

# Waste Recycling and Processing Corporation Act 2001

## Long Title

An Act to establish the Waste Recycling and Processing Corporation as a statutory State owned corporation to exercise certain functions in relation to waste; to dissolve the Waste Recycling and Processing Service of New South Wales; to make consequential amendments to other legislation; and for other purposes.

## Part 1 – Preliminary

### 1 Name of Act

This Act is the *Waste Recycling and Processing Corporation Act 2001*.

### 2 Commencement

This Act commences on a day or days to be appointed by proclamation.

### 3 Definitions

(1) In this Act: "**assets**" means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description (including money), and includes securities, choses in action and documents. "**Corporation**" means the statutory State owned corporation constituted by this Act. "**energy recovery**" means a process by which energy, such as heat, electrical energy or kinetic energy, is recovered in a useful form from waste. "**exercise**" a function includes perform a duty. "**function**" includes a power, authority or duty. "**liabilities**" means any liabilities, debts or obligations (whether present or future and whether vested or contingent). "**Ministerial Holding Corporation**" means the Ministerial Holding Corporation constituted under section 37B of the *State Owned Corporations Act 1989*. "**principles of ecologically sustainable development**" means the principles of ecologically sustainable development contained in section 6 (2) of the *Protection of the Environment Administration Act 1991*. "**rights**" means any rights, powers, privileges or immunities (whether present or future and whether vested or contingent). "**secondary resource**" means any resource (including energy in any useful form) that is recovered from waste as a result of secondary resource recovery. "**secondary resource facility**" means any premises used for secondary resource recovery. "**secondary resource recovery**" means a process by which a resource is recovered from waste, such as by re-using, recycling or reprocessing waste, and includes energy recovery. "**waste**" has the same meaning as in the *Protection of the Environment Operations Act 1997*. "**waste facility**" means any premises used for the reprocessing, sorting or disposal of waste, and includes a landfill site. "**Waste Recycling and Processing Service**" means the corporation constituted by the *Waste Recycling and Processing Service Act 1970* with the name "Waste Recycling and Processing Service of New South Wales".

(2) Words and expressions used in this Act and also the *State Owned Corporations Act 1989* have the same meanings in this Act as they have in that Act.

## Part 2 – Waste Recycling and Processing Corporation

### 4 Establishment of Waste Recycling and Processing Corporation as statutory SOC

(1) There is constituted by this Act a corporation with the corporate name of Waste

Recycling and Processing Corporation.

(2) The *State Owned Corporations Act 1989* is amended by inserting in Schedule 5, in alphabetical order, the words "Waste Recycling and Processing Corporation".

## **5 Principal objectives of Corporation**

(1) The principal objectives of the Corporation are as follows:

(a) to be a successful business and, to this end:

(i) to operate at least as efficiently as any comparable businesses, and

(ii) to maximise the net worth of the State's investment in it, and

(iii) to exhibit a sense of social responsibility by having regard to the interests of the community in which it operates,

(b) to protect the environment by conducting its operations in compliance with the principles of ecologically sustainable development contained in section 6 (2) of the *Protection of the Environment Administration Act 1991*,

(c) to exhibit a sense of responsibility towards regional development and decentralisation in the way in which it operates,

(d) to provide and manage efficient, safe and reliable waste facilities, secondary resource facilities and related facilities,

(e) to be an efficient and responsible provider of waste management services, secondary resource recovery services and related services,

(f) to minimise any adverse health and environmental impacts of its activities and services relating to waste management and secondary resource recovery.

(2) Each of the principal objectives of the Corporation is of equal importance.

(3) The provisions of section 20E of the *State Owned Corporations Act 1989* do not apply to the Corporation.

(4) The annual report of the Corporation under the *State Owned Corporations Act 1989* must include an assessment by the Auditor-General of the Corporation's performance in achieving the objective referred to in subsection (1) (a) (i).

## **6 Functions of Corporation**

(1) The Corporation has the functions conferred or imposed on it by or under this or any other Act or law.

