



## Regulatory Impact Statement (Consultation)

# **Proposed Protection of the Environment Operations (Waste) Regulation 2014**

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## Executive summary

The *Protection of the Environment Operations Act 1997* (the POEO Act) is the primary environmental legislation in NSW. Regulations may be made under the POEO Act to give effect to powers in the Act, including discharge into sewers, noise, vehicles and vessels, air emissions, environment protection licences and waste.

The Protection of the Environment Operations (Waste) Regulation 2005 (the existing Waste Regulation) relates to the regulation of waste and resource recovery in NSW. The existing Waste Regulation gives effect to the broad objectives and specific provisions within the POEO Act relating to waste, including:

- the administration of the section 88 contribution (the waste levy) within the POEO Act
- waste tracking and transportation requirements and obligations
- management requirements for special wastes (e.g. asbestos and clinical and related waste)
- prohibition against using certain residue waste for growing vegetation
- provisions for the recycling of consumer packaging
- exemption powers from the requirements of the existing Waste Regulation for waste transport, immobilisation, application to land and use of waste as fuel.

The existing Waste Regulation is due for staged repeal on 1 September 2014 in accordance with the *Subordinate Legislation Act 1989*. The Subordinate Legislation Act requires that Regulations be repealed on their fifth anniversary. The existing Waste Regulation was initially due for staged repeal in 2010; however, the repeal has been deferred on four occasions, each extending operation of the Regulation for an additional one-year period.

This Consultation Regulatory Impact Statement (Consultation RIS) has been prepared to assess the new Protection of the Environment Operations (Waste) Regulation 2014 (the proposed Waste Regulation). The Consultation RIS primarily assesses proposed changes to the existing Waste Regulation, and also includes an analysis of limited amendments to Schedule 1 of the POEO Act and the replacement of clause 108 of the Protection of the Environment Operations (General) Regulation 2009 (the POEO General Regulation). The Consultation RIS explains the need for government action, states the objectives of that action, and analyses the costs and benefits of a range of options.

This Consultation RIS takes an issues-based approach to the proposed Waste Regulation. Each main section of the proposed Waste Regulation is addressed separately as a discrete ‘issue’. For each issue, alternative options by which the objectives of the proposed Waste Regulation can be achieved are outlined, and the costs and benefits to individuals, the community, business and to government of each of the options are examined.

The proposed Waste Regulation was also examined for clarity, effectiveness and consistency with other legislation, where relevant, to ensure it is achieving its objectives and is not unduly complicated to implement.

The proposed Waste Regulation retains the vast majority of the provisions of the existing Waste Regulation and Schedule 1 of the POEO Act in substantially the same form, and replaces clause 108 of the POEO General Regulation. The principal proposed changes to the waste regulatory framework in the proposed Waste Regulation are:

Part	Proposed changes	Reference in this Consultation RIS
<b>Waste levy and monitoring requirements</b>	<p>From 1 July 2015:</p> <ul style="list-style-type: none"> <li>• Licensed waste processing, storage, recovery, recycling, treatment or transfer facilities (intermediary facilities) in the Regulated Area (other than certain specified facilities<sup>1</sup>) will incur liability for the waste levy on waste (other than liquid waste) received. The liability to pay only arises when certain prescribed triggers are met.</li> <li>• Waste disposal facilities receiving waste from intermediary facilities required to pay the levy will receive a 'credit' from the EPA in relation to that waste.</li> <li>• Intermediary facilities in the Regulated Area which are required to pay the waste levy will be required to keep waste records and report monthly to the EPA.</li> <li>• Non-levy paying intermediary facilities in the Regulated Area will be required to keep waste records and report annually to the EPA.</li> <li>• <b>All</b> waste facilities which pay the waste levy (including intermediary facilities and facilities receiving &lt; 5000 tonnes p/a) will be required to install and operate a weighbridge.</li> <li>• Intermediary facilities which pay the waste levy must conduct volumetric surveys.</li> <li>• <b>All</b> licensed waste facilities may be required by the EPA to install and operate a video monitoring system.</li> </ul>	Section 3.1 Section 4.1 Section 5.1
<b>Waste tracking</b>	Consignors and transporters of non-hazardous waste will be required to provide prescribed information in the EPA's on-line tracking system on the transport of at least 10 tonnes of that waste interstate from the Sydney, Newcastle, Central Coast and Wollongong metropolitan areas.	Section 3.2 Section 4.2 Section 5.2
<b>Management of special waste</b>	Consignors, transporters and recipients of waste tyres and asbestos, will in prescribed circumstances be required to report information to the EPA regarding the asbestos or waste tyres, their transport or disposal.	Section 3.3 Section 4.3 Section 5.3
<b>Prohibition against using certain waste for growing vegetation</b>	No significant amendments proposed.	Section 3.4 Section 4.4 Section 5.4

<sup>1</sup> The following intermediary facilities are exempt from the requirement to pay the levy (other than for trackable liquid waste):

- facilities required to be licensed for metallurgical activities (other than scrap metal processing), pulp or paper production or ceramic works
- facilities required to be licensed for composting, container reconditioning or contaminated soil treatment, and not any other waste activities
- facilities used only to receive hazardous waste, restricted solid waste, clinical and related waste, non-trackable liquid waste or any combination of these.

<b>Waste and Sustainability Improvement Scheme (WASIP)</b>	WASIP is being replaced with alternative funding arrangements for local councils through the NSW Government's Waste Less, Recycle More initiative. The provisions regarding WASIP in the existing Waste Regulation are not included in the proposed Waste Regulation.	Section 3.5 Section 4.5 Section 5.5
<b>Recycling of consumer packaging</b>	No significant amendments proposed.	Section 3.6 Section 4.6 Section 5.6
<b>Licensing thresholds</b>	The licensing thresholds for resource recovery, waste processing (non-thermal treatment) and waste storage facilities will be lowered to: <ol style="list-style-type: none"> <li>more than 1000 tonnes or m<sup>3</sup> of general waste on site at any one time</li> <li>for resource recovery and waste processing (non-thermal treatment) facilities, processing of more than 50 tonnes of general waste a day or 12,000 tonnes of general waste a year</li> <li>for waste storage facilities, more than 12,000 tonnes of general waste received per year</li> <li>for waste tyres, more than 5 tonnes of waste tyres or 500 waste tyres stored at any time.</li> </ol>	Section 3.7 Section 4.7 Section 5.7
<b>Land pollution offence</b>	'Land pollution' (for the purpose of the definition of the offence in the POEO Act) will be defined so as to include hazardous waste, restricted solid waste, >10 tonnes of asbestos waste, >100 tonnes or >10,000 waste tyres.	Section 3.8 Section 4.8 Section 5.8

The proposed Waste Regulation aims to reduce risks to human health and the environment and maintain the integrity of the waste levy framework by:

- reducing both illegal and distortionary activities in the waste sector, particularly within recycling, waste storage, waste processing and resource recovery facilities, delivering significant benefits to society
- providing the NSW Environment Protection Authority (EPA) with increased information about illegal dumping and inappropriate waste transport and disposal, so the EPA has enhanced capacity to reduce environmental and human health risks
- reducing the licensing thresholds for waste storage, waste processing and resource recovery facilities, to ensure environmental standards are met by smaller facilities, and to establish a level playing field across the waste industry.

In accordance with the Subordinate Legislation Act, this Consultation RIS will be made available along with the proposed Waste Regulation for public comment as part of the formal consultation process. Following due consideration of the comments provided in consultation, it is proposed to:

1. make a new Protection of the Environment Operations (Waste) Regulation 2014, and
2. modify the applicable provisions of the POEO Act and POEO General Regulation which remain of relevance for the regulation of the waste industry in NSW.

# Glossary

Term	Definition
APC	Australian Packaging Covenant
CIE 2014	<i>NSW Waste Regulation</i> : Final draft report prepared for the NSW Environment Protection Authority, The Centre for International Economics, Sydney.
COAG 2011	<i>Packaging Impacts Consultation Regulation Impact Statement</i> , COAG Standing Council on Environment and Water, Canberra.
Consultation RIS	This Consultation Regulatory Impact Statement
Controlled Waste NEPM	National Environment Protection (Movement of Controlled Waste between States and Territories) Measure
EPA	NSW Environment Protection Authority
EPHC 2010	<i>Decision Regulatory Impact Statement: Used Packaging Materials</i> , Environment Protection and Heritage Council
Existing Waste Regulation	Protection of the Environment Operations (Waste) Regulation 2005 (NSW)
ICAC	Independent Commission Against Corruption
Intermediary facility	Waste processing, storage, recovery, recycling, treatment or transfer facility
POEO Act	<i>Protection of the Environment Operations Act 1997</i> (NSW)
POEO General Regulation	Protection of the Environment Operations (General) Regulation 2009 (NSW)
Proposed Waste Regulation	Proposed Protection of the Environment Operations (Waste) Regulation 2014 (NSW), included as Appendix A
Regulated Area	Means: <ol style="list-style-type: none"> <li>Sydney Metropolitan Area (SMA) – broadly, the greater Sydney region</li> <li>Extended Regulated Area (ERA) – broadly, the Central Coast, Hunter, Shoalhaven, Illawarra, Newcastle, Lake Macquarie and Port Stephens, and Wingecarribee</li> <li>Regional Regulated Area (RRA) – broadly, the north coast of NSW, the upper Hunter and Blue Mountains</li> </ol>
Subordinate Legislation Act	<i>Subordinate Legislation Act 1989</i> (NSW)
Used Packaging NEPM	National Environment Protection (Used Packaging Materials) Measure
VENM	Virgin Excavated Natural Material
WARR Act	<i>Waste Avoidance and Resource Recovery Act 2001</i> (NSW)
Waste levy	The waste contribution payable by occupiers of certain licensed waste facilities under section 88 of the POEO Act

See abbreviations for referenced materials in Section 7. References.

# **1. Introduction**

This section sets out the framework for this Consultation Regulatory Impact Statement for the proposed Protection of the Environment Operations (Waste) Regulation 2014. It explains the requirements for Regulatory Impact Statements as set out in the *Subordinate Legislation Act 1989* and the NSW Government *Guide to Better Regulation* (DPC 2009), and the scope and structure of the Consultation RIS.

The section concludes with an explanation of the consultation process for the Consultation RIS and proposed Waste Regulation.

## **1.1 Scope**

The Consultation RIS relates to the proposed remaking and modification of the existing Waste Regulation, the Protection of the Environment Operations (Waste) Regulation 2005, and modification of the applicable provisions of Schedule 1 to the *Protection of the Environment Operations Act 1997* (POEO Act) and the Protection of the Environment Operations (General) Regulation 2009 (POEO General Regulation).

The Consultation RIS takes an issues-based approach, examining the objectives and impacts of the main sections of the proposed Waste Regulation. For each key issue identified, the EPA:

1. established the fundamental problem to be addressed, the objective of the EPA for making the Regulation, and possible alternatives for the provision
2. collected data relevant for each option from EPA databases or other sources
3. calculated the costs and benefits of each option – where it was not possible to quantify the costs and benefits of options, they are defined qualitatively.

Matters of a machinery nature, and those matters unlikely to impose an appreciable burden, cost or disadvantage, are not assessed in this Consultation RIS. Such matters are excluded from the RIS requirements under the Subordinate Legislation Act.

The Consultation RIS also does not include consideration of matters relating to the need for, or level of the waste levy, which is the subject of separate government determination processes.

## **1.2 Requirements of the *Subordinate Legislation Act 1989***

The Subordinate Legislation Act relates to the making and staged repeal of subordinate legislation such as Regulations. The Act requires a Regulatory Impact Statement (RIS) to be prepared for a principal Regulation which addresses the substantive matters to be dealt with by the Regulation.

A RIS must include:

1. a statement of the objectives sought to be achieved by the Regulation and the reasons for them
2. an identification of the alternative options by which those objectives can be achieved
3. an assessment of the costs and benefits of the proposed Regulation, including the costs and benefits relating to resource allocation, administration and compliance
4. an assessment of the costs and benefits of each alternative option to the making of the Regulation (including the option of not proceeding with any action), including the costs and benefits relating to resource allocation, administration and compliance
5. an assessment as to which of the alternative options involve the greatest net benefit or least net cost to the community, and
6. a statement of the consultation program to be undertaken.

This Consultation RIS includes an issues-based assessment of objectives, options, costs and benefits for the proposed Waste Regulation, and a statement of the consultation program.

### 1.3 Better regulation principles

In the NSW Government's *Guide to Better Regulation* (DPC 2009), there are seven principles which characterise good regulation and the minimisation of red tape. These principles are to be followed in the development of every regulatory proposal. The table below sets out the principles and how this Consultation RIS complies with them.

Principle	RIS compliance
The need for government action should be established	Due to the range of issues dealt with by the proposed Waste Regulation, the need for government action is set out in Section 2.1 of this Consultation RIS, and in the 'What is the problem?' section for each separate issue identified in Section 4.
The objective of government action should be clear	Due to the range of issues dealt with by the proposed Waste Regulation, the objective of government action is set out for each separate issue identified in Section 4.
The impact of government action should be properly understood by considering the costs and benefits of a range of options, including non-regulatory options	Due to the range of separate matters dealt with by the proposed Waste Regulation, the costs and benefits of options are identified for each separate issue in Section 5 of this Consultation RIS.
Government action should be effective and proportional	The Regulation is designed to ensure only those areas that require government action are addressed.
Consultation with business and the community should inform regulatory development	The consultation process is detailed in Section 1.5 of this Consultation RIS.
The simplification, repeal, reform or consolidation of existing regulation should be considered	A number of changes to the existing regulations are proposed which simplify their interpretation.
Regulation should be periodically reviewed and, if necessary, reformed to ensure its continued efficiency and effectiveness	The Regulation will be regularly reviewed to ensure it continues to meet the evolving demands of the community and business in NSW.

### 1.4 Structure of the Consultation RIS

This Consultation RIS is structured to provide the background to the existing waste regulatory framework in NSW, an analysis of key issues which are the focus of the current Waste Regulations, and alternative options for Waste Regulation in NSW.

This section provides a general introduction to the Consultation RIS, while Sections 2 and 3 include an overview of the current waste regulatory framework in NSW followed by a detailed review of the main sections of the existing Waste Regulation, and the offence of 'land pollution' and relevant licensed waste activities under the POEO Act.

Section 4 of the Consultation RIS then examines in more detail the key issues or areas where regulatory action has previously focused to achieve the objectives of the POEO Act in relation to waste. These are:

- the use of a market-based instrument (the waste levy) to drive waste avoidance and resource recovery outcomes
- the tracking of the movement of wastes across the state
- specific provisions for the management of special wastes
- a prohibition against using certain waste for growing vegetation
- a framework to drive recycling of consumer packaging.

For each of the above, the existing regulatory provisions and alternative options were considered that would meet both the objectives of the POEO Act and the NSW Government's better regulation principles.

As part of the review process, a detailed cost benefit analysis (CBA) was undertaken by the Centre for International Economics (CIE 2014). Section 5 summarises the main costs and benefits of each of the identified options.

In addition to the issues that pertain to the existing Waste Regulation, the Consultation RIS also considered:

- licensing thresholds for the waste activities under Schedule 1 of the POEO Act
- the land pollution offence provision in the POEO Act.

Other amendments that sit outside the main areas within the existing Waste Regulation and Schedule 1 of the POEO Act are detailed and assessed in Appendix B.

In consideration of the CBA and broader strategic objectives, a preferred option for each of the main issues/areas was chosen, each of which is presented in Section 6.

## **1.5 Consultation**

This Consultation RIS, together with the proposed Waste Regulation, are available for public comment until 6 June 2014. During this time both documents will be published on the EPA website at: [www.epa.nsw.gov.au/waste/wasteregconsultation.htm](http://www.epa.nsw.gov.au/waste/wasteregconsultation.htm).

Comments will be sought on this Consultation RIS and proposed Waste Regulation, through:

- advertising the exhibition of the Consultation RIS and the proposed Waste Regulation amendments on the NSW Government *Have Your Say* website ([www.haveyoursay.nsw.gov.au](http://www.haveyoursay.nsw.gov.au))
- publication of factsheets explaining the more significant proposed amendments on the EPA website at [www.epa.nsw.gov.au/wasteregconsultation](http://www.epa.nsw.gov.au/wasteregconsultation).
- notification by email of the proposed amendments and public consultation period to approximately 1300 subscribers to the EPA's waste updates service.

During this period the EPA will also be undertaking targeted consultation sessions with local councils and key industry stakeholders.

## **2. Legislative and policy context**

This section provides the legislative and policy context for the proposed Waste Regulation and this Consultation RIS. The need for government action is established by examining the nature of the waste industry in NSW, and current issues which are affecting the integrity of the waste regulatory framework.

### **2.1 The need for government action**

The waste sector is large, diverse and complex, with a broad range and scale of businesses, governments and individuals operating and interfacing with the environment.

In 2011–12, the total amount of waste generated in NSW was approximately 17 million tonnes, of which around 7.5 million tonnes was disposed of at NSW landfills, with the remainder recovered or disposed elsewhere.

The management, storage, re-use, disposal or processing of waste has the potential to cause significant environmental and human health impacts. The generation of waste by definition involves depletion of natural resources and represents inefficiency within the market; however, the more tangible impacts from the management of waste are often realised at waste facilities, with the potential for the release of emissions, and contamination of ground and surface water, together with odour, noise and dust issues.

In addition, the inappropriate use of waste through illegal dumping or littering can lead to loss of amenity, long-term degradation of soils, impacts on waterways, flora and fauna and substantial costs to individuals and the community for clean-up.

While local councils have responsibilities for regulating the waste industry (particularly in relation to development controls and consents), the EPA is the appropriate regulatory authority for all licensed waste facilities. Waste facilities are required to be licensed if they meet the activity thresholds contained in Schedule 1 of the POEO Act.

The waste industry includes waste disposal facilities, waste transporters, resource recovery, processing and recycling facilities, waste storage facilities and transfer stations. The industry is dominated by some very large corporations; however, there are many other smaller companies and organisations, including unlicensed organisations, which are also involved in waste collection, processing, transportation and storage. The total value of waste and resource recovery activities in NSW in 2011–12 was approximately \$4 billion, including almost \$1.3 billion from the sale of recovered materials alone (Waste Management & Environment Media 2012, p. 88).

In 2002, the Independent Commission Against Corruption (ICAC) identified the waste industry as prone by its nature to corruption risks (ICAC 2002). The risks identified by ICAC included the low level of entry into the market, high levels of cash used in transactions, and the opportunity to profit through illegal dumping and charging for higher service levels than those which were subsequently provided.

Since that time, various amendments to the existing Waste Regulation have been made, with the aim to make the legislative requirements robust, clear and readily enforceable in response to the risks raised by ICAC. Changes have also been made to improve environmental and human health protection outcomes (including further regulation of clinical and asbestos waste).

The existing Waste Regulation has provided a very sound framework for the regulation of facilities which are required to pay the waste levy (essentially licensed waste disposal facilities). These facilities are subject to tight regulatory controls and EPA oversight of their operations; however, the exclusion of certain facilities, including waste processing, storage, recovery, recycling, treatment or transfer facilities (intermediary facilities), from the

requirement to pay the levy and associated accountability mechanisms has created an uneven playing field between those facilities and licensed waste disposal facilities. See Section 4 for further explanation of this issue.

The risk factors raised in the 2002 ICAC report combined with a disparity in regulatory oversight has given rise to an increase in intermediary facilities ‘rorting’ the system. There is a significant amount of money that can be made by operators acting in a way which distorts the waste market. This may be through illegal dumping or excessive stockpiling by intermediary facilities (with potential environmental and human health impacts), misclassification of waste and other levy avoidance techniques.

As stated in the 2005 RIS for the existing Waste Regulation, ‘dealing with operators who are willing to openly exploit legal loopholes or who have no regard for the law poses significant difficulties for enforcement. Furthermore, their activities can undermine those of legitimate operators in the market place’. The Consultation RIS explores various options to create a more level playing field to minimise these risks.

Since the commencement of the existing Waste Regulation, there have also been a number of technological advancements that may assist the EPA in the protection of the environment and human health. This includes new and innovative technology for monitoring the movement and receipt of wastes between facilities. This Consultation RIS investigates incorporating some of these technologies into the waste regulatory framework in NSW.

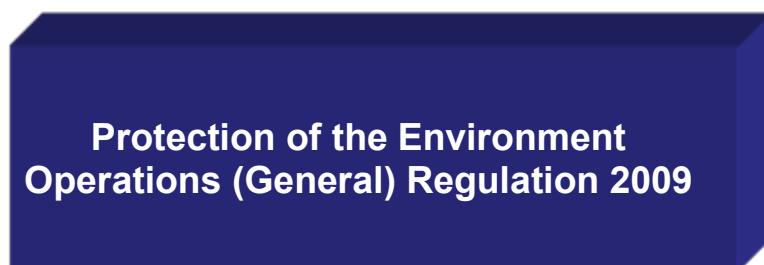
## **2.2 Waste regulatory framework**

In NSW, there are a complementary mix of instruments that operate together to promote the policy objectives of protection of the environment and human health, and to encourage resource recovery and waste avoidance. The framework is set out below:

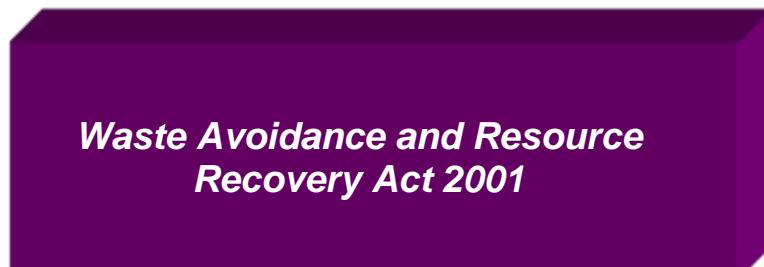
### **Primary legislation:**



### **Subordinate legislation:**



### **Related legislation:**



**Guidelines:**

*Waste Classification Guidelines, Environmental Guidelines: Solid waste landfills, Waste and Environment Levy: Operational guidance notes*

**Tools:**

Education, campaigns, licences, notices, prosecutions, audits, economic instruments

### **2.2.1 Protection of the Environment Operations Act 1997**

The POEO Act, to which the existing Waste Regulation and POEO General Regulation are subordinate, provides for the protection, restoration and enhancement of the quality of the environment in NSW. Specifically it aims to maintain ecologically sustainable development, prevent pollution and the degradation of the environment, and reduce risks to human health.

The relevant objects of the POEO Act relating to waste management are:

- to reduce risks to human health and prevent the degradation of the environment by the use of mechanisms that promote the following:
  - pollution prevention and cleaner production
  - the reduction to harmless levels of the discharge of substances likely to cause harm to the environment
  - the elimination of harmful wastes
  - the reduction in the use of materials and the re-use, recovery or recycling of materials
  - the making of progressive environmental improvements, including the reduction of pollution at source
  - the monitoring and reporting of environmental quality on a regular basis
- to assist in the achievement of the objectives of the *Waste Avoidance and Resource Recovery Act 2001*.

The POEO Act also:

- contains various provisions and mechanisms to achieve the objective of reducing the risk of harm to the environment and human health, including offence provisions for the unlawful transport of waste, the use of land as an unlawful waste facility and a range of littering offences
- enables the issuing of Environment Protection Licences (EPLs) to monitor and control pollution – Schedule 1 to the POEO Act lists activities for which a licence is required in order to regulate and control environmental impacts and potential pollution from such an activity. Landfill, waste storage and processing, composting, resource recovery and energy recovery facilities are all waste related activities that require a licence
- provides for a ‘contribution’ (known as the waste levy) to be paid on every tonne of waste received at a licensed waste facility (subject to exemptions as set out in this Consultation RIS)
- lists the definitions of waste classifications to enable waste generators to define their waste for disposal purposes and ensure that the right waste goes to the right place and harmful waste is managed appropriately.

Schedule 2 of the POEO Act also provides extensive regulation-making powers for waste, ranging from the operation of waste facilities, the transport of waste, the handling, use, storage, recovery, re-use and disposal of waste, and the provision of information by waste facilities and transporters.

## **2.2.2 Waste Avoidance and Resource Recovery Act 2001**

An objective of the POEO Act is to assist in the achievement of the objectives of the *Waste Avoidance and Resource Recovery Act 2001* (WARR Act). The objectives of the WARR Act are to:

- encourage the most efficient use of resources and to reduce environmental harm in accordance with the principles of ecologically sustainable development
- ensure that resource management options are considered against a hierarchy of the following order:
  - avoidance of unnecessary resource consumption
  - resource recovery (including reuse, reprocessing, recycling and energy recovery)
  - disposal
- provide for the continual reduction in waste generation
- minimise the consumption of natural resources and the final disposal of waste by encouraging the avoidance of waste and the re-use and recycling of waste
- ensure that industry shares with the community the responsibility for reducing and dealing with waste
- ensure the efficient funding of waste and resource management planning, programs and service delivery
- achieve integrated waste and resource management planning, programs and service delivery on a statewide basis
- assist in the achievement of the objectives of the POEO Act.

The appropriate management of waste in NSW is considered against the ‘waste hierarchy’ outlined above, in the order of avoidance, resource recovery and disposal.

## **2.2.3 Protection of the Environment Operations (Waste) Regulation 2005**

The existing Waste Regulation is subordinate to the POEO Act and is made pursuant to the regulation making powers for waste in the POEO Act. It is the principal Regulation made under the POEO Act for the regulation of waste.

As set out in Section 3 of this Consultation RIS, the existing Waste Regulation contains provisions regarding the requirements for transport, management, storage and disposal of waste within NSW. It details the requirements for payments of the waste levy, including associated reporting and record-keeping requirements. It also regulates the tracking of the transport of high-risk waste, the management of special wastes (such as asbestos and clinical waste), restrictions on using certain waste for growing vegetation, the Waste and Sustainability Improvement Scheme, the recycling of consumer packaging, and exemptions from requirements of the Regulation.

## **2.2.4 Protection of the Environment Operations (General) Regulation 2009**

The POEO General Regulation has limited application to waste; however, in Schedule 6 it contains penalty notice offences for infringements of the existing Waste Regulation and the POEO Act. The POEO General Regulation can also be used to clarify and expand on definitions contained within the POEO Act, which may be of general application or specifically apply to waste. For instance, ‘water pollution’ is more precisely defined in Schedule 5 of the POEO General Regulation.

## **2.2.5 Other instruments**

The waste regulatory framework is also supported by a number of guidelines. The primary guidelines for the management of waste are:

- *Waste Classification Guidelines* which provide guidance around the classification of waste for disposal, waste immobilisation and the management of radioactive wastes and acid sulfate soils.
- *Environmental Guidelines: Solid waste landfills*, which provide guidance for new and existing landfills to achieve the best environmental outcomes in the management of landfills.
- *Waste and Environment Levy: Operational guidance notes* which provide guidance around the application of the levy and associated requirements.

### **3. Requirements of the Protection of the Environment Operations (Waste) Regulation 2005**

This section contains a detailed analysis of each of the main provisions and Parts of the Protection of the Environment Operations (Waste) Regulation 2005 (the existing Waste Regulation). Relevant requirements of Schedule 1 of the *Protection of the Environment Operations Act 1997* are also included, as is the land pollution offence covered under the Act.

The existing Waste Regulation deals with matters required, permitted, necessary or convenient for carrying out or giving effect to the POEO Act. The existing Waste Regulation is due for staged repeal on 1 September 2014. This review is required to ensure the continuing relevance of the regulations.

The following are the main provisions of the existing Waste Regulation.

#### **3.1 Part 2 – Waste levy and monitoring requirements**

Under Section 88 of the POEO Act, occupiers of certain licensed waste facilities are required to pay the waste contribution (the waste levy) in respect of each tonne of waste (other than limited ‘exempt’ waste) received at that facility, if that facility is located in the Regulated Area or receives waste from the Regulated Area. The existing Waste Regulation then prescribes the amount of the waste levy, the manner, location and timing of payment, and requirements to pay interest for late payment.

The waste levy is effectively only currently payable by licensees of waste disposal facilities, as the POEO Act and existing Waste Regulation exempt or exclude licensed facilities used solely for the purposes of re-using, recovering, recycling or processing waste, together with waste storage facilities, transfer facilities, and waste treatment facilities from the requirement to pay the waste levy (other than for trackable liquid waste received).

The waste levy is designed as a market-based mechanism to create an incentive for waste avoidance and resource recovery. Landfilling waste has traditionally been the cheapest waste management option. The waste levy sends a price signal, by increasing the price of waste disposal, that disposal is the least preferable waste management option. It encourages generators of waste to review their practices (to consider avoidance or resource recovery), and increases the competitiveness of resource recovery facilities. This is consistent with the ‘waste hierarchy’ contained in the WARR Act.

The 2013–14 levy rates applicable for waste received at a scheduled waste disposal facility are:

Region	Rate per tonne
Sydney Metropolitan Area (SMA)	\$107.80
Extended Regulated Area (ERA)	\$107.80
Regional Regulated Area (RRA)	\$53.70

The levy in each region is scheduled to increase annually by \$10/tonne plus CPI until 2015–16. There is also a liquid waste levy on trackable liquid waste (currently \$68.30 per tonne – paid by 40 facilities) and a coal washery rejects levy on coal washery rejects (currently \$13.28 per tonne – paid by two facilities).

The existing Waste Regulation also:

- exempts premises used to dispose of only slags or virgin excavated material from the requirement to pay the waste levy

- exempts certain types of waste (including spoil generated by dredging activities, and waste collected as part of a community service or arising from natural disaster) from the waste levy
- enables waste levy deductions to be claimed for waste that can be used for an operational or land application purpose at a levy-paying facility, or for waste transported off-site from that facility
- requires a waste facility which is required to pay the waste levy to:
  - keep records for waste entering and departing the facility
  - provide monthly reports on waste received for that month
  - carry out a volumetric survey of the landfill site twice a year unless exempted
  - maintain a weighbridge on the site (if the site receives over 5000 tonnes of waste per annum)
  - if required by the EPA, install an approved video monitoring system in the manner and location specified in the notice.

## 3.2 Part 3 – Waste tracking

Part 3 of the existing Waste Regulation essentially requires the tracking of high-risk waste, to minimise the potential risk of harm to the environment and human health posed by the movement of these wastes.

The waste tracking requirements apply to waste (as opposed to licensed facilities), so the requirements apply equally to licensed and non-licensed businesses, with some exceptions.<sup>2</sup> Tracking can now be completed online, through the EPA's online waste tracking system.

The types of waste that must be tracked (including within NSW and interstate) are listed in Schedule 1 of the existing Waste Regulation, and are based on the list in the National Environment Protection (Movement of Controlled Waste between States and Territories) Measure (the Controlled Waste NEPM). These include a range of higher risk wastes in liquid or solid form, such as chemical waste, clinical waste and metallic waste.

The waste tracking provisions in Part 3 set out how such waste is to be managed by consignors, transporters and receivers.

These provisions include requirements for the consignor, who can be the occupier of the originating waste facility or authorised agent, to hold 'consignment authorisations' and 'waste transport certificates' in transporting waste from one waste facility to another.

Both the transporter and receiver of the waste must verify that a 'consignment authorisation' (held by the consignor) authorises the transport of the waste. A 'waste transport certificate', which contains details on the waste, consignor, transporter and receiver, must be carried by the transporter of the waste, and obtained by the receiver. Further requirements are placed on the consignor, who must ensure the transporter is licensed and that the recipient facility is legally able to accept the waste.

Part 3 of the existing Waste Regulation also requires copies of 'waste transport certificates' and 'consignment authorisations' to be kept for four years. The consignor must also maintain a list of all facilities from which trackable waste was transported.

The requirements in Part 3 provide the EPA with detailed information about these higher risk wastes, minimising the risk of potential environmental harm. All of these record-keeping requirements are able to be met by using the EPA's online waste tracking system.

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<sup>2</sup> Trackable waste, unless in a load under 200 kilograms or 2 tonnes of waste tyres can only be transported by transporters who are licensed under clause 48 of Schedule 1 of the POEO Act.

### 3.3 Part 4 – Management of special wastes

The classification of ‘special wastes’ was introduced in April 2008 for those wastes that had unique management requirements. The EPA has since classified three waste types as special waste: clinical and related waste, asbestos waste and waste tyres.

Part 4 of the existing Waste Regulation specifies management requirements for two of these wastes (asbestos waste and clinical and related waste) to ensure the risks posed to human health are minimised during transportation and disposal.

**Asbestos waste** is defined under Schedule 1 of the POEO Act as any waste that contains asbestos.<sup>3</sup> The existing Waste Regulation contains a provision that prohibits the re-use or recycling of asbestos. In addition the Regulation also outlines requirements for the transportation and disposal of asbestos waste. Requirements for the storage and handling (including removal) of asbestos are governed by the Work Health and Safety Regulation 2011.

The existing Waste Regulation requires that asbestos waste sent off-site must only be disposed of at a landfill site that can lawfully receive the waste. Under Schedule 1 of the POEO Act, with limited exceptions,<sup>4</sup> waste disposal facilities that receive asbestos must be licensed. There are also various provisions contained in the Regulation regarding the management of asbestos waste at a disposal facility, including the covering of asbestos waste.

The existing Waste Regulation also outlines specific requirements for the transportation of asbestos waste dependent on its characterisation. For example, friable asbestos material must be kept in a sealed container.

**Clinical and related waste** is defined under Schedule 1 of the POEO Act to include clinical, cytotoxic, pharmaceutical, drug, medicine and sharps waste. The requirements for the disposal of clinical and related waste at waste facilities include disposal restrictions, transport and packaging requirements.

This includes requirements for:

- clinical and related waste collected for disposal at landfill, to be separately stored, labelled and securely packaged
- disposing of clinical and related waste at unlicensed council landfill facilities outside the Regulated Area
- occupiers of certain facilities where clinical and related waste is generated to develop a clinical and related waste management plan
- the safe transport of clinical and related waste.

**Waste tyres** are defined under Schedule 1 of the POEO Act as ‘used, rejected or unwanted tyres, including shredded tyres or tyre pieces’. The existing Waste Regulation does not, however, contain specific management requirements for waste tyres.

