



Hazardous Waste (Regulation of Exports and Imports) (Waigani Convention) Regulations 1999

Statutory Rules 1999 No. 7 as amended

made under the

Hazardous Waste (Regulation of Exports and Imports) Act 1989

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Part 1 **Preliminary**

1 **Name of regulations** [see Note 1]

These regulations are the *Hazardous Waste (Regulation of Exports and Imports) (Waigani Convention) Regulations 1999*.

2 **Commencement**

These regulations commence on 1 January 2002.

3 **Purpose of these regulations**

These regulations are intended to provide for giving effect to the *Convention to Ban the Importation into Forum Island Countries of Hazardous and Radioactive Wastes and to Control the Transboundary Movement and Management of Hazardous Wastes within the South Pacific Region* (known as the Waigani Convention), made at Port Moresby on 16 September 1995, except so far as that Convention relates to radioactive wastes.

Note 1 The Waigani Convention is an Article 11 arrangement under the Basel Convention — see s 4C of the Act (subject to the making of a Declaration by the Minister under that section). The Basel Convention is set out in the Schedule to the Act.

Note 2 The text of the Convention is set out in Schedule 1 to these regulations.

Note 3 The Act does not apply to radioactive wastes — the definition of **hazardous waste** in the Act relies on the Basel Convention, which does not cover radioactive wastes. The export from, and import into, Australia of radioactive wastes is regulated under the *Customs Act 1901*, the Customs (Prohibited Exports) Regulations and the Customs (Prohibited Imports) Regulations.

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4 Definitions

In these regulations:

Act means the *Hazardous Waste (Regulation of Exports and Imports) Act 1989*.

Convention means the Convention referred to in regulation 3, the text of which is set out in Schedule 1.

Convention Area has the meaning given by Article 1 of the Convention.

Note The Convention Area is:

“(i) the land territory, internal waters, territorial sea, continental shelf, archipelagic waters and exclusive economic zones established in accordance with international law of:

American Samoa	Niue
Australia	The Commonwealth of
Cook Islands	Northern Mariana
Federated States of	Islands
Micronesia	Republic of Palau
Fiji	Papua New Guinea
French Polynesia	Pitcairn Islands
Guam	Solomon Islands
Kiribati	Tokelau
Republic of Marshall Islands	Tonga
Nauru	Tuvalu
New Caledonia and	Vanuatu
Dependencies	Wallis and Futuna
New Zealand	Western Samoa;

(ii) those areas of high seas which are enclosed from all sides by the exclusive economic zones referred to in sub-paragraph (i);

(iii) areas of the Pacific Ocean which have been included in the Convention Area pursuant to Article 2.6;”.

(The quotation is from the definition of **Convention Area** in Article 1 of the Convention. Samoa is called **Western Samoa** in the text of the Convention as adopted in September 1995. It is therefore called by that name in the list above.)

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Forum Island Country has the meaning given by Article 1 of the Convention.

Note The following countries are the Forum Island Countries:

American Samoa	Niue
Commonwealth of Northern Mariana Island	Papua New Guinea
Cook Islands	Pitcairn Island
Federated States of Micronesia	Republic of Palau
Fiji	Republic of the Marshall Islands
French Polynesia	Samoa
Guam	Solomon Islands
Kiribati	Tokelau
Nauru	Tonga
New Caledonia and its dependencies	Tuvalu
	Vanuatu
	Wallis and Futuna.

Party means a Party to the Convention.

5 Proposals that are within the scope of these regulations

The following kinds of import proposals and transit proposals are within the scope of these regulations:

- (a) proposals to import hazardous waste from a Forum Island Country;
- (b) proposals for the transit of hazardous waste through Australia from a Forum Island Country.

6 No export to Forum Island Country etc

Nothing in these regulations or Division 3 or 4 of Part 2, of the Act (as taken to apply in relation to an application by regulation 10 or 11), authorises the Minister to grant:

- (a) an export permit for the export of hazardous waste to:
 - (i) a Forum Island Country; or
 - (ii) a territory (other than an Other Party, within the meaning given by Article 1 of the Convention) within the Convention Area; or

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- (b) an import permit for the import of hazardous waste from a country within the Convention Area that is not a Party to the Convention; or
- (c) a transit permit for the transit of hazardous waste from, or to, a country within the Convention Area that is not a Party to the Convention.

Note 1 **Other Party** means Australia and New Zealand, which are Parties to the Convention, but are not Forum Island Countries.

Note 2 See Article 4 of the Convention.

Note 3 In addition, the Act directs the Minister not to grant a special export permit, a special import permit, or a special transit permit if the Minister is satisfied that the grant could result in hazardous waste being brought into Antarctica — see the Act, s 13F.

7 Discharge of wastes from a ship etc

Nothing in these regulations applies to wastes derived from the normal operation of a vessel (within the meaning given by Article 1 of the Convention), if the discharge of the wastes is covered by an international instrument other than the Convention.

Part 2 Notification and consent

8 Notice about competent authorities and acceptable languages

- (1) The Minister may publish a notice in the *Gazette*, setting out, for a Party:
 - (a) the authority of the Party that is the Competent Authority for the Convention, and the address of that authority; and
 - (b) the language that is acceptable to the Party.

Note For **Competent Authority**, see Articles 1 and 5 of the Convention.
- (2) For that notice, the Minister may rely on any information supplied by a Party from time to time, and is not obliged to verify that the information is correct.

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Part 3 Permits under the Convention

9 Meaning of terms for Part

In this Part:

Waigani import permit means a special import permit for an import of hazardous waste referred to in paragraph 5 (a).

Waigani transit permit means a special transit permit for a transit of hazardous waste referred to in paragraph 5 (b).

10 Waigani import permit

- (1) Sections 12 and 13B, and Divisions 3 and 4 of Part 2, of the Act are taken to apply in relation to a Waigani import permit, or an application for such a permit, as if:
 - (a) a reference to the Basel Convention were a reference to the Waigani Convention; and
 - (b) a reference to a Basel permit or a Basel import permit were a reference to a Waigani import permit; and
 - (c) provisions that apply only in relation to an export permit, or an application for such a permit, were omitted.
- (2) Also, the Minister must not grant a Waigani import permit unless:
 - (a) the applicant has notified the countries concerned (within the meaning given by Article 1 of the Convention) of the relevant proposal, in accordance with Article 6 of the Convention; and
 - (b) each such country has consented to the proposal, in accordance with that Article; and
 - (c) the Minister is satisfied that the waste will not be dumped at sea within the Convention Area.

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11 Waigani transit permit

- (1) Sections 13A and 13B, and Divisions 3 and 4 of Part 2, of the Act are taken to apply in relation to an application for a Waigani transit permit as if:
 - (a) a reference to the Basel Convention were a reference to the Waigani Convention; and
 - (b) a reference to a Basel permit or a Basel import permit were a reference to a Waigani import permit; and
 - (c) provisions that apply only in relation to an export permit, or an application for such a permit, were omitted.
- (2) Also, the Minister must not grant a Waigani transit permit unless:
 - (a) the applicant has notified the countries concerned (within the meaning given by Article 1 of the Convention) of the relevant proposal, in accordance with Article 6 of the Convention; and
 - (b) each such country has consented to the proposal, in accordance with that Article; and
 - (c) the Minister is satisfied that the waste will not be dumped at sea within the Convention Area.

12 Declaration as to corresponding requirements

- (1) The requirements of this Part are declared to be corresponding requirements for section 13E of the Act in relation to a proposal to which this Part and another set of Article 11 regulations both apply.
- (2) The requirements of this Part are declared to be corresponding requirements for subsection 18B (1) of the Act in relation to a proposal to which this Part and that subsection both apply.

13 Conditions of permit — movement document

- (1) It is a condition of a Waigani import permit or a Waigani transit permit that the waste concerned must be accompanied by a movement document giving the information set out in Annex VI B of the Convention.

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- (2) It is a condition of a Waigani import permit or a Waigani transit permit that a person in Australia who takes charge of the waste concerned signs the movement document when the person receives the waste.

14 Conditions of import permit — notice of disposal

It is a condition of a Waigani import permit that the importer of the waste concerned must notify both the exporter and the competent authority of the exporting party when:

- (a) the importer receives the waste; and
- (b) the disposal of the waste is completed.

15 Condition of permit — notification of accidents

It is a condition of a Waigani import permit or a Waigani transit permit that if an accident occurs during a transboundary movement of hazardous waste under the permit, and the accident is likely to present a risk to human health or the environment, the holder of the permit immediately informs:

- (a) the Department of the Environment; and
- (b) the Competent Authority of any affected Party (other than Australia); and
- (c) the appropriate authority of any other affected country.

