

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

(As read a first time)

**HAZARDOUS WASTE (REGULATION OF EXPORTS AND
IMPORTS) BILL 1989**

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1987-88-89

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

Presented and read a first time, 6 September 1989

*(Minister representing the Minister for the Arts, Sport, the Environment,
Tourism and Territories)*

A BILL

FOR

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

BE IT ENACTED by the Queen, and the Senate and the House of
Representatives of the Commonwealth of Australia, as follows:

PART 1—PRELIMINARY

Division 1—Introductory

5 **Short title**

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

Commencement

10 2. (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.

Object

3. The object of this Act is to regulate the export and import of hazardous waste to ensure that exported or imported hazardous waste is disposed of safely 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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Division 2—Interpretation

Interpretation—defined terms

4. In this Act, unless the contrary intention appears:

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

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“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 29 in relation to the application—the day on which the notice is complied with;

15

“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;

20

“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;

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30

“Australian vessel” means a vessel:

- (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;

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“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;

40

“**Basel Convention**” means the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal;

“**Court**” means the Federal Court of Australia;

5 “**dispose of safely**”, in relation to hazardous waste, has the meaning given by section 5;

“**export**” means export from Australia;

“**export permit**” means a permit under section 17 permitting the export of hazardous waste;

10 “**export proposal**” means a proposal to export hazardous waste and to dispose of it safely outside Australia;

“**hazardous waste**” means:

(a) waste that has any of the characteristics mentioned in Annex III to the Basel Convention (a copy of the English text of which annex is set out in the Schedule); or

15 (b) household waste; or

(c) residues arising from the incineration of household waste;

“**holder**”, in relation to a statutory permit, means the person to whom the permit was granted;

20 “**household waste**” does not include anything that is intended, by the person who has possession of it, to be re-used, regenerated or recycled;

“**identity card**” means an identity card issued under section 44;

“**import**” means import into Australia;

25 “**import permit**” means a permit under section 17 permitting the import of hazardous waste;

“**import proposal**” means a proposal to import hazardous waste and:

(a) to dispose of it safely in Australia; or

(b) to export it (whether or not in the same form as when imported) and dispose of it safely outside Australia;

30 “**inspector**” means a person appointed under section 43 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);

35 “**officer of Customs**” has the same meaning as in the *Customs Act 1901*;

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

40 “**original import proposal**”, in relation to a variation application relating to an import permit, means the import 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 statutory permit;

“permit condition” means a condition specified in:

- (a) a statutory permit under section 23; or
- (b) a notice under section 27 varying a statutory permit;

“platform” includes any structure at sea (whether or not fixed), but does not include a vessel; 5

“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 10
- (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 15
- (c) an Australian aircraft; or
- (d) an Australian platform; or
- (e) an Australian vessel;

“statutory permit” means an export permit or import permit;

“this Act” includes the regulations; 20

“variation”, in relation to a statutory permit, includes a variation of the permit conditions imposed on the permit;

“variation application” means an application under section 28 for the variation of a statutory permit;

“varied export proposal”, in relation to a variation application relating to an export permit, means the original export proposal, as proposed to be affected by the proposed variation; 25

“varied import proposal”, in relation to a variation application relating to an import permit, means the original import proposal, as proposed to be affected by the proposed variation; 30

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

“waste” includes anything that has been rejected as worthless by a person who has or had possession of it (whether or not someone else may regard it as having some value); 35

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

Meaning of “dispose of safely” in relation to hazardous waste

5. (1) For the purposes of this Act, hazardous waste is to be taken to have been disposed of safely only if: 40

- (a) it has been dealt with in such a way as to render it safe; and

(b) any hazardous waste produced in the course of that dealing has also been rendered safe.

(2) For the purposes of subsection (1), hazardous waste is to be taken to have been rendered safe only if it no longer poses a significant risk of injury or damage to human beings or the environment.

