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Department of the Environment and Water Resources

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Report of the national competition policy review of the *Hazardous Waste (Regulation of Exports and Imports) Act 1989* and associated regulations:

Government response to the review: 12 June 2001

Background

1. The Treasurer announced the schedule of legislation reviews in June 1996 as part of the Competition Principles Agreement. Under this agreement, the *Hazardous Waste (Regulation of Exports and Imports) Act 1989* ('Act') was scheduled for review in 1998/99. However, the commencement of the review was deferred until 1999/2000.
2. Draft terms of reference for the review were prepared in close consultation with the Office of Regulation Review (ORR). In February 2000, the ORR advised that the draft terms of reference met both the Commonwealth's obligations under the CPA and the requirements specified by Cabinet for the legislation review program.
3. The Allen Consulting Group was engaged to conduct the Review under the direction and guidance of a Task Force of Officials. A draft report of the Review was discussed with stakeholders at a meeting of the Hazardous waste act policy reference group on 23 November 2000. The Task Force of Officials required numerous changes to be made and the final report was received on 23 February 2001.

4. The Terms of Reference for the Review indicate that within four months of receiving the final Report, the Government intends to announce what action is to be taken, after obtaining advice from the Minister and, if appropriate, consideration by Cabinet.
5. A document containing possible Government responses to the recommendations in the final report of the Review was discussed, and agreement was reached with stakeholders at a meeting of the Hazardous waste act policy reference group on 4 June 2001.
6. The Government's response to the ten recommendations in the final report of the Review are outlined below.

Recommendation One

Consideration should be given to whether hazardous wastes should be prescribed so as not to include household wastes (which are defined as 'other wastes' in the Basel Convention).

Government Response

7. The Basel Convention defines 'hazardous wastes' under Annex I and household wastes as 'other wastes' under Annex II. This means that throughout the text of the Convention, the term 'hazardous wastes and other wastes' is used because in general, 'household wastes' are treated in the same way as 'hazardous wastes'. There are two exceptions to this. One is that household wastes are controlled even if they can be shown not to possess hazardous characteristics. The other is that household wastes are not subject to the Ban Amendment.
8. The Act defines 'household wastes' as a form of hazardous waste. This means that throughout the text of the Act, it is only necessary to refer to 'hazardous wastes', not to 'hazardous wastes and other wastes'.
9. The Review team noted that although this was a technical distinction, it may result in distorted or incorrect market signals being received by Australian traders in household wastes. They therefore recommended that household wastes be defined separately in the Act.
10. The Government has considered this recommendation, but since there are no Australian exporters or importers of household wastes (except from the French Antarctic Territory), a separate definition of household wastes would slightly complicate the language of the Act without delivering any identifiable benefits. Therefore the Government does not support the suggested amendment.

Recommendation Two

The Act should be amended to exclude from the definition of hazardous wastes those wastes which derive from the normal operations of a ship, the discharge of which is covered by another international instrument.

Government Response

11. Agreed. Such an amendment to the Act is among several amendments currently before the Parliament.

Recommendation Three

Consideration should be given to whether, in deciding to grant a permit, explicit reference should be made to:

- *in the case of export permits - the degree of competition in the domestic market; and*
- *in the case of import permits - whether imports are necessary to achieve critical mass and/or a reasonable degree of competition in the domestic recovery market.*