Note The Department of the Environment administers the Act at present. If the Department's name is changed, or it is abolished, or another Department takes over the administration of the Act, paragraph 15 (a) will have effect as if the name of the new Department were substituted, if the Governor-General so orders — see the *Acts Interpretation Act 1901*, ss 19B (2), 19BA (2) and 46 (1) (a).

Schedule 1 The Waigani Convention

(regulation 4)

Convention to Ban the Importation into Forum Island Countries of Hazardous and Radioactive Wastes and to Control the Transboundary Movement and Management of Hazardous Wastes within the South Pacific Region

Adopted in Port Moresby, Papua New Guinea
September 1995

Preamble

The Parties to this Convention:

Conscious of their responsibility to protect, preserve and improve the environment of the South Pacific for the good health, benefit and enjoyment of present and future generations of the people of the South Pacific;

Concerned about the growing threat to human health and the environment posed by the increasing generation of hazardous wastes and the disposal of such wastes by environmentally unsound methods;

Concerned also about the dangers posed by radioactive wastes to the people and environment of the South Pacific;

Aware that their responsibilities to protect, preserve and improve the environment of the South Pacific can be met only by cooperative effort among all peoples of the South Pacific based on an understanding of the needs and capacities of all parties;

Taking full account of the Programme of Action for the Sustainable Development of Small Island Developing States adopted in Barbados on 6 May 1994;

Noting with concern that a number of approaches have been made to certain Island Countries of the South Pacific by unscrupulous foreign waste dealers for the importation into and disposal within the South Pacific of hazardous wastes generated in other countries;

Concerned with the slowness of progress towards a satisfactory resolution of the issues surrounding international trade in goods which have been banned, cancelled or refused registration in the country of manufacture for human or environment reasons;

Recalling their commitments under existing regional treaties and arrangements towards the protection and preservation of the environment of the South Pacific, including the Convention for the Protection of Natural Resources and Environment of the South Pacific Region, signed in Noumea on 24 November, 1986, the Protocol concerning Cooperation in Combating Pollution Emergencies in the South Pacific Region, adopted by Parties on 25 November, 1986, and the South Pacific Nuclear Free Zone Treaty, signed in Rarotonga in August 1985;

Further Recalling the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal adopted by the Conference of the Plenipotentiaries on 22 March 1989, and noting decisions of its Conference of the Parties including Decision II 12 of 25 March 1994.

Desiring to conclude an agreement under Article 11 of that Convention;

Mindful of the International Atomic Agency (IAEA) Code of Practice in the International Transboundary Movement of Radioactive Waste and Recognising the need for its strict observance in the South Pacific Region;

Noting as well the preliminary negotiations on a convention on the Safe Management of Nuclear Waste;

Further Recalling the Declaration of the United Conference on the Human Environment (Stockholm, 1972), the Cairo Guidelines and Principles for the Environmentally Sound Management of Hazardous Wastes adopted by the Governing Council of the United Nations Environment Programme (UNEP) by Decision 14/30 of 17 June, 1987, the Recommendations of the United Nations' Committee on the Transport of Dangerous Goods (Formulated in 1957 and updated biennially);

Recalling also Agenda 21 adopted by the United Nations Conference on Environment and Development in Rio de Janeiro on 14 June, 1992 which reaffirms that effective control of the generation, storage, treatment, recycling and reuse, transport, recovery, and disposal of hazardous wastes is of paramount importance for proper health, environment protection and natural resources management and sustainable development;

Resolving to prohibit the importation of hazardous wastes into Pacific Island Developing Parties, and to regulate and facilitate the environmentally sound management of such wastes generated within the Convention Area; and

Resolving also to prohibit the importation of all radioactive wastes into Pacific Island Developing Parties while at the same time recognising that the standards, procedures and the authorities responsible for the environmentally sound management of radioactive wastes will differ from those in respect of hazardous wastes.

Have agreed as follows:

Article 1

Definitions

For the purpose of this Convention:

“**Approved site or facility**” means a site or facility for the disposal of hazardous wastes which is authorised or permitted to operate for this purpose by a relevant authority of the Party where the site or facility is located;

“**Area Under the Jurisdiction of a Party**” means any land, marine area or airspace within which a Party exercises administrative and regulatory responsibility in accordance with international law in regard to the protection of human health or the environment;

“**Authorised Transboundary Movement**” means a transboundary movements of hazardous wastes to which the consent of the Parties concerned has been given in accordance with the provisions of this Convention;

“**Basel Convention**” means the Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, 1989;

“**Carrier**” means any person who carries out the transport of hazardous wastes;

“**Cleaner Production**” means the conceptual and procedural approach to production that demands that all phases of the life-cycle of a product or process should be addressed, with the objective of prevention or minimisation of short and long-term risks to humans and to the environment;

“**Competent Authority**” means one governmental authority designated by a Party to be responsible within such geographical areas as the Party may think fit for receiving the notification of a transboundary movement of hazardous wastes and any information related to it, and for responding to such a notification, as provided in Article 6 of this Convention;

“**Convention Area**” shall comprise:

- (i) the land territory, internal waters, territorial sea, continental shelf, archipelagic waters and exclusive economic zones established in accordance with international law of:

American Samoa	New Zealand
Australia	Niue
Cook Islands	The Commonwealth of
Federated States of	Northern Mariana Islands
Micronesia	Republic of Palau
Fiji	Papua New Guinea
French Polynesia	Pitcairn Islands
Guam	Solomon Islands
Kiribati	Tokelau
Republic of Marshall	Tonga
Islands	Tuvalu

Nauru	Vanuatu
New Caledonia and Dependencies	Wallis and Futuna Western Samoa;

- (ii) those areas of high seas which are enclosed from all sides by the exclusive economic zones referred to in sub-paragraph (i);
- (iii) areas of the Pacific Ocean which have been included in the Convention Area pursuant to Article 2.6;

“**Countries Concerned**” means countries of export, import or transit whether or not Parties to this Convention;

“**Days**” means calendar days unless otherwise specified;

“**Disposal**” means any operation specified in Annex V to this Convention;

“**Disposer**” means any person for whom hazardous wastes are destined and who carries out the actual disposal of such wastes;

“**Domestically Prohibited Goods**” means substances or products which have been banned, cancelled or refused registration by government regulatory action, or voluntarily withdrawn from registration in country of manufacture, for human health or environmental reasons;

“**Environmentally Sound Management of Hazardous Wastes**” means taking all practicable steps to ensure that hazardous wastes are managed in a manner which will protect human health and the environment against the adverse effects which may result from such wastes;

“**Exporter**” means any person under the jurisdiction of the exporting Party who arranges for hazardous wastes to be exported;

“**Exporting Party**” means a Party from which a transboundary movement of hazardous wastes is planned to be initiated or is initiated;

“**Focal point**” means the entity of a Party referred to in Article 5 of this Convention responsible for receiving and submitting information as provided for in Articles 7 and 14;

“**Forum Island Countries**” means all Members of the South Pacific Forum with the exception of Australia and New Zealand;

“**Generator**” means any person whose activity produces hazardous wastes, or, if that person is not known, the person who is in possession and/or control of those wastes;

“**Hazardous Wastes**” means wastes as specified in Article 2 of this Convention;

“**IAEA**” means the International Atomic Energy Agency;

“**Illegal traffic**” means any transboundary movement of hazardous wastes as specified in Article 9 of this Convention;

“**Importer**” means any person under the jurisdiction of the Importing Party who arranges for hazardous wastes to be imported;

“**Importing Party**” means any Party to which transboundary movement is planned or takes place for the purpose of disposal therein or for the purpose of loading prior to disposal in an area not under the national jurisdiction of any State;

“**London Convention**” means the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972;

“**Management**” means the prevention and reduction of hazardous wastes and collection, transport, storage, and treatment or disposal, of hazardous wastes including after-care of disposal sites;

“**Other Party**” means a Party listed in Annex IV or any Party which is determined by the Conference of the Parties to be an Other Party in accordance with the procedure established pursuant to Article 13.4 (g);

“**Pacific Island Developing Party**” means a Party listed in Annex III, or a Party or territory of a Party accepted by the Conference of the Parties to be a Pacific Island Developing Party in accordance with procedures established pursuant to Article 13.3 (g);

“**Party**” means a Party to this Convention;

“**Person**” means any natural or legal person;

“**Precautionary Principle**” means the principle that in order to protect the environment, the precautionary approach shall be widely applied by Parties according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost effective measures to prevent environmental degradation;

“**Radioactive wastes**” means wastes which, as a result of being radioactive, are subject to other international control systems, including international instruments, applying specifically to radioactive materials;

“**Secretariat**” means the Secretariat established pursuant to Article 14 of this Convention;

“**SPREP**” means the South Pacific Regional Environment Programme;

“**Transit Party**” means any Party, other than the Exporting Part or the Importing Party, through which a movement of hazardous Wastes is planned or takes place;

“**Transboundary movement**” means any movement of hazardous wastes from an area under the jurisdiction of one Party, to or through an area under the jurisdiction of another Party, or to or through an area not under the jurisdiction of another Party, provided at least two (2) Parties are involved in the movement;

“**Vessels**” and “**Aircraft**” means waterborne or airborne craft of any type whatsoever. This expression includes air cushioned craft and floating craft, whether self-propelled or not;

“**Wastes**” means substances or materials which are disposed of or are intended to be disposed of, or are required to be disposed of, by provisions of national legislation.

