

EXPLANATORY STATEMENT

Select Legislative Instrument 2016 No.

Issued by Authority of the Minister for the Environment and Energy

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

Hazardous Waste (Regulation of Exports and Imports) Amendment (Hexachlorobenzene) 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 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 and Energy (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 Section A of Annex IV of 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 2016* (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 Finland for final disposal by HTI on land. The Act regulates exports of hazardous waste from Australia to other Parties to the Basel Convention. Finland is a party to the Basel Convention. Orica has elected to export the waste to Finland which has HTI facilities with the capability to destroy hexachlorobenzene.

The Regulation also remove regulation 5A of the Principal Regulations, which details the particulars of an export that did not proceed and is therefore redundant.

Given the technical nature of the Regulation stakeholders were not consulted. However, stakeholders have had the opportunity to comment (a 28 day consultation period) on the proposed export since the details are published in the Government Notice Gazette. Further, Orica has been involved in detailed discussions with the Matraville 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 2016*

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 2016* (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 – Regulation 5A

This item repeals current regulation 5A) of the *Hazardous Waste (Regulation of Exports and Imports) Regulations 1996*, and inserts the proposed regulation 5A. Currently, regulation 5A details the particulars of a previous proposed export of hazardous waste which did not proceed and is therefore redundant.

The proposed 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 that contains hexachlorobenzene); the amount of waste proposed for export to Finland (up to 135 tonnes); where the waste is currently stored (Orica's facilities in Matraville, New South Wales); how the waste will be transported to Finland and how the waste is to be disposed of in Finland (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 2016 (No.)

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 that contains hexachlorobenzene which is currently stored by Orica Australia Pty Ltd (Orica) in Matraville, New South Wales to Finland for final disposal by high temperature incineration (HTI) on land. Finland is a party to the Basel Convention. Orica has elected to export the waste to Finland 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 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 Josh Frydenberg MP, Minister for the Environment and Energy