



New South Wales

# Protection of the Environment Operations Amendment (Waste) Regulation 2001

under the

Protection of the Environment Operations Act 1997

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Protection of the Environment Operations Act 1997*.

BOB DEBUS, M.P.,

Minister for the Environment

## Explanatory note

### Amendment of Protection of the Environment Operations Act 1997

Part 1 of Schedule 1 to the *Protection of the Environment Operations Act 1997* (*the Act*) lists certain activities that are *premises-based*, including *Waste activities* and *Waste facilities*. The Act requires the occupier of premises at which such an activity is carried on to be the holder of a licence authorising the activity to be carried on at those premises.

This Regulation amends Part 1 of Schedule 1 so as:

- (a) to exclude from the definition of *Waste activities* the activity of storing no more than 40,000 litres at any one time of non-hazardous waste hydrocarbon oil prior to its being burnt as fuel on the premises on which it was stored, and
- (b) to exclude from the definition of *Waste facilities* premises on which no more than 40,000 litres per annum of non-hazardous waste hydrocarbon oil is burnt as fuel (but only if no other activity that would render the premises a waste facility is carried on at the premises).

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The effect of these amendments is that the occupier of the premises on which the excluded activities are carried on is no longer required to be licensed under the Act in order to carry on the activity.

### **Amendment of Protection of the Environment Operations (Waste) Regulation 1996**

#### **Waste activities and waste transporting**

The *Protection of the Environment Operations (Waste) Regulation 1996* (***the Regulation***) imposes certain requirements on persons who carry on ***non-licensed waste activities***, or ***non-licensed waste transporting***, within the meaning of the Regulation.

Licences to carry on certain waste activities or to transport certain waste impose similar requirements on the holders of the licences.

Clause 16 (2) (d) of the Regulation is concerned with the transport of waste from the premises on which the relevant non-licensed waste activity is carried on. Clause 16 (2) (d) (i) obliges the person carrying on the waste activity to obtain a consignment authorisation number for the waste from the person to whom it is to be delivered. Clause 16 (2) (d) (ii) obliges the person to complete (to the required extent) an approved waste data form in relation to the consigned waste and give a copy of the form to the person transporting the waste. Clause 16 (2) (h) requires the person to ensure that the waste is transported to a certain waste facility, person or place.

Clause 17 (2) (g) of the Regulation imposes requirements concerning the waste data form on the person who transports the waste concerned.

This Regulation inserts clauses 14A, 16A, 16B and 16C in the Regulation to modify the operation of clauses 16 and 17 and (in effect) modify the conditions of licences that are substantially to the same effect as those clauses.

Clause 14A contains definitions for the purpose of clauses 16A, 16B and 16C.

Clause 16A exempts persons from the requirements of clauses 16 (2) (d) and (h) and 17 (2) (g) (and, in effect, from similar requirements imposed by a licence) in relation to certain types of waste. The person carrying on the waste activity is not required to obtain a consignment authorisation number or make any records in relation to the transport of the waste, but must have “a reasonable belief” that the waste is to be transported to a certain waste facility, person or place for the purpose

of recycling, reprocessing or reuse. The transporter of the waste must make and keep specified records in relation to the waste (and give a copy of the records to the occupier of the premises to which, or the person carrying on mobile waste processing to whom, the waste is transported).

Clause 16B is concerned with the transport of certain types of waste between premises occupied by the same person. It exempts that person from the requirements of clause 16 (2) (d) (i) and (h) and exempts the transporter of the waste from the requirement of clause 17 (2) (g) (iv) (that the transporter give a copy of the waste data form to the occupier of the premises to which, or the person carrying on mobile waste processing to whom, the waste is transported). It also (in effect) exempts licence-holders from any similar requirement imposed by their licences.

Clause 16C enables the Environment Protection Authority to grant, by notice published in the Gazette, the same kinds of exemptions as are made by clause 16A in respect of the transport of waste of a type specified in the notice.

**Miscellaneous**

This Regulation also makes consequential and other minor amendments to clause 16.

This Regulation repeals 2 spent subclauses of clauses 16 and 17.

**Authority for Regulation**

This Regulation is made under the *Protection of the Environment Operations Act 1997*, and, in particular, under sections 5 (3), 286 (Exemptions by regulation) and 323 (the general regulation-making power).

