

# Waste Recycling and Processing Corporation (Authorised Transaction) Act 2010 No 8

[2010-8]



New South Wales

## Status Information

### Currency of version

Historical version for 23 March 2010 to 23 March 2010 (accessed 14 January 2025 at 15:09)

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### Provisions in force

Some, but not all, of the provisions displayed in this version of the legislation have commenced.

### Notes—

- **Note**  
Amending provisions are subject to automatic repeal pursuant to sec 30C of the [Interpretation Act 1987 No 15](#) once the amendments have taken effect.

### Authorisation

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File last modified 23 March 2010

# Waste Recycling and Processing Corporation (Authorised Transaction) Act 2010 No 8



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# Waste Recycling and Processing Corporation (Authorised Transaction) Act 2010 No 8



New South Wales

An Act to provide for the transfer of the business of the Waste Recycling and Processing Corporation; and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Waste Recycling and Processing Corporation (Authorised Transaction) Act 2010*.

### 2 Commencement

- (1) This Act commences on the date of assent to this Act, except as provided by subsection (2).
- (2) Section 30 and Schedule 6.2 commence on a day to be appointed by proclamation.

### 3 Interpretation

- (1) **Key definitions** In this Act:

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

***the Fund*** means the WAMC Landfill Rehabilitation Fund established by section 7.

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

**Note—**

The Waste Recycling and Processing Corporation operates under the trading name WSN Environmental Solutions.

***WSN assets*** means assets, rights and liabilities of WSN.

- (2) **Other interpretative provisions** Expressions used in this Act that are defined in Schedule 1 have the meanings set out in that Schedule.

## Part 2 The authorised transaction

### 4 Authority for transfer of WSN assets to private sector

This Act authorises the transfer to the private sector of any WSN assets.

### 5 Transfer of WSN assets to public sector agencies

This Act authorises the transfer of any WSN assets to one or more public sector agencies.

### 6 Proceeds of transaction

- (1) The proceeds of the transfer of WSN assets to the private sector pursuant to the authorised transaction (***the transaction proceeds***) belong to and are payable directly to the State.
- (2) The transaction proceeds paid to the State are to be paid as follows:
  - (a) the amount of all outstanding WAMC landfill liabilities on the completion of the authorised transaction (determined as provided by section 7) is to be paid into the WAMC Landfill Rehabilitation Fund under that section,
  - (b) the balance of the transaction proceeds are to be paid into the Consolidated Fund.
- (3) The following deductions are authorised to be made from the transaction proceeds:
  - (a) deduction of such amounts as the Treasurer approves to repay debt and satisfy other liabilities of a public sector agency in respect of WSN assets transferred for the purposes of the authorised transaction,
  - (b) deduction of such amounts as the Treasurer approves to reimburse public sector agencies for payments made by them in respect of any tax, duty, fee or charge imposed by any Act or law of the State or any other jurisdiction in connection with a transaction arrangement,
  - (c) deduction of such amounts as the Treasurer approves to satisfy any liability of a public sector agency arising under or in connection with a transaction arrangement,
  - (d) deduction of such amounts as the Treasurer approves to meet expenses reasonably incurred by public sector agencies for the purposes of the authorised transaction.
- (4) The transaction proceeds do not include any amount certified by the Treasurer to have been paid to a public sector agency as a tax, duty, fee or charge imposed by any Act or law of the State in connection with a transaction arrangement.
- (5) The deductions authorised to be made from the transaction proceeds may be made before payment of transaction proceeds into the Consolidated Fund or may be made

by payment from the Consolidated Fund.

- (6) The requirements of this section do not affect the validity of a transaction arrangement.

## **7 WAMC Landfill Rehabilitation Fund**

- (1) There is to be established in the Special Deposits Account a fund called the WAMC Landfill Rehabilitation Fund (***the Fund***). The Fund is to be administered by the Treasurer.
- (2) There is payable into the Fund:
- (a) out of the transaction proceeds under section 6, the amount of all outstanding WAMC landfill liabilities as at the completion of the authorised transaction (as determined under this section),
  - (b) interest and any other amounts accruing from time to time from the investments of the Fund.
- (3) There is payable from the Fund:
- (a) amounts in payment of (or in reimbursement for the payment of) any outstanding WAMC landfill liabilities, as directed by the Treasurer from time to time,
  - (b) amounts for payment to the Consolidated Fund as directed by the Treasurer from time to time, but only as permitted by this section,
  - (c) administrative expenses incurred in relation to the Fund.
- (4) The Treasurer cannot direct a payment from the Fund to the Consolidated Fund if the balance standing to the credit of the Fund at the time of the payment is less than the amount of all outstanding WAMC landfill liabilities at that time.
- (5) The amount of all outstanding WAMC landfill liabilities as at the completion of the authorised transaction is to be determined and reported to the Treasurer by the person appointed by the Treasurer as Technical Consultant for the authorised transaction.
- (6) The annual report of the Waste Assets Management Corporation is to include details of the amounts paid from the Fund during the financial year to which the report relates and the purposes for which those payments were made.
- (7) The Treasurer may invest money in the Fund in such manner as may be authorised by the [\*Public Authorities \(Financial Arrangements\) Act 1987\*](#).
- (8) In this section:

***outstanding WAMC landfill liabilities*** means any liabilities of WSN in relation to

the rehabilitation and future maintenance of landfill sites that become liabilities of the Waste Assets Management Corporation pursuant to the authorised transaction.

