Waste Reduction and Recycling (Waste Levy) and Other Legislation Amendment Bill 2018

Explanatory Notes

Short title

The short title of the Bill is the Waste Reduction and Recycling (Waste Levy) and Other Legislation Amendment Bill 2018.

Policy objectives and the reasons for them

The Bill amends the *Waste Reduction and Recycling Act 2011* and makes minor transitional amendments to the *City of Brisbane Act 2010* and the *Local Government Act 2009*.

The primary purpose of the Bill is to introduce a waste levy that will:

- act as a price signal that encourages waste avoidance and resource recovery behaviours, and discourages disposal to landfill as the first option
- provide a source of funding for programs to assist local government, business and industry to establish better resource recovery practices, improve overall waste management performance and sustain Queensland's natural environment
- provide certainty and security of feedstocks for advanced resource recovery and recycling technologies and processing, and
- facilitate industry investment in resource recovery infrastructure.

The Bill also makes minor amendments to the *City of Brisbane Act 2010* and the *Local Government Act 2009*, to allow local governments to amend by resolution, charges for commercial waste management in the 2018-19 financial year.

Queensland's approach to waste management and resource recovery continues to lag behind that of other states. A lack of clear market signals and inconsistent policy approaches has led to significant under investment in waste management and recycling infrastructure throughout Queensland. Reliance on the export of key recyclate commodities has also limited local investment and market development and leaves Queensland at significant risk to external price and policy shifts.

The Queensland Government signalled its intention to introduce a waste disposal levy, following the independent investigation led by the Honourable Peter Lyons QC into the transport of waste from other states into Queensland. The lack of a price signal in Queensland was leading to perverse outcomes in relation to waste management and resource recovery across eastern Australia. This review recommended, "the government should consider the implementing a general levy on all waste disposed of at landfill in Queensland."

On 1 June 2018, the 'Transforming Queensland's Recycling and Waste Industry' direction paper was released for public comment. The paper highlighted the implementation of a waste levy as a key component of a comprehensive waste strategy for Queensland to increase recycling and material recovery and the creation of new jobs.

As an avoidable charge, the waste levy will be instrumental in changing waste management behaviour and practices in Queensland. It will make landfill a less attractive option compared to more productive and job creating uses of waste - as a vital feedstock for the state's biofutures industries and for new industries that manufacture products using recycled content. The waste levy will provide a much needed source of funding for programs to support local government, business and industry in reducing the amount of waste they generate and increase recycling, and for the development of new markets and products.

A crucial element of the legislation to implement the levy will be measures that avoid direct cost impacts to households. It will provide for payments to local governments to offset the costs of the levy on municipal solid waste.

The levy will underpin a new waste management strategy being developed for Queensland. The strategy and the amendments to the legislation will provide the waste and resource recovery sector with the policy certainty that has been lacking and give investors the confidence to invest in new and expanded resource recovery infrastructure in Queensland

Importantly, the levy will also provide a disincentive to the practice of long-distance transport of waste for disposal in Queensland. Queensland is currently the only mainland state that does not have a levy on the disposal of waste to landfill.

Achievement of policy objectives

The Bill will achieve these objectives by:

- requiring operators of levyable waste disposal sites to remit to the State, a levy on waste delivered to the site and establishing a head of power for a regulation to prescribe the calculation method and rate of the levy on general and regulated (hazardous) waste;
- establishing a head of power for a regulation to identify a levy zone covering the more populous local government areas of the State - the levy will be paid on waste (including from interstate) delivered to a levyable waste disposal site in this zone;
- establishing the balance of Queensland as the 'non-levy zone' – levy is not payable on waste delivered to a levyable waste disposal site in this zone unless the waste was generated outside the zone (including interstate);
- exempting certain waste streams from levy payment by default, including:
  - waste from a declared natural disaster;
  - asbestos-contaminated waste;
  - dredge spoil;
  - clean earth;
- exempting certain waste streams from levy payment, on approval, including:
  - used goods that have been donated to a charitable recycling entity (e.g. members of the National Association of Charitable Recycling Organisations (NACRO)) that cannot be re-used, recycled or sold;
  - waste re-used in the operation of the landfill site (e.g. road base, capping landfill cells);

    - waste collected at community events such as “Clean Up Australia”;
- allowing recycling facilities to apply for a discount levy rate for their residue waste if that will make a significant difference to those types of regulation being established in Queensland;
- establishing transitional arrangements which allow the following categories of existing recycling facilities to apply for a levy exemption for their residue waste on the condition that their recovery efficiencies are maintained:
    - existing recyclers who would experience such hardship due to the levy that they would be forced to close – until 30 June 2022;
    - Material Recovery Facilities – until 30 June 2022;
    - Cairns’ Bedminster facility – until 30 June 2026
- requiring persons delivering waste to a levyable waste disposal site to give the operator of the site sufficient information to later enable the correct levy to be charged;
- requiring persons to give 24 hours notice before delivering levyable waste generated in the levy zone or interstate to a levyable waste disposal site, waste transfer station or recycling facility in the non-levy zone;
- requiring weighbridges to be used to measure waste at large sites initially and then at all sites in the levy zone within 5 years, except at very small, remote sites exempted from this requirement for up to 10 years under a transitional arrangement;
- establishing a head of power for deeming a measurement of waste where there is no weighbridge or the weighbridge is unserviceable;
- allowing operators to declare a resource recovery area at a waste disposal site where waste can be sorted and recyclables recovered without paying the levy;
- requiring waste disposal site operators to provide the State with monthly data which is used to calculate the levy;
- requiring commencement and annual volumetric surveys as a means to verify the accuracy of waste data used to calculate the levy;
- requiring Closed Circuit Television (CCTV) (or another method) to monitor on-site movement of waste if there is a reasonable belief that the site operator has not been providing accurate data or is otherwise avoiding the levy payment;
- allowing for payment plans and extensions of time to pay the levy in the event that a waste disposal site operator is unable to pay the levy on time, for example due to hardship;
- providing for re-crediting of the levy paid by a landfill operator on waste delivered by a customer who goes insolvent within 12 months without paying the levy cost that was passed on to them;
- imposing heavy penalties for levy evasion (up to two years imprisonment) and lesser penalties for a range of other offences;
- providing for annual reporting by the chief executive on the operation of the levy;
- providing for annual payments to local governments and requiring local governments to use the payments to mitigate any direct impact of the levy on households; and
- through transitional provisions, allowing local governments to amend their 2018-19 waste management charges in order to pass the levy cost on to commercial waste management customers.

Alternative ways of achieving policy objectives

There are no alternative ways of achieving the policy objectives that would provide stakeholders with clarity and certainty.

The introduction of the waste levy is critical to both creating a price signal for waste avoidance as well as generating a funding source to support local government and business resource recovery activities. The lack of a price signal within Queensland has depressed investment from the resource recovery industry, reduced the capacity of government to support resource recovery initiatives and led to Queensland being a dumping ground for interstate waste.

A waste levy underpins effective waste management strategies in New South Wales, Victoria, South Australia and Western Australia. It is also a feature of waste management in European and other developed nations.

The Bill will ensure there is no direct impact on households through the introduction of an advance payment to local governments to address the levy costs associated with municipal solid waste. This reflects a departure from the approach taken when a waste levy was introduced in Queensland in 2011 when direct impacts on households were avoided by having a nil levy for municipal solid waste.

Applying the levy to municipal solid waste simplifies the levy scheme and hence the administrative processes (for both the government and the waste disposal site operator) around the calculation of the levy. Applying the levy to municipal solid waste also reduces the potential for levy evasion.

The Bill will also not provide levy rebates for recyclable waste that is exported from a waste disposal site, as is the case in New South Wales. This is another departure from the approach taken when a waste levy was introduced in Queensland in 2011. Providing rebates would add complexity to the levy scheme, particularly because it creates opportunities for levy evasion that can only be addressed by imposing requirements for detailed reporting of on-site waste movements and regulation of stockpiling.

Queensland is proposing to avoid the complexity of rebates by ensuring the levy is valid in a different way - generally requiring any recyclable waste to be recovered from waste before the levy is paid. Recovery of recyclables may occur off-site or in a part of the site that is declared as a resource recovery area. Levy will not be paid when waste is delivered to the resource recovery area. Levy will only be paid if a portion of the waste delivered to the resource recovery area is later moved into the levyable part of the site, including for disposal to landfill.

Levy revenue will be used to fund implementation of a state-wide waste and resource recovery strategy and complementary sustainability and environment initiatives. Surplus funds from the levy may benefit the entire Queensland community.

The levy will be set at a level that sends an appropriate price signal that encourages waste avoidance and resource recovery behaviours, and discourages landfill disposal as the first option.

Estimated cost for government implementation

The Government has announced it is introducing the waste levy at $70 per tonne (higher for regulated waste) commencing on 4 March 2019. The levy is proposed to increase at $5 per annum until 2022.

From this revenue stream, $34.3 million has been allocated for the period to 2021-22 for development and implementation of the levy with an additional $6.6 million per annum on going. This funding will cover the necessary Information Technology system to facilitate data collection and levy calculation as well as the education, communications, administration and compliance activities necessary for its operation.

During the development phase, a $5 million grant program is in place to ensure that local government waste facilities are levy-ready.

Proceeds from the waste levy will also be available for additional waste programs, environmental priorities and community purposes. In particular, $100 million has been allocated over three years to support Queensland's resource recovery and recycling industry through a Resource Recovery Industry Development Program. The program will facilitate private sector and local government projects delivering innovative solutions to the problem of waste going to landfill and create jobs in emerging industries

To avoid a direct impact on Queensland households, the Government will provide an annual advance on levy charges to local governments that dispose of municipal solid waste at levyable waste disposal sites in the levy zone.

Between 2018-19 and 2021-22 it is expected that over 70% of revenue generated through the waste levy will be allocated to advance payments to councils, scheme start-up and operational costs, industry programs and other environmental priorities. Surplus revenue from the levy will benefit the entire Queensland community by providing funding for schools, hospitals, transport infrastructure and frontline services.

Consistency with fundamental legislative principles

The Bill is generally consistent with Fundamental Legislative Principles. The following potential breaches have been identified.

Legislation makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review—Legislative Standards Act 1992, section 4(3)(a)

The Bill provides for administrative decisions about a range of issues, including deciding applications for waste to be exempt from application of the levy, deciding applications for a residual discount approval, deciding applications for a waste levy instalment agreement, deciding applications for an extension of time to pay a waste levy amount and deciding when a monitoring system is required.

An information notice must be given in most circumstances where an application may be refused or where an application is approved subject to conditions. Eligibility to apply for a review of the decision (under existing Chapter 9 of the *Waste Reduction and Recycling Act 2011*) will be triggered by the requirement to give an information notice - the proponent has the right to request an internal review of a decision under the Act which was or should have been accompanied by an information notice. If not satisfied with the outcome of an internal review, the proponent may request an external review of the decision by the Queensland Civil and Administrative Tribunal.

It will be an offence, potentially attracting a maximum penalty of 200 penalty units, not to comply with a chief executive's notice under new section 63 of the Act (which is inserted by clause 6 of the Bill) requiring the installation, maintenance and operation of a monitoring system. However, the power to give a notice is limited to where the operator of a waste disposal site has not complied with the operator's obligation to pay the waste levy for the site, or give the chief executive waste returns for the site. An aggrieved operator could apply (under existing Chapter 9 of the *Waste Reduction and Recycling Act 2011*) for a stay of the decision to ensure that they were not subject to the obligation and hence in potential breach of the offence while the chief executive's decision was reviewed.

Legislation allows the delegation of legislative power only in appropriate cases and to appropriate persons—Legislative Standards Act 1992, section 4(4)(a)

Levy rate and levy calculation prescribed by regulation

The way in which the waste levy is calculated and the levy rate for types of waste are prescribed in regulation. It is arguable that all key components for the new levy should be contained in primary legislation. However, it is also necessary to ensure that the levy rate can be adjusted where necessary to achieve the objectives of the proposed Bill, especially by acting as a price signal that encourages waste avoidance and resource recovery behaviour, and discourages disposal as the first option.

