

Passed by both Houses



New South Wales

Waste Recycling and Processing Corporation (Authorised Transaction) Amendment Bill 2023

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I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney,*

, 2023



New South Wales

Waste Recycling and Processing Corporation (Authorised Transaction) Amendment Bill 2023

Act No _____, 2023

An Act to amend the *Waste Recycling and Processing Corporation (Authorised Transaction) Act 2010* to enable the Waste Assets Management Corporation to manage legacy sites containing contamination; and for other purposes.

I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.

Assistant Speaker of the Legislative Assembly.

The Legislature of New South Wales enacts—

1 Name of Act

This Act is the *Waste Recycling and Processing Corporation (Authorised Transaction) Amendment Act 2023*.

2 Commencement

This Act commences on the date of assent to this Act.

Schedule 1 **Amendment of Waste Recycling and Processing Corporation (Authorised Transaction) Act 2010 No 8**

[1] **Section 1 Name of Act**

Omit “*Waste Recycling and Processing Corporation (Authorised Transaction)*”.

Insert instead “*Waste Assets Management Corporation*”.

[2] **Section 3**

Omit the section. Insert instead—

3 Definitions

The dictionary in Schedule 1, clause 1 defines words used in this Act.

Note— The *Interpretation Act 1987* contains definitions and other provisions that affect the interpretation and application of this Act.

[3] **Part 1A**

Insert after Part 1—

Part 1A Waste Assets Management Corporation

Division 1 Constitution of WAMC

3B Functions of WAMC

(1) The WAMC has the following functions—

- (a) to acquire, control and manage contaminated land if, in the Chief Executive’s opinion, the land presents a risk of harm to human health or the environment,
- (b) to provide services and do other things for the following purposes in relation to contaminated land acquired, controlled or managed under paragraph (a)—
 - (i) the remediation of the land,
 - (ii) the use or development of the land,
 - (iii) activities that relate to or are incidental to the management, use or development of the land.

Examples—

- 1 using the land for landfill operations before the land is remediated
 - 2 following remediation of the land, using the land for use as a public recreation facility until the land is sold to another person
- (c) to enter into arrangements with a person or body in connection with its other functions, including arrangements for third parties to carry out development for the WAMC on land owned by the WAMC,
 - (d) functions conferred on the WAMC by this Act or another Act,
 - (e) functions supplementary or incidental to the exercise of its other functions, including the following—
 - (i) entering contracts or arrangements,
 - (ii) charging fees for services,

- (iii) conducting business, for example, generation of renewable energy or creation and sale of carbon credits or biodiversity credits,
 - (f) other prescribed functions in relation to land owned or managed by the WAMC.
- (2) In carrying out development on contaminated land, the Chief Executive must be satisfied the development will—
 - (a) prevent further contamination of the land, or
 - (b) be compatible with action taken to mitigate or minimise the risk of harm to human health or the environment presented by contaminants on the land.

Division 2 Dealings with land

3D Acquisition of land

The WAMC may, for this Act, acquire land or other property, or an interest in land or other property—

- (a) by agreement, or
- (b) in accordance with section 3F.

3E Transfer of land to WAMC

- (1) The Minister may, by order published in the Gazette, transfer land comprising, wholly or in part, contaminated land—
 - (a) from the State or a government agency to the WAMC, or
 - (b) from a council to the WAMC.
- (2) The Minister may transfer land under subsection (1) only if—
 - (a) both parties to the transfer have consented to the transfer, and
 - (b) the Treasurer has approved the transfer or the transfer is in accordance with a Treasurer's direction under the *Government Sector Finance Act 2018*.
- (3) On the day the order is published in the Gazette (the **transfer day**), the land vests in the WAMC for an estate in fee simple—
 - (a) without the need for further conveyance, transfer, assignment or assurance, and
 - (b) subject to the trusts, estates, interests, dedications, conditions, restrictions and covenants to which the land was subject immediately before the day the order is published.
- (4) On the transfer day, the following provisions have effect—
 - (a) the rights or liabilities of the transferor in relation to the land become the rights or liabilities of the WAMC,
 - (b) all proceedings relating to the land commenced before the transfer day by or against the transferor and pending immediately before the transfer day are taken to be proceedings pending by or against the WAMC,
 - (c) an act, matter or thing done or omitted to be done in relation to the land before the transfer day by, to or in relation to the transferor is, to the extent to which the act, matter or thing has force or effect, taken to have been done or omitted to be done by, to or in relation to the WAMC,

- (d) a reference in an Act, in an instrument made under an Act or in a document to the transferor is, to the extent it relates to the land or the rights or liabilities, to be read as, or as including, a reference to the WAMC.

