

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument No. 74, 2014**

Issued by Authority of the Minister for the Environment

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

*Hazardous Waste (Regulation of Exports and Imports) Amendment  
(Hexachlorobenzene) Regulation 2014*

The *Hazardous Waste (Regulation of Exports and Imports) Act 1989* (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 Act implements Australia's obligations under the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (the Basel Convention), an international treaty set up to control the movement of hazardous waste from one country to another.

Subsection 62(1) of the Act provides that the Governor -General may make regulations, not inconsistent with the Act, prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Subsection 18A(1) of the Act prohibits the Minister for the Environment (the Minister) from granting a Basel export permit ( a permit issued under the Act permitting the export of hazardous waste from Australia to foreign countries party to the Basel Convention) if the applicant proposes the hazardous waste will be disposed of by a method specified in the Basel Convention, such as high temperature incineration (HTI). However, subsection 18A(2) of the Act provides an exception to the prohibition in subsection 18A(1). It allows the Minister to grant a Basel export permit if certain conditions are satisfied namely, at the time of the decision to grant the permit, particulars of the export are specified in the *Hazardous Waste (Regulation of Exports and Imports) Regulations 1996* (the Principal Regulation); and the Minister is satisfied there are exceptional circumstances. Specification of these particulars by regulation is a pre-requisite to the Minister's decision-making process.

The *Hazardous Waste (Regulation of Export and Imports) Amendment (Hexachlorobenzene) Regulation 2014* (the Regulation) amends the Principal Regulations to include the particulars of a proposed export of hexachlorobenzene and other chlorinated waste which is currently stored by Orica Australia Pty Ltd (Orica) in Matraville, New South Wales to France for final disposal by HTI on land. The Act regulates exports of hazardous waste from Australia to other Parties to the Basel Convention. France is a party to the Basel Convention. Orica has elected to export the waste to France which has HTI facilities reportedly with the capability to destroy hexachlorobenzene and other chlorinated waste.

The Regulation also remove regulations 5A to 5C (inclusive) of the Principal Regulations, which detail the particulars of exports that have already taken place or did not proceed and are therefore redundant.

Given the technical nature of the Regulation stakeholders were not consulted. However, stakeholders will have the opportunity to comment (a 28 day consultation period) on the proposed export when its details are published in the Government Notice Gazette. Further, Orica has been involved in detailed discussions with the Botany community regarding the

hexachlorobenzene stored at Orica's site for many years. This consultation has informed the current export proposal.

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

The Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Details of the Regulation are set out in the **Attachment**.

The Regulation will commence on the day after registration on the Federal Register of Legislative Instruments.

Authority: Section 62(1) of the *Hazardous Waste (Regulation of Exports and Imports) Act 1989*

**Details of the *Hazardous Waste (Regulation of Exports and Imports) Amendment (Hexachlorobenzene) Regulation 2014***

**Section 1 – Name of regulation**

This section provides that the title of the Regulation is the *Hazardous Waste (Regulation of Exports and Imports) Amendment (Hexachlorobenzene) Regulation 2014* (the Regulation).

**Section 2 – Commencement**

This section provides that the Regulation will commence on the day after it is registered on the Federal Register of Legislative Instruments.

**Section 3 – Authority**

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

**Section 4 – Schedule(s)**

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

**Schedule 1 – Amendments**

**Item 1 – Regulations 5A to 5C**

This item repeals current regulations 5A to 5C (inclusive) of the *Hazardous Waste (Regulation of Exports and Imports) Regulations 1996*, and inserts regulation 5A. Currently, regulations 5A to 5C detail the particulars of previous proposed exports of hazardous waste and are therefore redundant.

Regulation 5A details, for subsection 18(2)(a) of the Act, the particulars of Orica Australia Pty Ltd's (Orica) proposed export of the hazardous waste including: the waste to be exported (hexachlorobenzene and other chlorinated waste); the amount of waste proposed for export to France (up to 132 tonnes); where the waste is current stored (Orica's facilities in Matraville, New South Wales); how the waste will be transported to France and how the waste is to be disposed of in France (high temperature incineration on land).

## **Statement of Compatibility with Human Rights**

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

### **Hazardous Waste (Regulation of Exports and Imports) Amendment (Hexachlorobenzene) Regulation 2014**

This Legislative Instrument is 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 Legislative Instrument**

The Legislative Instrument makes amendments to the *Hazardous Waste (Regulation of Exports and Imports) Regulation 1996* to include the particulars of a proposed export of, hexachlorobenzene and other chlorinated waste which is currently stored by Orica Australia Pty Ltd (Orica) in Matraville, New South Wales to France for final disposal by high temperature incineration (HTI) on land. France is a party to the Basel Convention. Orica has elected to export the waste to France which has HTI facilities reportedly with the capability to destroy hexachlorobenzene and other chlorinated waste.

The Legislative Instrument also removes the particulars of exports that have already taken place or did not proceed and are therefore, redundant.

#### **Human rights implications**

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

#### **Conclusion**

The Legislative Instruments are compatible with Australia's human rights obligations.

**The Hon Greg Hunt MP, Minister for the Environment**