Additional requirements may be prescribed by regulation

The Bill allows additional requirements to be prescribed by regulation in several situations, including for installation and operation of a weighbridge (new section 58), a monitoring system (new section 64), for volumetric surveys (new sections 70, 72Y, 72Z, 323 and 324), record keeping (new sections 72A and 72X) and for resource recovery areas (new sections 72R and 73A). Although learnings from interstate levy schemes and the former Queensland levy arrangements have been incorporated in the requirements of the Bill, it is not possible to foresee all the operational issues that may emerge when implementing such a significant reform as the waste levy. These provisions will enable minor issues to be addressed by regulation. The making of a regulation to prescribe additional requirements may require impact assessment under *The Queensland Government Guide to Better Regulation* requirements and would be subject to Parliamentary oversight via the tabling and disallowance requirements for a regulation.

Chief executive discretion to publish specifications for required data

New sections 60, 61 and 72 of the Act (which are inserted by clause 6 of the Bill) delegate to the chief executive the power to require recording of information about movements of waste and other material at a site (section 60 and 61) and specify how that information must be submitted in a waste data return (section 72).

Specifically, sections 60 and 61 provide that the chief executive may only require information that relates to the type of waste or other material, whether the waste was generated in the waste levy zone, the non-levy zone or outside Queensland, details of any exemption or discount applying to the waste, and the vehicle used to move the waste or material. For example, the chief executive would publish which types of waste need to be differentiated.

The chief executive would also specify the way in which the information would need to be submitted in a waste data return under section 72. For example, the relatively simple information in a summary data return might be submitted to the chief executive by entering information through an interface on the department's website while the detailed data return might be a file in a specific format which is uploaded to the department's IT system.

The detail of the requirements published by the chief executive about the information recorded and how it is to be submitted is not amenable to a regulation, particularly where it concerns information that will ultimately be submitted as a detailed data return. This is because it will include technical specifications that will ultimately ensure compatibility of the data with the department's administration and monitoring systems when it is uploaded. In essence, the chief executive's powers to particularise what information must be recorded (sections 60 and 61) and submitted in a certain way (section 72) is equivalent to requiring the information to be recorded and submitted in an approved form.

Abrogation of individuals' rights and liberties not listed in the Legislative Standards Act 1992

Penalties of appropriate level

Clause 7, 16 and clause 17 of the Bill provide heavy penalties for levy evasion.

Clause 7, which amends section 104 (Illegal dumping of waste provision), increases the maximum financial penalty that applies to the illegal dumping of waste to twice the amount of any waste levy that would have been paid if the waste had been delivered to a waste disposal site. The amendment is justified because the current maximum penalty for larger volumes of waste may be less than the levy avoided. The new maximum penalty will be a disincentive to using illegal dumping to avoid the levy.

Clause 16, which amends section 264 (General duties about documents or records), increases the maximum penalty for keeping, producing or making use of a document or record the person knows, or ought reasonably to know, contains information that is false or misleading in a material particular. If the intent is waste levy evasion, then the maximum penalty will be two years of imprisonment or whichever is the greater of 2,000 penalty units and twice the amount of any waste levy that an attempt was made to avoid and any interest that would have accrued on the amount.

Similarly, clause 17 of the Bill replaces existing section 265 with new sections 265 (Giving chief executive false or misleading information) and 265A (Giving chief executive incomplete information). In both cases, if the intention is to evade the waste levy, then a maximum penalty applies of two years of imprisonment or whichever is the greater of 2,000 penalty units and twice the amount of any waste levy that an attempt was made to avoid and any interest that would have accrued on the amount.

The maximum penalties established under clauses 16 and 17 reflect the seriousness of these offences and the need to provide an effective deterrent to levy evasion. For example, a large levyable waste disposal site may receive over 50,000 tonnes of levyable waste per month. If it provided incomplete or false information about these deliveries resulting in avoidance of 25% of it true levy liability over a twelve month period, then the total levy avoided would exceed $10.5 million.

Privacy and confidentiality rights

The requirement, in Chapter 3, Part 5, Division 2, Subdivision 4 (which is inserted by clause 6 of the Bill), for monitoring (by closed-circuit television or another approved system) of movements at certain waste disposal sites may be considered an encroachment on the right to privacy and by implication, a breach of the fundamental legislative principle that legislation has sufficient regard to the rights and liberties of individuals.

The Bill provides that monitoring may be required if the chief executive reasonably believes that the operator has not complied with their obligations to pay the waste levy or give the chief executive waste data returns. The requirement is considered necessary to address the risk of further levy evasion by operators who fail to accurately report the movements of waste at the site which are used to calculate the levy. The recordings of certain movements will be able to be checked against the detailed data return required to be recorded for waste movements.

The monitoring system recording will only need to be capable of identifying the vehicle being used to move the waste, for example from its number plate. It will not need to identify individuals.

The provisions also contain sufficient safeguards to minimise risks to privacy. For example, there are restrictions on who can operate the system and view the data and requirements for destruction of the recordings after a period of time.

Consultation

The Government invited the community (between 1 and 29 June 2018) to have their say on the direction of the new resource recovery, recycling and waste management strategy for the state, including the key features of the proposed waste levy, as outlined in the *Transforming Queensland's Recycling and Waste Industry* directions paper.

The Recycling and Waste Management Stakeholder Advisory Group (RWMSAG) considered the key parameters of the levy at its meetings on 14 May and 6 June 2018. The RWMSAG was established to provide strategic advice to the government on the development of the strategy and design of the levy. The RWMSAG includes representatives from the Local Government Association of Queensland (LGAQ), Australian Council of Recycling, Waste Recycling

Industry Queensland, Waste Management Association of Australia, Australian Industry Group, Chamber of Commerce and Industry Queensland (CCIQ), Sustainable Business Australia, Master Builders Queensland and Housing Industry Association. It agreed to the formation of a Legislation Technical Working Group to consider the development of the waste levy legislation in more detail.

The Legislation Technical Working Group consisted predominantly of nominees from the waste and recycling industries as well as representatives of LGAQ, CCIQ, Housing Industry Association and Master Builders Queensland. The working group met twice, on 2 July and 19 July 2018, for detailed discussion of working drafts of the Bill and some aspects of a proposed regulation to support it, particularly the potential for discounts on recycling residue waste.

The Department of Environment and Science (DES) also met individually with peak bodies, industry members and local governments about the design of the legislation.

Peak waste industry bodies and industry members generally support the levy but raised a range of specific issues about the detailed design of the legislation through the various forums available.

Consistency with legislation of other jurisdictions

Currently all other mainland states have a waste levy but the detailed arrangements for delivering their objectives differ.

All states currently charge the levy on all major waste streams including municipal solid waste.

Victoria, New South Wales and Western Australia have levy zones that are limited to specific areas of the state, whereas within South Australia the entire state is within the levy zone.

Victoria, South Australia and Western Australia all charge the levy only at waste facilities that include a landfill while New South Wales charges the levy at landfills, transfer stations and resource recovery facilities with levy rebated if it is then transferred to another facility (i.e. the transfer station receives a rebate if the waste is moved to a landfill which then pays the levy). In Western Australia, the levy is not charged until the waste is actually disposed to landfill at the site, whereas the levy is charged on delivery to the site in other states.

Victoria provides an annual rebate on the levy for waste that has been lawfully recycled, reprocessed or recovered. Similarly, New South Wales allows for a rebate on recyclable materials that are lawfully removed from a licensed facility. In Western Australia, operators can apply for an exemption for recyclable materials.

Notes on provisions

Part 1 Preliminary

Short title

Clause 1 states that the short title of the Bill may be cited as the *Waste Reduction and Recycling (Waste Levy) Amendment and Other Legislation Amendment Bill 2018.*

Commencement

Clause 2 provides that Part 2 commences on 4 March 2019, except for section 3, new chapter 16, part 3 heading and sections 323 and 324 which commence on 4 February 2019. The remaining parts of the Bill, Parts 3 and 4, which amend the *City of Brisbane Act 2010* and the *Local Government Act 2009*, are not mentioned because they will commence on assent.

Part 2 Amendment of Waste Reduction and Recycling Act 2011

Act amended

Clause 3 provides that Part 2 of the Bill amends the *Waste Reduction and Recycling Act 2011*.

Amendment of s 5 (Approach to achieving Act's objects)

Clause 4 amends section 5 of the *Waste Reduction and Recycling Act 2011*, which identifies the approaches to achieving the objects of the Act. This amendment inserts an additional approach, namely price signalling through the introduction of a levy on waste delivered to a levyable waste disposal site.

Clause 4 also renumbers section 5 of the Act to take into account the insertion of the additional approach.

Amendment of s 8A (Meaning of waste disposal site)

Clause 5 amends section 8A(b) of the *Waste Reduction and Recycling Act 2011* which currently provides that a 'waste disposal site' is broadly a type of waste facility for which the operator is required to hold an environmental authority and where waste delivered to the site is commonly disposed of to landfill at the site. The amendment replaces the word 'commonly' with 'sometimes' to ensure that where waste is more commonly being stockpiled at a waste facility, rather than disposed to landfill at the facility, the facility may still be a waste disposal site.

Replacement of ch 3 (Obligations of operator of waste disposal site)

Clause 6 omits the current Chapter 3 (Obligations of operator of waste disposal site) of the *Waste Reduction and Recycling Act 2011* and inserts a new Chapter 3 (Waste Levy). The new Chapter 3 comprises Part 1 - 7.

Part 1 (Preliminary)

Part 1 outlines the main purpose and key definitions of Chapter 3. It comprises sections 25 – 26.

Section 25 (Main Purpose)

Section 25 identifies that the main purpose of Chapter 3 is to impose a levy on waste delivered to a levyable waste disposal site, and to allow for an exemption from the levy, or a discounted levy rate, for particular waste.

Section 26 (Definitions for chapter)

Section 26 provides definitions relevant to Chapter 3 including of exempt waste, levyable waste, levyable waste disposal site and residue waste.

Exempt waste includes lawfully managed and transported asbestos-containing waste in specified circumstances and soil and other natural materials defined as ‘clean earth’. Types of exempt waste may also be prescribed by regulation or approved or declared by the chief executive under Chapter 3.

Levyable waste is waste, other than exempt waste, that is delivered to a levyable waste disposal site.

A levyable waste disposal site is a waste disposal site excluding a part that has been declared a resource recovery area (refer to section 72R). The term ‘*waste disposal site*’ is already defined in section 8A of the Act and is amended by clause 5 of the Bill.

Residue waste is the waste from a recycling activity that is commonly disposed of to landfill after the recoverable components have been removed from material. An example is the residue waste, commonly called ‘floc’, which is the mainly non-metal component that results from shredding and recovering metal from waste such as motor vehicles and whitegoods that have reached the end of their useful life.

Part 2 (Identifying exempt waste)

Part 2 comprises three divisions dealing with the declaration of limits for disaster management waste, approval of waste as exempt waste and declaring waste to be exempt waste.

Division 1 (Declaring limits for disaster management waste)

Division 1 of Part 2 comprises section 27.

Section 27 (Chief executive may declare limits for disaster management waste)

Section 27 provides that the chief executive may declare limits to the exemption for disaster management waste and for how such a declaration can be made. The chief executive may declare a limit by publishing it on the department's website. The chief executive must take all reasonable steps to ensure persons likely to be directly affected by the declaration are made aware of it, but a declaration is not invalid if the chief executive fails to do this. Examples of declared limits may include the period of time for which waste will be considered disaster management waste or that waste is disaster management waste only if disposed of at a facility stated on the website.

Division 2 (Approval of waste as exempt waste)

Division 2 of Part 2 outlines the application, assessment and approval process for the exemption of waste and comprises sections 28 – 34.