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# **Protection of the Environment Operations Amendment (Waste) Regulation 2001**

## **1 Name of Regulation**

This Regulation is the *Protection of the Environment Operations Amendment (Waste) Regulation 2001*.

## **2 Amendment of Protection of the Environment Operations Act 1997**

The *Protection of the Environment Operations Act 1997* is amended as set out in Schedule 1.

## **3 Amendment of Protection of the Environment Operations (Waste) Regulation 1996**

The *Protection of the Environment Operations (Waste) Regulation 1996* is amended as set out in Schedule 2.

## **4 Notes**

The explanatory note does not form part of this Regulation.

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## Schedule 1 Amendment of Protection of the Environment Operations Act 1997

(Clause 2)

### [1] Schedule 1 Schedule of EPA-licensed activities

Omit “emulsions.” from clause (2) (e) of the matter relating to *Waste activities* in Part 1.

Insert instead:

- emulsions,
- (f) the storage of no more than 40,000 litres at any one time of non-hazardous waste hydrocarbon oil prior to its being burnt as fuel on the premises on which it was stored.

### [2] Schedule 1, Part 1, matter relating to “Waste facilities”

Insert after clause (3) (c):

- (c1) premises on which:
  - (i) no more than 40,000 litres per annum of non-hazardous waste hydrocarbon oil is burnt as fuel, and
  - (ii) no other activity that would render the premises a waste facility is carried on,

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(Clause 3)

**[1] Clause 14A**

Insert before clause 15:

**14A Definitions**

In this Part:

*consignee* of waste means the occupier of the premises to which, or the person carrying on mobile waste processing to whom, the waste is transported.

*consignor* of waste means the occupier of the premises from which the waste is transported.

*licensed waste activity* means an activity that:

- (a) is carried on for business or other commercial purposes, and
- (b) involves the generating or storage of any one or more of the following types of waste:
  - (i) hazardous waste,
  - (ii) industrial waste,
  - (iii) Group A waste, and
- (c) is licensed under the Act.

*non-licensed waste activity* means an activity that:

- (a) is carried on for business or other commercial purposes, and
- (b) involves the generating or storage of any one or more of the following types of waste:
  - (i) hazardous waste,
  - (ii) industrial waste,
  - (iii) Group A waste, and
- (c) is not licensed under the Act.

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*transporter* of waste means the person transporting waste from the consignor of the waste to the consignee.

**[2] Clause 16 Requirements relating to non-licensed waste activities**

Omit the definition of *non-licensed waste activity* from clause 16 (1).

**[3] Clause 16 (2) (d)**

Insert “or clause 16A or 16B or under clause 16C” after “subclause (3)”.

**[4] Clause 16 (2) (h)**

Insert “(except as provided by clause 16A or 16B or under clause 16C)” after “the person must”.

**[5] Clause 16 (2) (h) (i)**

Insert “to receive waste of that type” after “licensed under the Act”.

**[6] Clause 16 (5)**

Omit the subclause.

**[7] Clauses 16A, 16B and 16C**

Insert after clause 16:

**16A Exemptions relating to certain types of waste**

- (1) This clause applies to the following types of waste arising from the carrying on of a licensed or non-licensed waste activity:
  - (a) non-hazardous waste hydrocarbon oil that constitutes Group A waste,
  - (b) waste batteries that constitute hazardous or industrial waste.
- (2) In relation to the transport of waste to which this clause applies:
  - (a) a person carrying on a non-licensed waste activity is not required to comply with clause 16 (2) (d) or (h), and