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<sup>3</sup> ‘Asbestos’ is defined as the fibrous form of those mineral silicates that belong to the serpentine or amphibole groups of rock-forming minerals, including actinolite, amosite (brown asbestos), anthophyllite, chrysotile (white asbestos), crocidolite (blue asbestos) and tremolite.

<sup>4</sup> Cl. 39(2)(f) of Schedule 1 of the POEO Act enables regional landfills owned and operated by local councils that receive <5000 tonnes of asbestos waste per year (and were in existence prior to 2008, and were not required to be licensed at that time) to receive asbestos waste generated in the regional areas for disposal.

### **3.4 Part 5 – Prohibition against using certain waste for growing vegetation**

In 2002, concerns were raised regarding the use of industrial wastes as fertilisers. It was found that some products sold to farmers had significant levels of heavy metals. In response, a prohibition on the application of certain industrial wastes to land used for growing vegetation was introduced in the existing Waste Regulation.

The prohibited industrial wastes are defined as ‘residue wastes’ in the existing Waste Regulation. These include fly ash, hazardous waste or restricted solid waste, foundry sands and foundry filter bag residues, catalysts in oil refining or other chemical processes, and other residues from certain industrial or manufacturing processes. However, the existing Waste Regulation also provides the EPA with the power to grant exemptions from this prohibition where the risk of harm to human health or the environment is demonstrated to be minimal. There are a number of exemptions from the prohibition in force, including for certain lime and gypsum residues and for fly ash. The exemptions generally set chemical criteria, testing and sampling regimes and restrictions on the use of the material.

### **3.5 Part 5A – Waste and Sustainability Improvement Scheme**

With the announcement of the City and Country Environment Restoration Program in 2005, the Government introduced Waste Performance and Improvement Payments. In July 2009, the payments changed to Waste and Sustainability Improvement Payments. These payments were available for local councils within the levy-paying area, and were conditional on councils meeting certain performance criteria in regards to waste management in their council area.

The Regulation outlines the details around the payments, including how councils are to apply for the payments and how payments are calculated. The final grants in the Waste and Sustainability Improvement Payments system were awarded for 2012–13.

### **3.6 Part 5B – Recycling of consumer packaging**

Part 5B of the existing Waste Regulation is designed to complement the Australian Packaging Covenant (APC). The APC is a voluntary scheme within a national co-regulatory arrangement for managing the environmental impacts of consumer packaging in Australia. The signatories to the scheme include generators of packaged materials and packaged products (suppliers) and the different levels of government in Australia. It is based on the principle of shared responsibility for packaging waste.

The existing Waste Regulation implements the NSW Government’s obligations under the National Environment Protection (Used Packaging Materials) Measure (the Used Packaging NEPM). The Regulation requires that any ‘brand owner’ of a product must comply with the requirements of Part 5B, unless it is a signatory to and compliant with the APC or has a turnover in Australia of under \$5 million. Effectively, brand owners above the threshold in NSW (as they do in all Australian jurisdictions) have a choice of signing up to and acting in compliance with the voluntary APC, or having to meet the packaging targets and other record-keeping and planning requirements of Part 5B of the existing Waste Regulation.

Part 5B sets targets for the recovery of material used in packaging products, which is currently set at 70% of all material used in packaging. The brand owner must ensure that such recovered materials are re-used or recycled. The EPA also sets targets for review of packaging design, which is 100% of new packaging and 50% of existing packaging to be reviewed using the Sustainable Packaging Guidelines by June 2015. These targets mirror the targets of the APC.

Brand owners must also prepare a ‘waste action plan’, which sets out a baseline on the current performance in respect of the use, recovery, re-use and recycling of materials used in

packaging, how the targets set by the EPA will be met, and how the brand owner will ensure a continuous reduction in the number of packaging items in the litter stream.

Part 5B also sets out extensive record-keeping requirements. This includes recording, for each packaging material used, the number of units, arrangements in place to ensure material is recovered, weight of recovered material (including that which is sent to landfill or re-used and recycled through export) and total kilojoules of embedded energy recovered. Records must be retained for at least five years.

### **3.7 Requirements of Schedule 1 of the *Protection of the Environment Operations Act 1997***

Under Schedule 1 to the POEO Act, certain thresholds are set at which the land application, processing, recovery and storage of waste trigger the requirement to hold an environment protection licence.

The current relevant thresholds for general waste<sup>5</sup> and storage of waste tyres are set out below:

Activity	Current thresholds
<b>Land application</b>	Any quantity of waste (i.e. zero tonne or cubic metre threshold)
<b>Resource recovery</b>	More than 2500 tonnes or cubic metres (whichever is lesser) stored at any one time, processing of more than 120 tonnes a day or 30,000 tonnes a year
<b>Waste disposal (thermal treatment)</b>	More than 200 tonnes processed a year
<b>Waste processing (non-thermal treatment)</b>	More than 2500 tonnes or cubic metres (whichever is lesser) stored at any one time, processing of more than 120 tonnes a day or 30,000 tonnes a year
<b>Waste storage</b>	More than 2500 tonnes or cubic metres (whichever is lesser) stored at any one time, or 30,000 tonnes received from off-site a year
<b>Storage of waste tyres</b>	More than 50 tonnes of waste tyres or 5000 waste tyres stored at any time

### **3.8 Land pollution offence under the *Protection of the Environment Operations Act 1997***

Section 142A of the POEO Act provides for an offence of ‘land pollution’, which is defined as introducing into or onto land any matter that:

- a. causes or is likely to cause degradation of the land, resulting in actual or potential harm to the health or safety of human beings, animals or other terrestrial life or ecosystems, or actual or potential loss or property damage, that is not trivial, or

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<sup>5</sup> There are separate thresholds for hazardous waste, restricted solid waste, special wastes, liquid wastes, contaminated soil or groundwater, sewage within stormwater treatment systems, and batteries, VENM and building and demolition waste, and some regional facilities.

- b. is of a prescribed nature, description or class or that does not comply with any standard prescribed in respect of that matter.

Regulations made under the POEO Act may prescribe certain matter, including waste, that when introduced into or onto land, constitutes land pollution.

## **4. Options for the Protection of the Environment Operations (Waste) Regulation 2014**

This section sets out, in relation to each of the Parts referred to in Section 3:

- the objectives of government action
- the problems to be solved
- the alternative options currently available to meet the objectives and solve the problems.

The costs and benefits of the options, and the preferred options, are set out in Section 5 of this Consultation RIS.

### **4.1 Part 2 of the existing Waste Regulation – Waste levy and monitoring requirements**

#### **Objectives**

The objectives of the waste levy provisions are to reduce illegal activities, and activities which distort the waste market, in order to maintain the integrity of the waste levy framework.

#### **What is the problem?**

As identified in Section 2.1 of this Consultation RIS, the waste industry has been found by ICAC to be prone by its nature to corruption risks. Without an appropriate regulatory framework, there can be significant illegal activities which undermine effective competition and adversely impact on the environment.

The provisions in Part 2 of the existing Waste Regulation have been designed to regulate levy-paying waste disposal facilities, and have generally been effective in ensuring compliance by waste disposal facilities with the waste levy framework.

Facilities which are not required to pay the waste levy do not need to comply with requirements under Part 2 of the existing Waste Regulation, such as record-keeping, reporting, weighbridges and volumetric survey requirements.

A major investigation has recently been undertaken by the EPA targeting large-scale unlawful waste activities. The investigation uncovered systemic unlawful waste disposal and levy avoidance activities by storage, recycling and reprocessing facilities in the waste sector.

The investigation found sophisticated arrangements in place between intermediary facilities, waste transporters and landfills, to falsify records, intentionally misclassify waste and provide false and misleading information about waste to Government authorities. In one instance alone of this alleged illegal activity, the EPA puts the loss of NSW State revenue at approximately \$18 million. These schemes are invariably centred on avoiding proper disposal costs (including landfill gate fees and the waste levy). The investigation also uncovered long-term stockpiling of waste on-site (as a levy avoidance technique), with no legitimate end use. The illegal dumping of waste on private property, state forests and national parks was also identified.

These activities can lead to distortion within the waste industry and undermine the intended effect of the waste levy to favour waste avoidance or resource recovery outcomes. The price signal of the waste levy is only effective where the cost of waste disposal (including the levy) is uniformly applied. Illegal disposal activities that circumvent payment of the levy enable those operators to offer discounted services to the market and undermine legitimate operators who are passing the full cost of disposal onto their clients.

These activities also lead to other environmental and social costs. Excessive stockpiling can lead to amenity, health and safety concerns. Abandoned stockpiles and illegal dumping has

amenity effects for neighbouring residents and can lead to contamination of the surrounding environment. These practices often result in significant clean-up costs for individuals and government.

As the levy framework does not currently apply to intermediary facilities, there are no provisions in place that require operators to provide the EPA with data relating to the throughput of waste in such facilities. This has led to inaccurate and incomplete data, significantly and adversely affecting the EPA's capacity to ensure compliance and develop effective waste policy for intermediary facilities, and to achieve broader resource recovery outcomes.

Government intervention is required to ensure the environment, society and the waste industry is protected against the illegal activity of certain operators in the waste industry. This activity is leading to unfair competition within the waste market and avoidance of substantial waste levies which would otherwise be payable to the Government on behalf of the people of NSW.

## Options

***Option WL1 – Remake the waste levy provisions in their current format***

***Option WL2 – Regulation with amended waste levy provisions***

***Option WL3 – Regulation with an alternative regulatory option requiring all waste transporters to be licensed***

### ***Option WL1 – Remake the waste levy provisions in their current format***

Under this option, Part 2 of the existing Waste Regulation would continue without any material amendments.

Maintaining Part 2 of the existing Waste Regulation in its current form would retain the oversight and regulatory controls the EPA currently has in relation to waste disposal facilities. Waste disposal facilities in the Regulated Area would also continue to be required to pay the waste levy.

However, intermediary facilities would not be required to pay the waste levy (other than for trackable liquid waste), nor would those facilities be subject to the same oversight and regulatory controls as waste disposal facilities.

### ***Option WL2 – regulation with amended waste levy provisions***

It is proposed, under this option, to introduce a range of new provisions in the proposed Waste Regulation to shift the application point of the levy further up the waste management chain, increasing accountability and transparency for intermediary facilities.

The principal changes, which would commence on 1 July 2015, are:

#### *1. Extension of the waste levy to intermediary facilities*

Under the *Protection of the Environment (Illegal Waste Disposal) Act 2013*, assented to on 3 September 2013, the exclusion of premises used solely for re-using, recovering, recycling or processing waste from the requirement to pay the waste levy was removed. This will be effective from a commencement date to be proclaimed (likely to be 1 July 2015). It is proposed to also remove the exemption for waste storage, transfer and treatment facilities from the requirement to pay the waste levy.

Consequently, from the commencement date, the waste levy will be payable by all ‘Scheduled Waste Facilities’<sup>6</sup> in the Regulated Area, other than those expressly exempted.<sup>7</sup>

Intermediary facilities in the Regulated Area would therefore be liable to pay the waste levy on all waste (other than liquid waste) received at the facility; however, that liability would be effectively extinguished once the waste is transported off-site for lawful re-use, encouraging resource recovery outcomes. The requirement to pay the waste levy for intermediary facilities will only be triggered for waste that is:

- a. sent from the intermediary facility for disposal
- b. stockpiled on-site for more than 12 months, or
- c. stockpiled above lawful limits.

As the intermediary facility will be required to pay the waste levy for waste it sends for disposal, a licensed waste disposal facility would receive a credit for the amount otherwise payable. This will be administered through a certificate system and avoid the levy being paid a second time on that waste.

The effect of these changes is that the point at which the levy is paid on non-recyclable residuals is shifted from the landfill gate to when the truck leaves the recycling gate. This provides the EPA with oversight of the movement of waste from intermediary facilities, making it significantly better equipped to combat illegal dumping. Such oversight is currently lacking.

The changes should not lead to a net increase in the amount of waste levy paid by intermediary facilities operating legitimately, as the levy would only be payable on waste sent for disposal (as is currently the case).

## *2. Record-keeping and reporting*

The current record-keeping requirements in clause 12 of the existing Waste Regulation do not apply to Scheduled Waste Facilities not required to pay the levy, due to the exemption granted under clause 12(9) of the Regulation.

It is proposed to repeal the current exemption, so that record-keeping requirements will also apply to **all** Scheduled Waste Facilities in the Regulated Area required to pay the waste levy, and all drum reconditioners and composters. These facilities would therefore have to record details for each delivery of waste received or sent off-site, such as the amount and type of waste and the registration number of the vehicle. Records of each stockpile at the facility (including quantity and type of waste) will also be required to be recorded.

Intermediary facilities required to pay the waste levy will also be required to provide ‘Waste Contribution Monthly Reports’ every month specifying the quantity and types of waste received in that month, and additional information prescribed by the EPA.

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<sup>6</sup> A ‘Scheduled Waste Facility’ is a waste facility that is required to hold an environment protection licence under Schedule 1 of the POEO Act because it is used for the storage, treatment, processing, sorting or disposal of waste.

<sup>7</sup> Premises used solely to dispose of slag/VENM will continue to be not liable to pay the waste levy. The following intermediary facilities will also be exempt from the requirement to pay the levy (other than for trackable liquid waste):

- facilities required to be licensed for metallurgical activities (other than scrap metal processing), pulp or paper production or ceramic works
- facilities required to be licensed for composting, container reconditioning or contaminated soil treatment, and not any other waste activities
- facilities used only to receive hazardous waste, restricted solid waste, clinical and related waste, non-trackable liquid waste or any combination of these.

### **3. Weighbridges**

Under the existing Waste Regulation, weighbridges are required to be installed at any Scheduled Waste Facility required to pay the waste levy and receiving over 5000 tonnes of waste in any year. Under this option this requirement will also apply to intermediary facilities required to pay the waste levy; however, the 5000-tonne threshold will be removed, so that **all** Scheduled Waste Facilities which are required to pay the waste levy will be required to install and operate a weighbridge.

Facilities required to install an approved weighbridge would need to:

- submit a vehicle flow control plan (including proposed vehicle flow controls and entry and exit points)
- ensure any vehicle entering and departing the premises records the quantity of material transported into or out of the facility
- maintain the weighbridge
- ensure the weighbridge is verified as a measuring instrument, and
- ensure the weighbridge has software that records data in the form and manner specified in EPA guidelines.

### **4. Volumetric surveys**

Clause 14 of the existing Waste Regulation requires landfills which pay the waste levy to undertake volumetric surveys of the site in June and December each year, and any other time specified by the EPA.

It is proposed that intermediary facilities which are required to pay the waste levy also have to undertake an initial baseline survey and annual volumetric surveys of the site and as required by the EPA.

### **5. Video monitoring**

Under clause 16 of the existing Waste Regulation, the EPA can, by written notice to the occupier of a Scheduled Waste Facility which is required to pay the waste levy, require the occupier to install an approved video monitoring system.

It is proposed that this requirement extend under this option to all Scheduled Waste Facilities, irrespective of whether they pay the levy, or the type of facility. It is intended that this initiative will come into effect from the commencement of the proposed Waste Regulation.

### ***Option WL3 – Regulation with an alternative regulatory option requiring all waste transporters to be licensed***

Another option to address the illegal disposal of waste is to obtain further information from waste transporters regarding the transport of waste. This would entail requiring all waste transporters to be licensed, and to report on the origin and destination of all waste transported, the type of waste, the date and the vehicle registration number.

This would involve the implementation of a system similar to the EPA's current online waste tracking system for high risk or 'trackable' wastes. The transporters would have the obligation to use the system to provide the information.

As each waste transporter (the entity, rather than the vehicle) would be licensed, with the requirement to report on the above information, the aim of such a system would be to ensure the EPA was provided with reliable data on the source and destination of the waste, with offences enforceable if the information was false or misleading. This may act as a disincentive for transporters to dispose of waste unlawfully.

## **4.2 Part 3 of the existing Waste Regulation – Waste tracking**

### **Objectives**

The objectives of the waste tracking provisions are to minimise the potential impacts to the environment and human health associated with wastes being transported or disposed of in an inappropriate manner, and to ensure the EPA has reliable information regarding long haul transport of general waste.

### **What is the problem?**

Certain wastes, due to their chemical composition and other characteristics, can be of high risk to the environment and human health if disposed or transported inappropriately.

Risk in relation to the transport and disposal of such waste is minimised if it is transported and received by operators who have the appropriate expertise in the transport, treatment, storage or processing of the waste.

If there is insufficient information accompanying a load of high risk waste, it can lead to delays in authorities identifying the waste and how to treat it if there are spills or contamination. It can also lead to collection of incompatible wastes by trucks (who make multiple pick-ups) with potentially dangerous consequences. Further, without some form of tracking of the source and destination of the waste, it may lead to illegal dumping of high risk waste which, given the hazardous nature of the waste, can lead to significant contamination of remote and environmentally sensitive sites.

Inappropriate disposal of waste can also have a destructive impact on other industries. As set out in the 2005 RIS for the existing Waste Regulation, the illegal disposal of high risk waste by one company places its competitors at a commercial disadvantage, who still have to pay the costs of treating and properly disposing of the waste. Further, an established system for the transport and treatment of high risk wastes is pivotal to maintaining the viability of specialised treatment facilities (often in other states) that deal with specialised wastes. As there are only one or two such facilities in Australia, any significant illegal disposal of these wastes may compromise their ongoing viability.

NSW is also subject to the Controlled Waste NEPM and is obliged to have regulation that mirrors the NEPM. Without such legislation, the national co-regulatory agreement for the management of controlled waste could be compromised.

Transport of other waste (even if not high risk) also has potential to cause adverse environmental impacts if not managed appropriately. For example, it is estimated that approximately 2500 tonnes of waste is transported interstate from NSW each week. Such long haul transport of weight-laden vehicles, which may be carried out for the purpose of avoiding proper disposal costs, can lead to heavy fuel consumption, release of greenhouse gas emissions, loss of load and congestion. The EPA currently has limited data regarding waste being transported interstate, which inhibits its capacity to develop effective waste policy and calculate waste disposal trends.

Government intervention is warranted in relation to the transport of waste, in order to ensure the designated regulatory authority and industry has appropriate oversight in relation to the movement of high risk waste and other waste over long distances.

## Options

**Option WT1 – No waste tracking regulation**

**Option WT2 – Remake the waste tracking provisions in their current format**

**Option WT3 – Remake the waste tracking provisions in their current format with an increase in scope to include interstate tracking of all wastes**

**Option WT4 – Remake the waste tracking provisions in their current format and increase their scope to include tracking of all wastes**

**Option WT5 – Remake the waste tracking provisions in their current format with an increase in scope to include satellite tracking**

### **Option WT1 – No waste tracking regulation**

This option would result in no waste tracking system for high risk wastes.

If this option was adopted, the licensing requirements in relation to trackable waste under the POEO Act would still apply. The EPA currently only licenses transporters who transport trackable waste loads over 200 kg or two tonnes of tyres. Such loads would not, however, be subject to the record-keeping and certification requirements (including ‘consignment authorisation’ and ‘transport certificate’) in the waste tracking provisions of the existing Waste Regulation.

Other regulatory requirements that would continue to apply to the transport of waste, include:

- record-keeping requirements in the existing Waste Regulation for occupiers of Scheduled Waste Facilities subject to the levy (particularly clause 12). However, those requirements do not extend to the generators of high risk wastes
- clause 49 of the existing Waste Regulation regarding the transportation of waste generally – This includes the requirement for vehicles to be maintained to prevent waste spillage, secure waste containers, cover waste, carry spill kits, and ensure incompatible wastes are not mixed together
- the Dangerous Goods (Road and Rail Transport) Regulation 2009 (the DG Regulation) documentation requirements (through the Dangerous Goods Code) for certain dangerous goods (but not all ‘trackable wastes’).

### **Option WT2 – Remake the waste tracking provisions in their current format**

Under this option, Part 3 of the existing Waste Regulation would be remade without any material amendments.

Requirements to develop and hold consignment authorisations, waste transport certificates, and other record-keeping requirements in the existing Waste Regulation would continue. This will ensure that high risk waste is tracked from generator through to waste facility.

The EPA advises that there has been minimal non-compliance with the current waste tracking system. There has only been one prosecution which has been pursued for the unlawful disposal of trackable waste under Schedule 1 Part 1 of the existing Waste Regulation.

***Option WT3 – Remake the waste tracking provisions in their current format with an increase in scope to include interstate tracking of all wastes***

Part 3 of the existing Waste Regulation would be remade under this option, with an additional provision to allow for the tracking of all wastes **transported interstate**. This would apply to any load of waste of at least 10 tonnes originating from the current Sydney Metropolitan Area (SMA) and Extended Regulated Area (ERA).<sup>8</sup>

These new provisions would require the waste consignor to lodge the consignment details in the existing EPA waste tracking system for the transport of waste interstate. This would include details regarding the waste, the consignor, waste generation site and recipient facility. The consignor must also only arrange for transportation of waste to an interstate waste facility which is lawfully able to receive that waste.

The waste transporter would also be required to enter information regarding the vehicle, the recipient facility and about the transporter itself.

***Option WT4 – Remake the waste tracking provisions in their current format and increase their scope to include tracking of all wastes***

Under this option, Part 3 of the existing Waste Regulation would be remade, with the scope of ‘trackable waste’ extended to include all wastes (not just high risk waste or waste being transported interstate).

The existing requirements in Part 3 would remain the same, with the exception that trackable waste would be expanded from the relevant parts of Schedule 1 to the existing Waste Regulation to include all waste. Every movement of waste would then be subject to the record-keeping and certification requirements of the waste tracking system.

***Option WT5 – Remake the waste tracking provisions in their current format with an increase in scope to include satellite tracking***

Under this option, Part 3 of the existing Waste Regulation would be remade.

The EPA would also have the power to require the owner of a vehicle used for transporting waste to install and operate an approved vehicle tracking device. This may take the form of a GPS. The device would have to be installed, capable of automatically recording routes travelled and operational at all times.

The Regulation would also contain penalties for tampering with, removing or failing to operate the device. The EPA would then be able to review the data received from the GPS to assess whether the transporter has been visiting waste dumping ‘hotspots’, or otherwise disposing of waste at sites or facilities at which waste is not authorised to be disposed.

## **4.3 Part 4 of the existing Waste Regulation – Management of special wastes**

### **Objectives**

The objectives of the special waste provisions are to protect the community from infection and health risks caused by special waste.

### **What is the problem?**

Exposure to airborne asbestos fibres, even in small quantities, may lead to significant health risks. While environmental risks caused by asbestos are minimal, potential illnesses caused

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<sup>8</sup> Note that the SMA and ERA will be combined to become the new Metropolitan Levy Area (MLA) under the proposed Waste Regulation.

by asbestos fibre exposure include asbestosis, lung cancer and mesothelioma, which are all life-threatening.

Illegal dumping of asbestos may lead to increased exposure of individuals to asbestos, increasing the risk of contracting asbestos-borne illnesses. This is particularly the case if the asbestos is dumped close to communities or at frequently visited sites.

Pages 56-59 of the cost benefit analysis of the Centre for International Economics (CIE 2014) contain a range of examples of the extent of illegal dumping of asbestos in NSW, and the substantial cost to clean up asbestos.

Clinical and related waste also has the potential to cause injury or infection. This is commonly through transmission of blood-borne virus from needle-stick injury. Identification and treatment of these viruses can be very expensive, with differing levels of risk depending on circumstances (CIE 2014, pp. 48–51).

Stockpiling and illegally dumping waste tyres provides breeding areas for mosquitoes and an associated increase in mosquito-borne diseases. Such stockpiles can also pose significant fire risks. The calorific value of rubber tyres is generally twice that of other common combustible materials, producing a very hot fire with significant smoke fumes, which is extremely difficult to extinguish (NSWFB 2009). Tyre fires emit toxic fumes which can be harmful to human health and the environment. Such fires can lead to closure of essential infrastructure and facilities within a large radius.

Due to the specific and potentially very serious human health concerns with inappropriate handling or disposal of asbestos, waste tyres and clinical and related waste, Government intervention which appropriately responds to the risks posed by these wastes is required. This intervention must provide industry with a clear framework in which to operate in relation to their handling of such waste.

## Options

***Option SW1 – No special Waste Regulation***

***Option SW2 – Remake the special waste provisions in their current format***

***Option SW3 – Remake the special waste provisions in their current form with a special waste monitoring requirement***

### ***Option SW1 – No special Waste Regulation***

Should the special waste provisions be allowed to lapse, there would no longer be specific regulation in the proposed Waste Regulation regarding asbestos waste and ‘clinical and related waste’, to protect human health.

The tracking requirements for clinical and related waste and asbestos transported interstate would still apply. This would retain the transport certification and record-keeping requirements in the existing Waste Regulation; however, tracking requirements do not apply to asbestos transported within NSW.

Clause 49 of the existing Waste Regulation, regarding the transportation of waste generally,<sup>9</sup> would also continue to apply, as would requirements for the packaging of asbestos under the

<sup>9</sup> The safeguards include the requirements to have vehicles maintained to prevent waste spillage, secure waste containers, covered waste, spill kits, and incompatible wastes not mixed together.

Dangerous Goods (Road and Rail Transport) Regulation 2009 (through the Dangerous Goods Code).

Without the continuation of the special waste provisions in the existing Waste Regulation, there would be no tailored provisions governing the disposal of asbestos waste, nor prohibiting the re-use or recycling of asbestos waste.

Likewise, there would be no specific handling, transport and disposal requirements, nor waste management plans for generators of clinical and related waste. There would also be no constraints on the disposal of clinical and related wastes at unlicensed landfills in regional areas.

***Option SW2 – Remake the special waste provisions in their current format***

Under this option, the existing special waste provisions would be remade with no material amendments. This would mean that the existing protections in place to ensure the risks posed to human health by clinical and related waste and asbestos waste would remain.

***Option SW3 – Remake the special waste provisions in their current format with a special waste monitoring requirement***

This option would retain the existing special waste provisions, with an additional obligation for the provision of information for the generation, transport and disposal of these wastes into an EPA electronic system. This would apply to:

- a. loads of more than 20 waste tyres or 200 kg of waste tyres (to be provided by the consignor, transporter and recipient)
- b. loads of at least 80 kg of asbestos waste (to be provided by the transporter and recipient).

The EPA would then be able to monitor the movement of asbestos and waste tyres to manage unlawful disposal and illegal dumping of waste, and gather valuable waste generation and disposal data.

It is envisaged that an electronic record-keeping tool would be used to record the information required, in a user-friendly manner minimising the manual inputting of data. The system would then be able to generate information on the amount of waste collected, location of waste generation, transporter details and location of reprocessing or disposal.

#### **4.4 Part 5 of the existing Waste Regulation – Prohibition against using certain waste for growing vegetation**

##### **Objectives**

The objectives in relation to options for limiting application of certain industrial residue waste to land are to minimise adverse environmental and human health impacts associated with the application of this waste to land for the purposes of growing vegetation.

##### **What is the problem?**

Industries produce waste with varying characteristics as part of their processes. Some of these wastes contain nutrients, trace elements or properties that may confer benefit when land applied in an agricultural context; however, many industrial wastes are not appropriate for application to land for the purpose of growing vegetation without close assessment of their potential to cause environmental harm and adversely impact human health and agriculture.

Certain industrial residue waste can contain undesirable contaminants, including heavy metals and persistent organic compounds.

Due to the potential for this waste to contaminate land used for growing vegetation and its consequent human health risks (through contamination of the food chain), Government intervention is required to appropriately mitigate risks; however, while there is the risk of certain industrial wastes contaminating the environment and causing potential human health issues if used to grow vegetation, there remains the policy priority to encourage resource recovery where appropriate. In determining whether industrial residue waste can be applied to land for re-use in growing vegetation, these competing priorities must be considered.

## Options

### ***Option RW1 – No residue Waste Regulation***

### ***Option RW2 – Remake the residue waste provisions in their current format***

#### ***Option RW1 – No residue Waste Regulation***

If the residue waste provisions in Part 6 of the existing Waste Regulation are allowed to lapse, applying such residue waste to any land for growing vegetation would no longer be expressly prohibited. This would potentially enable the land application of these high risk wastes at their generation site. The resource recovery exemption mechanism would not apply to this situation.

Licensing requirements would continue to apply where residue waste is received from off-site for land application in accordance with clause 39 of Schedule 1 to the POEO Act. Licence conditions could set requirements for where residue waste received from off-site may be applied to land for the purposes of growing vegetation. The EPA may also use the resource recovery exemption mechanism to manage the land application of residue waste received from off site.

#### ***Option RW2 – Remake the residue waste provisions in their current form***

Remaking the residue waste provisions in their current form would maintain the provisions prohibiting the use of the specified residue wastes for the purpose of growing vegetation. This option restricts application of the wastes at their generation site. It also retains the ability for the EPA to grant exemptions, which provides an avenue to encourage appropriate resource recovery.

This provides a clear signal that these wastes cannot be land applied, other than in accordance with an exemption.

## **4.5 Part 5A of the existing Waste Regulation – Waste and Sustainability Improvement Scheme**

This program has now ceased. The Government is now providing funding for waste and resource recovery infrastructure, programs and education through the *Waste Less, Recycle More* initiative. The provisions of Part 5A are no longer relevant, and the only option considered in the Consultation RIS is to repeal this Part.

## **4.6 Part 5B of the existing Waste Regulation – Recycling of consumer packaging**

### **Objectives**

The objectives for dealing with consumer packaging waste are to reduce the environmental and social impacts of packaging waste, and meet the responsibilities of NSW as a signatory to the Used Packaging NEPM.

### **What is the problem?**

Consumption of packaging in NSW totalled approximately 1.4 million tonnes in 2011–12 (CIE 2014, p. 76). If such consumption equates to waste generation, this constitutes almost 10% of all waste generated in the state. The generation of such waste involves manufacturers, retailers and consumers, and receives considerable community attention.

There is an apparent ‘market failure’ in relation to consumer packaging waste, in that the environmental and social costs of the disposal of packaging waste are not reflected in the costs of producers or consumers. As set out in a national level RIS (EPHC 2010, p.2), without some form of government regulation there is little incentive for either the consumer or producer to change their behaviour in respect of such packaging. This includes changing packaging design to make it more efficient (producer) or disposing of packaging to avoid littering (consumer). There can also be inadequate information available to make good packaging waste decisions.

The costs of packaging waste include amenity, human health and environmental costs caused by the littering of packaging waste. The clean-up costs for litter have been estimated to be close to \$89 million per year in NSW (CIE 2014, p. 79). CIE estimates that total costs to the community (primarily private costs) if all used packaging generated in NSW was sent to landfills with best practice controls would be around \$70-\$75 million per year for the next 5 years (CIE 2014, p. 78). However, CIE 2014 estimates the **environmental** and **social** costs to the community (as opposed to private costs) in NSW would be \$3 million per year (if facilities are well run landfills) or \$17 million per year for poorly managed landfills (CIE 2014, p. 78). This takes into account externalities such as air emissions, greenhouse gas emissions and leachate.

NSW is a signatory to the Australian Packaging Covenant (APC) and subject to the Used Packaging NEPM. As such, NSW is obliged to have regulation which mirrors the APC requirements. Without such legislation, the national co-regulatory agreement for the management of packaging waste could be compromised.

Government action is required in relation to consumer packaging waste to address the apparent market failure to consider the environmental and social costs of disposal of packaging waste, and to ensure NSW meets its Used Packaging NEPM and APC obligations.

## Options

**Option CP1 – No recycling of consumer packaging regulation**

**Option CP2 – Remake the recycling of consumer packaging provisions in their current format**

**Option CP3 – Changes to national arrangements regarding consumer packaging and removal of recycling of consumer packaging provisions**

**Option CP4 – NSW measures to address consumer packaging costs and removal of recycling of consumer packaging provisions**

### **Option CP1 – No recycling of consumer packaging regulation**

Should this option be pursued, the co-regulatory scheme for reducing the environmental and social impact of consumer packaging waste created under the existing Waste Regulation would cease. The recovery targets, waste action plans and record-keeping requirements of the recycling of consumer packaging provisions in Part 5B of the existing Waste Regulation would no longer be legislated.

As set out in Section 5.6 of this Consultation RIS, this may jeopardise the ongoing viability of the Used Packaging NEPM and the APC, and place NSW in breach of its obligations under those instruments.

### **Option CP2 – Remake the recycling of consumer packaging provisions in their current format**

Retaining the recycling of consumer packaging provisions in Part 5B of the existing Waste Regulation would continue to provide businesses with an alternative to the requirements of the APC. This provides an incentive for businesses to sign up to the APC, which ensures the national co-regulatory agreement for management of packaging waste retains its integrity. It also ensures that NSW continues to meet its obligations as a signatory to the APC.

Retaining the existing provisions will also require businesses to continue to meet commitments to reduce packaging litter and improve packaging design through either the recycling of consumer packaging provisions of the proposed Waste Regulation or the APC (depending on whether they sign up to the APC). This maintains the principle of shared responsibility for packaging waste, ensuring producers understand their responsibilities in managing packaging waste. It also continues to enable the NSW community to have access to APC funded projects.

### **Option CP3 – Changes to national arrangements regarding consumer packaging and removal of recycling of consumer packaging provisions**

The recycling of consumer packaging provisions of the existing Waste Regulation could be replaced with national initiatives to improve environmental and social outcomes from consumer packaging waste. Seven options were included in the Consultation RIS prepared by the COAG Standing Council on Environment and Water in 2011 (COAG 2011) relating to packaging impacts, including a National Packaging Waste Strategy and Co-regulatory Packaging Stewardship Scheme. CIE 2014 (pp. 83–84) examined these options, and whether alternative funding arrangements for the APC should be explored, including that the APC be directly government funded (not funded through industry).

#### ***Option CP4 – NSW measures to address consumer packaging costs and removal of recycling of consumer packaging provisions***

This option proposes action on a state level to address the environmental and social costs associated with consumer packaging waste. This would be carried out through direct measures to address landfill externalities, such as changes to design and siting requirements of landfills, and more stringent pollution and leachate controls. It may also include direct funding of litter reduction measures (including at a community level) (CIE 2014, pp. 84–85).

These measures would replace the recycling of consumer packaging provisions of the existing Waste Regulation.

### **4.7 Schedule 1 of the POEO Act – Licensing thresholds**

#### **Objectives**

The licensing threshold options are to help mitigate the risk posed by the management of waste in smaller resource recovery, waste processing and waste storage facilities, and maintain a level playing field across the industry.

