

**DRAFT BILL FOR PUBLIC COMMENT**

The Government proposes to introduce into Parliament a Bill to —

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

This draft Bill has been prepared for public comment but it does not necessarily represent the Government's settled position.

**Waste Avoidance and Resource Recovery  
Bill 2006**

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Western Australia

## **Waste Avoidance and Resource Recovery Bill 2006**

**A draft for public comment of  
A Bill for**

**An Act to —**

- **provide for waste avoidance and resource recovery; and**
- **establish the Waste Authority; and**
- **make provision 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 2006*.

### 2. Commencement

- 5 (1) This Act comes into operation on a day fixed by proclamation.
- (2) Different days may be fixed under subsection (1) for different provisions.

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

- 10 (1) In this Act unless the contrary intention appears —
- “**approved product stewardship agreement**” means a product stewardship agreement registered under section 43(3);
- “**business plan**” means a business plan approved under section 37;
- “**chairman**” means the chairman of the Waste Authority;
- 15 “**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;
- 20 “**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;
- 25 “**Executive Director, Public Health**” has the meaning given to that term in the *Health Act 1911*;
- “**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;

5

**“levy”** means a levy imposed under the *Waste Avoidance and Resource Recovery Levy Act 2006*;

**“liquid waste”** means waste designated by the regulations as liquid waste;

10

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

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

15

**“municipal solid waste”** means —

(a) all kinds of rubbish, refuse, junk, garbage or scrap that originate from residential, commercial or institutional sources; and

20

(b) discarded or abandoned materials, solid substances or objects that originate from residential, commercial or institutional sources; and

(c) any other solid waste of a kind prescribed by the regulations for the purposes of this paragraph,

25

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

**“problematic waste”** means waste that —

30

(a) poses, or has the potential to pose, a significant risk to human health or an environmental value or causes, or has the potential to cause, safety or operational difficulties in its collection or handling at a waste facility; and

(b) is designated by the regulations as problematic waste;

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

“**product stewardship agreement**” means an agreement where the producers of a product share responsibility for reducing the environmental impacts of the product throughout its lifecycle;

10 “**public authority**” means —

- (a) an agency or organisation as those terms are defined in the *Public Sector Management Act 1994*; or
- (b) a body, corporate or unincorporated, that is established or continued for a public purpose by the State, regardless of the way it is established; or
- 15 (c) a local government;

“**waste**” includes matter —

- 20 (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;

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

“**waste management service**” means —

- 30 (a) the collection of municipal solid waste; or
- (b) the collection of liquid waste; or
- (c) the storage, treatment, processing, sorting, recycling or disposal of municipal solid waste; or
- (d) the storage, treatment, processing, sorting, recycling or disposal of liquid waste; or

(e) the provision of receptacles for the temporary deposit of municipal solid waste; or

(f) the provision and management of waste facilities, machinery for the disposal of municipal solid waste and processes for dealing with municipal solid waste;

5 **“waste strategy”** means the waste strategy approved and in force under Part 4 Division 1;

**“WMR Fund”** means the Waste Management and Recycling Fund established by section 63.

10 (2) A word or expression used in this Act has the same meaning as it has in the EP Act unless —

(a) this Act gives it another meaning; or

(b) the contrary intention appears in some other way.

#### 4. State bound

15 This Act binds the State.

#### 5. Objects of this Act

The primary objects of this Act are to contribute towards sustainability in Western Australia and a transition to a waste-free society by —

20 (a) promoting the most efficient use of resources and reducing environmental harm in accordance with the principles of ecologically sustainable development; and

(b) the consideration of resource management options against the following hierarchy —

25 (i) avoidance of unnecessary resource consumption;

(ii) resource recovery (including reuse, reprocessing, recycling and energy recovery);

(iii) disposal.

**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.
- 5 (2) Without limiting the generality of subsection (1), this Act must not 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
- 10 provided for the offence by this Act.
- (3) Nothing in this section affects the operation of the *Sentencing Act 1995* section 11.
- (4) Nothing in this Act in any way affects any right any person has
- 15 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
- 20 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.

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## Part 2 — Waste Authority

### 8. Waste Authority established

A body called the Waste Authority is established.

### 9. Status

5 The Waste Authority is an agent of the Crown and enjoys the status, immunities and privileges of the Crown.

### 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.
- 10 (2) Notice of an approval under subsection (1) must be published in the *Gazette*.

### 11. Membership

- (1) The Waste Authority is to comprise 7 members appointed by the Governor on the recommendation of the Minister.
- 15 (2) Each of the members must have skill, experience and knowledge in matters relating to sustainability, waste management, resource recovery or recycling and —
- (a) one should have practical knowledge and experience in the field of local and State government; and
- 20 (b) one should have practical knowledge and experience in the field of environmental protection and conservation; and
- (c) one should have practical knowledge and experience in the field of waste management industry, including waste-related infrastructure development and market development; and
- 25 (d) one should have practical knowledge and experience in the field of regional affairs; and

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- (e) one should have practical knowledge and experience in the field of community education and relevant social issues.
- 5 (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.
- 10 (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**

15 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**

20 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**

25 Schedule 1 has effect with respect 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 Minister for Public Sector Management.

