

WESTERN AUSTRALIA

**ENVIRONMENTAL PROTECTION
AMENDMENT ACT 1998**

No. 14 of 1998

AN ACT to amend the *Environmental Protection Act 1986*.

[Assented to 21 May 1998.]

The Parliament of Western Australia enacts as follows:

PART 1 — PRELIMINARY

Short title

1. This Act may be cited as the *Environmental Protection Amendment Act 1998*.

Commencement

2. (1) Subject to subsections (2) and (3), this Act comes into operation on the day on which it receives the Royal Assent.

(2) Section 20 comes into operation on the day on which the *Environmental Protection (Landfill) Levy Act 1998* comes into operation.

(3) Part 2 and sections 22 to 25, 28, 30, 31 and 35 come into operation on such day as is, or such days as are respectively, fixed by proclamation.

Principal Act

3. In this Act the *Environmental Protection Act 1986** is referred to as the principal Act.

[* Reprinted as at 7 March 1996.
For subsequent amendments see 1996 Index to
Legislation of Western Australia, Table 1, pp. 74-5.]

PART 2 — LEGAL PROCEEDINGS AND PENALTIES

Section 3 amended

4. Section 3 (1) of the principal Act is amended by inserting after the definition of “the Western Australian Planning Commission” the following definitions —

“

“Tier 1 offence” means —

- (a) an offence listed in Part 1 of Schedule 1; or
- (b) an offence declared to be a Tier 1 offence under an approved policy;

“Tier 2 offence” means —

- (a) an offence listed in Part 2 of Schedule 1; or
- (b) an offence declared to be a Tier 2 offence under an approved policy;

“Tier 3 offence” means —

- (a) an offence listed in Part 3 of Schedule 1; or
- (b) an offence declared to be a Tier 3 offence under an approved policy;

”.

Section 35 amended

5. (1) Section 35 (1) of the principal Act is amended —

- (a) by inserting “and” after paragraph (a);

(b) by deleting “; and” after paragraph (b) and substituting a full stop; and

(c) by deleting paragraph (c).

(2) After section 35 (1) of the principal Act the following subsections are inserted —

“

(1a) An approved policy may create offences and provide penalties for them as follows —

(a) for a Tier 1 offence —

(i) if the offender is an individual, a penalty not exceeding \$250 000 and, in the case of a continuing offence, a daily penalty not exceeding \$50 000; and

(ii) if the offender is a body corporate, a penalty not exceeding \$500 000 and, in the case of a continuing offence, a daily penalty not exceeding \$100 000;

(b) for a Tier 2 offence —

(i) if the offender is an individual, a penalty not exceeding \$62 500 and, in the case of a continuing offence, a daily penalty not exceeding \$12 500; and

(ii) if the offender is a body corporate, a penalty not exceeding \$125 000 and, in the case of a continuing offence, a daily penalty not exceeding \$25 000;

and

- (c) for a Tier 3 offence, a penalty not exceeding \$5 000 and, in the case of a continuing offence, a daily penalty not exceeding \$1 000.

(1b) For the purposes of subsection (1a), an offence is a Tier 1, Tier 2 or Tier 3 offence if the approved policy declares that such an offence is an offence of that category.

”.

Sections 49 and 50 repealed and sections substituted

6. Sections 49 and 50 of the principal Act are repealed and the following sections are substituted —

“

Causing pollution and unreasonable emissions

49. (1) In this section —

“**unreasonable emission**” means an emission of noise, odour or electromagnetic radiation which unreasonably interferes with the health, welfare, convenience, comfort or amenity of any person.

(2) A person who intentionally or with criminal negligence —

- (a) causes pollution; or
(b) allows pollution to be caused,

commits an offence.

(3) A person who causes pollution or allows pollution to be caused commits an offence.

(4) A person who intentionally or with criminal negligence —

- (a) emits an unreasonable emission from any premises; or
- (b) causes an unreasonable emission to be emitted from any premises,

commits an offence.

(5) A person who —

- (a) emits an unreasonable emission from any premises; or
- (b) causes an unreasonable emission to be emitted from any premises,

commits an offence.

(6) A person charged with committing an offence against subsection (2) may be convicted of an offence against subsection (3) which is established by the evidence.

(7) A person charged with committing an offence against subsection (4) may be convicted of an offence against subsection (5) which is established by the evidence.

Discharge of waste in circumstances in which it is likely to cause pollution

50. (1) A person who intentionally or with criminal negligence —

- (a) causes waste to be placed; or

- (b) allows waste to be placed,

in any position from which the waste —

- (c) could reasonably be expected to gain access to any portion of the environment; and
- (d) would in so gaining access be likely to result in pollution,

commits an offence.

(2) A person who causes or allows waste to be placed in any position from which the waste —

- (a) could reasonably be expected to gain access to any portion of the environment; and
- (b) would in so gaining access be likely to result in pollution,

commits an offence.

(3) A person charged with committing an offence against subsection (1) may be convicted of an offence against subsection (2) which is established by the evidence.

”.

Section 65 amended

7. (1) After section 65 (4) of the principal Act the following subsection is inserted —

“

(4a) A person who —

- (a) is bound by a pollution abatement notice; and

- (b) intentionally or with criminal negligence does not comply with a requirement contained in the pollution abatement notice,

commits an offence.

”.

(2) After section 65 (5) of the principal Act the following subsection is inserted —

“

(5a) A person charged with committing an offence against subsection (4a) may be convicted of an offence against subsection (5) which is established by the evidence.

”.

Section 73 amended

8. Section 73 (5) of the principal Act is repealed and the following subsections are substituted —

“

(5) A person who intentionally or with criminal negligence contravenes a direction given to that person under subsection (1), without reasonable excuse for that contravention, commits an offence.

(6) A person who contravenes a direction given to that person under subsection (1), without reasonable excuse for that contravention, commits an offence.

(7) A person charged with committing an offence against subsection (5) may be convicted of an offence against subsection (6) which is established by the evidence.

”.

Section 74 amended

9. (1) After section 74 (1) of the principal Act the following subsection is inserted —

“

(1a) Subject to subsection (2), it shall be a defence to proceedings for a Tier 1 offence if the person charged with that offence proves that —

- (a) the person took reasonable precautions and exercised due diligence to prevent the commission of the offence; and
- (b) as soon as was reasonably practicable after the occurrence that gave rise to the charge the person notified particulars of the occurrence in writing to the Chief Executive Officer.

”.

(2) Section 74 (2) of the principal Act is amended by inserting after “subsection (1)” the following —

“ or (1a) ”.

Section 89 amended

10. Section 89 (5) and (6) of the principal Act are repealed.

Section 90 amended

11. (1) After section 90 (1) of the principal Act the following subsections are inserted —

“

(1a) An inspector may require a person to produce to the inspector any licence, registration, permit, approval, certificate or authority granted and issued under this Act to the person or alleged by the person to have been so granted and issued.

(1b) An inspector may —

- (a) conduct such examination and inquiry as the inspector considers necessary to ascertain whether there has been compliance with the Act; and
- (b) question any person to ascertain whether or not there has been compliance with this Act and require that person to answer any question and, if the inspector considers it appropriate, to verify the answer by statutory declaration.

”.

(2) Section 90 (2) is amended by inserting after “subsection (1)” the following —

“ , (1a) or (1b) ”.