#### **What is the problem?**

Waste activities have the potential to cause significant harm to both the environment and human health. In resource recovery, waste processing and waste storage facilities, this includes potential health impacts of dust, noise and odour. If inappropriately managed or abandoned, such facilities can have excessive stockpiles and also release gases into the environment, and leaching can lead to contamination of groundwater or waterways.

The EPA is not the regulatory authority for resource recovery, waste processing and waste storage facilities which are currently below the thresholds in Schedule 1 for waste received on site. These facilities are instead regulated by local government. The EPA, with its expertise in waste and resource recovery, and its resources for the regulation of waste facilities, may be better equipped to deliver environment protection outcomes for these facilities.

Further, as resource recovery, waste processing and waste storage facilities currently below the licensing thresholds do not have to meet requirements that licensed facilities must meet, it creates an uneven playing field across this sector. Should the waste levy reforms set out in Option WL2 of Section 4.1 of this Consultation RIS also be adopted, this gap in compliance and regulatory requirements will become even more marked. This places larger facilities at a commercial disadvantage with their smaller competitors in terms of administrative and other costs.

There is a need for Government intervention to ensure that smaller waste facilities meet minimum environmental criteria to ensure protection of the environment and human health, and compliance requirements similar to the larger facilities to ensure fair competition in the market. These facilities would generally have similar environmental risks to existing larger licensed facilities, albeit on a potentially smaller scale.

#### **Options**

***Option LT1 – Maintain existing thresholds***

***Option LT2 – Introduce new thresholds***

### ***Option LT1 – Maintain existing thresholds***

Under this option, the existing thresholds for resource recovery, waste processing and waste storage facilities would remain in place. This would mean that such facilities:

- a. storing 2500 tonnes or cubic metres or less of general waste at any one time (or for storage of waste tyres, 50 tonnes or 5000 waste tyres)
- b. processing 120 tonnes a day or 30,000 tonnes a year or less of general waste, or
- c. for waste storage facilities, receiving 30,000 tonnes or less of general waste a year

would not trigger the requirement to hold an EPA licence and would not be regulated by the EPA.

The facilities would continue to be regulated by local council. The resources of local councils, and their expertise in waste management, vary across the state.

### ***Option LT2 – Introduce new thresholds***

An alternative is to introduce the following new thresholds for general waste and storage of waste tyres for the requirement to hold an environment protection licence:

Activity	Proposed thresholds
<b>Resource recovery</b>	More than 1000 tonnes or cubic metres stored at any one time, processing of more than 50 tonnes a day or 12,000 tonnes a year
<b>Waste processing (non-thermal treatment)</b>	More than 1000 tonnes or cubic metres stored at any one time, processing of more than 50 tonnes a day or 12,000 tonnes a year
<b>Waste storage</b>	More than 1000 tonnes or cubic metres stored at any one time, or more than 12,000 tonnes received from off site a year
<b>Storage of waste tyres</b>	More than 5 tonnes of waste tyres or 500 waste tyres at any one time

Lowering of thresholds for waste disposal (application to land and thermal treatment) are not proposed under this option, as current thresholds have been found appropriate to manage the key risks at these facilities.

The EPA would become the appropriate regulatory authority for a number of new facilities and operations that will be captured under the proposed new thresholds. On current information, it is not clear exactly how many new facilities would be captured, although it is assumed it will be fewer than 50 new facilities (including 10 waste tyre storage facilities). The number will become clearer in the consultation process.

As a holder of an environment protection licence, the facilities must also pay licence fees and meet all requirements for Scheduled Waste Facilities, including payment of the waste levy (if Option WL2 in Section 4.1 of this Consultation RIS is adopted).

## **4.8 New provision – Land pollution offences**

### **Objectives**

To provide a strong deterrence against the unlawful disposal of certain types of waste which have the potential to have significant adverse environmental and health consequences.

## **What is the problem?**

Certain types of waste, by their nature, pose significant risks to human health or the environment if applied to land. The following categories of waste are of particular concern:

- a. **Asbestos waste:** As set out in this Consultation RIS, exposure to asbestos waste fibres may lead to severe adverse human health consequences.
- b. **Hazardous waste and restricted solid waste** (the highest classification for solid waste): Due to their chemical composition, these wastes can also cause severe environmental damage (and human health consequences) if managed in an uncontrolled manner.
- c. **Waste tyres:** Stored in large quantities, waste tyres can pose a fire hazard, and can accommodate disease carrying animals such as mosquitoes and vermin.

Currently, certain waste facilities are licensed to accept the above wastes for disposal; however, there have been incidents of unlawful disposal of these wastes at unlicensed facilities or sites, with potential for environmental and human health impacts. Government intervention is required to ensure communities are protected against these impacts.

Currently, under section 142A of the POEO Act, it is an offence to pollute land. The definition of 'land pollution' includes applying a substance to land that 'causes or is likely to cause degradation of the land' or 'resulting in actual or potential harm to the health or safety of human beings, animals or other terrestrial life or ecosystems'. The POEO Act does not specifically set out what types of waste constitute land pollution.

This is in contrast to the definition of 'water pollution', which includes 'prescribed matter' in Schedule 5 of the Protection of the Environment Operations (General) Regulation 2009. This clearly sets out what types of matter will strictly be determined to fall within the definition of 'water pollution' (such as oil, grease or flammable liquids), if the prescribed matter is placed in or onto waters, and does not meet prescribed standards.

The practical outcome of this option is that for each instance where waste is dumped on land, the offence of land pollution needs to be proven by the EPA in Court.

## **Options**

***Option LP1 – Maintain existing offence***

***Option LP2 – Amended land pollution provision***

### ***Option LP1 – Maintain existing offence***

This option would retain the current lack of a prescribed offence provision and maintain the offence provisions under the POEO Act.

### ***Option LP2 – Amended land pollution provision***

Under this option, it is proposed to prescribe that 'land pollution' would include, for the purpose of its definition in the POEO Act:

- hazardous waste
- restricted solid waste
- more than 10 tonnes of asbestos waste
- more than 100 tonnes or more than 10,000 waste tyres.

It will remain a defence to land pollution if a facility is licensed to land apply the waste.

This list of prescribed wastes would be incorporated into the definition of ‘land pollution’ in clause 108 of the POEO General Regulation, in a similar manner to the list of prescribed matter that constitutes ‘water pollution’ in Schedule 5 of that Regulation.

## **5. Cost benefit analysis for options for Protection of the Environment Operations (Waste) Regulation 2014**

The EPA commissioned the Centre for International Economics (CIE 2014) to undertake a cost benefit analysis (CBA) of the range of options outlined in Section 4 of this Consultation RIS. All estimates of present value and net present value in CIE 2014 and this section use a discount rate of seven per cent.

This section includes elements of the quantitative and qualitative assessment from CIE 2014, and an analysis of the costs and benefits for each of the options listed in Section 4 of this Consultation RIS. The full CIE 2014 should be referred to for more detailed analysis of the relevant costs and benefits of the various options. For some options, it was not possible to quantify the costs and benefits in dollar terms. It is anticipated that further information provided by stakeholders during the consultation process will enable a more complete analysis of the figures for those options.

### **5.1 Part 2 of the existing Waste Regulation – Waste levy and monitoring requirements**

For the waste levy and monitoring requirements, three options were proposed.

***Option WL1 – Remake the waste levy provisions in their current format***

***Option WL2 – Regulation with amended waste levy provisions***

***Option WL3 – Regulation with an alternative regulatory option requiring all waste transporters to be licensed***

The following sets out the relevant costs and benefits of each option.

#### ***Option WL1 – Remake the waste levy provisions in their current format***

While this option achieves the NSW Government's objectives in relation to setting a strong price signal for the disposal of waste it does not directly restrict the illegal and distortionary activities occurring in intermediary facilities.

As the EPA has identified in recent investigations, there have been significant illegal and distortionary activities through intermediary facilities (including in collaboration with landfills). As Option WL1 does not include measures specifically designed to counter these activities, it will not improve the capacity of the proposed Waste Regulation to reduce the environmental, social and financial implications of illegal waste disposal, stockpiling and waste levy avoidance through intermediary facilities.

#### ***Option WL2 – Regulation with amended waste levy provisions***

The package of measures under this option work together to:

- reduce the risk of illegal dumping through intermediary facilities, with a detailed account of materials moving through these facilities – This is achieved through the introduction of requirements to install weighbridges, record-keeping, video monitoring of vehicles and loads, volumetric surveys and levy payment requirements. This increased accountability means that there will be a significantly

lower risk of intermediary facilities disposing of their non-recyclable residual waste illegally

- remove the incentive for long-term storage or ‘above ground’ landfilling of waste at intermediary facilities – As the waste levy will be payable by those intermediary facilities when EPA prescribed stockpile limits are exceeded, there is an incentive for the facilities to improve their operations and maintain stockpiles within these levels at all times. The liability to pay the waste levy on a stockpile of waste which has been on site for over 12 months also encourages effective turnover of stock, either back into the productive economy, or for disposal at a lawful landfill
- reduce the risk of misclassification of waste and falsification of documents through intermediary facilities – Any discrepancies between facility and weighbridge records and volumetric surveys and other evidence, including video monitoring, will alert the EPA to the possibility of unlawful activities
- improve reliability of data, including waste tonnages, in relation to intermediary facilities and strengthen the EPA’s regulatory oversight across all scheduled waste facilities
- maintain all material provisions of Part 2 of the existing Waste Regulation – Those provisions have proven effective in minimising illegal activities in the waste industry.

CIE 2014 includes an extensive analysis of specific costs and benefits of this proposed option (pp. 23–34). This includes the benefit of reduced resource costs of managing waste (due to the above measures), together with the following costs:

- Costs to industry:
  - capital costs to install (up to 50% Government funded) and operate a weighbridge and associated software (if no weighbridge currently installed)<sup>10</sup>
  - administration costs due to extra record-keeping and reporting requirements<sup>11</sup>
  - costs of volumetric surveys<sup>12</sup>
  - compliance costs for credit system<sup>13</sup>

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<sup>10</sup> The costs as set out in the table below are based on an additional 100 intermediary facilities and the EPA’s understanding of how many of these facilities already have a functioning weighbridge. This does not include:

- a. intermediary facilities that will become Scheduled Waste Facilities under the proposed lowering of licensing thresholds under Section 4.7 of this Consultation RIS (as the total number of the facilities is not certain)
- b. the additional landfill facilities that may be required to install a weighbridge due to the removal of the 5000 tonne weighbridge threshold. This is addressed in Appendix B, as it does not relate to extending the levy to intermediary facilities
- c. waste tyre processing or storage facilities which will be required to pay the levy (as it is not clear how many of these facilities may require a weighbridge)
- d. potential additional costs for electricity connections and shelter for weighbridges, particularly in regional areas
- e. any increase in the number of intermediary facilities which may arise in the coming years.

<sup>11</sup> The costs as set out in the table are based on an additional 110 intermediary facilities which will be required to pay the levy, and 27 drum reconditioners and composters which will not be required to pay the levy. This does not include intermediary facilities that will become Scheduled Waste Facilities under the proposed lowering of licensing thresholds under Section 4.7 of this Consultation RIS (as the total number of the facilities is uncertain), other than waste tyre processing or storage facilities. The costs also do not include costs from any increase in the number of intermediary facilities which may arise in the coming years.

<sup>12</sup> This does not include costs for initial ‘baseline surveys’ for these intermediary facilities – it is unclear at this stage how many facilities will require this survey. It also does not include intermediary facilities that will become Scheduled Waste Facilities under the proposed lowering of licensing thresholds under Section 4.7 of this Consultation RIS (as the total number of the facilities is uncertain), other than waste tyre processing or storage facilities. It also does not include any increase in the number of intermediary facilities which may arise in the coming years.

<sup>13</sup> As the operation and functionality of the credit system is still being finalised, it is not possible to estimate the costs to industry (including intermediary facilities and landfills), and to Government of the administration and implementation of the credit system (including use of software and stockpile management).

- potential costs if required to install video monitoring.<sup>14</sup>
- Costs to government:
  - capital cost for new levy-paying facility to install weighbridge (up to 50% Government funded)
  - administration and enforcement staff – additional five FTE
  - implementation and compliance costs of the credit system
  - potential costs involved in installing video monitoring.

The following is the CIE 2014 summary of the costs and benefits of this proposed option (over 10 years):

#### **Summary of costs and benefits of amendments to the waste levy framework**

Impact from proposed amendment	Amount
	\$ million
<b>Benefits</b>	
Reduced waste management costs	38.63
<b>Costs</b>	
<b>Industry</b>	
Capital cost of weighbridge and software (50%)	1.30
Record-keeping and reporting	0.50
Volumetric surveys	3.86
<b>Government</b>	
Capital cost of weighbridge and software (50%)	1.30
Administration and enforcement	3.86
<b>Total costs</b>	<b>10.83</b>
<b>Net benefit</b>	<b>27.80</b>

Note: Estimates expressed in present value terms over a 10 year period, using a discount rate of seven per cent.

Source: CIE estimates (CIE 2014, pp. 33–34).

#### **Option WL3 – Regulation with an alternative regulatory option requiring all waste transporters to be licensed**

Under this option (requiring all waste transporters to be licensed), the main benefit would be that the EPA would have thorough information regarding the movement of waste.

This should provide the EPA with intelligence on which operators are involved in the transport of waste, which would in turn lead to more targeted effective education and compliance strategies for the waste transport sector. However, while these strategies may reduce the incentives for waste transporters to be involved in illegal dumping, it is difficult to envisage how such a licensing system would provide a disincentive for the intermediary facilities to illegally dispose of waste. Further, it does not address the issue of excessive stockpiling at intermediary facilities, as it only relates to recording of information for the transport, and not the stockpiling, of waste.

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<sup>14</sup> Given the uncertainty as to how many facilities will be required to install videos, the costs and benefits of video monitoring were not included in the final cost benefit analysis.

CIE 2014 (pp. 34-35) assessed the costs and benefits of this option. The costs include licence administration fees and costs of recording information, and costs to government of ensuring compliance and enforcement; however, as the total cost to industry and government is dependent on the number of waste transporters and vehicles used to transport the waste, together with number of loads, which are unknown, CIE was unable to quantify the costs of this option.

The benefits (and therefore net benefit) of the alternative option could not be assessed by CIE. As a stand-alone option, it is unlikely that without additional monitoring or tracking requirements, the licensing of all waste transporters would result in the necessary behavioural change within industry. The option is also dependent on the extent to which waste transporters, as opposed to waste facilities, are engaging in illegal handling of waste. The greater their involvement, the greater the benefits of this option.

**Preferred option:**

Based on available information, Option WL2 is the preferred option in relation to the waste levy framework.

Option WL1, while providing the EPA with effective oversight of scheduled waste disposal facilities, does not increase the regulatory oversight of all Scheduled Waste Facilities, reducing the EPA's ability to ensure compliance and counter illegal activity in the waste industry.

While the net costs and benefits of Option WL3 could not be fully assessed, it does not fully address the problem of illegal activities in the waste industry, as it does little to deter intermediary facilities from engaging in activities which are distorting the waste market. Option WL2 achieves significant net benefits to the community, and best achieves the EPA's objectives to reduce illegal activities in the waste sector.

## 5.2 Part 3 of the existing Waste Regulation – Waste tracking

For the tracking of waste, five options were proposed.

**Option WT1 – No waste tracking regulation**

**Option WT2 – Remake the waste tracking provisions in their current format**

**Option WT3 – Remake the waste tracking provisions in their current format with an increase in scope to include interstate tracking of all wastes**

**Option WT4 – Remake the waste tracking provisions in their current format and increase their scope to include tracking of all wastes**

**Option WT5 – Remake the waste tracking provisions in their current format with an increase in scope to include satellite tracking**

The costs and benefits of each option relating to the tracking of waste are below.

### ***Option WT1 – No waste tracking regulation***

Should the waste tracking provisions be repealed, there would be a number of costs, as set out in CIE 2014 (pp. 44-46), including:

- the private costs of the loss of comprehensive information flows
- the public costs of the probability of having to manage increased illegal dumping activity
- the EPA and participants would receive reduced information on the movement of high risk wastes, potentially increasing the risk of inappropriate transport of high risk wastes
- NSW would be in breach of its obligations under the Controlled Waste NEPM if the tracking provisions were repealed, which may jeopardise the integrity of interstate transport of waste
- the Controlled Waste NEPM requiring compatible tracking systems across states and territories would need to be replaced, which would be administratively burdensome and potentially very costly.

The main benefit would be the reduced cost of maintaining the current tracking system (estimated at \$25,000 a year); however, should an alternative system be established, this would require extensive negotiation between participants and also incur further costs.

### ***Option WT2 – Remake the waste tracking provisions in their current format***

Converse to Option WT1, maintaining the existing provisions would ensure the collection of extensive and detailed information on the movement and transportation history of higher risk waste. This information minimises the risks associated with the inappropriate transport of these wastes. It also supports the implementation of the Controlled Waste NEPM.

In terms of costs, CIE 2014 (pp. 43-44) found the following:

- The estimated annual cost to government to verify and audit the tracking system is \$25,000.
- There are minimal costs to industry as commercial contracting arrangements between waste transporters and consignors would generally require collection of similar information in any event.

### ***Option WT3 – Remake the waste tracking provisions in their current format with an increase in scope to include interstate tracking of all wastes***

Under this option, the costs and benefits associated with Option WT2 would also apply.

In addition, CIE 2014 (p. 46) found that the new provision for interstate tracking of all waste from the ‘Metropolitan Levy Area’ (being the current Sydney Metropolitan Area and Extended Regulated Area) that is transported interstate, provides the following benefits:

- This information would inform the EPA on the volume of waste bypassing the NSW waste regulatory framework, so it can make planning and strategic assessments of waste diversion incentives.
- The information would allow assessment of potential environmental and road congestion impacts due to excessive transport of waste interstate.

CIE 2014 was not able to provide an accurate assessment of the cost to administer interstate tracking; however, by linking in to the existing waste tracking system, establishment costs and ongoing costs are likely to be minimised.

### ***Option WT4 – Remake the waste tracking provisions in their current format and increase their scope to include tracking of all wastes***

Under this option, the costs and benefits associated with Option WT2 would also apply; however, there would be substantial costs arising out of inefficiencies in this system. This

option would include the requirement for consignment authorisations to provide prior notification before a recipient waste facility accepts a load of waste, which would provide significant information regarding the movement of waste and would be extremely administrative and resource intensive, with potentially little environmental benefit. This option would also likely increase transport costs.

CIE 2014 found that it would be unlikely there would be increased mitigation of environmental and human health risk from extending tracking to general waste.

***Option WT5 – Remake the waste tracking provisions in their current format with an increase in scope to include satellite tracking***

Under this option, the costs and benefits associated with Option WT2 would also apply.

A satellite tracking provision would enable the EPA to monitor routes travelled by selected waste transporters. This would enable the EPA to establish waste transport patterns, and detect waste transported to illegal waste disposal facilities. This would likely increase the capacity of the EPA to identify the illegal dumping of waste, and reduce the EPA's compliance and enforcement costs, as explained in CIE 2014.

As the EPA would determine which vehicles are required to install the tracking devices, the number of devices installed would vary from time to time depending on compliance and enforcement requirements. It is not currently possible to anticipate how many devices would be installed, nor the cost of each device (as a particular system has not been chosen). However, the EPA does not currently have the legislative power to introduce such satellite tracking provisions under the proposed Regulation. The EPA will, however, pursue this option in the future.

**Preferred option:**

The EPA considers that Option WT3 is the preferred option in relation to waste tracking. This option maintains the existing waste tracking provisions (as described in Option WT2), which have proven highly effective in reducing incidences of illegal dumping of hazardous waste. These measures provide a far more robust framework for monitoring high risk waste than the limited regulatory measures available under Option WT1. The existing provisions achieve the objective of minimising the potential impacts of highest risk waste on the environment and human health, with comparatively minor ongoing costs. They also assist in achieving one of the main objectives of the POEO Act, which is to prevent pollution incidents.

This option also provides the EPA with information regarding the interstate movement of general waste from the Greater Sydney Area. While it is unclear what the full costs of administration of this system will be, the EPA estimates that, given the sunk costs in the current online waste tracking system, additional costs on the EPA or industry are likely to be very low.

While Option WT4 would also enable tracking of waste interstate (and intrastate), given the significant scale, costs and inefficiencies of Option WT4, and limited environmental benefit, Option WT3 is preferable to Option WT4.

Further, while Option WT5 has many benefits, the EPA does not have the overarching legislative powers to introduce such a requirement under the proposed Regulation. This option is therefore not a recommended option under this Consultation RIS.

While CIE 2014 recommends adopting Option WT2 due to the absence of information on the cost to administer interstate tracking requirements, the advantages for policy and program development of Option WT3 make it the preferred option. This option would enable the EPA to better understand the incentives for and trends of interstate movement of waste in the context of the NSW waste regulatory framework and assess the environmental impact of long haul transport of such waste. Accordingly, Option WT3 has the greatest net benefit to the community.

### **5.3 Part 4 of the existing Waste Regulation – Management of special waste**

For the management of special waste, three options were proposed.

***Option SW1 – No special Waste Regulation***

***Option SW2 – Remake the special waste provisions in their current format***

***Option SW3 – Remake the special waste provisions in their current format with a special waste monitoring requirement***

The costs and benefits of the options in relation to the special waste provisions are set out below.

#### ***Option SW1 – No special Waste Regulation***

If this option were to be pursued, there would be no specific regulation for the handling, transport and disposal of clinical and related waste, waste tyres or asbestos waste under the proposed Waste Regulation.

CIE 2014 analyses the implications of removing the mandatory requirements in Part 4 in relation to treating clinical and related waste (CIE 2014, pp. 52–54). CIE noted that the majority of the fixed costs associated with changing waste management practices in relation to sharps waste have already been incurred by health facilities and other facilities that generate sharps waste (such as pubs and clubs). CIE 2014 considers there are strong incentives for facilities to continue with current practices (acting consistently with the general requirements of Part 4), even if Part 4 is repealed. Health facilities may also have reduced administration and compliance costs if they no longer have to comply with the requirements of Part 4. However, CIE identifies the major risk with the repeal of Part 4 (in relation to clinical and related waste) is the potential for the increased risk of transmission of infectious disease, particularly at health facilities that do not continue to act in accordance with the general requirements of Part 4. While the extent of this risk is difficult to quantify, the costs of the effects of needle-stick injuries (including psychological trauma) and potential infection can be significant.

It should be noted that although CIE have identified that health facilities would be likely to continue with their current practices, CIE did not consider whether waste transporters or operators would also continue to do so. Without the relevant requirements in place for the transport and disposal of clinical waste, risks of infection and injury may also substantially increase.

In terms of asbestos waste, as set out in Section 4.3 of this Consultation RIS, there are other existing requirements on transporters in relation to the packaging of asbestos waste for transport (including under the Dangerous Goods Code); however, these requirements are not as robust as those in the existing Waste Regulation and do not apply to the disposal of asbestos waste.

CIE found that there is little information available on how industry practice would change if the additional requirements for asbestos in Part 4 of the existing Waste Regulation were removed (CIE 2014, 62–63). CIE expected, however, that there would be reduced operational costs of asbestos management (through less packaging material required in transport and reduced tipping fees and transporting costs through being able to transport to unlicensed waste facilities). However, CIE cautioned that under this option while the **risk of**

increased exposure to asbestos may be low, the potential **cost** of exposure is high (primarily in relation to medical costs associated with contraction of asbestos related disease).

### ***Option SW2 – Remake the special waste provisions in their current format***

This option would retain the clinical and related waste and asbestos waste provisions in the existing Waste Regulation.

The costs of complying with the current provisions for clinical and related waste, for health facilities such as hospitals and home care facilities, is logically higher than if the requirements were repealed under Option SW1. However, CIE found that the ongoing costs are likely to be insubstantial (CIE 2014, p. 54). Given the potential costs to the community of the transmission of diseases which can occur through human contact with clinical and related waste, the benefit of tailored legislation to reduce this risk is likely to outweigh the costs.

For asbestos waste, while there is some existing legislation which regulates the transport and handling of asbestos, the legislation does not cover transport or disposal. While CIE found that remaking Part 4 in substantially the same form would mean operational costs for industry would be higher than if Part 4 was repealed, the benefits provided if the provisions lead to any small reduction of risk of human contraction of asbestos-related diseases outweigh these costs (CIE 2014, p. 63),<sup>15</sup> if the ongoing compliance costs are low.

Importantly, remaking the Regulation in its current form would maintain the existing prohibition on the re-use or recycling of asbestos waste. This clause ensures that human contact with asbestos waste (in the workplace or in the community) is limited and that disposal or containment is the main avenue for the material.

Clause 42 of the existing Waste Regulation, requiring that asbestos waste only be disposed of ‘at a landfill site that may lawfully receive the waste’ is vital to ensure only appropriate sites can receive asbestos (to manage any health impacts). However, in order to reduce the risks of illegal dumping of asbestos and the resulting costs on the community, it is important that there are sufficient landfills which can receive asbestos waste, and that they are appropriately located. This will ensure that there is sufficient competition between landfills to maintain landfill gate prices at a reasonable level, so as not to encourage avoidance of landfill fees and illegal dumping of asbestos.

Finally, retaining the special waste provisions in their current format maintains the status quo of no specific regulation for the handling, transport and disposal of waste tyres. The EPA could, however, continue to rely on non-regulatory options (such as education campaigns) and enforcement actions against facilities and transporters not lawfully authorised to transport, hold or dispose of waste tyres. These options have not, however, provided the EPA with sufficient information to enable it to establish the chain of custody of waste tyres (from retailer/retreader to final disposal point), or to provide disincentives for illegal activities in relation to waste tyres.

### ***Option SW3 – Remake the special waste provisions in their current format with a special waste monitoring requirement***

CIE 2014 (pp. 59-61 & 65–67) analyses the various costs and benefits associated with introducing a special waste monitoring requirement to the special waste provisions.

It is likely that, with respect to an asbestos and tyres monitoring requirement:

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<sup>15</sup> CIE 2014 noted that treatment costs for chrysotile asbestos are around \$667,000 per person, while the cost of death is between \$1.5 million and \$6.1 million.

- The EPA would be able to monitor whether the same quantities of asbestos/waste tyres are being reported at generation and disposal points. If there are any discrepancies, the EPA can determine if illegal dumping has occurred.
- This measure is likely to provide a disincentive for illegal dumping of these wastes, and there is likely to be a reduction in the quantity of illegal asbestos and tyre waste dumped in locations where there is a chance of exposure to the community.

In relation to asbestos however, CIE highlighted that the monitoring requirements would likely generally be met by licensed asbestos removalists. As the anecdotal evidence indicates unlicensed removalists contribute to the majority of illegal asbestos dumping, and that WorkCover NSW already conducts audits of licensed asbestos removalists, CIE estimated the benefits of the new provisions may be small.

In terms of costs for asbestos monitoring, CIE 2014 found that there were unlikely to be significant additional costs involved in implementing an asbestos monitoring requirement under Option SW3, as much of the information collected is already gathered through reporting requirements of licensed asbestos removalists to WorkCover NSW and landfills to the EPA. The main additional cost would be additional time spent by the EPA in collating and comparing information between licensed removalists and licensed landfills. CIE was not able to quantify the precise costs involved.

CIE 2014 also examined the costs and benefits of the proposed waste tyre monitoring requirement. As CIE stated, a small reduction in risk of a tyre fire could provide a significant community benefit (CIE 2014, p. 65-66), due to the potential for waste tyre fires to be extremely costly to extinguish and damaging to human health and the environment. CIE considered a range of potential costs for the system. The costs estimate by CIE is likely to significantly overestimate the time it would take for industry to use an electronic system; however, as the precise form of the monitoring system for waste tyres is still being developed by the EPA, the costs cannot yet be accurately predicted, and CIE was not able to establish whether the system would be of net benefit.

#### **Preferred option:**

The preferred option is Option SW3. This retains the benefits of Part 4 of the existing Waste Regulation, while providing the EPA with increased oversight of the removal, transport and disposal of asbestos waste and waste tyres. This enhances the EPA's enforcement capabilities and protects human health and the environment, consistent with the objectives for this Part and with one of the objects of the POEO Act, to monitor and report on environmental quality on a regular basis.

While CIE 2014 identified that it is difficult to determine, based on currently available information, whether the monitoring requirements provide a net community benefit, these measures would act as an additional disincentive to the illegal dumping of asbestos and waste tyres. Due to the serious potential consequences of exposure to asbestos and waste tyre fires, any reduction in illegal dumping of these wastes can lead to significant benefit.

## **5.4 Part 5 of the existing Waste Regulation – Prohibition against using certain waste for growing vegetation**

In relation to the prohibition against using certain waste for growing vegetation, two options were proposed.

***Option RW1 – No residue Waste Regulation***

***Option RW2 – Remake the residue waste provisions in their current format***

The base case of no regulation was qualitatively assessed by CIE against the existing provision, and the costs and benefits of each option are set out below.

### **Option RW1 – No residue Waste Regulation**

If the current Regulation were to lapse, CIE found that there would be the following potential benefits (CIE 2014, pp.69–70):

- Industry would be able to determine whether application of certain residue waste would be of harm to the environment or human health.
- Industry would have the flexibility to manage production inputs and costs.
- Government would save on administrative costs due to no longer regulating the use of residue waste.

CIE also found however, that the option poses the following costs (CIE 2014, pp. 70-71):

- potential environmental and human health impacts from industry applying residue waste where insufficient environmental precautions are implemented
- costs for government to remediate sites where residue wastes are applied, and costs of potential enforcement actions.

Without the residue waste provisions, EPA licensing requirements would apply to any site used for the application of waste *received from off- site* to land. Licences can stipulate restrictions on use of waste, including residue waste, on-site.

### **Option RW2 – Remake the residue waste provisions in their current format**

The existing provisions, by their nature (in excluding the application of certain residue wastes to land) provide benefit in terms of avoided risk to the environment and human health from potentially harmful industrial wastes. They also avoid costs to government relating to investigations and remediation from illegal incidents.

The costs of maintaining the provisions, according to CIE 2014 (pp. 70-71) are:

- increased disposal costs to industry (waste sent to landfill instead of land applied for growing vegetation, and includes gate fees and levy)
- increased cost of inputs used instead of residue waste
- increased cost to apply for and comply with an exemption from the EPA (approximately \$10,000 per application, and ongoing reporting/testing costs)
- administration costs to government to assess exemption applications.

### **Preferred option:**

The preferred option is Option RW2. This is consistent with the views of CIE in CIE 2014, which found that the costs of the option are minimal, while the benefit is potentially large in the avoided risk of harm to the environment and human health.

While under Option RW1 the EPA could specify restrictions in licensing conditions for application of residue waste to land, this will not apply to residue waste generated and applied to land on site. The inability to systematically regulate residue waste in this option increases environmental risk.

Option RW2 is best placed to achieve the objective of minimising adverse environmental and human health impacts associated with application of certain industrial waste to land, and to achieve one of the objects of the POEO Act, to reduce to harmless levels the discharge of substances likely to harm the environment. This is achieved through the current prohibition, in conjunction with the flexibility of an exemption framework which permits application of certain residue wastes in specified circumstances.

## **5.5 Part 5A of the existing Waste Regulation – Waste and Sustainability Improvement Scheme**

As this program has now ceased, the only option considered under the Consultation RIS is to allow this Part to lapse. No cost benefit analysis of options is therefore required.

## **5.6 Part 5B of the existing Waste Regulation – Recycling of consumer packaging**

In relation to the recycling of consumer packaging, four options were proposed.

***Option CP1 – No recycling of consumer packaging regulation***

***Option CP2 – Remake the recycling of consumer packaging provisions in their current format***

***Option CP3 – Changes to national arrangements regarding consumer packaging and removal of recycling of consumer packaging provisions***

***Option CP4 – NSW measures to address consumer packaging costs and removal of recycling of consumer packaging provisions***

The costs and benefits of the options in relation to dealing with consumer packaging waste are set out below.

### ***Option CP1 – No recycling of consumer packaging regulation***

Allowing Part 5B to lapse would result in potential savings for businesses and government; however, there would also likely be significant costs and implications for the Used Packaging NEPM and APC nationally.

According to CIE 2014 (p. 98), should the recycling of consumer packaging provisions continue over a five year regulatory period, the cost to business in NSW would be approximately \$21 million (including compliance costs on business of \$3.8 million per year and APC membership fees of \$1.3 million per year). If the recycling of consumer packaging provisions were not remade, these potential costs would be avoided.

Removal of the recycling of consumer packaging provisions would, however, have significant implications for the national co-regulatory arrangement for the management of packaging waste. NSW would be in breach of its obligations under the Used Packaging NEPM and as an APC signatory. It may also lead to the dismantling of the APC, as without the nation's largest state government meeting the requirements of the APC, the credibility of the scheme could be jeopardised. Therefore, the schemes the APC supports (including litter reduction projects, recycling and sustainable packaging design projects, of up to \$6 million per annum nationally and \$1 million per annum in NSW), and the joint action on recycling and litter promoted under the APC, would be placed at risk.

Practically, the proposed Waste Regulation would lose its effectiveness as a mechanism for supporting the APC in NSW, as there would be a lack of incentive for businesses to sign up to the APC (as the APC is voluntary and businesses would no longer be exposed to the 'stick' of being subject to Part 5B if they did not become a signatory). Those businesses, if

not signed up to the APC, would have an unfair advantage over their competitors, as they would not be subject to the targets and product stewardship requirements of the APC.

Without the recycling of consumer packaging provisions, and the resulting application of the APC to businesses, the proposed Waste Regulation would not directly address the environmental and social costs of the disposal of packaging waste. While the waste levy provides encouragement for recycling generally, without the recycling of consumer packaging provisions, there would be limited market incentives for producers to factor the externalities of consumer packaging waste into their decisions. The costs of these externalities would be borne by state and local governments and the community.

***Option CP2 – Remake the recycling of consumer packaging provisions in their current format***

As can be seen in the analysis of Option CP1, while there are various costs of maintaining the content of the recycling of consumer packaging provisions in the proposed Waste Regulation (including membership fees and compliance costs), the impacts of removing Part 5B are significant.

