



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

**No. 6, 1990**

## **Compilation No. 21**

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Prepared by the Office of Parliamentary Counsel, Canberra

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## About this compilation

### This compilation

This is a compilation of the *Hazardous Waste (Regulation of Exports and Imports) Act 1989* that shows the text of the law as amended and in force on 14 October 2024 (the **compilation date**).

The notes at the end of this compilation (the **endnotes**) include information about amending laws and the amendment history of provisions of the compiled law.

### Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Register ([www.legislation.gov.au](http://www.legislation.gov.au)). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the Register for the compiled law.

### Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

### Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

### Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the Register for the compiled law.

### Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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

## **Part 1—Preliminary**

### **Division 1—Introductory**

#### **1 Short title**

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

#### **2 Commencement**

- (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.

#### **3 Object and aims**

##### *Object*

- (1) The object of this Act is to regulate 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 human beings and the environment, both within and outside Australia, are protected from the harmful effects of the waste.

##### *Aims*

- (2) The aims of this Act are:

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- (a) to give effect to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal; and
- (b) to give effect to agreements and arrangements of the kind mentioned in Article 11 of that Convention.

## **Division 2—Interpretation**

### **4 Interpretation—defined terms**

In this Act, unless the contrary intention appears:

*Antarctica* means the area south of 60° South Latitude, including all ice shelves in that area.

*Article 11 arrangement* has the meaning given by section 4C.

*audit* means an audit under Subdivision B of Division 2 of Part 5.

*Australia*, when used in a geographical sense:

- (a) includes the external Territories; but
- (b) does not include Australian waters.

*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.

*Australian jurisdiction* means Australia or Australian waters, including over Australia or Australian waters.

*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.

*Australian vessel* means a vessel:

- (a) that is owned or operated by:

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- (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.

***Australian waters*** means the following:

- (a) the coastal sea of Australia;
- (b) the coastal sea of each external Territory;

which have the same meanings as in section 15B of the *Acts Interpretation Act 1901*.

***Basel Convention*** means the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, as amended and in force for Australia from time to time.

Note: The Convention is in Australian Treaty Series 1992 No. 7 ([1992] ATS 7) and could in 2017 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

***Basel export permit*** means a permit under section 17 permitting the export of hazardous waste.

***Basel import permit*** means a permit under section 17 permitting the import of hazardous waste.

***Basel permit*** means:

- (a) a Basel export permit; or
- (b) a Basel import permit; or
- (c) a Basel transit permit.

***Basel transit permit*** means a permit under section 17A permitting the carrying out of one or more transit proposals relating to hazardous waste.

***civil penalty provision*** has the same meaning as in the Regulatory Powers Act.

***Commonwealth entity*** has the same meaning as in the *Public Governance, Performance and Accountability Act 2013*.

**competent authority**, in relation to a foreign country, means:

- (a) if the country is a party to the Basel Convention—the competent authority of the country within the meaning of the Basel Convention; and
- (b) otherwise—a person or organisation that officially represents the country.

Note: The operation of this definition is modified in relation to colonies etc. by section 4D.

**Court** means the Federal Court of Australia.

**deal with**, in relation to hazardous waste, includes dispose of.

**decision period** means:

- (a) in relation to a permit application—the period referred to in subsection 16(1), but as paused or extended under section 15, 16A, 16B, 16C or 16D; or
- (b) in relation to a variation application—the period referred to in subsection 26B(1), but as paused or extended under Subdivision C of Division 4 of Part 2.

**disposal** means an operation specified in Annex IV to the Basel Convention.

**entrusted person** means:

- (a) the Minister; or
- (b) the Secretary; or
- (c) an APS employee in the Department; or
- (d) any other person employed in, or engaged by, the Department.

**environmentally sound management**, in relation to hazardous waste, has the meaning given by section 4E.

**evidential material** has the same meaning as in the Regulatory Powers Act.

**executive officer**, in relation to a body corporate, means a person, by whatever name called and whether or not a director of the body,

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who is concerned with, or takes part in, the management of the body.

**export** means export from Australia.

**export permit** means:

- (a) a Basel export permit; or
- (b) a special export permit.

**export proposal** means a proposal to export hazardous waste and to deal with it outside Australia.

**foreign country** includes:

- (a) a colony, overseas territory, overseas province or protectorate of a foreign country; and
- (b) a territory outside Australia, where a foreign country is to any extent responsible for the international relations of the territory; and
- (c) a territory outside Australia that is to some extent self-governing, but that is not recognised as an independent sovereign state by Australia.

**hazardous waste** means:

- (a) waste prescribed by the regulations, where the waste has any of the characteristics mentioned in Annex III to the Basel Convention; or
- (b) wastes covered by paragraph 1(a) of Article 1 of the Basel Convention; or
- (c) household waste; or
- (d) residues arising from the incineration of household waste; or
- (e) plastic wastes, including mixtures of such wastes, covered by Annex II to the Basel Convention;

but does not include wastes covered by paragraph 3 or 4 of Article 1 of the Basel Convention.

Note 1: Section 4A provides for an extended meaning of **hazardous waste**. The extended meaning relates to the following matters:

- (a) a case where a foreign country has classified a particular substance or object as hazardous waste;

- (b) a case where a foreign country has classified waste collected from households as hazardous waste.

Note 2: Section 4F provides for an extended meaning of *hazardous waste*. The extended meaning relates to substances or objects subject to notification or control under Article 11 arrangements.

Note 3: Section 4G provides for exclusions from the definition of *hazardous waste*. The exclusions relate to substances or objects not subject to notification or control under Article 11 arrangements.

**holder**, in relation to a Basel permit or a special permit, means the person to whom the permit was granted.

**household waste** means waste collected from households, but does not include waste specified in the regulations.

**identity card**, in relation to an inspector, means an identity card issued to the inspector under section 35 or 76 of the Regulatory Powers Act to the extent that either of those sections applies in relation to a provision of this Act.

**import** means import into Australia.

**import permit** means:

- (a) a Basel import permit; or
- (b) a special import permit.

**import proposal** means a proposal to import hazardous waste and to deal with it in Australia.

**inspector** means a person appointed under section 42 as an inspector.

**OECD country** means a country that is a member of the Organisation for Economic Cooperation and Development under the Convention on the Organisation for Economic Cooperation and Development done at Paris on 14 December 1960.

Note: The Convention is in Australian Treaty Series 1971 No. 11 ([1971] ATS 11) and could in 2021 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

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***officer of Customs*** has the same meaning as in the *Customs Act 1901*.

***official*** has the same meaning as in the *Public Governance, Performance and Accountability Act 2013*.

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

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

***original transit proposal***, in relation to a variation application relating to a Basel transit permit, means a transit 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 Basel permit.

***permit condition*** means a condition specified in:

- (a) a Basel permit under section 22; or
- (b) a notice under section 26 varying a Basel permit; or
- (c) a special permit; or
- (d) a notice under a set of Article 11 regulations varying a special permit.

***platform*** includes any structure at sea (whether or not fixed), but does not include a vessel.

***premises*** includes any place (whether or not enclosed or built on).

***protected information*** means information of any of the following kinds obtained by an entrusted person:

- (a) information the disclosure of which by the entrusted person could reasonably be expected to found an action by a person

(other than the Commonwealth) for breach of a duty of confidence;

- (b) information the disclosure of which could reasonably be expected to prejudice the effective working of government;
- (c) information the disclosure of which could reasonably be expected to prejudice the prevention, detection, investigation, prosecution or punishment of one or more offences;
- (d) information the disclosure of which could reasonably be expected to endanger a person's life or physical safety;
- (e) information the disclosure of which could reasonably be expected to prejudice the protection of public safety or the environment.

**recovery operation** means an operation mentioned in Appendix 5.B to the OECD Decision C(2001)107, being Revision of Decision C(92)39/FINAL on the control of transboundary movements of wastes destined for recovery operations, made on 14 June 2001 by the Council of the Organisation for Economic Cooperation and Development, as in force from time to time.

Note: The OECD Decision could in 2021 be viewed on the OECD website (<https://legalinstruments.oecd.org/>).

**Regulatory Powers Act** means the *Regulatory Powers (Standard Provisions) Act 2014*.

**relevant authority**, in relation to a searchable place, means:

- (a) in the case of premises in Australia—the occupier of the premises; and
- (b) in any other case—the person in command or control, or who appears to be in command or control, of the place.

**relevant information** means information obtained by an entrusted person under, or in accordance with, this Act or the Regulatory Powers Act as it applies in relation to this Act.

**relevant person**, for an audit, has the meaning given by section 52.

**searchable place** means:

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- (a) premises in Australia; or
- (b) an aircraft, vehicle or vessel within Australian jurisdiction; or
- (c) an Australian aircraft; or
- (d) an Australian platform; or
- (e) an Australian vessel.

**Secretary** means the Secretary of the Department.

**set of Article 11 regulations** has the meaning given by section 13C.

**special export permit** means a permit under a set of Article 11 regulations permitting the export of hazardous waste.

**special import permit** means a permit under a set of Article 11 regulations permitting the import of hazardous waste.

**special permit** means:

- (a) a special export permit; or
- (b) a special import permit; or
- (c) a special transit permit.

**special transit permit** means a permit under a set of Article 11 regulations permitting the carrying out of one or more transit proposals relating to hazardous waste.

**State or Territory government body** means:

- (a) a Department of State of a State or Territory; or
- (b) an agency of a State or Territory; or
- (c) an authority of a State or Territory.

**this Act** includes the regulations.

**transit permit** means:

- (a) a Basel transit permit; or
- (b) a special transit permit.

**transit proposal** has the meaning given by section 4B.

**variation**, in relation to a Basel permit, includes a variation of the permit conditions imposed on the permit.

**variation application** means an application under section 27 for the variation of a Basel permit.

**varied export proposal**, in relation to a variation application relating to a Basel export permit, means the original export proposal, as proposed to be affected by the proposed variation.

**varied import proposal**, in relation to a variation application relating to a Basel import permit, means the original import proposal, as proposed to be affected by the proposed variation.

**varied transit proposal**, in relation to a variation application relating to a Basel transit permit, means the original transit proposal, as proposed to be affected by the proposed variation.

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

**waste** means a substance or object that:

- (a) is proposed to be disposed of; or
- (b) is disposed of; or
- (c) is required by a law of the Commonwealth, a State or a Territory to be disposed of.

Note: **Disposed of** has a meaning corresponding to the meaning of **disposal**.  
See the definition of **disposal**.

#### **4A Exports and transits to foreign countries—extended meaning of hazardous waste**

*When this section has effect*

- (1) This section has effect for the purposes of the application of this Act:
  - (a) to the export or proposed export of a substance or object to a particular foreign country; or

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- (b) to, or to the carrying out of, a transit proposal that involves the export of a substance or object to a particular foreign country.

*Declaration extending the meaning of **hazardous waste**—classification under foreign laws*

- (2) If:
  - (a) the foreign country is a party to the Basel Convention; and
  - (b) the Minister is satisfied that, under a law of that country that gives effect to the Basel Convention, a particular substance or object is, in particular circumstances, classified as hazardous waste; and
  - (c) apart from this section, the waste is not hazardous waste; the Minister must, by writing, declare that that substance or object is, in those circumstances, hazardous waste for those purposes.

*Declaration extending the meaning of **hazardous waste**—waste collected from households*

- (3) If:
  - (a) the Minister is satisfied that the foreign country classifies particular waste collected from households as hazardous waste; and
  - (b) apart from this section, the waste is not hazardous waste; the Minister must, by writing, declare that that waste is hazardous waste for those purposes.

*Declaration has effect accordingly*

- (4) A declaration under this section has effect accordingly.

*Revocation of subsection (2) declaration*

- (5) If:
  - (a) a declaration is in force under subsection (2); and

(b) the Minister ceases to be satisfied of the matter referred to in paragraph (2)(b);  
the Minister must revoke the declaration.

*Revocation of subsection (3) declaration*

- (6) If:
- (a) a declaration is in force under subsection (3); and
  - (b) the Minister ceases to be satisfied of the matter referred to in paragraph (3)(a);
- the Minister must revoke the declaration.

*Gazettal of declaration*

- (7) If a declaration under this section is made or revoked, the Minister must arrange for a copy of the declaration or revocation to be published in the *Gazette*.

#### **4B Transit proposals**

- (1) This section sets out the proposals that are ***transit proposals*** for the purposes of this Act.

Note: Australia does not include Australian waters (see section 4).

*Transit proposal*

- (2) A proposal:
- (a) to bring hazardous waste into Australia (whether or not by way of import); and
  - (b) to take the waste out of Australia within 30 days;
- is a ***transit proposal*** so long as it is not proposed to dispose of the waste in Australia.

*Extension of time for carrying out proposal*

- (3) If the Minister is satisfied that there are special circumstances relating to a particular proposal, the Minister may, by writing, declare that subsection (2) applies to the proposal as if a reference

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in that subsection to 30 days were a reference to such longer period as is specified in the declaration.

*Declaration has effect accordingly*

- (4) The declaration has effect accordingly.

*Notification of decision*

- (5) If the Minister decides to make, or not to make, a declaration under this section about a person's proposal, the Minister must give the person a written notification of the decision.

*Gazettal of declaration*

- (6) If the Minister makes a declaration under this section, the Minister must arrange for a copy of the declaration to be published in the *Gazette*.

*Deemed export*

- (7) For the purposes of this Act, if hazardous waste is taken out of Australia in the course of carrying out a transit proposal, the taking of the waste out of Australia is to be treated as the export of the waste.

*Definitions*

- (8) In this section:

***dispose of*** does not include store.

***take waste out of Australia*** means take waste out of Australia for the purpose of importing the waste into a foreign country (whether or not the waste will be transported through any other foreign countries).

#### **4C Article 11 arrangements**

##### *Declaration of Article 11 arrangement*

- (1) If:
- (a) Australia has entered into an agreement or arrangement; and
  - (b) the Minister is satisfied that the agreement or arrangement is of a kind mentioned in Article 11 of the Basel Convention;
- the Minister must, by writing, declare that the agreement or arrangement is an **Article 11 arrangement** for the purposes of this Act.

##### *Declaration has effect accordingly*

- (2) A declaration under this section has effect accordingly.

##### *Revocation of declaration*

- (3) If:
- (a) a declaration is in force under this section; and
  - (b) the Minister ceases to be satisfied of the matter referred to in paragraph (1)(b);
- the Minister must revoke the declaration.

##### *Gazettal of declaration*

- (4) If a declaration under this section is made or revoked, the Minister must arrange for a copy of the declaration or revocation to be published in the *Gazette*.

#### **4D Treatment of colonies etc.**

##### *When colony etc. is a party to the Basel Convention*

- (1) For the purposes of this Act, if:
- (a) a territory is covered by either of the following subparagraphs:

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- (i) a colony, overseas territory, overseas province or protectorate of a foreign country;
  - (ii) a territory outside Australia, where a foreign country is to any extent responsible for the international relations of the territory; and
  - (b) the foreign country is a party to the Basel Convention; and
  - (c) the territory is not specified in the regulations;
- the territory is taken to be a party to the Basel Convention.

*Competent authority of colony etc.*

- (2) For the purposes of this Act, if a territory is covered by any of the following paragraphs:
- (a) a colony, overseas territory, overseas province or protectorate of a foreign country; or
  - (b) a territory outside Australia, where a foreign country is to any extent responsible for the international relations of the territory; or
  - (c) a territory outside Australia that is to some extent self-governing, but that is not recognised as an independent sovereign state by Australia;

a person or organisation that officially represents the territory is taken to be a competent authority of the territory.

*Subsection (2) has effect despite the definition of **competent authority***

- (3) Subsection (2) has effect despite anything in the definition of **competent authority** in section 4.

**4E Environmentally sound management of hazardous waste**

A reference in this Act to the **environmentally sound management** of hazardous waste is a reference to taking all practicable steps to ensure that the waste is managed in a manner that will protect human health, and the environment, against the adverse effects that may result from the waste.

**4F Article 11 arrangements—substances taken to be hazardous waste**

- (1) This section has effect for the purposes of the application of this Act:
- (a) to the import or proposed import of a substance or object from a particular foreign country; or
  - (b) to the export or proposed export of a substance or object to a particular foreign country; or
  - (c) to, or to the carrying out of, a transit proposal that involves the export of a substance or object to a particular foreign country.
- (2) If:
- (a) the country is a party to an Article 11 arrangement; and
  - (b) the substance or object is subject to notification or control under the arrangement; and
  - (c) apart from this section, the substance or object is not hazardous waste;
- the substance or object is taken to be hazardous waste for those purposes.

**4G Article 11 arrangements—substances not classified as hazardous waste**

- (1) This section has effect for the purposes of the application of this Act:
- (a) to the import or proposed import of a substance or object from a particular foreign country; or
  - (b) to the export or proposed export of a substance or object to a particular foreign country; or
  - (c) to, or to the carrying out of, a transit proposal that involves the export of a substance or object to a particular foreign country.
- (2) If:
- (a) the country is a party to an Article 11 arrangement; and

- (b) the arrangement expressly provides that the substance or object is not subject to notification or control under the arrangement;
- the substance or object is taken not to be hazardous waste for those purposes.

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

- (1) For the purposes of this Act, if:
  - (a) under subsection 22(2) or 26(2), the Minister specifies the day on or before which a permit condition relating to a Basel permit 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.
- (2) For the purposes of this Act, if:
  - (a) under a set of Article 11 regulations, the Minister specifies the day on or before which a permit condition relating to a special permit is to be complied with; and
  - (b) the condition is not complied with on or before that day;the holder of the permit is taken to have breached that condition at the end of that day.

## **Division 3—Operation of Act**

### **9 Extension to external Territories**

This Act, and the Regulatory Powers Act to the extent that it applies in relation to a provision of this Act, extend to every external Territory.

#### **9A Extraterritorial operation**

*This Act and Regulatory Powers Act generally apply within and outside of Australian jurisdiction*

- (1) Subject to this section, this Act, and the Regulatory Powers Act as it applies in relation to this Act, extend to acts, omissions, matters and things outside of Australian jurisdiction.

Note: Some searchable places will be outside of Australian jurisdiction.

*Regulatory provisions applying outside of Australian jurisdiction apply only to Australian entities*

- (2) Subject to subsections (4) and (5), to the extent that a provision of this Act, or a provision of the Regulatory Powers Act as it applies in relation to this Act, has effect in relation to anywhere outside of Australian jurisdiction, that provision applies only in relation to relevant Australian entities.

*Regulatory provisions apply to all entities etc. in Australian jurisdiction*

- (3) Subject to subsection (4), to the extent that a provision of this Act, or a provision of the Regulatory Powers Act as it applies in relation to this Act, has effect in relation to Australian jurisdiction, that provision applies in relation to:
  - (a) all relevant persons including foreign persons; and
  - (b) all relevant searchable places in that jurisdiction, including any owned or occupied by foreign persons.

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*This Act and the Regulatory Powers Act have effect subject to international law obligations*

- (4) This Act, and the Regulatory Powers Act as it applies in relation to this Act, have effect subject to:
- (a) the obligations of Australia under international law, including obligations under any international agreement binding on Australia; and
  - (b) any law of the Commonwealth giving effect to such an agreement.
- (5) The exercise in a foreign country of a power under this Act, or the Regulatory Powers Act as it applies in relation to this Act, is subject to the consent of the foreign country, if such consent is required under international law (including requirements under any international agreement binding on Australia).

*Definitions*

- (6) In this section:

***Australian entity*** means:

- (a) an Australian citizen; or
- (b) an individual who is a resident of Australia; or
- (c) a body corporate established by or under a law of the Commonwealth, of a State or of a Territory; or
- (d) an Australian aircraft; or
- (e) an Australian vessel.

***foreign person*** means a person other than:

- (a) an Australian citizen; or
- (b) an individual who is a resident of Australia; or
- (c) a body corporate established by or under a law of the Commonwealth, of a State or of a Territory.

## **9B Geographical application of offences**

Division 14 (standard geographical jurisdiction) of the *Criminal Code* does not apply in relation to an offence against this Act.

