



Western Australia

# **Waste Avoidance and Resource Recovery Act 2007**



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**Defined terms**



Western Australia

## **Waste Avoidance and Resource Recovery Act 2007**

**An Act to —**

- **provide for waste avoidance and resource recovery; and**
- **establish the Waste Authority; and**
- **provide for waste services by local governments; and**
- **provide for levies on waste; and**
- **repeal the *Environmental Protection (Landfill) Levy Act 1998*; and**
- **provide for related and consequential matters.**

The Parliament of Western Australia enacts as follows:

## **Part 1 — Preliminary**

### **1. Short title**

This is the *Waste Avoidance and Resource Recovery Act 2007*<sup>1</sup>.

### **2. Commencement**

This Act comes into operation as follows:

- (a) sections 1 and 2 — on the day on which this Act receives the Royal Assent<sup>1</sup>;
- (b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions<sup>1</sup>.

### **3. Meaning of terms used in this Act**

- (1) In this Act unless the contrary intention appears —

***approved product stewardship plan*** means a product stewardship plan registered under section 45(3);

***business plan*** means a business plan approved under section 39;

***CEO*** means chief executive officer of the department of the Public Service principally assisting in the administration of this Act;

***district*** means an area that has been declared to be a district under the *Local Government Act 1995*, and any place outside the boundaries of the district which is under the control of the local government for the district;

***entity*** means any person or body, including a public authority;

***EP Act*** means the *Environmental Protection Act 1986*;

***EP authorisation*** means a licence, permit or approval granted under the EP Act;

***Executive Director, Public Health*** has the meaning given in the *Health Act 1911* section 3(1);

***extended producer responsibility scheme*** means a scheme for giving effect to a 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;

***inspector*** means an inspector appointed under the EP Act section 88 for the purposes of this Act and includes the CEO;

***levy*** means a levy imposed under the *Waste Avoidance and Resource Recovery Levy Act 2007*;

***local government*** includes a regional local government established for the purpose of providing waste services;

***local government waste*** means —

- (a) waste from residential sources; and
- (b) any other waste of a kind prescribed by the regulations for the purposes of this paragraph,

but does not include sewage or waste of a kind prescribed by the regulations as excluded for the purposes of this definition;

***member*** means a member of the Waste Authority appointed under section 11(1);

***producer*** of a product includes a manufacturer, importer, supplier or distributor, of the product in this State or an entity having a proprietary interest in the name under which the product is manufactured, imported, supplied or distributed in this State;

***product stewardship plan*** means a plan in which the producers of a product —

- (a) share responsibility with governments and consumers for the environmental impact of the product throughout its use, including end of use management; and
- (b) seek to reduce the adverse environmental impact of the product;

***public authority*** means —

- (a) an agency or organisation as those terms are defined in the *Public Sector Management Act 1994*; or

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- (b) a body, corporate or unincorporate, that is established or continued for a public purpose by the State, regardless of the way it is established; or
- (c) a local government;

**WARR Account** means the Waste Avoidance and Resource Recovery Account established by section 79;

**waste** includes matter —

- (a) whether liquid, solid, gaseous or radioactive and whether useful or useless, which is discharged into the environment; or
- (b) prescribed by the regulations to be waste;

**Waste Authority** means the Waste Authority established by section 8;

**waste collection permit** has the meaning given by section 56(1);

**waste facility** means premises used for the storage, treatment, processing, sorting, recycling or disposal of waste;

**waste service** means —

- (a) the collection, transport, storage, treatment, processing, sorting, recycling or disposal of waste; or
- (b) the provision of receptacles for the temporary deposit of waste; or
- (c) the provision and management of waste facilities, machinery for the disposal of waste and processes for dealing with waste;

**waste strategy** means the waste strategy approved and in force under Part 4 Division 1.

- (2) If a term has a meaning in the EP Act, it has the same meaning in this Act unless the contrary intention appears in this Act.

**4. State bound**

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

**5. Objects of this Act**

- (1) The primary objects of this Act are to contribute to sustainability, and the protection of human health and the environment, in Western Australia and the move towards a waste-free society by —
  - (a) promoting the most efficient use of resources, including resource recovery and waste avoidance; and
  - (b) reducing environmental harm, including pollution through waste; and
  - (c) the consideration of resource management options against the following hierarchy —
    - (i) avoidance of unnecessary resource consumption;
    - (ii) resource recovery (including reuse, reprocessing, recycling and energy recovery);
    - (iii) disposal.
- (2) The principles set out in the EP Act section 4A apply in relation to the objects of this Act.

**6. Effect on other laws**

- (1) Except as specifically provided by this Act, the provisions of this Act are complementary to and not in derogation of the provisions of any other law of the State.
- (2) Without limiting the generality of subsection (1), this Act is not to be construed so as to prevent a person from being prosecuted under any other enactment for an offence punishable by this Act, or from being liable under any other law of the State to any other or higher penalty or punishment than is provided for the offence by this Act.
- (3) Nothing in this section affects the operation of the *Sentencing Act 1995* section 11.

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- (4) Nothing in this Act in any way affects any right any entity has at law to prevent, control or abate pollution or environmental harm or obtain damages.

**7. EDPH to be consulted on public health issues**

- (1) Nothing in this Act limits the functions of the Executive Director, Public Health under the *Health Act 1911*.
- (2) The regulations may set out circumstances in which the CEO or the Waste Authority must consult the Executive Director, Public Health with respect to a decision that the CEO or Waste Authority proposes to make under this Act.



## Part 2 — Waste Authority

### 8. Waste Authority established

A body called the Waste Authority is established.

### 9. Status

The Waste Authority is an agent of the State and has the status, immunities and privileges of the State.

### 10. Authority may use other names

- (1) In addition to its statutory name, the Waste Authority may use and operate under any other name approved by the Minister.
- (2) Notice of an approval under subsection (1) must be published in the *Gazette*.

### 11. Membership

- (1) The Waste Authority must comprise 5 members appointed by the Governor on the recommendation of the Minister.
- (2) The members are to be persons who, in the opinion of the Minister —
  - (a) have skill, experience and knowledge in matters relating to sustainability, waste services, or waste avoidance and resource recovery; or
  - (b) have a particular function or vocational interest relevant to the functions of the Waste Authority,

and who, in the opinion of the Minister, are able to make a contribution to the functions of the Waste Authority.

- (3) Before making a recommendation under subsection (1) the Minister must publish in a daily newspaper circulating throughout the State a notice calling for expressions of interest in appointment to the office of member.

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- (4) The Minister must consider expressions of interest lodged in accordance with the notice but may make a recommendation under subsection (1) whether or not the person recommended has lodged an expression of interest.
- (5) A member must not be a person who is employed in the Public Service under the *Public Sector Management Act 1994* Part 3.

**12. Chairman and deputy chairman**

One of the members is to be appointed by the Governor on the recommendation of the Minister to be the chairman of the Waste Authority and another to be the deputy chairman of the Waste Authority.

**13. CEO may attend meeting**

The CEO, or a delegate of the CEO, is entitled to attend any meeting of the Waste Authority and to take part in the consideration and discussion of any matter before a meeting, but cannot vote on any matter.

**14. Constitution and proceedings**

Schedule 1 sets out provisions as to the constitution and proceedings of the Waste Authority.

**15. Remuneration and conditions of members**

The remuneration and allowances and other conditions of office of a member are to be determined by the Governor on the recommendation of the Public Sector Commissioner.

*[Section 15 amended by No. 39 of 2010 s. 89.]*

**16. Provision of services and facilities**

- (1) The Minister must ensure that the Waste Authority is provided with such services and facilities as are reasonably necessary to enable it to perform its functions.

- (2) Without limiting subsection (1), the Minister may, by arrangement with the Department, and on such terms and conditions as may be mutually arranged with the Waste Authority, allow the Waste Authority to make use, either full-time or part-time, of —
  - (a) the services of any officer or employee employed in the Department; and
  - (b) any services or facilities of the Department.
- (3) This section does not limit section 17.

**17. Use of staff and facilities of other departments, agencies and instrumentalities**

- (1) Without limiting section 16, the Minister may, by arrangement with the relevant employing authority, allow the Waste Authority to make use, either full-time or part-time, of the services of any officer or employee —
  - (a) in the Public Service; or
  - (b) in a State agency or instrumentality; or
  - (c) otherwise in the service of the Crown in right of the State.
- (2) Without limiting section 16, the Minister may, by arrangement with —
  - (a) a department of the Public Service; or
  - (b) a State agency or instrumentality,make use of any facilities of the department, agency or instrumentality.
- (3) An arrangement under subsection (1) or (2) must be made on terms agreed to by the parties.

**18. Committees**

- (1) The Waste Authority, with the approval of the Minister, may —

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- (a) establish committees to assist the Waste Authority in the performance of its functions; and
  - (b) determine the constitution of any committee; and
  - (c) appoint —
    - (i) members of the Waste Authority; or
    - (ii) members of the Waste Authority and other persons,  
to be members or deputy members of a committee established under paragraph (a); and
  - (d) discharge, alter, or reconstitute any such committee.
- (2) At least one member of each committee established under subsection (1) must be a member of the Waste Authority.
- (3) A committee established under subsection (1) must comply with any direction of the Waste Authority.
- (4) Subject to any direction of the Waste Authority, a committee established under subsection (1) may determine its own procedure.

## **Part 3 — Functions of Waste Authority**

### **Division 1 — General**

#### **19. Functions of Waste Authority**

- (1) Subject to this Act, the functions of the Waste Authority are those set out in Schedule 2.
- (2) It is also a function of the Waste Authority to do things that it determines to be conducive or incidental to the performance of a function referred to in subsection (1).

#### **20. Powers generally**

- (1) The Waste Authority has all the powers it needs to perform its functions.
- (2) Without limiting subsection (1) the Waste Authority may for the purpose of performing a function —
  - (a) request the Minister to seek information on matters related to this Act from any other Minister and, on receipt of that information, to give it to the Waste Authority; and
  - (b) obtain the advice of persons having special knowledge, experience or responsibility in regard to any matter related to this Act; and
  - (c) consult and collaborate with appropriate entities, whether or not in the State; and
  - (d) conduct, commission, promote and support research into resource efficiency, waste avoidance and resource recovery and any other matter related to this Act; and
  - (e) publish reports relating to any matter arising under this Act, including reports on the Waste Authority's findings, advice, considerations and recommendations; and
  - (f) provide information to the public on any matter related to this Act.

## **Division 2 — Accountability**

### **21. Minister may give directions**

- (1) The Minister may give written directions to the Waste Authority with respect to the exercise or performance of its functions, either generally or in relation to a particular matter, and the Waste Authority must give effect to any such direction.
- (2) The text of a direction under subsection (1) must be included in the annual report submitted under section 23.

### **22. Minister to have access to information**

- (1) In this section —  
*document* includes any tape, disk or other device or medium on which information is recorded or stored;  
*information* means information specified, or of a description specified, by the Minister that relates to the functions of the Waste Authority;  
*officer of the Waste Authority* means a person whose services are provided under section 16(1) or used under section 17(1).
- (2) The Minister is entitled to have information in the possession of the Waste Authority and, if the information is in or on a document, to have, and make and retain copies of, that document.
- (3) For the purposes of subsection (2) the Minister may —
  - (a) request the Waste Authority to provide information to the Minister; and
  - (b) request the Waste Authority to give the Minister access to information; and
  - (c) for the purposes of paragraph (b) make use of officers of the Waste Authority to obtain the information and provide it to the Minister.

- (4) The Waste Authority must comply with a request under subsection (3) and make its officers and facilities available to the Minister for the purposes of paragraph (c) of that subsection.

