

## **Waste Law – a summary of the waste legislation and policies of the Commonwealth and Western Australia.**

**Environmental Defender's Office WA (Inc)**

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### **COMMONWEALTH LAW**

#### **Code of Practice for the Near-Surface Disposal of Radioactive Waste in Australia (1992)**

The *Code of practice for the near surface disposal of radioactive waste in Australia (1992)* provides the basis for the near-surface disposal of solid radioactive waste that has been classified as low-level and short-lived intermediate-level waste. The code is intended to apply to disposal of contaminated plant and equipment resulting from handling or processing of naturally-occurring materials which contain radioactive contaminants in low but non-trivial amounts, and to waste arising from processing of minerals remote from any mine site and where disposal at the mine site is inappropriate. The code also applies to disposal of waste arising from the rehabilitation, decontamination or decommissioning of sites or facilities where radioactive materials have been produced, stored, used or dispersed. The code establishes the requirements for site selection, design criteria and operational requirements for either a national near-surface disposal facility or for a purpose-built land-fill disposal trench.

[SOURCE: [http://www.arpana.gov.au/is\\_waste.htm](http://www.arpana.gov.au/is_waste.htm)]

#### **Commonwealth Radioactive Waste Management Act 2005 (Cth)**

This Act seeks to over-ride State and Territory legislation purporting to prevent the transport and storage of nuclear waste. Although it refers to three potential sites in the Northern Territory, the implication for nuclear waste management in Western Australia is clear in that, if valid, it would over-ride the *Nuclear Waste Storage and Transportation (Prohibition) Act 1999*.

#### **Environment Protection (Sea Dumping) Act 1981 (Cth)**

The *Environment Protection (Sea Dumping) Act 1981* gives effect to the *Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter 1972* (the London Convention). It prohibits the dumping or incineration at sea of radioactive material, wastes and other material without a permit. There is an exemption for dumping conducted to save human life or a vessel in distress. Where dumping has occurred the Minister has power to mitigate the damage or take remedial action and recover the costs from the person convicted of dumping. The Act applies to all vessels in Australian waters and to Australian vessels in international waters. The Act does not apply in

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relation to the disposal of wastes related to the exploration, exploitation and associated off-shore processing of sea-bed mineral resources

### **Hazardous Waste (Regulations of Exports and Imports) Act 1989 (Cth)**

This Act ratifies the *Basel Convention on the Control of Trans-boundary Movements of Hazardous Waste and their Disposal* 1989.

The main aims of the Basel Convention are to encourage environmentally sound management of hazardous waste, to regulate international trade in hazardous waste and to reduce the generation of hazardous wastes.

Accordingly the Act is relevant in the management of hazardous waste in that it prohibits exporting or importing hazardous waste without a permit. The Minister for the Environment and Heritage can only grant a permit to export hazardous waste where it can be shown that the wastes will be managed in an environmentally sound manner in the country of import. This in turn means that hazardous waste must generally be treated and disposed of in its country of origin, restricting the opportunity to protect the local environment by exporting the problem. The definition of hazardous waste includes household waste.

According to the Department of Foreign Affairs and Trade, “no export permits have been granted for the export of hazardous waste to any developing country since the amendments to the Hazardous Waste Act came into force in December 1996”

[SOURCE: [http://www.dfat.gov.au/environment/haz\\_waste.html](http://www.dfat.gov.au/environment/haz_waste.html) as at 29 June 2006].

### **Hazardous Waste (Regulation of Exports and Imports) (Imports from East Timor) Regs 2001 (Cth)**

These regulations are made under the *Hazardous Waste (Regulation of Exports and Imports) Act 1989* (Cth) to allow that the Minister may grant special import permits authorising the import of hazardous waste (as defined in the Act) from the Democratic Republic of East Timor.

“All arrangements in relation to the import of hazardous waste into Australia must not derogate from the environmentally sound management of hazardous wastes, as required by the Basel Convention” (Schedule 1)

### **Hazardous Waste (Regulation of Exports and Imports) (Waigani Convention) Regulations 1999 (Cth)**

These regulations give effect to the provisions of the *Convention to Ban the Importation into Forum Island Countries of Hazardous and Radioactive Wastes and to Control the Transboundary Movement and Management of Hazardous Wastes within the South Pacific Region* (known as the Waigani Convention). The Waigani Convention is very

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similar to the Basel Convention, however Waigani is administered within the Pacific Forum region. The Waigani Convention is also different to Basel in that it covers radioactive wastes and extends to the Economic Exclusion Zone (200 nautical miles) rather than the territorial sea (12 nautical miles) under Basel.