Note: The extended geographical application that section 9A gives to this Act applies to the offences and civil penalty provisions of this Act.

## **10 Act binds Crown**

This Act binds the Crown in right of the Commonwealth, of each of the States, of the Australian Capital Territory and of the Northern Territory.

## **10A Application of the *Criminal Code***

Chapter 2 (other than Part 2.5 and Division 14) of the *Criminal Code* applies to all offences against this Act.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

## **11 Relationship between Act and other Commonwealth laws**

This Act is in addition to, and not in derogation of or substitution for, the *Customs Act 1901*, the *Environment Protection and Biodiversity Conservation Act 1999* or any other law of the Commonwealth, whether enacted before or after the commencement of this Act.

## **Part 2—Import permits, export permits and transit permits**

### **Division 1—Applications for permits**

#### **12 Applications for import permits**

- (1) A person who has one or more import proposals in relation to hazardous waste may apply to the Minister for a permit authorising the import of 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 proposals as is required by the form.
- (3) The application may deal with 2 or more import proposals in relation to hazardous waste only if:
  - (a) the following matters are common to each proposal:
    - (i) the physical and chemical characteristics of the waste;
    - (ii) the route over which the waste is to be transported;
    - (iii) the sender of the waste; and
  - (b) the proposals constitute a regular pattern; and
  - (c) the proposals will all be carried out within 12 months of each other.

#### **13 Applications for export permits**

- (1) A person who has one or more export proposals in relation to hazardous waste may apply to the Minister for a permit authorising the export of 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 proposals as is required by the form.
- (3) The application may deal with 2 or more export proposals in relation to hazardous waste only if:
  - (a) the following matters are common to each proposal:
    - (i) the physical and chemical characteristics of the waste;
    - (ii) the route over which the waste is to be transported;
    - (iii) the recipient of the waste; and
  - (b) the proposals constitute a regular pattern; and
  - (c) the proposals will all be carried out within 12 months of each other.

### **13A Applications for transit permits**

- (1) A person who has one or more transit proposals in relation to hazardous waste may apply to the Minister for a permit to carry out the proposals.

**Note:** If a transit proposal is in connection with the movement of hazardous waste from one OECD country to another OECD country, a transit permit may not be required for that proposal: see subsection 33G(1).

- (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 proposals as is required by the form.
- (3) The application may deal with 2 or more transit proposals in relation to hazardous waste only if:
  - (a) the following matters are common to each proposal:
    - (i) the physical and chemical characteristics of the waste;
    - (ii) the route over which the waste is to be transported;
    - (iii) the sender and recipient of the waste; and
  - (b) the proposals constitute a regular pattern; and
  - (c) the proposals will all be carried out within 12 months of each other.

## **13B Basel permit or special permit**

### *Statement in application*

- (1) An application under section 12, 13 or 13A must state that the applicant is applying for:

- (a) a Basel permit; or
- (b) a special permit under a specified set of Article 11 regulations;

but not both.

Note 1: If the applicant has applied for a Basel permit, the application is to be dealt with in accordance with Division 3.

Note 2: If the applicant has applied for a special permit under a particular set of Article 11 regulations, the application is to be dealt with in accordance with that set of regulations.

### *Application specifying Basel permit—adjustment of application*

- (2) If:

- (a) an application under section 12, 13 or 13A states that the applicant is applying for a Basel permit; and
- (b) the Minister is satisfied that there are special circumstances relating to the application;

the Minister may, by writing, determine that this Act has effect as if the applicant had applied instead for the corresponding type of special permit under a set of Article 11 regulations specified in the determination.

### *Application specifying special permit—adjustment of application*

- (3) If:

- (a) an application under section 12, 13 or 13A states that the applicant is applying for a special permit under a particular set of Article 11 regulations; and
- (b) the Minister is satisfied that there are special circumstances relating to the application;

the Minister may, by writing:

- (c) determine that this Act has effect as if the applicant had applied instead for the corresponding type of Basel permit; or
- (d) determine that this Act has effect as if the applicant had applied instead for the corresponding type of special permit under another set of Article 11 regulations specified in the determination.

*Determination has effect accordingly*

- (4) A determination under this section has effect accordingly.

*Applicant to be given copy of determination*

- (5) As soon as practicable after the Minister makes a determination under this section, the Minister must give the applicant a copy of the determination.

## **Division 2—Special permits under a set of Article 11 regulations**

### **13C Regulations may give effect to Article 11 arrangements**

- (1) The regulations may provide for and in relation to:
  - (a) giving effect to an Article 11 arrangement; and
  - (b) giving effect to an amendment of an Article 11 arrangement.
- (2) Regulations made for the purposes of this section may be expressed to take effect on the day the arrangement or amendment enters into force, or comes into effect, for Australia (but must not be expressed to take effect before then).
- (2A) As soon as practicable after the arrangement or amendment enters into force, or comes into effect, for Australia, the Minister must publish a notice in the *Gazette* giving details of that fact.
- (3) Regulations made for the purposes of this section that give effect to a particular Article 11 arrangement (including regulations that give effect to an amendment of the Article 11 arrangement) are to be known as a *set of Article 11 regulations*.

### **13D Contents of a set of Article 11 regulations**

- (1) Each set of Article 11 regulations may:
  - (a) specify the kinds of import proposals, export proposals and transit proposals that are within the scope of that set of regulations; and
  - (b) provide for the granting of permits by the Minister authorising the import of hazardous waste, where the permit relates to an import proposal within the scope of that set of regulations; and
  - (c) provide for the granting of permits by the Minister authorising the export of hazardous waste, where the permit

relates to an export proposal within the scope of that set of regulations; and

- (d) provide for the granting of permits by the Minister authorising the carrying out of transit proposals within the scope of that set of regulations.

Note 1: A permit covered by paragraph (1)(b) is known as a *special import permit*—see the definition in section 4.

Note 2: A permit covered by paragraph (1)(c) is known as a *special export permit*—see the definition in section 4.

Note 3: A permit covered by paragraph (1)(d) is known as a *special transit permit*—see the definition in section 4.

- (2) A set of Article 11 regulations may provide for:
  - (a) conditions of special permits; and
  - (b) the revocation, surrender and variation of special permits.
- (3) This section does not, by implication, limit section 13C.

**13E Special permit may be granted under a set of Article 11 regulations only if corresponding requirements of other sets of Article 11 regulations have been met**

*Import*

- (1) If:
  - (a) a person applies for a special import permit in relation to an import proposal that is within the scope of a particular set of Article 11 regulations; and
  - (b) the proposal is within the scope of another set of Article 11 regulations;the Minister must not grant the permit unless the Minister is satisfied that the corresponding requirements of the other set of regulations have been met in relation to the proposal. For this purpose, a *corresponding requirement* of a particular set of Article 11 regulations is a requirement under that set of regulations:
  - (c) that must be met before granting a special import permit under that set of regulations; and

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- (d) that is declared by the regulations to be a corresponding requirement for the purposes of this subsection.
- (2) Subsection (1) does not prevent the set of Article 11 regulations mentioned in paragraph (1)(a) from setting out other requirements that must be met before granting a special import permit under that set of regulations.

*Export*

- (3) If:
  - (a) a person applies for a special export permit in relation to an export proposal that is within the scope of a particular set of Article 11 regulations; and
  - (b) the proposal is within the scope of another set of Article 11 regulations;the Minister must not grant the permit unless the Minister is satisfied that the corresponding requirements of the other set of regulations have been met in relation to the proposal. For this purpose, a ***corresponding requirement*** of a particular set of Article 11 regulations is:
  - (c) a requirement under that set of regulations to obtain the consent (whether actual or constructive) of an authority of a foreign country before granting a special export permit under that set of regulations authorising the export of hazardous waste to that country; or
  - (d) another requirement under that set of regulations:
    - (i) that must be met before granting a special export permit under that set of regulations; and
    - (ii) that is declared by the regulations to be a corresponding requirement for the purposes of this subsection.
- (4) Subsection (3) does not prevent the set of Article 11 regulations mentioned in paragraph (3)(a) from setting out other requirements that must be met before granting a special export permit under that set of regulations.

*Transit*

(5) If:

- (a) a person applies for a special transit permit in relation to a transit proposal that is within the scope of a particular set of Article 11 regulations; and
- (b) the proposal is within the scope of another set of Article 11 regulations;

the Minister must not grant the permit unless the Minister is satisfied that the corresponding requirements of the other set of regulations have been met in relation to the proposal. For this purpose, a ***corresponding requirement*** of a particular set of Article 11 regulations is:

- (c) a requirement under that set of regulations to obtain the consent (whether actual or constructive) of an authority of a foreign country before granting a special transit permit under that set of regulations authorising the carrying out of a transit proposal that involves the export of hazardous waste to that country; or
  - (d) another requirement under that set of regulations:
    - (i) that must be met before granting a special transit permit under that set of regulations; and
    - (ii) that is declared by the regulations to be a corresponding requirement for the purposes of this subsection.
- (6) Subsection (5) does not prevent the set of Article 11 regulations mentioned in paragraph (5)(a) from setting out other requirements that must be met before granting a special transit permit under that set of regulations.

**13F Special permit—waste not to be brought into Antarctica**

The Minister must not grant a special permit if the Minister is satisfied that the grant could result in hazardous waste being brought into Antarctica.

## **Division 3—Grant of Basel permits**

### **14 Variation of applications for Basel permits**

- (1) An applicant for a Basel 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.
- (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.
- (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 Minister may request further information about an application**

- (1) Within 60 days after the day of receiving an application for a Basel permit, the Minister may request the applicant to provide further information in writing to deal with the application.
- (2) If the Minister makes such a request of an applicant:
  - (a) the period in subsection 16(1) for the Minister to decide whether to grant the Basel permit is paused until the request is complied with; and
  - (b) the application is taken to be withdrawn if the request is not complied with within 60 days after the day that the request is made.

## **15A Acknowledgment and notification**

- (1) Within 7 days after receiving an application for a Basel permit, the Minister must give the applicant a written acknowledgment of the receipt.
- (2) Within 7 days after receiving an application for a Basel import permit authorising the import of hazardous waste from a foreign country, the Minister must give the competent authority of the country a written notification of the receipt.

## **16 Period for making decision on application for Basel permit— default period**

- (1) The Minister must decide whether to grant the Basel permit within 60 days starting on the day after the Minister receives the application (the *decision period*).

Note: This period may be paused or extended under section 15, 16A, 16B, 16C or 16D.

- (2) If the Minister has not decided whether to grant the permit by the end of the decision period, the Minister is to be taken to have decided, on the last day of that period, not to grant the permit.

## **16A Period for making decision on application for Basel permit— extensions for Basel export permits**

- (1) If the application is for a Basel export permit, then within 21 days after the day of receiving the application, the Minister must notify:
  - (a) the competent authority of the country to which hazardous waste is to be exported under the permit (the *receiving country*); and
  - (b) the competent authority of each country (if any) (a *transit country*) through which the hazardous waste is to be transported in order to export it to the receiving country;of such information about the application as is required by regulations made for the purposes of this subsection.

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- (2) If, at the end of the 46th day of the decision period, either:
- (a) the competent authority of the receiving country has neither given nor refused written consent to the grant of the permit; or
  - (b) a competent authority of a transit country notified under paragraph (1)(b) has neither given nor refused written consent to the grant of the permit;
- the decision period is paused until the earlier of:
- (c) the latest day such a refusal or consent is given by a competent authority covered by paragraph (a) or (b); and
  - (d) 12 months after the day the Minister receives the application.
- (3) If a foreign country is a party to the Basel Convention, a reference in subsection (2) to a consent given by the competent authority of the country is a reference to a consent given in accordance with Article 6 of the Basel Convention.

**16B Period for making decision on application for Basel permit—extensions for Basel permits**

- (1) If:
- (a) the application is for a Basel permit; and
  - (b) the Minister thinks that it will take more than 60 days to decide whether to grant the permit;
- the Minister may extend the decision period by up to a further 60 days.
- (2) The Minister must give written notice of any extension under subsection (1) to each of the following as soon as practicable:
- (a) the applicant;
  - (b) in the case of an application for a Basel import permit—the competent authority of the country from which the permit authorises the import of hazardous waste;
  - (c) in the case of a Basel export permit—the following:

- (i) the competent authority of the country to which the permit authorises the export of hazardous waste (the *receiving country*);
- (ii) the competent authority of each country (if any) through which the permit authorises the hazardous waste to be transported in order to export it to the receiving country.

#### **16C Period for making decision on application for Basel permit— referrals under the Environment Protection and Biodiversity Conservation Act 1999**

If, within the decision period, the proposal to grant the Basel permit is referred under Subdivision A of Division 4 of Part 11 of the *Environment Protection and Biodiversity Conservation Act 1999*, the decision period is paused until:

- (a) the Minister administering that Subdivision gives, under section 163 of that Act, advice on the proposed grant; or
- (b) the Minister administering that Subdivision decides, under section 161A of that Act, that that Subdivision does not apply to the referral.

Note: Under Subdivision A of Division 4 of Part 11 of the *Environment Protection and Biodiversity Conservation Act 1999*, persons considering whether to authorise certain actions must get advice on environmental matters from the Minister administering that Subdivision.

#### **16D Period for making decision on application for Basel permit— extension agreed with applicant**

The decision period is extended if the Minister and applicant agree in writing to the extension.

### **17 Grant of Basel import permits and Basel export permits**

- (1A) This section applies if the permit sought by a permit application is a Basel import permit or a Basel export permit.

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- (1) Subject to this Division, the Minister must grant the permit sought by a permit application if:
- (a) the Minister is satisfied that dealing with the hazardous waste concerned in accordance with the import proposals or export proposals would be consistent with the environmentally sound management of the hazardous waste; and
  - (b) in the case of a Basel export permit authorising the export of hazardous waste to a particular foreign country:
    - (i) the Minister is satisfied that the competent authority of the country has given written consent to the grant of the permit; and
    - (ii) the Minister is satisfied that the consent was given in accordance with Article 6 of the Basel Convention; and
  - (ba) in the case of a Basel export permit— the Minister is satisfied that the hazardous waste will be allowed to be transported through any foreign country through which the waste is proposed to be transported; and
  - (c) the Minister is satisfied that, having regard to:
    - (i) the applicant's financial viability; and
    - (ii) the applicant's previous record in relation to environmental matters; and
    - (iii) any other relevant matters;the applicant is a suitable person to be granted a Basel permit; and
  - (d) the Minister is satisfied that the applicant has appropriate insurance; and
  - (e) the Minister has taken into account any relevant public comments received in response to an invitation under paragraph 33(1)(aa) about the permit application (or any notice relating to that application).

Note: Section 18 specifies circumstances in which the applicant has appropriate insurance.

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

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- (2A) The Minister may decide not to grant the permit if:
- (a) the permit sought is a Basel export permit; and
  - (b) having regard to the requirements of paragraph 3(b) of Article 6 of the Basel Convention, the Minister thinks that it would not be appropriate to grant the permit.
- (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 proposals or export proposals.
- (5) The Minister may decide not to grant the permit if the permit sought is a Basel export permit and the Minister thinks that:
- (a) the hazardous waste could be disposed of safely and efficiently by using a facility in Australia; and
  - (aa) such a disposal would be consistent with the environmentally sound management of the waste; 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 proposals.
- (5A) The Minister may decide not to grant the permit if the applicant has previously failed to provide, or to arrange to provide, an auditor with assistance that is reasonably necessary for the conduct of an audit.

Note 1: For the requirement to provide an auditor with assistance that is reasonably necessary for the conduct of an audit, see section 54.

**Part 2** Import permits, export permits and transit permits

**Division 3** Grant of Basel permits

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Note 2: The audit need not relate to a permit. Assistance may be requested in relation to any audit of operations covered by a permit, an order under Part 3, a notification given under subsection 33G(1), or other prescribed operations: see section 50.

- (6) The Minister must not grant a Basel export permit or a Basel import permit if the Minister is satisfied that the grant could result in hazardous waste being brought into Antarctica.
- (7) The Minister must not grant a Basel export permit authorising the export of hazardous waste to a foreign country that is not a party to the Basel Convention.
- (8) The Minister must not grant a Basel import permit authorising the import of hazardous waste from a foreign country that is not a party to the Basel Convention.

**17A Grant of transit permits**

- (1) This section applies if the permit sought by a permit application is a Basel transit permit.
- (2) The Minister must grant the permit sought by a permit application if:
  - (a) the Minister is satisfied that carrying out the transit proposals will not pose a significant risk of injury or damage to human beings or the environment; and
  - (b) the Minister is satisfied that, having regard to:
    - (i) the applicant's financial viability; and
    - (ii) the applicant's previous record in relation to environmental matters; and
    - (iii) any other relevant matters;the applicant is a suitable person to be granted a Basel transit permit; and
  - (c) the Minister is satisfied that the applicant has appropriate insurance; and
  - (d) the Minister has taken into account any relevant public comments received in response to an invitation under

paragraph 33(1)(aa) about the permit application (or any notice relating to that application).

Note: Section 18 specifies circumstances in which the applicant has appropriate insurance.

- (3) Subsection (2) has effect subject to this Division.
- (4) The Minister may decide not to grant the permit if the Minister thinks that it would not be in the public interest to grant it.
- (4A) The Minister may decide not to grant the permit if the applicant has previously failed to provide, or to arrange to provide, an auditor with assistance that is reasonably necessary for the conduct of an audit.
  - Note 1: For the requirement to provide an auditor with assistance that is reasonably necessary for the conduct of an audit, see section 54.
  - Note 2: The audit need not relate to a permit. Assistance may be requested in relation to any audit of operations covered by a permit, an order under Part 3, a notification given under subsection 33G(1), or other prescribed operations: see section 50.
- (5) The Minister must not grant the permit if the Minister is satisfied that carrying out the transit proposals could result in hazardous waste being brought into Antarctica.

## **18 Determination of whether applicant has appropriate insurance**

An applicant for a Basel permit has appropriate insurance for the purposes of section 17 or 17A 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.

**18A Export permits for final disposal may be granted only in exceptional circumstances**

- (1) The Minister must not grant a Basel export permit authorising the export of hazardous waste if the applicant proposes that the hazardous waste will be disposed of by a method that is within the scope of Section A of Annex IV to the Basel Convention.
- (2) Despite subsection (1), the Minister may grant a Basel export permit in the circumstances described in that subsection if the Minister is satisfied that there are exceptional circumstances.
- (3) Subsection (2) does not apply if the Minister is satisfied that carrying out the export proposals would be inconsistent with the environmentally sound management of the hazardous waste.
- (4) In deciding whether there are exceptional circumstances for the purposes of subsection (2), the Minister must have regard to the following:
  - (a) whether there will be a significant risk of injury or damage to human beings or the environment if the Minister decides not to grant the permit;
  - (b) whether the waste is needed for research into improving the management of hazardous waste;
  - (c) whether the waste is needed for testing for the purposes of improving the management of hazardous waste;
  - (d) matters prescribed for the purposes of this paragraph.

**18B Basel permit may be granted only if the corresponding requirements of Article 11 regulations have been met**

*Import*

- (1) If:
  - (a) a person applies for a Basel import permit in relation to an import proposal; and

- (b) the proposal is within the scope of a particular set of Article 11 regulations;

the Minister must not grant the permit unless the Minister is satisfied that the corresponding requirements of that set of regulations have been met in relation to the proposal. For this purpose, a ***corresponding requirement*** of a particular set of Article 11 regulations is a requirement under that set of regulations:

- (c) that must be met before granting a special import permit under that set of regulations; and
- (d) that is declared by the regulations to be a corresponding requirement for the purposes of this subsection.

#### *Export*

- (2) If:

- (a) a person applies for a Basel export permit in relation to an export proposal; and
- (b) the proposal is within the scope of a particular set of Article 11 regulations;

the Minister must not grant the permit unless the Minister is satisfied that the corresponding requirements of that set of regulations have been met in relation to the proposal. For this purpose, a ***corresponding requirement*** of a particular set of Article 11 regulations is:

- (c) a requirement under that set of regulations to obtain the consent (whether actual or constructive) of an authority of a foreign country before granting a special export permit under that set of regulations authorising the export of hazardous waste to that country; or
- (d) another requirement under that set of regulations:
  - (i) that must be met before granting a special export permit under that set of regulations; and
  - (ii) that is declared by the regulations to be a corresponding requirement for the purposes of this subsection.