When action is begun etc. under Environment Protection (Impact of Proposals) Act in relation to import or export proposals

6. For the purposes of this Act:

(a) action is begun under the *Environment Protection (Impact of Proposals) Act 1974* in relation to an import proposal or export proposal, or a varied import proposal or varied export proposal, when the Minister administering that Act:

(i) under procedures approved under section 6 of that Act, directs the submission to that Minister of an environmental impact statement, or a public environment report, in relation to the proposal or varied proposal, or any aspect of it; or

(ii) under section 11 of that Act, directs that an inquiry be conducted in relation to the proposal or varied proposal, or any aspect of it; and

(b) the procedures required by that Act because of that action are completed when procedures under that Act in connection with the environmental impact statement, public environment report or inquiry are completed.

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

7. For the purposes of this Act, if:

(a) under subsection 23 (2) or 27 (2), the Minister specifies the day on or before which a permit condition 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.

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

8. In this Act:

(a) a reference to an offence against this Act includes a reference to an offence against section 6, 7 or 7A, or subsection 86 (1), of the *Crimes Act 1914* 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, 7 or 7A, or subsection 86 (1), of the *Crimes Act 1914* that relates to an offence against that provision.

Division 3—Operation of Act

Extension of Act to external Territories

9. This Act extends to every external Territory.

Act binds Crown

10. (1) This Act binds the Crown in right of the Commonwealth, of each of the States, of the Australian Capital Territory, of the Northern Territory and of Norfolk Island.

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(2) Nothing in this Act permits the Crown to be prosecuted for an offence.

Relationship between Act and other Commonwealth laws

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11. This Act is in addition to, and not in derogation of or substitution for, the *Customs Act 1901*, the *Environment Protection (Impact of Proposals) Act 1974* or any other law of the Commonwealth, whether enacted before or after the commencement of this Act.

PART 2—IMPORT PERMITS AND EXPORT PERMITS

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Division 1—Applications for, and granting of, permits

Applications for import permits

12. (1) A person who:

- (a) wants to import hazardous waste; and
- (b) has an import proposal in relation to the waste;

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may apply to the Minister for a permit to import 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 proposal as is required by the form.

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Applications for export permits

13. (1) A person who:

- (a) wants to export hazardous waste; and
- (b) has an export proposal in relation to the waste;

may apply to the Minister for a permit to export the waste.

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(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 proposal as is required by the form.

Variation of applications

14. (1) An applicant for a statutory 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.

5 (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.

10 (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**

15. (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.

20 (2) The request must be made by written notice given to the applicant not later than 60 days after the Minister receives the application.

Time within which applications are to be decided

16. (1) Subject to this section, where the Minister receives a permit application, the Minister must decide whether to grant the statutory permit within 60 days after the application day.

25 (2) If 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.

(3) The extension must be made by written notice given to the applicant within 60 days after the application day.

30 (4) If the Minister extends the period under subsection (2), the Minister must decide whether to grant the permit within the extended period.

(5) If, before the end of the period of 60 days specified in subsection (1), or that period as extended under subsection (2):

35 (a) action is begun under the *Environment Protection (Impact of Proposals) Act 1974* in relation to the import proposal or export proposal; and

(b) the procedures required by that Act because of that action have not been completed;

40 the Minister must decide whether to grant the permit within 30 days after the completion of those procedures.

(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. 5

(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. 10

(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. 15

Grant of permits

17. (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 proposal or export proposal: 20

(i) would result in the hazardous waste being disposed of safely; and

(ii) would not otherwise pose a significant risk of injury or damage to human beings or the environment; and

(b) if the permit sought is an export permit—that the hazardous waste concerned will: 25

(i) be allowed to enter the country to which the waste is proposed to be exported; and

(ii) be allowed to be transported through any country (including the territorial sea of a country) through which the waste is proposed to be transported; and 30

(c) that the applicant is a fit and proper person to be granted a statutory permit; and

(d) that the applicant has appropriate insurance.

(2) Even if the Minister is satisfied as mentioned in subsection (1), the Minister may decide under subsection (3), (4) or (5) not to grant the permit. 35

(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 proposal or export proposal.

(5) The Minister may decide not to grant the permit if the permit sought is an export permit and the Minister thinks that:

- (a) the hazardous waste could be disposed of by using a facility in Australia; 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 proposal.

(6) The Minister must not grant an export permit authorising the export of hazardous waste to Antarctica.

