

GRAHAM BRUCE POWELL BA LLB(Hons)
Legislative Specialist

44B Waimapu Street
Greerton, Tauranga 3112
NEW ZEALAND
Mobile: 0284029282
Email: jcoard@alphalink.com.au

31st May 2019

SPREP
P. O. Box 240
Apia SAMOA
Attention: Vicki Hall

**CONSULTANCY FOR THE COMPLETION OF DRAFTING INSTRUCTIONS FOR
MODEL LEGISLATION FOR UPOPS PROJECT**

FINAL REPORT - REVISED DRAFTING INSTRUCTIONS

Table of Contents

Executive Summary

List of Recommendations

- A. Background**
- B. Objectives and activities**
- C. Methodology**
- D. Key features of the Revised Drafting Instructions**
 - (a) Changes made as indicated in the checklist of recommendations
 - (b) Other changes made in the final stages of the revision of the Drafting Instructions

Attachment 1: Checklist of Recommendations (with responses from the project team)

Attachment 2: Revised Drafting Instructions

EXECUTIVE SUMMARY

1. Drafting Instructions for a model law dealing with the regulation of uPOPS and related matters have been comprehensively reviewed with a view to modifying them to facilitate the application of the Drafting Instructions as a tool for law reform by as many countries in the Pacific region as is possible.
2. A range of observations have been made in a Progress Report about the Drafting Instructions, and these highlighted some issues which may mitigate against them being readily adopted and applied in many countries. These observations noted that the Drafting Instructions may be improved in relation to the formatting and style. It was noted that they have no explanation about many key issues, and that no suitable title for the Act was suggested. It was recommended that a range of definitions should be proposed. Issues concerning the limited objectives of the Act were noted, and it was pointed out that the division of roles and powers of the Department and Minister should be explained in the Explanatory Notes. It was suggested that provision be made for developing, applying and enforcing technical standards, operating procedures and codes of practice. Other changes were warranted to avoid exposure of the governments to liability and to potential breaches of the Act by the responsible Department in a country which adopts them and enacts a law based upon them.
3. The Drafting Instructions have now been revised and are included in this Report as Attachment 2. The changes include all of the recommendations made in the Progress Report, and additional changes were made in relation to the following matters:
 - reference to the application of the precautionary principle has been added;
 - enforcement provisions have been included;
 - a provision on the authority to undertake prosecutions for breaches has been added;
 - an indemnity provision for enforcement officers has been added; and
 - a range of additional offences has been proposed.

A. Background

This Pacific POPs Release Reduction project is a GEF funded project under the Pacific Alliance of Sustainability, with components co-financed by the French Development Agency (AFD). The project is in its final year of implementation and is being co-implemented by United Nations Environment (UNE) and the Food and Agriculture Organization of the UN (FAO).

The Project commenced in June 2013, for a five year term, to assist 14 Pacific Island Countries in addressing unintentionally released POPs (uPOPs). The project has been extended and is now scheduled to be completed by the 30th June, 2019.

The Mid-Term Review of the Project and the 2017 Project Steering Committee meeting identified an urgent need for additional targeted technical support to the various project components to ensure that project activities are executed efficiently in line with the original project development objective and according to the revised project work plan. As such it has been identified that a Legal Consultant is required to provide services for the revision of the Drafting Instructions for the development of model national legislation to reduce unintentionally produced persistent organic pollutants.

B. Objectives and activities

The objective has been stated as the review of the Drafting Instructions for model national legislation to reduce the production of unintentional persistent organic pollutants.

The scope of work has been determined as being to assist SPREP and the Pacific Island countries by undertaking the following activities:

- (a) Review the Drafting Instructions for model national legislation to reduce the production of unintentional persistent organic pollutants; and
- (b) Prepare revised Drafting Instructions

In accordance with the contract, all work has been done as home office inputs.

C. Methodology

The review of the Drafting Instructions for an Act to implement the provisions of the Stockholm Convention in relation to uPOPS has involved the following steps:

- (a) A general review of the Drafting Instructions has been undertaken to assess basic issues such as style and formatting, and the relative ease with which they might be used as a model for drafting a relevant Act in the countries of the region;

- (b) A thorough review of the text of the Drafting Instructions has then been undertaken, and observations have been made about many provisions that form part of the document;
- (c) Consideration has been given to the assumptions that appear to have been made in the formulation of the Drafting Instructions, and the validity of these assumptions has been assessed and commented on;
- (d) The provisions of the Drafting Instructions have then been assessed to determine whether they might expose a government to unwarranted liability, and whether they might tend to create situations where a government itself might fail to comply with them;
- (e) The Drafting Instructions have been assessed in the light of relevant laws in the region applying in the context of waste management and the application of the Stockholm Convention; and'
- (f) On the basis of the above assessments, a range of recommendations have been formulated in relation to possible amendments to the Drafting Instructions, and to the inclusion of explanatory notes which might facilitate the adaptation of the Drafting Instructions as final drafted Acts.
- (g) A Progress Report containing and explaining all of the outcomes of the review and the recommendations which were formulated was submitted to the project management team. This report included a checklist of proposed recommendations. This checklist was reviewed by the project team and support was expressed for all of the proposed changes to the Drafting Instructions. The responses to the checklist of recommendations are indicated in Attachment 1.
- (h) On the basis of the recommendations, and the approval indicated for them, a final version of the revised Drafting Instructions has been prepared. The key features of this are explained in Part D of this Final Report and the final version is in Attachment 2.

D. Key features of the Revised Drafting Instructions

- (a) *Changes made as indicated in the checklist of recommendations*

All of the changes recommended in the Progress Report, and approved by the project management team, have been made to the Drafting Instructions. These changes relate to the following matters:

- Major changes have been made to the format of the Drafting Instructions;
- A short and long title has been proposed;
- Further explanatory notes have been added;
- Further definitions have been proposed;

- A clearer statement of objectives has been formulated;
- The use of the term "Department" has been clarified;
- The division of roles between the Minister and the Department has been explained;
- New provisions enable the approval of standards, guidelines etc;
- A general offence provision has been added;
- A new provision has been added to enable courts to order that costs of remedial action be paid for by offenders;
- The level of fines has been recommended for each offence;
- A new provision deals with approved forms and fees;
- A provision to ensure that the Government is bound by the law has been added;
- References to "gazettal" have been removed;
- Specific time limits for governments to take action have been avoided; and
- The imposition of mandatory requirements on Government have also been avoided.

(b) *Other changes made in the final stages of the revision of the Drafting Instructions*

During the re-drafting of the Drafting Instructions, other deficiencies with the original draft became apparent, and these have been addressed in the revised version. These changes relate to the following matters:

- reference to the application of the precautionary principle has been added;
- enforcement provisions have been included;
- a provision on the authority to undertake prosecutions for breaches has been added;
- an indemnity provision for enforcement officers has been added; and
- a range of additional offences has been proposed.



