



New South Wales

# Waste Minimisation and Management Act 1995 No 102

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New South Wales

# **Waste Minimisation and Management Act 1995 No 102**

Act No 102, 1995

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An Act relating to the management, regulation and reduction of waste; to amend the *Waste Disposal Act 1970* and certain other Acts; and for related purposes. [Assented to 22 December 1995]

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**The Legislature of New South Wales enacts:**

**Part 1 Preliminary**

**1 Name of Act**

This Act is the *Waste Minimisation and Management Act 1995*.

**2 Commencement**

This Act commences on a day or days to be appointed by proclamation.

**3 Principles and objects of Act**

(1) The underlying principles of this Act are:

- (a) to achieve by the end of 2000 a 60% reduction in the amount of waste disposed of in New South Wales (being a per capita reduction based on 1990 disposal rates), and
- (b) to establish a waste management hierarchy of the following order:
  - avoidance
  - re-use
  - recycling and reprocessing
  - disposal.

(2) The objects of this Act are as follows:

- (a) to ensure that local government, industry and community representatives are involved in the development of State wide waste policy,
- (b) to minimise the consumption of natural resources and the final disposal of waste by encouraging the avoidance of waste and the re-use and recycling of waste,
- (c) to ensure that industry shares with the community the responsibility for minimising and managing waste,
- (d) to establish a framework for the regulation of waste facilities and waste activities,

- (e) to promote and ensure the efficient resourcing of waste service planning and delivery,
- (f) to achieve integrated waste planning and services on a regional basis,
- (g) to promote and ensure environmentally responsible transporting, reprocessing and handling of waste,
- (h) to provide appropriate sanctions for unlawful waste disposal,

in accordance with the principles of ecologically sustainable development contained in section 6 (2) of the *Protection of the Environment Administration Act 1991*.

#### 4 Act binds Crown

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of Parliament permits, the Crown in all its other capacities.

#### 5 Definitions

In this Act:

***authorised officer*** means a person appointed under section 81.

***constituent council*** means a council of a local government area that forms part of a waste management region.

***controlled waste activity*** means a waste generating or handling activity specified in the regulations as being an activity requiring a licence.

***controlled waste facility*** means a waste facility, or a waste facility of a class, specified in the regulations as being a waste facility requiring a licence.

***council*** means a council within the meaning of the *Local Government Act 1993*.

***Court*** means the Land and Environment Court.



***environmental management plan*** means a plan that is:

- (a) required by the EPA to be prepared in respect of a licence, and
- (b) prepared in accordance with such guidelines as are provided by the EPA from time to time.

***EPA*** means the Environment Protection Authority constituted under the *Protection of the Environment Administration Act 1991*.

***exercise*** a function includes perform a duty.

***function*** includes a power, authority or duty.

***Fund*** means the Waste Planning and Management Fund established under this Act.

***industry*** includes any trade, manufacture or business.

***industry member***, in relation to an industry, means:

- (a) any person who creates waste, or disposes of waste, in connection with an activity carried on by the person in the industry, or
- (b) any person engaged in the industry who manufactures, imports or sells (by retail or wholesale) any product or item that creates waste or results in the creation of waste, or
- (c) any person engaged in the collection, transportation, reprocessing, recycling or refilling of such products or items, or
- (d) any person (including an association whether incorporated or not) representing the interests of the industry.

***industry waste reduction plan*** (or ***IWRP***) means an industry waste reduction plan in force under Part 4.

***landfill site*** means a waste facility used for the purposes of disposing of waste to land.

***licence*** means a licence (including a supervisory licence referred to in section 48) granted under this Act and in force.

**local authority** means a council, or a county council, within the meaning of the *Local Government Act 1993*.

**occupier** of premises means a person who has the management or control (otherwise than as an employee) of the premises.

**premises** includes a building of any description, or any part of a building, and any land or site whether built on or not.

**public authority** means a public authority constituted by or under an Act and includes:

- (a) a local authority, or
- (b) a Waste Board, or
- (c) a department of the Public Service, or
- (d) a member of staff or other person who exercises functions on behalf of a public authority, or
- (e) a State owned corporation or a subsidiary of such a corporation.

**putrescible landfill site** means a landfill site that is used for the purposes of disposal of putrescible waste.

**putrescible waste** means waste being food or animal matter (including dead animals or animal parts) or unstable or untreated biosolids.

**regional waste plan** means a plan approved by the Minister and in force under Part 3.

**site remediation work** means work for the remediation, rehabilitation and monitoring of premises the subject of a licence and that is required by the conditions of a licence to be carried out:

- (a) while the premises are being used for the purpose to which the licence relates, or
- (b) after the premises cease being used for the purpose to which the licence relates,

or both.

**State Waste Advisory Council** (or *SWAC*) means the State Waste Advisory Council established under Part 2.

**substance** includes matter or thing.

**waste** includes:

- (a) any substance (whether solid, liquid or gaseous) that is discharged, emitted or deposited in the environment in such volume, constituency or manner as to cause an alteration in the environment, or
- (b) any discarded, rejected, unwanted, surplus or abandoned substance, or
- (c) any otherwise discarded, rejected, unwanted, surplus or abandoned substance intended for sale or for recycling, reprocessing, recovery or purification by a separate operation from that which produced the substance, or
- (d) any substance prescribed by the regulations to be waste for the purposes of this Act.

A substance is not precluded from being waste for the purposes of this Act merely because it can be reprocessed, re-used or recycled.

**Waste Board** means a Waste Planning and Management Board constituted under Part 3.

**wastefacility** means any premises used for the storage, treatment, reprocessing, sorting or disposal of waste.

**waste management region** means a waste management region formed under Part 3.

## **Part 2 State waste planning and policy**

### **6 Object of this Part**

The object of this Part is to ensure that all relevant interests are represented in the making and implementation of State waste planning and policy.

### **7 Establishment of SWAC**

- (1) There is established by this Act a State Waste Advisory Council (SWAC).
- (2) SWAC is to consist of 9 members appointed by the Minister, of whom:
  - (a) 2 are to be persons representing local government interests, and
  - (b) 2 are to be persons representing non-government organisations whose charters include, as a primary aim, environment protection, and
  - (c) 1 is to be a person representing consumer interests, and
  - (d) 1 is to be a person representing the interests of the occupiers of waste facilities, and
  - (e) 2 are to be persons representing industry interests, and
  - (f) 1 is to be a representative of the EPA.
- (3) The Minister may seek from relevant bodies or organisations nominations of persons for appointment as members of SWAC.
- (4) Schedule 1 has effect with respect to the members and procedure of SWAC.

### **8 Functions of SWAC**

- (1) The primary function of SWAC is to advise the Minister and the EPA on the following matters:
  - (a) waste reduction priorities,
  - (b) changes to legislation relating to waste,
  - (c) State wide waste reduction programs and the implementation of those programs,

- (d) research and development priorities in waste management,
  - (e) preparation, content and approval of regional waste plans,
  - (f) funding of waste reduction programs,
  - (g) nominating industries for industry waste reduction plans,
  - (h) the preparation, scope, negotiation, approval and review of IWRPs.
- (2) SWAC may give advice to the Minister or the EPA whether or not the advice was requested.
- (3) SWAC may advise the Minister:
- (a) on the appropriate sanctions to be imposed on industry members and Waste Boards for failing to achieve waste reduction and other targets required under this Act, and
  - (b) on the waste streams that may be subject to disposal bans or restrictions under this Act.
- (4) SWAC may advise the Minister or the EPA on such other matters relating to waste as it thinks appropriate or as may be requested by the Minister or the EPA from time to time.
- (5) In exercising its functions under this Act, SWAC is to have regard to the principles of ecologically sustainable development contained in section 6 (2) of the *Protection of the Environment Administration Act 1991*.
- (6) SWAC may, on at least one occasion each year, invite public submissions on matters relating to waste management.
- (7) SWAC is required to prepare a report each year. Such a report is to refer to any public submissions received under subsection (6) and be made available to the public.
- (8) The first such annual report must identify priorities for action and any areas where improved performance is required.

## **Part 3 Regional waste planning and management**

### **Division 1 Preliminary**

#### **9 Objects of this part**

The objects of this Part are:

- (a) to provide for an integrated approach to the assessment and planning of waste management, and
- (b) to ensure that waste planning and management is undertaken on an efficient and cost-effective scale, and
- (c) to ensure that regional waste management activities reflect State wide waste policy.

### **Division 2 Waste management regions**

#### **10 Formation of waste management regions**

- (1) The Governor may, by order published in the Gazette:
  - (a) declare any 2 or more whole local government areas to be a waste management region and amend Schedule 2 by inserting the description of the waste management region (such description is to specify the name of the region and the local government areas forming the region), or
  - (b) declare the whole of any local government area to be included in a waste management region and amend Schedule 2 by amending the description of the waste management region concerned.
- (2) An order under this section may be made only on the joint recommendation of the Minister for the Environment and the Minister for Local Government.

- (3) Before recommending the making of any such order, the Ministers are:
  - (a) to invite, or require, nominations or submissions from councils about the formation of a waste management region or whether a council's local government area should be included in such a region, and
  - (b) to make available to councils guidelines to assist the councils in making their nominations or submissions, and
  - (c) to take into account their nominations or submissions, and
  - (d) to take into account any relevant advice by SWAC.
- (4) Such nominations or submissions are required to be made within the time specified by the Ministers. If a council does not respond within that time, or the response is not in accordance with the guidelines made available to the council, the Minister for the Environment may appoint an independent facilitator to assist the council in making a nomination or submission about the formation of a waste management region.

**11 Submission by councils not to be included in waste management region**

- (1) A council may make a submission to the Minister for the Environment that the council's local government area should not be included in a waste management region.
- (2) In making such a submission, the council must provide the Minister with details about the following matters and make available for public inspection a waste minimisation and management plan:
  - (a) the volume and types of waste in the council's local government area,
  - (b) the council's waste collection, handling and disposal arrangements,
  - (c) the council's waste reduction programs and the monitoring of waste reduction in its area,
  - (d) the council's waste reduction performance and targets.

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- (3) The Minister for the Environment and the Minister for Local Government may jointly decide that the council's local government area is not to be included in a waste management region, but only if both Ministers are satisfied:
- (a) that the council has a comprehensive scheme for reducing waste in its area consistent with the government's waste reduction targets, and
  - (b) that such a scheme does not rely on money allocated out of the Fund for regional initiatives, and
  - (c) that the council has long-term waste disposal arrangements and recycling programs in operation, and
  - (d) that the council's waste collection system is operating efficiently, and
  - (e) that the council's waste programs are in accordance with the principles of ecologically sustainable development contained in section 6 (2) of the *Protection of the Environment Administration Act 1991*, and
  - (f) that the council has consulted broadly with its local community in developing its waste programs.
- (4) However, both Ministers may subsequently decide that the council's local government area is to be included in a waste management region if:
- (a) the council fails to submit (within such time as is specified by the Minister for the Environment) an annual report to that Minister on its waste reduction performance during the year, or
  - (b) both Ministers are jointly of the opinion that the council's waste reduction performance no longer satisfies the grounds on which they made their previous decision.

## 12 Amendment of Schedule 2

The Governor may, on the joint recommendation of the Minister for the Environment and the Minister for Local Government, by order published in the Gazette amend Schedule 2:

- (a) by omitting all the matter relating to a waste management region, or



- (b) by omitting from the matter relating to a waste management region the name of any one or more local government areas.

