

Waste Avoidance and Resource Recovery Act 2001 No 58

[2001-58]



New South Wales

Status Information

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Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Notes—

- **See also**
[Brigalow and Nandewar Community Conservation Area Bill 2005](#)

Authorisation

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Contents

Long title	4
Part 1 Preliminary	4
1 Name of Act	4
2 Commencement	4
3 Objects of Act	4
4 Definitions	5
Part 2 Functions of Director-General	5
5 (Repealed)	5
6 Functions of Director-General	5
7-10 (Repealed)	6
11 Delegation	6
Part 3 Waste strategies	7
12 Development of waste strategies	7
13 (Repealed)	7
14 Power to request councils to report on waste strategy compliance	7
Part 4 Responsibilities with respect to industry waste reduction	8
15 Extended producer responsibility schemes	8
16 Regulations for implementation and operation of schemes	8
17 Circumstances in which schemes may be implemented	8

18 Priorities with respect to the implementation of schemes.....	9
Part 5 Financial provisions	9
19 Waste Fund	9
20 Provision by Director-General of financial assistance and guarantees	10
21 Fees for services supplied by Director-General.....	10
22 Acquisitions by Director-General	10
Part 6 Miscellaneous	10
23 Act to bind Crown	10
24 Reports by Director-General	10
25 (Repealed)	11
26 Proceedings for offences	11
27 Regulations.....	11
28 Repeal of Waste Minimisation and Management Act 1995 No 102.....	11
29, 30 (Repealed)	11
31 Savings, transitional and other provisions.....	11
32 Review of Act.....	11
Schedules 1-3 (Repealed)	12
Schedule 4 Savings, transitional and other provisions	12

Waste Avoidance and Resource Recovery Act 2001 No 58



New South Wales

An Act to promote waste avoidance and resource recovery; to repeal the *Waste Minimisation and Management Act 1995*; to amend the *Protection of the Environment Operations Act 1997*; and for other purposes.

Part 1 Preliminary

1 Name of Act

This Act is the *Waste Avoidance and Resource Recovery Act 2001*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Objects of Act

The objects of this Act are as follows:

- (a) to encourage the most efficient use of resources and to reduce environmental harm in accordance with the principles of ecologically sustainable development,
- (b) to ensure that resource management options are considered against a hierarchy of the following order:
 - (i) avoidance of unnecessary resource consumption,
 - (ii) resource recovery (including reuse, reprocessing, recycling and energy recovery),
 - (iii) disposal,
- (c) to provide for the continual reduction in waste generation,
- (d) to minimise the consumption of natural resources and the final disposal of waste by encouraging the avoidance of waste and the reuse and recycling of waste,
- (e) to ensure that industry shares with the community the responsibility for reducing and dealing with waste,

- (f) to ensure the efficient funding of waste and resource management planning, programs and service delivery,
- (g) to achieve integrated waste and resource management planning, programs and service delivery on a State-wide basis,
- (h) to assist in the achievement of the objectives of the *Protection of the Environment Operations Act 1997*.

4 Definitions

- (1) In this Act:

Department means the Department of Environment and Conservation.

Director-General means the Director-General of the Department.

exercise a function includes perform a duty.

function includes a power, authority or duty.

principles of ecologically sustainable development means the principles of ecologically sustainable development contained in section 6 (2) of the *Protection of the Environment Administration Act 1991*.

waste has the same meaning as in the *Protection of the Environment Operations Act 1997*.

- (2) Notes included in this Act do not form part of this Act.

Part 2 Functions of Director-General

5 (Repealed)

6 Functions of Director-General

- (1) The functions of the Director-General are as follows:
- (a) to develop, implement or co-ordinate the implementation of (and evaluate strategies and programs for State-wide achievement of) government policy objectives in respect of:
 - (i) resource efficiency and waste reduction and management in relation to regions, industry sectors or material types, and
 - (ii) community education and awareness in relation to resource efficiency and waste reduction and management, and
 - (iii) programs for the prevention of litter and illegal dumping, and