### **8 Treasurer to report on authorised transaction**

- (1) The Treasurer is to prepare a report on the following matters concerning the authorised transaction:
  - (a) the broad strategies for compliance with the waste management strategies of the Environment Protection Authority,
  - (b) the broad strategies to be established to ensure the resolution of any competition issues resulting from the authorised transaction.
- (2) In preparing the report, the Treasurer is to consult with the Environment Protection Authority.
- (3) The Treasurer's report is to be publicly released as soon as reasonably practicable after the completion of the authorised transaction.

## **Part 3 Facilitating the authorised transaction**

### **9 Treasurer's functions**

The Treasurer has and may exercise all such functions as are necessary or convenient for the purposes of the authorised transaction. The functions conferred on the Treasurer by any other provision of this Act do not limit the Treasurer's functions under this section.

### **10 Transaction companies**

- (1) The Treasurer may for the purposes of the authorised transaction establish, or direct the establishment of, companies as **transaction companies** in any of the following ways:
  - (a) the formation or acquisition by or on behalf of the State or a SOC of a company limited by shares, so that all the issued shares in the company are held by or on behalf of the State or a SOC (or both),
  - (b) the formation or acquisition of a company as a wholly owned subsidiary company of a transaction company,
  - (c) the conversion of WSN into a company limited by shares as provided by Schedule 2.
- (2) A transaction company that is a public sector agency may be converted from one kind of company to any other kind of company.
- (3) Except by express agreement with the Treasurer:

- (a) a transaction company is not and does not represent the State, and
  - (b) the debts, liabilities and obligations of a transaction company are not guaranteed by the State (but without affecting any guarantee of a debt, liability or obligation of WSN that becomes a debt, liability or obligation of the transaction company).
- (4) The Treasurer may act for or on behalf of the State, a SOC or a transaction company that is a public sector agency in connection with the rights, privileges and benefits, and the duties, liabilities and obligations of the State, the SOC or the transaction company as the holder of shares or other securities in a transaction company.
  - (5) Shares and other securities in a transaction company that is a public sector agency may be issued, sold or transferred in accordance with the directions of the Treasurer.
  - (6) The Treasurer may on behalf of the State, a SOC or a transaction company that is a public sector agency enter into and carry out transaction arrangements for the issue, sale or transfer of shares and other securities in a transaction company.

#### **11 Functions of WSN and transaction companies**

- (1) WSN and any transaction company have and may exercise all such functions as are necessary or convenient for the purposes of the authorised transaction.
- (2) The functions conferred by this section are in addition to any other functions that WSN or a transaction company has apart from this section and those other functions do not prevent or otherwise limit the exercise of the additional functions conferred by this section.
- (3) The Treasurer may act for and on behalf of and in the name of WSN or any transaction company (while it is a public sector agency) in the exercise of any of its functions for the purposes of the authorised transaction.

#### **12 Direction and control of WSN and transaction companies**

- (1) WSN and any transaction company (while it is a public sector agency) are subject to the direction and control of the Treasurer in the exercise of any of their functions for the purposes of the authorised transaction.
- (2) The Treasurer may give directions for the purposes of the authorised transaction to WSN and to any transaction company, and to the directors and other officers of WSN or a transaction company. Any such directions must be complied with by WSN, the transaction company or the directors or other officers concerned.
- (3) Directions to a transaction company (or its directors and other officers) can only be given and are only required to be complied with while the transaction company is a public sector agency.
- (4) The power to give directions under this section extends to directions with respect to



the way in which WSN or a transaction company is to conduct its business and other affairs.

- (5) Action taken by WSN to comply with a direction of the Treasurer under this Act does not require the approval of the voting shareholders or portfolio Minister of WSN.
- (6) Anything done or omitted to be done by a director or other officer of WSN or a transaction company in complying with a direction given by the Treasurer under this Act does not subject the director or officer personally to any action, liability, claim or demand.
- (7) The provisions of this section are declared to be Corporations legislation displacement provisions for the purposes of section 5G of the Corporations Act.

### **13 Grant of relevant authorisations**

- (1) The Treasurer may give directions to a public sector agency for or with respect to the grant of any relevant authorisation to a person who becomes or who it is proposed will become the new operator of any WSN assets pursuant to the authorised transaction, including directions for or with respect to any of the following:
  - (a) requiring the grant of any such relevant authorisation without the necessity for the making or determination of any application,
  - (b) the displacement or modification of any provision of a relevant law in its application to the grant of any such relevant authorisation,
  - (c) the conditions or endorsements subject to which any such relevant authorisation is to be granted or that are to be attached to any such relevant authorisation.
- (2) A direction may only be given under this section for the grant of a relevant authorisation that:
  - (a) operates to transfer, replace or replicate an existing relevant authorisation that is currently in force, to the extent of its application to or in respect of the WSN assets concerned, and
  - (b) is subject to terms, conditions or endorsements that are the same (or to substantially the same effect) as those to which that existing relevant authorisation is subject.
- (3) The Treasurer must consult with a public sector agency before giving a direction to the public sector agency under this section.
- (4) A public sector agency exercising functions under a relevant law must comply with a direction of the Treasurer under this section.
- (5) Anything done by WSN in compliance with a condition or endorsement of a relevant

authorisation in relation to WSN assets of which a person is the new operator is taken to have been done by the new operator for the purposes of any corresponding condition or endorsement of a relevant authorisation granted to the new operator pursuant to a direction under this section.

