

1995

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

**HAZARDOUS WASTE (REGULATION OF EXPORTS AND IMPORTS)  
AMENDMENT BILL 1995**

FURTHER SUPPLEMENTARY EXPLANATORY MEMORANDUM

**FURTHER AMENDMENTS TO BE MOVED  
ON BEHALF OF THE GOVERNMENT**

(Circulated by the authority of the Minister for the Environment, Sport and Territories,  
Senator the Honourable John Faulkner)



## AMENDMENTS OF HAZARDOUS WASTE (REGULATION OF EXPORTS AND IMPORTS) BILL 1995

### General Outline

- The further amendments proposed by the Government will amend the *Hazardous Waste (Regulations of Exports and Imports) Bill 1995* (the amending Bill).

The purpose of the further amendments is to:

- more precisely define the conditions under which standing may be extended to persons or organisations to seek judicial review under the *Administrative Decisions (Judicial Review) Act 1977* for decisions made under the proposed amended Act;

### Financial Impact Statement

The further amendments to the amending Bill will have no financial impact.

### Notes On Amendments

#### Schedules

#### Amendment (12) — Subsections 58A(2) and (3)

#### Extended standing of individuals and organisations to seek judicial review

1. This amendment omits the provisions of subsections 58A(2) and (3) of the amendment Bill and substitutes new provisions. The amended subsections more precisely define the conditions under which standing to seek judicial review under the *Administrative Decisions (Judicial Review) Act 1977* for decisions made under the amended Act may be extended to individual or organisations.
2. Subsection 58A(2) - The proposed clause extends the standing of an individual who may seek judicial review under the ADJR Act. Subsection 58A(2) provides that a 'person aggrieved' by a decision will now include an individual if he or she is an Australian citizen, or ordinarily resident in Australia, and in the two year period immediately preceding the decision, he or she has engaged in a series of activities related to various aspects of the management of hazardous wastes or pollution (where the pollution results from the disposal of hazardous waste). This provision does not affect the current standing of an individual.
3. This proposed amendment is intended to ensure that individuals who are Australians or ordinarily resident in Australia and who have demonstrated

a genuine and abiding interest and involvement in the issues of the management of hazardous wastes and pollution may also have standing extended to them under the *Administrative Decisions (Judicial Review) Act 1977*. These requirements are generally intended to deny standing to individuals who are citizens of other countries and to discourage or prevent mischievous or vexatious litigation by individuals attempting to use the standing provisions for matters of insufficient cause.

4. Subsection 58A(2A) - Under the proposed clause, an incorporated or unincorporated organisation or association is taken to be a 'person aggrieved' by a decision if it is incorporated or otherwise established in Australia, and in the two year period immediately preceding the decision, it has engaged in a series of activities related to various aspects of the management of hazardous wastes and pollution where the pollution results from the management of hazardous waste and the objects or purposes of the organisation or association include various aspects of the management of hazardous wastes or pollution (where the pollution results from the disposal of hazardous waste). In this context, a reference to 'a person' includes reference to a body corporate as well as an individual (section 22 of the *Acts Interpretation Act 1901*).
5. This proposed amendment is intended to ensure that only Australian organisations or associations who have demonstrated a genuine and abiding interest and involvement in the issues of the management of hazardous waste and pollution (where the pollution results from the disposal of hazardous waste) may have standing extended to them under the *Administrative Decisions (Judicial Review) Act 1977*. These requirements are intended to deny standing to organisations or associations not incorporated or otherwise established in Australia and to discourage or prevent mischievous or vexatious litigation by organisations or associations attempting to use the standing provisions for matters of insufficient cause.
6. The proposed amendment further clarifies the type of waste which the activities tests of subsections 58A(2), 58A(2A) and 58(2C) refer by specifying them to be *hazardous wastes* as defined in the amending Bill (see paragraph 101 below).
7. Subsection 58A(2B) - This proposed subsection ensures that standing is not extended to organisations or associations in regard to decisions made before their objects or purposes included reference to the matter concerned. This is to prevent an organisation or association attempting to gain standing in regard to a decision about a particular matter by, at that time, amending their objects or purposes to incorporate reference to such matter.
8. Subsection 58A(2C) - This proposed subsection provides that the activities tests of proposed paragraph 58A(2)(b) and paragraph 58A(2A)(b) must either be carried out in Australia or must relate to the effects of hazardous waste, which is generated in Australia, on human beings or the environment outside Australia. This ensures that standing may be

extended to appropriate Australian individuals, organisations or associations who are concerned with the effects of Australian hazardous wastes on human health or the environment, whether those effects occur inside or outside of Australia.

9. Subsection 58A(2D) - This proposed subsection provides that the meaning of the term *hazardous waste* in this subsection does not apply to the special modifications given effect by sections 4A, 4F and 4G of the amending Bill.
10. The meaning of the term *hazardous waste* can differ depending on the circumstances in which it is applied: under sections 4A, 4F and 4G, the meaning can be modified depending upon the national law of another country importing the hazardous waste from Australia, or through which the hazardous waste is transiting on its way to a third country from Australia (s4A), or on the terms of an Article 11 arrangement between Australia and another country to or from which the hazardous waste is being exported or imported (s 4F and s4G).
11. Because of the uncertainties as to the meaning of *hazardous waste* which might result from modifications applied by sections 4A, 4F and 4G, subsection 58A(2D) provides consistency to the meaning of *hazardous waste* for the application of subsection 58A by ensuring that the meaning of *hazardous waste* as used in section 58A is that applied by the unextended meaning of the definition of *hazardous waste* in section 4 of the amending Bill, ie, without the extended meanings applied by Notes 1, 2 and 3 to the definition.