



New South Wales

Waste Recycling and Processing Corporation (Authorised Transaction) Bill 2010 (No 2)

Explanatory note

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

Overview of Bill

The object of this Bill is to authorise and facilitate the transfer to the private sector of the assets, rights and liabilities of the Waste Recycling and Processing Corporation. In this Bill, the Corporation is referred to as *WSN* (to reflect the Corporation's trading name, WSN Environmental Solutions), and its assets, rights and liabilities are referred to as *WSN assets*.

The Bill has detailed provisions dealing with the transfer of WSN employees and their rights and entitlements on transfer. See **Schedule 4**.

Outline of provisions

Part 1 Preliminary

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of most of the provisions of the proposed Act on the date of assent, with provisions that will disestablish WSN as a statutory State owned corporation to commence on a day to be appointed by proclamation.

Clause 3 contains definitions of key terms used in the proposed Act. Schedule 1 contains other definitions. The clause defines *authorised transaction* to mean the transfer of WSN assets authorised by Part 2.

Part 2 The authorised transaction

Clause 4 authorises the transfer to the private sector of WSN assets.

Clause 5 authorises the transfer of WSN assets to one or more public sector agencies.

Clause 6 requires the proceeds of the transfer of WSN assets pursuant to the authorised transaction, after deduction of certain amounts for debt repayment and payment of expenses, to be paid into the Fund established under clause 7.

Clause 7 provides for the establishment of a Fund to be used for the payment of the outstanding landfill liabilities of WSN that become liabilities of the Waste Assets Management Corporation, with the balance of the Fund to be payable into the Consolidated Fund.

Clause 8 requires the Treasurer to prepare a report on the broad strategies for compliance with EPA waste management strategies and resolution of competition issues resulting from the authorised transaction.

Part 3 Facilitating the authorised transaction

Clause 9 provides that the Treasurer has and may exercise all such functions as are necessary or convenient for the purposes of the authorised transaction.

Clause 10 provides for the establishment of companies as *transaction companies* for the purposes of the authorised transaction (including by means of the corporate conversion of WSN).

Clause 11 provides that WSN and each transaction company has and may exercise all such functions as are necessary or convenient for the purposes of the authorised transaction. The clause also authorises the Treasurer to act for and on behalf of and in the name of WSN or a transaction company in the exercise of any of its functions for the purposes of the authorised transaction.

Clause 12 provides that WSN and transaction companies are subject to the direction and control of the Treasurer in the exercise of any of their functions for the purposes of the authorised transaction.

Clause 13 provides for the Treasurer to give directions for the grant of any relevant authorisation under various laws to a person who becomes or is proposed to become the new operator of WSN assets pursuant to the authorised transaction.

Clause 14 authorises the Treasurer to make vesting orders under Schedule 3 for the purposes of the authorised transaction.

Clause 15 references Schedule 4 which provides for the transfer of employment of employees of WSN in connection with the authorised transaction.

Clause 16 establishes the Waste Assets Management Corporation to hold WSN assets acquired by it or transferred to it and to carry on any activities or business that relate to any WSN assets held by it.

Clause 17 provides that various State taxes and charges are not payable by public sector agencies in connection with transactions for the purposes of the authorised transaction and authorises the Treasurer to exempt other persons from liability for State taxes and charges in connection with the authorised transaction.

Clause 18 exempts contracts for the sale of land from section 52A of the *Conveyancing Act 1919* when entered into for the purposes of the authorised transaction.

Part 4 Miscellaneous

Clause 19 authorises the release of information by the Auditor-General for the purposes of the authorised transaction.

Clause 20 authorises the Treasurer to delegate any function of the Treasurer under the proposed Act to the Secretary of the Treasury or any other officer of the Government Service prescribed by the regulations.

Clause 21 provides for the proposed Act to bind the State and all other Australian jurisdictions.

Clause 22 provides for the provisions of the proposed Act to prevail in the event of an inconsistency between the proposed Act and other State legislation.

Clause 23 provides for the operation of the proposed Act outside the State.

Clause 24 provides for the interpretation of the proposed Act so as not to exceed the legislative power of the State.

Clause 25 prevents the operation of the proposed Act and the various arrangements and actions that it authorises from constituting a breach of various civil obligations.

Clause 26 protects the State from claims for compensation in connection with the enactment or operation of the proposed Act.

Clause 27 provides for the issue of evidentiary certificates by the Treasurer.

Clause 28 is a general regulation-making power.

Clause 29 provides a savings and transitional regulation-making power.

Clause 30 repeals the *Waste Recycling and Processing Corporation Act 2001*.

Schedule 1 Interpretative provisions

Schedule 1 contains definitions and other interpretative provisions for the purposes of the proposed Act.

Schedule 2 Corporate conversion of WSN

Schedule 2 provides the procedure for the corporate conversion of WSN into a transaction company.

Schedule 3 Vesting of assets, rights and liabilities

Schedule 3 provides for the making of vesting orders by the Treasurer for the purposes of the authorised transaction. Vesting orders operate to vest assets, rights and liabilities of WSN or a transaction company in the transferee specified in the order.

Schedule 4 Employee protections

Schedule 4 provides for the transfer of employees of WSN either to an employer in the private sector or to a Public Service Department as an excess employee of the Department or as staff of the proposed Waste Assets Management Corporation. Permanent and temporary employees can elect not to be transferred to the private sector.

The following employment protections will apply for the benefit of transferred employees:

- (a) the terms and conditions of employment of an employee transferred to the private sector are to be the same as applied to the employee immediately before transfer,
- (b) those terms and conditions will not be able to be varied for permanent and temporary employees during their *employment guarantee period* (which is 3 years, or a shorter period for those temporary employees who have less than 3 years to run on their appointment),
- (c) employment of permanent and temporary employees with the private sector employer will not be able to be terminated during their employment guarantee period (with exceptions for such things as serious misconduct and disciplinary termination),
- (d) employees transferred to a Public Service Department will be employed on the terms and conditions that applied before their transfer and (in the case of employees who are transferred as excess employees) their employment will be managed in accordance with the Public Service excess employee policy,
- (e) employees will be entitled to remain as members of or contributors to their current superannuation schemes and will retain any rights to accrued leave,
- (f) service with WSN will count as service with the new employer.

The Schedule also authorises the payment of transfer payments to transferred employees.

Explanatory note

Schedule 5 Waste Assets Management Corporation

Schedule 5 makes further provision for the proposed Waste Assets Management Corporation, including provision for the following:

- (a) the management and staff of the Corporation,
- (b) the formation or acquisition of subsidiaries of the Corporation,
- (c) the transfer of assets, rights and liabilities of the Corporation,
- (d) dissolution of the Corporation.

Schedule 6 Amendment of Acts

Schedule 6 makes consequential amendments to various Acts in connection with the authorised transaction.