Graham Bruce Powell

ATTACHMENT 1

Checklist of recommendations (with responses from the project team)

Nature of recommendation	Y/N*	Comments
1. More straight-forward formatting styles be used (i.e delete the table)	Y	Agree and leave this to your advise
2. A title for the proposed Act is to be formulated	Y	Agree
3. Further explanatory notes are needed to facilitate the adaptation of the Draft to become Acts	Y	Agree
4. Further definitions are to be added	Y	Agree
5. More expansive objectives of the Act are to be stated. Is the new Act to be confined to regulating uPOPS or will the Drafting Instructions include more general waste management issues?	Y	For this project specifically for UPOPS. But for countries and practicality it should be open to address other chemicals and hazardous waste as required in the future. Can this be accommodated
6. The use of the term “Department” is to be explained in the Explanatory Notes, and countries may make appropriate modifications	Y	Agree
7. The division of the roles for the Minister and for the “Department” are to be explained	Y	Agree to be clearly defined
8. A new provisions should enable technical standards, operating procedures and codes of practice to be developed and applied	Y	Yes. Agree
9. A general offence provision should be included to cover all breaches of the Act	Y	Agree

Nature of recommendation	Y/N*	Comments
10. A new provision should permit courts to order that offenders pay the costs of remedial action and waste disposal	Y	Will leave it to legal advise
11. The amount of fines should be recommended	Y	Agree
12. A new provision should empower the Department to approve any necessary forms	Y	Agree
13. The Explanatory Notes should explain the need to review all relevant laws to determine the proper basis for these reforms (i.e. a stand- alone Act or Regulations) They should also explain the issues concerning applying conventions under national laws	Y	Agree
14. A new provision should state that the law binds the State, Government or the Crown (as the case may be)	Y	Agree
15. References to “gazettal” should be avoided and explanations given that each country should apply it usual procedures to give legal effect to determinations etc	Y	Leave this to your legal advise
16. Specific time limits for the taking of administrative action by the “Department” or the Minister should be avoided	Yes	Agree
17. Imposing mandatory requirements on the Government should be avoided and the provisions should empower Government to take the necessary actions	Yes	Leave it to your legal advise.

ATTACHMENT 2

Revised Drafting Instructions

DRAFTING INSTRUCTIONS FOR A LAW TO REGULATE UNINTENTIONAL PERSISTENT ORGANIC POLLUTANTS

BACKGROUND AND EXPLANATION

This is the first model law for application in Pacific Island jurisdictions to make provision for reducing the production, formation and release of unintentional persistent organic pollutants, and to implement and enforce relevant provisions of the Stockholm Convention.

Assumptions underlying these Drafting Instructions and their application

(a) That there is a need for a stand-alone Act

The major assumption underlying these Drafting Instructions is that there is a need for each country to proceed with this law reform by developing and making an Act of Parliament. Some countries have already legislated to apply the Stockholm Convention under comprehensive waste management Acts, or laws which regulate hazardous chemicals and substances.

It is possible that some of the key features of the Drafting Instructions could proceed as Regulations made specifically in relation to uPOPS and under the authority of existing Acts of Parliament.

A decision needs to be made as to whether these reforms are to proceed by drafting a new stand-alone Act, or whether an existing Act authorises the making of Regulations to apply the matters which are scoped in this document.

(b) Applying and enforcing Conventions under an Act

These Drafting Instructions make specific references to the Stockholm Convention, the Basel Convention and the Waigani Convention. The Drafting Instructions assume that each relevant country is a Party to each of these Conventions, and that an Act may be made to apply and enforce them. Many countries will not make laws to apply conventions if they are not a Party to them. And in some jurisdictions, there is a constitutional impediment to the making of any law which applies an international convention unless an Act of the Parliament specifically adopts the provisions of the Convention.

Care must be taken to ensure that the three major conventions referred to in these Drafting Instructions can be applied and enforced by a new law along the lines of that which is proposed in this document.

(c) Division of responsibilities between the Department and the Minister

The Drafting Instructions generally assume that the powers will be vested in and exercised by the "Department". This applies to the majority of the administrative and enforcement roles under the proposed Act. The Minister is referred to in the Drafting Instructions in the following contexts:

- The Minister has an obligation to consult with other Ministers to amend laws when an inconsistency arises;
- The Minister has power to approve National Guidelines;
- The Minister has power to endorse a national waste and pollution management strategy;
- The Minister may make Regulations to ban the importation of products or articles containing POPs;
- The Minister has power to set the recycling fees; and
- The Minister must submit reports made under the new Act to the Parliament within a prescribed time.

Countries can take a different approach to the division of roles and powers between the responsible Minister and the relevant Department or agency. Each country should assign the roles and powers under the new Act as they see fit.

(d) Technical standards, operating procedures and codes of practice

It is common and preferable for regulatory laws of this nature to provide for the making and enforcement of approved technical standards, guidelines, operating procedures and codes of practice. These concepts are effective regulatory tools and they can generally be made quickly to fill any regulatory gaps. The Drafting Instructions make some reference to technical requirements to be applied under national guidelines, the adoption of the technical guidelines prescribed under the Stockholm Convention and to waste management planning. Technical standards and specifications are also likely to be relevant in the context of the proposed licensing regimes.

It is preferable for the new Act to provide for technical requirements applicable to uPOPS to be prescribed and enforced by approved standards, guidelines, operating procedures and codes of practice, and this is further explained in the body of the Drafting Instructions.

(e) Approved forms

These Drafting Instructions propose a format for an application for a burning permit, and this is specified in Appendix 1.

These Drafting Instructions also refer to “approved forms” in the context of transferring a licence and assume that there will be an approved form for this purpose. It is preferable for a provision to be inserted to empower the Department to approve any necessary forms, and not rely solely on Regulations to be made to prescribe administrative forms.

Instructions for the Use of this Draft Model Law

Care must be taken to make the appropriate modifications to the terminology used in the Drafting Instructions to suit the specific requirements of the country which seeks to pursue the proposed law reform, and this will involve –

- (a) if the reforms are to proceed by making regulations under the authority of an existing Act, then a title for the Regulations should reflect the Act under which they are made (e.g. Waste Management (Control of Unintentional Persistent Organic Pollutant) Regulations);
- (b) formatting the new law should comply with the drafting and formatting styles applicable in your jurisdiction;
- (c) replacing the term "Department" wherever it is used in this document with the appropriate terminology for the “Ministry”, "Department", "Authority" or "Agency" which will have the primary responsibility for implementing this law, and making an appropriate definition for the term that is used;
- (d) determining the title of the head of the implementing agency and modifying all references to “CEO” to reflect the appropriate terminology;
- (e) inserting the name of the country in every place where the word [country] appears; and
- (f) inserting appropriate fines where indicated for each of the proposed offence provisions.

DRAFTING INSTRUCTIONS FOR A LAW TO REGULATE UNINTENTIONAL PERSISTENT ORGANIC POLLUTANTS

Contents

Proposed Short and Long Titles

- A. Interpretation and application**
 - (a) Definitions*
 - (b) Application of the precautionary principle*
 - (c) Law to bind the Government*
- B. Objectives of the Act**
- C. Relationship with other laws**
- D. General Environmental Duties**
- E. Approved guidelines etc.**
- F. Waste Management Planning**
- G. Regulatory controls applicable to POPS**
- H. uPOPs emissions from open burning and incineration of waste**
 - (a) Licence to operate a waste incineration plant*
 - (b) Environmental Bond*
 - (c) Amendment, cancellation or suspension of a licence*
 - (d) Amendment of a licence*
 - (e) Cancellation or suspension of a licence*
 - (f) Transfer of a licence to another person*
 - (g) Controls on open burning*
- I. uPOPs emissions from waste disposal sites**
- J. uPOPs emissions from residential combustion sources**
- K. UPOPS emissions from motor vehicles**
 - (a) Restrictions on importation of second-hand vehicles*
 - (b) Motor vehicle inspections*
 - (c) End-of-life recycling fee on vehicles*
 - (d) Amount of the Recycling Fee*
 - (e) Waste Recycling Fund*
- L. Department may request information**

- M. Offences and enforcement provisions**
 - (a) *Appointment of enforcement officers*
 - (b) *Powers of enforcement*
 - (c) *General offence provision and other offences*
 - (d) *Authority to prosecute*

- N. Other miscellaneous provisions**
 - (a) *Approved forms and fees*
 - (b) *Indemnities*
 - (c) *Power to make Regulations*

.....

