

South Australia

Zero Waste SA Act 2004

An Act to establish a statutory corporation, Zero Waste SA, with the function of reforming waste management in the State; to amend the *Environment Protection Act 1993*; and for other purposes.

Contents

Part 1—Preliminary

- 1 Short title
- 2 Commencement
- 3 Interpretation

Part 2—Zero Waste SA

- 4 Establishment of Zero Waste SA
- 5 Primary objective and guiding principles
- 6 Functions of Zero Waste SA
- 7 Powers of Zero Waste SA
- 8 Chief Executive
- 9 Board of Zero Waste SA
- 10 Terms and conditions of office
- 11 Proceedings of Board
- 12 Committees and subcommittees of Board
- 13 Conflict of interest
- 14 Business plan
- 15 Annual report
- 16 Use and protection of name

Part 3—Waste to Resources Fund

- 17 Waste to Resources Fund

Part 4—Waste strategy

- 18 Development of waste strategy
- 19 Zero Waste SA and Environment Protection Authority to co-ordinate activities

Part 5—Miscellaneous

- 20 Immunity of persons engaged in administration of Act
- 21 Regulations

Schedule 1—Related amendments and transitional provision

Part 1—Preliminary

- 1 Amendment provisions

Part 2—Amendment of *Environment Protection Act 1993*

- 2 Amendment of section 47—Criteria for grant and conditions of environmental authorisations
3 Amendment of section 57—Criteria for decisions of Authority in relation to the development authorisations

Part 3—Transitional provision

- 4 Payment by EPA to Waste Resources Fund of percentage of waste depot levy paid since 1 July 2003
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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Zero Waste SA Act 2004*.

2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

3—Interpretation

- (1) In this Act—

appointed member of the Board means a member of the Board appointed by the Governor;

Board means the Board of Zero Waste SA established as the governing body of Zero Waste SA under section 9;

waste has the same meaning as in the *Environment Protection Act 1993*;

waste management hierarchy—see subsection (2);

waste strategy—see Part 4;

Waste to Resources Fund—see Part 3;

Zero Waste SA—see Part 2.

- (2) In this Act, a reference to the ***waste management hierarchy*** is a reference to an order of priority for the management of waste in which—
- (a) avoidance of the production of waste; and
 - (b) minimisation of the production of waste; and
 - (c) reuse of waste; and
 - (d) recycling of waste; and
 - (e) recovery of energy and other resources from waste; and
 - (f) treatment of waste to reduce potentially degrading impacts; and

- (g) disposal of waste in an environmentally sound manner,
are pursued in order with, first, avoidance of the production of waste, and second, to the extent that avoidance is not reasonably practicable, minimisation of the production of waste, and third, to the extent that minimisation is not reasonably practicable, reuse of waste, and so on.

Part 2—Zero Waste SA

4—Establishment of Zero Waste SA

- (1) *Zero Waste SA* is established.
- (2) *Zero Waste SA*—
 - (a) is a body corporate with perpetual succession and a common seal; and
 - (b) is capable of suing and being sued in its corporate name; and
 - (c) is capable of acquiring, holding or dealing with real or personal property in its corporate name; and
 - (d) has the functions and powers assigned or conferred by or under this Act.
- (3) *Zero Waste SA* is an instrumentality of the Crown and holds its property on behalf of the Crown.
- (4) In the exercise of its powers, functions or duties, *Zero Waste SA* is subject to the direction of the Minister except in relation to the making of a recommendation or report to the Minister.
- (5) Any direction given to *Zero Waste SA* by the Minister must be in writing.

5—Primary objective and guiding principles

- (1) The primary objective of *Zero Waste SA* is to promote waste management practices that, as far as possible—
 - (a) eliminate waste or its consignment to landfill; and
 - (b) advance the development of resource recovery and recycling; and
 - (c) are based on an integrated strategy for the State.
- (2) *Zero Waste SA*, is, in the exercise of its functions, to be guided by—
 - (a) the waste management hierarchy; and
 - (b) the principles of ecologically sustainable development as set out in section 10 of the *Environment Protection Act 1993*; and
 - (c) best practice methods and standards in waste management; and
 - (d) the principle that government waste management policies should be developed through a process of open dialogue with local government, industry and the community in which local government, industry and the community are encouraged to contribute to decision making.

