

Waste Reduction and Recycling Bill 2011

Explanatory Notes for amendments to be moved during consideration in detail by the Honourable Vicky Darling MP

Title of Bill

Waste Reduction and Recycling Bill 2011

Objectives of the amendments

The proposed amendments in relation to the waste management components are minor in nature but are required to provide clarity for certain provisions. In all cases the proposed amendments provide a benefit to stakeholders and do not create an imposition or additional obligations.

Amendments are also proposed to Chapter 16, Parts 5 and 6 in relation to the carbon farming initiative. These will amend the *Land Act 1994* and the *Land Title Act 1994*.

The Commonwealth carbon farming legislation has been passed and the Commonwealth scheme is expected to commence by 1 December 2011.

Registration of a carbon abatement interest is essential before a proponent can apply to the Commonwealth for approval of a project.

The amendments to the Land Act and Land Titles Act are necessary to ensure the extent of every carbon abatement interest is properly defined by survey plan, including those over part of a lot.

This is essential because the carbon farming obligations will continue for approximately 100 years.

The uncertainty arising from inaccurately or inadequately described boundaries may -

- impact on participants being able to prove matters such as the carbon abatement capacity of the project or whether they have complied with their obligations; and

- cause difficulty in creating interests (e.g. leases, mortgages or c.a. interest) over adjacent land which is part of the same lot or transitioning to other uses of adjacent land, for example residential subdivision.

Achievement of the objectives

The objectives are achieved by way of amendments to the Bill.

Alternative ways of achieving policy objectives

There is no alternative way of achieving the policy objectives other than to amend the Bill.

Estimated cost for government implementation

There is no cost associated with these amendments.

Consistency with fundamental legislative principles

The amendments are consistent with fundamental legislative principles.

Consultation

The amendments to the waste management components of the Bill have been prepared based, in part, on recommendations contained in the Environment, Agriculture, Resources and Energy Committee Report No. 2 on the Waste Reduction and Recycling Bill 2011. The Committee process involved:

- a public briefing by Department of Environment and Resource Management officers on 24 August 2011
- a call for public submissions to the Committee, with submissions closing on 9 September 2011
- a public hearing on 7 September 2011
- a teleconference on 8 September 2011

Twenty-five public submissions were received. The public hearing on 7 September heard evidence from 12 submitters and the teleconference on 8 September involved four local governments who were unable to attend the public hearing in person.

The need for several amendments was also identified as a result of the Committee process. These amendments have been extensively consulted with affected stakeholders.

A number of other amendments were also identified as necessary in order to provide clarification of application of the levy and consistency between provisions of the Bill. These amendments are necessary but administrative in nature and have not been extensively consulted.

The Department of Premier and Cabinet and the Office of the Queensland Parliamentary Counsel have no issues with the amendments.

Notes on provisions

Amendment 1

Amendment 1 amends *clause 9* to provide a separation between the terms ‘avoid’ and ‘reduce’.

The object of this amendment is to make a clear distinction in the hierarchy to avoid confusion about which option takes precedence. Avoid is the preferred option, followed by reduce.

Amendment 2

Amendment 2 inserts a new part for Chapter 3—Waste levy, to provide the purpose of this Chapter.

The amendment provides a new Part 1—Preliminary. The amendment clarifies that the main purpose of this chapter is to impose a levy on waste that is delivered to a levyable waste disposal site, and to allow for an exemption from the levy, or for a nil levy rate, for particular wastes, including municipal solid waste.

Amendment 3

Amendment 3 amends *clause 25* to clarify the application of the contaminated soil exemption.

The object of amendment 3 is to ensure that the public does not bear additional costs from the levy, in circumstances where the state or local government is obliged to conduct an emergency clean up of a heavily contaminated site that presents an immediate risk to public health or the environment.

The amendment clarifies that the exemption only applies to emergency clean up circumstances, through reference to an exercise of emergency powers under s467 of the *Environmental Protection Act 1994*.

Amendment 4

Amendment 4 amends *clause 31* to provide a process to enable amendment of an exemption approval.

