

National Competition Policy Review

**Waste Minimisation and Management Act 1995 &
the waste provisions of the Protection of the
Environment Operations Act 1997**



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Contents

Summary of recommendations	5
<i>Waste Minimisation and Management Act 1995 (Waste Act) and the waste provisions of the Protection of the Environment Operations Act 1997 (POEO Act)</i>	5
1. Introduction	6
Review process	7
2. National Competition Policy and market theory in relation to environment protection legislation	8
Restrictions to competition	8
Ecologically sustainable development	8
Market failure and waste management	9
NSW waste management	10
Submissions to the review	10
3. Legislative provisions	11
Waste Minimisation and Management Act	11
Waste provisions in the Protection of the Environment Operations Act	13
4. Objectives of the acts	16
Waste Minimisation and Management Act	16
Protection of the Environment Operations Act	16
Review group's considerations	17
5. Restrictions to competition	19
Charging policies of waste boards (section 18(1)(a) - Waste Act)	19
Requirements for the preparation of industry waste reduction plans (Part 4 - Waste Act)	20
Licensing under the POEO Act	22
Supervisory licensee requirements for putrescible landfills (section 87 - POEO Act)	24
Waste levy (section 88 - POEO Act)	25

Appendix 1: Response to key issues	31
<i>Summary of submissions to the National Competition Policy review of the Waste Minimisation and Management Act 1995 (Waste Act) and the waste provisions of the Protection of the Environment Operations Act 1997 (POEO Act)</i>	
Appendix 2: Waste management in NSW	41
What is waste?	
Waste generation	
NSW waste industry profile	
Appendix 3: Legislative objects	44
Waste Minimisation and Management Act 1995 (Waste Act) and the Protection of the Environment Operations Act 1997 (POEO Act)	
References and further information	46

Summary of recommendations

Waste Minimisation and Management Act 1995 (Waste Act) and the waste provisions of the Protection of the Environment Operations Act 1997 (POEO Act)

Recommendation 1

The Minister for the Environment's statutory review of the Waste Act and the *Protection of the Environment Operations Act 1997* to consider relevant matters contained in submissions made to the National Competition Policy review.

Recommendation 2

Waste targets and performance measures need to take account of how they affect competition.

Recommendation 3

Repeal section 3(2)(g) of the Waste Act as being no longer relevant to the Act since the operations provisions of the Waste Act were repealed and those functions transferred to the POEO Act.

Recommendation 4

Amend section 18 (1)(a) of the Waste Act to remove the power of waste boards to establish management and charging policies for the waste services provided by the constituent councils on the basis that this power unnecessarily limits competition. Replace it with a provision that allows boards to issue guidelines.

Recommendation 5

Amend section 37 of the Waste Act to require the Environment Protection Authority to prepare and make public a report on the net public benefit of proceeding with the development of a non-negotiated industry waste reduction plan, other than where it implements a national environment protection measure.

Recommendation 6

Proposed amendments to the waste regulatory regime should take account of restrictions on competition.

Recommendation 7

Repeal section 87 of the *Protection of the Environment Operations Act 1997*, which provides for supervisory licences, as an unwarranted restriction on competition.

Recommendation 8

The Environment Protection Authority should complete its program of reviewing and, where necessary, revising its environment protection licences for landfills in NSW.

Recommendation 9

Ensure that the Environment Protection Authority has a policy in place for consistently applying (where appropriate) financial assurances on all classes of landfills, including Solid Waste Class 1 (putrescible) landfills.

Recommendation 10

Retain the waste levy under section 88 of the POEO Act.

1. Introduction

The National Competition Policy (NCP) requires that legislation should not restrict competition unless it can be demonstrated that the benefits to the community as a whole outweigh the costs, and the objectives of the legislation require that competition be restricted. As part of this policy, all NSW legislation that restricts competition is being reviewed in accordance with the principles for legislation reviews set out in the Competition Principles Agreement.

To fulfil its commitment under the Competition Principles Agreement, the NSW Government is undertaking a review of the *Waste Minimisation and Management Act 1995* (Waste Act) and the waste provisions of the *Protection of the Environment Operations Act 1997* (POEO Act). A review group comprising representatives of the NSW Environment Protection Authority (chair), the Cabinet Office and NSW Treasury are overseeing this review.

The terms of reference for the review are:

1. The review of the *Waste Minimisation and Management Act 1995* and the waste provisions of the *Protection of the Environment Operations Act 1997* (i.e. the waste licensing provisions contained in Chapter 3, including the waste levy and powers of supervisory licensees) shall be conducted in accordance with the principles for legislation reviews set out in the Competition Principles Agreement. The guiding principle of the review is that legislation should not restrict competition unless it can be demonstrated that:
 - (a) the benefits of the restriction to the community as a whole outweigh the costs, and
 - (b) the objectives of the legislation can be achieved only by restricting competition.
- 2) The following matters, where relevant, will be taken into account:
 - (a) government legislation and policies relating to ecologically sustainable development
 - (b) social welfare and equity considerations, including community service obligations
 - (c) government legislation and policies relating to matters such as occupational health and safety, industrial relations and access and equity
 - (d) economic and regional development, including employment and investment growth
 - (e) the interests of consumers generally, or of a class of consumers
 - (f) the competitiveness of Australian business
 - (g) the efficient allocation of resources.
- 3) Without limiting the scope of the review, the review is to:
 - (a) clarify the objectives of the legislation and their continuing appropriateness
 - (b) identify the nature of the restrictive effects on competition
 - (c) analyse the likely effect of any identified restriction on competition on the economy generally
 - (d) assess and balance the costs and benefits of the restrictions identified
 - (e) consider alternative means for achieving the same result, including non-legislative approaches.
- 4) When considering the matters in (2), the review should also:

- (a) identify any issues of market failure that need to be, or are being, addressed by the legislation, and
 - (b) consider whether the effects of the legislation contravene the competitive conduct rules in Part IV of the *Trade Practices Act 1974* (Cwlth) and the NSW Competition Code.
- 5) The review shall consider and take account of relevant regulatory schemes in other Australian jurisdictions and any recent reforms or reform proposals, including those relating to competition policy in those jurisdictions.
 - 6) The review shall consult with and take submissions from relevant government agencies, regional waste boards, Waste Service NSW, the Waste Contractors and Recyclers Association, the State Waste Advisory Council and any other interested parties.

Review process

In June 2000, the NCP review group released an issues paper to government, industry and community stakeholders and called for submissions. The comment period closed on 28 July 2000. Seven organisations made submissions:

- Australian Retailers Association
- Beverage Industry Environment Council
- Local Government and Shires Associations
- NSW waste boards
- Private Landfillers Association
- Waste Service NSW
- Western Sydney Waste Board

A summary of their submissions is in Appendix 1. Some other stakeholders indicated that they would make submissions to the parallel statutory review of the Waste Act (including the waste provisions of the POEO Act) rather than comment on the NCP review.

The Waste Act requires a review five years after its date of assent and a report must be presented to Parliament before 22 December 2001. The Minister for the Environment is undertaking the review and intends to present his report in early 2001. As part of his terms of reference, the Minister shall consider matters referred to him in the NCP review group's report. In line with this approach, comments on issues outside the NCP review's terms of reference should be considered in the statutory review of the Waste Act, which has terms of reference to deal with them. As the analysis in Appendix 1 shows, most matters raised in the submissions related more to the Minister's statutory review.

Recommendation 1

The Minister for the Environment's statutory review of the Waste Act and the waste provisions of the *Protection of the Environment Operations Act 1997* consider relevant matters contained in submissions made to the National Competition Policy review.

2. National Competition Policy and market theory in relation to environment protection legislation

Restrictions to competition

The goal of the National Competition Policy is to remove restrictions on competition so that Australian businesses can compete efficiently, while maintaining appropriate levels of community protection. The National Competition Policy requires that legislation should not restrict competition, unless it can be demonstrated that the benefits to the community as a whole outweigh the costs, and the objectives of the legislation require that competition be restricted.¹

Legislation has the potential to limit competition if it:

- governs the entry into the market or exit from it by firms or individuals
- controls prices or production levels
- restricts the quality, level or location of goods and services available
- restricts advertising and promotional activities
- restricts the price or type of input used in the production process
- is likely to confer significant costs on business
- changes the behaviour of individuals or firms from that which might otherwise occur in the absence of legislation
- provides advantages to some firms over others by, for example, shielding some activities from the pressure of competition.

Ecologically sustainable development

The terms of reference for the review include the requirement that government legislation and policies relating to ecologically sustainable development (ESD) must be taken into account when determining the most effective means of achieving a policy objective.²

- The core responsibility of the NSW Environment Protection Authority (EPA), and the legislation it administers, is to protect, restore and enhance the quality of the environment in NSW, having regard to the need to maintain ESD.

ESD can be achieved through the application of several principles, including:

- **The precautionary principle:** If there is a threat of serious or irreversible environmental damage, a lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.
- **Inter-generational equity:** The present generation should ensure that the health, diversity and productivity of the environment are maintained or enhanced for the benefit of future generations
- **Improved valuation, pricing and incentive mechanisms:** Environmental factors should be included in the valuation of assets and services. These include:
 - the concept of 'polluter pays': those who generate pollution and waste should bear the cost of containment, avoidance or abatement

¹ *New South Wales Government Policy Statement on Legislation Review*, June 1996.

