

[Act 1995 No 102]



New South Wales

Waste Minimisation and Management Bill 1995

Explanatory note

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

Overview of Bill

The underlying principles of this Bill 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.

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

The objects of this Bill 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 reduction 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.

This Bill replaces the limited licensing and regulatory scheme set out in the *Waste Disposal Act 1970* with a more extensive scheme applying throughout the State. It also provides for the establishment of public authorities (called Waste Planning and Management Boards) that will have the responsibility for planning and managing waste services in certain regions. This Bill also includes significant new measures designed to reduce the amount of waste being created in New South Wales.

Outline of provisions

Part 1 Preliminary

Part 1 (**clauses 1–5**) specifies the name and provides for the commencement of the proposed Act, sets out the objects of the proposed Act, states that the proposed Act binds the Crown, and defines certain terms used in the proposed Act. The term *waste* has an inclusive meaning (eg it includes any discarded, rejected, unwanted, surplus or abandoned substance, or any substance prescribed by the regulations).

Part 2 State waste planning and policy

Part 2 (**clauses 6–8**) establishes the State Waste Advisory Council (“SWAC”) for the purpose of ensuring cross-sectoral input in the development and implementation of Statewaste planning and policy. SWAC has the function of advising the Minister and the Environment Protection Authority (the “EPA”) on such matters as waste reduction priorities and the need for legislative change.

Part 3 Regional waste planning and management

Part 3 (**clauses 9–29**) provides for the formation of waste management regions, and for the constitution and functions of statutory corporations known as Waste Boards. A waste management region is a region that will comprise certain local government areas, but before a council’s area is included in a region, the council will have the opportunity to make submissions as to the formation of the region. A council can also seek to be excluded from a waste management region, but certain criteria must be met if it is to be excluded.

Once a waste management region is formed, **clause 13** provides for the constitution of a Waste Board in respect of the region. A Waste Board will have directors appointed by the Minister (a general manager and up to 8 persons nominated by the constituent councils). The directors are to manage and control the affairs of the Waste Board, and the Minister can give the directors written directions as to the functions of the Waste Board.

The functions of a Waste Board (**clause 18**) include establishing management and charging policies for the waste services provided by the constituent councils. A Waste Board can also enter into arrangements for the carrying out of waste and recycling services in the region, and charge fees for any of the services it provides. A Waste Board can also require contributions from the constituent councils in order to finance the Waste Board’s arrangements.

A Waste Board must prepare and implement a regional waste plan approved by the Minister (**clause 19**). The plan is to include proposed strategies and targets for managing and reducing waste and an implementation program identifying the action that is to be taken. A Waste Board must also report to the Minister on the implementation of its plan. The constituent councils of the waste management region must comply with the regional plan. **Clause 23** provides that a Waste Board commits an offence if it fails to prepare a regional waste plan or to implement its plan.

The rest of Part 3 is concerned with general provisions relating to Waste Boards (eg employment of staff, power to delegate functions to constituent councils, investment powers, and the requirement to keep money provided by the government in a separate account). **Clause 28** provides for the removal of directors and for the appointment of an administrator to replace the directors if the Waste Board has failed to do certain things (including implementing its regional waste plan). A Waste Board may be dissolved by an order by the Governor (**clause 29**).

Part 4 Industry waste reduction

Part 4 (**clauses 30-43**) provides for the preparation and implementation of industry waste reduction plans (“IWRPs”) and for other industry/producer responsibility schemes. An IWRP is to be prepared and implemented by certain industries and applies to the industry members (eg persons who manufacture, import or sell products or items that create waste or result in the creation of waste). An IWRP may set waste reduction targets and provide that certain requirements must be met (**clause 31**).

The Minister will determine whether an IWRP is to be prepared, but an industry can nominate itself for an IWRP (**clause 32**). The EPA must give public notice that an IWRP is to be prepared, and it can require industry members to provide certain information to the EPA (eg what the member has done about waste management and reduction in the past) (**clauses 33-34**). The EPA then provides a report to the Minister on the scope of the proposed IWRP (**clause 35**).

An IWRP is to be prepared either by the industry concerned based on a negotiation process (**clause 36**) or by the EPA without negotiation (**clause 37**), and comes into force when it is approved by the Minister and notice of approval is published in the Gazette (**clause 38**). The EPA can direct an industry member to rectify the contravention by the member of an IWRP, and it will be an offence not to comply with the direction (**clause 39**).

Part 4 also enables regulations to be made prohibiting or restricting the sale of prescribed products in prescribed circumstances, and requiring the implementation of recycling, re-use or take-back and utilisation schemes (**clauses 40-43**).

Part 5 Licences

Part 5 (**clauses 44–62**) establishes a licensing scheme that will require occupiers of waste facilities, persons who carry out waste generating or handling activities and persons who transport waste to be licensed under the proposed Act. The regulations will specify the waste facilities, waste activities and types of waste affected by the licensing scheme.

The EPA may require an application for a licence to be accompanied by an environmental management plan. The regulations may also provide for the remittal, reduction and refunding of the prescribed application fee (**clause 47**). With respect to putrescible landfill sites, **clause 48** provides special licensing arrangements requiring a public authority to exercise control over the facility in relation to environmental matters.

The EPA is to take certain matters into consideration in determining licence applications (**clause 49**). Licences are in force for a period of one year and may be renewed from time to time. The applicant may request a shorter period, and the EPA may approve the transfer of licences (**clause 50**). The EPA is required to maintain a register of licences that is to be made available for public inspection. **Clause 52** enables the EPA to revoke or suspend a licence.

