

**AMENDMENTS TO ANNEXES VIII AND IX OF THE CONVENTION  
ON THE CONTROL OF TRANSBOUNDARY MOVEMENTS OF  
HAZARDOUS WASTES  
AND THEIR DISPOSAL, 1992  
(GENEVA, 29 OCTOBER 2004)**

**[2005] ATS 28**

**Documents tabled on 28 March 2006:**

**National Interest Analysis [2006] ATNIA 15**

**with attachment on consultation**

**Text of the proposed treaty action**

**Background information:**

**List of Parties for which the Amendments are in force**



## NATIONAL INTEREST ANALYSIS: CATEGORY 1 TREATY

### SUMMARY PAGE

#### **Amendments to Annexes VIII and IX of the Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, 1992 (Geneva, 29 October 2004) [2005] ATS 28**

#### **Nature and timing of proposed treaty action**

1. Australia is a Party to the *Basel Convention on the Control of the Transboundary Movements of Hazardous Wastes and their disposal* (the Basel Convention, or the Convention), which was done at Basel on 22 March 1989 ([1992] ATS 7). The Convention entered into force for Australia and generally on 5 May 1992.
2. At the seventh meeting of the Conference of Parties to the Basel Convention in Geneva from 25 – 29 October 2004, the Parties adopted amendments to Annexes VIII and IX of the Convention (the Amendments). The Annexes are an integral part of the Convention.
3. Parties wishing to object to the Amendments were able to do so, pursuant to Article 18, paragraph 2(b) of the Basel Convention, by providing written notification to the Depositary within six months of the Depositary providing a communication to the Parties concerning the Amendments. Neither Australia, nor any other Party, gave notification of any objection to the Amendments in accordance with the Convention.
4. Pursuant to Article 18, paragraph 2(c), the Amendments entered into force for all Parties, including Australia, on 8 October 2005, being the date of expiry of six months from the date the Depositary circulated the communication concerning the Amendments. The work area responsible for the Convention was not aware at the time that amendment of Annexes was captured by the National Interest Analysis process. New procedures within the work area will ensure that the National Interest Analysis process is followed for any future amendments of the Annexes.

#### **Overview and national interest summary**

5. The Amendments clarify that some particular wastes (waste cables coated or insulated with certain compounds being listed in new entry A 1190 to Annex VIII) are covered by the Basel Convention and that other particular wastes (waste metal cables coated or insulated with certain compounds, being listed in new entry B 1115 to Annex IX) are not covered by the Convention. The Amendments neither extend nor diminish the number of wastes subject to the Basel Convention.
6. The Amendments provide greater certainty to Australian industry, the community and the Commonwealth Government in determining what wastes are considered as ‘hazardous wastes’ subject to the Basel Convention. They do not result in any increase or decrease in the scope of the Convention, but clarify its existing scope. By providing greater certainty, the Amendments strengthen the Basel Convention’s effectiveness in controlling the transboundary movement of hazardous wastes.

## **Reasons for Australia to take the proposed treaty action**

7. The Basel Convention governs the transboundary movements of hazardous wastes. Amongst other matters, it provides that countries must give prior consent to the importation or movement of hazardous waste into or through their territory and puts an onus on exporting countries to ensure that hazardous wastes are managed in an environmentally sound manner in the country of import. The Basel Convention is implemented in Australia through the *Hazardous Waste (Regulation of Exports and Imports) Act 1989* (the Hazardous Waste Act) and associated regulations.

8. The Basel Convention applies to 'hazardous waste' as defined in the Convention. Article 1, paragraph 1(a) to the Basel Convention provides that the term 'hazardous wastes' includes wastes that belong to any category contained in Annex I, unless they do not possess any of the characteristics contained in Annex III. Annex I lists categories of wastes which are to be controlled, while Annex III lists hazardous characteristics.

9. In 1998, the Convention was amended to include Annexes VIII and IX (see Amendment and adoption of Annexes, done at Kuching, Malaysia, on 27 February 1998, to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal of 22 March 1989, [1998] ATNIA 16). These Annexes clarify, but do not alter, whether particular wastes should be regarded as hazardous wastes for the purposes of the Convention. Annex VIII is a list of wastes that are to be considered hazardous under Article 1, paragraph 1(a) unless they do not possess any of the characteristics listed in Annex III. Annex IX lists wastes that are not to be so regarded, unless they exhibit Annex III characteristics.