² ESD is a consideration in the Competition Principles Agreement Clause 1(3)

- the concept that users of goods and services should pay prices based on the full life-cycle cost of providing the goods and services, including the use of natural resources and assets and the ultimate disposal of any waste
- the concept that environmental goals should be pursued in the most cost-effective way, by establishing incentive structures, including market mechanisms, that enable those best placed to maximise benefits or minimise costs to develop their own solutions and responses to environmental problems.³

The application of ESD principles is explicitly identified in the broad objectives of both the Waste Act and POEO Act.

Market failure and waste management

Market failure occurs where the operation of the market delivers outcomes that do not maximise collective welfare. These conditions provide the justification for governments to intervene in markets. There are several forms of market failure:

- **imperfect competition:** where there is unequal bargaining power between market participants (for example, monopoly service providers of utilities such as water)
- **externalities:** where the costs of a particular activity are external to the individual or business and are imposed on others (for example, vehicle emissions)
- **public goods :** where there are goods for which property rights cannot be applied (for example, national defence)
- **imperfect information:** where market participants are not equally informed (for example, stock exchange disclosure).

Environmental legislation typically addresses market failure associated with externalities. Environmental externalities exist when economic activity causes environmental degradation for which the polluter makes no compensation. Therefore, the particular activity imposes a cost on the community that is not included in the price paid by the consumer.

In the case of waste disposal there are external costs imposed on the environment. These are related to the operation of waste facilities, both at the site of the facility and elsewhere (for example, at landfills). On-site externalities include emissions of leachate to ground or surface waters and of gases and odours to the atmosphere, particularly such greenhouse gases as carbon dioxide and methane. Off-site externalities include the corridor effects of transport of materials to the waste facility and inter-generational impacts associated with the long-term loss of a site for uses other than low-value, open space purposes.

These external costs vary among different materials. For example, waste that is high in heavy metals is more likely to contribute to the formation of dangerous leachate; biologically reactive organic waste is more likely to contribute to greenhouse gas emissions; building rubble is likely to have a low impact compared with mixed waste. These variations are not necessarily reflected in the cost to landfill operators of processing and handling these materials.

Because of these externalities, the price paid by consumers of waste disposal services in an unregulated market may be less than the total cost that the waste imposes on the community. This can lead to distortion of the market: waste disposal will be favoured over alternatives such as more efficient use of materials, re-use and recycling. This distortion results in increases in the environmental effects identified above (on-site and off-site effects), and causes a general increase in consumption of raw materials, brought about by less than optimal use of these materials.

³ Source: *Protection of the Environment Administration Act 1991*

As part of a regulatory impact analysis of the Waste Minimisation and Management Regulation 1996,⁴ the EPA estimated the external environmental and social costs of waste disposal in the greater Sydney metropolitan region⁵. The EPA quantified the external costs of environmental damage from greenhouse gas emissions from landfills, local amenity and waste transport corridors, and inter-generational costs (primarily landfill scarcity costs). These quantifiable external costs ranged between \$13 and \$33 per tonne of waste disposed of in the greater Sydney metropolitan region and between \$36 million and \$91 million per year for NSW in total.

There has been some progress towards the incorporation of these environmental costs into the cost of waste disposal, including:

- improved environmental controls to reduce the impacts of leachate, noise and odours (these controls being generally included in licence conditions)
- pricing by Waste Service NSW that provides for the replacement of existing landfills
- application of the waste levy under section 88 of the *Protection of the Environment Operations Act 1997*, currently set at \$17 a tonne for the Sydney metropolitan area⁶ and \$8 a tonne for the extended regulated area⁷.

NSW waste management

Appendix 2 defines waste and outlines waste management in NSW.

Submissions to the review

A majority of the submissions to the review recognised the need for government action in waste management to address market failure; specifically, the external costs imposed on the environment by an *unregulated* waste management framework. Submissions then focused on the extent and form of the regulation necessary in waste management.

⁴ Source: *Regulatory Impact Statement – Proposed Waste Minimisation and Management Regulation 1996*. NSW EPA, 1996.

⁵ The 'greater Sydney metropolitan region' means the Wollongong–Sydney–Newcastle conurbation.

⁶ The 'Sydney metropolitan area' means the area constituting the Metropolitan Waste Disposal Region under the *Waste Recycling and Processing Service Act 1970* immediately before 1 November 1996 (*Protection of the Environment Operations Act 1997*: Schedule 1, Part 3, Division 2).

⁷ The 'extended regulated area' means the area comprising the local government areas of Cessnock, Gosford, Kiama, Lake Macquarie, Maitland, Newcastle, PortStephens, Shellharbour, Shoalhaven, Wingecarribee, Wollongong and Wyong (*Protection of the Environment Operations Act 1997*: Schedule 1, Part 3, Division 2).

3. Legislative provisions

Both the Waste Act and the POEO Act are relatively recent pieces of legislation—commencing on 22 December 1995 and 1 July 1999 respectively. For full extracts of the objects of the legislation see Appendix 3.

Waste Minimisation and Management Act

The Waste Act establishes the framework for the strategic planning and funding of waste reduction at a State and regional level and within industry sectors. It sets out roles and responsibilities for all essential stakeholders. The Act also includes the waste hierarchy (giving preference to waste avoidance, then re-use, followed by recycling, with waste disposal as the last option) and incorporates the NSW Government's 60% waste reduction target.

State Waste Advisory Council

Part 2 of the Waste Act establishes the State Waste Advisory Council (SWAC). SWAC's primary function is to provide strategic advice to the Minister for the Environment and the NSW Environment Protection Authority (EPA) on waste issues of State significance. SWAC has specific statutory roles in the development and review of regional waste plans and industry waste reduction plans, and also provides advice on expenditure under the Waste Planning and Management Fund.

Membership of SWAC is by ministerial appointment and drawn from consumer groups (1 member), industry (3), environment groups (2), local government (2), and the EPA (1).

Regional waste management

Part 3 (sections 9–29) of the Waste Act sets out an integrated planning framework for delivering waste management, consistent with state-wide waste policy, through the establishment of waste management regions and regional waste planning and management boards (waste boards), comprising local government councils. The regional approach:

aims to ensure co-operative decision making on waste policy and programs by groups of councils and to overcome the fragmentation and duplication of effort between individual councils.⁸

The Waste Act identifies the key objective of waste boards as '...to co-ordinate the waste services provided in and for the Waste Board's waste management region'.⁹ Board functions include the coordination of waste services and waste management policies in the region and shared use and development of infrastructure activities between the constituent councils. Boards may also provide waste or recycling services or infrastructure within their regions and may directly engage in the buying or leasing of land, plant, machinery and equipment.

Section 18 of the Waste Act identifies waste board functions, which include the establishment of management and charging policies for the waste services provided by the constituent councils.¹⁰ In exercising these powers in order to set specific charging policies, waste boards were viewed as being potentially in conflict with Part IV of the Trade Practices Act (Cwlth)

⁸ The Hon P. Allan. Second reading speech. November 1995.

⁹ s. 17(a), *Waste Minimisation and Management Act 1995*

¹⁰ s. 18(a), *Waste Minimisation and Management Act 1995*

and the NSW Competition Code. To deal with this potential conflict, section 18 was protected from Part IV of the Trade Practices Act and the NSW Competition Code until 20 July 2000.¹¹

Waste boards must prepare regional waste plans in accordance with the principles set out in the Waste Act. The plans must document the strategies and targets for waste reduction within the region, including:

- developing options for waste reduction, management and disposal
- managing and reducing waste that cannot be recycled or otherwise recovered
- identifying time frames for achieving strategies and targets
- developing mechanisms for monitoring performance.

Boards and their constituent councils must comply with regional waste plans that have been approved by the Minister.

There are currently eight regional waste boards in the greater metropolitan area: Inner Sydney, Western Sydney, Southern Sydney, Macarthur, Northern Sydney, Hunter, Illawarra and Central Coast. Board directors are chosen from nominees of the constituent councils, and councils are required to comply with the obligations contained in their Regional Waste Plan.

One formal rural regional waste board has been established in south-eastern NSW. In the rest of rural NSW, the NSW Government has established rural pilot waste-management boards with less formal structures than other boards but with similar waste minimisation and management objectives.

The Waste Planning and Management Fund provides recurrent and program funds to the waste boards and rural pilot boards. Boards may require contributions from constituent councils to finance their arrangements and initiatives. Some boards currently receive such contributions.

Industry waste reduction planning

Part 4 of the Waste Act establishes an industry waste-reduction planning framework that seeks to provide

... for the preparation, implementation, monitoring and enforcement of industry waste reduction plans that are designed ... to ensure greater industry responsibility for waste reduction.¹²

Industry waste reduction plans (IWRPs) seek to encourage industry

... to participate and co-operate with the EPA in the negotiation and preparation of an industry waste reduction plan for the industry, and if such a plan is in force with respect to the industry, to comply with the plan.¹³

¹¹ In July 1998, the Government granted a once-only, two-year exemption from the anti-competitive provisions by passing a regulation under the *Competition Policy Reform (NSW) Act 1995*.

¹² s. 30(a), *Waste Minimisation and Management Act 1995*

¹³ s. 30(b), *Waste Minimisation and Management Act 1995*

Where an industry does not negotiate an IWRP in good faith or does not comply with the requirements of an IWRP, or is particularly diverse or complex or competitive, the Minister can authorise the preparation of an IWRP without negotiation for that industry sector.