*Transit*

(3) If:

- (a) a person applies for a Basel transit permit in relation to a transit proposal; and
- (b) the proposal is within the scope of a particular set of Article 11 regulations;

the Minister must not grant the permit unless the Minister is satisfied that the corresponding requirements of that set of regulations have been met in relation to the proposal. For this purpose, a ***corresponding requirement*** of a particular set of Article 11 regulations is:

- (c) a requirement under that set of regulations to obtain the consent (whether actual or constructive) of an authority of a foreign country before granting a special transit permit under that set of regulations authorising the carrying out of a transit proposal that involves the export of hazardous waste to that country; or
- (d) another requirement under that set of regulations:
  - (i) that must be met before granting a special transit permit under that set of regulations; and
  - (ii) that is declared by the regulations to be a corresponding requirement for the purposes of this subsection.

**19 Applicants to be notified of decisions**

- (1) If the Minister decides to grant a Basel 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 Basel 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.
- (3) A contravention of this section in relation to a decision does not affect the validity of the decision.

### **19A Foreign countries to be notified of decision about grant of import permit**

- (1) As soon as practicable after the Minister makes a decision to grant, or not to grant, a Basel import permit authorising the import of hazardous waste from a particular foreign country, the Minister must give the competent authority of the country a written notification of the decision.
- (2) A contravention of this section in relation to a decision does not affect the validity of the decision.

### **20 Matters to be specified in Basel import permits**

- (1) A Basel import permit must specify particulars of:
  - (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 dealt with after the import; and
  - (g) if the hazardous waste is to be disposed of after the import—the facility to be used in the disposal and the process (if any) involved in the disposal.
- (3) A Basel import permit may also include conditions under section 22 and such other information as the Minister considers appropriate.

### **21 Matters to be specified in Basel export permits**

- (1) A Basel 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

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- (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
  - (f) the way in which the hazardous waste is to be dealt with after the export; and
  - (g) if the hazardous waste is to be disposed of after the export—the facility to be used in the disposal and the process (if any) involved in the disposal.
- (3) A Basel export permit may also include conditions under section 22 and such other information as the Minister considers appropriate.

**21A Matters to be specified in Basel transit permits**

- (1) A Basel transit permit must specify particulars of the transit proposals concerned.
- (2) A Basel transit permit may also include conditions under section 22 and such other information as the Minister considers appropriate.

**22 Basel permits may be granted subject to conditions**

- (1) The Minister may grant a Basel permit subject to conditions specified in the permit.
- (2) The Minister may specify in the Basel permit the day on or before which the holder of the permit is to comply with a condition.
- (2A) A Basel transit permit must be granted subject to such conditions as the Minister considers necessary or desirable for the purposes of ensuring that the transit proposals are carried out.
- (2B) A Basel permit may be granted subject to a condition relating to the giving of:
  - (a) one or more guarantees; or

- (b) one or more security deposits;  
in respect of compliance by the permit holder with the permit holder's obligations under, or arising out of, this Act.
- (2C) The following are examples of cases where a guarantee or a security deposit might be given:
- (a) a holding company gives the Minister a guarantee that a subsidiary of the holding company will pay any amounts owed by the subsidiary under subsection 38B(2);
  - (b) a person gives the Minister a security deposit in respect of compliance by the person with the person's obligations to pay amounts owing under subsection 38B(2).
- (2D) Subsections (2A) and (2B) do not, by implication, limit subsection (1).
- Note 1: Another example of a condition is one that includes a day on or before which it needs to be complied with.
- Note 2: The condition could be imposed under this section or under Division 4 as a variation of the permit.
- (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.

## **Division 4—Revocation, surrender and variation of Basel permits**

### **Subdivision A—Revoking Basel permits**

#### **24 Revoking Basel permits—grounds**

- (1) The Minister may, in writing, decide to revoke a Basel permit if the Minister is satisfied that:
- (a) the holder of the permit:
    - (i) gave the Minister false, misleading or incomplete information; and
    - (ii) when doing so, failed to give the Minister an explanation for doing so, or failed to give the Minister the correct or complete information if the person was reasonably able to have done so; or
  - (b) the holder of the permit:
    - (i) is failing, or has failed, to comply with a condition to which the permit is subject; or
    - (ii) is failing, or has failed, to comply with a provision of this Act relating to the permit; or
    - (iii) is failing, or has failed after the granting of the permit, to provide or to arrange to provide an auditor with assistance that is reasonably necessary for the conduct of an audit; or
  - (c) after considering information that was not considered when granting the permit, the permit would not be granted if the Minister were now asked to grant it; or
  - (d) after considering information that was not considered when granting the permit, the revocation is necessary to prevent or lessen a threat of serious harm to human health or the environment; or
  - (e) a ground prescribed by the regulations for the purposes of this paragraph is satisfied for the holder and the permit.

Note 1: For the requirement to provide an auditor with assistance that is reasonably necessary for the conduct of an audit, see section 54.

Note 2: The audit need not relate to the permit. Assistance may be requested in relation to any audit of operations covered by a permit, an order under Part 3, a notification given under subsection 33G(1), or other prescribed operations: see section 50.

- (2) However, a revocation of a Basel permit only applies to an import, export or the carrying out of a transit proposal authorised by the permit if the import, export or the carrying out of the transit proposal has yet to begin.

Note 1: This subsection means that a Basel permit that authorises 2 or more imports or exports of hazardous waste, or the carrying out of 2 or more transit proposals, only applies to an import or export, or the carrying out of a transit proposal, that has not begun at the time of the revocation.

Note 2: This subsection also means a Basel permit cannot be revoked if it only authorises a single import or export that has already begun or the carrying out of a single transit proposal that has already begun.

## **24A Revoking Basel permits—notice of proposed revocation**

- (1) Despite subsection 24(1), the Minister must not revoke a Basel permit under that subsection unless:
- (a) the Minister has given a written notice to the holder of the permit in accordance with subsection (2) of this section; and
  - (b) the Minister has taken into account any information given, within 14 days after the day the notice is given to the permit holder, to the Minister in response to the notice.
- (2) A notice under paragraph (1)(a) must:
- (a) specify the proposed revocation of the permit; and
  - (b) specify the grounds for the proposed revocation; and
  - (c) invite the holder of the permit to give the Minister, within 14 days after the day the notice is given, a written statement showing cause why the permit should not be revoked; and
  - (d) include a statement setting out the holder's right to seek review of a decision to revoke the permit.

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- (3) A notice under paragraph (1)(a) is not required if the Minister reasonably believes that the proposed revocation is necessary to prevent or lessen a serious and imminent threat to human health or the environment.

**24B Notice of revocation**

- (1) If the Minister decides under subsection 24(1) to revoke a Basel permit, the Minister must give the holder of the permit a written notice stating the following:
- (a) that the permit is to be revoked;
  - (b) the reasons for the revocation;
  - (c) the day the revocation is to take effect (which must not be before the day the notice is given to the holder);
  - (d) information about the holder's right to seek review of the decision.
- (2) If the holder of the permit was given a notice (a *show cause notice*) under paragraph 24A(1)(a) that included the invitation referred to in paragraph 24A(2)(c), the revocation must not take effect before the end of 14 days after the day the show cause notice was given.

**24C Exhaustive statement of natural justice hearing rule**

This Subdivision is taken to be an exhaustive statement of the requirements of the natural justice hearing rule in relation to the matters it deals with.

**Subdivision B—Surrendering Basel permits**

**25 Surrender of Basel permits**

- (1) Subject to this section, the holder of a Basel 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) If the permit is a Basel import permit, the permit may not be surrendered after any import authorised by the permit has begun.
- (2A) If the permit is a Basel export permit, the permit may not be surrendered after any export authorised by the permit has begun.
- (2B) If the permit is a Basel transit permit, the permit may not be surrendered after the carrying out of any transit proposal authorised by the permit has begun.
- (3) The surrender of the permit takes effect on the day on which subsection (1) is satisfied.

### **Subdivision C—Varying Basel permits: on application**

#### **26 Varying Basel permits on application**

- (1) The Minister may, on application by the holder of a Basel permit, vary the permit if:
  - (a) the Minister is satisfied that, if the Minister were asked to grant the Basel permit (as proposed to be varied), the Minister would decide to grant the permit; and
  - (b) the Minister has taken into account any relevant public comments received in response to an invitation under paragraph 33(1)(aa) about the application.

Note: Examples of a variation include varying or revoking a permit condition.

- (2) The application must:
  - (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.
- (3) The Minister must give the applicant written notice of having received an application within 7 days after the day of receiving it.

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**26A Minister may request further information about an application**

- (1) Within 60 days after the day of receiving the application, the Minister may request the applicant to provide further information in writing to deal with the application.
- (2) If the Minister makes such a request of an applicant:
  - (a) the period in subsection 26B(1) for the Minister to decide whether to make the variation is paused until the request is complied with; and
  - (b) the application is taken to be withdrawn if the request is not complied with within 60 days after the day the request is made.

**26B Period for making a decision on an application—default period**

- (1) The Minister must decide whether to make the variation within the period of 60 days starting on the day after the Minister receives the application (the *decision period*).

Note: This period may be paused or extended under section 26A, 26C, 26D, 26E or 26F.

- (2) If the Minister does not decide whether to make the variation by the end of the decision period, the Minister is to be taken to have decided, on the last day of that period, not to make the variation.

**26C Period for making a decision on an application—extensions for Basel export permits**

- (1) If the application is for a variation of a Basel export permit, then within 21 days after the day of receiving the application, the Minister must notify:
  - (a) the competent authority of the country to which hazardous waste is to be exported under the permit (the *receiving country*); and
  - (b) the competent authority of each country (if any) (a *transit country*) through which the hazardous waste is to be transported in order to export it to the receiving country;

of such information about the application as is required by regulations made for the purposes of this subsection.

- (2) If, at the end of the 46th day of the decision period, either:
- (a) the competent authority of the receiving country has neither given nor refused written consent to the variation; or
  - (b) a competent authority of a transit country notified under paragraph (1)(b) has neither given nor refused written consent to the variation;
- the decision period is paused until the earlier of:
- (c) the latest day such a refusal or consent is given by a competent authority covered by paragraph (a) or (b); and
  - (d) 12 months after the day the Minister receives the application.
- (3) If a foreign country is a party to the Basel Convention, a reference in subsection (2) to a consent given by the competent authority of the country is a reference to a consent given in accordance with Article 6 of the Basel Convention.

#### **26D Period for making a decision on an application—extensions for Basel permits**

- (1) If:
- (a) the application is for a variation of a Basel permit; and
  - (b) the Minister thinks that it will take more than 60 days to decide whether to make the variation;
- the Minister may extend the decision period by up to a further 60 days.
- (2) The Minister must give written notice of any extension under subsection (1) to each of the following as soon as practicable:
- (a) the applicant;
  - (b) in the case of a variation of a Basel import permit—the competent authority of the country from which the permit authorises the import of hazardous waste;
  - (c) in the case of a variation of a Basel export permit—the following:

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- (i) the competent authority of the country to which the permit authorises the export of hazardous waste (the *receiving country*);
- (ii) the competent authority of each country (if any) through which the permit authorises the hazardous waste to be transported in order to export it to the receiving country.

**26E Period for making a decision on an application—referrals under the Environment Protection and Biodiversity Conservation Act 1999**

If, within the decision period, the proposal to vary the Basel permit is referred under Subdivision A of Division 4 of Part 11 of the *Environment Protection and Biodiversity Conservation Act 1999*, the decision period is paused until:

- (a) the Minister administering that Subdivision gives, under section 163 of that Act, advice on the proposed variation; or
- (b) the Minister administering that Subdivision decides, under section 161A of that Act, that that Subdivision does not apply to the referral.

Note: Under Subdivision A of Division 4 of Part 11 of the *Environment Protection and Biodiversity Conservation Act 1999*, persons considering whether to authorise certain actions must get advice on environmental matters from the Minister administering that Subdivision.

**26F Period for making a decision on an application—extension agreed with applicant**

The decision period is extended if the Minister and applicant agree in writing to the extension.

**26G Notice of variation**

If the Minister makes a decision in relation to an application to vary a Basel permit, the Minister must give the holder of the permit a written notice stating the following:

- (a) whether the permit is to be varied;
- (b) if the decision is that the permit is to be varied—the day the variation is to take effect;
- (c) if the decision is that the permit is not to be varied:
  - (i) the reasons for the decision; and
  - (ii) information about the holder's right to seek review of the decision.

### **Subdivision D—Varying Basel permits: on Minister's initiative**

#### **26H Varying Basel permits on Minister's initiative—grounds**

The Minister may, in writing, decide to vary a Basel permit if the Minister is satisfied that:

- (a) the holder of the permit:
  - (i) gave the Minister false, misleading or incomplete information; and
  - (ii) when doing so, failed to give the Minister an explanation for doing so, or failed to give the Minister the correct or complete information if the person was reasonably able to have done so; or
- (b) the holder of the permit:
  - (i) is failing, or has failed, to comply with a condition to which the permit is subject; or
  - (ii) is failing, or has failed, to comply with a provision of this Act relating to the permit; or
  - (iii) is failing, or has failed after the granting of the permit, to provide or to arrange to provide an auditor with assistance that is reasonably necessary for the conduct of an audit; or
- (c) after considering information that was not considered when granting the permit, the variation is necessary to prevent or lessen a threat of serious harm to human health or the environment; or
- (d) a ground prescribed by the regulations for the purposes of this paragraph is satisfied for the holder and the permit.

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- Note 1: Examples of a variation include imposing a condition on the permit, or varying or revoking a permit condition.
- Note 2: For the requirement to provide an auditor with assistance that is reasonably necessary for the conduct of an audit, see section 54.
- Note 3: The audit need not relate to the permit. Assistance may be requested in relation to any audit of operations covered by a permit, an order under Part 3, a notification given under subsection 33G(1), or other prescribed operations: see section 50.

### **26J Varying Basel permits—notice of proposed variation**

- (1) Despite section 26H, the Minister must not vary a Basel permit under that section unless:
- (a) the Minister has given a written notice to the holder of the permit in accordance with subsection (2) of this section; and
  - (b) the Minister has taken into account any information given, within 14 days after the day the notice is given to the permit holder, to the Minister in response to the notice.
- (2) A notice under paragraph (1)(a) must:
- (a) specify the proposed variation of the permit; and
  - (b) specify the grounds for the proposed variation; and
  - (c) invite the holder of the permit to give the Minister, within 14 days after the day the notice is given, a written statement showing cause why the permit should not be varied; and
  - (d) include a statement setting out the holder's right to seek review of a decision to vary the permit.
- (3) A notice under paragraph (1)(a) is not required if the Minister reasonably believes that the proposed variation is necessary to prevent or lessen a serious and imminent threat to human health or the environment.

### **26K Notice of variation**

- (1) If the Minister decides under section 26H to vary a Basel permit, the Minister must give the holder of the permit a written notice stating the following:

- (a) that the permit is to be varied;
- (b) the reasons for the variation;
- (c) the day the variation is to take effect (which must not be before the day the notice is given to the holder);
- (d) information about the holder's right to seek review of the decision.

Example: A variation could impose a condition to be complied with on or after the day the variation takes effect in relation to an import that has already happened.

- (2) If the holder of the permit was given a notice (a ***show cause notice***) under paragraph 26J(1)(a) that included the invitation referred to in paragraph 26J(2)(c), the day stated under paragraph (1)(c) of this section when the variation is to take effect must not be before the end of 14 days after the day the show cause notice was given.

## **26L Exhaustive statement of natural justice hearing rule**

This Subdivision is taken to be an exhaustive statement of the requirements of the natural justice hearing rule in relation to the matters it deals with.

## **Division 5—Miscellaneous**

### **32 Applications and notices to be accompanied by fees**

- (1) The regulations may prescribe fees to be paid in relation to applications and notices given to the Minister under this Part or under a set of Article 11 regulations.
- (2) An application or notice given to the Minister under this Part or under a set of Article 11 regulations must be accompanied by the prescribed fee (if any).
- (3) If an application or notice given to the Minister under this Part or under a set of Article 11 regulations 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.
- (4) The amount or rate of a fee must be reasonably related to the expenses incurred or to be incurred by the Commonwealth in relation to the application or notice to which it relates, and must not be such as to amount to taxation.
- (5) The Minister may wholly or partly waive, or wholly or partly refund, a prescribed fee in circumstances prescribed by the regulations.
- (7) The regulations may make provision for and in relation to the indexation of prescribed fees.

### **32A Applications to be accompanied by levy**

- (1) An application under section 12, 13 or 13A must be accompanied by the levy imposed by the *Hazardous Waste (Regulation of Exports and Imports) Levy Act 2017*.

Note: An application under section 12, 13 or 13A must be for a Basel permit or a special permit under a specified set of Article 11 regulations: see section 13B.

- (2) If the application is not accompanied by the levy, the application is taken not to have been received by the Minister until the levy has been paid.

### **33 Publication of certain particulars on Department's website**

#### *Requirement to publish information*

- (1) The Minister must cause to be published on the Department's website particulars of:
- (a) each application and notice received by the Minister under this Part or under a set of Article 11 regulations; and
  - (aa) for each application or notice described in paragraph (a)—an invitation for members of the public to comment on the application or notice within 15 business days after being published under this subsection; and
  - (b) each Basel permit or special permit granted; and
  - (c) each decision not to grant a Basel permit or special permit; and
  - (d) each revocation of a Basel permit or special permit; and
  - (e) each surrender of a Basel permit or special permit; and
  - (f) each variation of a Basel permit or special permit; and
  - (g) each determination under section 13B.

The particulars may include the name of the person concerned.

#### *Exception—contrary to the public interest*

- (2) Subsection (1) does not apply to 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:
- (a) endanger public safety; or
  - (b) cause damage to:
    - (i) the security of Australia; or
    - (ii) the defence of Australia; or
    - (iii) the international relations of Australia.

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*Exception—invitations for public comment*

- (2A) Subsection (1) does not apply to publishing an invitation described in paragraph (1)(aa) for public comment on an application or notice if the Minister is satisfied that:
- (a) the existence of exceptional circumstances means it is inappropriate to do so; or
  - (b) it would not be in the public interest to do so; or
  - (c) the application, or notice, is for a variation that is of a minor or technical nature.

*Exception—minor or technical variations of a permit*

- (2B) Subsection (1) does not apply to:
- (a) a variation of a kind described in paragraph (1)(f); or
  - (b) an application for such a variation;
- if the variation is of a minor or technical nature.

*Publishing must happen as soon as practicable after it is required*

- (3) The Minister must cause a publication required by this section to be made as soon as practicable after the requirement arises.

*Publishing other information*

- (4) The Minister may cause to be published on the Department's website particulars of:
- (a) any offence against this Act for which a person has been convicted; and
  - (b) any order under section 82 of the Regulatory Powers Act against a person for contravening a civil penalty provision of this Act; and
  - (c) any undertaking given under section 114 of the Regulatory Powers Act by a person in relation to a provision of this Act; and

- (d) any order under section 115 of the Regulatory Powers Act against a person for a breach of an undertaking given in relation to a provision of this Act; and
  - (e) any injunction under section 121 or 122 of the Regulatory Powers Act against a person in relation to a provision of this Act; and
  - (f) any order under Part 3 of this Act by the Minister to a person.
- The particulars may include the name of the person concerned.

## **Part 2A—Regulation of import, export, transit and sale of hazardous waste**

### **Division 1—Regulation of import of hazardous waste**

#### **33A Import of hazardous waste—basic contravention**

##### *Prohibition of imports*

- (1) A person contravenes this subsection if:
- (a) the person imports waste; and
  - (b) the waste is hazardous waste; and
  - (c) the person is not the holder of an import permit authorising the person to import the hazardous waste; and
  - (d) the person is not the holder of a transit permit authorising the person to import the hazardous waste; and
  - (e) there is no notification in force under subsection 33G(1) that the person does not require a transit permit to import the hazardous waste; and
  - (f) the import has not been ordered under section 35; and
  - (g) the import is not authorised by an order under section 38.