Section 28 (Application for approval of waste as exempt waste)

Section 28 provides for the making of an application for waste to be exempt from the levy. The application for the exemption must be in the approved form, supported by enough information to allow a decision to be made and accompanied by the fee prescribed by regulation. A person may make an exempt waste application only for:

- waste that has been donated to a charitable recycling entity but that cannot practicably be re-used, recycled or sold. A *charitable recycling entity* as an entity that:
    a. operates on a not-for profit basis; and
    b. is registered as a charity under the *Collections Act 1966*; and
    c. is a Deductible Gift Recipient for the purposes of laws administered by the Australian Taxation Office of the Commonwealth; and
    d. actively and consistently operates a recycling or re-use program for:
        i. providing emergency assistance; or
        ii. otherwise supporting the charitable purposes of the entity.
- waste collected by members of the community in the course of an organised event directed at addressing littering or illegal dumping. An example of such an event would be 'Clean Up Australia Day'.
- contaminated earth from land listed on the environmental management register or contaminated land register. The registers are defined in the *Environmental Protection Act 1994,* Schedule 4.
- waste to be used at a levyable waste disposal site as part of the necessary operation of the site, including for progressive capping, batter construction, final capping, profiling and site rehabilitation.
- biosecurity waste which is waste made up of matter that is subject to the operation of the *Biosecurity Act 2014.* Only the chief executive of a department having responsibility for the administration of the *Biosecurity Act 2014* can apply for an exemption for biosecurity waste.

Section 29 (Chief executive may require additional information or documents)

Section 29 allows the chief executive, within 28 days of receiving an application to exempt waste from the levy, to require additional information or documents about the application by a stated day. If the information or documents are not provided by the stated day, or at the end of an extension agreed between the applicant and chief executive, then the application is taken to be withdrawn.

Section 30 (Deciding application)

Section 30 provides that chief executive must decide to grant or refuse the application within 28 days from when the chief executive receives the application or receives any additional information or documents that may have been requested. In deciding whether to grant the application, the chief executive must consider the objects of the Act, the information outlined in the application and any criteria prescribed by regulation. The application must be refused in the circumstances prescribed by regulation. If a decision is not made within 28 days, then the chief executive is taken to have refused the application which triggers the requirement to provide an information notice and makes the operator eligible to request a review of the decision under Chapter 9 of the Act.

Section 31 (Grant of application)

Section 31 provides that if the chief executive grants the application, the chief executive must, within 5 business days, give the applicant notice of the approval. An approval cannot be for more than three years. If the chief executive imposes conditions on the approval, the chief executive must also give the applicant an information notice about the decision to impose the conditions. The requirement for an information notice makes the operator eligible to request a review of the decision under Chapter 9 of the Act. An information notice is not required if the conditions are the same, or substantially the same, as agreed to or asked for by the applicant.

Section 32 (Refusal of application)

Section 32 provides that if the chief executive decides to refuse the application, the chief executive must, within 5 business days, give the applicant an information notice about the decision. The requirement for an information notice makes the operator eligible to request a review of the decision under Chapter 9 of the Act.

Section 33 (Amendment of approval by agreement)

Section 33 provides that an approval may be amended by agreement between the chief executive and the holder of the approval. If the holder requests an amendment then the request must be accompanied by the fee prescribed by regulation.

Section 34 (Cancellation or amendment of approval by chief executive)

Section 34 allows the chief executive to cancel or amend an approval of waste as exempt waste if there are reasonable grounds to cancel or amend it. The grounds may include that a requirement or a condition of the approval has not been complied with, that there is reasonable suspicion that incorrect or misleading information was provided

through the application process, that the circumstances relevant to the granting of the approval have changed or that it is desirable to cancel or amend the approval having regard to the objects of this Act.

Prior to cancelling or amending an approval, the chief executive must notify the holder of the approval of the proposed action and invite the holder to make written submissions, within a period of at least 21 days, as to why the proposed action should not be taken. The chief executive must consider all submissions made when making a decision on whether to take the proposed action. If the chief executive decides to undertake the proposed action, the chief executive must, within 10 business days after making the decision give the holder of the approval an information notice about the decision. The requirement for an information notice makes the operator eligible to request a review of the decision under Chapter 9 of the Act. The decision takes effect when the information notice is given.

Division 3 (Declaring waste to be exempt waste)

Division 3 of Part 2 comprises section 35.

Section 35 (Chief executive may declare waste to be exempt waste in exceptional circumstances)

Section 35 provides that if the chief executive is satisfied that exceptional circumstances apply for waste or the disposal of waste then the chief executive may declare that waste to be exempt waste. The declaration is made by publication on the department's website. The declaration may be subject to limits or conditions.

Part 3 (Operation of waste levy)

Part 3 imposes the waste levy and provides for a regulation to prescribe how it is calculated and the rate of the levy. It also provides for the waste levy zone to be prescribed by regulation. Part 3 comprises sections 36-43.

Section 36 (Imposition of the waste levy)

Section 36 imposes the waste levy. The operator of a levyable waste disposal site is liable to pay the State the waste levy on all levyable waste delivered to the site if the site is located within the waste levy zone or on levyable waste that was generated outside the non-levy zone if the site is in the non-levy zone. The liability to pay the levy on waste generated outside the non-levy zone if it is delivered to a site in the non-levy zone is to ensure that waste is not moved from the levy zone to waste disposal sites outside the levy zone for the purposes of avoiding the levy. It will also ensure the levy is paid on waste that is generated interstate no matter where in Queensland it is delivered to a waste disposal site.

Section 37 (Calculating waste levy amount)

Section 37 provides for the waste levy rate for each type of waste to be prescribed by regulation and the amount of levy payable on waste to be calculated in the way prescribed by regulation.

Section 38 (Offence to remove waste from levyable waste disposal site in particular circumstances)

Section 38 provides that it is an offence to remove waste on which a levy was, or must be paid, from a levyable waste disposal site for sale or commercial gain. The prohibition is to ensure that the levy is not ultimately paid by a site operator on materials which are received by the site operator as a step in the production of 'goods', such as are made from recyclable waste. A levy charged on such waste could be regarded as an excise and may breach section 90 of the Constitution.

However, the prohibition on removing waste from the site is not absolute. It would not apply unless levy was, or must be, paid on the waste – materials recovered from waste stockpiled before commencement or exempt waste could be removed.

Also, the prohibition is only on removal for sale or other commercial gain. For example, the operator could pay someone to remove the waste in order to comply with a legislative requirement, such as a license condition or ban on disposal of the type of waste.

Note that a resource recovery area can be established at a levyable waste disposal site for the purposes of separating recyclable and reusable materials before the levy is paid (see Part 6 below).

Also, waste can be removed once the site stops being a levyable waste disposal site, for example when it is no longer receiving waste. This means that the prohibition would not prevent future mining of a landfill cell to recover valuable materials.

Section 39 (When residue waste taken to be generated outside the non-levy zone)

Section 39 provides that if the waste feedstock for a recycling activity in the non-levy zone came from outside the non-levy zone (i.e. from the levy zone or interstate) then the residue waste generated by the recycling activity is taken have been generated outside the non-levy zone. This is to prevent levy evasion by laundering waste through recycling activities in the non-levy zone.

Section 40 (Mixing waste generated outside non-levy zone with waste generated in the non-levy zone)

Section 40 provides that when waste generated in the non-levy zone is mixed with waste generated outside the non-levy zone (i.e. in the levy zone or interstate) before being delivered to a levyable waste disposal site in the non-levy zone, then all the mixed waste is taken to be generated outside the non-levy zone. However, the chief executive and the person who mixed the waste can agree in writing to another way of working out which waste was generated outside the non-levy zone.

Section 41 (Mixing types of waste that attract different rates of waste levy)

Section 41 provides that when types of waste that attract different levy rates are mixed, then the all the waste is subject to the levy rate of the type of waste with the highest levy rate.

Section 42 (Mixing types of waste that attract same rate of waste levy)

Section 42 provides that when different types of waste which attract the same levy rate are mixed before delivery to a levyable waste disposal size, then the operator of the site, using information required to be given by the person delivering the waste under section 53, must make a reasonable estimate of the amount of each waste type for sections 60 and 61.

Section 43 (Regulation identifying waste levy zone)

Section 43 provides that a regulation may identify local government areas that form the waste levy zone. It is not necessary for the levy zone to be made up of local government areas that are contiguous.

Note that the non-levy zone is defined in section 26 as the part of the State made up of local government areas outside the waste levy zone.

Part 4 (Discounting waste levy for residue waste)

Part 4 provides for the discounting of the levy on recycling residue waste. It comprises section 44 – 51.

Section 44 (Application for discounted rate for waste levy for residue waste)

Section 44 details the application process for a discount, which recycling activities should be prescribed by regulation and for the discounted rate to be prescribed by regulation.

A person who conducts a recycling activity, prescribed by regulation, may make an application (a residue waste discounting application) asking the chief executive to apply a discounted levy rate for residue waste from the activity.

The application must be in an approved form, supported by enough information to allow the chief executive to decide the application, and accompanied by the fee prescribed by regulation.

A recycling activity can only be prescribed if a discount on the waste levy for residue waste will have a significant impact on the activity becoming established and sustained in Queensland and the activity optimises the market and material value that can be derived from the waste used as feedstock.

Section 45 (Chief executive may require additional information or documents)

Section 45 allows the chief executive, within 28 days of receiving a residue waste discounting application, to request further reasonable information or documents about the application by a stated day. If the information or documents are not provided by the stated day, or at the end of an extension agreed between the applicant and chief executive, then the application is taken to be withdrawn.

Section 46 (Deciding application)

Section 46 provides that the chief executive must decide either to grant or refuse a residue waste discounting application within 28 days from the later of either when the chief executive receives the application, or receives additional information or documents requested under section 45. If the chief executive fails to make a decision then the application is taken to be refused, which triggers the requirement for an information notice and makes the applicant eligible to request a review of the decision under Chapter 9 of the Act.

In deciding whether to grant the application, the chief executive must consider the objects of the Act, the information outlined in the application and any criteria prescribed by regulation. The applicant's history of compliance with this Act and any licences, environmental authorities or other approvals required for carrying out the recycling activity under the *Environmental Protection Act 1994* is also to be considered. An application must be refused if the criteria prescribed by regulation are not met.

Section 47 (Grant of application)

Section 47 requires the chief executive to give the applicant a notice within 5 business days of granting a residue waste discounting application that includes the discounted rate for the residue waste which has been prescribed by regulation, the period of the approval and any conditions of the approval.

The conditions must include a requirement either that the applicant maintains, as a minimum, a stated recycling efficiency or a limit on the amount of residue waste that will attract the discount rate in a period.

An approval can only be granted for up to three years and must not extend beyond the day prescribed by regulation for a review by the chief executive of the discounted rate, the recycling efficiency threshold and other matters prescribed about a residue discount for Part 2.

An information notice must be given if any conditions are imposed on the approval which differ substantially from the conditions asked for or agreed to by the applicant. The requirement for an information notice makes the applicant eligible to request a review of the decision under Chapter 9 of the Act.

Section 48 (Refusal of application)

Section 48 provides that chief executive must give the applicant an information notice within 5 business days of refusing a residue waste discounting application. The requirement for an information notice makes the applicant eligible to request a review of the decision under Chapter 9 of the Act.

Section 49 (Amendment of approval by agreement)

Section 49 provides that an approval of a discounted rate for the waste levy for residue waste can be amended by agreement between the chief executive and the holder of the approval. If the holder requested the amendment then the request must be accompanied by a fee prescribed by regulation.

Section 50 (Cancellation or amendment of approval by chief executive)

Section 50 allows the chief executive to cancel or amend an approval of a discounted rate for the waste levy for residue waste if the chief executive considers there are reasonable grounds. Grounds for cancelling or amending an application include that there is a reasonable suspicion that the limits or conditions included in the approval have not been complied with or are based on false or misleading information, that the approval holder has not implemented strategies or practices to progressively improve the efficiency of the applicant's recycling activities during the period of the proposed exemption, that circumstances of granting approval have changes or that it is desirable to cancel or amend the approval having regard to the objects of the Act.

