

Waste Reduction and Recycling and Other Legislation Amendment Bill 2012

Explanatory Notes for Amendments to be moved during Consideration in Detail by the Honourable Andrew Powell MP

Title of the Bill

Waste Reduction and Recycling and Other Legislation Amendment Bill 2012.

Objectives of the Amendments

The proposed amendments are necessary to ensure that the amendments in the Bill are clear and meet the policy intent of the provisions. The objectives of the amendments are to provide clarity for certain provisions, streamline obligations and requirements for impacted parties and address drafting omissions and errors.

Achievement of the Objectives

The proposed amendments are needed to ensure the effective operation of the amendments in the Bill. The objectives will be achieved by making the proposed amendments to the Bill.

Alternative ways of achieving policy objectives

The objectives can only be achieved through legislative amendment.

Estimated cost for government implementation

The amendments do not impose costs for government implementation.

Consistency with fundamental legislative principles (FLPs)

No potential breaches have been identified.

Consultation

Government

The Department of the Premier and Cabinet and the Office of the Queensland Parliamentary Counsel have been consulted on the amendments.

Community, local government and industry

Several of the amendments have been made as a result of the report from the Agriculture, Resources and Environment Committee, a portfolio committee established by the Queensland Legislative Assembly on 18 May 2012. This report

considered industry, community and local government submissions. Other amendments streamline or remove regulatory obligations for local government and industry.

Notes on Provisions

Clause 1 After clause 1

This clause inserts a new clause **1A Commencement**. This amendment ensures that section 52 of the *Waste Reduction and Recycling Act 2011* commences on a day to be fixed by proclamation and not on assent.

This ensures that data reporting requirements are retained while consultation is undertaken in relation to amendments to the Waste Reduction and Recycling Regulation 2011 to prescribe a reporting period in regulation.

Clause 2 Clause 6 (Act amended)

This clause amends clause 6 of the Bill which states that part 3 of the Bill amends the *Environmental Protection Act 1994*. This amendment notes that this Bill also amends the *Environmental Protection Act 1994* in the schedule to the Bill.

Clause 3 Clause 10 (Amendment of s 8 (Insertion of new ch 5 and 5A))

This clause amends clause 10 of the Bill which amends section 8 of the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012*. This amendment amends section 167 of the *Environmental Protection Act 1994* as inserted by the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012*.

Section 167 states that the decision stage starts the day the Coordinator-General gives the proponent a copy of the Coordinator-General's report under the *State Development and Public Works Organisation Act 1971*.

However, this does not take into account where the information stage or notification stage are still running under the *Environmental Protection Act 1994*. This could result in the unintended consequence that the administering authority could be required to make a decision before the full assessment process has been completed.

Consequently, section 167 is amended to say that the decision stage starts on the later of the following dates:

- i. The day the Coordinator-General gives the proponent a copy of the Coordinator-General's report under the *State Development and Public Works Organisation Act 1971*; or

- ii. The day after all other stages applying to the application have ended.

Clause 4 **Clause 10 (Amendment of s 8 (Insertion of new chs 5 and 5A))**

This clause amends clause 10 of the Bill which amends section 8 of the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012*. This amendment amends section 278 of the *Environmental Protection Act 1994* as inserted by the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012*.

Section 278 specifies when the administering authority can cancel or suspend an environmental authority. As mentioned in the explanatory notes for this section, this section was intended to replace, and have similar enforcement grounds, to sections 73I, 293 and 312F of the pre-amended *Environmental Protection Act 1994*.

However, the old section 312F allowed an environmental authority to be cancelled or suspended if the administering authority had required the holder to give, change or replenish the financial assurance and the holder hadn't complied with this requirement. When section 278 was drafted, this enforcement ground was split – so section 278(2)(b) addresses where the holder is required to “give” a financial assurance, and section 278(2)(c) addresses where the holder is required to “replenish” the financial assurance. However, where the holder is required to “change” their financial assurance was inadvertently missed in the drafting. This amendment corrects that error.

Note that there is a process under section 306 that the administering authority must follow before making the requirement to change the financial assurance. This ensures natural justice and allows for review and appeal of the requirement.

Clause 5 **Clause 10 (Amendment of s 8 (Insertion of new chs 5 and 5A))**

This clause amends clause 10 of the Bill to amend section 318R of the *Environmental Protection Act 1994* (as inserted by the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012*). Section 318R specifies that the chief executive may investigate a “person”. However, the term “person” is narrower than the term “entity” and would mean that the chief executive could not investigate, for example, a local government to determine whether they are a suitable operator. This amendment corrects that error.