Proposed Short and Long Titles

It is suggested that the short title of the new law should be the Persistent Organic Pollutants (Control of uPOPS) Act.

A similar title can be used if the option of pursuing these reforms by the making of Regulations is favoured.

The long title of the Act could be along the following lines:

" An Act to regulate persistent organic pollutants in accordance with the Stockholm Convention by reducing the production, formation and release of unintentional persistent organic pollutants (uPOPs), and for related purposes."

A. Interpretation and application

- (a) *Definitions*

The following definitions are suggested, but their relevance and application depend upon the terms used in the final version of the drafted law:

“Basel Convention” means the Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (Basel Convention), Basel, 1989 (as amended), and includes any Protocol, Code or Regulation made under the Convention (unless such instrument has not been adopted by *[country]*;

“CEO” means the *[insert the appropriate description of head of the relevant implementing agency, and replace the term "CEO" as necessary]*;

“Department” means the *[insert the appropriate description of the relevant implementing agency, and replace the word "Department" as necessary]*;

“environmentally sound manner” means the taking of all practicable steps to ensure that hazardous substances are managed in a manner which will protect human health and the environment against the adverse effects which may result from such wastes;

"the Fund" means the Waste Recycling Fund established under section xx;

“notifier” means any person who gives a notification under this Act;

“Persistent Organic Pollutant” means any of the chemicals or substances regulated under the Stockholm Convention;

“Prohibited Persistent Organic Pollutant” means all persistent organic pollutants which are, or contain, aldrin, chlordane, DDT, dieldrin, endrin, heptachlor, mirex and toxaphene;

“Regulated Persistent Organic Pollutant” means all persistent organic pollutants which are, contain or may create or emit hexachlorobenzene, polychlorinated biphenyls, dioxins or furans;

“Stockholm Convention” means the Stockholm Convention on Persistent Organic Pollutants (Stockholm Convention on POPs), Stockholm, 2001 (as amended), and includes any Protocol, Code or Regulation made under the Convention (unless such instrument has not been adopted by *[country]*);

“transboundary movement” means any movement of a hazardous substance from an area under the national jurisdiction (being any land, marine area or airspace) of one State to or through an area under the national jurisdiction of another State, or to or through an area not under the national jurisdiction of any State, provided at least the area of two States is involved in the movement;

"Unintentional Persistent Organic Pollutant" and "uPOP" mean the unintentionally produced POPs listed in Annex C, Part I of the Stockholm Convention, including hexachlorobenzene (HCB), pentachlorobenzene (PeCB), polychlorinated biphenyls (PCB) and polychlorinated dibenzo-p-dioxins and dibenzofurans (PCDD/PCDF).

“Waigani Convention” means 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 (Waigani Convention), Waigani, 1995 (as amended), and includes any Protocol, Code or Regulation made under the Convention (unless such instrument has not been adopted by *[country]*); and

“wastes” means any substance or object which is disposed of or intended to be disposed of, or which is required to be disposed of under any law.

(b) *Application of the precautionary principle*

The precautionary principle of modern international environmental law should apply whenever the provisions of the new law are applied. This could be stated in the following terms:

"(1) All persons and agencies having responsibilities under this Act, or whose functions and powers may relate to any matter or thing involving the regulation, control, management and transboundary movement of persistent organic pollutants and articles which may contain persistent organic pollutants within [country], must apply the precautionary principle when discharging their responsibilities and functions, or exercising their powers.

(2) For the purposes of this Act, the precautionary principle is applied if, in the event of a threat of damage to the environment or a risk to human health in [country], a lack of full scientific certainty regarding the extent of adverse effects is not used as a reason for not acting to prevent or minimise the potential adverse effects or risks arising in any way from a matter or thing regulated under this Act."

(c) *Law to bind the Government*

It is important that the law applies to government departments, agencies and officers. Insert an appropriate provision to the effect that the Act binds the Government (or the State, Crown etc - as the case may be).

B. Objectives of the Act

Explanation:

According to Article 5 of the Stockholm Convention, Parties are required to identify, characterize, quantify and prioritize sources of releases of unintentional POPs, and develop strategies with concrete measures, timelines and goals to minimize or eliminate these releases. To reduce the total releases of POPs derived from anthropogenic sources, Parties are also required to implement best available techniques (BAT) and best environmental practice (BEP) for the sources listed in Annex C, Parts II and III. The objectives of the new law are to implement the aims, objectives, principles, processes and requirements of Article 5 of the Stockholm Convention to reduce the formation and release of uPOPs in the country.

A provision is required to state the objective of the legislation. The objectives are as follows:

- (a) to protect the environment and to safeguard human health from the harmful effects of persistent organic pollutants and articles which may contain persistent organic pollutants;
- (b) to implement the processes and requirements under Article 5 of the Stockholm Convention related to the sources of releases of unintentional POPs, and to develop strategies with concrete measures, timelines and goals to minimize or eliminate these releases;
- (c) to reduce the production, formation and release of unintentional persistent organic pollutants (uPOPs);
- (d) to otherwise regulate persistent organic pollutants and articles which may contain persistent organic pollutants, and uPOPS.

C. Relationship with other laws

Explanation:

These drafting instructions address issues that may be found in laws applying in other areas (e.g. for customs, health, and transportation). In any circumstances where more than one law has application, a person must remain bound by the obligations applying under all relevant laws, and the responsible agencies must be obliged to cooperate to ensure that all laws are effectively enforced and complied with.

A provision along the following lines is likely to be appropriate:

- "xx. Application of other relevant laws -** (1) This Act does not affect the operation or any aspect of the implementation of any law relating to –
- (a) the control of pesticides;
 - (b) the management and regulation of living modified organisms and the implementation of the Cartagena Protocol;
 - (c) the prohibition and regulation of ozone depleting substances and the implementation of the Montreal Protocol;
 - (d) the regulation of any other hazardous chemical or substance;
 - (e) labour, commerce, industry and the licensing of businesses;
 - (f) public health, protection of the environment, quarantine and biosecurity arrangements; and
 - (g) customs and border control arrangements.
- (2) If the provisions of this Act and any other law of the nature stated in sub-section (1) apply to any particular circumstance –
- (a) the relevant powers, requirements and processes applying under each law shall have full effect and the person to whom they apply in the circumstances must fully comply with all applicable requirements; and
 - (b) the respective agencies responsible for the implementation and enforcement of the respective laws shall cooperate so as to ensure that

all relevant requirements are applied and all relevant powers are exercised to give full effect to the provisions of each of the laws."

D. General Environmental Duties

Provisions of the Act should:

- (a) Require a person not to conduct an activity which is likely to cause material environmental harm or environmental nuisance from persistent organic pollutants and articles which may contain persistent organic pollutants, or the possible creation of uPOPS, unless the person takes all reasonable and practicable measures to prevent or minimise the harm.
 - “environmental nuisance” means unreasonable interference or likely interference with an environmental value caused by aerosols, fumes, light, noise, odour, particles or smoke
 - “material environmental harm” means any actual or potential adverse effect on the environment or the health and safety of human beings.
- (b) Require that a person whose activities involving persistent organic pollutants and articles which may contain persistent organic pollutants, or the possible creation of uPOPS, notify the Department as soon as possible after they become aware of the possibility of environmental nuisance or material environmental harm.
- (c) The penalty for contravening the provisions is [suggested in the equivalent amount of Aus\$10,000] for an individual, and [suggested in the equivalent amount of Aus\$100,000] for a corporation. [Note: Country to specify the amount of the penalties]

E. Approved guidelines etc.

Explanation:

The Stockholm Convention Secretariat has published a range of technical guidelines on the environmentally sound management of POPs, which can be adopted (with or without modification) as national guidelines. It is common and preferable for regulatory laws of this nature to provide for the making and enforcement of approved technical standards, guidelines, operating procedures and codes of practice. These concepts are effective regulatory tools and they can generally be made quickly to fill any regulatory gaps.