10. The Amendments inserted new entries to the lists in Annexes VIII and IX, which, as noted above, help clarify the meaning of hazardous wastes in the Convention. The new entry to Annex VIII is entry A 1190, which covers: Waste metal cables coated or insulated with plastics containing or contaminated with coal tar, PCB, lead, cadmium, other organohalogen compounds or other Annex I constituents to an extent that they exhibit Annex III characteristics. The new entry to Annex IX is entry B 1115, which covers: Waste metal cables coated or insulated with plastics, not included in list A A1190, excluding those destined for Annex IVA operations or any other disposal operations involving, at any stage, uncontrolled thermal processes, such as open-burning.

11. The Amendments provide further guidance to Parties on which wastes are or are not covered by the Basel Convention. They do not extend or decrease the existing scope of the Basel Convention.

12. The Amendments bind all Parties as no Party objected to the Amendments in accordance with Convention. Australia agreed to the Amendments after negotiating the text at the seventh meeting of the Conference of Parties to the Basel Convention and is already bound by the Amendments.

## **Obligations**

13. The Amendments place no additional obligations on Australia to those already existing under the Basel Convention. As outlined briefly above, those obligations primarily require the Australian Government to ensure that exports of hazardous wastes from Australia do not take place without the previous consent of the receiving countries, and that any imported or exported hazardous wastes are managed in an environmentally sound manner.

## **Implementation**

14. The Hazardous Waste Act provides that the term 'hazardous waste' in the Act includes wastes covered by paragraph 1(a) of the Article 1 of the Basel Convention (see paragraph (b) of the definition of hazardous waste in the Act, section 4). Consequently, the Act does not need to be amended in order to take account of the Amendments. However, a copy of the Convention is annexed to the Act, and it would be preferable to amend this copy to ensure it is up-to-date. The Government proposes to do so, pursuant to section 62 of the Act, before the end of 2006.

## **Costs**

15. There are no additional costs to the Commonwealth, State or Territory Governments, business or industry because there are no new controls required to implement the Amendments. By providing clarity as to whether particular substances are regarded as 'hazardous wastes', the Amendments may result in a cost saving for the Commonwealth in terms of assessing whether or not those substances are subject to the Convention.

## **Regulation Impact Statement**

16. The Office of Regulation Review (Productivity Commission) has been consulted and confirms that a Regulation Impact Statement is not required.

## **Future treaty action**

17. It is a normal Convention process for Parties to review the lists and propose new text to further elaborate the lists as part of their ongoing consideration of technological issues and advances. Any future amendments to the Convention or its Annexes will be subject to Australia's domestic treaty processes, including prior consideration by JSCOT.

## **Withdrawal or denunciation**

18. As noted, the Amendments have already come into effect. There is no provision in the Basel Convention which would enable Australia to withdraw from the Amendments.

19. It would be necessary to withdraw from the Basel Convention itself in order to avoid becoming bound by the Amendments. Article 27 provides that a Party may withdraw from the Basel Convention at any time after three years from the date on which the Convention entered into force for it. Withdrawal would be effective one year after notification to the Convention's Depositary, or on such later date as may be specified in the

notification. Australia has been a party to the Convention since 1992. Therefore Australia could withdraw from the Convention if it wished.

20. However, the Australian Government considers that the Amendments, which are of a minor technical nature, are beneficial to Australia's interests in promoting the effective operation of the Convention. Withdrawing from the Convention would adversely affect these interests and Australia's international standing generally. If in the future Australia wished to withdraw from the Convention, such withdrawal would be subject to Australia's domestic treaty processes, including consideration by JSCOT.