6—Functions of Zero Waste SA

The functions of Zero Waste SA are—

- (a) to develop, co-ordinate and contribute to the implementation of government policy objectives in respect of—
 - (i) waste management for regions, industry sectors or material types; and
 - (ii) public and industry awareness and education in relation to waste management; and
 - (iii) programs for the prevention of litter and illegal dumping; and
 - (iv) market development for recovered resources and recycled material; and
- (b) to develop, adopt and administer the waste strategy for the State; and
- (c) to monitor and assess the adequacy of the waste strategy and its implementation; and
- (d) to provide assistance to local councils with arrangements for regional waste management; and
- (e) to contribute to the development of waste management infrastructure, technologies and systems; and
- (f) to commission, support and collaborate on research into waste management practices and issues; and
- (g) to advise the Minister from time to time about the amount to be charged by way of the levy under section 113 of the *Environment Protection Act 1993*;
- (h) to advise the Minister about any matter referred to it by the Minister or any matter it sees fit to advise the Minister on in connection with its responsibilities under this Act; and
- (i) such other functions as may be conferred on it by this Act or any other Act, or as may be assigned to it by the Minister.

7—Powers of Zero Waste SA

Zero Waste SA may exercise any powers that are necessary or expedient for, or incidental to, the performance of its functions and in particular—

- (a) may obtain expert or technical advice from a person on such terms and conditions as it thinks fit; and
- (b) may, if the Chief Executive of Zero Waste SA is declared under section 13 of the *Public Sector Management Act 1995* to have the powers and functions of Chief Executive of an administrative unit of the Public Service, make use of the services of the administrative unit's employees and of its facilities.

8—Chief Executive

- (1) The office of Chief Executive of Zero Waste SA is established.
- (2) The Chief Executive is, subject to the control and direction of the Board, responsible for giving effect to the policies and decisions of the Board.

- (3) The Chief Executive will be appointed by the Governor, on conditions determined by the Governor, for a term, not exceeding 7 years, specified in the instrument of appointment and, at the expiration of a term of appointment, is eligible for re-appointment.
- (4) The Governor may appoint a person (on terms and conditions determined by the Governor) to act in the office of Chief Executive of Zero Waste SA.
- (5) A person appointed to act in the office of the Chief Executive under subsection (4)—
 - (a) may act in that office during a temporary absence of the Chief Executive or while the office of the Chief Executive is temporarily vacant; and
 - (b) has, while so acting, all the powers, duties and functions of the Chief Executive.

9—Board of Zero Waste SA

- (1) The Board of Zero Waste SA is established as the governing body of Zero Waste SA.
- (2) The Board is to consist of not less than 6 and not more than 10 members.
- (3) The Chief Executive of Zero Waste SA is a member of the Board *ex officio* and the remaining members of the Board will be appointed by the Governor.
- (4) The Minister must consult with the Local Government Association, in accordance with the regulations, in relation to the selection of persons for appointment under this section.
- (5) One member of the Board must be a member of the Board of the Environment Protection Authority.
- (6) The Board's membership must include persons who together have, in the Governor's opinion, practical knowledge of, and experience in, the following areas:
 - (a) environmental sustainability, conservation and protection;
 - (b) local government;
 - (c) waste management industry or waste-related infrastructure development;
 - (d) regional affairs;
 - (e) economic, financial and risk management;
 - (f) advocacy on environmental matters on behalf of the community.
- (7) At least one member of the Board must be a woman and one a man.
- (8) The Governor may appoint a suitable person to be deputy of a member of the Board (other than the Chief Executive) and a person so appointed may act in the place of the member during any absence of the member.

10—Terms and conditions of office

- (1) An appointed member of the Board is to be appointed for a term, not exceeding 2 years, specified in the instrument of appointment and is, on the expiration of a term of office, eligible for re-appointment.
- (2) An appointed member of the Board is entitled to such remuneration, allowances and expenses as may be determined by the Governor.