5 **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.

10 (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 —

15 (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**

20 (1) Without limiting section 16, the Minister may, by arrangement with the relevant employer, 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

25 (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 —

30 (a) a department of the Public Service; or

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(b) a State agency or instrumentality,  
make use of any facilities of the department, agency or  
instrumentality.

5 (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 —  
(a) establish committees to assist the Waste Authority in the  
performance of its functions; and

10 (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,

15 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.

20 (3) The Waste Authority may alter the constitution of, or discharge,  
any committee established under subsection (1).

(4) A committee established under subsection (1) must comply with  
any direction of the Waste Authority.

25 (5) Subject to any direction of the Waste Authority, a committee  
established under subsection (1) may determine its own  
procedure.



## **Part 3 — Functions and powers of the Waste Authority**

### **Division 1 — General**

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

- 5      (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**

- 10      (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 —
- 15      (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  
20      related to this Act; and
- (c) consult and collaborate with appropriate persons and bodies, including government departments and agencies, whether or not in the State; and
- 25      (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;  
30      and

- (f) provide information to the public on any matter related to this Act.

## **Division 2 — Accountability**

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

- 5 (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.
- 10 (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;
- 15 “**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
- 20 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.
- 25 (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.

5 (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**

10 (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.

15 (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 —

- 5
- (a) a strategy for continuous improvement of waste management benchmarked against international best practice; and
  - (b) targets for waste reduction, resource recovery and the diversion of waste from landfill disposal.

#### **25. Waste strategy may adopt codes or legislation**

10 (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.

15 (2) The waste strategy may adopt, either wholly or in part with or without modifications —

- (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.
- 20

(3) If the waste strategy adopts a code or subsidiary legislation, it is adopted as in force from time to time unless the waste strategy specifies that a particular text is adopted.

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

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

**27. Consultation**

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

**28. Public notification**

10 (1) The draft waste strategy must be submitted, together with such reports and other material as the Waste Authority considers desirable, to the Minister for the Minister's consent to public submissions being sought.

(2) If the Minister consents to public submissions being sought in respect of the draft waste strategy the Waste Authority must publish —

- 15 (a) in the *Gazette*; and  
(b) in 2 issues of a daily newspaper circulating throughout the State,

a notice —

- 20 (c) specifying the places at which copies of the draft waste strategy may be inspected and obtained; and  
(d) stating the effect of section 29 and specifying the period referred to in that section.

(3) The Waste Authority may fix and charge a fee for supplying a copy of the draft waste strategy.

**29. Public submissions**

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

- 30 (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 in the *Gazette* under section 28(2)(a); and

- (b) by delivering or posting them so that they are received within that period at the offices of the Waste Authority.

**30. Draft to be referred to certain bodies**

- 5 (1) The draft waste strategy, modified if the Waste Authority thinks fit after considering submissions under section 29, must be referred by the Waste Authority to each entity consulted under section 27 together with a summary of those submissions, and may be referred by it to any other entity.
- 10 (2) If an entity to which the draft waste strategy is referred under subsection (1) considers that the Waste Authority should vary the draft, it may within 28 days after receipt of the draft, in writing, request the Waste Authority to make the variation.

**31. Consideration by Minister**

- 15 (1) After considering all requests that have been duly lodged under section 30, 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
  - 20 (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  
25 strategy to the Minister on or before the date directed by the Minister.

**32. 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.

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

- (1) The Waste Authority must review the waste strategy as soon as practicable after —
- (a) the second anniversary of the day on which it comes into operation; and
- (b) the expiry of each 2 yearly interval after that anniversary,
- and, if it considers that the circumstances so require, prepare amendments to the waste strategy or a revised waste strategy.
- (2) If, on a review under this section, the Waste Authority considers that the waste strategy does not require amendment or revision it may determine that it is to continue in force without amendment.
- (3) The following provisions, as to consultation about, and approval of, the waste strategy, apply for the purposes of this section, with all necessary changes —

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- 10
- (a) section 27, as if the reference in that section to the preparation of the waste strategy were a reference to the review of the waste strategy;
  - (b) sections 28, 29, 30, 31 and 32(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 32(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**

- 15
- 20
- 25
- (1) The CEO may request any entity to provide —
    - (a) a report on 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 reasons to the CEO.
  - (3) 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 Administration and Audit Act 1985*.



## **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.
- 5 (2) The draft business plan is to be submitted to the Minister on or before the date required by the Minister.
- (3) 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.

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

- (1) A business plan is to set out —
- (a) the Waste Authority's objectives and priorities for the next 3 financial years; and
- (b) financial projections for that period; and
- 15 (c) the Waste Authority's budget for the next financial year; 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 WMR Fund for the next financial year; and
- 20 (f) 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 persons and
- 25 bodies as the Waste Authority thinks fit as to the development of policy for the application of money from the WMR Fund.

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

- 5 (1) After amending its draft business plan in any way required by the Minister, the Waste Authority must submit, on or before the date required by the Minister, a final business plan to the Minister and the Minister may approve the plan.
- (2) The Waste Authority must have regard to the business plan in carrying out its functions.
- 10 (3) The Waste Authority must not depart significantly from its business plan without first obtaining the approval of the Minister.
- (4) The Waste Authority must ensure that a copy of its current business plan is —
- 15 (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 a business plan.