- (iv) market development for recovered resources and recycled material, and
 - (v) information dissemination,
- (b) to develop, co-ordinate and monitor the implementation of event and public space waste management codes,
 - (c) to assist local communities to enter into arrangements for regionally-based secondary resource recovery from waste,
 - (d) 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),
 - (e) to research and develop waste reduction and resource efficiency infrastructure, technologies and systems,
 - (f) to develop and support training and education programs for resource efficiency, waste reduction and waste and litter management,
 - (g) to monitor, report on and evaluate the regional implementation of State-wide policies and strategies with respect to waste,
 - (h) to advise the Minister as to the kinds of articles, materials and substances that should be prohibited from being used for landfill or from being used in connection with other treatment processes, and the resource recovery options for those articles, materials and substances,
 - (i) such other functions as may be conferred or imposed on the Director-General by or under this or any other Act or law.
- (2) The Director-General may provide advice to the Minister on matters relating to waste policy and expenditure from the Waste Fund established under section 19.
 - (3) The Director-General is, in the exercise of the Director-General's functions, to have regard to the principles of ecologically sustainable development.

7-10 (Repealed)

11 Delegation

- (1) The Director-General may delegate to an authorised person the exercise of any of the Director-General's functions, other than this power of delegation.
- (2) In this section:
 - authorised person** means:
 - (a) a member of the staff of the Department, or

- (b) a person of a class prescribed by the regulations.

Part 3 Waste strategies

12 Development of waste strategies

- (1) The Director-General is to develop a waste strategy for the State.
- (2) A waste strategy:
 - (a) is to be based on continuous improvement and benchmarked against international best practice, and
 - (b) is to include targets for waste reduction, resource recovery and the diversion of waste from landfill disposal, developed by an expert reference group appointed by the Director-General.
- (3) A waste strategy does not take effect until it is adopted by the Director-General.
- (4) (Repealed)
- (5) After the adoption of the first waste strategy, subsequent waste strategies, to replace existing waste strategies, are to be developed at intervals of not more than 2 years.
- (6) For the purpose of developing any waste strategy, the adequacy of the waste strategy is, if appropriate, to be assessed by means including the technique known as life cycle analysis.
- (7) Before adopting a waste strategy, the Director-General:
 - (a) must cause notice of the proposed strategy to be published in a daily newspaper circulating throughout the State, and
 - (b) must cause copies of the proposed strategy to be made available for public inspection on the Internet and at each of the offices of the Department, and
 - (c) must allow a period of at least 28 days for members of the public to send written comments to the Director-General in relation to the proposed strategy, and
 - (d) must take any such comments into consideration.

13 (Repealed)

14 Power to request councils to report on waste strategy compliance

- (1) The Director-General may request a local council to provide the reasons for any specified non-compliance by the local council with the objectives of the current waste strategy.
- (2) Such a request must be in writing and must specify the date by which the local

council is requested to provide the reasons to the Director-General.

Part 4 Responsibilities with respect to industry waste reduction

15 Extended producer responsibility schemes

- (1) For the purposes of this Part, an **extended producer responsibility scheme** is 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.
- (2) Any such scheme includes 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 and post-disposal consequences).
- (3) In this Part:

producer of a product includes a supplier of the product in this State or person having a proprietary interest in the name under which the product is supplied in this State.

product includes any substance.

16 Regulations for implementation and operation of schemes

The regulations may make provision for or with respect to the implementation and operation of extended producer responsibility schemes in connection with a product, group of products or an industry in New South Wales.

17 Circumstances in which schemes may be implemented

- (1) The Minister is not to recommend the making of a regulation for or with respect to the implementation of an extended producer responsibility scheme unless the Minister is satisfied that it is necessary to do so having regard to the following matters:
 - (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.

- (2) A regulation with respect to the implementation or operation of a scheme cannot be challenged or invalidated because of this section.

18 Priorities with respect to the implementation of schemes

- (1) The Director-General is required to publicly advertise each year a priority statement with respect to the extended producer responsibility schemes the Director-General proposes to recommend for implementation under this Part.
- (2) The advertisement is to be published in at least 2 newspapers circulating throughout the State and in such other publications as the Director-General considers appropriate.
- (3) The advertisement is to invite written submissions to the Director-General on any relevant matter relating to the priority statement and state the period (being not less than 1 month after the advertisement is last published) within which submissions may be made.
- (4) The Director-General is, not later than 3 months after the closing date for submissions, to publish a report on any submissions received by the Director-General and to make the report available to the public.