(6) A relevant authorisation granted to WSN or to the new operator of WSN assets may not be suspended or cancelled on the ground of the conversion of WSN or the new operator to a company or on the ground of any change that has occurred in the officers or shareholders of the company as a result of that conversion or pursuant to a transaction arrangement.

(7) In this section:

**grant** includes issue and transfer.

**new operator** of WSN assets means:

- (a) a public sector agency to which any WSN assets are transferred for the purposes of the authorised transaction, or
- (b) a person (or the nominee of a person) in whom WSN assets are vested, or to whom WSN assets are transferred, pursuant to the authorised transaction.

**public sector agency** includes a local authority.

**relevant authorisation** means a licence, permit, consent, entitlement, accreditation or other authorisation under a relevant law.

**relevant law** means any of the following Acts and any regulations or instruments under those Acts:

*Contaminated Land Management Act 1997*

*Environmental Planning and Assessment Act 1979*

*Mining Act 1992*

*Protection of the Environment Operations Act 1997*

*Sydney Water Act 1994*

*Water Act 1912*

*Water Management Act 2000*

any other Act prescribed by the regulations.

## 14 Vesting orders

The Treasurer may make vesting orders under Schedule 3 for the purposes of the

authorised transaction.

## **15 Employee protections**

Schedule 4 contains provisions relating to the transfer of employees of WSN for the purposes of the authorised transaction.

## **16 Waste Assets Management Corporation**

- (1) There is constituted by this Act a corporation with the corporate name of the Waste Assets Management Corporation (***the Corporation***).
- (2) The Corporation is a NSW Government agency and is, in the exercise of the Corporation's functions, subject to the control and direction of the Treasurer.
- (3) The Corporation has the following functions:
  - (a) to hold, on behalf of the Crown, WSN assets acquired by it or transferred to it by or under this or any other Act and to conduct businesses, provide services and carry on activities that relate to or are incidental to the management of any WSN assets held by it,
  - (b) to undertake, on behalf of the Crown, the development for any purpose for the benefit of the State of any land comprising WSN assets held by it,
  - (c) such other functions in connection with WSN assets held by it as may be prescribed by the regulations,
  - (d) such other functions as may be conferred or imposed on the Corporation by or under this or any other Act.

### **Note—**

See also Schedule 5, which makes further provision for the Corporation.

## **17 State taxes**

- (1) In this section:

***relevant matter*** means any of the following:

- (a) the transfer of WSN assets for the purposes of the authorised transaction,
- (b) a vesting of assets, rights or liabilities by operation of Schedule 3 (Vesting of assets, rights and liabilities) and anything certified by the Treasurer as having been done in consequence of such a vesting (for example, the transfer or registration of an interest in land),
- (c) the issue, disposal or purchase of shares or other securities in a company for the purposes of the authorised transaction,

- (d) any matter connected with the corporate conversion of WSN for the purposes of the authorised transaction,
- (e) such other matters for the purposes of the authorised transaction as may be prescribed by the regulations.

**State tax** means application or registration fees, duty under the [Duties Act 1997](#) or any other tax, duty, fee or charge imposed by any Act or law of the State.

- (2) State tax is not payable by a public sector agency in relation to a relevant matter.
- (3) State tax is not payable by a person or body (other than a public sector agency) in relation to a relevant matter to such extent (if any) as the Treasurer may direct by order in writing, either generally or in a particular case.
- (4) An order may be made by the Treasurer under this section before or after the liability to pay the State tax concerned accrues.
- (5) The Treasurer must give a copy of an order under this section to the Chief Commissioner of State Revenue.

## **18 Contracts for sale of land**

Section 52A (Contracts for sale of land) of the [Conveyancing Act 1919](#) does not apply to a contract for the sale of land that is entered into for the purposes of the authorised transaction.

## **Part 4 Miscellaneous**

### **19 Release of information by Auditor-General**

Section 38 (Secrecy) of the [Public Finance and Audit Act 1983](#) does not apply to or in respect of a report or communication that the Treasurer authorises the Auditor-General to make to a person for the purposes of the authorised transaction.

### **20 Delegation**

The Treasurer may delegate to the Secretary of the Treasury, or to any other officer of the Government Service prescribed by the regulations, any function of the Treasurer under this Act except this power of delegation.

### **21 Act to bind State and other jurisdictions**

- (1) This Act binds the State and, in so far as the legislative power of the Parliament of New South Wales permits, the other States, the Territories and the Commonwealth.
- (2) Without limiting subsection (1), this Act has effect despite any privilege or immunity of the Crown in any of its capacities.

- (3) This Act does not make any State or Territory, the Commonwealth, or the Crown in any of its capacities, liable to be prosecuted for an offence.
- (4) A reference in this section to a State, Territory or the Commonwealth includes a reference to the Government of the State, Territory or Commonwealth.

## **22 General relationship of Act with other State legislation**

- (1) None of the following provisions operate to prevent, restrict or otherwise limit the carrying out of the authorised transaction or the exercise of a function for the purposes of the authorised transaction:
  - (a) any provision of the *State Owned Corporations Act 1989* or the *Waste Recycling and Processing Corporation Act 2001*,
  - (b) any provision of the constitution of WSN or a subsidiary of WSN.
- (2) In the event of any inconsistency between the provisions of this Act or the regulations and a provision of any other State legislation that is prescribed by the regulations as an inconsistent provision for the purposes of this section, the provisions of this Act or the regulations (as the case may be) prevail to the extent of the inconsistency.

