

**WASTE DISPOSAL (FURTHER AMENDMENT) ACT 1989**  
**No. 38**

NEW SOUTH WALES



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**WASTE DISPOSAL (FURTHER AMENDMENT) ACT 1989 No. 38**

NEW SOUTH WALES



**Act No. 38, 1989**

An Act to amend the Waste Disposal Act 1970 to reconstitute the Waste Management Authority; to amend certain other Acts consequentially; and for other purposes. [Assented to 10 May 1989]

*Waste Disposal (Further Amendment) 1989*

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**The Legislature of New South Wales enacts:**

**Short title**

1. This Act may be cited as the Waste Disposal (Further Amendment) Act 1989.

**Commencement**

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

**Amendment of Waste Disposal Act 1970 No. 97**

3. The Waste Disposal Act 1970 is amended as set out in Schedule 1.

**Consequential amendment of other Acts**

4. The Acts specified in Schedule 2 are amended as set out in that Schedule.

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**SCHEDULE 1—AMENDMENT OF WASTE DISPOSAL ACT 1970**

(Sec. 3)

(1) Section 5 (**Definitions**)—

(a) Section 5—

Omit the definitions of “Deputy Director” and “Director”, insert instead in alphabetical order:

“Deputy Managing Director” means the Deputy Managing Director of the Authority;

“Managing Director” means the Managing Director of the Authority;

(b) Section 5 (2)—

At the end of section 5, insert:

(2) In this Act—

(a) a reference to a function includes a reference to a power, authority and duty; and

(b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

(2) Section 6 (**Constitution of the Metropolitan Waste Disposal Region**)—

Omit “the Schedule” wherever occurring, insert instead “Schedule 1”.

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SCHEDULE 1—AMENDMENT OF WASTE DISPOSAL ACT 1970—  
*continued*

(3) Sections 7–8D—

Omit sections 7 and 8, insert instead:

**Constitution of Authority**

7. (1) There is constituted by this Act a corporation with the corporate name of the Waste Management Authority of New South Wales.

(2) The Authority—

- (a) has the functions conferred or imposed on it by or under this or any other Act; and
- (b) is, for the purposes of any Act, a statutory body representing the Crown.

**Constitution of Waste Management Authority Board**

8. (1) There shall be a Waste Management Authority Board.

(2) The Board shall consist of—

- (a) the Managing Director; and
- (b) 6 part-time members, being persons appointed by the Governor on the recommendation of the Minister.

(3) The persons recommended by the Minister must have such managerial or other qualifications as the Minister considers necessary to enable the Board to carry out its functions.

(4) Schedule 2 has effect with respect to the constitution and procedure of the Board.

**Board to determine policies of Authority**

8A. (1) The Waste Management Authority Board has the function of determining the policies of the Authority.

(2) In exercising that function, the Board shall, as far as practicable, ensure that the activities of the Authority are carried out properly, effectively and efficiently.

**Executive officers of Authority**

8B. (1) The Governor may appoint a Managing Director, and a Deputy Managing Director, of the Authority.

(2) Schedule 3 has effect with respect to the Managing Director and the Deputy Managing Director.

**Functions of executive officers**

8C. (1) The affairs of the Authority shall be managed and controlled by the Managing Director in accordance with the policies of the Waste Management Authority Board.

*Waste Disposal (Further Amendment) 1989***SCHEDULE 1—AMENDMENT OF WASTE DISPOSAL ACT 1970—**  
*continued*

(2) Any act, matter or thing done in the name of, or on behalf of, the Authority by the Managing Director shall be taken to have been done by the Authority.

(3) The Deputy Managing Director has such functions in connection with the affairs of the Authority (excluding those of the Managing Director as a member of the Waste Management Authority Board) as the Managing Director determines.

(4) During the illness or absence of the Managing Director, or during a vacancy in the office of Managing Director, the Deputy Managing Director has all the functions of the Managing Director, including—

- (a) functions as a member of the Waste Management Authority Board; and
- (b) functions delegated to the Managing Director.