Government Response

12. At present, competition issues are considered on a case-by-case basis as part of the "efficiency" criterion. That is, under section 17(4) '*the Minister may decide not to grant the permit . . . having regard to Australia's international obligations*', and these obligations include reducing transboundary movements to the minimum consistent with the environmentally sound and efficient management of the waste. Under section 17(5) '*the Minister may decide not to grant the permit . . . if the hazardous waste could be disposed of safely and efficiently by using a facility in Australia*".
13. In five years, only one application has been refused on 'efficiency' grounds, that is, the waste could be disposed of safely and efficiently by using a facility in Australia. The Review Team commented that, as with all administrative processes, the issue is one of finding the right balance. The Review Team suggested that the current grounds for refusing permits were appropriate but for export permits, if wastes could be recovered in an appropriate manner overseas at a significant cost and/or quality advantage then this should be an indicator that the domestic market is less competitive. For import permits, the Review Team suggested that the Minister should explicitly consider whether allowing an import of hazardous wastes would assist in achieving critical mass for domestic recycling facilities.
14. The Government considers that the factors suggested in the recommendation are already adequately incorporated in the efficiency criterion and more prescriptive language should be avoided until more experience has been gained.

Recommendation Four

The Hazardous Waste (Regulation of Exports and Imports) (OECD Decision) Regulations should be amended to bring them into line with the OECD Decision provisions whereby once a competent authority has notified the OECD Secretariat of a decision to not raise objections over certain types of shipments notification must still be provided to that country but the 30 day objection period is waived.

Government Response

15. Agreed. This recommendation will be implemented when the OECD Decision Regulations are next amended.

Recommendation Five

Existing pre-approval mechanisms appear to have limited industry understanding, and in any case appear to be less effective than would be hoped. To the degree possible the Department of the Environment and Heritage should seek to encourage the uptake of pre-approval domestically and abroad and should encourage overseas Parties to ensure that pre-approval provides a meaningful reduction in the administrative costs of the HWA and the Basel Convention generally.

Government Response

16. Agreed. The Department of the Environment and Heritage will encourage the uptake of pre-approval mechanisms. The current amendments to the OECD Council Decision will allow permits to be granted for up to three years for pre-approved facilities and this should result in a meaningful reduction in administrative costs.

Recommendation Six

Fees for permits should be reviewed so that, in addition to being based on cost recovery principles, their relative levels do not unnecessarily distort the decision to send hazardous waste to either Basel or OECD destinations.

Government Response

17. Fees were set in 1996 on the basis of the time required to process an application at public service rates, then \$53 per hour. The high cost of a Basel export permit reflects the time and effort required to assess whether an export to a non-OECD country is environmentally sound (one application in five years) or whether an export to an OECD country for final disposal meets the exceptional circumstances test (two applications in five years).
18. The Review team acknowledged that companies who export to OECD countries for recovery (more than fifty permits in five years) are likely to oppose subsidising the very small number of applications for Basel export permits, which by their nature require extensive scrutiny.
19. Agreed. The Government will continue to keep the fees under review, but does not propose any change at this time.

Recommendation Seven

While it is administratively convenient to establish default insurance requirements, applicants should be free to make the case for lower insurance obligations.

Government Response

20. Agreed. Appropriate amendments have already been made to the text of Information Paper No. 3, 'Australian Guide to Exporting and Importing Hazardous Waste: Applying for a Permit: Second Edition'.

Recommendation Eight

It should be made clear to applicants that insurance may be able to be held by parties other than the applicant. The applicant would be required to demonstrate that appropriate insurance is held at every stage of the shipment.

Government Response

21. Agreed. Appropriate amendments have already been made to the text of Information Paper No. 3, ' *Australian Guide to Exporting and Importing Hazardous Waste: Applying for a Permit: Second Edition*'.

Recommendation Nine

The Department of the Environment and Heritage should continue to take steps to encourage overseas Parties to accept electronic documentation as part of the HWA notification and consent procedures.

Government Response

22. Agreed. The Department of the Environment and Heritage will continue to take steps to encourage overseas Parties to accept electronic documentation.

Recommendation Ten

The Department of the Environment and Heritage should be required to publish information about the actual (ie, in comparison to permitted) shipments of hazardous waste.

Government Response

23. Agreed. The Department of the Environment and Heritage will publish information on actual shipments of hazardous waste as part of its Annual Report in accordance with section 61 of the Act. This information is also provided to the Secretariat of the Basel Convention under Article 13/16.

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