**23. Annual report of the Waste Authority**

- (1) The Waste Authority must, as soon as practicable after 1 July, and in any event on or before 31 October, in each year, prepare and give to the Minister a report on the operations and proceedings of the Waste Authority for the previous financial year.
- (2) The Minister must cause the Waste Authority's report to be laid before each House of Parliament within 7 sitting days of the House after the Minister has received it.

## **Part 4 — Management documents**

### **Division 1 — Waste strategy**

#### **24. Purpose of waste strategy**

The purpose of the waste strategy is to set out, for the whole of the State —

- (a) a long term strategy for continuous improvement of waste services, waste avoidance and resource recovery, benchmarked against best practice; and
- (b) targets for waste reduction, resource recovery and the diversion of waste from landfill disposal.

#### **25. Waste Authority to prepare draft waste strategy**

As soon as practicable after the commencement of this section the Waste Authority must prepare, or cause to be prepared, a draft waste strategy.

#### **26. Consultation**

In the preparation of the draft waste strategy the Waste Authority must consult such entities involved in waste services or waste avoidance and resource recovery in the State as the Waste Authority thinks appropriate.

#### **27. Public notification of draft waste strategy**

- (1) The draft waste strategy must be submitted, together with such reports and other material as the Waste Authority considers relevant, to the Minister for the Minister's consent to public submissions being sought.
- (2) If the Minister does not consent to public submissions being sought in respect of the draft waste strategy the Minister must return the draft waste strategy to the Waste Authority and request it to —



- (a) consider or further consider any matter and deal with the matter in the draft waste strategy; and
  - (b) revise the draft waste strategy in the light of its consideration or further consideration; and
  - (c) again submit the draft waste strategy to the Minister under this section.
- (3) If the Minister consents to public submissions being sought in respect of the draft waste strategy the Waste Authority must publish —
  - (a) in the *Gazette*; and
  - (b) in 2 issues of a daily newspaper circulating throughout the State,a notice —
  - (c) specifying the places at which copies of the draft waste strategy may be inspected and obtained; and
  - (d) stating the effect of section 28 and specifying the period referred to in that section.
- (4) The Waste Authority may fix and charge a fee for supplying a copy of the draft waste strategy.

## **28. Public submissions**

Submissions in respect of the draft waste strategy may be made, in the form, if any, approved by the Waste Authority, by any entity —

- (a) within a period determined by the Waste Authority that is not less than 12 weeks after the day on which the notice is published in the *Gazette* under section 27(3)(a); and
- (b) by delivering or posting them so that they are received within that period at the offices of the Waste Authority.

**29. Modified draft to be referred to entities who made submissions**

- (1) The draft waste strategy, modified if the Waste Authority thinks fit after considering submissions under section 28, must be referred by the Waste Authority to each entity which made a submission under that section together with a summary of the submissions, and may be referred by it to any other entity.
- (2) If an entity to whom the draft waste strategy is referred under subsection (1) considers that the Waste Authority should vary the draft, the entity may within 28 days after receipt of the draft, in writing, request the Waste Authority to make the variation.

**30. Consideration by Minister**

- (1) After considering all requests that have been duly lodged under section 29, the Waste Authority must submit to the Minister —
  - (a) the draft waste strategy, with the modifications, if any, it thinks fit to make; and
  - (b) a copy of each of the submissions and requests; and
  - (c) a report by the Waste Authority on the submissions and requests.
- (2) The Minister may direct that the draft waste strategy is to be modified as directed by the Minister.
- (3) The Waste Authority must amend the draft waste strategy as directed by the Minister and again submit the draft waste strategy to the Minister on or before the date directed by the Minister.

**31. Approval of Minister**

- (1) The Minister may approve, or refuse to approve, the draft waste strategy.
- (2) Notice that the waste strategy has been approved by the Minister must be published by the Minister in the *Gazette*.

- (3) The waste strategy comes into operation on the day of publication in the *Gazette* of a notice under subsection (1) or on a later day that is specified in the document.
- (4) The Waste Authority must ensure that a copy of the waste strategy is —
  - (a) available for inspection by members of the public at its principal place of business whenever that place is open to the public; and
  - (b) published on the internet.
- (5) The Waste Authority may fix and charge a fee for supplying a copy of the waste strategy.

**32. Minor amendments to waste strategy**

- (1) The Waste Authority may, with the approval of the Minister, make minor amendments to the waste strategy without complying with section 33.
- (2) The Waste Authority must include a report on minor amendments made under this section in its annual report under section 23.

**33. Review and revision of waste strategy**

- (1) The Waste Authority must review the waste strategy —
  - (a) whenever directed to do so by the Minister; and
  - (b) in any event, not later than 5 years after the Minister has under section 31 last approved the waste strategy or amendments to it or its continuation in force without amendment.
- (2) If, on a review under this section, the Waste Authority considers that the circumstances so require, the Waste Authority must prepare amendments to the waste strategy or a revised waste strategy.

- (3) If, on a review under this section, the Waste Authority considers that the waste strategy does not require amendment or revision the Waste Authority may determine that it is to continue in force without amendment.
- (4) The following provisions, as to consultation about, and approval of, the waste strategy, apply for the purposes of this section, with all necessary changes —
  - (a) section 26, as if the reference in that section to the preparation of the draft waste strategy were a reference to the review of the waste strategy;
  - (b) sections 27, 28, 29, 30 and 31(1), as if the references in those provisions to the draft waste strategy were references to the proposed amendments to the waste strategy, the proposed revised waste strategy or a proposal that the existing waste strategy be continued in force without amendment;
  - (c) section 31(2) and (3) as if references in those provisions to a waste strategy were references to the amendment of the waste strategy, the proposed revised waste strategy or the continuation of the waste strategy.

**34. Power to request report on waste strategy compliance**

- (1) The CEO may request any entity to provide a report on —
  - (a) its compliance with the waste strategy; or
  - (b) the reasons for any specified non-compliance by that entity with the waste strategy.
- (2) Such a request must be in writing and must specify the date by which the entity is requested to provide the report to the CEO.
- (3) The CEO may forward the report to the Waste Authority.
- (4) If an entity does not —
  - (a) comply with the waste strategy; or
  - (b) comply with a request under this section,

the CEO may include, after consultation with the entity, a summary of the entity's failure in the Department's next annual report prepared for the purposes of the *Financial Management Act 2006* Part 5.

## **Division 2 — Business plans**

### **35. Draft business plan to be submitted to Minister**

- (1) Each year the Waste Authority must prepare a draft business plan.
- (2) The Minister may from time to time, by written notice to the Waste Authority —
  - (a) fix a day in each year by which a draft business plan is to be submitted under subsection (1); or
  - (b) cancel a notice given under paragraph (a).
- (3) Each draft business plan must be submitted to the Minister for approval not later than —
  - (a) the day fixed under subsection (2); or
  - (b) if there is for the time being no day so fixed — 3 months before the start of the next financial year.
- (4) The first draft business plan for the Waste Authority is to be in respect of the next full financial year after the commencement of this section.

### **36. Contents of business plan**

- (1) A business plan is to set out —
  - (a) the Waste Authority's objectives and priorities for the next 5 financial years; and
  - (b) financial projections for that period; and
  - (c) the Waste Authority's budget for the next financial year; and

- (da) the services and facilities that are reasonably necessary to be provided or used under section 16 for the next financial year in order to enable the Waste Authority to perform its functions; and
  - (d) what the Waste Authority intends to do over the next financial year; and
  - (e) the Waste Authority's policy for the application of moneys from the WARR Account for the next financial year; and
  - (f) a priority statement with respect to extended producer responsibility schemes in accordance with section 47; and
  - (g) any other matters that the Minister requires in writing.
- (2) A business plan must be consistent with the waste strategy.
- (3) The Waste Authority may seek the advice of such entities as the Waste Authority thinks fit as to the development of policy for the application of money from the WARR Account.

*[Section 36 amended by No. 48 of 2009 s. 4.]*

**37. Minister's powers in relation to draft business plan**

- (1) If the Minister has not approved a draft business plan by one month before the start of the next financial year, the Minister may, by written notice, direct the Waste Authority —
- (a) to take specified steps in relation to the draft plan; or
  - (b) to make specified modifications to the draft plan.
- (2) The Waste Authority must comply with the direction as soon as is practicable.

**38. Business plan pending approval**

- (1) In subsection (2) —
- latest draft plan*** means the draft business plan submitted, or last submitted, by the Waste Authority to the Minister before the

start of the financial year with any modifications made by the Waste Authority, whether before or after that time, at the direction of the Minister.

- (2) If the Minister has not approved a draft business plan before the start of a financial year, the latest draft plan is to be the business plan for the Waste Authority until a draft business plan is approved under section 39.

**39. Approval and implementation of business plan**

- (1) After amending its draft business plan in any way directed by the Minister, the Waste Authority must submit, on or before the date required by the Minister, a revised draft business plan to the Minister and the Minister may approve the plan.
- (2) When the Minister approves a draft business plan, it becomes the business plan for the relevant financial year or remainder of the year, as the case may be.
- (3) The Waste Authority must have regard to the business plan in carrying out its functions.
- (4) The Waste Authority must not depart significantly from its business plan without first obtaining the approval of the Minister.
- (5) The Waste Authority must ensure that a copy of its current business plan is —
  - (a) available for inspection by members of the public at its principal place of business whenever that place is open to the public; and
  - (b) published on the internet.
- (6) The Waste Authority may fix and charge a fee for supplying a copy of a business plan.

### **Division 3 — Waste plans**

#### **40. Waste plans**

- (1) In this section —

***plan for the future*** means a plan made under the *Local Government Act 1995* section 5.56.

- (2) A local government may include within its plan for the future a waste plan outlining how, in order to protect human health and the environment, waste services provided by the local government in the relevant district will be managed to achieve consistency with the waste strategy.
- (3) The waste plan may include —
- (a) population and development profiles for the district;
  - (b) an assessment of significant sources and generators of waste received by the local government;
  - (c) an assessment of the quantities and classes of waste received by the local government;
  - (d) an assessment of the services, markets and facilities for waste received by the local government;
  - (e) an assessment of the options for reduction, management and disposal of waste received by the local government;
  - (f) proposed strategies and targets for managing and reducing waste received by the local government;
  - (g) proposed strategies and targets for the efficient disposal of waste received by the local government that cannot be recovered, reused or recycled;
  - (h) an implementation programme that identifies the required action, timeframes, resources and responsibilities for achieving these strategies and targets;
  - (i) such other matters as may be prescribed by the regulations.



- (4) The CEO may by written notice require a local government to include within its plan for the future a waste plan outlining how, in order to protect human health and the environment, waste services provided by the local government will be managed to achieve consistency with the waste strategy.
- (5) The notice may specify a reasonable period within which the waste plan must be included in the plan for the future.
- (6) The CEO may, on the request of a local government and at the expense of that local government, prepare a draft waste plan for that local government.

**41. CEO's powers in relation to waste plan**

- (1) If the CEO is of the opinion that a waste plan should, but does not, include a matter referred to in section 40(3), the CEO may, by written notice, require the local government to modify the waste plan to include that matter.
- (2) Before giving a notice to a local government under subsection (1) the CEO —
  - (a) must consult with the local government and have regard to its views; and
  - (b) if the local government so requests, must consult with the Waste Authority and have regard to its views.
- (3) A local government must comply with the notice as soon as is practicable.
- (4) If the local government does not comply with the notice issued under section 40(4) or under subsection (1), the CEO may serve notice in writing on the local government —
  - (a) specifying the relevant notice and the manner in which the local government has failed to comply with it; and
  - (b) advising the local government that the CEO intends to deal with the matter under section 42.