The object of amendment 4 is to streamline the administrative processes to allow an amendment to an approval. The Bill did not allow for amendments to an approval. This meant that if the approval holder proposed a change to the approval, the holder would need to make application for a new approval. It also meant that if the chief executive wanted to change a matter under the approval, the only option would be to cancel the approval by following the procedures under clauses 34 and 35.

Amendment 5

Amendment 5 amends *clause 36* to include clean earthen material as a type of stockpiled waste that is not levied.

The object of amendment 5 is to ensure that clean earthen material is not levied.

Clean earthen material will be prescribed in the Waste Reduction and Recycling Regulation 2011 as an exempt waste (as per s25(g)(i) of the Bill).

Clean earthen material is unique in that it is a waste that is used as part of the operation of a landfill. However, unless it is specifically exempt from the imposition of the levy, once it is disposed of to the landfill it would become subject to the levy. The definition of disposal under clause 8 does not distinguish between an operational use and a disposal action. It states that a reference to disposal in relation to waste means the depositing of the waste, other than on a temporary or short term basis, into or onto land.

Amendment 6

Amendment 6 amends *clause 38* to provide a definition for stockpiled wastes that are not eligible for a resource recovery deduction.

The object of amendment 6 is to clarify that specific wastes are not eligible for a resource recovery deduction. This is because these wastes—clean earthen material, disaster management waste and green waste—when delivered to the site are required to be stockpiled separately from all other stockpiled waste at the levyable waste disposal site. These wastes also create no levy liability on delivery to the site if they are stockpiled separately.

As no levy liability was created and they do not form part of the general stockpile calculations for a resource recovery deduction, when this waste is exported from the site for sale or recycling, no resource recovery deduction is created.

Amendment 7

Amendment 7 amends *clause 40* to insert a new subsection that states that if the operator of a levyable waste disposal site requests that a person provides information in the approved form, the person must comply with the request.

The object of amendment 7 is to strengthen the requirement around the provision of information by a person delivering waste to a levyable waste disposal site to the site operator. This is particularly in relation to loads of mixed municipal solid waste and commercial and industrial waste. The amendment makes it clear to the deliverer of the waste what is expected from the deliverer.

Amendments 8 to 11

These amendments amend *clause 41* in relation to small sites. A small site means a levyable waste disposal site the operator of which is required to hold a registration certificate for the disposal of 2000t or less in a year.

Clause 297 provides for transitional arrangements to allow a temporary relaxation from s44(2) requirements for small sites. This means that a small site operator must notify the chief executive of a proposed alternative methodology for measuring and recording the waste and identify in the notification the small site and include details of the proposed alternative

methodology. If the small site operator does this then the levy period is annual rather than monthly for payment of the levy.

The object of the amendments is to clarify how small sites would be treated if an operator of a small site either does not wish to notify the chief executive of an alternative methodology or fails to notify by the due date.

If a small site operator fails to notify the chief executive of an alternative methodology the levy period is monthly as for other levyable waste disposal sites. This provides certainty for operators to ensure that they understand the consequences of not notifying the chief executive.

Amendment 12

Amendment 12 amends *clause 44* to insert a statement that this section applies to waste that is the subject of any delivery or movement in relation to a levyable waste disposal site, if the movement is a specific type of movement.

The object of this amendment is to maintain consistency between requirements to measure movements under *clause 43(2)* and *clause 44*.

Amendments 13

Amendment 13 amends *clause 46* to insert a new subsection to provide for an earlier time that a volumetric survey can be carried out.

The object of this amendment is to allow an operator of a levyable waste disposal site to undertake a volumetric survey earlier than June in certain circumstances. Circumstances may arise where a levyable waste disposal site ceases operation. Instead of waiting until June to undertake the survey, the site operator could conduct the survey at the time of closure. This means that, for example, if a site closes in August of one year the operator does not have to wait until June of the following year to do the survey and risk forgetting that the survey is required. However, this amendment does not oblige an operator to undertake a survey earlier—it simply affords them the opportunity.

Amendment 14

Amendment 14 amends *clause 49* in relation to keeping the results of volumetric surveys.

The objective of this amendment is to allow the operator of a levyable waste disposal site to keep volumetric survey results in electronic form as well as hard copy. The original clause stated that results were to be kept as a document in hard copy form. Allowing a site operator to keep electronic results provides for ease of storage at the site.