**Division 3 — Waste management plans**

20 **38. Waste management plans**

- (1) In this section —
- “plan for the future”** means a plan made under the *Local Government Act 1995* section 5.56.
- 25 (2) The CEO may by written notice require a local government to include within its plan for the future a waste management plan outlining how waste management services in the relevant district will be managed to achieve consistency with the waste management strategy.

- (3) The notice may require any or all of the following matters to be included in the waste management plan —
- (a) population and development profiles for the district;
  - (b) an assessment of all significant sources and generators of waste in the district;
  - (c) an assessment of the quantities and classes of waste in the district and the potential for avoidance and reduction;
  - (d) an assessment of the services, markets and facilities for municipal solid waste and other waste;
  - (e) an assessment of the options for waste reduction, management and disposal in the district;
  - (f) proposed strategies and targets for managing and reducing waste in the region;
  - (g) proposed strategies and targets for the efficient disposal of waste 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 notice may specify a reasonable period within which the waste management plan must be included in the plan for the future.
- (5) The CEO may, on the request of a local government and at the expense of that local government, prepare a draft waste management plan for that local government.

**39. CEO's powers in relation to waste management plan**

- (1) If the CEO is of the opinion that a waste management plan does not include all of the matters required under section 38(3) to be

included in the plan, the CEO may, by written notice, require the local government to modify the waste management plan as specified by the CEO.

- 5 (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.
- 10 (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 38(2) or under subsection (1) of this section, the CEO may serve notice in writing on the local government —
- 15 (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 has referred the matter to the Waste Authority to be dealt with under section 40.

20 **40. Waste Authority may prepare or modify waste management plan**

- (1) When a matter has been referred to the Waste Authority and a notice of the referral has been served on a local government under section 39(4), the Waste Authority may take all such steps and prepare all such documents as are necessary to ensure compliance with the notice referred to in section 38(2) or 39(1), as the case requires, as if the Waste Authority were the local government.
- 25
- (2) A waste management plan, or modification of a waste management 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.
- 30

- 5 (3) All costs, charges and expenses incurred by the Waste Authority 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.

**41. Effect of waste management plan**

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

**42. Report on waste management plans**

- 15 (1) The CEO may require a local government to submit a report to the CEO on the implementation of its waste management plan.
- (2) The CEO may require the local government to include in the report information about any or all of the following matters —
- 20 (a) the quantities of waste of each of the classes identified in the waste management 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;
- 25 or
- (iii) held in stockpiles; or
- (iv) disposed of to landfill;
- (b) the number of premises serviced;
- 30 (c) changes made during the reporting period to the nature of the waste management services provided;

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**Part 4** Management documents

**Division 3** Waste management plans

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- (d) complaints lodged with the local government under section 68 and actions taken by the local government in response;
- (e) any other matters specified in the waste management plan;
- (f) such other matters as the local government considers appropriate.

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## Part 5 — Product stewardship

### 43. Product stewardship agreements

- (1) A producer or group of producers may submit a product stewardship agreement to the CEO.
- 5 (2) A product stewardship agreement must specify —
- (a) the products dealt with under the agreement; and
  - (b) targets and timeframes for avoidance, reduction, reuse or recycling of waste; and
  - 10 (c) the information that will be collected, assessed and audited to ascertain whether the targets and timeframes specified in the agreement 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.
- 15 (3) If the CEO is satisfied that the product stewardship agreement deals with the matters specified in subsection (2) in an appropriate way, the CEO must register the agreement.

### 44. Extended producer responsibility schemes

20 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
- 25 (b) whether there is an effective approved product stewardship agreement in place, or a similar national agreement, that is able to achieve the desired outcomes and is being actively implemented, monitored and reported on; and

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- (c) whether there is an Australian national scheme which adequately deals with the product proposed to be dealt with under the proposed scheme.

**45. Priorities with regard to extended producer responsibility schemes**

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- (1) The Waste Authority must —
  - (a) advertise 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) in the advertisement, invite submissions on any relevant matter relating to the priority statement.

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- (2) Subsection (1) does not apply in respect of the first year after the commencement of this section.

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- (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.

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- (4) Submissions may be made, in the form, if any, approved by the Waste Authority, by any person —
  - (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

25

- (b) by delivering or posting them so that they are received within that period at the offices of the Waste Authority.

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- (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 management services**

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

#### **46. Application of this Part**

(1) In this section —

5       “**port**” means port as defined in the *Port Authorities Act 1999*  
          section 3(1);

          “**port authority**” means a body established under the *Port*  
          *Authorities Act 1999* section 4(1).

10       (2) If the Minister and the Minister administering the *Port*  
          *Authorities Act 1999* so agree in writing, this Part, Part 4  
          Division 3 and Part 10, apply to a port authority specified in the  
          agreement as if the port authority were a local government and  
          the relevant port or part of the port specified in the agreement  
          were a district.

15       (3) If an agreement is made under subsection (2) in respect of a port  
          or part of a port, the local government in whose district the port  
          is situated is not required to provide a waste management  
          service to that port or part of a port.

