**2016**

**THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA**

**HOUSE OF REPRESENTATIVES**

# HAZARDOUS WASTE (REGULATION OF EXPORTS AND IMPORTS) AMENDMENT BILL 2016

# HAZARDOUS WASTE (REGULATION OF EXPORTS AND IMPORTS) LEVY BILL 2016

## EXPLANATORY MEMORANDUM

**(Circulated by the authority of the**

**Minister for the Environment and Energy, the Hon Josh Frydenberg MP)**

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# HAZARDOUS WASTE (REGULATION OF EXPORTS AND IMPORTS) AMENDMENT BILL 2016

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## OUTLINE

The Hazardous Waste (Regulation of Exports and Imports) Amendment Bill 2016 (the **Amendment Bill**) amends the *Hazardous Waste (Regulation of Exports and Imports) Act 1989* (the **Act**). The Hazardous Waste (Regulation of Export and Imports) Levy Bill 2016 (the **Levy Bill**) supports the amendments by introducing a levy on import, export and transit permit applications. The amendments will improve the administrative efficiency of the Act and ensure its operation is fully cost recovered.

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

The Amendment Bill and Levy Bill will bring the hazardous waste permit scheme into compliance with the Australian Government's requirements for cost recovery. The Act currently only includes a limited level of cost recovery of hazardous waste import, export and transit movement permits. The proposed amendments allow for full cost recovery of the permitting scheme. It will do this by amending the fee provisions in the Act and introducing a levy in a separate Levy Bill. It is anticipated that full cost recovery might also provide an incentive for reducing the generation of hazardous waste, as the application fees are ultimately paid for by the waste generator.

The Levy Bill will allow the Government to recover the costs of administering the permit scheme under the Act that are within the definition of recoverable costs, but cannot be linked to an individual permit applicant. The levy will be charged for permit applications made under sections 12, 13 and 13A of the Act to allow for full recovery of the costs incurred by the Department of the Environment and Energy (the **Department**) in operating the regulatory framework (such as costs associated with compliance and enforcement).

The Amendment Bill will also make a range of administrative amendments to streamline and reduce the complexity of the Act while ensuring the standard of environmental protection remains high. These amendments will also reduce regulatory costs for business. For example, one proposed amendment will allow the Department to publish hazardous waste permit applications and decision notices on the Department's website, rather than through the Commonwealth *Gazette*, which provides stakeholders the most up-to-date method of accessing relevant information.

## FINANCIAL IMPACT STATEMENT

For the 2015-16 financial year, the total costs incurred by the Department of the Environment and Energy are estimated to be $1.13 million, including both direct and indirect costs. Of these costs, around $1.03 million are considered recoverable. A Cost Recovery Implementation

Statement was prepared regarding the method of implementation of cost recovery for hazardous waste import, export and transit permitting. The Cost Recovery Implementation Statement is available on the Department's website: http://www.environment.gov.au/about-us/accountability-reporting/cost-recovery.

**REGULATORY IMPACT STATEMENT**

A Regulatory Impact Statement was not required for the measures included in the Hazardous Waste (Regulation of Exports and Imports) Amendment Bill 2016 or the Hazardous Waste (Regulation of Exports and Imports) Levy Bill 2016.

## STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

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These Bills are compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

### Overview of the Bills

The purpose of the Hazardous Waste (Regulation of Exports and Imports) Amendment Bill 2016 (the **Amendment Bill**) and the Hazardous Waste (Regulation of Exports and Imports) Levy Bill 2016 (the **Levy Bill**) is to allow for cost recovery for permitting activities under the *Hazardous Waste (Regulation of Exports and Imports) Act 1989* (the **Act**). The Amendment Bill also makes a number of administrative amendments to reduce the complexity of the Act and the regulatory burden on business.

### Human rights implications

The Bills do not engage any of the applicable rights or freedoms. The Amendment Bill allows for the imposition of a fee for service for activities under the Act. The Levy Bill introduces the new levy to recover certain recoverable costs arising from the administration of the hazardous waste permit scheme.

### Conclusion

The Bills are compatible with human rights as they do not raise any human rights issues.