The regulations “do not apply to radioactive wastes — the definition of *hazardous waste* in the Act relies on the Basel Convention, which does not cover radioactive wastes. The export from, and import into, Australia of radioactive wastes is regulated under the *Customs Act 1901*, the Customs (Prohibited Exports) Regulations and the Customs (Prohibited Imports) Regulations” (Regulation 3)

[SOURCE: [www.oztoxics.org/waigani/waigani/descr\\_c1.html](http://www.oztoxics.org/waigani/waigani/descr_c1.html)]

### **National Environment Protection Measure: Movement of Controlled Waste between States and Territories**

NEPMs are broad framework-setting statutory instruments outlining agreed national objectives for protecting or managing particular aspects of the environment. This NEPM establishes a nationwide tracking system for the interstate transport of controlled wastes. The *Movement of Controlled Waste NEPM* defines 'waste' as any matter that is discarded, rejected, unwanted, surplus or abandoned whether the material is for disposal, recycling, reprocessing, recovery, reuse, purification or sale whether of any value or not.

The *Movement of Controlled Waste NEPM* provides lists of waste streams, specific constituents and hazardous characteristics to identify whether specific materials are hazardous waste. This is similar to the way in which the Basel Convention defines hazardous wastes. Exemption from some requirements of the *Movement of Controlled Waste NEPM* may be given based on the direct reuse of some controlled waste.

### **National Environmental Protection Measure (NEPM): Used Packaging Materials**

Businesses producing a significant amount of packaging waste are required to self-regulate to a specified standard under the Used Packaging Materials NEPM, to ensure their packaging materials are recycled or reused appropriately. Failure to comply results in a fine. The penalties are inconsistent and range from \$250,000 (ACT) to \$4,000 (Tasmania). Regulations to implement the NEPM in WA have recently been re-introduced after the previous regulations expired in 2004. The *Environmental Protection (NEPM–UPM) Regulations 2007(WA)* contain fines of \$5000 for non-compliance.

### **National Environmental Protection Measure: Product Stewardship**

The NEPM for product stewardship has not yet been finalised. According to the National Environment Protection Council:

“The NEPM will consist of a generic framework that establishes guidelines and principles to be applied by governments in determining the merits of a co-

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regulatory approach for a particular sector, and guides the development of product stewardship agreements for particular sectors. The NEPM will also include schedules relating to sector-specific product stewardship agreements setting out the requirements for non-participants captured under the regulatory safety net for a particular sector. Sector-specific schedules under consideration for initial incorporation in the NEPM include, but may not be limited to, televisions and tyres.”

[SOURCE: [http://www.ephc.gov.au/nepms/product\\_stewardship/product\\_stewardship.htm](http://www.ephc.gov.au/nepms/product_stewardship/product_stewardship.htm)]

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## **STATE LAW Western Australia**

### **Conservation and Land Management Regulations 2002**

These regulations impose a penalty for discharging or depositing waste on CALM land (\$2,000). The penalty under this regulation for littering on CALM land is potentially twice the penalty prescribed by the *Litter Act 1979*.

### **Contaminated Sites Act 2003**

This Act came into force on 1 December 2006. A site is contaminated when there is a substance present on that site (including land and water), at above background concentrations that presents or has the potential to present, a risk of harm to human health, the environment or an environmental value. Any person may report a known or suspected contamination of any site to the Department of Environment and Conservation, however land-owners, or those who either know or suspect they have caused or contributed to that contamination, must report it. Contaminated sites are listed on a publicly accessible database and in certain circumstances owners must give notice of contamination to purchasers, mortgagees or lessees of the property, at least 14 days before the completion of the transaction.

### **Dangerous Goods Safety Act 2002**

The Act achieved Assent in late 2004. The new legislation cannot be proclaimed until all supporting regulations are completed. The seven sets of regulations are due to be proclaimed in 2007.