Before cancelling or amending an approval, the chief executive must give notice to the holder of the approval of the proposed action, the grounds, facts and circumstances for the proposed action and invite the holder to make written submissions to show why the proposed action should not be taken. The time period for the holder to respond with written submissions must be at least 21 days. The chief executive must consider all submissions made during that period when making a decision. If the chief executive decides to cancel or amend the approval, the chief executive must, within 10 business days, after making the decision, give the holder an information notice about the decision. The decision takes effect when the holder is given the information notice. The requirement for an information notice makes the approval holder eligible to request a review of the decision under Chapter 9 of the Act.

Section 51 (Automatic cancellation of approval)

Section 51 provides that an approval of a discounted rate for the waste levy for residue waste is automatically cancelled if the owner of the business holding the approval ceases to be the owner, including, for example, because the ownership of the business is transferred to another entity.

Part 5 (Obligations relating to waste levy)

Part 5 of Chapter 3 outline the obligations of persons delivering waste and operators of a waste disposal sites to support the administration of the levy arrangements. The obligations on an operator of a levyable waste disposal site includes remitting the levy, measurement of waste by weighbridge or using weight measurement criteria, installing, maintaining and operating a monitoring system (if required), volumetric surveys, data reporting and record keeping and payment options. Part 5 comprises divisions 1 - 3.

Division 1 (Obligations of person delivering waste)

Division 1 of Part 5 outlines the obligations of a person delivering waste. It comprises sections 52 - 55.

Section 52 (Person delivering waste)

Section 52 provides that both the person who physically delivers waste and the person who engages or directs the person to physically deliver the waste are taken to be a person who delivers waste under Division 1.

Section 53 (Person delivering waste to levyable waste disposal site to give information)

Section 53 requires a person delivering waste to a levyable waste disposal site to provide information so that the operator of the site can meet their obligations under Division 2. The information required includes the amount of exempt waste; the amount of each type of waste; and whether the waste was generated in the non-levy zone, the waste levy zone or interstate.

A maximum penalty of 300 penalty units applies for a contravention of this requirement.

If the person delivers waste from outside the non-levy zone to a levyable waste disposal site in the non-levy zone in a vehicle with a GCM (gross combination mass – broadly the maximum loaded mass of a vehicle) or GVM (gross vehicle mass – broadly the lawful maximum loaded mass of a vehicle) of more than 4.5 tonnes, then the person must give the site operator the required information at least 24 hours before the waste is delivered. The information may be given for several consignments of waste.

The information does not need to be given if the person delivering the waste knows that the operator already has the required information.

The operator of the site may require the information to be provided in the approved form. A maximum penalty of 300 penalty units applies for a contravention of this requirement unless the person has a reasonable excuse.

It is a defence to prosecution for the offences if a person who engages or directs another person to deliver waste can prove they issued appropriate instructions to ensure compliance with the section, used all reasonable precautions to ensure compliance and

could not have stopped the commission of the offence by the exercise of reasonable diligence.

Section 54 (Person delivering particular waste to give information)

Section 54 requires a person delivering waste generated outside the non-levy zone, in a vehicle with a GCM or GVM of more than 4.5 tonnes, to provide information at least 24 hours before delivering it to a resource recovery and transfer facility or other entity undertaking recycling in the non-levy zone. A resource recovery and transfer facility is defined as a facility used for receiving, sorting, dismantling or baling waste or storing waste before moving it for recycling, processing, treatment or disposal.

The delivery information required includes the amount of exempt waste and whether the waste was generated in the non-levy zone, the waste levy zone or interstate.

A maximum penalty of 300 penalty units applies for a contravention of this requirement.

The information may be given for several consignments of waste.

The information does not need to be given if the person delivering the waste knows that the operator already has the required information.

The operator of the facility or entity conducting a recycling activity may require the information to be provided in the approved form.

A maximum penalty of 300 penalty units applies for a contravention of this requirement.

It is a defence to prosecution for the offences if a person who engages or directs another person to deliver waste can prove they issued appropriate instructions to ensure compliance with the section, used all reasonable precautions to ensure compliance and could not have stopped the commission of the offence by the exercise of reasonable diligence.

Section 55 (Giving false or misleading information when delivering waste)

Section 55 establishes an offense for a person delivering waste to a levyable waste disposal site in the state, or to a resource recovery and transfer facility or a recycling activity in the non-levy zone, to knowingly give any false or misleading information to the operator of the site. This offence remains regardless of whether or not the person is required to give information under sections 53 or 54.

A maximum penalty of 300 penalty units applies to contravention of this requirement.

It is not an offence if the person delivering the waste explains how a document is false or misleading and provides the correct information.

Division 2 (Obligations of operators of levyable waste disposal sites)

Division 2 of Part 5 comprises seven subdivisions outlining the obligations of the operator of a levyable waste disposal site in relation to remitting the levy, measurement of waste by weighbridge or using weight measurement criteria, implementing monitoring systems, conducting volumetric surveys, data reporting and record keeping.

Subdivision 1 (Remitting waste levy)

Section 56 (Remitting waste levy amount to the State)

Section 56 provides for the payment of the levy by a levyable waste disposal site operator. After receiving a summary data return (as defined in section 72) from the operator, the chief executive will issue an invoice for the levy period.

The term 'levy period' is defined in section 26. It is generally a month. However, if the operator of a small site meets the requirements of a transitional provision in section 325 and therefore is not required to comply with the waste measurement and recording requirements stated in section 61(2), then the levy periods for that small site until 30 June 2021 are:

- commencement of section 26 until 30 June 2019
- 1 July 2019 to 30 June 2020
- 1 July 2020 to 30 June 2021

The levy would generally be required to be paid by the 'due date for payment' as defined in section 26. This is generally the 28th day of the second month after the levy period, i.e. if the levy period was June, the levy would be payable by 28 August. However, the operator may have longer to pay the levy due to a waste levy instalment agreement or if an extension of time to pay the levy has been granted (under sections 72G, 72H and 72I).

If a waste levy amount owing by the site operator remains unpaid after its due date, interest is payable on the unpaid amount for each day starting on the day after the due date for payment and ending on the day the amount is actually paid. The rate of interest is the same rate as that applying on unpaid tax under the *Taxation Administration Act 2001*, section 54 and the *Taxation Administration Regulation 2001*, section 8.

The State can recover any unpaid levy, and unpaid interest on the unpaid amount, through application to a court of competent jurisdiction.

Subdivision 2 (Weighbridges)

Subdivision 2 comprises section 57 – 58.

Section 57 (Weighbridge required)

Section 57 provides the weighbridge installation requirements for levyable waste disposal sites in the waste levy zone and non-levy zone. The requirement to install a weighbridge will be phased in over several years according to the size of the site.

In the levy zone, a weighbridge must be installed:

- by 4 March 2019 if an environmental authority for the disposal of more than 10,000 tonnes of waste in a year is required to be held for the site
- by 1 July 2021 if an environmental authority for the disposal of more than 5,000 tonnes, but not more than 10,000 tonnes of waste in a year at the site
- by 1 July 2024 for any other site.

In the non-levy zone, a weighbridge will be required to be installed at a site from these dates only if the site receives at least 600 tonnes of levyable waste from outside the non-levy zone (levy zone or interstate) during a year. A site of the relevant size that hits this trigger will have until 30 June of the following year to install its weighbridge. In 2019, the weighbridge requirement is triggered if the amount of levyable waste received between 4 March and 31 December is at least 600 tonnes.

A maximum penalty of 300 penalty units applies for contravention of these requirements.

Section 58 (Weighbridge requirements)

Section 58 requires the operator of a levyable waste disposal site with a weighbridge to ensure it is installed, operated and maintained in accordance with requirements prescribed in regulation, kept in proper working order and is certified under the *National Measurement Act 1960* (Cth).

If any event results in the weighbridge being out of operation, the operator must bring the weighbridge back into operation in the shortest practicable time and keep a record detailing the reason and the period. If the period is more than 24 hours, the chief executive must be notified within three days of when the weighbridge ceased operation, whether or not the weighbridge is still out of operation, of the reason, the period and what actions are being undertaken to bring it back to operation. If the weighbridge is still out of operation when the chief executive is notified, the site operator must notify the chief executive of its operation within three days after it commences operation.

A maximum penalty of 200 penalty units applies to contraventions of these requirements.

Subdivision 3 (Measurement of waste)

Subdivision 3 comprises section 59 – 61.

Section 59 (When waste or other material must be measured)

Section 59 provides that waste or more than 1 tonne of other material must be measured when it is delivered to, or removed from, a levyable waste disposal site and when it is delivered to or removed from a resource recovery area. The requirement to measure waste or other material removed from a resource recovery area applies where waste is moved to any other part of the waste disposal site or if the waste or other material is moved off the site in a vehicle with a GCM or GVM of more than 4.5 tonnes.

Section 60 (Measurement of waste by weighbridge)

Section 60 requires that if a weighbridge is installed at a waste disposal site it must be used to measure and record the waste or other material as required in section 59.

In addition, the operator must ensure that the record of all measurements includes the information required by the chief executive and published on the department's website about the type of waste or material, where the waste was generated, details of any levy exemption or discount applying to the waste and the vehicle used to move the waste or material.

A maximum of 300 penalty units applies for a contravention of the requirements to use the weighbridge to measure and record the movements of waste and include the information required by the chief executive.

If the weighbridge is not in operation, the operator of the site must ensure that the waste is measured and recorded in compliance with the weight measurement criteria prescribed under regulation. Also, if it is not practicable to use a weighbridge to measure and record a particular waste, an alternative method may be used where agreed to by the chief executive.

Section 61 (Measurement of waste other than by weighbridge)

Section 61 provides that where a weighbridge is not installed at a waste disposal site, the weight measurement criteria prescribed by regulation must be used for measuring movements of waste or other material as required in section 59.

In addition, the operator must ensure that the record of all measurements includes the information required by the chief executive and published on the department's website about the type of waste or material, where the waste was generated, details of any levy exemption or discount applying to the waste and the vehicle used to move the waste or material.

A maximum penalty of 300 penalty units applies for contravention of the requirements.

Subdivision 4 (Monitoring system)

Subdivision 4 comprises section 62 - 66.

Section 62 (What is a monitoring system)

Section 62 defines a monitoring system for the purposes of subdivision 4 as a closed-circuit television or another system approved by the chief executive by publishing the details of the system on the department's website.

Section 63 (When monitoring system may be required by the chief executive)

Section 63 empowers the chief executive to require the operator of a waste disposal site to install, operate and maintain a monitoring system if the chief executive believes that the operator has not complied with their obligation to pay the waste levy or to submit waste data returns. The requirement is made by a notice specifying monitoring points for recording vehicle movements at the site. The notice must state the day by which the notice must be complied with and include an information notice for the decision to give the notice. The requirement for an information notice makes the operator eligible to request a review of the decision under Chapter 9 of the Act.

A maximum penalty of 200 penalty units applies for a contravention of the notice.

Section 64 (Requirements for monitoring system)

Section 64 provides the requirements for a monitoring system required under section 63. The requirements include that the monitoring system must meet the minimum requirements as set out under a regulation and be kept in proper working order. The system must be able to record each vehicle at each monitoring point in a way that identifies the vehicle, for example by recording the vehicle's registration.

The operator of the waste disposal site must display signage at the premises to make persons arriving at the site aware that a monitoring system is installed. Access to the monitoring system must generally be restricted to the operator of the site or a person authorised by the operator. Recordings made using the equipment must also be stored in a secure place at the premises in compliance with any requirements prescribed by regulation.

Operators are required keep each recording available at the premises for inspection and viewing by an authorised person for a minimum of 60 days unless an authorised officer has confirmed in writing that they have a copy of the recording and that copy is viewable. Safeguards have been included to minimise risks to privacy. No-one, other than an authorised person, the operator of the site or a person approved by the operator, is allowed to view the recordings at the premises or erase or destroy them. After 90 days the recordings must be erased or destroyed.

A maximum penalty of 200 penalty units applies for a contravention of these requirements.