To date, no industries have been subject to a non-negotiated IWRP. However, national schemes, such as the Used Packaging Materials National Environment Protection Measure (which is subject to its own national consultation and impact assessment process) can be adopted through the non-negotiated IWRP provisions.

The Waste Act permits the Minister to regulate an industry where it has not complied with an IWRP or has not co-operated with the EPA in preparing an IWRP. The regulations may require the following:

- the prohibition or restriction of the sale of such products or classes of products as may be prescribed
- the implementation and operation of recycling, re-use, refundable deposits or take-back and utilisation schemes
- that a percentage of products recovered must be used in re-used or reprocessed
- a performance bond to ensure compliance with any such scheme.¹⁴

To date, no regulations have been made under these provisions.

Waste Planning and Management Fund

Section 73(1) of the Waste Act establishes the Waste Planning and Management Fund and its sources of revenue. The Fund is current wholly funded from an appropriation from the NSW Government's Consolidated Fund. Section 73(2)–(4) of the Act sets out how the funds may be allocated. The *New South Wales Environment Protection Authority Annual Report 1998–99*, pp. 92–99 provides the most recent figures on the Fund's income and expenditure.

Waste provisions in the Protection of the Environment Operations Act

The waste provisions of the POEO Act establish a licensing system for waste activities and facilities, including the waste disposal levy on material received at licensed facilities.

Licensing of waste activities and facilities

Regulatory provisions that were previously included in the Waste Act (Parts 5–7) were integrated with other environmental protection licensing systems in the POEO Act when the POEO Act commenced on 1 July 1999. The provisions contained in the POEO Act (Chapter 3) relate to licensing requirements, licensing conditions, offences, enforcement and investigation provisions and financial provisions (waste levy) applicable to waste facilities and transporters. Further regulatory requirements are set out in the Protection of the Environment Operations (Waste) Regulation 1996.

Activities that may require a licence include the generation, storage, transporting, processing or disposal of wastes that are considered to pose hazards to the environment and/or human health or to degrade the amenity of the surrounding community. Environment protection licences are currently required for:

- industrial, commercial, government and institutional waste activities generating or storing hazardous, industrial or Group A wastes (varying quantity thresholds apply depending on the type of business)
- mobile waste processors receiving hazardous, industrial or Group A¹⁵ wastes (in any quantity)

¹⁴ ss. 41-42, *Waste Minimisation and Management Act 1995*

- waste facilities:
 - facilities that treat, recycle, reprocess or dispose of hazardous, industrial, Group A, or Group B¹⁶ wastes (in any quantities)
 - used tyre processing or disposal facilities (processing or disposing of more than 5000 tonnes a year or storing more than 50 tonnes at any one time)
 - waste storage, transfer, separating or processing facilities handling any type of waste (in quantities exceeding 30 000 tonnes a year)
 - waste incineration facilities (varying quantity thresholds depending on the type of waste)
 - landfill sites (varying quantity thresholds, depending on their location and the type of waste involved and exemptions for certain types of waste)
- transporters transporting hazardous, industrial, Group A, Group B or Group C wastes (for greater than 200 kg loads).

Licence conditions

Where the NSW Environment Protection Authority (EPA) issues environment protection licences, the conditions contained in these licences aim to ensure that:

- wastes are handled, stored, processed, disposed of and transported in a manner that minimises the likelihood of threats to the environment and human health and of degradation to amenity
- any discharges to air, ground or water are of an acceptable quality for the location
- the environmental effects of the activities being licensed are monitored and reported
- hazardous, industrial and Group A wastes are ‘tracked’ (by means of a closed-loop paper trail) from the point of generation, through transportation to the waste facility or mobile waste processor that is licensed to accept them
- the types and quantities of waste handled are measured, recorded and reported
- waste levy obligations (where applicable) are met according to the legislative requirements
- annual reports and other compliance certificates (in relation to licence conditions) are prepared and submitted to the EPA
- proper records and reports are kept and maintained for a reasonable time for the purposes of auditing.

The following EPA guidelines also form part of the regulatory framework:

- *Environmental Guidelines: Assessment, Classification and Management of Liquid and Non-liquid Wastes* (1999)
- *Environmental Guidelines: Solid Waste Landfills* (1996)
- *Environmental Guidelines: Use and Disposal of Biosolids Products* (1997).

Licence conditions for waste facilities are consistent with these guidelines, which document best-practice approaches for compliance with the legislation. These guidelines were subject to separate cost-benefit analyses, which concluded that implementation would result in a net benefit to the community and provide minimisation of environmental harm in a cost-effective manner.

¹⁵ See *Environmental Guidelines: Assessment, Classification and Management of Liquid and Non-liquid Wastes* (June 1999), NSW EPA.

¹⁶ See *Environmental Guidelines: Assessment, Classification and Management of Liquid and Non-liquid Wastes* (1999). NSW EPA.

Supervisory licensee powers for putrescible landfills

Under section 87 of the POEO Act, licensees that are not public authorities¹⁷ may not hold licences for facilities that receive putrescible waste¹⁸ unless a separate licence for the facility (a supervisory licence) is granted to a public authority. The supervisory licensee 'is to impose conditions on the licence with respect to the following matters':

- the types and volumes of waste received at the waste facility
- the design of the waste facility
- the separation, re-use, reprocessing and recycling of waste received at the facility.

In issuing a licence to the operator of a facility that accepts putrescible waste but is not a public authority, the appropriate regulatory authority¹⁹ is required to:

... impose a condition on the licence requiring the occupier to charge for the disposal of putrescible waste at the waste facility in accordance with the directions of the public authority holding the supervisory licence.

This provision requires the supervisory licensee to determine the disposal fee for putrescible waste received at the facility.

Section 87 was viewed as potentially in conflict with Part IV of the Trade Practices Act (Cwlth) and the NSW Competition Code. To deal with this potential conflict, the section was protected from Part IV of the Trade Practices Act and the NSW Competition Code until 20 July 2000.²⁰

Waste levy

Section 88 of the POEO Act requires waste facilities to pay contributions on all wastes they receive. These contributions are known generally as the waste levy. The Act excludes from paying the levy those waste facilities that are used solely for the purposes of re-using, recycling or reprocessing waste. The current waste levy applies at a differential rate. Contributions are as follows:

- waste originating or disposed of in the Sydney metropolitan area: \$17 a tonne
- waste originating and disposed of in the extended regulated area: \$8 a tonne.

The EPA collects the levy. Contributions are Crown revenue and paid into the Consolidated Fund. From 1 July 2000, 55% of the levy contributions is hypothecated to the Waste Planning and Management Fund.

¹⁷ *Public authority* means a public or local authority constituted by or under an Act, and includes: (a) a government department, or (b) a statutory body representing the Crown, a State owned corporation or a local council, or (c) a member of staff or other person who exercises functions on behalf of a public authority.

¹⁸ Putrescible waste is food or animal matter, including dead animals or animal parts, or unstable or untreated biosolids.

¹⁹ The NSW EPA is the current regulatory authority for the purposes of the POEO Act.

²⁰ In July 1998, the Government granted a once-only, two-year exemption for the anti-competitive provisions by passing a regulation under the *Competition Policy Reform (NSW) Act 1995*.

4. Objectives of the acts

Appendix 3 sets out the legislative objects of the *Waste Minimisation and Management Act 1995* (Waste Act) and the *Protection of the Environment Operations Act 1997* (POEO Act).

Waste Minimisation and Management Act

The Hansard record of the second reading speech of the Waste Act describes the Act's original objectives:

A modern system demands a shift towards waste minimisation, re-use and recycling with a continuing imperative for environmentally sound disposal of residual wastes. This bill embraces these new challenges in three ways. It establishes unambiguous principles and goals in waste management. It clearly outlines the roles and responsibilities of State and local government, the manufacturing industry and the waste industry to ensure the most comprehensive and equitable management of all waste streams. The bill then underpins these new roles and responsibilities with a modern, flexible and environmentally focused system of regulation and economic incentives.

The Act has four principal components:

- establishment of the State Waste Advisory Council to advise the Minister and EPA on waste matters
- establishment of regional waste boards based on local government areas to manage waste regionally
- a statutory framework for industry waste reduction planning
- establishment of a Waste Planning and Management Fund to finance waste reduction and land management initiatives.

Protection of the Environment Operations Act

The second reading speech for the POEO Act describes the legislative objectives of the Act:

This Government is both aware of, and reacting on, the urgent need to prevent harm to the environment and to ensure that we have ongoing improvement for future generations. At the same time, we are committed to improving our existing institutions and laws to provide a balanced and prosperous future for NSW, both environmentally and economically.

The speech goes on to state:

With the introduction of the Protection of [the] Environment Bill 1997, this Government continues its commitment to ecologically sustainable development and to regulatory reform. Central to this commitment is the need to provide for strong anti-pollution laws and an efficient and equitable enforcement regime.

Apart from the transfer of the operational aspects of the Waste Act to the POEO Act, no significant amendments have been made to the former. Similarly, the POEO Act has not been amended except for minor changes.

In meeting the objective of preventing harm to the environment, the regulatory provisions seek to:

- license those activities which may have potentially large and serious impacts on the environment
- regulate without licences those people whose activities may have smaller but still potentially serious impacts on the environment

- provide an economic tool—the waste levy—that discourages waste disposal and encourages avoidance, re-use, recycling or reprocessing by incorporating external environmental costs in landfill prices.

