

[Act 2001 No 58]



New South Wales

Waste Avoidance and Resource Recovery Bill 2001

Explanatory note

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

Overview of Bill

The main object of this Bill is to promote waste avoidance and resource recovery.

In particular, the Bill:

- (a) repeals and replaces the *Waste Minimisation and Management Act 1995*, and
- (b) establishes Resource NSW and provides for its management and functions (in place of Waste Planning and Management Boards and the State Waste Advisory Council), and
- (c) provides for industry waste reduction by authorising the making of regulations to implement and provide for the operation of extended producer responsibility schemes (in place of industry waste reduction plans), and

* Amended in committee—see table at end of volume.

- (d) continues the Waste Fund for the purpose of funding relevant programs and Resource NSW.

The Bill also amends the *Protection of the Environment Operations Act 1997* with respect to waste.

Outline of provisions

Part 1 Preliminary

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 sets out the objects of the proposed Act.

Clause 4 defines certain words and expressions used in the proposed Act.

Part 2 Resource NSW

Clause 5 constitutes a corporate body representing the Crown called Resource NSW.

Clause 6 sets out the functions of Resource NSW, including:

- (a) to develop, implement or co-ordinate the implementation of (and evaluate strategies and programs for State-wide achievement of) government policy objectives with respect to a number of waste avoidance and resource recovery matters, and
- (b) to assist local communities to enter into arrangements for regionally-based secondary resource recovery from waste, and
- (c) to assist in developing co-ordinated waste management services, including system and contract reform (such as contracts for waste and recycling services and system co-ordination), and
- (d) to research and develop waste reduction and resource efficiency infrastructure, technologies and systems, and
- (e) to develop and support training and education programs for resource efficiency, waste reduction and waste and litter management, and

- (f) to monitor, report on and evaluate the regional implementation of State-wide policies and strategies with respect to waste.

Resource NSW is required to have regard to the principles of ecologically sustainable development.

Clause 7 subjects Resource NSW to Ministerial control and direction.

Clause 8 establishes a Board of Resource NSW to determine its long-term strategic plans and oversee its effective, efficient and economical management. The Board is to consist of the Chief Executive of Resource NSW and not more than 9 part-time members appointed by the Minister.

Clause 9 provides that the affairs of Resource NSW are to be managed and controlled by the Chief Executive of Resource NSW.

Clause 10 enables the employment of public service staff and other seconded or specially employed staff of Resource NSW.

Clause 11 authorises Resource NSW to delegate its functions.

Part 3 Responsibilities with respect to industry waste reduction

Clause 12 defines *extended producer responsibility scheme* as a scheme for giving effect to an environmental policy in which the producer's responsibility for a product (including physical or financial responsibility) is extended to the post-consumer stage of the product's life-cycle, including a scheme for product stewardship (that is, shared responsibility for the life-cycle of products including the environmental impact of the product from the extraction of virgin materials, to manufacturing, to consumption and through to and including ultimate disposal).

Clause 13 authorises the making of regulations for the implementation and operation of extended producer responsibility schemes in connection with a product, group of products or an industry in New South Wales.

Clause 14 sets out the circumstances in which an extended producer responsibility scheme may be implemented, namely if the Minister is satisfied that it is necessary having regard to the following:

- (a) the volume of waste requiring ultimate disposal or the toxicity of the waste generated,
- (b) whether there is a national scheme in place that adequately addresses waste issues in New South Wales,

- (c) whether there is an effective voluntary scheme in place (nationally or State-based) that is able to achieve the desired outcomes and is being actively implemented, monitored and reported on,
- (d) whether economic analysis supports the implementation of the scheme,
- (e) whether there are any constitutional or other impediments to New South Wales acting unilaterally in implementing the scheme.

Clause 15 requires the EPA to advertise publicly priority statements with respect to the extended producer responsibility schemes that it proposes to recommend and to invite public submissions.

Part 4 Financial provisions

Clause 16 continues, as the Waste Fund, the Waste Planning and Management Fund under the repealed Act. Money hypothecated from waste disposal facility contributions is paid into the Fund. The Fund is to be applied for the purposes of waste avoidance, resource recovery and waste management and to fund Resource NSW.

Clause 17 authorises Resource NSW to provide loans, grants, subsidies, financial guarantees and other financial assistance.

Clause 18 enables Resource NSW to charge fees for the supply of services.

Clause 19 relates to gifts, bequests or devises to Resource NSW.

Part 5 Miscellaneous

Clause 20 provides that the proposed Act binds the Crown.

Clause 21 makes miscellaneous provisions relating to the seal of, and the service of documents on, Resource NSW.

Clause 22 provides that offences against the proposed Act or the regulations are to be dealt with summarily by a Local Court.

Clause 23 empowers the making of regulations under the proposed Act. The regulations may create offences punishable by a penalty not exceeding 200 penalty units for an individual (currently \$22,000) or 400 penalty units for a corporation (currently \$44,000).

Clause 24 repeals the *Waste Minimisation and Management Act 1995*.

Clause 25 is a formal provision giving effect to the amendments to the *Protection of the Environment Operations Act 1997* set out in Schedule 2.

Clause 26 is a formal provision giving effect to the consequential amendments to other Acts set out in Schedule 3.

Clause 27 gives effect to the savings, transitional and other provisions in Schedule 4.

Clause 28 provides for a Ministerial review of the proposed Act after 5 years.

Schedules

Schedule 1 contains standard provisions relating to the members and procedure of the Board of Resource NSW.

Schedule 2 contains amendments to the *Protection of the Environment Operations Act 1997* relating to waste, including the following:

- (a) to make the elimination of harmful wastes a specific object of that Act,
- (b) to authorise the EPA to waive contributions by licensees of waste facilities,
- (c) to remove the power of a public authority that is the supervisory licensee of a private waste disposal facility to direct the charges for the use of the facility, and to exempt until 1 July 2003 the supervisory licence arrangements from Competition Code requirements,
- (d) to extend the regulation-making power under that Act to include the prohibition or regulation of the treatment or disposal of waste,
- (e) to transfer the local government area of Hawkesbury from the Sydney metropolitan area to the extended regulated areas with respect to the waste facility licensing functions of the EPA.

Schedule 3 contains consequential amendments to other Acts.

Schedule 4 contains savings, transitional and other provisions, including the following:

- (a) the power to make regulations of a savings and transitional nature consequent on the enactment of the proposed Act,
- (b) the dissolution of existing Waste Boards and the transfer of their assets, rights and liabilities to Resource NSW,

Explanatory note

- (c) the transfer of the existing staff of the dissolved Waste Boards to Resource NSW (except for general managers and certain other officers),
- (d) the abolition of the State Waste Advisory Council,
- (e) the revocation of existing industry waste reduction plans (other than the plan relating to used packaging materials which is to be continued until 1 July 2004, unless sooner revoked).