Determination of whether applicant is fit and proper person

18. Without limiting the matters that the Minister may take into account in determining whether an applicant for a statutory permit is a fit and proper person to be granted a statutory permit, the Minister may have regard to:

- (a) any conviction of the applicant for an offence against this Act committed within 10 years before the Minister received the application; and
- (b) any conviction of the applicant for an offence against another law of the Commonwealth or of a State or Territory that is punishable by imprisonment for 12 months or longer, being an offence committed within 10 years before the Minister received the application; and
- (c) whether the applicant is an undischarged bankrupt; and
- (d) any false or misleading statement made by the applicant in, or in relation to, an application or notice made or given by the applicant under this Act, and whether the applicant knew the statement was false or misleading; and
- (e) the applicant's previous experience and record in relation to managing and dealing with hazardous waste.

Determination of whether applicant has appropriate insurance

19. An applicant for a statutory permit has appropriate insurance for the purposes of section 17 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.

Applicants to be notified of decisions

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20. (1) If the Minister decides to grant a statutory 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 statutory 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.

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(3) A contravention of this section in relation to a decision does not affect the validity of the decision.

Matters to be specified in import permits

21. (1) An import permit must specify particulars of:

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- (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 disposed of safely.

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(2) The particulars specified in an import permit of the way in which the hazardous waste is to be disposed of safely may include particulars of the facility to be used in the disposal, or any process involved in the disposal.

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(3) An import permit may also include conditions under section 23 and such other information as the Minister considers appropriate.

Matters to be specified in export permits

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22. (1) An 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
- (e) the place from which the hazardous waste is to be exported; and
- (f) the way in which the hazardous waste is to be disposed of safely.

35

(2) The particulars specified in an export permit of the way in which the hazardous waste is to be disposed of safely may include particulars of the facility to be used in the disposal, or any process involved in the disposal.

5 (3) An export permit may also include conditions under section 23 and such other information as the Minister considers appropriate.

Permits may be granted subject to conditions

23. (1) The Minister may grant a statutory permit subject to conditions specified in the permit.

10 (2) The Minister may specify in the statutory permit the day on or before which the holder of the permit is to comply with a condition.

15 (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.

Import of hazardous waste before disposal outside Australia

20 24. (1) This section applies where an application for an import permit sets out a proposal to import hazardous waste and to export it (whether or not in the same form as when imported) and dispose of it safely outside Australia.

(2) The Minister may, at the applicant's request but not otherwise, treat the application as being also an application for an export permit in relation to the export of the hazardous waste in accordance with the import proposal.

Division 2—Revocation, surrender and variation of permits

25 **Revocation of permits**

25. (1) Subject to subsection (3), the Minister may, by written notice given to a person who is the holder of a statutory permit, revoke the permit if:

30 (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

35 (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 5
 - (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. 10
- (2) The Minister may not revoke the permit after the import or export of the hazardous waste to which the permit relates.
- (3) The revocation of the permit takes effect on the day on which the notice revoking the permit is given to the person. 15
- (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. 20
- (5) In this section:
- “application or notice concerning the permit”** means:
- (a) the application for the permit; or 25
 - (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.

Surrender of permits 30

26. (1) Subject to subsection (2), the holder of a statutory permit may, at any time, surrender the permit by:

- (a) returning the permit to the Minister; and
- (b) giving the Minister written notice that the permit is surrendered.

(2) The permit may not be surrendered after the import or export of the hazardous waste to which the permit relates. 35

(3) The surrender of the permit takes effect on the day on which subsection (1) is satisfied.

Variation of permits

27. (1) Subject to subsection (5), the Minister may, by written notice given to a person who is the holder of a statutory permit, vary the permit.

5 (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.

10 (3) Subsection 23 (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.

15 (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 (which may be a day before or after the hazardous waste concerned has been imported or exported, as the case may be).

(5) The Minister must not vary the permit in a particular way unless:

- 20
- (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 31 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:

- 25
- (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
 - 35 (ii) providing correct information to the Minister if the person had, or could reasonably have obtained, the correct information;
 - (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
 - 40 (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.

(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.

5

(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.

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(9) In this section:

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“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.

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Applications for variations of permits

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

(2) The application must:

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- (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.

Further information may be requested

29. (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.

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(2) The request must be made by written notice given to the applicant not later than 60 days after the Minister receives the application.