3F Transfer of land from WAMC

- (1) The WAMC may, by written notice, advise the Minister that certain land is no longer required to be owned or managed by the WAMC for risks to human health or the environment to be properly managed in relation to the land.
- (2) The Minister may, by order published in the Gazette, transfer the land specified in the order from the WAMC to—
 - (a) for land transferred to the WAMC from the State or a government agency—the State, the government agency or, with the agreement of both parties to the transfer, another government agency, or
 - (b) for land transferred to the WAMC from a council—the council.
- (3) On the day the order is published in the Gazette (the *transfer day*), the land vests in the transferee for an estate in fee simple—
 - (a) without the need for further conveyance, transfer, assignment or assurance, and
 - (b) subject to the trusts, estates, interests, dedications, conditions, restrictions and covenants to which the land was subject immediately before the day the order is published.
- (4) On the transfer day, the following provisions have effect—
 - (a) the rights or liabilities of the WAMC in relation to the land become the rights or liabilities of the transferee,
 - (b) all proceedings relating to the land commenced before the transfer day by or against the WAMC and pending immediately before the transfer day are taken to be proceedings pending by or against the transferee,
 - (c) an act, matter or thing done or omitted to be done in relation to the land before the transfer day by, to or in relation to the WAMC is, to the extent to which the act, matter or thing has force or effect, taken to have been done or omitted to be done by, to or in relation to the transferee,
 - (d) a reference in an Act, in an instrument made under an Act or in a document to the WAMC is, to the extent it relates to the land or the rights or liabilities, to be read as, or as including, a reference to the transferee.

3G Effect of transfer of land under this part

- (1) Land may be transferred under this part despite a requirement of another Act or law that relates to dealing with or disposing of the land.
- (2) No compensation is payable to a person or body in connection with the operation of this section.
- (3) The operation of this section must not be regarded as—
 - (a) a breach of contract or confidence or otherwise as a civil wrong, or
 - (b) a breach of a contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities, or
 - (c) giving rise to a remedy by a party to an instrument, or causing or permitting the termination of an instrument, because of a change in the beneficial or legal ownership of an asset, right or liability.

- (4) Duty under the *Duties Act 1997* is not chargeable for or in relation to—
 - (a) a vesting or transfer of land effected under this section or in accordance with arrangements entered into under this Act, or
 - (b) anything certified by the Minister as having been done in consequence of the vesting or transfer or under the arrangements.

3H Sale of land by WAMC

The WAMC may, with the consent of the Minister, sell or exchange land owned by the WAMC, including by disposing of a fee simple estate in the land.

3I Requirement to report about acquisitions and disposal of land

- (1) The WAMC must, within 2 months after the end of each reporting period, give the Minister a report about the following—
 - (a) land acquired, or disposed of, by the WAMC in the reporting period, including land bought, sold, exchanged or otherwise transferred to or from the WAMC,
 - (b) if the WAMC disposed of land to a person other than the State, a government agency or a council within the reporting period—the reason for the decision to dispose of the land to that person.
- (2) The Minister must, within 5 sitting days after being given a report under subsection (1), provide the report to the Presiding Officer of each House of Parliament.
- (3) A report provided to the Presiding Officer of a House of Parliament under subsection (2) must be laid before that House within 5 sitting days of that House after it is received by the Presiding Officer.
- (4) In this section—

reporting period means the following periods—

 - (a) the period starting on 1 January in a year and ending on 30 June in that year,
 - (b) the period starting on 1 July in a year and ending on 31 December in that year.

[4] Section 7 WAMC Landfill Rehabilitation Fund

Omit “Minister for Finance, Services and Property” from section 7(1), (3)(a) and (b), (4) and (7).

Insert instead “Minister”.

[5] Section 7, as amended by item [4]

Renumber as section 3C and transfer after section 3B, as inserted by item [3].

[6] Section 16 Waste Assets Management Corporation

Omit “Minister for Finance, Services and Property” from section 16(2).

Insert instead “Minister”.

[7] Section 16(3)

Omit the subsection.

[8] Section 16, as amended by items [6] and [7]

Renumber as section 3A and transfer before section 3B, as inserted by item [3].

[9] Section 20 Delegation

Omit section 20(2). Insert instead—

- (2) The Minister may delegate to the following any function of the Minister under this Act, except this power of delegation—
- (a) an officer of the Department in which this Act is administered,
 - (b) another officer of a government sector agency.

[10] Section 29 Savings and transitional regulations

Omit the section.

[11] Schedule 1 Interpretative provisions

Omit clause 1, heading.

Insert instead—

1 Dictionary

[12] Schedule 1, clause 1

Omit the definitions of *authorised transaction*, *Waste Assets Management Corporation*, *WSN* and *WSN assets*.