**Contact details**

Hazardous Waste Section

Environment Quality Division

Department of the Environment and Heritage

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**Consultation**

1. On matters related to the Basel Convention and implementation of the Hazardous Waste Act, the Commonwealth undertakes consultation with State and Territory governments as well as hazardous waste stakeholder groups through the Hazardous Waste Act Policy Reference Group (PRG). Industry and environment stakeholders are represented on the PRG by such companies and organisations as the Minerals Council of Australia, Simsmetal Limited, the Plastics and Chemicals Industries Association, the Australian Conservation Foundation, the Nature Conservation Council and Greenpeace Australia. Also included are officers of interested Commonwealth Government departments and agencies.
2. The PRG acts as a forum for the Commonwealth to raise issues of policy development with stakeholders, and to receive their direct feedback. It also provides a conduit for interested parties to report on any issues they consider to be of importance to the implementation of the Hazardous Waste Act, and the development of briefing positions for Australian delegations to Basel Convention meetings.
3. Before the seventh meeting of the Conference of the Parties to the Basel Convention (COP7), at which the Amendments were adopted, both the PRG and various Commonwealth Departments and Agencies were consulted about the proposals to adopt the Amendments. The Amendments adopted at COP7 are consistent with the Australian position endorsed through the consultations.
4. In particular, the Department of Environment and Heritage consulted with the PRG about the proposals to adopt the Amendments. The PRG did not consider the Amendments controversial and formed no specific view on the proposals.
5. Further, the Department of the Environment and Heritage consulted with the Department of Foreign Affairs and Trade, Department of Health, Attorney-General's Department and Department of Industry, Tourism and Resources seeking their agreement to Australia agreeing with the Amendments and they all agreed with this position.

## Background Information:

### List of Parties for which the Amendments are in force:

The Amendments are in force for all Parties to Basel Convention, which are listed below.

<b>Parties to the Basel Convention</b>		
<b>Total number of Parties: 166</b>		
<b>Entry into force:</b> 5 May 1992, in accordance with article 25 (1) of the Convention.		
<b>Registration:</b> 5 May 1992, No. 28911.		
<b>Participant</b>	<b>Signature</b>	<b>Accession (a) Acceptance (A) Approval (AA) Formal confirmation (c) Ratification Succession(d)</b>
Afghanistan	22.03.89	
Albania		29.06.99 (a)
Algeria		15.09.98 (a)
Andorra		23.7.99 (a)
Antigua and Barbuda		05.04.93 (a)
Argentina	28.06.89	27.06.91
Armenia		01.10.99 (a)
Australia		05.02.92 (a)
Austria	19.03.90	12.01.93
Azerbaijan		01.06.01 (a)
Bahamas		12.08.92 (a)
Bahrain	22.03.89	15.10.92
Bangladesh		01.04.93 (a)
Barbados		24.08.95 (a)
Belarus		10.12.99 (a)
Belgium	22.03.89	01.11.93
Belize		23.05.97 (a)
Benin		04.12.97 (a)
Bhutan		26.08.02 (a)
Bolivia	22.03.89	15.11.96
Bosnia & Herzegovina		16.03.01 (a)
Botswana		20.05.98 (a)
Brazil		01.10.92 (a)



Brunei Darussalam		16.12.02 (a)
Bulgaria		16.02.96 (a)
Burkina Faso		04.11.99 (a)
Burundi		06.01.97 (a)
Cambodia		02.03.01 (a)
Cameroon		09.02.01 (a)
Canada	22.03.89	28.08.92
Cape Verde		02.07.99 (a)
Chad		10.03.04 (a)
Chile	31.01.90	11.08.92
China	22.03.90	17.12.91
Colombia	22.03.89	31.12.96
Comoros		31.10.94 (a)
Cook Islands		29.06.04 (a)
Costa Rica		07.03.95 (a)
Côte d'Ivoire		01.12.94 (a)
Croatia		09.05.94 (a)
Cuba		03.10.94 (a)
Cyprus	22.03.89	17.09.92
Czech Republic		30.09.93 (d)
Democratic Republic of Congo		06.10.94 (a)
Denmark	22.03.89	06.02.94 (AA)
Djibouti		31.05.02 (a)
Dominica		05.05.98 (a)
Dominican Republic		10.07.00 (a)
Ecuador	22.03.89	23.02.93
Egypt		08.01.93 (a)
El Salvador	22.03.90	13.12.91
Equatorial Guinea		07.02.03 (a)
Eritrea		10.03.05 (a)
Estonia		21.07.92 (a)
Ethiopia		12.04.00 (a)
European Community	22.03.89	07.02.94 (AA)
Finland	22.03.89	19.11.91 (A)
France	22.03.89	07.01.91 (AA)
Gambia		15.12.97 (a)