### **Division 3 Waste Boards**

#### **13 Constitution of Waste Boards**

- (1) For each waste management region, there is constituted a Waste Planning and Management Board.
- (2) A Waste Board:
  - (a) is a body corporate with the corporate name specified in Schedule 3, and
  - (b) is not and does not represent the Crown.
- (3) The Governor may, by order published in the Gazette, amend Schedule 3 by inserting the name of a Waste Board and the waste management region for which it is constituted. The order is to specify the date by which directors of the Board are to be in office.

#### **14 Directors of Waste Boards**

- (1) There are to be directors of each Waste Board.
- (2) The directors are:
  - (a) the general manager of the Waste Board employed under section 24, and
  - (b) no more than 12 other persons appointed by the Minister.
- (3) The persons appointed by the Minister under this section as directors are to be persons nominated by the constituent councils.
- (4) Each constituent council can nominate any of its councillors or employees. However, a constituent council is required to nominate at least 1 (but not more than 2) other persons having relevant expertise but who are not councillors or employees of the council.
- (5) If the constituent councils do not provide nominations in the time specified by written notice of the Minister, the Minister may appoint such persons as the Minister thinks fit.

- (6) The majority of the directors of a Waste Board must be persons who are councillors or employees of the constituent councils. However, a constituent council cannot have more than one representative (being a councillor or employee).
- (7) Schedule 4 has effect with respect to the directors of a Waste Board.

#### **15 Directors to manage affairs of Waste Board**

- (1) The directors of a Waste Board have the function of managing and controlling the affairs of the Waste Board. In exercising that function, the directors are to ensure that the activities of the Waste Board are carried out properly and efficiently.
- (2) Any act, matter or thing done in the name of, or on behalf of, a Waste Board by the directors, is taken to have been done by the Waste Board.
- (3) The Minister may give the directors of a Waste Board written directions in relation to the exercise of the Waste Board's functions and the directors must comply with any such direction.

#### **16 General manager of Waste Board**

Subject to section 28, the general manager of a Waste Board:

- (a) has the function of exercising the day-to-day management of the Waste Board, and
- (b) is subject to the control and direction of the directors, and
- (c) has such other functions as may be conferred or imposed by or under this or any other Act.

### **Division 4 Objectives and functions of Waste Boards**

#### **17 Objectives of Waste Boards**

The objectives of a Waste Board are:

- (a) to co-ordinate the waste services provided in and for the Waste Board's waste management region, and

- (b) to ensure that the constituent councils adopt efficient waste management practices and policies, and
- (c) to operate in accordance with the principles of ecologically sustainable development contained in section 6 (2) of the *Protection of the Environment Administration Act 1991*.

## **18 Functions of Waste Boards**

- (1) The functions of a Waste Board are as follows:
  - (a) to establish management and charging policies for the waste services provided by the constituent councils,
  - (b) to enter into arrangements for carrying out waste services and recycling services in respect of the waste generated in its waste management region,
  - (c) to enter into arrangements for the recycling of waste,
  - (d) to develop handling, sorting and waste management principles for waste generators in its waste management region,
  - (e) to charge fees for any of the services provided by the Waste Board,
  - (f) to enter into arrangements with any person for the performance of services, or for the supply of goods, plant, machinery or material, with respect to the exercise by the Waste Board, of its functions.
- (2) A Waste Board may require contributions from constituent councils in its waste management region to finance the Waste Board's arrangements and initiatives. Any such contribution payable by a council to a Waste Board becomes, if it is not paid as directed by the Waste Board, a debt due to the Waste Board that is recoverable in any court of competent jurisdiction.
- (3) A Waste Board has such other functions as may be conferred or imposed on it by or under this or any other Act.

## **19 Regional waste plans**

- (1) A Waste Board is required to prepare and implement a plan for the waste management region for which it is constituted (a *regional waste* plan).

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- (2) Such a plan must, subject to the regulations, include the following matters:
- (a) population and development profiles for the waste management region,
  - (b) an assessment of all significant sources and generators of waste in the region,
  - (c) an assessment of the quantities and classes of waste in the region and the potential for avoidance and reduction,
  - (d) an assessment of the services, markets and facilities for each different waste category (ie domestic, commercial and industrial),
  - (e) an assessment of the options for waste reduction, management and disposal in the region,
  - (f) proposed strategies and targets for managing and reducing waste in the region and for the efficient disposal of waste that cannot be recovered, re-used or recycled,
  - (g) matters concerning waste education and initiatives for separating waste at its source,
  - (h) an implementation program that identifies the required action, time-frames, resources and responsibilities for achieving these strategies and targets,
  - (i) a mechanism for monitoring performance in light of these targets and strategies,
  - (j) such other matters as may be authorised by the regulations.
- (3) The Minister may provide guidelines to assist Waste Boards in the preparation of regional waste plans. Any such guidelines are to contain advice about the 1990 disposal rates referred to in section 3 (1) (a), the methods to be used to identify priority waste streams in the region, and priority waste minimisation and management options.
- (4) A Waste Board is required to consult with relevant business, industry and community groups, and with the local community, in preparing its regional waste plan.

- (5) A draft plan is to be available for public comment for at least 2 months, and the Waste Board is required to take any submissions it receives into consideration in preparing the plan.
- (6) Once a regional waste plan is prepared, it must be submitted to the EPA for approval by the Minister. The Minister is to have regard to the advice of SWAC in deciding whether or not to approve the plan, and is to have regard to the following matters:
  - (a) whether the plan establishes a comprehensive scheme for reducing waste in the waste management region concerned that is consistent with the government's waste reduction targets,
  - (b) whether the plan establishes a scheme for the efficient collection, re-use, treatment, reprocessing, recycling and disposal of waste generated in the region,
  - (c) whether the plan has been subject to public consultation,
  - (d) whether the plan's initiatives are to be efficiently and adequately funded.
- (7) A regional waste plan comes into force when the Minister approves the plan. A Waste Board is to make its plan available for inspection or purchase by any person.
- (8) A Waste Board may amend its regional waste plan from time to time after consultation with the constituent councils. Any such proposed change must be submitted to the Minister for approval before it has any effect.

## **20 Report on regional waste plans**

- (1) A Waste Board must, at least once each year, submit a report to the Minister on the implementation of its regional waste plan.
- (2) The Minister may require the Waste Board to amend its regional waste plan after the Board has consulted with the constituent councils.

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**21 Application of regional waste plan to constituent councils**

- (1) A regional waste plan applies to each of the constituent councils in the waste management region concerned.
- (2) It is a statutory duty of a constituent council to comply with the plan or with any requirement arising under the plan.

**22 Compliance with regional waste plans**

- (1) A Waste Board may direct any one of the constituent councils to comply with the regional waste plan (including any requirement arising under the plan or relating to the preparation of the plan).
- (2) Any such direction is to be in writing and specify the date by which the Waste Board requires compliance with the plan.
- (3) A council commits an offence against the *Environmental Offences and Penalties Act 1989* if it fails to comply with the regional waste plan after being directed to do so by the Waste Board.
- (4) It is a defence to a prosecution arising under this section if the council can prove:
  - (a) that the commission of the offence was due to causes over which the council had no control, and
  - (b) that the council took reasonable precautions and exercised due diligence to prevent the commission of the offence.

**23 Offence by Waste Board**

- (1) A Waste Board commits an offence against the *Environmental Offences and Penalties Act 1989* if:
  - (a) the directors of the Board fail to comply with a direction given by the Minister, or
  - (b) the Board fails to prepare a regional waste plan for approval by the Minister within 9 months of the constitution of the Board, or
  - (c) the Board fails to implement its regional waste plan.

- (2) It is a defence to a prosecution arising under this section if the Waste Board can prove:
- (a) that the commission of the offence was due to causes over which the Waste Board had no control, and
  - (b) that the Waste Board took reasonable precautions and exercised due diligence to prevent the commission of the offence.

## **Division 5 General provisions**

### **24 Staff of Waste Boards**

- (1) A Waste Board is to employ a person as general manager of the Waste Board, and it may employ such other persons as are necessary to enable it to exercise its functions.
- (2) Part 2 of the *Public Sector Management Act 1988* does not apply to or in respect of persons employed under this section.

### **25 Delegation by Waste Boards**

A Waste Board may delegate to any of the constituent councils in the waste management region concerned the exercise of any of its functions (other than this power of delegation).

### **26 Investments**

- (1) A Waste Board may invest money held by it:
- (a) in such manner as may be authorised by the *Public Authorities (Financial Arrangements) Act 1987*, or
  - (b) if that Act does not confer power to invest money so held, in any manner authorised for the time being for the investment of trust funds or in any other manner approved by the Minister with the concurrence of the Treasurer.
- (2) A Waste Board may at any time dispose of any of its investments and apply the proceeds for the purpose of exercising its functions.

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**27 Separate account to be maintained**

- (1) A Waste Board must establish and maintain a separate account into which is paid all money allocated to the Waste Board from the Waste Planning and Management Fund.
- (2) Subject to subsection (3), the Minister may specify the manner in which money allocated to a Waste Board from the Fund is to be spent.
- (3) Money held in such a separate account established and maintained under this section may be spent only in connection with the exercise of the Waste Board's functions under this Act.

**28 Removal of directors of Waste Board and appointment of administrator**

- (1) The Minister may, with the concurrence of the Minister for Local Government, by order published in the Gazette:
  - (a) remove any one or all directors of a Waste Board from office, or
  - (b) remove all directors of a Waste Board from office and appoint, as administrator of the Waste Board concerned, a person specified in the order for such period as may be specified in the order, or
  - (c) remove all directors of a Waste Board (other than the general manager) from office and appoint, as administrator of the Waste Board concerned, the general manager for such period as may be specified in the order.
- (2) Such an order may be made only if both Ministers are satisfied that the Waste Board has failed:
  - (a) to prepare a regional waste plan for approval within 9 months of the constitution of the Waste Board, or
  - (b) to implement its regional waste plan, or
  - (c) to direct the constituent councils to comply with the plan, or
  - (d) to exercise its other functions.



- (3) An administrator of a Waste Board has and may exercise, subject to any conditions that may be specified in the order by which the administrator was appointed, all the functions of the Waste Board.
- (4) An administrator of a Waste Board is entitled to be paid from the funds of the Waste Board such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the administrator.
- (5) The regulations may make provision for or with respect to administrators of Waste Boards.

## **29 Dissolution of Waste Boards**

- (1) The Governor may, by order published in the Gazette, and on the joint recommendation of the Minister for the Environment and the Minister for Local Government, dissolve a Waste Board and may, in the order, amend Schedule 3 accordingly by omitting the matter relating to the dissolved Waste Board.
- (2) Any such order takes effect on the date of publication of the order or a later date specified in the order.
- (3) On such an order taking effect, the assets, rights and liabilities (if any) of the dissolved Waste Board are to be transferred or dealt with in accordance with the regulations.

## **Part 4 Industry waste reduction**

### **Division 1 Preliminary**

#### **30 Objects of this Part**

The objects of this Part are:

- (a) to provide a framework for the preparation, implementation, monitoring and enforcement of industry waste reduction plans that are designed:
  - (i) to minimise the amount of waste being created in New South Wales, and
  - (ii) to minimise the consumption of natural resources, and
  - (iii) to ensure greater industry responsibility for waste reduction, and
  - (iv) to encourage an efficient and cost effective approach to industry waste reduction, and
- (b) to encourage industry members:
  - (i) to participate and co-operate with the EPA in the negotiation and preparation of an industry waste reduction plan for the industry, and
  - (ii) if such a plan is in force with respect to the industry, to comply with the plan, and
- (c) to provide for sanctions in cases of unsatisfactory performance, or unwillingness to co-operate, in industry waste reduction planning.
- (d) to ensure that industry waste minimisation and management initiatives reflect State wide waste policy and waste minimisation and management objectives.