- (5) A local government aggrieved by a notice given to the local government under subsection (4) may apply to the State Administrative Tribunal for a review of the notice.

**42. CEO may prepare or modify waste plan**

- (1) When a notice has been served on a local government under section 41(4), the CEO may, after consulting and having regard to the views of the Waste Authority and the local government, take all such steps and prepare all such documents as are necessary to ensure compliance with the notice referred to in section 40(4) or 41(1), as the case requires, as if the CEO were the local government.
- (2) A waste plan, or modification of a waste plan, for a local government prepared under this section has effect as if it were part of a plan for the future made by the local government.
- (3) All costs, charges and expenses incurred by the CEO in the exercise of any powers conferred by subsection (1) may be recovered from the local government as a debt due to the Crown or may be deducted from any moneys payable by the Crown to the local government.
- (4) A local government aggrieved by a waste plan, or modification of a waste plan, prepared under this section may apply to the State Administrative Tribunal for a review of the plan or modification.

**43. Effect of waste plan**

- (1) The CEO must have regard to the waste plan of a local government when exercising a function under this Act or any other Act that affects the operation of the waste plan.
- (2) A local government must perform its functions in respect of waste management in accordance with its waste plan as existing from time to time.

**44. Report on waste plan**

- (1) The CEO may require a local government to submit a report to the CEO on the implementation of its waste plan.
- (2) The CEO may require the local government to include in the report information about any or all of the following matters —
  - (a) the quantities of waste of each of the classes identified in the waste plan —
    - (i) collected or otherwise received by the local government and its contractors; or
    - (ii) reused or recycled by the local government or transferred to other parties for reuse or recycling; or
    - (iii) held in stockpiles; or
    - (iv) disposed of to landfill;
  - (b) the number of premises serviced;
  - (c) changes made during the reporting period to the nature of the waste services provided;
  - (d) complaints lodged with the local government under section 71 and actions taken by the local government in response;
  - (e) any other matters specified in the waste plan;
  - (f) such other matters as the local government considers appropriate.
- (3) A local government aggrieved by a requirement under this section may apply to the State Administrative Tribunal for a review of the requirement.

## **Part 5 — Product stewardship**

### **45.      Product stewardship plans**

- (1) A producer or group of producers may submit a product stewardship plan to the CEO.
- (2) A product stewardship plan must specify —
  - (a) the products dealt with under the plan; and
  - (b) targets and timeframes for avoidance, reduction, reuse or recycling of waste; and
  - (c) the information that will be collected, assessed and audited to ascertain whether the targets and timeframes specified in the plan have been met; and
  - (d) how the information will be made public; and
  - (e) any other matter the producer or group of producers considers relevant.
- (3) If the CEO is satisfied that the product stewardship plan deals with the matters specified in subsection (2) in an appropriate way, the CEO must register the plan.

### **46.      Extended producer responsibility schemes**

- (1) Before regulations are made for the purpose of implementing and operating an extended producer responsibility scheme, the Minister must have regard to —
  - (a) the nature of the product proposed to be dealt with under the proposed scheme; and
  - (b) whether there is an effective approved product stewardship plan in place, or a similar national plan, that is able to achieve the desired outcomes and is being actively implemented, monitored and reported on; and
  - (c) whether there is an Australian national scheme which adequately deals with the product proposed to be dealt with under the proposed scheme.

- (2) Where a regulation made in respect of a matter referred to in Schedule 3 Division 3 specifically provides that this subsection applies in respect of a provision of the regulation, a person who commits an offence under the provision is liable to a fine of \$50 000 and a daily penalty of \$5 000.

**47. Statements with regard to extended producer responsibility schemes**

- (1) The Waste Authority must —
- (a) include in its business plan each year a priority statement with respect to any extended producer responsibility schemes the Waste Authority proposes to recommend for implementation and operation under the regulations; and
  - (b) advertise the priority statement; and
  - (c) in the advertisement, invite submissions on any relevant matter relating to the priority statement.
- (2) Subsection (1) does not apply in respect of the first year after the commencement of this section.
- (3) The advertisement must be published —
- (a) in the *Gazette*; and
  - (b) twice in a newspaper circulating throughout the State; and
  - (c) otherwise as the Waste Authority considers appropriate.
- (4) Submissions may be made, in the form, if any, approved by the Waste Authority, by any entity —
- (a) within a period determined by the Waste Authority that is not less than 28 days after the day on which the notice is published under subsection (3)(a); and
  - (b) by delivering or posting them so that they are received within that period at the offices of the Waste Authority.

- (5) The Waste Authority must have regard to the submissions when deciding whether or not to proceed with recommending the implementation and operation under the regulations of an extended producer responsibility scheme.

## **Part 6 — Waste services**

### **Division 1 — Services provided by local governments**

**48. References to provision of waste service**

A reference in this Part to a waste service provided by a local government includes a reference to a waste service provided on behalf of a local government pursuant to a contract.

**49. Specified public authority may exercise functions of local government**

- (1) The CEO, by notice published in the *Gazette*, may designate a specified area that is not part of a district as an area in which a specified public authority may perform and exercise the functions of a local government under this Act.
- (2) In subsection (1) —  
***specified*** means specified in a notice published under that subsection.
- (3) If a notice is published under subsection (1), this Act applies as if —
  - (a) a reference to a local government included a reference to the public authority specified in the notice; and
  - (b) a reference to a district included a reference to the area designated in the notice.

**50. Provision of waste services**

- (1) Subject to this Act and the EP Act, a local government may provide, or enter into a contract for the provision on its behalf of, waste services.
- (2) A local government does not require a waste collection permit or an EP authorisation to collect or transport local government waste but is otherwise subject to the provisions of the EP Act.

- (3) The CEO may, for the purpose of protecting human health or the environment, by written notice require a local government, or 2 or more local governments together, to provide, in relation to local government waste, a waste service of a kind specified in the notice.
- (4) The CEO must seek and have regard to the advice of the Waste Authority before issuing a notice under subsection (3).
- (5) The notice must be given to each local government required to provide the waste service.
- (6) The notice may apply to the whole of a local government district or districts or to a specified portion of a local government district or districts.
- (7) Subject to subsection (8) and the EP Act, the local government must comply with the notice.
- (8) The local government is not required to provide a waste service for which the local government is required to hold an EP authorisation until the authorisation has been granted, but must use reasonable endeavour to obtain the authorisation as soon as practicable after the notice is issued.
- (9) A local government aggrieved by a requirement in a notice given by the CEO under subsection (3) may apply to the State Administrative Tribunal for a review of the requirement.

**51. Costs of providing combined waste service**

- (1) If 2 or more local governments combine in providing a waste service, the CEO may, by written notice, determine the proportion of the cost of providing the service to be borne by each local government.
- (2) A local government aggrieved by a determination under subsection (1) may apply to the State Administrative Tribunal for a review of the determination.



**52. Codes of practice**

- (1) The Waste Authority may, with the approval of the Minister, make codes of practice for the provision of waste services —
  - (a) generally; or
  - (b) in relation to local government waste; or
  - (c) in relation to other particular types of situations.
- (2) A code must be made in consultation with such entities as have, in the opinion of the Waste Authority, a relevant interest in its provisions.
- (3) A code must not be inconsistent with any written law.
- (4) The *Interpretation Act 1984* section 43(7), (8) and (9) applies to a code as if it were subsidiary legislation.
- (5) The Waste Authority may amend or revoke a code or revoke it and substitute another code for it.
- (6) The Waste Authority must cause any code, and any amendment or substituted code, to be published for public information.

**53. CEO may monitor and evaluate waste services**

- (1) The CEO may monitor waste services provided by a local government —
  - (a) to determine whether a notice is needed under section 50(3); and
  - (b) to determine whether the prerequisites for issuing a waste collection permit under section 56 have been met; and
  - (c) to ascertain whether there has been compliance with section 71(1).
- (2) If monitoring under subsection (1) indicates a reason for concern, the CEO may —
  - (a) carry out a performance evaluation of the waste services —
    - (i) to determine whether a notice is needed under section 50(3); or

- (ii) to determine whether the prerequisites for issuing a waste collection permit under section 56 have been met; or
  - (iii) to ascertain whether there has been compliance with section 71(1);
- and
- (b) publish the results of the performance evaluation.
- (3) The CEO must seek and have regard to the advice of the Waste Authority as to —
  - (a) the appropriate performance of a waste service; and
  - (b) any other matters proposed to be evaluated,before carrying out a performance evaluation.
- (4) For the purposes of this section the CEO may by notice given to a local government request the local government to provide the CEO, or a person specified in the notice, with such reports and other information specified in the notice as are necessary for monitoring or evaluating waste services.
- (5) A local government must comply with a notice given to it under subsection (4).
- (6) A local government aggrieved by a request in a notice given by the CEO under subsection (4) may apply to the State Administrative Tribunal for a review of the request.

**54. Expenses of evaluation**

- (1) If the results of a performance evaluation of waste services provided by a local government indicate that —
  - (a) a requirement should be imposed under section 50(3); or
  - (b) the prerequisites for issuing a waste collection permit under section 56 have been met; or

- (c) there has not been compliance under section 71(1),  
any reasonable expenses incurred by the CEO in carrying out  
and publishing the results of the performance evaluation may be  
recovered from the local government as a debt due to the Crown  
or may be deducted from any moneys payable by the Crown to  
the local government.
- (2) The CEO must give the local government at least 28 days notice  
of the intention to recover or deduct the expenses and of the  
amount proposed to be recovered or deducted.
- (3) A local government given a notice under subsection (2) may  
apply to the State Administrative Tribunal for a review of the  
proposed recovery or deduction.

**55. Disposal of waste by local government**

Subject to any prescribed exceptions, and to the EP Act, all  
waste received by a local government —

- (a) becomes the property of the local government; and  
(b) may be destroyed, sold or otherwise disposed of by the  
local government.

**Division 2 — Waste collection permits**

**56. Waste collection permit**

- (1) The CEO may, subject to this section and regulations made for  
the purposes of this section, issue a permit to collect local  
government waste (a *waste collection permit*).
- (2) The CEO must not issue a waste collection permit to collect  
local government waste in a local government district or part of  
a district unless —
- (a) a local government does not collect the local  
government waste specified in the waste collection  
permit in that district or part of that district; or  
(b) the criteria specified in subsection (3) are met.

- (3) The CEO may issue a waste collection permit to collect local government waste in a local government district or part of a district if the CEO is of the opinion that —
  - (a) the collection by the local government of the local government waste specified in the waste collection permit in the district or part of a district is not adequate insofar as the waste management techniques employed are not consistent with modern practice; and
  - (b) the applicant for the waste collection permit is capable of carrying out improved waste collection.
- (4) If a waste collection permit to collect local government waste in a local government district or part of a district is in force, a local government must not collect that local government waste without the written approval of the CEO.
- (5) A person aggrieved by a decision of the CEO under this section may apply to the State Administrative Tribunal for a review of the decision.

**57. Consistency with modern practice**

When making a determination for the purposes of section 56 or 59 as to whether a waste management technique is consistent with modern practice the CEO —

- (a) must have regard to any relevant code of practice made by the Waste Authority under section 52 as to waste services; or
- (b) if there is no relevant code of practice, must have regard to the advice of the Waste Authority.

**58. CEO to consult on issue, renewal or amendment of permit**

Before issuing, renewing or amending a waste collection permit the CEO must seek and have regard to recommendations and advice on the issue, renewal or amendment of the permit from —

- (a) the Waste Authority; and

- (b) the Executive Director, Public Health; and
- (c) the local government in the district of which the waste collection is carried out.

