

WESTERN AUSTRALIA*James Sippe and Clara Bowman***Waste Avoidance and Resource Recovery Acts**

The *Waste Avoidance and Resource Recovery Act 2007* (WA) (**Act**) and the *Waste Avoidance and Resource Recovery Levy Act 2007* (WA) (**Levy Act**) received assent on 21 December 2007. The majority of the provisions have not yet come into effect.

Consolidation of legislation

The Act proposes to create a new regulatory framework for waste management by transferring the relevant provisions of current legislation regulating waste avoidance and control so as to form one consolidated waste management Act.

To this end, provisions of part VIIA (Landfill levy) of the *Environmental Protection Act 1986* (WA) will be transferred and the body corporate of Waste Management abolished; responsibility for the Mt Walton Intractable Waste Repository will be moved from Waste Management to the Department of Housing and Works; and provisions of the *Health Act 1911* (WA) regarding waste collection and management will be repealed and the matters dealt with under the new regulatory framework. Importantly, local government's responsibilities in relation to the management of refuse will also be removed.

The Levy Act will replace the now repealed *Environmental Protection (Landfill) Levy Act 1998* (WA). The Levy Act provides for the establishment of a Waste Avoidance and Resource Recovery Account, to be credited with levies and penalties paid, and any investment income.

Administrative changes

A new Waste Authority is established with the role of creating and implementing policy and planning, and administering funds raised from the landfill levy, imposed by the Levy Act. The Act requires the Waste Authority to develop a waste strategy for the long term improvement of waste services, waste avoidance and resource recovery, to be approved by the Minister. The Waste Authority's annual business plan and waste management plans prepared by local governments will address its implementation.

The issue of producer responsibility and product stewardship is also addressed by the Act. The Act initially allows for the submission of a product stewardship plan to the Waste Authority by producer groups, outlining means to address the management of the wastes their products create. If the voluntary approach does not succeed in requiring producers to take responsibility for their products, the Act further provides for the making of regulations to establish mandatory extended producer responsibility schemes.

Offences

Collection of waste by unauthorised persons, obstruction of local government, and non-compliance with a waste plan or permit are new offences created by the Act. The maximum penalty for each of these offences is \$10,000. In addition, evading a levy imposed under the Levy Act is made an offence with a penalty of \$10,000 plus a further penalty equal to three times the amount evaded.

Biosecurity and Agriculture Management Acts

The *Biosecurity and Agriculture Management Act 2007* (WA) (**Act**), along with two subsidiary Acts discussed below, received assent on 12 October 2007, although many of the substantive provisions of the Act have not yet come into effect.

The objective of the Act is to provide effective agriculture and biosecurity management in Western Australia, through controlling the importation and movement of pests and diseases and the regulation of the use of agricultural and veterinary chemicals.

The Act is intended to be the State's primary biosecurity legislation. To that end, the *Biosecurity and Agriculture Management (Repeal and Consequential Provisions) Act 2007* repealed the *Aerial Spraying Control Act 1966* (WA), *Agricultural Produce (Chemical Residues) Act 1983* (WA),

Agricultural Products Act 1929 (WA), *Agriculture and Related Resources Protection Act 1976 (WA)*, *Fertilizers Act 1977 (WA)*; and *Plant Diseases Act 1914 (WA)*. However, the Act will continue to operate in conjunction with legislation under other portfolios including the environment, fisheries and forestry.

The Act establishes two new bodies:

- a Biosecurity Council to provide advice on matters related to biosecurity; and
- the Western Australian Agriculture Ministerial Body to assist the Minister in furthering and promoting the best interests of biosecurity and agriculture management.

The Act creates several new offences in relation to biosecurity, including an offence of releasing a prescribed declared pest into the environment, with a penalty of up to \$100,000 and 12 months imprisonment. Uniform procedures for inspections, compliance and legal proceedings under agriculture and biosecurity management laws are also specified in the Act.

Dangerous Goods regulations operational

The *Dangerous Goods Safety Regulations 2004 (WA)* came into effect on 1 March 2008. The Regulations were proclaimed and gazetted on 31 December 2007 following substantial public consultation and review.

Greenhouse Gas Emission Reduction Bill

The *Greenhouse Gas Emission Reduction (Hot Water Systems) Bill 2007 (WA)* was introduced into the Legislative Council and received its second reading speech on 6 December 2007.

The Bill aims to reduce greenhouse gas emissions caused by the use of hot water systems and promotes the use of solar or other efficient hot water systems in Western Australia, by prohibiting the sale or hire of hot water systems that do not comply with prescribed requirements.

The proposed Act will require '5 star plus' compliance for heat pump, gas and solar hot water systems for new homes. To allow for future technological advances, different standards to the '5 star plus' standards can be prescribed in regulations. Different standards can only be put in place if the responsible Minister is satisfied that greenhouse gas emissions will be as good or lower under the different standards.

Case law

The Esperance Port Authority has been charged under the *Environmental Protection Act 1986 (WA) (EP Act)* in relation to the lead contamination which killed thousands of birds and elevated lead levels in the blood of some residents. One of the charges is causing pollution with criminal negligence, which has a maximum penalty of \$1 million. The Authority Esperance Port Authority has also been charged with failure to notify the CEO of a discharge of waste likely to cause pollution, causing pollution, emitting unreasonable emissions, and causing an emission not in accordance with a licence.

Two Environmental Protection Notices (EPNs) were also been issued by the DEC to the Port Authority under section 65C of the EP Act, in relation to the clean-up of the remaining lead identified in the Port environment.