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- (b) a person carrying on a licensed waste activity is exempt from the operation of section 64 (1) of the Act in respect of any condition of the licence that is substantially to the same effect as clause 16 (2) (d) or (h).
- (3) However, subclause (2) applies only if the person concerned has a reasonable belief that the waste is to be transported, for the purpose of recycling, reprocessing or reusing the waste (or, if the waste is non-hazardous waste hydrocarbon oil that constitutes Group A waste, for the use of that oil as fuel):
  - (a) to a waste facility that is licensed under the Act to receive waste of that type, or
  - (b) to a person carrying on mobile waste processing that is licensed under the Act to receive waste of that type, or
  - (c) to a place that can otherwise lawfully receive waste of that type.
- (4) A transporter of waste to which this clause applies:
  - (a) is not required to comply with clause 17 (2) (g), or
  - (b) if licensed under the Act, is exempt from the operation of section 64 (1) of the Act in respect of any condition of the licence that is substantially to the same effect as clause 17 (2) (g),in relation to the waste concerned.
- (5) However, the transporter of the waste must make a record of the following:
  - (a) the name and address of the transporter,
  - (b) if the transporter is required to be licensed under the Act—the transporter's environment protection licence number,
  - (c) the registration number of the vehicle used to transport the waste,
  - (d) the type and quantity of the waste transported,
  - (e) the date on which the waste is delivered to the consignee,
  - (f) the name and address of the consignee.



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- (6) The transporter must:
- (a) retain the record for a period of not less than 3 years after the time the record was made, and
  - (b) make the record available for inspection by an authorised officer on request, and
  - (c) give a copy of the record to the consignee.

Maximum penalty: 200 penalty units in the case of a corporation and 100 penalty units in the case of an individual.

- (7) The consignee must:
- (a) retain the copy of the record for a period of not less than 3 years after the time the record was made, and
  - (b) make the copy of the record available for inspection by an authorised officer on request.

Maximum penalty: 200 penalty units in the case of a corporation and 100 penalty units in the case of an individual.

**16B Exemptions relating to certain waste transported between premises occupied by the same person**

- (1) This clause applies to hazardous waste, industrial waste or Group A waste that:
- (a) arises from the carrying on of a waste activity (regardless of whether the waste activity is required to be licensed under the Act), and
  - (b) is transported, for the purpose of storage or treatment (or both storage and treatment), between premises occupied by the same person.
- (2) In relation to the transport of waste to which this clause applies:
- (a) a person carrying on a non-licensed waste activity is not required to comply with clause 16 (2) (d) (i) or (h) (but must still comply with clause 16 (2) (e)), and

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- (b) a person carrying on a licensed waste activity is exempt from the operation of section 64 (1) of the Act in respect of any condition of the licence that is substantially to the same effect as clause 16 (2) (d) (i) or (h) (but is not so exempt in relation to any condition of the licence that is substantially to the same effect as clause 16 (2) (e)), and
- (c) the transporter of the waste:
  - (i) is not required to comply with clause 17 (2) (g) (iv), or
  - (ii) if licensed under the Act, is exempt from the operation of section 64 (1) of the Act in respect of any condition of the licence that is substantially to the same effect as clause 17 (2) (g) (iv).
- (3) The transporter of the waste must make the copy of the waste data form given to the transporter by the consignor of the waste available for inspection by an authorised officer on request.

Maximum penalty: 200 penalty units in the case of a corporation and 100 penalty units in the case of an individual.

### **16C Exemptions relating to other types of waste**

- (1) The EPA may, from time to time, by notice published in the Gazette, exempt:
  - (a) a person carrying out a non-licensed waste activity from the requirements of clause 16 (2) (d) and (h), and
  - (b) a person carrying on a licensed waste activity from the operation of section 64 (1) of the Act in relation to any condition of the licence that is substantially to the same effect as clause 16 (2) (d) or (h), and
  - (c) a transporter of waste from the requirements of clause 17 (2) (g) or, in the case of a transporter who is licensed under the Act, from the operation of section 64 (1) of the Act in relation to any condition of the licence that is substantially to the same effect as clause 17 (2) (g), and

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- (d) any other licensee from the operation of section 64 (1) of the Act in relation to any condition of the licence that is specified in the notice,

in relation to the transport of waste of a type specified in the notice.

- (2) An exemption under this clause:
  - (a) is subject to the conditions (if any) specified in the notice, and
  - (b) has effect only if the exempted person complies with such of the provisions of clause 16A as are relevant to that person, and
  - (c) may be revoked by the EPA at any time by a further notice published in the Gazette.

**[8] Clause 17 Requirements relating to non-licensed waste transporting**

Insert “(except as provided by clause 16A or 16B or under clause 16C)” after “the person must” in clause 17 (2) (g).

**[9] Clause 17 (2) (h) (i)**

Insert “to receive waste of that type” after “licensed under the Act”.

**[10] Clause 17 (3)**

Omit the subclause.