



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

Statutory Rules No. 7, 1999

made under the

Hazardous Waste (Regulation of Exports and Imports) Act 1989

Compilation No. 4

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Prepared by the Office of Parliamentary Counsel, Canberra

About this compilation

This compilation

This is a compilation of the *Hazardous Waste (Regulation of Exports and Imports) (Waigani Convention) Regulations 1999* that shows the text of the law as amended and in force on 1 July 2017 (the *compilation date*).

The notes at the end of this compilation (the *endnotes*) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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Part 1—Preliminary

1 Name of regulations

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

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 in Australian Treaty Series 1992 No. 7 ([1992] ATS 7) and could in 2017 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

Note 2: The Waigani Convention is in Australian Treaty Series 2001 No. 17 ([2001] ATS 17) and could in 2017 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

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.

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.

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:

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Part 1 Preliminary

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

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
- (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.

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Part 2Notification and consent

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Part 2—Notification and consent

8Notice about competent authorities and acceptable languages

- (1) The Minister may publish a notice on the Department’s website, 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.

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.

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

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- (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.

11A Requests for further information

- (1) This regulation applies to a person if:
 - (a) the person applies for a Waigani import permit, or a variation of such a permit, under a provision of Part 2 of the Act as applied by regulation 10; and
 - (b) the Minister gives the person a request under section 15 or 28 of the Act, as applied by regulation 10, in relation to the application.
- (2) This regulation also applies to a person if:
 - (a) the person applies for a Waigani transit permit, or a variation of such a permit, under a provision of Part 2 of the Act as applied by regulation 11; and
 - (b) the Minister gives the person a request under section 15 or 28 of the Act, as applied by regulation 11, in relation to the application.
- (3) The person must comply with the request before the later of the following times:
 - (a) the end of 30 days after the request is given;
 - (b) if the Minister, by written notice to the person, allows a longer period—the end of that longer period.
- (4) If the person does not comply with the request before that time, the application is taken to be withdrawn at that time.
- (5) Applications may be made to the Administrative Appeals Tribunal for review of decisions of the Minister under paragraph (3)(b) to refuse to allow a longer period for a request to be complied with.

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.

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

Note: **Department** means the Department administered by the Minister who administers these Regulations (see section 19A of the *Acts Interpretation Act 1901* as it applies because of section 13 of the *Legislation Act 2003*). In 2017, this was the Department of the Environment and Energy.

Endnotes

Endnote 1—About the endnotes

Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

Editorial changes

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation “(md not incorp)” is added to the details of the amendment included in the amendment history.

Endnote 2—Abbreviation key

ad = added or inserted	o = order(s)
am = amended	Ord = Ordinance
amdt = amendment	orig = original
c = clause(s)	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
C[x] = Compilation No. x	pres = present
Ch = Chapter(s)	prev = previous
def = definition(s)	(prev...) = previously
Dict = Dictionary	Pt = Part(s)
disallowed = disallowed by Parliament	r = regulation(s)/rule(s)
Div = Division(s)	reloc = relocated
ed = editorial change	renum = renumbered
exp = expires/expired or ceases/ceased to have effect	rep = repealed
F = Federal Register of Legislation	rs = repealed and substituted
gaz = gazette	s = section(s)/subsection(s)
LA = <i>Legislation Act 2003</i>	Sch = Schedule(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sdiv = Subdivision(s)
(md) = misdescribed amendment can be given effect	SLI = Select Legislative Instrument
(md not incorp) = misdescribed amendment cannot be given effect	SR = Statutory Rules
mod = modified/modification	Sub-Ch = Sub-Chapter(s)
No. = Number(s)	SubPt = Subpart(s)
	<u>underlining</u> = whole or part not commenced or to be commenced

Endnotes

Endnote 3—Legislation history

Endnote 3—Legislation history

Name	Registration	Commencement	Application, saving and transitional provisions
Hazardous Waste (Regulation of Exports and Imports) (Waigani Convention) Regulations 1999 (SR No. 7, 1999)	11 Feb 1999	1 Jan 2002 (r 2)	
Hazardous Waste (Regulation of Exports and Imports) (Waigani Convention) Amendment Regulations 1999 (No. 1) (SR No. 312, 1999)	15 Dec 1999	15 Dec 1999 (r 2)	—
Acts and Instruments (Framework Reform) (Consequential Amendments) Regulation 2016	29 Feb 2016 (F2016L00170)	Sch 1 (item 21): 5 Mar 2016 (s 2(1) item 1)	—
Hazardous Waste (Regulation of Exports and Imports) Legislation Amendment (2017 Measures) Regulations 2017	29 June 2017 (F2017L00788)	Sch 1 (items 10–17): 1 July 2017 (s 2(1) item 1)	—

Endnote 4—Amendment history

Endnote 4—Amendment history

Provision affected	How affected
Part 1	
r 2	rs No312, 1999 rep LA s 48D
r 3	am F2017L00788
r 4	am F2017L00788
Part 2	
r 8	am F2017L00788
Part 3	
r 11A	ad F2017L00788
r 15	am F2016L00170; F2017L00788
Schedule 1	rep F2017L00788