Section 92 amended

12. Section 92 (2) of the principal Act is repealed and the following subsections are inserted —

“

(2) An inspector who finds a person committing an offence or who on reasonable grounds suspects that an offence has been committed or is about to be committed by a person may require the person —

- (a) to give the name and address of the person to the inspector; and
- (b) if the inspector suspects on reasonable grounds that a name or address so given is false, to produce evidence that the particulars are correct.

(3) If a person fails or refuses to comply with a requirement under subsection (2) (a), or gives a name or

address that the inspector reasonably believes to be false, the inspector may require the person to stay with the inspector until the person can be delivered to a police officer to be dealt with according to law and, for that purpose, may detain the person.

(4) A person who —

(a) does not comply with a requirement made under subsection (1), (2) or (3); or

(b) gives a false name or address to an inspector,

commits an offence.

”.

**Sections 92A, 92B, 92C, 92D, 92E, 92F, 92G and 92H
inserted**

13. After section 92 of the principal Act the following sections are inserted —

“

Seizure

92A. (1) An inspector may seize any thing that the inspector suspects on reasonable grounds —

(a) is, or is intended to be, involved in the commission of an offence against this Act; or

(b) may afford evidence of the commission of such an offence.

(2) As soon as practicable after the thing is seized, the inspector is to give a receipt for it to the person from whom it was seized.

(3) If for any reason, it is not practicable to comply with subsection (2), the inspector is to —

- (a) leave the receipt at the place of seizure; and
- (b) ensure the receipt is left in a reasonably secure way and in a conspicuous position.

(4) Nothing in this section restricts the power of an authorized person or police officer to seize equipment under section 81A.

Dealing with thing seized

92B. (1) If any thing is seized under section 92A and, in the opinion of the Chief Executive Officer, the thing is likely to cause pollution or perish if no action is taken to deal with it, the Chief Executive Officer may sell, treat, preserve, destroy, dispose of or otherwise deal with the thing in the prescribed way.

(2) Except as provided in subsection (3), proceeds of the sale of any thing under subsection (1) are to be paid into the Consolidated Fund.

(3) If —

- (a) any thing is seized by an inspector in connection with a suspected offence;
- (b) the thing is sold under subsection (1); and
- (c) a decision is subsequently made not to commence a prosecution in respect of the offence or, after the prosecution has been completed, no person is convicted of the offence,

the proceeds of the sale of the thing (less any costs and expenses incurred by the Chief Executive Officer in dealing

with the thing) are to be paid to the person from whom the thing was seized.

(4) The Chief Executive Officer may recover all costs and expenses incurred by the Chief Executive Officer in respect of action taken under subsection (1).

(5) The costs and expenses referred to in subsection (4) may be —

- (a) awarded by order under section 99Y; or
- (b) recovered as a debt due from the owner of the thing or the person from whom the thing was seized in a court of competent jurisdiction, despite proceedings not having been taken for an offence involving the seized thing.

Return of thing seized

92C. (1) The Chief Executive Officer may at any time before a prosecution involving the thing seized is started authorize the return of the thing seized to its owner or person entitled to the possession of the thing or the person from whom the thing was seized.

(2) The Chief Executive Officer may authorize the return of the thing on such conditions as the Chief Executive Officer thinks fit, including a condition that the person give security to the Chief Executive Officer for payment of the value of the thing if it is forfeited.

(3) A person must not contravene a condition imposed under subsection (2).

(4) If a court convicts a person of an offence against subsection (3), the court may, in addition to any penalty imposed under that subsection, order the person to pay

compensation for any damage or loss caused by the offence to any person.

(5) Subject to section 92B, subsection (1) and any order for forfeiture made under this Act, the Chief Executive Officer is to order the return of the seized thing to its owner or the person entitled to the possession of the thing or the person from whom the thing was seized at the end of —

- (a) 12 months from the time it was seized; or
- (b) if a prosecution for an offence involving the thing is started within that 12 months — the prosecution for the offence and any appeal from the prosecution.

Forfeiture of abandoned property

92D. (1) If any thing is seized under this Act and a person to whom the thing can be returned under section 92C cannot be found, the Chief Executive Officer is to give notice in the prescribed manner that the thing is being held by the Department and may be claimed by its owner.

(2) If after the expiration of 3 months from the day on which notice has been given under subsection (1) the thing has not been claimed by its owner the thing is forfeited to the Crown.

Person not to interfere with seized property

92E. (1) A person must not remove, damage or interfere with any thing seized under this Act unless the person is authorized to do so by the Chief Executive Officer or an inspector.

(2) If a court convicts a person of an offence against subsection (1), the court may, in addition to any penalty imposed under that subsection, order the person to pay compensation to the Chief Executive Officer or to any other person for any damage or loss caused by the offence.

Assistance to inspector

92F. (1) An inspector may be assisted in the exercise of his or her powers under this Part by such persons as the inspector considers necessary.

(2) A person is not personally liable for any matter or thing done or omitted to be done in good faith by that person in the course of giving assistance to an inspector under subsection (1).

Inspector to try to minimize damage

92G. In exercising any power under this Part, an inspector is to try, as far as is practicable, to minimize damage to any property.

Compensation

92H. (1) A person who suffers loss or damage as a result of the exercise of —

- (a) the power of entry conferred on an inspector by section 89 (3); or
- (b) the powers in respect of seizure conferred on an inspector by section 92A or 92B,

may within one year of the exercise of that power apply to the Chief Executive Officer for compensation for that loss or damage.

(2) No compensation is payable pursuant to an application under subsection (1) unless the Chief Executive Officer is of the opinion that, in the circumstances of the case, it is just to pay compensation.

(3) The amount of compensation payable is to be determined by agreement between the person applying for that compensation and the Chief Executive Officer or, in default of any such agreement, by a Local Court on the application of the person so applying or of the Chief Executive Officer.

”.

Part VIA inserted

14. After section 99 of the principal Act the following Part is inserted —

“

**PART VIA — LEGAL PROCEEDINGS AND
PENALTIES**

Division 1 — Tier 2 offences and modified penalties

Giving a modified penalty notice

99A. (1) This section applies to a person if —

- (a) the Chief Executive Officer is of the opinion that —
 - (i) the person has committed a Tier 2 offence; and
 - (ii) there is sufficient evidence to support the allegation of the offence;

- (b) the Minister has consented, under section 114 (1a), to the institution of proceedings in respect of the offence;
- (c) as soon as was reasonably practicable after the occurrence giving rise to the allegation of the offence, the alleged offender notified particulars of the occurrence in writing to the Chief Executive Officer;
- (d) after the occurrence giving rise to the allegation of the offence, the alleged offender took all reasonable and practicable steps to minimize and remedy any adverse environmental effects of that occurrence;
- (e) the alleged offender cooperated with officers and employees of the Department and provided information and assistance when so requested;
- (f) the alleged offender has taken reasonable steps to ensure that the circumstances giving rise to the allegation of the offence do not re-occur; and
- (g) having regard to the nature and particulars of the alleged offence and to the particulars of the circumstances relating to the alleged offence, the alleged offence can adequately be dealt with under this Division.

(2) If the Chief Executive Officer makes a determination that a person alleged to have committed a Tier 2 offence is a person to whom this section applies, the Chief Executive Officer is to —

- (a) issue a certificate —
 - (i) stating the determination; and

- (ii) specifying how the criteria in subsection (1) on which the determination was made were met;

and

- (b) give a modified penalty notice, and the certificate referred to in paragraph (a), to the person.

(3) A modified penalty notice may be served personally or by registered post.