Note 1: For paragraph (e), a notification under subsection 33G(1) may cease to be in force if it is revoked under subsection 33G(4).

Note 2: The physical elements of an offence against subsection (4) are set out in this subsection (see section 58F).

##### *Compliance with import permits*

- (2) A person contravenes this subsection if:
- (a) the person imports waste; and
  - (b) the waste is hazardous waste; and
  - (c) the person is the holder of an import permit authorising the person to import the hazardous waste; and
  - (d) the import is not in accordance with the permit.

Note: The physical elements of an offence against subsection (4) are set out in this subsection (see section 58F).

*Compliance with permit conditions*

- (3) A person contravenes this subsection if:
- (a) the person imports waste; and
  - (b) the waste is hazardous waste; and
  - (c) the person is the holder of an import permit authorising the person to import the hazardous waste; and
  - (d) the permit is subject to a permit condition; and
  - (e) the person does an act or omits to do an act; and
  - (f) the act or omission does not comply with the permit condition in relation to the import (whether before, during or after the import).

Note: The physical elements of an offence against subsection (4) are set out in this subsection (see section 58F).

*Fault-based offence*

- (4) A person commits an offence if the person contravenes subsection (1), (2) or (3).

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

*Strict liability offence*

- (5) A person commits an offence of strict liability if the person contravenes subsection (1), (2) or (3).

Penalty: 60 penalty units.

*Civil penalty provision*

- (6) A person is liable to a civil penalty if the person contravenes subsection (1), (2) or (3).

Civil penalty: 600 penalty units.

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**33B Import of hazardous waste—injury or damage to human beings or the environment**

*Prohibition of imports*

- (1) A person contravenes this subsection if:
- (a) the person imports waste; and
  - (b) the waste is hazardous waste; and
  - (c) the person is not the holder of an import permit authorising the person to import the hazardous waste; and
  - (d) the person is not the holder of a transit permit authorising the person to import the hazardous waste; and
  - (e) there is no notification in force under subsection 33G(1) that the person does not require a transit permit to import the hazardous waste; and
  - (f) the import has not been ordered under section 35; and
  - (g) the import is not authorised by an order under section 38; and
  - (h) the import, or the presence of the hazardous waste in Australia after the import, injures or damages, or is likely to injure or damage, human beings or the environment.

Note 1: For paragraph (e), a notification under subsection 33G(1) may cease to be in force if it is revoked under subsection 33G(4).

Note 2: The physical elements of an offence against subsection (4) are set out in this subsection (see section 58F).

*Compliance with import permits*

- (2) A person contravenes this subsection if:
- (a) the person imports waste; and
  - (b) the waste is hazardous waste; and
  - (c) the person is the holder of an import permit authorising the person to import the hazardous waste; and
  - (d) the import is not in accordance with the permit; and
  - (e) the import, or the presence of the hazardous waste in Australia after the import, injures or damages, or is likely to injure or damage, human beings or the environment.

Note: The physical elements of an offence against subsection (4) are set out in this subsection (see section 58F).

*Compliance with permit conditions*

- (3) A person contravenes this subsection if:
- (a) the person imports waste; and
  - (b) the waste is hazardous waste; and
  - (c) the person is the holder of an import permit authorising the person to import the hazardous waste; and
  - (d) the permit is subject to a permit condition; and
  - (e) the person does an act or omits to do an act; and
  - (f) the act or omission does not comply with the permit condition in relation to the import (whether before, during or after the import); and
  - (g) the non-compliance with the permit condition injures or damages, or is likely to injure or damage, human beings or the environment.

Note: The physical elements of an offence against subsection (4) are set out in this subsection (see section 58F).

*Fault-based offence*

- (4) A person commits an offence if the person contravenes subsection (1), (2) or (3).

Penalty: Imprisonment for 8 years or 500 penalty units, or both.

*Alternative verdict*

- (5) In a trial for an offence against subsection (4), the trier of fact may find the defendant not guilty of that offence, but guilty of an offence against subsection 33A(4), if:
- (a) the trier of fact is not satisfied that the defendant is guilty of the offence against subsection (4) of this section; and
  - (b) the trier of fact is satisfied that the defendant is guilty of the offence against subsection 33A(4); and

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- (c) the defendant has been accorded procedural fairness in relation to that finding of guilt.

*Strict liability offence*

- (6) A person commits an offence of strict liability if the person contravenes subsection (1), (2) or (3).

Penalty: 60 penalty units.

*Civil penalty provision*

- (7) A person is liable to a civil penalty if the person contravenes subsection (1), (2) or (3).

Civil penalty: 1,000 penalty units.

## **Division 2—Regulation of export of hazardous waste**

### **33C Export of hazardous waste—basic contravention**

#### *Prohibition of exports*

- (1) A person contravenes this subsection if:
- (a) the person exports waste; and
  - (b) the waste is hazardous waste; and
  - (c) the person is not the holder of an export permit authorising the person to export the hazardous waste; and
  - (d) the person is not the holder of a transit permit authorising the person to export the hazardous waste; and
  - (e) there is no notification in force under subsection 33G(1) that the person does not require a transit permit to export the hazardous waste; and
  - (f) the export has not been ordered under section 34 or 35A.

Note 1: For paragraph (e), a notification under subsection 33G(1) may cease to be in force if it is revoked under subsection 33G(4).

Note 2: The physical elements of an offence against subsection (4) are set out in this subsection (see section 58F).

#### *Compliance with export permits*

- (2) A person contravenes this subsection if:
- (a) the person exports waste; and
  - (b) the waste is hazardous waste; and
  - (c) the person is the holder of an export permit authorising the person to export the hazardous waste; and
  - (d) the export is not in accordance with the permit.

Note: The physical elements of an offence against subsection (4) are set out in this subsection (see section 58F).

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*Compliance with permit conditions*

- (3) A person contravenes this subsection if:
- (a) the person exports waste; and
  - (b) the waste is hazardous waste; and
  - (c) the person is the holder of an export permit authorising the person to export the hazardous waste; and
  - (d) the permit is subject to a permit condition; and
  - (e) the person does an act or omits to do an act; and
  - (f) the act or omission does not comply with the permit condition in relation to the export (whether before, during or after the export).

Note: The physical elements of an offence against subsection (4) are set out in this subsection (see section 58F).

*Fault-based offence*

- (4) A person commits an offence if the person contravenes subsection (1), (2) or (3).

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

*Strict liability offence*

- (5) A person commits an offence of strict liability if the person contravenes subsection (1), (2) or (3).

Penalty: 60 penalty units.

*Civil penalty provision*

- (6) A person is liable to a civil penalty if the person contravenes subsection (1), (2) or (3).

Civil penalty: 600 penalty units.

### **33D Export of hazardous waste—injury or damage to human beings or the environment**

#### *Prohibition of exports*

- (1) A person contravenes this subsection if:
- (a) the person exports waste; and
  - (b) the waste is hazardous waste; and
  - (c) the person is not the holder of an export permit authorising the person to export the hazardous waste; and
  - (d) the person is not the holder of a transit permit authorising the person to export the hazardous waste; and
  - (e) there is no notification in force under subsection 33G(1) that the person does not require a transit permit to export the hazardous waste; and
  - (f) the export has not been ordered under section 34 or 35A; and
  - (g) the export, or the presence of the hazardous waste outside of Australia after the export, injures or damages, or is likely to injure or damage, human beings or the environment.

Note 1: For paragraph (e), a notification under subsection 33G(1) may cease to be in force if it is revoked under subsection 33G(4).

Note 2: The physical elements of an offence against subsection (4) are set out in this subsection (see section 58F).

#### *Compliance with export permits*

- (2) A person contravenes this subsection if:
- (a) the person exports waste; and
  - (b) the waste is hazardous waste; and
  - (c) the person is the holder of an export permit authorising the person to export the hazardous waste; and
  - (d) the export is not in accordance with the permit; and
  - (e) the export, or the presence of the hazardous waste outside of Australia after the export, injures or damages, or is likely to injure or damage, human beings or the environment.

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Note: The physical elements of an offence against subsection (4) are set out in this subsection (see section 58F).

*Compliance with permit conditions*

- (3) A person contravenes this subsection if:
- (a) the person exports waste; and
  - (b) the waste is hazardous waste; and
  - (c) the person is the holder of an export permit authorising the person to export the hazardous waste; and
  - (d) the permit is subject to a permit condition; and
  - (e) the person does an act or omits to do an act; and
  - (f) the act or omission does not comply with the permit condition in relation to the export (whether before, during or after the export); and
  - (g) the non-compliance with the permit condition injures or damages, or is likely to injure or damage, human beings or the environment.

Note: The physical elements of an offence against subsection (4) are set out in this subsection (see section 58F).

*Fault-based offence*

- (4) A person commits an offence if the person contravenes subsection (1), (2) or (3).

Penalty: Imprisonment for 8 years or 500 penalty units, or both.

*Alternative verdict*

- (5) In a trial for an offence against subsection (4), the trier of fact may find the defendant not guilty of that offence, but guilty of an offence against subsection 33C(4), if:
- (a) the trier of fact is not satisfied that the defendant is guilty of the offence against subsection (4) of this section; and
  - (b) the trier of fact is satisfied that the defendant is guilty of the offence against subsection 33C(4); and

- (c) the defendant has been accorded procedural fairness in relation to that finding of guilt.

*Strict liability offence*

- (6) A person commits an offence of strict liability if the person contravenes subsection (1), (2) or (3).

Penalty: 60 penalty units.

*Civil penalty provision*

- (7) A person is liable to a civil penalty if the person contravenes subsection (1), (2) or (3).

Civil penalty: 1,000 penalty units.

## **Division 3—Regulation of transit of hazardous waste**

### **33E Transit of hazardous waste—basic contravention**

#### *Prohibition of bringing waste into Australia*

- (1) A person contravenes this subsection if:
- (a) in the course of carrying out a transit proposal, the person brings waste into Australia (whether or not by way of import); and
  - (b) the waste is hazardous waste; and
  - (c) the person is not the holder of a transit permit authorising the person to bring the hazardous waste into Australia; and
  - (d) there is no notification in force under subsection 33G(1) that the person does not require a transit permit for the transit proposal.

Note 1: For paragraph (d), a notification under subsection 33G(1) may cease to be in force if it is revoked under subsection 33G(4).

Note 2: The physical elements of an offence against subsection (5) are set out in this subsection (see section 58F).

#### *Compliance with transit permits—bringing waste into Australia*

- (2) A person contravenes this subsection if:
- (a) in the course of carrying out a transit proposal, the person brings waste into Australia (whether or not by way of import); and
  - (b) the waste is hazardous waste; and
  - (c) the person is the holder of a transit permit authorising the person to bring the hazardous waste into Australia; and
  - (d) the bringing of the hazardous waste into Australia is not in accordance with the permit.

Note: The physical elements of an offence against subsection (5) are set out in this subsection (see section 58F).

*Compliance with transit permits—exporting waste*

- (3) A person contravenes this subsection if:
- (a) in the course of carrying out a transit proposal, the person exports waste; and
  - (b) the waste is hazardous waste; and
  - (c) the person is the holder of a transit permit authorising the person to export the hazardous waste; and
  - (d) the export is not in accordance with the permit.

Note: The physical elements of an offence against subsection (5) are set out in this subsection (see section 58F).

*Compliance with permit conditions*

- (4) A person contravenes this subsection if:
- (a) in the course of carrying out a transit proposal, the person brings waste into Australia (whether or not by way of import); and
  - (b) the waste is hazardous waste; and
  - (c) the person is the holder of a transit permit authorising the person to bring the hazardous waste into Australia; and
  - (d) the permit is subject to a permit condition; and
  - (e) the person does an act or omits to do an act; and
  - (f) the act or omission does not comply with the permit condition in relation to the transit of the hazardous waste (whether before, during or after bringing it into Australia).

Note: The physical elements of an offence against subsection (5) are set out in this subsection (see section 58F).

*Fault-based offence*

- (5) A person commits an offence if the person contravenes subsection (1), (2), (3) or (4).

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

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*Strict liability offence*

- (6) A person commits an offence of strict liability if the person contravenes subsection (1), (2), (3) or (4).

Penalty: 60 penalty units.

*Civil penalty provision*

- (7) A person is liable to a civil penalty if the person contravenes subsection (1), (2), (3) or (4).

Civil penalty: 600 penalty units.

**33F Transit of hazardous waste—injury or damage to human beings or the environment**

*Prohibition of bringing waste into Australia*

- (1) A person contravenes this subsection if:
- (a) in the course of carrying out a transit proposal, the person brings waste into Australia (whether or not by way of import); and
  - (b) the waste is hazardous waste; and
  - (c) the person is not the holder of a transit permit authorising the person to bring the hazardous waste into Australia; and
  - (d) there is no notification in force under subsection 33G(1) that the person does not require a transit permit for the transit proposal; and
  - (e) the bringing into Australia, or the presence in Australia, of the hazardous waste injures or damages, or is likely to injure or damage, human beings or the environment.

Note 1: For paragraph (d), a notification under subsection 33G(1) may cease to be in force if it is revoked under subsection 33G(4).

Note 2: The physical elements of an offence against subsection (5) are set out in this subsection (see section 58F).

*Compliance with transit permits—bringing waste into Australia*

- (2) A person contravenes this subsection if:
- (a) in the course of carrying out a transit proposal, the person brings waste into Australia (whether or not by way of import); and
  - (b) the waste is hazardous waste; and
  - (c) the person is the holder of a transit permit authorising the person to bring the hazardous waste into Australia; and
  - (d) the bringing of the hazardous waste into Australia is not in accordance with the permit; and
  - (e) the bringing into Australia, or the presence in Australia, of the hazardous waste injures or damages, or is likely to injure or damage, human beings or the environment.

Note: The physical elements of an offence against subsection (5) are set out in this subsection (see section 58F).

*Compliance with transit permits—exporting waste*

- (3) A person contravenes this subsection if:
- (a) in the course of carrying out a transit proposal, the person exports waste; and
  - (b) the waste is hazardous waste; and
  - (c) the person is the holder of a transit permit authorising the person to export the hazardous waste; and
  - (d) the export is not in accordance with the permit; and
  - (e) the export, or the presence of the hazardous waste outside of Australia after the export, injures or damages, or is likely to injure or damage, human beings or the environment.

Note: The physical elements of an offence against subsection (5) are set out in this subsection (see section 58F).

*Compliance with permit conditions*

- (4) A person contravenes this subsection if:

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- (a) in the course of carrying out a transit proposal, the person brings waste into Australia (whether or not by way of import); and
- (b) the waste is hazardous waste; and
- (c) the person is the holder of a transit permit authorising the person to bring the hazardous waste into Australia; and
- (d) the permit is subject to a permit condition; and
- (e) the person does an act or omits to do an act; and
- (f) the act or omission does not comply with the permit condition in relation to the transit of the hazardous waste (whether before, during or after bringing it into Australia); and
- (g) the non-compliance with the permit condition injures or damages, or is likely to injure or damage, human beings or the environment.

Note: The physical elements of an offence against subsection (5) are set out in this subsection (see section 58F).

*Fault-based offence*

- (5) A person commits an offence if the person contravenes subsection (1), (2), (3) or (4).

Penalty: Imprisonment for 8 years or 500 penalty units, or both.

*Alternative verdict*

- (6) In a trial for an offence against subsection (5), the trier of fact may find the defendant not guilty of that offence, but guilty of an offence against subsection 33E(5), if:
- (a) the trier of fact is not satisfied that the defendant is guilty of the offence against subsection (5) of this section; and
  - (b) the trier of fact is satisfied that the defendant is guilty of the offence against subsection 33E(5); and
  - (c) the defendant has been accorded procedural fairness in relation to that finding of guilt.

*Strict liability offence*

- (7) A person commits an offence of strict liability if the person contravenes subsection (1), (2), (3) or (4).

Penalty: 60 penalty units.

*Civil penalty provision*

- (8) A person is liable to a civil penalty if the person contravenes subsection (1), (2), (3) or (4).

Civil penalty: 1,000 penalty units.

**33G Notice that transit permit not required**

- (1) The Minister may notify a person, in writing, that the person does not require a transit permit for a transit proposal if the Minister is satisfied:
- (a) that carrying out the transit proposal is in connection with the movement of hazardous waste from one OECD country to another OECD country; and
  - (b) that the hazardous waste is destined for recovery operations; and
  - (c) that carrying out the transit proposal will not pose a significant risk of injury or damage to human beings or the environment; and
  - (d) of any other matters prescribed by the regulations for the purposes of this paragraph; and
  - (e) of any other matters the Minister considers relevant.
- (2) Even if the Minister is satisfied as mentioned in subsection (1), the Minister may decide not to give a notification under that subsection if the applicant has previously failed to provide, or to arrange to provide, an auditor with assistance that is reasonably necessary for the conduct of an audit.

Note 1: For the requirement to provide an auditor with assistance that is reasonably necessary for the conduct of an audit, see section 54.

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Note 2: The audit need not relate to a notification. Assistance may be requested in relation to any audit of operations covered by a permit, an order under Part 3, a notification given under subsection 33G(1), or other prescribed operations: see section 50.

- (3) The Minister must, as soon as practicable after giving a notification under subsection (1), cause to be published, on the Department's website, particulars of the notification.
- (4) The Minister may, by notifying a person in writing, revoke a notification of the person under subsection (1) for a transit proposal if the Minister:
  - (a) is no longer satisfied of the matters in paragraphs (1)(a) to (d) in relation to the transit proposal and the person; or
  - (b) is satisfied that the person is failing, or has failed after the notice was given, to provide, or to arrange to provide, an auditor with assistance that is reasonably necessary for the conduct of an audit.
- (5) However, a revocation of a notification only applies to the carrying out of a transit proposal if the carrying out of the transit proposal has yet to begin.

**Division 4—Regulation of sale of hazardous waste****33H Regulation of sale of hazardous waste**

- (1) A person contravenes this subsection if:
- (a) the person sells waste to a body corporate incorporated outside Australia (whether the sale occurs within or outside Australia); and
  - (b) the waste is hazardous waste; and
  - (c) the body corporate:
    - (i) does not have a registered office in Australia; or
    - (ii) does not have a principal office, and at least one executive officer, in Australia; and
  - (d) the person sells the waste knowing, or being reckless as to whether, the waste is to be exported by the body corporate; and
  - (e) an export permit authorising the export of the waste is not in force when the sale occurs.

Note: The physical elements of an offence against subsection (3) are set out in this subsection (see section 58F).

- (2) A person contravenes this subsection if:
- (a) the person sells waste to another person who is located outside Australia; and
  - (b) the waste is hazardous waste; and
  - (c) the person sells the waste knowing, or being reckless as to whether, the waste is to be exported; and
  - (d) an export permit authorising the export of the waste is not in force when the sale occurs.

Note: The physical elements of an offence against subsection (3) are set out in this subsection (see section 58F).

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*Fault-based offence*

- (3) A person commits an offence if the person contravenes subsection (1) or (2).

Penalty: Imprisonment for 3 years or 180 penalty units, or both.

*Civil penalty provision*

- (4) A person is liable to a civil penalty if the person contravenes subsection (1) or (2).

Civil penalty: 360 penalty units.