Schedule 1 of the POEO Act sets out those activities that require licences. These activities must comply with their licence conditions.

If an activity does not require a licence, it may be required to meet other responsibilities set out in the POEO Act and its regulations. The NSW Environment Protection Authority's *Guide to Licensing under the Protection of the Environment Operations Act 1997, Parts A and B* (EPA 1999), describe the licensing process in detail.

Review group's considerations

The NCP review group sought comment on whether the objectives of the Waste Act and POEO Act were adequately defined and still appropriate. Submissions to the review generally supported the objectives of both acts as currently drafted. Several submissions, however, identified the need to incorporate criteria that ensure that waste reduction initiatives give consideration to both environmental and economic outcomes rather than environmental considerations alone.

Unusually, the Waste Act establishes principles as well as objects. Two principles are set out:

- to achieve by the end of 2000 a 60% reduction in the amount of waste disposed of in NSW
- to establish a waste management hierarchy: avoidance; re-use; recycling and reprocessing; and disposal.

The waste target as a principle within the Act has been an effective means of raising community awareness of the NSW Government's intentions for waste minimisation. This principle remains appropriate. However, a single target, measured on a per capita basis, may be too simplistic to reflect performance in waste streams that differ in their characteristics. Given their potential to increase costs to businesses, targets and measures should reflect the relevant circumstances affecting the commercial and industrial and the construction and demolition waste streams. The review group understands that the Minister for the Environment has established an expert panel to advise him on future waste targets, benchmarks and measures. The panel should take account of how the establishment and implementation of future targets affect competition within those sectors.

A majority of submissions (with the exception of the Local Government and Shires Associations) came out strongly against the use of broad-brush waste-diversion targets because of their inconsistency with the principles of ecologically sustainable development. These principles require consideration of *both* environmental *and* economic factors in developing waste management options, rather than a waste diversion 'at all costs' approach as suggested by the current target.

The waste hierarchy appears to be a useful guide for considering waste policy and regulatory and management options that give priority to the best environmental outcomes. It is a simple, highly visible message about waste goals. However, from the perspective of its impact on competition, the hierarchy needs to be balanced with the concept of efficiency. Maximising re-use, recycling or reprocessing without considering efficiency may result in increased costs to producers and adversely impact on competitiveness without significant environmental benefit.

While submissions (particularly the Local Government and Shires Associations) generally supported the hierarchy, they considered it to be misleading in the absence of additional guidance on waste avoidance, re-use and recycling. Several submissions recommended that the hierarchy also be subject to environmental and economic considerations when used to guide waste management decisions.

The objects of the Waste Act [section 3(2)(a), (b), (c), (e) & (f)] relating to waste avoidance, re-use and recycling and reprocessing and disposal remain appropriate, even with the recommended modification to the industry waste reduction planning provisions (see recommendation 6 below).

Since the operational aspects of the Waste Act were transferred to the POEO Act, section 3(2)(g) is no longer relevant and should be repealed. This section sets out the object to achieve and ensure environmentally responsible transporting and reprocessing and handling of waste.

Given the recent enactment of the POEO Act, its objects remain relevant.

Recommendation 2

Waste targets and performance measures need to take account of how they affect competition.

Recommendation 3

Repeal section 3(2)(g) of the Waste Act as being no longer relevant to the Act since the operations provisions of the Waste Act were repealed and those functions transferred to the POEO Act.

5. Restrictions to competition

The review group considers that there are three provisions within the Waste Minimisation and Management Act (Waste Act) and the Protection of the Environment Operations Act (POEO Act) that restrict competition and recommends amendments to:

1. powers of regional waste boards to direct council charging policies
2. industry waste reduction plans
3. supervisory licensing.

The issues paper also identified two other areas where the POEO Act may restrict competition:

1. environment protection licensing
2. the waste levy.

The review group makes separate recommendations about each of these two areas.

Charging policies of waste boards (section 18(1)(a) - Waste Act)

Section 18 of the Waste Act allows waste boards to determine region-wide charging policies for municipal waste collections and other council collection services, including council-run landfills within their regions. These powers apply only to services provided by constituent councils and do not extend to services provided by the private sector. The purposes of these powers are to:

- ensure that the full costs associated with waste disposal are taken into account
- encourage waste avoidance, re-use or recycling rather than waste disposal
- make communities accountable for their own waste and minimise waste transfers.

Regional charging policies may be implemented in at least two ways. Waste boards may set specific charging policies for waste services, resulting in uniform pricing of council services within their regions. Alternatively, boards may establish guidelines for charging policies and structures, resulting in consistent and harmonised policies without necessarily resulting in uniform charges. These provisions potentially give waste boards the power to both control prices and limit competition between council service providers within a region. They also give them the power to fix prices where councils are in competition with the private sector, for example, with trade waste or non-putrescible landfills.

In practice, waste boards focus on establishing charging policies and structures that harmonise council waste services without seeking uniform charges.²¹ For domestic waste, boards actively seek the introduction of user-pays disposal fees that charge domestic premises according to the amount of waste disposed of.

Waste boards have also developed policies on waste disposal that focus on ensuring that the prices charged for landfills within their regions recover the full costs associated with disposal and discourage interregional waste transfers.²² Boards focus on establishing charging systems that allow for differential pricing for different types of waste; for example, discounts for separated green waste.

²¹ Cross-Regional Program Report (1998). *Variable Rate Charges for Domestic Waste Collection on Differential Charging*. Aquatech Pty Ltd.

²² Cross-Regional Program Report (1998). *Landfill Charging Structures*. Aquatech Pty Ltd.

Review group's considerations

The NCP review group sought specific comment on waste board charging policies, in terms of their appropriateness, potential restrictions on competition and alternatives. The current drafting of these provisions permits considerable debate as to whether there is a risk to competition and some submissions addressed these issues. They argued that the powers were unnecessary and not justified under existing competition principles. Regional waste boards' submissions put forward a very strong case for the retention of these pricing powers. They saw these powers as underpinning their future capacity to manage regional waste effectively. The boards saw their use of these powers in broad policy terms rather than in terms of price fixing.

The review group acknowledges that the pricing of waste services can represent a critical ingredient in influencing market dynamics with respect to determining the end use of waste products. However, the power of boards to control prices and, consequently, limit competition between service providers within a region, would not appear to be justifiable on economic efficiency grounds or necessary to achieve the regulatory objectives.

Accordingly, there is a strong case for amending section 18 of the Waste Act to remove the power of boards to set or control prices for waste collection or disposal. The Government may wish to vest boards with powers to issue pricing *guidelines* with a view to ensuring that the full costs associated with waste disposal are taken into account.

To date, the boards have not exercised their powers to establish charging policies, preferring to rely on guidance. There are not likely to be any impacts arising from a transition to the proposed arrangement.

There had been concern that this provision may be in conflict with the competitive conduct rules of Part IV of the Trade Practices Act. The Government, therefore, gave short-term legislative protection from the Part IV. Repeal of section 18(1)(a) will remove any potential conflict.

Recommendation 4

Amend section 18 (1)(a) of the Waste Act to remove the power of waste boards to establish management and charging policies for the waste services provided by the constituent councils on the basis that this power unnecessarily limits competition. Replace it with a provision that allows boards to issue guidelines.

Requirements for the preparation of industry waste reduction plans (Part 4 - Waste Act)

The Waste Act envisages industry waste reduction plans (IWRPs) as a voluntary initiative between industry and the NSW Government. IWRPs are typically developed in consultation with industry members. However, where an industry does not co-operate in developing an IWRP, or an industry sector does not comply with the provisions of a plan, the Minister for the Environment can require a non-negotiated IWRP and require industry compliance.

To date, there have been three IWRPs: for milk packaging, used tyres, and beer and soft drink packaging.

IWRPs can specify the following:

- waste reduction targets
- actions to be taken in the areas of product design, production and packaging for reducing waste
- actions to increase re-use and recycling of waste, litter management and safe disposal

- monitoring and reporting systems
- industry financial contributions.

In line with the administrative practices of the EPA, all IWRPs in NSW are subject to economic assessment by the EPA of the potential costs imposed on an industry.

Industry has committed itself to significant waste reduction in those IWRPs negotiated to date:

- The dairy industry is committed to achieving a 60% reduction in milk packaging disposed of to landfill by 31 December 2000, based on the 1990 baseline.
- The tyre industry has agreed to a graduated waste reduction target of a 50% reduction in the total equivalent passenger units (EPU) of tyres disposed of by 2005.
- The beer and soft drink industry has agreed to an overall waste reduction in beer and soft drink packaging waste by 5.5% to 81 grams per litre by 2003.

An important feature of the NSW industry waste reduction framework is that IWRPs typically apply to entire industries rather than individual firms.²³ The Waste Act does not limit the scope of IWRPs and, consequently, there may be certain features of the implementation of IWRPs that may potentially result in anti-competitive effects.

These include:

- Defining industries for the purposes of IWRPs may result in higher costs for firms covered by plans than firms in related industries outside the plans that may be competitors.
- IWRPs may require the establishment of joint industry bodies to oversee the management of industry waste; this may result in collusion on pricing for certain activities in the plan, for example, fixing a buy-back price for used containers for reprocessing.²⁴
- IWRPs may require certain levels (and costs) of compliance with waste management targets for all industry participants; these may act as barriers to entry into the market.