(4) A determination by the Chief Executive Officer that a person is, or is not, a person to whom this section applies, or the fact that the Chief Executive Officer has not made such a determination, cannot be the subject of appeal or judicial review or otherwise be called in question in any proceedings.

Content of notice

99B. (1) A modified penalty notice is to be in the prescribed form and is to —

- (a) contain a description of the alleged offence;
- (b) advise that if the alleged offender does not wish to have a complaint of the alleged offence heard and determined by a court, the amount of money specified in the notice as being the modified penalty for the offence may be paid to a designated person within a period of 28 days after the service of the notice; and
- (c) inform the alleged offender as to who are designated persons for the purposes of receiving payment of modified penalties.

(2) In a modified penalty notice the amount specified as the modified penalty for the alleged offence referred to in the notice is to be the amount that was —

- (a) if the alleged offender has not previously been convicted of an offence of that kind and has not previously paid a modified penalty under this Division in respect of an alleged offence of that kind, 10% of the maximum fine that could be imposed for that offence by a court; and
- (b) if the alleged offender has previously been convicted of an offence of that kind, or has previously paid a modified penalty under this Division in respect of an alleged offence of that kind, 20% of the maximum fine that could be imposed for that offence by a court,

at the time the alleged offence is believed to have been committed.

(3) The Chief Executive Officer may, in writing, appoint persons or classes of persons to be designated persons for the purposes of this section.

Extension of time

99C. The Chief Executive Officer may, in a particular case, extend the period of 28 days within which the modified penalty may be paid and the extension may be allowed whether or not the period of 28 days has elapsed.

Withdrawal of notice

99D. (1) Within one year after a modified penalty notice was given to an alleged offender in respect of an offence the Chief Executive Officer may, if —

- (a) the Chief Executive Officer is no longer of the opinion that the alleged offender is a person to

whom section 99A applies in respect of that offence; and

- (b) the modified penalty has not been paid,

withdraw the modified penalty notice by sending to the alleged offender a notice in the prescribed form stating that the modified penalty notice has been withdrawn.

(2) A notice under this section may be served personally or by registered post.

Consequence of paying modified penalty

99E. (1) Subsections (2) and (3) apply if the modified penalty specified in a modified penalty notice has been paid within 28 days or such further time as is allowed.

(2) If this subsection applies it prevents the bringing of proceedings and the imposition of penalties to the same extent that they would be prevented if the alleged offender had been convicted by a court of, and punished for, the alleged offence.

(3) If this subsection applies, the Chief Executive Officer is to publish a notice of payment of the modified penalty, and such particulars as are prescribed, in —

- (a) the annual report of the Department prepared for the purposes of the *Financial Administration and Audit Act 1985*; and
- (b) a daily newspaper circulating throughout the State.

(4) Payment of a modified penalty is not to be regarded as an admission for the purposes of any proceedings, whether civil or criminal.

Register of certificates and modified penalty notices

99F. (1) The Chief Executive Officer is to maintain a register of —

- (a) certificates and modified penalty notices issued under section 99A (2);
- (b) withdrawal forms sent under section 99D; and
- (c) such particulars in relation to modified penalty notices and payments as the Chief Executive Officer considers appropriate or as are prescribed.

(2) The register is to be available for public inspection under such conditions and at such places and times as are prescribed.

Application of penalties collected

99G. An amount paid as a modified penalty is to be dealt with as if it were a fine imposed by a court as a penalty for an offence.

Division 2 — Infringement notice offences

Interpretation

99H. In this Division —

“**designated person**”, in section 99K, 99M or 99N, means a person appointed under section 99I to be a designated person for the purposes of the section in which the term is used;

“infringement notice offence” means a Tier 3 offence, or an offence against the regulations, that is prescribed by the regulations for the purposes of this Division.

Designated persons

99I. (1) The Chief Executive Officer may, in writing, appoint persons or classes of persons to be designated persons for the purposes of section 99K, 99M or 99N or for the purposes of 2 or more of those sections.

(2) A person who is authorized to give infringement notices under section 99J is not eligible to be a designated person for the purposes of section 99K, 99M or 99N.

Giving a notice

99J. (1) An inspector who has reason to believe that a person has committed an infringement notice offence may, within 35 days after the alleged offence is believed to have been committed, give an infringement notice to the alleged offender.

(2) An infringement notice may be served personally or by registered post.

Content of notice

99K. (1) An infringement notice is to be in the prescribed form and is to —

- (a) contain a description of the alleged offence;
- (b) advise that if the alleged offender does not wish to have a complaint of the alleged offence heard and determined by a court, the amount of money

specified in the notice as being the modified penalty for the offence may be paid to a designated person within a period of 28 days after the service of the notice; and

- (c) inform the alleged offender as to who are designated persons for the purposes of receiving payment of modified penalties.

(2) In an infringement notice the amount specified as the modified penalty for the offence referred to in the notice is to be the amount that was the prescribed modified penalty at the time the alleged offence is believed to have been committed.

(3) The modified penalty that may be prescribed for a Tier 3 offence is not to exceed —

- (a) if the alleged offender has not previously been convicted of an offence of that kind and has not previously paid a modified penalty under this Division in respect of an alleged offence of that kind, 10% of the maximum fine that could be imposed for that offence by a court; and
- (b) if the alleged offender has previously been convicted of an offence of that kind, or has previously paid a modified penalty under this Division in respect of an alleged offence of that kind, 20% of the maximum fine that could be imposed for that offence by a court.

Convictions and payments to be disregarded after 5 years

99L. For the purposes of section 99K (3), a prior conviction or payment of a modified penalty in respect of an alleged offence is not to be taken into account for the purposes of determining whether the alleged offender has

previously been convicted of an offence or has previously paid a modified penalty notice unless —

- (a) the prior conviction was recorded within the period of 5 years immediately prior to the giving of an infringement notice in respect of the present alleged offence; or
- (b) the modified penalty was paid in respect of the prior alleged offence within the period of 5 years immediately prior to the giving of an infringement notice in respect of the present alleged offence.

Extension of time

99M. A designated person may, in a particular case, extend the period of 28 days within which the modified penalty may be paid and the extension may be allowed whether or not the period of 28 days has elapsed.

Withdrawal of notice

99N. (1) Within one year after the notice was given a designated person may, whether or not the modified penalty has been paid, withdraw an infringement notice by sending to the alleged offender a notice in the prescribed form stating that the infringement notice has been withdrawn.

(2) If an infringement notice is withdrawn after the modified penalty has been paid, the amount is to be refunded.

(3) A notice under this section may be served personally or by registered post.

Consequence of paying modified penalty

99O. (1) Subsection (2) applies if the modified penalty specified in an infringement notice has been paid within 28 days or such further time as is allowed and the notice has not been withdrawn.

(2) If this subsection applies it prevents the bringing of proceedings and the imposition of penalties to the same extent that they would be prevented if the alleged offender had been convicted by a court of, and punished for, the alleged offence.

(3) Payment of a modified penalty is not to be regarded as an admission for the purposes of any proceedings, whether civil or criminal.

Application of penalties collected

99P. An amount paid as a modified penalty is, subject to section 99N (2) —

- (a) if issued by an inspector employed by a local government, to be paid to the local government; and
- (b) otherwise, to be dealt with as if it were a fine imposed by a court as a penalty for an offence.