Clause 6

Clause 15 (Amendment of s 60 (Insertion of new ch 13, pt 18))

This clause amends clause 15 of the Bill which amends section 60 of the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012*. This section inserts new transitional provisions for the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012*.

Section 677 of the *Environmental Protection Act 1994* (as inserted by the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012*) provides a transitional process where a person holds both a development permit and a registration certificate. This is because both of these documents were required in order to carry out an environmentally relevant activity.

However, a number of applications for environmentally relevant activities may be on-foot when the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012* commences on 31 March 2013. These activities will have a development permit (or be in the process of obtaining a development permit), but will not have a registration certificate. It was originally thought that this could be dealt with administratively. However, it now seems likely that there will be a greater number of operators in this category than originally assumed.

Consequently, a process is needed to ensure that operators with a development permit, but not a registration certificate, are not required to go through the full environmental authority application process in order to legally carry out the activity. This process allows for a person to apply to convert their development conditions of the development approval (i.e. those conditions relating to carrying out the environmentally relevant activity) into an environmental authority. The person must be a suitable operator, but there will be no other decision criteria for the decision and no fee for the conversion.

The same process also applies to UDA and PDA development approvals.

The new subsections (3A and 3B) amend section 678 of the *Environmental Protection Act 1994* (as inserted by the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012*) to delete subsection (2)(c). Subsection (2)(c) is no longer required because it has been replaced by the new process in sections 678A to 678F.

The new subsection (3C) inserts the new transitional provisions, sections 678A to 678F.

Section 678A provides that a person can apply if they have a development permit (or a UDA or PDA development approval) but not a registration certificate.

Section 678B specifies the information required to make a conversion application. This information is basically the essential parts of section 125 of the *Environmental Protection Act 1994* (as inserted by the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012*). This section ensures that the department can identify the application particulars, and assess the applicant as their suitability to be registered as a suitable operator (if they are not already registered).

Section 678C states that the only criterion for the decision is that the applicant be a suitable operator.

Section 678D states that, if the application is approved, the chief executive must grant the environmental authority, and the conditions of the environmental authority are the relevant conditions from the development permit or UDA or PDA development approval.

Section 678E states that the environmental authority either takes effect when it is issued, or when the holder gives the chief executive notice that they wish to commence carrying out the activity.

Section 678F applies where the applicant is not already a registered suitable operator. In that case, the chief executive must assess whether the applicant is suitable under chapter 5A of the *Environmental Protection Act 1994* (as inserted by the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012*). If the applicant is assessed as not being suitable, then this application must also be refused. However, the decision is not about this application – it is about the applicant's suitability to be an operator. Therefore the notice of decision is the decision under section 318I of the *Environmental Protection Act 1994* and this section ensures that the section 318I notice includes notice of the decision under these provisions.

The new subsection (3D) amends section 681 of the *Environmental Protection Act 1994* (as inserted by the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012*). Section 681 applies where an application for a registration certificate has been made before commencement, but is given after commencement. The existing subsections (3) and (4) specify what happens to the registration certificate after it is given, but only for operations that operate under a code of environmental compliance. The new subsection (5) applies for the rest of the registration certificates (i.e. those associated with a development permit). In this case, the registration certificate is treated like one given before commencement and the usual transitional provisions apply (i.e. the registration certificate is combined with the ERA conditions from the development permit to become an environmental authority).

Clause 7 **Clause 21 (Replacement, renumbering and relocation of s27 (Meaning of *levyable waste disposal site*))**

This clause amends clause 21 of the Bill which amends section 27 of the *Waste Reduction and Recycling Act 2011*. Section 27 contains reference to a waste disposal site being a waste facility that may be under the ownership or control of the State, a local government or otherwise. However, reference to ownership has created some confusion and is considered unnecessary. As long as a waste facility fulfils both the requirements of section 27 ownership is not relevant.

Removing reference to ownership does not place obligations on new operators or additional obligations on existing operators; it simply clarifies the meaning of waste disposal site to assist operators.

Consequently, section 27 is amended to remove reference to the ownership of a site as it is unnecessary.