Time within which applications are to be decided

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30. (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 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.

5 (3) The extension must be made by written notice given to the applicant within 60 days after the application day.

(4) If the Minister extends the period under subsection (2), the Minister must decide whether to make the variation within the extended period.

(5) If, before the end of the period of 60 days specified in subsection (1), or that period as extended under subsection (2):

10 (a) action is begun under the *Environment Protection (Impact of Proposals) Act 1974* in relation to the varied import proposal or varied export proposal; and

(b) the procedures required by that Act because of that action have not been completed;

15 the Minister must decide whether to make the variation within 30 days after the completion of those procedures.

(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.

20 (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.

(8) If the Minister has not decided whether to make the variation:

25 (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.

30 (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.

Making of variations

35 31. 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 statutory permit, as proposed to be varied, the Minister would decide to grant the permit.

Applicants to be notified of decisions

40 32. (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. 5

Division 3—Miscellaneous

Applications and notices to be accompanied by fees

33. (1) The regulations may prescribe fees, not exceeding \$4,000, to be paid in relation to applications and notices given to the Minister under this Part. 10

(2) An application or notice given to the Minister under this Part must be accompanied by the prescribed fee (if any).

(3) If an application or notice given to the Minister under this Part 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. 15

Publication of certain particulars in *Gazette*

34. (1) Subject to subsection (2), the Minister must cause to be published in the *Gazette* particulars of: 20

- (a) each application and notice received by the Minister under this Part; and
- (b) each statutory permit granted; and
- (c) each decision not to grant a statutory permit; and
- (d) each revocation of a statutory permit; and 25
- (e) each surrender of a statutory permit; and
- (f) each variation of a statutory permit.

(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: 30

- (a) endanger public safety; or
- (b) cause damage to:
 - (i) the security of Australia; or
 - (ii) the defence of Australia; or 35
 - (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

Orders where section 40 contravened

5 **35. (1)** If a person imports 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.

(2) If:

- 10 (a) a person contravenes subsection 40 (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.

15 (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.

20 **Orders where section 41 contravened**

36. (1) If a person exports hazardous waste in contravention of subsection 41 (1), the Minister may, in writing, order the person to deal with the waste in a specified way.

(2) If:

- 25 (a) a person contravenes subsection 41 (2) in relation to hazardous waste; and
- (b) the Minister is satisfied that:
- 30 (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.

35 (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.

Orders to remedy or mitigate damage

37. (1) If:

- (a) a person has contravened section 40 or 41 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;

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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.

10

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

38. (1) If:

- (a) the Minister makes an order under section 35, 36 or 37 requiring a person to do something; and
- (b) the person does not do the thing as and when required by the order;

15

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.

20

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

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39. (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 35—the order;

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the person may apply to the Minister, in writing, for an order authorising the person to import the waste.

35

(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.

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(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.

**PART 4—REGULATION OF IMPORT AND EXPORT OF
HAZARDOUS WASTE**

Regulation of import of hazardous waste

40. (1) A person must not, knowingly or recklessly, import hazardous waste unless:

- (a) the person is the holder of an import permit authorising the person to import the waste; or
- (b) the import is authorised by an order under section 39; or
- (c) the import has been ordered under section 36.

Penalty: Imprisonment for 5 years.

(2) The holder of an import permit must not, knowingly or recklessly:

- (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.

Penalty: Imprisonment for 5 years.

(3) A person authorised by an order under section 39 to import hazardous waste must not, knowingly or recklessly, import or deal with the waste except in accordance with the order.

Penalty: Imprisonment for 5 years.

Regulation of export of hazardous waste

41. (1) A person must not, knowingly or recklessly, export hazardous waste unless:

- (a) the person is the holder of an export permit authorising the person to export the waste; or
- (b) the export has been ordered under section 35.

Penalty: Imprisonment for 5 years.

(2) The holder of an export permit must not, knowingly or recklessly:

- (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.

Penalty: Imprisonment for 5 years.

Injunctions

42. (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 a provision of this Part, 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. 5

(2) Where:

- (a)** a person has refused or failed, is refusing or failing, or is proposing to refuse or fail, to do anything; and 10
- (b)** the refusal or failure was, is, or would be, an offence against a provision of this Part;

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). 15

(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: 20

- (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 25
- (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: 30

- (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 35
- (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. 40

(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 5—ADMINISTRATION

Appointment of inspectors

43. (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.