## **Part 3—Ministerial orders in relation to hazardous waste**

### **Division 1—Ministerial orders**

#### **34 Orders relating to import of hazardous waste**

- (1) If a person contravenes one or more of the provisions mentioned in subsection (2) in relation to hazardous waste, the Minister may, in writing, order the person to deal with the waste in a specified way.
- (2) For the purposes of subsection (1), the provisions are the following:
  - (a) subsection 33A(1) (import of hazardous waste—basic contravention);
  - (b) subsection 33A(2) (import in accordance with permit—basic contravention);
  - (c) subsection 33A(3) (compliance with permit conditions—basic contravention);
  - (d) subsection 33B(1) (import of hazardous waste—injury or damage);
  - (e) subsection 33B(2) (import in accordance with permit—injury or damage);
  - (f) subsection 33B(3) (compliance with permit conditions—injury or damage);
  - (g) subsection 38F(1) (contravention of order to import hazardous waste—basic contravention);
  - (h) subsection 38G(1) (contravention of order to import hazardous waste—injury or damage).
- (3) Without limiting subsection (1), the Minister may, under that subsection:
  - (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.

- (4) An order under this section may also require the person to give the Minister (by a specified time and in a specified manner) specified information relating to the dealing with the waste.

### **35 Orders relating to export of hazardous waste**

- (1) If a person contravenes one or more of the provisions mentioned in subsection (2) in relation to hazardous waste, the Minister may, in writing, order the person to deal with the waste in a specified way.
- (2) For the purposes of subsection (1), the provisions are the following:
- (a) subsection 33C(1) (export of hazardous waste—basic contravention);
  - (b) subsection 33C(2) (export in accordance with permit—basic contravention);
  - (c) subsection 33C(3) (compliance with permit conditions—basic contravention);
  - (d) subsection 33D(1) (export of hazardous waste—injury or damage);
  - (e) subsection 33D(2) (export in accordance with permit—injury or damage);
  - (f) subsection 33D(3) (compliance with permit conditions—injury or damage).
- (3) Without limiting subsection (1), the Minister may, under that subsection:
- (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.
- (4) An order under this section may also require the person to give the Minister (by a specified time and in a specified manner) specified information relating to the dealing with the waste.

**35A Orders relating to transit of hazardous waste**

- (1) If a person contravenes one or more of the provisions mentioned in subsection (2) in relation to hazardous waste, the Minister may, in writing, order the person to deal with the waste in a specified way.
- (2) For the purposes of subsection (1), the provisions are the following:
  - (a) subsection 33E(1) (transit of hazardous waste—basic contravention);
  - (b) subsection 33E(2) (compliance with transit permit to bring waste into Australia—basic contravention);
  - (c) subsection 33E(3) (compliance with transit permit to export waste—basic contravention);
  - (d) subsection 33E(4) (compliance with transit permit conditions—basic contravention);
  - (e) subsection 33F(1) (transit of hazardous waste—injury or damage);
  - (f) subsection 33F(2) (compliance with transit permit to bring waste into Australia—injury or damage);
  - (g) subsection 33F(3) (compliance with transit permit to export waste—injury or damage);
  - (h) subsection 33F(4) (compliance with transit permit conditions—injury or damage).
- (3) Without limiting subsection (1), the Minister may, under that subsection:
  - (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.
- (4) An order under this section may also require the person to give the Minister (by a specified time and in a specified manner) specified information relating to the dealing with the waste.

### **36 Orders to remedy or mitigate damage**

- (1) If:
- (a) a person contravenes one or more of the following provisions in relation to hazardous waste:
    - (i) subsection 33A(1), (2) or (3) (import of hazardous waste—basic contravention);
    - (ii) subsection 33B(1), (2) or (3) (import of hazardous waste—injury or damage);
    - (iii) subsection 33C(1), (2) or (3) (export of hazardous waste—basic contravention);
    - (iv) subsection 33D(1), (2) or (3) (export of hazardous waste—injury or damage);
    - (v) subsection 33E(1), (2), (3) or (4) (transit of hazardous waste—basic contravention);
    - (vi) subsection 33F(1), (2), (3) or (4) (transit of hazardous waste—injury or damage); and
  - (b) the Minister is satisfied that the contravention resulted in the waste causing significant injury or damage to human beings or the environment;
- 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.

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

- (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 34—the order;
- the person may apply to the Minister, in writing, for an order authorising the person to import the waste.
- (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.
- (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.
- (5) An order under this section may also require the person to give the Minister (by a specified time and in a specified manner) specified information relating to the dealing with the waste.

## **Division 2—Contravention of orders**

### **38A Orders to remedy or mitigate damage if order under section 34, 35, 35A or 38 not complied with**

(1) If:

- (a) the person has been given an order under section 34, 35, 35A or 38 requiring the person:
  - (i) to deal with hazardous waste in a specified way; or
  - (ii) to deal with hazardous waste by a specified time; and
- (b) the person does an act or omits to do an act; and
- (c) the act or omission contravenes the requirement; and
- (d) the Minister is satisfied that the non-compliance with the requirement resulted in the waste causing significant injury or damage to human beings or the environment;

the Minister may, in writing, order the person to take such steps as the Minister thinks proper to remedy or mitigate the damage.

Note: A requirement to deal with hazardous waste in a specified way includes a requirement to import or export the waste.

(2) The Minister must not, under subsection (1), order the person to pay compensation.

### **38B Minister may take action and recover costs if order under section 34, 35, 35A, 36, 38 or 38A not complied with**

(1) If:

- (a) the Minister makes an order under section 34, 35, 35A, 36, 38 or 38A requiring a person to do something; and
- (b) the person does not do the thing as and when required by the order;

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 so much of those costs as are reasonable and the amount may be recovered by the Commonwealth as a debt due to the Commonwealth in:

- (a) the Court; or
- (b) the Federal Circuit and Family Court of Australia (Division 2); or
- (c) a court of a State or Territory that has jurisdiction in relation to the matter.

### **38C Failure to deal with waste in contravention of order under section 34, 35 or 35A—basic contravention**

#### *Failure to deal with waste*

- (1) A person contravenes this subsection if:
- (a) the person has been given an order under section 34, 35 or 35A requiring the person:
    - (i) to deal with hazardous waste in a specified way; or
    - (ii) to deal with hazardous waste by a specified time; and
  - (b) the person does an act or omits to do an act; and
  - (c) the act or omission contravenes the requirement.

Note 1: The physical elements of an offence against subsection (2) are set out in this subsection (see section 58F).

Note 2: A requirement to deal with hazardous waste in a specified way includes a requirement to import or export the waste.

#### *Fault-based offence*

- (2) A person commits an offence if the person contravenes subsection (1).

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

#### *Strict liability offence*

- (3) A person commits an offence of strict liability if the person contravenes subsection (1).

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Penalty: 60 penalty units.

*Civil penalty provision*

- (4) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 600 penalty units.

**38D Failure to deal with waste in contravention of order under section 34, 35 or 35A—injury or damage to human beings or the environment**

*Failure to deal with waste*

- (1) A person contravenes this subsection if:
- (a) the person has been given an order under section 34, 35 or 35A requiring the person:
    - (i) to deal with hazardous waste in a specified way; or
    - (ii) to deal with hazardous waste by a specified time; and
  - (b) the person does an act or omits to do an act; and
  - (c) the act or omission contravenes the requirement; and
  - (d) the non-compliance with the requirement injures or damages human beings or the environment.

Note 1: The physical elements of an offence against subsection (2) are set out in this subsection (see section 58F).

Note 2: A requirement to deal with hazardous waste in a specified way includes a requirement to import or export the waste.

*Fault-based offence*

- (2) A person commits an offence if the person contravenes subsection (1).

Penalty: Imprisonment for 8 years or 500 penalty units, or both.

*Alternative verdict*

- (3) In a trial for an offence against subsection (2), the trier of fact may find the defendant not guilty of that offence, but guilty of an offence against subsection 38C(2), if:
- (a) the trier of fact is not satisfied that the defendant is guilty of the offence against subsection (2) of this section; and
  - (b) the trier of fact is satisfied that the defendant is guilty of the offence against subsection 38C(2); and
  - (c) the defendant has been accorded procedural fairness in relation to that finding of guilt.

*Strict liability offence*

- (4) A person commits an offence of strict liability if the person contravenes subsection (1).

Penalty: 60 penalty units.

*Civil penalty provision*

- (5) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 1,000 penalty units.

**38E Failure to deal with waste in contravention of order under section 36 or 38A***Failure to deal with waste*

- (1) A person contravenes this subsection if:
- (a) the person has been given an order under section 36 or 38A requiring the person to take steps to remedy or mitigate damage; and
  - (b) the person does an act or omits to do an act; and
  - (c) the act or omission contravenes the requirement.

**Part 3** Ministerial orders in relation to hazardous waste

**Division 2** Contravention of orders

**Section 38F**

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Note: The physical elements of an offence against subsection (2) are set out in this subsection (see section 58F).

*Fault-based offence*

- (2) A person commits an offence if the person contravenes subsection (1).

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

*Strict liability offence*

- (3) A person commits an offence of strict liability if the person contravenes subsection (1).

Penalty: 60 penalty units.

*Civil penalty provision*

- (4) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 600 penalty units.

**38F Failure to deal with waste in contravention of order under section 38—basic contravention**

*Failure to deal with waste*

- (1) A person contravenes this subsection if:
- (a) the person has been given an order under section 38 requiring the person to deal with hazardous waste in a specified way; and
  - (b) the person does an act or omits to do an act; and
  - (c) the act or omission contravenes the requirement.

Note 1: The physical elements of an offence against subsection (2) are set out in this subsection (see section 58F).

Note 2: A requirement to deal with hazardous waste in a specified way includes a requirement to import the waste or a requirement to deal with the waste within a specified time.

*Fault-based offence*

- (2) A person commits an offence if the person contravenes subsection (1).

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

*Strict liability offence*

- (3) A person commits an offence of strict liability if the person contravenes subsection (1).

Penalty: 60 penalty units.

*Civil penalty provision*

- (4) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 600 penalty units.

**38G Failure to deal with waste in contravention of order under section 38—injury or damage to human beings or the environment**

*Failure to deal with waste*

- (1) A person contravenes this subsection if:
- (a) the person has been given an order under section 38 requiring the person to deal with hazardous waste in a specified way; and
  - (b) the person does an act or omits to do an act; and
  - (c) the act or omission contravenes the requirement; and
  - (d) the act or omission injures or damages, or is likely to injure or damage, human beings or the environment.

**Part 3** Ministerial orders in relation to hazardous waste

**Division 2** Contravention of orders

**Section 38G**

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Note 1: The physical elements of an offence against subsection (2) are set out in this subsection (see section 58F).

Note 2: A requirement to deal with hazardous waste in a specified way includes a requirement to import the waste or a requirement to deal with the waste within a specified time.

*Fault-based offence*

- (2) A person commits an offence if the person contravenes subsection (1).

Penalty: Imprisonment for 8 years or 500 penalty units, or both.

*Alternative verdict*

- (3) In a trial for an offence against subsection (2), the trier of fact may find the defendant not guilty of that offence, but guilty of an offence against subsection 38F(2), if:
- (a) the trier of fact is not satisfied that the defendant is guilty of the offence against subsection (2) of this section; and
  - (b) the trier of fact is satisfied that the defendant is guilty of the offence against subsection 38F(2); and
  - (c) the defendant has been accorded procedural fairness in relation to that finding of guilt.

*Strict liability offence*

- (4) A person commits an offence of strict liability if the person contravenes subsection (1).

Penalty: 60 penalty units.

*Civil penalty provision*

- (5) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 1,000 penalty units.

### **38H Failure to give information in contravention of order under this Part**

#### *Failure to give information*

- (1) A person contravenes this subsection if:
- (a) a person has been given an order under this Part requiring the person to give the Minister specified information by a specified time and in a specified manner; and
  - (b) the person does an act or omits to do an act; and
  - (c) the act or omission contravenes the requirement.

#### *Strict liability offence*

- (2) A person commits an offence of strict liability if the person contravenes subsection (1).

Penalty: 30 penalty units.

#### *Civil penalty provision*

- (3) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 240 penalty units.

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**Part 4A—Transportation of waste substances  
through transit countries where an export  
permit under this Act is not required**

**41A Transporting substance through transit country without  
approval**

*Transporting substance through transit country without approval*

- (1) A person contravenes this subsection if:
- (a) the person exports a substance or object to a foreign country (the *destination country*); and
  - (b) the substance or object is transported through a third country (the *transit country*) on its way to the destination country; and
  - (c) the substance or object is not hazardous waste for the purposes of the application of this Act to the export; and
  - (d) under section 41C the substance or object is a notifiable substance in relation to the transit country; and
  - (e) at the time when the substance or object was brought into the transit country, the transportation had not been approved under section 41B.

Note: The physical elements of an offence against subsection (2) are set out in this subsection (see section 58F).

*Fault-based offence*

- (2) A person commits an offence if the person contravenes subsection (1).

Penalty: Imprisonment for 3 years or 180 penalty units, or both.

*Strict liability offence*

- (3) A person commits an offence of strict liability if the person contravenes subsection (1).

Penalty: 60 penalty units.

*Civil penalty provision*

- (4) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 360 penalty units.

**41B Approval of transportation of substances through transit countries**

*Application for approval*

- (1) A person may apply to the Minister for an approval under this section to transport a substance or object through a foreign country.

*Form of application*

- (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 proposed transportation as is required by the form.

*Minister must notify foreign country of application*

- (3) Within 21 days after receiving the application, the Minister must give the competent authority of the foreign country a written notification of the application. For the purposes of this section, the ***competent authority's decision period*** is the period of 60 days beginning when the notification was given to the competent authority.

## Section 41C

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*If the foreign country consents, Minister must approve transportation*

- (4) If, during the competent authority's decision period, the competent authority notifies the Minister that it consents to the transportation, the Minister must, as soon as practicable after receiving that notification, give the applicant a written notice approving the transportation.

*If the foreign country refuses consent, Minister must refuse approval of transportation*

- (5) If, during the competent authority's decision period, the competent authority notifies the Minister that it does not consent to the transportation, the Minister must, as soon as practicable after receiving that notification, give the applicant a written notice refusing to approve the transportation.

*If the foreign country does not reply within 60 days, Minister must refuse approval of transportation*

- (6) If, by the end of the competent authority's decision period, the competent authority has neither:
- (a) notified the Minister that it consents to the transportation; nor
  - (b) notified the Minister that it does not consent to the transportation;
- the Minister must, as soon as practicable, give the applicant a written notice refusing to approve the transportation.

## **41C Notifiable substances in relation to transit countries**

- (1) This section has effect for the purposes of the application of this Part to the export of a substance or object to a foreign country if:
- (a) the substance or object is not hazardous waste for the purposes of the application of this Act to the export; and
  - (b) the substance or object is, or is proposed to be, transported through a third country (the *transit country*).

*Notifiable substance—Annex I/III waste*

- (2) If a substance or object is Annex I/III waste, the substance or object is a **notifiable substance** in relation to the transit country for those purposes. However, this rule does not apply if the substance or object is declared to be exempt in relation to the transit country by the regulations.

Note: **Annex I/III waste** is defined by subsection (7).

*Declaration that substance is notifiable substance*

- (3) If:
- (a) the transit country is a party to the Basel Convention; and
  - (b) the Minister is satisfied that, under a law of that country that gives effect to the Basel Convention, a particular substance or object is classified as hazardous waste; and
  - (c) the substance or object is not Annex I/III waste;
- the Minister must, by writing, declare that the substance or object is a **notifiable substance** in relation to the transit country for those purposes.

Note: **Annex I/III waste** is defined by subsection (7).

*Declaration has effect accordingly*

- (4) A declaration under subsection (3) has effect accordingly.

*Revocation of declaration*

- (5) If:
- (a) a declaration is in force under subsection (3); and
  - (b) the Minister ceases to be satisfied of the matter referred to in paragraph (3)(b);
- the Minister must revoke the declaration.

**Part 4A** Transportation of waste substances through transit countries where an export permit under this Act is not required

#### Section 41C

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##### *Gazettal of declaration*

- (6) If a declaration under subsection (3) is made or revoked, the Minister must arrange for a copy of the declaration or revocation to be published in the *Gazette*.

##### *Definition*

- (7) In this section:

***Annex I/III waste*** means waste that belongs to any category contained in Annex I to the Basel Convention, unless it does not possess any of the characteristics contained in Annex III to that Convention.

## **Part 4B—Record keeping, information and confidentiality**

### **Division 1—Record keeping and information gathering**

#### **41D Requirement to make and retain records**

##### *Records*

- (1) The regulations may make provision for and in relation to requiring records to be made and retained by the following:
  - (a) a person who holds a permit under this Act in relation to the import, export or transit of hazardous waste;
  - (b) a person who has been notified under subsection 33G(1) that a transit permit is not required for carrying out a transit proposal;
  - (c) a person who has been given an order under Part 3 of this Act.
- (2) Without limiting subsection (1), regulations made for the purposes of that subsection may make provision for and in relation to one or more of the following:
  - (a) the kind of records that must be made and retained;
  - (b) the form in which records must be retained;
  - (c) the period for which records must be retained.
- (3) A person contravenes this subsection if:
  - (a) the person is required to make or retain a record in accordance with regulations made for the purposes of subsection (1); and
  - (b) the person fails to comply with the requirement.

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*Strict liability offence*

- (4) A person commits an offence of strict liability if the person contravenes subsection (3).

Penalty: 30 penalty units.

*Civil penalty provision*

- (5) A person is liable to a civil penalty if the person contravenes subsection (3).

Civil penalty: 240 penalty units.

**41E Requirement to give information or produce documents**

- (1) The Secretary may, by written notice, require a person to give a specified inspector or entrusted person, in the manner and within the period specified in the notice, any:
- (a) specified information; or
  - (b) specified documents;
- that the Secretary reasonably believes that the person is capable of giving for the purposes of investigating or preventing a contravention of a provision of this Act.
- (2) The period specified in a notice given under subsection (1) must be at least 14 days after the day the notice is given.
- (3) A notice given under subsection (1) must set out the effect of subsection (4) and sections 137.1 and 137.2 of the *Criminal Code*.
- (4) A person contravenes this subsection if:
- (a) the person is given a notice under subsection (1); and
  - (b) the person fails to comply with the notice.

*Strict liability offence*

- (5) A person commits an offence of strict liability if the person contravenes subsection (4).

Penalty: 30 penalty units.

*Civil penalty provision*

- (6) A person is liable to a civil penalty if the person contravenes subsection (4).

Civil penalty: 240 penalty units.

**41F Self-incrimination**

- (1) An individual is not excused from giving information or producing a document under section 41E on the ground that giving the information or producing the document might tend to incriminate the individual in relation to an offence.

Note: A body corporate is not entitled to claim the privilege against self-incrimination.

- (2) However:

- (a) the information given or document produced; and
- (b) the giving of the information or the production of the document; and
- (c) any information, document or thing obtained as a direct or indirect consequence of the giving of the information or the production of the document;

are not admissible in evidence against the individual in criminal proceedings other than proceedings for an offence against:

- (d) section 41E of this Act; or
- (e) section 137.1 or 137.2 of the *Criminal Code* in relation to giving the information or producing the document.

**Part 4B** Record keeping, information and confidentiality

**Division 1** Record keeping and information gathering

**Section 41F**

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- (3) If, at general law, an individual would otherwise be able to claim the privilege against self-exposure to a penalty (other than a penalty for an offence) in relation to giving information or producing a document under section 41E, the individual is not excused from giving the information or producing the document under that provision on that ground.

Note: A body corporate is not entitled to claim the privilege against self-exposure to a penalty.

## **Division 2—Authorised uses and disclosures of relevant information**

### **Subdivision A—Authorised uses and disclosures by Minister**

#### **41G Disclosure of relevant information to Commonwealth entities**

The Minister may disclose relevant information to a Commonwealth entity if the Minister is satisfied the disclosure is for the purposes of assisting the entity to perform its functions or exercise its powers.

#### **41H Disclosure of relevant information to State or Territory government body**

The Minister may disclose relevant information to a State or Territory government body if:

- (a) the Minister reasonably believes that the disclosure of the information is necessary for the purposes of:
  - (i) the Minister performing functions, or exercising powers, under this Act; or
  - (ii) the administration of a State or Territory law; and
- (b) the State or Territory government body has undertaken not to use or further disclose the information except in accordance with an agreement that:
  - (i) is in force between the Commonwealth and the State or Territory; and
  - (ii) applies in relation to the information; and
- (c) the Minister is satisfied that the information will be used and further disclosed only in accordance with the agreement.