Amendment 15

Amendment 15 amends *clause 51* in relation to the submission of waste data returns. This amendment provides that an extension of time to make a payment will also apply to an extension of time to provide a waste data return, regardless of the circumstance in which the extension had been granted.

Clause 57 provides the ability for the operator of a levyable waste disposal site to apply for an extension of time to pay the levy amount. Clause 58 allows the chief executive to grant an extension by gazette notice without an application.

Clause 51 currently states that if an extension of time is granted under section 57, an equivalent extension is taken to apply for the giving of a waste data return for the site. However, without the amendment there is no equivalent arrangement for extensions provided under section 58. The amendment provides for consistency of application for similar provisions.

Amendment 16

Amendment 16 amends *clause 61* in relation to the ability for the operator of a levyable waste disposal site where a resource recovery area has been declared or, or an entity with responsibility for the operation of a resource recovery area, to cancel the resource recovery area declaration.

The object of this amendment is to streamline the process by which an area is no longer a resource recovery area. Currently this would have to be achieved through a revocation by the chief executive. However, there may be circumstances where the operator of the site may wish to cancel the declaration. The effect of a revocation is that it prevents that operator from declaring a resource recovery area if there has been a revocation within the last year. This would mean that if the operator wished to cease declaration of the resource recovery area for a period of time and then resume operation, they would not be able to do so for 12 months.

This amendment allows a cancellation process initiated by the operator of the resource recovery area and states the time within which the operator must notify the chief executive of the cancellation. The operator must notify of the cancellation as, if there is waste remaining in the cancelled part of the site this will become levyable waste—with the exception of clean earthen material, disaster management waste and green waste.

Amendments 17 to 19

Amendments 17 to 19 amend *clause 62* in relation to the effect of a declaration for a resource recovery area.

The object of the amendments is to ensure that clean earthen material, disaster management waste and green waste that in each case has been stockpiled separately from all other stockpiled waste in the resource recovery area retain their \$0 levy status if moved from the resource recovery area to the levyable waste disposal site.

Amendment 17 reflects amendment 16 (clause 61) to clarify that it is the revoked or cancelled area. *Amendment 18* provides for the continuation of the \$0 levy for the specified wastes and *amendment 19* clarifies that waste moved from the resource recovery area is taken to be levyable waste delivered to the levyable waste disposal site.

Amendments 20 and 21

Amendments 20 and 21 amend *clause 63* in relation to the revocation of a resource recovery area by the chief executive. These amendments maintain consistency with amendments 18 and 19 for clause 62.

Amendments 22 and 23

Amendments 22 and 23 amend *clause 65* in relation to a volumetric survey for a resource recovery area.

The object of these amendments is to maintain consistency between clause 65 (Volumetric survey for resource recovery area) and clause 46 (Volumetric survey for levyable waste disposal site) and clause 49 (Keeping of results of volumetric survey).

Amendment 24

Amendment 24 amends *clause 140* in relation to a planning entity's waste reduction and recycling plan obligation.

The object of this amendment is to remove any doubt about when a planning entity's obligations under this section commence and when it becomes an offence not to comply with the obligations.

The effect of the amendment is that it is not an offence for failing to have a waste reduction and recycling plan until one year after the obligation that is created under this section applies. This provides the planning entity with a one year period to prepare a plan that complies with the requirements of the section.

Amendments 25 and 26

Amendment 25 amends *clauses 330* and *amendment 26* amends *clause 334* in relation to amending the *Land Act 1994* and the *Land Title Act 1994*.

The object of the amendments is to ensure that the extent of every carbon abatement interest is properly defined by survey plan, including those over part of a lot.

Boundaries must be accurately and adequately described as a registration of a carbon abatement interest is essential before a proponent is able to apply to the Commonwealth for approval of a project.

Uncertainty arising from inaccurately described boundaries may impact on the ability of proponents to prove matters such as the carbon abatement capacity of the project or whether they have complied with their obligations. It could also cause difficulty in creating interests over adjacent land which is part of the same lot or transitioning to other uses of adjacent land, for example residential subdivision.