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

#### **47. Provision of waste management services**

25       (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 management services.

(2) A local government does not require an EP authorisation to  
          collect or transport municipal solid waste but is otherwise  
          subject to the provisions of the EP Act.

- (3) The CEO may, by written notice, require a local government, or 2 or more local governments together, to provide a waste management service of a kind specified in the notice.
- 5 (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 management service.
- 10 (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.
- 15 (8) The local government is not required to provide a waste management 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.
- 20 (9) If 2 or more local governments combine in providing a waste management service, the CEO may, by written notice, fix the proportion of the cost of providing the service to be borne by each local government.

**48. Codes of practice**

- 25 (1) The Waste Authority may, with the approval of the Minister, make codes of practice for the provision of waste management services —
- (a) generally; or
- (b) in relation to particular types of situations.
- 30 (2) A code must be made in consultation with such persons and bodies 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) Section 43(7), (8) and (9) of the *Interpretation Act 1984* apply to a code as if it were subsidiary legislation.
- 5 (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.

**49. CEO may monitor and evaluate waste management services**

- 10 (1) The CEO may monitor waste management services provided by a local government —
- (a) to determine whether a notice is needed under section 47(3); and
- (b) to determine whether the prerequisites for issuing an authorisation under section 53 have been met; and
- 15 (c) to ascertain whether there has been compliance with section 68(1).
- (2) If monitoring under subsection (1) indicates a reason for concern, the CEO may —
- 20 (a) carry out a performance evaluation of the waste management services —
- (i) to determine whether a notice is needed under section 47(3); or
- (ii) to determine whether the prerequisites for issuing an authorisation under section 53 have been met;
- 25 or
- (iii) to ascertain whether there has been compliance with section 68(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 management service; and
  - 5 (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
- 10 other information specified in the notice as are necessary for monitoring or evaluating waste management services.
- (5) A local government must comply with a notice given to it under subsection (4).

**50. Expenses of evaluation**

- 15 (1) If the results of a performance evaluation of waste management services provided by a local government indicate that —
- (a) a requirement should be imposed under section 47(3); or
  - (b) the prerequisites for issuing an authorisation under section 53 have been met; or
  - 20 (c) there has not been compliance under section 68(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
- 25 the local government.
- (2) The CEO must give the local government as least 28 days notice of intention to recover or deduct the expenses.

**51. Fees and charges for waste management services by local government**

- (1) A local government may by resolution fix fees and charges for waste management services.
- 5 (2) If a local government provides waste management services in a district or part of a district every occupier of premises within a prescribed part of that district, or of that part of the district, as the case may be must pay to the local government the charges fixed by the local government.
- 10 (3) The *Interpretation Act 1984* sections 41(2), 42, 43, 45 and 46 apply to a resolution referred to in subsection (1) as if the resolution were a regulation.
- (4) A fee or charge fixed under this section is recoverable as if it were a fee or charge fixed under the *Local Government Act 1995*.
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**52. Disposal of waste by local government**

All waste collected by a local government may, subject to the EP Act, be destroyed, sold or otherwise disposed of by the local government.

20 **Division 2 — Waste collection authorisations**

**53. Waste collection authorisation**

- (1) The CEO must not grant, issue or give an EP authorisation to collect municipal solid waste in a local government district or part of a district unless —
- 25 (a) a local government does not collect the municipal solid waste specified in the EP authorisation in that district or part of that district; or
- (b) the criteria specified in subsection (2) are met.

- (2) The CEO may grant, issue or give an EP authorisation referred to in subsection (1) if the CEO is of the opinion that —
- (a) the applicant for the EP authorisation is capable of carrying out the same or improved waste collection in an adequate manner; and
  - (b) the collection by the local government of the municipal solid waste specified in the EP authorisation in the district or part of a district is not adequate insofar as the waste management techniques employed are not consistent with modern practice.
- (3) When making a determination as to whether a waste management technique is consistent with modern practice the CEO —
- (a) must have regard to any code of practice made by the Waste Authority under section 48 as to waste management techniques; or
  - (b) if there is no code of practice, must have regard to the advice of the Waste Authority.
- (4) If an EP authorisation to collect municipal solid waste in a local government district or part of a district is in force, a local government must not collect that municipal solid waste without the written approval of the CEO.

**54. CEO to consult local government and EDPH**

Before granting or amending an EP authorisation to collect municipal solid waste the CEO must seek and have regard to recommendations and advice on the grant or amendment of the authorisation from —

- (a) the Waste Authority; and
- (b) the Executive Director, Public Health; and
- (c) the local government in the district of which it is proposed to carry out the waste collection.

**55. Authorisation holder may supply waste receptacles**

The holder of an EP authorisation to collect municipal solid waste may —

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- (a) reserve the exclusive right to sell waste receptacles for the waste collection; and
  - (b) charge a reasonable cost for the waste receptacles; and
  - (c) recover in a court of competent jurisdiction the cost of waste receptacles supplied to any owner or occupier who is under obligation to take one or more.

10 **56. Disposal of waste by holder of authorisation**

All municipal solid waste collected by the holder of an EP authorisation to collect that waste may, subject to the EP Act, be destroyed, sold or otherwise disposed of by the holder of the authorisation.