Section 65 (Requirements if monitoring system stops operating)

Section 65 provides for what must happen if any event stops the monitoring system that was required to be installed under section 63 from recording. The operator must rectify the problem as soon as practicable and keep a record detailing the reason and the period the system was not recording. If the period is more than 24 hours, the chief executive must be notified within three days of it starting to be out of operation of the reason the recording stopped, the period and what actions are being taken to rectify the situation. If the system is still out of operation when the chief executive is notified, the site operator must notify the chief executive of its operation within three days after it starts recording again.

A maximum penalty of 100 penalty units applies for the contravention of these requirements.

Section 66 (Operators required to give chief executive plan for monitoring system)

Section 66 requires an operator to provide the chief executive with a plan for the monitoring system within 21 days of being required to install the system under section 63. The plan must include a diagram indicating how the components of the monitoring system have been positioned and the scope of recordings.

A maximum penalty of 40 penalty units applies for contravention of these requirements.

Subdivision 5 (Volumetric surveys)

Subdivision 5 comprises section 67 – 71.

Section 67 (Volumetric survey for levyable waste disposal site in waste levy zone)

Section 67 requires the operator of a levyable waste disposal site located in the waste levy zone to carry out a volumetric survey in June each year. At most sites the obligation applies from 1 June 2020, but at a small site (where the operator holds an environmental authority to receive less than 2,000 tonnes of waste in a year) the obligation only applies from 1 June 2022.

The site operator must undertake a volumetric survey of the levyable waste disposal site in June 2020 and provide the results to the chief executive by the end of July 2020.

The volumetric survey must be undertaken in accordance with section 70 for all stockpiled waste at the site and each landfill cell where waste has been disposed of since the last volumetric survey required under the Act. (An initial volumetric survey is required at each site in 2019 under section 323).

(The information provided by the volumetric surveys may be cross-checked by the chief executive against the data provided by the operator, which is used as the basis for calculation of the levy payable, about movements of waste at the site since the last survey.)

A maximum penalty of 200 penalty units applies for a contravention of these requirements.

If since the last survey waste has stopped being delivered to the site or for some other reason the site has ceased to be a levyable waste disposal site, then the operator is still obliged to conduct a volumetric survey the following June. However, the volumetric survey may be conducted and submitted earlier than otherwise required.

Section 68 (Volumetric survey for levyable waste disposal site in non-levy zone in particular circumstances)

Section 68 requires the operator of a levyable waste disposal site in the non-levy zone to carry out a volumetric survey if at least 600 tonnes of levyable waste generated outside the non-levy zone was received at the site during a year. For 2019, this section will only apply if 600 tonnes is received at the site between 4 March 2019 and 31 December 2019. For small sites (where the operator holds an environmental authority to receive less than 2,000 tonnes of waste in a year) this section does not apply until 1 June 2022.

The volumetric survey must be undertaken in accordance with section 70 for each active landfill cell at the site and all stockpiled waste at the site. It must be carried out between 1 January and 30 June of the following year and the results provided to the chief executive before the end of July in the following year.

A maximum penalty of 200 penalty units applies for a contravention of these requirements.

If the site ceased to be a levyable waste disposal site at some time since the last survey, because waste was no longer delivered to the site or for some other reason the site ceased to be a levyable waste disposal site, then the operator is still obligated to conduct a volumetric survey the following June. However, the volumetric survey may be conducted and submitted earlier than otherwise required.

Section 69 (Volumetric survey for new landfill cells)

Section 69 requires that, before any landfill cell is used for the first time for disposing of waste at a levyable waste disposal site, the operator must carry out a volumetric survey of the cell, in accordance with section 70, and submit the results to the chief executive. This section applies to levyable waste disposal sites within the waste levy zone, and also to sites in the non-levy zone where at least 600 tonnes of levyable waste generated outside the non-levy zone was received at the site within the preceding 12 months. This is regardless of whether or not waste has previously been disposed of to landfill at the levyable waste disposal site. The volumetric survey must be submitted to the chief executive in the approved form by the end of the month immediately following the month in which the volumetric survey is carried out.

A maximum penalty of 200 penalty units applies for contravention of the requirements.

Section 70 (Requirements for volumetric surveys)

Section 70 sets out the specific requirements for a volumetric survey. The survey must be performed in compliance with any requirements prescribed by regulation. The survey results must be in the approved form; be accompanied by a topographical plan of the site; and have been certified as accurate by a surveyor under the *Surveyors Act 2003*.

Section 71 (Failure to carry out volumetric survey or give chief executive the results)

Section 71 allows the chief executive to commission a volumetric survey for a levyable waste disposal site if the operator fails to carry out a volumetric survey or to provide a copy of the results to the chief executive. The chief executive may direct an authorised person to enter the site in order to facilitate the survey. The chief executive may recover the reasonable cost of the survey from the operator.

Subdivision 6 (Waste data returns)

Subdivision 6 comprises section 72.

Section 72 (Submission of waste data returns)

Section 72 requires the operator of a levyable waste disposal site to submit a waste data return by the end of the last business day of the month following the end of a levy period for the site or if granted an extension of time (under section 72G, 72H or 72I) at the end of the extension.

There are two types of waste data return:

- a summary data return which provides information required to be measured under section 59 used by the chief executive to calculate the levy liability for the site for a levy period; and
- a detailed data return which contains comprehensive information about the movements of individual waste loads and other material into, out from and within a waste disposal site as required by section 59.

All sites within the waste levy zone are required to submit a summary data return. In the non-levy zone, the requirement to submit a summary data return is triggered by the receipt, during a levy period, of any levyable waste generated in the levy zone or interstate.

The requirement for sites to submit a detailed data return will be phased in over several years according to the size of the site and does not apply to a section 325 small site.

A detailed data return must be submitted by the operator of a site in the levy zone:

- from commencement if an environmental authority for the disposal of more than 10,000 tonnes of waste in a year is required to be held for the site;
- from 1 July 2021 if an environmental authority for the disposal of more than 5,000 tonnes, but not more than 10,000 tonnes of waste in a year is required to be held at the site; or
- from 1 July 2024 for any other site.

A detailed data return must be submitted by the operator of a site in the non-levy zone only if an environmental authority for the disposal of more than 10,000 tonnes of waste in a year is required to be held for the site and at least 50 tonnes of waste generated in the levy zone or interstate was received during the levy period. A maximum penalty of 300 penalty units applies for contravention of the requirements.

Subdivision 7 (Record keeping)

Section 72A (Operator of levyable waste disposal site to keep particular documents)

Section 72A requires the operator of a levyable waste disposal site to keep copies of the following documents:

- waste data returns, and any information used to prepare returns - for five years after submission of the return;
- records of a period in which a weighbridge (section 58 (3)) or monitoring system (section 65 (2)) was out of operation, for five years after the record was made;
- volumetric surveys for landfill cells or stockpiled waste - for five years after the survey was undertaken;
- any notice that was required to be given to the chief executive - for five years after the notice was given; and
- any other record prescribed under a regulation for the period prescribed under a regulation.

A maximum penalty of 300 penalty units applies for a contravention.

Retention of these documents is critical as access to these records may be needed to verify the accuracy of the waste data returns and levy payments and compliance with other requirements under the Act.

Division 3 (Payment options)

Division 3 of Part 5 comprises four subdivisions that cover options for payment of the waste levy including instalment agreements, extensions of time, and the circumstances in which the chief executive may estimate the waste levy amount payable. It also provides for re-credit of levy amounts paid by the operator of a levyable waste disposal site.

Subdivision 1 (Waste levy instalment agreements)

Subdivision 1 comprises sections 72B – 72F.

Section 72B (Waste levy instalment agreement)

Section 72B defines a waste levy instalment agreement as an agreement between the chief executive and an operator of a levyable waste disposal site or sites to pay the waste levy owed in instalments.

Section 72C (Application for waste levy instalment agreement)

Section 72C allows an operator of a levyable waste disposal site, who is unable to pay the waste levy within the time required, to apply to enter into a waste levy instalment agreement. The application must include a description of the financial situation that has resulted in the inability to pay the waste levy amount by the due date, and how the financial situation came about. The operator must also provide up-to-date management

and financial records to verify these claims. An instalment agreement may relate to two or more levyable waste disposal sites that are operated by the same person.

The chief executive may agree to enter into an instalment agreement with the operator only if satisfied that the operator has demonstrated an inability to pay the levy amount within the time required; and how entering into the instalment agreement will allow the operator to pay the waste levy amount while at the same time allowing the operator to pay future levy amounts.

The chief executive has 20 days from receiving the application to decide whether to grant or refuse the application. If the chief executive decides to refuse the application, the chief executive must give the operator an information notice about the decision to refuse. Failure to make a decision within this time is taken to be a decision by the chief executive to refuse the application. The requirement for an information notice makes the applicant eligible to request a review of the decision under Chapter 9 of the Act. If the chief executive decides to grant the application it must give the operator a notice stating the terms of the waste levy instalment agreement and the period within which all waste levy amounts must be paid.

An operator can apply for a waste levy instalment agreement at any time but only one agreement can be in force at any time, and only one agreement can be entered into in a financial year. The period in which the operator has to pay all waste levy amounts will be in the agreement, however it must be no longer than six months from the start of the agreement.

Section 72D (Amendment of waste levy instalment agreement)

Section 72D allows the operator of a levyable waste disposal site to apply for an amendment of an instalment agreement, but only to include an additional amount not greater than 10% of the total waste levy amount owing by the operator at the time of application (not subject to the agreement), or to extend the period for repayment of the total waste levy amount by no more than three months.

This extension can be in addition to the six month original period under section 72C, making nine months the maximum possible period for an instalment agreement. The chief executive needs to be satisfied that the operator has demonstrated an inability to pay within the timeframes under the current instalment agreement and amending the agreement will allow the operator to pay all waste levy amounts.

The chief executive must decide the application within 20 days of receipt, and provide an information notice for a decision to refuse. The requirement for an information notice makes the operator eligible to request a review of the decision under Chapter 9 of the Act.

Section 72E (Interest affected by waste levy instalment agreement)

Section 72E provides that if an application is made after the due date for a waste levy amount, and agreed to by the chief executive, interest is payable up to the day the application was made and must be paid on or before the due date for payment of the next waste levy amount.

If an instalment agreement application is refused the normal requirements under chapter 3 for the payment of interest continue to apply.

Section 72F (Failure to pay an instalment under waste levy instalment agreement)

Section 72F provides that if an instalment amount is not paid by the due date, then the waste levy instalment agreement is taken to be no longer in force and the whole levy amount becomes due the day after the due date, unless the original due date for an amount under the instalment agreement was in the future in which case the future date becomes the due date.

If an instalment amount is not paid by the due date and in the absence of an instalment agreement interest would have been payable, then interest becomes payable on the amount from the day after the payment was due under the instalment agreement.

Subdivision 2 (Extension of time)

Subdivision 2 (Extension of time) comprises sections 72G – 72I.

Section 72G (Application for extension of time to pay waste levy amount)

Section 72G allows an operator of a levyable waste disposal site to apply for an extension of time of up to one month to pay a waste levy amount. An application must be made by the due date for payment and state the reasons why the extension is applied for.

The chief executive may grant an extension only if satisfied it is not reasonable to expect the operator to pay the waste levy amount by the due date, for example where an operator has suffered a significant electricity supply disruption or computer malfunction.

The chief executive must decide the application within 5 business days after the due date for payment of the waste levy amount, and provide a notice stating the new due date for payments for any applications granted, or an information notice for any decision to refuse an application. The requirement for an information notice makes the operator eligible to request a review of the decision under Chapter 9 of the Act. If the chief executive fails to advise the applicant within the required timeframe then the application is deemed to be refused.

An operator cannot make more than one application for an extension of time under this section or section 72H for the payment of the same waste levy amount, or more than two applications under this section or section 72H in one financial year.

An operator cannot make an application under this section if they do not hold any environmental authority they should hold for conducting operations at the site.