In relation to the costs of maintaining the recycling of consumer packaging provisions, it is important to note that to date no businesses contacted by the EPA in NSW have chosen to be subject to those provisions rather than join the APC. Direct enforcement and administration costs to the NSW Government in relation to the recycling of consumer packaging provisions have been minimal.

CIE also argues that, while the recycling of consumer packaging provisions may increase recycling rates (and have proven to do so in the past) (CIE 2014, pp. 86–88), additional recycling of consumer packaging can, depending on the circumstances, impose a net cost on the community (CIE 2014, p. 99).

The Consultation RIS prepared by the COAG Standing Council on Environment and Water in 2011 (COAG 2011) relating to packaging impacts indicates otherwise. That RIS included a cost benefit analysis of a range of national options for managing consumer packaging waste, including ‘Option 2a’. That option is a close reflection of the current co-regulatory scheme established under Part 5B of the existing Waste Regulation, involving an APC with underpinning government regulation (although in that RIS, the underpinning regulation is of the Commonwealth, not NSW).

COAG 2011 assessed the benefits of that option, including market value of resources; avoided regulatory, landfill operating and litter clean-up costs; avoided landfill externalities; costs of scheme design, implementation, operation and compliance; costs of collection, transport and processing; and household and business participation costs. Over a 20-year analysis period, this option achieved a net benefit of \$46 million to the community nationally, without taking account of all non-market benefits that could not be quantified.

The differences in the net benefits between the two assessments (CIE 2014 and COAG 2011) include differences in cost calculations. In addition, while they should not be added to the cost benefit results (to avoid any double counting), COAG 2011 found that the following non-market-benefits should be taken into consideration in assessing the overall costs and benefits of the options:

- the community’s willingness to pay for increased packaging recycling. Under ‘Option 2a’, the estimated benefit of this willingness to pay was between \$233 and \$402 million per annum nationally. This incorporates the desire of the community to avoid unnecessary resource depletion and costs of resource extraction.

- recycling has also been found to generate more employment than landfill operations, leading to more employment and economic opportunities in NSW (Access Economics 2009).<sup>16</sup>

CIE considered willingness to pay for increased packaging recycling should not be considered as it is not a tangible environmental or social outcome in itself, and did not consider employment generation as a potential benefit.

Both CIE 2014 and COAG 2011 did agree, however, that it is appropriate to consider willingness to pay in formulating litter reduction policy, although they were not able to quantify the community's desire, nor the full costs of litter in general (as there is insufficient detail). A cost-benefit analysis prepared for COAG 2011 noted that households are willing to pay an additional \$4.15 for every one per cent decrease in litter (COAG 2011, Attachment C p. 86).

The benefits of the co-regulatory scheme for litter do depend to some extent on whether NSW litter projects are funded (noting that no NSW litter projects have been funded under the APC to date). Moreover, CIE 2014 found other initiatives of the APC, such as changing packaging design to reduce litter, are unlikely to have reduced the amount of litter in NSW to date. Nevertheless, the potential benefit of the willingness to pay must be acknowledged.

Finally, the costs and benefits of further recycling vary, depending on factors such as the composition and market price of recovered materials. The purpose of the recycling targets in the APC and the recycling of consumer packaging provisions are to provide flexibility to allow industry to choose to recycle materials that are of net benefit. This must be included in any cost benefit analysis, and it appears this was not fully addressed in CIE 2014.

#### ***Option CP3 – Changes to national arrangements regarding consumer packaging and removal of recycling of consumer packaging provisions***

As identified in CIE 2014 (pp. 83–84), COAG 2011 examined a range of options that could be introduced on a national level to address environmental and social costs of consumer packaging waste. The only option, however, that resulted in a net benefit for society was 'Option 2a' in that RIS, which is very similar to the arrangements under Part 5B of the existing Waste Regulation.

A Decision RIS on COAG 2011 is due to be finalised by the end of this year. That RIS may provide further alternatives as to national approaches to address the environmental and social costs of consumer packaging waste. At this stage, however, it is not the place of this Consultation RIS for NSW legislation to further analyse the various options which may be available at a national level.

CIE 2014 also questions whether alternative funding arrangements for the APC could be introduced. CIE argues that the APC membership fees are effectively an industry levy, and that in their current form are unlikely to improve efficiency. Rather, CIE argues that it would be more efficient for governments to fully fund the APC and its projects (including litter), without requiring industry to fund the APC and prepare and report on action plans (CIE 2014, p. 92). However, this would fundamentally change the structure of the existing system, under which industry is to take responsibility and stewardship for their packaging. It assumes that the APC would continue even with this fundamental change and even without NSW implementing supporting legislation, and would also require consultation and agreement between states (which could prove difficult and time-consuming) and a further cost benefit analysis after such consultation.

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<sup>16</sup> Access Economics 2009 found that there were 9.2 full-time equivalent employees directly involved in recycling for every 10,000 tonnes of material processed, compared with only 2.8 jobs for an equivalent amount of waste sent to landfill.

#### ***Option CP4 – NSW measures to address consumer packaging costs and removal of recycling of consumer packaging provisions***

Should Part 5B of the existing Waste Regulation be allowed to lapse, CIE proposes alternative NSW based measures to address landfill externalities and reduce litter.

CIE 2014 includes an analysis of the costs and benefits of implementing direct measures to address landfill externalities (CIE 2014, p. 99-100). This analysis found that there are currently varying levels of compliance and enforcement with landfill licence conditions in Australia. If best practice controls are applied at landfills (addressing their environmental and social costs), then in most circumstances, there is a net benefit to the community (although generally not in small rural landfills).

This analysis does not however include any concession with respect to willingness to pay for reduction of litter, nor the full costs of litter, and is inconsistent with the policy objective of complying with the NEPM obligations. Further, the costs to government in ensuring compliance with best practice controls would vary from region to region and would need to be closely analysed with respect to packaging waste. Effectively, this option shifts the costs of packaging waste from industry to the government (and indirectly the consumer).

CIE 2014 also argues that generally the costs associated with litter are localised, so that it would be preferable for them to be addressed in direct litter reduction measures by the state (NSW) as opposed to nationally. Further, as the decision to litter is made by consumers rather than producers, CIE argues that the provision of bins and education programs through government (rather than industry) funding is preferable to placing obligations on business (CIE 2014, p. 100). However, coordinated national approaches to litter, and funding for particular programs, as provided under the APC system, can provide economies of scale to achieve effective campaigns and targeted programs to address particular packaging waste litter issues.

#### **Preferred option:**

The preferred option, based on current available information, is Option CP2. While there are clearly costs for industry involved in this co-regulatory arrangement, the co-regulatory scheme has been effective in ensuring target industries meet the APC requirements. It also ensures that NSW complies with its obligations under the Used Packaging NEPM.

There are conflicting views as to whether the promotion of recycling under the current co-regulatory consumer packaging waste system is of net benefit to the community (as shown by the discrepancies between COAG 2011 and CIE 2014); however, the reduction in the use of materials and the re-use, recovery or recycling of materials is a key objective of the POEO Act.

Option CP2 takes into consideration the willingness to pay by the community for reduction of litter (unquantified but significant) and the avoidance of unnecessary resource depletion resulting from recycling. On current information, Option CP2 best achieves the policy objectives to resolve the existing problems in relation to dealing with consumer packaging. It is important, however, to monitor developments with Option CP3 to ensure material improvements to the national scheme can be incorporated in NSW.

### **5.7 Schedule 1 of the POEO Act – Licensing thresholds**

In relation to the licensing thresholds for resource recovery, waste processing and waste storage facilities in Schedule 1 of the POEO Act, two options were proposed.

#### ***Option LT1 – Maintain existing thresholds***

#### ***Option LT2 – Introduce new thresholds***

The costs and benefits of each option in relation to licensing thresholds are set out below.

### ***Option LT1 – Maintain existing thresholds***

In spite of the risks they may pose, the operations of many small waste facilities do not fall under the EPA's jurisdiction. Maintaining the current thresholds would mean that there would be no additional compliance costs to industry, and that local government would continue to be the appropriate regulatory authority for these facilities; however, unregulated waste activities have the potential to cause considerable harm to the environment and human health. Maintaining the status quo would mean that these smaller operators would not be subject to the same regulatory oversight as larger operators, and that in spite of the risk of such facilities, local government (as opposed to the better resourced EPA), would be the regulatory authority.

### ***Option LT2 – Introduce new thresholds***

The principal benefits of Option LT2 (compared to the base case of Option LT1), with the introduction of lower licensing thresholds are:

- reduced risk of harm to the environment through EPA licensing and oversight of these smaller waste facilities
- relieving pressure on local government resources, as the EPA, with expertise in regulating waste facilities would become the appropriate regulatory authority
- smaller facilities will be subject to the same regulatory oversight as larger resource recovery, waste processing and waste storage facilities, providing a level playing field across the waste industry.

The main costs of Option LT2 (as opposed to the base case of Option LT1) are licensing fees for occupiers of facilities which currently are below the existing thresholds but above the proposed new thresholds (New Licensed Facilities). Such fees will be proportionate to the nature, size and/or capacity of the activity undertaken. There will also be ongoing costs for New Licensed Facilities in administering and complying with their licence.

New Licensed Facilities would also be liable for the waste levy on each tonne of waste entering the facility (should the Option WL2 in Section 4.1 of this Consultation RIS be adopted), subject to deductions for recyclables being sent on to the productive economy. This is neither a cost nor benefit, however, rather a transfer payment by industry to government.

It is not possible to quantify at this stage the precise costs and benefits of this change, as the number of additional facilities which would constitute New Licensed Facilities is unknown; however, it is anticipated that fewer than 50 additional waste facilities will be captured under the new thresholds, so the potential costs are reduced.

#### **Preferred option:**

The preferred option is Option LT2. This option supports one of the objectives of the POEO Act, of making progressive environmental improvements. As the smaller licensed facilities would be under the regulatory control of the EPA, the objective of mitigating the risk posed by management of waste in these smaller facilities can be met. While this option places increased fees and administration costs on these facilities, the broader industry, environmental and health benefits outweigh these costs.

## **5.8 New provisions – Land pollution offence**

In relation to the land pollution offence, two options were proposed.

***Option LP1 – Maintain existing offence***

***Option LP2 – Amended land pollution provision***

The costs and benefits of each option in relation to the land pollution offence are set out below.

***Option LP1 – Maintain existing offence***

***Option LP2 – Amend land pollution provision***

The main benefit of Option LP2, as identified in CIE 2014, is to provide clarity to the regulated community as to what specific types and amounts of waste constitute land pollution. This removes the burden of proof for the regulator, which should reduce the enforcement and legal costs to the government of Option LP1 (including reduced Court time and costs).

It is difficult to envisage any material increased costs to industry or government from the proposed changes, as they do not place any specific obligations on industry or government. Rather, they provide a strong deterrent to the illegal disposal of the prescribed waste.

**Preferred option:**

The preferred option is Option LP2. The additional certainty this provision provides over Option LP1 achieves the objective of providing a strong deterrent to the illegal disposal of high risk wastes, which should reduce the risks to human health and the environment posed by application of such waste to land. The provision also assists in achieving one of the objectives of the POEO Act, to eliminate harmful wastes.

## 6. Conclusion

The costs and benefits of the options for the proposed Waste Regulation have been reviewed using an issues-based approach. The Consultation RIS describes a base case for each issue, and the differences between the base case and various options for the issue. The costs and benefits of each option to individuals and the community, to business and to government have been analysed.

Following analysis of the costs and benefits for each option, the overall recommendation of this Consultation RIS is to introduce the Protection of the Environment Operations (Waste) Regulation 2014 to replace the Protection of the Environment Operations (Waste) Regulation 2005, with a limited number of amendments to other legislation made under the *Protection of the Environment Operations Act 1997*. This involves:

- a remake of certain provisions of the existing Waste Regulation
- modification of:
  - a number of provisions of the existing Waste Regulation (as set out in the table in the Executive Summary and in Appendix B of this Consultation RIS)
  - Schedule 1 of the *Protection of the Environment Operations Act 1997*
  - certain provisions of the Protection of the Environment Operations (General) Regulation 2009.

The most significant proposed amendment is to Part 2 of the existing Waste Regulation, regarding the waste levy and monitoring requirements (intended to commence on 1 July 2015). CIE 2014 found that the total net benefit to the community of the preferred option of amending the waste levy provisions of the existing Waste Regulation (Option WL2) would be \$27.8 million over 10 years. This is the preferred option as the existing Waste Regulation does not directly or substantially address illegal activities through intermediary facilities, and the alternative option does not sufficiently deter illegal operations of intermediary facilities.

The costs associated with the remainder of the changes to the existing Waste Regulation, Schedule 1 to the POEO Act and the POEO General Regulation are relatively low. The costs and benefits of the options were assessed in light of their ability to achieve the objectives of the POEO Act and this Consultation RIS. While it is not, at this stage, possible to provide all costs and benefits of each option in dollar terms, the analysis in Section 5 of this Consultation RIS determines which option provides the greatest net benefit with respect to the particular issue in response to the policy objectives.

Based on the current information available, it is proposed that the following options should be included in the proposed Waste Regulation (noting the provision they relate to in the Regulation), together with those set out in Appendix B:

Part	Option	Provision in proposed Waste Regulation (see Appendix A)
<b>Waste levy and monitoring requirements</b>	<b>Option WL2</b> is the preferred option. This involves the remake of Part 2 of the existing Waste Regulation, together with changes set out in Section 4.1.	Parts 2 and 3/Clauses 7–37 (reflecting provisions of Part 3 of existing Waste Regulation) Schedule 4 (revised waste levy framework)
<b>Waste tracking</b>	<b>Option WT3</b> is the preferred option. This involves the remake of Part 3 of the existing Waste Regulation (with only minor changes) with an increase in scope to include interstate tracking of general waste (as set out in Section 4.2).	Part 4/ Clauses 38-61 (reflecting provisions of Part 3 of existing Waste Regulation). Part 5/Clauses 62–67 (new interstate tracking of general waste provisions)
<b>Management of special waste</b>	<b>Option SW3</b> is the preferred option. This involves the remake of Part 4 of the existing Waste Regulation (with only minor changes) with an additional special waste monitoring requirement (as set out in Section 4.3).	Clauses 73, 74, 76, 77 and 105 (reflecting provisions of Part 4 of existing Waste Regulation) Clauses 72 and 75 (new clauses regarding asbestos and waste tyre monitoring)
<b>Prohibition against using certain waste for growing vegetation</b>	<b>Option RW2</b> is the preferred option. This involves the remake of Part 5 of the existing Waste Regulation (with only minor changes), as set out in Section 4.4.	Clause 106 (reflecting provisions of Part 5 of existing Waste Regulation).
<b>Waste and Sustainability Improvement Scheme (WASIP)</b>	As the Waste and Sustainability Improvement Scheme has ceased, Part 5A was removed, with no replacement necessary, as set out in Section 4.5.	No provision
<b>Recycling of consumer packaging</b>	<b>Option CP2</b> is the preferred option. This involves the remake of the recycling of consumer packaging provision (with only minor changes), as set out in Section 4.6.	Clauses 78–86 (reflecting provisions of Part 5B of existing Waste Regulation).
<b>Licensing thresholds</b>	<b>Option LT2</b> is the preferred option. This involves lowering the licensing thresholds for resource recovery, waste processing and waste storage facilities contained in Schedule 1 of the POEO Act, as set out in Section 4.7	Schedule 2 of proposed Waste Regulation (including amendments to 34, 41 and 42 of Schedule 1 of POEO Act).
<b>Land pollution offence</b>	<b>Option LP2</b> is the preferred option. This involves amending the definition of ‘land pollution’ in the POEO Act, by defining specific activities which constitute land pollution, as set out in Section 4.8.	Schedule 3 of proposed Waste Regulation (involving amendment to clause 108 of POEO General Regulation).

It is therefore considered that the proposed Waste Regulation, incorporating the above preferred options, would involve greater benefits to the community and lower costs to business and government from better regulation of the waste industry when compared to the other options proposed for each issue.

## 7. References

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## **Appendix A – Proposed Waste Regulation**



New South Wales

## Protection of the Environment Operations (Waste) Regulation 2014

under the

Protection of the Environment Operations Act 1997

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Protection of the Environment Operations Act 1997*.

Minister for the Environment

### Explanatory note

The object of this Regulation is to remake, with alterations, the *Protection of the Environment Operations (Waste) Regulation 2005*, which is repealed on 1 September 2014 by section 10 (2) of the *Subordinate Legislation Act 1989*. The new Regulation provides for the following matters:

- (a) the prescribing of certain substances as being within the definition of *waste* in the *Protection of the Environment Operations Act 1997 (the Act)*,
- (b) the calculation of contributions (*waste contributions*) payable by occupiers of waste facilities licensed under the Act and related matters, including:
  - (i) deductions and exemptions in respect of waste contributions, and
  - (ii) monthly reporting by occupiers who are required to pay waste contributions, and
  - (iii) volumetric surveys of landfill sites whose occupiers are required to pay waste contributions,
- (c) the records to be kept by occupiers of waste facilities licensed under the Act,
- (d) the measurement and recording of waste transported into or out of those waste facilities, including by the use of weighbridges,
- (e) requirements imposed on consignors, transporters and receivers of waste that are aimed at tracking specified types of waste that are transported within NSW or interstate,
- (f) other requirements relating to the transportation of waste, including requirements for consignors and transporters of waste to report to the Environment Protection Authority (the *EPA*) on the following:
  - (i) the transportation interstate of waste generated in metropolitan areas,
  - (ii) the transportation of waste tyres,
  - (iii) the transportation of asbestos waste,
- (g) requirements relating to the management of asbestos waste,
- (h) requirements, relating to the recovery, re-use and recycling of waste materials in consumer packaging, that are to be met by certain brand owners, and retailers, who are not signatories to (or who fail to comply with) the Australian Packaging Covenant,
- (i) exemptions granted by the EPA from provisions of the Act or of this Regulation,

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# public consultation draft

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Protection of the Environment Operations (Waste) Regulation 2014 [NSW]  
Explanatory note

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- (j) approvals granted by the EPA relating to the classification of waste containing immobilised contaminants,
- (k) reporting by the occupiers of landfill sites who are not required to pay waste contributions because they are not licensed under the Act,
- (l) the management of clinical and related waste, including its disposal at a waste facility whose occupier is not licensed under the Act and its transportation,
- (m) the prohibition on certain residue waste being applied to land used for growing vegetation,
- (n) consequential and other related amendments to the *Protection of the Environment Operations (General) Regulation 2009*,
- (o) consequential and other related amendments to Schedule 1 (Scheduled activities) to the Act,
- (p) amendments to this Regulation relating to the removal on 1 July 2015 (by the *Protection of the Environment Operations Amendment (Illegal Waste Disposal) Act 2013*) of the exemption from payment of waste contributions by occupiers of waste facilities used for re-using, recovering, recycling or processing waste,
- (q) other miscellaneous matters, including savings.

This Regulation is made under the *Protection of the Environment Operations Act 1997*, including sections 286 and 323 (the general regulation-making power), Schedule 2 and the various provisions of the Act mentioned in this Regulation.

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Protection of the Environment Operations (Waste) Regulation 2014 [NSW]

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Protection of the Environment Operations (Waste) Regulation 2014 [NSW]  
Part 1 Preliminary

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## Protection of the Environment Operations (Waste) Regulation 2014

under the

Protection of the Environment Operations Act 1997

### Part 1 Preliminary

#### 1 Name of Regulation

This Regulation is the *Protection of the Environment Operations (Waste) Regulation 2014*.

#### 2 Commencement

- (1) Except as provided by subclause (2), this Regulation commences on 1 September 2014 and is required to be published on the NSW legislation website.

**Note.** This Regulation replaces the *Protection of the Environment Operations (Waste) Regulation 2005* which is to be repealed on 1 September 2014 by section 10 (2) of the *Subordinate Legislation Act 1989*.

- (2) Schedule 4 commences on the commencement of Schedule 1 [1] to the *Protection of the Environment Operations Amendment (Illegal Waste Disposal) Act 2013*.

#### 3 Interpretation

- (1) In this Regulation:

**approved** means approved by the EPA from time to time.

**scheduled waste disposal facility** means a waste facility that is required to be licensed under the Act because it is used for the disposal of waste.

**scheduled waste facility** means a waste facility that is required to be licensed under the Act because it is used for the storage, treatment, processing, sorting or disposal of waste.

**the Act** means the *Protection of the Environment Operations Act 1997*.

**trackable liquid waste**—see clause 4.

**Waste Levy Guidelines** means the document of that name, published by the EPA in the Gazette (as amended or replaced, from time to time, by notice published in the Gazette).

**Note.** A copy of the guidelines is available on the EPA's website ([www.epa.nsw.gov.au](http://www.epa.nsw.gov.au)).

- (2) Expressions used in this Regulation that are defined in Part 3 (Definitions) of Schedule 1 to the Act have the same meanings as specified in that Part.
- (3) Notes included in this Regulation do not form part of this Regulation.

#### 4 Meaning of “trackable liquid waste”

- (1) For the purposes of this Regulation, **trackable liquid waste** means liquid waste that is of a type described in Part 1 of Schedule 1 and exhibits any of the characteristics specified in Part 3 of Schedule 1.

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Protection of the Environment Operations (Waste) Regulation 2014 [NSW]  
Part 1 Preliminary

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- (2) However, liquid waste is not trackable liquid waste for the purposes of this Regulation if Part 4 of this Regulation does not apply to the transportation of that waste because of the operation of clause 39 (2) or an exemption granted under Part 9.

**5 Liquid waste—conversion of volume to weight** (cf clause 4 (2) of 2005 Reg)

For the purposes of Parts 2 and 3:

- (a) one kilolitre of trackable liquid waste is taken to weigh one tonne, and
- (b) other liquid waste that is measured by volume is taken to weigh the amount calculated in accordance with a relevant method specified in the Waste Levy Guidelines.

**6 Definition of “waste”—prescribed circumstances and substances** (cf clauses 3A and 3B of 2005 Reg)

- (1) For the purposes of paragraph (d) of the definition of *waste* in the Dictionary to the Act, the following circumstances are prescribed:
- (a) in relation to substances that are applied to land—the application to land by:
    - (i) spraying, spreading or depositing on the land, or
    - (ii) ploughing, injecting or mixing into the land, or
    - (iii) filling, raising, reclaiming or contouring the land,
  - (b) in relation to substances that are used as fuel—all circumstances.
- (2) For the purposes of paragraph (e) of the definition of *waste* in the Dictionary to the Act, the following substances are prescribed to be waste:
- (a) any substance that is received by a scheduled waste facility (other than any office supplies, or any plant or vehicles, used or intended to be used at the facility) if the facility is required to pay contributions to the EPA under section 88 of the Act and the substance is reasonably capable of being applied to land at the facility by:
    - (i) spraying, spreading or depositing on the land, or
    - (ii) ploughing, injecting or mixing into the land, or
    - (iii) filling, raising, reclaiming or contouring the land, and
  - (b) any processed, recycled, re-used or recovered substance produced wholly or partly from waste that is intended to be applied to land by:
    - (i) spraying, spreading or depositing on the land, or
    - (ii) ploughing, injecting or mixing into the land, or
    - (iii) filling, raising, reclaiming or contouring the land, and
  - (c) any processed, recycled, re-used or recovered substance produced wholly or partly from waste that is intended to be used as fuel.

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Protection of the Environment Operations (Waste) Regulation 2014 [NSW]  
Part 2 Contributions by occupiers of scheduled waste facilities

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## Part 2 Contributions by occupiers of scheduled waste facilities

### Division 1 Interpretation

#### 7 Definitions (cf clause 4 of 2005 Reg)

In this Part:

**coal washery rejects** means the waste resulting from washing coal (including substances such as coal fines, soil, sand and rock resulting from that process).

**CPI** means the Consumer Price Index (All Groups Index) for Sydney issued by the Australian Statistician.

**MLA or metropolitan levy area** means the local government areas of Ashfield, City of Auburn, Bankstown City, Blacktown City, Botany Bay City, Burwood, Camden, Campbelltown City, Canada Bay, Canterbury City, Cessnock City, Fairfield City, Gosford City, Hawkesbury City, Holroyd City, Hornsby, Hunter's Hill, Hurstville City, Kiama, City of Kogarah, Ku-ring-gai, Lake Macquarie City, Lane Cove, Leichhardt, Liverpool City, Maitland City, Manly, Marrickville, Mosman, Newcastle City, North Sydney, Parramatta City, Penrith City, Pittwater, Port Stephens, Randwick City, Rockdale City, Ryde City, Shellharbour City, Shoalhaven City, Strathfield, Sutherland Shire, City of Sydney, The Hills Shire, Warringah, Waverley, Willoughby City, Wingecarribee, Wollongong City, Woollahra and Wyong.

**qualified surveyor** means:

- (a) a person registered as a land surveyor under the *Surveying and Spatial Information Act 2002*, or
- (b) such other person, or class of person, as the EPA may approve.

**RLA or regional levy area** means the local government areas of Ballina, Bellingen, Blue Mountains City, Byron, Clarence Valley, Coffs Harbour City, Dungog, Gloucester, Great Lakes, Greater Taree City, Kempsey, Kyogle, Lismore City, Muswellbrook, Nambucca, Port Macquarie-Hastings, Richmond Valley, Singleton, Tweed, Upper Hunter Shire and Wollondilly.

**year** means a year beginning on 1 July and ending on 30 June.

#### 8 Tonnes to be rounded in calculations

- (1) For the purposes of calculating a contribution under this Part (including the amount of any deduction and the quantity of waste exempted from the calculation of a contribution under clause 21), the tonnage of any waste is to be rounded to two decimal places (rounding 0.005 upwards).
- (2) However, if the method by which waste is authorised to be measured and recorded under Division 2 of Part 3 results in a measurement and record to two decimal places or less:
  - (a) the tonnage of waste for the purposes of calculating any such contribution is the tonnage so measured and recorded, and
  - (b) that tonnage need not be rounded.

### Division 2 How and when contributions are to be paid

#### 9 How contributions are to be paid (cf clause 4A (1) of 2005 Reg)

For the purposes of section 88 (3) (a) of the Act, a contribution payable under that section may be paid by cheque or electronic funds transfer.

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Protection of the Environment Operations (Waste) Regulation 2014 [NSW]  
Part 2 Contributions by occupiers of scheduled waste facilities

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## 10 When contributions are to be paid (cf clause 4A (2)–(4) of 2005 Reg)

- (1) For the purposes of section 88 (3) (b) of the Act, the period of 56 days after the end of each month is prescribed as the time within which the contribution payable by an occupier is to be paid in respect of waste other than trackable liquid waste.
- (2) For the purposes of section 88 (3) (b) of the Act, the period of 28 days after the end of each 3 month period (being the 3 month periods ending on 31 August, 30 November, the last day of February and 31 May in each year) is prescribed as the time within which the contribution payable by an occupier is to be paid in respect of trackable liquid waste.
- (3) For the purposes of section 88 (3) (b) of the Act, and despite subclause (1), the period of 26 days after the end of each month is prescribed as the time within which the contribution payable by an occupier is to be paid in respect of coal washery rejects received at a scheduled waste facility used to dispose of coal washery rejects only.

## Division 3 Calculation of contribution—general

### 11 Determination of rate (cf clause 5 (6)–(8) and (9)–(18))

- (1) For the purposes of this Division, the **MLA amount** is:
  - (a) \$120.90 for the year beginning on 1 July 2014, or
  - (b) for a year beginning on or after 1 July 2015—the amount, in dollars and cents, calculated for the year in accordance with the Formula (rounded to the nearest 10 cents and, if the amount to be rounded is 5 cents, rounded up).
- (2) For the purposes of this Division, the **RLA amount** is:
  - (a) \$65.40 for the year beginning on 1 July 2014, or
  - (b) for a year beginning on or after 1 July 2015—the amount, in dollars and cents, calculated for the year in accordance with the Formula (rounded to the nearest 10 cents and, if the amount to be rounded is 5 cents, rounded up).
- (3) For the purposes of this Division, the **TLW amount** is:
  - (a) \$70.10 for the year beginning on 1 July 2014, or
  - (b) for a year beginning on or after 1 July 2015—the TLW amount, in dollars and cents, for the year previous to the year for which the calculation is being made.
- (4) For the purposes of this Division, the **Special Levy amount** is:
  - (a) \$13.60 for the year beginning on 1 July 2014, or
  - (b) for a year beginning on or after 1 July 2015—the amount, in dollars and cents, calculated for the year in accordance with the Formula (rounded to the nearest 10 cents and, if the amount to be rounded is 5 cents, rounded up).
- (5) The **Formula** is:

$$S = T \times \left(1 + \left(\frac{A - B}{B}\right)\right)$$

**S** is the amount, in dollars and cents, being calculated.

**T** is:

- (a) if the MLA amount is being calculated:
  - (i) \$130.90 for the year beginning on 1 July 2015, or
  - (ii) for a year beginning on or after 1 July 2016—the MLA amount, in dollars and cents, for the year previous to the year for which the calculation is being made, or

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Protection of the Environment Operations (Waste) Regulation 2014 [NSW]  
Part 2 Contributions by occupiers of scheduled waste facilities

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- (b) if the RLA amount is being calculated:
  - (i) \$75.40 for the year beginning on 1 July 2015, or
  - (ii) for a year beginning on or after 1 July 2016—the RLA amount, in dollars and cents, for the year previous to the year for which the calculation is being made, or
- (c) if the TLW amount is being calculated:
  - (i) \$70.10 for the year beginning on 1 July 2015, or
  - (ii) for a year beginning on or after 1 July 2016—the TLW amount, in dollars and cents, for the year previous to the year for which the calculation is being made, or
- (d) if the Special Levy amount is being calculated:
  - (i) \$13.60 for the year beginning on 1 July 2015, or
  - (ii) for a year beginning on or after 1 July 2015—the Special Levy amount, in dollars and cents, for the year previous to the year for which the calculation is being made.

*A* is the CPI number for the December quarter of the year previous to the year for which the calculation is being made.

*B* is the CPI number for the December quarter of the year 2 years previous to the year for which the calculation is being made.

- (6) For the purposes of the Formula, the issue of a CPI number is to be disregarded if, at any time, the Australian Statistician issues the CPI number in substitution for a CPI number previously issued.

**12 Contributions payable if adequate records kept** (cf clause 5 (1)–(5), (8A), (8B) and (17) of 2005 Reg)

- (1) For the purposes of section 88 (2) of the Act, the contributions payable by occupiers of scheduled waste facilities are the contributions calculated in accordance with this clause.
- (2) The contribution required to be paid by an occupier of a scheduled waste facility, in respect of waste (other than trackable liquid waste) received at the facility, is as follows:
  - (a) in the case of a scheduled waste facility located in the MLA—the MLA amount for the period in which the waste is received for each tonne of waste that is received in that period,
  - (b) in the case of a scheduled waste facility located outside the MLA:
    - (i) the MLA amount for the period in which the waste is received for each tonne of waste received in that period that has been generated in, or generated from waste generated in, the MLA, and
    - (ii) the RLA amount for the period in which the waste is received for each tonne of waste received in that period that has been generated in, or generated from waste generated in, the RLA, and
    - (iii) the RLA amount for the period in which the waste is received for each tonne of waste received in that period that has been generated, or generated from waste generated, outside both the MLA and RLA, but only if the facility is in the RLA.
- (3) The contribution required to be paid by an occupier of a scheduled waste facility, in respect of trackable liquid waste received at the facility, is the TLW amount for the year for each tonne of the waste received in that year.

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Protection of the Environment Operations (Waste) Regulation 2014 [NSW]  
Part 2 Contributions by occupiers of scheduled waste facilities

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- (4) The contribution required to be paid by an occupier of a scheduled waste facility used to dispose of coal washery rejects only, in respect of coal washery rejects received at the facility, is the Special Levy amount for the year in which the rejects are received for each tonne of rejects received in that year.
- (5) An occupier of such a scheduled waste facility is not required to pay a contribution under subclause (2) in respect of those coal washery rejects.
- (6) The amount of the contribution calculated in accordance with this clause is to be adjusted in accordance with Division 4 (if applicable) and rounded to the nearest cent (rounding 0.5 cent upwards).
- (7) For the purposes of this clause:
  - (a) the **MLA amount** or **RLA amount**, in respect of virgin excavated natural material received on or after 1 September 2013, is 90 per cent of the MLA amount, or RLA amount, otherwise applying for the purposes of this Division (as calculated under clause 11), and
  - (b) the **MLA amount** or **RLA amount**, in respect of residual waste generated directly (at an approved waste facility) from the shredding of scrap metal, is as follows:
    - (i) in the case of any such waste received during the period commencing on 1 September 2014 and ending on 30 June 2016—50 per cent of the MLA amount, or RLA amount, otherwise applying for the purposes of this Division (as calculated under clause 11),
    - (ii) in the case of any such waste received in a year beginning on or after 1 July 2016 and ending on or before 30 June 2018—75 per cent of the MLA amount, or RLA amount, otherwise applying for the purposes of this Division (as calculated under clause 11).
- (8) The MLA amount or RLA amount calculated under subclause (7) is to be rounded to two decimal places (rounding 0.005 cent upwards).

**13 Contributions payable if inadequate records kept** (cf clause 6 of 2005 Reg)

- (1) For the purposes of section 88 (2) of the Act, the contribution payable by the occupier of a scheduled waste facility, in respect of waste received at the facility during any period, is to be calculated in accordance with this clause (instead of clause 12) if:
  - (a) the records relating to waste received in the period are inadequate, and
  - (b) in the opinion of the EPA, the contribution cannot be calculated in accordance with clause 12 because those records are inadequate.
- (2) The records relating to waste received at a waste facility during a period are inadequate if:
  - (a) there are no records relating to waste received at the facility during the period, or
  - (b) the records relating to waste received in the period are incomplete, inaccurate or inconsistent with other records (whether kept by the occupier of the waste facility concerned or another person or body), or
  - (c) the information contained in the records relating to waste received in the period has not been obtained by using methods that, in the opinion of the EPA, are appropriate.Nothing in this subclause limits the circumstances in which the records may be inadequate.
- (3) The contribution required to be paid by the occupier of the scheduled waste facility is the applicable amount (relating to the period in which the EPA first becomes aware

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Protection of the Environment Operations (Waste) Regulation 2014 [NSW]  
Part 2 Contributions by occupiers of scheduled waste facilities

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that the records of waste received in a period are inadequate) for each tonne of waste that the EPA estimates has been received during the period for which the records are inadequate.