**Ministerial control**

8D. The Waste Management Authority Board, the Managing Director and the Deputy Managing Director are, in the exercise of their functions, subject to the control and direction of the Minister.

(4) Section 9 (**Executive officer entitled to re-appointment in certain cases**)—

- (a) Before “Director” wherever occurring, insert “Managing”.
- (b) Omit “, otherwise than pursuant to subsection (1) (paragraph (h) excepted) or (2) of section 8”, insert instead “because of the expiration of the period for which the Managing Director or Deputy Managing Director was appointed or because of resignation”.

(5) Section 10 (**Meetings of the Authority**)—

Omit the section.

(6) Section 15 (**Preservation of certain rights etc.**)—

Before “Director” wherever occurring, insert “Managing”.

(7) Section 21—

Omit the section, insert instead:

**Delegation**

21. The Authority may delegate any of its functions (other than this power of delegation)—

- (a) to the Deputy Managing Director; or

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SCHEDULE 1—AMENDMENT OF WASTE DISPOSAL ACT 1970—  
*continued*

- (b) to any servant of the Authority; or
  - (c) to the council of an area in which a depot is situated or a regional depot is established, or, with the consent of that council, to an employee of that council; or
  - (d) to any person of whose services the Authority makes use pursuant to this or any other Act; or
  - (e) to any other person with the approval of the Minister.
- (8) Section 21D (**Advisory Board to monitor operation of incineration facility**)—
  - (a) Section 21D (1) (a)—  
Omit “Director”, insert instead “Chairperson of the Waste Management Authority Board”.
  - (b) Section 21D (1) (a1)—  
After section 21D (1) (a), insert:  
(a1) the Managing Director;
  - (c) Section 21D (1) (g)—  
Omit “Authority”, insert instead “Waste Management Authority Board”.
- (9) Section 28 (**Authority to maintain register**)—  
Before “Director” wherever occurring, insert “Managing”.
- (10) Sections 51 (**Proof of certain matters not required**) and 53 (**Documents—how authenticated**)—  
Omit the sections.
- (11) Section 55 (**Proceedings for offences**)—  
Section 55 (2)—  
Omit “Director or of such officer of the Authority as may be authorised in writing by the Authority for the purposes of this subsection”, insert instead “Managing Director or Deputy Managing Director”.
- (12) Section 59—  
After section 58, insert:  
**Savings and transitional provisions**  
59. Schedule 4 has effect.
- (13) Schedule—  
Omit “SCHEDULE”, insert instead “SCHEDULE 1”.

*Waste Disposal (Further Amendment) 1989***SCHEDULE 1—AMENDMENT OF WASTE DISPOSAL ACT 1970—  
*continued*****(14) Schedules 2–4—**

At the end of the Act, insert:

**SCHEDULE 2—CONSTITUTION AND PROCEDURE OF THE BOARD**

(Sec. 8 (4))

**Definitions**

1. In this Schedule—

“Board” means the Waste Management Authority Board;

“member” means the Managing Director or a part-time member of the Board;

“part-time member” means a member of the Board other than the Managing Director.

**Chairperson of Board**

2. (1) Of the part-time members of the Board, one shall (in and by his or her instrument of appointment as a part-time member or in and by another instrument executed by the Governor) be appointed as Chairperson of the Board.

(2) The Governor may remove a part-time member from the office of Chairperson at any time.

(3) A person who is a part-time member and Chairperson vacates office as Chairperson if the person—

(a) is removed from that office by the Governor; or

(b) resigns that office by instrument in writing addressed to the Minister; or

(c) ceases to be a part-time member.

**Deputies**

3. (1) The Minister may, from time to time, appoint a person to be the deputy of a part-time member, and the Minister may revoke any such appointment.

(2) In the absence of a part-time member, the part-time member's deputy—

(a) shall, if available, act in the place of the part-time member; and

(b) while so acting, has all the functions of the part-time member and shall be taken to be a part-time member.

(3) The deputy of a part-time member who is Chairperson of the Board does not (because of this clause) have the part-time member's functions as Chairperson.