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

### **Division 1 — Collection of levy imposed under *Waste Avoidance and Resource Recovery Levy Act 2006***

#### **57. Payment of levy**

- 5 (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.

#### **10 58. Financial assurance**

The regulations may make provision —

- 15 (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
- 20 (d) with respect to matters necessary for, or incidental to, the effective operation of a financial assurance.

#### **59. Payment by instalments**

- 25 (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.

**60. 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.

**61. 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 60.

**62. 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 \$5 000 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 60.

**Division 2 — Waste Management and Recycling Fund**

5 **63. Waste Management and Recycling Fund**

- (1) There is to be established and kept —
- (a) as an account forming part of the Trust Fund constituted under the *Financial Administration and Audit Act 1985* section 9; or
  - 10 (b) with the approval of the Treasurer, at a bank as defined in the *Financial Administration and Audit Act 1985* section 3(1),

an account to be called the “Waste Management and Recycling Fund”.

- 15 (2) The WMR Fund is to be administered by the Waste Authority.

- (3) The WMR Fund is to be credited with —

- (a) any levy paid; and
- (b) any amount paid by way of penalty under section 60; and
- 20 (c) income derived from the investment of moneys forming part of the WMR Fund; and
- (d) any other moneys lawfully payable to the credit of the WMR Fund.

**64. Application of moneys in the WMR Fund**

- 25 (1) Moneys held in the WMR Fund may be applied by the Waste Authority, in a manner that is consistent with the current business plan or is approved by the Minister —

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- (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 management 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 WMR Fund (including the costs of collecting levies and penalties and support and evaluation services).
- (2) The Waste Authority must —
- (a) seek the advice of such other persons and bodies as the Waste Authority thinks fit as to the setting and variation of a levy; and
  - (b) from time to time develop and publish a statement of the objectives to be achieved by programmes funded under this section.
- (3) Moneys held in the WMR Fund may be paid to a person or body by the Waste Authority for the purposes of subsection (1)(a) on such terms and conditions as the Waste Authority thinks fit.
- (4) A person or body 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,

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commits an offence.

Penalty: a fine of \$5 000.

- (5) The annual report of the Department prepared for the purposes of the *Financial Administration and Audit Act 1985* must include a summary of any written performance evaluation carried out pursuant to a direction of the Waste Authority by a person or body to whom moneys are paid under subsection (3).

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**65. Application of *Financial Administration and Audit Act 1985***

- (1) The provisions of the *Financial Administration and Audit Act 1985* regulating the financial administration, audit and reporting of departments apply to and in relation to the WMR Fund.

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- (2) The administration of the WMR Fund is for the purposes of the *Financial Administration and Audit Act 1985* section 52 to be regarded as a service of the Department.

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## Part 8 — Offences

### 66. Waste collection not to be carried out by unauthorised persons

5 A person other than a local government who, for fee or reward, collects municipal solid waste in a local government district other than in accordance with —

- (a) a written contract with the local government; or
- (b) an approval to collect municipal solid waste issued by a local government in accordance with regulations made under this Act; or
- 10 (c) an EP authorisation to collect municipal solid waste,

commits an offence.

Penalty: a fine of \$5 000 and a daily penalty of \$1 000.

### 67. Obstruction or hindrance

- 15 (1) A person who obstructs or hinders a local government or its contractor, or the holder of an EP authorisation to collect municipal solid waste, in the collection of municipal solid waste commits an offence.

Penalty: a fine of \$5 000.

- 20 (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 municipal solid waste.

### 68. Services to be provided in accordance with waste management plan or authorisation

- 25 (1) A waste management service provided by a local government must be carried out —

- (a) in accordance with section 41(2); and

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(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 —

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(a) a waste management service is not carried out in accordance with subsection (1); or

(b) municipal solid waste is not collected in accordance with a condition of an EP authorisation to collect that waste,

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

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(c) the local government in the case of services provided, or that should have been provided, by the local government or its contractor; or

(d) the CEO in the case of services provided, or that should have been provided, by the holder of an EP authorisation to collect municipal solid waste.

(3) If a complaint is lodged —

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(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

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(b) under subsection (2)(d), the CEO must give written notice of the complaint to the holder of the EP authorisation by whom the services were, or should have been, provided.

(4) If —

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(a) a complaint is lodged under subsection (2)(c) with a local government in respect of waste management services it provided, or should have provided, 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

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(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 public health,

the local government commits an offence.

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Penalty: a fine of \$10 000.

(5) If —

(a) notice is served under subsection (3) on a contractor or holder of an EP authorisation; and

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(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),

the contractor or holder of the EP authorisation, as the case requires, commits an offence.

Penalty: a fine of \$10 000.

## **Part 9 — Enforcement**

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

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

(1) In this section —

5           **“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 —

10           (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.

15           (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 —

20           (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.

25           (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.

5 Penalty: a fine of \$20 000.

**70. Inspectors**

- (1) An inspector appointed under the EP Act section 88 may also be appointed under that section for the purposes of this Act.

10 (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.

15 (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 prescribed premises 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.