Provisions should:

- (a) Adopt the Stockholm Convention’s General technical guidelines on the environmentally sound management of wastes consisting of, containing or

contaminated with persistent organic pollutants as the 'National Technical Guidelines on Management of POPs'.

- (b) Adopt Section V.A of the Stockholm Convention's Guidelines on Best Available Techniques and Provisional Guidance on Best Environmental Practices relevant to Article 5 and Annex C of the Stockholm Convention on Persistent Organic Pollutants as the 'National Best Practice Guideline and Standards for Waste Incineration'.
- (c) Adopt Section VI.C of the Stockholm Convention's Guidelines on Best Available Techniques and Provisional Guidance on Best Environmental Practices relevant to Article 5 and Annex C of the Stockholm Convention on Persistent Organic Pollutants as the 'National Best Practice Guidelines to Reduce POPs Emissions from Domestic Cooking and Heating'.

The Department may modify a Stockholm Convention Guidelines if deemed necessary or desirable to better reflect the local context, prior to adopting it as the National Guideline. For example, the guidelines may be modified to include local terminologies, to omit text irrelevant to the country context, to include local or regional examples and case studies, or to include details of country- or region-specific best-practice procedures and processes. *Note:* the provisions should not necessarily prevent the Department from using other suitable best practice sources, as the basis for developing the national guidelines.

The Department must submit the national guidelines to the Minister for approval in accordance with the usual practice for the exercise or executive authority. The national guideline takes effect on the date that they are approved by the Minister.

In addition to adopting the Stockholm Convention Guidelines as outlines above, there would be merit in providing for the approval and enforcement of standards, guidelines, operating procedures and codes of practice relevant to persistent organic pollutants and articles which may contain persistent organic pollutants, or the possible creation of uPOPS, along the following line:

"xx. Approved standards, operating procedures, codes of practice etc. - (1)

For any purpose associated with the regulation of persistent organic pollutants and articles which may contain persistent organic pollutants, or the possible creation of uPOPS, and the application of the requirements of this Act, the Department has authority to formulate, apply and enforce approved standards, rules, operating procedures, guidelines and codes of practice.

- (2) Without limiting the generality of subsection (1), approved standards, rules, operating procedures, guidelines and codes of practice may relate to any of the following matters -
 - (a) the imposition of any requirement to ensure the proper management of persistent organic pollutants or articles which may contain persistent organic pollutants;

- (b) requirements for the storage and transportation of persistent organic pollutants or articles which may contain persistent organic pollutants, and any goods and substances which may create uPOPS;
 - (c) any requirement which regulates the recycling of goods and substances relevant to managing persistent organic pollutants or articles which may contain persistent organic pollutants, and avoiding the creation of uPOPS;
 - (d) requirements for the disposal of wastes which may create uPOPS;
 - (h) the segregation of certain types of wastes;
 - (i) procedures to be observed when wastes are disposed of at waste dumps and waste disposal facilities which may create uPOPS; and
 - (j) any other matter to facilitate the orderly keeping, collection and disposal of goods and substances which may cause uPOPS.
- (3) Approved standards, rules, operating procedures, guidelines and codes of practice take effect when they are approved by the Minister.
- (4) Any person who fails or refuses to comply with any standard, rule, operating procedure, guideline or code of practice which is stated to be applicable to them; commits an offence and shall be liable upon conviction to a fine not exceeding [suggested in the equivalent amount of Aus\$2,000].

F. Waste Management Planning

Explanation:

Poor waste management, including open burning of waste, healthcare and quarantine waste incineration, and burning on dumps, is a major source of uPOPs emissions in Pacific Island Countries. The first step to addressing these sources is to encourage sectors of society to develop and implement simple waste management plans that improve overall management of waste and reduce opportunities for the formation and release of uPOPs.

Provisions should:

- (a) Require the Department to incorporate into long-term national waste and pollution management strategies provisions which deal with persistent organic pollutants or articles which may contain persistent organic pollutants. A National Implementation Plan dealing with all aspects of the regulation and management of POPs and articles containing POPs must be a feature of such planning.
- (b) Require designated entities to develop, implement and keep updated basic management plans and strategies for dealing with POPS and articles containing POPS. The first plans must be submitted to the Department within [6] months of the provision coming into force. Subsequent (updated) plans must be submitted annually on expiry of the previous plan.

“Designated entities” are government departments and agencies, local governments, businesses and organisations determined by the Minister. These will be all entities which deal with POPS and articles containing POPS.

The waste management plan for an entity should include the following:

- A brief description of the entity and its activities
 - Data on the types and amount of POPS dealt with in any manner by the entity
 - A description of how the POPS are currently managed
 - Targets for reducing, reusing, and recycling POPS and articles containing POPS
 - Activities to be implemented to achieve the targets
 - Indicators to be used to measure progress of implementing the plan
 - A schedule for submitting regular reports on implementation of the plan to the Department
- (c) Empower the Department to prepare and disseminate a template for the management plan when this provision comes into force.
- (d) Require reporting entities to maintain records relevant to POPS and articles containing POPS, and to provide the Department with an activity report within 3 months after financial year ends.

A ‘reporting entity’ is an entity that receives, sorts, recycles, treats, disposes or exports POPS and articles containing POPS. Reporting entities can also an entity be determined as such by the Department by giving the entity a notice of this decision. The notice must state the decision (i.e. that the entity is being made a reporting entity), the reasons for the decision, the obligations of the reporting entity, and when the obligations commence.

The waste activity report must include:

- details of the types and amounts of POPS and articles containing POPS received, sorted, recycled, treated, disposed, or exported; and the sources of them
- any other matter prescribed by Regulations.

G. Regulatory controls applicable to POPS

Explanation:

The Stockholm Convention seeks to regulate all POPS and its scope is not limited to uPOPS. General prohibitions should be applied to uPOPS in accordance with the Convention. And specific controls should apply to Regulated POPS.

If no law currently regulates POPs as contemplated by the Stockholm Convention, then provisions along the following lines will be useful:

- "x. Prohibitions applying to persistent organic pollutants** - (1) Despite any other provision of this Act, no person may manufacture, produce, import or use any prohibited persistent organic pollutant in [country].
- (2) No person may store any prohibited persistent organic pollutant in [country] unless the persistent organic pollutants are being stored prior to their lawful disposal in accordance with this Act.
- (3) No person may export any persistent organic pollutant except for the purpose of –
- (a) laboratory-scale research or as a reference standard in the country of import; or
- (b) disposal in an environmentally sound manner in the country of import.
- (4) Any permissible export of a persistent organic pollutant under sub-section (3) shall be undertaken in accordance with –
- (a) the provisions of the National Implementation Plan approved under this Act;
- (b) all applicable international rules, standards and guidelines; and
- (c) any direction given by the competent authority of the country of import to ensure that international rules, standards and guidelines are observed.
- (5) Any person who breaches any provision of this section commits an offence and shall be liable upon conviction to a fine not exceeding [suggested equivalent to Aus \$100,000] or to a term of imprisonment not exceeding 5 years, or to both.