## **23 Extraterritorial operation of Act**

- (1) It is the intention of the Parliament of New South Wales that the operation of this Act should, as far as possible, include operation in relation to the following:
  - (a) things situated in or outside the territorial limits of the State,
  - (b) acts, transactions and matters done, entered into or occurring in or outside the territorial limits of the State,
  - (c) things, acts, transactions and matters (wherever situated, done, entered into or occurring) that would, apart from this Act, be governed or otherwise affected by the law of another State, a Territory, the Commonwealth or a foreign country.
- (2) Without limiting subsection (1), it is the intention of the Parliament of New South Wales that the provisions of this Act have an operation in relation to the things, acts, transactions and matters referred to in that subsection even if the rules of private international law (whether at general law or as provided by legislation) would require the application of a law other than this Act instead of the provisions of this Act.

## **24 Construction of Act and instruments so as not to exceed legislative power**

- (1) Unless a contrary intention appears, if a provision of this Act or an instrument made under this Act:
  - (a) would, apart from this section, have an invalid application, but

(b) also has at least one valid application,

it is the intention of the Parliament of New South Wales that the provision is not to have the invalid application, but is to have every valid application.

(2) Despite subsection (1), the provision is not to have a particular valid application if:

(a) apart from this section, it is clear, taking into account the provision's context and the purposes or objects underlying this Act, that the provision was intended to have that valid application only if every invalid application, or a particular invalid application, of the provision had also been within the legislative power of the Parliament of New South Wales, or

(b) the provision's operation in relation to that valid application would be different in a substantial respect from what would have been its operation in relation to that valid application if every invalid application, or a particular invalid application, of the provision had been within the legislative power of the Parliament of New South Wales.

(3) Subsection (2) does not limit the cases in which a contrary intention may be taken to appear for the purposes of subsection (1).

(4) This section is in addition to, and not in derogation of, section 31 of the [Interpretation Act 1987](#).

(5) In this section:

**application** means an application in relation to:

(a) one or more particular persons, things, matters, places, circumstances or cases, or

(b) one or more classes (however defined or determined) of persons, things, matters, places, circumstances or cases.

**invalid application**, in relation to a provision, means an application because of which the provision exceeds the legislative power of the Parliament of New South Wales.

**valid application**, in relation to a provision, means an application which, if it were the provision's only application, would be within the legislative power of the Parliament of New South Wales.

## 25 Protection of contractual and other obligations

(1) This section applies to the following:

(a) the operation of this Act (including any order under this Act and anything done or omitted to be done under or for the purposes of this Act),

(b) the transfer of WSN assets for the purposes of the authorised transaction,

- (c) the entering into or performance of obligations under a transaction arrangement by a public sector agency,
  - (d) a disclosure of information by, on behalf of or with the consent of a public sector agency for the purposes of the authorised transaction.
- (2) None of the matters or things to which this section applies are to be regarded as:
- (a) a breach of contract or confidence or otherwise as a civil wrong, or
  - (b) a breach of any instrument (including, without limitation, any provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities) or as requiring any act to be done under an instrument, or
  - (c) giving rise to any right or remedy by a party to a contract or other instrument, or as causing or permitting the termination of, or exercise of rights under, any contract or other instrument, or
  - (d) an event of default under any contract or other instrument, or
  - (e) giving rise to a breach of or an offence against a provision of an Act that prohibits or restricts the disclosure of information, or
  - (f) releasing a surety or other obligee wholly or in part from an obligation.
- (3) This section does not affect the rights and obligations of the parties to a transaction arrangement in respect of the performance of obligations under the transaction arrangement.
- (4) In this section:

***instrument*** means an instrument (other than an instrument made under this Act) or any other document 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, process or other instrument issued by a court or tribunal.

## **26 Compensation not payable**

- (1) Compensation is not payable by or on behalf of the State:
- (a) because of the enactment or operation of this Act, or for any consequence of that enactment or operation, or
  - (b) because of any statement or conduct relating to the enactment of this Act.
- (2) This section does not extend to compensation payable under a transaction arrangement to a party to the transaction arrangement in connection with the performance of obligations under the transaction arrangement.

(3) In this section:

**compensation** includes damages or any other form of monetary compensation.

**conduct** includes any act or omission, whether unconscionable, misleading, deceptive or otherwise.

**operation of this Act** includes the operation of any notice or order under this Act and any agreement entered into under or for the purposes of this Act.

**statement** includes a representation of any kind:

- (a) whether made verbally or in writing, and
- (b) whether negligent, false, misleading or otherwise.

**the State** means the Crown within the meaning of the [Crown Proceedings Act 1988](#), and includes a public sector agency and an officer, employee or agent of the Crown or a public sector agency.

## 27 Certificate evidence

A certificate purporting to be signed by the Treasurer or an officer prescribed by the regulations certifying that an order specified or referred to in the certificate is an order made by the Treasurer under a specified provision of this Act is admissible in evidence in any legal proceedings and is evidence of the matters certified.

## 28 Regulations

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.

## 29 Savings and transitional regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act.
- (2) For the avoidance of doubt, any such provision may, if the regulations so provide, have effect despite any specified provision of this Act.
- (3) Any such provision may, if the regulations so provide, take effect from the date of assent to this Act or a later date.
- (4) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, 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.