**Circulated by the authority of the Minister for the Environment and Energy, the Hon Josh Frydenberg MP**

**HAZARDOUS WASTE (REGULATION OF EXPORTS AND IMPORTS) AMENDMENT BILL 2016**

## NOTES ON CLAUSES

### Clause 1 – Short title

1. The short title is the Hazardous Waste (Regulation of Exports and Imports) Amendment Act 2016.

### Clause 2 – Commencement

2. The table in this clause sets out the commencement of the provisions as follows:

    a. Sections 1 to 3 will commence on the day that the Hazardous Waste (Regulation of Exports and Imports) Amendment Bill 2016 (the **Amendment Bill**) receives Royal Assent.

    b. Schedule 1 Part 1 will commence the day after the Amendment Bill receives Royal Assent, to ensure the Act does not operate retrospectively.

    c. Schedule 1, Part 2 in relation to the levy, will apply the later of:

        i. the day after this Act receives the Royal Assent, and

        ii. 1 July 2017.

### Clause 3 – Schedule(s)

3. Clause 3 is a formal provision specifying that each Act specified in the Schedule to the Amendment Bill be amended as indicated by the Schedule.

### Schedule 1 – Amendments

#### Part 1

### Items 1 and 2 – Section 4 and note in section 4

4. Items 1 and 2 are consequential amendments to the amendment made in Item 17, which removes the English text of the Basel Convention from the Schedule to the Act.

5. Item 1 amends the definitions to remove the reference to the English text of the Basel Convention being scheduled to the Act. It also inserts a clause that the definition of the Basel Convention provides that it is the in force text as amended from time to time.

6. Item 2 adds a note to the definition of the Basel Convention to provide a website where the in force text of the Basel Convention can be viewed.

### Item 3 – Note in subsection 13A(1)

7. Item 3 is a consequential amendment to the amendment made in Item 10.

**Item 4 – Subsection 18A(2)**

8. Item 4 repeals the current subsection and substitutes it with a new subsection 18A(2), which removes the requirement for the particulars of the export application to be specified in the regulations before a decision is made to grant a Basel export permit for final disposal in exceptional circumstances.

9. This amendment will reduce duplication with other measures intended to ensure visibility of exports. Currently the regulations are required to be amended or new regulations must be introduced prior to the Minister approving a Basel export permit for final disposal. This provision is intended to ensure that particulars of an application for a Basel export permit for final disposal are clearly set out prior to the grant of a permit. However, this intent is achieved by the requirement in section 33 for particulars of applications to be published in the Commonwealth *Gazette,* noting Item 9 of this Bill which will amend section 33 to enable this information to be published on the Department's website rather than in the Commonwealth *Gazette*. The requirement for the particulars of an application to be published under section 33 will remain, thereby ensuring that the public is made aware of the details of an application for a Basel export permit for final disposal before a decision is made to grant a permit.

10. In addition, paragraph 18A(2)(a) currently has the potential to impose unnecessary delay on businesses, as a decision cannot be made to grant a Basel export permit for final disposal until the particulars of the application are specified in the regulations. Removing this requirement will reduce potential delays for industry.

**Item 5 – Paragraph 21(1)(e)**

11. Item 5 repeals paragraph 21(1)(e) to remove the requirement to specify the place of export in a Basel export permit. By removing this requirement, small changes to arrangements regarding the specific place from which an export will commence will no longer trigger the need for a formal variation of the permit, and therefore remove unnecessary burden on business.

12. The requirement to specify the precise place of export in Basel export permits has resulted in situations where a permit holder is required to apply for a variation to their permit due to changes in circumstances after the permit has been granted (for example, a change in the port from which the hazardous waste is to be shipped, due to changes in shipping routes). Item 5 will reduce administrative burden on industry by decreasing the number of instances where industry stakeholders are required to apply for formal variations when the place of export is changed.

13. The Act will continue to require sufficient detail be set out in the permits to ensure the movement of hazardous waste is approved and appropriately managed.

**Item 6 – Subsection 32(1)**

14. Item 6 removes the $8000 cap on the fee amount prescribed under the regulations for permit applications in subsection 32(1). This amendment allows the permit fees to be adjusted to reflect the costs incurred by the Department in assessing permit applications.

15. Under the Act, fees are charged for permit applications for the export, import and transit of hazardous waste. The fees are currently capped at $8000. The cap has been in place since 1991. As such, it does not reflect the current cost of administering the permitting

scheme. The Cost Recovery Impact Statement provided an estimate for the 2015-2016 financial year showing that the fees recovered approximately 5 percent of the overall costs incurred by the Department.