10 (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:

- 15 (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;
- 20 (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.

(4) In subsection (3):

25 “Minister”, in relation to Norfolk Island, means a member of the Executive Council of Norfolk Island.

Identity cards

44. (1) The Minister may cause an identity card to be issued to an inspector.

(2) The identity card must:

- 30 (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: \$100.

35

Proof of authority

45. (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 46, 50, 51 or 52.

Power to control movement of vessels and aircraft etc.

46. (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 or exported.

(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;
- (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, without reasonable excuse, refuse or fail to comply with a requirement made under this section.

Penalty: \$6,000.

(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.

Entry and search of searchable places—monitoring compliance

5 47. (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 49 (1).

10 (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 50 authorises the entry or boarding, or the exercise of the power.

15 (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.

20 **Entry and search of searchable places—evidence of offences**

 48. (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:

- 25 (a) enter or board the searchable place; and
- (b) exercise the powers set out in subsection 49 (1).

 (2) If the inspector enters or boards the searchable place and finds the evidence, the following provisions have effect:

- 30 (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;

- 35 (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
- 40 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 51 that was issued in relation to the evidence authorises the entry or boarding, or the exercise of the power. 5
- (4) If, in the course of searching the searchable place under subsection (1) pursuant to a warrant under section 51, the inspector:
- (a) finds a thing that the inspector believes, on reasonable grounds to be: 10
 - (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 15
 - (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; 20
- 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. 25

General powers of inspectors in relation to searchable places

49. (1) The powers an inspector may exercise under paragraph 47 (1) (b) or 48 (1) (b) in relation to a searchable place are as follows: 30
- (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; 35
 - (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; 40

(e) if the inspector was authorised to enter or board the place by a warrant under section 50 or 51—to require any person in or on the place to:

(i) answer any questions put by the inspector; and

5 (ii) produce any books, records or documents requested by the inspector;

(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.

10 (2) Subsection (1) has effect subject to subsections 47 (2) and 48 (3).

(3) A person must not, without reasonable excuse, refuse or fail to comply with a requirement made under paragraph (1) (d) or (e).

Penalty: \$3,000.

15 (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.

Monitoring warrants

50. (1) An inspector may apply to a magistrate for a warrant under this section in relation to a particular searchable place.

20 (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
25 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.

30 (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 49 (1); and

35 (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.

Offence related warrants

51. (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. 5

(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. 10

(4) The warrant must:

(a) state the name of the inspector; and 15

(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 49 (1); and

(iii) to seize the evidence; and 20

(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 one month 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. 25

Offence related warrants may be granted by telephone

52. (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 51.

(2) Before applying for the warrant, the inspector must prepare an information of a kind mentioned in subsection 51 (2) that sets out the grounds on which the issue of the warrant is sought. 30

(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: 35

(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 51, complete and sign such warrant as the magistrate 40

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 51.

(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.

Production of permits and orders

53. (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 statutory permit authorising the import or export; or
- (b) an order under section 35, 36 or 39 authorising or requiring the import or export.

(3) The suspected person must not, without reasonable excuse, refuse or fail to comply with the requirement.

Penalty: \$3,000.

Assistance of inspectors

54. (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, without reasonable excuse, refuse or fail to comply with the requirement.

Penalty: \$3,000.

Obstruction of inspectors etc.

55. A person must not, without reasonable excuse, obstruct, hinder or resist an inspector in the exercise of powers under this Act.

Penalty: \$3,000.

False statements

56. (1) A person must not, in or in relation to an application or notice under Part 2, knowingly or recklessly:

- (a) make a statement that is false or misleading in a material particular; or
- (b) give to the Minister a document containing information that is false or misleading in a material particular without:
 - (i) indicating to the Minister that the document is false or misleading and the respect in which the document is false or misleading; and
 - (ii) providing correct information to the Minister if the person has, or can reasonably obtain, the correct information.

Penalty: \$6,000.