### 30 Repeal of [Waste Recycling and Processing Corporation Act 2001 No 59](#)

The [Waste Recycling and Processing Corporation Act 2001](#) is repealed.

## Schedule 1 Interpretative provisions

(Section 3)

### 1 Definitions

In this Act:

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

**authorised transaction**—see section 3.

**corporate conversion**, in relation to WSN, means the registration of WSN as a company under the Corporations Act.

**Corporations Act** means the [Corporations Act 2001](#) of the Commonwealth.

**exercise** a function includes perform a duty.

**function** includes a power, authority or duty.

**general law** means the common law and equity (as modified from time to time by legislation).

**legislation** includes:

- (a) any statute of a legislature (whether enacted or made in Australia or elsewhere), and
- (b) any proclamation, regulation, rule, by-law, order or any other kind of subordinate legislation (however described) made under the authority of a statute (whether enacted or made in Australia or elsewhere).

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

**local authority** means a council or county council under the [Local Government Act 1993](#) and includes a subsidiary of a council or county council.

**private sector** means any person other than a public sector agency.

**Note—**

A person who is a public sector agency of another jurisdiction is a private sector person for the purposes of this Act.

**public sector agency** means any of the following:

- (a) the State (including the Crown in right of the State),
- (b) a Minister,
- (c) WSN,
- (d) the Ministerial Holding Corporation constituted by the *State Owned Corporations Act 1989*,
- (e) the Waste Assets Management Corporation and any private subsidiary corporation of the Corporation,
- (f) a public authority of the State,
- (g) a SOC,
- (h) any other person acting on behalf of the State (or the Crown in right of the State),
- (i) a transaction company, but only while all the shares in the transaction company are held by or on behalf of the State or a SOC or the transaction company is a subsidiary of another transaction company all the shares in which are held by or on behalf of the State or a SOC.

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

**SOC** means a State owned corporation within the meaning of the *State Owned Corporations Act 1989*.

**State legislation** means any legislation of the State.

**transaction arrangement** means a transaction, agreement or other arrangement entered into by a public sector agency for the purposes of the authorised transaction.

**transaction company** means a company established as a transaction company pursuant to this Act.

**Waste Assets Management Corporation or the Corporation** means the Waste Assets Management Corporation constituted by section 16 of this Act.

**WSN**—see section 3.

**WSN assets**—see section 3.

## **2 Functions for the purposes of the authorised transaction**

For the purposes of this Act, any act, matter or thing is done or has effect for the purposes of the authorised transaction if it is done or has effect for the purpose of effecting or facilitating the authorised transaction or is done or has effect for any purpose that is ancillary or incidental to or consequential on the authorised transaction.

## **3 Transfer of WSN assets—interpretation**

- (1) When this Act authorises the transfer of WSN assets to the private sector it is authorising any transaction, arrangement or other action that results in WSN assets becoming vested in one or more persons in the private sector.
- (2) The following are examples of the ways in which WSN assets can be transferred to the private sector:
  - (a) direct sale to the private sector,
  - (b) sale to the private sector of a transaction entity,
  - (c) any other transaction whereby any one or more persons in the private sector becomes an owner of WSN assets.
- (3) The transfer of WSN assets to the private sector does not require a transfer of WSN assets by or from WSN and could, for example, be effected by the corporate conversion of WSN (to establish a transaction company) and the transfer of shares in the transaction company to the private sector.

- (4) In this clause:

**entity** includes a transaction company.

**sale** of an entity includes a sale of securities in the entity.

**transaction entity** means:

- (a) an entity that holds WSN assets or into which WSN is converted, or
- (b) an entity that is the holding company of an entity referred to in paragraph (a), or
- (c) an entity that has control (within the meaning of the Corporations Act) of an entity referred to in paragraph (a), or
- (d) any other entity the sale of which to the private sector results in WSN assets being vested in the private sector.

#### 4 Words and expressions defined in Corporations Act

Words and expressions used in this Act that are defined in section 9 of the Corporations Act have the same meanings as in that section, except in so far as they are defined differently in this Act or the context or subject-matter otherwise indicates or requires.

#### 5 Notes

Notes included in this Act do not form part of this Act.

### Schedule 2 Corporate conversion of WSN

(Section 10)

#### 1 Direction for corporate conversion of WSN

The Treasurer may direct by order in writing (**a corporate conversion direction**) that WSN be converted into a company limited by shares of a specified type.

#### 2 Application for conversion to company

- (1) If a corporate conversion direction is given, WSN is authorised to apply to be registered under Part 5B.1 of the Corporations Act as a company limited by shares of the type specified in the direction.
- (2) The Treasurer can certify that the provisions of this Act have been complied with concerning the transfer of the incorporation of WSN to the Corporations Act, and such a certificate is conclusive evidence in any proceedings before a court or tribunal that all the requirements of this Act have been complied with concerning the transfer of the incorporation of WSN to the Corporations Act.
- (3) The Treasurer's certificate under this clause cannot be challenged, reviewed or called into question in proceedings before any court or tribunal.