Amendments 27 to 34

Amendments 27 to 34 amend *Schedule (Dictionary)*

Amendment 27 provides new definitions for clean earthen material and clean earth. These definitions relate to the exemption provisions for clean earthen material in *clauses 61, 62 and 63* and clarify the application of that exemption for the purposes of clean earthen material. Clean earthen material as a term was not previously used in the Bill; however, as it is necessary to describe clean earthen material in the Bill to ensure a levy is

not applied when the material is used in the levyable waste disposal site, the definition is required.

Amendment 28 provides a new definition to define domestic premises. This definition relates to the definition of municipal solid waste referred to in the purpose statement. This definition states that domestic premises means either a single unit private dwelling; or premises containing two or more separate flats, apartments or other dwelling units.

Amendment 29 provides a new definition for green waste. This definition relates to the exemption provisions for green waste in clauses 61, 62 and 63. Green waste as a term was previously not used in the Bill; however; as it is necessary to describe green waste in the Bill to ensure a levy is not applied when the material is stockpiled separately, the definition is required.

Amendment 30 provides a definition for municipal solid waste. The purpose statement provides that a levy may be imposed on waste delivered to a levyable waste disposal site and allows for exemptions or a nil levy rate to apply to particular wastes—including municipal solid waste. The definition makes clear what is and is not municipal solid waste.

Municipal solid waste is waste that is generated as a result of the day-to-day ordinary use of domestic premises if the waste is removed from the premises by or on behalf of the person who generated the waste; or if the waste is collected by or on behalf of a local government as part of a waste collection and disposal system that is operating regularly in its local government area.

Municipal solid waste is also waste that is generated by specific activities that are carried out by or on behalf of a local government. These activities are limited to—street sweeping; maintenance of parks, gardens or other public spaces; servicing of street litter bins; and occasional bulky item collections from domestic premises.

The definition also states specific circumstances when waste is not municipal solid waste. These circumstances are if—the waste is taken from domestic premises under a commercial arrangement such as if the waste is collected in a skip bin supplied by a commercial operator; the waste is generated at domestic premises as a result of a commercial arrangement such as waste generated by a builder who has been paid to perform renovations; or waste that is the subject of a commercial activity prescribed under a regulation.

Amendment 31 amends the definition of regulated waste. It is necessary to amend this definition as the definition of regulated waste is being transferred from the *Environmental Protection Regulation 2008*, which is made under the *Environmental Protection Act 1994*, to the Waste Reduction and Recycling Bill 2011—to be made under this Act.

Amendment 32 provides a new definition for untreated timber. This definition links to the definition for green waste (provided at Amendment 29) and clarifies the types of material that are suitable to be included as green waste.

Amendment 33 provides a new definition for waste facility.

It has been necessary to change the definition of waste facility to ensure that certain waste disposal activities are not captured as a levyable waste disposal site. Early discussion papers on the proposed levy indicated that the lawful disposal of waste that had been generated by an entity and was disposed of at a facility provided for the purpose of disposing solely of that waste would not be captured by the levy.

However; inadvertently the meaning of levyable waste disposal site did capture some of these facilities.

The amendment clarifies the position and through the definition excludes these types of activities from being a waste facility and, as such, from being a levyable waste disposal site.

The definition as amended states that a waste facility does not include a facility that is lawfully operated for the sole purpose of disposing of waste generated by an environmentally relevant activity (or activities) carried out under the *Environmental Protection Act 1994* if—

- the waste is generated only by, and its generation is ancillary to, the operation of the relevant activity and
- the relevant activity (or activities) is not a *waste management ERA* and
- the facility is operated by, for, or in direct association with the entity (or entities) carrying out the relevant activity.

This definition provides for ERAs such as metal refining, power stations, paper mills and abattoirs to dispose of their own waste at a facility operated by, for or in association with that entity, whether the facility is located on-site or at another location.

Amendment 34 provides a new definition for a waste management ERA.

This amendment is associated with the definition of waste facility in relation to (2) and ensures that a waste management ERA cannot dispose of process waste on-site as this is beyond the original intent of the exclusion. A waste management ERA includes an ERA for activities such as metal recovery, crushing, milling, grinding and screening of materials, composting and soil conditioning, regulated waste treatment, tyre recycling, waste disposal, waste incineration and thermal treatment and the operation of a transfer station.

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