



# Waste Reduction and Recycling Act 2011

Reprinted as in force on 1 December 2011

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Reprint No. 0C

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This Act is reprinted as at 1 December 2011. The reprint—

- shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c))
- incorporates all necessary consequential amendments, whether of punctuation, numbering or another kind (Reprints Act 1992 s 5(d)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes. Also see list of legislation for any uncommenced amendments.

Minor editorial changes allowed under the provisions of the Reprints Act 1992 mentioned in the following list have also been made to—

- omit provisions that are no longer required (s 40)
- make all necessary consequential amendments (s 7(1)(k)).

This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of reprints is included in the endnotes.

**Also see endnotes for information about—**

- **when provisions commenced**
- **editorial changes made in earlier reprints.**

## Spelling

The spelling of certain words or phrases may be inconsistent in this reprint or with other reprints because of changes made in various editions of the Macquarie Dictionary (for example, in the dictionary, ‘lodgement’ has replaced ‘lodgment’). Variations of spelling will be updated in the next authorised reprint.

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If the date of an authorised reprint is the same as the date shown for an unauthorised version previously published, it merely means that the unauthorised version was published before the authorised version. Also, any revised edition of the previously published unauthorised version will have the same date as that version.

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Queensland

# Waste Reduction and Recycling Act 2011

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# Waste Reduction and Recycling Act 2011

[as amended by all amendments that commenced on or before 1 December 2011]

**An Act to encourage the proper use of resources by improving ways of reducing and dealing with waste, to repeal the *Environmental Protection (Waste Management) Policy 2000* and to amend the *Environmental Protection Act 1994*, the *Environmental Protection (Waste Management) Regulation 2000*, the *Forestry Act 1959*, the *Land Act 1994*, the *Land Title Act 1994*, the *Nature Conservation Act 1992*, the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009*, the *Water Act 2000* and the *Water Supply (Safety and Reliability) Act 2008* for particular purposes**

## Chapter 1 Preliminary

### Part 1 Introduction

#### 1 Short title

This Act may be cited as the *Waste Reduction and Recycling Act 2011*.

#### 2 Commencement

- (1) The following provisions commence on 1 December 2011—
- chapter 3, parts 3, 4 and 7
  - sections 63 and 65
  - chapters 5, 6, 7 and 8



- 
- (2) Without limiting subsection (1), the achievement of the objects of this Act must if practicable be guided by—
- (a) the waste and resource management hierarchy; and
  - (b) the following policy principles (the *waste and resource management principles*)—
    - (i) the polluter pays principle;
    - (ii) the user pays principle;
    - (iii) the proximity principle;
    - (iv) the product stewardship principle.

## 5 Approach to achieving Act's objects

The objects of this Act are intended primarily to be achieved through approaches that include the following—

- (a) preparation, implementation and maintenance of a waste management strategy for the State;
- (b) preparation and implementation of a business plan for the strategy;
- (c) price signalling, including through the introduction of a levy on waste disposal;
- (d) providing for the preparation of State, local government and industry strategic waste management plans;
- (e) providing for reporting requirements for the State, local governments and business and industry;
- (f) banning particular waste disposal;
- (g) identifying priority products and associated management tools;
- (h) preparation, implementation and maintenance of a priority product statement;
- (i) providing for product stewardship schemes;
- (j) waste tracking requirements;

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- (k) granting approvals of resources for beneficial use;
- (l) prohibiting particular conduct in relation to waste;
- (m) appointing authorised persons to investigate matters arising under this Act and otherwise to enforce this Act;
- (n) supporting approaches mentioned in paragraphs (a) to (m) through the making of regulations under this Act.

## **6 Act binds all persons**

- (1) This Act binds all persons, including the State and, to the extent the legislative power of the Parliament permits, the Commonwealth and the other States.
- (2) However, the Commonwealth or a State can not be prosecuted for an offence against this Act.

# **Part 3 Interpretation**

## **Division 1 Dictionary**

### **7 Definitions**

The dictionary in the schedule defines particular words used in this Act.

## **Division 2 Key concepts and definitions**

### **8 The concept of *disposal***

- (1) This Act commonly uses the expression *disposal* in relation to waste.



- 
- (2) In practical terms, a primary outcome arising from the implementation of this Act's provisions is intended to be a reduction in the amount of waste that permanently, or at least indefinitely, effectively becomes incorporated into land, commonly referred to as becoming landfill.
  - (3) Accordingly, in this Act, a reference to *disposal* in relation to waste may ordinarily be taken to mean the depositing of the waste, other than on a temporary or short term basis, into or onto land.
  - (4) Subsection (3) does not limit what *disposal* may be taken to mean in an appropriate context.