20 (4) When an inspector exercises a power of entry under subsection (3), the inspector may do any or all of the following —

- 25 (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;
- 30 (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;

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- (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.
  - (5) A person who does not comply with a requirement under subsection (4)(e) commits an offence.  
Penalty: a fine of \$20 000.
  - (6) In subsection (3) —  
**“waste inspection”**, in relation to waste deposited or stored on prescribed premises, 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;

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- (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;
- 10 (i) to gather any information relevant to making a decision under this Act;
- (j) any other purpose relevant to the administration of this Act.

**71. Authorised persons and analysts**

- 15 (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.
- 20 (3) An analyst appointed under the EP Act section 94 may also be appointed under that section for the purposes of this Act.

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

- 25 (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 —
- 30

**Waste Avoidance and Resource Recovery Bill 2006**

**Part 9** Enforcement

**Division 1** Investigation and obtaining information

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- 5
- (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 —
- 10 (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.
- 15 (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
- 20 (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.
- 25 Penalty: a fine of \$25 000.

## Division 2 — General

### 73. Who can institute proceedings for offences

- 5 (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.
- 10 (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.

### 15 74. 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.
- 20 (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 73 —
- (a) the prosecution may be commenced within 2 years after that day; and
  - 25 (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 73 is the day specified in the prosecution notice, unless the contrary is shown.

5 **75. 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  
10 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.  
15

- (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.  
20

**76. 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.  
25

- (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.  
30

**77. 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 —

- 5
- (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 10 — Appeals**

### **78. Local government may appeal from requirement of CEO**

- 5 (1) A local government which disagrees with a requirement or request included in a notice given to the local government under section 47(3) or 49(4) or the content of a notice given to the local government under section 47(9) may appeal to the Minister.
- 10 (2) A local government given a notice under section 50(2) may appeal to the Minister against the proposed recovery or deduction on the ground that the expenses are not properly recoverable under that section.

### **79. How appeal is made**

- 15 (1) An appeal is instituted by giving written notice of the appeal to the Minister within 30 days of the local government or person receiving the relevant notice.
- (2) The notice of appeal must set out the grounds of the appeal.

### **80. Role of the Minister**

- 20 (1) On an appeal the Minister must consider the notice of appeal and —
- (a) affirm the requirement or direction appealed against; or
  - (b) vary the requirement or direction appealed against; or
  - (c) set aside the requirement or direction and substitute a requirement or direction that the Minister thinks appropriate.
- 25 (2) The Minister must notify the appellant in writing of the decision within 30 days of the date of the decision.
- (3) Where the Minister affirms or varies a requirement or direction the Minister must specify a date on which the requirement or



direction, or the requirement or direction as so varied, is to come into force.

- 5
- (4) The decision of the Minister is final and without appeal.
  - (5) Before making a decision the Minister may request such further information as the Minister considers desirable to consider and determine the appeal from any person or body.
  - (6) Before making a decision, the Minister may seek advice from the Waste Authority or any other person or body but need not take that advice into account in making the decision.

## Part 11 — General provisions

### 81. Waste management operations by Minister for Works

(1) In this section —

“**Minister for Works**” means the body corporate created by the  
5 *Public Works Act 1902* section 5;

“**waste management operation**” means an operation for the  
collection, transport, storage, treatment or disposal of  
waste, or for 2 or more of those activities.

(2) Subject to this Act, the EP Act and any other written law  
10 relating to the treatment and disposal of waste, the Minister for  
Works may carry on waste management operations at or in  
relation to the following sites —

(a) the intractable waste disposal facility operated at  
Mt Walton East, Shire of Coolgardie;

15 (b) any other waste disposal or treatment facility prescribed  
by the regulations for the purposes of this section.

(3) Subject to subsection (2), the Minister for Works may do all  
things necessary or convenient to be done for or in connection  
with the performance of functions under subsection (2).

20 (4) Without limiting subsection (3) the Minister for Works may, for  
the purpose of performing functions under this section —

(a) enter into a contract or arrangement; and

(b) charge for the use of services and facilities.

### 82. Confidentiality

25 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;  
30 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.

5 Penalty: a fine of \$25 000.

**83. Delegation**

(1) The Minister may delegate to a person referred to in subsection (4) any power or duty of the Minister under another provision of this Act.

10 (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.

15 (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

20 (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.

25 (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.

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- (8) Nothing in this section limits the ability of the Minister, the CEO or the Waste Authority to act through an officer or agent.

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

5                      Sections 112, 112A, 115, 116, 117, 118 and 119 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
- 10                      (c) a reference in section 112A to “Part VI” were a reference to this Act.

**85. 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
- 15                      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
- 20                      that it might have for another person having done anything as described in that subsection.
- (4) In this section, a reference to the doing of anything includes a reference to an omission to do anything.

**86. Laying documents before Parliament**

- 25                      (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.

- 5 (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  
10 of the House after the Clerk received the copy.

**87. 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.
- 15 (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) applies with respect to regulations made under this Act.
- (4) If a regulation made under this Act is inconsistent with a  
20 regulation made under the EP Act, the regulation made under the EP Act prevails to the extent of the inconsistency.