- x. Regulated persistent organic pollutants** - (1) No person may manufacture, produce, store, import or use any regulated persistent organic pollutant in [country], unless –
- (a) the import is required under a duty to re-import applying under the Stockholm Convention; or
- (b) the manufacture, production, storage or use is in accordance with the National Implementation Plan and the requirements of the Stockholm Convention, applying to the applicable management arrangements for the relevant persistent organic pollutant; and
- (c) all lawful directions given under this Act and any other law relating to the management of the persistent organic pollutant are complied with.
- (2) The Minister may approve a National Implementation Plan, and any amendment to it, for the control and proper management of persistent organic pollutants in [country], and the implementation of the Stockholm Convention.
- (3) Regulations made under this Act may make provision for the implementation and enforcement of the National Implementation Plan approved under sub-section (2), or any particular provision of the Plan."

Explanation:

Due to the toxic and persistent nature of POPs, it is important that POPs-containing goods, articles, or wastes be permanently banned from entering the country where feasible, and removed from circulation to minimise ongoing risks to human health and the environment. Many POPs were used as additives in a variety of articles and products (e.g. electronics) and may be found in imported goods that are still in use. At the end of their life, these goods may be targeted for future reuse and recycling initiatives which would result in re-circulation of the POPs.

Banning the importation, reuse and recycling of POPs and POPs-contaminated waste eliminates the associated risks to human health and the environment, and also avoids the economic and financial costs associated with managing these wastes

Provisions should:

(a) Enable Regulations to be made to ban the importation of particular products or articles containing POPs. In identifying products or articles to be banned, the Minister should consider whether suitable replacement products or articles are available.

(b) Ban anyone from importing, reusing or reprocessing POPs and POPs-contaminated wastes.

‘Importing’ means bringing into the country for storage, use, reuse, reprocessing or disposal,

‘Reusing’ means using the POPs or POPs-contaminated wastes for their original intended purpose or for an alternative purpose.

‘Reprocessing’ means transforming the waste into raw materials (e.g. via mechanical or thermal processes), or combining the waste with other materials (whether waste or not) to create raw materials that may be used to make new goods or products.

(c) Enable a list of POPs-contaminated wastes banned from reuse and recycling to be prescribed by Regulations.

(d) Ban the incineration of POPs and POPs-contaminated wastes.

The penalty for contravening the provisions is [suggested in the equivalent amount of Aus\$20,000] for an individual, and [suggested in the equivalent amount of Aus\$250,000] for a corporation. [Note: Country to specify the amount of the penalties]

POPs and POPs-contaminated wastes can be exported for environmentally sound disposal or destruction in accordance with requirements of the:

- Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal and/or

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

H. uPOPs emissions from open burning and incineration of waste

Explanation:

Under Article 5 of the Stockholm Convention, Parties must:

- For new uPOPs sources, require the use of best available techniques (BAT) for identified source categories including waste incinerators; and promote the use of best environmental practices (BEP)
- For existing sources, promote use of BAT and BEP for identified uPOPs source categories including waste incinerators, open burning of waste including on landfills, fossil fuel-fired boilers, installations fuelled by wood and other biomass fuels, and motor vehicles.

Most Pacific Island Countries administer an environmental impact assessment process and a basic permit system for waste management and other polluting activities. Therefore, BAT and BEP requirements can be put into practice if they are incorporated into permit conditions for relevant activities.

Definitions:

- BAT means the available techniques which are the best for preventing or minimising emissions and impacts on the environment. “Techniques” include both the technology used and the way the installation is designed, built, maintained, operated and decommissioned.
- BEP means the application of the most appropriate combination of environmental control measures and strategies.

As noted previously, open burning of waste, healthcare and quarantine waste incineration, and waste burning on dumps, are major sources of uPOPs emissions in Pacific Island Countries

These sites are also often set alight to reduce the volume of waste and the nuisance associated with odours from decomposing waste, flies, and vermin, or to expose metal for recycling. However, there are some instances when controlled burning may be necessary (e.g. to reduce or eliminate the threat of disease and other threats to public health or the environment).

(a) *Licence to operate a waste incineration plant*

Provisions should provide for the following:

- (i) Require a person to obtain a licence from the Department to operate a waste incineration plant. The licence is in addition to, and does not negate the need for,

any approvals that may be required from planning authorities and other government agencies to establish the waste incinerator. It is the applicant's responsibility to ensure they obtain all necessary approvals for legal operation of a waste incineration plant.

A waste incineration plant means any stationary or mobile equipment dedicated to the thermal treatment of wastes. This includes incineration by oxidation of waste as well as other thermal treatment processes such as pyrolysis, gasification or plasma processes which produce substances that are then incinerated.

The application for a licence must include the following:

- Details of the applicant's experience in owning/managing/operating waste incineration plants or related facilities of a similar scale as the proposed incineration plant
- Information that demonstrates the applicant's financial viability, and solvency
- Details of the site where the proposed incineration plant will be installed, including evidence of ownership or lease.
- Description of measures to meet the BAT and BEP recommended in the 'National Best Practice Guideline and Standards on Waste Incineration', including measures to:
 - address the occupational health and safety risks to employees and sub-contractors
 - ensure that banned wastes and materials are not incinerated
 - divert materials from incineration into existing national or local recycling programs
 - minimise the amount of non-combustible materials (e.g. metals) and hazardous wastes burned in the incinerator (e.g. metals)
 - minimise the amount and harmfulness of emissions and residues (e.g. ash) from the incineration process
 - regularly test and report on the emissions to air, water and land from the waste incineration plant
 - minimise the nuisance from operation of the incineration plant and associated operations (e.g. odours, noise, increased vehicular traffic, etc)
 - dispose of the residues of the incineration process in an environmentally safe manner
 - minimise the overall impact to the surrounding environment from operation of the incineration plant
 - manage and respond to emergencies.
- Any other information required by the Department.

When deciding the application, the following are relevant considerations to be taken into account by the Department:

- whether the applicant has a viable business model and expertise to operate a waste incineration plant in an environmentally safe manner in compliance

with all relevant national guidelines and standards, and with international best practices in the absence of national guidelines and standards.

- whether operation of the waste incineration plant is likely to present risks of harm to human health or the environment that are beyond the Department's monitoring and enforcement capabilities.
- (ii) Enable the Department to set conditions on a licence for a waste incineration plant, which it deems necessary or desirable, including, but not limited to:
- The requirement to pay an environmental bond to ensure that enough funds are available to cover costs that may be incurred by the Department's actions to bring an incineration plant into compliance or to rehabilitate any environmental harm caused by the plant (if the plant operator fails to take such actions)
 - The requirement to implement specific BAT and BEP measures stipulated in the National Best Practice Guideline and Standards for Waste Incineration
 - The requirement to comply with other national guidelines and standards
 - A list of all types of wastes to which the licence applies, and banned wastes
 - The limits for emissions from the incineration plant into air and water and how each limit shall be monitored and measured
 - Waste storage and handling requirements at the incineration plant
 - Requirements for pre-treatment of waste fed into the incineration plant
 - Requirements for disposal of residues generated from the incineration plant
 - Requirements for environmental monitoring and reporting
 - Record keeping and reporting requirements (e.g. waste quantities managed, and details of clients)
- (iii) The penalty for contravening the provisions is [suggested in the equivalent amount of Aus\$10,000] for an individual, and [suggested in the equivalent amount of Aus\$100,000] for a corporation. [Note: Country to specify the amount of the penalties]

(b) *Environmental Bond*

Provisions should provide for the following:

- (i) The Department has authority to decide the amount of the environmental bond payable, and it must be paid into a dedicated account and quarantined from other government revenues to ensure that it is available when needed to cover the costs of corrective actions, or to refund the licence-holder if for example, the waste incineration plant is safely operated and closed without environmental harm.
- (ii) The Department may make a claim against the environmental bond to recover reasonable costs or expenses of taking action to prevent or minimise environmental harm or to restore the environment.