Non-negotiated IWRPs

By their nature, non-negotiated IWRPs have the potential to place significant costs on industry. It is not intended to use these powers except in extraordinary circumstances; for example, with an unco-operative industry or where a national measure has been adopted and is to be implemented in each jurisdiction.

Section 37 of the Waste Act permits the Minister to decide that the proposed IWRP is to be prepared by the EPA without negotiation with any nominated industry member based on:

- the past performance by the industry in collecting, recycling or reducing waste
- co-operation with the EPA in the preparation of an IWRP for the industry
- the diversity, complexity or competitive nature of the industry.

Regulation-making powers

The purpose of the regulation-making powers in the Waste Act (Division 3) is to encourage industry to participate in the IWRP process, or to require actions to reduce waste by industries that have not complied with an agreed plan. The powers are explicit in terms of introducing container deposit legislation, recovery targets or other take-back schemes. The introduction of

²³ NSW EPA (1995). *Waste Reforms*, the policy paper that introduced the Waste Act, focuses exclusively on 'industry sectors' rather than individual waste generators. A sector-wide co-operative approach was perceived as yielding the greatest results.

²⁴ Such arrangements require specific authorisation from the Australian Competition and Consumer Commission.

these schemes would place significant costs on industry and the regulation-making provisions were designed to ensure that IWRPs and other negotiated instruments delivered real waste avoidance gains.

Any regulation established under these provisions would have to comply with the *Subordinate Legislation Act 1989*, which specifies the requirements for new regulations. The effect on an industry of the introduction of any such regulation would need to be documented in a regulatory impact statement (RIS) tabled in Parliament along with the regulation. The RIS would need to demonstrate that it provided net benefit to the community. Parliament has the power to disallow any proposed industry regulation. Nonetheless, the current review needs to consider the benefits and costs of having the power to make such a regulation.

Review group's considerations

The NCP review group sought comment on alternatives to IWRPs, particularly non-regulatory measures. There was general dissatisfaction with IWRPs as they currently operate, with a majority of submissions noting that IWRPs have been ineffective in meeting their waste reduction objectives. Plans were variously described as 'politically motivated', 'top-down approach' and 'last resort'. A majority of responses supported non-regulatory means of achieving the objectives of IWRPs.

Some submissions (see Appendix 1) explored alternatives including expansion of national initiatives and the use of economic instruments to influence consumer choice and achieve environmental outcomes.

The review group specifically asked for comment on the selection of target industries and consideration of economic assessment criteria to assist development of an IWRP. A number of submissions supported consideration of both industry sectors and materials, and the need to justify the industry and material selection in terms of environmental harm. To this end, a majority of submissions supported the application of economic criteria before developing an IWRP to ensure industries and materials were fairly targeted.

The review group recognises that a degree of compulsion is necessary to make the industry waste reduction provisions workable. However, the cost and competition impacts of non-negotiated plans need to be fully recognised. Section 37 of the Waste Act should therefore be amended to insert a requirement that the EPA prepare and make public a report on the net public benefit of proceeding with the development of an involuntary IWRP (except where it implements a national environment protection measure).

The review group understands that the Minister, in his statutory review, will closely examine developments relevant to legislated schemes for product stewardship.

Recommendation 5

Amend section 37 of the Waste Act to require the Environment Protection Authority to prepare and make public a report on the net public benefit of proceeding with the development of a non-negotiated industry waste reduction plan, other than where it implements a national environment protection measure.

Licensing under the POEO Act

Licence conditions aim to specify the standards required to protect the environment; for example, requirements for landfills to be lined to prevent the escape of pollutants to ground water. Licence conditions, *prima facie*, restrict competition by imposing compliance costs, which may be a barrier to entry. Significant costs are imposed on licensees through the

application of performance bonds or post-closure financial assurances that represent a barrier to entry for waste disposal services.

The EPA undertook a regulatory impact assessment of waste licensing as part of the introduction of the Waste Minimisation and Management Regulation 1996.²⁵ The licensing provisions of the POEO Act were also subject to cost–benefit analysis in a regulatory impact statement²⁶. Both documents were subject to extensive industry and community consultation and demonstrated a net benefit for the proposed regulatory arrangements.

Waste facilities may attract environment protection licence conditions that are not generally applied to other activities licensed under the POEO Act.²⁷ Because these conditions apply only to waste facilities, they may be considered to be anti-competitive, particularly where they impose significant costs on their operators.

Review group’s considerations

The NCP review group recognises community expectations that the EPA should be the appropriate regulatory authority for hazardous wastes where these have the potential to cause environmental harm. Licensing is the appropriate regulatory tool, for example, for transport, treatment and similar activities related to hazardous, industrial and Group A wastes (i.e. controlled aqueous wastes and non aqueous wastes). However, there may be other circumstances where the current licensing scheme is not necessary to ensure appropriate environmental management. Other tools that lead to reduced compliance costs for industry may be more suitable. These include regulations, guidelines, or environment protection notices. These options should be thoroughly explored in the Minister’s statutory review and their regulatory impacts tested.

The review group notes that the Minister for the Environment, in issuing his terms of reference for the statutory review of the Waste Act and the POEO Act, has indicated that he wishes to consider the appropriateness or otherwise of the waste regulatory regime. The review group has been advised that this will involve a rigorous reconsideration of appropriate regulatory tools.

²⁵ NSW EPA (1996). *Regulatory Impact Statement for the Proposed Waste Minimisation and Management Regulation*, June 1996. These provisions are now included in the Protection of the Environment Operations (Waste) Regulation 1999 and the POEO Act.

²⁶ NSW EPA (1996) *Protection of the Environment Operations Bill 1996—Impact Analysis of the Draft Schedule of EPA-licensed Activities*.

²⁷ ss. 75 and 76 of the POEO Act place additional conditions on licensed waste facilities including:

- information provision: the licensee to provide information relating to the creation, collection, handling, transportation, treatment, reprocessing, recycling, re-use or disposal of waste
- environment management plan: to prepare, and comply with, an environmental waste management plan
- conditions relating to waste received at premises, specifically
 - handling or disposal of waste received
 - limits on certain classes and quantities
- provide incentives to encourage separation of waste delivered to those premises.

Recommendation 6

Proposed amendments to the waste regulatory regime should take account of restrictions on competition.

Supervisory licensee requirements for putrescible landfills (section 87 - POEO Act)

The principal aim of the supervisory licensee provisions of the POEO Act is to permit private sector entrance into the putrescible waste market under strictly controlled conditions that will not compromise achievement of environmental goals. This addresses community concerns that:

... profit-oriented private operators will not recognise and respond to waste reduction goals, and that they will be more prone to cut corners in environmental management.²⁸

Public authority control of putrescible facilities aims to ensure that facilities operate in accordance with NSW environmental policies and enjoy a higher degree of public confidence.

When a public authority exercises its supervisory licensee functions under section 87 of the POEO Act and sets the price for putrescible waste disposal, it could be in conflict with Part IV of the Trade Practices Act (Commonwealth) and the NSW Competition Code. Section 87 of the POEO Act was protected from Part IV of the Trade Practices Act and the NSW Competition Code until 20 July 2000.²⁹

A system of supervisory licences may restrict competition by limiting entry to the industry and controlling the prices charged for putrescible waste disposal. The provision requiring the supervisory licensee to direct the disposal charges imposed by a private operator may limit the development of a competitive market for putrescible waste disposal services. A possible justification for this is that unrestricted competition in this market would undermine the Government's waste reform goals.

Review group's considerations

The NCP review group sought comment on the need for supervisory licences and possible alternatives to current pricing control arrangements that would ensure appropriate environmental standards. Regional waste boards, Waste Service NSW and the Local Government and Shires Associations want to retain supervisory licences. The Beverage Industry Environment Council and the Private Landfillers Association could see no justification for them, given that the policy justification for supervisory licences appears to be that the private sector could not be trusted to maintain environmental standards.

While the stated purpose of supervisory licences may validly reflect some community concerns, the review group considers that a supervisory licence is unwarranted and represents an unnecessary restriction on competition for two reasons.

First, the waste levy on waste facilities serves the dual purpose of encouraging alternative options to waste disposal and providing a proxy for the recovery of the estimated external environmental and social costs arising from waste disposal in the Sydney metropolitan area and the extended regulated area.

²⁸ NSW EPA (1995). *Waste Reforms*.

²⁹ In July 1998, the Government granted a once-only, two-year exemption for this anti-competitive provision by passing a regulation under the *Competition Policy Reform (NSW) Act 1995*.

Secondly, as with all activities it regulates, the EPA is responsible for ensuring proper regulation and auditing of private putrescible waste landfills. The appropriate economic instrument to use with an environment protection licence is a financial assurance, which the EPA already requires as a licence condition for privately owned non-putrescible landfills. To ensure competitive neutrality, the EPA should apply such licence conditions equally to any private-operator, corporatised public operator, and non-corporatised public operator. All operators would need to build the costs of financial assurances into their pricing structure.

The review group understands that the EPA is reviewing all its environment protection licences of landfills.

Repeal of section 87 of the POEO Act will remove any potential conflict with the competitive conduct rules of Part IV of the Trade Practices Act.