Section 72H (Application for extension of time to submit waste data return and pay waste levy amount)

Section 72H allows the operator to apply for an extension of time to submit a waste data return and pay the waste levy amount for the levy period covered by the waste data return. The operator must apply by the due day for the waste data return and must state the reasons why the extension is being applied for. The extension cannot be for more than 1 month after the due date for submission of the return or payment of the amount.

The chief executive may grant an extension only if satisfied it is not reasonable to expect the operator to submit the waste data return or pay the waste levy amount by the due date.

The chief executive must decide the application within 5 business days after the due day for submission of the waste data return, and provide a notice stating the new due day for submission of the waste data return and the new due date for payment of the associated waste levy amount. The chief executive must provide an information notice for any decision to refuse an application. The requirement for an information notice makes the operator eligible to request a review of the decision under Chapter 9 of the Act. If the chief executive fails to advise the operator the application is deemed to be refused.

An operator cannot make more than one application for an extension of time under this section or section 72G for the payment of the same waste levy amount, or more than two applications under this section or section 72G in one financial year.

An operator cannot make an application under this section if they do not hold any environmental authority they should hold for conducting operations at the site.

Section 72I (Public notice granting extension of time to submit waste data return and pay waste levy amount)

Section 72I allows the chief executive, by publication on the department’s website, to grant an extension of time to one or more levyable waste disposal site operators for the submission of a waste date return and payment of a waste levy amount in the case of a significant emergency, without the need for operators to make an application.

Subdivision 3 (Chief executive’s estimation of waste levy amount)

Subdivision 3 comprises section 72J.

Section 72J (Estimation of waste levy amount payable by operator of levyable waste disposal site)

Section 72J enables the chief executive to estimate the levy liability of an operator of a levyable waste disposal site if the operator has not submitted a waste data return by the due date, or has provided information which the chief executive considers is incomplete or inaccurate, or the chief executive is satisfied on reasonable grounds a waste levy amount payable by the operator is otherwise incorrect.

The chief executive may decide an estimate of the operator's liability for a period, whether or not the due date for payment of the amount of waste levy payable has passed, and must give an information notice of the decision to the operator. The requirement for an information notice makes the operator eligible to request a review of the decision under Chapter 9 of the Act.

The estimated waste levy amount decided by the chief executive becomes the amount of waste levy payable by the operator for the period. However, this does not prevent a subsequent adjustment being made if a different amount is calculated as a result of any review of the chief executive's decision.

Subdivision 4 (Bad debt credit)

Subdivision 4 comprises sections 72K – 72Q

Section 72K (Eligibility for bad debt credit after insolvency or bankruptcy of customer)

Section 72K provides for an operator of a levyable waste disposal site to apply for a credit in respect of waste levy if the operator passed on the levy costs to the customer who delivered the waste, the waste was included in a summary data return for the site and the customer failed to pay the amount within 30 days and became insolvent within 12 months. The section includes a number of specific requirements that must be met before an operator is eligible to apply or which make the operator ineligible.

These include that an operator is not eligible to apply if the operator and the customer were related entities or the operator accepted the delivery of waste from the customer when the customer had an overdue payment for an earlier delivery of waste.

Section 72L (Application for bad debt credit)

Section 72L outlines the application process for a bad debt credit. The application must be in the approved form and supported by sufficient information to allow the chief executive to decide the application.

Section 72M (Chief executive may require additional information or documents)

Section 72M allows the chief executive, within 28 days of receiving a bad debt credit application, to request further information or documents from the applicant by a stated day. If this information or documents are not provided by the stated day, or at the end of an extension agreed between the applicant and chief executive, then the application is taken to be withdrawn.

Section 72N (Deciding application)

Section 72N provides that the chief executive must decide whether to grant or refuse a bad debt credit application within 30 days of receiving the application or additional information or documents under section 72M. The application is taken to have been refused if it is not decided within the 30 days. An approval must be granted if the

applicant is eligible to receive the credit and refused if the applicant is ineligible to receive the credit.

Section 72O (Grant of application)

Section 72O provides that the chief executive is required to notify the applicant within 5 business days of granting a bad debt credit application. The notice must include the amount of the credit and be accompanied by an information notice for the decision. The requirement for an information notice makes the applicant eligible to request a review of the decision under Chapter 9 of the Act.

Section 72P (Refusal of application)

Section 72P provides that the chief executive must notify the applicant within 5 business days of deciding to refuse a bad debt credit application. The notice must be accompanied by an information notice for the decision. The requirement for an information notice makes the applicant eligible to request a review of the decision under Chapter 9 of the Act.

Section 72Q (Payment of bad debt credit)

Section 72Q provides that the chief executive must pay the bad debt credit by making a deduction from the amount of levy that the operator is required to pay for the levy period when the decision was made. If the total amount is more than the amount of levy required to be paid for that period then the operator must be paid the excess. If the applicant is no longer an operator, then the applicant must be paid the amount of the bad debt credit.

Part 6 (Resource recovery area)

Part 6 of Chapter 3 provides for the declaration, cancellation and revocation of a resource recovery area and outlines the obligations relating to a resource recovery area. It comprises two divisions.

Division 1 (Declaration of resource recovery area)

Division 1 of Part 6 comprises sections 72R – 72W.

Section 72R (Resource recovery area)

Section 72R enables the operator of a waste disposal site to declare a resource recovery area. The operator can only establish a resource recovery area if the area is used for a recycling activity. A recycling activity is defined in the Dictionary (schedule) to include the re-use of waste resources, and recycling of waste resources to make products and recovering waste resources including for energy production.

The operator, or another entity who will be responsible for the area, must hold any relevant licences, environmental authorities or other approvals required for carrying out these activities in the resource recovery area.

The resource recovery area must be separated from the rest of the site by a physical barrier which limits vehicle access to points identified on the waste disposal site plan required under section 72S or 72U. The area and physical barrier must comply with any requirements prescribed under a regulation.

A resource recovery area cannot be declared if there has been a revocation under section 72W of a declaration of a resource recovery area within the previous 12 months in relation to the same waste facility.

Section 72S (Declaration of resource recovery area)

Section 72S sets out the process for an operator of a waste disposal site to declare a proposed resource recovery area by giving a notice to the chief executive at least 20 days before using the area as a resource recovery area. This is why sections 72R and 72S have a commencement date four weeks earlier than commencement of the waste levy obligation itself (refer clause 2).

Operators will be able to declare a proposed resource recovery area on their site prior to commencement of the waste levy obligation by relying on section 17 of the *Acts Interpretation Act 1954.* This section allows for a provision of an Act to be exercised prior to the commencement of the empowering provision to which it relates.

The notice must be made in the approved form, stated the day the declaration will take effect, include a description of the activities that will be carried out within the resource recovery area and be signed by the operator and any other entity responsible for the area.

A plan of the waste disposal site indicating the resource recovery area and clearly showing the physical barrier and points of access between the area and the rest of the site needs to accompany the notice.

Section 72T (Effect of declaration of resource recovery area)

Section 72T provides that once an area is declared as a resource recovery area, it is no longer part of the levyable waste disposal site (i.e. no levy is payable on waste delivered to the area). However if waste is moved from the resource recovery area to the levyable waste disposal site then it is taken to be waste delivered to the levyable waste disposal site and levy may be payable.

Section 72U (Amendment of resource recovery area)

Section 72U enables the operator of a waste disposal site with a declared resource recovery area to amend the declaration by giving the chief executive a notice of their intent to amend the declaration at least 20 days before the amendment is to take effect.

The notice to the chief executive must be made in the approved form, signed by the operator and any other entity responsible for the area, and accompanied by:

- an updated plan of the waste disposal site indicating the amended resource recovery area and clearly showing the physical barrier and points of access between the area and the rest of the site; and

- if the activities to be undertaken in the amended resource recovery area are proposed to change - a description of the activities.

The operator does not need to amend the declaration if the change is only: a change to the barrier or points of access that does not involve a change to the boundaries: a change to the recycling activities being carried out in the area; or a change of the entity responsible for the operation of the area. (These changes are dealt with under section 73C).

If an amendment of the resource recovery area leads to a part of the former area being included in the levyable waste disposal site, then all waste within that area is considered to be waste that has been delivered to the levyable waste disposal site, and levy may be payable under section 36.

Section 72V (Cancellation of resource recovery area)

Section 72V allows the operator of a waste disposal site with a declared resource recovery area to cancel the declaration by giving the chief executive notice of their intent to cancel the declaration at least 30 days prior to the cancellation taking effect.

If a resource recovery area is cancelled, then the area becomes part of the levyable waste disposal site, and all waste within this area is taken to be waste that has been delivered to the levyable waste disposal site and levy may be payable under section 36.

Section 72W (Revocation of resource recovery area by chief executive)

Section 72W gives the chief executive the power to revoke a resource recovery area declaration if:

- an active landfill cell is within the area; or
- the amount of waste (including recyclable waste) stockpiled in the area is greater than the total amount of waste delivered to the area in the previous 12 months; or
- the operator or another entity responsible for the resource recovery area is convicted of an offence under Part 6; or
- the chief executive believes the area no longer meets the requirements under section 72R to be declared a resource recovery area.

To revoke a declaration of a resource recovery area, the chief executive must first give notice to the operator stating the grounds for the proposed revocation and the supporting facts and circumstances, when the revocation is intended to take effect, and that the operator may make a written submission within a stated period of at least 21 days after being given the notice. The chief executive must consider all submissions made within the stated period before making a decision. If the chief executive decides to revoke the resource recovery area, the chief executive must give an information notice to the operator within 10 business days after making the decision. The requirement for an information notice makes the operator eligible to request a review of the decision under Chapter 9 of the Act. The decision takes effect when the information notice is given to the operator

On revocation, the area becomes part of the levyable waste disposal site, and all waste within this area is taken to be waste that has been delivered to the levyable waste disposal site and levy may be payable under section 36.

Division 2 (Obligations relating to resource recovery area)

Division 2 comprises sections 72X – 73C.

Section 72X (Requirement to keep documents)

Section 72X requires an entity responsible for a resource recovery area to keep records for at least five years about waste or other material delivered to or removed from the area, the results of any volumetric survey of the area required to be carried out under the Act, and any other event in relation to the area as prescribed under a regulation.

A maximum penalty of 300 penalty units applies for a contravention of this section.

Section 72Y (Volumetric survey for resource recovery area in waste levy zone)

Section 72Y requires that from 1 June 2020, a volumetric survey of all stockpiled waste within a resource recovery area located in the waste levy zone must be carried out in June of each year. The survey is required to be undertaken in accordance of requirements prescribed by regulation and the results must be provided to the chief executive in the approved form by the end of July. The results of the volumetric survey must include a topographical plan certified by a surveyor complying with specifications advised by the chief executive and include details of the area of the resource recovery area and stockpiles of waste.

A maximum penalty of 200 penalty units applies for a contravention of this section. (An initial volumetric survey is required of each resource recovery area in 2019 under section 324).

This section does not apply to a resource recovery area declared for a small site until 1 June 2022.

Section 72Z (Volumetric survey for resource recovery area in non-levy zone)

Section 72Z requires a volumetric survey for resource recovery area at a waste disposal site in the non-levy zone to be undertaken if the recovery area receives more than 600 tonnes of levyable waste from the levy zone or interstate during a year. The survey is required before the end of June of the following year and must include all stockpiled waste. A copy of the results in the approved form must be provided to the chief executive by the end of July of that year. For 2019, this section will only apply if 600 tonnes of levyable waste is received at the site between 4 March 2019 and 31 December 2019.

The survey is required to be undertaken in accordance of requirements prescribed by regulation and be certified as accurate by a surveyor under the *Surveyors Act 2003*.

This section does not apply to a resource recovery area declared for a small site until 1 June 2022.

A maximum penalty of 200 penalty units applies for a contravention of this section.

Section 73 (Volumetric survey carried out by chief executive)

Section 73 provides that if a volumetric survey is not conducted in accordance with the requirements of 72Y(2)(a) and 72Z(2)(a), the chief executive may arrange for a volumetric survey of the resource recovery area to be carried out and may direct an authorised person to enter the resource recovery area to facilitate the survey. The chief executive may recover the cost of undertaking the survey from the entity.