Clause 8 **Clause 21 (Replacement, renumbering and relocation of s27 (Meaning of *levyable waste disposal site*))**

This clause amends clause 21 of the Bill which amends section 27 of the *Waste Reduction and Recycling Act 2011*. Section 27 states that one of the requirements for a waste facility to be a waste disposal site is that the operator of the facility is required to hold a registration certificate for the disposal of waste at the facility.

However, the term ‘registration certificate’ is being replaced with ‘environmental authority’. The *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012* amends sections 43(2) and 101 of the Waste Act to replace ‘registration certificate’ with ‘environmental authority’.

Consequently, section 27 also requires amendment to change ‘registration certificate’ to ‘environmental authority’ to ensure consistency.

Clause 9 **Clause 25 (Replacement of ss 42-43)**

This clause amends clause 25 of the Bill which amends section 43 of the *Waste Reduction and Recycling Act 2011*. Section 43 states that the operator of a waste disposal site that is required to hold a registration certificate for the disposal of more than 10000t of waste in a year at the site must ensure that a weighbridge is installed at the site on or before 1 December 2013.

This is not consistent with other provisions that also have a due date requirement, such as section 52 and section 123. The dates associated with these sections have been removed from the Act and replaced with ‘a date to be prescribed in regulation.’

Prescribing a date in regulation will provide more time to consult with affected site operators to ensure that a reasonable date is set.

Consequently, section 43 is amended to provide for a date to be prescribed in regulation for the installation of a weighbridge.

Clause 10

Clause 25 (Replacement of ss 42-43)

This clause amends clause 25 of the Bill which amends section 43 of the *Waste Reduction and Recycling Act 2011*. Section 43 states that the operator of a waste disposal site that is required to hold a registration certificate for the disposal of more than 10000t of waste in a year at the site must ensure that a weighbridge is installed at the site on or before 1 December 2013.

The obligation to install a weighbridge as it stands in s43 is for all operators regardless of the life remaining in the waste disposal site. While Clause 44 amends section 249 of the *Waste Reduction and Recycling Act 2011* to state that the chief executive may only give a person a compliance notice if the chief executive is satisfied that the waste disposal site is not planned to be closed within one year of the requirement to install a weighbridge, this occurs at the end of the process. There is no clear advice within section 43 that provides for circumstances where the requirement to install a weighbridge does not apply. The proposed new subsection removes any doubt for the operators of waste disposal sites in relation to their obligation to install a weighbridge.

Consequently section 43 is amended to include a new subsection specifically stating that, despite the requirement in subsection (2) to install a weighbridge by a certain date, the operator of a waste disposal site is not required to ensure a weighbridge is installed if the site is planned to be closed within 1 year after the operator would otherwise be required to install the weighbridge.

Clause 11

Clause 28 (Replacement of s 52 (Submission of waste data returns))

This clause amends clause 28 of the Bill which amends section 52 of the *Waste Reduction and Recycling Act 2011*. Section 52 provides for the submission of waste data returns and states that the operator of a waste disposal facility prescribed in regulation must, before the due date, give the chief executive a return in the approved form for a period prescribed in regulation.

This section is amended on the recommendation of the Agriculture, Resources and Environment Committee to allow for the provision of a return on or before a date prescribed under a regulation. Where previously the section stated that the return must

be provided before the due date, the amendment allows the operator of a waste disposal site to submit the return on the due date and still comply with this requirement.

Clause 12 Clause 28 (Replacement of s 52 (Submission of waste data returns))

This clause amends clause 28 of the Bill which amends section 52 of the *Waste Reduction and Recycling Act 2011*. Section 52 provides for the submission of waste data returns and states that the operator of a waste disposal facility prescribed in regulation must, before the due date, give the chief executive a return in the approved form for a period prescribed in regulation.

The due date is defined as being the twentieth day of the second month after the end of the reporting period for the site. This timeframe is an artefact of the levy remittance process, which required monthly reporting by the twentieth day of the second month after the month the report related to. For example, a report and levy payment for January is due by 20 March.

Section 52 is amended to remove the due date definition. ‘Due date’ is replaced with ‘the day prescribed under a regulation’ for subsection (2) of this section.

The replacement of the stated due date with a date to be prescribed by regulation allows more flexibility in determining the date for the data returns and removes the link to levy remittance.

Clause 13 Clause 29 (Amendment of s 53 (Requirement for operator of levyable waste disposal site to keep particular documents))

This clause omits clause 29 and inserts a new clause—**Omission of s53 (Requirement for operator of levyable waste disposal site to keep particular documents)** that omits section 53 of the *Waste Reduction and Recycling Act 2011*. Section 53 provides for a waste disposal site operator to keep certain documents for a period of time.