### **Division 2 Industry waste reduction plans**

#### **31 Scope of IWRPS**

- (1) An industry waste reduction plan must specify the industry, or the industry members, or both, to which the IWRP applies.

- (2) An IWRP may:
- (a) set waste reduction targets for the industry, having regard to national waste reduction targets, and
  - (b) indicate the level of financial contribution by industry members required to support recycling collection services and other consumer based waste reduction programs, and indicate the manner in which resources are to be allocated for achieving waste reduction targets, and
  - (c) identify the opportunities and action to be taken in the areas of product design, production and packaging for reducing waste, and
  - (d) determine, and identify the action to be taken to implement, the appropriate methods for reducing, re-using and recycling waste, for litter management and for the safe disposal of waste, and
  - (e) identify how consumers are to be informed about the impact on the environment of waste generating products and packaging, and
  - (f) specify the time frame for implementing proposed waste reduction targets and strategies, and
  - (g) establish a public monitoring and reporting program, and
  - (h) include details of the performance indicators to be used to monitor whether waste reduction targets set out in the IWRP are being attained, and
  - (i) include a requirement to provide the EPA with data and other information, and to report to the EPA on the implementation of the IWRP, and
  - (j) include such other matters as may be authorised by the regulations.

### **32 Criteria for determining initiation of IWRPs**

- (1) The Minister may, from time to time, decide that an IWRP is to be prepared in accordance with this Part for a particular industry.
- (2) An industry can nominate itself for an IWRP. The Board of the EPA, or SWAC, can also nominate an industry for an IWRP.

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- (3) Based on an assessment of the following matters (and such other matters as the Minister considers relevant), the Minister is to determine whether or not an IWRP is to be prepared for the nominated industry:
    - (a) the impact on the environment of the waste created by the activities of the industry members, or
    - (b) the environmentally sensitive nature, or the amount, of the natural resources consumed by industry members in the production or manufacturing processes of the industry.
  - (4) On the commencement of this section, the Minister is taken to have determined that an IWRP is to be prepared and implemented for the dairy industry.
  - (5) Without limiting section 31, the IWRP for the dairy industry must:
    - (a) set a target for the level of use of refillable milk bottles for the New South Wales milk market by the end of 1996, and
    - (b) include a comprehensive public education strategy to encourage the community to use and return refillable milk bottles.

### **33 EPA to give public notice of proposed IWRP**

- (1) As soon as practicable after the Minister decides that an IWRP is to be prepared for an industry, the EPA is to advertise the decision by causing a notice to be published in at least 2 newspapers circulating generally in the State and in such other publications as the EPA considers relevant.
- (2) The advertisement must invite written submissions to the EPA on any relevant matter concerning the proposed IWRP and specify a closing date (being a date at least 1 month after the date on which the advertisement is last published) for the making of such submissions.

### **34 EPA may require industry members to provide background information**

- (1) The EPA may, by written notice given to any person that the EPA considers is a person to whom the proposed IWRP would apply, require the person to provide such information as is specified in the notice to assist in the preparation of the IWRP.

- (2) Without limiting subsection (1), the notice may require that the following information be provided in such form and manner as is specified in the notice:
  - (a) the quantities and classes of items that are manufactured, imported or sold by the person in New South Wales,
  - (b) the quantities and classes of wastes that are likely to be created as a result of the activities of the person,
  - (c) information about what the person has done, or is doing, in relation to waste management and reduction of the consumption of natural resources.
- (3) A notice under this section is to specify the date by which the information must be provided to the EPA. The date specified must be at least one month after the date on which the notice was given.
- (4) Any person who fails to comply with the requirement of a notice under this section is guilty of an offence against the *Environmental Offences and Penalties Act 1989*.

### **35 Report on how IWRP is to be prepared**

- (1) The EPA is to prepare a report to the Minister on the scope of the proposed IWRP. Any such report must be referred to SWAC, and SWAC may advise the Minister on such matters relating to the report as it thinks fit.
- (2) The report is to include any relevant information obtained by the EPA (including that received by way of public submissions), and any advice given by SWAC regarding the proposed IWRP.
- (3) The report is also to recommend to the Minister the way in which the proposed IWRP should be prepared. This may include a recommendation as to the persons or organisations (if any) that the EPA or SWAC considers should be involved in the negotiation of the proposed IWRP.
- (4) Alternatively, the report can recommend that the proposed IWRP be prepared in accordance with section 37.

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**36 Preparation of IWRP—process of negotiation**

- (1) The Minister may, on the advice of SWAC:
  - (a) nominate which persons or organisations are to be involved in the negotiation of the proposed IWRP with the EPA, and
  - (b) determine the time within which the proposed IWRP is to be finalised.
- (2) If the Minister decides that the proposed IWRP is to be negotiated between the EPA and any such nominated persons or organisations, the EPA and all other parties involved are to consult with each other in the preparation by industry of the IWRP.
- (3) A draft IWRP must be prepared in accordance with the negotiation process, and be submitted to the EPA within such time as is determined by the EPA after consultation with the parties involved.
- (4) The EPA is then to submit the draft IWRP to SWAC for its advice before referring the draft to the Minister for the Minister's approval.
- (5) After the draft IWRP is referred to the Minister, the Minister may approve the plan (or may reject the plan, or require changes to be made).

**37 Preparation of IWRP by EPA without negotiation**

- (1) The Minister may decide that the proposed IWRP is to be prepared by the EPA without negotiation with any nominated industry members. The Minister's decision may be based on, but is not limited to, an assessment of the following matters:
  - (a) the past performance by the industry in collecting, recycling or reducing waste created by the activities of industry members,
  - (b) whether industry members have participated, sought to participate, or are likely to participate, with the EPA in the preparation of an IWRP for the industry,
  - (c) the diversity, complexity or competitive nature of the industry concerned.

- (2) The Minister may also decide that the proposed IWRP is to be prepared by the EPA if the industry concerned has failed to prepare a draft IWRP in accordance with section 36 or the Minister is of the opinion that any such draft plan is inadequate.
- (3) If the Minister decides that the proposed IWRP is to be prepared by the EPA without negotiation with industry members, the EPA is to determine the contents of the IWRP.
- (4) The contents of such an IWRP, without limiting section 31, may include:
  - (a) waste reduction targets determined by the EPA (and based on such factors as the EPA considers to be relevant), and
  - (b) provisions requiring industry members to make financial contributions to support community based waste reduction schemes and recycling programs, and
  - (c) a requirement that the industry establish a fund, or provide such other arrangement as may be approved by the Minister, into which such contributions are to be paid and from which payments to support community based waste reduction schemes and recycling programs are to be distributed as determined by the Minister.
- (5) The EPA is to submit the draft IWRP to SWAC for its advice before referring the draft to the Minister for the Minister's approval.
- (6) After the draft IWRP is referred to the Minister, the Minister may approve the plan (or may reject the plan, or require changes to be made).

### **38 Approval and gazettal of IWRPs**

- (1) If the Minister approves the IWRP, the IWRP comes into force on such day as notice of the Minister's approval of the plan is published in the Gazette.
- (2) The notice must state that the IWRP is available from the EPA. A notice as to the availability of the plan must also be published in at least 2 newspapers circulating generally in the State and in such other publications as the EPA considers relevant.

- (3) The EPA must:
- (a) provide a copy of the IWRP to any industry member or other person who made a submission, or who provided information, or who was otherwise involved in the negotiation of the plan, under this Part, and
  - (b) make copies of the IWRP available for inspection or purchase by any person.

### **39 Contravention of IWRPs**

- (1) The EPA may, if it is satisfied that an industry member has contravened an IWRP that applies to the member, give the industry member a copy of the plan and a written notice specifying the Contravention.
- (2) For the purposes of this section, the contravention of an IWRP includes the failure to meet any of the requirements specified in the plan.
- (3) Any such notice is to specify the date by which the EPA requires the contravention to be rectified. The date specified must be at least one month after the date on which the notice was given, and the EPA may withdraw the notice within that time.
- (4) A person to whom a notice is given under this section is guilty of an offence against the *Environmental Offences and Penalties Act 1989* if the person fails to rectify the contravention in accordance with the requirement in the notice.
- (5) The EPA is to specify in its annual report any person who has failed to rectify a contravention of an IWRP.
- (6) If the contained/packaging industry has failed to achieve a waste reduction target that has been set by an IWRP, SWAC may advise the Minister of the need to introduce container deposit legislation.

## **Division 3 Regulations relating to industry waste reduction**

### **40 Regulations under this Division**

- (1) A regulation made for the purposes of this Division may be made only on the recommendation of the Minister.



- (2) The Minister is not to recommend the making of such a regulation unless the Minister is satisfied that the regulation is warranted because of non-compliance with an industry waste reduction plan or because the industry concerned has failed to participate or co-operate with the EPA in the negotiation and preparation of an industry waste reduction plan for the industry.

#### **41 Regulations relating to certain products**

The regulations may make provision prohibiting or restricting the sale of such products or classes of products as may be prescribed in such circumstances as may be prescribed.

#### **42 Regulations relating to recycling and other schemes**

The regulations may make provision:

- (a) requiring the implementation and operation of recycling, re-use, refundable deposit or take-back and utilisation schemes, as determined by the regulations, in relation to products that result in the creation of waste, and
- (b) for the percentage of products to be recovered under any such scheme that must be used in re-use or reprocessing initiatives, and
- (c) requiring the provision of a performance bond to ensure compliance with any such scheme, and
- (d) for the forfeiture of any such bond in the circumstances authorised by the regulations, and
- (e) requiring the EPA to be provided with documentation or particulars regarding compliance with any such scheme.

#### **43 Penalties for contravening regulations**

Despite section 8DA (3) of the *Environmental Offence and Penalties Act 1989*, a regulation made for the purposes of this Division may impose a penalty not exceeding 200 penalty units in the case of an individual, or 500 penalty units in the case of a corporation, in respect of a contravention of the regulation.

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## Part 5 Licences

### Division 1 Licensing requirements

#### 44 Licences in respect of controlled waste facilities

A person who is an occupier of a controlled waste facility is guilty of an offence against the *Environmental Offences and Penalties Act 1989* unless the person is the holder of a licence granted in respect of the waste facility.

#### 45 Persons carrying out controlled waste activities must be licensed

A person who:

- (a) is carrying out a controlled waste activity, and
- (b) is not the holder of a licence authorising the person to carry out that activity,

is guilty of an offence against the *Environmental Offences and Penalties Act 1989*.

#### 46 Transporters of certain waste must be licensed

- (1) This section applies to such classes or quantities (or both) of waste as are prescribed by the regulations for the purposes of this section.

- (2) A person who:

- (a) transports any waste to which this section applies for fee or gain, and
- (b) is not the holder of a licence authorising the person to transport that waste,

is guilty of an offence against the *Environmental Offences and Penalties Act 1989*.

- (3) It is a defence to a prosecution for an offence arising under this section to prove that the defendant transported the waste in the capacity of being an employee of another person.

- (4) For the purposes of this section, the occupier of a controlled waste facility, or of any premises at which controlled waste activities are carried on, who transports any waste to which this section applies from or to the premises, is taken to transport the waste for fee or gain.