#### 3 Effect of conversion

- (1) The following provisions are taken to have had effect immediately before WSN is registered as a company under the Corporations Act:
  - (a) WSN ceases to be a statutory State owned corporation for the purposes of the *State Owned Corporations Act 1989* or any other State legislation,
  - (b) the voting shareholders (within the meaning of the *State Owned Corporations Act 1989*) of WSN cease to be members of the corporation,
  - (c) the board of directors of WSN is dissolved and each member (including any acting member) of the board ceases to hold office as such,
  - (d) any person who holds a statutory office of WSN ceases to hold that office, subject to Schedule 4 (Employee protections),

- (e) any person who ceases to be a member of WSN or to hold an office because of the operation of this subclause is not entitled to any compensation for the loss of that membership or office.
- (2) Nothing in this clause prevents any person from becoming an officer of the company into which WSN is being converted in accordance with its constitution and the provisions of the Corporations Act.
- (3) WSN becomes a transaction company for the purposes of this Act only when it is registered as a company under the Corporations Act.

### Schedule 3 Vesting of assets, rights and liabilities

(Section 14)

#### 1 Definitions

In this Schedule:

**transferee** means the person or body in whom any assets, rights or liabilities are vested by a vesting order.

**transferor** means the person or body from whom any assets, rights or liabilities are divested by a vesting order.

**vesting order**—see clause 2.

#### 2 Making of vesting order

The Treasurer may, by order (**a vesting order**), vest assets, rights and liabilities of WSN or a transaction company in a person specified in the order as the transferee.

#### 3 Vesting of assets, rights and liabilities in transferee

- (1) When any assets, rights or liabilities are vested by a vesting order, the following provisions have effect (subject to the vesting order):
  - (a) the assets vest in the transferee by virtue of this clause and without the need for any conveyance, transfer, assignment or assurance,
  - (b) the rights and liabilities become, by virtue of this clause, the rights and liabilities of the transferee,
  - (c) all proceedings relating to the assets, rights or liabilities pending by or against the transferor are taken to be proceedings pending by or against the transferee,
  - (d) any act, matter or thing done or omitted to be done in relation to the assets, rights or liabilities by, to or in respect of the transferor is (to the extent that the act, matter or thing has any force or effect) taken to have been done or omitted by, to or in respect of the transferee,

- (e) the transferee has all the entitlements and obligations of the transferor in relation to those assets, rights and liabilities that the transferor would have had but for the order, whether or not those entitlements and obligations were actual or potential at the time the order took effect,
- (f) a reference in any Act, in any instrument made under any Act or in any document of any kind to the transferor or a predecessor of the transferor is (to the extent that it relates to those assets or liabilities but subject to the regulations), to be read as, or as including, a reference to the transferee.

(2) No attornment to the transferee by a lessee from the transferor is required.

#### **4 Terms and conditions of vesting**

A vesting order may be made on such terms and conditions as are specified in the order.

#### **5 Consideration for vesting**

A vesting order may specify the consideration for which a vesting to which it applies is made and the value or values at which assets, rights or liabilities are vested.

#### **6 Date of vesting**

A vesting order takes effect on the date it is made or on such other date as may be specified in the order.

#### **7 Vesting of interests in land**

- (1) A vesting order may vest an interest in respect of land vested in the transferor without vesting the whole of the interests of the transferor in that land.
- (2) If the interest vested is not a separate interest, the order operates to create the interest vested in such terms as are specified in the order.
- (3) This clause does not limit any other provision of this Schedule.

#### **8 Confirmation of vesting**

- (1) The Treasurer may by order in writing confirm a vesting of particular assets, rights or liabilities by operation of this Schedule.
- (2) Such an order is evidence of that vesting.

#### **9 Determinations by Treasurer**

For the purposes of the making of a vesting order, the Treasurer may determine whether or not particular assets, rights or liabilities comprise assets, rights or liabilities of WSN, a transaction company or the Corporation at a particular time, and such a determination is conclusive as to the matters determined.

## 10 Certification to registration authorities

(1) In this clause:

**registration authority** means a person or body that has functions under any law in connection with the keeping of a register in respect of assets, rights or liabilities.

(2) A public sector agency that is the transferee or transferor under a vesting order may lodge with a registration authority a certificate certifying as to such information as may reasonably be required by the registration authority to enable the registration authority to exercise any function of the authority arising in connection with the vesting of any asset, right or liability pursuant to the vesting order.

(3) Such a certificate is to be accepted and acted upon by the registration authority and, despite any other law, the registration authority is not entitled to require that the information concerned be provided to it in any particular form or in any particular manner.

(4) No fee or charge is payable by the transferee to a registration authority for or in respect of the exercise of any function by the registration authority in connection with the vesting of an asset, right or liability by a vesting order.

## 11 Evidence of orders and certificates

A document purporting to be a vesting order or an order or certificate given under a provision of this Schedule is, unless the contrary is established, taken to be such an order or certificate and to have been properly made or given.

## 12 Public sector accounting policies

The Treasurer may give directions to public sector agencies for or with respect to accounting policies to be applied by public sector agencies in connection with the transfer between public sector agencies of assets, rights and liabilities of WSN or a transaction company for the purposes of the authorised transaction (in place of public sector accounting policies that would otherwise be applicable in respect of any such transfer).

# Schedule 4 Employee protections

(Section 15)

## 1 Definitions

(1) In this Schedule:

**casual employee** means an employee of WSN whose employment is in a category of employment that is described in or classified under a relevant award as casual employment or who is otherwise engaged as a casual employee.

**contract employee** means an employee of WSN whose terms and conditions of

employment are provided by an individual contract and not by a relevant award.

**permanent employee** means an employee of WSN whose employment is of indefinite duration and who is not a casual employee, temporary employee or contract employee.