Before making a claim, the Department must first give the licence-holder reasonable notice in writing of the intended action, and allow the licence-holder to respond.

The Department must consider the licence-holder's response in deciding whether to make the claim and must notify the licence-holder of its decision.

The licence-holder may apply to the Department to reduce the amount of the environmental bond (e.g. if the waste incineration plant has been scaled down), or discharge the bond (e.g. if operations have ceased and the site has been cleaned up and there is unlikely to be any environmental harm).

The application should include a statement demonstrating the extent to which the licence conditions have been complied with. The Department may request additional information to decide the application.

If the Department is satisfied that there is not likely to be any claim on the environmental bond, it may decide to reduce or discharge the bond. A decision must be made and notified to the licence-holder in writing.

(c) *Amendment, cancellation or suspension of a licence*

Provisions should provide for the following:

The Department may cancel, suspend, or amend a licence, by first giving the licence-holder notice details of the proposed action (cancellation, suspension, or amendment), and inviting the licence-holder to make a submission as to why the proposed action should not be taken.

In deciding on the proposed action, the Department must consider any submission made by the licence-holder.

The Department must communicate its final decision to the licence-holder in writing, with a statement of the grounds relied on for the decision.

(d) *Amendment of a licence*

Provisions should provide for the following:

A licence-holder may apply to the Department to amend their licence. The application must include all information required by the Department.

The Department may approve or disallow the application and give the licence-holder written notice of the decision, and the grounds relied upon.

(e) *Cancellation or suspension of a licence*

Provisions should provide for the following:

The Department may cancel or suspend a licence, if the Department is satisfied that there is a sufficient ground for doing so. Grounds may include the following:

- The licence was granted on the basis of false or misleading information provided by the applicant
- A condition of the licence has not been complied with
- The operations violate existing laws
- The licence was granted on the basis of information and circumstances that have changed, such that continued operation is likely to result in unacceptable harm to public health or the environment.

(f) Transfer of a licence to another person

Provisions should provide for the following:

The holder of a licence may apply to the Department, using the approved form, to transfer the licence to another person. For example, a licence may be transferred if the business is sold to another person. Information to be provided with the application include:

- details of the transferee, including their experience in owning/managing/operating waste incineration plants or related facilities of a similar scale as the proposed incineration plant; and information that demonstrates the transferee's financial viability, and solvency
- signed consent of the proposed transferee
- a signed declaration by the proposed transferee stating that they are aware of their obligations under the licence, the Act, and the Regulations.

When deciding the application, the following are relevant considerations:

- the proposed transferee has the experience relevant to the licence being transferred
- the applicant has been convicted of any environmental offences in [country]
- the applicant is aware of his or her obligations under the licence, and all applicable laws.

The Department may approve or disallow the application and give the licence-holder written notice of the decision, and the grounds relied upon.

(g) Controls on open burning

Provisions should provide for the following:

- (i) Ban the open burning of waste in urban areas. 'Open burning' means the burning of materials where smoke and other pollutants are released directly into the air.

- (ii) Ban the open burning of waste in rural areas and outer islands unless conducted under a permit issued by the Department. This does not include burning of wood and other biomass for cooking, heating, or cultural/ceremonial purposes. The penalty for contravening the provisions is [suggested in the equivalent amount of Aus\$1,000] for an individual, and [suggested in the equivalent amount of Aus\$5,000] for a corporation. [Note: Country to specify the amount of the penalties]
- (iii) Enable a person to apply to the Department for a permit to burn waste in rural areas and outer islands. The permit application must be in the approved form (Appendix 1) and be accompanied by the approved application fee.

The Department must notify the applicant of its decision in writing.

The Department may impose conditions on the permit it deems necessary or desirable to minimise adverse impacts on public health and the environment.

A permit may be revoked by the issuing authority or by officers acting with the authority of the departments responsible for Health, Forestry, or Fire Services.

A permit is not required for a fire using charcoal, dry wood or other dry plant material to prepare food or beverages; or burning vegetation for fire prevention or control.

I. uPOPs emissions from waste disposal sites

Explanation:

Landfilling is the predominant waste disposal method in Pacific Island Countries. Landfills can be classified as open dumps, controlled dumps (both of which are the most common) and sanitary landfills:

- An open dump lacks engineered features (e.g. liner) and management controls (e.g. environmental monitoring) to prevent environmental harm occurring from the deposited waste.
- A controlled dump has no functional engineered features, but typically has a few management controls in place such as directed placement of waste, and restricted public access.
- A sanitary landfill has engineered features and controls in place to prevent environmental harm occurring from the deposited waste.

There are often no restrictions on what may be disposed of in open dumps and controlled dumps, including hazardous wastes and POPs, which may accumulate and be discharged to the surrounding environment in leachate.

Provisions should provide for the following:

- (a) Ban the disposal of all POPs in landfills (open dump, controlled dump, and sanitary landfills) unless otherwise authorised in writing by the Department.
- (b) Require POPs to be stored in accordance with approved standards etc.
- (c) Ban the setting of open fires at a ‘waste management facility’, unless done with the written authorisation of the Department. [suggested equivalent to Aus \$5,000] or to a term of imprisonment not exceeding 6 months, or to both.

A waste management facility means a facility for the recycling, reprocessing, treatment, storage, incineration, conversion to energy, sorting, consolidation or disposal of waste

- (d) Require all operators of landfills and waste management facilities to develop, implement and keep updated an environmental management plan for the facility. The first plan must be submitted to the Department within [12 months] of the provision coming into force. Subsequent (updated) plans must be submitted on or before expiry of the current plan.
- (e) Authorise the Department to prepare and disseminate a template for the environmental management plan when the provision comes into force.

J. uPOPs emissions from residential combustion sources

Explanation:

Cooking and heating with wood and other biomass is still a common practice in all Pacific Island Countries. This can cause significant emissions of uPOPs depending on the fuel used (household waste, sea salt laden driftwood and treated wood are significant sources of uPOPs) and how well the fuel combusts (combustion efficiency).

The efficient combustion of clean, untreated fuels for cooking and heating (e.g. with well-designed wood stoves) is critical to reducing the formation and release of uPOPs.

Strategies to minimize releases of uPOPs from cooking and heating with wood/biomass include public education, awareness and training programmes on the proper use of the cooking/heating appliances, use of appropriate fuels and the health impacts from uncontrolled residential combustion. The Stockholm Convention provides specific guidance on BAT and BEP measures to reduce uPOPs emissions.

Provisions should provide for the following:

- (a) Insert a provision that requires all government entities to consider and apply the approved standards etc in the design and implementation of relevant projects and programs.
- (b) Insert a provision that bans the burning of the following materials for cooking and heating:
- glass, metals (such as copper, iron, chromium, and aluminium), oils, rubber, plastics, snack wrappers, aerosol cans, tyres, treated timber, chemically treated materials, electrical and electronic items, cables, wiring, batteries, household chemical containers, vinyl flooring, paint, treated timber, construction waste materials including PVC pipes and sheet rock (dry wall), hazardous waste, and industrial solid waste.
- A person who breaches this provision commits an offence and is liable to a fine [suggested equivalent to Aus \$1,000].

K. UPOPS emissions from motor vehicles

Explanation:

uPOPs emissions from motor vehicles result from the incomplete combustion of fossil fuels (gasoline, diesel, and heavy fuel oil) in engines. Newer vehicles are expected to emit fewer uPOPs due to increasingly stringent emission requirements in the countries of origin/manufacture. However, older vehicles currently in use may be emitting higher levels of uPOPs.

