



New South Wales

Waste Avoidance and Resource Recovery Bill 2001

Explanatory note

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

Overview of Bill

The main object of this Bill is to promote waste avoidance and resource recovery.

In particular, the Bill:

- (a) repeals and replaces the *Waste Minimisation and Management Act 1995*, and
- (b) establishes Resource NSW and provides for its management and functions (in place of Waste Planning and Management Boards and the State Waste Advisory Council), and
- (c) provides for industry waste reduction by authorising the making of regulations to implement and provide for the operation of extended producer responsibility schemes (in place of industry waste reduction plans), and
- (d) continues the Waste Fund for the purpose of funding relevant programs and Resource NSW.

The Bill also amends the *Protection of the Environment Operations Act 1997* with respect to waste.

Outline of provisions

Part 1 Preliminary

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 sets out the objects of the proposed Act.

Clause 4 defines certain words and expressions used in the proposed Act.

Part 2 Resource NSW

Clause 5 constitutes a corporate body representing the Crown called Resource NSW.

Clause 6 sets out the functions of Resource NSW, including:

- (a) to develop, implement or co-ordinate the implementation of (and evaluate strategies and programs for State-wide achievement of) government policy objectives with respect to a number of waste avoidance and resource recovery matters, and
- (b) to assist local communities to enter into arrangements for regionally-based secondary resource recovery from waste, and
- (c) 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), and
- (d) to research and develop waste reduction and resource efficiency infrastructure, technologies and systems, and
- (e) to develop and support training and education programs for resource efficiency, waste reduction and waste and litter management, and
- (f) to monitor, report on and evaluate the regional implementation of State-wide policies and strategies with respect to waste.

Resource NSW is required to have regard to the principles of ecologically sustainable development.

Clause 7 subjects Resource NSW to Ministerial control and direction.

Clause 8 establishes a Board of Resource NSW to determine its long-term strategic plans and oversee its effective, efficient and economical management. The Board is to consist of the Chief Executive of Resource NSW and not more than 9 part-time members appointed by the Minister.

Clause 9 provides that the affairs of Resource NSW are to be managed and controlled by the Chief Executive of Resource NSW.

Clause 10 enables the employment of public service staff and other seconded or specially employed staff of Resource NSW.

Clause 11 authorises Resource NSW to delegate its functions.

Part 3 Responsibilities with respect to industry waste reduction

Clause 12 defines *extended producer responsibility scheme* as 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, including 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).

Clause 13 authorises the making of regulations for the implementation and operation of extended producer responsibility schemes in connection with a product, group of products or an industry in New South Wales.

Clause 14 sets out the circumstances in which an extended producer responsibility scheme may be implemented, namely if the Minister is satisfied that it is necessary having regard to the following:

- (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.

Clause 15 requires the EPA to advertise publicly priority statements with respect to the extended producer responsibility schemes that it proposes to recommend and to invite public submissions.

Part 4 Financial provisions

Clause 16 continues, as the Waste Fund, the Waste Planning and Management Fund under the repealed Act. Money hypothecated from waste disposal facility contributions is paid into the Fund. The Fund is to be applied for the purposes of waste avoidance, resource recovery and waste management and to fund Resource NSW.

Clause 17 authorises Resource NSW to provide loans, grants, subsidies, financial guarantees and other financial assistance.

Clause 18 enables Resource NSW to charge fees for the supply of services.

Clause 19 relates to gifts, bequests or devises to Resource NSW.

Part 5 Miscellaneous

Clause 20 provides that the proposed Act binds the Crown.

Clause 21 makes miscellaneous provisions relating to the seal of, and the service of documents on, Resource NSW.

Clause 22 provides that offences against the proposed Act or the regulations are to be dealt with summarily by a Local Court.

Clause 23 empowers the making of regulations under the proposed Act. The regulations may create offences punishable by a penalty not exceeding 200 penalty units for an individual (currently \$22,000) or 400 penalty units for a corporation (currently \$44,000).

Clause 24 repeals the *Waste Minimisation and Management Act 1995*.

Clause 25 is a formal provision giving effect to the amendments to the *Protection of the Environment Operations Act 1997* set out in Schedule 2.

Clause 26 is a formal provision giving effect to the consequential amendments to other Acts set out in Schedule 3.

Clause 27 gives effect to the savings, transitional and other provisions in Schedule 4.

Clause 28 provides for a Ministerial review of the proposed Act after 5 years.

Schedules

Schedule 1 contains standard provisions relating to the members and procedure of the Board of Resource NSW.

Schedule 2 contains amendments to the *Protection of the Environment Operations Act 1997* relating to waste, including the following:

- (a) to make the elimination of harmful wastes a specific object of that Act,
- (b) to authorise the EPA to waive contributions by licensees of waste facilities,
- (c) to remove the power of a public authority that is the supervisory licensee of a private waste disposal facility to direct the charges for the use of the facility, and to exempt until 1 July 2003 the supervisory licence arrangements from Competition Code requirements,
- (d) to extend the regulation-making power under that Act to include the prohibition or regulation of the treatment or disposal of waste,
- (e) to transfer the local government area of Hawkesbury from the Sydney metropolitan area to the extended regulated areas with respect to the waste facility licensing functions of the EPA.