Division 3 — Penalties

Penalties

99Q. (1) An individual who is convicted of an offence under a section specified in —

- (a) column 2 of Division 1 of Part 1 of Schedule 1; or

- (b) column 2 of Division 1 of Part 2 of Schedule 1,

is liable to a penalty not exceeding the penalty specified opposite to that section in column 3 of that Division.

(2) A body corporate which is convicted of an offence under a section specified in —

- (a) column 2 of Division 2 of Part 1 of Schedule 1; or

- (b) column 2 of Division 2 of Part 2 of Schedule 1,

is liable to a penalty not exceeding the penalty specified opposite to that section in column 3 of that Division.

(3) A person, being either an individual or a body corporate, who or which is convicted of an offence under a section specified in —

- (a) column 2 of Division 3 of Part 2 of Schedule 1; or

- (b) column 2 of Part 3 of Schedule 1,

is liable to a penalty not exceeding the penalty specified opposite to that section in column 3 of that Division or Part.

Daily penalty

99R. (1) Without limiting section 71 of the *Interpretation Act 1984*, where an offence is committed by a person by reason of the contravention of a provision of this Act under which the person is required or directed to do any act or thing, or to refrain from doing any act or thing, that offence is taken to continue so long as the act or thing so required or directed remains undone, or continues to be done, as the case may be.

(2) In addition to a penalty specified in column 3 of Schedule 1, a person, being either an individual or a body

corporate, who or which is convicted of an offence under a section specified in column 2 of any Part of Schedule 1 is liable to a daily penalty not exceeding the daily penalty specified opposite to that section in column 4 of the Part for each day or part of a day during which the offence continues after written notice of the alleged offence has been given by the Chief Executive Officer to the offender.

(3) In addition to a penalty specified in column 3 of Schedule 1, a person, being either an individual or a body corporate, who or which is convicted of an offence under a section specified in column 2 of any Part of Schedule 1 is liable to a daily penalty not exceeding the daily penalty specified opposite to that section in column 4 of the Part for each day or part of a day during which the offence continues after the offender is convicted.

Attempt and accessory after the fact

99S. A person who attempts to commit, or becomes an accessory after the fact to, an offence (in this section called “**the principal offence**”) commits —

- (a) if the principal offence is a Tier 1 offence, a Tier 1 offence;
- (b) if the principal offence is a Tier 2 offence, a Tier 2 offence;
- (c) if the principal offence is a Tier 3 offence, a Tier 3 offence,

and is liable on conviction, unless the Act specifies otherwise, to the penalty to which a person convicted of the principal offence is liable.

Division 4 — Additional powers available to the court

Meaning of “convicted”

99T. For the purposes of this Division —

- (a) “**convicted**” has the same meaning as in the *Sentencing Act 1995*; and
- (b) a person is convicted of an offence notwithstanding that a spent conviction order is made under section 39 of the *Sentencing Act 1995* in respect of the conviction.

Orders generally

99U. (1) One or more orders may be made under this Division against a person convicted of an offence against this Act.

(2) Orders may be made under this Division in addition to any penalty that may be imposed in relation to the offence.

(3) Orders made under this Division in relation to an offence are not limited by the monetary penalty that may be imposed in respect of the offence.

(4) Nothing in this Division limits the court’s powers under the *Sentencing Act 1995* or the *Crimes (Confiscation of Profits) Act 1988*.

Orders for forfeiture

99V. (1) If a court convicts a person of an offence against this Act, the court may, in addition to any other penalty imposed under this Act, order the forfeiture to the

Crown of any thing used, or intended to be used, in the commission of the offence.

(2) A court is not to make an order for the forfeiture of any thing under subsection (1) unless the prosecutor applies for the order.

(3) If a thing is forfeited to the Crown, any security given to the Chief Executive Officer under section 92C in lieu of the thing is taken to be forfeited to the Crown in lieu of the thing.

Disposal of forfeited things

99W. (1) Any thing forfeited to the Crown under this Act may be sold, destroyed or otherwise disposed of or dealt with in the prescribed way.

(2) Proceeds of the sale of any thing forfeited to the Crown under this Act are to be paid into the Consolidated Fund.

(3) If the thing is not sold, or if the proceeds of the sale are insufficient to defray the costs and expenses of seizing, storing, treating, selling, destroying, disposing of or otherwise dealing with the thing and an order for costs or expenses incurred in respect of the thing has not been made under section 99Y (1) (a) (i) —

- (a) those costs and expenses or the unsatisfied balance of them; and
- (b) the costs of and incidental to the proceedings for recovery from the former owner,

may be recovered from the offender as a debt due in a court of competent jurisdiction.

Orders for restoration and prevention

99X. (1) If a court convicts a person of an offence against this Act, the court may order the offender to take such steps as are specified in the order, within such time as is so specified (or such further time as the court on application may allow) —

- (a) to prevent, control, abate or mitigate any harm to the environment caused by the commission of the offence;
- (b) to make good any resulting environmental damage; or
- (c) to prevent the continuance or recurrence of the offence.

(2) A court is not to make an order under subsection (1) unless the prosecutor applies for the order.

(3) The court may, in an order under this section, impose any other requirements the court considers necessary or expedient for enforcement of the order.

(4) A person who without lawful excuse, proof of which is on the person, does not comply with an order under this section commits an offence punishable after summary conviction by the court that imposed the order.

(5) If a court convicts a person under subsection (4) of failing to comply with an order, the court may order that the act required to be done may be done so far as is practicable by the Chief Executive Officer, or some other person appointed by the court, at the cost of the offender.

(6) Expenses and costs incurred, or to be incurred, by a person under an order under subsection (5) are to be ascertained in such manner as the court may direct and are

to be paid by, or recovered from, the offender in such manner as the court orders.

Orders for costs, expenses and compensation

99Y. (1) If a court convicts a person of an offence against this Act, the court may, if it appears to the court that —

(a) the Chief Executive Officer or a public authority has reasonably incurred costs and expenses in connection with —

(i) seizing, storing, treating, selling, destroying, disposing of or otherwise dealing with a thing seized under this Act in relation to the offence;

(ii) the prevention, control, abatement or mitigation of any harm to the environment caused by the commission of the offence; or

(iii) making good any resulting environmental damage;

or

(b) a person (including a public authority) has, by reason of the commission of the offence, suffered loss of or damage to property or has reasonably incurred costs and expenses in preventing or mitigating, or in attempting to prevent or mitigate, any such loss or damage,

order the offender to pay to the Chief Executive Officer, public authority or person the reasonable costs and expenses so incurred, or compensation for the loss or damage so suffered, as the case may be, in such amount as

does not exceed the prescribed amount and is fixed by the order.

(2) The court may make an order under subsection (1) at the time of imposing a penalty for the offence or upon application at a later time.

Orders regarding monetary benefits

99Z. (1) If a court convicts a person of any offence against this Act, the court may order the offender to pay an additional penalty of an amount not exceeding the court's estimation of the amount of any monetary benefits acquired by the offender, or accrued or accruing to the offender, as a result of the commission of the offence.

(2) In this section —

“monetary benefits” means monetary, financial or economic benefits acquired by the avoidance of charges, fees or other costs which would have been incurred by the offender if the offender had not committed the offence.