(2) The principal functions of the Corporation are:

(a) to establish, maintain and operate waste facilities, secondary resource facilities and related facilities, and

(b) to conduct businesses or provide services relating to waste, and secondary resource recovery, and

(c) to provide waste management services, secondary resource management services and related services, and

(d) to research, develop and implement alternative technologies for managing waste, and

(e) to trade in waste and secondary resources.

(3) The Corporation may also:

(a) provide any facilities or services that are ancillary or incidental to its principal functions, and

(b) conduct any business or provide any service (whether or not related to its principal functions) that it considers will further its objectives.

(4) In exercising its functions, the Corporation must strive to achieve international best practice in waste management.

(5) In exercising its functions, the Corporation must act in accordance with the principles of ecologically sustainable development.

## **7 Board of directors**

(1) The Corporation is to have a board of directors.

(2) The board is to consist of:

- (a) one director appointed by the voting shareholders on the recommendation of a selection committee comprising:
  - (i) 2 persons nominated by the portfolio Minister, and
  - (ii) 2 persons nominated by Unions NSW,being a person selected by the committee from a panel of 3 persons nominated by Unions NSW, and
- (b) at least 3 and not more than 6 other directors, to be appointed by the voting shareholders after consultation with the portfolio Minister.
- (3) The chief executive officer may be appointed as a director.
- (4) The procedures for constituting a selection committee for the purposes of subsection (2) (a), for making nominations and for determining other matters relating to the selection process are to be determined by the regulations or (subject to the regulations) by the voting shareholders.
- (5) One of the directors referred to in subsection (2) (b) is (in and by the director's instrument of appointment or in and by another instrument executed by the voting shareholders) to be appointed as chairperson of the board.
- (6) The board is accountable to the voting shareholders in the manner set out in Part 4 of the *State Owned Corporations Act 1989* and in the constitution of the Corporation.
- (7) The voting shareholders may remove a director, or the chairperson, from office at any time for any or no reason and without notice (but only at a duly convened meeting of the voting shareholders) and, in that event, the office of the director or chairperson is taken to have become vacant for the purposes of Schedule 8 to the *State Owned Corporations Act 1989*.
- (8) Subject to subsection (9), Schedule 8 to the *State Owned Corporations Act 1989* has effect with respect to the constitution and procedure of the board.
- (9) The provisions of section 20J of the *State Owned Corporations Act 1989*, and of clauses 2 (1) and (2), 4 and 7 (1) (d) and (2) of Schedule 8 to that Act, do not apply to the Corporation or to the chairperson.

## **8 Chief executive officer**

- (1) The chief executive officer of the Corporation is to be appointed by the board after consultation with the voting shareholders and the portfolio Minister.
- (2) The board may remove a person from office as chief executive officer, at any time, for any or no reason and without notice, but only after consultation with the voting shareholders and the portfolio Minister.
- (3) The chief executive officer is entitled to be paid such remuneration (including travelling and subsistence allowances) as the board may determine.
- (4) The board may, after consultation with the voting shareholders, fix the conditions of employment of the chief executive officer in so far as they are not fixed by or under any other Act or law.
- (5) The *Public Sector Management Act 1988* (Part 8 included) does not apply to the chief executive officer.
- (6) Subject to subsection (7), Schedule 9 to the *State Owned Corporations Act 1989* has effect with respect to the chief executive officer.
- (7) The provisions of section 20K of the *State Owned Corporations Act 1989*, and of clauses 2, 3 and 6 of Schedule 9 to that Act, do not apply to the chief executive officer.

## **9 Acting chief executive officer**

- (1) The board may, from time to time, appoint a person to act in the office of chief executive officer during the illness or absence of the chief executive officer.
- (2) The board may remove a person from office as acting chief executive officer, at any time, for any or no reason and without notice.
- (3) A person, while acting in the office of chief executive officer:
  - (a) has all the functions of the chief executive officer and is taken to be the chief

executive officer, and

(b) is entitled to be paid such remuneration (including travelling and subsistence allowances) as the board may determine.

(4) For the purposes of this section, a vacancy in the office of a chief executive officer is regarded as an absence from office.

(5) Clause 5 of Schedule 9 to the *State Owned Corporations Act 1989* does not apply to an acting chief executive officer of the Corporation.