Schedule 3 contains consequential amendments to other Acts.

Schedule 4 contains savings, transitional and other provisions, including the following:

- (a) the power to make regulations of a savings and transitional nature consequent on the enactment of the proposed Act,
- (b) the dissolution of existing Waste Boards and the transfer of their assets, rights and liabilities to Resource NSW,

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- (c) the transfer of the existing staff of the dissolved Waste Boards to Resource NSW (except for general managers and certain other officers),
- (d) the abolition of the State Waste Advisory Council,
- (e) the revocation of existing industry waste reduction plans (other than the plan relating to used packaging materials which is to be continued until 1 July 2004, unless sooner revoked).



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New South Wales

Waste Avoidance and Resource Recovery Bill 2001

No. , 2001

A Bill for

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

Clause 1 Waste Avoidance and Resource Recovery Bill 2001

Part 1 Preliminary

The Legislature of New South Wales enacts: 1

Part 1 Preliminary 2

1 Name of Act 3

This Act is the *Waste Avoidance and Resource Recovery Act 2001*. 4

2 Commencement 5

This Act commences on a day or days to be appointed by proclamation. 6
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3 Objects of Act 8

The objects of this Act are as follows: 9

- (a) to encourage the most efficient use of resources and to reduce environmental harm in accordance with the principles of ecologically sustainable development, 10
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- (b) to ensure that resource management options are considered against a hierarchy of the following order: 13
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 - (i) avoidance of unnecessary resource consumption, 15
 - (ii) resource recovery (including reuse, reprocessing, recycling and energy recovery), 16
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 - (iii) disposal, 18
- (c) to provide for the continual reduction in waste generation, 19
- (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, 20
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- (e) to ensure that industry shares with the community the responsibility for reducing and dealing with waste, 23
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- (f) to ensure the efficient funding of waste and resource management planning, programs and service delivery, 25
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- (g) to achieve integrated waste and resource management planning, programs and service delivery on a State-wide basis, 27
28
- (h) to assist in the achievement of the objectives of the *Protection of the Environment Operations Act 1997*. 29
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| 4 | Definitions | 1 |
| (1) | In this Act: | 2 |
| | <i>Chief Executive of Resource NSW</i> means the person holding or acting in the office of Chief Executive of Resource NSW under Part 2 of the <i>Public Sector Management Act 1988</i> . | 3 4 5 |
| | <i>EPA</i> means the Environment Protection Authority. | 6 |
| | <i>exercise</i> a function includes perform a duty. | 7 |
| | <i>function</i> includes a power, authority or duty. | 8 |
| | <i>principles of ecologically sustainable development</i> means the principles of ecologically sustainable development contained in section 6 (2) of the <i>Protection of the Environment Administration Act 1991</i> . | 9 10 11 |
| | <i>Resource NSW</i> means Resource NSW constituted by this Act. | 12 |
| | <i>waste</i> has the same meaning as in the <i>Protection of the Environment Operations Act 1997</i> . | 13 14 |
| (2) | Notes included in this Act do not form part of this Act. | 15 |

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| Part 2 Resource NSW | 1 |
| 5 Constitution | 2 |
| (1) There is constituted by this Act a corporation with the corporate name of Resource NSW. | 3 4 |
| (2) Resource NSW is, for the purposes of any Act, a statutory body representing the Crown. | 5 6 |
| 6 Functions | 7 |
| (1) The functions of Resource NSW are as follows: | 8 |
| (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: | 9 10 11 |
| (i) resource efficiency and waste reduction and management in relation to regions, industry sectors or material types, and | 12 13 14 |
| (ii) community education and awareness in relation to resource efficiency and waste reduction and management, and | 15 16 17 |
| (iii) programs for the prevention of litter and illegal dumping, and | 18 19 |
| (iv) market development for recovered resources and recycled material, and | 20 21 |
| (v) information dissemination, | 22 |
| (b) to assist local communities to enter into arrangements for regionally-based secondary resource recovery from waste, | 23 24 |
| (c) 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), | 25 26 27 28 |
| (d) to research and develop waste reduction and resource efficiency infrastructure, technologies and systems, | 29 30 |
| (e) to develop and support training and education programs for resource efficiency, waste reduction and waste and litter management, | 31 32 33 |
| (f) to monitor, report on and evaluate the regional implementation of State-wide policies and strategies with respect to waste, | 34 35 |