Part 5 Financial provisions

19 Waste Fund

- (1) There is established a fund called the Waste Fund.
- (2) The Waste Fund is to be maintained by the Director-General.
- (3) Money in the Waste Fund can only be allocated in the manner authorised by the Minister.
- (4) There is to be paid into the Waste Fund:
 - (a) any money appropriated by Parliament for payment into the Waste Fund, and
 - (b) any money given to the Director-General for the express purpose of payment into the Waste Fund, and
 - (c) the proceeds of the investment of money in the Waste Fund, and
 - (d) any other money required to be paid into the Waste Fund by or under this or any other Act or law.
- (5) The money in the Waste Fund may be applied for any or all of the following purposes:
 - (a) waste avoidance, resource recovery and waste management (including

enforcement and regulation),

(b) any purpose for which it could lawfully have been applied by the corporation formerly constituted under section 5 and known as Resource NSW immediately before the dissolution of that corporation,

(c) the costs incurred by the Director-General in maintaining the Waste Fund.

(6) The Director-General may invest money in the Waste Fund in any manner authorised by the *Public Authorities (Financial Arrangements) Act 1987*.

20 Provision by Director-General of financial assistance and guarantees

(1) The Director-General may, for the purposes of exercising the Director-General's functions under this Act:

(a) provide loans, grants, subsidies and other financial assistance, and

(b) subject to subsection (2), provide financial guarantees.

(2) The Director-General may provide a financial guarantee only with the approval of the Minister and the concurrence of the Treasurer.

21 Fees for services supplied by Director-General

The Director-General may charge, for the supply of any services under this Act or the regulations:

(a) such fee as is prescribed by the regulations for the supply of the service, or

(b) if a fee is not so prescribed, such reasonable fee as the Director-General determines for the supply of the service.

22 Acquisitions by Director-General

(1) The Director-General may acquire by gift, bequest or devise any property for the purposes of this Act and may agree to carry out the conditions of any such gift, bequest or devise.

(2) The rule of law against remoteness of vesting does not apply to or in respect of any condition of a gift, bequest or devise to which the Director-General has agreed.

Part 6 Miscellaneous

23 Act to bind Crown

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of the Parliament of New South Wales permits, the Crown in all its other capacities.

24 Reports by Director-General

- (1) The Director-General must prepare and deliver to the Minister a report every 2 years on the following matters:
 - (a) the volumes of waste avoided, produced, recycled or reused in New South Wales during the reporting period,
 - (b) how those volumes compare with target volumes established by any current waste strategy,
 - (c) a description of the strategies and programs being implemented by the Director-General and the degree of success achieved by them.
- (2) The Minister is to cause a copy of the report to be tabled in each House of Parliament no later than the fifth sitting day of that House in the Parliamentary session next following the end of the reporting period.

25 (Repealed)

26 Proceedings for offences

Proceedings for offences against this Act or the regulations are to be disposed of summarily by a Local Court.

27 Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) The regulations may create offences punishable by a penalty not exceeding:
 - (a) 200 penalty units in the case of an individual, or
 - (b) 400 penalty units in the case of a corporation.
- (3) The regulations may adopt any document as in force from time to time.

28 Repeal of [Waste Minimisation and Management Act 1995 No 102](#)

The [Waste Minimisation and Management Act 1995](#) is repealed.

29, 30 (Repealed)

31 Savings, transitional and other provisions

Schedule 4 has effect.

32 Review of Act

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those

objectives.

- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

Schedules 1-3 (Repealed)

Schedule 4 Savings, transitional and other provisions

(Section 31)

Part 1 Preliminary

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

 this Act

[Statute Law \(Miscellaneous Provisions\) Act \(No 2\) 2003](#), but only to the extent that it amends this Act

- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later day.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

1A Definitions

In this Schedule:

assets means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description (including money), and includes securities, choses in action and documents.

liabilities means any liabilities, debts or obligations (whether present or future and whether vested or contingent).

rights means any rights, powers, privileges or immunities (whether present or future and whether vested or contingent).

Part 2 Provisions consequent on enactment of this Act

2 Definitions

In this Part:

former Act means the *Waste Minimisation and Management Act 1995*.

instrument means an instrument (other than this Act) that creates, modifies or extinguishes rights or liabilities (or would do so if lodged, filed or registered in accordance with any law), and includes any judgment, order or process of a court.

State Waste Advisory Council means the State Waste Advisory Council established by the former Act as in force immediately before the repeal of that Act by this Act.