- (4) The **applicable amount** relating to a period is:
  - (a) in the case of trackable liquid waste—the TLW amount for the period, or
  - (b) in the case of coal washery rejects received at a waste facility used to dispose of such rejects only—the Special Levy amount for the period, or
  - (c) in the case of waste (other than trackable liquid waste or coal washery rejects referred to in paragraph (b)) received at a waste facility located outside the MLA that the EPA is satisfied has been generated outside the MLA—the RLA amount for the period, or
  - (d) in any other case—the MLA amount for the period.
- (5) In estimating the tonnage of waste received at the scheduled waste facility during the period, the EPA is to take into consideration any of the following that the EPA considers appropriate in the circumstances:
  - (a) in respect of waste other than liquid waste, a volumetric survey of waste at the facility concerned carried out by a qualified surveyor,
  - (b) available records in respect of the facility concerned,
  - (c) any information provided by an authorised officer who has seen or inspected the facility,
  - (d) any other information available to the EPA (such as video monitoring records) and records kept by persons not involved with the operation of the facility concerned.
- (6) If the EPA decides to base its estimate of the tonnage of waste received at the waste facility on a volumetric survey, the EPA may, by written notice to the occupier of the waste facility, require the occupier to ensure that:
  - (a) such a survey is carried out by a qualified surveyor within 21 days after the date of the notice, and
  - (b) a copy of the report of the qualified surveyor is forwarded to the EPA within 7 days after the occupier receives the report.
- (7) An occupier of a waste facility to whom such a notice has been given must comply with the requirements specified in the notice.  
Maximum penalty: 200 penalty units in the case of a corporation, 100 penalty units in the case of an individual.
- (8) For the purposes of estimating the tonnage of waste received at a waste facility under this clause, on the basis of a volumetric survey, the following formula is to be used in converting cubic metres of waste to tonnes of waste (unless the EPA is of the opinion that it is able to more accurately estimate the tonnage of the waste using another method that is reasonably available to it, in which case the EPA must use that other method instead):
$$T = V \times 2$$
where:  
**T** is the amount in tonnes of waste received.  
**V** is the volume in cubic metres of the waste determined by the volumetric survey.
- (9) This clause has effect in respect of waste received at a scheduled waste facility whether or not it was received before or after the commencement of this clause.

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- (10) The amount of the contribution calculated in accordance with this clause is to be rounded to the nearest cent (rounding 0.5 cent upwards).

## Division 4      Deductions from contributions

**14 Operational purpose deduction** (cf clause 11A (1) (a) and (c), (2), (3A), (5) and (5A) of 2005 Reg)

- (1) The occupier of a scheduled waste facility who is required to pay a contribution under section 88 of the Act may deduct from a contribution payable under that section an amount in respect of waste received at the facility that:
- (a) has been or is to be used for a purpose to which a certificate issued under clause 15 applies, and
  - (b) has been or is to be used in accordance with the requirements specified in the certificate, and
- (2) A deduction is not available under this clause in respect of waste that:
- (a) exceeds the amount of waste specified in a certificate issued under clause 15, or
  - (b) is used otherwise than in accordance with the requirements specified in the certificate.

**15 Approval of operational purpose** (cf clause 11 of 2005 Reg)

- (1) An occupier of a scheduled waste facility may apply to the EPA for approval to use at the facility any kind of waste referred to in the second column of the following table for a purpose (an *operational purpose*) specified opposite in the third column.

Item	Kind of waste	Purpose
1	New asphalt, or new concrete, obtained at a batching plant.	Roads or other construction works.
2	Materials that meet the specifications of the Waste Levy Guidelines.	Roads.
3	Any one or more of the following: (a) geonets, (b) geotextiles, (c) drainage layer media (having a thickness not greater than 300 millimetres) placed over landfill base and side liners, (d) piping.	Leachate collection systems that are associated with leachate management and are in accordance with the conditions of an environment protection licence.
4	Any one or more of the following: (a) geomembranes, (b) geotextiles, (c) clay liners (having a thickness not greater than 900 millimetres), (d) piping.	Landfill lining systems (including landfill base and side liners) that are in accordance with the conditions of an environment protection licence.

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Item	Kind of waste	Purpose
5	Any one or more of the following: (a) geomembranes, (b) geotextiles, (c) clay liners (having a thickness not greater than 900 millimetres), (d) piping, (e) drainage layer media (having a thickness not greater than 300 millimetres) placed over landfill base and side liners.	Stormwater management systems associated with landfill lining systems.
6	Any one or more of the following: (a) drainage gravels (not exceeding the minimum amount required by the applicable environment protection licence), (b) piping.	Landfill gas collection systems that are associated with landfill gas management and are in accordance with the conditions of an environment protection licence.
7	Plastic sheeting.	Daily cover for waste at landfill sites.
8	Virgin excavated natural material, or potential acid sulfate soils, not mixed with any other kind of waste.	Placing the material, ores or soils below the water table (in accordance with the conditions of an environment protection licence) to rehabilitate a sand mine.
9	Waste of any kind.	Final capping works, in accordance with the conditions of an environment protection licence, at landfill sites.

- (2) The occupier may apply to the EPA for approval under this clause:
  - (a) before the waste has been used for the operational purpose, or
  - (b) after the waste has been used for the operational purpose.
- (3) The application must include the following:
  - (a) in the case of an application made before the waste has been used for an operational purpose—a plan for the use of the waste for the operational purpose,
  - (b) in the case of an application made after the waste has been used for an operational purpose—a report on the use of the waste for the operational purpose,
  - (c) such other information as the EPA may require to approve the application.
- (4) The EPA may, on an application under this clause, approve the use of waste for an operational purpose at the facility whether or not the waste has already been used for the operational purpose.
- (5) If the EPA approves an operational purpose under this clause, the EPA must issue a certificate to the occupier of the scheduled waste facility certifying that the use of waste for the operational purpose has been approved.
- (6) The certificate must specify:
  - (a) the scheduled waste facility to which the certificate applies, and
  - (b) the operational purpose for which the waste is to be, or has been, used, and
  - (c) the amount of waste approved for the operational purpose, and

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- (d) in the case of an application made before the waste has been used for the operational purpose—the period in which the waste is to be used for that purpose, and
- (e) any conditions relating to the use of waste for the operational purpose.

**16 Transported waste deduction other than for trackable liquid waste** (cf clause 11A (1) (b), (3) and (3AAA) of 2005 Reg)

- (1) The occupier of a scheduled waste facility who is required to pay a contribution under section 88 of the Act may deduct from a contribution payable under that section an amount in respect of waste received at the facility that has been:
  - (a) recovered, recycled or processed at that facility (in accordance with any requirements of the Waste Levy Guidelines) and transported from the facility to another place for a lawful use, or
  - (b) transported from the facility to another facility for lawful recovery, recycling, processing or disposal.
- (2) A deduction is not available under this clause in respect of:
  - (a) trackable liquid waste received at the facility, or
  - (b) landfill gas or anything derived from landfill gas, or
  - (c) landfill leachate or anything derived from landfill leachate.

**17 Transported trackable liquid waste deduction** (cf clause 11A (1) (b1) and (3AA) of 2005 Reg)

The occupier of a scheduled waste facility who is required to pay a contribution under section 88 of the Act may deduct from a contribution payable under that section an amount in respect of trackable liquid waste received at the facility that has been transported from the facility (in accordance with any requirements of the Waste Levy Guidelines):

- (a) as waste other than trackable liquid waste to a scheduled waste facility within the regulated area and is disposed of (in accordance with any requirements of the Waste Levy Guidelines) at that other facility, or
- (b) as a substance other than trackable liquid waste to a place that can lawfully receive the substance for recycling, reuse or processing but only if any requirements of the Waste Levy Guidelines have been satisfied, or
- (c) as trackable liquid waste to another facility that is authorised to receive it.

**18 Provisions applicable in relation to all deductions** (cf clause 11A (4) and (6)–(9) of 2005 Reg)

**(1) No deduction available in respect of certain waste**

A deduction is not available under this Division in respect of waste that:

- (a) has already been the subject of a deduction, in accordance with this Division, from the calculation of a contribution otherwise payable by the occupier, or
- (b) has already been exempted, in accordance with Division 5, from the calculation of the contribution otherwise payable by the occupier, or
- (c) was received at the facility more than 24 months before the date of the deduction.

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**(2) Calculation of amount of deduction**

A deduction under this Division is to be:

- (a) calculated on the basis of the rate of contribution that was applicable in respect of the waste at the time that the waste was received at the waste facility concerned, and
- (b) following that calculation, rounded to the nearest cent (rounding 0.5 cent upwards).

**(3) Disallowance of deductions**

The EPA may, by written notice to the occupier of a scheduled waste facility, disallow the whole or any part of a deduction made by the occupier under this Division if the EPA is satisfied that:

- (a) the occupier was not allowed to make the deduction, or
  - (b) the deduction is not available in respect of the waste.
- (4) Any such notice may require the occupier to:
- (a) increase a specified contribution payable by the occupier by the whole or such part of the deduction made by the occupier under this Division as the EPA may determine, or
  - (b) pay to the EPA an amount equal to the whole or such part of the deduction made by the occupier under this Division as the EPA may determine.

**(5) Rebate where deduction exceeds contribution**

If the amount of a deduction to which the occupier of a scheduled waste facility is entitled under this Division exceeds the amount of the contribution payable by the occupier under section 88 of the Act, the occupier is entitled to a rebate of the amount by which the deduction exceeds the contribution.

## Division 5 Exemptions from requirement to pay contribution

**19 Payment of contributions for putrescible waste landfill sites subject of supervisory licence** (cf clause 7 of 2005 Reg)

- (1) In the case of a scheduled waste facility that is the subject of a supervisory licence as referred to in section 87 of the Act, the occupier who is not the holder of the supervisory licence (the *non-supervisory occupier*) is required to pay the applicable contributions under section 88 of the Act and the public authority concerned is exempt from that requirement.
- (2) However, the public authority is required to pay the contributions, and the non-supervisory occupier is exempt from that requirement, if they:
  - (a) have made an arrangement for the contributions to be paid by the public authority, and
  - (b) have informed the EPA in writing of the arrangement.

**20 Exemption of certain other occupiers from requirement to pay contributions** (cf clause 9 of 2005 Reg)

- (1) The occupier of any waste facility that is not a scheduled waste facility is exempt from the requirement to pay a contribution to the EPA under section 88 of the Act.
- (2) The occupier of any of the following types of scheduled waste facility is exempt from the requirement to pay a contribution to the EPA under section 88 of the Act (but only in respect of waste other than trackable liquid waste):

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- (a) a facility consisting of any one or more of the following:
  - (i) a waste storage facility,
  - (ii) a waste transfer facility,
  - (iii) a waste treatment facility (not being an incinerator),
- (b) a facility used to dispose of only slags or virgin excavated natural material (or any combination of those types of waste).

**21 Certain types of waste exempted from calculation of contributions** (cf clause 10 (1) of 2005 Reg)

**Note.** An exemption from the requirement to pay contributions under section 88 of the Act may also be granted by the EPA under Part 9 in relation to certain types of waste.

- (1) The following types of waste received at a scheduled waste facility are exempted from the calculation of the contribution payable under section 88 of the Act for each tonne of that waste received at the waste facility:
  - (a) any spoil generated by dredging activities,
  - (b) any waste collected in accordance with a community service or activity, or arising from a biological outbreak or natural disaster, and that has been approved, in writing, for the purposes of this clause.
- (2) Waste is not exempt under this clause from the calculation of the contribution payable by the occupier of a scheduled waste facility if the occupier fails to comply with any requirement under Division 1 of Part 3 with respect to the waste.

## Division 6 Reports and surveys

**22 Waste contribution monthly reports** (cf clause 13 of 2005 Reg)

- (1) This clause does not apply in respect of trackable liquid waste.
- (2) The occupier of a scheduled waste facility who is required to pay contributions under section 88 of the Act must, within the prescribed number of days after the end of each month, provide the EPA with the following information (in the approved form and manner):
  - (a) the quantity of waste received at the waste facility during the month to which the report relates,
  - (b) the waste types (determined in accordance with the Waste Levy Guidelines) received at the waste facility during the month to which the report relates,
  - (c) such other information in relation to the waste facility as may be specified in the approved form.

Maximum penalty: 200 penalty units in the case of a corporation, 100 penalty units in the case of an individual.

- (3) In this clause, the **prescribed number of days** is:
  - (a) in the case of a scheduled waste facility used to dispose of coal washery rejects only—26 days, or
  - (b) in any other case—56 days.

**23 Periodic volumetric surveys of landfill sites** (cf clause 14 of 2005 Reg)

- (1) The occupier of a landfill site who is required to pay contributions under section 88 of the Act must:
  - (a) cause a volumetric survey of the landfill site to be carried out by a qualified surveyor during June and December in each year, and

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- (b) provide the results to the EPA, in the approved form and manner, by no later than the following 31 July and 31 January, respectively.
- (2) The occupier must also:
- (a) cause a volumetric survey of the landfill site to be carried out by a qualified surveyor at any other time, or within any period, specified by the EPA by written notice to the occupier, and
  - (b) provide the results to the EPA, in the approved form and manner, by no later than any time, or the end of any period, specified in the notice.
- Note.** See the Waste Levy Guidelines for the approved form and manner in which the results of volumetric surveys are to be provided for the purposes of subclauses (1) and (2).
- (3) The occupier must:
- (a) keep a copy of the results of each survey for a period of at least 6 years after the date on which the survey is carried out, and
  - (b) make those results available for inspection and copying by an authorised officer on request.
- (4) The EPA may, by written notice to the occupier of a landfill site:
- (a) exempt the occupier from any requirement under this clause until such time as the EPA decides to revoke the exemption by further written notice to the occupier, or
  - (b) defer the application of any requirement under this clause in respect of the occupier until such time as is specified in the notice.

Maximum penalty (subclauses (1)–(3)): 200 penalty units in the case of a corporation, 100 penalty units in the case of an individual.

## 24 EPA may require topographical survey of scheduled waste facility

- (1) The occupier of a scheduled waste facility who is required to pay contributions under section 88 of the Act must:
- (a) cause a topographical survey of the facility to be carried out by a qualified surveyor at any time, or within any period, specified by the EPA by written notice to the occupier, and
  - (b) provide the results to the EPA, in the approved form and manner, by no later than any time, or the end of any period, specified in the notice.

**Note.** See the Waste Levy Guidelines for the approved form and manner in which the results of topographical surveys are to be provided.

- (2) The occupier must:
- (a) keep a copy of the results of each survey for a period of at least 6 years after the date on which the survey is carried out, and
  - (b) make those results available for inspection and copying by an authorised officer on request.

Maximum penalty: 200 penalty units in the case of a corporation, 100 penalty units in the case of an individual.

## Division 7 Other

### 25 Interest on unpaid contributions (cf clause 8 of 2005 Reg)

- (1) The interest on a contribution under section 88 of the Act that is not fully paid by the due date for payment of the contribution is to be calculated daily (at the prescribed rate and as compound interest):
- (a) from the day immediately following the due date, and

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- (b) on so much of the contribution as remains outstanding.

**Note.** Accordingly, interest ceases to accumulate when the contribution has been fully paid (whether or not interest is fully paid at that time).

- (2) The **prescribed rate** at which interest is to be charged on the outstanding amount of a contribution is the sum of the following per annum:
  - (a) 8 per cent,
  - (b) the cash rate target released by the Reserve Bank of Australia that is applicable for the first business day after the due date for payment of the contribution.

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## Part 3 Records, measurement of waste and monitoring at scheduled waste facilities

### Division 1 Record keeping (cf clauses 10 (2) and (3) and 12 of 2005 Reg)

#### 26 Determination of waste types

For the purposes of this Division, the waste types are to be determined in accordance with the Waste Levy Guidelines.

#### 27 Waste and other material received at facility

The occupier of a scheduled waste facility must record the following information in relation to each delivery of waste, waste derived material or other material received at a scheduled waste facility:

- (a) the amount of any waste delivered and its waste type,
- (b) the amount of any waste derived material or other material delivered,
- (c) the amount of any waste delivered that is spoil generated by dredging activities,
- (d) if any of the waste delivered has been collected in accordance with a community service or activity, or arising from a biological outbreak or natural disaster, and been approved in writing for the purposes of clause 21:
  - (i) the amount of that waste, and
  - (ii) particulars of the community service, activity, biological outbreak or natural disaster in respect of which the waste has been collected,

**Note.** The waste referred to in paragraphs (c) and (d) are exempted by clause 21 from the calculation of waste contributions payable by the waste facility.

- (e) the date and time the delivery is made,
- (f) the registration number of the vehicle making the delivery,
- (g) in the case of waste transported to the waste facility from another waste facility—the name and address of the other facility,
- (h) in the case of an occupier who is required to pay contributions under section 88 of the Act—the particulars of where on the site any waste, waste derived material or other material delivered is placed at the facility.

Maximum penalty: 200 penalty units in the case of a corporation, 100 penalty units in the case of an individual.

#### 28 Waste and other materials transported from facility for use, recovery, recycling, processing or disposal

The occupier of a scheduled waste facility must record the following information in relation to each load of waste, waste derived material or other material transported by vehicle from the scheduled waste facility for use, recovery, recycling, processing or disposal at another place:

- (a) the amount of any waste contained in the load and its waste type,
- (b) the amount of any waste derived material or other material contained in the load,
- (c) the amount of any waste contained in the load that is spoil generated by dredging activities,
- (d) if any of the waste in the load has been collected in accordance with a community service or activity, or arising from a biological outbreak or natural disaster, and been approved in writing for the purposes of clause 21:

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- (i) the amount of that waste, and
- (ii) particulars of the community service, activity, biological outbreak or natural disaster in respect of which the waste has been collected,

**Note.** The waste referred to in paragraphs (c) and (d) are exempted by clause 21 from the calculation of waste contributions payable by the waste facility.

- (e) the date and time the load is transported from the facility,
- (f) the registration number of the vehicle that transports the load,
- (g) the name and address of the place to which the load is transported,
- (h) in the case of waste or other material in the load that is removed from a stockpile required to have a unique stockpile number under clause 31 (1) (a)—the unique stockpile number,
- (i) in the case of an occupier who is required to pay contributions under section 88 of the Act—details of any recycling, mixing, blending or processing applied to any waste in the load, including the composition as a proportion of waste and other material in any waste-derived material in the load.

Maximum penalty: 200 penalty units in the case of a corporation, 100 penalty units in the case of an individual.

## 29 Other records relating to vehicles

The occupier of a scheduled waste facility must record the following particulars in relation to vehicles that enter the facility for a purpose related to the operation of the facility (whether or not the vehicle is transporting or has delivered waste):

- (a) the date and time on which the vehicle enters the facility,
- (b) the date and time on which the vehicle leaves the facility,
- (c) the registration number of the vehicle,
- (d) the purpose of entry.

Maximum penalty: 200 penalty units in the case of a corporation, 100 penalty units in the case of an individual.

## 30 Waste used for operational purpose at facility if occupier required to pay contribution

The occupier of a scheduled waste facility who is required to pay contributions under section 88 of the Act must record the following in relation to any waste of a kind referred to in the second column of the table to clause 15 (1) that is used at the facility for a purpose specified opposite in the third column of that table:

- (a) the amount of waste and its waste type,
- (b) the nature of the purpose,
- (c) the date the waste is used,
- (d) particulars of any certificate issued under clause 15 relating to the use of waste for the purpose.

Maximum penalty: 200 penalty units in the case of a corporation, 100 penalty units in the case of an individual.

## 31 Waste and other material stockpiled at facility if occupier required to pay contribution

- (1) The occupier of a scheduled waste facility who is required to pay contributions under section 88 of the Act must record the following information in relation to any waste and any other material stockpiled at the facility (other than trackable liquid waste and material mixed with trackable liquid waste):

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- (a) a unique identification number for each stockpile, and
  - (b) the quantity of any waste (and its waste type) or other material held in each stockpile as at 30 June and 31 December of each year, and
  - (c) the quantity of any waste (and its waste type) or other material that is added to or removed from each stockpile each day.
- (2) The occupier of a scheduled waste facility who is required to pay contributions under section 88 of the Act must, if any trackable liquid waste (including any material mixed with trackable liquid waste) is stockpiled at the facility, record the quantity of any such waste (and its waste type) held in each stockpile as at 30 June of each year.  
Maximum penalty: 200 penalty units in the case of a corporation, 100 penalty units in the case of an individual.

## 32 Records to be kept in accordance with guidelines

The occupier of a scheduled waste facility who is required to record information under this Division must ensure that the records required to be kept are:

- (a) kept in accordance with the requirements of the Waste Levy Guidelines, and
- (b) in the case of records relating to trackable liquid waste or material mixed with trackable liquid waste—provided to the EPA electronically at such times, and in the approved form and manner.

**Note.** See the Waste Levy Guidelines for the approved form and manner in which records are to be provided for the purposes of paragraph (b).

Maximum penalty: 200 penalty units in the case of a corporation, 100 penalty units in the case of an individual.

## 33 Records to be retained and made available on request

- (1) The occupier of a scheduled waste facility who is required to record information under this Division must ensure that the records required to be kept under this Division are accurate and are retained for a period of at least 6 years after the date on which the record is made.
- (2) The occupier of a scheduled waste facility who is required to record information under this Division must make any such records available for inspection and copying by an authorised officer on request.

Maximum penalty: 200 penalty units in the case of a corporation, 100 penalty units in the case of an individual.

## 34 Exemptions

The EPA may grant an exemption under Part 9 from one or more provisions of this Division.

## Division 2 Measurement of waste

### 35 Weighbridges at facilities whose occupiers are required to pay waste contributions (cf clause 15 of 2005 Reg)

- (1) The occupier of a scheduled waste facility who is required to pay contributions under section 88 of the Act must ensure that there is a weighbridge installed at the waste facility.  
Maximum penalty: 200 penalty units in the case of a corporation, 100 penalty units in the case of an individual.

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- (2) The occupier must:
- (a) submit to the EPA, within 30 days after installing the weighbridge, a plan of the waste facility indicating the proposed vehicle flow controls, including the entry and exit points where waste is transported into and out of the waste facility, (a **vehicle flow control plan**), and
  - (b) if any change occurs in relation to those vehicle flow controls, submit a revised vehicle flow control plan to the EPA no later than 30 days after the relevant change occurs, and
  - (c) keep a copy of the latest vehicle flow control plan on the premises and make the plan available for inspection and copying by an authorised officer on request, and
  - (d) ensure that:
    - (i) each vehicle that enters or leaves the waste facility for a purpose relating to the operation of the facility (whether or not the vehicle is transporting or has delivered waste), uses the weighbridge on entering and on leaving the facility, or
    - (ii) an approved alternative method of measuring and recording the quantity of waste and other material transported into or out of the waste facility is used during any period that the weighbridge is out of operation, and
- Note.** See the Waste Levy Guidelines for the approved method.
- (e) take all reasonable steps to ensure that any such weighbridge is maintained in proper working order, and
  - (f) ensure that any such weighbridge is verified (within the meaning of the *National Measurement Act 1960* of the Commonwealth) at least once a year, and
  - (g) ensure that the weighbridge has related software that records quantities of waste in the approved form and manner, and
- Note.** See the Waste Levy Guidelines for the approved form and manner referred to in this paragraph.
- (h) notify the EPA of any incident that results in the weighbridge being out of operation for any period of more than 24 hours (and do so immediately on becoming aware that the incident will result in the weighbridge being out of operation for any such period), and
    - (i) comply with any other requirement relating to the installation or operation of the weighbridge that the EPA may specify by written notice to the occupier.
- Maximum penalty: 200 penalty units in the case of a corporation, 100 penalty units in the case of an individual.
- (3) The EPA may, by written notice to the occupier of a waste facility:
- (a) exempt the occupier from any requirement under this clause, subject to any conditions specified in the notice, until such time as the EPA decides to revoke the exemption by further written notice to the occupier, or
  - (b) defer the application of any requirement under this clause in respect of the occupier, subject to any conditions specified in the notice, until such time as is specified in the notice.
- Note.** The conditions may (for example) include a condition that the quantity of waste that is transported into or out of the facility is measured, and recorded, using a specified method, including a method specified in the Waste Levy Guidelines.

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## **36 Measuring and recording of non-liquid waste at facilities whose occupiers are not required to pay waste contributions**

- (1) An occupier of a scheduled waste facility who is not required to pay contributions under section 88 of the Act must ensure that the quantity of waste (other than liquid waste) that is transported into or out of the facility is measured, and recorded, using a method specified in the Waste Levy Guidelines.

Maximum penalty: 200 penalty units in the case of a corporation, 100 penalty units in the case of an individual.

- (2) The EPA may, by written notice to the occupier of a waste facility, exempt the occupier from the requirement under this clause until such time as the EPA decides to revoke the exemption by further written notice to the occupier.

## **Division 3 Monitoring**

### **37 EPA may require video monitoring system (cf clause 16 of 2005 Reg)**

- (1) The EPA may, by written notice to an occupier of a scheduled waste facility, require the occupier:
- (a) to install and operate a video monitoring system that conforms with the specifications in the notice, and
  - (b) to operate the system during the times specified in the notice or at all times.
- (2) The occupier must:
- (a) comply with the requirements specified in the notice within the period specified in the notice, and
  - (b) ensure that video monitoring records are kept for at least one year from the time of the recording, and
  - (c) make such recordings available for inspection and copying by an authorised officer on request.

Maximum penalty: 200 penalty units in the case of a corporation, 100 penalty units in the case of an individual.

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Protection of the Environment Operations (Waste) Regulation 2014 [NSW]  
Part 4 Tracking of certain waste transported within, out of and into NSW

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## Part 4 Tracking of certain waste transported within, out of and into NSW

### Division 1 Preliminary

#### 38 Definitions (cf clause 17 of 2005 Reg)

In this Part:

**authorised agent**, in relation to the transportation of waste, means a person appointed, in accordance with Division 5, as an authorised agent for the transportation of the waste.

**consignment authorisation** means:

- (a) in relation to the transportation of waste to a waste facility in New South Wales—a consignment authorisation issued under Division 6 authorising the transportation of the waste to that facility, and
- (b) in relation to the transportation of waste to a waste facility in a participating State—an authority (however expressed) issued in accordance with the laws of that participating State and authorising the transportation of the waste to that facility.

**consignor** of waste, in relation to the transportation of waste, means:

- (a) in the case of waste that is transported from a waste facility:
  - (i) if the occupier of the facility has not appointed an authorised agent under Division 5 in relation to the waste—the occupier of the facility, or
  - (ii) if the occupier of the facility has appointed an authorised agent under Division 5 in relation to the waste—that authorised agent, or
- (b) in any other case—any person who is the consignor of the waste.

**equivalent transport authorisation** means a licence or other authority that:

- (a) has been issued by a participating State, and
- (b) corresponds (or is similar) to an environment protection licence authorising the carrying out of the scheduled activity of transporting waste.

**participating State** means a participating State (other than New South Wales), or a participating Territory, within the meaning of the *National Environment Protection Council (New South Wales) Act 1995*.

**receiver** of waste means the occupier of a waste facility that has received waste from a consignor of waste.

**transporter** of waste means any person who transports waste.

**waste transport certificate** means a waste transport certificate in the approved form.

#### 39 Transportation of waste to which Part does and does not apply (cf clauses 18 and 19 of 2005 Reg)

- (1) This Part applies to:
  - (a) the transportation of waste within New South Wales if the waste is of a type described in Part 1 of Schedule 1, and
  - (b) the transportation of waste from New South Wales to a participating State, into New South Wales from a participating State or through New South Wales from one participating State to another if the waste is of a type described in Part 1 or Part 2 of Schedule 1.

**Note.** Division 8 provides a defence in proceedings for an offence against this Part if the defendant establishes that although the waste concerned was of a type described in Part 1 or 2 of Schedule 1 it did not exhibit any of the characteristics specified in Part 3 of that Schedule.

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- (2) However, this Part does not apply to any of the following:
- (a) the transportation of waste in an emergency to protect human health, the environment or property,
  - (b) the transportation of waste to a person or body for the purpose of use in analysis relating to waste categorisation or in research, but only if the transportation and use of the waste has been approved in writing by the EPA (in the case of the transportation of the waste to a place in New South Wales) or by the agency, within the meaning of NEPM, of a participating State (in the case of the transportation of the waste to that participating State),
  - (c) the transportation of waste by pipeline,
  - (d) the transportation of any residue of a substance in a container if the container will be refilled with the same type of substance and the substance in the refilled container is intended for use,
  - (e) the transportation from a farm of unwanted chemicals resulting from the operation of the farm, but only if:
    - (i) the transportation is carried out by the owner or occupier of the farm, and
    - (ii) the chemicals are transported to a collection place designated by a collection scheme approved in writing by the EPA or an agency of a participating State, and
    - (iii) the transportation is carried out without fee or reward being given,
  - (f) the transportation of waste in accordance with a product recall approved by the Australian Pesticides and Veterinary Medicines Authority, Food Standards Australia New Zealand or the Therapeutic Goods Administration of the Commonwealth.
- (3) In this clause, **NEPM** means the *National Environment Protection (Movement of Controlled Waste between States and Territories) Measure 1998* made under section 14 (1) of the *National Environment Protection Council (New South Wales) Act 1995*.  
**Note.** NEPM is also made under the *National Environment Protection Council Act 1994* of the Commonwealth and is available on [www.comlaw.gov.au](http://www.comlaw.gov.au).

## 40 Exemptions from provisions of this Part (cf clause 20 of 2005 Reg)

The EPA may grant an exemption under Part 9 from any one or more of the provisions of this Part.

## Division 2 Obligations on consignor of waste

### 41 Obligations on consignor of waste relating to transportation of waste (cf clause 22 of 2005 Reg)

- (1) A consignor of waste must ensure that the waste is not transported from one place to another place unless the consignor:
- (a) holds a consignment authorisation in respect of the waste, and
  - (b) has obtained a waste transport certificate for the waste and has certified that any part of the certificate that is required to be completed by the consignor has been completed accurately, and
  - (c) has given the waste transport certificate to the transporter of the waste, and
  - (d) has ensured that the transporter is licensed (if required by or under the Act) to transport the waste, and
  - (e) has ensured that the waste facility to which the waste is to be transported can lawfully accept waste of the type concerned.

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- (2) A consignor of waste must not contravene or fail to comply with any condition of a consignment authorisation that is held by the consignor.

Maximum penalty: 200 penalty units in the case of a corporation, 100 penalty units in the case of an individual.

**42 Copy of waste transport certificate to be given to occupier of waste facility** (cf clause 23 of 2005 Reg)

Within 7 days after the day on which an authorised agent of the occupier of a waste facility gives a waste transport certificate to the transporter of the waste under this Division, the authorised agent must cause the occupier to be given a copy of the waste transport certificate in the same form as it was given by the agent to the transporter.

Maximum penalty: 100 penalty units in the case of a corporation, 50 penalty units in the case of an individual.

## Division 3 Obligations on transporter of waste

**43 Obligations on transporters of waste** (cf clause 24 of 2005 Reg)

- (1) A transporter of waste must:
- before transporting the waste, certify that any part of the waste transport certificate for the waste that is required to be completed by the transporter has been completed accurately, and
  - before transporting the waste, ensure that there is a consignment authorisation that authorises the transport of the waste, and
  - carry in the vehicle transporting the waste the waste transport certificate for the waste.
- (2) Except as provided by subclause (3), a transporter of waste must not remove the waste, or cause the waste to be removed, from the vehicle transporting the waste unless:
- the receiver of the waste has been given the waste transport certificate in respect of the waste and has consented to the waste being removed, or
  - there is no waste transport certificate in respect of the waste but the receiver of the waste has consented to the waste being removed and can lawfully store the waste, or
  - the waste is being directly transferred to another vehicle, the transfer is recorded on the waste transport certificate and the waste transport certificate is given to the transporter operating the other vehicle.
- (3) A transporter of waste must remove the waste, or cause the waste to be removed, from the vehicle transporting the waste in accordance with the directions of an authorised officer if requested by the officer to do so.
- (4) A transporter of waste that has been rejected by the receiver of waste to whom the waste has been delivered must:
- obtain the waste transport certificate for the waste endorsed by the receiver with the information that the receiver has rejected the waste, and
  - transport the waste to the waste facility identified under clause 45 (2) by the receiver.

**Note.** Clause 45 (3) provides that a consignment authorisation and waste transport certificate for waste that has been rejected by a receiver of waste are taken to authorise the transport of the waste to a waste facility that can lawfully accept the waste.

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- (5) A transporter of waste has a defence to a contravention of subclause (4) (b) if the transporter:
  - (a) is not informed in accordance with clause 45 (2) of another waste facility to which the waste can be transported, and
  - (b) notifies the EPA in writing, within 3 working days after removing the waste from the waste facility at which it was rejected, of the waste facility to which the transporter transported the waste after it was rejected.
- (6) A transporter of waste must not contravene or fail to comply with any condition of a consignment authorisation for waste that is being transported by the transporter.  
Maximum penalty (subclauses (1)–(4) and (6)): 200 penalty units in the case of a corporation, 100 penalty units in the case of an individual.