- (g) such other functions as may be conferred or imposed on it by or under this or any other Act or law. 1
2
- (2) Resource NSW is, in the exercise of its functions, to have regard to the principles of ecologically sustainable development. 3
4
- 7 Ministerial control** 5
- Resource NSW is, in exercising its functions, subject to the control and direction of the Minister. 6
7
- 8 Resource NSW Board** 8
- (1) There is to be a Board of Resource NSW. 9
- (2) The functions of the Board are as follows: 10
- (a) to determine the long-term strategic plans of Resource NSW, 11
- (b) to oversee the effective, efficient and economical management of Resource NSW. 12
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- (3) The Board is to consist of the following members: 14
- (a) the Chief Executive of Resource NSW, 15
- (b) not more than 9 part-time members appointed by the Minister (*appointed members*). 16
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- (4) Each appointed member is to be a person who, in the opinion of the Minister, has appropriate qualifications or experience in relation to one or more of the following: 18
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- (a) resource conservation and environmental protection, 21
- (b) local government, 22
- (c) the waste management industry, 23
- (d) industry, 24
- (e) rural affairs, 25
- (f) regional affairs, 26
- (g) urban affairs and infrastructure, 27
- (h) financial and risk management. 28
- (5) The Minister is to appoint one of the appointed members as the Chairperson of the Board and another as the Deputy Chairperson of the Board. 29
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| (6) | Schedule 1 has effect with respect to the members and procedure of the Board. | 1 2 |
| (7) | The Board may establish committees to assist it in connection with the exercise of any of its functions. The members of a committee may, but need not, include members of the Board. | 3 4 5 |
| 9 | Chief Executive | 6 |
| (1) | The affairs of Resource NSW are to be managed and controlled by the Chief Executive of Resource NSW in accordance with any decisions of the Board of Resource NSW. | 7 8 9 |
| (2) | Any act, matter or thing done in the name of, or on behalf of, Resource NSW by the Chief Executive is taken to have been done by Resource NSW. | 10 11 12 |
| 10 | Staff | 13 |
| (1) | The staff of Resource NSW are to be employed under Part 2 of the <i>Public Sector Management Act 1988</i> . | 14 15 |
| (2) | Resource NSW may employ staff for any special purpose approved by the Minister. Part 2 of the <i>Public Sector Management Act 1988</i> does not apply to the employment of any such staff. | 16 17 18 |
| (3) | Resource NSW may arrange for the use of the services of any staff or facilities of a government department or a public or local authority. | 19 20 |
| (4) | For the purposes of this Act, a person whose services are made use of under this section is a member of the staff of Resource NSW. | 21 22 |
| (5) | Resource NSW may engage consultants to obtain expert advice. | 23 |
| 11 | Delegation | 24 |
| (1) | Resource NSW may delegate to an authorised person the exercise of any of its functions, other than this power of delegation. | 25 26 |
| (2) | In this section: | 27 |
| | authorised person means: | 28 |
| (a) | a member of the staff of Resource NSW, or | 29 |
| (b) | a person of a class prescribed by the regulations. | 30 |

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| Part 3 Responsibilities with respect to industry waste reduction | 1 |
| | 2 |
| 12 Extended producer responsibility schemes | 3 |
| (1) For the purposes of this Part, an <i>extended producer responsibility scheme</i> 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. | 4 5 6 7 8 |
| (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). | 9 10 11 12 13 |
| (3) In this Part: | 14 |
| <i>producer</i> 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. | 15 16 17 |
| <i>product</i> includes any substance. | 18 |
| 13 Regulations for implementation and operation of schemes | 19 |
| 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. | 20 21 22 23 |
| 14 Circumstances in which schemes may be implemented | 24 |
| (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: | 25 26 27 28 |
| (a) the volume of waste requiring ultimate disposal or the toxicity of the waste generated, | 29 30 |
| (b) whether there is a national scheme in place that adequately addresses waste issues in New South Wales, | 31 32 |

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Part 3 Responsibilities with respect to industry waste reduction

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| (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, | 1 2 3 4 |
| (d) | whether economic analysis supports the implementation of the scheme, | 5 6 |
| (e) | whether there are any constitutional or other impediments to New South Wales acting unilaterally in implementing the scheme. | 7 8 9 |
| (2) | A regulation with respect to the implementation or operation of a scheme cannot be challenged or invalidated because of this section. | 10 11 |
| 15 | Priorities with respect to the implementation of schemes | 12 |
| (1) | The EPA is required to publicly advertise from time to time a priority statement with respect to the extended producer responsibility schemes it proposes to recommend for implementation under this Part. | 13 14 15 |
| (2) | The advertisement is to be published in at least 2 newspapers circulating throughout the State and in such other publications as the EPA considers appropriate. | 16 17 18 |
| (3) | The advertisement is to invite written submissions to the EPA 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. | 19 20 21 22 |

Part 4 Financial provisions

| | |
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| 16 Waste Fund | 2 |
| (1) There is established a fund called the Waste Fund. | 3 |
| (2) The Waste Fund is to be maintained by the EPA. However, money in the Waste Fund can only be allocated in the manner authorised by the Minister. | 4 5 6 |
| (3) There is to be paid into the Waste Fund: | 7 |
| (a) any money appropriated by Parliament for payment into the Waste Fund, and | 8 9 |
| (b) any money given to the EPA or Resource NSW for the express purpose of payment into the Waste Fund, and | 10 11 |
| (c) the proceeds of the investment of money in the Waste Fund, and | 12 13 |
| (d) any other money required to be paid into the Waste Fund by or under this or any other Act or law. | 14 15 |
| (4) The money in the Waste Fund may be applied for any or all of the following purposes: | 16 17 |
| (a) waste avoidance, resource recovery and waste management (including enforcement and regulation), | 18 19 |
| (b) allocation to Resource NSW, | 20 |
| (c) the costs incurred by the EPA in maintaining the Waste Fund. | 21 |
| (5) The EPA may invest money in the Waste Fund in any manner authorised by the <i>Public Authorities (Financial Arrangements) Act 1987</i> . | 22 23 24 |
| 17 Provision by Resource NSW of financial assistance and guarantees | 25 |
| (1) Resource NSW may, for the purposes of exercising its functions: | 26 |
| (a) provide loans, grants, subsidies and other financial assistance, and | 27 28 |
| (b) subject to subsection (2), provide financial guarantees. | 29 |
| (2) Resource NSW may provide a financial guarantee only with the approval of the Minister and the concurrence of the Treasurer. | 30 31 |