**59. Term and renewal of waste collection permit**

- (1) The term of a waste collection permit must not exceed 3 years but the permit may be renewed from time to time.
- (2) The CEO must not renew a permit if —
  - (a) the local government in the district or part of the district in which waste collection under the permit is undertaken has advised the CEO under section 58 that it will undertake the collection of local government waste in that district or part of the district; and
  - (b) the CEO is of the opinion that the collection by the local government of the local government waste will be adequate insofar as the waste management techniques employed will be consistent with modern practice.
- (3) A person aggrieved by a decision of the CEO under this section may apply to the State Administrative Tribunal for a review of the decision.

**60. Disposal of waste by holder of permit**

Subject to any exclusions prescribed by regulations under this Act, and to the EP Act, all waste collected by the holder of a waste collection permit to collect that waste —

- (a) becomes the property of the holder of the permit; and
- (b) may be destroyed, sold or otherwise disposed of by the holder of the permit.

**Division 3 — Local laws and local government rates, fees  
and charges**

**61. Local laws in respect of waste management**

(1) A local government —

- (a) may, if the CEO consents; and
- (b) must, if the CEO so directs,

make local laws in accordance with the *Local Government Act 1995* Part 3 Division 2 Subdivision 2 for the purposes specified in section 64 or generally for carrying into effect the provisions of this Part.

- (2) A local government must repeal, amend or suspend the operation of a local law if directed to do so by the CEO.
- (3) The CEO must consult the local government before giving a direction, or refusing to consent to the making of a local law, under this section.
- (4) The CEO must not give a direction to make a local law unless the local law is relevant to the protection of human health or the environment.
- (5) A local government aggrieved by —
  - (a) a direction of the CEO given under this section; or
  - (b) a decision of the CEO to refuse to consent to the making of local laws,

may apply to the State Administrative Tribunal for a review of the direction or decision.

- (6) The *Local Government Act 1995* sections 3.14 and 3.17 do not apply in relation to local laws made under this Act.
- (7) The *Local Government Act 1995* sections 3.12(3) and (4) and 3.13 do not apply if the local government is acting on the direction of the CEO under subsection (1)(b) or (2).

- (8) A local law is inoperative to the extent that it is inconsistent with this Act or a regulation made under this Act.

**62. Model local laws**

- (1) The Governor may cause to be prepared and published in the *Gazette* model local laws the provisions of which a local law made under this Act may adopt by reference, with or without modification.
- (2) Model local laws have no effect except to the extent that they are adopted.
- (3) The Governor may, by notice published in the *Gazette*, amend a model local law published under this section.
- (4) An amendment to a model local law does not affect any local law that adopted the model local law before the amendment but the amendment may be adopted by a further local law.

**63. Governor may amend or repeal local laws**

- (1) The Governor may make a local law to amend the text of, or repeal, a local law.
- (2) Subsection (1) does not include the power to amend a local law to include in it a provision that bears no reasonable relationship to the local law as in force before the amendment.
- (3) The Minister must give a local government notice in writing of any local law that the Governor makes to amend the text of, or repeal, any of the local government's local laws.
- (4) A local law made under this section is to be taken, for all purposes, to be a local law made by the local government which made the local law that is amended or repealed.

**64. Subject matter of local laws**

- (1) In this section —

**owner**, in relation to premises comprised of or on land, has the meaning given in the *Local Government Act 1995* section 1.4.

- (2) Local laws may be made for all or any of the following purposes —

- (a) the provision and administration of waste services and related matters;
- (b) the establishment, provision, use and control of receptacles for the deposit and collection of waste, whether temporary or otherwise;
- (c) if a local government itself undertakes or contracts for removal of waste from premises, imposing on the owner or occupier of the premises requirements in connection with the removal so as to facilitate the removal, and prescribing the manner in which the requirement is to be complied with;
- (d) if a local government or the holder of a waste collection permit does not itself undertake or contract for removal of waste from premises, imposing on the owner or occupier of the premises a requirement to remove waste from the premises, and prescribing the manner in which the requirement is to be complied with;
- (e) if a local government itself undertakes or contracts for the removal of waste, requiring the waste to be placed in waste receptacles provided by the local government;
- (f) prescribing intervals at which the contents of the receptacles will be removed by a local government;
- (g) requiring the temporary placing of waste receptacles in streets or lanes by owners or occupiers of property for collection of waste, and requiring the replacement of the receptacles on the property;



- (h) providing for the maintenance by owners and occupiers of waste receptacles provided by a local government;
  - (i) providing for the issue of approvals to collect local government waste and remove it from premises;
  - (j) fixing fees and charges in relation to waste services provided by a local government and the issue of approvals under paragraph (i), and prescribing the persons liable and the method of recovery of amounts not duly paid.
- (3) A local law may provide that contravention of a provision of the local law is an offence, and may provide for the offence to be punishable on conviction by a penalty not exceeding a fine of \$5 000.
- (4) If the offence is of a continuing nature, the local law may make the person liable to a further penalty not exceeding a fine of \$500 in respect of each day or part of a day during which the offence has continued.
- (5) The local law may provide for the imposition of a minimum penalty for the offence.
- (6) The level of the penalty may be related to —
  - (a) the circumstances or extent of the offence; or
  - (b) whether the offender has committed previous offences and, if so, the number of previous offences that the offender has committed.
- (7) A local law may specify the method and the means by which any fines imposed are to be paid and collected, or recovered.

## **65. Enforcement of local laws**

- (1) Local laws made by a local government under this Act may be enforced under the *Local Government Act 1995* as if the local laws were made by the local government under that Act.

- (2) If there is a conflict or inconsistency between this Act and the *Local Government Act 1995* in relation to the enforcement of a local law, the provisions of the *Local Government Act 1995* prevail.
- (3) Without limiting subsections (1) and (2), the *Local Government Act 1995* Part 9 Division 2 applies in relation to enforcement and legal proceedings for an offence against a local law.

**66. Local government may impose waste collection rate**

- (1) A local government may impose on rateable land within its district, and cause to be collected, an annual rate for the purpose of providing for the proper performance of all or any of the waste services it provides.
- (2) The annual rate must not exceed —
  - (a) 12 cents in the dollar on the gross rental value; or
  - (b) where the system of valuation on the basis of the unimproved value is adopted, 3 cents in the dollar on the unimproved value of the land in fee simple.
- (3) The provisions of the *Local Government Act 1995* relating to the making, payment and recovery of general rates apply with respect to rates referred to in subsection (1).

**67. Local government may impose receptacle charge**

- (1) A local government may, in lieu of, or in addition to a rate under section 66, provide for the proper disposal of waste, whether within its district or not, by making an annual charge per waste receptacle, payable in one sum or by equal monthly or other instalments in advance, in respect of premises provided with a waste service by the local government.
- (2) The charge is to be imposed on the owner (as defined in section 64(1)) or occupier, as the local government may decide, of any premises provided with a waste service by the local government.

- (3) The provisions of the *Local Government Act 1995* relating to the recovery of general rates apply with respect to a charge referred to in subsection (1).
- (4) In the case of premises being erected and becoming occupied during the year for which payment is to be made, the charge for the service provided is to be the sum that proportionately represents the period between the occupation of the premises and the end of the year for which payment is made.
- (5) Notice of any charge made under this section may be included in any notice of rates imposed under section 66 or the *Local Government Act 1995*, but the omission to give notice of a charge does not affect the validity of the charge or the power of the local government to recover the charge.
- (6) A charge may be limited to premises in a particular portion of the area under the control of the local government.
- (7) Charges under this section may be imposed in respect of and are to be payable for all premises in respect of which a waste service is provided, whether such premises are rateable or not.
- (8) A local government may make different charges for waste services rendered in different portions of its district.

**68. Fees and charges fixed by local government**

Nothing in this Part prevents or restricts a local government from imposing or recovering a fee or charge in respect of waste services under the *Local Government Act 1995* section 6.16.

**Division 4 — Offences**

**69. Waste collection not to be carried out by unauthorised persons**

A person other than a local government who, for fee or reward, collects local government waste in a local government district other than as authorised by —

- (a) a written contract with the local government; or
- (b) an approval to collect local government waste issued by a local government in accordance with regulations or local laws; or
- (c) a waste collection permit,

commits an offence.

Penalty: a fine of \$10 000 and a daily penalty of \$1 000.

**70. Obstruction or hindrance**

- (1) A person who obstructs or hinders a local government or its contractor, or the holder of a waste collection permit, in the collection of local government waste commits an offence.  
Penalty: a fine of \$10 000.
- (2) An occupier does not commit an offence under this section by reason only of collecting or using, selling or otherwise disposing of the occupier's own local government waste.

**71. Services to be provided in accordance with waste plan or permit**

- (1) A waste service in respect of local government waste provided by a local government must be carried out —
  - (a) in accordance with section 43(2); and
  - (b) to the satisfaction of the CEO and, in the case of services carried out by a contractor on behalf of a local government, the local government.
- (2) If —
  - (a) a waste service is not carried out in accordance with subsection (1); or
  - (b) local government waste is not collected in accordance with a condition of a waste collection permit to collect that waste,

and, by reason of that failure, waste has accumulated on premises, the occupier of the premises may lodge an oral or written complaint with —

- (c) the local government in the case of services provided, or that had been undertaken to be provided, by the local government or its contractor; or
- (d) the CEO in the case of services provided, or that had been undertaken to be provided, by the holder of a waste collection permit.

(3) If a complaint is lodged —

- (a) under subsection (2)(c), the local government must give written notice of the complaint to the contractor (if any) by whom the services were, or should have been, provided; or
- (b) under subsection (2)(d), the CEO must give written notice of the complaint to the holder of the waste collection permit by whom the services were, or should have been, provided.

(4) If —

- (a) a complaint is lodged under subsection (2)(c) with a local government in respect of waste services it provided, or had undertaken to provide, itself; and
- (b) the requisite service has not been provided and the cause of complaint removed within 48 hours of the lodging of the complaint; and
- (c) the Executive Director, Public Health, by notice in writing given to the CEO, declares that the failure to provide the requisite service and remove the cause of complaint has the potential to pose a risk to human health,

the local government commits an offence.

Penalty: a fine of \$10 000.

(5) If —

- (a) notice is served under subsection (3) on a contractor or holder of a waste collection permit; and
- (b) the requisite service has not been provided and the cause of complaint removed within 48 hours of service of the notice under subsection (3); and
- (c) the Executive Director, Public Health, by notice in writing given to the contractor or holder of the waste collection permit, declares that the failure to provide the requisite service and remove the cause of complaint has the potential to pose a risk to human health,

the contractor or holder of the waste collection permit, as the case requires, commits an offence.

Penalty: a fine of \$10 000.

### **Division 5 — General**

#### **72. Accumulation of waste — prevention notice**

(1) If —

- (a) waste has accumulated on premises; and
- (b) the CEO is of the opinion that the accumulation of waste has caused, is causing or is about to cause conditions detrimental to the environment or dangerous to human health,

an inspector or authorised person may take action under the EP Act section 73 or a prevention notice may be given under the EP Act section 73A.

(2) Nothing in this section limits the operation of the EP Act.

## **Part 7 — Collection and application of levy**

### **Division 1 — Collection of levy imposed under *Waste Avoidance and Resource Recovery Levy Act 2007***

#### **73. Payment of levy**

- (1) A levy is due and payable at such time or times, and in such manner, as is prescribed by the regulations.
- (2) A levy is payable to the Minister.
- (3) The regulations may provide for the refund or deduction of amounts overpaid by way of levy and the payment of rebates.
- (4) Any levy paid is to be credited to an operating account of the Department established under the *Financial Management Act 2006* section 16(1)(a).