Additional orders

99ZA. (1) If a court convicts a person of any offence against this Act, the court may do any one or more of the following —

- (a) order the offender to take specified action to publicise the offence and its environmental and other consequences and any other orders made against the person;
- (b) order the offender to take specified action to notify specified persons or classes of persons of the offence and its environmental and other consequences and of any orders made against the person (including, for example, the publication in

an annual report or any other notice to shareholders of a company or the notification of persons aggrieved or affected by the offender's conduct);

- (c) order the offender to carry out a specified project for the restoration or enhancement of the environment in a public place or for the public benefit.

(2) The court is not to make an order under subsection (1) (c) unless the prosecutor applies for the order.

(3) The court may, in an order under this section, fix a period for compliance and impose any other requirements the court considers necessary or expedient for enforcement of the order.

(4) If the offender fails to comply with an order under subsection (1) (a) or (b), the Chief Executive Officer may take action to carry out the order as far as may be practicable, including action to publicise or notify —

- (a) the original contravention, its environmental and other consequences, and any other penalties imposed on the offender; and
- (b) the failure to comply with the order.

(5) The reasonable cost of taking action referred to in subsection (4) is recoverable by the Chief Executive Officer as a debt due in a court of competent jurisdiction.

Enforcement of orders for payment of moneys

99ZB. (1) If —

- (a) the court orders the payment of moneys under this Division; and

- (b) the amount payable under the order is not paid within 28 days after the date of the order,

the amount may be recovered as a judgment debt in a court of competent jurisdiction, unless an order is made under subsection (2).

(2) If the order is made by the Supreme Court or the District Court, that court may in addition make an order under section 59 of the *Sentencing Act 1995* and for that purpose that section, with any necessary changes, applies as if the order were a fine imposed on the offender.

(3) For the purposes of subsection (1), a certified copy of an order is on request to be issued (without payment of a fee) to the Chief Executive Officer and the copy may be registered (without payment of a fee) as a judgment in a court of competent jurisdiction.

”.

Section 112A inserted

15. After section 112 of the principal Act the following section is inserted —

“

Self-incrimination

112A. (1) An individual is not excused from answering a question or producing a document when required to do so under Part VI on the ground that to do so might tend to incriminate the individual or make the individual liable to a penalty.

(2) An answer given, or document produced, by an individual when required to do so under Part VI is not admissible in evidence against the individual in any criminal proceeding (other than proceedings in respect of giving false or misleading information) if the individual

objected at the time of doing so on the ground that it might incriminate the individual.

(3) Further information obtained as the result of an answer given, or document produced, by an individual when required to do so under Part VI is not inadmissible on the ground that —

- (a) the answer or document was required to be given; or
- (b) the answer or document might incriminate the individual.

”.

Section 113 repealed

16. Section 113 of the principal Act is repealed.

Section 114 amended

17. Section 114 of the principal Act is amended —

- (a) by repealing subsection (1) and substituting the following subsections —

“

(1) A prosecution for a Tier 1 offence is not to be instituted otherwise than by the Chief Executive Officer acting with the consent of the Minister.

(1a) Subject to subsection (3), proceedings in respect of a Tier 2 offence, whether by way of —

- (a) giving a modified penalty notice under section 99A; or

(b) prosecution for the offence,

as determined by the Chief Executive Officer, are not to be instituted otherwise than by the Chief Executive Officer acting with the consent of the Minister.

(1b) Subject to section 79 (2), a prosecution for a Tier 3 offence is not to be instituted otherwise than by —

(a) the Chief Executive Officer; or

(b) an authorized person acting under a power which that person is entitled by an authority issued under section 87 to exercise.

(1c) The Minister is not to give a direction or instruction to the Chief Executive Officer in respect of the giving of a modified penalty notice or an infringement notice or the institution of a prosecution.

”;

(b) in subsection (2) by deleting “12” and substituting the following —

“ 24 ”; and

(c) in subsection (3) by inserting after “police officer” the following —

“

acting with the consent of the Chief Executive Officer

”.

Schedule 1 repealed and a Schedule substituted

18. Schedule 1 to the principal Act is repealed and the following Schedule is substituted —

“

SCHEDULE 1 — PENALTIES

[Sections 99Q and 99R]

PART 1 — TIER 1 OFFENCES AND PENALTIES

Division 1 — Individuals

Column 1	Column 2	Column 3	Column 4
<i>Item</i>	<i>Section</i>	<i>Penalty — individual</i>	<i>Daily penalty</i>
1	6 (7)	\$250 000	\$50 000
2	47 (1)	\$125 000	\$25 000
3	48 (6)	\$162 500	\$32 500
4	49 (2)	\$500 000 or 5 years imprisonment or both	\$100 000
5	49 (3)	\$250 000 or 3 years imprisonment or both	\$50 000
6	49 (4)	\$125 000	\$25 000
7	50 (1)	\$500 000	\$100 000
8	50 (2)	\$250 000	\$50 000
9	65 (4a)	\$250 000	\$50 000

*Environmental Protection Amendment
 Act 1998*

10	69 (5)	\$162 500	\$32 500
11	71 (5)	\$250 000	\$50 000
12	73 (5)	\$250 000	\$50 000

Division 2 — Bodies corporate

Column 1	Column 2	Column 3	Column 4
<i>Item</i>	<i>Section</i>	<i>Penalty — body corporate</i>	<i>Daily penalty</i>
1	6 (7)	\$500 000	\$100 000
2	47 (1)	\$250 000	\$50 000
3	48 (6)	\$325 000	\$65 000
4	49 (2)	\$1 000 000	\$200 000
5	49 (3)	\$500 000	\$100 000
6	49 (4)	\$250 000	\$50 000
7	50 (1)	\$1 000 000	\$200 000
8	50 (2)	\$500 000	\$100 000
9	65 (4a)	\$500 000	\$100 000
10	69 (5)	\$325 000	\$65 000
11	71 (5)	\$500 000	\$100 000
12	73 (5)	\$500 000	\$100 000

PART 2 — TIER 2 OFFENCES AND PENALTIES

Division 1 — Individuals

Column 1	Column 2	Column 3	Column 4
<i>Item</i>	<i>Section</i>	<i>Penalty — individual</i>	<i>Daily penalty</i>
1	49 (5)	\$62 500	\$12 500
2	52	\$50 000	\$10 000
3	53 (1)	\$50 000	Nil
4	53 (2)	\$50 000	Nil
5	55 (1)	\$62 500	\$12 500
6	56	\$50 000	\$10 000
7	58 (1)	\$62 500	\$12 500
8	61 (1)	\$62 500	\$12 500
9	65 (5)	\$62 500	\$12 500
10	75 (2)	\$62 500	\$12 500
11	73 (6)	\$62 500	\$12 500
12	92C (3)	\$62 500	Nil
13	92E (1)	\$62 500	Nil
14	99X (4)	\$62 500	Nil

Division 2 — Bodies corporate

Column 1	Column 2	Column 3	Column 4
<i>Item</i>	<i>Section</i>	<i>Penalty — body corporate</i>	<i>Daily penalty</i>
1	49 (5)	\$125 000	\$25 000
2	52	\$100 000	\$20 000
3	53 (1)	\$100 000	Nil
4	53 (2)	\$100 000	Nil
5	55 (1)	\$125 000	\$25 000
6	56	\$100 000	\$20 000
7	58 (1)	\$125 000	\$25 000
8	61 (1)	\$125 000	\$25 000
9	65 (5)	\$125 000	\$25 000
10	73 (6)	\$125 000	\$25 000
11	75 (2)	\$125 000	\$25 000
12	92C (3)	\$125 000	Nil
13	92E (1)	\$125 000	Nil
14	99X (4)	\$125 000	Nil