## Division 4      Obligations on receiver of waste

### 44      Obligations on receiver of waste relating to waste (cf clause 25 of 2005 Reg)

- (1) Before accepting any waste, a receiver of waste must:
  - (a) ensure that there is a consignment authorisation that authorises the transport of the waste, and
  - (b) obtain the waste transport certificate for the waste, and
  - (c) certify that any part of the certificate that is required to be completed by the receiver has been completed accurately.
- (2) However, a receiver of waste may accept waste if:
  - (a) there is no valid consignment authorisation or waste transport certificate for the waste or the waste transport certificate is inaccurate, and
  - (b) the receiver is licensed to store the waste.
- (3) If waste is transported to a waste facility without a waste transport certificate, the receiver of waste who occupies the facility must:
  - (a) generate a waste transport certificate for the waste, and
  - (b) complete as much of the certificate (including any parts that are required to be completed by the consignor and transporter, except any signature or certification required) as is possible for the receiver to complete based on the information available to the receiver.
- (4) A receiver of waste must:
  - (a) within 3 working days after waste arrives at a waste facility occupied by the receiver, notify the EPA in writing if the waste was delivered without a valid consignment authorisation or waste transport certificate, and
  - (b) within 3 working days after accepting or rejecting waste, notify the EPA in writing if the receiver considers that the transport certificate for the waste is inaccurate and of the ways in which the receiver considers the certificate to be inaccurate, and
  - (c) within 3 working days after rejecting waste, notify the EPA in writing that the waste has been rejected and the date on which it was rejected.
- (5) If waste is transported to a waste facility, the receiver of waste who occupies the facility must, within 14 days after accepting or rejecting the waste, notify the consignor in writing whether the receiver has accepted or rejected the waste.
- (6) If waste is transported to a waste facility, the receiver of waste who occupies the facility must:

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- (a) as soon as practicable after the waste arrives at the facility, record on the waste transport certificate the date on which the waste arrived, and
- (b) within 21 days after the waste arrives or such longer period as is permitted in writing by the EPA, record on the waste transport certificate for the waste whether the receiver has accepted or rejected the waste and the date on which the waste was accepted or rejected, and
- (c) in a case where the waste is accepted and is processed at the facility, record on the waste transport certificate, within 3 working days after the waste is processed, the date on which the waste was processed and the method of processing used, and
- (d) in a case where the waste is accepted and is only stored at the facility, record on the waste transport certificate, within 3 working days after the waste is accepted, that the waste has been accepted for storage.

Maximum penalty (subclauses (1) and (3)–(6)): 200 penalty units in the case of a corporation, 100 penalty units in the case of an individual.

## 45 Receiver of waste may accept or reject waste (cf clause 26 of 2005 Reg)

- (1) If a receiver of waste accepts waste delivered to a waste facility that is occupied by the receiver, any subsequent transport of the waste from the waste facility is to be treated as a new consignment of the waste for the purposes of this Part and, accordingly, requires a new consignment authorisation and waste transport certificate.
- (2) If a receiver of waste rejects waste delivered to the receiver, the receiver must inform the transporter of the waste of a waste facility:
  - (a) to which the waste can be transported, and
  - (b) that can lawfully accept the waste.Maximum penalty: 200 penalty units in the case of a corporation, 100 penalty units in the case of an individual.
- (3) For the purposes of this Part, a consignment authorisation, or waste transport certificate, for waste that has been rejected by a receiver of waste is taken to authorise the transport of the waste to a waste facility that can lawfully accept the waste.

## Division 5 Authorised agents

### 46 Appointment of authorised agent (cf clause 27 of 2005 Reg)

- (1) An occupier of a waste facility may appoint a person as an authorised agent in relation to the transportation of waste from the facility.
- (2) The appointment of a person as an authorised agent of the occupier of a waste facility has no effect for the purposes of this Part unless:
  - (a) the person is the holder of an approval under this Division (an *approval*) that is in force, and
  - (b) the appointment is evidenced by an agreement in writing between the person and the occupier that clearly specifies that the person is appointed as an authorised agent of the occupier for the purposes of this Part and is appointed to carry out the obligations of a consignor of the waste under this Part.
- (3) The EPA may require (either generally or in a particular case or class of cases) that any such agreement be in the approved form.
- (4) A person must not act as an authorised agent for the purposes of this Part unless:
  - (a) the person is the holder of an approval that is in force, and

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- (b) the person has been appointed by the occupier of the waste facility as the occupier's authorised agent in accordance with this clause, and

- (c) the appointment is evidenced as referred to in subclause (2) (b).

Maximum penalty: 200 penalty units in the case of a corporation, 100 penalty units in the case of an individual.

- (5) A person appointed, in accordance with this clause, by the occupier of a waste facility to be an authorised agent of the occupier must, within 7 days after the person's approval has been revoked, notify the occupier in writing that the approval has been revoked.

Maximum penalty: 100 penalty units in the case of a corporation, 50 penalty units in the case of an individual.

## **47 Approval of authorised agents** (cf clause 28 of 2005 Reg)

- (1) The EPA may grant an approval to a transporter or a receiver of waste authorising the appointment of the transporter or receiver as an authorised agent.

- (2) An approval is to be in writing and may be issued subject to conditions.

- (3) The EPA may revoke an approval for any reason.

- (4) The EPA is not to revoke an approval, unless it has given at least 14 days' written notice to the holder of the approval stating the reasons for the revocation.

- (5) The holder of an approval must not contravene or fail to comply with any condition of the approval.

Maximum penalty: 200 penalty units in the case of a corporation, 100 penalty units in the case of an individual.

- (6) For the purposes of this Part, if an approval of a person as an authorised agent is revoked after waste has been transported from premises and the person was (immediately before the revocation) the authorised agent, in relation to the waste, of the occupier of those premises, the approval is taken to continue in force in relation to the transportation of the waste. However, the approval is taken to continue in force only until the waste is transported to a waste facility at which the waste is accepted.

## **Division 6 Consignment authorisations**

### **48 Issue of consignment authorisations** (cf clause 29 of 2005 Reg)

- (1) The EPA, or a receiver of waste who is approved under this Division by the EPA, may issue a consignment authorisation to a consignor of waste in respect of the transport of waste to a waste facility in New South Wales.

- (2) A consignment authorisation is to be in the approved form.

- (3) A consignment authorisation may authorise:

- (a) the transportation of waste on one or more occasions, and

- (b) the transportation of waste from one or more waste facilities.

- (4) A receiver of waste must not issue a consignment authorisation unless the authorisation:

- (a) is in the approved form, and

- (b) is issued in accordance with an approval granted to the receiver by the EPA under this Division, and

- (c) is issued to a consignor of waste, and

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- (d) only authorises the transport of the waste to a waste facility occupied by the receiver, and
- (e) is only issued for the transport of waste that the receiver could lawfully accept at that waste facility.

Maximum penalty: 200 penalty units in the case of a corporation, 100 penalty units in the case of an individual.

- (5) A consignment authorisation has effect for such period (not exceeding 12 months after the date of its issue) as is specified in the consignment authorisation.
- (6) A consignment authorisation may be revoked for any reason by the EPA or by a receiving facility that issued it.
- (7) The EPA or a receiving facility is not to revoke a consignment authorisation, unless it has given at least 7 days' written notice to the holder of the approval stating the reasons for the revocation.

**49 Approval of receivers of waste to issue consignment authorisations** (cf clause 30 of 2005 Reg)

- (1) The EPA may grant an approval to a receiver of waste for the purposes of issuing consignment authorisations.
- (2) An approval is to be in writing and may be issued subject to conditions.
- (3) The EPA may revoke an approval for any reason.
- (4) The EPA is not to revoke an approval, unless it has given at least 7 days' written notice to the holder of the approval stating the reasons for the revocation.

**50 Expired or revoked consignment authorisation** (cf clause 31 of 2005 Reg)

For the purposes of this Part, if a consignment authorisation that authorised the transport of waste to a waste facility expires or is revoked after the waste leaves the place from which it is being transported, the authorisation is taken to continue in force in relation to that waste but only until the waste is delivered to a waste facility at which it is accepted.

## Division 7 Record keeping and returns

**51 Record keeping requirements relating to occupiers of waste facilities** (cf clause 32 of 2005 Reg)

An occupier of a waste facility who is not a consignor of the waste must retain the following records for at least 4 years:

- (a) copies of each waste transport certificate given to the occupier of the waste facility by the consignor of the waste,
- (b) copies of each agreement evidencing the appointment of an authorised agent as referred to in clause 46 (2) (b).

Maximum penalty: 200 penalty units in the case of a corporation, 100 penalty units in the case of an individual.

**52 Record keeping requirements relating to consignors of waste** (cf clause 33 of 2005 Reg)

A consignor of waste must retain the following records for at least 4 years after the record is made:

- (a) copies of each consignment authorisation,
- (b) copies of each waste transport certificate required to be completed by the consignor under this Part,

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- (c) if the consignor is an authorised agent of one or more occupiers of waste facilities—a list of premises from which waste that was the subject of such a waste transport certificate was transported,
- (d) if the consignor is an authorised agent of one or more occupiers of waste facilities—copies of each agreement entered into by the consignor as referred to in clause 46 (2) (b).

Maximum penalty: 200 penalty units in the case of a corporation, 100 penalty units in the case of an individual.

**53 Record keeping requirements relating to transporters of waste** (cf clause 34 of 2005 Reg)

A transporter of waste must retain, for at least 4 years, copies of each waste transport certificate required to be completed by the transporter under this Part.

Maximum penalty: 200 penalty units in the case of a corporation, 100 penalty units in the case of an individual.

**54 Record keeping requirements relating to receivers of waste** (cf clause 35 of 2005 Reg)

A receiver of waste must retain the following records for at least 4 years:

- (a) copies of each consignment authorisation issued by the receiver,
- (b) each waste transport certificate given to the receiver for waste accepted by the receiver and each waste transport certificate generated by the receiver,
- (c) copies of each notice required to be given to the EPA under this Part.

Maximum penalty: 200 penalty units in the case of a corporation, 100 penalty units in the case of an individual.

**55 Returns by receivers of waste** (cf clause 36 of 2005 Reg)

A receiver of waste:

- (a) must provide the EPA (or such other person or body as may be approved for the purposes of this clause) with such information as the EPA (or the other person or body) may require in relation to the waste received by the receiver, including a description of the waste, the quantity of the waste and the proposed treatment intended for the waste, and
- (b) must retain a copy of the information provided for a period of at least 4 years after the day it was provided.

Maximum penalty: 200 penalty units in the case of a corporation, 100 penalty units in the case of an individual.

**56 Records to be made available for inspection and copying by authorised officer** (cf clause 22 (2) (c) of 2005 Reg)

A person who is required to retain records under this Division must make those records available for inspection and copying by an authorised officer on request.

Maximum penalty: 200 penalty units in the case of a corporation, 100 penalty units in the case of an individual.

**57 Approved record-keeping systems** (cf clause 37 of 2005 Reg)

- (1) The EPA may approve a system (whether a paper-based system or an electronic system) for the purpose of keeping the records and giving the notices and other documentation required by this Part.

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- (2) Without limiting clause 40, the EPA may grant, to any person or class of persons who establishes such an approved system, an exemption under Part 9 from any one or more of the provisions of this Part relating to the keeping of records or submission of notices or other documentation.

## Division 8      Miscellaneous

**58 Exemption relating to authorised interstate transporters of waste** (cf clause 38 of 2005 Reg)

- (1) This clause applies to any person who holds an equivalent transport authorisation and transports waste into or through New South Wales or from New South Wales to a participating State.
- (2) A person to whom this clause applies is, to the extent that the person transports waste into, through or from New South Wales, exempt from section 49 (2) of the Act.
- (3) It is a condition of any such exemption that the person comply with the conditions of the person's equivalent transport authorisation to the extent that those conditions apply to the transport of waste to which this Part applies.

**59 Defences** (cf clause 39 of 2005 Reg)

- (1) It is a defence to proceedings for an offence against any provision of this Part if the defendant establishes that, although the waste concerned was of a type described in Part 1 or 2 of Schedule 1, it did not exhibit any of the characteristics specified in Part 3 of that Schedule.
- (2) It is a defence to proceedings for an offence against any provision of this Part relating to the transportation of waste if the defendant establishes that:
- the waste concerned was being transported through New South Wales to a participating State, and
  - the waste was not loaded or unloaded in New South Wales, and
  - the person complied with the laws of the place from which the waste was transported and the place to which the waste was being transported.

**60 Offence relating to false information about waste** (cf clause 40 (2) and (3) of 2005 Reg)

**Note.** See also section 144AA of the Act.

- (1) An authorised agent of an occupier of a waste facility must notify the EPA within 3 working days after becoming aware that the occupier has given information about the waste to the agent that is false or misleading in a material respect.  
Maximum penalty: 200 penalty units in the case of a corporation, 100 penalty units in the case of an individual.
- (2) In this clause, information about waste is *false or misleading in a material respect* if:
- it misrepresents the type, classification or characteristics of the waste, or
  - it misrepresents the hazards or potential harm to human health or the environment associated with the transport, handling, deposit, disposal, storage, processing, recycling, recovery, re-use or use of the waste.

**61 Approved forms** (cf clause 41 of 2005 Reg)

- (1) The EPA may approve the form of any authorisation, certificate, notice, report or other document to be used for the purposes of this Part.

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- (2) If a provision of this Part requires the giving or keeping (however expressed) of a document for which a form has been approved under this clause, the provision is to be read as requiring the giving or keeping of a document that complies with the approved form.

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Protection of the Environment Operations (Waste) Regulation 2014 [NSW]  
Part 5 Reporting on waste from metropolitan levy area transported out of NSW

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## Part 5 Reporting on waste from metropolitan levy area transported out of NSW

### 62 Definitions

- (1) In this Part:  
*consignor* of waste, in relation to the transportation of waste, means:
  - (a) in the case of waste that is transported from a waste facility—the occupier of the waste facility, or
  - (b) in any other case—any person who is the consignor of the waste.  
*interstate waste facility* means a waste facility in a State or Territory, other than New South Wales.  
*metropolitan levy area* has the same meaning as in Part 2.  
*transporter* of waste means a person who carries on any business involving the transportation of waste.
- (2) A reference in this Part to the EPA's online waste tracking system is a reference to the online waste tracking system operated by the EPA and approved by it, for the purposes of this Part, from time to time.

### 63 Transportation of waste to which Part does and does not apply

- (1) This Part applies to the transportation of waste from New South Wales to an interstate waste facility if the waste has been generated in, or generated from waste generated in, the metropolitan levy area.
- (2) However, this Part does not apply to:
  - (a) the transportation of less than 10 tonnes of waste, or
  - (b) the transportation of waste of a type described in Part 1, or Part 2, of Schedule 1, or  
**Note.** Part 4 of this Regulation applies to the transportation of that type of waste.
  - (c) the transportation of liquid waste, or
  - (d) the transportation of special waste that would be liquid waste were it not for the express exclusion in the definition of *liquid waste* in Part 3 Schedule 1 to the Act, or
  - (e) the transportation of waste in an emergency to protect human health, the environment or property, or
  - (f) the transportation of waste by pipeline, or
  - (g) the transportation of waste in accordance with a product recall approved by the Australian Pesticides and Veterinary Medicines Authority, Food Standards Australia New Zealand or the Therapeutic Goods Administration of the Commonwealth, or
  - (h) the transportation of waste from New South Wales that commenced before the commencement of this Part.

### 64 Exemptions from provisions of this Part (cf clause 20 of 2005 Reg)

The EPA may grant an exemption under Part 9 from any of the provisions of this Part.

### 65 Consignors to provide information to EPA

- (1) A consignor of waste must cause the following information to be given to the EPA (by using the EPA's online waste tracking system), in relation to a transportation of waste to which this Part applies, within 3 days after the transportation commences:

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Part 5 Reporting on waste from metropolitan levy area transported out of NSW

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- (a) the name, address and contact details of the consignor,
  - (b) the name, address and contact details of the premises from which the waste is transported (if different from the name, address and contact details referred to in paragraph (a)),
  - (c) the date on which the waste is transported from the waste facility or other premises concerned,
  - (d) the name and address of the interstate waste facility to which the waste is transported,
  - (e) the type and amount of waste (in tonnes),
  - (f) the local government area in which the waste has been generated (if known).
- (2) The consignor must give to the transporter of the waste identifying particulars for the load of waste concerned, as allocated by the EPA's online waste tracking system.
- Maximum penalty: 200 penalty units in the case of a corporation, 100 penalty units in the case of an individual.

## **66 Consignor to arrange transportation only to lawful interstate waste facility**

A consignor of waste must not arrange for the transportation of waste to an interstate waste facility unless the facility can lawfully receive waste of the type concerned.

Maximum penalty: 200 penalty units in the case of a corporation, 100 penalty units in the case of an individual.

## **67 Transporters to provide information to EPA**

A transporter of waste must cause the following information to be given to the EPA (using the EPA's online waste tracking system), in relation to the transportation of waste to which this Part applies, within 3 days of causing the waste to be delivered to an interstate waste facility:

- (a) the name, address and contact details of the premises in New South Wales from which the waste has been transported,
- (b) the name, address and contact details of the transporter,
- (c) the mode of transportation,
- (d) if the vehicle used to transport the waste is a motor vehicle—the registration number of the vehicle,
- (e) the name, address and contact details of the interstate waste facility.

Maximum penalty: 200 penalty units in the case of a corporation, 100 penalty units in the case of an individual.

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Protection of the Environment Operations (Waste) Regulation 2014 [NSW]  
Part 6 Other provisions relating to transportation of waste

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## Part 6 Other provisions relating to transportation of waste

### 68 Requirements relating to transportation of waste generally (cf clause 49 of 2005 Reg)

**Note.** Under section 116 of the Act, it is an offence to wilfully or negligently cause any substance to leak, spill or otherwise escape in a manner that harms, or is likely to harm, the environment.

- (1) A person who transports waste must do so in a manner that avoids the waste spilling, leaking or otherwise escaping from the vehicle or plant used to transport the waste. For example, the person must ensure that:
  - (a) any container mounted on the vehicle or plant is secured safely to the vehicle or plant during transportation of the waste, and
  - (b) any waste that is likely to be blown, or otherwise escape, from the vehicle or plant if uncovered during its transportation is covered during its transportation.
- (2) A person who, in the course of business, transports waste must take all reasonable steps to ensure that any vehicle or plant used to transport the waste is constructed and maintained so as to avoid the waste spilling, leaking or otherwise escaping from the vehicle or plant.
- (3) A person who, when acting in the course of employment or in the course of business, transports waste must ensure that:
  - (a) the following are carried in any vehicle used to transport the waste:
    - (i) a copy of any environment protection licence required to authorise the transport of the waste,
    - (ii) a spill kit that is appropriate for the type of waste being transported, and
  - (b) the person does not transport incompatible wastes together, and
  - (c) any material that, when it is collected for transportation, has been segregated for recycling is not mixed with other waste in the course of transportation, and
  - (d) any liquid waste that, when it is collected for transportation, is not mixed with other waste is not, during the course of transportation, mixed with other waste.
- (4) A person who, in the course of business, transports liquid waste must ensure that the waste is able to be sampled by the release of suitable and accessible valves located on the top and, where appropriate, bottom of any container used to transport the waste.
- (5) For the purposes of this clause, a council that transports waste is taken to do so in the course of business.

Maximum penalty: 200 penalty units in the case of a corporation, 100 penalty units in the case of an individual.

### 69 Requirement applying to vehicles transporting waste to which Part 4 applies (cf clause 49 (h) (ii) of 2005 Reg)

A person who, when acting in the course of employment or in the course of business, transports waste to which Part 4 applies must ensure that any Guide set out in the yellow section of HB 76—2010: *Dangerous Goods—Initial Emergency Response Guide* and applying to the waste concerned is carried in any vehicle used to transport the waste.

Maximum penalty: 200 penalty units in the case of a corporation, 100 penalty units in the case of an individual.

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Protection of the Environment Operations (Waste) Regulation 2014 [NSW]  
Part 6 Other provisions relating to transportation of waste

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**70 Condition of licence for transportation of liquid category 1 and category 2 trackable waste** (cf clause 49A of 2005 Reg)

It is a condition of an environment protection licence that authorises the transportation of waste to which clause 48 of Schedule 1 to the Act applies that any such waste that is liquid waste and (when it is collected for transportation) is not mixed with other waste, is not mixed with other waste during the course of transportation.

**71 Exemptions for certain licensees from transportation requirements relating to liquid waste** (cf clause 51B (b) of 2005 Reg)

The EPA may grant an exemption under Part 9 from both clauses 68 (3) (d) and 70.

**72 Reporting on transportation of waste tyres solely within New South Wales**

- (1) This clause applies to the transportation of waste tyres.
- (2) However, this clause does not apply to:
  - (a) the transportation of a load of waste tyres that have a total weight of less than 200 kilograms (unless the load contains at least 20 tyres), or
  - (b) the transportation of waste tyres if Part 4 applies to the transportation, or
  - (c) the transportation of waste tyres in an emergency to protect human health, the environment or property, or
  - (d) the transportation of waste tyres that commenced before 1 September 2014.
- (3) A consignor of a load of waste tyres must cause the following information to be given to the EPA (in the approved form and manner) before the transportation of the load commences:
  - (a) the name, address and contact details of the consignor,
  - (b) the name, address and contact details of the premises from which the load is proposed to be transported (if different from the name, address and contact details referred to in paragraph (a)),
  - (c) the date on which it is proposed that the transportation commence,
  - (d) the name, address and contact details of the premises to which the waste tyres are proposed to be transported,
  - (e) the weight (in kilograms) of waste tyres in the load (rounded to the nearest kilogram and, if the amount to be rounded is 0.5 kilogram, rounded up),
  - (f) the number of tyres in the load if the weight of the load is less than 200 kilograms,
  - (g) any other information specified in the Asbestos and Waste Tyres Guidelines.Maximum penalty: 200 penalty units in the case of a corporation, 100 penalty units in the case of an individual.
- (4) The consignor of a load of waste tyres must cause the following information to be given to the transporter of the load (in the approved form and manner) before the transportation of the load commences:
  - (a) the unique consignment code issued by the EPA in relation to that load, and
  - (b) any other information specified in the Asbestos and Waste Tyres Guidelines.Maximum penalty: 200 penalty units in the case of a corporation, 100 penalty units in the case of an individual.
- (5) If the premises to which the load is delivered (the *receiving premises*) are not the same as the premises specified by the consignor under subclause (3) (d), the transporter causing the delivery must ensure that the EPA is given the name, address

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and contact details of the receiving premises (in the approved form and manner) within 24 hours after the delivery.

Maximum penalty: 200 penalty units in the case of a corporation, 100 penalty units in the case of an individual.

- (6) The transporter of a load of waste tyres must ensure that the occupier of any premises to which the transporter causes the load to be delivered is given the following information (in the approved form and manner) no later than on delivery:

- (a) the unique consignment code issued by the EPA in relation to that load, and
- (b) any other information specified in the Asbestos and Waste Tyres Guidelines.

Maximum penalty: 200 penalty units in the case of a corporation, 100 penalty units in the case of an individual.

- (7) The occupier of premises to which a load of waste tyres is delivered must cause the EPA to be given the following information (in the approved form and manner) within 3 days after the delivery:

- (a) the date and time of delivery,
- (b) the weight (in kilograms) of waste tyres in the load (rounded to the nearest kilogram and, if the amount to be rounded is 0.5 kilogram, rounded up),
- (c) the number of tyres in the load if the weight of the load is less than 200 kilograms,
- (d) any other information specified in the Asbestos and Waste Tyres Guidelines.

Maximum penalty: 200 penalty units in the case of a corporation, 100 penalty units in the case of an individual.

- (8) The EPA may grant an exemption under Part 9 from the whole of, or any provision within, this clause.

- (9) A reference in this clause to the approved form and manner in which information is to be given is a reference to the form and manner in which the Asbestos and Waste Tyres Guidelines specify the information is to be given.

- (10) In this clause:

**Asbestos and Waste Tyres Guidelines** means the document of that name, published by the EPA in the Gazette (as amended or replaced, from time to time, by notice published in the Gazette).

**Note.** A copy of the guidelines is available on the EPA's website ([www.epa.nsw.gov.au](http://www.epa.nsw.gov.au)).

**consignor**, in relation to the transportation of waste tyres, means:

- (a) in the case of waste tyres that are transported from a waste facility—the occupier of the waste facility, or
- (b) in any other case—any person who is the consignor of the waste tyres.

**transporter** of waste tyres means:

- (a) in the case of waste tyres that are transported in the course of business—the person who carries on the business, or
- (b) in any other case—any individual who carries out the transportation.

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Protection of the Environment Operations (Waste) Regulation 2014 [NSW]  
Part 7 Transportation and management of asbestos waste

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## Part 7 Transportation and management of asbestos waste

Note. **Asbestos waste** is defined in Part 3 of Schedule 1 to the Act.

### 73 Definitions (cf clause 42 (6) of 2005 Reg)

In this Part:

**bonded asbestos material** means any material (other than friable asbestos material) that contains asbestos.

**friable asbestos material** means any material that contains asbestos and is in the form of a powder or can be crumbled, pulverised or reduced to powder by hand pressure when dry.

### 74 General requirements applying to transportation of asbestos waste (cf clause 42 (3) of 2005 Reg)

A person who transports asbestos waste must ensure that:

- (a) the vehicle in which the person transports the waste is covered and leak-proof, and
- (b) if the waste consists of bonded asbestos material—it is securely packaged during the transportation, and
- (c) if the waste consists of friable asbestos material—it is kept in a sealed container during transportation, and
- (d) if the waste consists of asbestos-contaminated soils—it is wetted down.

Maximum penalty: 400 penalty units in the case of a corporation, 200 penalty units in the case of an individual.

### 75 Reporting on transportation of asbestos waste solely within New South Wales

- (1) This clause applies to the transportation of asbestos waste.
- (2) However, this clause does not apply to:
  - (a) the transportation of less than 80 kilograms of asbestos waste in any single load, or
  - (b) the transportation of asbestos waste if Part 4 applies to the transportation, or
  - (c) the transportation of asbestos waste in an emergency to protect human health, the environment or property, or
  - (d) the transportation of asbestos waste that commenced before 1 September 2014.
- (3) The transporter of a load of asbestos waste must cause the following information to be given to the EPA (in the approved form and manner) before the transportation of the load commences:
  - (a) the address of the site at which the asbestos waste has been generated (by its removal from the site), if known to the transporter,
  - (b) the name, address and contact details of the premises from which the load is proposed to be transported,
  - (c) the date on which it is proposed that the transportation commence,
  - (d) the name, address and contact details of the premises to which the waste is proposed to be transported,
  - (e) the approximate amount (in kilograms) of each class of asbestos waste in the load (rounded to the nearest kilogram and, if the amount to be rounded is 0.5 kilogram, rounded up),

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Protection of the Environment Operations (Waste) Regulation 2014 [NSW]  
Part 7 Transportation and management of asbestos waste

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- (f) any other information specified in the Asbestos and Waste Tyres Guidelines.  
Maximum penalty: 200 penalty units in the case of a corporation, 100 penalty units in the case of an individual.
- (4) If the premises to which the load is delivered (the *receiving premises*) are not the same as the premises specified under subclause (3) (d), the transporter causing the delivery must ensure that the EPA is given the name, address and contact details of the receiving premises (in the approved form and manner) within 24 hours after the delivery.  
Maximum penalty: 200 penalty units in the case of a corporation, 100 penalty units in the case of an individual.
- (5) The transporter of a load of asbestos waste must ensure that the occupier of any premises to which the transporter causes the load to be delivered is given the following information (in the approved form and manner) no later than on delivery:
- (a) the unique consignment code issued by the EPA in relation to that load,
  - (b) any other information specified in the Asbestos and Waste Tyres Guidelines.
- Maximum penalty: 200 penalty units in the case of a corporation, 100 penalty units in the case of an individual.
- (6) The occupier of a waste facility to which a load of asbestos waste is delivered must cause the EPA to be given the following information (in the approved form and manner) within 3 days after the delivery:
- (a) the date and time of delivery,
  - (b) the approximate amount (in kilograms) of each class of asbestos waste in the load (rounded to the nearest kilogram and, if the amount to be rounded is 0.5 kilogram, rounded up),
  - (c) any other information specified in the Asbestos and Waste Tyres Guidelines.
- Maximum penalty: 200 penalty units in the case of a corporation, 100 penalty units in the case of an individual.
- (7) The EPA may grant an exemption under Part 9 from the whole of, or any provision within, this clause.
- (8) A reference in this clause to the approved form and manner in which information is to be given is a reference to the form and manner in which the Asbestos and Waste Tyres Guidelines specify the information is to be given.
- (9) For the purposes of this clause, the classes of asbestos waste are as follows:
- (a) bonded asbestos material,
  - (b) friable asbestos material.
- (10) In this clause:
- Asbestos and Waste Tyres Guidelines** means the document of that name, published by the EPA in the Gazette (as amended or replaced, from time to time, by notice published in the Gazette).
- Note.** A copy of the guidelines is available on the EPA's website ([www.epa.nsw.gov.au](http://www.epa.nsw.gov.au)).
- transporter** of asbestos waste means:
- (a) in the case of asbestos waste that is transported in the course of business—the person who carries on the business, or
  - (b) in any other case—any individual who carries out the transportation.

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Protection of the Environment Operations (Waste) Regulation 2014 [NSW]  
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**76 Disposal of asbestos waste** (cf clause 42 (4) of 2005 Reg)

- (1) A person may only dispose of asbestos waste at a landfill site that can lawfully receive the waste.
- (2) When a person delivers asbestos waste to a landfill site, the person must inform the occupier of the landfill site that the waste contains asbestos.
- (3) When a person unloads or disposes of asbestos waste at a landfill site, the person must prevent the generation or stirring up of dust.
- (4) The occupier of a landfill site must ensure that asbestos waste disposed of at the site is covered with virgin excavated natural material or (if expressly authorised by an environment protection licence held by the occupier) other material:
  - (a) initially (at the time of disposal), to a depth of at least 0.15 metre, and
  - (b) at the end of each day's operation, to a depth of at least 0.5 metre, and
  - (c) finally, to a depth of at least 1 metre (in the case of bonded asbestos waste or asbestos-contaminated soils) or 3 metres (in the case of friable asbestos material) beneath the final land surface of the landfill site.

Maximum penalty: 400 penalty units in the case of a corporation, 200 penalty units in the case of an individual.

**77 Re-use and recycling of asbestos waste prohibited** (cf clause 42 (5) of 2005 Reg)

A person must not cause or permit asbestos waste in any form to be re-used or recycled.

Maximum penalty: 400 penalty units in the case of a corporation, 200 penalty units in the case of an individual.

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Protection of the Environment Operations (Waste) Regulation 2014 [NSW]  
Part 8 Recycling of consumer packaging

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## Part 8 Recycling of consumer packaging (cf Part 5B of 2005 Reg)

### 78 Definitions (cf clause 46G (1) and (2) (a) of 2005 Reg)

In this Part:

**Australian Packaging Covenant** means:

- (a) the Australian Packaging Covenant of 1 July 2010 (including its annexures and schedules), as amended from time to time, and
- (b) the targets for signatories to the Covenant that are specified in the Australian Packaging Covenant Council's current strategic plan (as referred to in the Covenant), as amended from time to time.

**brand owner**—see clause 79.

**recover**, in relation to materials, means to separate those materials from the waste stream in a manner that enables them to be re-used for packaging or used for other products.

**Sustainable Packaging Guidelines** means the guidelines of that name contained in Schedule 2 to the Australian Packaging Covenant (except as provided by clause 86).

### 79 Brand owners of products (cf clause 46H of 2005 Reg)

- (1) For the purposes of this Part, a person is the **brand owner** of a product if the person is the owner of the product name under which the product is sold or otherwise distributed in Australia.
- (2) If no person in Australia satisfies subclause (1), in relation to a product, each person who is a licensee of the product name under which the product is sold or otherwise distributed in Australia is the **brand owner** of the product for the purposes of this Part, but only in respect of those items of the product that are sold or distributed under that licence.
- (3) If no person in Australia satisfies subclause (1) or (2), in relation to a product, each person who is a franchisee under a business arrangement that allows the person to sell or otherwise distribute the product in Australia is the **brand owner** of the product for the purposes of this Part, but only in respect of those items of the product that are sold or distributed by the person under that arrangement.
- (4) If no person in Australia satisfies subclause (1), (2) or (3), in relation to a product, the person who first sells a particular item of the product in Australia is the **brand owner** of the product for the purposes of this Part, but only in respect of that item.
- (5) In this clause, **product name** includes a trade mark, brand name or trade name whether or not registered in Australia.

### 80 Application of this Part (cf clause 46I of 2005 Reg)

- (1) This Part applies to a person who is:
  - (a) a brand owner of consumer products, or
  - (b) a retailer who provides plastic bags to consumers for transporting consumer products from the retailer.
- (2) This Part does not apply to a person if:
  - (a) the person is a signatory to (and complying with):
    - (i) the Australian Packaging Covenant (or any arrangement that replaces the Australian Packaging Covenant), or
    - (ii) any other arrangement approved by the EPA (by order published in the Gazette) that the EPA is satisfied will produce equivalent outcomes to the Australian Packaging Covenant, or

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Part 8 Recycling of consumer packaging

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- (b) the person has a gross annual income in Australia of less than \$5 million.
- (3) For the purposes of this clause, a person is taken not to be complying with the Australian Packaging Covenant if:
  - (a) the person is a signatory to the Covenant, and
  - (b) the EPA has been notified by the Australian Packaging Covenant Council (the *Covenant Council*) that the person no longer has the benefit of being a signatory to the Covenant, and
  - (c) since receiving that notification, the EPA has not received advice from the Covenant Council to the effect that the Covenant Council is satisfied that the person is a compliant signatory.

**81 Packaging for which brand owners and retailers responsible** (cf definition of "person's packaging" (in clause 46G (1)) and clause 46I (2) and (3) of 2005 Reg)

For the purposes of this Part, a person who is a brand owner or retailer of consumer products is responsible for the following packaging:

- (a) in the case of a brand owner of such products—all packaging made of any material (or any combination of materials) for containing, protecting, marketing and handling the product (including any packaging materials used to transport the products to a retailer, but not including packaging provided by a retailer to a consumer for transporting the products from the retailer), or
- (b) in the case of a retailer of such products—plastic bags that the retailer provides to consumers for transporting the products from the retailer (whether or not the retailer is a brand owner of any of the products).

**82 EPA is to set targets for recovery of materials and review of packaging design** (cf clause 46J of 2005 Reg)

- (1) The EPA is, by order published in the Gazette, to set targets for the following:
  - (a) recovery of material used in packaging products (whether in relation to all or to particular material so used),
  - (b) review of packaging design.
- (2) In setting any such target the EPA is to have regard to current national performance and the targets set out in the Australian Packaging Covenant.
- (3) Without limiting subclause (1) (a), any such target may be expressed in the form of a percentage of the materials used.