(4) A person while acting in the place of a part-time member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.

**Terms of office of part-time members**

4. Subject to this Schedule, a part-time member shall hold office for such period (not exceeding 4 years) as may be specified in the part-time member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

*Waste Disposal (Further Amendment) 1989***SCHEDULE 1—AMENDMENT OF WASTE DISPOSAL ACT 1970—**  
*continued***Remuneration**

5. A part-time member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the part-time member.

**Vacancy in office of part-time member**

6. (1) The office of a part-time member becomes vacant if the member—
- (a) dies; or
  - (b) completes a term of office and is not re-appointed; or
  - (c) resigns the office by instrument in writing addressed to the Minister; or
  - (d) is removed from office by the Governor under this clause or under Part 8 of the Public Sector Management Act 1988; or
  - (e) is absent from 4 consecutive meetings of the Board of which reasonable notice has been given to the part-time member personally or in the ordinary course of post, except on leave granted by the Board or unless, before the expiration of 4 weeks after the last of those meetings, the part-time member is excused by the Board for having been absent from those meetings; or
  - (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
  - (g) becomes a temporary patient or a continued treatment patient within the meaning of the Mental Health Act 1958, a forensic patient within the meaning of the Mental Health Act 1983 or a protected person within the meaning of the Protected Estates Act 1983; or
  - (h) is convicted in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence which, if committed in New South Wales, would be an offence so punishable.
- (2) The Governor may remove a part-time member from office at any time.

**Disclosure of pecuniary interests**

7. (1) If—
- (a) a member of the Board has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Board; and
  - (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,

the member shall, 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 Board.

(2) A disclosure by a member of the Board at a meeting of the Board that the member—

- (a) is a member, or is in the employment, of a specified company or other body; or



*Waste Disposal (Further Amendment) 1989***SCHEDULE 1—AMENDMENT OF WASTE DISPOSAL ACT 1970—**  
*continued*

- (b) is a partner, or is in the employment, of a specified person; or
- (c) has some other specified interest relating to a specified company or other body or to a specified person,

is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).

(3) Particulars of any disclosure made under this clause shall be recorded by the Board in a book kept for the purpose and that book shall be open at all reasonable hours to inspection by any person on payment of the fee determined by the Board.

(4) After a member of the Board has disclosed the nature of an interest in any matter, the member shall not, unless the Minister or the Board otherwise determines—

- (a) be present during any deliberation of the Board with respect to the matter; or
- (b) take part in any decision of the Board with respect to the matter.

(5) For the purposes of the making of a determination by the Board under subclause (4), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates shall not—

- (a) be present during any deliberation of the Board for the purpose of making the determination; or
- (b) take part in the making by the Board of the determination.

(6) A contravention of this clause does not invalidate any decision of the Board.

**Filling of vacancy in office of part-time member**

8. If the office of any part-time member becomes vacant, a person shall, subject to this Act, be appointed to fill the vacancy.

**Effect of certain other Acts**

9. (1) The Public Sector Management Act 1988 does not apply to the appointment of a part-time member and a part-time member is not, as a part-time member, subject to that Act (except Part 8).

(2) If by or under any other Act provision is made—

- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office; or
- (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a part-time member or from accepting and retaining any remuneration payable to the person under this Act as such a part-time member.

(3) The office of a part-time member is not, for the purposes of any Act, an office or place of profit under the Crown.

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**SCHEDULE 1—AMENDMENT OF WASTE DISPOSAL ACT 1970—**  
*continued*

**Liability of members etc.**

10. No matter or thing done by the Board, any member or any person acting under the direction of the Board shall, if the matter or thing was done in good faith for the purposes of executing this or any other Act, subject a member or a person so acting personally to any action, liability, claim or demand.

**General procedure**

11. The procedure for the calling of meetings of the Board and for the conduct of business at those meetings shall, subject to this Act and the regulations, be as determined by the Board.