*[Section 73 amended by No. 48 of 2009 s. 5.]*

#### **74. Financial assurance**

The regulations may make provision —

- (a) empowering the CEO to require a licensee, or occupier required under the EP Act to hold a licence, to provide a financial assurance for the purpose of securing or guaranteeing payment of a levy; and
- (b) with respect to the form, amount, maintenance and termination of the financial assurance; and
- (c) with respect to the conditions and procedures under which the financial assurance may be called on or used; and
- (d) with respect to matters necessary for, or incidental to, the effective operation of a financial assurance.

**75. Payment by instalments**

- (1) The regulations may provide for the payment of an amount of the levy to be made by instalments, and, subject to subsection (2), each instalment is due and payable at a time ascertained in accordance with the regulations.
- (2) If —
  - (a) the regulations provide for the payment of an amount of a levy to be made by instalments; and
  - (b) an instalment is not paid at or before the time due for the payment of the instalment,

the whole of the amount of the levy unpaid becomes due and payable at that time.

**76. Penalty for non-payment**

- (1) If an amount of a levy remains unpaid after the day on which it becomes due for payment, there is payable to the Minister by way of penalty, in addition to the amount of the levy, an amount calculated at the rate of 20% per annum upon the amount of the levy from time to time remaining unpaid.
- (2) The amount by way of penalty referred to in subsection (1) is to be calculated from the time when the amount of the levy becomes payable.
- (3) Any amount paid by way of penalty under subsection (1) is to be credited to an operating account of the Department established under the *Financial Management Act 2006* section 16(1)(a).

*[Section 76 amended by No. 48 of 2009 s. 6.]*

**77. Recovery of levy**

The following amounts may be recovered by the Minister in a court of competent jurisdiction as debts due to the Minister —

- (a) a levy that is due and payable;



(b) an amount payable under section 76.

**78. Evading levy**

- (1) A person who, by any wilful act, default or neglect, or by any fraud, art or contrivance whatever, evades or attempts to evade payment of all or any amount of a levy commits an offence.  
Penalty: a fine of \$10 000 and treble the amount evaded or attempted to be evaded.
- (2) The imposition on a person of a fine under subsection (1) does not affect the liability of the person to pay the levy and penalty under section 76.

**Division 2 — Waste Avoidance and Resource Recovery Account**

**79. Waste Avoidance and Resource Recovery Account**

- (1) There is to be established and kept as an agency special purpose account established under the *Financial Management Act 2006* section 16 an account to be called the “Waste Avoidance and Resource Recovery Account”.
- (2) The WARR Account is to be administered by the Waste Authority.
- (3A) The Minister is to direct in each financial year that there is to be credited to the WARR Account such amount of the levy credited to the Department’s operating account under section 73(4) as is specified by the Minister.
- (3B) The amount specified under subsection (3A) must be as follows —
- (a) in the financial year ending 30 June 2010 — an amount not less than the difference between 25% of the forecast levy amount for that financial year and the amount of levy paid or payable for the period 1 July 2009 to 31 December 2009;

- (b) in any other financial year — not less than 25% of the forecast levy amount for the financial year.
- (3C) For the purposes of subsection (3B) the *forecast levy amount* for a financial year is —
  - (a) the estimate of the levy amount for the financial year set out in the budget papers for that financial year tabled in the Legislative Assembly; or
  - (b) if another means of determining the forecast levy amount for the financial year is prescribed — the forecast levy amount determined by those means.
- (3) In addition to the amount referred to in subsection (3A), the WARR Account is to be credited with —
  - [(a), (b) deleted]*
  - (c) income derived from the investment of moneys forming part of the WARR Account; and
  - (d) any other moneys lawfully payable to the credit of the WARR Account.

*[Section 79 amended by No. 48 of 2009 s. 7.]*

**80. Application of moneys in the WARR Account**

- (1) Moneys held in the WARR Account are to be applied, in a manner that is consistent with the current business plan or as may be approved by the Minister —
  - (a) to fund programmes relating to the management, reduction, reuse, recycling, monitoring or measurement of waste; and
  - (b) to fund the preparation, review and amendment of the waste strategy, waste plans under Part 4 and extended producer responsibility schemes and the implementation of that strategy and those plans and schemes; and

- (c) in payment of the costs of administering the WARR Account (including the costs of collecting levies and penalties and support and evaluation services); and
- (d) to fund the services and facilities referred to in section 36(1)(da); and
- (e) in payment of the other costs of the administration and enforcement of this Act, including the remuneration of members of the Waste Authority.

*[(2) deleted]*

- (3) Moneys held in the WARR Account may be paid to an entity by the Waste Authority for the purposes of subsection (1)(a) on such terms and conditions as the Waste Authority thinks fit.
- (4) An entity to whom moneys are paid under subsection (1)(a) who fails to ensure that —
  - (a) the moneys are only expended for the purposes of the programme and in accordance with any terms or conditions imposed by the Waste Authority; or
  - (b) a performance evaluation in respect of the programme for which the moneys are paid is carried out in accordance with any written direction of the Waste Authority; or
  - (c) at such time or times as are prescribed by the regulations, a special purpose audit is carried out by a registered company auditor of the allocation and expenditure of the moneys; or
  - (d) a report on the audit is prepared by the auditor and a copy of the report is provided to the Waste Authority as soon as is practicable after it is prepared,

commits an offence.

Penalty: a fine of \$10 000.

- (5) The annual report of the Department prepared for the purposes of the *Financial Management Act 2006* Part 5 must include a

summary of any written performance evaluation carried out pursuant to a direction of the Waste Authority by an entity to whom moneys are paid under subsection (3).

*[Section 80 amended by No. 48 of 2009 s. 8.]*

**81. Application of *Financial Management Act 2006***

- (1) The provisions of the *Financial Management Act 2006* and the *Auditor General Act 2006* regulating the financial administration, audit and reporting of departments apply to and in relation to the WARR Account.
- (2) The administration of the WARR Account is for the purposes of the *Financial Management Act 2006* section 52 to be regarded as a service of the Department.

*[Section 81 amended by No. 48 of 2009 s. 9.]*

## **Part 8 — Enforcement**

### **Division 1 — Investigation and obtaining information**

#### **82. Power to require information or material**

- (1) In this section —  
*authorised person* means the CEO or an inspector authorised for the purposes of this section in writing by the CEO.
- (2) An authorised person, may, on the request of the Waste Authority or otherwise for the purpose of assisting the Waste Authority to perform its functions, require a person —
- (a) to provide oral or written answers to specified questions; or
  - (b) to produce to the authorised person specified material or material of a specified class, in the person's possession or control.
- (3) The authorised person may make the requirement —
- (a) if an oral response is required — orally; or
  - (b) in any other case — by notice given to the person to whom the requirement is addressed.
- (4) The authorised person must —
- (a) allow a person a reasonable time within which to comply with the requirement; and
  - (b) if the requirement is made by notice given to the person, specify the time allowed in the notice.
- (5) The authorised person may require a person to verify answers to questions by statutory declaration.
- (6) A person who does not comply with a requirement under this section within the time allowed under subsection (4) or within any further time allowed by the authorised person commits an offence.

Penalty: a fine of \$20 000.

**83. Inspectors**

- (1) An inspector appointed under the EP Act section 88 may also be appointed under that section for the purposes of this Act.
- (2) For the purposes of this Act, an inspector has all the functions that the inspector has under the EP Act, and for those purposes any relevant reference in the EP Act to “this Act” is to be read and construed as if it were a reference to this Act.
- (3) In addition to the functions of an inspector under the EP Act, an inspector may at any time, and with any assistance the inspector may require, enter any premises prescribed for the purposes of the EP Act Part V on which waste is deposited or stored and on those premises may do any act or thing, including the collection and removal of samples, records or other things, which in the opinion of the inspector is necessary to be done for a waste inspection.
- (4) In subsection (3) —  
**waste inspection**, in relation to waste deposited or stored on premises prescribed for the purposes of the EP Act Part V, means an inspection for any or all of the following purposes —
  - (a) to ascertain whether there has been compliance with this Act;
  - (b) to gather information as to the composition of the waste;
  - (c) to gather information as to the processing of the waste;
  - (d) to gather information as to the transport of the waste;
  - (e) to gather information as to any environmental harm arising, or likely to arise, from the waste;
  - (f) to ascertain whether a liability to pay a levy or fee under this Act has been met;
  - (g) to gather information relevant to ascertaining the amount of a levy or fee under this Act;
  - (h) to audit records required to be kept under this Act;

- (i) to gather any information relevant to making a decision under this Act;
  - (j) any other purpose relevant to the administration of this Act.
- (5) When an inspector exercises a power of entry under subsection (3), the inspector may do any or all of the following —
  - (a) search the premises and examine anything on the premises;
  - (b) take possession of, and remove from the premises, samples, documents or anything else relevant to the inspection;
  - (c) take extracts from or make copies of, or download or print out, any documents found in the course of carrying out his or her functions under this Act;
  - (d) photograph or film anything on the premises;
  - (e) require any person who is on the premises —
    - (i) to state his or her full name and address; and
    - (ii) to answer (orally or in writing) questions put by the inspector that are relevant to the inspection; and
    - (iii) to give the inspector any information in the person's possession or control that is relevant to the inspection; and
    - (iv) to operate or allow the inspector to operate equipment or facilities on the premises for waste inspection purposes; and
    - (v) to give the inspector any translation, code, password or other information necessary to gain access to or to interpret and understand any document or information located or obtained by the inspector in the course of exercising his or her functions under this Act; and

- (vi) to give other assistance that the inspector reasonably requires to carry out the inspection.

- (6) A person who does not comply with a requirement under subsection (5)(e) commits an offence.

Penalty: a fine of \$20 000.

**84. Authorised persons and analysts**

- (1) An authorised person appointed under the EP Act section 87 may also be appointed under that section for the purposes of this Act.
- (2) For the purposes of this Act, an authorised person has all the functions that the person has under the EP Act, and for those purposes any relevant reference in the EP Act to “this Act” is to be read and construed as if it were a reference to this Act.
- (3) An analyst appointed under the EP Act section 94 may also be appointed under that section for the purposes of this Act.

**85. Audit may be directed by CEO**

- (1) In this section —  
*approved auditor*, in relation to an audit, means a person approved by the CEO under subsection (5).
- (2) The CEO may direct a person who is involved in the control or management of premises on which waste is deposited or stored to engage and pay for an approved auditor to conduct an audit into and report to the CEO about all or any of the following —
  - (a) the composition or quantity of waste deposited or stored on the premises;
  - (b) the risk to people, property or the environment from waste deposited or stored on the premises;
  - (c) the safety of the premises or of any activities on the premises.
- (3) The direction must —



- (a) state the reasons for and the objectives of the audit; and
  - (b) specify the matters in subsection (2) to be audited; and
  - (c) set a date on or before which the report must be given to the CEO.
- (4) The CEO may at any time amend or cancel a direction given under this section.
- (5) For the purposes of this section the CEO may approve a person as an auditor in relation to an audit if the CEO is satisfied the person —
  - (a) has qualifications and experience that are appropriate to the audit; and
  - (b) is independent of the premises where the audit is to be conducted and of any business conducted there; and
  - (c) is able to conduct the audit and to prepare a report in accordance with the direction given as to the audit.
- (6) A person who does not comply with a direction given by the CEO under this section commits an offence.  
Penalty: a fine of \$25 000.
- (7) A person aggrieved by a direction given by the CEO under this section may apply to the State Administrative Tribunal for a review of the direction.