Article 2

Scope of the Convention and Area of Coverage

Scope of the Convention

1. The following substances shall be “**hazardous wastes**” for the purposes of this Convention:
 - (a) Wastes that belong to any category contained in Annex I of this Convention, unless they do not possess any of the characteristics contained in Annex II of this Convention;
 - (b) Wastes that are not covered under paragraph (a) above, but which are defined as, or are considered to be, hazardous wastes by the national legislation of the exporting, importing or transit Party to, from, or through which such wastes are to be sent;
2. Radioactive wastes are excluded from the scope of this Convention except as specifically provided for in Article 4.1, 4.2, 4.3 and 4.5 of this Convention.
3. Wastes which derive from the normal operations of a vessel, the discharge of which is covered by another international instrument, shall not fall within the scope of this Convention.
4. Nothing in this convention shall affect in any way the sovereignty of States over their territorial sea, the sovereign rights and jurisdiction that States have in their exclusive economic zones and continental

shelves, and the exercise by vessels and aircraft of all States of navigational rights and freedoms, as provided for in international law and as reflected in the 1982 United Nations Convention on the Law of the Sea and other relevant international instruments.

5. Nothing in this Convention shall affect in any way the rights and obligations of any Party under international law including the London Convention as amended; the 1982 United Nations Convention on the Law of the Sea, including in particular Articles 31, 210 and 236 thereof; the South Pacific Nuclear Free Zone Treaty, 1985, including in Particular Article 7 thereof; and the International Convention for the Prevention of Pollution from Ships, 1973.

Area of Coverage

6. A Party may add areas under its jurisdiction within the Pacific Ocean between the Tropic of Cancer and 60 degrees South latitude and between 130 degree East longitude and 120 West longitude to the Convention Area. Such addition shall be notified to the Depositary, who shall promptly notify the other Parties and the Secretariat. Such areas shall be incorporated within the Convention Area ninety days after notification to the Parties by the Depositary, provided there has been no objection to the proposal to add new areas by any Party. If there is any such objection the Parties concerned will consult with a view to resolving the matter.

Article 3

National Definitions of Hazardous Wastes

1. Each Party shall, within six months of becoming a Party to this Convention, inform the Secretariat of the wastes, other than those listed in Annex I of this Convention, considered or defined as hazardous under its national legislation and of any requirements concerning transboundary movement procedures applicable to such wastes.

2. Each Party shall subsequently inform the Secretariat of any significant changes to the information it has provided pursuant to paragraph 1 of this Article.

3. The Secretariat shall forthwith inform all Parties of the information it has received pursuant to paragraphs 1 and 2 of this Article.

4. Parties shall be responsible for making the information transmitted to them by the Secretariat under paragraph 3 of this Article available to their exporters, importers and other appropriate bodies.

Article 4

General Obligations

1. Hazardous Wastes and Radioactive Wastes Import and Export Ban
 - (a) Each Pacific Island Developing Party shall take appropriate legal, administrative and other measures within the area under its jurisdiction to ban the import of all hazardous wastes and radioactive wastes from outside the Convention Area. Such import shall be deemed an illegal and criminal act.
 - (b) Each Other Party shall take appropriate legal, administrative and other measures within the area under its jurisdiction to ban the export of all hazardous wastes and radioactive wastes to all Forum Island Countries, or to territories located in the Convention Area with the exception of those that have the status of Other Parties in accordance with Annex IV. Such export shall be deemed an illegal and criminal act.
2. To facilitate compliance with paragraph 1 of this Article, all Parties:
 - (a) Shall forward in a timely manner all information relating to illegal hazardous and radioactive wastes import activity within the area under its jurisdiction to the Secretariat who shall distribute the information as soon as possible to all Parties; and
 - (b) Shall cooperate to ensure that no illegal import of hazardous and radioactive wastes from a non-Party enters under the jurisdiction of a Party to this Convention.
3. Ban on Dumping of Hazardous Wastes and Radioactive Wastes at Sea
 - (a) Each Party which is a Party to the London Convention, the South Pacific Nuclear Free Zone Treaty, 1985, the 1982 United Nations

Convention on the Law of the Sea or the Protocol for the Prevention of Pollution on the South Pacific Region by Dumping, 1986, reaffirms the commitments under those instruments which require it to prohibit dumping of hazardous wastes and radioactive wastes at sea.

- (b) Each Party which is not a Party either to the London Convention, or the Protocol for the Prevention of Pollution on the South Pacific Region by Dumping 1986, should consider becoming a Party to both of those instruments.

4. Wastes Located in the Convention Area

Each Party shall:

- (a) Ensure that within the area under its jurisdiction the generation of hazardous wastes is reduced to a minimum taking into account social, technological and economic needs;
- (b) Take appropriate legal, administrative and other measures to ensure that within the area under its jurisdiction, all transboundary movements of hazardous wastes generated within the Convention Area are carried out in accordance with the provisions of this Convention;
- (c) Ensure the availability of adequate treatment and disposal facilities for the environmentally sound management of hazardous wastes, which shall be located, to the extent practicable, within areas under its jurisdiction, taking into account social technological and economic considerations. However, where Parties are for geographic, social or economic reasons unable to dispose safely of hazardous wastes within those areas, cooperation would take place as provided for under Article 10 of this Convention.
- (d) In cooperation with SPREP, participate in the development of programmes to manage and simplify the transboundary movement of hazardous wastes which cannot be disposed of in an environmentally sound manner in the countries in which they are located. Provided that such programmes do not derogate from the environmentally sound management of hazardous wastes as required by this Convention, they may be registered as arrangements under Article 11 of this Convention;
- (e) Develop a national hazardous wastes management strategy which is compatible with the SPREP South Pacific Regional Pollution Prevention, Waste Minimisation and Management Programme;

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- (f) Submit to the Secretariat such reports as the Conference of the Parties may require regarding the hazardous wastes generated in the area under its jurisdiction in order to enable the Secretariat to produce a regulate hazardous wastes report;
 - (g) Subject to Article 11 of this Convention, prohibit within the area under its jurisdiction hazardous wastes from being exported to or imported from non-Parties within the Convention Area; and
 - (h) Take appropriate legal, administrative and other measures to prohibit vessels flying its flag or aircraft registered in its territory from carrying out activities in contravention of this Convention.

5. Radioactive Wastes

- (a) Parties shall give active consideration to the implementation of the IAEA Code of Practice on the International Transboundary Movement of Radioactive Wastes and such other international and national standards which are at least as stringent; and
- (b) Subject to available resources, Parties shall actively participate in the development of the Convention on the Safe Management of Nuclear Waste.

6. Domestically Prohibited Goods

- (a) Subject to available resources, Parties shall endeavour to participate in relevant international fora to find an appropriate global solution to the problems associated with the international trade of domestically prohibited goods.
- (b) Nothing in this Convention shall be interpreted as limiting the sovereign right of Parties to act individually or collectively, consistent with their international obligations, to ban the importation of domestically prohibited goods into areas under their jurisdiction.

Article 5

Competent Authorities and Focal Points

1. To facilitate the implementation of this Convention, each Party shall designate or establish one competent authority and one focal point. A Party need not designate or establish new or separate authorities to perform the functions of the competent authority and the focal point.

2. The competent authority shall be responsible for the implementation of notification procedures for transboundary movements of hazardous wastes in accordance with the provisions of Article 6 of this Convention.

3. The focal point shall be responsible for the transmitting and receiving information in accordance with the provisions of Article 7 of this Convention.

4. The Parties shall inform the Secretariat, within three months of the date of entry into force of this Convention for them, which authorities they have designated or established as the competent authority and focal point.

Article 6

Notification Procedures for Transboundary Movements of Hazardous Wastes between Parties

1. The exporting Party shall notify, or shall require the generator or exporter to notify, in writing, through its competent authority, the competent authority of the countries concerned of any proposed transboundary movement of hazardous wastes. Such notification shall contain the declarations and information specified in Annex VI A of this Convention, written in a language acceptable to the importing Party. Only one notification needs to be sent to each country concerned.