Section 73A (Obligations of entity responsible for operation of resource recovery area)

Section 73A requires an entity having responsibility for the operation of a resource recovery area to ensure:

- there is no active landfill cell within a resource recovery area;
- the requirements prescribed for the area under a regulation are complied with; and
- the access points and the physical barrier between the resource recovery area and the rest of the site comply with the requirements prescribed under a regulation.

A maximum penalty of 1665 penalty units applies to contravention of these requirements.

Section 73B (False claims about resource recovery area)

Section 73B prohibits the operator of a waste disposal site falsely claiming that there is a resource recovery at a site if the area has not been declared in accordance with requirements in section 72S or the declaration has been cancelled or revoked under section 72V or 72W. Also it prohibits the operator of a waste disposal site falsely claiming that a place at the site is in a resource recovery area declared for the site if the place is not in the area.

A maximum penalty of 1665 penalty units applies for contravention of these prohibitions.

Section 73C (Changes affecting resource recovery area requiring notification)

Section 73C provides that notice must be given of certain changes in relation to a resource recovery area.

An operator of a resource recovery area must notify the chief executive within seven days of a change to a resource recovery area that involves a change to the access points or physical barrier that does not involve a change to the boundaries. Notice of a change to the barrier or access points must be in the approved form and accompanied by an amended plan.

A maximum penalty of 300 penalty units applies to the contravention of this requirement.

The operator must also advise the chief executive of the change within seven days if there is a change to the recycling activities being carried out or a change of the entity responsible for the operation of the area. A maximum penalty of 100 penalty units applies to contravention of these requirements.

Part 7 (Miscellaneous)

Part 7 comprises section 73D and 73E.

Section 73D (Annual payment to local governments)

Section 73D outlines the requirements for making, using and providing information about annual payments to local governments. It requires the chief executive to make an annual payment to each local government affected by the waste levy. The payment is to be calculated in the way prescribed by regulation. Local governments must use the payment to mitigate any direct impacts of the levy on households within the local government area. The chief executive must not make a further annual payment if the chief executive reasonably believes a local government has not used the funds in the way required. A local government must include information about the purpose of the annual payment and amount received by the local government in its rate notices for the relevant year. If the local government fails to provide the information, the chief executive may refuse to make a further annual payment until the local government provides the information to its ratepayers. Also, if the local government distributes misinformation in relation to an annual payment, the chief executive may refuse to make a further annual payment until the local government has informed the intended audience of the distributed information of how the misinformation was false or misleading. Distribution means including the misinformation in a rate notice or other document issued by the local government, publishing it on the local government website or including it in an advertisement made by, or on behalf of, the local government.

Section 73E (Review of efficacy of waste levy)

Section 73E provides that the chief executive must review the efficacy of the waste levy within three years after the commencement of the levy and then at intervals of not more than ten years. This will ensure that the levy arrangements achieve the objects of the Act and align with the State’s waste management strategy.

Amendment of s 104 (Illegal dumping of waste provision)

Clause 7 amends section 104(1) of the *Waste Reduction and Recycling Act 2011*. It increases the maximum financial penalty that applies to the illegal dumping of waste to ensure that it is a disincentive to using illegal dumping to avoid the levy. For larger volumes of waste where the current maximum penalty may be less than the levy avoided, the maximum penalty will be twice the amount of any waste levy that would have been paid if the waste had been delivered to a waste disposal site.

Amendment of ch 7, hdg (Reporting about waste management)

Clause 8 amends the heading of Chapter 7 of the *Waste Reduction and Recycling Act 2011* to reflect the amendments to Part 3 of Chapter 7 by clause 9.

Replacement of ch 7, pt 3 (Reporting by chief executive)

Clause 9 replaces Chapter 7, Part 3, of the *Waste Reduction and Recycling Act 2011* which comprises section 154. The existing section 154 requires the chief executive to prepare and publish an annual report that summarises waste disposal and recycling information provided to the department by local government and other reporting entities. The replacement expands the requirement to include reporting information about the waste levy. This will provide a comprehensive picture of state-wide waste management which will allow analysis of trends in disposal and recovery.

Amendment of s 245 (Definitions for chapter)

Clause 10 amends section 245 of the *Waste Reduction and Recycling Act 2011*. Current section 245 (Definitions for chapter) defines terms for the purposes of Chapter 11 (show cause notices and compliance notices). The amendment has the effect of extending the compliance notice powers to the referenced offences in new Chapter 3 which is inserted by clause 6.

Amendment of s 249 (Restriction on giving compliance notice)

Clause 11 amends section 249 of the *Waste Reduction and Recycling Act 2011*. Current section 249 (Restriction on giving compliance notice) restricts the giving of a compliance notice for not installing a weighbridge at a site if the site is proposed to be closed within 1 year of when the requirement in existing section 43(2) of the Act started to apply to the operator of the site. Existing section 43 is being replaced by clause 6. The amendment has the effect of providing the same restriction on the giving of a compliance notice for not installing a weighbridge at a site if the site is proposed to be closed within 1 year of when the equivalent requirement, under new sections 57(2) or (3) inserted by clause 6, started to apply to the site.

Amendment of s 251 (Person must comply with notice)

Clause 12 amends section 251 of the *Waste Reduction and Recycling Act 2011*. Current section 251 (Person must comply with notice) establishes an offence for not complying with a compliance notice. If the compliance notice relates to existing section 43(3) or (4) of the Act, the maximum penalty is 200 penalty units. Existing section 43 is being replaced by clause 6. The amendment has the effect of providing the same maximum penalty for the equivalent requirements, under new sections 58(2) and (3).

Amendment of s 253 (When waste audit required)

Clause 13 amends section 253 of the *Waste Reduction and Recycling Act 2011*. Current section 253 (When waste audit required) specifies when the chief executive may require a waste audit to be undertaken. The amendment has the effect of extending the power to require a waste audit to the referenced offences in new Chapter 3 which is inserted by clause 6.

Insertion of new part 12A

Clause 14 inserts a new Chapter 12A in the *Waste Reduction and Recycling Act 2011*.

Chapter 12A (Legal Proceedings)

Chapter 12A provides evidentiary provisions to support legal proceedings under the Act. It comprises sections 257A- 257D.

Section 257A (Application of chapter)

Section 257A states that Chapter 12A part applies to a legal proceeding under the Act.

Section 257B (Appointments and authority)

Section 257B provides that the chief executive's appointment and an authorised person's appointment are presumed unless a party to the proceeding, by reasonable notice, requires proof of them.

Section 257C (Signatures)

Section 257C provides that chief executive's or an authorised person's signature is evidence of what it purports to be.

Section 257D (Evidentiary provisions)

Section 257D provides a list of evidentiary aids that may be provided in a proceedings for an offence against this Act.

Amendment of s 258 (Court may make particular orders)

Clause 15 amends section 258 of the *Waste Reduction and Recycling Act 2011*. Current section 258 (Court may make particular orders) provides that the court may make certain orders if a person is convicted of a prescribed offence. The orders that may be made include a monetary benefit order which means an order requiring the person against whom it is made to pay an amount to the chief executive representing any financial or other benefit the person has received because of the act or omission constituting the offence in relation to which the order is made. The amendment has the effect of providing that the orders can be made if a person is convicted of the referenced offences under new Chapter 3 which is inserted by clause 6.

Amendment of s 264 (General duties about documents or records)

Clause 16 amends section 264 of the *Waste Reduction and Recycling Act 2011*. Current section 264 (General duties about documents or records) establishes offences relating to the making, keeping and producing of documents or records. The amendment affects only the offence to keep, produce or make use of a document or record the person knows, or ought reasonably to know, contains information that is false or misleading in a material particular. The amendment provides that if the intent is waste levy evasion, then the maximum penalty is or two years of imprisonment or whichever is the greater of 2,000 penalty units and twice the amount of any

waste levy that an attempt was made to avoid and any interest that would have accrued on the amount.

Replacement of s 265 (Giving chief executive false or misleading information)

Clause 17 replaces existing section 265 with new sections 265 and 265A of the *Waste Reduction and Recycling Act 2011.*

Section 265 (Giving chief executive false or misleading information)

The replacement section 265 modernises the provision establishing an offence to give false or misleading information to the chief executive and increases the maximum penalties in certain circumstances.

A maximum penalty of 1,665 penalty units applies. However if the intention of giving the false or misleading information is to evade the waste levy, then a maximum penalty applies of two years of imprisonment or whichever is the greater of 2,000 penalty units and twice the amount of any waste levy that an attempt was made to avoid and any interest that would have accrued on the amount.

It is not an offence if the person explains how information given in a document is false or misleading and provides the correct information.

Section 265A (Giving chief executive incomplete information)

Section 265A establishes an offence to knowingly give an incomplete document required under Chapter 3 of the Act to the chief executive.

A maximum penalty of 1,665 penalty units applies. However if the intention of providing the incomplete document is to evade the waste levy, then a maximum penalty applies of two years of imprisonment or whichever is the greater of 2,000 penalty units and twice the amount of any waste levy that an attempt was made to avoid and any interest that would have accrued on the amount.

It is not an offence if the person explains how a document is incomplete and provides the necessary information.

Amendment of s 271 (Regulation-making power)

Clause 18 amends section 271 of the *Waste Reduction and Recycling Act 2011*. Current section 271 (Regulation-making power) provide a head of power for regulations to be made under the Act. The amendment provides the ability to regulate to prescribe: recycling efficiency thresholds; and the day for review of the discounted levy rate for residue waste, recycling efficiency threshold and any other matters prescribed for Chapter 3, Part 4 (Discounting waste levy for residue waste). The amendment also allows requirements to be prescribed for the installation and operation of a weighbridge that are additional to those under other legislation including under a law of the Commonwealth. However, the making of such a regulation would be subject to the *National Measurement Act 1960* (Cwlth).

Amendment of ch 16, pt 3

Clause 19 inserts Part 3 in Chapter 16 (Other transitional provisions) of the *Waste Reduction and Recycling Act 2011*.

Part 3 (Transitional provisions for *Waste Reduction and Recycling (Waste Levy) and Other Legislation Amendment Act 2018*)

Part 3 comprises Divisions 1 to 3.

Division 1 (Exemption from waste levy for residue waste until 30 June 2022)

Division 1 provides for exemptions from the levy for residue waste under a residue waste approval. It comprises sections 309 – 317.

Section 309 (Definitions for division)

Section 309 defines terms used in the Division 1 including the terms 'transition period' and 'qualifying period'. Transition period generally means the period from commencement to 30 June 2022, but for the mechanical biological treatment facility in Cairns using Bedminster technology it means the period from commencement to 30 June 2026. Qualifying period means the period from 1 July 2018 to commencement.

Section 310 (Application for approval of residue waste as exempt waste for transition period)

Section 310 provides that an entity conducting a recycling activity during the qualifying period may apply to the chief executive to exempt their residue waste from the waste levy for the transition period. An application must be made no later than 30 June 2019 for all activities except for the Cairns' Bedminster Facility.

The application must be made in the approved form and supported by information which differs depending on the recycling activity being undertaken.

Section 311 (Chief executive may require additional information or documents)

Section 311 provides that the chief executive may, by notice, require the applicant to give the chief executive further reasonable information or documents about the application by a reasonable day stated in the notice. If the information is not provided by the day, then the application is taken to be withdrawn.

Section 312 (Deciding application)

Section 312 requires the chief executive to make a decision to either grant or refuse an application in a time that is reasonable in the circumstances. A failure to make a decision under this section is taken to be a refusal of the application which triggers the

requirement to give an information notice. The requirement for an information notice makes the applicant eligible to request a review of the decision under Chapter 9 of the Act.

In deciding to grant the application the chief executive must consider: the objects of the Act; the information included in the application; the applicants history of compliance with relevant legislation; and whether adequate measures will be implemented to progressively minimise the amount of residue waste generated and to ensure the operation will be able to continue once the transition period ends. The chief executive may also consider the advice of any expert reference group that the chief executive considers suitable to provide advice in relation to financial hardship.