**83 Requirements to recover, re-use and recycle materials and review packaging design in accordance with targets** (cf clause 46K of 2005 Reg)

- (1) A person to whom this Part applies must ensure:
  - (a) that the materials used in packaging for which the person is responsible are recovered in accordance with the targets for recovery of those materials set by the EPA under clause 82, and
  - (b) that, after being recovered, those materials are:
    - (i) re-used or recycled by the person, or
    - (ii) if that is not practicable—re-used or recycled within Australia, or
    - (iii) if that is not practicable—re-used or recycled overseas, and
  - (c) that consumers are given adequate information to enable them to deal with the materials used in the packaging once they are no longer needed by the consumer (including information on where to take the materials and how to re-use or recycle them), and

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Part 8 Recycling of consumer packaging

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- (d) that the design of the packaging is reviewed in accordance with the targets that the EPA sets under clause 82.

Maximum penalty:

- (a) in the case of a corporation—200 penalty units and, in the case of a continuing offence, a further penalty of 100 penalty units for each day the offence continues, or
  - (b) in the case of an individual—100 penalty units and, in the case of a continuing offence, a further penalty of 50 penalty units for each day the offence continues.
- (2) The requirement in subclause (1) (a) to recover materials used in packaging for which a person is responsible is satisfied if an equivalent amount of the same material is recovered by, or on behalf of, the person from packaging that is substantially similar to the packaging for which the person is responsible.

**84 Requirement to prepare waste action plan** (cf clause 46L of 2005 Reg)

- (1) A person to whom this Part applies must prepare a draft plan (a *draft waste action plan*), in accordance with this clause, and submit the draft plan to the EPA, within one month after the EPA gives written notice to the person that the person is required to prepare and submit a draft waste action plan.
- (2) A draft waste action plan is to set out:
  - (a) a baseline of data setting out the person's current performance in respect of the use, recovery, re-use and recycling of the materials used in the packaging for which the person is responsible, and
  - (b) how the person will ensure compliance with clause 83, including:
    - (i) targets for the recovery of the materials used in the packaging and for reviewing the design of that packaging, and
    - (ii) time frames, proposed actions and performance indicators for achieving those targets, and
  - (c) how the person will ensure a continuous reduction in the number of packaging items in the litter stream.
- (3) A draft waste action plan is to be in the form, and is to contain any matter or particular relating to the following, that the EPA may specify, by written notice to the person:
  - (a) the use, recovery, re-use or recycling of the materials used in the packaging for which the person is responsible,
  - (b) the review of that packaging's design,
  - (c) the reduction in packaging litter.
- (4) The EPA may, by written notice to a person who has submitted a draft waste action plan:
  - (a) if the EPA reasonably believes that the draft plan is not sufficient to ensure that the person complies with clause 83 or subclause (2) (c)—direct the person to amend the draft plan and to resubmit it within the period specified in the notice, or
  - (b) approve the draft plan as the person's waste action plan with effect from the date specified in the notice.
- (5) The EPA may, by written notice to a person who has a waste action plan, direct the person to amend the plan, and submit the amended plan to the EPA within the period specified in the notice, if the EPA reasonably believes that the plan is not sufficient to ensure that the person complies with clause 83 or subclause (2) (c).

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Part 8 Recycling of consumer packaging

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- (6) A person must comply with a direction of the EPA given in accordance with this clause.
- (7) To the extent that a waste action plan relates to a person's obligations under clause 83, a failure to comply with the plan is evidence of a failure to comply with that clause.

Maximum penalty (subclauses (1) and (6)):

- (a) in the case of a corporation—200 penalty units and, in the case of a continuing offence, a further penalty of 100 penalty units for each day the offence continues, or
- (b) in the case of an individual—100 penalty units and, in the case of a continuing offence, a further penalty of 50 penalty units for each day the offence continues.

## **85 Record keeping** (cf clause 46M of 2005 Reg)

- (1) A person to whom this Part applies must keep records that set out the following, in relation to each financial year:
  - (a) for each packaging material used by the person in packaging for which the person is responsible:
    - (i) the total weight of material used by material type, and
    - (ii) the number of units of packaging by unit and material type, and
    - (iii) the arrangements that are in place to ensure that material is recovered, including details of any agreement with a third party for the recovery of material, and
    - (iv) the total weight of material recovered by material type, and
    - (v) the total weight of recovered material re-used and recycled in Australia by material type, and
    - (vi) the total weight of recovered material re-used and recycled, through export, by material type, and
    - (vii) the total amount of embedded energy recovered (in kilojoules), and
    - (viii) the total weight of recovered material disposed of to landfill, and
    - (ix) how recovered material is used, and
    - (x) how consumers have been advised as to how packaging is to be recovered,
  - (b) the percentages of existing and new packaging for which the person is responsible that is reviewed using the Sustainable Packaging Guidelines, and any improvements made to the design of that packaging,
  - (c) any measures that the person takes to ensure a continuous reduction in the number of packaging items in the litter stream.

Maximum penalty:

- (a) in the case of a corporation—200 penalty units and, in the case of a continuing offence, a further penalty of 100 penalty units for each day the offence continues, or
- (b) in the case of an individual—100 penalty units and, in the case of a continuing offence, a further penalty of 50 penalty units for each day the offence continues.

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Protection of the Environment Operations (Waste) Regulation 2014 [NSW]  
Part 8 Recycling of consumer packaging

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- (2) Records kept by a person under this clause must be retained by the person for a period of at least 5 years following the financial year to which they relate.  
Maximum penalty:
  - (a) in the case of a corporation—200 penalty units and, in the case of a continuing offence, a further penalty of 100 penalty units for each day the offence continues, or
  - (b) in the case of an individual—100 penalty units and, in the case of a continuing offence, a further penalty of 50 penalty units for each day the offence continues.
- (3) A reference in this clause to a financial year, in relation to the keeping and retention of records by a person, is a reference to:
  - (a) in the case of a person that is a company—a financial year of the company, or
  - (b) any in other case—the period of 12 months commencing on 1 July in any year.

**86 EPA may approve alternative to Sustainable Packaging Guidelines** (cf clause 49G (2) (b))

- (1) The EPA may give written approval to any person to whom this Part applies to use a set of guidelines, for the purposes of this Part, as an alternative to the Sustainable Packaging Guidelines.
- (2) The EPA may give such an approval only if the EPA is satisfied that, if the person uses the alternative set of guidelines, the person will achieve outcomes equivalent to those that the person would achieve by using the Sustainable Packaging Guidelines.
- (3) A reference in this Part (other than in this clause) to the Sustainable Packaging Guidelines, in relation to a person who is given an approval under this clause, is taken to be a reference to the alternative set of guidelines to which the approval relates.

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Protection of the Environment Operations (Waste) Regulation 2014 [NSW]  
Part 9 Exemptions from provisions of Act and Regulation

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## Part 9 Exemptions from provisions of Act and Regulation

### 87 General provisions relating to exemptions (cf clause 51 of 2005 Reg)

- (1) The EPA may, if authorised to do so by another provision of this Regulation, grant an exemption under this clause from specified provisions of the Act or this Regulation.
- (2) The EPA may grant an exemption to any person or class of persons.
- (3) Without limiting subclause (2), any exemption may be granted to any person or class of persons by reference to:
  - (a) any premises or class of premises, or
  - (b) any area or class of areas, or
  - (c) any activity or class of activities, or
  - (d) any other matter or thing or class of matters or things.
- (4) The EPA may grant an exemption:
  - (a) on its own initiative, or
  - (b) on the application of a person to whom the exemption applies, or
  - (c) on the application of a person belonging to a class of persons to which the exemption applies, or
  - (d) in the case of an exemption authorised to be granted by clause 88—on the application of a person who:
    - (i) supplies, or intends to supply, waste to a person to whom the exemption applies, or
    - (ii) supplies, or intends to supply, waste to a person belonging to a class of persons to which the exemption applies, or
    - (iii) supplies, or intends to supply, waste to a person or class of persons for resupply to another person to whom the exemption applies, or
    - (iv) supplies, or intends to supply, waste to a person or class of persons for resupply to another person belonging to a class of persons to which the exemption applies.
- (5) An application under this clause must:
  - (a) be in the approved form, and
  - (b) be accompanied by such fee (if any) as the EPA may determine, and
  - (c) be accompanied by such information, documents or evidence as the EPA may require for the purposes of determining whether the exemption should be granted.
- (6) An exemption granted under this clause is effected as follows:
  - (a) in the case of an exemption granted to specified persons only—by notice published in the Gazette or by written notice given to those persons,
  - (b) in any other case—by notice published in the Gazette.
- (7) An exemption granted under this clause takes effect:
  - (a) on the date on which the notice is published or given in accordance with this clause, or
  - (b) if a later date is specified in the notice—the later date.

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Protection of the Environment Operations (Waste) Regulation 2014 [NSW]  
Part 9 Exemptions from provisions of Act and Regulation

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- (8) An exemption granted under this clause may be unconditional or may be subject to conditions specified in the notice.  
**Note.** A person is exempt from a provision only to the extent that the person complies with any conditions of the exemption. Accordingly, the person commits an offence against the provision to which the exemption applies if the person fails to comply with those conditions.
- (9) The EPA may vary or revoke an exemption granted under this clause by a further notice published or given in accordance with this clause.

**88 Exemptions relating to resource recovery** (cf clauses 46 and 51A of 2005 Reg)

- (1) This clause applies to any of the following waste:
  - (a) waste consisting of any processed, recycled, re-used or recovered substance that is produced wholly or partly from waste and is, or is intended to be, applied to land by:
    - (i) spraying, spreading or depositing it on the land, or
    - (ii) ploughing, injecting or mixing it into the land, or
    - (iii) filling, raising, reclaiming or contouring the land,
  - (b) waste consisting of any processed, recycled, re-used or recovered substance produced wholly or partly from waste that is, or is intended to be, used as fuel,
  - (c) any waste that is used, or intended to be used, in connection with a process of thermal treatment.
- (2) The EPA may grant an exemption under clause 87 from any one or more of the following provisions, in relation to an activity or class of activities relating to waste to which this clause applies:
  - (a) the provisions of sections 47–49 and 88 of the Act,
  - (b) the provisions of Schedule 1 to the Act, either in total or as they apply to a particular type of activity,
  - (c) the provisions of Part 4 and clauses 101, 102 and 106 of this Regulation.

**89 Supply of waste to which resource recovery exemptions apply**

- (1) The EPA may, by order, impose requirements on a specified person (or a specified class of persons) with which the person (or any person belonging to the specified class) must comply before supplying waste to which a specified resource recovery exemption applies.
- (2) An order under this clause is effected as follows:
  - (a) in the case of an order applying to specified persons only—by written notice given to those persons, or
  - (b) in any other case—by notice published in the Gazette.
- (3) An order under this clause takes effect:
  - (a) on the date on which the order is given or published in accordance with this clause, or
  - (b) if a later date is specified in the notice—the later date.
- (4) The EPA may vary or revoke an order granted under this clause by a further notice published or given in accordance with this clause.
- (5) An order under this clause is revoked on the date on which the resource recovery exemption to which it applies is revoked.

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# public consultation draft

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Protection of the Environment Operations (Waste) Regulation 2014 [NSW]  
Part 9 Exemptions from provisions of Act and Regulation

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- (6) A person must not supply waste to which a resource recovery exemption applies unless, before supplying the waste, the person complies with any requirements imposed on the person (or a class of persons to which the person belongs) by order of the EPA under this clause.  
Maximum penalty: 400 penalty units in the case of a corporation, 200 penalty units in the case of an individual.
- (7) It is a defence in any proceedings for an offence under this clause if the defendant establishes that, at the time of the alleged offence, the defendant had reasonable grounds to believe that the person supplied:
  - (a) did not intend to use the waste for an activity carried out in accordance with the exemption, and
  - (b) did not intend to resupply the waste to another person for an activity carried out (whether or not by the other person) in accordance with the exemption.
- (8) In this clause:  
**resource recovery exemption** means an exemption granted under clause 87 that is authorised to be granted by clause 88.

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# public consultation draft

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Protection of the Environment Operations (Waste) Regulation 2014 [NSW]  
Part 10 Classification of waste containing immobilised contaminants

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## Part 10 Classification of waste containing immobilised contaminants

### 90 Definitions

- (1) In this Part:  
*designated waste* means waste that has been, or is purported to have been, classified in accordance with an immobilised contaminants approval.  
*designated waste certificate*—see clause 98.  
*immobilised contaminants approval*—see clause 91.
- (2) A reference in this Part to a person to whom an immobilised contaminants approval is granted includes a reference to a person who belongs to a class of persons to which an immobilised contaminants approval is granted.

### 91 General effect of immobilised contaminants approval (cf clause 50 of 2005 Reg)

- (1) The EPA may grant an approval (an *immobilised contaminants approval*) authorising waste of a kind to which it applies to be classified, in accordance with the approval.  
**Note.** See clause 49 (2) of Schedule 1 to the Act.
- (2) In particular, an immobilised contaminants approval authorises the person to whom the approval is granted to classify the waste after:
  - (a) any specified techniques for immobilising contaminants in the waste have been applied, and
  - (b) any specified tests to determine the extent to which such contaminants are immobilised have been carried out.
- (3) The authorisation conferred by an immobilised contaminants approval to classify waste applies only in respect of such amount of waste as is specified in the approval (if the approval restricts the amount of waste to which it applies and is granted to a specified person).

### 92 Approval may be granted on application or on EPA's initiative

- (1) The EPA may grant an immobilised contaminants approval:
  - (a) on its own initiative,
  - (b) on the application of a person to which the approval applies, or
  - (c) on the application of a person belonging to a class of persons to which the approval applies.
- (2) An application under this clause must:
  - (a) be in the approved form, and
  - (b) be accompanied by such fee (if any) as the EPA may determine, and
  - (c) identify the kind of waste in relation to which the application is made, and
  - (d) identify the contaminants that are proposed to be immobilised (or that the applicant contends are sufficiently immobilised for the purposes of any intended disposal, storage or use of the waste), and
  - (e) identify any techniques that the applicant proposes to apply to immobilise the contaminants, and
  - (f) be accompanied by such evidence as may be required by the EPA for the purposes of ascertaining whether or not the identified contaminants in the waste:

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# public consultation draft

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Protection of the Environment Operations (Waste) Regulation 2014 [NSW]  
Part 10 Classification of waste containing immobilised contaminants

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- (i) will be immobilised (or sufficiently immobilised) after any such techniques are applied for the purposes of any intended disposal, storage or use, and
- (ii) will remain immobilised (or sufficiently immobilised) after any intended disposal, storage or use of the waste, and
- (g) be accompanied by such other information, documents or evidence as the EPA may require for the purposes of determining whether or not the approval should be granted.

## **93 Content of immobilised contaminants approval**

- (1) An immobilised contaminants approval must specify the following:
  - (a) the persons (or class of persons) to whom the approval is granted,
  - (b) the kind of waste and the contaminants in any such waste to which the approval applies,
  - (c) the techniques (if any) that are to be applied for immobilising those contaminants, including any standard that must be achieved in applying, or as a result of applying, those techniques,
  - (d) the method to be applied in classifying waste under the approval (following the application of any such techniques), including the tests (if any) that are to be carried out for the purposes of determining the extent to which the specified contaminants are immobilised,
  - (e) any restriction on the quantity of waste to which the approval applies.
- (2) An immobilised contaminants approval is subject to such conditions as may be imposed by the EPA.
- (3) Without limiting subclause (2), those conditions may relate to any of the following:
  - (a) the waste facilities (or class of waste facilities) to which the waste may be taken for disposal, storage or use,
  - (b) any particular purposes for which the waste may be used, or supplied for use, if the waste is determined, pursuant to the approval, to be of a specified classification,
  - (c) the notification of certain matters to the EPA,
  - (d) record keeping.

## **94 How and when approval takes effect**

- (1) An immobilised contaminants approval is effected as follows:
  - (a) in the case of an approval granted to a specified person that is subject to a condition that authorises the waste to be taken for disposal, storage or use to specified waste facility only—by written notice given to the specified person,
  - (b) in any other case—by notice published in the Gazette.
- (2) An immobilised contaminants approval takes effect:
  - (a) on the date on which the notice is given, or published, in accordance with this clause, or
  - (b) if a later date is specified in the notice—the later date.

## **95 Variation or revocation of approval**

The EPA may vary or revoke an immobilised contaminants approval by a further notice published or given in accordance with clause 94.

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# public consultation draft

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Protection of the Environment Operations (Waste) Regulation 2014 [NSW]  
Part 10 Classification of waste containing immobilised contaminants

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## 96 Duration of approval

An immobilised contaminants approval remains in force:

- (a) unless sooner revoked, for any period specified in the approval, or
- (b) until it is revoked if no period is specified in the approval.

## 97 Compliance with immobilised contaminants approval

- (1) Any person to whom an immobilised contaminants approval is granted may, if classifying waste of a kind to which the approval applies, do so in accordance with either the method specified in the approval or clause 49 (1) of Schedule 1 to the Act.
- (2) Any person to whom an immobilised contaminants approval is granted who classifies, or purports to classify, waste of a kind to which the approval applies in accordance with the method specified in the approval must comply with any conditions specified in the approval.

Maximum penalty: 200 penalty units in the case of a corporation, 100 penalty units in the case of an individual.

## 98 Provision of certificates to occupiers of waste facilities

- (1) A person to whom an immobilised contaminants approval applies who causes or permits waste classified in accordance with the approval to be taken to any premises must cause the occupier of the premises to be given (in any approved manner) a designated waste certificate in relation to the waste.  
Maximum penalty: 200 penalty units in the case of a corporation, 100 penalty units in the case of an individual.
- (2) A *designated waste certificate* is a certificate (in the approved form) by or on behalf of the person:
  - (a) to the effect that the waste has been classified in accordance with an immobilisation contaminants approval and that the approval authorises, or does not prohibit, the waste being taken to the premises for disposal or storage or for the use concerned, and
  - (b) containing particulars identifying the immobilised contaminants approval concerned, and
  - (c) in the case of designated waste to which an order under clause 100 applies that has been effected by notice published in the Gazette—containing particulars identifying the order concerned.

## 99 Disposing of, storing or using designated waste

- (1) An occupier of a waste facility must not cause or permit designated waste to be received at the facility for disposal, storage or use at the facility unless the immobilised contaminants approval applying to the waste authorises, or does not prohibit, the waste being taken to the premises for disposal or storage or for the use concerned (as the case may be).  
Maximum penalty: 200 penalty units in the case of a corporation, 100 penalty units in the case of an individual.
- (2) It is a defence in any proceedings for an offence against this clause if the defendant establishes that (at the time of the alleged offence):
  - (a) the waste facility was a lawful waste facility, and
  - (b) the defendant was not given or had not received a designated waste certificate in relation to the waste and had no reason to believe that the waste was designated waste.

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# public consultation draft

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Protection of the Environment Operations (Waste) Regulation 2014 [NSW]  
Part 10 Classification of waste containing immobilised contaminants

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## **100 Other requirements applying to receivers of designated waste**

- (1) The EPA may, by order, impose requirements on an occupier of a specified waste facility (or any occupier of a waste facility of a specified class) that relate to the disposal, storage or use of designated waste at the specified waste facility (or any waste facility of the specified class).
- (2) An order under this clause is effected as follows:
  - (a) in the case of an order applying to a specified waste facility only—by written notice given to the occupier of the facility, or
  - (b) in any other case—by notice published in the Gazette.
- (3) An order under this clause takes effect:
  - (a) on the date on which the order is given or published in accordance with this clause, or
  - (b) if a later date is specified in the notice—the later date.
- (4) The EPA may vary or revoke an order granted under this clause by a further notice published or given in accordance with this clause.
- (5) The occupier of any waste facility at which designated waste is received for disposal, storage or use must ensure that any requirements imposed by such an order that relate to the disposal, storage or use at the facility (or at any waste facility of a class to which the facility belongs) are complied with at the facility.  
Maximum penalty: 200 penalty units in the case of a corporation, 100 penalty units in the case of an individual.
- (6) It is a defence to a prosecution for an offence under this clause if the defendant establishes that, at the time of the alleged offence, the defendant:
  - (a) was not given or had not received a designated waste certificate in relation to the waste, and
  - (b) had no reason to believe that the waste was designated waste.

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Protection of the Environment Operations (Waste) Regulation 2014 [NSW]  
Part 11 Miscellaneous

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## Part 11 Miscellaneous

### 101 Reporting requirements for non-paying landfill sites

- (1) This clause applies to any occupier of a landfill site who is not required to pay contributions under section 88 of the Act.
- (2) However, this clause does not apply to:
  - (a) the occupier of any landfill site where waste disposal is not carried out for business or other commercial purposes, or
  - (b) the occupier of any landfill site that receives virgin excavated natural material only (and not any other type of waste), or
  - (c) the occupier of any landfill site who is not required to pay contributions under section 88 of the Act solely because of an exemption under clause 19.
- (3) Within 60 days after the end of each subsequent financial year, the occupier of a landfill site to whom this clause applies must provide, in the approved form, the EPA with such information as the EPA requires in respect of the landfill site.  
Maximum penalty: 200 penalty units in the case of a corporation, 100 penalty units in the case of an individual.
- (4) In this clause, *financial year* means the period of 12 months commencing on 1 July in any year.

### 102 EPA to be notified of newly established landfill sites where licence not required (cf clause 47 (3) of 2005 Reg)

- (1) An occupier of a newly established landfill site who is not required to hold an environment protection licence in respect of the site must, before the site commences to be operated as a landfill site, notify the EPA of the following particulars:
  - (a) the location of the landfill site,
  - (b) the name and address of the occupier.  
Maximum penalty: 200 penalty units in the case of a corporation, 100 penalty units in the case of an individual.
- (2) This clause does not apply to the occupier of any landfill site:
  - (a) where waste disposal is not carried out for business or other commercial purposes, or
  - (b) that receives virgin excavated natural material only (and not any other type of waste).

### 103 Defence to offence of polluting land at unlicensed landfill site

- (1) The defence provided for in section 142E of the Act (relating to the introduction of a substance into or onto land that is an unlicensed landfill site) is available to the occupier of an unlicensed landfill site if, when the substance was introduced:
  - (a) particulars of the location of the landfill site, and of the name and address of the occupier, had been notified to the EPA (if required, by that date, to be notified under clause 102), and
  - (b) there was lawful authority to use the land as a landfill site, and
  - (c) the landfill site was being operated in accordance with the operating requirements.
- (2) The *operating requirements*, in relation to a landfill site, are as follows:
  - (a) at least once per week, all waste is to be covered with virgin excavated natural material to a depth of at least 0.15 metre,

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Protection of the Environment Operations (Waste) Regulation 2014 [NSW]  
Part 11 Miscellaneous

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- (b) if the substance is asbestos waste—the requirements of clause 76 relating to covering that waste are to be complied with,
- (c) if the substance is clinical or related waste—the requirements of clause 105 relating to the disposal of that waste at a landfill site are to be complied with,
- (d) all reasonable steps are to be taken to minimise the emission of any offensive odour or offensive noise beyond the boundaries of a landfill site,
- (e) all reasonable steps are to be taken to avoid discharges from the landfill site causing water pollution,
- (f) all reasonable steps are to be taken to ensure that any plant at the landfill site that is used for the purposes of disposing of, or moving or covering, waste are properly maintained so as to avoid land pollution,
- (g) all reasonable steps are to be taken to ensure that any plant at the landfill site that is designed to control or prevent land pollution at the site (including any gas collection system and any leachate collection system) is maintained,
- (h) all reasonable steps are to be taken to secure the site against uncontrolled public access (for example, by the provision of fencing and other security measures),
- (i) all reasonable steps are to be taken to minimise the emission of dust beyond the boundaries of the landfill site,
- (j) all reasonable steps are to be taken to minimise the tracking of dust or mud from the site on to any public road providing access to the site,
- (k) all reasonable steps are to be taken to minimise the risk of fire at the landfill site.

**104 Requirement relating to storage of waste generally** (cf clause 48 of 2005 Reg)

A person who stores waste on premises (whether or not the waste was produced on the premises) must ensure that it is stored in an environmentally safe manner.

Maximum penalty: 200 penalty units in the case of a corporation, 100 penalty units in the case of an individual.

**105 Special requirements relating to clinical and related waste** (cf clauses 43 and 51B (a) of 2005 Reg)

- (1) A person who collects waste for disposal at a waste facility that is a landfill site and who knows (or ought reasonably to know) that the waste includes clinical and related waste, must ensure that when collecting the waste and for so long as it remains in the person's possession the waste is stored in a container or bag, and labelled, in accordance with the core requirements.

Maximum penalty: 400 penalty units in the case of a corporation, 200 penalty units in the case of an individual.

- (2) The **core requirements** for storage and labelling of clinical and related waste are as follows:
  - (a) any sharps waste:
    - (i) must be contained in a rigid-walled container that satisfies the applicable requirements of Australian and New Zealand Standard AS/NZS 3816:1998, *Management of clinical and related wastes (AS/NZS 3816:1998)*, and
    - (ii) must, as far as practicable, be stored separately from other waste,
  - (b) any clinical and related waste that is not sharps waste (and not mixed with sharps waste) must be contained in a rigid-walled container, or a bag, that satisfies any applicable requirements of AS/NZS 3816:1998,

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Protection of the Environment Operations (Waste) Regulation 2014 [NSW]  
Part 11 Miscellaneous

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- (c) the container or bag in which the waste is contained must be labelled in accordance with AS/NZS 3816:1998.
- (3) It is a condition of an environment protection licence that authorises the transportation of clinical and related waste that:
  - (a) during transportation:
    - (i) the waste is stored in a container or bag, and labelled, in accordance with the core requirements, and
    - (ii) each container or bag of the waste is placed in a rigid container that is leak proof, shatter proof and washable and has a securely fitting lid to prevent spills, and
  - (b) the waste is not transported in a vehicle having a waste compaction system, and
  - (c) a spill kit is carried in any vehicle transporting the waste that conforms with the requirements set out in Waste Management Guidelines for Health Care Facilities, and
  - (d) when the waste is in the vehicle and the vehicle is unattended, the vehicle is securely locked and (except where the vehicle is a railway vehicle) parked in an area that is secure and undercover.
- (4) The EPA may grant an exemption under Part 9 from subclause (3).
- (5) A person must not dispose of clinical and related waste at a waste facility that is a landfill site, if the occupier of the facility does not hold an environment protection licence authorising the disposal of the waste, unless:
  - (a) the waste facility is operated by a local authority and located outside the regulated area, and
  - (b) written approval of the local authority to the disposal of the waste has been obtained, and
  - (c) the waste has been generated outside the regulated area, and
  - (d) the waste does not contain any sharps waste, cytotoxic waste, radioactive waste or recognisable body parts, and
  - (e) the waste is stored in a container or bag, and labelled, in accordance with the core requirements, and
  - (f) the person disposes of the waste in amounts that do not exceed 40 kilograms at any time, and
  - (g) the person ensures that the waste is buried, or immediately contained, in a manner that prevents the waste coming into contact with any person or animal.
- Maximum penalty: 400 penalty units in the case of a corporation, 200 penalty units in the case of an individual.
- (6) The occupier of premises comprising a hospital, day procedure centre, pathology laboratory, mortuary or medical research facility where clinical and related waste is generated:
  - (a) must develop a waste management plan for clinical and related waste in accordance with the Waste Management Guidelines for Health Care Facilities, and
  - (b) must designate an appropriate person or persons responsible for implementing and monitoring the waste management plan, and

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Protection of the Environment Operations (Waste) Regulation 2014 [NSW]  
Part 11 Miscellaneous

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- (c) must keep the waste management plan up-to-date, retain it on the premises and make it available, on the request of the appropriate regulatory authority, for inspection and copying.

Maximum penalty: 400 penalty units in the case of a corporation, 200 penalty units in the case of an individual.

- (7) In this clause:

***Waste Management Guidelines for Health Care Facilities*** means the publication entitled *Waste Management Guidelines for Health Care Facilities* (ISBN 0 7313 4060 4), issued by NSW Health in August 1998.

**106 Residue waste not to be applied to land used for growing vegetation** (cf clauses 44 and 45 of 2005 Reg)

**Note.** An exemption from this clause may be granted under Part 9.

- (1) A person must not apply residue waste, or cause or permit residue waste to be applied, to any land that is used for the purpose of growing vegetation, including any land used for agricultural, horticultural, silvicultural, pastoral or environmental rehabilitation purposes.

Maximum penalty: 400 penalty units in the case of a corporation, 200 penalty units in the case of an individual.

- (2) It is a defence to a prosecution for an offence against this clause if the person establishes that the waste that was applied to the land had been lawfully sold as a soil improving agent, or a trace element product, within the meaning of the *Fertilisers Act 1985*.

- (3) A reference in this clause to applying waste to land includes a reference to:

- (a) spraying, spreading or depositing the waste on the land, or
- (b) ploughing, injecting or mixing the waste into the land.

- (4) In this clause:

***residue waste*** means any of the following substances (and includes any substance incorporating, mixed with or made from any of the following substances):

- (a) fly ash or bottom ash from any furnace,
- (b) lime or gypsum residues from any industrial or manufacturing process,
- (c) residues from any industrial or manufacturing process that involves the processing of mineral sand,
- (d) substances that have been used as catalysts in any oil refining or other chemical process,
- (e) foundry sands and foundry filter bag residues,
- (f) residues from any industrial or manufacturing process that involves the refining or processing of metals or metallic products.

**107 General savings** (cf clause 53 of 2005 Reg)

Any act, matter or thing that, immediately before the repeal of the *Protection of the Environment Operations (Waste) Regulation 2005*, had effect under that Regulation continues to have effect under this Regulation.

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Protection of the Environment Operations (Waste) Regulation 2014 [NSW]  
Schedule 1 Waste to which waste tracking requirements under Part 4 apply

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## Schedule 1    **Waste to which waste tracking requirements under Part 4 apply**

(Clauses 4, 39 (1), 59 (1) and 63 (2) (b))

### Part 1    **Waste transported within NSW or interstate and required to be tracked**

#### **Description**

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- Acidic solutions or acids in solid form
- Antimony; antimony compounds
- Arsenic; arsenic compounds
- Barium compounds, excluding barium sulphate
- Basic solutions or bases in solid form
- Beryllium; beryllium compounds
- Boron compounds
- Cadmium; cadmium compounds
- Ceramic-based fibres with physico-chemical characteristics similar to those of asbestos
- Chlorates
- Chromium compounds (hexavalent and trivalent)
- Clinical and related wastes
- Cobalt compounds
- Containers and drums that are contaminated with residues of substances that are referred to in this Part
- Copper compounds
- Cyanides (inorganic)
- Cyanides (organic)/nitriles
- Encapsulated, chemically-fixed, solidified or polymerised wastes that are referred to in this Part
- Ethers
- Filter cake contaminated with residues of substances that are referred to in this Part
- Fire debris and fire washwaters
- Fly ash, excluding fly ash generated from Australian coal fired power stations
- Halogenated organic solvents
- Highly odorous organic chemicals (including mercaptans and acrylates)
- Inorganic fluorine compounds, excluding calcium fluoride
- Inorganic sulfides
- Isocyanate compounds
- Lead; lead compounds
- Mercury; mercury compounds
- Metal carbonyls
- Nickel compounds

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# public consultation draft

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Protection of the Environment Operations (Waste) Regulation 2014 [NSW]  
Schedule 1 Waste to which waste tracking requirements under Part 4 apply

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## **Description**

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- Non toxic salts
- Organic phosphorous compounds
- Organic solvents, excluding halogenated solvents
- Organohalogen compounds, excluding substances referred to in this Part or Part 2
- Oxidising agents
- Perchlorates
- Phenols; phenol compounds, including chlorophenols
- Phosphorus compounds, excluding mineral phosphates
- Polychlorinated dibenzo-furan (any congener)
- Polychlorinated dibenzo-p-dioxin (any congener)
- Reactive chemicals
- Reducing agents
- Residues from industrial waste treatment/disposal operations
- Selenium; selenium compounds
- Soils contaminated with a substance or waste that is referred to in this Part
- Surface active agents (surfactants), containing principally organic constituents and that may contain metals and inorganic materials
- Tellurium; tellurium compounds
- Thallium; thallium compounds
- Triethylamine catalysts for setting foundry sands
- Vanadium compounds
- Waste chemical substances arising from research and development or teaching activities (including those that are not identified and/or are new and whose effects on human health and/or the environment are not known)
- Waste containing peroxides other than hydrogen peroxide
- Waste from heat treatment and tempering operations containing cyanides
- Waste from manufacture, formulation and use of wood-preserving chemicals
- Waste from the production, formulation and use of biocides and phytopharmaceuticals
- Waste from the production, formulation and use of inks, dyes, pigments, paints, lacquers and varnish
- Waste from the production, formulation and use of organic solvents
- Waste from the production, formulation and use of photographic chemicals and processing materials
- Waste from the production, formulation and use of resins, latex, plasticisers, glues and adhesives
- Waste from the production and preparation of pharmaceutical products
- Waste mineral oils unfit for their original intended use
- Waste oil/water, hydrocarbons/water mixtures or emulsions
- Waste pharmaceuticals, drugs and medicines
- Waste resulting from surface treatment of metals and plastics
- Waste tarry residues arising from refining, distillation and any pyrolytic treatment

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Protection of the Environment Operations (Waste) Regulation 2014 [NSW]  
Schedule 1 Waste to which waste tracking requirements under Part 4 apply

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## Description

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Waste substances and articles containing or contaminated with polychlorinated biphenyls, polychlorinated naphthalenes, polychlorinated terphenyls and/or polybrominated biphenyls

Waste of an explosive nature not subject to other legislation

Zinc compounds

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## Part 2 Waste transported interstate and required to be tracked

Animal effluent and residues (abattoir effluent, poultry and fish processing wastes)

Asbestos

Containers and drums that are contaminated with residues of waste referred to in this Part

Encapsulated, chemically-fixed, solidified or polymerised wastes that are referred to in this Part

Filter cake contaminated with residues of substances that are referred to in this Part

Grease trap waste

Soils contaminated with a substance or waste referred to in this Part

Tannery wastes including leather dust, ash, sludges and flours

Tyres

Wool scouring wastes

## Part 3 Characteristics of trackable wastes

Dangerous Goods Class (UN Class)	UN Code	
1	H1	<b>Explosive</b> An explosive substance or waste is a solid or liquid substance or waste (or mixture of substances or wastes) which is in itself capable by chemical reaction of producing gas at such a temperature and pressure and at such a speed as to cause damage to the surroundings.
3	H3	<b>Flammable Liquids</b> The word “flammable” has the same meaning as “inflammable”. Flammable liquids are liquids, or mixtures of liquids, or liquids containing solids in solution or suspension (for example, paints, varnishes, lacquers, etc but not including substances or wastes) which give off flammable vapour at temperatures of not more than 60.5 degrees Celsius, closed-cup test, or not more than 65.6 degree Celsius, open-cup test.
4.1	H4.1	<b>Flammable solids</b> Solids or waste solids which under conditions encountered in transport are readily combustible, or may cause or contribute to fire through friction.
4.2	H4.2	<b>Substances or wastes liable to spontaneous combustion</b> Substances or wastes which are liable to spontaneous heating under normal conditions encountered in transport, or to heating up in contact with air, and being liable to catch fire.
4.3	H4.3	<b>Substances or wastes which, in contact with water, emit flammable gases</b> Substances or wastes which, by interaction with water, are liable to become spontaneously flammable or to give off flammable gases in dangerous quantities.