- (3) The Governor may remove an appointed member of the Board from office for—
 - (a) misconduct; or
 - (b) neglect of duty; or
 - (c) incapacity to carry out satisfactorily the duties of his or her office; or
 - (d) failure to carry out satisfactorily the duties of his or her office.
- (4) An appointed member of the Board neglects his or her duty if the member fails to attend three consecutive meetings without the leave of the Board.
- (5) The office of an appointed member of the Board becomes vacant if the member—
 - (a) dies; or
 - (b) completes a term of office and is not reappointed; or
 - (c) resigns by written notice addressed to the Minister; or
 - (d) is removed from office by the Governor under subsection (3).
- (6) On the office of an appointed member of the Board becoming vacant, a person must be appointed in accordance with this Act to the vacant office.

11—Proceedings of Board

- (1) The Governor will appoint a member of the Board to preside at meetings of the Board.
- (2) In the absence of the person appointed under subsection (1) from a meeting of the Board, a member chosen by those present will preside.
- (3) A quorum of the Board consists of half of the total number of its members (ignoring any fraction resulting from the division) plus one and no business may be transacted at such a meeting unless a quorum is present.
- (4) Subject to subsection (3), the Board may act despite vacancies in its membership or a defect in appointment of a member.
- (5) A decision carried by a majority of the votes cast by the members present at a meeting is a decision of the Board.
- (6) Each member present at a meeting of the Board has one vote on a matter arising for decision and, if the votes are equal, the member presiding at the meeting may exercise a casting vote.
- (7) A telephone or video conference between members will, for the purposes of this section, be taken to be a meeting of the Board at which the participating members are present.
- (8) A proposed resolution of the Board becomes a valid decision of the Board despite the fact that it is not voted on at a meeting of the Board if—
 - (a) notice of the proposed resolution is given to all members in accordance with procedures determined by the Board; and
 - (b) a majority of the members express their concurrence in the proposed resolution by letter, facsimile transmission, e-mail or other written communication setting out the terms of the resolution.
- (9) The Board must have accurate minutes kept of its proceedings and make them available to all members of the Board.

- (10) A person who is not a member of the Board may be present during a meeting with the consent of the Board but not otherwise.
- (11) Subject to this Act, the Board may determine its own procedures.

12—Committees and subcommittees of Board

- (1) The Board may establish committees or subcommittees as the Board thinks fit to advise Zero Waste SA on any aspect of its functions, or to assist Zero Waste SA in the performance of its functions.
- (2) A committee or subcommittee established under subsection (1) may, but need not, consist of, or include, members of the Board.
- (3) The procedures to be observed in relation to the conduct of business of a committee or a subcommittee of the Board will be—
 - (a) as prescribed by regulation; or
 - (b) insofar as the procedure is not prescribed by regulation—as determined by the Board; or
 - (c) insofar as the procedure is not prescribed by regulation or determined by the Board—as determined by the relevant committee or subcommittee.

13—Conflict of interest

- (1) A member of the Board or a committee or subcommittee established by the Board who has a direct or indirect pecuniary or personal interest in a matter decided or under consideration by the Board or committee or subcommittee—
 - (a) must disclose the nature of the interest to the Board or committee or subcommittee; and
 - (b) must not take part in any deliberations or decisions of the Board or committee or subcommittee on the matter.

Maximum penalty: \$5 000 or imprisonment for 1 year.

- (2) It is a defence to a charge of an offence against subsection (1) to prove that the defendant was not, at the time of the alleged offence, aware of his or her interest in the matter.
- (3) A disclosure under this section must be recorded in the minutes of the Board.

14—Business plan

- (1) Zero Waste SA must, at least one month before the beginning of each financial year, submit a business plan to the Minister for approval.
- (2) A business plan must—
 - (a) set out Zero Waste SA's major projects, and its goals and priorities with respect to the full range of Zero Waste SA's functions, for the next 3 financial years; and
 - (b) set out Zero Waste SA's budget for the next financial year (including estimates of its income and expenditure for that period); and
 - (c) conform with any requirements of the Minister as to the form of the plan and any other matters to be addressed by the plan.