The main thrust of the Act is to make it an offence (with a high maximum penalty) to fail to take all reasonably practicable measures to minimise the risk to people, property and the environment in handling, transporting, storing, treating and disposing of “dangerous goods” (to be determined by the Regulations – although Section 5 provides that harm from dangerous goods is to be assessed having regard to public knowledge).

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The Act is accordingly very relevant to hazardous waste management – although much will depend on the Regulations.

The Act repeals the *Dangerous Goods (Transport) Act 1998* and the *Explosive and Dangerous Goods Act 1961* and all related Regulations.

For more information go to:

[http://www.docep.wa.gov.au/ResourcesSafety/Sections/Dangerous\\_Goods/Legislation\\_and\\_Policy/Dangerous\\_Goods\\_Act.html](http://www.docep.wa.gov.au/ResourcesSafety/Sections/Dangerous_Goods/Legislation_and_Policy/Dangerous_Goods_Act.html)

### **Environmental Protection Act 1986**

This Act provides the basis for much of WA's waste management regulation through its provisions, powers to make waste policies, and in particular its subsidiary regulations.

While many of the powers established under the Act can be considered to apply to waste (given that the Act deals with pollution and impact on the environment), there are also specific provisions for dealing with waste and waste management.

In addition, the industry licensing provisions of Part V of the Act apply to many sectors of the waste management industry. Detailed obligations on waste management are in various regulations under the Act, which are discussed below.

The Act deals with the Landfill Levy scheme, which is clearly of high relevance to waste management (see also *Environmental Protection (Landfill) Levy Act 1998*), and in Part VII B deals with waste management operations.

Some provisions in this Act will be replaced by the Waste Avoidance and Resource Recovery Bill, if it comes into force.

### **Environmental Protection Regulations 1987**

These Regulations provide detail for the functioning of the principal Act (that is, the *Environmental Protection Act 1986*). Much of the Regulation deals with prescribing the sorts of activities and premises which attract the attention of the Act, the considerations which should be taken into account in deciding whether to permit those activities, and the licensing and fees for those activities and premises.

Part 9 deals with the Landfill Levy, which is an important part of waste management in WA.

### **Environmental Protection (Concrete Batching and Cement Product Manufacturing) Regulations 1998**

This Regulation made under the *Environmental Protection Act 1986* provides that a person carrying on concrete batching or cement product manufacturing must ensure that

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all waste created is recycled or disposed of at an appropriate landfill site or waste treatment facility; failure to do so is an offence penalised by up to \$5,000.

#### **Environmental Protection (Controlled Waste) Regulations 2004**

There is a significant degree of overlap between these Regulations and the awaited *Dangerous Goods Safety Act Regulations* in that many of the “controlled wastes” as defined in these Regulations are in all likelihood “dangerous goods” under the DGSA.

The Regulations control the controlled waste by setting out a licensing and tracking system for transportation and disposal of such waste and making it an offence to not comply with any of the requirements.

#### **Environmental Protection (Landfill) Levy Act 1998**

This Act is an enabling Act to allow promulgation of Regulations to prescribe levies on waste disposed of to landfill.

Its function forms part of the incentive to industry to reduce the amount of waste generated (thereby reducing their landfill levy expenses) as well as providing funds to be used in achieving waste management goals.

This Act will be replaced by the Waste Avoidance and Resource Recovery Bill, if it comes into force.

#### **Environmental Protection (Rural Landfill) Regulations 2002**

These Regulations set out the requirements and basic standards required for maintaining a putrescible landfill site accepting more than 20 but less than 5 000 tonnes per year (i.e. Category 89 – Class II - landfills). Such sites can accept clean fill, Type 1 Inert Waste, Putrescible Wastes, Contaminated solid waste meeting waste acceptance criteria specified for Class II landfills (possibly with specific licence conditions), Type 2 Inert Wastes (with specific licence conditions), Type 1 and Type 2 Special Wastes (for registered sites as approved under the Controlled Waste Regulations).

The Regulations also provide that the occupier of a landfill site must prepare and submit a post-closure rehabilitation plan for the site to the Chief Executive Officer for approval, within 18 months of the site being registered.