Georgia		20.05.99 (a)
Germany	23.10.89	21.04.95
Ghana		30.05.03 (a)
Greece	22.03.89	04.08.94
Guatemala	22.03.89	15.05.95
Guinea		26.04.95 (a)
Guinea-Bissau		09.02.05 (a)
Guyana		04.04.01 (a)
Haiti	22.03.89	
Honduras		27.12.95 (a)
Hungary	22.03.89	21.05.90 (AA)
Iceland		28.06.95 (a)
India	15.03.90	24.06.92
Indonesia		20.09.93 (a)
Iran (Islamic Republic of)		05.01.93 (a)
Ireland	19.01.90	07.02.94
Israel	22.03.89	04.12.94
Italy	22.03.89	07.02.94
Jamaica		23.01.03 (a)
Japan		17.09.93 (a)
Jordan	22.03.89	22.06.89 (AA)
Kazakhstan		03.06.03 (a)
Kenya		01.06.00 (a)
Kiribati		07.09.00 (a)
Kuwait	22.03.89	11.10.93
Kyrgyzstan		13.08.96 (a)
Latvia		14.04.92 (a)
Lebanon	22.03.89	21.12.94
Lesotho		31.05.00 (a)
Liberia		22.09.04 (a)
Libyan Arab Jamahiriya		12.07.01 (a)
Liechtenstein	22.03.89	27.01.92
Lithuania		22.04.99 (a)
Luxembourg	22.03.89	07.02.94
Madagascar		02.06.99 (a)
Malawi		21.04.94 (a)

Malaysia		08.10.93 (a)
Maldives		28.04.92 (a)
Mali		05.12.00 (a)
Malta		19.06.00 (a)
Marshall Islands		27.01.03 (a)
Mauritania		16.08.96 (a)
Mauritius		24.11.92 (a)
Mexico	22.03.89	22.02.91
Micronesia (Federated States of)		06.09.95 (a)
Monaco		31.08.92 (a)
Mongolia		15.04.97 (a)
Morocco		28.12.95 (a)
Mozambique		13.03.97 (a)
Namibia		15.05.95 (a)
Nauru		12.11.01 (a)
Nepal		15.10.96 (a)
Netherlands	22.03.89	16.04.93 (A)
New Zealand	18.03.89	20.12.94
Nicaragua		03.06.97 (a)
Niger		17.06.98 (a)
Nigeria	15.03.90	13.03.91
Norway	22.03.89	02.07.90
Oman		08.02.95 (a)
Pakistan		26.07.94 (a)
Panama	22.03.89	22.02.91
Papua New Guinea		01.09.95 (a)
Paraguay		28.09.95 (a)
Peru		23.11.93 (a)
Philippines	22.03.89	21.10.93
Poland	22.03.90	22.03.92
Portugal	26.06.89	26.01.94
Qatar		09.08.95 (a)
Republic of Korea		28.02.94 (a)
Republic of Moldova		02.07.98 (a)
Romania		27.02.91 (a)
Russian Federation	22.03.90	31.01.95

Rwanda		07.01.04 (a)
Saint Kitts and Nevis		07.09.94 (a)
Saint Lucia		09.12.93 (a)
Saint Vincent and the Grenadines		02.12.96 (a)
Samoa		22.03.02 (a)
Saudi Arabia	22.03.89	07.03.90
Senegal		10.11.92 (a)
Serbia and Montenegro		18.04.00 (a)
Seychelles		11.05.93 (a)
Singapore		02.01.96 (a)
Slovakia		28.05.93 (d)
Slovenia		07.10.93 (a)
South Africa		05.05.94 (a)
Spain	22.03.89	07.02.94
Sri Lanka		28.08.92 (a)
Swaziland		08.08.05 (a)
Sweden	22.03.89	02.08.91
Switzerland	22.03.89	31.01.90
Syrian Arab Republic	11.10.89	22.01.92
Thailand	22.03.90	24.11.97
The former Yugoslav Republic of Macedonia		16.07.97 (a)
Togo		02.07.04 (a)
Trinidad and Tobago		18.02.94 (a)
Tunisia		11.10.95 (a)
Turkey	22.03.89	22.06.94
Turkmenistan		25.09.96 (a)
Uganda		11.03.99 (a)
Ukraine		08.10.99 (a)
United Arab Emirates	22.03.89	17.11.92
United Kingdom of Great Britain and Northern Ireland	06.10.89	07.02.94
United Republic of Tanzania		07.04.93 (a)
United States of America	22.03.90	
Uruguay		20.12.91
Uzbekistan		07.02.96 (a)
Venezuela	22.03.89	03.03.98
Viet Nam		13.03.95 (a)

Yemen		21.02.96 (a)
Zambia		15.11.94 (a)
<b>Signatories of the Basel Convention which have not yet ratified:</b> Afghanistan, Haiti, United States of America		