**Quorum**

12. The quorum for a meeting of the Board is 4 members.

**Presiding member**

13. (1) The Chairperson of the Board or, in the absence of the Chairperson, another part-time member elected to chair the meeting by the members present shall preside at a meeting of the Board.

(2) The person presiding at any meeting of the Board has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

**Voting**

14. A decision supported by a majority of the votes cast at a meeting of the Board at which a quorum is present is the decision of the Board.

**Minutes**

15. The Board shall cause full and accurate minutes to be kept of the proceedings of each meeting of the Board.

**Transaction of business outside meetings or by telephone etc.**

16. (1) The Board may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the Board for the time being, and a resolution in writing approved in writing by a majority of those members shall be taken to be a decision of the Board.

(2) The Board may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.

(3) For the purposes of—

- (a) the approval of a resolution under subclause (1); or
- (b) a meeting held in accordance with subclause (2),

the Chairperson and each member of the Board have the same voting rights as they have at an ordinary meeting of the Board.

(4) A resolution approved under subclause (1) shall, subject to the regulations, be recorded in the minutes of the Board.

(5) Papers may be circulated among members of the Board for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

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**SCHEDULE 1—AMENDMENT OF WASTE DISPOSAL ACT 1970—  
*continued***

**Committees**

17. (1) The Board may establish committees to assist it in connection with the exercise of its functions.

(2) It does not matter that any or all of the members of a committee are not members of the Board.

(3) The procedure for the calling of meetings of a committee and for the conduct of business at those meetings shall be as determined by the Board or (subject to any determination of the Board) by the committee.

**First meeting**

18. The Minister shall call the first meeting of the Board in such manner as the Minister thinks fit.

**SCHEDULE 3—PROVISIONS RELATING TO THE EXECUTIVE  
OFFICERS**

(Sec. 8B (2))

**Definition**

1. In this Schedule—

“executive officer” means the Managing Director or the Deputy Managing Director.

**Acting executive officers**

2. (1) The Minister may, from time to time, appoint a person to act in the office of an executive officer during a vacancy in the office or during the illness or absence of the executive officer and the person, while so acting, has all the functions of the executive officer and shall be taken to be the executive officer.

(2) The Minister may, at any time, remove any person from an office to which the person was appointed under this clause.

(3) A person while acting in the office of an executive officer is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.

**Term of office**

3. Subject to this Schedule, an executive officer shall hold office for such period, not exceeding 5 years, as may be specified in the instrument of appointment of the executive officer, but is eligible (if otherwise qualified) for re-appointment.

**Executive officer to be full-time**

4. An executive officer shall devote the whole of his or her time to the duties of his or her office, except to the extent permitted by this Act or by the Minister.

*Waste Disposal (Further Amendment) 1989***SCHEDULE 1—AMENDMENT OF WASTE DISPOSAL ACT 1970—  
*continued*****Remuneration**

5. An executive officer is entitled to be paid—

- (a) remuneration in accordance with the Statutory and Other Offices Remuneration Act 1975; and
- (b) such travelling and subsistence allowances as the Minister may from time to time determine in respect of the executive officer.

**Casual vacancies**

6. (1) The office of an executive officer becomes vacant if the executive officer—

- (a) dies; or
- (b) completes a term of office and is not re-appointed; or
- (c) resigns the office by instrument in writing addressed to the Minister; or
- (d) is retired or removed from office by the Governor under this clause or under Part 8 of the Public Sector Management Act 1988; or
- (e) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
- (f) becomes a temporary patient or a continued treatment patient within the meaning of the Mental Health Act 1958, a forensic patient within the meaning of the Mental Health Act 1983 or a protected person within the meaning of the Protected Estates Act 1983; or
- (g) is convicted in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence which, if committed in New South Wales, would be an offence so punishable; or
- (h) engages in any paid employment outside the duties of his or her office, except with the consent of the Minister.

(2) An executive officer may, after reaching the age of 60 years, be retired from office by the Governor.

(3) The Governor may remove an executive officer from office for incapacity, incompetence or misbehaviour.