Waste Board means a Waste Planning and Management Board constituted under Part 3 of the former Act as in force immediately before the repeal of that Act by this Act.

3 Dissolution of Waste Boards

- (1) Each Waste Board is dissolved.
- (2) A person who, immediately before the dissolution of a Waste Board, held office as a director of the Waste Board:
 - (a) ceases to hold that office, and
 - (b) is not entitled to any compensation because of the loss of that office.

4 General managers and other declared officers of Waste Boards

- (1) This clause applies to a person employed by a Waste Board immediately before the day on which the Waste Board is dissolved by this Act as:
 - (a) the general manager, or
 - (b) an officer declared by the Minister by order in writing to be an officer to whom this clause applies.
- (2) A person to whom this clause applies:
 - (a) ceases to hold the position held by the person immediately before the Waste Board is dissolved, and
 - (b) except as provided by subclause (3), is not entitled to any compensation because of the loss of that position, and

(c) is eligible to be employed by Resource NSW.

(3) Any such person (if not employed by Resource NSW on ceasing to hold that position) is entitled to be paid by Resource NSW:

(a) the compensation (if any) that would have been payable under Part 2A of the *Public Sector Management Act 1988* on termination of employment if the person had been an executive officer to whom that Part applied, or

(b) the compensation (if any) provided by the person's contract of employment with the dissolved Waste Board on termination of employment with that Board,

whichever is the lesser.

5 Staff of Waste Boards (other than General Manager or other declared officer)

(1) This clause applies to a person employed by a Waste Board immediately before the day on which the Waste Board is dissolved by this Act, other than the general manager or other officer to whom clause 4 applies.

(2) A person to whom this clause applies becomes, on the dissolution of the Waste Board, an employee of Resource NSW.

(3) The person is (until other provision is duly made under any Act or law) to be employed in accordance with any relevant statutory provisions, awards, agreements and determinations that would have applied to the person had the person remained in the employ of the Waste Board.

6 Construction of references to Waste Boards

On the dissolution of a Waste Board by this Act, a reference in any Act (other than this Act), in an instrument made under any Act or in a document of any kind:

(a) to the Waste Board is taken to be a reference to Resource NSW, and

(b) to a director of the Waste Board is taken to be a reference to a member of the Board of Resource NSW, and

(c) to the general manager of the Waste Board is taken to be a reference to the Chief Executive of Resource NSW.

7 Transfer of assets, rights and liabilities to new Authority

(1) On the day on which a Waste Board is dissolved by this Act, the following provisions have effect:

(a) the assets of the Waste Board vest in Resource NSW by virtue of this clause without the need for any further conveyance, transfer, assignment or assurance,

(b) the rights and liabilities of the Waste Board become the rights and liabilities of

Resource NSW,

- (c) all proceedings commenced before that day by or against the Waste Board and pending immediately before that day are taken to be proceedings pending by or against Resource NSW,
 - (d) any act, matter or thing done or omitted to be done before that day by, to or in respect of the Waste Board is (to the extent that that act, matter or thing has any force or effect) taken to have been done or omitted by, to or in respect of Resource NSW.
- (2) The Minister may, by order in writing, direct that any specified asset, right or liability of a Waste Board is transferred to a body representing the Crown (but only if the body consents to the transfer). Subclause (1) applies to any such direction as if a reference to Resource NSW were a reference to that body.
- (3) The operation of this clause is not to be regarded:
- (a) as a breach of contract or confidence or otherwise as a civil wrong, or
 - (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities, or
 - (c) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability.
- (4) The operation of this clause is not to be regarded as an event of default under any contract or other agreement.
- (5) No attornment to the transferee by a lessee from a Waste Board is required.

8 Transfer duty

Duty under the *Duties Act 1997* is not chargeable for or in respect of:

- (a) a transfer effected by or under this Schedule, or
- (b) anything certified by the Minister as having been done in consequence of such a transfer (for example, the transfer or conveyance of an interest in land).

9 First annual report of Resource NSW

- (1) This clause applies with respect to any period before the dissolution of a Waste Board for which the affairs of the Waste Board have not been the subject of an annual financial report of the Waste Board.
- (2) The first annual report of Resource NSW is to include the financial affairs of a dissolved Waste Board with respect to any such period.

