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*Working globally for a toxic free future*

Environment Quality Legislation Section
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Dear Sir/Ms,

Before addressing the policy questions directly it should be noted that the stakeholder engagement by the Federal Government on hazardous waste issues has deteriorated markedly since 2008. It has been extremely disappointing that the consultative stakeholder group established by the Federal Government to review import and export applications and hazardous waste policy has not met for many years. NTN has repeatedly requested a reason as to why the Hazardous Waste Act Policy Reference Group has not been convened for a number of years and is still waiting for a coherent response. Similarly the Hazardous Waste Act Technical Advisory Group has not met regularly for some time. The matters discussed in this review are exactly the type of matters, which should be considered by these groups. As a first step in developing better hazardous waste management in Australia these groups should be reconvened as soon as possible.

**Question 1.**
**Are there any ways in which the object and aims of the Act could be amended in order for Australia to better meet its international obligations?**

Yes. The object of the Act currently does not explicitly make any statement about the need to minimise the generation of hazardous waste but rather remains silent on this issue. In effect it implies that any amount of hazardous waste can be generated as long as it is regulated and 'managed' in an environmentally sound manner. This may be feasible with finite volumes of waste arising but is not sustainable in the long term where hazardous waste generation is regarded as a function of economic growth.

The object and aims of the Act should be amended to ensure that the amount of hazardous waste generated is as low as technologically achievable for any given process or source and that hazardous waste is recycled or recovered into useful product whereever possible. The exception to this objective is where recycling or recovery of hazardous waste is undesirable (such as in the case of banned persisent organic pollutants under the Stockholm convention). In instances where recycling is

undesirable, then environmentally sound destruction of the waste must be required. Recovery of materials from hazardous waste for use in industrial applications is acceptable but incineration of waste for energy recovery should not be accepted under any circumstances, as it is not environmentally sound.

The Act should also be amended to ensure that Australia not only has 'adequate facilities for disposal' but has world class facilities for *treatment, recycling, recovery and destruction* of hazardous waste in an environmentally sound manner.

Australia is critically lacking in technologically advanced facilities for hazardous waste destruction. This has resulted in poor management of hazardous waste, poor facilities with crude operating procedures (such as in Western Australia) fires, explosions and poor environmental outcomes. The ill-fated attempt to export hexachlorobenzene (HCB) waste to Germany and Denmark has underscored the lamentable lack of advanced treatment plants in Australia and the lack of a national treatment facility that can address existing POPs stockpiles such as the HCB and POPs contaminants such as polybrominated diphenyl ethers (PBDEs), perfluorooctane sulfonate (PFOS) and hexabromocyclododecane (HBCD). The solution to these problems needs to be nationally mandated as the 'state by state' approach has failed.

The Act must be amended in such a way as to ensure that all states cooperate on the need for a national hazardous waste treatment facility. It is impractical for all states to create facilities that can manage every conceivable form of waste. However, the emerging POPs contaminants are likely to occur in much greater volumes an diversity due to their sequestration in household goods such mattresses, electronic goods, furnishings and kitchenware and in building products, which will enter the waste stream as buildings age and are demolished or renovated. This will require one of more strategically located facilities to deal with the current stockpiles of POPs waste from industrial and domestic origins as well as future waste POPs waste streams from as yet to be identified sources.

***Question 2:***
***What issues are there with the definition of 'hazardous waste' or related definitions in the Act and Regulations?***

***Question 3:***
***How could these definitions be improved, consistent with Australia meeting its international obligations?***

There are significant problems in the definition of hazardous waste throughout Australia. All states vary in their classification of hazardous waste and the lack of harmonisation creates significant problems in tracking waste, assessing trends in waste generation, defining sources of waste and evaluating progress in reducing waste.

In 2006, a Western Australian stakeholder led committee (The Core Consultative Committee on Waste) attempted to harmonize the WA classifications of hazardous waste with the EU classification system. The process revealed that hazardous waste in WA had been defined in groups not according to risk, toxicity or hazard

classifications but instead were organised 'alphabetically'. The tracking system for these wastes didn't require reporting by weight so the true volumes on hazwaste could only be guessed at. Attempts to evaluate waste reduction programs were completely undermined by major data gaps caused by these classification problems.

In order for Australia to monitor and manage its own hazardous waste, it should amend the act to harmonise definitions using the EU classification system, which has been based on exhaustive research and application. Consultancies undertaking this exercise for the Core Consultative Committee on Waste made the determination that this could be done without major disruption to the WA system (and presumably to the other state systems).

This would also have the advantage of ensuring that the objectives of the Act, where they pertain to implementation of the Basel Convention or the Stockholm Convention, can be more easily met due to the harmonisation between the international definitions of hazardous waste and Australia's definitions.

***Question 6:***
***How could the current powers for compliance and enforcement be improved, including in relation to:***
***(i) seizure of evidence***
***(ii) search and information gathering powers.***

The seizure period for evidence for the purposes of prosecution should be amended in the Act to allow for at least 120 days or until such time as the prosecution commences.

Inspectors must be given more realistic information gathering powers through amendments to the Act that require a person that is the owner of goods to provide information that may be necessary to determine whether a material is a hazardous waste, for the purpose of determining a suspected contravention of the Act

***Question 7:***
***Do the existing powers for making arrangements achieve the intention of obligations under Article 4 of the Basel Convention?***

It is difficult to tell if the existing powers achieve the intention of the obligations under Basel Article 4, as they do not appear to have ever been used. There are certainly many instances where hazardous waste disposal sites have released unacceptable levels of pollution for many years without intervention by either state or commonwealth authorities. Certainly adequate disposal facilities have not been developed for POPs waste as a result of ministerial intervention, encouragement or consultation. Hence, the recent attempts to export hazardous HCB waste to Denmark and Germany.

If the powers in the Act were sufficient and the Minister exercised them to their full extent then this situation would never have arisen.

***Question 8:***
***How could these powers be improved to better achieve the objectives of the Basel Convention, such as the obligation to minimise the generation of hazardous waste?***

In the case of fixed point sources of hazardous waste, the Act should be amended to permit the audit of any proposed new manufacturing facility, which involves an industrial process that generates hazardous waste. There is enough knowledge to classify industry 'types' that generate hazardous waste. Each industry type should be benchmarked to establish the lowest possible hazardous waste generation for that generic facility type and each new proposal should be obliged to meet or exceed that standard.

Each facility should also be required to commit to a plan that indicates how hazardous waste generated from the facility will be reduced over time or eliminated through process input substitution. Penalties should apply for non-compliance with such a plan.

In most cases such measures will be monitored for compliance through regulators at state jurisdiction level. States and territories may be required to pass mirror legislation to ensure that the intentions of the Act (and by derivation the intention of the Basel Convention and other international instruments) are met within the state licensing system.

For diffuse sources of hazardous waste such as household goods in the disposal phase contaminated with POPs, importers and manufacturers should also be subject to some form of audit under the Act to assess the amount of hazardous waste arising as a result of their marketing of such products in Australia. If the levels of hazardous waste arising from these products in disposal phase is considered excessive and cannot be managed in an environmentally acceptable manner in Australia then mechanisms must be included in the Act to prohibit the import of these goods.

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