#### **Health Act 1911**

This is the primary Act dealing with all matters relating to public health, some of which are relevant to a consideration of waste management.

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The focus of the Act (due primarily to its age) is on sanitary considerations and putrescible waste such as sewerage. It also creates the framework under which local government operates its waste removal and disposal function.

It gives local government powers to formulate a scheme for the construction and maintenance of all sewers, drains, and appliances necessary for carrying away or disposing of or treating any noxious or waste matter within its district. It is an offence to discharge any waste into sewers which “causes a nuisance or is injurious to health, or interferes with the disposal of sewage” (section 94). It is also an offence to defile or pollute any water supply (section 129).

The Act also gives local government powers to undertake or contract out works for:

- The removal of house and trade refuse and other rubbish from premises.
- The collection and disposal of sewage.
- The providing, in proper and suitable places, of receptacles for the temporary deposit of refuse and rubbish collected.
- The providing of suitable places, buildings, and appliances for the disposal of refuse, rubbish and sewage.
- The construction and installation of plant for the disposal of refuse, rubbish and sewage.

The local government may destroy, dispose of or sell any of the waste it collects.

The waste management powers of Local Government will be replaced by the Waste Avoidance and Resource Recovery Bill, if it comes into force.

### **Litter Act 1979**

The Litter Act establishes offences for littering, bill posting, and breaking glass in public places.

Although the Act is quite flexible in allowing regulations to be made which are “not inconsistent” with the Act, the powers are limited in that the maximum penalty at present is \$1,000. Although the courts can order an offender to clean up the litter, failure to comply only carries a maximum penalty of \$1,000.

The Act will shortly be repealed and new litter provisions will be incorporated in the Environmental Protection Act. The changes include the new offence of illegal dumping, increasing fines for littering by corporations and enhancing the investigative powers of enforcement officers.

### **Mines Safety and Inspection Act 1994**

This Act has a narrow application in waste management - specifically the power to make regulations regarding the removal and disposal of waste created during the mining process.

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### **Mines Safety and Inspection Regulations 1995**

The Regulations are authorised under Section 104 of the *Mines Safety and Inspection Act 1994*, and their relevance is mostly in relation to waste management of radioactive materials arising from a mining operation.

Radioactive waste management is achieved through the requirement that plans are drawn up prior to commencement setting out the proposed waste management plan, and again when mining operations are suspended or abandoned. The plans require approval of the State mining engineer.

Penalties for failure to observe the obligations in the Regulations are restricted to \$50,000 for Corporations on a first offence (\$62,500 for a second offence).

### **National Environment Protection Council (Western Australia) Act 1996**

This Act recognises the creation of and assignment of power to the National Environment Protection Council (“NEPC”).

The NEPC was an outcome of an Intergovernmental Agreement on the Environment (IGAE), which was reached at a Special Premiers Conference in October 1990 and came into effect in May 1992. Membership of NEPC includes environment ministers from the Australian Government and each state and territory. The Australian Government Minister for the Environment and Heritage chairs NEPC. Each NEPC minister has equal voting power. Decisions of NEPC can only be made with a two-thirds majority of ministers. The Australian Government does not have the power of veto

The NEPC achieves its objectives by introducing National Environmental Protection Measures (“NEPM”) which the Commonwealth, State and Territory Governments are obliged to enact laws to implement (although note that they do not always do so).

The NEPC may formulate NEPM on a variety of issues which include

- general guidelines for the assessment of site contamination
- environmental impacts associated with hazardous wastes
- the re-use and recycling of used materials.

For more information see <http://www.deh.gov.au/about/councils/nepc/index.html>

### **Nuclear Activities Regulation Act 1978**

The object of this Act is to make provision for protecting the health and safety of the people of the State, and the environment, from possible harmful effects associated with nuclear activities. The definition of ‘nuclear activities’ in this Act includes waste generated by any activity associated with mining or processing etc of radioactive material.

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The ambit of the Act in a waste management context is limited although flexible within its area of effect since it allows for the promulgation of Regulations and Codes of Practice and provides for reasonably high penalties to be imposed for offences thereby created. Note however that enforcement of offences created by Regulations may only take place with Ministerial approval.

