

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

WASTE MINIMISATION BILL 2001

EXPLANATORY MEMORANDUM

Circulated with the authority of
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BACKGROUND AND OUTLINE

The Waste Minimisation Bill 2001 provides a legal framework for the management, regulation and reduction of waste.

This Bill introduces the industry waste reduction plan (IWRP) as the main waste reduction tool. Under the Bill the industry waste reduction plan can be developed jointly with industry through negotiation, or in particular circumstances by the Minister without negotiation. Industry waste reduction plans can also implement national measures such as obligations to the National Environment Protection Council (NEPC) to implement National Environment Protection Measures, (NEPMs).

The first Industry Waste Reduction Plan to be developed is for used packaging materials. It will fulfill the ACT's obligations to the National Environment Protection Council by implementing the National Environment Protection (Used Packaging Materials) Measure.

The Bill also contains the provisions of the Building and Services Act and the Garbage Regulations which control the delivery of the garbage and recycling services and give the Minister power to set fees and charges for delivery of the services as well as disposal.

This framework legislation can be developed overtime to implement further components of the No Waste by 2010 Strategy and various recommendations

made by the ACT Commissioner for the Environment in his report "Progress towards a No Waste by 2010 Strategy" to further implement the Strategy using legislation where necessary.

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Part 1 Preliminary

Clause 1 is a formal requirement and deals with the short title of the Bill.

Clause 2 is a formal requirement and deals with the commencement provisions. The Act will commence on a day set by the Minister; this is to allow for the commencement before the 30 June 2001, the date of the repeal of the Building and Services Act and Garbage Regulations to allow for the continuation of waste services within the Territory.

Clause 3 defines certain words and phrases used in the Act for example recycle, industry waste reduction plan etc.

Clause 4 explains that a note is explanatory and not part of the Act.

Clause 5 the objects of the Bill sets the tone for the legislation. The Bill is to be interpreted and administered to give effect to the goals listed in this clause. They provide for a hierarchy for waste management in line with current best practice and the ACT "No Waste by 2010 Strategy". The objects also provide for the involvement of government, industry and the community in the development of waste policy and in the responsibility for minimising and managing waste. The objects of the Act promote efficient and integrated waste service planning and delivery and environmentally responsible transporting, reprocessing and handling of waste.

Clause 6 this clause embodies principles endorsed by the Intergovernmental Agreement on the Environment to which the ACT is a signatory. These principles are:

- The precautionary principle
- Intergenerational equity
- Conservation of biological diversity and ecological integrity and
- Improved valuation pricing and incentive mechanisms including measures such as the polluter pays principle.

Part 2 Industry Waste Reduction

Industry Waste Reduction Plans

Clause 7 this part of the Act deals with the main tool for waste reduction, the industry waste reduction plan (IWRP). The objects of this part include providing a framework for the preparation, implementation, monitoring and enforcement of industry waste reduction. These plans are aimed at reducing waste creation within the ACT, minimising the use of natural resources, ensuring greater industry responsibility for waste reduction and encouraging efficient and cost effective approach to industry waste reduction. It also provides for the implementation of national environment protection measures. The Act also encourages industry members to participate and cooperate with the Environment Management Authority in the preparation of an industry waste reduction plan. It provides for sanctions in the case of low performance or unwillingness to cooperate in the planning of industry waste reduction plans. It aims to ensure that initiatives reflect best practice waste policy and waste minimisation and management objectives.

Clause 8 this section deals with the scope of the IWRP, that is what it can and what it cannot aim to do, for example, set waste reduction targets for industry having regards to national waste reduction targets. The scope can also include any other matter prescribed under regulations.

Clause 9 this gives the Minister the power to decide that an IWRP can be developed for a particular industry. It also allows for an industry to nominate itself for an IWRP. The Minister must take certain factors into account in deciding whether or not an IWRP should be prepared for a nominated industry.

Clause 10 this clause requires the EMA to advertise a decision of the Minister that an IWRP be prepared for an industry. The EMA must ask for public submissions on the IWRP and specify a closing date.

Clause 11 this clause gives the EMA the power to require by written notice a person, who the EMA believes on reasonable grounds is an industry member to whom an IWRP is proposed, to provide information that will assist the EMA in developing the IWRP. The notice may require certain information and give a date by which this information should be sent to the EMA. It is an offence to contravene the notice without reasonable excuse and carries a maximum penalty of 250 penalty units. There is provision for a continuing offence and daily penalty rates.

Clause 12 this clause deals with the report to the Minister prepared by the EMA on the scope of the proposed IWRP. It includes relevant information obtained by public submissions, the report also recommends the ways in which the proposed IWRP should be prepared. This will include either the name of the persons or organisations to be involved in the negotiations, or a recommendation that the IWRP be prepared without negotiation.

