Hazardous Waste (Regulation of Exports and Imports) Bill 1989

Date Introduced: 6 September 1989
House: House of Representatives
Portfolio: Arts, Tourism and Territories

Digest of Bill

Purpose
To establish a permit system for the export and import of hazardous waste and create offences for the unauthorised import and export of such waste.

Background
The Australian Environment Council (AEC) has defined 'hazardous industrial waste' to mean any waste or combination of wastes which pose a substantial hazard or potential hazard to human health or the environment. Such wastes include toxic organics; toxic inorganics; non-biodegradable and bioaccumulative materials; flammables; explosive and potentially explosive materials; corrosives; and teratogenic, carcinogenic or mutagenic materials.1

Hazardous waste has become the focus of increasing public interest in recent years, and the international shipment of these materials is currently an important international political issue. Recently, the Zanoobia and Karin B, ships carrying hazardous toxics, aroused publicity in their attempts to find a country to accept the hazardous waste. The unregulated disposal of toxic wastes has resulted in mercury poisoning in Japan, Brazil and Puerto Rico; cadmium poisoning in Japan; and copper poisoning in Malaysia, where liquid wastes from mines was released onto rice fields. In Australia, incidents of illegal disposal of hazardous wastes have included drums of waste dumped on rubbish tips; oil contaminated with polychlorinated biphenyls (PCBs) disposed of in Melbourne that found its way into a nearby recreational lake; cyanide poured into the Cooks River; and the dumping of 7 000 – 10 000 litres of paint into the Sydney sewerage system.

The development of controls, institutions and facilities for the management of hazardous industrial waste in Australia has, until recently, lagged behind much of the developed world. In 1987, it was estimated that 10 000 tonnes had been accumulated of intractable wastes (i.e. wastes for which there are no environmentally acceptable disposal facilities) and an additional 1000 tonnes are produced each year.2 In 1982, the House of Representatives Standing Committee on Environment and Conservation held an inquiry into the management of chemicals potentially hazardous to health and the environment, and particularly
looked at the adequacy of Commonwealth and State legislative arrangements; research, assessment and dissemination of information; and international co-operation. The Committee expressed concern over the numerous State and Federal Acts dealing with hazardous wastes; the numerous overlapping committees; the lack of accurate information in Australia on the amounts of hazardous wastes being generated, stored and disposed of; and the lack of national co-ordination for the management of hazardous industrial waste. The Committee's recommendations included that there should be comprehensive regulatory controls over the production, use, transport, storage, treatment and disposal of hazardous wastes; and that 'if State Governments fail to introduce effective and comprehensive legislation... by 1985, the Commonwealth legislate to control these hazards to the fullest extent of its power'.

In 1986, the AEC, which is made up of Commonwealth and State Environment Ministers, produced *National Guidelines for the Management of Hazardous Wastes* (the Guidelines). Basically, the Guidelines provide a national framework for the management of hazardous wastes. While the Guidelines represent a step towards national co-ordination, implementation has been fragmented. This problem, to a large degree, stems from the nature of the Guidelines themselves. The Guidelines are non-binding, are general, and lack clear prescriptions for action.

On 29 May 1987, the Minister for Arts, Heritage and Environment, announced that the Commonwealth, New South Wales and Victoria would establish a joint taskforce to consider the safest and most effective way of tackling the disposal of intractable industrial waste on a national basis. In July 1988, the Taskforce presented a Preliminary Report. In common with the Committee's recommendations and the Guidelines, the Taskforce's recommendations included comprehensive co-ordinated legislative, regulatory, ownership and management arrangements for hazardous and intractable industrial wastes. The Taskforce placed particular emphasis on the management of Australia's current intractable waste problem. The Taskforce found that much of Australia's intractable waste is currently in stockpiles which cannot be minimised or recycled. The Taskforce recommended that a fixed, land-based, rotary kiln high temperature incinerator should be established in south-eastern Australia. The proposed facility would be used to destroy intractable wastes stored and generated in eastern Australia. The cost of a 12 000 tonne capacity incinerator was estimated to be $25 million.

In 1987, the United Nations' Environment Programme (UNEP) proposed establishing a Convention on Transboundary Movement of Hazardous Wastes. The proposed convention was to provide a framework that would allow parties to transport and dispose of hazardous waste in an environmentally safe way, and make it increasingly difficult to move or dispose of hazardous waste in an unacceptable way. On 22 March 1989, 116 countries, including the U.S., assented to a treaty called 'The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal' (the Convention). The main features of the Convention include a requirement that Parties prohibit the
export of hazardous wastes from their shores to States that do not consent to the import, and that countries treating and disposing of wastes do so in an environmentally sound manner. The Convention also provides for the tracking of wastes when moved across borders. The UNEP's executive director stated that 'the ultimate goal (of the Convention) is to make the movements of hazardous waste so costly and difficult that industry will find it more profitable to cut down on waste production, and reuse or recycle what waste they produce'. To date no country has ratified the treaty. The passage of the Bill will allow Australia to ratify the Convention.