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| 18 Fees for services supplied by Resource NSW | 1 |
| Resource NSW may charge, for the supply of any services under this Act or the regulations: | 2 |
| (a) such fee as is prescribed by the regulations for the supply of the service, or | 3 |
| (b) if a fee is not so prescribed, such reasonable fee as it determines for the supply of the service. | 4 |
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| | 7 |
| 19 Gifts etc to Resource NSW | 8 |
| (1) Resource NSW 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. | 9 |
| | 10 |
| | 11 |
| (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 Resource NSW has agreed. | 12 |
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| Part 5 Miscellaneous | 1 |
| 20 Act to bind Crown | 2 |
| 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. | 3 4 5 |
| 21 Miscellaneous provisions relating to Resource NSW | 6 |
| (1) The seal of Resource NSW is to be kept by the Chief Executive of Resource NSW and may be affixed to a document only: | 7 8 |
| (a) in the presence of the Chief Executive or a member of the staff of Resource NSW authorised in that behalf by the Chief Executive, and | 9 10 11 |
| (b) with an attestation by the signature of the Chief Executive or that member of staff of the fact of the affixing of the seal. | 12 13 |
| (2) A document may be served on Resource NSW by sending it by post to an office of Resource NSW or leaving it at the office with a person authorised in writing by Resource NSW to accept service of documents on behalf of Resource NSW. Nothing in this subsection affects the operation of any provision of a law or of the rules of a court authorising a document to be served on Resource NSW in any other manner. | 14 15 16 17 18 19 20 |
| 22 Proceedings for offences | 21 |
| Proceedings for offences against this Act or the regulations are to be disposed of summarily by a Local Court. | 22 23 |
| 23 Regulations | 24 |
| (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. | 25 26 27 28 |
| (2) The regulations may create offences punishable by a penalty not exceeding: | 29 30 |
| (a) 200 penalty units in the case of an individual, or | 31 |
| (b) 400 penalty units in the case of a corporation. | 32 |

Clause 23 Waste Avoidance and Resource Recovery Bill 2001

Part 5 Miscellaneous

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| (3) | The regulations may adopt any document as in force from time to time. | 1 |
| 24 | Repeal of Waste Minimisation and Management Act 1995 No 102 | 2 |
| | The <i>Waste Minimisation and Management Act 1995</i> is repealed. | 3 |
| 25 | Amendment of Protection of the Environment Operations Act 1997 No 156 | 4 |
| | The <i>Protection of the Environment Operations Act 1997</i> is amended as set out in Schedule 2. | 5 |
| | | 6 |
| | | 7 |
| 26 | Amendment of other Acts | 8 |
| | The Acts specified in Schedule 3 are amended as set out in that Schedule. | 9 |
| | | 10 |
| 27 | Savings, transitional and other provisions | 11 |
| | Schedule 4 has effect. | 12 |
| 28 | Review of Act | 13 |
| (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. | 14 |
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| (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. | 17 |
| | | 18 |
| (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. | 19 |
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| Schedule 1 | Provisions relating to members and procedure of Resource NSW Board | 1 |
| | | 2 |
| | (Section 8 (6)) | 3 |
| 1 | Definitions | 4 |
| | In this Schedule: | 5 |
| | <i>appointed member</i> means any member of the Board other than the Chief Executive of Resource NSW. | 6 |
| | | 7 |
| | <i>Board</i> means the Board of Resource NSW. | 8 |
| | <i>Chairperson</i> means the Chairperson of the Board. | 9 |
| | <i>Deputy Chairperson</i> means the Deputy Chairperson of the Board. | 10 |
| | <i>member</i> means any member of the Board (including the Chief Executive of Resource NSW). | 11 |
| | | 12 |
| 2 | Terms of office of appointed members | 13 |
| | Subject to this Schedule, an appointed member holds office for such period (not exceeding 3 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment. | 14 |
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| | | 17 |
| 3 | Remuneration of appointed members | 18 |
| | An appointed member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member. | 19 |
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| | | 21 |
| 4 | Deputies of appointed members | 22 |
| (1) | The Minister may, from time to time, appoint a person to be the deputy of an appointed member, and the Minister may revoke any such appointment. | 23 |
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| | | 25 |
| (2) | In the absence of an appointed member, the member's deputy may, if available, act in the place of the member. | 26 |
| | | 27 |
| (3) | While acting in the place of an appointed member, a person: | 28 |
| (a) | has all the functions of the member (other than the member's functions as Chairperson or Deputy Chairperson) and is taken to be a member, and | 29 |
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| (b) | is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person. | 1 2 3 |
| (4) | For the purposes of this clause, a vacancy in the office of an appointed member is taken to be an absence of the member. | 4 5 |
| 5 | Vacancy in office of appointed member | 6 |
| (1) | The office of an appointed member becomes vacant if the member: | 7 |
| (a) | dies, or | 8 |
| (b) | completes a term of office and is not re-appointed, or | 9 |
| (c) | resigns the office by instrument in writing addressed to the Minister, or | 10 11 |
| (d) | is removed from office by the Minister under this clause, or | 12 |
| (e) | is absent from 4 consecutive meetings of the Board of which reasonable notice has been given to the member personally or by post, except on leave granted by the Board or unless the member is excused by the Board for having been absent from those meetings, or | 13 14 15 16 17 |
| (f) | becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or | 18 19 20 21 |
| (g) | becomes a mentally incapacitated person, or | 22 |
| (h) | is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable. | 23 24 25 26 27 |
| (2) | The Minister may at any time remove an appointed member from office. | 28 29 |
| 6 | Filling of vacancy in office of appointed member | 30 |
| | If the office of an appointed member becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy. | 31 32 |