Clause 13 this section deals with the process of negotiating an IWRP with nominated persons or organisations. The Minister may nominate the persons to be involved in the negotiation of the IWRP and the timeframe within which the IWRP is to be finalised. Consultation must take place between the industry parties and the EMA. The draft plan must be developed in the specified timeframe and in the agreed parameters of the IWRP. On receiving a draft of the

Plan the Minister may in writing approve the IWRP, reject the IWRP or require changes to the IWRP.

Clause 14 this section deals with the preparation of an IWRP where the Minister decides that the IWRP be developed without negotiation with industry members. The Minister may decide this on a range of issues, which include, the past performance of the activities of the industry members in reducing waste; whether industry members have participated with the EMA in the preparation of the IWRP, the diversity complexity or competitive nature of the industry .The Minister is not limited to these reasons The Minister can decide that the IWRP be prepared by the EMA, if the industry has failed to prepare a draft IWRP in accordance with Section 13, or the Minister is of the opinion that the draft IWRP is inadequate. The EMA will determine the contents of the IWRP, if it is to be developed without negotiation. The contents of the IWRP can include waste reduction targets. The draft IWRP can be approved by the Minister or rejected or require changes.

Clause 15 this section provides the parameters for the Minister to direct the EMA to prepare an IWRP for an industry to implement a national environment protection measure such as the National Environment Protection (Used Packaging Materials) Measure. Because NEPMS are developed under the NEPC Act and have specific and extensive consultation over the eighteen months it usually takes to develop the NEPM. These IWRP are developed without negotiation as the negotiation has taken place under the NEPC process. Section 15 of the Act allows for the IWRP to be developed without needing to comply with the requirement under section 10 to give public notice of an IWRP, section 12 to report on how an IWRP is to be prepared or section 13 process of negotiation under this Act. The EMA submits the drafted IWRP to the Minister for approval; the Minister can then approve the IWRP or require changes to be made.

Clause 16 an IWRP can incorporate any document in force at a particular time, for example in relation to used packaging materials the waste reduction targets

developed with regard to the Packaging Covenant Council waste reduction targets.

Clause 17 the Minister may give notice in the Gazette of each approval of an IWRP and the EMA must publish a copy of the notice in a daily newspaper circulating in the Territory, stating that copies of the IWRP are obtainable from the EMA. The EMA must also give a copy of the plan to any industry member or other person who made a submission or was involved in the negotiation of the plan. The EMA must also make available for inspection or purchase copies of the IWRP by any other person.

Clause 18 this section deals with the process when the EMA has reasonable grounds to believe that an industry member has contravened an IWRP. The EMA must give the industry member a copy of the IWRP and a written notice stating the contravention. Contravention includes failing to meet any requirement of the IWRP. The contravention of the IWRP must be rectified within a stated period of at least a month after the date on which the notice was given. The notice must also be in accordance with the requirements of the Code of Practice in force under the Administrative Appeals Tribunal Act 1989 section 25B(1). Failure to rectify a requirement in that notice without reasonable excuse is an offence with 250 penalty units. The section provides for continuing daily offences.

Clause 19 the EMA must include in its annual report any contravention of a requirement of a notice under section 19.

Division 2.2 Regulations Relating to Industry Waste Reduction

Clause 20 this section deals with the types of regulations that maybe made under part 2 of the Act.

Part 3 Waste Disposal

Clause 21 this deals with definitions in part 3 relating to waste disposal for example garbage services.

Clause 22 this gives the Minister the power to make provision for the supply of a garbage service.

Clause 23 this section gives the Territory ownership of the garbage.

Clause 24 this section gives the Minister the power to make provision for the disposal of waste including facilities for reuse/recycling.

Clause 25 this section deals makes it an offence for the owner or occupier of premises to allow the premises to be used as a waste facility the maximum penalty being 100 penalty units. However subsection (1) does not apply to any declared use of the premises under the regulations.

Clause 26 this section deals with the types of regulations that may be made in relation part 3 for example the collection and disposal of waste.

Part 4 Enforcement

This part establishes powers and procedures in relation to enforcement of the Bill

Division 4.1 General

Clause 27 sets out the definitions for this part, connected with a particular offence, occupier and offence, to remove doubt in the circumstances set out there.

Division 4.2 Authorised persons

Clause 28 this gives the power to the chief executive to appoint an authorised person under the Act.

Clause 29 this part gives the details required on the identity card of the authorised person.

Division 4.3 Powers of Authorised Persons

Clause 30 this gives the authorised person powers to enter premises in a range of specific circumstances.

