

EXPLANATORY STATEMENT

Hazardous Waste (Regulation of Exports and Imports) (Fees) Amendment Regulation 2016

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) (Fees) Amendment
Regulation 2016*

The *Hazardous Waste (Regulation of Exports and Imports) Act 1989* (the Act) regulates 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 humans and the environment, both within and outside Australia, are protected from the harmful effects of the waste.

The Act gives effect to the *Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal* (the **Basel Convention**) and agreements and arrangements of the kind mentioned in Article 11 of that Convention.

Section 62 of the Act provides 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 by carrying out or giving effect to the Act.

Section 32 of the Act provides that the regulations may prescribe fees, not exceeding \$8000, to be paid in relation to applications and notices given to the Minister under Part 2 of the Act or under a set of Article 11 regulations. These regulations are the *Hazardous Waste (Regulation of Exports and Imports) (Fees) Regulations 1990* (the Principal Regulation).

The Department incurs costs for assessing permit applications and for administering the Act and regulations. Under current arrangements, approximately 5 per cent of the Department's cost in administering the permit scheme is recovered (\$48,000 each year). This leaves a shortfall of around \$1 million each year.

The *Hazardous Waste (Regulation of Exports and Imports) (Fees) Amendment Regulation 2016* (the Regulation) implements the first phase of changes to the cost recovery arrangements under the Act. This first phase will achieve approximately 33 per cent cost recovery of recoverable costs, by increasing the amount of fees for all permits, subject to the cap provided for under section 32 of the Act. The Regulation simplifies the fee structure by removing and replacing the existing fees with new fees, noting that fees for permit renewals, notices to transit countries and an import permit with waste destined for an approved facility will not be replaced. Subsequent phases will amend the Act's cost recovery arrangements to bring the charging structure into line with the Australian Government Charging Framework to recover all recoverable costs.

Details of the Regulation are set out in the Attachment. Affected stakeholders have been consulted in the development of these cost recovery reforms, including regular permit applicants. The draft Cost Recovery Implementation Statement was circulated to stakeholders on two occasions. The comments received informed the development of the new charging arrangements.

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

The Regulation commences on 1 July 2016.

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) (Fees) Amendment Regulation 2016

Overview of the Legislative Instrument

The *Hazardous Waste (Regulation of Exports and Imports) (Fees) Amendment Regulation 2016* (the Regulation) amends the *Hazardous Waste (Regulation of Exports and Imports) (Fees) Regulations 1990* to implement the first phase of cost recovery reforms. This first phase will achieve approximately 33 per cent cost recovery of recoverable costs, by increasing the amount of fees for all permits, subject to the cap provided for under section 32 of the Act. The Regulation also simplifies the fee structure.

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 Regulation is compatible with Australia's human rights obligations.

The Hon Greg Hunt MP
Minister for the Environment

ATTACHMENT**Details of the *Hazardous Waste (Regulation of Exports and Imports) (Fees) Amendment Regulation 2016*****Section 1 – Name of Regulation**

This section provides that the title of the Regulation is the *Hazardous Waste (Regulation of Exports and Imports) (Fees) Amendment Regulation 2016* (the Regulation).

Section 2 – Commencement

This section provides that the Regulation commences on 1 July 2016.

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 the Regulation has effect according to its terms.

Schedule 1 – Amendments**Item 1 – After Regulation 1**

This item inserts a new regulation 1A into the *Hazardous Waste (Regulation of Exports and Imports) (Fees) Regulations 1999* (the Principal Regulations) to insert an authority provision in the Principal Regulations, consistent with current drafting practice. This provision provides that the regulations are made under the *Hazardous Waste (Regulation of Exports and Imports) Act 1989*.

Items 2 and 3 – Regulation 2

Item 2 inserts a new note to regulation 2 of the Principal Regulations. The new note updates the interpretation provision of the Principal Regulations in accordance with the new fee structure proposed by the Regulation (see Item 6). The note provides that a number of expressions used in the Principal Regulations are defined in the Act, including Basel Convention, export permit, import permit and transit permit. Item 3 repeals the existing note to regulation 2.

Item 4 – Regulation 3

This item repeals regulation 3 and substitutes it with a new regulation 3 and a new regulation 4.

The new regulation 3 provides that, for section 32 of the Act, the prescribed fees for applications would be specified in Schedule 1 of the Principal Regulations. The amendment involves no substantive change, and makes the regulation consistent with current drafting practice.

The new regulation 4 is an application provision and clarifies that the amendments made by the Regulation only apply in relation to an application for a permit, or for a variation of a permit, made on or after 1 July 2016. To avoid doubt, an application will be ‘made’ when it is ‘submitted’ by the applicant to the Minister.

Item 5 – Schedule

This item repeals the Schedule to the Principal Regulations and substitutes it with a new Schedule. The new Schedule prescribes the new fees for an application for a permit as follows:

- Item 1 of the table provides that the application fee for the grant of a transit permit is \$2 484.
- Item 2 of the table provides that the application fee for the grant of an import permit is \$3 726.
- Item 3 of the table provides that the application fee for the grant of an export permit (for operations which may lead to resource recovery, recycling, reclamation, direct re-use or alternative uses (within the meaning of the Basel Convention)) is \$7 451.
- Item 4 of the table provides that the application fee for the grant of an export permit (for operations other than those which may lead to resource recovery, recycling, reclamation, direct re-use or alternative uses (within the meaning of the Basel Convention)) is \$8 000.
- Item 5 of the table provides that the fee for application for variation of a transit permit is \$497.
- Item 6 of the table provides that the fee for the application for variation of an import permit is \$745.
- Item 7 of the table provides that the fee for the application for variation of an export permit (for operations which may lead to resource recovery, recycling, reclamation, direct re-use or alternative uses (within the meaning of the Basel Convention)) is \$2 980.
- Item 8 of the table provides that the fee for the application for variation of an export permit (for operations other than those which may lead to resource recovery, recycling, reclamation, direct re-use or alternative uses (within the meaning of the Basel Convention)) is \$8 000.