Emissions of uPOPs can be reduced through operation of well-maintained vehicles, and use of pollution control devices, and through the implementation of sustainable recycling programs for end-of-life vehicles.

In all Pacific Island Countries, the maintenance condition and road worthiness of vehicles are normally assessed annually by a national (or state) transportation agency as part of the country's vehicle licensing and registration system. However, vehicle inspections do not normally include emissions testing. This aspect of national legislation needs to be strengthened to ensure that vehicles emitting unacceptable levels of POPs are not allowed to operate.

(a) Restrictions on importation of second-hand vehicles

Provisions should provide for the following:

- (i) Ban the importation of used and reconditioned certain prescribed motor vehicles which are more than [x] years of their date of manufacture.

Note: Countries should specify the national Customs Tariff Codes corresponding to the types of vehicles to be banned.

- (ii) Insert provisions to require the importer of a vehicle to demonstrate compliance with the following relevant standards:

Imported vehicles must meet the Australian vehicle emission standards in force at the time of import, or the vehicle emission standard applicable to the vehicle in the vehicle's country of origin – whichever is more stringent.

Note to drafter: at the time of writing these instructions, the standards in force were Australian Design Rule (ADR) 79/04 for light vehicles (≤ 3.5 tonnes), and ADR 80/03 for heavy vehicles (>3.5 tonnes)

- (iii) The importer must demonstrate compliance by providing the original certification documents prior to the arrival of the imports. Acceptable certifications will be the certificate or letter of compliance issued by a duly registered and authorised entity in the country of import.
- (iv) Assign responsibility for the provisions above to the Ministry/Agency responsible for transportation.

(b) *Motor vehicle inspections*

Provisions should provide for the following:

- Require that the checks in Appendix 2 be conducted under the current vehicle inspection system. These are in addition to (and not in place of) existing checks.

(c) *End-of-life recycling fee on vehicles*

Provisions should provide for the following:

- Impose an 'end-of-life recycling fee' ('Recycling Fee') on the importation of vehicles into [country]. The Recycling Fee must be paid by the importer of a vehicle into [country].

(d) *Amount of the Recycling Fee*

Provisions should provide for the following:

- (i) The Minister must determine the amount of the Recycling Fee for different types of vehicles, and in doing so, must:
- consider the costs of collecting, transporting, crushing, storing and exporting end-of-life vehicles for environmentally sound recycling;
 - consider the estimated costs of ongoing education and awareness-raising initiatives with regard to protection of the environment through recycling of end-of-life vehicles.
 - consider any other criteria the Minister considers appropriate.

- consult with relevant stakeholders including vehicle importers, vehicle recycling companies, business representatives, and community representatives.
- (ii) The Minister must publish and give notice of the amount of the Recycling Fees in accordance with the arrangements usually applied to such matters in the country.
- (e) *Waste Recycling Fund*

Provisions should provide for the following:

- (i) Establish a fund called the Waste Recycling Fund and require the Recycling Fee to be paid into the Fund.

Note: some countries may use a pre-existing waste fund such as one established for container deposit schemes, rather than establish a new fund.

- (ii) The Fund is to be managed by the Department, in accordance with the requirements of the [Department of Finance or other government body].
- (iii) Money paid into the Fund are to be used for:
- the collection, transportation, temporary storage, and exportation for recycling of end-of-life vehicles.
 - ongoing initiatives to raise awareness of the need to protect the environment by collecting and recycling end-of-life vehicles.
- (iv) The Department must give an annual report to the Minister by [date] each year, covering the previous financial year and setting out:
- the amount of Recycling Fee paid into the Fund
 - how money in the Fund has been spent
 - the total number of vehicles (by type) on which the Recycling Fee was paid
 - the total quantity of end-of-life vehicles collected
 - the total quantity of end-of-life vehicles exported.

The Minister must present the report to Parliament within [one] month of receiving it.

The Minister must make the report available to the public after it has been presented to Parliament.

L. Department may request information

Explanation:

The persistent lack of availability of, and access to, data relating to waste management is a constant challenge in Pacific Island Countries, which hampers the development of

effective policies. A general provision is needed which gives the Department broad powers to require relevant stakeholders to provide data that may be deemed necessary for the effective design or implementation of policies and projects, or to support effective compliance monitoring.

Insert a provision that authorises the Department to request in writing, information from any person or entity that is reasonably expected to have the information.

The request may be in the form of a notice that details the information requested; the reason for requesting the information; and the date by which the information should be provided.

The Department has authority to extend the deadline for providing the information.

The penalty for failing to comply with an information request is a fine [suggested to be the equivalent of Aus \$1,000]

M. Offences and enforcement provisions

(a) Appointment of enforcement officers

It may be useful and appropriate for the enforcement powers under the new Act to be exercised by police officers, environment officers and other officers of the Department who are authorised by the CEO, authorised officers under public health laws, customs officers, quarantine officers and authorised officers of any port authority.

The Minister or Director should be given authority to appoint other enforcement officers.

(b) Powers of enforcement

For the purposes of implementing and enforcing the provisions of the new Act, and monitoring and containing the effects of wastes on human health and the environment, the persons referred to above should have powers (with any appropriate restrictions) to -

- (a) enter upon any land;
- (b) enter private premises at all reasonable times where it is believed on reasonable grounds that there has been a contravention of this Act, after notifying the owner of their intention to do so;
- (c) take samples of wastes, soil and water for testing and analysis;
- (d) require the production of records and information relevant to the management, storage, movement and disposal of hazardous substances;
- (e) seize any hazardous substance, or shipment containing a hazardous substance, that is being managed, transported or disposed of –
 - (i) in breach of a requirement of this Act;
 - (ii) in breach of a provision of any of the applicable Conventions;
 - (iii) in an manner which poses a risk to human health or the environment; and

- (f) order that certain substances, wastes and materials apparently containing or affected by hazardous substances be contained, removed or otherwise dealt with so as to minimise their adverse effects on human health or the environment.

It should be an offence for any person to refuse or fail to comply with a requirement given by an enforcement officer.

The costs associated with any disposal of POPS and articles containing POPS which have been seized or ordered to be disposed of by an enforcement officer may be recovered as a debt owed by the person or persons in breach of the law.

(c) *General offence provision and other offences*

The new Act should confirm that is an offence for any person to breach the new law or to fail to comply with a provision of the new law, for which no specific offence is prescribed. The fine for such an offence should be [suggested to be equivalent to Aus \$2,000].

Courts should be given a clear power to require that offenders pay the cost of any remedial action required to be taken as a result of their offending against the Act.

In addition to this general offence provision, the new Act should prescribe the following to be offences if they involve hazardous substances (i.e. to be defined for this purpose as any POPS and any article containing POPS):

- (a) to fail to give a notification required under the Act;
- (b) to fail to obtain a necessary licence, permit or approval required under the Act;
- (c) to fail to observe any applicable conditions applying to a licence, permit or approval under the Act;
- (d) to fail to maintain registers, records or databases required under the Act;
- (e) to fail to provide information as required by the Act, under any permit condition or at the request of an authorised officer;
- (f) to causes pollution from any hazardous substances;
- (g) to fail to report any pollution incident or the discharge of any hazardous substance into the environment which causes risk to human health when obliged to do so under the Act;
- (h) to fail to properly manage hazardous substance in accordance with any requirements under the Act;
- (i) to dumps hazardous substance, except as authorised under the Act;
- (j) to fail to properly label or provide any warning concerning a hazardous substance as required under the Act;
- (k) to fail to properly package or keep contained any hazardous substance in breach of any provision of the Act;
- (l) to hinder or obstruct any authorised officer exercising a lawful power under the Act;

- (m) to fail to comply with any lawful direction given by an authorised officer in accordance with the Act; or
- (n) to aids, abets, procures or counsels the commission of any offence against the Act

—

A person should be liable upon conviction to a fine [suggested to be equivalent to Aus \$100,000] or to a term of imprisonment not exceeding 5 years or both.