2. The importing Party shall acknowledge within reasonable time, which in the case of Other Parties shall not exceed fourteen working days, the receipt of the notification referred to in paragraph 1 of this Article. The importing Party shall have sixty days after issuing the acknowledgment to inform the notifier that it is consenting to the movement or requesting additional information. In the event that additional information has been sought, a new period of twenty-one days recommences from the time of receipt of the additional information.

3. The Exporting Party shall not allow the transboundary movement, until it has received:

- (a) Written consent of the importing Party; and
- (b) Written consent from every transit Party; and.
- (c) Written consent of every non-Party country of transit; and
- (d) Written confirmation from the importing Party of the existence of a contract between the exporter and the disposer specifying the environmentally sound management of the wastes in question; and
- (e) Written confirmation from the exporter of the existence of adequate insurance, bond or other guarantee satisfactory to the exporting Party.

4. Each transit Party shall acknowledge within a reasonable time, which in the case of Other Parties shall not exceed fourteen working days, the receipt of the notification referred to in paragraph 1 of this Article. Each transit Party shall have sixty days after issuing the acknowledgment to inform the notifier that it is consenting to the movement or requesting additional information. In the event that additional information has been sought, a new period of twenty-one days recommences from the time of receipt of the additional information.

5. In the case of a transboundary movement of wastes, where the wastes are legally defined as or considered to be hazardous wastes only:

- (a) By the exporting Party, the requirement of paragraph 10 of this Article, that any transboundary movement shall be covered by insurance, bond or any other guarantees shall be required by the exporting Party;
- (b) By the importing, or the transit Party, the requirements of paragraphs 1, 3, 4 and 6 of this Article that apply to the exporter and the exporting Party, shall apply *mutatis mutandis* to the importer or disposer and importing Party, respectively; or
- (c) By any transit Party, the provisions of paragraph 4 shall apply to such Party.

6. The exporting Party may, subject to the written consent of the Parties concerned, allow the generator or the exporter to use a general notification where hazardous wastes having the same physical and chemical characteristics are shipped regularly to the same disposer via the same customs office of exit of the exporting Party via the same customs

office of entry of the importing Party, and, in the case of transit, via the same customs office of entry and exit of the Party or Parties of transit.

7. The countries concerned may make their written consent to the use of the general notification referred to in paragraph 6 subject to the supply of certain information, such as the exact quantities or periodical lists of hazardous wastes to be shipped.

8. The general notification and written consent referred to in paragraphs 6 and 7 of this Article may cover multiple shipments of hazardous wastes during a maximum period of twelve months.

9. Each transboundary movement shall be accompanied by a movement document which includes the information listed in Annex VI B. The Parties to this Convention shall require that each person who takes charge of a transboundary movement of hazardous wastes sign the movement document either upon delivery or receipt of the wastes in question. They shall also require the disposer to inform both the exporter and the competent authority of the exporting Party of receipt by the disposer of the wastes in question and, in due course, of the completion of disposal as specified in the notification. If no such information is received by the exporting Party, the competent authority of the exporting Party or the exporter shall so notify the importing Party.

10. Any transboundary movement of hazardous wastes shall be covered by insurance, bond or other guarantee as may be required by the importing Party or any transit Party.

Article 7

Transmission of Information

1. The Parties shall ensure that in the case of an accident occurring during the transboundary movement of hazardous wastes or their disposal which is likely to present risks to human health and the environment in other States and Parties, those States and Parties and the Secretariat are immediately informed.

2. The Parties shall inform one another, through the Secretariat, of:
 - (a) Changes regarding the designation of competent authorities and/or focal points, pursuant to Article 5 of this Convention;
 - (b) Changes in their national definition of hazardous wastes, pursuant to Article 3 of this Convention.

3. The Parties, consistent with national laws and regulations, shall set up information collection and dissemination mechanisms on hazardous wastes to enable the Secretariat to fulfil the functions listed in Article 14.

Article 8

Duty to Re-Import

1. The Exporting Party shall adopt appropriate administrative and legal measures to ensure that when an authorised transboundary movement of hazardous wastes cannot be completed in accordance with the terms of the contract or of this Convention, the wastes in question are returned to it by the exporter. To this end, the importing Party and the transit Party or Parties shall not oppose, hinder or prevent the return of those wastes to the exporting Party.

2. Notwithstanding the provisions of paragraph 1 of this Article, where an authorised transboundary movement of hazardous wastes cannot be completed within the terms of the contract or the terms of this Convention, the exporting Party need not re-import those wastes provided that alternative arrangements are made for the disposal of the wastes in a manner which is compatible with the environmentally sound management of hazardous wastes as required by this Convention and other international legal obligations. Such disposal shall take place within ninety days from the time that the importing Party informed the exporting Party and the Secretariat, or such period of times as the Parties concerned agree.

Article 9

Illegal Traffic

1. For the purpose of this Convention, any transboundary movement of hazardous wastes shall be deemed to be illegal traffic if:

- (a) Carried out without notification, pursuant to the provisions of this Convention, to all countries concerned;
- (b) Carried out without the consent, pursuant to the provisions of this Convention of a country concerned;
- (c) Consent is obtained from countries concerned through falsification, misrepresentation or fraud;
- (d) The contents do not conform in a material way with the supporting documentation;
- (e) It results in deliberate disposal of hazardous wastes in contravention of this Convention, other relevant international instruments and of general principles of international law; or
- (f) It is in contravention of the import and export bans established by Article 4.1.

2. Each Party shall introduce or adopt appropriate national legislation to prevent and punish illegal traffic. The Parties shall cooperate with a view to achieving the objects of this Article.

3.

- (a) In case of a transboundary movement of hazardous wastes deemed to be illegal traffic as the result of conduct on the part of the exporter or generator, the exporting Party shall ensure that, within 30 days from the time the exporting Party has been informed about the illegal traffic or such other period of time the countries concerned may agree, the wastes in question are:
 - (i) taken back by the exporter or generator or, if necessary, by itself into the exporting Party; or, if impracticable,
 - (ii) otherwise disposed of in accordance with the provisions of this Convention.
- (b) In the case of sub-paragraph 3 (a) (i), the Parties concerned shall not oppose, hinder or prevent the return of those wastes to the exporting Party.

4. In the case of a transboundary movement of hazardous wastes deemed to be illegal traffic as a result of conduct on the part of the importer or disposer, the importing Party shall ensure that the wastes in question are disposed of in an environmentally sound manner by the importer or disposer or, if necessary, by itself within thirty days from the time the illegal traffic has come to the attention of the importing Party or such time as the countries concerned may agree. To this end, the importing Party and the exporting Party shall cooperate, as necessary, in the disposal of the wastes in an environmentally sound manner.

5. In cases where the responsibility for the illegal traffic cannot be assigned either to the exporter or generator or to the importer or disposer, the Parties concerned or other Parties, as appropriate, shall ensure, through co-operation, that the wastes in question are disposed of as soon as possible in an environmentally sound manner either in the exporting Party or the importing Party or elsewhere as appropriate.

6. The Secretariat shall undertake the necessary coordination with the Secretariat of the Basel Convention in relation to the effective prevention and monitoring of illegal traffic in hazardous wastes. Such coordination shall include:

- (a) Exchanging information on incidents or alleged incidents of illegal traffic in the Convention Area and on the appropriate steps to remedy such incidents;
- (b) Providing assistance in the field of capacity building including development of national legislation and of appropriate infrastructure in the Pacific Island Developing Parties with a view to the prevention and penalization of illegal traffic of hazardous wastes.

Article 10

Cooperation Among Parties and International Cooperation

1. The Parties to this Convention shall cooperate with one another, non-Parties and relevant regional and international organisations, to facilitate the availability of adequate treatment and disposal facilities and improve and achieve environmentally sound management of hazardous

wastes. Such facilities shall be located within the Convention Area to the extent practicable taking into account social, technological and economic considerations;

2. To this end, the Parties shall:

- (a) Upon request, make information available, whether on a bilateral or regional basis, with a view to promoting the environmentally sound management of hazardous wastes, including harmonisation of relevant technical standards and practices;
- (b) Cooperate in monitoring the effects of hazardous wastes and their management on human health, and the environment;
- (c) Cooperate, subject to their national laws and policies, in the development and implementation of new environmentally sound and cleaner production technologies and the improvement of existing technologies. Such cooperation shall be with a view to eliminating, as far as practicable, the generation of hazardous wastes and achieving more effective and efficient methods of ensuring their management in an environmentally sound manner, including the study of the economic, social and environmental effects of the adoption of such new and improved technologies;
- (d) Cooperate, subject to their national laws and policies, actively in the transfer of technology and management systems related to the environmentally sound management of hazardous wastes. They shall also cooperate in developing the technical capacity and infrastructure or Parties, especially those which may need and request technical assistance in this field; and
- (e) Cooperate in developing appropriate technical guidelines and/or codes of practice.