## **Division 2 Licensing scheme**

### **47 Applications for licences**

- (1) An application may be made to the EPA for a licence.
- (2) An application must:
- (a) be in the form approved by the EPA, and
  - (b) be accompanied by the fee prescribed by the regulations.
- (3) An application for a licence must, if required by the EPA but subject to the regulations, be accompanied by an environmental management plan.
- (4) The EPA may, by written notice served on the applicant for a licence, require the applicant to provide the EPA with such information as the EPA considers necessary and relevant to the application and as is specified in the notice. The EPA may refuse to grant the licence until it receives the information.
- (5) Different application fees may be prescribed by the regulations for the purposes of this section:
- (a) in respect of such different classes of controlled waste facilities, or such different volumes of waste received at controlled waste facilities, as may be prescribed, or
  - (b) in respect of licences authorising a person to carry out a controlled waste activity—according to such different classes of controlled waste activities as may be prescribed, or
  - (c) in respect of licences authorising a person to transport waste to which section 46 applies—according to the prescribed class or quantity of waste proposed to be transported by the person, or
  - (d) according to such other factors as may be prescribed.

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- (6) The regulations may also make provision for the remittal, reduction and refund of application fees in such circumstances as may be prescribed.

#### **48 Putrescible landfill sites—licensing arrangements**

- (1) This section applies to controlled waste facilities that are putrescible landfill sites. More than one occupier can be required to hold a licence in respect of such a waste facility.
- (2) A licence in respect of a waste facility to which this section applies may be granted to a person other than a public authority only if a public authority holds a separate licence granted in respect of the waste facility (referred to in this section as a *supervisory licence*).
- (3) In granting a supervisory licence, the EPA is to impose conditions on the licence with respect to the following matters:
- (a) the types and volume of waste received at the waste facility,
  - (b) the design of the waste facility (being a waste facility established after the commencement of this section),
  - (c) the separation, re-use, reprocessing and recycling of waste received at the facility.
- (4) In granting a licence to an occupier of a waste facility to which this section applies who is not a public authority, the EPA is to impose a condition on the licence requiring the occupier to charge for the disposal of putrescible waste at the waste facility in accordance with the directions of the public authority holding the supervisory licence.
- (5) An application by a public authority for a supervisory licence must specify the arrangements under which the public authority has the capacity to exercise control over the waste facility with respect to the matters referred to in subsection (3).

#### **49 Determination of applications for licences**

- (1) The EPA may:
- (a) grant a licence in respect of an application, or
  - (b) refuse any such application.

- (2) In considering an application for a licence, the EPA is to take the following matters into consideration:
  - (a) the practical measures to be taken to prevent, control, abate or mitigate pollution and to protect the environment,
  - (b) any of the objects of this Act, and any of the EPA's objectives, that the EPA considers to be relevant to the application,
  - (c) any environmental management plan submitted by the applicant,
  - (d) any industry waste reduction plan that applies to the applicant,
  - (e) any regional waste plan relevant to the application,
  - (f) the practical measures proposed to be taken in order to achieve the integration of all phases of the waste management hierarchy as referred to in section 3,
  - (g) such other matters as the EPA considers to be relevant.
- (3) The EPA must not refuse an application unless before doing so:
  - (a) it has given notice to the applicant of its intention to refuse the application, and
  - (b) it has specified in the notice the reasons for its intended refusal, and
  - (c) it has given the applicant a reasonable opportunity to make submissions to it, and
  - (d) it has taken into consideration any such submissions by the applicant.

#### **50 Duration and transfer of licences**

- (1) Subject to this Act, a licence remains in force for a period of one year from the date specified in the licence and may be renewed from time to time.
- (2) A licence may, if requested by the applicant or if determined by the EPA, be granted or renewed for a specified period of less than one year.
- (3) A licence may, with the approval of the EPA and on payment of the prescribed fee, be transferred.

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**51 Register of licences**

- (1) The EPA is required to keep a register of licences in accordance with this section.
- (2) The EPA must record in the register the following:
  - (a) such information as the EPA considers appropriate in relation to each application for a licence,
  - (b) each determination of the EPA made in respect of an application for a licence,
  - (c) the name and address of each holder of a licence,
  - (d) the terms and conditions of each licence,
  - (e) details of any suspension, cancellation or surrender of a licence,
  - (f) such other information as is prescribed by the regulations.
- (3) The register may be kept in any form determined by the EPA.
- (4) A copy of the register is to be available for public inspection at the principal office of the EPA.
- (5) A copy of any part of the register may be obtained by members of the public from the EPA.
- (6) The regulations may prescribe any or all of the following:
  - (a) the hours when the register can be inspected and when copies can be obtained,
  - (b) fees for the inspection of the register,
  - (c) fees for copies of parts of the register.

The register can be inspected or copies can be obtained during ordinary office hours, and on payment of fees determined by the EPA, in the absence of regulations prescribing these matters.

**52 Revocation or suspension of licences**

- (1) The EPA may, during the currency of a licence, by notice in writing served on the licensee, revoke the licence or suspend it for such period as the EPA thinks fit.

- (2) Without limiting the grounds on which the EPA may revoke or suspend a licence, the EPA may do so if it is satisfied that the licensee has contravened any provision of this Act or the regulations or any conditions of the licence.
- (3) The revocation or suspension of a licence:
  - (a) if the licensee is a person other than a public authority—takes effect as provided by section 76 (Effect of decisions subject to appeal), or
  - (b) if the licensee is a public authority—has no effect until the expiry of 21 days after the EPA has given the public authority notice of its decision and, if within that time the EPA or the public authority, in accordance with section 78 (Licence disputes between EPA and public authorities), refers a dispute arising out of the decision, until the decision is confirmed under that section.
- (4) The EPA must not decide to revoke or suspend a licence unless before doing so:
  - (a) it has given notice to the licensee of its decision, and
  - (b) it has specified in the notice the reasons for its decision, and
  - (c) it has given the applicant a reasonable opportunity to make submissions to it, and
  - (d) it has taken into consideration any such submissions by the applicant.

### **Division 3 Licence conditions**

#### **53 Conditions generally**

- (1) A licence may be granted either subject to conditions or unconditionally.
- (2) The EPA may impose conditions on a licence that require the licensee to provide to the EPA, in such manner and form as may be approved by the EPA, information relating to the creation, collection, handling, transportation, treatment, reprocessing, recycling, re-use and disposal of waste.
- (3) Nothing in this Division limits the generality of the conditions that the EPA can impose on a licence.

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**54 Offence of contravening licence conditions**

Any person who, being the holder of a licence, contravenes any condition of the licence is guilty of an offence against the *Environmental Offences and Penalties Act 1989*.

**55 Licence conditions for controlled waste facilities**

The conditions that may be imposed by the EPA on a licence granted in respect of a controlled waste facility include the following:

- (a) conditions relating to the handling or disposal of waste received at the waste facility,
- (b) conditions requiring the licensee to take only certain classes and quantities of waste at the waste facility, or requiring the licensee to refuse to accept certain classes and quantities of waste at the waste facility,
- (c) conditions requiring the licensee to provide incentives to encourage the separation of waste delivered to the waste facility,
- (d) conditions requiring the licensee to prepare, and comply with, an environmental management plan (which may, among other things include a closure plan as referred to in section 59) in respect of the waste facility,
- (e) conditions requiring compliance with any industry waste reduction plan applying to the licensee,
- (f) conditions requiring the licensee to monitor and report on compliance with the licensing conditions,
- (g) conditions requiring the licensee to carry out environment protection activities and site remediation work,
- (h) conditions requiring the holder of the licence to provide financial assurance for site remediation work.

**56 Licence conditions for controlled waste activities**

The conditions that may be imposed by the EPA on a licence authorising a person to carry out controlled waste activities include the following:

- (a) conditions relating to the storage, handling, treatment and processing of waste,



- (b) conditions imposing responsibility on the licensee for the proper disposal of waste transported from any premises occupied by the licensee,
- (c) conditions requiring the licensee to report to the EPA on any matters concerning waste transported from such premises,
- (d) conditions requiring compliance with any industry waste reduction plan applying to the licensee,
- (e) conditions requiring the licensee to prepare, and comply with, an environmental management plan,
- (f) conditions requiring the licensee to monitor compliance with the licence conditions,
- (g) conditions requiring the licensee to implement a re-use, recycling or take-back and utilisation scheme in respect of any product or item manufactured or sold by the licensee that creates waste,
- (h) conditions requiring the licensee to carry out environment protection activities and site remediation work,
- (i) conditions requiring the holder of the licence to provide financial assurance for site remediation work.

#### **57 Licence conditions for transporters of waste**

The conditions that may be imposed by the EPA on a licence authorising a person to transport waste to which section 46 applies include the following:

- (a) conditions relating to the construction, maintenance and cleaning of any container, vehicle or vessel used by the licensee for the transportation of waste,
- (b) conditions relating to the times during which, the routes along which, and the waste facilities to which, waste may be transported by the licensee,
- (c) conditions imposing responsibility on the licensee for the proper handling and disposal of waste transported by the licensee,
- (d) conditions requiring the licensee to monitor and report on compliance with the licensing conditions.

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**58 Amendment of licence conditions**

- (1) The EPA may, during the currency of a licence, by notice in writing served on the licensee:
  - (a) revoke or vary any conditions attached to the licence, or
  - (b) attach new conditions to the licence.
- (2) The revocation or variation of any conditions attached to a licence or the attaching of new conditions to a licence:
  - (a) if the licensee is a person other than a public authority — takes effect as provided by section 76 (Effect of decisions subject to appeal), or
  - (b) if the licensee is a public authority — has no effect until the expiry of 21 days after the EPA has given the public authority notice of its decision and, if within that time the EPA or the public authority, in accordance with section 78 (Licence disputes between EPA and public authorities), refers a dispute arising out of the decision, until the decision is confirmed under that section.

**Division 4 Post-closure requirements****59 Completion of controlled waste facility operations**

- (1) In this section, *last licensee* means the person who was the holder of a licence granted in respect of a controlled waste facility and in force immediately before the waste facility ceased operations. For the purposes of this section, a controlled waste facility is taken to have ceased operations if the EPA revokes a licence granted in respect of the waste facility or a licensee fails to renew such a licence.
- (2) Within 3 months from the time a controlled waste facility ceases operations, the last licensee is required to submit to the EPA a closure plan in relation to the premises concerned.

- (3) Such a closure plan must:
  - (a) be consistent with any environmental management plan relating to the waste facility, and
  - (b) specify the steps taken (or to be taken) in closing and stabilising the premises concerned and the time-frame for doing so, and
  - (c) provide for a post-closure monitoring and maintenance program, and
  - (d) identify any proposed future uses of the premises.
- (4) The EPA may approve the closure plan as submitted to it, or it may vary the plan before approving it.
- (5) If the last licensee fails to submit a closure plan in accordance with this section, or the EPA does not approve the plan, the EPA may direct the person by notice in writing:
  - (a) to adopt and implement a program specified by the EPA for the monitoring and rehabilitation of the site, and
  - (b) to report to the EPA on such matters relating to the on-going maintenance of the site as the EPA may specify.
- (6) A person who is a last licensee is guilty of an offence against the *Environmental Offences and Penalties Act 1989* if the person:
  - (a) fails to comply with the requirements of a closure plan as approved by the EPA, or
  - (b) fails to comply with a direction by the EPA under subsection (5).

## **Division 5 Financial assurances**

### **60 EPA may require financial assurance**

- (1) The EPA may require a holder of a licence granted in respect of a controlled waste facility to provide and maintain a financial assurance.
- (2) A financial assurance may be required:
  - (a) for the purpose of securing or guaranteeing funding towards the payment of the costs and expenses of carrying out site remediation work, and
  - (b) to be maintained until site remediation work has been completed.