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| 7 | Chairperson and Deputy Chairperson | 1 |
| (1) | In the absence of the Chairperson, the Deputy Chairperson may, if available, act in the place of the Chairperson. | 2 3 |
| (2) | While acting in the place of the Chairperson, the Deputy Chairperson has all the functions of the Chairperson and is taken to be the Chairperson. | 4 5 6 |
| (3) | The Chairperson or Deputy Chairperson vacates office as Chairperson or Deputy Chairperson if the person: | 7 8 |
| (a) | is removed from office by the Minister under this clause, or | 9 |
| (b) | ceases to be a member. | 10 |
| (4) | The Minister may at any time remove the Chairperson or Deputy Chairperson from office as Chairperson or Deputy Chairperson. | 11 12 |
| 8 | Disclosure of pecuniary interests | 13 |
| (1) | If: | 14 |
| (a) | a member has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Board, and | 15 16 17 |
| (b) | the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter, | 18 19 20 |
| | the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Board. | 21 22 23 |
| (2) | A disclosure by a member at a meeting of the Board that the member: | 24 |
| (a) | is a member, or is in the employment, of a specified company or other body, or | 25 26 |
| (b) | is a partner, or is in the employment, of a specified person, or | 27 |
| (c) | has some other specified interest relating to a specified company or other body or to a specified person, | 28 29 |
| | is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1). | 30 31 32 33 |

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| (3) Particulars of any disclosure made under this clause must be recorded by the Board in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of the fee determined by the Board. | 1 2 3 4 |
| (4) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the Board otherwise determines: | 5 6 7 |
| (a) be present during any deliberation of the Board with respect to the matter, or | 8 9 |
| (b) take part in any decision of the Board with respect to the matter. | 10 11 |
| (5) For the purposes of the making of a determination by the Minister or Board under subclause (4), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not: | 12 13 14 |
| (a) be present during any deliberation of the Board for the purpose of making the determination, or | 15 16 |
| (b) take part in the making by the Board of the determination. | 17 |
| (6) A contravention of this clause does not invalidate any decision of the Board. | 18 19 |
| 9 Effect of certain other Acts | 20 |
| (1) Part 2 of the <i>Public Sector Management Act 1988</i> does not apply to or in respect of the appointment of an appointed member. | 21 22 |
| (2) If by or under any Act provision is made: | 23 |
| (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or | 24 25 26 |
| (b) prohibiting the person from engaging in employment outside the duties of that office, | 27 28 |
| the provision does not operate to disqualify the person from holding that office and also the office of an appointed member or from accepting and retaining any remuneration payable to the person under this Act as a member. | 29 30 31 32 |

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| 10 | Personal liability of members | 1 |
| | Any matter or thing done or omitted by a member of the Board or any person acting under the direction of the Board does not subject any member or a person so acting personally to any action, liability, claim or demand if the matter or thing was done or omitted in good faith for the purpose of executing this Act. | 2 3 4 5 6 |
| 11 | General procedure | 7 |
| | The procedure for the calling of meetings of the Board and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Board. | 8 9 10 |
| 12 | Quorum | 11 |
| | The quorum for a meeting of the Board is a majority of its members, of whom one must be the Chairperson or Deputy Chairperson. | 12 13 |
| 13 | Presiding member | 14 |
| | (1) The Chairperson (or, in the absence of the Chairperson, the Deputy Chairperson) is to preside at a meeting of the Board. | 15 16 |
| | (2) The presiding member has a deliberative vote and, in the event of an equality of votes, has a second or casting vote. | 17 18 |
| 14 | Voting | 19 |
| | A decision supported by a majority of the votes cast at a meeting of the Board at which a quorum is present is the decision of the Board. | 20 21 |
| 15 | Transaction of business outside meetings or by telephone | 22 |
| | (1) The Board may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the Board for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the Board. | 23 24 25 26 |
| | (2) The Board may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members. | 27 28 29 30 |