**relevant award** means any award, agreement or other industrial instrument (under a law of the State or the Commonwealth) that provides for the terms and conditions of employment of employees of WSN.

**temporary employee** means an employee of WSN (other than a casual employee or contract employee) whose employment is in a category of employment that is described in or classified under a relevant award as temporary employment or whose employment is, under the terms of his or her employment, for a limited period.

**transaction completion** means the day certified by the Treasurer by order in writing as the day on which the authorised transaction is completed.

**transferred employee** means an employee of WSN whose employment is transferred under this Schedule.

- (2) A transaction company is considered to be an employer in the private sector for the purposes of this Schedule even while it is a public sector agency.

## 2 Transfer of employees

- (1) The Treasurer may by order in writing transfer the employment of an employee of WSN to the employment of an employer in the private sector or to employment in a Department of the Public Service.
- (2) A transfer to employment in a Department of the Public Service must be either:
- (a) a transfer to employment as a member of staff of the Waste Assets Management Corporation (which means employment in the Department for the purpose of enabling the Corporation to exercise its functions), or
  - (b) a transfer to employment as an excess employee of the Department.
- (3) A permanent employee or temporary employee can decline to be transferred to employment in the private sector.

### Note—

Casual and contract employees cannot decline a transfer to the private sector.

- (4) An employee's employment cannot be transferred to employment as an excess employee of a Department unless the employee is a permanent employee or temporary employee who has declined to be transferred to employment in the private sector.



- (5) The employer to whose employment an employee is transferred under this Schedule is the **new employer**.

### **3 Employment protection for employees transferred to private sector**

- (1) The employment of a transferred employee with the new employer in the private sector is to be on the same terms and conditions as applied to the employee as an employee of WSN immediately before the transfer of employment.
- (2) Those terms and conditions cannot be varied during any employment guarantee period for the transferred employee except by agreement entered into by or on behalf of the transferred employee.
- (3) The employment of a transferred employee with the new employer cannot be terminated by the new employer during the employment guarantee period, except:
- (a) for serious misconduct, or
  - (b) pursuant to the proper application of reasonable disciplinary procedures, or
  - (c) by agreement with the employee.
- (4) There is an **employment guarantee period** for transferred employees who are permanent or temporary employees, as follows:
- (a) for permanent employees the employment guarantee period is 3 years after the transaction completion,
  - (b) for temporary employees the employment guarantee period is the remainder of the employee's current term of employment (as specified in the arrangements under which the employee was engaged as a temporary employee) immediately before the transaction completion or the period of 3 years after the transaction completion, whichever period ends first.

#### **Note—**

There is no employment guarantee period for contract employees or casual employees. The employment of a transferred employee who is a contract employee remains governed by the contract of employment.

### **4 Employment protection for employees transferred to Public Service**

- (1) The employment of a person who is transferred to a Department of the Public Service under this Schedule is to be on the same terms and conditions as applied to the employee as an employee of WSN immediately before the transfer, subject to this clause.
- (2) The employment of a transferred employee as an excess employee of the Department is to be managed in accordance with any relevant public sector policy (an **excess employee policy**) applicable to excess employees of Departments, and for that

purpose the employee is to be treated as an employee declared excess by the Department to which the employee is transferred on the basis that the employee's substantive position in the Department has been deleted.

- (3) The terms and conditions of employment of the transferred employee cannot be varied for 12 months after the employee becomes an employee of the new employer except by agreement with the employee or (in the case of employment as an excess employee of a Department) in accordance with an excess employee policy.
- (4) This clause does not operate to extend the period of engagement of a temporary employee of WSN. A transferred employee who was a temporary employee of WSN immediately before the transfer is not entitled to employment as a transferred employee beyond the finishing date of the person's employment as a temporary employee of WSN (as specified in the arrangements under which the employee was engaged as a temporary employee).

## **5 Superannuation**

- (1) A transferred employee is entitled to continue as a contributor, member or employee for the purposes of any superannuation scheme in respect of which he or she was a contributor, member or employee (as an employee of WSN) immediately before the transfer of employment and remains so entitled subject to any variation to that entitlement made either by agreement or otherwise in accordance with law.
- (2) The new employer is taken to be an employer for the purposes of any superannuation scheme in respect of which the transferred employee continues as a contributor, member or employee pursuant to an entitlement under this clause.

## **6 Continuity of employment**

The continuity of a transferred employee's employment is taken not to have been broken by the transfer of employment, and service of the employee with WSN (including service deemed to be service with WSN) that is continuous service up to the time of transfer is deemed for all purposes to be service with the new employer.

## **7 Accrued leave entitlements**

- (1) A transferred employee retains any rights to sick leave, annual leave or long service leave accrued or accruing immediately before the transfer of employment (except accrued leave for which the employee has, on ceasing to be an employee of WSN, been paid the monetary value in pursuance of any other entitlement of the employee).
- (2) Nothing in the *Industrial Relations Act 1996*, the *Long Service Leave Act 1955* or the *Annual Holidays Act 1944* prevents payment in connection with the operation of this Act of the monetary value of annual leave or long service leave in lieu of an entitlement to that leave accrued by a person as an employee of a public sector

agency before the transfer of the employee's employment under this Schedule.