(d) Authority to prosecute

It would be useful for a provision to confirm that prosecutions for offences against this Act may be undertaken by police officers, environment officers, authorised officers under the public health laws and officers of approved waste management authorities (as appropriate) who are authorised by a Chief Executive Officer of such an authority.

In countries where there is a waste management agency, the new law should provide that if prosecutions are undertaken by a waste management authority, the costs of any legal practitioner retained by a waste management authority for that purpose may be ordered by a court to be paid to the authority.

N. Other miscellaneous provisions

(a) Approved forms and fees

Unless the country adopts other practices in relation to the approval of forms and fees, it is preferable for the CEO of the Department to have power to approve any form for any purpose under the new Act.

It is also useful if the Minister has power to prescribe any fees and charges for any purpose under the Act, if such fees and charges are not otherwise prescribed by Regulations.

(b) Indemnities

As the new law is regulatory in nature, it is preferable that a provision states that any person lawfully exercising a power under the Act shall not be liable for any loss or damage, or be subject to any criminal prosecution, in relation to the reasonable exercise of a power or function.

(c) Power to make Regulations

A power to make regulations in relation to any matter provided for under the new Act, and to support the regulation of uPOPS in accordance with the Stockholm Convention should be stated in the usual terms.

A provision to permit Regulations to prescribe offences and to provided for fines of up to the equivalent of Aus \$25,000 and terms of imprisonment for up to 12 months would be useful, if appropriate in the jurisdiction.

Appendix 1: Sample Application for an Open Burning Permit

Application date:			
Applicant's name:			
Phone number:			
Applicant's address:			
Materials to be burned:			
Location where burning will occur:			
Owner or occupier of land where burning will occur:			
If the applicant is not the land owner or occupier, does the applicant have the consent of the land owner or occupier?			
Reason for burning:			
Applicant's signature		Date:	

<i>For Government Use Only</i>			
Verified/inspected by:			
Title:			
Date verified/inspected:			
Permit begins on:			
Permit expires on:			
Permit number:			
Permit approved by:			
Title:			
Signature:		Date:	

Permit for Open Burning Conditions of Permit

The following conditions must be followed:

1. The permittee must have the permit on their person and shall produce the permit for inspection when requested to do so by a forest officer, town fire warden, conservation officer, or other peace officer. The permittee shall remain with the fire at all times and before leaving the site shall completely extinguish the fire.
2. Burning may only be conducted in daylight hours (dawn to dusk). [*countries to amend hours as necessary*]
3. The burning shall be conducted as far away as practical (about 500m away?) from any public road, airport, and healthcare facilities, unless approved by the Department. Where possible, the burning should also be located downwind of these areas and downwind of residential areas.
4. This permit may be cancelled at the discretion of an authorised officer from the issuing Department, or from Government Departments responsible for Health, Forestry, or Fire Services. Completely extinguish any fire immediately if the permit is revoked.
5. Do not burn waste if there is a practical alternative method for managing or disposing of the material such as chipping or composting, recycling, or disposal in the local landfill or dumpsite.
6. **The following materials must not be burned:** Wet waste, glass, metals (such as copper, iron, chromium, and aluminium), oils, rubber, plastics, snack wrappers, aerosol cans, tyres, treated timber, chemically treated materials, electrical and electronic items, cables, wiring, batteries, household chemical containers, vinyl flooring, paint, construction waste materials such as PVC pipes and sheet rock (dry wall), hazardous waste, and industrial solid waste.
7. **Burning any of the banned materials is an offence and may result in a fine or penalty. – Frank: we need to have this inserted in the appropriate provisions above!**
8. Materials to be burnt should be dry and loose (non-compacted). Limit burning to small, well-ventilated fires that are burned in a way to prevent smouldering (thick smoke). Avoid fires in large containers. If smouldering (smoke without flame) occurs, spread the burning materials to allow a flame to develop, or extinguish the pile.
9. It is the responsibility of the permittee to monitor and keep the fire under control and to prevent it from spreading and causing damage to persons and property. The Department is not responsible for any damages caused from a fire authorised by this permit.
10. Any person tending to the fire should position themselves upwind from the fire. Where possible, protective clothing such as gloves, boots and overalls, together with smoke masks and goggles should be used.
11. After the materials are burnt, completely extinguish the fire to prevent smouldering or spreading of the fire. Ash from the extinguished fire should be disposed of in a

- landfill (or the local dumpsite) and must not be spread on land such as backyard gardens, farm land, or animal pastures.
12. Contact the Department of xxx at phone number xxx-xxxx to inform them that you are burning (office hours are Monday-Friday 8:00 am – 4:30 pm).

Appendix 2: Motor vehicle emissions: Reasons for failing an inspection

The following sets out the criteria for when the emissions or exhaust system of a motor vehicle is considered defective and must fail an inspection.

- a) An emission related component originally fitted to the vehicle is altered, modified or removed so that it no longer operates as intended
- b) Any component of the vehicle is adjusted so that it increases exhaust emissions including smoke
- c) Replacement fuel delivery systems do not continue to comply with the emission requirements applicable at the time of the vehicle's manufacture
- d) Any original emission related component is not properly located, connected, damaged, deteriorated or altered in any way to reduce effectiveness (e.g. a catalytic converter is not fitted where one was originally provided or has been bypassed).
- e) An exhaust system does not discharge in accordance with prescribed standards.
- f) The exhaust outlet on a motor vehicle, other than a bus or goods carrying vehicle with a gross vehicle mass less than 12 tonnes, does not extend:
 - beyond the rear-most seating position; and
 - at least 40mm past the outermost joint of the floor pan that is not continuously welded or permanently sealed, or
 - where the body of the vehicle is permanently enclosed and not fitted with a vertical exhaust system, to the edge of the vehicle.
- g) A vertical exhaust does not extend at least 150mm above the cab of the vehicle
- h) The outlet on a vertical exhaust does not discharge the exhaust flow straight up:
 - at an angle above the horizontal; and
 - towards the rear, or right, of the vehicle
- i) Exhaust components are not securely mounted with adequate clearance between other parts of the vehicle and the road
- j) The exhaust system is fitted with a device designed to bypass noise and/or gaseous emission control devices which would render the system non-compliant with the vehicle emissions standards in force.
- k) Any exhaust component fouls any part of the steering, suspension, brake or fuel system
- l) For a bus, flammable material is located within 100mm of the exhaust without shielding
- m) There are leaks or excessive noise from the exhaust system and joints during operation (excluding manufacturer's drain holes in mufflers).
- n) The engine emits sparks, flames, excessive gases, oil or fuel residue.

- o) When operating, an engine of a motor vehicle manufactured after 1930 emits visible emissions for a period of 10 seconds or more. *This does not apply to emissions that are visible only because of heat or condensation of water vapour.*
- p) For petrol engines fitted with positive crankcase ventilation, crankcase gases escape into the atmosphere.
- q) A vehicle operating on Liquid Petroleum Gas (LPG) or Compressed Natural Gas (CNG) and petrol does not have the emission control equipment fitted to enable compliance with emission levels when operating on petrol.