## **Division 2 — General**

### **86. Who can institute proceedings for offences**

- (1) Proceedings for an offence against this Act are not to be instituted otherwise than by the CEO or a person authorised to do so by the CEO.
- (2) An authorisation under subsection (1) —
  - (a) must be in writing; and

- (b) may be given generally or in relation to a specified offence or specified offences.
- (3) If a prosecution notice alleging an offence under this Act purports to be made or sworn by a person authorised to institute proceedings for offences of that kind, it is to be presumed, in the absence of proof to the contrary, that the prosecution notice was made or sworn by such a person.

**87. Time for bringing prosecutions**

- (1) A prosecution for an offence under this Act must be commenced within 2 years after the date on which the offence is alleged to have been committed.
- (2) Despite subsection (1), if a prosecution notice alleging an offence under this Act specifies the day on which evidence of the alleged offence first came to the attention of a person authorised to institute the prosecution under section 86 —
  - (a) the prosecution may be commenced within 2 years after that day; and
  - (b) the prosecution notice need not contain particulars of the day on which the offence is alleged to have been committed.
- (3) The day on which evidence first came to the attention of a person authorised to institute a prosecution under section 86 is the day specified in the prosecution notice, unless the contrary is shown.

**88. Daily penalties**

- (1) Without limiting the *Interpretation Act 1984* section 71, where an offence is committed by a person by reason of the contravention of a provision of this Act under which the person is required or directed to do any act or thing, or to refrain from doing any act or thing, that offence is to be taken to have continued so long as the act or thing so required or directed remains undone, or continues to be done, as the case may be.

- (2) In addition to a penalty specified for an offence, a person convicted of an offence is liable to a daily penalty not exceeding the daily penalty specified for the offence for each day or part of a day during which the offence continues after written notice of the alleged offence has been given by the CEO to the offender.
- (3) In addition to a penalty specified for an offence, a person convicted of an offence is liable to a daily penalty not exceeding the daily penalty specified for the offence for each day or part of a day during which the offence continues after the offender is convicted.

**89. Attempt, incitement or accessory after the fact**

- (1) *The Criminal Code* section 555A applies to an offence under this Act as if it were a simple offence under that Code.
- (2) A person who becomes an accessory after the fact to an offence under this Act (the ***principal offence***) within the meaning of *The Criminal Code* section 10 commits an offence and is liable on conviction to the penalty to which a person convicted of the principal offence is liable.

**90. Additional powers available to the court**

The provisions of the EP Act Part VIA Division 4 apply to and in relation to this Act as if —

- (a) a reference in those provisions to “this Division” were a reference to this Part; and
- (b) a reference in those provisions to “this Act” were a reference to this Act.

## **Part 9 — General provisions**

### **91. Confidentiality**

The CEO, an inspector, authorised person or any other person performing functions under this Act must not, directly or indirectly, record, disclose or make use of any information obtained in the course of duty except —

- (a) for the purpose of performing functions under this Act; or
- (b) as required or allowed by this Act or under a written law; or
- (c) with the written consent of the person to whom the information relates.

Penalty: a fine of \$25 000.

### **92. Delegation**

- (1) The Minister may delegate to a person referred to in subsection (4) any power or duty of the Minister under a provision of this Act (other than this section or section 80(1)).
- (2) The CEO may delegate to a person referred to in subsection (4) any power or duty of the CEO under another provision of this Act.
- (3) The Waste Authority may delegate to a person referred to in subsection (4) any power or duty of the Waste Authority under another provision of this Act.
- (4) A delegation under subsection (1), (2) or (3) may be made to —
  - (a) any officer or other person referred to in the EP Act section 22; or
  - (b) a public authority or officer or employee of a public authority; or
  - (c) any other person or committee of persons,specified in the instrument of delegation.

- (5) The delegation must be in writing executed by the Minister, CEO or Waste Authority, as the case requires.
- (6) A person to whom a power or duty is delegated under this section cannot delegate that power or duty.
- (7) A person exercising or performing a power or duty that has been delegated to the person under this section is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (8) Nothing in this section limits the ability of the Minister, the CEO or the Waste Authority to act through an officer or agent.

**93. Other provisions of EP Act apply**

Sections 93, 112, 112A, 115, 116, 117, 118, 119 and 120 of the EP Act apply to and in relation to this Act as if —

- (a) a reference in those sections to “this Act” were a reference to this Act; and
- (b) a reference in those sections to “the Authority” were a reference to the Waste Authority; and
- (c) a reference in section 112A to “Part VI” were a reference to this Act.

**94. Protection from liability for wrongdoing**

- (1) An action in tort does not lie against a person for anything that the person has done, in good faith, in the performance or purported performance of a function under this Act.
- (2) The protection given by subsection (1) applies even though the thing done as described in that subsection may have been capable of being done whether or not this Act had been enacted.
- (3) Despite subsection (1), the Crown is not relieved of any liability that it might have for another person having done anything as described in that subsection.

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- (4) In this section, a reference to the doing of anything includes a reference to an omission to do anything.

**95. Laying documents before Parliament**

- (1) If a provision of this Act requires the Minister to cause a document to be laid before each House of Parliament, or be dealt with under this section, within a period and —
  - (a) at the commencement of the period, a House of Parliament is not sitting; and
  - (b) the Minister is of the opinion that the House will not sit during that period,

the Minister must transmit a copy of the document to the Clerk of that House.

- (2) A copy of a document transmitted to the Clerk of a House is to be regarded as having been laid before that House.
- (3) The laying of a copy of a document that is regarded as having occurred under subsection (2) must be recorded in the Minutes, or Votes and Proceedings, of the House on the first sitting day of the House after the Clerk received the copy.

**96. Regulations**

- (1) The Governor may make regulations prescribing all matters required or permitted by this Act to be prescribed or necessary or convenient to be prescribed for carrying out this Act.
- (2) Without limiting subsection (1), regulations may be made under that subsection in respect of the matters set out in Schedule 3.
- (3) The EP Act section 123(3)(b) applies with respect to regulations made under this Act.
- (4) If a regulation made under this Act is inconsistent with a regulation made under the EP Act, the regulation made under the EP Act prevails to the extent of the inconsistency.

**97. Regulations to operate as local laws**

- (1) The Governor may make regulations that are to operate as if they were local laws for each district to which they apply.
- (2) Regulations made under this section may deal with any matter in respect of which local laws may be made under Part 6 Division 3.
- (3) Regulations under this section, other than those that only repeal or amend other regulations, are to contain a statement to the effect that they apply as if they were local laws.
- (4) A local government is to administer any regulation made under this section, to the extent that it relates to any place where the local government may perform functions, as if the regulation was a local law.

**98. Regulations, local laws and waste strategy may adopt codes or legislation and other references**

- (1) In this section —  
*code* means a code, standard, rule, specification or other document, made in or outside Australia, that does not by itself have legislative effect in this State.
- (2) Regulations, local laws and the waste strategy may adopt, either wholly or in part with or without modifications and either specifically or by reference —
  - (a) any code; or
  - (b) any subsidiary legislation, made, determined or issued under any other Act or under any Act of the Commonwealth, another State or a Territory.
- (3) If the regulations, local laws or waste strategy adopt a code or subsidiary legislation, it is adopted as in force from time to time unless the regulations, local laws or waste strategy specify that a particular text is adopted.

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- (4) The CEO must ensure that any code or subsidiary legislation adopted under subsection (2) is —
  - (a) available for public inspection during normal office hours at a place prescribed by regulation; and
  - (b) published on, or accessible through, the Department's website on the internet or another site on the internet approved under the regulations.
- (5) In any proceedings under this Act, production of a copy of a code or subsidiary legislation adopted under subsection (2) purporting to be certified by the CEO to be a true copy as at any date or during any period is, without proof of the signature of the CEO, sufficient evidence of the content of the code or subsidiary legislation as at that date or during that period.

**99. Review of Act**

- (1) The Minister must carry out a review of the operation and effectiveness of this Act as soon as practicable after —
  - (a) the fifth anniversary of its commencement; and
  - (b) the expiry of each 5 yearly interval after that anniversary.
- (2) The Minister must prepare a report based on the review and, as soon as practicable after the report is prepared (and in any event not more than 12 months after the relevant anniversary), cause it to be laid before each House of Parliament.

**100. Consequential amendments**

Each Act specified in Schedule 4 is amended as set out in that Schedule.

**101. Transitional and savings provisions**

Schedule 5 sets out transitional and savings provisions.



**102.     *Waste Avoidance and Resource Recovery Levy Regulations 2008 and amendments validated***

- (1) The following regulations are to be taken to have been validly made and to have, and to have always had, full force and effect —
  - (a) the *Waste Avoidance and Resource Recovery Levy Regulations 2008*;
  - (b) the *Waste Avoidance and Resource Recovery Levy Amendment Regulations 2009*;
  - (c) the *Waste Avoidance and Resource Recovery Levy Amendment Regulations 2011*.
- (2) The rights, obligations and liabilities of all persons are to be taken to be, and to have always been, the same as if the regulations listed in subsection (1) had been validly made.
- (3) Anything done, or purportedly done, before the *Waste Avoidance and Resource Recovery Amendment (Validation) Act 2014* section 4 comes into operation is as valid and effective, and is to be taken to have always been as valid and effective, as it would have been if the regulations listed in subsection (1) had been valid at the time the thing was done.
- (4) In subsection (3), a reference to the doing of anything includes a reference to an omission to do anything.

*[Section 102 inserted by No. 16 of 2014 s. 4.]*

## **Schedule 1 — Constitution and proceedings of the Waste Authority**

[s. 14]

### **Division 1 — General provisions**

#### **1. Meaning of terms used in this Schedule**

In this Schedule —

*chairman* means chairman of the Waste Authority;

*deputy chairman* means the deputy chairman of the Waste Authority.

#### **2. Term of office**

A member holds office for such term, not exceeding 5 years, as is specified in the instrument of his or her appointment, but may from time to time be reappointed.

#### **3. Resignation, removal**

(1) The office of a member becomes vacant if the member —

- (a) resigns the office by written notice addressed to the Minister;  
or
- (b) is an insolvent under administration as defined in the *Corporations Act 2001* of the Commonwealth; or
- (c) is removed from office by the Minister under subclause (2).

(2) The Minister may remove a member from office if the Minister is satisfied that the member —

- (a) has neglected his or her duty; or
- (b) has misbehaved; or
- (c) is incompetent; or
- (d) is suffering from mental or physical incapacity impairing the performance of his or her functions; or
- (e) has been absent, without leave and reasonable excuse, from 3 consecutive meetings of the Waste Authority of which the member has had notice.

**4. Leave of absence**

The Waste Authority may grant leave of absence to a member on such terms and conditions as it thinks fit.

**5. Chairman unable to act**

If the chairman is unable to act by reason of sickness, absence or other cause, or during any vacancy in that office, the deputy chairman must perform the functions of the chairman.

**6. Acting members**

- (1) If a member, other than the chairman, is unable to act by reason of sickness, absence or other cause, the Minister may appoint a person to act in the place of that member during the unavailability or absence.
- (2) If the member who is the deputy chairman is performing the functions of the chairman, the Minister may appoint another person to act in the place of the deputy chairman.
- (3) While acting in the place of a member, the acting member has all of the functions, powers and immunities of the member.
- (4) The appointment of a person under this clause may be terminated at any time by the Minister.

**7. Saving**

An act or omission of a person acting in place of another under clause 5 or 6 cannot be questioned on the ground that the occasion for the acting had not arisen or had ceased.