Main Provisions

The object of the Bill is to regulate the export and import of hazardous waste to ensure it is disposed of so that people and the environment are protected from its harmful effects (clause 3).

'Hazardous waste' is defined as waste that has any of the characteristics listed in Annex III of the Convention (a copy is set out in the Schedule of the Bill), household waste, or residues from the incineration of household waste (clause 4).

'Household waste' will not include anything that is intended to be reused or recycled (clause 4).

Clause 5 provides that hazardous waste will only be taken to have been 'disposed of safely' if it no longer poses a significant risk of injury or damage to people or the environment.

Part 2 of the Bill (clauses 12 – 34) deals with import and export permits for hazardous waste. A person who wants to either import or export hazardous waste and has an import or export proposal in relation to that waste, may apply to the Minister for a permit to import or export it (clauses 12 and 13).

The Minister is to decide within 60 days of receiving a permit request whether to grant it. Where the Minister does not make a decision within 60 days, the application will be taken to have not been granted. Where the Minister thinks that it will take more than 60 days to consider an application, the 60 day period may be extended, subject to the applicant receiving notice of the extension (clause 16).

Clause 17 provides that the Minister is to grant a permit where satisfied that the hazardous waste would be disposed of safely; would not pose a significant risk of injury to people or the environment; and the applicant is a fit and proper person and has insurance. Where an export permit is sought, the Minister must also be satisfied that the receiving country will allow the waste to enter, and that it will be allowed transit through any country necessary. Notwithstanding the above, the Minister may refuse to grant an application for a number of reasons including that the Minister thinks that it would not be in the public interest to grant the permit; there is another way in which the
hazardous waste could be dealt with; or that the hazardous waste could be disposed of by using a facility in Australia. The Minister is not to grant an export permit for the export of hazardous waste to Antarctica.

The Minister may have regard to certain matters when determining whether a permit applicant is a fit and proper person, including any conviction of the applicant for an offence against a Commonwealth, State or Territory law that occurred in the last ten years and was punishable by 12 months imprisonment; whether the applicant is an undischarged bankrupt; and the applicant's previous experience and record in dealing with hazardous waste (clause 18).

The Minister is to notify, as soon as practicable, an applicant of a decision to grant or refuse a permit. Where the Minister refuses an application, the Minister is to give the applicant reasons for the decision (clause 20).

Clauses 21 and 22 provide that import and export permits must contain certain particulars, including the kind and quantity of hazardous waste; the method of transport by which the hazardous waste is to be moved; the place to which the hazardous waste is to be moved; and the way in which the hazardous waste is to be disposed of safely.

The Minister may place conditions on a permit (clause 23).

Clause 25 provides that the Minister may, in certain circumstances, revoke a permit. These include that the Minister is satisfied that the permit holder knowingly made a false or misleading statement; failed to disclose all the information they should have disclosed; or that the person has breached permit conditions. The Minister is, as soon as practicable, to give the permit holder the reasons for the revocation.

The regulations may prescribe that a fee, not exceeding $4000, be paid for permit applications and notices to vary applications. An application or notice is to be accompanied by the prescribed fee (clause 33).

Clause 34 provides that the Minister is to publish in the Gazette particulars of each permit application and notice; permits granted or refused; permits revoked; permits surrendered; and permits varied. The Minister will not be required to publish information that the Minister determines would not be in the public interest to do so because it would endanger public safety, or cause damage to Australia's security, defence, or international relations.

The Minister may make certain orders where there has been an unauthorised export or import of hazardous waste under clauses 40 and 41 (see below), including ordering a person to deal with waste in a specified way; order that waste to be exported or imported; remedy or mitigate damage caused; or order that costs be paid where the Commonwealth has carried out orders that a person failed to do (clauses 35 – 38).
Clauses 40 and 41 provide that it will be an offence to knowingly or recklessly import or export hazardous waste without a permit, or other than in accordance with a permit. The maximum penalty for breach of these provisions will be imprisonment for 5 years.

Clause 46 will allow an inspector to give certain directions to ships and aircraft subject to Australian jurisdiction where there are reasonable grounds for suspecting that they have or will import or export hazardous waste. The directions an inspector may give include to ensure the ship or aircraft does not remain within, or come within, Australian jurisdiction; to ensure that goods being carried on the ship or aircraft are not unloaded until directed to; and to arrange for the goods being carried on the ship or aircraft to be unloaded. The maximum penalty for failing to comply, without reasonable excuse will be a fine of $6 000.

Clauses 47 - 56, and 58 and 59, provide standard administrative provisions including those for the power of inspectors in relation to premises, ships and aircraft; warrants to enter and search premises, ships and aircraft; penalties for obstructing an inspector or failing to answer certain questions; and for the review of administrative decisions.

References

For further information, if required, contact the Science, Technology and Environment Group.

12 September 1989

Bills Digest Service
Legislative Research Service

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

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