In deciding to grant the application the chief executive must be satisfied that the applicant was conducting the activity during the qualifying period and that any additional requirements stated for the category of applicant have or are likely to be met.

Section 313 (Grant of application)

Section 313 provides that, if the chief executive grants the application, the chief executive must give the applicant notice that the application has been granted. The notice must include the period of the exemption and any conditions on the approval. The conditions must include a requirement either that the applicant maintains, as a minimum, a stated recycling efficiency or a limit on the amount of residue waste that will attract the exemption in a period.

If the chief executive imposes conditions on the approval, the notice must include or be accompanied by an information notice for the decision to impose the conditions. The requirement for an information notice makes the applicant eligible to request a review of the decision under Chapter 9 of the Act. However, the chief executive does not have to give the applicant an information notice if a condition is the same or substantially the same as a condition agreed to or asked for by the applicant.

Section 314 (Refusal of application)

Section 314 provides that the chief executive must give the applicant an information notice if the chief executive decides to refuse the application. The requirement for an information notice makes the applicant eligible to request a review of the decision under Chapter 9 of the Act.

Section 315 (Cancellation or amendment of approval by chief executive)

Section 315 enables the chief executive to cancel or amend an approval to exempt residue waste if the chief executive considers that there are reasonable grounds to do so. The grounds a chief executive may have for cancelling or amending an approval include that the limits or conditions have not been complied with.

If the chief executive proposes to cancel or amend an approval to exempt residue waste, the chief executive must give the holder notice of the proposed action and invite the holder to make written submissions, within a period of at least 21 days, to show why

the proposed action should not be taken. The chief executive must consider any submissions made.

If the chief executive decides to cancel or amend the approval, then within 10 business days, provide the holder an information notice about the decision. The requirement to give an information notice makes the holder eligible to request a review under Chapter 9 of the Act. The cancellation or amendment takes effect when the information notice is given.

Section 316 (Automatic cancellation of approval)

Section 316 states that an approval that residue waste is exempt waste is automatically cancelled if the business that was relevant at the time of the application ceases to be in the grant holder's ownership. This includes circumstances where ownership of a business is transferred to another entity.

Division 2 (Exemption from weighbridge requirements for particular sites until 30 June 2029)

Division 1A comprises sections 317 – 321.

Section 317 (Application for exemption from s 57 until 30 June 2029)

Section 317 allows the operator of a levyable waste disposal site to apply for an exemption to the requirements for installation of a weighbridge under section 57. The exemption applies to an operator of a levyable waste disposal site for which the operator holds an environmental authority for the disposal of not more than 1,000 tonnes of waste in a year at the site. An operator has until 1 January 2024 to make an application. An approval granted under this section is for a period ending no later than 30 June 2029.

Section 318 (Chief executive may require additional information or documents)

Section 318 allows the chief executive to require further information or documents, by notice, about the application by a stated day. The application is taken to be withdrawn if the information or documents are not provided by the stated day.

Section 319 (Deciding application)

Section 319 requires the chief executive to decide to grant or refuse the application within a suitable time and in consideration of the objects of the Act and information provided by the applicant. The application is taken to be refused if the chief executive fails to make a decision. This triggers the requirement to give an information notice. The requirement to give an information notice makes the applicant eligible to request a review of the decision under Chapter 9 of the Act.

Section 320 (Grant of application)

Section 320 requires the chief executive to give notice to the applicant if the application is approved. The notice must include any conditions on the approval. If the chief executive imposes conditions, the notice must include or be accompanied by an information notice. The requirement to give an information notice makes the applicant eligible to request a review of the decision under Chapter 9 of the Act. However, the chief executive does not have to give the applicant an information notice if a condition is the same or substantially the same as a condition agreed to or asked for by the applicant.

Section 321 (Refusal of application)

Section 321 requires the chief executive to provide an information notice if the chief executive refuses the application. The requirement to give an information notice makes the applicant eligible to request a review of the decision under Chapter 9 of the Act.

Division 3 (Other matters)

Division 3 comprises section 322 – 325.

Section 322 (Exemption from using weighbridge for stated period in stated circumstances)

Section 322 provides that an operator of waste disposal levy site is not required to use a weighbridge to measure waste or other material as required under section 59 until 30 June 2020 if they meet all of the following criteria:

- the waste or other material is moved in a vehicle with a GCM or GVM of 4.5 tonnes or less;
- the operator has given the chief executive notice in writing before the commencement date that is not practicable for the site to use a weighbridge. The notice must also identify the site and outline the steps being taken to ensure that a weighbridge will be in use for measurement and recording purposes before 1 July 2020; and
- the operator complies with the weight measurement requirements prescribed by regulation.

Section 323 (Volumetric survey of levyable waste disposal site to be carried out within stated period)

Section 323 requires the operator of a levyable waste disposal site in the waste levy zone to ensure a volumetric survey is carried out for each active landfill cell and all stockpiled waste at the site and provide a copy of the results to the chief executive between 4 February 2019 and 30 April 2019.

A maximum penalty of 200 penalty units applies if the operator fails to carry out the volumetric survey.

The volumetric survey must be performed in accordance with the requirements prescribed under a regulation and give the chief executive a copy of the results within the prescribed time.

The results of the volumetric survey must:

- be in electronic form;
- include a topographical plan complying with specifications advised by the chief executive;
- include details of the area of the levyable waste disposal site, the site's landfill capacity and the stockpiles of waste on the site; and
- be certified as accurate by a surveyor under the *Surveyors Act 2003*.

The results of the volumetric survey must be kept for at least 5 years.

A maximum penalty of 200 penalty units applies for contravention of the requirement to keep a copy of the results of the survey.

If the operator of a levyable waste disposal site fails to undertake the volumetric survey and submit the results, the chief executive may arrange for a volumetric survey for each landfill cell and all stockpiled waste held at the operator's site, and recover the cost of the survey from the operator as a debt payable to the State.

It is necessary for a volumetric survey to be undertaken for a landfill and any stockpiles at the landfill to provide baseline data of waste at the site before commencement of the levy.

(This section has a commencement date four weeks earlier than commencement of most of the amendments in this Bill (refer clause 2) to allow an operator, should they choose, to have the survey undertaken when they are undertaking a survey for the purposes of declaring a resource recovery area at the site.)

Section 324 (Volumetric survey of resource recovery area to be carried out within stated period)

Section 324 requires an entity having responsibility for the operation of a resource recovery area located within the waste levy zone to ensure a volumetric survey is carried out for all stockpiled waste on the area between the commencement date and 30 April 2019. A copy of the results of the survey must be provided to the chief executive in the approved form before the 30 April 2019.

A maximum penalty of 200 penalty units applies if an operator fails to conduct the survey and give the chief executive a copy of the results within the prescribed time.

The volumetric survey must be performed in accordance with the requirements prescribed under a regulation.

The results of the volumetric survey must:

- be in electronic form;

- include a topographical plan complying with specifications advised by the chief executive;
- include details of the area of the resource recovery area and the stockpiles of waste on the area; and
- be certified as accurate by a surveyor under the *Surveyors Act 2003*.

A copy of the results of the volumetric survey must be kept for at least 5 years.

A maximum penalty of 200 penalty units applies for contravention of the requirement to keep a copy of the results of the survey.

If an entity having responsibility for the operation of a resource recovery area fails to conduct the volumetric survey and submit the results, the chief executive may arrange for a volumetric survey for all stockpiled waste in the area, and recover the cost of the survey from the entity as a debt payable to the State.

It is necessary for a volumetric survey to be undertaken on a resource recovery area to provide baseline data of waste at the site before commencement of the levy.

(This section has a commencement date four weeks earlier than commencement of most of the amendments in this Bill (refer clause 2) to allow an operator, should they choose, to have the survey undertaken when they are undertaking a survey for the purposes of declaring the resource recovery area at the site.)

Section 325 (Temporary relaxation from s 59 requirements for small site)

Section 325 provides that until 30 June 2021, the operator of a small site (as defined in new section 26 inserted by clause 6) is not required to use the weight measurement criteria prescribed under a regulation to record the movement of waste as required under section 59 if the operator has, before commencement, notified the chief executive of the details of a proposed alternative methodology for measuring and recording the waste. The operator is also required to provide details of the site as part of the notification.

The proposed alternative methodology must enable the operator to fairly calculate the total waste levy amount owing to the chief executive on waste delivered, or moved from stockpile to landfill, at the site, and the operator must implement the alternative methodology in accordance with its terms.

Amendment of schedule (Dictionary)

Clause 20 amends the Schedule (Dictionary) of the *Waste Reduction and Recycling Act 2011*. It provides signposts to the definition of a number of terms defined in new Chapter 3 of the Act (e.g. ‘active land fill’ and ‘bad debt credit’). It deletes the definition of ‘clean earthen material’ and replaces it with definitions of the new terms ‘earth’ and ‘clean earth’. It replaces the definition of ‘recycling activity’ with a wider definition. It amends the definition of ‘waste data return’ due to the replacement of Chapter 3 and the definition of ‘waste facility’.

The existing definition of ‘waste facility’ provides that a waste facility is a facility for the recycling, reprocessing, treatment, storage, incineration, conversion to energy, sorting,

consolidation or disposal (including disposal to landfill) of waste. Subsection (2) of the definition of 'waste facility' ensures that where an environmentally relevant activity, including, for example a resource activity, also authorises the disposal of waste generated by the activity at a facility, the facility is not considered a waste facility provided that is the only waste it receives. The amendment in clause 20 will clarify that the exemption would not apply if the disposal of waste was not authorised under the same environmental approval. The entity carrying out the activity could not dispose of waste, generated under another environmental authority, at the facility if the facility was not authorised under the same environmental authority. For example, if a resource company is authorised to operate multiple tenures as one project area under one environmental authority, and the authority also covers the disposal of the waste at a facility, any waste disposal from the project area will not be deemed a 'waste facility' under the Act. If waste from outside the project area is disposed of at the facility, either by the same or a different resource company, the facility, which is approved for the disposal of the project related waste, would become a 'waste facility'. A classification of a facility as a 'waste facility' under the Act does not necessarily mean the waste levy will be incurred on all waste delivered to the facility.

Part 3 Amendment of City of Brisbane Act 2010

Part 3 of the Bill comprises clauses 21 and 22.

Act amended

Clause 21 provides that Part 3 of the Bill amends the *City of Brisbane Act 2010*.

Insertion of new ch 8, pt 10

Clause 22 inserts new Part 10 into Chapter 8 of the *City of Brisbane Act 2010*.

Part 10 (Transitional provision for Waste Reduction and Recycling (Waste Levy) and Other Legislation Amendment Act 2018)

Part 10 comprises section 280.

Section 280 (Limited power to amend utility charge for commercial properties)

Section 280 inserts a transitional provision that will allow Brisbane City Council to amend once, by resolution, its charges for commercial waste management in the 2018-19 financial year. This is to address the current limitation under the *City of Brisbane Act 2010*, where a charge can only be set at the local government's budget meeting for a financial year and cannot be amended.

Part 4 (Amendment of Local Government Act 2009)

Part 4 of the Bill comprises clauses 23 and 24.

Act amended

Clause 23 provides that Part 4 of the Bill amends the *Local Government Act 2009*.

Insertion of new ch 9, pt 14

Clause 24 inserts new Part 14 into Chapter 9 of the *Local Government Act 2009*.

Part 14 (Transitional provision for *Waste Reduction and Recycling (Waste Levy) and Other Legislation Amendment Act 2018*)

Part 14 comprises section 328.

Section 328 (Limited power to amend utility charge for commercial properties)

Section 328 is a transitional provision that will allow a local government to amend once, by resolution, its charges for commercial waste management in the 2018-19 financial year. This is to address the current limitation under the Local Government Act 2009, where a charge can only be set at the local government's budget meeting for a financial year and cannot be amended.