# public consultation draft

Protection of the Environment Operations (Waste) Regulation 2014 [NSW]  
Schedule 1 Waste to which waste tracking requirements under Part 4 apply

Dangerous Goods Class (UN Class)	UN Code	
5.1	H5.1	<b>Oxidising</b> Substances or wastes which, while in themselves not necessarily combustible, may, generally by yielding oxygen, cause or contribute to, the combustion of other materials.
5.2	H5.2	<b>Organic peroxides</b> Organic substances or wastes which contain the bivalent-O-O structure are thermally unstable substances which may undergo exothermic self-accelerating decomposition.
6.1	H6.1	<b>Poisonous (acute)</b> Substances or wastes liable either to cause death or serious injury or to harm human health if swallowed or inhaled or by skin contact.
6.2	H6.2	<b>Infectious substances</b> Substances or wastes containing viable micro-organisms or their toxins which are known or suspected to cause disease in animals or humans.
8	H8	<b>Corrosives</b> Substances or wastes which, by chemical action, will cause severe damage when in contact with living tissue, or in the case of leakage, will materially damage, or even destroy, other goods or the means of transport; they may also cause other hazards.
9	H10	<b>Liberation of toxic gases in contact with air or water</b> Substances or waste which, by liberation with air or water, are liable to give off toxic gases in dangerous quantities.
9	H11	<b>Toxic (delayed or chronic)</b> Substances or wastes which, if they are inhaled or ingested or if they penetrate the skin, may involve delayed or chronic effects, including carcinogenicity.
9	H12	<b>Ecotoxic</b> Substances or wastes which if released present or may present immediate or delayed adverse impacts to the environment by means of bioaccumulation and/or toxic effects upon biotic systems.
9	H13	<b>Capable of yielding another material which possesses H1–H12</b> Capable by any means, after disposal, of yielding another material, eg leachate, which possesses any of the characteristics listed above. <b>Other reasons</b> Potential to have a significant adverse impact on ambient air quality. Potential to have significant adverse impact on ambient marine, estuarine or fresh water quality.

**Note.** UN Class and Code relates to the hazard classification system included in the United Nations Recommendations on the Transport of Dangerous Goods as used in Australia.

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# public consultation draft

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Protection of the Environment Operations (Waste) Regulation 2014 [NSW]  
Schedule 2 Amendment of Protection of the Environment Act 1997 No 156

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## Schedule 2 Amendment of Protection of the Environment Operations Act 1997 No 156

### [1] Schedule 1 Scheduled activities

Omit the definition of *chemical storage waste generation* from clause 9 (1).

### [2] Schedule 1, clause 9 (1)

Insert in alphabetical order:

*on-site generated chemical waste storage* means the storage of any chemical substance produced on site that is prescribed waste (that is, hazardous waste, restricted solid waste or liquid waste, or any combination of them).

### [3] Schedule 1, clause 9, Table

Omit the matter relating to chemical storage waste generation.

### [4] Schedule 1, clause 9, Table

Insert after the matter relating to general chemicals storage:

#### Table

on-site generated chemical waste storage	involves storing on site at any time more than 5 tonnes of any chemical substance produced on site that is prescribed waste, not including excluded material (where 1,000 litres of liquid is taken to weigh 1 tonne)
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### [5] Schedule 1, clause 18 (3) (b)

Omit the paragraph. Insert instead:

- (b) an exemption granted under Part 9 of the *Protection of the Environment Operations (Waste) Regulation 2014* exempts the person carrying out the activity from the requirements of section 48 (2) as they apply to waste disposal (thermal treatment).

### [6] Schedule 1, clause 24 (3)

Omit “www.environment.nsw.gov.au” from the note to the definition of *land west of the Great Dividing Range*.

Insert instead “www.epa.nsw.gov.au”.

### [7] Schedule 1, clause 34 (3) (b) (ii)

Omit the subparagraph. Insert instead:

- (ii) an exemption granted under Part 9 of the *Protection of the Environment Operations (Waste) Regulation 2014* exempts the person carrying out the activity from the requirements of section 48 (2) as they apply to waste disposal (application to land), waste disposal (thermal treatment), waste processing (non-thermal treatment) and waste storage.

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# public consultation draft

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Protection of the Environment Operations (Waste) Regulation 2014 [NSW]  
Schedule 2 Amendment of Protection of the Environment Operations Act 1997 No 156

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**[8] Schedule 1, clause 34, Table**

Omit the matter relating to the recovery of general waste. Insert instead:

recovery of general waste	involves having on site at any time more than 1,000 tonnes, or 1,000 cubic metres, of waste
	involves processing more than 50 tonnes of waste per day or 12,000 tonnes of waste per year

**[9] Schedule 1, clause 39 (2) (f)**

Omit the paragraph. Insert instead:

- (f) sites that are outside the regulated area, but only if:
- (i) the site is owned and operated by or on behalf of a local council, and
  - (ii) the site was in existence immediately before 28 April 2008 and was not required to be licensed before that date, and
  - (iii) details required under clause 47 of the *Protection of the Environment Operations (Waste) Regulation 2005* were provided, in relation to the site, before 28 April 2008, and
  - (iv) the site receives from off site less than 5,000 tonnes per year of waste, and
  - (v) that waste has been generated outside the regulated area and consists only of general solid waste (putrescible), general solid waste (non-putrescible), clinical and related waste, asbestos waste, grease trap waste or waste tyres (or any combination of them).

**[10] Schedule 1, clause 41 (1), definition of “non-thermal treatment of hazardous and other waste”**

Omit “asbestos waste”.

Insert instead “special waste (other than asbestos waste or waste tyres)”.

**[11] Schedule 1, clause 41, Table**

Omit the matter relating to non-thermal treatment of general waste. Insert instead:

non-thermal treatment of general waste	involves having on site at any time more than 1,000 tonnes, or 1,000 cubic metres, of general waste
	involves processing more than 50 tonnes per day, or 12,000 tonnes per year, of general waste

**[12] Schedule 1, clause 42 (2) (b)**

Omit the paragraph. Insert instead:

- (b) the storage of up to 60 tonnes at any time of any of the following kinds of waste (but not when accompanied by any other kind of waste):
- (i) drilling mud,
  - (ii) grease trap waste,
  - (iii) waste lead acid batteries,
  - (iv) waste oil.

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Protection of the Environment Operations (Waste) Regulation 2014 [NSW]  
Schedule 2 Amendment of Protection of the Environment Operations Act 1997 No 156

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**[13] Schedule 1, clause 42 (3)**

Omit the subclause. Insert instead:

- (3) The activity to which this clause applies is declared to be a scheduled activity if:
- (a) more than 5 tonnes of hazardous waste, restricted solid waste, liquid waste, clinical or related waste or special waste (other than waste tyres) is stored on the premises at any time, or
  - (b) more than 5 tonnes of waste tyres or 500 waste tyres is stored on the premises at any time, or
  - (c) more than 1,000 tonnes, or 1,000 cubic metres, of waste (other than waste referred to in paragraph (a) or (b)) is stored on the premises at any time, or
  - (d) more than 12,000 tonnes of waste (other than waste referred to in paragraph (a) or (b)) is received per year from off site.

**[14] Schedule 1, clause 48 (1) (a) (including note) and (b) and Table to clause 48**

Omit “transport” wherever occurring. Insert instead “transportation”.

**[15] Schedule 1, clause 48 (2)**

Omit the subclause. Insert instead:

- (2) However, this clause does not apply to the transportation of waste that is excluded from the application of Part 4 of the *Protection of the Environment Operations (Waste) Regulation 2014 (the Waste Regulation)* by clause 39 of that Regulation.

**[16] Schedule 1, clause 48 (4)**

Omit the subclause. Insert instead:

- (4) In this clause:
- category 1 trackable waste** means waste of a type described in Part 1 of Schedule 1 to the Waste Regulation that exhibits any of the characteristics specified in Part 3 of that Schedule.
- category 2 trackable waste** means waste of a type described in Part 2 of Schedule 1 to the Waste Regulation that exhibits any of the characteristics specified in Part 3 of that Schedule.
- participating State** has the same meaning as in Part 4 of the Waste Regulation.

**[17] Schedule 1, clause 49, definitions of “category 1 trackable waste” and “category 2 trackable waste”**

Omit the definitions.

**[18] Schedule 1, clause 49, definition of “general solid waste (non-putrescible)”**

Omit paragraph (x). Insert instead:

- (x) anything that is classified as general solid waste (non-putrescible) pursuant to the Waste Classification Guidelines,

**[19] Schedule 1, clause 49, definition of “general solid waste (putrescible)”**

Omit paragraph (i). Insert instead:

- (i) anything that is classified as general solid waste (putrescible) pursuant to the Waste Classification Guidelines,

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Protection of the Environment Operations (Waste) Regulation 2014 [NSW]  
Schedule 2 Amendment of Protection of the Environment Act 1997 No 156

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**[20] Schedule 1, clause 49, definition of “hazardous waste”**

Omit paragraph (g). Insert instead:

- (g) anything that is classified as hazardous waste pursuant to the Waste Classification Guidelines,

**[21] Schedule 1, clause 49, definition of “restricted solid waste”**

Omit paragraph (a). Insert instead:

- (a) anything that is classified as restricted solid waste pursuant to the Waste Classification Guidelines,

**[22] Schedule 1, clause 49 (2)**

Insert at the end of clause 49:

- (2) Despite subclause (1), in this Schedule, any waste that is classified as one of the following classes of waste, in accordance with an immobilised contaminants approval granted under Part 10 of the *Protection of the Environment Operations (Waste) Regulation 2014*, is taken to be waste of that class:
  - (a) general solid waste (non-putrescible),
  - (b) general solid waste (putrescible),
  - (c) hazardous waste,
  - (d) restricted solid waste,
  - (e) special waste.

**[23] Schedule 1, clause 50 (1), notes to definitions of “Biosolids Guidelines”, “EPA Gazettal notice” and “Waste Classification Guidelines”**

Omit “www.environment.nsw.gov.au”. Insert instead “www.epa.nsw.gov.au”.

**[24] Schedule 1, clause 50 (1), definition of “regulated area”**

Insert “City of” before “Auburn” and “Kogarah”, respectively.

**[25] Schedule 1, clause 50 (1), definition of “sharps waste”**

Omit “, and to a standard specified in an EPA Gazettal notice”.

Insert instead “(and to a standard specified in an EPA Gazettal notice) or waste that has been treated by a method approved, in writing, by the Secretary of the Ministry of Health”.

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Protection of the Environment Operations (Waste) Regulation 2014 [NSW]  
Schedule 3 Amendment of Protection of the Environment Operations (General) Regulation 2009

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## Schedule 3 Amendment of Protection of the Environment Operations (General) Regulation 2009

### [1] Clause 98C Additional matters to be included in plan

Omit “the requirements set out in clause 49 of the *Protection of the Environment Operations (Waste) Regulation 2005*” from clause 98C (2) (d).

Insert instead “any requirements set out in clauses 68 and 69 of the *Protection of the Environment Operations (Waste) Regulation 2014*”.

### [2] Clause 108

Omit the clause.

### [3] Clause 109

Insert at the end of Part 4:

#### 108 Definition of “land pollution”

(1) For the purposes of paragraph (b) of the definition of **land pollution** or **pollution of land** in the Dictionary to the Act, the following matter is prescribed:

- (a) hazardous waste,
- (b) restricted solid waste,
- (c) more than 10 tonnes of asbestos waste,
- (d) more than 10,000, or more than 100 tonnes of, waste tyres.

(2) In this clause, **asbestos waste**, **hazardous waste** and **restricted solid waste** and **waste tyres** have the same meanings as they have in Schedule 1 to the Act.

### [4] Schedule 6 Penalty notice offences

Omit the matter relating to the *Protection of the Environment Operations (Waste) Regulation 2005*.

Insert instead:

#### Protection of the Environment Operations (Waste) Regulation 2014

Column 1	Column 2	Column 3	Column 4
Provision of Regulation	Officer	Penalty	Penalty
Clause 13 (7)	3	\$500	—
Clause 22 (2)	3	\$500	—
Clause 23 (1)	3	\$500	—
Clause 23 (2)	3	\$500	—
Clause 23 (3) (a)	3	\$500	—
Clause 23 (3) (b)	3	\$500	—
Clause 24 (1)	3	\$500	—
Clause 24 (2) (a)	3	\$500	—
Clause 24 (2) (b)	3	\$500	—
Clause 27	3	\$500	—

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Protection of the Environment Operations (Waste) Regulation 2014 [NSW]  
Schedule 3 Amendment of Protection of the Environment Operations (General) Regulation 2009

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## Protection of the Environment Operations (Waste) Regulation 2014

Column 1	Column 2	Column 3	Column 4
Provision of Regulation	Officer	Penalty	Penalty
Clause 28	3	\$500	—
Clause 29	3	\$500	—
Clause 30	3	\$500	—
Clause 31	3	\$500	—
Clause 32	3	\$500	—
Clause 33 (1)	3	\$500	—
Clause 33 (2)	3	\$500	—
Clause 35 (1)	3	\$500	—
Clause 35 (2)	3	\$500	—
Clause 36 (1)	3	\$500	—
Clause 37 (2) (a)	3	\$500	—
Clause 37 (2) (b)	3	\$500	—
Clause 37 (2) (c)	3	\$500	—
Clause 41 (1)	3	\$500	—
Clause 41 (2)	3	\$500	—
Clause 42	3	\$500	—
Clause 43 (1)	3	\$500	—
Clause 43 (2)	3	\$500	—
Clause 43 (3)	3	\$500	—
Clause 43 (4)	3	\$500	—
Clause 43 (6)	3	\$500	—
Clause 44 (1)	3	\$500	—
Clause 44 (3)	3	\$500	—
Clause 44 (4)	3	\$500	—
Clause 44 (5)	3	\$500	—
Clause 44 (6)	3	\$500	—
Clause 45 (2)	3	\$500	—
Clause 46 (4)	3	\$500	—
Clause 46 (5)	3	\$500	—
Clause 47 (5)	3	\$500	—
Clause 48 (4)	3	\$500	—
Clause 51	3	\$500	—
Clause 52	3	\$500	—
Clause 53	3	\$500	—
Clause 54	3	\$500	—

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Protection of the Environment Operations (Waste) Regulation 2014 [NSW]  
Schedule 3 Amendment of Protection of the Environment Operations (General) Regulation 2009

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## Protection of the Environment Operations (Waste) Regulation 2014

Column 1	Column 2	Column 3	Column 4
Provision of Regulation	Officer	Penalty	Penalty
Clause 55 (a)	3	\$500	—
Clause 55 (b)	3	\$500	—
Clause 56	3	\$500	—
Clause 65 (1)	3	\$500	—
Clause 67	3	\$500	—
Clause 68 (1)	1, 2	\$500	—
Clause 68 (2)	1, 2	\$500	—
Clause 68 (3)	1, 2	\$500	—
Clause 68 (4)	1, 2	\$500	—
Clause 69	1, 2	\$500	—
Clause 72 (3)	3	\$500	—
Clause 72 (4)	3	\$500	—
Clause 72 (5)	3	\$500	—
Clause 72 (7)	3	\$500	—
Clause 74	1, 2	\$500	—
Clause 75 (3)	3	\$500	—
Clause 75 (4)	3	\$500	—
Clause 75 (6)	3	\$500	—
Clause 76 (1)	1, 2	\$500	—
Clause 76 (4)	1, 2	\$500	—
Clause 77	1, 2	\$500	—
Clause 84 (1)	2	\$500	—
Clause 84 (6)	2	\$500	—
Clause 85 (1)	2	\$500	—
Clause 85 (2)	2	\$500	—
Clause 101 (3)	3	\$500	—
Clause 102 (1)	3	\$500	—
Clause 105 (1)	1, 2	\$500	—
Clause 105 (5)	1, 2	\$500	—
Clause 106 (1)	1, 2	\$750	—

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Protection of the Environment Operations (Waste) Regulation 2014 [NSW]  
Schedule 4 Amendment of Protection of the Environment Operations (Waste) Regulation 2014

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## Schedule 4 Amendment of Protection of the Environment Operations (Waste) Regulation 2014

### [1] Clause 10 When contributions are to be paid

Omit clause 10 (1). Insert instead:

- (1) For the purposes of section 88 (3) (b) of the Act, the following periods are prescribed as the times within which a contribution payable by an occupier of a scheduled waste disposal facility is to be paid in respect of waste (other than trackable liquid waste) received at the facility:
  - (a) in the case of waste consisting of coal washery rejects (if the facility is used to dispose of coal washery rejects only)—the period of 26 days after the end of the month in which the waste is received at the facility,
  - (b) in any other case—the period of 56 days after the end of the month in which the waste is received at the facility.
- (1A) For the purposes of section 88 (3) (b) of the Act, the following periods are prescribed as the times within which a contribution payable by an occupier of a waste facility that is not a scheduled waste disposal facility is to be paid in respect of waste (other than trackable liquid waste) received at the facility:
  - (a) in the case of waste that, at the end of the month within which it is received, is contained in a stockpile that exceeds the approved stockpile limit for the facility—the period of 56 days after the end of that month,
  - (b) in the case of waste other than waste referred to in paragraph (a) that, before the period of 12 months after the end of the month in which it is received at the facility, is transported from the facility—56 days after the end of the month in which the waste is transported from the facility,
  - (c) in any other case—the period of 12 months after the end of the month in which the waste is received at the facility.

### [2] Clause 10 (3)

Omit the subclause. Insert instead:

- (3) In this clause:  
*approved stockpile limit* means the maximum amount of waste that may be stored on the premises at any one time under the terms of:
  - (a) the environment protection licence for the premises, or
  - (b) if that licence does not specify the maximum amount of waste that may be stored on the premises at any one time—a development consent or an approval granted under Part 3A, Part 4 or Part 5.1 of the *Environmental Planning and Assessment Act 1979*.

### [3] Clause 15A

Insert after clause 15:

#### 15A Certified waste disposal deduction

The occupier of a scheduled waste disposal facility who is required to pay a contribution under section 88 of the Act may deduct from a contribution payable under that section an amount in respect of waste (other than trackable liquid waste) received at the facility for disposal if:

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Protection of the Environment Operations (Waste) Regulation 2014 [NSW]  
Schedule 4 Amendment of Protection of the Environment Operations (Waste) Regulation 2014

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- (a) the occupier holds a certificate, in the approved form, in respect of the waste that the occupier of another scheduled waste facility has completed, and
- (b) the certificate:
  - (i) is to the effect that the occupier of the other facility has paid, or is required to pay, the contribution in respect of that waste, and
  - (ii) specifies the total amount of the contribution so paid, or required to be paid, and any other particulars that the approved form specifies are to be completed.

**[4] Clause 16 Transported waste deduction other than for trackable liquid waste**

Omit “, processing or disposal” from clause 16 (1) (b). Insert instead “or processing”.

**[5] Clause 17A**

Insert after clause 17:

**17A Deduction for shredder floc transported from waste recycling facility to scheduled waste facility**

- (1) The occupier of an approved waste facility who is required to pay a contribution under section 88 of the Act may deduct from a contribution payable under that section an amount in respect of waste:
  - (a) received at the facility as scrap metal, and
  - (b) transported from the facility on or before 30 June 2018 to another scheduled waste facility as shredder floc that has been generated at the facility.
- Note.** The waste facility to which shredder floc is transported may pay a reduced contribution as a result of the discounted MLA and RLA amounts applying under clause 12 to such waste if it is received on or before 30 June 2018. (See clause 12 (7) (b), in particular.)
- (2) In this clause, *shredder floc* means residual waste generated directly (at an approved waste facility) from the shredding of scrap metal.

**[6] Clause 18 Provisions applicable in relation to all deductions**

Insert after clause 18 (1):

**(1A) Exception**

Despite subclause (1) (a), a deduction is available under clause 14 or 16 (or both) in respect of waste that has already been the subject of a deduction referred to in clause 15A.

**[7] Clause 18 (2A) and (2B)**

Insert after clause 18 (2):

**(2A) Exceptions**

Despite subclause (2) (a), the deduction available under clause 15A to an occupier of a scheduled waste facility is to be calculated on the basis of the amount of the contribution specified on the certificate concerned as having been paid, or required to be paid, by the occupier of another scheduled waste facility.

(2B) Despite subclause (2) (a), the deduction available under clause 17A in respect of scrap metal that is transported from a waste facility as shredder floc (within the meaning of that clause) is to be calculated on the basis of the rate of

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Protection of the Environment Operations (Waste) Regulation 2014 [NSW]  
Schedule 4 Amendment of Protection of the Environment Operations (Waste) Regulation 2014

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contribution applicable in respect of shredder floc at the time the scrap metal was received at the facility, as if it had been received at the facility as shredder floc.

**[8] Clause 20 Exemption of certain other occupiers from requirement to pay contributions**

Omit clause 20 (2). Insert instead:

- (2) The occupier of a scheduled waste facility is exempt from the requirement to pay contributions to the EPA under section 88 of the Act if:
- (a) any of the scheduled activities listed in the provisions of Schedule 1 to the Act referred to in the second column of the following table are carried on at the facility, and
  - (b) the facility is not a waste facility of a kind described opposite in the third column.

Item	Provision of Schedule 1 to Act	Facilities to which exemption does not apply
1	Clause 7 (Ceramic works)	Scheduled waste disposal facilities.
2	Clause 12 (Composting)	Scheduled waste disposal facilities. Facilities at which any scrap metal processing is carried on that meets the criteria set out in Column 2 of the Table to clause 26 (Metallurgical activities) of Schedule 1 to the Act.
3	Clause 14 (Container reconditioning)	Facilities at which any of the scheduled activities listed in clauses 34 (Resource recovery), 41 (Waste processing (non-thermal treatment)) or 42 (Waste storage) of Schedule 1 to the Act are carried on. Same as for item 2.
4	Clause 15 (Contaminated soil treatment)	Same as for item 2.
5	Clause 26 (Metallurgical activities)	Scheduled waste disposal facilities. Facilities at which any scrap metal processing is carried on that meets the criteria set out in Column 2 of the Table to clause 26 of Schedule 1 to the Act.
6	Clause 30 (Paper or pulp production)	Scheduled waste disposal facilities.

- (3) The occupier of a scheduled waste facility that is not a scheduled waste disposal facility is exempt from the requirement to pay contributions to the EPA under section 88 of the Act if:
- (a) the waste authorised to be received under the licence concerned consists only of clinical and related waste, hazardous waste, liquid waste or restricted solid waste (or any combination of those types of waste), or
  - (b) the facility is used to dispose of only slags or virgin excavated natural material (or any combination of those types of waste), or

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- (c) the facility is used to receive only garden waste, food waste or manure (or any combination of those types of waste).
- (4) Nothing in this clause exempts the occupier of a scheduled waste facility from the requirement to pay contributions to the EPA in respect of trackable liquid waste received at the facility.

**Note.** See clause 101 in relation to reporting requirements for facilities that are not required to pay contributions because of an exemption under this clause.

**[9] Clause 21 Certain types of waste exempted from calculation of contributions**

Insert “disposal” after “scheduled waste” from clause 21 (1).

**[10] Clause 21 (1A)**

Insert after clause 21 (1):

- (1A) Liquid waste (other than trackable liquid waste) received at a scheduled waste facility is exempted from the calculation of the contribution payable under section 88 of the Act for each tonne of that waste received at the waste facility.

**[11] Clause 22 Waste contribution monthly reports**

Omit clause 22 (3). Insert instead:

- (3) In this clause, the *prescribed number of days* is:
  - (a) in the case of a scheduled waste disposal facility used to dispose of coal washery rejects only—26 days, or
  - (b) in the case of any other scheduled waste disposal facility—56 days, or
  - (c) in any other case—14 days.

**[12] Clause 23 Periodic volumetric surveys of scheduled waste facilities**

Omit clause 23 (1). Insert instead:

- (1) The occupier of a scheduled waste facility who is required to pay contributions under section 88 of the Act must:
  - (a) in the case of a scheduled waste disposal facility that is a landfill site:
    - (i) cause a volumetric survey of the landfill site to be carried out by a qualified surveyor during June and December in each year, and
    - (ii) provide the results to the EPA, in the approved form and manner, by no later than the following 31 July and 31 January, respectively, and
  - (b) in any other case:
    - (i) cause a volumetric survey of waste at the facility to be carried out by a qualified surveyor during June in each year, and
    - (ii) provide the results to the EPA, in the approved form and manner, by no later than the following 31 July.

**[13] Clause 27 Waste and other material received at facility**

Insert after clause 27 (h):

- (i) in the case of waste to which a certificate of a kind referred to in clause 15A applies—particulars of the certificate (but only if the facility is a scheduled waste disposal facility and the certificate is to the effect that the occupier of another facility has paid, or is required to pay, the contribution in respect of the waste).

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Protection of the Environment Operations (Waste) Regulation 2014 [NSW]  
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**[14] Clause 28 Waste and other materials transported from facility for use, recovery, recycling, processing or disposal**

Insert after clause 28 (i):

- (j) in the case of waste to which a certificate of a kind referred to in clause 15A applies—particulars of the certificate (but only if the facility is a scheduled waste disposal facility and the certificate is to the effect that the occupier of another facility has paid, or is required to pay, the contribution in respect of the waste).

**[15] Clause 101 Reporting requirements for non-paying waste facilities**

Omit clause 101 (1). Insert instead:

- (1) This clause applies to any of the following:
  - (a) any occupier of a scheduled waste facility who is not required to pay contributions under section 88 of the Act because of an exemption under Division 5 of Part 2,
  - (b) any occupier of a waste facility that is a landfill site who is not required to pay contributions under section 88 of the Act because an environment protection licence is not required for the facility.

**[16] Clause 101 (3)**

Omit “landfill site” wherever occurring. Insert instead “waste facility”.

**[17] Clauses 108 and 109**

Insert after clause 107:

**108 Transitional arrangement relating to weighbridges**

Clause 35 does not apply in relation to the occupier of a scheduled waste facility who, immediately before the commencement of Schedule 1 [1] to the *Protection of the Environment Operations Amendment (Illegal Waste Disposal) Act 2013*:

- (a) was not required to pay contributions under section 88 of the Act because the EPA had determined that the facility was used solely for the purposes of re-using, recovering, recycling or processing waste other than liquid waste, or
- (b) was exempt under clause 20 (a) (as in force immediately before that date) from the requirement to pay a contribution under section 88 of the Act in respect of waste received at the facility.

**109 Other transitional arrangements relating to commencement of Protection of the Environment Operations Amendment (Illegal Waste Disposal) Act 2013**

- (1) This clause applies to the occupier of a scheduled waste facility who:
  - (a) immediately before the commencement of Schedule 1 [1] to the Amending Act—was not required to pay contributions under section 88 of the Act because the EPA had determined that the facility was used solely for the purposes of re-using, recovering, recycling or processing waste other than liquid waste, and
  - (c) is required to pay a contribution to the EPA under section 88 of the Act in respect of waste received on or after that commencement.

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# public consultation draft

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Protection of the Environment Operations (Waste) Regulation 2014 [NSW]  
Schedule 4 Amendment of Protection of the Environment Operations (Waste) Regulation 2014

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(2) **Report to be provided of waste existing immediately before 1 July 2015**

An occupier of a waste facility to whom this clause applies must, by no later than 31 July 2015, provide the EPA (in the approved form and manner), with an estimate of the amount of waste, and its waste type (determined in accordance with the Waste Levy Guidelines), at the facility immediately before the commencement of the Amending Act.

Maximum penalty: 200 penalty units in the case of a corporation, 100 penalty units in the case of an individual.

(3) The estimate is to be made using an approved method.

(4) **Baseline topographical survey for comparison with first volumetric survey**

An occupier of a waste facility to whom this clause applies must:

- (a) cause a topographical survey of the facility to be carried out by a qualified surveyor (within the meaning of Part 2) during July 2015, and
- (b) provide the results to the EPA, in the approved form and manner, by no later than 31 August 2015.

Maximum penalty: 200 penalty units in the case of a corporation, 100 penalty units in the case of an individual.

(5) In this clause, **Amending Act** means the *Protection of the Environment Operations Amendment (Illegal Waste Disposal) Act 2013*.

## **Appendix B – Additional amendments to the Protection of the Environment Operations (Waste) Regulation 2005**

The proposed Waste Regulation contains a number of further amendments to the existing Waste Regulation, Schedule 1 of the POEO Act and the POEO General Regulation. These amendments have been assessed as minor in nature and will not place any material costs on society which would merit an analysis of the options or a cost benefit analysis.

The measures include:

- **Use of materials for road making:** Under the current waste levy framework, landfills can claim a full deduction from the waste levy for new asphalt or concrete obtained from a batching plant which is used for road making at a landfill in the Regulated Area.

It is proposed to extend this deduction mechanism to include:

- recycled road-base (provided it meets set specifications)<sup>17</sup> and virgin materials sourced from a quarry which are used for road making at any Scheduled Waste Facility (including intermediary facilities) in the Regulated Area
- intermediary facilities to claim deductions for new asphalt or concrete obtained from a batching plant which is used for road making or construction at a landfill in the Regulated Area. Landfills will continue to be able to claim this deduction.

Effectively, waste facilities' use of these materials for road making at their facility will not attract levy liability.

These changes extend the range of materials which can be used for legitimate road making at waste facilities and promote the resource recovery of materials which are suitable for road making. There are minimal cost implications for industry or society.

- **Reporting for non-levy paying intermediary facilities:** Currently, landfills which are not required to pay the waste levy are required to comply with minimal reporting requirements under clause 47 of the existing Waste Regulation. This includes providing the EPA with the location of the site, name and address of an occupier, and to complete an approved form about the site, and anything else required by the EPA.

It is proposed to extend this requirement to intermediary facilities which are not required to pay the waste levy, from 1 July 2015. This will enable the EPA to have a basic understanding of the operations of such facilities so that it can perform its regulatory functions and enhance data required to monitor against the NSW recycling targets under the *Waste Avoidance and Resource Recovery Strategy*.

In order to establish the costs of such requirements, further information from industry is required during consultation.

- **Drilling mud storage –** Currently, the storage of five tonnes or more of hazardous waste, restricted solid waste, liquid waste, clinical or related waste or asbestos waste received from off site, requires a licence under Schedule 1 of the POEO Act. This would generally include drilling mud.

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<sup>17</sup> These requirements are contained in Table 2 of the *Specification for Supply of Recycled Material for Pavements, Earthworks and Drainage 2010*, Department of Environment, Climate Change and Water NSW, April 2010, and further characteristics consistent with Table 2 of the 'recovered aggregate exemption 2010' made under the Protection of the Environment Operations (Waste) Regulation 2005.

The proposed Waste Regulation includes an increased threshold of 60 tonnes of drilling mud that must be on site at any one time to trigger the licensing requirements. This will allow more time for sampling and transport of the drilling mud to suitable treatment facilities in this rapidly expanding industry, with minimal additional costs.

- **Additional record-keeping and weighbridge requirements for existing levy paying facilities (landfills):** As set out in the *Waste Levy Guidelines*, the relevant contents of which will be available for public comment along with the proposed Waste Regulation, there will be some additional information required to be recorded in relation to each load of waste entering and departing levy paying waste disposal facilities.

This may require software upgrades for existing weighbridges, and minimal additional administration costs for landfill facilities. For those facilities that require an upgrade, it is estimated that this would cost \$3000 per such facility. It is not anticipated that additional facility administrative costs would be substantial. It is not yet possible, however, to calculate the exact amount of any additional costs.

Further, the 5000-tonne threshold for the requirement to install a weighbridge at levy paying facilities is proposed to be removed from the commencement of the proposed Waste Regulation (see Section 4.1 of this Consultation RIS). Therefore, any levy-paying waste disposal facility will be required to install a weighbridge, even if it receives less than 5000 tonnes of waste per year, *unless the EPA grants an exemption for such a facility* (if it is proven impractical for the smaller facility to install a weighbridge). The EPA requires further information regarding the size of these smaller facilities so that it can establish whether weighbridges will be required, prior to establishing the potential costs and benefits of this change at this stage (although see CIE 2014 at p. 29 regarding costs of weighbridges generally).

- **Recording quantity of waste at facilities without a weighbridge:** The proposed Waste Regulation includes a requirement for levy paying facilities which are not required to have a weighbridge (e.g. if they are exempted from the requirement to have a weighbridge) to measure and record their waste using an approved method.

The approved method would be the conversion factors published in the *Waste Levy Guidelines*, the relevant contents of which will be made available for public comment along with the proposed Waste Regulation. This is a change of a machinery nature, which acts to formalise current practice, so should not lead to significant increased costs.

- **Defence to land pollution offence at unlicensed landfills:** The proposed Waste Regulation includes a defence for proceedings for a land pollution offence against unlicensed landfills.

Without the defence, an unlicensed landfill would be found to contravene section 142 of the POEO Act if it caused any land pollution (as defined in the POEO Act).

The defence would be available if the landfill, at the time of the alleged land pollution, maintained certain minimum operational standards at the facility. This would include measures to reduce risk of fire and odour/noise/dust emissions, control public access to the premises, and general maintenance of the facility.

This provision is not mandating behaviour; rather providing a defence to potential prosecution. Any cost implications would depend on the extent to which existing unlicensed landfills and new unlicensed landfills already have systems in place to meet these minimum standards.