**Division 2 — Proceedings of Waste Authority**

**8. Meetings**

- (1) Subject to this clause, meetings are to be held at the times and places that the Waste Authority determines.
- (2) A special meeting of the Waste Authority may at any time be convened by —
  - (a) the chairman; or

- (b) any 3 members; or
  - (c) the Minister, if the Minister wishes the Waste Authority to discuss a matter on which the Minister has requested its advice.
- (3) The first meeting of the Waste Authority after the coming into operation of this Act is to be convened by the chairman.
- (4) The chairman, or the deputy chairman acting under clause 5, must preside at all meetings of the Waste Authority at which he or she is present or participating under clause 12.
- (5) If both the chairman and the deputy chairman are not present or participating under clause 12, the members present or participating are to appoint a member to preside.
- (6) At any meeting of the Waste Authority 3 members constitute a quorum.

**9. Voting**

- (1) At any meeting of the Waste Authority each member present or participating under clause 12 has a deliberative vote.
- (2) The member presiding has a casting vote in addition to a deliberative vote if the votes are otherwise equal.

**10. Minutes**

- (1) The Waste Authority must cause accurate minutes to be kept of the proceedings at its meetings.
- (2) The Waste Authority must submit to the Minister a copy of the minutes of a meeting within 14 days after the meeting at which the minutes were confirmed was held.

**11. Resolution without meeting**

- (1) A resolution of the Waste Authority in writing signed by each member, or assented to by each member by letter, facsimile, email or other similar means is as effectual as if it had been passed at a meeting of the Waste Authority.

- (2) The Waste Authority must cause a record to be kept of each resolution under subclause (1).

**12. Holding meetings remotely**

The presence of a member at a meeting of the Waste Authority need not be by attendance in person but may be by that member and each other member at the meeting being simultaneously in contact by telephone or other means of instantaneous communication.

**13. Waste Authority to determine own procedures**

Subject to this Act, the Waste Authority may determine its own procedures.

**Division 3 — Disclosure of interests etc.**

**14. Disclosure of interests**

- (1) A member of the Waste Authority who has a material personal interest in a matter being considered or about to be considered by the Waste Authority 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 Waste Authority.

Penalty: a fine of \$10 000.

- (2) A disclosure under subclause (1) must be recorded in the minutes of the meeting.

**15. Voting by interested members**

A member of the Waste Authority who has a material personal interest in a matter that is being considered by the Waste Authority —

- (a) must not vote whether at a meeting or otherwise —
- (i) on the matter; or
  - (ii) on a proposed resolution under clause 16 in respect of that matter, whether relating to that member or a different member;

and

- (b) must not be present while the matter, or a proposed resolution of the kind referred to in paragraph (a)(ii), is being considered at a meeting.

**16. Clause 15 may be declared inapplicable**

Clause 15 does not apply if the Waste Authority has at any time passed a resolution that —

- (a) specifies the member, the interest and the matter; and
- (b) states that the members voting for the resolution are satisfied that the interest should not disqualify the member from considering or voting on the matter.

**17. Quorum where clause 15 applies**

- (1) Despite clause 8(6), if a member of the Waste Authority is disqualified under clause 15 in relation to a matter, a quorum is present during the consideration of the matter if at least 2 members are present who are entitled to vote on any motion that may be moved at the meeting in relation to the matter.
- (2) The Minister may deal with a matter insofar as the Waste Authority cannot deal with it because of subclause (1).

**18. Minister may declare clauses 15 and 17 inapplicable**

- (1) The Minister may by writing declare that clause 15 or 17 or both of them do not apply in relation to a specified matter either generally or in voting on particular resolutions.
- (2) The Minister must cause a copy of the declaration under subclause (1) to be laid before each House of Parliament, or be dealt with under section 95, within 14 days after a declaration is made.

## **Schedule 2 — Functions of the Waste Authority**

[s. 19(1)]

1. To —
  - (a) advise and make recommendations to the Minister on matters relating to this Act; and
  - (b) inquire into and advise the Minister or the CEO on any matter relating to this Act on which the Minister or CEO requests advice; and
  - (c) advise and make recommendations to the CEO on the regulation of waste services; and
  - (d) advise and make recommendations to the CEO with respect to subsidiary legislation under this Act.
- 2A. To seek the advice of such other entities as the Waste Authority thinks fit for the purpose of providing advice to the Minister in relation to the setting and variation of a levy.
2. To act as an advocate for the objects of this Act.
3. To develop, promote and review the waste strategy and coordinate its implementation.
4. To monitor and assess the adequacy of, and report to the Minister on the operation of, the waste strategy, product stewardship plans and extended producer responsibility schemes.
5. To promote community awareness and understanding of resource efficiency, waste avoidance and resource recovery.
6. To support State and Commonwealth policies which will enhance progress towards zero waste.
7. To promote resource efficiency, waste avoidance and resource recovery.
8. To promote coordination between organisations seeking to prevent waste.
9. To liaise with local governments to ensure that the provisions of this Act are enforced in the districts of those local governments.
10. To cooperate with local governments to coordinate local efforts to prevent waste.

11. To receive representations on waste management issues from members of the public.
12. To promote market development for recovered resources and recycled materials.
13. To promote the development of locally owned resource recovery infrastructure.
- 14A. From time to time to develop and publish a statement of the objectives to be achieved by programmes funded under section 80(1)(a).
14. To ensure that the appropriate investigations, audits and inspections in relation to the application of moneys under section 80(1)(a) are carried out.
15. To take appropriate measures to bring the provisions of this Act to the attention of the public.
16. To do such other acts and things as are conducive to the prevention and control of waste.
17. To perform such other functions as are conferred on it under this Act or are referred to it by the Minister.

*[Schedule 2 amended by No. 48 of 2009 s. 10.]*



## **Schedule 3 — Matters in respect of which regulations may be made**

[s. 96]

### **Division 1 — General**

1. Providing for the form and content of any notice.
2. Providing for the keeping, inspection and production of reports, records, returns, registers and other information.
3. Providing for the imposition of fees and charges.
4. Providing for the recovery of expenses incurred by the CEO or a local government.
5. Prescribing offences under the regulations and penalties for the commission of those offences not exceeding \$10 000, with or without a daily penalty of not more than \$1 000.
6. Providing for review by the State Administrative Tribunal of decisions made under the regulations.

### **Division 2 — Waste collection and facilities**

7. Regulating the operation of waste facilities, and the treatment, storage, processing, recycling or disposal of waste at waste facilities.
8. Regulating the use of receptacles for waste.
9. Regulating waste services.
10. Regulating the transportation of waste.
11. Regulating the creation, collection, storage, handling, processing, recycling and disposal of waste.
12. Providing for waste collection permits.
13. Regulating the issue by local governments of approvals to collect local government waste.
14. Providing for the provision of information relating to the operation of waste facilities and the transportation of waste.

15. Prohibiting the disposal to landfill or other waste facilities of specified waste or classes of waste (including any products that are or have been included in an extended producer responsibility scheme).

**Division 3 — Product stewardship**

16. Making provision in relation to assisting in the negotiation of, and assessing the implementation and operation of, product stewardship plans.
17. Regulating the implementation, operation and enforcement of extended producer responsibility schemes.
18. Without limiting the *Interpretation Act 1984* section 43(8)(d), exempting persons or products, or classes of person or product, from all or any of the provisions of the regulations applying to extended producer responsibility schemes, and specifying circumstances in which and conditions subject to which an exemption applies.
19. Without limiting item 17, requiring a person who manufactures, distributes or sells a product to do all or any of the following —
- (a) provide consumer information on the use and disposal of the product and its by-products;
  - (b) operate collection facilities for the product and its by-products;
  - (c) collect or accept the product and its by-products for disposal from a consumer of the product;
  - (d) dispose of the product in accordance with the regulations.
20. Without limiting item 17, prescribing products for which a fee, deposit or bond for the collection, recycling or disposal of the product must be paid and —
- (a) regulating the collection of the fee, deposit or bond; and
  - (b) regulating the circumstances in which the fee, deposit or bond and a refund of the fee, deposit or bond will apply; and
  - (c) providing for the amount of the fee, deposit or bond or refund; and
  - (d) providing for the time at which the fee, deposit, bond or refund must be paid.

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21. Concerning the control and management of fees, deposits or bonds paid under the regulations including —
- (a) requiring the person who collects the fee, deposit or bond to forward the fee, deposit or bond to a person specified in the regulations; and
  - (b) making provision as to who is empowered to hold the fee, deposit or bond and where the fee, deposit or bond must be held; and
  - (c) providing for the application of the fee, deposit or bond and interest from the fee, deposit or bond.
22. Providing for the establishment of, and regulating the operation of, collection facilities for products and their by-products.
23. Requiring a producer of a product to formulate and implement a management plan with respect to the product, specifying the matters to be dealt with in the management plan, providing for approval of the management plan and requiring compliance with the management plan.
24. Providing for proof of payment of fees, deposits or bonds under the regulations and its evidential status.

## **Schedule 4 — Amendments and repeals**

[s. 100]

**1. *Constitution Acts Amendment Act 1899* amended**

- (1) The amendment in this clause is to the *Constitution Acts Amendment Act 1899*.
- (2) Schedule V Part 3 is amended by inserting after the item relating to the Veterinary Surgeons' Board the following item —  
“  
The Waste Authority established under the *Waste Avoidance and Resource Recovery Act 2007*.  
”.

**2. *Environmental Protection Act 1986* amended**

- (1) The amendments in this clause are to the *Environmental Protection Act 1986*.
- (2) Section 3(1) is amended by deleting the definition of “Waste Management (WA)”.
- [3] *Has not come into operation*<sup>2</sup>.]
- (4) Part VIIB is repealed.
- (5) Schedule 2 item 33 is amended by inserting after “controlling the” —  
“ collection, ”.
- [3. *Has not come into operation*<sup>2</sup>.]

**4. *Health Act 1911* amended**

- (1) The amendments in this clause are to the *Health Act 1911*.
- (2) Section 41 is amended by deleting “refuse” and inserting instead —  
“ sewage ”.
- (3) Section 106(1) is amended by deleting “, rubbish or refuse”.
- (4) Section 111 is amended by deleting “, rubbish, or refuse”.

- (5) Section 112(1) is amended by deleting paragraph (a) and paragraphs (f) to (h).
- (6) Sections 112A, 114(2), 115, 118 and 134(20), (21), (22), (23), (24) and (30) are repealed.
- (7) The Table to section 344C is amended as follows:
  - (a) by deleting “112A(1)(b) and (3)(b),”;
  - (b) by deleting “(30),”.
- (8) Schedule 5 is amended by deleting “112A(4),”.

**5.      *Public Works Act 1902* amended**

- (1) The amendment in this clause is to the *Public Works Act 1902*.
- (2) After section 111 the following Part is inserted —

“

**Part VIA — Miscellaneous**

**112.      Waste management operations at Mt Walton**

- (1) In this section —
  - waste* has the meaning given by the *Waste Avoidance and Resource Recovery Act 2007*;
  - waste management operation* means an operation for the collection, transport, receipt, storage, treatment or disposal of waste, or for 2 or more of those activities.
- (2) Subject to the *Waste Avoidance and Resource Recovery Act 2007*, the *Environmental Protection Act 1986* and any other written law relating to the treatment and disposal of waste, the Minister may, but is not obliged to —
  - (a) carry on waste management operations at or in relation to the intractable waste disposal facility operated at Mt Walton East, Shire of Coolgardie; and

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- (b) do all things necessary or convenient to be done for or in connection with the performance of functions under paragraph (a).
- (3) Without limiting subsection (2), the Minister may, for the purpose of performing any function under this section —
  - (a) enter into any contract or arrangement, including a contract or arrangement with any person for —
    - (i) the performance of the function by that person on behalf of the Minister; or
    - (ii) the supply of equipment or services;
  - and
  - (b) charge for the use of services or facilities.