**Filling of vacancy in office of an executive officer**

7. If the office of an executive officer becomes vacant, a person shall, subject to this Act, be appointed to fill the vacancy.

**Public Sector Management Act 1988 not to apply**

8. The Public Sector Management Act 1988 does not apply to or in respect of the appointment of an executive officer and an executive officer is not, as an executive officer, subject to that Act (except Part 8).

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**SCHEDULE 1—AMENDMENT OF WASTE DISPOSAL ACT 1970—**  
*continued*

**SCHEDULE 4—SAVINGS AND TRANSITIONAL PROVISIONS**

(Sec. 59)

**PART 1—PRELIMINARY****Savings and transitional regulations**

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

Waste Disposal (Amendment) Act 1989;

Waste Disposal (Further Amendment) Act 1989.

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

(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 THE ENACTMENT OF THE WASTE DISPOSAL (FURTHER AMENDMENT) ACT 1989****Definitions**

2. In this Part—

“former Authority” means the Waste Management Authority of New South Wales as constituted in accordance with this Act immediately before the relevant commencement and formerly known as the Metropolitan Waste Disposal Authority;

“reconstituted Authority” means the Waste Management Authority of New South Wales constituted in accordance with this Act;

“relevant commencement” means the commencement of Schedule 1 (3) to the Waste Disposal (Further Amendment) Act 1989.

**Continuity of Authority**

3. The reconstituted Authority is a continuation of, and the same legal identity as, the former Authority.

**Members of former Authority**

4. (1) A person who, immediately before the relevant commencement, held office as a member of the former Authority ceases to hold office as such on that commencement.

(2) A person who so ceases to hold office as a member of the former Authority is not entitled to any remuneration or compensation because of the loss of that office.

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**SCHEDULE 1—AMENDMENT OF WASTE DISPOSAL ACT 1970—**  
*continued*

(3) A reference in any other Act, in any instrument made under any Act or in any other instrument of any kind to a member of the former Authority shall be read as a reference to a member of the Waste Management Authority Board.

**Existing executive officers**

5. The person who, immediately before the relevant commencement, held office—

- (a) as Director of the former Authority—shall be taken to have been appointed as Managing Director of the reconstituted Authority; or
- (b) as Deputy Director of the former Authority—shall be taken to have been appointed as Deputy Managing Director of the reconstituted Authority,

on the same terms and conditions, and for the rest of the term of office, on and for which the person was appointed as Director, or Deputy Director, of the former Authority.

**Existing delegation**

6. A delegation by the former Authority of any of the former Authority's functions made under section 21 of this Act and in force immediately before the relevant commencement shall be taken to be a delegation made under that section by the reconstituted Authority.

**SCHEDULE 2—CONSEQUENTIAL AMENDMENT OF OTHER ACTS**

(Sec. 4)

**Environmentally Hazardous Chemicals Act 1985 No. 14—**

**Schedule 1 (Provisions relating to the Committee)—**

**Clause 2 (f)—**

Omit the paragraph, insert instead:

- (f) one shall be a person nominated by the Waste Management Authority of New South Wales;

**State Pollution Control Commission Act 1970 No. 95—**

**Section 18 (Technical Advisory Committee)—**

**Section 18 (2) (i)—**

Omit the paragraph, insert instead:

- (i) one shall be a person nominated by the Waste Management Authority of New South Wales;

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SCHEDULE 2—CONSEQUENTIAL AMENDMENT OF OTHER  
ACTS—*continued*

**Statutory and Other Offices Remuneration Act 1975 (1976 No. 4)—**

**Schedule 2 (Public Offices)—**

Omit the following:

Director of the Waste Management Authority of New South  
Wales.

Deputy Director of the Waste Management Authority of New  
South Wales.

insert instead:

Managing Director of the Waste Management Authority of New  
South Wales.

Deputy Managing Director of the Waste Management Authority  
of New South Wales.

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[*Minister's second reading speech made in—  
Legislative Assembly on 5 April 1989  
Legislative Council on 2 May 1989*]