3. The Secretariat shall encourage Other Parties and other concerned developed countries to take all practicable steps to promote, facilitate and finance, as appropriate, the transfer of, or access to, environmentally sound technologies and know-how to Pacific Island Developing Parties, to enable them to implement the provisions of the Convention. Other Parties undertake to cooperate with the Secretariat in this regard.

4. Taking into account the needs of developing countries, Parties shall encourage cooperation with international organisations in order to promote, among other things, public awareness, the development of rational management of hazardous wastes and the adoption of new

technologies which are environmentally sound, including cleaner production technologies.

Article 11

Bilateral, Regional and Multinational Agreements

1. Notwithstanding the provisions of Article 4.4 (g), Parties to this Convention may enter into bilateral or multilateral agreements or arrangements with non-Parties regarding transboundary movement and management of hazardous wastes provided that that such agreements or arrangements do not derogate from the provisions of Article 4.1 or from the environmentally sound management of hazardous wastes as required by this Convention.

2. Parties shall notify the Secretariat of any bilateral, regional or multilateral agreements or arrangements referred to in paragraph 1 of this Article and those which they have entered into prior to the entry into force of this Convention for them, for the purpose of controlling transboundary movements of hazardous wastes which take place entirely among the parties to such agreements.

3. The provisions of this Convention shall not affect transboundary movements of hazardous wastes which take place pursuant to such agreements or arrangements provided that such agreements or arrangements are compatible with the environmentally sound management of hazardous wastes as required by this Convention.

Article 12

Liability and Compensation

The Conference of the Parties shall consider the preparation and adoption of appropriate arrangements in the field of liability and compensation arising from transboundary movements of hazardous wastes in the Convention Area without prejudice to the application and further development of relevant rules of international law.

Article 13

Conference of the Parties

1. A Conference of the Parties is hereby established. The first meeting of the Conference of the Parties shall be convened not later than one year after the entry into force of this Convention. Thereafter, ordinary meetings of the Conference of the Parties shall be held at regular intervals to be determined by the Conference at its first meeting. The quorum for meetings of the Conference of the Parties shall be two-thirds of the Parties.
2. The Conference of the Parties shall adopt by consensus at its first ordinary meeting, or as soon as practicable thereafter, Rules of Procedure. It shall also adopt by consensus financial rules, including the scale of contributions of the Parties to this Convention to the regular budget.
3. The first meeting of the Conference of the Parties shall consider the adoption of any additional measures in accordance with the precautionary principle relating to the implementation of this Convention.
4. The Conference of the Parties shall keep under continuous review and evaluation the effective implementation of this Convention, and in addition, shall:
 - (a) Promote the harmonisation at high levels of protection of appropriate legislation, policies, strategies and measures for minimising harm to human health and the environment;
 - (b) Consider and adopt, where necessary, amendments to this Convention, and its annexes, taking into consideration, *inter alia*, available scientific, technical, economic and environmental information;
 - (c) Examine and approve the regular budget prepared by the Secretariat in accordance with Article 14;
 - (d) Consider and undertake any additional action that may be necessary for the achievement of the purposes of this Convention in the light of experience gained in the operation of the Convention developments elsewhere;
 - (e) Consider and adopt protocols as necessary;

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- (f) Establish and/or designate such subsidiary bodies or agencies as are deemed necessary for the implementation of this Convention; and
 - (g) Determine and adopt appropriate rules and procedures for the acceptance of new parties to this Convention in accordance with Article 23 and Annexes III and IV.

5. Any State which is eligible to become a Party to this Convention may be represented as an observer at meetings of the Conference of the Parties. Any other body or agency, whether national, regional or international, governmental or non-governmental, with an interest in the subject matter of this Convention which has informed the Secretariat of its wish to be represented as an observer at a meeting of the Conference of the Parties, may be admitted unless at least one third of the Parties present object. The admission and participation of observers shall be subject to the rules of procedure adopted by the Conference of the Parties.

Article 14

Secretariat

1. A Secretariat for this Convention is hereby established. The functions of the Secretariat shall be to:
- (a) Arrange and service meetings of the Parties to this Convention;
 - (b) Prepare the regular budget of the Conference of the Parties, as required by this Convention;
 - (c) Prepare and transmit reports based upon information received in accordance with Articles 3, 4, 7 and 11 of this Convention;
 - (d) Prepare and transmit information derived from meetings of subsidiary bodies and agencies established under Article 3 of this Convention or provided by relevant inter-governmental and non-governmental entities;
 - (e) Ensure coordination with the Secretariat of the Basel Convention and other relevant international bodies and regional bodies, and in particular to enter into such administrative arrangements as may be required for the effective discharge of its functions;

- (f) Communicate with competent authorities and focal points established by the Parties in accordance with Article 5 of this Convention as well as appropriate inter-governmental and non-governmental organisations which may provide financial and/or technical assistance in the implementation of this Convention;
- (g) Compile information concerning approved sites and facilities available for the disposal of their hazardous wastes and means of transport to these sites and facilities and to circulate this information;
- (h) Receive and convey on request to Parties information on available sources of technical and scientific expertise;
- (i) Receive and convey on request to Parties information on consultants or consulting firms having necessary technical competence in the field which can assist them with examining a notification for a transboundary movement, the concurrence of a shipment of hazardous wastes with the relevant notification, and/or whether the proposed disposal facilities for hazardous wastes are environmentally sound, when they have reason to believe that the wastes in question will not be managed in an environmentally sound manner;
- (j) Assist Parties to this Convention in their identification of cases of illegal traffic and to circulate immediately to the Parties concerned any information it has received regarding illegal traffic, and to undertake the necessary coordination with the Secretariat of the Basel Convention as provided for in Article 9.6;
- (k) To cooperate with countries concerned and with relevant and competent international organisations and agencies in the provision of experts and equipment for the purpose of rapid assistance in the event of an emergency situation in the Convention Area;
- (l) To report the information prescribed in paragraph 2 of this Article, to the Parties to this Convention, before the end of each calendar year;
- (m) To perform such other functions relevant to the purposes of this Convention as may be determined by the Conference of the Parties.

2. The Secretariat shall transmit to the Parties, before the end of each calendar year, a report taking into account material provided by Parties

under Articles 4.4 (f) and 7.3 on the previous calendar year, containing the following:

- (a) Information regarding transboundary movement of hazardous wastes in which Parties have been involved, including:
 - (i) the quantity of hazardous wastes exported, their category, characteristics, destination, any transit country and disposal method as stated in the notification;
 - (ii) the amount of hazardous wastes imported, their category, characteristics, origin, and disposal methods;
 - (iii) disposals which did not proceed as intended; and
 - (iv) efforts to achieve a reduction of the amount of hazardous wastes subject to transboundary movement.
 - (b) Information on measures adopted by Parties in the implementation of this Convention;
 - (c) Information where it is available on the effects on human health and the environment from the generation, transportation, and disposal of hazardous wastes in the Convention area. The information may take the form of statistical data;
 - (d) Information on accidents occurring during the transboundary movements, treatment and disposal of hazardous wastes and on measures undertaken to deal with them;
 - (e) Information on environmentally sound treatment and disposal options operated by the Parties; and
 - (f) Information on measures undertaken by Parties for the development of cleaner production technologies for the reduction and/or elimination of the production of hazardous wastes.
3. The Secretariat's functions shall be carried out by SPREP.

Article 15

Revolving Fund

The Conference or the Parties shall consider the establishment of a revolving fund to assist on an interim basis in case of emergency situations to minimise damage from disasters or accidents arising from transboundary movement or disposal of hazardous wastes within the Convention Area.