Clause 31 the authorised person must produce an identity card when asked by the occupier of the premises

Clause 32 this sets out the procedure authorised officers must follow in obtaining consent from an occupier to enter premises.

Clause 33 this clause sets out the procedure for the authorised person to follow to obtain a warrant.

Clause 34 this sets out the procedure for the authorised person to obtain a warrant without attending the office of the Magistrate, if it is urgent or there are other special circumstances. There are safeguards to ensure that the warrant is properly obtained, including requiring the warrant to be faxed to the officer, or if that is not possible, the officer is required to fill in a form with the relevant information, and at a later time provide it to the Magistrate who must attach it to the original warrant.

Clause 35 this sets out the power of an authorised person on entry to premises and allows them do and collect a range of things, for example, take measurements or conduct tests. This clause requires the occupier to give the authorised person reasonable help and if they do not without reasonable excuse commit an offence and are liable to a maximum fine of 50 penalty units.

Clause 36 provides a power to an authorised officer to assist in identifying offenders by allowing them to require a person to give their name

Clause 37 provides a power under certain circumstances to seize evidence.

Clause 38 this provides for the authorised person to give a receipt for the things seized.

Clause 39 entitles the person who would be entitled to the thing if it were not seized to inspect it or if a document take extracts from it or make copies of it.

Clause 40 this deals with the circumstances when the thing seized must be returned to the owner or reasonable compensation must be paid by the Territory.

Division 4.4 Miscellaneous

Clause 41 this part deals with the offence of hindering an authorised person without reasonable excuse and has a maximum penalty of 50 penalty units imprisonment for six months or both.

Clause 42 this part means that an authorised person and anyone helping them in carrying out a function under this part must take all reasonable steps that they cause as little inconvenience, detriment or damage as is practicable in carrying out their function. If anything is damaged then written notice of the damage must be given to the person reasonably believed to be the owner of the thing.

Clause S43 this part deals with the procedure to be followed for the person claiming compensation against the Territory.

Part 5 Miscellaneous

Clause 44 this deals with the application to the AAT for a review of a decision by the EMA made under section 18 contravention of IWRP.

Clause 45 this empowers the Minister to determine fees for the Act. Fees include a fee that is a tax and a charge or other amount whether or not it is a tax. A determination is a disallowable instrument.

Clause 46 this empowers the Minister in writing to approve forms for the Act, the form must be used for the particular purpose for which it was approved and it is a disallowable instrument.

Clause 47 this empowers the EMA to delegate its powers under the Bill to a public employee, an authorised person or a person prescribed under the regulations.

Clause 48 this requires people to provide information required by the Bill even if doing so could incriminate them. However recognising that this provision overrides a common law privilege and could otherwise trespass unduly on a person's right, the information provided is not admissible against the person in any proceedings under the Bill.

The only exceptions to this protection are proceedings relating to the offence of:
providing false or misleading information; or
providing false or misleading documents; or
an offence against the Crimes Act 1900 part 8.

Clause 49 this enables a person to claiming professional privilege in relation to making available or in answering a question.

Clause 50 this deals with the offence of knowingly giving information that is false or misleading in a material particular in relation to purported compliance with the Act. The maximum penalty is 50 penalty units or six months imprisonment or both.

Clause 51 this deals with the offence of a person producing a document or a copy of a document that the person knows is false or misleading in a material particular in relation to purported compliance with a requirement of the Act. The maximum penalty is 50 penalty units, imprisonment for six months or both.

Clause 52 this intends to make corporations or business owners liable in the criminal sense for the acts and omissions of their employees and agents. The state of mind of the agent or employee is imputed to the business owner. The acts or omissions of agents and employees, are taken to have been done by the owner, unless the owner can show that they could not have reasonably prevented the act or omission. As a safeguard the owner who is convicted as a result of these provisions cannot be punished by imprisonment.

Clause 53 this provides that an executive officer of a corporation is criminally liable for offences committed by the corporation. Combined with clause 50, this is intended to allow prosecutions of executive officers of corporations for the acts and omissions of its employees, so that the executive officers cannot stand behind the corporate shield.

As a safeguard an executive officer will escape liability if he or she exercised due diligence to prevent the relevant act or omission that constitutes the offence, or if the executive officer could not have reasonably been expected to know about the

contravention, given their position in the organisation. The executive officer will also have available any defence open to the corporation.

Clause 54 empowers the Executive to make regulations for the Act and for offences for contravention of the regulations and penalties of not more than 10 penalty units.

Clause 55 this deals with transitional provisions relating to determination of fees before the commencement of the Legislation Act 2001.

Clause 56 this with the transitional arrangements for notification of approval of an IWRP under section 17 of the Act before the commencement of the Legislation Act 2001.