### **Nuclear Waste Storage and Transportation (Prohibition) Act 1999**

The objects of this Act are “to protect the health, welfare and safety of the people of Western Australia and to protect the environment in which they dwell by prohibiting the establishment of a nuclear waste storage facility in this State, the use of any place in this State for the storage or disposal of nuclear waste and the transportation in this State of nuclear waste” (Section 4).

This Act is by its nature very limited in scope and only seeks to prohibit the construction or operation of nuclear waste management facilities in WA and to prohibit the transport of nuclear waste in WA.

Note however that the definition of nuclear waste excludes radioactive waste such as that which might be generated by mining radioactive substances.

### **Radiation Safety Act 1975**

This Act creates a scheme of licensing and registration in relation to possession, storage, use, handling or disposal of, or other dealing with, any radioactive substance, irradiating apparatus or electronic product.

Accordingly the relevance of the Act to waste management considerations is limited to the storage and disposal of radioactive material and waste (mainly generated in a medical or scientific context).

### **Radiation Safety (General) Regulations 1983**

These regulations are made pursuant to the *Radiation Safety Act 1975*. The regulations prohibit a person from knowingly causing or allowing any radioactive substances to be released or disposed of in such a manner as to cause such contamination of the environment as to result in a person receiving an effective dose in excess of the appropriate effective dose limit (section 31). In addition it prohibits the disposal of solid radioactive waste by near-surface disposal unless the disposal, the disposal facility and the disposal site comply with the requirements of the appropriate code of practice. As with the *Radiation Safety Act 1975*, the penalty for contravention is very low.

This Act is relevant only to disposal of radioactive material and waste (mainly generated in a medical or scientific context).

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### **Waterways Conservation Act 1976**

The Act deals with the discharge or deposit of waste which might enter the waterways and cause damage through pollution to the water or water sources.

It also provides a system of licences for the discharge or deposit of material in water or on land controlled by the Commission.

### **Waterways Conservation Regulations 1981**

These Regulations are made pursuant to the *Waterways Conservation Act 1976*.

Where exercise of power by the Commission is in conflict with exercise of power by local authorities in relation to waters comprised within a management area concerning the discharge or proposed discharge of water or any waste into any waters, or onto or under any land so as to be likely to enter any waters, the Commission's powers prevail.

### **Western Australian Marine (Sea Dumping) Act 1981**

This Act enacts the provisions of the *International Convention On The Prevention Of Marine Pollution By Dumping Of Wastes And Other Matter 1972* in WA waters.

It specifically deals with the disposal of waste to the sea, with a view to minimising such disposal and carefully regulating such disposal.

The Act does not apply in relation to the disposal of wastes related to the exploration, exploitation and associated off-shore processing of sea-bed mineral resources.

### **Waste Avoidance and Resource Recovery Bill**

The draft Waste Avoidance and Resource Recovery Bill was released for public comment in August 2006. It is expected to be introduced to Parliament in 2007.

The obligations and powers for waste management services for municipal solid waste – which includes commercial waste in its definition – will be moved from the *Health Act 1911* into this Bill. The Bill allows potential competition for the carrying out of waste management services (primarily between local government and commercial entities with an EP Authorisation from the CEO of the new Waste Authority, but also with the Port Authorities) with the safety net that the CEO may direct that local government provide services if needs be.

The Bill requires a Waste Strategy to be developed by the Waste Authority and Waste Management Plans to be developed by local government. Any entity may be required to report to the CEO of the Department of Environment and Conservation on its state of compliance with the published Waste Strategy and can be named and shamed if it does

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not comply with the Waste Strategy. Local Government's Waste Management Plans have the status of local government "plans for the future".

Industry is encouraged to formulate and enter into Product Stewardship Agreements, the existence, implementation and effectiveness of which are taken into account by the Minister in deciding whether to implement powers to put Extended Producer Responsibility Schemes in place. Schedule 3 sets out very specific Regulation-making powers mapping out the terrain in which Container Deposit Legislation may be implemented.

The Bill also consolidates the levy provisions of Part VIIA of the *Environmental Protection Act 1986* and Section 4 of the *Environmental Protection (Landfill) Levy Act 1998*

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