Division 3 — Individuals and bodies corporate

Column 1	Column 2	Column 3	Column 4
<i>Item</i>	<i>Section</i>	<i>Penalty — individual or body corporate</i>	<i>Daily penalty</i>
1	47 (3)	\$50 000	Nil
2	51	\$25 000	\$5 000
3	62 (2)	\$25 000	\$5 000
4	67	\$10 000	Nil
5	72 (1)	\$50 000	\$10 000
6	72 (4)	\$50 000	\$10 000
7	76 (1)	\$25 000	\$5 000
8	76 (2)	\$25 000	\$5 000
9	81 (2)	\$25 000	Nil
10	82 (2)	\$25 000	\$5 000
11	83	\$25 000	Nil
12	86 (1)	\$10 000	\$2 000
13	86 (2)	\$10 000	\$2 000
14	86 (3)	\$10 000	\$2 000
15	90 (2)	\$25 000	\$5 000
16	91 (3)	\$25 000	\$5 000
17	92 (4)	\$25 000	\$5 000
18	93	\$25 000	Nil

19	95 (2)	\$25 000	\$5 000
20	96 (3)	\$10 000	\$2 000
21	112	\$50 000	Nil
22	120	\$50 000	Nil

PART 3 — TIER 3 OFFENCES AND PENALTIES

Column 1	Column 2	Column 3	Column 4
<i>Item</i>	<i>Section</i>	<i>Penalty — individual or body corporate</i>	<i>Daily penalty</i>
1	77 (1)	\$5 000	Nil
2	77 (2)	\$5 000	Nil
3	77 (3)	\$5 000	Nil
4	78 (1)	\$5 000	Nil
5	78 (3)	\$5 000	Nil
6	79 (1)	\$5 000	Nil
7	80	\$5 000	Nil
8	84 (1)	\$5 000	Nil
9	85 (1)	\$5 000	Nil
10	97 (2)	\$5 000	\$1 000
11	110H (6)	\$5000	Nil

”.

Schedule 2 amended

19. Schedule 2 to the principal Act is amended —

(a) by inserting after item 18 the following item —

“

18A. Regulating the seizure and storage of things under section 92A and the sale, preservation, treatment and other ways of dealing with those things.

”;

and

(b) in item 37 by deleting “\$200” and substituting the following —

“ \$5 000 ”.

PART 3 — WASTE MANAGEMENT

Division 1 — Amendments to principal Act

Part VIIA inserted

20. After section 110 of the principal Act the following Part is inserted —

“

PART VIIA — LANDFILL LEVY

***Division 1 — Collection of levy imposed under
Environmental Protection (Landfill) Levy Act 1998***

Interpretation

110A. In this Part —

“**Fund**” means the Waste Management and Recycling Fund established under section 110H;

“**levy**” means a levy imposed under the *Environmental Protection (Landfill) Levy Act 1998*.

Payment of levy

110B. (1) A levy is due and payable at such time or times, and in such manner, as is prescribed.

(2) A levy is payable to the Minister.

(3) The regulations may provide for the refund or deduction of amounts overpaid by way of levy and the payment of rebates.

Financial assurance

110C. The regulations may make provision —

- (a) empowering the Chief Executive Officer to require a licensee to provide a financial assurance for the purpose of securing or guaranteeing payment of a levy;
- (b) with respect to the form, amount, maintenance and termination of the financial assurance;
- (c) with respect to the conditions and procedures under which the financial assurance may be called on or used; and
- (d) with respect to matters necessary for, or incidental to, the effective operation of a financial assurance.

Payment by instalments

110D. (1) The regulations may provide for the payment of an amount of a levy to be made by instalments, and, subject to subsection (2), each instalment is due and payable at a time ascertained in accordance with the regulations.

(2) If —

- (a) the regulations provide for the payment of an amount of a levy to be made by instalments; and
- (b) an instalment is not paid at or before the time due for the payments of the instalment,

the whole of the amount of the levy unpaid becomes due and payable at that time.

Penalty for non-payment

110E. (1) If an amount of a levy remains unpaid after the day on which it becomes due for payment, there is payable to the Minister by way of penalty, in addition to the amount of the levy, an amount calculated at the rate of 20% per annum upon the amount of the levy from time to time remaining unpaid.

(2) The amount by way of penalty referred to in subsection (1) is to be calculated from the time when the amount of the levy becomes payable.

Recovery of levy

110F. The following amounts may be recovered by the Minister in a court of competent jurisdiction as debts due to the Minister —

- (a) a levy that is due and payable; and
- (b) an amount payable under section 110E.

Evading levy

110G. (1) A person who, by any wilful act, default or neglect, or by any fraud, art or contrivance whatever, evades or attempts to evade payment of all or any amount of a levy commits an offence.

Penalty: \$5 000 and treble the amount evaded or attempted to be evaded.

(2) The imposition on a person of a fine under subsection (1) does not affect the liability of the person to pay the levy and penalty under section 110E.

Division 2 — Waste Management and Recycling Fund

Waste Management and Recycling Fund

110H. (1) There is to be established and kept —

- (a) at the Treasury, as an account forming part of the Trust Fund constituted under section 9 of the *Financial Administration and Audit Act 1985*; or
- (b) with the approval of the Treasurer, at a bank,

an account to be called the “Waste Management and Recycling Fund”.

(2) The Fund is to be administered by the Minister.

(3) The Fund is to be credited with —

- (a) any levy paid;
- (b) any amount paid by way of penalty under section 110E;
- (c) income derived from the investment of moneys forming part of the Fund; and
- (d) any other moneys lawfully payable to the credit of the Fund.

(4) Moneys held in the Fund may be applied by the Minister —

- (a) to fund programmes relating to the management, reduction, reuse, recycling, monitoring or measurement of waste that are approved by the Minister; and

- (b) in payment of the costs of administering the Fund (including the costs of collecting levies and penalties and support and evaluation services).

(5) Moneys held in the Fund may be paid by the Minister to a person or body to conduct a programme relating to the management, reduction, reuse, recycling, monitoring or measurement of waste promoted by that person or body.

(6) A person or body to whom moneys are paid under subsection (5) who fails to ensure that —

- (a) the moneys are only expended for the purposes of the programme and in accordance with any terms or conditions imposed by the Minister;
- (b) a performance evaluation in respect of the programme for which the moneys are paid is carried out in accordance with any written direction of the Minister;
- (c) at such time or times as are prescribed, a special purpose audit is carried out by a registered company auditor of the allocation and expenditure of the moneys; or
- (d) a report on the audit is prepared by the auditor and a copy of the report is provided to the Minister as soon as is practicable after it is prepared,

commits an offence.

(7) The Minister is to —

- (a) seek the advice of such persons and bodies as the Minister thinks fit as to the setting and variation of a levy and the development of policy for the application of money from the Fund; and

- (b) from time to time develop and publish a statement of the objectives to be achieved by programmes funded under this section.

(8) The annual report of the Department prepared for the purposes of the *Financial Administration and Audit Act 1985* is to include a summary of any written performance evaluation carried out pursuant to a direction of the Minister by a person or body to whom moneys are paid under subsection (5).

Application of *Financial Administration and Audit Act 1985*

110I. (1) The provisions of the *Financial Administration and Audit Act 1985* regulating the financial administration, audit and reporting of departments apply to and in relation to the Fund.

(2) The administration of the Fund is for the purposes of section 52 of the *Financial Administration and Audit Act 1985* to be regarded as a service of the Department.