**113. Delegation of powers and duties under section 112**

- (1) In this section —  
**public authority** means —
  - (a) a Minister of the State;
  - (b) an agency, authority or instrumentality of the State; or
  - (c) a local government; or
  - (d) a body, whether corporate or unincorporate, that is established or continued for a public purpose under a written law.
- (2) Without limiting sections 5A and 5B, the Minister may delegate any power or duty of the Minister under section 112 to —
  - (a) a public authority or an officer or employee of a public authority; or
  - (b) any other person.

- (3) Notice of the delegation is to be published in the *Gazette*.
- (4) A person exercising or performing a power or duty that has been delegated to the person under this section is taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (5) Nothing in this section limits the ability of the Minister to perform a function through an officer or agent.

”.

## **Schedule 5 — Savings and transitional provisions**

[s. 101]

### **1. Terms used in this Schedule**

In this Schedule —

**commencement day** means the day on which section 101 comes into operation.

### **2. Application of the *Interpretation Act 1984***

- (1) The provisions of the *Interpretation Act 1984* (for example sections 36 and 38) about the repeal of written laws and the substitution of other written laws for those so repealed apply to the repeal of the *Environmental Protection (Landfill) Levy Act 1998* and its substitution by the *Waste Avoidance and Resource Recovery Levy Act 2007* as if the repeal and substitution were effected under this Act.
- (2) The other provisions of this Schedule are additional to the provisions applied by subclause (1).

### **3. Local laws under *Health Act 1911* continued**

- (1) Any local law made by a local government under the *Health Act 1911* section 112A or 134(20), (21), (22), (23), (24), (29) (in relation to waste services) or (30) and of effect on the commencement day continues to be of effect as if it were made under this Act and may be amended or repealed accordingly.
- (2) For the purposes of the *Local Government Act 1995* section 3.16(1) a local law referred to in subclause (1) and made after the coming into operation of the *Local Government Act 1995* is to be regarded as having commenced on the day on which it was made under the *Health Act 1911*.

### **4. Fees and charges fixed under *Health Act 1911* continued**

- (1) Any charge fixed under the *Health Act 1911* section 106 that is imposed per waste receptacle continues to be of effect as if it were a charge imposed under section 67.



- (2) Any fee or charge for the removal of refuse fixed by resolution by a local government under the *Health Act 1911* section 344C and of effect on the commencement day continues to be of effect as if it were a fee or charge prescribed by local law under this Act.

**5. Regulations**

The regulations made for the purposes of the *Environmental Protection Act 1986* Part VIIA or the *Environmental Protection (Landfill) Levy Act 1998* section 4 that were in force immediately before the commencement day continue in force as if they were regulations made under this Act and may be amended or repealed accordingly.

**6. Waste Management and Recycling Fund**

- (1) In this section —  
*former fund* means the Waste Management and Recycling Fund established under the EP Act section 110H.
- (2) On the commencement day any moneys standing to the credit of the former fund are to be credited to the WARR Account to be applied —
- (a) in the payment of any liabilities of the former fund which arose before the commencement day; and
  - (b) for the purposes set out in section 80,
- and the former account is then to be closed.
- (3) The WARR Account is to be credited with any moneys that became payable to the former fund before the commencement day and that is paid after that day.

**7. Waste Management (WA): devolution of assets and liabilities**

- (1) In this clause —  
*assets* means —
- (a) property of every kind whether tangible or intangible, real or personal, corporeal or incorporeal; and
  - (b) without limiting paragraph (a) includes choses in action, goodwill, rights, interests and claims of every kind in or to property, whether arising from, accruing under, created or

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evidenced by or the subject of, an instrument or otherwise and whether liquidated or unliquidated, actual, contingent or prospective;

**liability** means any liability, duty or obligation whether actual, contingent or prospective, liquidated or unliquidated, or whether owned alone or jointly or jointly and severally with any other person;

**right** means any right, power, privilege or immunity whether actual, prospective or contingent;

**Waste Management (WA)** means the body established under the EP Act section 110L.

(2) On and after the commencement day —

- (a) the assets and rights of Waste Management (WA) that were immediately before that day vested in Waste Management (WA) vest in the State by force of this clause; and
- (b) the liabilities of Waste Management (WA) (including a share of a liability) immediately before that day become, by force of this clause, the liabilities of the State; and
- (c) any proceeding or remedy that immediately before that day might have been brought or continued by or available against or to Waste Management (WA), may be brought or continued and are available, by or against or to the State; and
- (d) all records and data of Waste Management (WA) pass to the State.

(3) Any agreement or instrument subsisting immediately before the commencement day —

- (a) to which Waste Management (WA) was a party; or
- (b) which contains a reference to Waste Management (WA),

has effect on and after the commencement day as if —

- (c) the State were substituted for Waste Management (WA) as a party to the agreement or instrument; and
- (d) any reference in the agreement or instrument to Waste Management (WA) were (unless the context otherwise requires) amended to be or include a reference to the State.

**8. Transitional regulations**

- (1) If there is no sufficient provision in this Act for dealing with a transitional matter, regulations under this Act may prescribe all matters that are required or necessary or convenient to be prescribed for dealing with the matter.
- (2) In subclause (1) —  
*transitional matter* means a matter that needs to be dealt with for the purpose of —
  - (a) effecting the transition from the provisions repealed by this Act to the provisions of this Act; or
  - (b) effecting the transition from the provisions of an Act amended by a provision of this Act (the *amending provision*) as in force before the commencement day to the provisions of that Act as in force after the commencement day.
- (3) Regulations made under subclause (1) may provide that specified provisions of this Act as in force on or after the commencement day, or of subsidiary legislation made under this Act, or of an Act amended by this Act —
  - (a) do not apply; or
  - (b) apply with specified modifications,to or in relation to any matter.
- (4) If regulations made under subclause (1) provide that a specified state of affairs is to be taken to have existed, or not to have existed, on and from a day that is earlier than the day on which the regulations are published in the *Gazette* but not earlier than the commencement day, the regulations have effect according to their terms.
- (5) In subclauses (3) and (4) —  
*specified* means specified or described in the regulations.
- (6) If regulations contain a provision referred to in subclause (4), the provision does not operate so as to —
  - (a) affect in a manner prejudicial to any person (other than the State, an authority of the State or a local government), the rights of that person existing before the day of publication of those regulations; or

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- (b) impose liabilities on any person (other than the State, an authority of the State or a local government) in respect of anything done or omitted to be done before the day of publication of those regulations.

### Notes

- <sup>1</sup> This is a compilation of the *Waste Avoidance and Resource Recovery Act 2007* and includes the amendments made by the other written laws referred to in the following table <sup>1a, 3</sup>.

### Compilation table

Short title	Number and year	Assent	Commencement
<i>Waste Avoidance and Resource Recovery Act 2007</i>	36 of 2007	21 Dec 2007	s. 1 and 2: 21 Dec 2007 (see s. 2(a)); s. 3, 100 (Sch. 4 cl. 2(1), (2) and (4) and 5) and 101 (Sch. 5 cl. 1, 7 and 8): 9 Jan 2008 (see s. 2(b) and <i>Gazette</i> 8 Jan 2008 p. 33); Act other than s. 1, 2, 3, 100 (Sch. 4 cl. 2(1), (2) & (4) & cl. 5) & s. 101 (Sch. 5 cl. 1, 7 & 8): 1 Jul 2008 (see s. 2(b) and <i>Gazette</i> 20 Jun 2008 p. 2705)
<i>Waste Avoidance and Resource Recovery Amendment Act 2009 Pt. 2</i>	48 of 2009	7 Dec 2009	s. 3 and 9: 8 Dec 2009 (see s. 2(b)) Pt. 2 other than s. 3 and 9: 1 Jan 2010 (see s. 2(c) and <i>Gazette</i> 22 Dec 2009 p. 5253)
<i>Public Sector Reform Act 2010 s. 89</i>	39 of 2010	1 Oct 2010	1 Dec 2010 (see s. 2(b) and <i>Gazette</i> 5 Nov 2010 p. 5563)
<i>Waste Avoidance and Resource Recovery Amendment (Validation) Act 2014</i>	16 of 2014	2 Jul 2014	2 Jul 2014 (see s. 2)

- <sup>1a</sup> On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

### Provisions that have not come into operation

Short title	Number and year	Assent	Commencement
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Short title	Number and year	Assent	Commencement
<i>Waste Avoidance and Resource Recovery Act 2007</i> Sch. 4 cl. 2(3) and 3 <sup>2</sup>	36 of 2007	21 Dec 2007	To be proclaimed (see s. 2(b))

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<sup>2</sup> On the date as at which this compilation was prepared, the *Waste Avoidance and Resource Recovery Act 2007* Sch. 4 cl. 2(3) and 3 had not come into operation. They read as follows:

“

#### **Schedule 4 — Amendments and repeals**

[s. 100]

**2. *Environmental Protection Act 1986* amended**

(3) Part VIIA is repealed.

**3. *Environmental Protection (Landfill) Levy Act 1998* repealed**

The *Environmental Protection (Landfill) Levy Act 1998* is repealed.

”.

<sup>3</sup> The *Waste Avoidance and Resource Recovery Regulations 2008* r. 24 reads as follows:

“

**24. Transitional provision — Waste Management and Recycling Fund**

The *Waste Avoidance and Resource Recovery Act 2007* Schedule 5 clause 6 prevails to the extent that there is an inconsistency between that provision and Part VIIA Division 2 of the EP Act.

”.

## Defined terms

*[This is a list of terms defined and the provisions where they are defined.  
The list is not part of the law.]*

Defined term	Provision(s)
amending provision.....	Sch. 5 cl. 8(2)
approved auditor .....	85(1)
approved product stewardship plan.....	3(1)
assets .....	Sch. 5 cl. 7(1)
authorised person .....	82(1)
business plan .....	3(1)
CEO .....	3(1)
chairman .....	Sch. 1 cl. 1
code.....	98(1)
commencement day .....	Sch. 5 cl. 1
deputy chairman.....	Sch. 1 cl. 1
district .....	3(1)
document.....	22(1)
entity .....	3(1)
EP Act.....	3(1)
EP authorisation .....	3(1)
Executive Director, Public Health .....	3(1)
extended producer responsibility scheme .....	3(1)
forecast levy amount for a .....	79(3C)
former fund .....	Sch. 5 cl. 6(1)
information .....	22(1)
inspector.....	3(1)
latest draft plan.....	38(1)
levy .....	3(1)
liability.....	Sch. 5 cl. 7(1)
local government.....	3(1)
local government waste.....	3(1)
member .....	3(1)
officer of the Waste Authority .....	22(1)
owner .....	64(1)
plan for the future .....	40(1)
principal offence .....	89(2)
producer .....	3(1)
product stewardship plan .....	3(1)
public authority .....	3(1)
right.....	Sch. 5 cl. 7(1)
specified.....	49(2), Sch. 5 cl. 8(5)
transitional matter .....	Sch. 5 cl. 8(2)
WARR Account.....	3(1)

**Defined terms**

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waste .....	3(1)
Waste Authority .....	3(1)
waste collection permit .....	3(1), 56(1)
waste facility .....	3(1)
waste inspection .....	83(4)
Waste Management (WA) .....	Sch. 5 cl. 7(1)
waste service .....	3(1)
waste strategy .....	3(1)