#### **41J Disclosure for the purposes of law enforcement**

- (1) The Minister may disclose relevant information to an enforcement body if:

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- (a) the Minister reasonably believes that the disclosure of the information is necessary for:
    - (i) the enforcement of the criminal law; or
    - (ii) the enforcement of a law imposing a pecuniary penalty; or
    - (iii) the protection of public revenue; and
  - (b) the functions of that body include that enforcement or protection.
- (2) Each of the following is an *enforcement body*:
- (a) a Commonwealth entity;
  - (b) a State or Territory government body;
  - (c) the Australian Federal Police;
  - (d) the police force or police service of a State or Territory.

**41K Disclosure to reduce serious risk to human health**

The Minister may disclose relevant information if the Minister reasonably believes that the disclosure is necessary to prevent or lessen a serious risk to human health.

**41L Disclosure to reduce serious risk to the environment**

The Minister may disclose relevant information if the Minister reasonably believes that the disclosure is necessary to prevent or lessen a serious risk to the environment.

**Subdivision B—Authorised uses and disclosures by entrusted person**

**41M Disclosure for the purposes of an Act**

An entrusted person may use or disclose relevant information if the use or disclosure is for the purposes of this Act or another Act administered by the Minister.

#### **41N Publicly available information**

An entrusted person may use and disclose relevant information if the information has already been lawfully made available to the public.

#### **41P Person to whom information relates**

An entrusted person may disclose relevant information to the person to whom the information relates.

#### **41Q Disclosure with consent**

An entrusted person may use or disclose relevant information that relates to a person if:

- (a) the person has consented to the use or disclosure; and
- (b) the use or disclosure is in accordance with that consent.

#### **41R Person who provided information**

An entrusted person may disclose relevant information to the person who provided the information.

#### **41S Summaries or statistics**

An entrusted person may disclose:

- (a) summaries of relevant information; or
- (b) statistics derived from relevant information;

if those summaries or statistics do not enable the identification of a person.

#### **41T Disclosure to a court, tribunal etc.**

An entrusted person may disclose relevant information, or a document containing relevant information:

- (a) for the purposes of proceedings before:
  - (i) a court; or

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- (ii) a tribunal, authority or person that has the power to require the answering of questions or the production of documents; or
- (b) in accordance with an order of a court or such a tribunal, authority or person.

**41U Use for the purposes of disclosure**

An entrusted person may use relevant information for the purpose of disclosing the relevant information under this Division.

**Subdivision C—Offences**

**41V Unauthorised use or disclosure of protected information—entrusted person**

*Unauthorised use or disclosure*

- (1) A person contravenes this subsection if:
- (a) the person is, or has been, an entrusted person; and
  - (b) the person has obtained relevant information in the person's capacity as an entrusted person; and
  - (c) the information is protected information; and
  - (d) the person uses or discloses the information.

Note: The physical elements of an offence against subsection (3) are set out in this subsection (see section 58F).

*Exceptions*

- (2) However, subsection (1) does not apply if the use or disclosure is authorised or required by:
- (a) this Act; or
  - (b) any other law of the Commonwealth; or
  - (c) a prescribed law of a State or a Territory.

Note: A person who wishes to rely on this subsection bears an evidential burden in relation to the matters in this subsection (see

subsection 13.3(3) of the *Criminal Code* and section 96 of the  
Regulatory Powers Act).

*Fault-based offence*

- (3) A person commits an offence if the person contravenes  
subsection (1).

Penalty: Imprisonment for 2 years or 180 penalty units, or both.

*Strict liability offence*

- (4) A person commits an offence of strict liability if the person  
contravenes subsection (1).

Penalty: 60 penalty units.

*Civil penalty provision*

- (5) A person is liable to a civil penalty if the person contravenes  
subsection (1).

Civil penalty: 360 penalty units.

**41W Unauthorised use or disclosure of protected information—  
official of Commonwealth entity**

- (1) A person contravenes this subsection if:
- (a) the person is, or has been, an official of a Commonwealth  
entity; and
  - (b) the person has obtained relevant information in the person's  
capacity as an official of the entity; and
  - (c) the information is protected information that was disclosed to  
the entity under section 41G; and
  - (d) the person uses or discloses the information other than for the  
purpose for which it was disclosed to the entity.

Note: The physical elements of an offence against subsection (2) are set out  
in this subsection (see section 58F).

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*Fault-based offence*

- (2) A person commits an offence if the person contravenes subsection (1).

Penalty: Imprisonment for 2 years or 180 penalty units, or both.

*Strict liability offence*

- (3) A person commits an offence of strict liability if the person contravenes subsection (1).

Penalty: 60 penalty units.

*Civil penalty provision*

- (4) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 360 penalty units.

## **Part 5—Compliance powers**

### **Division 1—Inspectors**

#### **42 Appointment of inspectors**

- (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.
- (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:
  - (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;
  - (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.

Note: Paragraph (a) includes, for example, staff of the Australian Maritime Safety Authority.

## **Division 2—Powers of inspectors**

### **Subdivision A—Monitoring and investigation powers**

#### **43 Monitoring powers**

##### *Provisions subject to monitoring*

- (1) The following provisions are subject to monitoring under Part 2 of the Regulatory Powers Act:
- (a) each provision of this Act;
  - (b) an offence against the *Crimes Act 1914* or the *Criminal Code* to the extent that it relates to this Act.

Note: Part 2 of the Regulatory Powers Act creates a framework for monitoring whether the provisions have been complied with. It includes powers of entry and inspection.

##### *Information subject to monitoring*

- (2) Information given in compliance or purported compliance with a provision of this Act is subject to monitoring under Part 2 of the Regulatory Powers Act.

Note: Part 2 of the Regulatory Powers Act creates a framework for monitoring whether the information is correct. It includes powers of entry and inspection.

##### *Related provisions, authorised applicant, issuing officer, relevant chief executive and relevant court*

- (3) For the purposes of Part 2 of the Regulatory Powers Act, as it applies in relation to the provisions mentioned in subsection (1) and the information mentioned in subsection (2):
- (a) there are no related provisions; and
  - (b) an inspector is an authorised applicant; and
  - (c) a magistrate is an issuing officer; and
  - (d) the Secretary is the relevant chief executive; and

- (e) the Court is the relevant court.

*Authorised persons*

- (4) For the purposes of Part 2 of the Regulatory Powers Act:
  - (a) an inspector is an authorised person in relation to the provisions mentioned in subsection (1) and the information mentioned in subsection (2); and
  - (b) an officer of Customs is an authorised person in relation to either of sections 48 and 49 of this Act and the information given in compliance or purported compliance with either of those sections.

*Person assisting*

- (5) An authorised person may be assisted by other persons in exercising powers or performing functions or duties under Part 2 of the Regulatory Powers Act in relation to the provisions mentioned in subsection (1) and the information mentioned in subsection (2).

## **44 Modifications of monitoring powers**

*Additional monitoring powers*

- (1) For the purposes of determining:
  - (a) whether a provision mentioned in subsection 43(1) has been, or is being, complied with; or
  - (b) the correctness of information mentioned in subsection 43(2);the additional powers mentioned in subsection (2) of this section are taken to be included in the monitoring powers under Part 2 of the Regulatory Powers Act.
- (2) The additional monitoring powers are:
  - (a) the power to sample any thing in a searchable place entered under Part 2 of the Regulatory Powers Act; and
  - (b) the power to remove, test and analyse such samples; and
  - (c) the power to secure a searchable place entered under Part 2 of the Regulatory Powers Act; and

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- (d) the power to secure things in a searchable place entered under Part 2 of the Regulatory Powers Act for the purposes of sampling, testing or analysing those things; and
- (e) the powers set out in sections 47, 48 and 49 of this Act.

*Premises*

- (3) Part 2 of the Regulatory Powers Act applies in relation to the provisions mentioned in subsection 43(1) of this Act, and the information mentioned in subsection 43(2) of this Act, as if a reference in that Part to “premises” were a reference to “searchable place” as defined in section 4 of this Act.

*Occupier*

- (4) Part 2 of the Regulatory Powers Act applies in relation to the provisions mentioned in subsection 43(1) of this Act, and the information mentioned in subsection 43(2) of this Act, as if a reference in that Part to “occupier” were a reference to “relevant authority” as defined in section 4 of this Act.

*Stopping or detaining a vessel, aircraft or vehicle*

- (5) If an authorised person is authorised under section 18 of the Regulatory Powers Act, as it applies in relation to:
  - (a) a provision mentioned in subsection 43(1) of this Act; and
  - (b) information mentioned in subsection 43(2) of this Act;to enter a searchable place that is a vessel, aircraft or vehicle, the monitoring powers under Part 2 of the Regulatory Powers Act are taken to include a power that the authorised person may stop and detain the vessel, aircraft or vehicle for the purposes of:
  - (c) entering the vessel, aircraft or vehicle; and
  - (d) exercising monitoring powers under that Part.

*Announcement before entry under a warrant*

- (6) For the purposes of determining:

- (a) whether a provision mentioned in subsection 43(1) has been, or is being, complied with; or
  - (b) the correctness of information mentioned in subsection 43(2); paragraph 26(b) of the Regulatory Powers Act is taken not to apply to an authorised person if the authorised person reasonably believes that showing the authorised person's identity card before entering a searchable place under Part 2 of that Act is not practical in the circumstances.
- (7) However, if either of the following persons is present at the searchable place when the authorised person so enters it:
  - (a) the relevant authority in relation to the searchable place;
  - (b) another person who apparently represents the relevant authority in relation to the searchable place;the Regulatory Powers Act is taken to require the authorised person to show the authorised person's identity card to the relevant authority, or other person, as soon as is practicable.

*Use of force in executing a monitoring warrant*

- (8) In executing a monitoring warrant under Part 2 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in subsection 43(1) of this Act and the information mentioned in subsection 43(2) of this Act:
  - (a) an authorised person may use such force against things as is necessary and reasonable in the circumstances; and
  - (b) a person assisting the authorised person may use such force against things as is necessary and reasonable in the circumstances.

## **45 Investigation powers**

*Provisions subject to investigation*

- (1) A provision is subject to investigation under Part 3 of the Regulatory Powers Act if it is:
  - (a) an offence against this Act; or

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- (b) a civil penalty provision of this Act; or
- (c) an offence against the *Crimes Act 1914* or the *Criminal Code* to the extent that it relates to this Act.

Note: Part 3 of the Regulatory Powers Act creates a framework for investigating whether a provision has been contravened. It includes powers of entry, search and seizure.

*Related provisions, authorised applicant, issuing officer, relevant chief executive and relevant court*

- (2) For the purposes of Part 3 of the Regulatory Powers Act, as it applies in relation to evidential material that relates to a provision mentioned in subsection (1):
  - (a) there are no related provisions; and
  - (b) an inspector is an authorised applicant; and
  - (c) a magistrate is an issuing officer; and
  - (d) the Secretary is the relevant chief executive; and
  - (e) the Court is the relevant court.

*Authorised persons*

- (3) For the purposes of Part 3 of the Regulatory Powers Act:
  - (a) an inspector is an authorised person in relation to evidential material that relates to a provision mentioned in subsection (1); and
  - (b) an officer of Customs is an authorised person in relation to evidential material that relates to either of sections 48 and 49 of this Act.

*Person assisting*

- (4) An authorised person may be assisted by other persons in exercising powers or performing functions or duties under Part 3 of the Regulatory Powers Act in relation to evidential material that relates to a provision mentioned in subsection (1).

## **46 Modifications of investigation powers**

### *Additional investigation powers*

- (1) The additional powers mentioned in subsection (2) are taken to be included in the investigation powers under Part 3 of the Regulatory Powers Act, as that Part applies in relation to evidential material that relates to a provision mentioned in subsection 45(1) of this Act.
- (2) The additional investigation powers are:
  - (a) the power to sample any thing in a searchable place entered under Part 3 of the Regulatory Powers Act; and
  - (b) the power to remove, test and analyse such samples; and
  - (c) the power to secure a searchable place entered under Part 3 of the Regulatory Powers Act; and
  - (d) the power to secure things in a searchable place entered under Part 3 of the Regulatory Powers Act for the purposes of sampling, testing or analysing those things; and
  - (e) the powers set out in sections 47, 48 and 49 of this Act.

### *Premises*

- (3) Part 3 of the Regulatory Powers Act applies in relation to evidential material that relates to a provision mentioned in subsection 45(1) of this Act as if a reference in that Part to “premises” were a reference to “searchable place” as defined in section 4 of this Act.

### *Occupier*

- (4) Part 3 of the Regulatory Powers Act applies in relation to evidential material that relates to a provision mentioned in subsection 45(1) of this Act as if a reference in that Part to “occupier” were a reference to “relevant authority” as defined in section 4 of this Act.

*Stopping or detaining a vessel, aircraft or vehicle*

- (5) If an authorised person is authorised under section 48 of the Regulatory Powers Act, as it applies in relation to evidential material that relates to a provision mentioned in subsection 45(1) of this Act, to enter a searchable place that is a vessel, aircraft or vehicle, the investigation powers under Part 3 of the Regulatory Powers Act are taken to include a power that the authorised person may stop and detain the vessel, aircraft or vehicle for the purposes of:
- (a) entering the vessel, aircraft or vehicle; and
  - (b) exercising investigation powers under that Part.

*Use of force in executing an investigation warrant*

- (6) In executing an investigation warrant under Part 3 of the Regulatory Powers Act, as that Part applies in relation to evidential material that relates to a provision mentioned in subsection 45(1) of this Act:
- (a) an authorised person may use such force against things as is necessary and reasonable in the circumstances; and
  - (b) a person assisting the authorised person may use such force against things as is necessary and reasonable in the circumstances.

**47 Additional monitoring and investigation powers—control movement of vessels and aircraft etc.**

- (1) For the purposes of paragraph 44(2)(e) or 46(2)(e), the powers under Part 2 or 3 of the Regulatory Powers Act include the powers in this section if an authorised person acting under that Part 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, exported or the subject of a transit proposal.

- (2) If this section applies in relation to a vessel, the authorised person 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, or does not come, as the case requires, within 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 authorised person 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 authorised person permits their unloading.
- (3) If this section applies in relation to an aircraft, the authorised person 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, or does not come, as the case requires, within 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 authorised person 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 authorised person permits their unloading.
- (4) An authorised person 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

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- (c) if the requirement relates to an aircraft—any other internationally recognised means of communication with an aircraft.

*Complying with requirement*

- (5) A person contravenes this subsection if:
  - (a) the person is subject to a requirement under this section; and
  - (b) the person fails to comply with the requirement.

Note: An example of failing to comply with a requirement is refusing to comply with it.

- (6) Subsection (5) does not apply if complying with the requirement would have endangered the person or any other person.

Note: A person who wishes to rely on this subsection bears an evidential burden in relation to the matters in this subsection (see subsection 13.3(3) of the *Criminal Code* and section 96 of the Regulatory Powers Act).

*Strict liability offence*

- (7) A person commits an offence of strict liability if the person contravenes subsection (5).

Penalty: 30 penalty units.

*Civil penalty provision*

- (8) A person is liable to a civil penalty if the person contravenes subsection (5).

Civil penalty: 240 penalty units.

**48 Additional monitoring and investigation powers—production of permits and orders for import or export**

- (1) For the purposes of paragraph 44(2)(e) or 46(2)(e), the powers under Part 2 or 3 of the Regulatory Powers Act include the powers in this section if an authorised person acting under that Part has

reasonable grounds for suspecting that a person (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 Basel permit or special permit authorising the import or export; or
  - (b) an order under section 34, 35, 35A or 38 authorising or requiring the import or export.

*Complying with requirement*

- (3) A person contravenes this subsection if:
- (a) the person is subject to a requirement under subsection (2); and
  - (b) the person fails to comply with the requirement.

Note: An example of failing to comply with a requirement is refusing to comply with it.

*Strict liability offence*

- (4) A person commits an offence of strict liability if the person contravenes subsection (3).

Penalty: 30 penalty units.

*Civil penalty provision*

- (5) A person is liable to a civil penalty if the person contravenes subsection (3).

Civil penalty: 240 penalty units.

**49 Additional monitoring and investigation powers—production of transit permits**

- (1) For the purposes of paragraph 44(2)(e) or 46(2)(e), the powers under Part 2 or 3 of the Regulatory Powers Act include the powers in this section if an authorised person acting under that Part has reasonable grounds for suspecting that a person (the *suspected person*):
- (a) intends to carry out a transit proposal; or
  - (b) is carrying out a transit proposal; or
  - (c) has carried out a transit proposal.
- (2) The authorised person may require the suspected person to produce, or to produce evidence of the existence and contents of:
- (a) a transit permit authorising the carrying out of the transit proposal; or
  - (b) a notification in force under subsection 33G(1) that a transit permit is not required for the transit proposal.

*Complying with requirement*

- (3) A person contravenes this subsection if:
- (a) the person is subject to a requirement under subsection (2); and
  - (b) the person fails to comply with the requirement.

Note: An example of failing to comply with a requirement is refusing to comply with it.

*Strict liability offence*

- (4) A person commits an offence of strict liability if the person contravenes subsection (3).

Penalty: 30 penalty units.

*Civil penalty provision*

- (5) A person is liable to a civil penalty if the person contravenes subsection (3).

Civil penalty: 240 penalty units.

**Subdivision B—Audit powers**

**50 Audits**

*Operations in relation to which audit may be required*

- (1) The Secretary may, in writing, require an audit to be conducted of any of the following:
- (a) operations purportedly covered by an import proposal that is or was covered by an import permit;
  - (b) operations purportedly covered by an export proposal that is or was covered by an export permit;
  - (c) operations purportedly covered by a transit proposal that is or was covered by a transit permit;
  - (d) operations that are or were covered by an order under Part 3;
  - (e) operations that are or were purportedly covered by a notification under subsection 33G(1);
  - (f) operations that are or were carried out, or proposed to be carried out, in any other circumstances prescribed by the regulations for the purposes of this paragraph.

*Matters to which audit must relate*

- (2) An audit under subsection (1) must relate to whether operations referred to in a paragraph of subsection (1):
- (a) are covered by any permit, order or notification referred to in that paragraph; or
  - (b) are complying, have complied, or will comply with any permit, order or notification referred to in that paragraph; or

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- (c) are complying, have complied, or will comply with any requirement of, or made under, this Act; or
  - (d) if a notification is referred to in that paragraph—would likely result in the Minister still being satisfied of the criteria in subsection 33G(1) were the Minister to consider making the notification again; or
  - (e) are complying, have complied, or will comply with any other matter relating to the operation of this Act prescribed by the regulations for the purposes of this paragraph.
- (3) An audit under subsection (1) may deal with anything that is:
- (a) reasonably necessary for the effective conduct of the audit; or
  - (b) incidental to the matter to which the audit relates.

*Who may conduct audit*

- (4) An audit under this section must be conducted by an inspector.

**51 Single audit or program of audits may be required**

The Secretary may require, under section 50, a single audit, or a program of audits, to be conducted in relation to a specified matter or matters included in a specified class of matters.

Note: If the Secretary has required a program of audits to be conducted in relation to a matter, the Secretary may also require additional audits to be conducted in relation to the matter (see subsection 33(1) of the *Acts Interpretation Act 1901*).

**52 Relevant person for an audit**

The *relevant person* for an audit is as follows:

- (a) for an audit of operations relating to a permit—the holder of the permit;
- (b) for an audit of operations relating to an order under Part 3—the person who is the subject of the order;
- (c) for an audit of operations relating to a notification under subsection 33G(1)—the person notified;

- (d) for an audit of operations that are, were, or proposed to be carried out in circumstances prescribed by the regulations for the purposes of paragraph 50(1)(f)—the person who is or was carrying out, or is proposing to carry out, the operations.

### **53 Conduct of audit**

- (1) The Secretary need not give notice of an audit required under this Subdivision.
- (2) Before starting to conduct an audit, an auditor must give the relevant person for the audit a description of the scope of the audit.