16. Removing the cap allows the fee to be adjusted to allow permitting activities under the Act to be fully cost recovered in the future. Fees will continue to be prescribed in regulations.

**Item 7 – At the end of section 32**

17. Item 7 amends section 32 to allow the fees to be indexed as prescribed in the regulations. Annual indexation on the application fees will be based on the Consumer Price Index (the CPI), to ensure that the fees remain up to date. Using the CPI to determine annual increases was assessed to be the most transparent and simple way to ensure the fee structure remains cost reflective.

**Item 8 – Section 33 (heading)**

18. Item 8 is a consequential amendment to the amendment made in item 9 to amend the heading.

**Item 9 - Subsection 33(1)**

19. Item 9 amends subsection 33(1) to provide that the Minister will publish on the Department's website the information that the subsection currently requires to be published in the Commonwealth *Gazette*. This will improve the speed with which notices are published, and the ease with which they can be accessed.

**Items 10 and 11 – Subsection 40A(1)**

20. Item 10 repeals subsection 40A(1), not including the note, and substitutes it with a new subsection 40A(1).

21. Under new paragraph 40A(1)(a) a person must not bring hazardous waste into Australia in the course of carrying out a transit proposal unless the person is the holder of a transit permit; or where under new paragraph 40A(1)(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 a transit permit is not needed for that proposal.

22. Item 11 inserts three new subsections after subsection 40A(1). The new subsection 40A(1A) specifies the matters that the Minister must be satisfied of before providing a notification under the new paragraph 40A(1)(b) such that a person may bring hazardous waste into Australia without a transit permit. Under the new subsection 40A(1A) the Minister must be satisfied that the transit proposal will not pose a significant risk of injury or damage to human beings or the environment, and any other matters that are prescribed by the regulations.

23. New subsection 40A(1B) provides that the Minister may also consider other relevant matters in making this decision and that these matters are not limited by the new subsection 40A(1A). New subsection 40A(1C) provides that the Minister is required to publish on the Department's website particulars of each such notification given. The publication of decisions made in relation to the OECD transit proposals increases the

transparency of the process and allows stakeholders to easily access relevant information on the Department's website.

24. Items 10 and 11 operate in conjunction with Australia's obligations under the *Revision of the Decision of the Council C(92)39/FINAL on the Control of Transboundary Movements of Wastes Destined for Recovery Operations* (the **OECD Decision**). The OECD Decision provides that, for a transit proposal that is subject to the OECD Decision, the competent authority of an exporting country and/or the exporter is required to provide written notification to the competent authorities of the countries concerned (including all transit countries and the importing country) for a decision to be made on a transit proposal. The competent authorities of the countries concerned then have a period of 30 days to object to the proposed transboundary movement of waste. Those competent authorities may either consent or object to the transboundary movement of hazardous waste. If no objection is received within the 30 days of the date of acknowledging notification, the competent authority is taken to have consented (tacit consent) to the movement. This is part of the Amber Control Procedure, established under the OECD Decision. The proposed amendments will operate with the OECD Decision procedures to ensure that a person proposing a transit proposal through Australia must have appropriate authority to do so.

25. The OECD Regulations require a person proposing the transit of hazardous waste through Australia, in connection with the movement of such wastes between two OECD countries, to hold an Australian transit permit. This requirement is additional to the export and import permitting approvals that are required by the competent authorities of the exporting and importing countries for that movement. However, as Australia is already required to provide its consent to the transit proposal as part of the Amber Control Procedure, the additional requirement for an Australian transit permit can impose an unnecessary burden and cost to business. This amendment will reduce duplicative processes for low risk OECD shipments of hazardous waste when transiting through Australia.

**Item 12 – At the end of section 40A**

26. Item 12 is a consequential amendment to the amendment made in Item 10.

**Item 13 – Section 60**

27. Item 13 is a consequential amendment to the amendment made in Item 14.

**Item 14 – At the end of section 60**

28. Item 14 amends section 60 so that the Minister may delegate any or all of the Minister's functions and powers under the Act to an Australian Public Service employee who holds, or is acting in, an Executive Level 2 position in the Department. This will enable an Executive Level 2 officer to exercise the Minister's functions and powers under the Act.