**88. Review of Act**

- (1) The Minister must carry out a review of the operation and effectiveness of this Act as soon as practicable after —  
25 (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

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not more than 12 months after the relevant anniversary), cause it to be laid before each House of Parliament.

**89.        Consequential amendments**

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

**90.        Transitional and savings provisions**

Schedule 5 sets out transitional and savings provisions.

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

[s. 8]

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

5    **1.        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.

**2.        Resignation, removal**

- 10        (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
  - 15        (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
  - 20        (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  
25        3 consecutive meetings of the Waste Authority of which the  
          member has had notice.

**3.        Leave of absence**

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

**4. 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.

5 **5. 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.

10 (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.

15 (4) The appointment of a person under this clause may be terminated at any time by the Minister.

**6. Saving**

An act or omission of a person acting in place of another under clause 4 or 5 cannot be questioned on the ground that the occasion for the acting had not arisen or had ceased.

20 **Division 2 — Proceedings of Waste Authority**

**7. Meetings**

(1) Subject to this clause, meetings are to be held at the times and places that the Waste Authority determines.

25 (2) A special meeting of the Waste Authority may at any time be convened by —

(a) the chairman; or

(b) any 4 members; or

30 (c) the Minister, if the Minister wishes the Waste Authority to discuss a matter on which the Minister has requested its advice.





**11. Holding meetings remotely**

5 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.

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

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

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

10 **13. 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.

15

Penalty: a fine of \$10 000.

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

**14. Voting by interested members**

20 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

25

(ii) on a proposed resolution under clause 15 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.

30

**15. Clause 14 may be declared inapplicable**

Clause 14 does not apply if the Waste Authority has at any time passed a resolution that —

- 5            (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.

**16. Quorum where clause 14 applies**

- 10           (1) Despite clause 7(6), if a member of the Waste Authority is disqualified under clause 14 in relation to a matter, a quorum is present during the consideration of the matter if at least 3 members are present who are entitled to vote on any motion that may be moved at the meeting in relation to the matter.
- 15           (2) The Minister may deal with a matter insofar as the Waste Authority cannot deal with it because of subclause (1).

**17. Minister may declare clauses 14 and 16 inapplicable**

- (1) The Minister may by writing declare that clause 14 or 16 or both of them do not apply in relation to a specified matter either generally or in voting on particular resolutions.
- 20           (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 86, within 14 days after a declaration is made.

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

[s. 19(1)]

1. To advise and make recommendations to the Minister on matters relating to this Act.
- 5 2. To act as an advocate for the objects of this Act.
3. To inquire into and advise the Minister or the CEO on any matter relating to this Act, or an appeal, on which the Minister or CEO requests advice.
4. To coordinate the implementation of the waste strategy.
- 10 5. To monitor and assess the adequacy of, and report to the Minister on the operation of, the waste strategy, product stewardship agreements and extended producer responsibility schemes.
6. To promote community awareness and understanding of resource efficiency, waste avoidance and resource recovery.
- 15 7. To support State and Commonwealth policies which will enhance progress towards zero waste.
8. To promote resource efficiency, waste avoidance and resource recovery.
9. To promote coordination between organisations seeking to prevent waste.
- 20 10. To liaise with local governments to ensure that the provisions of this Act are enforced in the districts of those local governments.
11. To cooperate with local governments to coordinate local efforts to prevent waste.
- 25 12. To receive representations on waste management issues from members of the public.
13. To advise and make recommendations to the Minister and the CEO on the regulation of waste management services.
14. To promote market development for recovered resources and recycled materials.
- 30 15. To promote the development of locally owned resource recovery infrastructure.

16. To take appropriate measures to bring the provisions of this Act to the attention of the public.
17. To ensure that the appropriate investigations, audits and inspections of matters related to this Act are carried out.
- 5 18. To do such other acts and things as are conducive to the prevention and control of waste.
19. To perform such other functions as are conferred on it under this Act or are referred to it by the Minister.

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

[s. 87]

**Division 1 — General**

- 5 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. Prescribing offences under the regulations and penalties for the commission of those offences not exceeding \$5 000.

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

4. Regulating the operation of waste facilities, and the treatment, storage, processing, recycling or disposal of waste at waste facilities.
5. Regulating the use of receptacles for municipal solid waste.
6. Regulating waste management services.
- 15 7. Regulating the transportation of waste.
8. Regulating the creation, collection, storage, handling, processing, recycling and disposal of waste.
9. Regulating the issue by local governments of approvals to collect municipal solid waste.
- 20 10. Providing for the provision of information relating to the operation of waste facilities or the transportation of waste.

**Division 3 — Product stewardship**

11. Making provision in relation to assisting in the negotiation of, and assessing the implementation and operation of, product stewardship agreements.
- 25 12. Regulating the implementation and operation of extended producer responsibility schemes.
13. Without limiting the *Interpretation Act 1984* section 43(8)(d), exempting persons or products, or classes of person or product, from
- 30 all or any of the provisions of the regulations applying to extended

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producer responsibility schemes, and specifying circumstances in which and conditions subject to which an exemption applies.