*Regulations may make provision in relation to other matters*

- (3) Regulations made for the purposes of this subsection may make provision for and in relation to:
  - (a) other matters relating to the conduct of an audit; and
  - (b) the process to be followed after an audit has been completed.
- (4) Without limiting subsection (3), the regulations may make provision for and in relation to the following:
  - (a) information that must be provided to the relevant person for the audit before the audit, during the audit or after the audit is completed;
  - (b) requirements for reports to be provided in relation to an audit.

### **54 Relevant person for an audit must provide assistance**

- (1) The relevant person for an audit must provide the auditor with assistance that is reasonably necessary for the conduct of the audit.
- (2) Without limiting subsection (1), providing assistance that is reasonably necessary includes complying with any request under subsection 55(1) for the audit.

Note: Failing to provide assistance that is reasonably necessary for the conduct of an audit may result in, for example, the revocation or

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variation of a permit or the revocation of notification given under subsection 33G(1).

**55 Powers of auditors**

- (1) For the purpose of conducting an audit, an auditor may request a person who the auditor reasonably believes has information or documents that are relevant to the audit to answer questions, provide information in writing, or produce the documents.

Note: A person may commit an offence or be liable to a civil penalty if the person provides false or misleading information or documents (see sections 137.1 and 137.2 of the *Criminal Code*).

- (2) An auditor may make copies of, or take extracts from, a document or record produced under subsection (1).

## **Part 5AA—Enforcement powers**

### **Division 1—Civil penalty provisions**

#### **56AA Civil penalty provisions**

##### *Enforceable civil penalty provisions*

- (1) Each civil penalty provision of this Act is enforceable under Part 4 of the Regulatory Powers Act.

Note: Part 4 of the Regulatory Powers Act allows a civil penalty provision to be enforced by obtaining an order for a person to pay a pecuniary penalty for the contravention of the provision.

##### *Authorised applicant*

- (2) For the purposes of Part 4 of the Regulatory Powers Act, the Secretary is an authorised applicant in relation to the civil penalty provisions of this Act.

##### *Relevant court*

- (3) For the purposes of Part 4 of the Regulatory Powers Act, the Court is a relevant court in relation to the civil penalty provisions of this Act.

## **Division 2—Infringement notices**

### **56AB Infringement notices**

#### *Provisions subject to an infringement notice*

- (1) A provision of this Act contravention of which is an offence of strict liability is subject to an infringement notice under Part 5 of the Regulatory Powers Act.

Note: Part 5 of the Regulatory Powers Act creates a framework for using infringement notices in relation to provisions.

#### *Infringement officer*

- (2) For the purposes of Part 5 of the Regulatory Powers Act, an inspector is an infringement officer in relation to the provisions mentioned in subsection (1).

#### *Relevant chief executive*

- (3) For the purposes of Part 5 of the Regulatory Powers Act, the Secretary is the relevant chief executive in relation to the provisions mentioned in subsection (1).

## **Division 3—Enforceable undertakings**

### **56AC Enforceable undertakings**

#### *Enforceable provisions*

- (1) The provisions of this Act are enforceable under Part 6 of the Regulatory Powers Act.

Note: Part 6 of the Regulatory Powers Act creates a framework for accepting and enforcing undertakings relating to compliance with provisions.

#### *Authorised person*

- (2) For the purposes of Part 6 of the Regulatory Powers Act, the Secretary is an authorised person in relation to the provisions mentioned in subsection (1).

#### *Relevant court*

- (3) For the purposes of Part 6 of the Regulatory Powers Act, the Court is a relevant court in relation to the provisions mentioned in subsection (1).

## **Division 4—Injunctions**

### **56AD Injunctions**

#### *Enforceable provisions*

- (1) The provisions of this Act are enforceable under Part 7 of the Regulatory Powers Act.

Note: Part 7 of the Regulatory Powers Act creates a framework for using injunctions to enforce provisions.

#### *Authorised persons*

- (2) For the purposes of Part 7 of the Regulatory Powers Act, each of the following persons is an authorised person:
- (a) in relation to the provisions mentioned in subsection (1)—the Secretary;
  - (b) in relation to:
    - (i) conduct or proposed conduct in contravention of a provision of this Act; or
    - (ii) a refusal or failure to do a thing that was, is or would be a contravention of a provision of this Act;a person who, or entity to which, subsection (3), (4), (5) or (6) applies.
- (3) This subsection applies to a person whose interests have, are or will be affected by the conduct, proposed conduct, refusal or failure mentioned in paragraph (2)(b).
- (4) This subsection applies to an individual if:
- (a) the individual is an Australian citizen or ordinarily resident in Australia; and
  - (b) at any time during the 2-year period ending immediately before the individual makes an application for an injunction, the individual has engaged in one or more activities relating to any of the following:

- (i) research into hazardous waste;
  - (ii) the protection of human beings or the environment from the harmful effects of hazardous waste;
  - (iii) research into pollution of the air, water or soil, where the pollution results from the disposal of hazardous waste;
  - (iv) the protection of human beings or the environment from the harmful effects of pollution of the air, water or soil, where the pollution results from the disposal of hazardous waste.
- (5) This subsection applies to a body corporate if:
- (a) the body corporate is incorporated in Australia; and
  - (b) at any time during the 2-year period ending immediately before the body corporate makes an application for an injunction, the body corporate has engaged in one or more activities relating to any of the following:
    - (i) research into hazardous waste;
    - (ii) the protection of human beings or the environment from the harmful effects of hazardous waste;
    - (iii) research into pollution of the air, water or soil, where the pollution results from the disposal of hazardous waste;
    - (iv) the protection of human beings or the environment from the harmful effects of pollution of the air, water or soil, where the pollution results from the disposal of hazardous waste; and
  - (c) the objects or purposes of the body corporate include any of the following:
    - (i) research into hazardous waste;
    - (ii) the protection of human beings or the environment from the harmful effects of hazardous waste;
    - (iii) research into pollution of the air, water or soil, where the pollution results from the disposal of hazardous waste;

- (iv) the protection of human beings or the environment from the harmful effects of pollution of the air, water or soil, where the pollution results from the disposal of hazardous waste.
- (6) This subsection applies to an unincorporated organisation or unincorporated association if:
  - (a) the organisation or association was established in Australia; and
  - (b) at any time during the 2-year period ending immediately before the organisation or association makes an application for an injunction, the organisation or association has engaged in one or more activities relating to any of the following:
    - (i) research into hazardous waste;
    - (ii) the protection of human beings or the environment from the harmful effects of hazardous waste;
    - (iii) research into pollution of the air, water or soil, where the pollution results from the disposal of hazardous waste;
    - (iv) the protection of human beings or the environment from the harmful effects of pollution of the air, water or soil, where the pollution results from the disposal of hazardous waste; and
  - (c) the objects or purposes of the organisation or association include any of the following:
    - (i) research into hazardous waste;
    - (ii) the protection of human beings or the environment from the harmful effects of hazardous waste;
    - (iii) research into pollution of the air, water or soil, where the pollution results from the disposal of hazardous waste;
    - (iv) the protection of human beings or the environment from the harmful effects of pollution of the air, water or soil, where the pollution results from the disposal of hazardous waste.

- (7) Part 7 of the Regulatory Powers Act, as that Part applies in relation to a provision mentioned in subsection (1), applies as if a reference in subsections 119(1) and 119(2) of that Act to “a person” included references to “an unincorporated organisation” and “an unincorporated association”.
- (8) Subparagraphs (4)(b)(i) to (iv), (5)(b)(i) to (iv) and (6)(b)(i) to (iv) do not apply to activities unless:
  - (a) the activities are carried on within Australian jurisdiction; or
  - (b) the activities relate to the effects of hazardous waste of Australian origin on human beings, or the environment, outside of Australian jurisdiction.
- (9) For the purposes of subsections (4), (5) and (6), in interpreting the expression ***hazardous waste***, sections 4A, 4F and 4G are to be ignored.

*Relevant court*

- (10) For the purposes of Part 7 of the Regulatory Powers Act, the Court is a relevant court in relation to the provisions mentioned in subsection (1).

*Certain limits on granting injunctions do not apply*

- (11) Subsection 124(1) of the Regulatory Powers Act applies in relation to the provisions mentioned in subsection (1) of this section as if paragraph 124(1)(c) of that Act were replaced by the following paragraph:
  - “(c) whether or not there is a significant risk of injury or damage to an individual or the environment if the person engages in conduct of that kind.”.
- (12) Subsection 124(2) of the Regulatory Powers Act applies in relation to the provisions mentioned in subsection (1) as if paragraph 124(2)(c) of that Act were replaced by the following paragraph:

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“(c) whether or not there is a significant risk of injury or damage to an individual or the environment if the person refuses or fails to do the thing.”.

## **Part 5A—Arrangements by Minister**

### **56A Arrangements by Minister**

#### *Arrangements*

- (1) The Minister may make arrangements directed towards any or all of the following:
  - (a) discouraging the unlawful import or export of hazardous waste;
  - (b) collecting statistics relating to the import and export of hazardous waste;
  - (c) helping to reduce the generation of hazardous waste in Australia;
  - (d) developing adequate disposal facilities for the environmentally sound management of hazardous waste in Australia;
  - (e) encouraging persons involved in the management of hazardous waste in Australia to take steps:
    - (i) to prevent or reduce pollution arising from the management of the waste; and
    - (ii) to prevent or reduce the adverse consequences of any such pollution for human health and the environment.

#### *Achievement of object or aims of this Act*

- (2) An arrangement may only be made under subsection (1) to the extent necessary to achieve the object or aims of this Act.

#### *Co-operation by the Commonwealth*

- (3) Arrangements under subsection (1) may include, but are not limited to, arrangements involving co-operation by the Commonwealth with any or all of the following:

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- (a) the government of a foreign country, of a State or of a Territory;
- (b) the administration of an external Territory;
- (c) an organisation;
- (d) a person.

*Consultation with States/Territories*

- (4) Before making an arrangement covered by paragraph (1)(c), (d) or (e), the Minister must consult the government or administration of a State or Territory if:
  - (a) the arrangement relates, in whole or in part, to an activity carried on, or proposed to be carried on, in the State or Territory; and
  - (b) the government or administration of the State or Territory is not a party to the arrangement.

*Constitutional limitations*

- (5) The Minister may perform functions conferred by subsection (1) to the extent only that they do not exceed the functions that may be conferred on the Minister by virtue of any of the legislative powers of the Parliament. In particular, the Minister may perform functions under subsection (1) for purposes related to:
  - (a) trade or commerce with other countries, or among the States; and
  - (b) external affairs; and
  - (c) the spending of money appropriated by the Parliament; and
  - (d) the granting of financial assistance to a State on such terms and conditions as the Minister determines; and
  - (e) the executive power of the Commonwealth; and
  - (f) statistics; and
  - (g) a Territory; and
  - (h) the activities of a corporation to which paragraph 51(xx) of the Constitution applies.

## Part 6—Miscellaneous

### 57 Review of decisions

Applications may be made to the Administrative Review Tribunal for the review of decisions of the following kinds:

- (a) decisions whether to grant Basel permits or special permits;
- (b) decisions to impose permit conditions on a Basel permit or special permit;
- (c) decisions to require permit conditions to be complied with on or before particular days;
- (d) decisions whether to vary Basel permits or special permits;
- (e) decisions to revoke Basel permits or special permits;
- (ea) decisions to give a notice under subsection 33G(1);
- (eb) decisions to revoke a notice under subsection 33G(4);
- (f) decisions under sections 34, 35, 35A, 36 and 38A to order people to do things;
- (g) decisions whether to make orders under section 38;
- (h) decisions under section 4A (which deals with declarations of hazardous waste);
- (i) decisions under section 4B (which deals with extensions of time for carrying out transit proposals);
- (j) decisions under section 13B (which deals with the classification of applications for permits);
- (k) decisions under subsection 32(5) (which deals with reduction of fees);
- (l) decisions under section 41B (which deals with the approval of the transportation of notifiable substances through transit countries);
- (m) decisions under section 41C (which deals with declarations of notifiable substances).

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**58 Statement to accompany notification of decision**

- (1) Where a decision of a kind referred to in section 57 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 Review Tribunal under the *Administrative Review Tribunal Act 2024* for review of the decision; and
  - (b) a statement to the effect that a person who is entitled to apply to the Administrative Review Tribunal for the review of a decision may, under section 268 of that Act, request a statement of reasons (within the meaning of that Act).
- (3) A contravention of subsection (1) in relation to a decision does not affect the validity of the decision.

**58A Extended standing of individuals and organisations to seek judicial review**

- (1) This section has effect for the purposes of the application of the *Administrative Decisions (Judicial Review) Act 1977* to a decision under this Act.
- (2) An individual is taken to be a person aggrieved by the decision if:
  - (a) the individual is an Australian citizen or ordinarily resident in Australia; and
  - (b) at any time during the 2-year period ending immediately before the decision was made, the individual has engaged in a series of activities relating to any of the following:
    - (i) research into hazardous waste;
    - (ii) the protection of human beings or the environment from the harmful effects of hazardous waste;
    - (iii) research into pollution of the air, water or soil, where the pollution results from the disposal of hazardous waste;
    - (iv) the protection of human beings or the environment from the harmful effects of pollution of the air, water or soil,

where the pollution results from the disposal of hazardous waste.

- (3) An organisation or association (whether incorporated or not) is taken to be a person aggrieved by the decision if:
- (a) the organisation or association is incorporated, or was otherwise established, in Australia; and
  - (b) at any time during the 2-year period ending immediately before the decision was made, the organisation or association has engaged in a series of activities relating to any of the following:
    - (i) research into hazardous waste;
    - (ii) the protection of human beings or the environment from the harmful effects of hazardous waste;
    - (iii) research into pollution of the air, water or soil, where the pollution results from the disposal of hazardous waste;
    - (iv) the protection of human beings or the environment from the harmful effects of pollution of the air, water or soil, where the pollution results from the disposal of hazardous waste; and
  - (c) the objects or purposes of the organisation or association included any of the following:
    - (i) research into hazardous waste;
    - (ii) the protection of human beings or the environment from the harmful effects of hazardous waste;
    - (iii) research into pollution of the air, water or soil, where the pollution results from the disposal of hazardous waste;
    - (iv) the protection of human beings or the environment from the harmful effects of pollution of the air, water or soil, where the pollution results from the disposal of hazardous waste.

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- (4) Subsection (3) does not apply in relation to a decision made before the objects or purposes of the organisation or association included the matter concerned.
- (5) Subparagraphs (2)(b)(i), (ii), (iii) and (iv) and (3)(b)(i), (ii), (iii) and (iv) do not apply to activities unless:
  - (a) the activities are carried on in Australia; or
  - (b) the activities relate to the effects of hazardous waste of Australian origin on human beings, or the environment, outside Australia.
- (6) For the purposes of this section, in interpreting the expression ***hazardous waste***, the effect of sections 4A, 4F and 4G is to be ignored.
- (7) A reference in this section to a ***decision under this Act*** includes a reference to:
  - (a) conduct for the purpose of making a decision under this Act; or
  - (b) a failure to make a decision under this Act.
- (8) To avoid doubt, this section is intended to extend, but not limit, the meaning of the expression ***person aggrieved by a decision***.

**58B Evidentiary certificate—classification of hazardous waste**

*Hazardous waste*

- (1) The Minister may issue a written certificate stating that a specified substance or object is, or is not, in specified circumstances, hazardous waste:
  - (a) for the purposes of this Act; or
  - (b) for the purposes of the application of this Act to a specified matter.

*Consultation with relevant experts*

- (2) When deciding whether to issue a certificate under subsection (1), the Minister must consult one or more of the following:
- (a) a person who the Minister considers has expertise or qualifications relevant to the decision;
  - (b) an industry group;
  - (c) an environmental group;
  - (d) a State or Territory government body.

*Prima facie evidence*

- (3) In any proceedings relating to this Act, a certificate under subsection (1) is prima facie evidence of the matters in the certificate.

*Gazettal*

- (4) A copy of a certificate under subsection (1) must be published in the *Gazette*.

**58C Evidentiary certificate—environmentally sound management of hazardous waste***Environmentally sound management of hazardous waste*

- (1) The Minister may issue a written certificate stating that engaging, or failing to engage, in specified conduct in relation to specified hazardous waste is, or is not, environmentally sound management of that hazardous waste for the purposes of this Act.

*Consultation with relevant experts*

- (2) When deciding whether to issue a certificate under subsection (1), the Minister must consult one or more of the following:
- (a) a person who the Minister considers has expertise or qualifications relevant to the decision;
  - (b) an industry group;

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- (c) an environmental group;
- (d) a State or Territory government body.

*Prima facie evidence*

- (3) In any proceedings relating to this Act, a certificate under subsection (1) is prima facie evidence of the matters in the certificate.

*Gazettal*

- (4) A copy of a certificate under subsection (1) must be published in the *Gazette*.

**58D Regulations defining hazardous waste—Minister must consult**

Before regulations are made for the purposes of paragraph (a) of the definition of ***hazardous waste*** in section 4, the Minister must consult one or more of the following:

- (a) a person who the Minister considers has expertise or qualifications relevant to those regulations;
- (b) an industry group;
- (c) an environmental group;
- (d) a State or Territory government body.

**58F Contravening an offence provision or a civil penalty provision**

- (1) This section applies if a provision of this Act provides that a person contravening another provision of this Act (the ***conduct provision***) commits an offence or is liable to a civil penalty.
- (2) For the purposes of this Act, and the Regulatory Powers Act to the extent that it relates to this Act, a reference to a contravention of an offence provision or a civil penalty provision includes a reference to a contravention of the conduct provision.

- (3) For the purposes of applying Chapter 2 of the *Criminal Code* to the offence, the physical elements of the offence are set out in the conduct provision.

Note: Chapter 2 of the *Criminal Code* sets out general principles of criminal responsibility.

## **59 Conduct of directors, employees and agents**

- (1) Where, in proceedings for a designated offence, it is necessary to establish the state of mind of a body corporate in relation to a particular act or omission, it is sufficient to show:
- (a) that the act or omission was done by a director, employee or agent of the body corporate within the scope of his or her actual or apparent authority; and
  - (b) that the director, employee or agent had the state of mind.
- (2) Any act or omission done on behalf of a body corporate by a director, employee or agent of the body corporate within the scope of his or her actual or apparent authority is to be taken, in proceedings for a designated offence, to have been done also by the body corporate unless the body corporate establishes that the body corporate took reasonable precautions and exercised due diligence to avoid the act or omission.
- (3) Where, in proceedings for a designated offence, it is necessary to establish the state of mind of a person other than a body corporate in relation to a particular act or omission, it is sufficient to show:
- (a) that the act or omission was done by an employee or agent of the person within the scope of his or her actual or apparent authority; and
  - (b) that the employee or agent had the state of mind.
- (4) Any act or omission done on behalf of a person other than a body corporate by an employee or agent of the person within the scope of his or her actual or apparent authority is to be taken, in proceedings for a designated offence, to have been done also by the first-mentioned person unless the person establishes that the person

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took reasonable precautions and exercised due diligence to avoid the act or omission.

- (5) Where:
- (a) a person other than a body corporate is convicted of an offence; and
  - (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
  - (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.
- (8) In this section:
- designated offence*** means one or more of the following:
- (a) an offence against this Act;
  - (b) an offence against section 6 of the *Crimes Act 1914* to the extent that it relates to an offence against this Act;
  - (c) an offence against section 11.1, 11.4 or 11.5 of the *Criminal Code* to the extent that it relates to an offence against this Act.

**59A Nomination of address for service of documents**

- (1) For the purposes of this Act, a person may nominate an address for service in:
- (a) a permit application made by the person; or

- (b) any other document given by the person to, or to a delegate of, the Minister.
- (2) For the purposes of this Act, a document may be given to the person by leaving it at, or by sending it by pre-paid post to, the nominated address for service.
- (3) Subsection (2) has effect in addition to section 28A of the *Acts Interpretation Act 1901*.