Recommendation 7

Repeal section 87 of the *Protection of the Environment Operations Act 1997*, which provides for supervisory licences, as an unwarranted restriction on competition.

Recommendation 8

The Environment Protection Authority should complete its program of reviewing and, where necessary, revising its environment protection licences for landfills in NSW.

Recommendation 9

Ensure that the Environment Protection Authority has a policy in place for consistently requiring (where appropriate) financial assurances on all classes of landfills, including solid waste class 1 (putrescible) landfills.

Waste levy (section 88 - POEO Act)

A waste levy is applied to waste disposed of at licensed facilities

Historically, the pricing structure for waste disposal has been based solely on recovering capital and operating costs and has not included the external costs of disposal. (See 'Market failure and waste management', above.) Consequently, the waste disposal market has been distorted in favour of disposal by landfill and incineration, and alternatives—waste avoidance, re-use, recycling and reprocessing—are effectively priced out of the market.

The waste levy is an economic tool intended to discourage waste disposal and encourage behaviours further up the waste hierarchy. The levy is set to reflect the social and environmental impacts of waste disposal, such as greenhouse gas emissions; loss of amenity, inter-generational effects and transport corridor impacts.³⁰

The occupier of a licensed waste facility is required to pay the EPA contributions prescribed by the regulations for all waste received at the facility.³¹ The thresholds for a 'waste facility'

³⁰ These were identified in the 1996 regulatory impact statement for the (then) Waste Minimisation and Management Regulation 1996 as being in the range of \$13 to \$33 a tonne for the Sydney metropolitan area and \$11 to \$26 a tonne for the extended regulated area. The current rates of the levy are \$17 and \$8.

³¹ s. 88, *Protection of the Environment Operations Act 1997*

are such that no commercial landfill falls beneath the threshold of 20 000 tonnes of inert waste per year—a very low threshold. The levy applies to all licensed waste facilities except those used ‘solely for the purposes of reusing, recycling or reprocessing waste’.

Levy differentials reflect the higher environmental externalities in the Sydney metropolitan area and provide a disincentive for the transfer of waste from the Sydney metropolitan area to remote locations for disposal.

Review group’s considerations

The NCP review group acknowledges that the imposition of the waste levy on waste facilities other than those used solely for the purposes of re-using, recycling or reprocessing waste discriminates against these facilities and may restrict competition. However, the application of the waste levy is based two premises.

First, the levy provides a proxy for the recovery of the estimated external environmental and social costs that arise from waste disposal in the Sydney metropolitan area and extended regulated area. Such costs arise from greenhouse emissions, local amenity impacts, waste transport corridors and scarcity of landfill sites. These costs are not otherwise recovered from waste collection and disposal services that focus on the operating and capital costs of such operations.

Secondly, the levy acts as an economic tool to discourage waste disposal and encourage behaviours further up the waste hierarchy (for example, re-use, recycling or reprocessing of waste).

The levy represents a state tax. There is compulsion in that the target licensed waste operators have no choice but to participate in the transaction. An equivalent good or service is not provided in exchange for payment. The waste levy is not unlike other taxes that may be discriminatory in their application.

A generally understood principle is that the taxing powers of jurisdictions are exempt from the application of the legislative review provisions of the Competition Principles Agreement.

Recommendation 10

Retain the waste levy under section 88 of the POEO Act.

Appendix 1:

Response to key issues

Summary of submissions to the National Competition Policy review of the *Waste Minimisation and Management Act 1995* (Waste Act) and the waste provisions of the *Protection of the Environment Operations Act 1997* (POEO Act)

Australian Retailers Association	Beverage Industry Environment Council (Access Economics)	Local Government and Shires Associations	NSW waste boards	Private Landfillers Association	Waste Service NSW (KPMG)	Western Sydney Waste Board
GENERAL POLICY APPROACH						
Seek national harmonisation of environment protection legislation.	Competition is a means of achieving waste minimisation through efficient use of scarce resources.	Shortcomings in the existing arrangements are a failure of implementation rather than legislation.	Seek minor changes to the current legislative arrangements.	Seek amendment to existing licensing and levy arrangements.	Existing legislation has resulted in a high degree of duplication and lack of accountability for waste management.	New paradigm approach with 'waste' seen as a 'resource'.
MARKET FAILURE						
1. Is there adequate justification for government action in waste management?						
	Government intervention in waste management to correct market failure is essential. The response should be non-wasteful and effective. The existing arrangements are wasteful.	Market failure has been identified in the issues paper, however, considers that recycling commodities subject to supply and demand are another form of market failure. Seek a 'control economy' for recyclables.	Government intervention in waste management necessary. Market failure adequately identified in issues paper.		Support the need for public policy intervention.	

Australian Retailers Association	Beverage Industry Environment Council (Access Economics)	Local Government and Shires Associations	NSW waste boards	Private Landfillers Association	Waste Service NSW (KPMG)	Western Sydney Waste Board
OBJECTIVES OF LEGISLATION						
2. Are the objectives of the WMMA clearly specified?						
	Consider current objectives are too general. Would like explicit cost-benefit criteria applied (ie. environmental benefits exceed the cost).	Support the existing objectives as currently expressed.	Support existing objectives.		Support existing objectives. Considers that 3(b) should not seek to reduce final disposal - should seek to allocate resources to their highest value. Also, seek cost benefit criteria to apply.	Current objectives are inadequate and in conflict with ESD principles. Recommend adoption of 'highest resource value principle' - i.e. utilising resources at their highest possible value.
3. Use of waste targets to achieve waste reduction						
	Target has failed. Target is poorly specified - should specify the type of waste since different wastes have different environmental impacts. Blanket target conflicts with development of regionally appropriate approaches and ESD.	Strongly support the 60% target. Failure to reach target has been due to a lack of Government commitment.	Existing target will need amendment – possibly replaced by a series of targets that are ESD consistent.		Do not support 'volume reduction' targets. If target is too high or too low, a misallocation of resources would result. Target is poorly defined.	60% target is in direct conflict with ESD principles.
4. Appropriateness of waste hierarchy						
	Present hierarchy can be inconsistent with ESD principles without further guidance (i.e. by applying to all waste, at all times to all parts of NSW)	Strongly support waste hierarchy but concerned that 'avoidance' may be ignored in favour of 'recycling'.	Blanket application of the waste hierarchy is potentially ESD-inconsistent.		Hierarchy does not clarify the role of energy recovery processes.	Waste hierarchy is in direct conflict with ESD principles.

Australian Retailers Association	Beverage Industry Environment Council (Access Economics)	Local Government and Shires Associations	NSW waste boards	Private Landfillers Association	Waste Service NSW (KPMG)	Western Sydney Waste Board
OBJECTIVES OF LEGISLATION (cont.)						
5. Are the objectives of the POEO Act clearly specified?						
	Would like explicit cost-benefit criteria applied (i.e. environmental benefits exceed the cost).				Objectives reasonable - would benefit from some simplification.	
STATE WASTE ADVISORY COUNCIL						
6. Operation of SWAC						
Inadequate performance as a strategic body. No recommended solution.			Deferred comment for the Waste Act review.		SWAC is largely ineffective and duplicates the role of the Waste Board Chair meetings. SWAC functions should be 'merged' with a new 'metro-politan waste board'.	
WASTE BOARDS						
7. Operation of regional waste boards						
Excessive duplication and waste of resources. No recommended solution.	Local autonomy takes precedence over regional management. Boards have failed on regional uniformity; efficiency; and coordination.		Deferred comment for the Waste Act review.		Operational activities of boards have resulted in a high degree of duplication and waste of resources. High degree of duplication between the Waste Service's functions and the objectives of boards.	

Australian Retailers Association	Beverage Industry Environment Council (Access Economics)	Local Government and Shires Associations	NSW waste boards	Private Landfillers Association	Waste Service NSW (KPMG)	Western Sydney Waste Board
WASTE BOARDS (cont.)						
8. Number and regional coverage of waste boards						
	Considers Sydney has too many waste boards to meet the objectives of regionalisation.				Waste Board boundaries developed for political reasons not logistics. Recommends reducing the number from eight to three.	
9. Board governance						
	Boards currently dominated by local council interests - conflicts with regional approach.					
10. Regional waste planning						
	Regional waste plans must demonstrate net benefits for program proposals. Councils should be rewarded for compliance with plans.		Deferred comment for the Waste Act review.		Boards have failed to coordinate their infrastructure planning, resulting in duplication and wastage.	
11. Section 18 powers of waste boards to direct charging policies						
	Pricing powers over councils are anti-competitive but ineffective in meeting environmental objectives. Boards should be given 'real powers' (not specified) to undertake regional planning and ensure council compliance.	Pricing policies are considered 'superfluous' because of domestic charging requirements of Local Government Act.	Pricing powers are essential for board activities. Argue that competition restrictions are minimal. Part IV protection considered unnecessary as uniform charges are not sought. 'Pricing policy' interpreted more broadly.		Boards only control a small proportion of the waste stream, which reduces their effectiveness. Power to direct council waste should be revoked. Landfill charges should not seek uniform charging.	The opportunity to use these powers has not been tested.. Use of pricing powers is not expected to restrict competition. Flow control powers are essential and must be retained.