(2) A person must not, otherwise than in or in relation to an application or notice under Part 2, knowingly or recklessly:

(a) make to an inspector doing duty in relation to this Act a statement that is false or misleading in a material particular; or

(b) give to an inspector doing duty in relation to this Act a document containing information that is false or misleading in a material particular without:

(i) indicating to the inspector that the document is false or misleading and the respect in which the document is false or misleading; and

(ii) providing correct information to the inspector if the person is in possession of, or can reasonably obtain, the correct information.

Penalty: \$6,000.

Part does not limit power to impose permit conditions

57. This Part is not to be taken to limit the Minister's power to impose permit conditions on a statutory 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 6—MISCELLANEOUS

Review of decisions

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

(a) decisions whether to grant statutory permits;

(b) decisions to impose permit conditions on a statutory permit;

(c) decisions to require permit conditions to be complied with on or before particular days;

(d) decisions whether to vary statutory permits;

(e) decisions to revoke statutory permits;

(f) decisions under sections 35, 36 and 37 to order people to do things;

(g) decisions whether to make orders under section 39.

Statement to accompany notification of decision

59. (1) Where a decision of a kind referred to in section 58 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. 5

Conduct of directors, servants and agents

60. (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: 10

- (a) that the conduct was engaged in by a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority; and
- (b) that the director, servant or agent had the state of mind.

(2) Any conduct engaged in on behalf of a body corporate by a director, servant 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. 15
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(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 a servant or agent of the person within the scope of his or her actual or apparent authority; and 25
- (b) that the servant or agent had the state of mind.

(4) Any conduct engaged in on behalf of a person other than a body corporate by a servant 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. 30

(5) Where:

- (a) a person other than a body corporate is convicted of an offence; and 35
- (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

5 (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.

10 (8) A reference in this section to engaging in conduct includes a reference to failing or refusing to engage in conduct.

Delegation by Minister

61. The Minister may, by signed writing, delegate any or all of the Minister's functions and powers under this Act to:

(a) the Secretary to the Department; or

15 (b) a person holding or performing the duties of a Senior Executive Service office (within the meaning of the *Public Service Act 1922*) in the Department.

Annual report

62. (1) The Minister must:

20 (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.

25 (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

30 (b) in any other case—the period were a financial year.

Regulations

63. (1) The Governor-General may make regulations, not inconsistent with this Act, prescribing matters:

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

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

(2) The regulations may amend the Schedule for the purpose of ensuring that the Schedule correctly sets out the English text of Annex III to the Basel Convention as in force from time to time.

PART 7—AMENDMENT OF THE CUSTOMS ACT 1901

Principal Act

64. In this Part, “Principal Act” means the *Customs Act 1901*’.

Forfeited goods

65. Section 229 of the Principal Act is amended by adding at the end the following subsection: 5

“(3) In spite of subsection (1), goods are not forfeited to the Crown merely because they are imported or exported in contravention of the *Hazardous Waste (Regulation of Exports and Imports) Act 1989*.”.

SCHEDULE

Section 4

**ANNEX III TO THE BASEL CONVENTION—
LIST OF HAZARDOUS CHARACTERISTICS**

UN Class* Code Characteristics

- 1 H1 Explosive
An explosive substance or waste is a solid or liquid substance or waste (or mixture of substances or wastes) which is in itself capable by chemical reaction of producing gas at such a temperature and pressure and at such a speed as to cause damage to the surroundings.
- 3 H3 Flammable liquids
The word "flammable" has the same meaning as "inflammable". Flammable liquids are liquids, or mixtures of liquids, or liquids containing solids in solution or suspension (for example, paints, varnishes, lacquers, etc., but not including substances or wastes otherwise classified on account of their dangerous characteristics) which give off a flammable vapour at temperatures of not more than 60.5°C, closed-cup test, or not more than 65.6°C, open-cup test. (Since the results of open-cup tests and of closed-cup tests are not strictly comparable and even individual results by the same test are often variable, regulations varying from the above figures to make allowance for such differences would be within the spirit of this definition.)
- 4.1 H4.1 Flammable solids
Solids, or waste solids, other than those classed as explosives, which under conditions encountered in transport are readily combustible, or may cause or contribute to fire through friction.
- 4.2 H4.2 Substances or wastes liable to spontaneous combustion
Substances or wastes which are liable to spontaneous heating under normal conditions encountered in transport, or to heating up on contact with air, and being then liable to catch fire.
- 4.3 H4.3 Substances or wastes which, in contact with water emit flammable gases
Substances or wastes which, by interaction with water, are liable to become spontaneously flammable or to give off flammable gases in dangerous quantities.
- 5.1 H5.1 Oxidizing
Substances or wastes which, while in themselves not necessarily combustible, may, generally by yielding oxygen cause, or contribute to, the combustion of other materials.
- 5.2 H5.2 Organic Peroxides
Organic substances or wastes which contain the bivalent-O-O-structure are thermally unstable substances which may undergo exothermic self-accelerating decomposition.
- 6.1 H6.1 Poisonous (Acute)
Substances or wastes liable either to cause death or serious injury or to harm human health if swallowed or inhaled or by skin contact.
- 6.2 H6.2 Infectious substances
Substances or wastes containing viable micro organisms or their toxins which are known or suspected to cause disease in animals or humans.