### **10 Application of State Owned Corporations Act 1989**

The provisions of this Part are in addition to and (except to the extent to which this Part provides) do not derogate from the provisions of the *State Owned Corporations Act 1989*.

## **Part 3 – Dissolution of Waste Recycling and Processing Service**

### **11 Dissolution of Waste Recycling and Processing Service**

(1) The Waste Recycling and Processing Service is dissolved.

(2) The following Schedules have effect:

(a) Schedule 1 (Transfer of assets, rights and liabilities),

(b) Schedule 2 (Transfer of staff of Waste Recycling and Processing Service).

### **12 Corporation is same legal entity as Waste Recycling and Processing Service**

(1) On the dissolution of the Waste Recycling and Processing Service, the Corporation is taken for all purposes, including the rules of private international law, to be a continuation of, and the same legal entity as, the Waste Recycling and Processing Service.

(2) This section does not affect any transfer of assets, rights and liabilities under section 13 or 14.

### **13 Transfer of general assets, rights and liabilities of Waste Recycling and Processing Service**

(1) The general assets, rights and liabilities of the Waste Recycling and Processing Service are transferred to the Corporation.

(2) The general assets, rights and liabilities of the Waste Recycling and Processing Service are the assets, rights and liabilities of the Waste Recycling and Processing Service immediately before its dissolution by this Act, except any assets, rights and liabilities transferred by an order under section 14.

(3) Schedule 1 applies to the transfer effected by this section.

### **14 Transfer of specified assets, rights and liabilities of Waste Recycling and Processing Service**

(1) The Minister with the approval of the Treasurer may, at any time before the dissolution of the Waste Recycling and Processing Service, by order in writing, transfer such assets, rights and liabilities of the Waste Recycling and Processing Service as are specified or referred to in the order to the Ministerial Holding Corporation or to any other person acting on behalf of the State.

(2) Schedule 1 applies to a transfer under this section.

## **Part 4 – Miscellaneous**

### **15 Environmental reporting indicators**

(1) The Minister is from time to time to adopt environmental reporting indicators, including ecologically sustainable development indicators, for use by the Corporation.

(2) The indicators must include a methodology for making comparisons to international best practice in waste management.

(3) Before adopting any environmental reporting indicators, the Minister:

(a) must cause notice of the proposed indicators to be published in a daily newspaper circulating throughout the State, and

- (b) must cause copies of the proposed indicators to be made available for public inspection on the Internet and at each of the offices of the Corporation, and
- (c) must allow a period of at least 28 days for members of the public to send written comments to the Minister in relation to the proposed indicators, and
- (d) must take any such comments into consideration.

## **16 Waste received by Corporation**

Any waste received at a waste facility of the Corporation is the property of the Corporation.

## **17 Regulations**

The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

## **18 Repeal**

The *Waste Recycling and Processing Service Act 1970* is repealed.

## **19 (Repealed)**

## **20 Savings, transitional and other provisions**

Schedule 4 has effect.

## **21 Review of Act**

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

# **Schedule 1 Transfer of assets, rights and liabilities**

(Sections 11, 13 and 14)

## **1 Application and interpretation**

- (1) This Schedule applies to any transfer of assets, rights or liabilities under section 13 or 14.
- (2) In this Schedule, the person or body from which any assets, rights or liabilities are transferred is called the "**transferor**" and the person or body to which they are transferred is called the "**transferee**".

## **2 Vesting of undertaking in transferee**

- (1) When any assets, rights or liabilities are transferred by a transfer to which this Schedule applies, the following provisions have effect:
  - (a) the assets of the transferor vest in the transferee by virtue of this clause and without the need for any further conveyance, transfer, assignment or assurance,
  - (b) the rights or liabilities of the transferor become by virtue of this clause the rights or liabilities of the transferee,
  - (c) all proceedings relating to the assets, rights or liabilities commenced before the transfer by or against the transferor or a predecessor of the transferor and pending immediately before the transfer are taken to be proceedings pending by or against the transferee,
  - (d) any act, matter or thing done or omitted to be done in relation to the assets, rights or liabilities before the transfer by, to or in respect of the transferor or a

predecessor of the transferor is (to the extent to which that act, matter or thing has any force or effect) taken to have been done or omitted by, to or in respect of the transferee,

(e) a reference in any Act, in any instrument made under any Act or in any document of any kind to the transferor or a predecessor of the transferor is (to the extent to which it relates to those assets, rights or liabilities) taken to include a reference to the transferee.