- (3) The Minister may approve a business plan submitted under this section with or without modification.
- (4) If a business plan is not approved by the Minister (with or without modification) before the commencement of the period to which it relates, Zero Waste SA may proceed as if it were approved (but is bound by any modifications subsequently required by the Minister).
- (5) Zero Waste SA may, at any time, submit a variation of its business plan to the Minister for the Minister's approval (which may be with or without modification).
- (6) Zero Waste SA must ensure that its business plan, as last approved under this section, is available for public inspection on a website and at its principal place of business during normal office hours.
- (7) In this section—
financial year means—
 - (a) the period starting from a date specified by the Minister and ending on 30 June following the commencement of this section; or
 - (b) a succeeding period of 12 months commencing on 1 July.

15—Annual report

- (1) Zero Waste SA must, on or before 30 September in each year, present a report to the Minister on Zero Waste SA's operations during the previous financial year.
- (2) A report under this section must include—
 - (a) an audited statement of the income and expenditure of the Waste to Resources Fund, together with details of the items of income and expenditure of the Fund, for the period to which the report relates; and
 - (b) any direction given to Zero Waste SA by the Minister during the period to which the report relates; and
 - (c) details of the co-ordination of activities by Zero Waste SA and the Environment Protection Authority during the period to which the report relates; and
 - (d) an assessment of the adequacy of the waste strategy and its implementation during the period to which the report relates according to the criteria and methods established in the strategy.
- (3) The Minister must, within 12 sitting days after receipt of a report under this section, cause copies of the report to be laid before each House of Parliament.

16—Use and protection of name

- (1) Zero Waste SA has a proprietary interest in—
 - (a) the name "Zero Waste"; and
 - (b) the name "Zero Waste SA"; and
 - (c) any other name prescribed by regulation for the purposes of this section.

- (2) A person must not, without the consent of Zero Waste SA in the course of a trade or business, use a name in which Zero Waste SA has a proprietary interest under this section for the purpose of promoting the sale of services or the provision of any benefits.
Maximum penalty: \$20 000.
- (3) A consent under this section—
 - (a) may be given with or without conditions (including conditions requiring payment to Zero Waste SA); and
 - (b) must be given in writing addressed to the applicant for the consent; and
 - (c) may be revoked by Zero Waste SA for a breach of a condition by notice in writing given personally or by post to a person who has the benefit of the consent.
- (4) The Supreme Court may, on the application of Zero Waste SA, grant an injunction to restrain a breach of this section.
- (5) The court by which a person is convicted of an offence against this section may, on the application of Zero Waste SA, order the convicted person to pay compensation of an amount fixed by the court to Zero Waste SA.
- (6) Subsections (4) and (5) do not derogate from any civil remedy that may be available to Zero Waste SA apart from those subsections.

Part 3—Waste to Resources Fund

17—Waste to Resources Fund

- (1) The *Waste to Resources Fund* is established.
- (2) The Fund must be kept as directed by the Treasurer.
- (3) The Fund is to consist of the following money:
 - (a) 50 per cent, or such greater percentage as may be prescribed, of the amount paid by waste depot licence holders by way of levy under section 113 of the *Environment Protection Act 1993* in respect of solid waste received at the depots;
 - (b) any money appropriated by Parliament for the purposes of the Fund;
 - (c) any money paid into the Fund at the direction or with the approval of the Minister and the Treasurer;
 - (d) any money received by way of grant, gift or bequest for the purposes of the Fund;
 - (e) any income from investment of money belonging to the Fund;
 - (f) any money paid into the Fund under any other Act.
- (4) The Minister must, at least annually, review the adequacy of the amount paid into the Fund under subsection (3)(a).
- (5) The Fund may be applied by Zero Waste SA (without further appropriation than this subsection) in accordance with the business plan or in any other manner authorised by the Minister for the purposes of this Act.

