



New South Wales

Waste Minimisation and Management Amendment Bill 1998

Explanatory note

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

Overview of Bill

The objects of this Bill are as follows:

- (a) to prevent illegal waste dumping by making it an offence to transport waste to a place that cannot lawfully be used as a waste facility for that waste,
 - (b) to make it clear that a direction may be given to a person in relation to waste even though the waste is no longer in the possession or under the control of the person,
 - (c) to empower an authorised officer to direct the owner or occupier of any land not to receive any waste on that land or to cause or allow any waste to be deposited on that land,
 - (d) to clarify the power to make regulations under the *Waste Minimisation and Management Act 1995* with respect to the provision of information about matters relating to waste,
 - (e) to make minor and consequential amendments to the *Environmental Offences and Penalties Act 1989*.
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Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision giving effect to the amendments to the *Waste Minimisation and Management Act 1995* set out in Schedule 1.

Clause 4 is a formal provision giving effect to the amendments to the *Environmental Offences and Penalties Act 1989* set out in Schedule 2.

Schedule 1 Amendment of Waste Minimisation and Management Act 1995

Illegal waste dumping

At present under section 63 of the *Waste Minimisation and Management Act 1995*, it is an offence to dispose of waste on land without the consent of the owner or occupier of the land. Even though it is an offence under section 64 of the Act for the owner or occupier of the land to cause, permit or allow the land to be used as an unlawful waste facility, the person who transports or owns the waste can dump it anywhere so long as they do so with lawful authority (ie if they obtain the consent of the owner or occupier of the land).

Schedule 1 [2] replaces section 63 to make it an offence for a person to transport (ie convey and deposit) waste to a place that cannot lawfully be used as a waste facility for the waste. If waste is transported in contravention of the proposed section, both the transporter and the owner (eg the person who owned the waste before it was transported) will be guilty of an offence against the *Environmental Offences and Penalties Act 1989* ("the EOP Act"). The defendant will have the onus of proving that the place to which the waste was transported can lawfully be used as a waste facility for the waste. However, it will be a defence if the defendant establishes that the owner or occupier of the place gave the defendant (or displayed at the place) an approved notice certifying that the place could lawfully be used as a waste facility for the waste. **Schedule 1 [5]** provides that it will be an offence for the owner or occupier to falsely certify that the place could lawfully be used as such a waste facility.

Schedule 1 [1] makes a consequential amendment to the heading to Part 6 of the Act.

Directions relating to waste

Section 65 presently empowers an authorised officer of the EPA to give a direction to a person about certain matters involving any waste created by, or in the possession or under the control of, the person, and section 68 presently empowers the EPA to require a person to provide information in connection with any waste created by, or in the possession or under the control of, the person. **Schedule 1 [3]** and **[4]** make it clear that such directions may be given in respect of, or in connection with, any waste that is no longer in the possession or under the control of the person concerned.

Schedule 1 [3] also empowers an authorised officer to direct the owner or occupier of any land not to receive waste or cause or allow any waste to be deposited on that land. Failure to comply with such a direction will be an offence against the EOP Act.

Other amendments

Schedule 1 [6] makes it clear that regulations may be made for or with respect to the provision of information about any matter relating to waste, and that this power will include the provision of information about the operation of waste facilities and the transportation of waste. **Schedule 1 [7]** is a consequential amendment.

Schedule 1 [8] enables regulations of a savings or transitional nature to be made as a consequence of the enactment of the proposed Act. **Schedule 1 [9]** is a consequential amendment.

Schedule 2 Amendment of Environmental Offences and Penalties Act 1989

Schedule 2 [1] brings the definition of *waste* in the EOP Act more into line with the definition in the *Waste Minimisation and Management Act 1995*.

Schedule 2 [3] makes special provision for the penalties for the offences arising under sections 65 and 68 of the *Waste Minimisation and Management Act 1995* (ie failing to comply with a direction or with a notice to provide the EPA with information). The maximum penalty for an offence arising under section 65 will be \$15,000 (plus a penalty of \$7,000 for each day the offence continues), and the maximum penalty for an offence arising under section 68 will be \$10,000 (plus a penalty of \$5,000 for each day the offence continues). **Schedule 2 [2]**, **[4]** and **[5]** are consequential amendments.



New South Wales

Waste Minimisation and Management Amendment Bill 1998

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Waste Minimisation and Management Act 1995 No 102	2
4 Amendment of Environmental Offences and Penalties Act 1989 No 150	2

Schedules

1 Amendment of Waste Minimisation and Management Act 1995	3
2 Amendment of Environmental Offences and Penalties Act 1989	7



New South Wales

Waste Minimisation and Management Amendment Bill 1998

No. , 1998

A Bill for

An Act to amend the *Waste Minimisation and Management Act 1995* to prohibit the transporting of waste to places that cannot lawfully be used as waste facilities, and to make further provision with respect to directions about waste; to make minor and consequential amendments to the *Environmental Offences and Penalties Act 1989*; and for other purposes.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Waste Minimisation and Management Amendment Act 1998*.

2 Commencement

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

**3 Amendment of Waste Minimisation and Management Act 1995
No 102**

The *Waste Minimisation and Management Act 1995* is amended 10
as set out in Schedule 1.

**4 Amendment of Environmental Offences and Penalties Act 1989
No 150**

The *Environmental Offences and Penalties Act 1989* is amended 15
as set out in Schedule 2.

