



New South Wales

Waste Minimisation and Management Amendment Act 1998 No 155

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New South Wales

Waste Minimisation and Management Amendment Act 1998 No 155

Act No 155, 1998

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.
[Assented to 14 December 1998]

The Legislature of New South Wales enacts:

1 Name of Act

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

2 Commencement

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 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 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**".

[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:

- (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*.

- (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:

- (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
- (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.

- (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) 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
 - (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:
 - (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
 - (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.
- (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
 - (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.

[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
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).
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".

[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.

(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.

[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.

[Minister's second reading speech made in—
Legislative Assembly on 29 October 1998
Legislative Council on 3 December 1998]

BY AUTHORITY