Australian Retailers Association	Beverage Industry Environment Council (Access Economics)	Local Government and Shires Associations	NSW waste boards	Private Landfillers Association	Waste Service NSW (KPMG)	Western Sydney Waste Board
WASTE BOARDS (cont.)						
12. Other waste board powers						
		Imposition of levy is strongly opposed.			Waste boards capacity to borrow money and operate waste facilities is opposed and should be clarified through the review.	
INDUSTRY WASTE REDUCTION PLANS						
13. Operation of IWRPs						
Politically motivated and wasteful.	IWRPs appear ineffective in cost-benefit terms.		View IWRPs as a 'last-resort' regulatory alternative where other avenues have been exhausted.		IWRPs have had little impact in reducing waste. Supports reviewing the processes and appropriateness of IWRPs.	Forcing change has been unsuccessful (i.e. top-down approach).
14. Alternatives to IWRPs						
Should be abolished in favour of national arrangements.	Support development of plans which would: <ul style="list-style-type: none"> • promote avoidance; or • encourage recycling. Self-regulatory arrangements are supported, as is the wider use of pricing mechanisms to influence outcomes.	Do not support non-regulatory IWRP models.			Consider environmental levy at industry production level to reflect environmental costs and therefore passed onto consumers.	Drive-through recycling network will allow industry to apply product stewardship principles.

Australian Retailers Association	Beverage Industry Environment Council (Access Economics)	Local Government and Shires Associations	NSW waste boards	Private Landfillers Association	Waste Service NSW (KPMG)	Western Sydney Waste Board
INDUSTRY WASTE REDUCTION PLANS (cont.)						
15. Selection of target industries						
The shift in focus of IWRPs from industry sector to problem materials is supported. However, these should be national schemes.	Industry selection appears politically motivated rather concerned with environmental harm. Waste types need to be prioritised on the basis of environmental harm. Current focus on appears to favour domestic packaging.	IWRPs should be targeted to where they are most effective.	The use of an IWRP model for material-specific initiatives should be explored.		Material-specific approach should be explored and ranked on environmental impact.	Drive-through centres allow targeting of problem materials.
16. Determination of waste reduction targets						
	Targets should be practical and achievable, not top-down/ imposed.					
17. Economic evaluation criteria to be met before development of IWRP						
Support requirement for costs and benefits to be determined.		Conditional support to applying cost/benefit criteria.	Support economic assessment of proposed IWRPs to ensure cost-effective means of meeting waste targets.		Support the introduction of economic evaluation mechanisms.	Economic assessment criteria would not improve outcomes of current IWRPs.
18. Introduction of container deposit legislation						
Strongly oppose introduction of container deposit legislation.						

Australian Retailers Association	Beverage Industry Environment Council (Access Economics)	Local Government and Shires Associations	NSW waste boards	Private Landfillers Association	Waste Service NSW (KPMG)	Western Sydney Waste Board
LICENSING						
19. Operation of environment protection licences						
		Note that the licensing regime has been tightened in recent years - expression of support.	Support existing licensing arrangements.	Current threshold for a waste facility creates market distortions and disadvantages private licensed landfills.	Support existing licensing arrangements. Current threshold causes distortions by encouraging small landfills.	
20. Alternatives to general licensing of waste facilities and waste activities						
		Existing licensing arrangements should not be weakened.	Licensing should not be all-encompassing: exemption to encourage some activities and facilities (e.g. material recycling).	Should be no threshold, with a minimal requirement for small facilities to register with EPA, with waste levy applying to all facilities.	Threshold should be reduced or abolished. Consideration should be given to all waste facility operators contributing to a fund to remediate a site after closure. Also suggest adoption of an industry code of conduct for operators of licensed waste facilities.	

Australian Retailers Association	Beverage Industry Environment Council (Access Economics)	Local Government and Shires Associations	NSW waste boards	Private Landfillers Association	Waste Service NSW (KPMG)	Western Sydney Waste Board
LICENSING (cont.)						
21. Requirement for supervisory licence for privately-owned putrescible waste facilities						
	Justification for its retention is weak. Do not support justification of public sector supervision of transfer stations and landfill on the basis that 'they [private sector] can't be trusted'. Question the community resistance to fully privatised operations.	Responsibility for putrescible landfills should continue to lie in the hands of public authorities because of the risk of encouraging more waste disposal. Support retention of supervisory licences.	Give strong support to the retention of supervisory licences and pricing oversight to ensure full cost recovery over the life of a facility.	Supervisory licences should be abolished - justification for its retention is weak (i.e. to ensure environmental outcomes). Current anti-competitive regime places a huge cost on Sydney residents. Supervisory licensee is also likely to be a major customer of operator - creating a conflict of interest.	Supervisory licensing should be retained but local councils should not be considered appropriate licensees. Recommend establishment of an independent licensee body to regulate all public and private operators.	
22. Application of supervisory licences on Waste Service NSW						
	Questions why Waste Service is treated differently from private sector waste operations.			If supervisory licences are retained then they should apply to the NSW Waste Service.	Recent independent review as part of Waste Service corporatisation showed no market failure justifying the public ownership of the NSW waste service.	
23. Landfill environment management plans (LEMPs)						
					Section 76 of POEO Act requires clarification in relation to the difference between a LEMP and an 'environmental waste management plan'	

Australian Retailers Association	Beverage Industry Environment Council (Access Economics)	Local Government and Shires Associations	NSW waste boards	Private Landfillers Association	Waste Service NSW (KPMG)	Western Sydney Waste Board
LEVY UNDER SECTION 88 OF THE POEO ACT						
24. Operation of the s. 88 levy						
		See it as a revenue raising instrument with little effective impact on waste disposal.	See the levy as a key policy instrument to achieve waste reduction goals.	Levy should apply to all waste facilities with a rebate for recycled materials.	Support the application of the levy. Not effective for site-specific externalities or encouraging new technologies. Fails to provide adequate pricing signals.	Current changes to the levy are arbitrary in timing and amount. Levy does not take into account full external costs.
25. Alternatives to the s. 88 waste levy						
		Consider application of point-of-sale levies and 'a system of refunds' as having more effect on waste behaviour.	Tailor existing levy for greater regional or product differentiation to achieve waste reduction.	Levy should be extended to include other treatment options (e.g. composting). The 1996 EPA regulatory impact statement greatly exaggerated the external costs. Alternative waste treatments also have external costs that are not measured.	Application of levy should be clarified in terms of its application to alternative technologies (e.g. waste to energy) which may be superior to disposal when measured on ESD criteria. Should adopt a sliding scale levy based on energy consumed in disposal (including transport). Result would be a separate levy rate for each facility (i.e. ESD ranking).	On-going evaluation of external costs should be undertaken.
26. Role of the EPA						
	Problems impeding the EPA's effectiveness would be addressed through the reform of the Act.				EPA needs to be restructured to separate the policy, regulatory and enforcement functions.	

Australian Retailers Association	Beverage Industry Environment Council (Access Economics)	Local Government and Shires Associations	NSW waste boards	Private Landfillers Association	Waste Service NSW (KPMG)	Western Sydney Waste Board
OTHER						
27. Role of Department of Urban Affairs and Planning (DUAP)						
					DUAP is well placed to undertake regional planning for waste facilities	
28. Allocation of monies from the waste fund						
					Administration of funds should go to an independent entity, e.g. Sustainable Energy Development Authority (SEDA)	
29. Third party access to Waste Service NSW facilities						
					Have legal opinion suggesting that access is not justified under NCP agreement.	
30. SEPP48						
					Seek a broadening of the terms of reference to clarify the operation of SEPP48 Currently a large 'first mover advantage.	

Appendix 2:

Waste management in NSW

What is waste?

The *Waste Minimisation and Management Act 1995* introduced a definition of waste that encompasses substances that are discarded, rejected, unwanted, surplus or abandoned and allows a particular problematic substance such as waste that may not fall clearly within the definition to be nominated.

Regulations under the *Protection of the Environment Operations Act 1997* divides liquid and non-liquid waste types into different 'classes' depending on their likely impacts on the environment. Some common waste types (for example, municipal waste, building and demolition waste and clinical waste) are given pre-assigned classifications in legislation. For wastes without pre-assigned classification, the regulatory framework requires the use of the *Environmental Guidelines: Assessment, Classification and Management of Liquid and Non-liquid Wastes*³² to determine the waste classification.

The classification of waste is based on the potential of the waste to cause environmental harm or have impacts on the local amenity. The regulations define a number of different classes for which there are differing regulatory obligations:

- non-liquid waste classes: *hazardous, industrial, solid and inert waste*
- liquid waste classes: *hazardous, Group A, Group B, Group C and non-controlled aqueous liquid waste*.

Putrescible waste is classified as a solid waste, and therefore poses a higher environmental risk than inert waste. It consequently needs to be managed with greater care. Putrescible wastes contain:

- food waste, or
- waste consisting of animal matter (including dead animals or animal parts), or
- biosolids categorised as Stabilisation Grade C in accordance with the criteria set out in the EPA guidelines for biosolids.³³

Wastes collected from either municipal or commercial and industrial sectors typically need to be disposed of at putrescible waste facilities.

Waste generation

Historically, waste disposal data has focused on the greater Sydney metropolitan region, with little reliable baseline data for beyond the region. International waste disposal comparisons are usually made in terms of kilograms of waste disposed of per \$100 of gross domestic product or gross State product. Total waste disposal in NSW adjusted for gross State product decreased from 1990 to 1993 and then stabilised at 20% to 25% below 1990 levels. The 1998 total level of waste disposal was 18% below the 1990 levels when adjusted for gross State product.