- (2) The operation of this clause is not to be regarded:
  - (a) as a breach of contract or confidence or otherwise as a civil wrong, or
  - (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities, or
  - (c) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability.
- (3) The operation of this clause is not to be regarded as an event of default under any contract or other instrument.
- (4) No attornment to the transferee by a lessee from the transferor is required.
- (5) A transfer is subject to the terms and conditions of the order by which it is effected.
- (6) No compensation is payable to any person or body in connection with a transfer to which this Schedule applies except to the extent (if any) to which the order giving rise to the transfer so provides.

### **3 Date of vesting**

An order under section 14 takes effect on the date specified in the order, being a date on or before the dissolution of the Waste Recycling and Processing Service.

### **4 Consideration for vesting**

The Minister may, by order in writing, specify the consideration on which a transfer to which this Schedule applies is made and the value or values at which the assets, rights or liabilities are transferred.

### **5 State taxes not chargeable**

State tax is not chargeable in respect of:

- (a) a transfer to which this Schedule applies, or
- (b) anything certified by the Minister as having been done in consequence of such a transfer (for example, the transfer or conveyance of an interest in land).

### **6 Confirmation of vesting**

- (1) The Minister may, by notice in writing, confirm a transfer of particular assets, rights or liabilities by operation of this Schedule.
- (2) Such a notice is conclusive evidence of that transfer.

## **Schedule 2 Transfer of staff of Waste Recycling and Processing Service**

(Section 11)

### **1 Definition**

In this Schedule, "**former Waste Service staff**" means the members of staff of the Waste Recycling and Processing Service immediately before the dissolution of the Waste Recycling and Processing Service.

### **2 Transfer of former Waste Service staff to Waste Recycling and Processing Corporation**

(1) The former Waste Service staff are transferred to the Corporation and are to be regarded for all purposes as having become employees of the Corporation on the day on which the Waste Recycling and Processing Service is dissolved.

(2) The Waste Recycling and Processing Service is taken to be an authority to which Schedule 4 (Provisions relating to certain staff) of the *State Owned Corporations Act 1989* applies.

### **3 General saving of conditions of employment**

(1) A person who is transferred under this Schedule is (until other provision is duly made under any Act or law) to be employed in accordance with any relevant statutory provisions, awards, agreements and determinations that would have applied to the person if the person had not been transferred but had instead remained on the staff of the Waste Recycling and Processing Service (and the Waste Recycling and Processing Service had continued in existence).

(2) However, nothing in this clause affects the application of section 36 (1) of the *State Owned Corporations Act 1989* to the Corporation. Accordingly, the *Government and Related Employees Appeal Tribunal Act 1980* does not apply to the Corporation or any subsidiary of the Corporation.

### **4 Saving of leave**

A member of the staff of the Corporation who is a member of the former Waste Service staff retains any rights to annual leave, extended service leave, sick leave, and other forms of leave, accrued or accruing in his or her employment with the Waste Recycling and Processing Service.

### **5 No payment out on transfer or dual benefits**

(1) This clause applies to a person who becomes, because of this Schedule, a member of the staff of the Corporation.

(2) A person to whom this clause applies is not entitled to receive any payment or other benefit merely because the person ceases to be a member of the staff of the Waste Recycling and Processing Service.

(3) A person to whom this clause applies is not entitled to claim, both under this Act and under any other Act, dual benefits of the same kind for the same period of service.

## **Schedule 3 (Repealed)**

## **Schedule 4 Savings, transitional and other provisions**

(Section 20)

### **Part 1 – Preliminary**

#### **1 Regulations**

(1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

*Waste Recycling and Processing Corporation Act 2001*

(2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.

(3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

(a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or

(b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its

publication.

## **Part 2 – Provisions consequent on enactment of Waste Recycling and Processing Corporation Act 2001**

### **2 Definition**

In this Part:

**"Waste Recycling and Processing Service Board"** means the Waste Recycling and Processing Service Board constituted under the *Waste Recycling and Processing Service Act 1970*.