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- (3) A financial assurance may be in one or more of the following forms:
- (a) a bank guarantee of money or letter of credit,
  - (b) a bond,
  - (c) an insurance policy,
  - (d) a third party guarantee,
  - (e) a fund established and maintained by a public authority,
  - (f) any other form of security that the EPA considers appropriate.
- (4) The EPA cannot require a financial assurance to be provided unless it is satisfied that the assurance is justified having regard to:
- (a) the degree of risk of environmental harm associated with the activities to be carried out, or
  - (b) the likelihood of action being required to carry out site remediation work because of activities to be carried out under the licence, or
  - (c) the environmental record of the holder of the licence, or
  - (d) any other matters prescribed by the regulations.
- (5) The amount of a financial assurance is to be as determined by the EPA. However, the EPA must not require a financial assurance of an amount more than the amount that, in the EPA's opinion, represents a reasonable estimate of the total likely costs and expenses that may be incurred in carrying out site remediation work.
- (6) A financial assurance may be called on only with the written authorisation of the EPA.

### **61 Calling on financial assurance**

A financial assurance (or any part of it specified by the EPA) may be called on by the EPA if the EPA:

- (a) is satisfied that the last licensee (as referred to in section 59) has failed to comply with the requirements of a closure plan as approved by the EPA under that section, or

- (b) is satisfied that a licensee has contravened any condition of the licence relating to site remediation work, or
- (c) incurs or proposes to incur costs or expenses in taking action that is covered by the financial assurance.

## **62 Lapsing of financial assurance**

- (1) The requirement to provide a financial assurance lapses and no longer binds the person who was required to provide it if the EPA is satisfied:
  - (a) that site remediation work has been completed in accordance with a post-closure plan approved by the EPA under section 59, and
  - (b) that further environmental management of the premises is not required.
- (2) The person may provide the EPA with a certified statement of completion to the effect that site remediation work has been completed and that further environmental management of the premises is not required. If the EPA approves the statement, the requirement for provision of financial assurance lapses.

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## Part 6 Waste disposal offences

### 63 Unlawful disposal of waste on land

- (1) If a person, without lawful authority, disposes of waste on any land, the person and, if the person is not the owner of the waste, the owner, are each guilty of an offence against the *Environmental Offences and Penalties Act 1989*.
- (2) A person is taken to have disposed of waste with lawful authority:
  - (a) in the case of disposal of waste in or on a public place—if the person has disposed of the waste with the consent of the relevant public authority, or in accordance with any conditions specified by the relevant public authority in relation to the disposal of waste in or on the public place, or
  - (b) in the case of the disposal of waste on land not being a public place—if the person has disposed of the waste on land owned or occupied by the person or on land with the consent of both the owner and occupier of that land.
- (3) If the owner of the waste is not the person who allegedly disposed of the waste, it is a defence to a prosecution in relation to the owner for the owner to prove:
  - (a) that the commission of the offence was due to causes over which the owner had no control, and
  - (b) that the owner took reasonable precautions and exercised due diligence to prevent the commission of the offence.
- (4) In any proceedings for an offence arising under this section, the onus of proving that a person had lawful authority to dispose of the waste concerned lies with that person.
- (5) In this section:
  - (a) a reference to the disposal of waste includes a reference to the dumping, abandoning or depositing of any thing that constitutes waste, and
  - (b) a reference to the disposal of waste includes a reference to causing, permitting or allowing the disposal of waste, and

- (c) a reference to land does not include waters within the meaning of the Clean Waters Act 1970, and
- (d) a reference to the owner of waste includes, in relation to waste that has been disposed of, a reference to the person who was the owner of the waste immediately before it was disposed of, and
- (e) a reference to a public place includes a reference to a public place within the meaning of the Local Government Act 1993, a State forest or a flora reserve within the meaning of the Forestry Act 1916 and a national park, state recreation area, historic site, nature reserve, state game reserve or Aboriginal area within the meaning of the *National Parks and Wildlife Act 1974*, and
- (f) a reference to the relevant public authority, in relation to a public place, is a reference to the public authority or other person in whom that place is vested or who has the care, control or management of that place.

#### **64 Unlawful use of land as waste facility**

- (1) If a person, being the owner or occupier of any land, causes, permits or allows the land to be used as a waste facility without lawful authority, the person is guilty of an offence against the *Environmental Offences and Penalties Act 1989*.
- (2) In any proceedings for an offence arising under this section, the onus of proving that a person had lawful authority to cause, permit or allow land to be used as a waste facility lies with that person.

## Part 7 Enforcement provisions

### 65 Directions by authorised officers

- (1) An authorised officer may, by notice in writing given to any person, give a direction to that person with respect to the transportation, collection, reception, treatment, re-use, reprocessing, storage and disposal of any waste created by, or in the possession or under the control of, that person.
- (2) If any such direction would cause a person to be in breach of any of the provisions of the regulations or any condition attached to a licence, the direction may only be given in circumstances that the officer considers to be an emergency.
- (3) A person who neglects or fails to comply with any such direction is guilty of an offence against the *Environmental Offences and Penalties Act 1989* even though compliance with the direction would cause the person to be in breach of any of the provisions of the regulations or any condition attached to a licence.
- (4) A person is not guilty of an offence against any Act or regulation because of anything done in compliance with a direction given under subsection (1).

### 66 Power of authorised officers to require information to be given

- (1) An authorised officer may require a person whom the authorised officer suspects on reasonable grounds to have knowledge of matters in respect of which information is reasonably required for the administration or enforcement of this Act to answer questions in relation to those matters.
- (2) A person who neglects or fails to comply with any such requirement is guilty of an offence against the *Environmental Offences and Penalties Act 1989* even though to do so might incriminate the person or make the person liable for an offence.
- (3) A person is not required to answer a question unless the person was warned on that occasion that a failure to comply is an offence.



- (4) Any answer given by an individual under this section is not admissible in evidence in any proceedings against the person (other than for an offence referred to in section 85) if the person objected at the time of giving it to doing so on the ground that it might tend to incriminate the person.
- (5) Further information obtained as a result of information in an answer given under this section is not inadmissible on the ground that the question had to be answered or that the answer might incriminate any person.

#### **67 Directions by EPA to occupiers of unlicensed waste facilities**

- (1) The EPA may, by notice in writing, give a direction to the occupier of a waste facility (not being a controlled waste facility) with respect to the treatment, reprocessing, sorting or disposal of waste at the waste facility.
- (2) A person who neglects or fails to comply with any such direction is guilty of an offence against the *Environmental Offences and Penalties Act 1989*.

#### **68 EPA may require persons to provide information**

- (1) The EPA may, by notice in writing, require any person to provide the EPA with such information or other data in the person's possession (or that is within the person's power to lawfully obtain) in connection with the transportation, collection, reception, treatment, re-use, reprocessing, storage and disposal of any waste created by, or in the possession or under the control of, that person.
- (2) A person who neglects or fails to comply with any such requirement is guilty of an offence against the *Environmental offences and Penalties Act 1989*.
- (3) Any information provided by an individual under this section is not admissible in any proceedings against the person (other than for an offence referred to in section 85) if the person objected at the time of providing it to doing so on the ground that it might tend to incriminate the person.

**69 Inquiries**

- (1) The EPA must, if required by the Minister, and may, of its own motion, inquire into and make a report and recommendation to the Minister on any matter or thing relating to the creation, transportation, collection, reception, storage, treatment or disposal of waste or otherwise relating to waste.
- (2) The EPA, for the purpose of conducting any such inquiry, may, by notice in writing served on any person, require the person:
  - (a) within such reasonable time as may be specified in the notice, to provide the EPA with such information, and to produce such books, documents or other papers in the person's possession or under the person's control, as may be required for the purpose of the inquiry and as may be specified in the notice, or
  - (b) to attend at a time and place specified in the notice before the EPA, and at such other times as may be required by the EPA, to give evidence concerning any matter the subject of the inquiry and to produce all such books, documents or papers in the person's possession or the person's control as may be required for the purpose of the inquiry and as may be specified in the notice.
- (3) The EPA may, for the purpose of conducting an inquiry under this section, and subject to section 13 of the *Oaths Act 1900*, require any such evidence to be given on oath, and either in writing or orally, and for that purpose the person presiding at the inquiry may administer an oath.
- (4) A person who:
  - (a) neglects or fails to comply with the requirements of a notice served on the person under this section, or
  - (b) provides any information required by a notice under this section that is false or misleading in a material particular, or
  - (c) gives any evidence in connection with an inquiry under this section that is false or misleading in a material particular,

is guilty of an offence against the *Environmental Offences and Penalties Act 1989*.

- (5) It is a sufficient defence to a prosecution for an offence arising under subsection (4) if the defendant proves that the defendant believed the truth of the information or evidence given and that it was given in good faith.
- (6) The regulations may prescribe scales of expenses to be allowed to persons for attending or giving evidence under this section.

## **70 Power of entry and inspection**

- (1) An authorised officer may, for the purpose of determining whether a person is contravening or has contravened this Act or the regulations:
  - (a) enter any one or more of the following premises:
    - (i) a waste facility at any time,
    - (ii) any premises in or on which an industry is carried on, including any premises used in connection with a factory, at any time, and
  - (b) exercise in those premises the functions specified in subsection (2).
- (2) The functions that may be exercised in premises entered by an authorised officer are as follows:
  - (a) the authorised officer may conduct such investigations, make such inquiries, examinations, tests and inspections, and take such samples and recordings, as the officer considers necessary,
  - (b) the authorised officer may require the occupier of the premises to produce to the officer any records or documents relating to the activities carried on at the premises,
  - (c) the authorised officer may require the occupier of the premises to provide such reasonable assistance and facilities as may be requested by the officer.
- (3) An authorised officer is not entitled to exercise the powers conferred by this section in relation to any part of any premises used for residential purposes, except:
  - (a) with the consent of the occupier of the premises, or
  - (b) under the authority conferred by a search warrant issued under section 71.

- (4) A person who:
- (a) obstructs an authorised officer in the exercise of the officer's functions under this section, or
  - (b) being the occupier of any premises, fails or refuses to comply with a requirement by an authorised officer under this section,

is guilty of an offence against the *Environmental Offences and Penalties Act 1989*.

- (5) In this section, **obstruct** includes delay or hinder.

#### **71 Search warrants**

- (1) An authorised officer may apply to an authorised justice for the issue of a search warrant if the authorised officer believes on reasonable grounds that a provision of this Act or the regulations is being or has been contravened on any premises.
- (2) An authorised justice to whom such an application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising an authorised officer named in the warrant:
- (a) to enter the premises, and
  - (b) to exercise any function of an authorised officer under section 70.
- (3) Part 3 of the *Search Warrants Act 1985* applies to a search warrant issued under this section.
- (4) In this section, **authorised justice** has the same meaning as in the *Search Warrants Act 1985*.

## **Part 8 Financial provisions**

### **72 Contributions by occupiers of controlled waste facilities**

- (1) Nothing in this section applies to a controlled waste facility that is used solely for the purposes of re-using, recycling or reprocessing waste as determined by the EPA.
- (2) The occupier of a controlled waste facility is required to pay to the EPA in respect of all waste received at the waste facility such contribution as may be prescribed by the regulations.
- (3) The contribution payable by an occupier must be paid at such intervals, and in such manner, as the EPA may direct by notice in writing given to the occupier.
- (4) An occupier who fails to pay any such contribution within the due time specified by the EPA is guilty of an offence against the *Environmental Offences and Penalties Act 1989*.
- (5) The regulations may:
  - (a) provide for contributions to be calculated on such basis, and in accordance with such factors, as may be specified in the regulations, and
  - (b) provide for the exemption of specified occupiers, or specified classes of occupiers, from the requirement to pay contributions, and
  - (c) provide for the exemption of specified wastes from the calculation of contributions (including, for example, wastes that are recycled, reprocessed or re-used), and
  - (d) provide for the payment of rebates to specified occupiers or specified classes of occupiers.
- (6) Any contribution payable by the occupier of a controlled waste facility under this section becomes, if it is not paid in accordance with this section and the regulations, a debt due to the EPA that is recoverable in any court of competent jurisdiction.
- (7) Interest is payable on any unpaid contribution under this section at such rate and calculated in such manner as may be prescribed by the regulations. Any such interest may be recovered in the same way as the contribution is recovered.