Article 16

Amendments to this Convention

1. Any Party may propose amendments to this Convention
2. Amendments to this Convention may be adopted only at a meeting of the Conference of the Parties at which at least two thirds of the Parties are represented. The text of any proposed amendment to this Convention shall be communicated to the Parties by the Secretariat at least six months before the meeting at which it is proposed for adoption. The Secretariat shall also communicate proposed amendments to the Signatories to this Convention and to the Depositary for their information.
3. The Parties shall make every effort to reach agreement on any proposed amendment to this Convention by consensus. If all efforts at consensus have been exhausted, and no agreement reached, the amendment shall, as a last resort, be adopted by a two-thirds majority vote of the Parties present and voting, each party having one vote, and shall be submitted by the Depositary to all Parties for ratification, acceptance or approval.
4. Instruments of ratification, acceptance or approval of amendments shall be deposited with the Depositary. Amendments shall enter into force between Parties having accepted such amendments on the ninetieth day following the date of receipt by the Depositary of the instruments of at least three-fourths of the Parties to this Convention. Thereafter the amendments shall enter into force for any other Party on the ninetieth day after the date on which that Party deposits its instrument.
6. For the purpose of this Article, “Parties present and voting” means Parties present and casting an affirmative or negative vote.

Article 17

Protocols to this Convention

1. The Conference of the Parties may, at any ordinary meeting, adopt protocols to the Convention.
2. The text of any proposed protocol shall be communicated to the Parties by the Secretariat at least six months before the meeting at which it is proposed for adoption.
3. The procedure specified in Article 16.3 shall apply to the adoption of, and any amendment to, any protocol.
4. The requirements for the entry into force of any protocol or subsequent amendments to such protocol shall be established by that protocol.
5. Decisions under any protocol shall be taken only by the Parties to that protocol.

Article 18

Adoption and Amendments of Annexes

1. The annexes to this Convention shall form an integral part of this Convention and, unless expressly provided otherwise, a reference to this Convention constitutes, at the same time a reference to any annexes thereto. Such annexes shall be restricted to scientific, technical and administrative matters.
2. The following procedure shall apply to the proposal, adoption and entry into force of additional annexes or amendments to annexes, to this Convention:
 - (a) Such additional annexes or amendments to annexes shall proposed and adopted according to the procedure laid down in Articles 16.1, 16.2 and 16.3 of this Convention;
 - (b) Any Party that is unable to accept an additional annexes or amendments to the annexes, shall so notify the Depositary, in

writing, within six months from the date of the communication of the adoption by the Depositary. The Depositary shall without delay notify all Parties of any such notification received. A Party may at any time substitute an acceptance for a previous declaration of objection and the annexes or amendments to annexes shall thereupon enter into force for that Party;

- (c) Upon the expiration of six months from the date of the circulation of the communication by the Depositary, the annexes or amendments to annexes shall enter into force for all Parties to this Convention, which have not submitted a notification in accordance with the provision of subparagraph (b) above.

3. If an additional annex or an amendment to an annex involves an amendment to this Convention or to any Protocol, the additional annex or amended annex shall not enter into force until such time as the amendment to this Convention or to the protocol enters into force.

Article 19

Verification

1. Any Party which has reason to believe that another Party is acting or has acted in breach of its obligations under this Convention may inform the Secretariat thereof, and in such an event, shall simultaneously and immediately inform, directly or through the Secretariat, the Party against whom the allegations are made. All relevant information should be submitted by the Secretariat to the Parties.

2. The Conference of the Parties shall consider the adoption of a Protocol dealing with detailed procedures and arrangements for the verification of alleged breaches of obligations under this Convention.

Article 20

Settlement of Disputes

1. In case of a dispute between Parties as to the interpretation or application of, or compliance with, this Convention or any protocol

thereto, the Parties concerned shall seek a settlement of the dispute through negotiation, mediation or any other peaceful means of their own choice.

2. If the Parties concerned cannot settle their dispute through the means mentioned in the paragraph 1 of this Article, the dispute, if the Parties to the dispute agree, shall be submitted to arbitration under the conditions set out in Annex VII of this Convention or to the International Court of Justice. However, failure to reach common agreement on submission of the dispute to arbitration or to the International Court of Justice shall not absolve the Parties from the responsibility of continuing to seek to resolve it by the means referred to in paragraph 1.

3. When ratifying, accepting, approving, or acceding to this Convention, or at any time thereafter, a Party may declare that it recognises as compulsory *ipso facto* and without special agreement, in relation to any Party accepting the same obligation:

- (a) Arbitration in accordance with the procedures set out in Annex VII; and/or
- (b) Submission of the dispute to the International Court of Justice.

Such declaration shall be notified in writing to the Secretariat which shall communicate it to the Parties.

Article 21

Signature

1. This Convention shall be open for signature by the Members of the South Pacific Forum at Waigani, Port Moresby on 16 September 1995.

2. This Convention shall remain open for signature by the Members of the South Pacific Forum from 20 September 1995 until 19 March 1996 at the South Pacific Forum Secretariat, Suva.

Article 22

Ratification, Acceptance, Formal Confirmation or Approval

This Convention shall be subject to ratification, acceptance or approval by Members of the South Pacific Forum. Instruments of ratification, acceptance or approval shall be deposited with the Depository.

Article 23

Accession

1. This Convention shall be open for accession by Members of the South Pacific Forum from the day after the date on which the Convention is closed for signature. The instruments of accession shall be deposited with the Depository.

2. Other States not members of the South Pacific Forum which have territories in the Convention Area may accede to the Convention. In addition, other States which do not have territories in the Convention Area may also accede to the Convention pursuant to a decision of the Conference of the Parties under Article 13.4 (g).

Article 24

Entry into Force

This Convention shall enter into force thirty days after the date of deposit of the tenth instrument of ratification, acceptance, approval or accession, and thereafter for each State thirty days after the deposit of its ratification, acceptance, formal confirmation, approval or accession.

Article 25

Reservations and Declarations

1. No reservation or exception shall be made to this Convention.
2. Paragraph 1 of this Article does not preclude a signatory or a Party when signing, ratifying or acceding to this Convention, from making declarations or statements, however phrased or named, with a view, inter alia, to the harmonisation of its laws and regulations with the provisions of this Convention, provided that such declarations or statements do not purport to exclude or to modify the legal effect of the provisions of the Convention in application to that Party.

Article 26

Withdrawal

1. At any time after three years from the date on which this Convention has entered into force for a Party, that Party may withdraw by giving written notification to the Depositary.
2. Withdrawal shall be effective one year from receipt of notification by the Depositary, or on such later date as may be specified in the notification.
3. Withdrawal shall not exempt any withdrawing Party from fulfilling any obligations it might have incurred under the Convention, whilst a Party to this Convention.

Article 27

Depositary

The Secretary General of the South Pacific Forum Secretariat shall be the Depositary of this Convention and of any Protocol thereto.

Article 28

Registration

This Convention, as soon as it enters into force, shall be registered by the Depositary with the Secretary-General of the United Nations in conformity with Article 102 of the Charter of the United Nations.

IN WITNESS WHEREOF the undersigned, being duly authorised to that effect, have signed this Convention:

For the Government of Australia

For the Government of the Cook Islands

For the Government of the Federated States of Micronesia

For the Government of the Republic of Fiji

For the Government of the Republic of Kiribati

For the Government of the Republic of Nauru

For the Government of New Zealand

For the Government of Niue

For the Government of Republic of Palau

For the Government of Papua New Guinea

For the Government of Republic
of the Marshall Islands

For the Government of Solomon
Islands

For the Government of Tonga

For the Government of Tuvalu

For the Government of Vanuatu

For the Government of Western
Samoa

DONE at Port Moresby, Papua New Guinea on the sixteenth day of
September in the year one thousand nine hundred and ninety five, in a
single original in the English language.

Annex I — Categories of Wastes Which are Hazardous

Annex II — List of Hazardous Characteristics

Annex III — Pacific Island Developing Countries

Annex IV — Other Parties

Annex V — Disposal Operations

Annex VI — Information to be Provided on Notification
and Movement

Annex VII — Arbitration

Annex I

Categories of Wastes Which are Hazardous Wastes

Wastes Streams:

- Y1 Clinical wastes from medical care in hospitals, medical centers and clinics
- Y2 Wastes from the production and preparation of pharmaceutical products
- Y3 Waste pharmaceuticals, drugs and medicines
- Y4 Wastes from the production, formulation and use of biocides and phytopharmaceuticals
- Y5 Wastes from the manufacture, formulation and use of wood preserving chemicals
- Y6 Wastes from the production, formulation and use of organic solvents
- Y7 Wastes from heat treatment and tempering operations containing cyanides
- Y8 Waste mineral oils unfit for their originally intended use
- Y9 Waste oils/water, hydrocarbons/water mixtures, emulsions
- Y10 Waste substances and articles containing or contaminated with polychlorinated biphenyls (PCBs) and/or polychlorinated terphenyls (PCTs) and/or polybrominated biphenyls (PBBs)
- Y11 Waste tarry residues arising from refining, distillation and any pyrolytic treatment
- Y12 Wastes from production, formulation and use of inks, dyes, pigments, paints, lacquers, varnish
- Y13 Wastes from production, formulation and use of resins, latex, plasticizers, glues/adhesives
- Y14 Waste chemical substances arising from research and development or teaching activities which are not identified and/or are new and whose effects on man and/or the environment are not known
- Y15 Wastes of an explosive nature not subject to other legislation
- Y16 Wastes from production, formulation and use of photographic chemicals and processing materials

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- Y17 Wastes resulting from surface treatment of metals and plastics
- Y18 Residues arising from industrial waste disposal operations
- Y46 Wastes collected from households, including sewage sludges with the exception of clean sorted recyclable wastes which do not possess any of the hazardous characteristics found in Annex II.
- Y47 Residues arising from the incineration of household wastes.