Waste Avoidance and Resource Recovery Bill 2001

Schedule 1 Provisions relating to members and procedure of Resource NSW Board

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| (3) For the purposes of: | 1 |
| (a) the approval of a resolution under subclause (1), or | 2 |
| (b) a meeting held in accordance with subclause (2), | 3 |
| the Chairperson and each member have the same voting rights as they | 4 |
| have at an ordinary meeting of the Board. | 5 |
| (4) A resolution approved under subclause (1) is, subject to the | 6 |
| regulations, to be recorded in the minutes of the meetings of the Board. | 7 |
| (5) Papers may be circulated among the members for the purposes of | 8 |
| subclause (1) by facsimile or other transmission of the information in | 9 |
| the papers concerned. | 10 |
| 16 First meeting | 11 |
| The Minister may call the first meeting of the Board in such manner | 12 |
| as the Minister thinks fit. | 13 |

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| Schedule 2 | Amendment of Protection of the Environment Operations Act 1997 | 1 |
| | | 2 |
| | (Section 25) | 3 |
| [1] | Section 3 Objects of Act | 4 |
| | Insert after section 3 (d) (ii): | 5 |
| | (ia) the elimination of harmful wastes, | 6 |
| [2] | Section 3 (g) | 7 |
| | Omit “ <i>Waste Minimisation and Management Act 1995</i> ”. | 8 |
| | Insert instead “ <i>Waste Avoidance and Resource Recovery Act 2001</i> ”. | 9 |
| [3] | Section 45 Matters to be taken into consideration in licensing functions | 10 |
| | Omit section 45 (k). | 11 |
| [4] | Section 75 Conditions relating to waste | 12 |
| | Omit section 75 (3). | 13 |
| [5] | Section 87 Putrescible waste landfill sites—licensing arrangements | 14 |
| | Omit section 87 (5). | 15 |
| [6] | Section 87 | 16 |
| | Insert after section 87 (6): | 17 |
| | (7) The following things are specifically authorised by this Act for the purposes of the <i>Trade Practices Act 1974</i> of the Commonwealth and the <i>Competition Code of New South Wales</i> : | 18 |
| | | 19 |
| | | 20 |
| | | 21 |
| | (a) anything done by the appropriate regulatory authority in exercising its functions under this section, | 22 |
| | | 23 |

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| (b) | anything done by the occupier of a waste facility to which this section applies for the purposes of complying with the conditions of the occupier's licence that are imposed by the appropriate regulatory authority under this section, | 1 2 3 4 5 |
| (c) | anything done by a public authority holding a supervisory licence referred to in this section for the purpose of complying with the conditions of the licence that are imposed by the appropriate regulatory authority under this section. | 6 7 8 9 10 |
| | but only if the thing is done before 1 July 2003. | 11 |
| (8) | Things authorised to be done by subsection (7) are authorised only to the extent (if any) that they would otherwise contravene Part IV of the <i>Trade Practices Act 1974</i> of the Commonwealth or the <i>Competition Code of New South Wales</i> . | 12 13 14 15 |
| [7] | Section 88 Contributions by licensee of waste facilities | 16 |
| | Insert after section 88 (2): | 17 |
| (2A) | The EPA may waive payment of contributions, in relation to waste received at a specified facility or class of facilities, for such reasons as it thinks fit, either generally or in relation to specified contributions (including contributions that were due before the commencement of this subsection). If it waives payment of any such contribution, the EPA must cause notice of that fact to be given to the Secretary of the Treasury. | 18 19 20 21 22 23 24 |
| [8] | Section 186 Extension of Chapter to other environment protection legislation | 25 26 |
| | Omit " <i>Waste Minimisation and Management Act 1995</i> " from section 186 (a). | 27 28 |
| | Insert instead " <i>Waste Avoidance and Resource Recovery Act 2001</i> ". | 29 |
| [9] | Section 213 Application of Chapter | 30 |
| | Omit " <i>Waste Minimisation and Management Act 1995</i> " from section 213 (2) (a). | 31 32 |
| | Insert instead " <i>Waste Avoidance and Resource Recovery Act 2001</i> ". | 33 |

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| [10] Section 319 Disclosure of information | 1 |
| Omit “of any” from section 319 (6). | 2 |
| Insert instead “of the <i>Waste Avoidance and Resource Recovery Act 2001</i> or of any other”. | 3 4 |
| [11] Schedule 1 Schedule of EPA-licensed activities | 5 |
| Insert “Hawkesbury,” after “Gosford,” in the definition of <i>extended regulated area</i> in item (1) of Division 2 of Part 3. | 6 7 |
| [12] Schedule 1, Part 3, Division 2, item (1) | 8 |
| Omit the definition of <i>Sydney metropolitan area</i> . Insert instead: | 9 |
| <i>Sydney metropolitan area</i> means the local government areas of Ashfield, Auburn, Bankstown, Baulkham Hills, Blacktown, Botany, Burwood, Camden, Campbelltown, Canada Bay, Canterbury, Fairfield, Holroyd, Hornsby, Hunters Hill, Hurstville, Kogarah, Ku-ring-gai, Lane Cove, Leichhardt, Liverpool, Manly, Marrickville, Mosman, North Sydney, Parramatta, Penrith, Pittwater, Randwick, Rockdale, Ryde, South Sydney, Strathfield, Sutherland, Sydney, Warringah, Waverley, Willoughby and Woollahra. | 10 11 12 13 14 15 16 17 18 |
| [13] Schedule 2 Regulation-making powers | 19 |
| Insert at the end of clause 5 (Waste): | 20 |
| (6) Prohibiting or regulating the treatment or disposal of waste. | 21 |
| [14] Schedule 5 Savings, transitional and other provisions | 22 |
| Insert at the end of clause 2 (1): | 23 |
| <i>Waste Avoidance and Resource Recovery Act 2001</i> | 24 |