### **3 Board of Waste Recycling and Processing Service**

(1) A person who, immediately before the dissolution of the Waste Recycling and Processing Service, held office as a member of the Waste Recycling and Processing Service Board (including the Managing Director of the Waste Recycling and Processing Service) ceases to hold office as such a member or Managing Director.

(2) A person who ceases to hold office is not entitled to any remuneration or compensation because of the loss of that office.

### **4 First directors of board**

(1) The members of the Waste Recycling and Processing Service Board become, on the dissolution of the Waste Recycling and Processing Service, directors of the board of the Corporation for the residue of their terms of office as, and subject to the same conditions (including conditions as to remuneration) as those of their appointment as, members of the Waste Recycling and Processing Service Board.

(2) The office of such a director becomes vacant in the circumstances specified in section 7 (7) of this Act or clause 7 (1) of Schedule 8 to the *State Owned Corporations Act 1989* (clause 7 (1) (d) excepted).

(3) This clause does not apply in respect of the Managing Director of the Waste Recycling and Processing Service.

### **5 First chief executive officer**

(1) The Managing Director of the Waste Recycling and Processing Service is taken, on the dissolution of the Waste Recycling and Processing Service, to have been appointed as the chief executive officer of the Corporation for the residue of his or her term of office as Managing Director of the Waste Recycling and Processing Service.

(2) The other provisions of section 8 apply to a chief executive officer taken to be appointed under this clause.

### **6 Special provisions relating to former senior executive officers**

(1) This clause applies to a person to whom Schedule 2 or clause 4 of this Schedule applies who held an executive position under Part 2A of the *Public Sector Management Act 1988* immediately before the dissolution of the Waste Recycling and Processing Service.

(2) Any such person is not entitled to exercise a right of return to the public sector under section 42R, or to seek compensation under section 42S, of the *Public Sector Management Act 1988*:

(a) on ceasing to hold the executive position on the dissolution of the Waste Recycling and Processing Service, or

(b) on ceasing to be employed by the Corporation.

(3) This clause applies despite anything to the contrary in this Act.

### **7 Continuation of criminal proceedings against Waste Recycling and Processing Service**

(1) Proceedings for an offence against a law of New South Wales that were instituted against the Waste Recycling and Processing Service before its dissolution, or that could have been instituted against the Waste Recycling and Processing Service but for its dissolution, may be continued or instituted against the Corporation.

(2) A penalty notice served on the Waste Recycling and Processing Service for an offence against a law of New South Wales or any amount paid by the Waste Recycling and Processing Service in respect of such a penalty notice:

(a) is taken to be a penalty notice served on the Corporation, or

(b) is taken to be an amount paid by the Corporation,

as the case requires.

### Historical notes

The following abbreviations are used in the Historical notes:

Am	amended	No	number	Schs	Schedules
Cl	clause	p	page	Sec	section
Cl	clauses	pp	pages	Secs	sections
Div	Division	Reg	Regulation	Subdiv	Subdivision
Divs	Divisions	Regs	Regulations	Subdivs	Subdivisions
GG	Government Gazette	Rep	repealed	Subst	substituted
Ins	inserted	Sch	Schedule		

Table of amending instruments *Waste Recycling and Processing Corporation Act 2001 No 59*. Minister's second reading speech made: Legislative Assembly, 20.6.2001; Legislative Council, 3.7.2001. Assented to 17.7.2001. Date of commencement, 1.9.2001, sec 2 and GG No 132 of 31.8.2001, p 6566. This Act has been amended as follows:

2003	No 82	<i>Statute Law (Miscellaneous Provisions) Act (No 2) 2003</i> . Assented to 27.11.2003. Date of commencement of Sch 3, assent, sec 2 (1).
2005	No 64	<i>Statute Law (Miscellaneous Provisions) Act 2005</i> . Assented to 1.7.2005. Date of commencement of Sch 2.67, assent, sec 2 (2).

### Table of amendments

Sec 7	Am 2005 No 64, Sch 2.67 [1] [2].
Sec 19	Rep 2003 No 82, Sch 3.
Sch 3	Rep 2003 No 82, Sch 3.