

[Act 1998 No 155]



New South Wales

Waste Minimisation and Management Amendment Bill 1998

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are as follows:

- (a) to prevent illegal waste dumping by making it an offence to transport waste to a place that cannot lawfully be used as a waste facility for that waste.
 - (b) to make it clear that a direction may be given to a person in relation to waste even though the waste is no longer in the possession or under the control of the person.
 - (c) to empower an authorised officer to direct the owner or occupier of any land not to receive any waste on that land or to cause or allow any waste to be deposited on that land.
 - (d) to clarify the power to make regulations under the *Waste Minimisation and Management Act 1995* with respect to the provision of information about matters relating to waste.
 - (e) to make minor and consequential amendments to the *Environmental Offences and Penalties Act 1989*.
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Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision giving effect to the amendments to the *Waste Minimisation and Management Act 1995* set out in Schedule 1.

Clause 4 is a formal provision giving effect to the amendments to the *Environmental Offences and Penalties Act 1989* set out in Schedule 2.

Schedule 1 Amendment of Waste Minimisation and Management Act 1995

Illegal waste dumping

At present under section 63 of the *Waste Minimisation and Management Act 1995*, it is an offence to dispose of waste on land without the consent of the owner or occupier of the land. Even though it is an offence under section 64 of the Act for the owner or occupier of the land to cause, permit or allow the land to be used as an unlawful waste facility, the person who transports or owns the waste can dump it anywhere so long as they do so with lawful authority (ie if they obtain the consent of the owner or occupier of the land).

Schedule 1 [2] replaces section 63 to make it an offence for a person to transport (ie convey and deposit) waste to a place that cannot lawfully be used as a waste facility for the waste. If waste is transported in contravention of the proposed section, both the transporter and the owner (eg the person who owned the waste before it was transported) will be guilty of an offence against the *Environmental Offences and Penalties Act 1989* ("the EOP Act"). The defendant will have the onus of proving that the place to which the waste was transported can lawfully be used as a waste facility for the waste. However, it will be a defence if the defendant establishes that the owner or occupier of the place gave the defendant (or displayed at the place) an approved notice certifying that the place could lawfully be used as a waste facility for the waste. **Schedule 1 [5]** provides that it will be an offence for the owner or occupier to falsely certify that the place could lawfully be used as such a waste facility.

Schedule 1 [1] makes a consequential amendment to the heading to Part 6 of the Act.

Directions relating to waste

Section 65 presently empowers an authorised officer of the EPA to give a direction to a person about certain matters involving any waste created by, or in the possession or under the control of, the person, and section 68 presently empowers the EPA to require a person to provide information in connection with any waste created by, or in the possession or under the control of, the person. **Schedule 1 [3]** and **[4]** make it clear that such directions may be given in respect of, or in connection with, any waste that is no longer in the possession or under the control of the person concerned.

Schedule 1 [3] also empowers an authorised officer to direct the owner or occupier of any land not to receive waste or cause or allow any waste to be deposited on that land. Failure to comply with such a direction will be an offence against the EOP Act.

Other amendments

Schedule 1 [6] makes it clear that regulations may be made for or with respect to the provision of information about any matter relating to waste, and that this power will include the provision of information about the operation of waste facilities and the transportation of waste. **Schedule 1 [7]** is a consequential amendment.

Schedule 1 [8] enables regulations of a savings or transitional nature to be made as a consequence of the enactment of the proposed Act. **Schedule 1 [9]** is a consequential amendment.

Schedule 2 Amendment of Environmental Offences and Penalties Act 1989

Schedule 2 [1] brings the definition of *waste* in the EOP Act more into line with the definition in the *Waste Minimisation and Management Act 1995*.

Schedule 2 [3] makes special provision for the penalties for the offences arising under sections 65 and 68 of the *Waste Minimisation and Management Act 1995* (ie failing to comply with a direction or with a notice to provide the EPA with information). The maximum penalty for an offence arising under section 65 will be \$15,000 (plus a penalty of \$7,000 for each day the offence continues). and the maximum penalty for an offence arising under section 68 will be \$10,000 (plus a penalty of \$5,000 for each day the offence continues). **Schedule 2 [2]**, **[4]** and **[5]** are consequential amendments.