Wastes having as constituents:

- Y19 Metal carbonyls
- Y20 Beryllium; beryllium compounds
- Y21 Hexavalent chromium compounds
- Y22 Copper compounds
- Y23 Zinc compounds
- Y24 Arsenic; arsenic compounds
- Y25 Selenium, selenium compounds
- Y26 Cadmium; cadmium compounds
- Y27 Antimony; antimony compounds
- Y28 Tellurium; tellurium compounds
- Y29 Mercury; mercury compounds
- Y30 Thallium; thallium compounds
- Y31 Lead, lead compounds
- Y32 Inorganic fluorine compounds excluding calcium fluoride
- Y33 Inorganic cyanides
- Y34 Acidic solutions or acids in solid form
- Y35 Basic solutions or bases in solid form
- Y36 Asbestos (dust and fibres)
- Y37 Organic phosphorous compounds
- Y38 Organic cyanides
- Y39 Phenols; phenol compounds including chlorophenols
- Y40 Ethers
- Y41 Halogenated organic solvents
- Y42 Organic solvents excluding halogenated solvents
- Y43 Any congener of polychlorinated dibenzo-furan
- Y44 Any congener of polychlorinated dibenzo-p-dioxin
- Y45 Organohalogen compounds other than substances referred to in this Annex(e.g. Y39, Y41, Y42, Y43, Y44)

Annex II

List of Hazardous Characteristics

UN Class	Code	Characteristics
1	H1	Explosive An explosive substance or waste is a solid or liquid substance or waste (or mixture of substances or wastes) which is in itself capable by chemical reaction of producing gas at such a temperature and pressure and at such speed as to cause damage to the surroundings.
3	H3	Flammable Liquids The word “flammable” has the same meaning as “inflammable”. Flammable liquids are liquids, or mixtures of liquids, or liquids containing solids in solution or suspension (for example, paints, varnishes, lacquers, etc., but not including substances or wastes otherwise classified on account of their dangerous characteristics) which give off a flammable vapour at temperatures of not more than 60.5 deg. C, closed-cup test, or not more than 65.6 deg C, open-cup test. (Since the results of open-cup tests and of closed-cup tests are not strictly comparable and even individual results by the same test are often variable, regulations varying from the above figures to make allowance for such differences would be within the spirit of this definition.)
4.1	H4.1	Flammable solids Solids, or waste solids, other than those classed as explosives, which under conditions encountered in transport are readily combustible, or may cause or contribute to fire through friction.

4.2	H4.2	<p>Substances or wastes liable to spontaneous combustion</p> <p>Substances or wastes which are liable to spontaneous heating under normal conditions encountered in transport, or to heating up on contact with air, and being then liable to catch fire.</p>
4.3	H4.2	<p>Substances or wastes which, in contact with water emit flammable gases</p> <p>Substances or wastes which, by interaction with water, are liable to become spontaneously flammable or to give off flammable gases in dangerous quantities.</p>
5.1	H5.1	<p>Oxidising</p> <p>Substances or wastes which, while in themselves not necessarily combustible, may, generally by yielding oxygen cause, or contribute to, the combustion of other materials.</p>
5.2	H5.2	<p>Organic Peroxides</p> <p>Organic substances or wastes which contain the bivalent-o-o-structure are thermally unstable substances which may undergo exothermic self-accelerating decomposition.</p>
6.1	H6.1	<p>Poisonous (Acute)</p> <p>Substances or wastes liable either to cause death or serious injury or to harm human health if swallowed or inhaled or by skin contact.</p>
6.2	H6.2	<p>Infectious substances</p> <p>Substances or wastes containing viable micro organisms or their toxins which are known or suspected to cause disease in animals or humans.</p>
8	H8	<p>Corrosives</p> <p>Substances or wastes which, by chemical action, will cause severe damage when in contact with living tissue, or, in the case of leakage, will materially damage, or even</p>

9	H10	destroy, other goods or the means of transport; they may also cause other hazards. Liberation of toxic gases in contact with air or water Substances or wastes which, by interaction with air or water, are liable to give off toxic gases in dangerous quantities.
9	H11	Toxic (Delayed or chronic) Substances or wastes which, if they are inhaled or ingested or if they penetrate the skin, may involve delayed or chronic effects, including carcinogenicity.
9	H12	Ecotoxic Substances or wastes which if released present or may present immediate or delayed adverse impacts to the environment by means of bioaccumulation and/or toxic effects upon biotic systems.
9	H13	Capable, by any means, after disposal, of yielding another material, e.g., leachate, which possesses any of the characteristics listed above.

Tests

The potential hazards posed by certain types of wastes are not yet fully documented; tests to define quantitatively these hazards do not exist. Further research is necessary in order to develop means to characterize potential hazards posed to man and/or the environment by these wastes. Standardized tests have been derived with respect to pure substances and materials. Many countries have developed national tests which can be applied to materials listed in Annex I, in order to decide if these materials exhibit any of the characteristics listed in this Annex.

Corresponds to the hazard classification system included in the United Nations Recommendations on the Transport of Dangerous Goods (ST/SG/ AC.10/1/Rev.5, United Nations, New York, 1988).

Annex III

Pacific Island Developing Countries

(1) The Following members of the South Pacific Forum, on becoming a party to this Convention, shall be considered to be Pacific Island Developing Parties for the purposes of the Convention:

- Cook Islands
- Federated States of Micronesia
- Fiji
- Kiribati
- Republic of Marshall Islands
- Nauru
- Niue
- Republic of Palau
- Papua New Guinea
- Solomon Islands
- Tonga
- Tuvalu
- Vanuatu
- Western Samoa

(2) The Conference of the Parties may, in accordance with Article 13.4 (g), and upon agreement with such prospective party, accept the status of any new Party to this Convention as a Pacific Island Developing Party.

Annex IV

Other Parties

(1) The following Members of the South Pacific Forum, on becoming a party to this Convention, shall be considered to be Other Parties for the Purposes of the Convention:

- Australia
- New Zealand

(2) (a) The Conference of the Parties may, in accordance with Article 13.4 (g), and upon agreement with such prospective party, accept the status of any new Party to this Convention as an Other Party;

(b) An Other Party may designate a territory located within the Convention Area to which, upon agreement by the Conference of the Parties, the provisions of Article 4.1 of this Convention shall be applied *mutatis mutandis* in the same manner as they apply to a Pacific Island Developing Party.

Annex V

Disposal Operations

A. Operations which do not lead to the possibility of resource recovery, recycling, reclamation, direct re-use or alternative uses (Final Disposal)

Section A encompasses all such disposal operations which occur in practice.

- D1 Deposit into or onto land, (eg landfill etc)
- D2 Land treatment, (eg biodegradation of liquid or sludgy discards into soils etc)
- D3 Deep Injection (eg injection of pumpable discards into wells, salt domes or naturally occurring repositories, etc)
- D4 Surface impoundment, (eg placement of liquid or sludge discards into pits, ponds or lagoons etc)
- D5 Specially engineered landfill (eg placement into lined discrete cells which are capped and isolated from one another and the environment etc)
- D6 Release into a water body except seas/oceans
- D7 Release into seas/oceans including sea-bed insertion
- D8 Biological treatment not specified elsewhere in this Annex which results final compounds or mixtures which are discarded by means of any of the operations in Section A
- D9 Physico-chemical treatment not specified elsewhere in this Annex which are discarded by means of any of the operations in Section A (eg evaporation, drying, calcination, neutralisation, precipitation etc)

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- D10 Incineration on land
 - D11 Incineration at sea
 - D12 Permanent storage (eg emplacement of containers in a mine etc)
 - D13 Blending or mixing prior to submission to any of the operations in Section A
 - D14 Repackaging prior to submission to any of the operations in Section A
 - D15 Storage pending any of the operations in Section A

B. Operations which may lead to resource recovery, recycling, reclamation, direct re-use or alternative uses (Recycling)

Section B encompasses all such operations with respect to materials legally defined as or considered to be hazardous wastes and which otherwise would have been destined for operation included in Section A.