The EPA can grant licences subject to conditions or unconditionally and it will be an offence to contravene the conditions of a licence (**clauses 53–54**). The conditions that may be imposed on a licence include the matters referred to in **clauses 55–57**, and the EPA can amend the conditions attached to a licence.

Clause 59 requires the last licensee of a controlled waste facility to submit to the EPA a post-closure plan for approval by the EPA. Such a plan is to provide for such matters as a post-closure monitoring and maintenance program.

Clauses 60–62 authorise the EPA to require a controlled waste facility licence holder to provide a financial assurance for the purpose of ensuring that site remediation work is carried out either during or after the licence period. A financial assurance can be imposed as a condition of the licence, and it can be called on by the EPA if licence conditions relating to site remediation work are contravened or if the EPA incurs costs in taking action covered by the financial assurance.

Part 6 Waste disposal offences

Clause 63 prohibits a person from disposing of waste on land without lawful authority. The owner of the waste also commits an offence unless the owner can prove that the owner had no control over, and took reasonable precautions to prevent, the disposal of the waste without lawful authority.

Clause 64 makes it an offence for the owner or occupier of land to cause, permit or allow the land to be used as a waste facility without lawful authority.

Part 7 Enforcement provisions

Part 7 (**clauses 65-71**) contains provisions enabling authorised officers to give directions with respect to certain matters relating to waste and to require information to be given, enabling the EPA to give directions to occupiers of unlicensed waste facilities, enabling the EPA to require a person to provide certain information about waste related matters, enabling the EPA to inquire into and make a report and recommendation to the Minister on matters relating to waste, and to require a person to provide information in relation to such an inquiry and to attend before the EPA to give evidence, and enabling authorised officers to conduct investigations, to enter waste facilities and certain other premises, to make inquiries and to exercise certain other powers. **Clause 71** provides for the issue of search warrants authorising the entry of certain premises for the purpose of investigating alleged contraventions of the proposed Act.

Part 8 Financial provisions

Clause 72 requires the occupier of a controlled waste facility (other than a facility used solely for the purposes of reprocessing waste) to pay the EPA a contribution prescribed by the regulations in respect of the waste received at the waste facility.

Clause 73 establishes the Waste Management and Planning Fund and provides for how money in the Fund is to be allocated. **Clause 74** enables the EPA to invest the money in the Fund.

Part 9 Appeals and disputes

Part 9 (**clauses 75-78**) provides for appeals to the Land and Environment Court regarding licensing decisions by the EPA or notices to rectify contraventions of industry waste reduction plans and for the resolution of disputes between the EPA and public authorities with respect to licensing decisions by the EPA.

Part 10 Miscellaneous

Part 10 (**clauses 79–90**) contains provisions enabling the Minister to delegate certain functions to the EPA, relating to the appointment of authorised officers, providing for certificate evidence of certain matters under the proposed Act, enabling the EPA to charge for services supplied by it under the proposed Act, providing for the service of notices to persons under the proposed Act, prohibiting the making of false statements, restricting a person from disclosing information obtained in connection with the administration or execution of the proposed Act and enabling the Governor to make regulations for the purposes of the proposed Act. The remainder of Part 10 contains machinery provisions that give effect to Schedule 5 (Savings and transitional provisions) and Schedule 6 (Amendment of Acts), repeal the regulations made under the *Waste Disposal Act 1970* and provide for the proposed Act to be reviewed by the Minister after 5 years.

Schedule 1 contains provisions relating to the members and procedure of the State Waste Advisory Council.

Schedule 2 will contain the descriptions of waste management regions formed under Part 3 of the proposed Act.

Schedule 3 will contain the names of Waste Boards constituted under Part 3 of the proposed Act.

Schedule 4 contains provisions relating to the directors of a Waste Board.

Schedule 5 contains savings and transitional provisions, including a power to make regulations of a savings and transitional nature consequent on the enactment of the proposed Act.

Schedule 6 contains amendments to Acts that are mainly consequential on the enactment of the proposed Act. The Acts to be amended consequentially are the *Clean Waters Act 1970*, the *Environmental Offences and Penalties Act 1989* (the “EOP Act”), the *Land and Environment Court Act 1979*, the *Local Government Act 1993*, the *Pollution Control Act 1970*, the *Protection of the Environment Administration Act 1991*, the *Public Finance and Audit Act 1983* and the *Search Warrants Act 1985*.

The EOP Act is amended to provide that the penalty for offences arising under the proposed Act will be a maximum of \$125,000 for corporations and \$60,000 for individuals. However a number of offences specified in Schedule 2 to the EOP Act will provide for a lower penalty, and some can be dealt with by way of penalty notices. The EOP Act is also amended to provide that the new offences relating to unlicensed waste facilities, unlicensed waste activities, disposal of waste without lawful authority and allowing land to be used as a waste facility without lawful authority may be commenced not later than 3 years after the date of the alleged offence (for other offences the period is 12 months).

The *Waste Disposal Act 1970* (to be renamed the *Waste Recycling and Processing Service Act 1970*) is substantially amended as a result of the regulatory controls being replaced by the proposed Act. That Act will now only deal with the constitution, functions and operations of the Waste Recycling and Processing Service (“WRAPS”). The amendments make it clear that WRAPS can undertake commercial activities in relation to waste. The provisions constituting the Metropolitan Waste Disposal Region are repealed, as are the provisions relating to the high temperature waste incineration facility.