- (6) Zero Waste SA may, with the approval of the Treasurer, invest in a manner approved by the Treasurer any of the money belonging to the Fund that is not immediately required for the purposes of the Fund.

Part 4—Waste strategy

18—Development of waste strategy

- (1) Zero Waste SA is to develop a waste strategy for the State.
- (2) A waste strategy—
- (a) is to include objectives, principles and priorities of Zero Waste SA for the management of waste generated or disposed of in the State; and
 - (b) is to include analysis of waste generation levels and waste management practices; and
 - (c) is, as a result of the analysis undertaken, to include targets or goals for—
 - (i) waste reduction; and
 - (ii) the diversion of waste from landfill disposal; and
 - (iii) waste collection, transport and disposal; and
 - (iv) public and industry awareness and education programs; and
 - (v) research; and
 - (d) is to identify—
 - (i) the means of implementation of the targets or goals; and
 - (ii) any obstacles or potential obstacles to the implementation of the targets or goals; and
 - (iii) any significant risks associated with the implementation of the targets or goals; and
 - (e) is to establish criteria and methods for assessing the adequacy of the strategy and its implementation.
- (3) A waste strategy does not take effect until it is adopted by Zero Waste SA.
- (4) Before adopting a waste strategy, Zero Waste SA must—
- (a) cause copies of the proposed waste strategy to be sent to the Minister and, as prescribed, State and local government bodies; and
 - (b) cause notice of the proposed strategy to be published in a newspaper circulating throughout the State; and
 - (c) cause copies of the proposed strategy to be made available for public inspection on a website and at its principal place of business during normal office hours; and
 - (d) allow a period of at least 8 weeks for consultation with State and local government bodies and written submissions from the public on the proposed strategy; and

- (e) take into consideration the views and submissions gathered through that process.
- (5) The first waste strategy is to be adopted within 12 months after the establishment of Zero Waste SA or at a time directed by the Minister.
- (6) Subsequent waste strategies, to replace existing waste strategies, are to be developed at intervals of not more than 5 years or at a time directed by the Minister.
- (7) Zero Waste SA must ensure that the current waste strategy is available for public inspection on a website and at its principal place of business during normal office hours.

19—Zero Waste SA and Environment Protection Authority to co-ordinate activities

Zero Waste SA and the Environment Protection Authority are required to co-ordinate their activities for the development and implementation of waste strategies under this Part.

Part 5—Miscellaneous

20—Immunity of persons engaged in administration of Act

- (1) No personal liability attaches to a person engaged in the administration of this Act for an act or omission in good faith in the exercise or discharge, or purported exercise or discharge, of official powers or functions.
- (2) A liability that would, but for subsection (1), lie against a person, lies instead against the Crown.

21—Regulations

The Governor may make such regulations as are contemplated by, or as are necessary or expedient for the purposes of, this Act.

Schedule 1—Related amendments and transitional provision

Part 1—Preliminary

1—Amendment provisions

In this Schedule, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Environment Protection Act 1993*

2—Amendment of section 47—Criteria for grant and conditions of environmental authorisations

Section 47(1)—after paragraph (e) insert:

- (ea) have regard to the waste strategy for the State adopted under the *Zero Waste SA Act 2004* (if relevant); and

3—Amendment of section 57—Criteria for decisions of Authority in relation to the development authorisations

Section 57—delete "and any relevant environment protection policies" and insert:

, any relevant environment protection policies and the waste strategy for the State adopted under the *Zero Waste SA Act 2004* (if relevant)

Part 3—Transitional provision

4—Payment by EPA to Waste Resources Fund of percentage of waste depot levy paid since 1 July 2003

The Environment Protection Authority must, on the commencement of this Part, pay to the Treasurer for the credit of the Waste to Resources Fund a sum equal to 47.5 per cent of the amount paid by waste depot licence holders by way of levy under section 113 of the *Environment Protection Act 1993* during the period between 1 July 2003 and the commencement of Part 3 of this Act in respect of solid waste received at the depots.