29. Item 14 also inserts subsection 60(2) which provides that in exercising the powers or functions under a delegation, the delegate is subject to the directions of the Minister. The purpose of subsection 60(2) is that the Minister may make directions. This allows the Minister to direct an Executive Level 2 employee that they may only exercise decision-making powers in relation to certain types of decisions.

30. These amendments will ensure that permit processing and decisions can be made more efficiently and effectively, and reduce any delay costs to business while ensuring that the delegation is appropriately exercised.

**Item 15 - Subsection 62(1)**

31. Item 15 is a consequential amendment to the amendment made in Item 16.

**Item 16 – Subsection 62(2)**

32. Item 16 repeals subsection 62(2) as a consequential amendment of Item 17. The subsection, which provides that regulation amendments could be used to amend the Schedule to ensure it contained the most current version of the full English text of the Basel Convention, is no longer necessary because Item 17 removes the Basel Convention from the Schedule.

**Item 17 - Schedule**

33. Item 17 repeals the Schedule so that a copy of the full English text of the Basel Convention is no longer scheduled to the Act. Duplicating the text of the Basel Convention in the Act requires amendments to the Act each time the Basel Convention is amended to ensure that the Schedule remains contemporaneous (see subsection 62(2) of the Act, which enables the regulations to amend the Schedule). This amendment significantly shortens the Act and eliminates the need for costly re-publication of the Convention as part of the Act.

**Item 18 – Application and transitional provisions**

34. Items 18 (1)-(4) clarify that the amendments in Items 4, 5, 9, and 10 do not apply retrospectively.

35. Item 18(5) provides that regulations in force under subsection 62(1) of the Act continue to be in force on or after commencement of Item 18, as if they were regulations in force under section 62 of the Act.

**Part 2**

**Item 19 – After section 32**

36. Item 19 inserts a new section 32A. Subsection 32A(1) provides that permit applications under sections 12, 13 and 13A must be accompanied by a levy. The levy is payable at the time of the application for a permit for import, export or transit of hazardous waste. The levy is imposed separately under the Hazardous Waste (Regulation of Exports and Imports) Levy Bill 2016.

37. The Levy imposed under the new subsection 32A(1) allows the Department to recover costs related to the administration of the permitting scheme under Act that are not directly linked to particular permit applications. It was determined that the cost recovery arrangements for the permitting scheme need to be updated with the imposition of a flat rate levy to ensure appropriate levels of costs are recovered. Currently, the Commonwealth Government only recovers approximately 30 percent of the costs it incurs administering the permit scheme under the Act. The imposition of a flat rate levy on all

permit types is the most equitable, transparent and simple way to recover the costs associated with the regulatory operation of the Act.

38. Subsection 32A(1) includes a note that an application under sections 12, 13 or 13A is either an application for a Basel Permit or an application for a special permit under a specified set of Article 11 regulations. This clarifies that the levy applies to applications for all export, import and transit permits, including where a permit is identified, under paragraph 13B(1)(a) as being a Basel permit, or paragraph 13B(1)(b) as a special permit under a specified set of Article 11 regulations.

39. Item 19 provides that new subsection 32A(2) that if a permit application for the movement of hazardous waste is not accompanied by the levy the application is taken not to have been received by the Minister until the levy has been paid.

**Item 20 –Application provision**

40. Item 20 provides that Item 19 applies to applications made on or after the commencement of this Part.

**HAZARDOUS WASTE (REGULATION OF EXPORTS AND IMPORTS) LEVY BILL 2016**

**NOTES ON CLAUSES**

## Part 1 - Preliminary

### Clause 1 – Short title

41. Clause 1 provides that the short title is the Hazardous Waste (Regulation of Exports and Imports) Levy Act 2016.

### Clause 2 – Commencement

42. The table in Clause 2 sets out the commencement of the provisions as follows:

    a. Sections 1 and 2 will commence on the day that the Hazardous Waste (Regulation of Exports and Imports) Levy Bill 2016 (the **Levy Bill**) receives Royal Assent.

    b. Sections 3 to 10 in relation to the levy, will apply from 1 July 2017 or if the Act commences after that date, sections 3 to 10 will apply from the day after the Levy Bill receives Royal Assent.