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| Schedule 3 | Amendment of other Acts | 1 |
| | (Section 26) | 2 |
| 3.1 | First State Superannuation Act 1992 No 100 | 3 |
| | Schedule 1 Employers | 4 |
| | Omit “A Waste Planning and Management Board constituted under the <i>Waste Minimisation and Management Act 1995</i> ”. | 5 |
| | Insert instead: | 6 |
| | Resource NSW | 7 |
| | | 8 |
| 3.2 | Land and Environment Court Act 1979 No 204 | 9 |
| [1] | Section 17 Class 1—environmental planning and protection appeals | 10 |
| | Omit section 17 (aa). | 11 |
| [2] | Section 20 Class 4—environmental planning and protection and development contract civil enforcement | 12 |
| | Omit “ <i>Waste Minimisation and Management Act 1995</i> ,” from section 20 (3) (a). | 13 |
| | | 14 |
| | | 15 |
| [3] | Section 20 (3) (a) | 16 |
| | Insert in alphabetical order of Acts: | 17 |
| | <i>Waste Avoidance and Resource Recovery Act 2001</i> , | 18 |

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| 3.3 Local Government Act 1993 No 30 | 1 |
| Dictionary | 2 |
| Omit “ <i>Waste Minimisation and Management Act 1995</i> ” from the definition of <i>waste</i> . | 3 |
| | 4 |
| Insert instead “ <i>Protection of the Environment Operations Act 1997</i> ”. | 5 |
| 3.4 Protection of the Environment Administration Act 1991 No 60 | 6 |
| Section 3 Definitions | 7 |
| Omit “ <i>Waste Minimisation and Management Act 1995</i> ” from the definition of <i>environment protection legislation</i> . | 8 |
| | 9 |
| Insert instead “ <i>Waste Avoidance and Resource Recovery Act 2001</i> ”. | 10 |
| 3.5 Public Finance and Audit Act 1983 No 152 | 11 |
| [1] Schedule 2 Statutory bodies | 12 |
| Insert in alphabetical order: | 13 |
| Resource NSW | 14 |
| [2] Schedule 2 | 15 |
| Omit the following: | 16 |
| A Waste Planning and Management Board constituted under the <i>Waste Minimisation and Management Act 1995</i> | 17 |
| | 18 |

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| 3.6 Public Sector Management Act 1988 No 33 | 1 |
| Schedule 1 Departments | 2 |
| Insert in Columns 1 and 2, respectively, in alphabetical order of Departments: | 3 |
| Resource NSW | 4 |
| Chief Executive of Resource NSW | 5 |
| 3.7 Search Warrants Act 1985 No 37 | 6 |
| Section 10 Definitions | 7 |
| Omit “section 71 of the <i>Waste Minimisation and Management Act 1995</i> ” | 8 |
| from the definition of <i>search warrant</i> . | 9 |
| 3.8 State Authorities Non-contributory Superannuation Act 1987 No 212 | 10 |
| Schedule 1 Employers | 11 |
| Omit “A Waste Planning and Management Board constituted under the <i>Waste Minimisation and Management Act 1995</i> ”. | 12 |
| Insert instead: | 13 |
| Resource NSW | 14 |
| Resource NSW | 15 |
| Resource NSW | 16 |
| 3.9 State Authorities Superannuation Act 1987 No 211 | 17 |
| Schedule 1 Employers | 18 |
| Omit “A Waste Planning and Management Board constituted under the <i>Waste Minimisation and Management Act 1995</i> ”. | 19 |
| Insert instead: | 20 |
| Resource NSW | 21 |
| Resource NSW | 22 |

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| 3.10 Superannuation Act 1916 No 28 | 1 |
| [1] Schedule 3 List of Employers | 2 |
| Omit “A Waste Planning and Management Board constituted under the <i>Waste Minimisation and Management Act 1995</i> ”. | 3 |
| | 4 |
| Insert instead: | 5 |
| Resource NSW | 6 |
| [2] Schedule 26 | 7 |
| Omit “Waste planning and management boards constituted under the <i>Waste Minimisation and Management Act 1995</i> ”. | 8 |
| | 9 |
| Insert instead: | 10 |
| Resource NSW | 11 |