**73 Waste Planning and Management Fund**

- (1) There is to be established a Waste Planning and Management Fund into which is to be paid:
  - (a) such money as may be appropriated by Parliament for payment into the Fund, and
  - (b) such money as may be given to the EPA for the express purpose of payment into the Fund, and
  - (c) the proceeds of the investment of money in the Fund, and
  - (d) such money as may by law be required to be paid into the Fund.
- (2) Money in the Fund may:
  - (a) be allocated with the Minister's authorisation only, and
  - (b) be spent in connection with waste reduction and management at State, regional and local government levels, and in connection with enforcement and regulation at regional and local government levels, and
  - (c) be allocated to Waste Boards on such basis as the Minister considers appropriate, and
  - (d) be carried forward in the Fund if it is not spent during the year in which it was paid into the Fund.
- (3) The Minister is to seek the advice of SWAC regarding the development of policy for the allocation of money from the Fund, the setting and variation of any contributions under clause 72 and the procedures by which the contributions are imposed on the occupiers of controlled waste facilities.
- (4) SWAC is to devise a formula for the apportioning of money allocated from the Fund for the purposes of waste related initiatives at State and regional levels. Such a formula is to specify the minimum proportion that is to be allocated for funding associated with regional waste initiatives.

**74 Investment of money in Fund**

The EPA may invest money in the Fund:

- (a) in the manner authorised by the *Public Authorities (Financial Arrangements) Act 1987*, or
- (b) if that Act does not confer power on the EPA to invest the money, in any other manner approved by the Treasurer.

## **Part 9 Appeals and disputes**

### **75 Right to appeal to Court—licensing decisions and notices concerning IWRPs**

- (1) A person (other than a public authority) who is aggrieved by a decision of the EPA regarding:
  - (a) the refusal to grant a licence, or the granting of a licence subject to conditions, or
  - (b) the revocation or suspension of a licence, or
  - (c) the amendment of the conditions of a licence, or
  - (d) a notice under section 39 (Contravention of IWRPs),may appeal to the Court against the decision.
- (2) An appeal is to be made within 21 days after the date the EPA gave notice of its decision to the person.

### **76 Effect of decisions subject to appeal**

A decision of the EPA to revoke or suspend a licence, or to amend the conditions of a licence, or a decision of the EPA under section 39 to require a person to rectify a contravention of an IWRP, takes effect:

- (a) on the date specified in the notice served on the person in respect of whom the decision is made (being a date not earlier than 21 days after the notice is served on the person), or
- (b) if an appeal is made within that 21 days, on the date the decision is confirmed or the appeal is withdrawn, or on such earlier date as the Court otherwise orders.

### **77 Determination of appeal**

- (1) The Court may determine the appeal:
  - (a) by dismissing it and by confirming the decision appealed against, or
  - (b) by upholding the appeal and directing the EPA to take such action under this Act or the regulations as the Court thinks appropriate.
- (2) The decision of the Court on the matter appealed against is final and is binding on the appellant and the EPA.

**78 Licence disputes between EPA and public authorities**

- (1) If a dispute arises between the EPA and a public authority with respect to a decision of the EPA:
  - (a) to refuse an application made by the public authority for a licence, or
  - (b) to grant a licence to the public authority subject to conditions, or
  - (c) to revoke or suspend a licence granted to the public authority, or
  - (d) to revoke or vary any condition attached to a licence., or attach a new condition to a licence, granted to the public authority,

the EPA or the public authority may, within 21 days after the decision was notified by the EPA to that public authority, refer the dispute to the Premier (or to the Minister if the public authority is a council) for settlement in accordance with this section.

- (2) On the referral of a dispute to the Premier or the Minister, the Premier or Minister may appoint a person to hold an inquiry and make a report to the Premier or Minister with respect to the dispute.
- (3) After the completion of an inquiry and, if a report is made under subsection (2), after consideration of that report, the Premier or the Minister may make such orders with respect to the dispute as the Premier or Minister thinks fit.
- (4) Any such order may direct the payment of any costs or expenses of or incidental to the holding of the inquiry.
- (5) The EPA or public authority to which any such order is given must comply with that order.
- (6) An order by the Premier or Minister under this section is final and is taken to be the decision of the EPA.



**79 Disputes concerning IWRPs and regional waste plans**

If a dispute arises in connection with the approval by the Minister of an industry waste reduction plan or a regional waste plan, the Minister may appoint an independent facilitator who is to consult with such persons as the facilitator considers appropriate in order to settle the dispute. The independent facilitator is to report to the Minister on the matter that is the subject of the dispute within 21 days from the date of the facilitator's appointment.

## **Part 10 Miscellaneous**

### **80 Delegation by Minister**

The Minister may delegate to the EPA any of the Minister's functions under the following provisions:

- (a) section 10 (3) (a) and (b) and (4) (relating to nominations or submissions from councils and appointment of facilitator),
- (b) section 19 (7) and (8) (approval of regional waste plans),
- (c) section 27 (2) (relating to how certain money can be spent),
- (d) section 73 (2) (relating to the Fund).

### **81 Appointment of authorised officers**

- (1) The EPA may appoint any person (including a class of persons) as an authorised officer for the purposes of this Act.
- (2) The authority of an authorised officer may be limited by the relevant instrument of appointment to the functions specified in the instrument of appointment.
- (3) An authorised officer cannot exercise the functions of an authorised officer under this Act unless the officer is in possession of an identification card issued by the EPA.
- (4) In the course of exercising the functions of an authorised officer under this Act, the officer must, if requested to do so by any person, produce the officer's identification card to the person.

### **82 Evidence**

- (1) A certificate signed by the Director-General of the EPA, or by an officer of the EPA authorised by the Director-General, certifying any one or more of the following:
  - (a) that a written notice, order or direction purporting to be given under this Act, and a copy of which is set out or annexed to the certificate, was given on a day specified in the certificate,

- (b) that a controlled waste facility was or was not, at a time or during a period so specified, licensed under this Act,
- (c) that a waste generating or handling activity was or was not, at a time or during a period so specified, a controlled waste activity,
- (d) that a person was or was not, at a time or during a period so specified, the holder of a licence granted in respect of a controlled waste facility so specified,
- (e) that a person who is carrying out a controlled waste activity was or was not, at a time or during a period so specified, the holder of a licence authorising the person to carry out that activity,
- (f) that a person who transports waste to which section 46 applies was or was not, at a time or during a period so specified, the holder of a licence authorising the person to transport that waste,
- (g) that a licence was, at a time or during a period so specified, subject to conditions so specified,
- (h) that a licence was, at a time or during a period so specified, suspended or revoked,
- (i) that a person was, at a time or during a period so specified, the owner of waste,
- (j) that a person was, at a time or during a period so specified, the owner or occupier of land,
- (k) that a person was, at a time or during a period so specified, an authorised officer,
- (1) that any consent necessary for bringing proceedings for an offence arising under this Act or the regulations has been duly given,

is admissible in any proceedings under this Act or any other Act and is prima facie evidence of the matters so specified.

- (2) In proceedings for an offence arising under this Act or the regulations, a certificate under subsection (1) that is admitted in evidence and that certifies that a person was, at a time or during a period, the holder of a licence granted in respect of a controlled

waste facility is to be accepted by the Court as evidence of the truth of an allegation that the person was, at that time or during that period, an occupier of the waste facility unless the contrary is proved.

### **83 Fees for services**

The EPA may charge, unless the fees are prescribed by the regulations, such reasonable fees as it determines for the supply of any services (including providing copies of licences) under this Act or the regulations.

### **84 Service of notices**

Any notice under this Act or the regulations that is required to be served or given to a person may be served or given:

- (a) by delivering it personally to the person to whom it is addressed, or
- (b) by delivering it to the place of residence or business of the person to whom it is addressed and by leaving it there for the person with some other person, or
- (c) by posting it to the person to whom it is addressed to the place known to the EPA as the person's place of residence or business.

### **85 Offence of providing false information**

A person is guilty of an offence against the *Environmental Offences and Penalties Act 1989* if the person:

- (a) in connection with an application for a licence, or
- (b) in complying with a requirement under section 66 or 68, provides any information, or makes any statement, that is false or misleading in a material respect.

### **86 Disclosure of information**

- (1) A person is guilty of an offence against the *Environmental Offences and Penalties Act 1989* if the person discloses any information relating to any manufacturing or other industrial or

commercial secrets or working processes and obtained in connection with the administration or execution of this Act or the regulations, unless the disclosure:

- (a) is made with the consent of the person from whom the information was obtained, or
  - (b) is made in connection with the administration or execution of this Act or the regulations, or
  - (c) is made with the prior permission of the Minister, or
  - (d) is ordered by a court, or by any other body or person authorised by law to examine witnesses, in the course of, and for the purpose of, the hearing and determination by that court, body or person of any matter, or
  - (e) is made by an authorised officer to an officer or authority engaged in administering or executing a law of the Commonwealth or of another State or a Territory relating to waste management or to the protection of the environment, or
  - (f) is made with other lawful excuse.
- (2) However, nothing in this section enables the EPA to disclose information obtained under section 34 (2) in a manner that would disadvantage or prejudice the person providing it because of its commercial value.
- (3) The Minister is not to grant the permission referred to in subsection (1) (c) unless satisfied that to do so would be in the public interest.

## **87 Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Without affecting the generality of subsection (1), the regulations may make provision for or with respect to the following:
  - (a) the operation of waste facilities, and the treatment, storage, reprocessing, recycling or disposal of waste at waste facilities, whether or not required to be licensed under this Act,

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- (b) the transportation of waste by persons (whether or not required to be licensed under this Act),
  - (c) the collection, storage, creation, handling, reprocessing, recycling and disposal of waste,
  - (d) the construction or maintenance of containers, vehicles and vessels used for the transportation of waste,
  - (e) the granting, renewal, refusal, revocation, suspension or transfer of licences,
  - (f) the matters authorised to be included in industry waste reduction plans,
  - (g) the preparation, monitoring and enforcement of IWRPs,
  - (h) the formation of waste management regions and the constitution of Waste Boards,
  - (i) the preparation and implementation of regional waste plans,
  - (j) such matters arising from the alteration of the boundaries of local government areas as may be necessary to give effect to Part 3,
  - (k) the appointment of an administrator under Part 3,
  - (l) the assets, rights and liabilities of a Waste Board that is dissolved under Part 3.
- (3) The regulations may require information relating to the operation of waste facilities (whether or not required to be licensed under this Act) to be provided in such manner and in such circumstances as may be prescribed.
- (4) The regulations may exempt any persons or class of persons, or any premises or class of premises, from any provision of this Act in such circumstances, and subject to such conditions, as may be specified in the regulations.
- (5) Any person who contravenes a provision of a regulation is guilty of an offence against the *Environmental Offences and Penalties Act 1989* and is liable to the penalty imposed by the regulations in respect of the offence in accordance with the *Environmental Offences and Penalties Act 1989*.

## **88 Savings and transitional provisions**

Schedule 5 has effect.

## **89 Amendment of other Acts**

The Acts specified in Schedule 6 are amended as set out in that Schedule.

## **90 Repeals**

The following Regulations are repealed:

- (a) the *Metropolitan Waste Disposal Authority Registration and Licensing Regulation*,
- (b) the *Waste Disposal (Depot Contributions) Regulations 1971*.