Review of Part VIIA

110J. The Minister shall carry out a review of the operation and effectiveness of this Part as soon as practicable after the expiry of three years from the coming into operation of section 20 of the *Environmental Protection Amendment Act 1998* and cause a report based on the review to be prepared and laid before each House of Parliament as soon as practicable after the review is completed.

”.

Schedule 2 amended

21. Schedule 2 to the principal Act is amended by inserting after item 36 the following item —

“
36A. The keeping and production of returns and other information by a licensee in relation to the receipt of waste.
”.

Part VIIB inserted

22. Immediately before section 111 of the principal Act, the following Part is inserted —

“
PART VIIB — WASTE MANAGEMENT OPERATIONS

Interpretation

110K. In this Part —

“**waste management operation**” means an operation for the collection, transport, storage, treatment or disposal of waste, or for 2 or more of those activities.

Waste Management (WA) established

110L. (1) A body called Waste Management (WA) is established.

(2) Waste Management (WA) —

- (a) consists of the Chief Executive Officer; and
- (b) is a body corporate with perpetual succession and a common seal.

(3) Proceedings may be taken by or against Waste Management (WA) in its corporate name.

(4) Waste Management (WA) is an entity that forms part of the Department and —

- (a) its services are services under the control of the Department; and
- (b) its operations are operations of the Department.

Waste Management (WA) may carry on waste management operations

110M. (1) Subject to subsection (2), Waste Management (WA) may carry on waste management operations at or in relation to the following sites —

- (a) the intractable waste disposal facility operated at Mt Walton East, Shire of Coolgardie by or on behalf of the State immediately before the coming into operation of section 22 of the *Environmental Protection Amendment Act 1998*;
- (b) the Metropolitan Septage Treatment Plant, Waterworks Road, Forrestdale operated by or on behalf of the State immediately before the coming into operation of section 22 of the *Environmental Protection Amendment Act 1998*;
- (c) the Industrial Liquid Waste Treatment Plant, Waterworks Road, Forrestdale operated by or on behalf of the State immediately before the coming into operation of section 22 of the *Environmental Protection Amendment Act 1998*.

(2) Waste Management (WA) is to carry on a waste management operation in accordance with —

- (a) the conditions and procedures to which the proposal to carry on the waste management operation is subject under Part IV; and
- (b) the directions of the Minister under section 110N.

(3) Waste Management (WA) does not require a licence or other authorization under any other provision of this Act in order to carry on a waste management operation and Waste Management (WA) is taken to comply with all of the provisions of this Act, other than this Part, when carrying on a waste management operation under subsection (1).

Directions by Minister

110N. (1) Without limiting section 32 of the *Public Sector Management Act 1994*, the Minister may give directions in writing to Waste Management (WA) with respect to the performance of Waste Management (WA)'s functions, either generally or with respect to a particular matter, including a direction that Waste Management (WA) is not to perform a function without the prior approval in writing of the Minister, and Waste Management (WA) is to give effect to those directions.

(2) If there is inconsistency between a direction of the Minister and —

- (a) a condition or procedure to which the proposal to carry on the waste management operation is subject under Part IV; or

- (b) a requirement or direction of the Treasurer under section 110Q,

the condition or procedure, or requirement or direction of the Treasurer, as the case may be, prevails to the extent of the inconsistency.

Monitoring of waste management operations

110O. (1) The Authority may monitor or cause to be monitored the implementation of any proposal of which Waste Management (WA) is the proponent insofar as that implementation is subject to —

- (a) any conditions or procedures which are set out in the relevant statement served under section 45 (5); and
- (b) any direction of the Minister under section 110N,

for the purpose of determining whether or not those conditions, procedures or directions have been or are being complied with and, if the Authority ascertains that any such condition, procedure or direction has not been or is not being complied with, the Authority is to inform the Minister accordingly.

(2) The Minister, on being informed under subsection (1) by the Authority that any relevant condition, procedure or direction has not been or is not being complied with, is to exercise one or more of the powers set out in section 48 (4) as if that section applied to the carrying on of a waste management operation in accordance with section 110M (2).

(3) Any order or direction given by the Minister to Waste Management (WA) under subsection (2) is taken to be a direction given under section 110N.

(4) Sections 47 and 48 do not apply to or in respect of Waste Management (WA) as a proponent.

Powers

110P. (1) Waste Management (WA) may, subject to this Part, do all things necessary or convenient to be done for or in connection with the performance of its functions under section 110M.

(2) Without limiting subsection (1), Waste Management (WA) may, for the purpose of performing its functions under section 110M and subject to this Part —

- (a) acquire, hold, manage, improve, develop and dispose of property;
- (b) participate in any business arrangement and acquire, hold and dispose of shares, units or other interests in, or relating to, a business arrangement;
- (c) enter into a contract or arrangement;
- (d) charge for the provision and use of its services and facilities; and
- (e) apply the expertise and resources of the Department to provide services and facilities for profit or providing revenue.

(3) In exercising any power under this section Waste Management (WA) may act in conjunction with —

- (a) any person or firm, or a public authority; or
- (b) any department of the Public Service or any agency of the State or the Commonwealth.

(4) In this section —

“acquire” includes taking on lease or licence or in any other manner in which an interest in property may be acquired;

“business arrangement” means a partnership, a trust, a joint venture, or an arrangement for sharing profits;

“dispose of” includes dispose of by way of lease;

“participate” includes form, promote, establish, enter, manage, dissolve, wind up, and do anything incidental to participating in a business arrangement;

“property” means property of every kind, whether real or personal, tangible or intangible, corporeal or incorporeal, and any interest in property.

Treasurer to consider proposals under section 110P (2) (b)

110Q. (1) Before exercising any power conferred by section 110P (2) (b) Waste Management (WA) is to —

- (a) notify the Treasurer of the proposal; and
- (b) seek the Treasurer’s approval to it,

unless it is of a kind that the Treasurer has determined in writing need not be so notified.

(2) The Treasurer may impose requirements to be complied with by Waste Management (WA) in connection with a proposal of which the Treasurer has approved.

(3) The Treasurer may also give directions to be complied with generally by Waste Management (WA) in the exercise of the powers referred to in section 110P (2) (b).

Delegation by Waste Management (WA)

110R. (1) Waste Management (WA) may, by instrument in writing, delegate to an officer of the Department the performance of any of its functions, other than this power of delegation.

(2) A function performed by a delegate is taken to be performed by Waste Management (WA).

(3) A delegate performing a function under this section is taken to do so in accordance with the terms of the delegation unless the contrary is shown.

(4) Nothing in this section is to be read as limiting the ability of Waste Management (WA) to act through its agents in the normal course of business.

Documents presumed to be duly executed

110S. When a document is produced bearing a seal purporting to be the common seal of Waste Management (WA), it is to be presumed until the contrary is shown that the seal is the seal of Waste Management (WA) and has been duly affixed.

Tabling and annual report

110T. (1) Any direction given by the Minister under this Part is to be tabled in each House of Parliament within 14 sitting days of that House after the approval or direction is given.

(2) The annual report of the Department prepared for the purposes of the *Financial Administration and Audit Act 1985* is to include —

- (a) any direction given to Waste Management (WA) by the Minister under this Part during the financial year to which the report relates; and
- (b) an environmental performance report on waste management operations carried on by Waste Management (WA).

”.