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| Schedule 4 Savings, transitional and other provisions | 1 |
| (Section 27) | 2 |
| Part 1 Regulations | 3 |
| 1 Regulations | 4 |
| (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts: | 5 |
| this Act | 6 |
| (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. | 7 |
| (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: | 8 |
| (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 | 9 |
| (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. | 10 |
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| | 18 |
| Part 2 Provisions consequent on enactment of this Act | 19 |
| 2 Definitions | 20 |
| In this Part: | 21 |
| <i>assets</i> 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. | 22 |
| <i>former Act</i> means the <i>Waste Minimisation and Management Act 1995</i> . | 23 |
| | 24 |
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| <i>instrument</i> 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. | 1 2 3 4 |
| <i>liabilities</i> means any liabilities, debts or obligations (whether present or future and whether vested or contingent). | 5 6 |
| <i>rights</i> means any rights, powers, privileges or immunities (whether present or future and whether vested or contingent). | 7 8 |
| <i>State Waste Advisory Council</i> means the State Waste Advisory Council established by the former Act as in force immediately before the repeal of that Act by this Act. | 9 10 11 |
| <i>Waste Board</i> 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. | 12 13 14 |
| 3 Dissolution of Waste Boards | 15 |
| (1) Each Waste Board is dissolved. | 16 |
| (2) A person who, immediately before the dissolution of a Waste Board, held office as a director of the Waste Board: | 17 18 |
| (a) ceases to hold that office, and | 19 |
| (b) is not entitled to any compensation because of the loss of that office. | 20 21 |
| 4 General managers and other declared officers of Waste Boards | 22 |
| (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: | 23 24 25 |
| (a) the general manager, or | 26 |
| (b) an officer declared by the Minister by order in writing to be an officer to whom this clause applies. | 27 28 |
| (2) A person to whom this clause applies: | 29 |
| (a) ceases to hold the position held by the person immediately before the Waste Board is dissolved, and | 30 31 |
| (b) except as provided by subclause (3), is not entitled to any compensation because of the loss of that position, and | 32 33 |
| (c) is eligible to be employed by Resource NSW. | 34 |

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| (3) | Any such person (if not employed by Resource NSW on ceasing to hold that position) is entitled to be paid by Resource NSW: | 1 2 |
| (a) | the compensation (if any) that would have been payable under Part 2A of the <i>Public Sector Management Act 1988</i> on termination of employment if the person had been an executive officer to whom that Part applied, or | 3 4 5 6 |
| (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, | 7 8 9 |
| | whichever is the lesser. | 10 |
| 5 | Staff of Waste Boards (other than General Manager or other declared officer) | 11 12 |
| (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. | 13 14 15 16 |
| (2) | A person to whom this clause applies becomes, on the dissolution of the Waste Board, an employee of Resource NSW. | 17 18 |
| (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. | 19 20 21 22 |
| 6 | Construction of references to Waste Boards | 23 |
| | 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: | 24 25 26 |
| (a) | to the Waste Board is taken to be a reference to Resource NSW, and | 27 28 |
| (b) | to a director of the Waste Board is taken to be a reference to a member of the Board of Resource NSW, and | 29 30 |
| (c) | to the general manager of the Waste Board is taken to be a reference to the Chief Executive of Resource NSW. | 31 32 |

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| 7 | Transfer of assets, rights and liabilities to new Authority | 1 |
| (1) | On the day on which a Waste Board is dissolved by this Act, the following provisions have effect: | 2 3 |
| (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, | 4 5 6 |
| (b) | the rights and liabilities of the Waste Board become the rights and liabilities of Resource NSW, | 7 8 |
| (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, | 9 10 11 |
| (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. | 12 13 14 15 |
| (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. | 16 17 18 19 20 |
| (3) | The operation of this clause is not to be regarded: | 21 |
| (a) | as a breach of contract or confidence or otherwise as a civil wrong, or | 22 23 |
| (b) | as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities, or | 24 25 26 |
| (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. | 27 28 29 30 |
| (4) | The operation of this clause is not to be regarded as an event of default under any contract or other agreement. | 31 32 |
| (5) | No attornment to the transferee by a lessee from a Waste Board is required. | 33 34 |

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| 8 | Transfer duty | 1 |
| | Duty under the <i>Duties Act 1997</i> is not chargeable for or in respect of: | 2 |
| | (a) a transfer effected by or under this Schedule, or | 3 |
| | (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). | 4 5 6 |
| 9 | First annual report of Resource NSW | 7 |
| | (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. | 8 9 10 |
| | (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. | 11 12 |
| 10 | Abolition of State Waste Advisory Council | 13 |
| | (1) The State Waste Advisory Council is abolished. | 14 |
| | (2) A person who, immediately before the abolition of State Waste Advisory Council, held office as a member of the Council: | 15 |
| | (a) ceases to hold that office, and | 16 17 |
| | (b) is not entitled to any compensation because of the loss of that office. | 18 19 |
| 11 | Continuation of Waste Planning and Management Fund as Waste Fund | 20 |
| | 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. | 21 22 23 |
| 12 | Existing industry waste reduction plans | 24 |
| | (1) In this clause: | 25 |
| | <i>IWRP</i> means an industry waste reduction plan in force under Part 4 of the former Act immediately before its repeal. | 26 27 |
| | <i>used packaging materials IWRP</i> means the IWRP notified in the Gazette of 29 September 2000. | 28 29 |
| | (2) On the repeal of the former Act, each IWRP (other than the used packaging material IWRP) is revoked and ceases to have effect. | 30 31 |

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- (3) The used packaging material IWRP continues to have effect until: 1
- (a) 1 July 2004, or 2
 - (b) a date appointed by proclamation for the purposes of this 3
clause, 4
- whichever first occurs. 5
- (4) The provisions of the former Act relating to an IWRP (and related 6
provisions of the *Protection of the Environment Operations Act 1997*) 7
continue to have effect (despite their repeal) with respect to the used 8
packaging material IWRP while it continues to have effect under 9
subclause (3). 10