## **91 Review of Act**

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) In particular, the Minister is to have regard to the establishing of new waste reduction targets after 2000.
- (3) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (4) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

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## Schedule 1 Provisions relating to members and procedure of SWAC

(Section 7)

### 1 Definition

In this Schedule, *member* means any member of the State Waste Advisory Council.

### 2 Chairperson of SWAC

- (1) One of the members of SWAC is to be appointed by the Minister as the chairperson of SWAC. Any such appointment may be made at the time the person is appointed as a member or after that appointment.
- (2) The Minister may at any time remove a member from the office of chairperson of SWAC.
- (3) A person who is a member and chairperson of SWAC vacates the office of chairperson if the person:
  - (a) is removed from that office under this clause, or
  - (b) resigns that office by instrument in writing addressed to the Minister, or
  - (c) ceases to be a member.

### 3 Deputies of members

- (1) The Minister may, from time to time, appoint a person to be the deputy of a member of SWAC, and the Minister may revoke any such appointment.
- (2) In the absence of a member, the member's deputy:
  - (a) may, if available, act in the place of the member, and
  - (b) while so acting, has all the functions of the member and is to be taken to be a member.
- (3) The deputy of a member who is chairperson of SWAC does not (because of this clause) have the member's functions as chairperson.



- (4) A person while acting in the place of a member is entitled to be paid such allowances as the Minister may from time to time determine in respect of the person.

**4 Terms of office**

Subject to this Schedule, a member holds office for such period (not exceeding 2 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

**5 Allowances**

A member is entitled to be paid such allowances as the Minister from time to time determines in respect of the member.

**6 Vacancy in office of member**

- (1) The office of a member becomes vacant if the member:
- (a) dies, or
  - (b) completes a term of office and is not re-appointed, or
  - (c) resigns the office by instrument in writing addressed to the Minister, or
  - (d) is removed from office under this clause, or
  - (e) is absent from 4 consecutive meetings of SWAC of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by SWAC or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by SWAC for having been absent from those meetings, or
  - (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
  - (g) becomes a mentally incapacitated person, or
  - (h) is convicted in New South Wales of an offence that is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.
- (2) The Minister may remove a member from office at any time.

## **7 Filling of vacancy in office of member**

If the office of a member becomes vacant, a person may, subject to this Act, be appointed to fill the vacancy.

## **8 Disclosure of pecuniary interests**

- (1) A member who has a direct or indirect pecuniary interest:
  - (a) in a matter that is being considered, or is about to be considered, at a meeting of SWAC, or
  - (b) in a thing being done or about to be done by SWAC,must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of SWAC.
- (2) A disclosure by a member at a meeting of SWAC that the member:
  - (a) is a member, or is in the employment, of a specified company or other body, or
  - (b) is a partner, or is in the employment, of a specified person, or
  - (c) has some other specified interest relating to a specified company or other body or a specified person,is taken to be a sufficient disclosure of the nature of the interest in any matter or thing relating to that company or other body or to that person which may arise after the date of the disclosure.
- (3) Particulars of any disclosure made under this clause are to be recorded by the members in a book kept for the purpose and that book is to be open at all reasonable hours to inspection by any person.
- (4) After a member has, or is taken to have, disclosed the nature of an interest in any matter or thing pursuant to subclause (1) or (2), the member must not, unless the Minister otherwise determines:

- (a) be present during any deliberation of the members, or take part in any decision of SWAC, with respect to that matter, or
  - (b) exercise any functions under this Act with respect to that thing.
- (5) A contravention of this clause does not invalidate any decision of SWAC.

#### **9 Effect of certain other Acts**

- (1) Part 2 of the *Public Sector Management Act 1988* does not apply to or in respect of the appointment of a member.
- (2) If by or under any Act provision is made:
  - (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
  - (b) prohibiting the person from engaging in employment outside the duties of that office,the provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Act as a member.
- (3) The office of a member is not, for the purposes of any Act, an office or place of profit under the Crown.

#### **10 General procedure**

The procedure for the calling of meetings of SWAC and for the conduct of business at those meetings is, subject to this Act and the regulations and to any direction of the Minister, to be as determined by SWAC.

#### **11 Quorum**

The quorum for a meeting of SWAC is 5 members.

## **12 Presiding member**

- (1) The chairperson of SWAC or, in the absence of the chairperson, another member elected to chair the meeting by the members present is to preside at a meeting of SWAC.
- (2) The person presiding at any meeting of SWAC has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

## **13 Voting**

A decision supported by a majority of the votes cast at a meeting of SWAC at which a quorum is present is the decision of SWAC.

## **14 Minutes of meetings**

SWAC is required to keep minutes of proceedings at its meetings and to furnish to the Minister a copy of the minutes of each meeting within 14 days after the meeting was held.

## **15 First meeting**

The Minister may call the first meeting of SWAC in such manner as the Minister thinks fit.

**Schedule 2 Description of waste management regions**

(Sections 10 and 12)

*Name of waste management region*      *Local government areas*

**Schedule 3 Names of Waste Boards**

(Sections 13 and 29)

*Name of Waste Board*

*Waste management region*

## **Schedule 4 Directors of Waste Boards**

(Section 14)

### **1 Definition**

In this Schedule:

*director* means a director of a Waste Board.

### **2 Chairperson of directors of Waste Board**

- (1) Of the directors other than the general manager, one is (in and by the director's instrument of appointment as a director or in and by another instrument executed by the Minister) to be appointed as chairperson of the Waste Board.
- (2) The Minister may remove a director from the office of chairperson at any time.
- (3) A person who is a director and chairperson of a Waste Board vacates office as chairperson if the person:
  - (a) is removed from that office by the Minister, or
  - (b) resigns that office by instrument in writing addressed to the Minister, or
  - (c) ceases to be a director.

### **3 Deputies**

- (1) The Minister may, from time to time, appoint a person to be the deputy of any director other than the general manager, and the Minister may revoke any such appointment.
- (2) In the absence of a director, the director's deputy:
  - (a) is, if available, to act in the place of the director, and
  - (b) while so acting, has all the functions of the director and is taken to be a director.
- (3) The deputy of a director who is chairperson of a Waste Board does not have the director's function as chairperson.

#### **4 Terms of office**

Subject to this Schedule, a director other than the general manager holds office for such period not exceeding 2 years as may be specified in the instrument of appointment of the director, but is eligible (if otherwise qualified) for re-appointment.

#### **5 Travelling and other out-of-pocket expenses**

A director other than the general manager is entitled to be paid from the funds of the Waste Board concerned the actual travelling and other out-of-pocket expenses properly and reasonably incurred by the director in the performance of the director's official duties.

#### **6 Vacancy in office of directors**

The office of a director other than the general manager becomes vacant if the director:

- (a) dies, or
- (b) completes a term of office and is not re-appointed, or
- (c) resigns the office by instrument in writing addressed to the Minister, or
- (d) is absent from 4 consecutive meetings of the directors of which reasonable notice has been given to the director personally or in the ordinary course of post, except on leave granted by the directors or unless, before the expiration of 4 weeks after the last of those meetings, the director is excused by the other directors for having been absent from those meetings, or
- (e) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
- (f) becomes a mentally incapacitated person, or



- (g) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or upwards or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable, or
- (h) is removed by the Minister under section 28.

### **7 Filling of vacancy in office of directors**

If the office of a director other than the general manager becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

### **8 Disclosure of pecuniary interests**

- (1) A director who has a direct or indirect pecuniary interest:
  - (a) in a matter that is being considered, or is about to be considered, at a meeting of the directors, or
  - (b) in a thing being done or about to be done by the directors,must, as soon as possible after the relevant facts have come to the director's knowledge, disclose the nature of the interest at a meeting of the directors.
- (2) A disclosure by a director at a meeting of the directors that the director:
  - (a) is a member, or is in the employment, of a specified company or other body, or
  - (b) is a partner, or is in the employment, of a specified person, or
  - (c) has some other specified interest relating to a specified company or other body or a specified person,

is taken to be a sufficient disclosure of the nature of the interest in any matter or thing relating to that company or other body or to that person which may arise after the date of the disclosure.

- (3) Particulars of any disclosure made under this clause are to be recorded by the directors in a book kept for the purpose and that book is to be open at all reasonable hours to inspection by any person.
- (4) After a director has, or is taken to have, disclosed the nature of an interest in any matter or thing pursuant to subclause (1) or (2), the director must not, unless the Minister otherwise determines:
  - (a) be present during any deliberation of the directors, or take part in any decision of the directors, with respect to that matter, or
  - (b) exercise any functions under this Act with respect to that thing.
- (5) A contravention of this clause does not invalidate any decision of the directors.
- (6) Nothing in this clause applies to or in respect of an interest of a director in a matter or thing which arises by reason only that the director is an employee of a Waste Board.

## **9 Effect of certain other Acts**

- (1) Part 2 of the *Public Sector Management Act 1988* does not apply to or in respect of the appointment of a director.
- (2) If provision is made by or under any other Act requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or prohibiting the person from engaging in employment outside the duties of that office, that provision is not to operate to disqualify the person from holding that office and also the office of a director or from accepting and retaining any remuneration payable to the person under this Act as a director.
- (3) The office of a director is for the purposes of any Act not to be taken to be an office or place of profit under the Crown.

## **10 Liability of directors**

A matter or thing done or omitted to be done by a Waste Board, a director of a Waste Board or any person acting under the direction of a Waste Board or a director does not, if the matter or thing was done in good faith for the purposes of executing this or any other Act, subject the director or a person so acting personally to any civil action, liability, claim or demand.

## **11 General procedure**

The procedure for the calling of meetings of the directors and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the directors.

## **12 Quorum**

The quorum for a meeting of the directors of a Waste Board is a majority of the directors for the time being.

## **13 Presiding director**

- (1) The chairperson of the directors or, in the absence of the chairperson, another director elected as chairperson for the meeting by the directors present, is to preside at a meeting of the directors.
- (2) The person presiding at any meeting of the directors has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

## **14 Voting**

A decision supported by a majority of the votes cast at a meeting of the directors at which a quorum is present is to be the decision of the directors.

## **15 First meeting of directors**

The Minister is to call the first meeting of the directors of a Waste Board in such manner as the Minister thinks fit.

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## Schedule 5 Savings and transitional provisions

(Section 88)

### Part 1 Preliminary

#### 1 Savings and transitional regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act.
- (2) Any such savings or transitional provision may, if the regulations so provide, take effect on the date of assent to this Act or a later date.
- (3) To the extent to which any such savings or transitional provision takes effect on a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

### Part 2 Provisions consequent on the enactment of this Act

#### 2 Definition

In this Part:

*existing authority* means a licence or certificate of registration granted by the EPA under the *Waste Disposal Act 1970* and in force immediately before the commencement of Part 5 of this Act.

### **3 Phasing-in of licensing requirements**

A person who, on the commencement of Part 5 of this Act, is required to hold a licence does not commit an offence against the *Environmental Offences and Penalties Act 1989* for not holding such a licence until the period prescribed for the purposes of this clause ends.

### **4 Saving of existing authorities**

An existing authority is taken to be a licence granted by the EPA under this Act, but only if it was granted in respect of a waste facility, activity or transporter of waste who or which is required to be licensed under this Act.

### **5 Authorised persons**

A person who is authorised by the EPA under section 48 of the *Waste Disposal Act 1970*, being an authorisation in force immediately before the commencement of this clause, is taken to be an authorised officer for the purpose of this Act until such time as the authorisation is revoked by the EPA.

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## Schedule 6 Amendment of Acts

(Section 89)

### 6.1 Clean Waters Act 1970 No 78

#### Section 16 Prohibition of pollution of waters

Insert “(including a licence granted under the *Waste Minimisation and Management Act 1995* in respect of a waste facility)” after “a licence” in section 16 (6).