- R1 Use as fuel (other than in direct incineration) or other means to generate energy
- R2 Solvent reclamation/regeneration
- R3 Recycling/reclamation of organic substances which are not used as solvents
- R4 Recycling/reclamation of metals and metal compounds
- R5 Recycling/reclamation of other inorganic materials
- R6 Regeneration of acids or bases
- R7 Recovery of components used for pollution abatement
- R8 Recovery of components from catalysts
- R9 Used oil re-refining or other reuses of previously used oil
- R10 Land treatment resulting in benefit to agriculture or ecological improvement
- R11 Uses of residual materials obtained from any of the operations numbered R1–R10
- R12 Exchange of wastes for submission to any of the operations numbered R1–R11
- R13 Accumulation of material intended for any operation in Section B

Annex VI

A — Information to be Provided on Notification

1. Reason for wastes export.
2. Exporter of the wastes. ^{1/}
3. Generator(s) of the wastes and site of generation. ^{1/}
4. Disposer of the wastes and actual site of disposal. ^{1/}
5. Intended carrier(s) of the wastes or their agents, if known. ^{1/}
6. Country of export of the wastes.
Competent authority. ^{2/}
7. Expected countries of transit.
Competent authority. ^{2/}
8. Country of import of the wastes.
Competent authority. ^{2/}
9. General or single notification.
10. Projected date(s) of shipment(s) and period of time over which wastes are to be exported and proposed itinerary (including point of entry and exit). ^{3/}
11. Means of transport envisaged (road, rail, sea, air, inland waters).
12. Information relating to insurance. ^{4/}
13. Designation and physical description of the wastes including Y number and UN number and its composition ^{5/} and information on any special handling requirements including emergency provisions in case of accidents.
14. Type of packaging envisaged (e.g. bulk, drummed, tanker).

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15. Estimated quantity in weight/volume.^{6/}
 16. Process by which the wastes are generated.^{7/}
 17. For wastes listed in Annex I, classifications from Annex II: hazardous characteristic, H number, and UN class.
 18. Method of disposal as per Annex V.
 19. Declaration by the generator and exporter that the information is correct.
 20. Information transmitted (including technical description of the plant) to the exporter or generator from the disposer of the wastes upon which the latter has based his assessment that there was no reason to believe that the wastes will not be managed in an environmentally sound manner in accordance with the laws and regulations of the country of import.
 21. Information concerning the contract between the exporter and disposer.

Notes

- 1/ Full name and address, telephone, telex or telefax number and the name, address, telephone, telex or telefax number of the person to be contacted.
- 2/ Full name and address, telephone, telex or telefax number.
- 3/ In the case of a general notification covering several shipments, either the expected dates of each shipment or, if this is not known, the expected frequency of the shipments will be required.
- 4/ Information is to be provided on relevant insurance requirements and how they are met by exporter, carrier and disposer.
- 5/ The nature and the concentration of the most hazardous components, in terms of toxicity and other dangers presented by the wastes both in handling and in relation to the proposed disposal method.
- 6/ In the case of a general notification covering several shipments, both the estimated total quantity and the estimated quantities for each individual shipment will be required.

- 7/ Insofar as this is necessary to assess the hazard and determine the appropriateness of the proposed disposal operation.

B — Information to be Provided on the Movement Document

1. Exporter of the wastes.
2. Generator(s) of the wastes and site of generation.
3. Disposer of the wastes and actual site of disposal.
4. Carrier(s) of the wastes ^{/1} or his agent(s).
5. Subject of general or single notification.
6. The date the transboundary movement started and date(s) and signature on receipt by each person who takes charge of the wastes.
7. Means of transport (road, rail, inland waterway, sea, air) including countries of export, transit and import, also point of entry and exit where these have been designated.
8. General description of the wastes (physical Party, proper UN shipping name and class, UN number, Y number and H number as applicable).
9. Information on special handling requirements including emergency provision in case of accidents.
10. Type and number of packages.
11. Quantity in weight/volume.
12. Declaration by the generator or exporter that the information is correct.
13. Declaration by the generator or exporter indicating no objection from the competent authorities of all Parties concerned which are Parties.

14. Certification by disposer of receipt at designated disposal facility and indication of method of disposal and of the approximate date of disposal.

Notes

The information required on the movement document shall where possible be integrated in one document with that required under transport rules. Where this is not possible the information should complement rather than duplicate that required under the transport rules. The movement document shall carry instructions as to who is to provide information and fill-out any form.

1/ Full name and address, telephone, telex or telefax number and the name, address, telephone, telex or telefax number of the person to be contacted in case of emergency.

Annex VII

Arbitration

Article 1

Unless the agreement referred to in Article 20 of the Convention provides otherwise, the arbitration procedure shall be conducted in accordance with Articles 2 to 10 below.

Article 2

The claimant party shall notify the Secretariat that the parties have agreed to submit the dispute to arbitration pursuant to Articles 20.2 or 20.3 of this Convention and include, in particular, the articles of this Convention, the interpretation or application of which, are at issue. The Secretariat shall forward the information thus received to all Parties to this Convention.

Article 3

The arbitral tribunal shall consist of three members. Each of the Parties to the dispute shall appoint an arbitrator, and the two arbitrators so appointed shall designate by common agreement the third arbitrator, who shall be the president of the arbitral tribunal. The latter shall not be a national of one of the Parties to the dispute, nor have his usual place of residence in the territory of one of these parties nor be employed by any of them, nor have dealt with the case in any other capacity.

Article 4

1. If the president of the arbitral tribunal has not been designated within two months of the appointment of the second arbitrator, the Secretary General of the Forum Secretariat in consultation with the Director of SPREP shall, at the request of either party, designate that person within a further two months' period.

2. If one of the Parties to the dispute does not appoint an arbitrator within two months of the receipt of the request, the other Party may inform the Secretary General of the Forum Secretariat who shall, in consultation with the Director of SPREP, designate the president of the arbitral tribunal within a further two months' period. Upon designation, the president of the arbitral tribunal shall request the Party which has not appointed an arbitrator to do so within two months. After such period, he shall inform the Secretary General of the Forum Secretariat, who shall make this appointment within a further two months' period, in consultation with the Director of SPREP.

Article 5

1. The arbitral tribunal shall render its decision in accordance with international law and in accordance with the provisions of this Convention.

2. Any arbitral tribunal established under the provisions of this Annex shall decide its own rules of procedure.

Article 6

1. The decisions of the arbitral tribunal both on procedure and on substance, shall be taken by majority vote of its members.
2. The tribunal may take all appropriate measures in order to establish the facts. It may, at the request of one or the parties, recommend essential interim measures of protection.
3. The parties to the dispute shall provide all facilities necessary for the effective conduct of the proceedings.
4. The absence or default of a party in the dispute shall not constitute an impediment to the proceedings.

Article 7

The tribunal may hear and determine counter-claims arising directly out of the subject-matter of the dispute.

Article 8

Unless the arbitral tribunal determines otherwise because of the particular circumstances of the case, the expenses of the arbitral tribunal, including the remuneration of its members, shall be borne by the parties to the dispute in equal shares. The arbitral tribunal shall keep a record of all its expenses, and shall furnish a final Statement thereof to the parties.

Article 9

Any Party that has an interest of a legal nature in the subject-matter of the dispute which may be affected by the decision in the case, may intervene in the proceedings with the consent of the arbitral tribunal

Article 10

1. The arbitral tribunal shall render its award within five months of the date on which it is established unless it finds it necessary to extend the time-limit for a period which should not exceed five months.

2. The award of the arbitral tribunal shall be accompanied by a statement of reasons. It shall be final and binding upon the parties to the dispute.

3. Any dispute which may arise between the parties concerning the interpretation or execution of the award may be submitted by either party to the arbitral tribunal which made the award or, if the latter cannot be seized thereof, to another tribunal constituted for this purpose in the same manner as the first.

Notes to the *Hazardous Waste (Regulation of Exports and Imports) (Waigani Convention) Regulations 1999*

Note 1

The *Hazardous Waste (Regulation of Exports and Imports) (Waigani Convention) Regulations 1999* (in force under the *Hazardous Waste (Regulation of Exports and Imports) Act 1989*) as shown in this compilation comprise Statutory Rules 1999 No. 7 amended as indicated in the Tables below.

Table of Statutory Rules

Year and number	Date of notification in <i>Gazette</i>	Date of commencement	Application, saving or transitional provisions
1999 No. 7	11 Feb 1999	1 Jan 2002	
1999 No. 312	15 Dec 1999	15 Dec 1999	—

Table of Amendments

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
R. 2	rs. 1999 No. 312