10 Abolition of State Waste Advisory Council

- (1) The State Waste Advisory Council is abolished.
- (2) A person who, immediately before the abolition of State Waste Advisory Council, held office as a member of the Council:
 - (a) ceases to hold that office, and
 - (b) is not entitled to any compensation because of the loss of that office.

11 Continuation of Waste Planning and Management Fund as Waste Fund

The Waste Planning and Management Fund established under the former Act is, on the commencement of this Act, taken to be the Waste Fund established by this Act.

12 Existing industry waste reduction plans

- (1) In this clause:

IWRP means an industry waste reduction plan in force under Part 4 of the former Act immediately before its repeal.

used packaging materials IWRP means the IWRP notified in the Gazette of 29 September 2000.

- (2) On the repeal of the former Act, each IWRP (other than the used packaging materials IWRP) is revoked and ceases to have effect.
- (3) The used packaging materials IWRP continues to have effect until:
 - (a) 1 July 2006, or
 - (b) a date appointed by proclamation for the purposes of this clause,whichever first occurs.
- (3A) Paragraph 5.1 of the used packaging materials IWRP is to be construed as if it read as follows:

This Plan comes into force on the commencement date and will continue in force until 1 July 2006, or until a date appointed by proclamation for the purposes of clause 12 of Schedule 4 to the [Waste Avoidance and Resource Recovery Act 2001](#), whichever occurs first.

- (4) The provisions of the former Act relating to an IWRP (and related provisions of the [Protection of the Environment Operations Act 1997](#)) continue to have effect (despite their repeal) with respect to the used packaging materials IWRP while it continues to have effect under subclauses (3) and (3A).

Part 3 Provisions consequent on enactment of the [Statute Law \(Miscellaneous Provisions\) Act \(No 2\) 2003](#)

13 Definitions

In this Part:

Board means the Board of Resource NSW referred to in section 8 as in force immediately before the repeal of that section by the [Statute Law \(Miscellaneous Provisions\) Act \(No 2\) 2003](#).

Resource NSW means the corporation constituted under section 5 as in force immediately before the repeal of that section by the [Statute Law \(Miscellaneous Provisions\) Act \(No 2\) 2003](#).

14 Dissolution of Resource NSW

- (1) Resource NSW is dissolved.
- (2) A reference in any document (other than this Act) to Resource NSW is taken to be a reference to the Director-General.
- (3) A person who, immediately before the dissolution of Resource NSW, held office as a member of the Board:
 - (a) ceases to hold that office, and
 - (b) is not entitled to any compensation because of the loss of that office.

15 Transfer of assets, rights and liabilities to the Crown

- (1) On the day on which Resource NSW is dissolved by this Act, the following provisions have effect:
 - (a) the assets of Resource NSW vest in the Crown by virtue of this clause without the need for any further conveyance, transfer, assignment or assurance,
 - (b) the rights and liabilities of Resource NSW become the rights and liabilities of the Crown,
 - (c) all proceedings commenced before that day by or against Resource NSW and pending immediately before that day are taken to be proceedings pending by or against the Crown,
 - (d) any act, matter or thing done or omitted to be done before that day by, to or in respect of Resource NSW is (to the extent that that act, matter or thing has any force or effect) taken to have been done or omitted by, to or in respect of the Crown.

- (2) The operation of this clause is not to be regarded:
 - (a) as a breach of contract or confidence or otherwise as a civil wrong, or
 - (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities, or
 - (c) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability.
- (3) The operation of this clause is not to be regarded as an event of default under any contract or other agreement.
- (4) No attornment to the transferee by a lessee from Resource NSW is required.
- (5) Duty under the *Duties Act 1997* is not chargeable for or in respect of:
 - (a) a transfer effected by this clause, or
 - (b) anything certified by the Minister as having been done in consequence of such a transfer (for example, the transfer or conveyance of an interest in land).

16 Financial statements and annual report of Resource NSW

- (1) The annual report of Resource NSW required under the *Annual Reports (Statutory Bodies) Act 1984* in respect of the portion of the financial year ending on the date of dissolution of Resource NSW is to be included in the annual report of the Department of Environment and Conservation for the relevant financial year.
- (2) In this clause, **financial year** has the same meaning as it has in the *Public Finance and Audit Act 1983*.

Note—

An annual report referred to in clause 16 (1) must contain financial statements, prepared in accordance with Division 3 of Part 3 of the *Public Finance and Audit Act 1983* and audited under that Division.