Schedule 1 Amendment of Waste Minimisation and Management Act 1995

(Section 3)

[1] Part 6, heading

Omit “Waste disposal”. Insert instead “Miscellaneous”. 5

[2] Section 63

Omit the section. Insert instead:

63 Unlawful transporting of waste

- (1) If a person transports any waste to a place that cannot lawfully be used as a waste facility for that waste: 10

- (a) the person, and
- (b) if the person is not the owner of the waste, the owner,

are each guilty of an offence against the *Environmental Offences and Penalties Act 1989*. 15

- (2) In proceedings for an offence arising under this section, the defendant bears the onus of proving that the place to which the waste was transported can lawfully be used as a waste facility for the waste.

- (3) It is a defence in proceedings against a person for an offence arising under this section if the person establishes that: 20

- (a) an approved notice was, at the time of the alleged offence, given to the person by the owner or occupier of the place to which the waste was transported or was displayed at the place, and 25

- (b) the approved notice stated that the place could lawfully be used as a waste facility for the waste, and

- (c) the person had no reason to believe that the place could not lawfully be used as a waste facility for the waste. 30

Waste Minimisation and Management Amendment Bill 1998

Schedule 1 Amendment of Waste Minimisation and Management Act 1995

- (4) However, it is not a defence in such proceedings for the person to establish that the person relied on the advice (other than advice in the form of an approved notice) given by the owner or occupier concerned to the effect that the place could, at the time of the alleged offence, be lawfully used as such a waste facility. 5
- (5) It is a defence in proceedings against an owner of waste for an offence arising under this section if the owner did not transport the waste and establishes:
- (a) that the commission of the offence was due to causes over which the owner had no control, and 10
- (b) that the owner took reasonable precautions and exercised due diligence to prevent the commission of the offence.
- (6) For the purposes of this section: 15
- (a) a reference to the transporting of waste to a place is a reference to:
- (i) conveying the waste to that place and depositing it at that place, or
- (ii) causing or permitting the waste to be so conveyed and deposited, and 20
- (b) a reference to the owner of waste includes, in relation to waste that has been transported, a reference to the person who was the owner of the waste immediately before it was transported. 25
- (7) In this section:
- approved notice** means a notice, in a form approved by the EPA:
- (a) stating that the place to which the notice relates can lawfully be used as a waste facility for the waste specified in the notice, and 30
- (b) that contains a certification by the owner or occupier of the place that the statement is correct.

[3] Section 65 Directions by authorised officers

Omit section 65 (1). Insert instead:

- (1) An authorised officer may, by notice in writing, do either or both of the following:
 - (a) give a direction to any person with respect to the transportation, collection, reception, treatment, re-use, reprocessing, storage and disposal of:
 - (i) any waste created by that person, or
 - (ii) any waste that is or was in the possession or under the control of that person.
 - (b) direct the owner or occupier of any land not to receive any waste on that land or to cause or allow any waste to be deposited on that land.

[4] Section 68 EPA may require persons to provide information

Omit "or in the possession" from section 68 (1).
Insert instead "or that is or was in the possession".

[5] Section 85 Offence of providing false information

Insert after section 85 (a):

- (a1) in an approved notice within the meaning of section 63, or

[6] Section 87 Regulations

Insert after section 87 (2) (c):

- (c1) the provision of information about any matter relating to waste, including information relating to the collection, storage, creation, handling, reprocessing, recycling and disposal of waste, and the operation of waste facilities and the transportation of waste (whether or not required to be licensed under this Act),

[7] Section 87 (3)

Omit the subsection.

Waste Minimisation and Management Amendment Bill 1998

Schedule 1 Amendment of Waste Minimisation and Management Act 1995

[8] Schedule 5 Savings and transitional provisions

Omit "this Act" from clause 1 (1). Insert instead:

the following Acts:

this Act

Waste Minimisation and Management Amendment Act 5
1998

[9] Schedule 5, clause 1 (2)

Omit "this Act". Insert instead "the Act concerned".

Schedule 2 Amendment of Environmental Offences and Penalties Act 1989

(Section 4)

[1] Section 4 Definitions

Omit "refined" from section 4 (3).

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Insert instead "reprocessed, re-used".

[2] Section 8DA Offences under Waste Minimisation and Management Act 1995

Omit "Any" from section 8DA (1).

Insert instead "Except as provided by subsections (1A), (1B) and (2),
any".

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[3] Section 8DA (1A) and (1B)

Insert after section 8DA (1):

(1A) Any person who, by virtue of section 65 (3) of the *Waste
Minimisation and Management Act 1995*, is guilty of an
offence against this Act is liable to a penalty not
exceeding \$15,000 and, in the case of a continuing
offence, to a further penalty not exceeding \$7,000 for
each day the offence continues.

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(1B) Any person who, by virtue of section 68 (2) of the *Waste
Minimisation and Management Act 1995*, is guilty of an
offence against this Act is liable to a penalty not
exceeding \$10,000 and, in the case of a continuing
offence, to a further penalty not exceeding \$5,000 for
each day the offence continues.

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Waste Minimisation and Management Amendment Bill 1998

Schedule 2 Amendment of Environmental Offences and Penalties Act 1989

[4] Section 8DA (2)

Omit “and is not liable to any penalty under subsection (1)”.

[5] Schedule 1 Penalties for Tier 2 offences

Omit the matter relating to sections 65 (3) and 68 (2) of the *Waste Minimisation and Management Act 1995* from Part 5.

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