SCHEDULE—continued

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|---|-----|---|
| 8 | H8 | Corrosives
Substances or wastes which, by chemical action, will cause severe damage when in contact with living tissue, or, in the case of leakage, will materially damage, or even destroy, other goods or the means of transport; they may also cause other hazards. |
| 9 | H10 | Liberation of toxic gases in contact with air or water
Substances or wastes which, by interaction with air or water, are liable to give off toxic gases in dangerous quantities. |
| 9 | H11 | Toxic (Delayed or chronic)
Substances or wastes which, if they are inhaled or ingested or if they penetrate the skin, may involve delayed or chronic effects, including carcinogenicity. |
| 9 | H12 | Ecotoxic
Substances or wastes which if released present or may present immediate or delayed adverse impacts to the environment by means of bioaccumulation and/or toxic effects upon biotic systems. |
| 9 | H13 | Capable, by any means, after disposal, of yielding another material, e.g., leachate, which possesses any of the characteristics listed above. |

Tests

The potential hazards posed by certain types of wastes are not yet fully documented; tests to define quantitatively these hazards do not exist. Further research is necessary in order to develop means to characterise potential hazards posed to man and/or the environment by these wastes. Standardized tests have been derived with respect to pure substances and materials. Many countries have developed national tests which can be applied to materials listed in Annex I, in order to decide if these materials exhibit any of the characteristics listed in this Annex.

* Corresponds to the hazard classification system included in the United Nations Recommendations on the Transport of Dangerous Goods (ST/SG/AC.10/1/Rev.5, United Nations, New York, 1988).

NOTE

1. No. 6, 1901, as amended. For previous amendments, see No. 21, 1906; Nos. 9 and 36, 1910; No. 19, 1914; No. 10, 1916; No. 41, 1920; No. 19, 1922; No. 12, 1923; No. 22, 1925; No. 6, 1930; Nos. 7 and 45, 1934; No. 7, 1935; No. 85, 1936; No. 54, 1947; No. 45, 1949; Nos. 56 and 80, 1950; No. 56, 1951; No. 108, 1952; No. 47, 1953; No. 66, 1954; No. 37, 1957; No. 54, 1959; Nos. 42 and 111, 1960; No. 48, 1963; Nos. 29, 82 and 133, 1965; No. 28, 1966; No. 54, 1967; Nos. 14 and 104, 1968; Nos. 12 and 134, 1971; Nos. 162 and 216, 1973; Nos. 28 and 120, 1974; Nos. 56, 77 and 107, 1975; Nos. 41, 91 and 174, 1976; No. 154, 1977; Nos. 36 and 183, 1978; Nos. 19, 92, 116, 155, 177 and 180, 1979; Nos. 13, 15, 110 and 171, 1980; Nos. 45, 61, 64, 67, 152 and 157, 1981; Nos. 48, 51, 80, 81, 108, 115 and 137, 1982; Nos. 19, 39 and 101, 1983; Nos. 2, 22, 63, 72 and 165, 1984; Nos. 39, 40 and 175, 1985; Nos. 10, 34 and 149, 1986; Nos. 51, 76, 81, 104 and 141, 1987; Nos. 63, 66, 76, 99, 120 and 121, 1988; and Nos. 23, 24, 78 and 108, 1989.