## **8 Transfer payments**

- (1) A transferred employee is not entitled to receive any payment or other benefit (including in the nature of severance pay or redundancy or other compensation) merely because the employee ceased to be an employee of WSN, or the employee's contract of employment with WSN was terminated, as a result of the transfer of employment (but without affecting any entitlement to a transfer payment under this clause).
- (2) The Treasurer or another public sector agency may enter into agreements or other arrangements with respect to the making of transfer payments to employees in connection with the transfer of employment of employees under this Schedule or otherwise in connection with the operation of this Act.
- (3) Any such arrangements may provide for the payment of any such transfer payments to be payments on the occasion of the termination of employment with the current employer despite any provision of this Schedule.

## **9 Workplace relations**

The Treasurer may negotiate and enter into agreements or industrial instruments concerning workplace relations for or on behalf of the State or a public sector agency in connection with the operation of this Schedule.

## **10 Operation of Commonwealth law**

- (1) A provision of this Schedule (including a provision to the extent that it imposes or continues a term or condition of employment) has no effect to the extent of any inconsistency with any provision of the *Fair Work Act 2009* of the Commonwealth or of any instrument under that Act.
- (2) This clause is not intended to limit the operation of section 24 (Construction of Act and instruments so as not to exceed legislative power) of this Act.

# **Schedule 5 Waste Assets Management Corporation**

(Section 16)

## **1 General Manager**

- (1) The General Manager of the Corporation is the person holding office as such under Chapter 1A of the *Public Sector Employment and Management Act 2002*.
- (2) The General Manager is responsible for the day-to-day management of the affairs of the Corporation and any act, matter or thing done in the name of, or on behalf of, the General Manager is taken to have been done by the Corporation.

## 2 Staff

The Corporation cannot employ any staff.

### Note—

Staff may be employed under Chapter 1A of the *Public Sector Employment and Management Act 2002* in the Government Service to enable the Corporation to exercise its functions.

## 3 Subsidiaries

- (1) Any function of the Corporation may be exercised by the Corporation itself or by a private subsidiary corporation.
- (2) The Corporation may:
  - (a) form, or participate in the formation of, private corporations, and
  - (b) acquire interests in private corporations, and
  - (c) sell or otherwise dispose of interests in private corporations.
- (3) The Corporation must not, without the approval of the Treasurer:
  - (a) form, or participate in the formation of, a private subsidiary corporation, or
  - (b) acquire an interest in a private corporation so that, as a result of the acquisition, the corporation becomes a private subsidiary corporation, or
  - (c) sell or otherwise dispose of any interest in a private subsidiary corporation so that, as a result of the sale or disposal, it ceases to be a private subsidiary corporation.
- (4) A private subsidiary corporation is not, and does not represent, the Crown.
- (5) In this Schedule:

**private corporation** means a corporation within the meaning of the Corporations Act formed in or outside New South Wales.

**private subsidiary corporation** means a private corporation in which the Corporation has a controlling interest.

## 4 Delegation of Corporation's functions

- (1) The Corporation may delegate to an authorised person any of its functions, other than this power of delegation.
- (2) A delegate may sub-delegate to an authorised person any function delegated by the Corporation if the delegate is authorised in writing to do so by the Corporation.
- (3) In this clause, **authorised person** means:
  - (a) a member of staff of the Corporation, or

- (b) a private subsidiary corporation of the Corporation, or
- (c) the holder of an office prescribed by the regulations.

## **5 Transfer of Corporation's assets, rights and liabilities**

- (1) This Act authorises the transfer of any assets, rights and liabilities of the Corporation (or a private subsidiary corporation of the Corporation) to any of the following:
  - (a) a public sector agency,
  - (b) a local authority,
  - (c) a private subsidiary corporation of the Corporation.
- (2) The Treasurer may make vesting orders under Schedule 3 for the purpose of transferring any assets, rights or liabilities of the Corporation or a private subsidiary corporation under this clause, as if the Corporation or private subsidiary corporation were a transaction company.

## **6 Annual report**

The annual report of the Corporation is to be included in the annual report to Parliament of the Treasury or of such other Department of the Public Service as the Treasurer may designate from time to time.

## **7 Seal of Corporation**

The seal of the Corporation is to be kept by the General Manager, or by a member of the staff of the Corporation authorised in that behalf by the General Manager, and may be affixed to a document only:

- (a) in the presence of the General Manager or that member of the staff, and
- (b) with an attestation by the signature of the General Manager or that member of staff of the fact of the affixing of the seal.

## **8 Dissolution of Corporation**

- (1) The Governor may by proclamation appoint a day as the day on which the Corporation is to be dissolved.
- (2) On the appointed day, the Corporation is dissolved and any assets, rights and liabilities of the Corporation become assets, rights and liabilities of the Crown.
- (3) Schedule 3 applies to the assets, rights and liabilities vested in the Crown under this clause as if they had been vested by a vesting order under that Schedule.
- (4) Regulations of a savings and transitional nature may be made consequent on the dissolution of the Corporation.

## **Schedule 6 Amendment of Acts**

### **6.1 Public Finance and Audit Act 1983 No 152**

#### **Schedule 2 Statutory bodies**

Insert in alphabetical order:

Waste Assets Management Corporation

### **6.2 State Owned Corporations Act 1989 No 134**

#### **Schedule 5 Statutory SOCs**

Omit "Waste Recycling and Processing Corporation".

### **6.3 Subordinate Legislation Act 1989 No 146**

#### **Schedule 4 Excluded instruments**

Insert at the end of the Schedule (with appropriate item numbering):

Regulations under the *Waste Recycling and Processing Corporation (Authorised Transaction) Act 2010*.