Insert in alphabetical order—

authorised transaction means the transfer of WSN assets authorised by Part 2.

contaminated land means—

- (a) land that is contaminated within the meaning of the *Contaminated Land Management Act 1997*, or
- (b) land subject to a licence or notice issued under the *Protection of the Environment Operations Act 1997*, or
- (c) land subject to ongoing management or maintenance to mitigate or minimise the risks to human health and the environment presented by the contamination of the land, or
- (d) land adjacent to or adjoining land referred to in paragraph (a) or (b) on which it is reasonably necessary to carry out works—
 - (i) to contain or prevent further contamination, or
 - (ii) to mitigate the risks of contamination, or
 - (iii) to establish a buffer around the land to manage the risks to human health and the environment in relation to the land.

contamination has the same meaning as in the *Contaminated Land Management Act 1997*, section 5.

WAMC or *the Corporation* means the Waste Assets Management Corporation constituted by section 3A.

WSN means the Waste Recycling and Processing Corporation constituted by the *Waste Recycling and Processing Corporation Act 2001*.

WSN assets means assets, rights and liabilities of WSN.

[13] Schedule 5 Waste Assets Management Corporation

Omit “Minister for Finance, Services and Property” wherever occurring in clauses 3(3) and 5(2).

Insert instead “Minister”.

[14] Schedule 5, clause 5(3)

Omit the subclause.

[15] Schedule 5, clause 6

Omit “Treasurer”. Insert instead “Minister”.

[16] Schedule 6

Insert after Schedule 5—

Schedule 6 Savings and transitional provisions

Part 1 Preliminary

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the commencement of—
 - (a) a provision of this Act, or
 - (b) a provision amending this Act.
- (2) A savings or transitional provision consequent on the commencement of a provision must not be made more than 2 years after the commencement.
- (3) A savings or transitional provision made consequent on the commencement of a provision is repealed 2 years after the commencement.
- (4) A savings or transitional provision made consequent on the commencement of a provision may take effect before the commencement but not before—
 - (a) for a provision of this Act—the date of assent to this Act, or
 - (b) for a provision amending this Act—the date of assent to the amending Act.
- (5) A savings or transitional provision taking effect before its publication on the NSW legislation website does not—
 - (a) affect the rights of a person existing before the publication in a way prejudicial to the person, or
 - (b) impose liabilities on a person for anything done or omitted to be done before the publication.
- (6) In this section—

person does not include the State or an authority of the State.

Part 2 Provisions consequent on Waste Recycling and Processing Corporation (Authorised Transaction) Amendment Act 2023

2 Definition

In this part—

amendment Act means the *Waste Recycling and Processing Corporation (Authorised Transaction) Amendment Act 2023*.

3 References to Waste Recycling and Processing Corporation (Authorised Transaction) Act 2010

On the commencement of the amendment Act, Schedule 1[1], a reference in an Act, instrument or other document to the *Waste Recycling and Processing Corporation (Authorised Transaction) Act 2010* is taken to include a reference to the *Waste Assets Management Corporation Act 2010*.

4 Treasurer may declare completion of authorised transaction

- (1) The Treasurer may, by order published in the Gazette, declare the completion of the authorised transaction on a specified day.
- (2) On the specified day, the authorised transaction provisions are repealed.
- (3) In this section—

authorised transaction provisions means the following—

 - (a) Parts 2 and 3, as amended by the amendment Act,
 - (b) sections 19 and 21–27,
 - (c) Schedule 1, clauses 2 and 3,
 - (d) Schedules 2–4,
 - (e) Schedule 5, clause 5.

Schedule 2 Amendment of other legislation

2.1 Electricity Network Assets (Authorised Transactions) Act 2015 No 5

[1] Schedule 7 Savings, transitional and other provisions

Omit “*Waste Recycling and Processing Corporation (Authorised Transaction) Act 2010*” from clause 8, definition of *authorised transaction Act*.

[2] Schedule 7, clause 8

Omit “Waste Assets Management Corporation established by the *Waste Recycling and Processing Corporation (Authorised Transaction) Act 2010*” from the definition of *existing MHC*.

2.2 Environmentally Hazardous Chemicals Act 1985 No 14

Schedule 1 Provisions relating to the Committee

Omit “Waste Recycling and Processing Corporation” from clause 2(f).

Insert instead “Waste Assets Management Corporation”.

2.3 Land and Environment Court Act 1979 No 204

Section 20 Class 4—environmental planning and protection, development contract and strata renewal plan civil enforcement

Omit “*Waste Recycling and Processing Corporation Act 2001*” from section 20(3)(a).

Insert instead “*Waste Assets Management Corporation Act 2010*”.

2.4 Subordinate Legislation Act 1989 No 146

Schedule 4 Excluded instruments

Omit item 34.