The amendment in the Bill retains the requirement to keep copies of waste data returns and associated documents used in the preparation of returns. However, it reduces this requirement from 5 years to 1 year.

Transitional provisions in this Bill will ensure that the requirement to keep records for 5 years continues to apply to a person that was the operator of a levyable waste disposal site before the levy was repealed.

The documents that would now be required to be kept under this section relate primarily to the provision of data under section 52. This information will already have been provided to the chief executive and as the information is no longer linked to calculation or remittance of the levy keeping documents is no longer necessary.

As a consequence, this amendment removes section 53 from the Act.

Note that this section is amended on the recommendation of the Agriculture, Resources and Environment Committee.

Clause 14 **Clause 43 (Amendment of s245 (Definitions for ch 11))**

This clause inserts a new clause 43 to amend section 245 of the *Waste Reduction and Recycling Act 2011*. In omitting section 53 of the Act, consequential amendments are required to various sections of the Act that reference section 53. Section 245 relates to prescribed provisions for the purposes of giving show cause and compliance notices under Chapter 11.

Clause 15 **Clause 46 (Amendment of s253 (When waste audit required))**

This clause inserts a new clause 46 to amend section 253 of the *Waste Reduction and Recycling Act 2011*. In omitting section 53 of the Act, consequential amendments are required to various sections of the Act that reference section 53. Section 253 relates to requirements for conducting a waste audit.

Clause 16 **Schedule (Acts amended)**

This clause amends the schedule to the Bill, which makes minor administrative and consequential amendments to the Acts specified.

This amendment inserts new provisions into the schedule to correct cross-references. The *Economic Development Act 2012* made a number of changes to the *State Development and Public Works Organisation Act 1971*, including replacing references to “significant project” with a “coordinated project”.

The *Economic Development Act 2012* made a number of consequential changes to other Acts to change these references; however, due to an oversight, these changes were not made to the *Environmental Protection Act 1994*.

In addition, cross-references to section 467 in sections 363N(1)(c), 482(2)(b) and 486(1)(c) are corrected. Section 467 was amended by the *Economic Development Act 2012* in November 2012, but these cross-references were not updated to reflect the changes. The correct cross reference is to subsection (1)(b) of section 467.

Clause 17 **Schedule (Acts amended)**

This clause amends the schedule to the Bill, which makes minor administrative and consequential amendments to the Acts specified.

This amendment corrects an error in the name of the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012*.

Clause 18 **Schedule (Acts amended)**

This clause amends the schedule to the Bill, which makes minor administrative and consequential amendments to the Acts specified.

This amendment inserts new provisions into the schedule to correct cross-references. The *Economic Development Act 2012* made a number of changes to the *State Development and Public Works Organisation Act 1971*, including replacing references to “significant project” with a “coordinated project”.

The *Economic Development Act 2012* made a number of consequential changes to other Acts to change these references; however, due to an oversight, these changes were not made to the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012*.

Clause 19 **Schedule (Acts amended)**

This clause amends the schedule to the Bill, which makes minor administrative and consequential amendments to the Acts specified.

This amendment inserts a new provision into the schedule to correct cross-references. The *Economic Development Act 2012* made a number of changes to the *State Development and Public Works Organisation Act 1971*, including replacing references to “significant project” with a “coordinated project”.

The *Economic Development Act 2012* made a number of consequential changes to other Acts to change these references; however, due to an oversight, these changes were not made to the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012*.

Clause 20 **Schedule (Acts amended)**

This clause amends the schedule to the Bill, which makes minor administrative and consequential amendments to the Acts specified.

This amendment inserts a new provision into the schedule to correct cross-references. The *Economic Development Act 2012* made a number of changes to the *State Development and Public Works Organisation Act 1971*, including replacing references to “significant project” with a “coordinated project”.

The *Economic Development Act 2012* made a number of consequential changes to other Acts to change these references; however, due to an oversight, these changes were not made to the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012*.

Clause 21 **Schedule (Acts amended)**

This clause inserts **10A** to amend **section 258(7), definition of prescribed offence** in the *Waste Reduction and Recycling Act 2011* to remove reference to section 53. In omitting section 53 of the Act, consequential amendments are required to various sections of the Act that reference section 53. Section 258 is in relation to court orders.