7, 1996; No 118, 2001
s 39.....	rs No 7, 1996
	am No 15, 2001; No 4, 2016
s 40.....	rs No 7, 1996
	am No 15, 2001; No 4, 2016
s 40A.....	ad No 7, 1996

Endnotes

Endnote 4—Amendment history

Provision affected	How affected
	am No 15, 2001; No 4, 2016; No 8, 2017
s 40AA	ad No 118, 2001
	am No 4, 2016
s 40B	ad No 7, 1996
	am No 118, 2001; No 4, 2016
s 41	am No 7, 1996; No 118, 2001
Part 4A	
Part 4A	ad No 7, 1996
s 41A	ad No 7, 1996
	am No 15, 2001; No 4, 2016
s 41B	ad No 7, 1996
s 41C	ad No 7, 1996
Part 5	
s 42	am No 7, 1996; No 33, 2009; No 139, 2010; No 41, 2015
s 43	am No 15, 2001; No 61, 2016
s 45	am No 7, 1996; No 15, 2001; No 61, 2016
s 48	am No 15, 2001; No 61, 2016
s 52	am No 7, 1996; No 15, 2001; No 61, 2016
s 52A	ad No 7, 1996
s 53	am No 15, 2001; No 61, 2016
s 54	am No 15, 2001
	rep No 137, 2000
s 55	am No 7, 1996
	rep No 137, 2000
s 56	am No 7, 1996
Part 5A	
Part 5A	ad No 7, 1996
s 56A	ad No 7, 1996
Part 6	
s 57	am No 7, 1996
s 58A	ad No 7, 1996

Endnote 4—Amendment history

Provision affected	How affected
s 58B	ad No 7, 1996
s 58C	ad No 7, 1996
s 58D	ad No 7, 1996
s 58E	ad No 7, 1996
s 59	am No 5, 2015
s 59A	ad No 7, 1996
s 59B	ad No 7, 1996
s 60	am No 146, 1999; No 5, 2011; No 8, 2017
s 62	am No 7, 1996; No 8, 2017
Part 7	rep No 7, 1996
s 63	rep No 7, 1996
s 64	rep No 7, 1996
Schedule	
Schedule	am No 7, 1996; Statutory Rules 1999 No 102
	rep No 8, 2017