³² EPA 1999

³³ *Environmental Guidelines: Use and Disposal of Biosolids Products* (EPA 1997)

NSW waste industry profile

In 1997, the NSW waste management industry was estimated to be worth more than \$600 million, of which \$229 million was income generated from the treatment, processing and/or disposal of waste. The private and public trading businesses involved directly employed over 3000 people in NSW, and a large majority of those were involved in the collection and transport of waste. In addition, over 2000 people were employed by the general government waste-management sector.³⁴

Waste Service NSW is currently the dominant operator of waste disposal facilities in Sydney, and has had an effective monopoly control and ownership of putrescible-waste disposal facilities.³⁵ Private sector companies currently operate putrescible-waste transfer stations and landfill sites under contract to Waste Service NSW. A number of private companies and local councils own, control and operate non-putrescible landfill sites, and there is significant competition between providers of landfill disposal of non-putrescible waste.³⁶

The Australian waste management industry is concentrated in NSW, with 30.9% of companies operating in the State. The key service segments of the industry in terms of percentage share of the national waste management market are:

- collection and transportation of waste: 58.7%
- processing and/or disposal of waste: 25.4%
- collection, transport, treatment and sale of recyclables: 10.2%
- other: 5.7%.

A majority of the collection and transport of waste is undertaken by private operators on behalf of public authorities (such as councils) or private businesses.³⁷

National trends indicate that over the five years to 1998–99, industry gross product (IGP) grew at an annual average rate of 4.5% a year.³⁸ During this time a transfer of activity from local government to private businesses has bolstered growth in domestic waste management. An increasing proportion of the domestic waste is going to recycling processors.

Key features of the industry structure in NSW are:

- Local councils retain responsibility for the collection of waste and kerbside recyclables, but these services are often provided by private collectors under contract to councils.
- Transfer stations and landfills receiving council waste are owned by Waste Service NSW, which often contracts out all operations to private operators.
- Generators of commercial and industrial waste, and construction and demolition waste, dispose of the majority of their non-putrescible waste to private operators who own and operate landfill sites.³⁹

³⁴ Source: Australian Bureau of Statistics—Waste Management Industry Australia. 1996–97.

³⁵ The exceptions are Hawkesbury and Bankstown councils, which operate small putrescible facilities. Waste Service's near monopoly on putrescible waste will end when Collex's Woodlawn landfill comes on line.

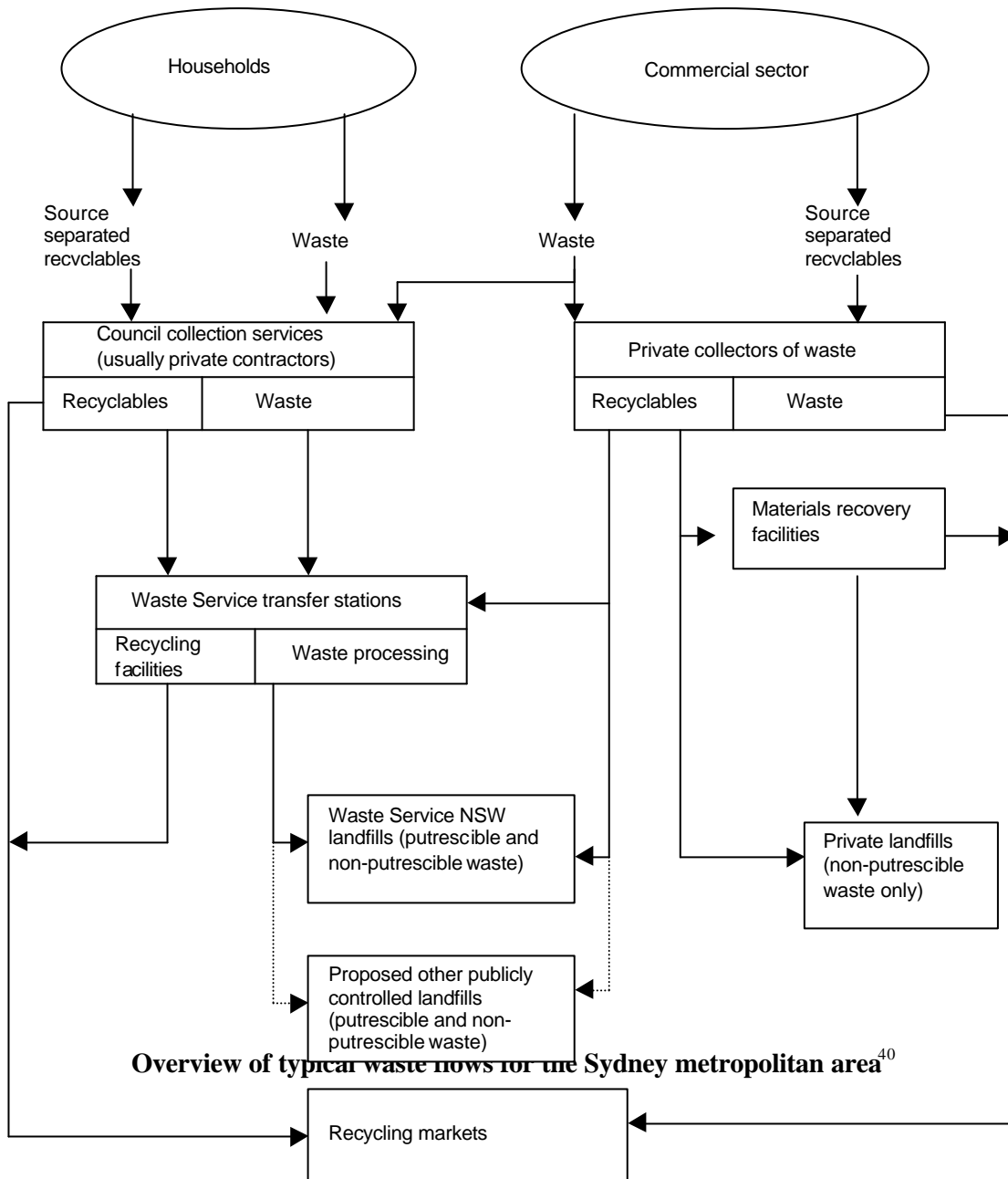
³⁶ Source: Independent Pricing and Review Tribunal (1996). *Pricing Policies of the Waste Recycling and Processing Service of NSW*.

³⁷ Source: IBIS Business Information Pty Ltd. Q9634—Waste Disposal Services

³⁸ Source: IBIS Business Information Pty Ltd. Q9634—Waste Disposal Services

³⁹ Source: Independent Pricing and Review Tribunal (1996). *Pricing Policies of the Waste Recycling and Processing Service of NSW*.

The figure below is an overview of the flow of waste material, including recyclables, within NSW.



⁴⁰ Source: Independent Pricing and Review Tribunal (1996). *Pricing Policies of the Waste Recycling and Processing Service of NSW*, p. 18

Appendix 3:

Legislative objects

Waste Minimisation and Management Act 1995 (Waste Act) and the Protection of the Environment Operations Act 1997 (POEO Act)

Section 3 of the Waste Act sets out the principles and objects of the Act:

- 3 (1) The underlying principles of this Act are:
- (a) to achieve by the end of 2000 a 60% reduction in the amount of waste disposed of in New South Wales (being a per capita reduction based on 1990 disposal rates), and
 - (b) to establish a waste management hierarchy of the following of the following order:
 - avoidance
 - re-use
 - recycling and reprocessing
 - disposal.
- (2) The objects of this Act are as follows:
- (a) to ensure that local government, industry and community representatives are involved in the development of State wide waste policy
 - (b) to 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
 - (c) to ensure that industry shares with the community the responsibility for minimising and managing waste
 - (d) (Repealed)
 - (e) to promote and ensure the efficient resourcing of waste planning service planning and delivery
 - (f) to achieve integrated waste planning and services on a regional basis
 - (g) to promote and ensure environmentally responsible transporting, reprocessing and handling of waste
 - (h) (Repealed)
- in accordance with the principles of ecologically sustainable development contained in section 6 (2) of the *Protection of the Environment Administration Act 1991*.

Section 3 of the *Protection of the Environment Operations Act 1997* sets out its objects.

- (3) The objects of this Act are as follows:
- (a) to protect, restore and enhance the quality of the environment in New South Wales, having regard to the need to maintain ecologically sustainable development,
 - (b) to provide increased opportunities for public involvement and participation in environment protection
 - (c) to ensure that the community has access to relevant and meaningful information about pollution

- (d) to reduce risks to human health and prevent the degradation of the environment by use of mechanisms that promote the following:
 - (i) pollution prevention and cleaner production,
 - (ii) the reduction to harmless levels of discharge of substances likely to cause harm to the environment,
 - (iii) the reduction in the use of materials and re-use or recycling of materials,
 - (iv) the making of progressive environmental improvements, including the reduction of pollution at source,
 - (v) the monitoring and reporting of environmental quality on a regular basis,
- (e) to rationalise, simplify and strengthen the regulatory framework for environmental protection
- (f) to improve the efficiency of administration of the environmental legislation
- (g) to assist in the achievement of the objectives of the *Waste Minimisation and Management Act 1995*.

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Waste Minimisation and Management Amendment Regulation 1999