### **59B Service of summons or process on foreign corporations— criminal proceedings**

- (1) This section applies to a summons or process in any criminal proceedings under this Act, where:
  - (a) the summons or process is required to be served on a body corporate incorporated outside Australia; and
  - (b) the body corporate does not have a registered office or a principal office in Australia; and
  - (c) the body corporate has an agent in Australia.
- (2) Service of the summons or process may be effected by serving it on the agent.
- (3) Subsection (2) has effect in addition to section 28A of the *Acts Interpretation Act 1901*.

Note: Section 28A of the *Acts Interpretation Act 1901* deals with the service of documents.

- (4) In this section:  
***criminal proceeding*** includes a proceeding to determine whether a person should be tried for an offence.

## **60 Delegation by Minister**

- (1) The Minister may, by signed writing, delegate any or all of the Minister's functions and powers under this Act to:
  - (a) the Secretary of the Department; or

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- (b) an SES employee, or acting SES employee, in the Department; or
  - (c) an APS employee who holds, or is acting in, an Executive Level 2, or equivalent, position in the Department.
- (2) In performing functions or exercising powers under a delegation, the delegate must comply with any directions of the Minister.

**60A Delegation by Secretary**

- (1) The Secretary may, in writing, delegate all or any of the Secretary's functions or powers under this Act to an SES employee, or acting SES employee, in the Department.
- (2) The functions or powers that may be delegated under subsection (1) include functions or powers the Secretary has as a relevant chief executive, authorised applicant or authorised person for the purposes of a provision of the Regulatory Powers Act because of this Act.
- (3) In performing functions or exercising powers under a delegation, the delegate must comply with any directions of the Secretary.

**61 Annual report**

- (1) The Minister must:
  - (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.
- (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

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

## **62 Regulations**

The Governor-General may make regulations, not inconsistent with this Act, prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

## Endnotes

### Endnote 1—About the endnotes

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## Endnotes

### Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

### Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

### Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

### Editorial changes

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

### Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe how an amendment is to be made. If, despite the misdescription, the amendment

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Endnote 1—About the endnotes

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can be given effect as intended, then the misdescribed amendment can be incorporated through an editorial change made under section 15V of the *Legislation Act 2003*.

If a misdescribed amendment cannot be given effect as intended, the amendment is not incorporated and “(md not incorp)” is added to the amendment history.

## Endnotes

### Endnote 2—Abbreviation key

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#### Endnote 2—Abbreviation key

ad = added or inserted	o = order(s)
am = amended	Ord = Ordinance
amdt = amendment	orig = original
c = clause(s)	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
C[x] = Compilation No. x	pres = present
Ch = Chapter(s)	prev = previous
def = definition(s)	(prev...) = previously
Dict = Dictionary	Pt = Part(s)
disallowed = disallowed by Parliament	r = regulation(s)/rule(s)
Div = Division(s)	reloc = relocated
ed = editorial change	renum = renumbered
exp = expires/expired or ceases/ceased to have effect	rep = repealed
F = Federal Register of Legislation	rs = repealed and substituted
gaz = gazette	s = section(s)/subsection(s)
LA = <i>Legislation Act 2003</i>	Sch = Schedule(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sdiv = Subdivision(s)
(md) = misdescribed amendment can be given effect	SLI = Select Legislative Instrument
(md not incorp) = misdescribed amendment cannot be given effect	SR = Statutory Rules
mod = modified/modification	Sub-Ch = Sub-Chapter(s)
No. = Number(s)	SubPt = Subpart(s)
	<u>underlining</u> = whole or part not commenced or to be commenced

## Endnote 3—Legislation history

## Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Hazardous Waste (Regulation of Exports and Imports) Act 1989	6, 1990	17 Jan 1990	17 July 1990 (s 2(2))	
Arts, Sport, Environment, Tourism and Territories Legislation Amendment Act (No. 2) 1991	179, 1991	25 Nov 1991	s 3(2) and Sch: 25 Nov 1991 (s 2)	s 3(2)
Hazardous Waste (Regulation of Exports and Imports) Amendment Act 1996	7, 1996	11 June 1996	11 Dec 1996 (s 2(2))	Sch 1 (items 126-129)
<b>as amended by</b>				
Environmental Reform (Consequential Provisions) Act 1999	92, 1999	16 July 1999	Sch 7 (item 16): (s 2(3))	—
Environmental Reform (Consequential Provisions) Act 1999	92, 1999	16 July 1999	Sch 3 (items 41–45): 16 July 2000 (s 2(1))	Sch 3 (item 45)
Public Employment (Consequential and Transitional) Amendment Act 1999	146, 1999	11 Nov 1999	Sch 1 (item 505): 5 Dec 1999 (s 2(1), (2))	—
Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000	137, 2000	24 Nov 2000	Sch 1 (items 217, 218) and Sch 2 (items 418, 419): 24 May 2001 (s 2(3))	Sch 2 (items 418, 419)

## Endnotes

### Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Environment and Heritage Legislation Amendment (Application of Criminal Code) Act 2001	15, 2001	22 Mar 2001	s 4 and Sch 1 (items 73–95): 24 May 2001 (s 2(1)(c))	s 4
Environmental Legislation Amendment Act 2001	118, 2001	18 Sept 2001	s 4 and Sch 1: 16 Oct 2001 (s 2(2))	s 4
Customs Legislation Amendment (Name Change) Act 2009	33, 2009	22 May 2009	Sch 2 (item 35): 23 May 2009 (s 2)	—
Territories Law Reform Act 2010	139, 2010	10 Dec 2010	Sch 1 (item 67): 11 Dec 2010 (s 2(1) item 2)	—
Statute Law Revision Act 2011	5, 2011	22 Mar 2011	Sch 7 (item 62): 19 Apr 2011 (s 2(1) item 18)	—
Statute Law Revision Act (No. 1) 2015	5, 2015	25 Feb 2015	Sch 3 (items 88–92): 25 Mar 2015 (s 2(1) item 10)	—
Customs and Other Legislation Amendment (Australian Border Force) Act 2015	41, 2015	20 May 2015	Sch 5 (item 80) and Sch 9: 1 July 2015 (s 2(1) items 2, 7)	Sch 9
<b>as amended by</b>				
Australian Border Force Amendment (Protected Information) Act 2017	115, 2017	30 Oct 2017	Sch 1 (item 26): 1 July 2015 (s 2(1) item 2)	—

## Endnote 3—Legislation history

<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Norfolk Island Legislation Amendment Act 2015	59, 2015	26 May 2015	Sch 2 (item 210): 1 July 2016 (s 2(1) item 5) Sch 2 (item 356–396): 18 June 2015 (s 2(1) item 6)	Sch 2 (items 356– 396)
<b>as amended by</b>				
Territories Legislation Amendment Act 2016	33, 2016	23 Mar 2016	Sch 2: 24 Mar 2016 (s 2(1) item 2)	—
Statute Law Revision Act (No. 1) 2016	4, 2016	11 Feb 2016	Sch 4 (items 1, 180): 10 Mar 2016 (s 2(1) item 6)	—
Statute Update Act 2016	61, 2016	23 Sept 2016	Sch 1 (items 250–252): 21 Oct 2016 (s 2(1) item 1)	—
Hazardous Waste (Regulation of Exports and Imports) Amendment Act 2017	8, 2017	22 Feb 2017	Sch 1 (item 1–18): 23 Feb 2017 (s 2(1) item 2) Sch 1 (items 19, 20): 1 July 2017 (s 2(1) item 3)	Sch 1 (items 18, 20)
Hazardous Waste (Regulation of Exports and Imports) Amendment Act 2021	73, 2021	30 June 2021	Sch 1–4 and Sch 5 (items 1–29, 31–40): 30 Dec 2021 (s 2(1) items 2–5)	Sch 2 (items 37– 41), Sch 3 (items 3, 4), Sch 4 (items 24, 25) and Sch 5 (items 21, 31, 35)
Administrative Review Tribunal (Consequential and Transitional Provisions No. 1) Act 2024	38, 2024	31 May 2024	Sch 7 (items 1, 2, 11): 14 Oct 2024 (s 2(1) item 2)	—

## Endnotes

### Endnote 3—Legislation history

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Number and year	FRLI registration	Commencement	Application, saving and transitional provisions
102, 1999	1 Jan 2005 (F1999B00102)	6 Nov 1998 (r 3)	—

## Endnote 4—Amendment history

## Endnote 4—Amendment history

Provision affected	How affected
Title.....	am No 7, 1996
<b>Part 1</b>	
<b>Division 1</b>	
s 3.....	rs No 7, 1996
<b>Division 2</b>	
s 4.....	am No 7, 1996; No 118, 2001; No 8, 2017; No 73, 2021
s 4A.....	ad No 7, 1996
s 4B.....	ad No 7, 1996
	am No 73, 2021
s 4C.....	ad No 7, 1996
s 4D.....	ad No 7, 1996
s 4E.....	ad No 7, 1996
s 4F.....	ad No 7, 1996
s 4G.....	ad No 7, 1996
s 5.....	rep No 7, 1996
s 6.....	am No 7, 1996
	rep No 92, 1999
s 7.....	am No 7, 1996
s 8.....	am No 15, 2001
	rep No 73, 2021
<b>Division 3</b>	
s 9.....	am No 73, 2021
s 9A.....	ad No 73, 2021
s 9B.....	ad No 73, 2021
s 10.....	am No 59, 2015
s 10A.....	ad No 15, 2001
	am No 73, 2021
s 11.....	am No 92, 1999

## Endnotes

### Endnote 4—Amendment history

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Provision affected	How affected
<b>Part 2</b>	
<b>Division 1</b>	
Part 2 heading.....	rs No 7, 1996
Division 1 heading .....	rs No 7, 1996
s 12.....	am No 7, 1996
s 13.....	am No 7, 1996
s 13A.....	ad No 7, 1996
	am No 8, 2017; No 73, 2021
s 13B .....	ad No 7, 1996
<b>Division 2</b>	
Division 2.....	ad No 7, 1996
s 13C .....	ad No 7, 1996
	am No 118, 2001
s 13D.....	ad No 7, 1996
s 13E .....	ad No 7, 1996
s 13F.....	ad No 7, 1996
<b>Division 3</b>	
Division 3 heading .....	ad No 7, 1996
s 14.....	am No 7, 1996
s 15.....	rs No 73, 2021
s 15A.....	ad No 7, 1996
	am No 73, 2021
s 16.....	am No 7, 1996; No 92, 1999
	rs No 73, 2021
s 16A.....	ad No 73, 2021
s 16B .....	ad No 73, 2021
s 16C .....	ad No 73, 2021
s 16D.....	ad No 73, 2021
s 17.....	am No 7, 1996; No 73, 2021
s 17A.....	ad No 7, 1996
	am No 73, 2021

## Endnote 4—Amendment history

Provision affected	How affected
s 18.....	am No 7, 1996
s 18A.....	ad No 7, 1996
	am No 8, 2017
s 18B .....	ad No 7, 1996
s 19.....	am No 7, 1996
s 19A.....	ad No 7, 1996
s 20.....	am No 7, 1996
s 21.....	am No 7, 1996; No 8, 2017
s 21A.....	ad No 7, 1996
s 22.....	am No 7, 1996; No 73, 2021
s 23.....	rep No 7, 1996
<b>Division 4</b>	
Division 2 heading .....	rep No 7, 1996
Division 4 heading .....	ad No 7, 1996
<b>Subdivision A</b>	
Subdivision A heading .....	ad No 73, 2021
s 24.....	am No 7, 1996
	rs No 73, 2021
s 24A.....	ad No 73, 2021
s 24B .....	ad No 73, 2021
s 24C .....	ad No 73, 2021
<b>Subdivision B</b>	
Subdivision B heading .....	ad No 73, 2021
s 25.....	am No 7, 1996
<b>Subdivision C</b>	
Subdivision C heading .....	ad No 73, 2021
s 26.....	am No 7, 1996
	rs No 73, 2021
s 26A.....	ad No 73, 2021
s 26B .....	ad No 73, 2021
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## Endnotes

### Endnote 4—Amendment history

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Provision affected	How affected
s 26C .....	ad No 73, 2021
s 26D .....	ad No 73, 2021
s 26E .....	ad No 73, 2021
s 26F .....	ad No 73, 2021
s 26G .....	ad No 73, 2021
<b>Subdivision D</b>	
Subdivision D .....	ad No 73, 2021
s 26H .....	ad No 73, 2021
s 26J .....	ad No 73, 2021
s 26K .....	ad No 73, 2021
s 26L .....	ad No 73, 2021
s 27 .....	am No 7, 1996
	rep No 73, 2021
s 28 .....	rep No 73, 2021
s 28A .....	ad No 7, 1996
	rep No 73, 2021
s 29 .....	am No 7, 1996; No 92, 1999
	rep No 73, 2021
s 30 .....	am No 7, 1996
	rep No 73, 2021
s 31 .....	rep No 73, 2021
<b>Division 5</b>	
Division 3 heading .....	rep No 7, 1996
Division 5 heading .....	ad No 7, 1996
s 32 .....	am No 179, 1991; No 7, 1996; No 8, 2017; No 73, 2021
s 32A .....	ad No 8, 2017
s 33 .....	am No 7, 1996 (as am by No 92, 1999); No 8, 2017; No 73, 2021
<b>Part 2A</b>	
Part 2A .....	ad No 73, 2021
<b>Division 1</b>	
s 33A .....	ad No 73, 2021

## Endnote 4—Amendment history

Provision affected	How affected
s 33B .....	ad No 73, 2021
<b>Division 2</b>	
s 33C .....	ad No 73, 2021
s 33D .....	ad No 73, 2021
<b>Division 3</b>	
s 33E .....	ad No 73, 2021
s 33F .....	ad No 73, 2021
s 33G .....	ad No 73, 2021
<b>Division 4</b>	
s 33H .....	ad No 73, 2021
<b>Part 3</b>	
<b>Division 1</b>	
Division 1 heading .....	ad No 73, 2021
s 34 .....	am No 118, 2001; No 73, 2021
s 35 .....	am No 118, 2001; No 73, 2021
s 35A .....	ad No 7, 1996
	am No 118, 2001; No 73, 2021
s 36 .....	am No 7, 1996; No 73, 2021
s 37 .....	am No 7, 1996
	rep No 73, 2021
s 38 .....	am No 118, 2001
<b>Division 2</b>	
Division 2 heading .....	ad No 73, 2021
s 38A .....	ad No 118, 2001
	rs No 73, 2021
s 38B .....	ad No 118, 2001
	am No 4, 2016
	rs No 73, 2021
	am No 73, 2021
s 38C .....	ad No 73, 2021
s 38D .....	ad No 73, 2021

## Endnotes

### Endnote 4—Amendment history

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Provision affected	How affected
s 38E .....	ad No 73, 2021
s 38F.....	ad No 73, 2021
s 38G.....	ad No 73, 2021
s 38H.....	ad No 73, 2021
Part 4 heading.....	rs No 7, 1996; No 118, 2001 rep No 73, 2021
s 39.....	rs No 7, 1996 am No 15, 2001; No 4, 2016 rep No 73, 2021
s 40.....	rs No 7, 1996 am No 15, 2001; No 4, 2016 rep No 73, 2021
s 40A.....	ad No 7, 1996 am No 15, 2001; No 4, 2016; No 8, 2017 rep No 73, 2021
s 40AA .....	ad No 118, 2001 am No 4, 2016 rep No 73, 2021
s 40B .....	ad No 7, 1996 am No 118, 2001; No 4, 2016 rep No 73, 2021
s 41.....	am No 7, 1996; No 118, 2001 rep No 73, 2021
<b>Part 4A</b>	
Part 4A .....	ad No 7, 1996
s 41A.....	ad No 7, 1996 am No 15, 2001; No 4, 2016 rs No 73, 2021
s 41B .....	ad No 7, 1996
s 41C .....	ad No 7, 1996

## Endnote 4—Amendment history

Provision affected	How affected
<b>Part 4B</b>	
Part 4B .....	ad No 73, 2021
<b>Division 1</b>	
s 41D .....	ad No 73, 2021
s 41E .....	ad No 73, 2021
s 41F .....	ad No 73, 2021
<b>Division 2</b>	
<b>Subdivision A</b>	
s 41G .....	ad No 73, 2021
s 41H .....	ad No 73, 2021
s 41J .....	ad No 73, 2021
s 41K .....	ad No 73, 2021
s 41L .....	ad No 73, 2021
<b>Subdivision B</b>	
s 41M .....	ad No 73, 2021
s 41N .....	ad No 73, 2021
s 41P .....	ad No 73, 2021
s 41Q .....	ad No 73, 2021
s 41R .....	ad No 73, 2021
s 41S .....	ad No 73, 2021
s 41T .....	ad No 73, 2021
s 41U .....	ad No 73, 2021
<b>Subdivision C</b>	
s 41V .....	ad No 73, 2021
s 41W .....	ad No 73, 2021
<b>Part 5</b>	
Part 5 heading .....	rs No 73, 2021
<b>Division 1</b>	
Division 1 heading .....	ad No 73, 2021
s 42 .....	am No 7, 1996; No 33, 2009; No 139, 2010; No 41, 2015
<b>Division 2</b>	

## Endnotes

### Endnote 4—Amendment history

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Provision affected	How affected
Division 2 heading .....	ad No 73, 2021
<b>Subdivision A</b>	
Subdivision A heading .....	ad No 73, 2021
s 43.....	am No 15, 2001; No 61, 2016 rs No 73, 2021
s 44.....	rs No 73, 2021
s 45.....	am No 7, 1996; No 15, 2001; No 61, 2016 rs No 73, 2021
s 46.....	rs No 73, 2021
s 47.....	rs No 73, 2021
s 48.....	am No 15, 2001; No 61, 2016 rs No 73, 2021
s 49.....	rs No 73, 2021
<b>Subdivision B</b>	
Subdivision B heading .....	ad No 73, 2021
s 50.....	rs No 73, 2021
s 51.....	rs No 73, 2021
s 52.....	am No 7, 1996; No 15, 2001; No 61, 2016 rs No 73, 2021
s 52A.....	ad No 7, 1996 rep No 73, 2021
s 53.....	am No 15, 2001; No 61, 2016 rs No 73, 2021
s 54.....	am No 15, 2001 rep No 137, 2000 ad No 73, 2021
s 55.....	am No 7, 1996 rep No 137, 2000 ad No 73, 2021
s 56.....	am No 7, 1996 rep No 73, 2021

## Endnote 4—Amendment history

Provision affected	How affected
<b>Part 5AA</b>	
Part 5AA .....	ad No 73, 2021
<b>Division 1</b>	
s 56AA .....	ad No 73, 2021
<b>Division 2</b>	
s 56AB .....	ad No 73, 2021
<b>Division 3</b>	
s 56AC .....	ad No 73, 2021
<b>Division 4</b>	
s 56AD .....	ad No 73, 2021
<b>Part 5A</b>	
Part 5A .....	ad No 7, 1996
s 56A .....	ad No 7, 1996
<b>Part 6</b>	
s 57 .....	am No 7, 1996; No 73, 2021; No 38, 2024
s 58 .....	am No 38, 2024
s 58A .....	ad No 7, 1996
s 58B .....	ad No 7, 1996
	am No 73, 2021
s 58C .....	ad No 7, 1996
	am No 73, 2021
s 58D .....	ad No 7, 1996
	rs No 73, 2021
s 58E .....	ad No 7, 1996
	rep No 73, 2021
s 58F .....	ad No 73, 2021
s 59 .....	am No 5, 2015; No 73, 2021
s 59A .....	ad No 7, 1996
s 59B .....	ad No 7, 1996
s 60 .....	am No 146, 1999; No 5, 2011; No 8, 2017
s 60A .....	ad No 73, 2021

## Endnotes

### Endnote 4—Amendment history

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Provision affected	How affected
s 62.....	am No 7, 1996; No 8, 2017
Part 7 .....	rep No 7, 1996
s 63.....	rep No 7, 1996
s 64.....	rep No 7, 1996
<b>Schedule</b>	
Schedule.....	am No 7, 1996; Statutory Rules 1999 No 102
	rep No 8, 2017