### 6.2 Environmental Offences and Penalties Act 1989 No 150

#### [1] Section 4 Definitions

Omit paragraph (b) of the definition of *pollution control authority* from section 4 (1). Insert instead:

- (b) a licence granted under the *Waste Minimisation and Management Act 1995*, or

#### [2] Section 4

Omit “effluent” from paragraph (c) of the definition of *waste*. Insert instead:

effluent,

and includes waste within the meaning of the *Waste Minimisation and Management Act 1995*.

**[3] Section 8DA**

Insert after section 8D:

**8DA Offences under the Waste Minimisation and Management Act 1995**

- (1) Any person who (by virtue of any provision of the *Waste Minimisation and Management Act 1995*) is guilty of an offence against this Act is liable:
  - (a) in the case of a corporation—to a penalty not exceeding \$125,000 and, in the case of a continuing offence, to a further penalty not exceeding \$60,000 for each day the offence continues, or
  - (b) in the case of an individual—to a penalty not exceeding \$60,000 and, in the case of a continuing offence, to a further penalty not exceeding \$30,000 for each day the offence continues.
- (2) Any person who (by virtue of any provision of the *Waste Minimisation and Management Act 1995*) is guilty of an offence specified in Part 5 of Schedule 1 is liable to a penalty not exceeding the amount specified in that Part in respect of that offence and is not liable to any penalty under subsection (1).
- (3) Subject to the *Waste Minimisation and Management Act 1995*, a regulation under that Act may impose a penalty not exceeding:
  - (a) \$10,000 in the case of an individual, or
  - (b) \$20,000 in the case of a corporation,in respect of a contravention of the regulation.

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**[4] Section 12 Time within which proceedings dealt with summarily may be commenced**

Insert at the end of section 12 (a) (iv):

, or

- (v) section 44,45,63 or 64 of the *Waste Minimisation and Management Act 1995*,

**[5] Section 12 (b)**

Omit “or (iv)”. Insert instead “, (iv) or (v)”.

**[6] Section 13 Consent to institution of proceedings**

Insert after section 13 (5A):

- (5B) Subsection (1) does not apply to the institution of proceedings for an offence arising under Part 6 of the *Waste Minimisation and Management Act 1995* by an employee of a council of a local government area if the proceedings are instituted with the consent of the council (or with the written consent of such member or employee of the council as may be authorised by the council for the purposes of this subsection).

**[7] Schedule 1 Penalties for Tier 2 Offences**

Insert “, 8DA” after “8D” in the matter immediately following the heading to the Schedule.



**[8] Schedule 1, Part 5**

Insert after Part 4:

**Part 5 Offences arising under the Waste Minimisation and Management Act 1995**

<i>Provision of Act</i>	<i>Nature of offences</i>	<i>Penalty</i>
Section 34 (4)	Failing to comply with notice to provide information	\$10,000
Section 59 (6) (a)	Failing to comply with requirements of approved closure plan	\$15,000
Section 59 (6) (b)	Failing to comply with direction by EPA	\$15,000
Section 65 (3)	Failing to comply with direction by authorised officer	\$15,000
Section 66 (2)	Failing to comply with requirement to provide information	\$15,000
Section 67 (2)	Failing to comply with direction by EPA	\$15,000
Section 68 (2)	Failing to provide information as required	\$10,000
Section 69 (4)	Failing to comply with requirements of notice, or providing false information or evidence at inquiry	\$5,000
Section 70 (4)	Obstructing, or failing to comply with requirement of, authorised officer	\$10,000
Section 85	Providing false information	\$10,000
Section 86	Unlawfully disclosing information obtained under Act	\$10,000

**[9] Schedule 2 Penalty notices**

Omit clause 2 (c).

**[10] Schedule 2, Part 2**

Omit “3,” wherever occurring.

**[11] Schedule 2**

Insert at the end of the Schedule:

*Waste Minimisation and Management Act 1995*

<i>Provision of Act</i>	<i>Short description</i>	<i>Officer</i>	<i>Penalty</i>
Section 54	Contravene condition of licence	2	\$500
Section 63 (1)	Disposing of waste on land without lawful authority	1, 2	\$600
Section 64 (1)	Allowing land to be used as waste facility without lawful authority	1, 2	\$600
Section 65 (3)	Fail to comply with direction	2	\$500
Section 66 (2)	Fail to comply with requirement to provide information	2	\$500
Section 67 (2)	Fail to comply with direction	2	\$500
Section 68 (2)	Fail to provide information	2	\$200

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Section 70 (4) (a)	Obstruct authorised officer	2	\$300
Section 70 (4) (b)	Fail to comply with requirement	2	\$300
Section 85	Provide false information	2	\$200

**[1] Section 17 Class 1—environmental planning and protection appeals**

Insert after section 17 (a):

(aa) appeals under section 75 of the *Waste Minimisation and Management Act 1995*,

**[2] Section 20 Class 4—environmental planning and protection and development contract civil enforcement**

Omit “*Waste Disposal Act 1970*,” from section 20 (3) (a).

Insert instead:

*Waste Minimisation and Management Act 1995*,

*Waste Recycling and Processing Service Act 1970*,

**[3] Section 21 Class 5—environmental planning and protection summary enforcement**

Insert “8DA,” after “8D,” in section 21 (ca).

## 6.4 Local Government Act 1993 No 30

**[1] Section 124 What orders may be given, in what circumstances and to whom?**

Omit “(other than waste that is dealt with under the *Waste Disposal Act 1970*)” from order No 22 in the Table.

**[2] Section 124**

Insert “, provided that it is not inconsistent with regulations made under the *Waste Minimisation and Management Act 1995*” after “order” in Column 1 of order No 22 in the Table.

**[3] Section 124**

Omit the matter in Column 2 of order No 22 in the Table.  
Insert instead:

Waste is present or generated on the land or premises and is not being dealt with satisfactorily, and is not regulated or controlled by, or subject to, a licence or notice granted or issued under the *Waste Minimisation and Management Act 1995*.

### Dictionary

Omit “and a substance” from the definition of *waste*.  
Insert instead “and includes any other substance defined as waste for the purposes of the *Waste Minimisation and Management Act 1995*, and a substance”.

### Dictionary

Insert “or waste facility” after “a waste depot” in the definition of *waste depot*.

**6.5 Pollution Control Act 1970 No 95**

**Section 5 Definitions**

Omit “*Waste Disposal Act 1970*” from the’ definition of waste.  
Insert instead “*Waste Minimisation and Management Act 1995*”.

**6.6 Protection of the Environment Administration Act 1991  
No 60**

**[1] Section 3 Definitions**

Omit “*Waste Disposal Act 1970*” from the definition of *environment protection legislation*.  
Insert instead “*Waste Minimisation and Management Act 1995*”.

**[2] Section 15 Establishment of Board**

Omit “9” from section 15 (2). Insert instead “10”.

**[3] Section 15 (2) (b)**

Omit “8”. Insert instead “9”.

**[4] Section 15 (3) (g)**

Insert at the end of section 15 (3) (f):

, and

- (g) 1 is to have expertise in local government matters and is to be selected by the Minister from a panel of nominees provided to the Minister by the Local Government and Shires Associations of New South Wales.

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**[5] Schedule 1 Provisions relating to members and procedure of**

Omit “5” from clause 11. Insert instead “6”.

**6.7 Public Finance and Audit 1983 No 152**

**Schedule 2 Statutory Bodies**

Insert before “Waste Recycling and Processing Service.” the following:

A Waste Planning and Management Board constituted under the *Waste Minimisation and Management Act 1995*.

**6.8 Search Warrants Act 1985 No 37**

**Section 10 Definitions**

Insert in alphabetical order of Acts in the definition of *search warrant*:

section 71 of the *Waste Minimisation and Management Act 1995*,

**6.9 Waste Disposal Act 1970 No 97**

**[1] Long title**

Omit the long title. Insert instead:

An Act to constitute the Waste Recycling and Processing Service of New South Wales and to provide for its functions; and for related purposes.

**[2] Section 1 Name of Act and commencement**

Omit “*Waste Disposal Act 1970*” from section 1 (1).  
Insert instead “*Waste Recycling and Processing Service Act 1970*”.

**[3] Section 4 Effect of this Act on other Acts**

Omit the section.

**[4] Section 5 Definitions**

Omit the definitions of *Court, depot, effluent, garbage, incineration facility, occupier* and *trade waste*.

**[5] Section 5**

Omit the definition of *waste*. Insert instead:

*waste* has the same meaning as in the *Waste Minimisation and Management Act 1995*.

**[6] Section 5**

Insert in alphabetical order:

*waste facility* means any premises used for the reprocessing, sorting or disposal of waste, and includes a landfill site.

**[7] Part 2 Constitution of the Metropolitan Waste Disposal Region**

Omit the Part.

**[8] Sections 17 (1) (a), 18 and 20**

Omit “depots” and “depot” wherever occurring.  
Insert instead “waste facilities” and “waste facility”, respectively.

**[9] Section 17 Functions of Service**

Omit section 17 (1) (b).

**[10] Section 17 (2)**

Insert after section 17 (1):

- (2) The Service may undertake any commercial activity relating to the handling, treatment, processing, recycling or disposal of waste.

**[11] Sections 18 and 20**

Omit “, whether within or outside the Metropolitan Waste Disposal Region,” wherever occurring.

**[12] Section 21 Delegation**

Omit “depot” from section 21 (c).  
Insert instead “waste facility established or operated by the Service”.

**[13] Part 4A High temperature waste incineration facility**

Omit the Part.

**[14] Part 5 Registration and licensing**

Omit the Part.

**[15] Part 6 Finance**

Omit the Part.



**[16] Section 45 Inquiries**

Omit the section.

**[17] Section 46**

Omit the section. Insert instead:

**46 Fees**

- (1) The Service may charge such fees as it determines for:
  - (a) the receipt of waste at any waste facility established or operated by the Service, and
  - (b) the supply of any service under this Act or the regulations.
- (2) The Service may charge interest on overdue fees at a rate not exceeding the rate prescribed for the purposes of this section.

**[18] Section 49**

Omit the section. Insert instead:

**47 Sale of waste**

- (1) Any waste received at a waste facility of the Service is the property of the Service.
- (2) The Service may sell its waste and any residue or product of its waste resulting from any process or operation used for the treatment of waste at a waste facility of the Service.
- (3) A person must not interfere with, or remove waste (including any such residue or product of waste) from a waste facility of the Service unless the person is authorised by the Service to do so or is an employee of the Service acting in the proper performance of the person's duties as such an employee.

Maximum penalty: 10 penalty units.

**[19] Section 48 Powers of authorised persons to enter premises and give directions**

Omit the section.

**[20] Section 49 Occupier of premises may be required to furnish information**

Omit the section.

**[21] Section 50 Disclosure of information**

Omit the section.

**[22] Section 55**

Omit the section. Insert instead:

**[23] 55 Proceedings for offences**

Proceedings for an offence against this Act or the regulations are to be disposed of summarily before a Local Court constituted by a Magistrate sitting alone or before the Land and Environment Court in its summary jurisdiction.

**[24] Section 58**

Omit the section. Insert instead:

**58 Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) A regulation may create an offence punishable by a penalty not exceeding 5 penalty units.

**[24] Schedule 1 Areas and parts of areas which constitute the Metropolitan Waste Disposal Region**

Omit the Schedule.

**[25] Schedule 4 Savings and transitional provisions**

Insert at the end of clause 1 (1):

*Waste Minimisation and Management Act 1995.*

[Minister's second reading speech made in—

Legislative Assembly on 15 November 1995

Legislative Council on 15 December 1995]