Division 2 — Consequential amendments to principal Act

Section 3 amended

23. Section 3 (1) of the principal Act is amended by inserting after the definition of “waste” the following definition —

“ **“Waste Management (WA)”** means the body established under section 110L; ”.

Section 107 amended

24. Section 107 (1) of the principal Act is amended —

(a) in paragraph (a) by deleting “section 106 (a)” and substituting the following —

“ section 106 (1) (a) ”;

(b) in paragraph (b) by deleting “section 106 (b)” and substituting the following —

“ section 106 (1) (b) ”.

Section 121 amended

25. Section 121 (c) of the principal Act is amended by deleting “or the Chief Executive Officer” and substituting the following —

“ , the Chief Executive Officer or Waste Management (WA) ”.

Division 3 — Recovery of certain costs

Interpretation

26. In this Division —

“**agreement**” means an agreement —

- (a) made between the State and another party in respect of disposal of waste at the Mt Walton East waste facility before the coming into operation of this section; and
- (b) declared by the Minister, by notice published in the *Gazette*, to be an agreement to which this Division applies,

and includes —

- (c) that agreement as varied from time to time in accordance with its provisions; and
- (d) any annexure to that agreement;

“**Mt Walton East waste facility**” means the intractable waste disposal facility at Mt Walton East, Shire of Coolgardie in Western Australia situated on reserve number 42001 (Jaurdi Location 73).

Recovery of costs from other party

27. (1) The State may recover directly from the other party to an agreement costs (within the meaning of the agreement) incurred by the State in conducting the Works (within the meaning of the agreement).

(2) The power of the State under subsection (1) is to be exercised subject to, and in accordance with, the terms of the relevant agreement.

PART 4 — MISCELLANEOUS AMENDMENTS

Section 3 amended

28. Section 3 (1) of the principal Act is amended by inserting after the definition of “motor vehicle” the following definition —

“
“**NEPM**” means a national environment protection measure within the meaning of the *National Environment Protection Council (Western Australia) Act 1996*;
”.

Section 20 amended

29. Section 20 (1) of the principal Act is repealed and the following subsection is substituted —

“
(1) The Chief Executive Officer may by notice published in the *Gazette*, with the approval of the Minister, delegate either generally or as otherwise provided in the notice, to —

- (a) an officer or other person referred to in section 22;
- (b) a public authority or officer or employee of a public authority; or
- (c) any other person,

specified in the notice (in this section called “**the delegate**”) all or any of the powers and duties of the Chief Executive Officer under this Act, other than this power of delegation.

”.

Section 37A inserted

30. After section 37 of the principal Act the following section is inserted —

“ **NEPM may be declared to be approved policy**

37A. (1) The Minister may, by notice published in the *Gazette*, declare that an NEPM specified in the declaration is, for the purposes specified in the declaration, to be taken to be an approved policy with the force of law, and the declaration has effect accordingly.

(2) The Minister may by notice published in the *Gazette* revoke or amend a declaration made under subsection (1).

”.

Section 72 amended

31. After section 72 (2) of the principal Act the following subsections are inserted —

“ (3) The occupier of premises from which a discharge of waste of a kind specified in a relevant NEPM occurs is to notify the Chief Executive Officer in the prescribed manner of the prescribed details of that discharge.

(4) An occupier who contravenes subsection (3) commits an offence.

(5) In subsection (3) —

“**relevant NEPM**” means an NEPM that is —

(a) taken to be an approved policy under section 37A; or

(b) specified by regulation to be a relevant NEPM.

”.

Section 89 amended

32. Section 89 (1) of the principal Act is amended —

- (a) by deleting “or” after paragraph (b);
- (b) in paragraph (c) by deleting “or formulated,” and substituting the following —
 - “ or formulated; or ”; and
- (c) by inserting after paragraph (c) the following paragraph —
 - “(ca) at any reasonable time any premises, other than premises referred to in paragraph (a), or place at or from which the inspector reasonably believes solid fuel burning equipment, or solid fuel, is manufactured, sold or distributed for sale,”.

Section 90 amended

33. Section 90 (1) of the principal Act is amended by deleting paragraph (b) and substituting the following paragraph —

- “(b) any person to produce to the inspector any books or other sources of information in the custody or possession of that person relating to —
 - (i) any discharge of any waste or any emission of noise, odour or electromagnetic radiation; or
 - (ii) the manufacture, sale or distribution for sale of any prescribed equipment or material,”.

Section 92 amended

34. Section 92 (1) of the principal Act is amended —

- (a) by deleting “or” after paragraph (a);
- (b) in paragraph (b) by deleting “stored,” and substituting the following —
“ stored; or ”;
- (c) by inserting after paragraph (b) the following paragraph —
“
(c) at or from which prescribed equipment or material is manufactured, sold or distributed for sale,
”;
and
- (d) by deleting “process or activity” and substituting the following —
“ process, activity or material ”.

Section 123 amended

35. (1) Section 123 (1) of the principal Act is repealed and the following subsection is substituted —

“

(1) The Governor may, on the recommendation of the Authority, make regulations —

- (a) prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed, for giving effect to the purposes of this Act; and

- (b) if any act, matter or thing required or authorized to be done under or in relation to an NEPM for the purpose of implementing the NEPM cannot conveniently be required or authorized under the provisions of this Act, requiring or authorizing the doing of such act, matter or thing.

”.

(2) After section 123 (3) the following subsection is inserted —

“

- (4) Regulations made under subsection (1) (b) are valid and have effect even if they are inconsistent with or repugnant to a provision contained elsewhere in this Act.

”.

Schedule 2 amended

36. Schedule 2 to the principal Act is amended —

- (a) in item 2 by inserting after “under this Act” the following —

“ and the recovery of unpaid fees ”;

- (b) by deleting item 5 and substituting the following item —

“

5. The matters that may be set out in a certificate or report relating to —

- (a) the taking, or results, of measurements referred to in item 3;
- (b) the conduct, method, or results, of testing referred to in item 4;

- (c) the equipment for such measurements or testing;
- (d) the persons taking such measurements, conducting such tests or testing equipment for such measurements or testing,

and the evidential status and probative value of those matters.

”;

- (c) by inserting after item 30 the following item —

“

30A. Prohibiting or regulating the manufacture, sale or distribution for sale of solid fuel burning equipment, or solid fuel, of a prescribed class or description.

”;

- (d) by inserting after item 33 the following item —

“

33A. Requiring any information or documents supplied for the purposes of the Act to be verified by statutory declaration.

”;

and

- (e) in item 36 by inserting after “keeping” the following —

“ and inspection ”.

Minor amendments

37. The provisions of the principal Act referred to in Column 1 of Schedule 1 are amended in the manner set out opposite them in Column 2.

SCHEDULE 1 — MINOR AMENDMENTS

[Section 37]

Column 1	Column 2
s. 9	Delete “Public Service Board” and substitute the following — “ Minister for Public Sector Management ”.
s. 22 (2)	Delete “Public Service Board” and substitute the following — “ Minister for Public Sector Management ”.
s. 25 (3)	Delete “Public Service Board” and substitute the following — “ Minister for Public Sector Management ”.
s. 29 (4)	Delete “Public Service Board” and substitute the following — “ Minister for Public Sector Management ”.
s. 40 (8)	Delete “Public Service Board” and substitute the following — “ Minister for Public Sector Management ”.
s. 108 (2)	Delete “Public Service Board” and substitute the following — “ Minister for Public Sector Management ”.