14. Without limiting item 12, requiring a person who manufactures, distributes or sells a product to do all or any of the following —
- 5 (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;
- 10 (c) collect or accept the product and its by-products for disposal from a consumer of the product.
15. Without limiting item 12, prescribing products for which a fee, deposit or bond for the collection or disposal of the product must be paid and —
- 15 (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
- 20 (d) providing for the time at which the fee, deposit, bond or refund must be paid.
16. Concerning the control and management of fees, deposits or bonds paid under the regulations including —
- 25 (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
- 30 (c) providing for the application of the fee, deposit or bond and interest from the fee, deposit or bond.
17. Providing for the establishment of, and regulating the operation of, collection facilities for products and their by-products.

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

**Division 3** Product stewardship

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18. Requiring a producer of a product to formulate and implement a management plan with respect to the product and specifying the matters to be dealt with in the management plan.
19. Providing for proof of payment of fees, deposits or bonds under the regulations and its evidential status.
- 5



## Schedule 4 — Amendments and repeals

[s. 89]

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

- 5        (1) The amendment in this clause is to the *Constitution Acts Amendment Act 1899*\*.

          [\* *Reprint 14 as at 21 April 2006.*

*For subsequent amendments see Western Australian  
Legislation Information Tables for 2005, Table 1, p. 89 and  
Act No. 28 of 2006.]*

- 10        (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 2006.*

15

          ”.

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

- (1) The amendments in this clause are to the *Environmental Protection Act 1986*\*.

          [\* *Reprint 5 as at 16 September 2005.*

20        *For subsequent amendments see Western Australian  
Legislation Information Tables for 2005, Table 1, p. 148 and  
Acts Nos. 38 of 2005 and 28 of 2006.]*

- (2) Section 3(1) is amended by deleting the definition of “Waste  
Management (WA)”.

- 25        (3) Part VIIA is repealed.

- (4) Part VIIB is repealed.

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

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

**cl. 4**

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**4. Health Act 1911 amended**

(1) The amendments in this clause are to the *Health Act 1911*\*.

[\* *Reprint 13 as at 15 July 2005.*

*For subsequent amendments see Western Australian  
Legislation Information Tables for 2005, Table 1, p. 205 and  
Acts Nos. 23 and 28 of 2006.]*

(2) Section 106(1) is amended by deleting “, rubbish or refuse”.

(3) Section 111 is amended by deleting “, rubbish, or refuse”.

(4) Sections 112, 112A, 113, 114, 115, 116, 118 and 134(20), (21), (22),  
(23), (24) and (30) are repealed.

(5) The Table to section 344C is amended by deleting “(30),”.

**5. Public Works Act 1902 amended**

(1) The amendment in this clause is to the *Public Works Act 1902*\*.

[\* *Reprinted as at 1 June 2001.*

*For subsequent amendments see Western Australian  
Legislation Information Tables for 2005, Table 1, p. 373 and  
Acts Nos. 18 of 2005 and 28 of 2006.]*

(2) Section 2 is amended in the definition of “public work” by inserting  
after item (4) —

“

(4A) Any site required for, and works for or in  
connection with, the disposal or treatment of  
waste.

”.

## Schedule 5 — Savings and transitional provisions

[s. 90]

**1. Terms used in this Schedule**

In this Schedule —

5            **“commencement day”** means the day on which section 89 comes  
                 into operation.

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

10            (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*  
                 *Bill 2006* as if the repeal and substitution were effected under  
                 this Act.

15            (2) The other provisions of this Schedule are additional to the provisions  
                 applied by subclause (1).

**3. Charges fixed under *Health Act 1911* continued**

20            (1) Any local law made by a local government under the *Health Act 1911*  
                 section 134(30) and of effect on the commencement day continues to  
                 be of effect until a resolution made by that local government under  
                 section 51 takes effect.

25            (2) Any resolution made by a local government under the *Health*  
                 *Act 1911* section 344C fixing charges for the removal of trade or  
                 house refuse and of effect on the commencement day continues to be  
                 of effect until a resolution made by that local government under  
                 section 51 takes effect.

**4. Regulations**

30            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.

**cl. 5**

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**5. 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.
- 5 (2) On the commencement day any moneys standing to the credit of the former fund are to be credited to the WMR Fund 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 64,
- 10 and the former account is then to be closed.
- (3) The WMR Fund 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.

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

- 15 (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 evidenced by or the subject of, an instrument or otherwise and whether liquidated or unliquidated, actual, contingent or prospective;
- 20
- “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;
- 25
- “right”** means any right, power, privilege or immunity whether actual, prospective or contingent;
- 30
- “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
  - 5 (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
  - 10 (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 —
- 15 (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 —
- 20 (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.

**7. Transitional regulations**

- 25 (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) —
- 30 **“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

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- 5 (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 —
- 10 (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.
- 15 (5) In subclauses (3) and (4) —  
**“specified”** means specified or described in the regulations.
- 20 (6) If regulations contain a provision referred to in subclause (4), the provision does not operate so as to —
- 25 (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  
(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.

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## WESTERN AUSTRALIA

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# Waste Avoidance and Resource Recovery Bill 2006

### DRAFT BILL FOR PUBLIC COMMENT

The Government proposes to introduce into Parliament a Bill to —

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

This draft Bill has been prepared for public comment but it does not necessarily represent the Government's settled position.