### Clause 3 – Act to bind the Crown

43. Clause 3 is a formal provision specifying that this Levy Bill will bind the Crown in right of each of the States, of the Australian Capital Territory and the Northern Territory. However, it does not bind the Crown in right of the Commonwealth.

### Clause 4 – Act extends to external Territories

44. Clause 4 provides that the Act extends to every external Territory.

### Clause 5 - Definitions

45. Clause 5 provides definitions of terms used in this Levy Bill.

### Clause 6 – Act does not impose tax on property of a State

46. Clause 6 provides that the Act does not impose a tax on property of any kind belonging to a State.

## Part 2 – Levy on hazardous waste permit applications

### Clause 7 – Imposition of levy

47. Clause 7 imposes a levy on hazardous waste permit applications. The introduction of the levy will allow the Government to recover the costs of activities related to administering the regulatory framework, which are within the definition of recoverable costs, but cannot be linked to an individual permit applicant.

48. A significant portion of current recoverable costs comes from activities that provide benefit to companies that export, import or transit hazardous waste but the benefits cannot be linked directly to a specific applicant. These activities include: the handling of enquiries in relation to permit applications, development of standard operating

procedures and advisory material related to the administration of the Act and compliance and enforcement activities. A flat rate levy was agreed as the appropriate method for recovering costs, as it is simple to administer and avoids disproportionate impacts on particular applicants.

49. The Cost Recovery Impact Statement provides that there is a sound in-principle case to recover the costs incurred by the Government in operating the hazardous waste permitting activities. One expected outcome of the imposition of a levy is that it may lead to improved industry efficiency. It is intended that the levy will provide an incentive to generators of hazardous waste to have regard to the cost of operating the regulatory framework in making their economic decisions, leading to a more efficient allocation of resources. In addition, the introduction of a levy ensures that the beneficiaries of the regulatory framework bear the cost of its administration, rather than general taxpayers who may not use or benefit from it. The flat rate levy was determined to be the most effective method to recover indirect costs that are reasonably attributed to users of the regulatory system.

**Clause 8 – By whom levy payable**

50. Clause 8 provides that the levy will be applied to all permit applications under the Act, including import, export and transit permits. The Amendment Bill provides that the levy will apply to hazardous waste permit applications specified under sections 12, 13 and 13A of the Act.

**Clause 9 – Amount of levy**

51. Clause 9 sets the amount of the levy. Paragraph 9(1)(a) specifies that the amount of levy charge payable in respect of the grant of a permit is $4616, or such other amount, not exceeding $6000, as is prescribed. The calculation for the $4616 levy rate is outlined in the Cost Recovery Impact Statement.

52. As the base levy amount is determined by a calculation based on estimates of future costs and permit applications, both of which may fluctuate, a different base levy amount may be prescribed from time to time. However, to ensure that industry retains a level of certainty about its potential levy liability, the levy will be capped at $6000, as it is unlikely the levy will need to increase by more than 30 percent.

53. Clause 9 provides new subsection 9(2) that the levy is subject to annual indexation, based on the Consumer Price Index, to ensure that the levy charges remain current. The indexation is to commence on 1 July 2018 for the levy components of the permit charges, and then be applied each 1 July thereafter. New subsection 9(2) provides the formula for calculating the annual indexation:

| | | |
|---|---|---|
| Amount of the levy on the day before the indexation day | X | Indexation factor for the indexation day |

54. The new subsection 9(3) provides that the amount calculated under the formula in subsection 9(2) will be rounded to the nearest dollar.

55. The new subsections 9(4)–(7) provide the definition of the index factor, the index number, the base March quarter and the reference March quarter. The index number is defined according to the index reference period for the Consumer Price Index provided in the Australian Statistician.

**Clause 10 – Regulations**

56. Clause 10 provides that the Governor-General may prescribe regulations in relation to the levy amount not exceeding $6000.

    Any base levy amount prescribed in the regulations as applicable from time to time must not exceed the $6000 cap that will be introduced in the new subsection 9(1). This will guarantee that the base levy amount at any given time will not be more than 30 percent higher than the initial base levy amount of $4616 that is also set out in the new subsection 9(1). Industry will be given notice of any proposed amendments to the regulations to change the base levy amount.