## 9 **Meaning of *waste and resource management hierarchy***

The *waste and resource management hierarchy* is the following precepts, listed in the preferred order in which waste and resource management options should be considered—

- (a) AVOID unnecessary resource consumption;
- (b) REDUCE waste generation and disposal;
- (c) RE-USE waste resources without further manufacturing;
- (d) RECYCLE waste resources to make the same or different products;
- (e) RECOVER waste resources, including the recovery of energy;
- (f) TREAT waste before disposal, including reducing the hazardous nature of waste;
- (g) DISPOSE of waste only if there is no viable alternative.

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## **10 Meaning of *polluter pays principle***

- (1) The *polluter pays principle* is the principle that all costs associated with the management of waste should be borne by the persons who generated the waste.
- (2) The costs associated with the management of waste may include the costs of—
  - (a) minimising the amount of waste generated; and
  - (b) containing, treating and disposing of waste; and
  - (c) rectifying environmental harm caused by waste.

## **11 Meaning of *user pays principle***

- (1) The *user pays principle* is the principle that all costs associated with the use of a resource should be included in the prices of the goods and services (including government services) that result from the use.
- (2) In deciding what are the costs associated with the use of a resource, an amount received from a government as a subsidy, incentive payment, grant or similar payment, that would otherwise reduce the costs, must be disregarded.

## **12 Meaning of *proximity principle***

The *proximity principle* is the principle that waste and recovered resources should be managed as close to the source of generation as possible.

## **13 Meaning of *product stewardship principle***

- (1) The *product stewardship principle* is the principle that there is a shared responsibility between all persons who are involved in the life cycle of a product for managing the environmental, social and economic impact of the product.

- (2) The product stewardship principle recognises that different roles and responsibilities may apply at each stage in the life cycle of a product.
- (3) However, the product stewardship principle does not apply to an entity—
  - (a) in relation to a matter to which the packaging NEPM applies; or
  - (b) if the entity is a signatory to the Australian Packaging Covenant—in relation to a matter to which the covenant applies; or
  - (c) if the entity is a signatory to a national product stewardship arrangement, or a State-based product stewardship scheme approved or accredited under this Act, and is meeting its obligations under the arrangement or scheme—in relation to a matter to which the arrangement or scheme applies.
- (4) An arrangement mentioned in subsection (3)(c) may be voluntary or mandatory in nature or may include both voluntary and mandatory aspects.

## **Chapter 2            Management documents**

### **Part 1                Waste management strategy**

#### **Division 1           Introduction**

##### **14            Waste management strategy**

- (1) This part provides for the making of a waste management strategy for the State to help in achieving the objects of this Act.

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- (2) The waste management strategy is intended as a long-term strategy for—
  - (a) achieving waste avoidance, sustainable consumption, industry investment in innovation and new infrastructure, strategic regional infrastructure planning, and product stewardship; and
  - (b) securing continuous improvement in waste management and resource recovery practices, services and technologies, benchmarked against best available technology; and
  - (c) reducing the climate change impacts of waste management and disposal.

## **15 What may be included in State's waste management strategy**

- (1) The State's waste management strategy may provide for anything affecting, or that may affect or be affected by, the management of waste.
- (2) Without limiting subsection (1), the strategy may include the following—
  - (a) waste avoidance;
  - (b) resource efficiency;
  - (c) resource recovery;
  - (d) product design;
  - (e) consumption;
  - (f) product stewardship;
  - (g) priority products;
  - (h) standards, criteria and specifications for recycled materials and products containing recycled material;
  - (i) strategic waste management planning;
  - (j) data reporting.

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## **Division 2                      Draft waste management strategy**

### **16            Preparation of draft strategy**

- (1) The chief executive must prepare a draft of the State's waste management strategy.
- (2) The chief executive must give public notice when a draft of the waste management strategy has been prepared.
- (3) The notice must—
  - (a) be published on the department's website and in any other way the chief executive considers appropriate; and
  - (b) state where copies of the draft strategy may be inspected; and
  - (c) invite written submissions from the public on the draft strategy; and
  - (d) state a day by which the written submissions may be given to the chief executive.
- (4) The period for receiving submissions must be at least 28 days.

## **Division 3                      Making of waste management strategy**

### **17            Submissions to be considered when preparing final strategy**

- (1) The chief executive must prepare, and give to the Minister, a final version of the State's waste management strategy.
- (2) In preparing the final version of the strategy, the chief executive must consider all submissions on the draft strategy given to the chief executive under section 16.

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## **18 Approval of final strategy**

- (1) The final version of the waste management strategy must be approved by the Minister by gazette notice.
- (2) The waste management strategy comes into effect as the State's waste management strategy on the day the Minister's approval is gazetted or on a later day stated in the gazette notice or in the strategy for that purpose.
- (3) The gazette notice in which the Minister approves the waste management strategy must include details about where a copy of the strategy may be inspected and obtained.
- (4) The chief executive must publish the waste management strategy in full on the department's website as soon as practicable after its approval.

## **19 Minor amendment of waste management strategy**

- (1) A minor amendment of the waste management strategy may be made without complying with the requirements of division 2.
- (2) In this section—  
*minor amendment*, of the waste management strategy, means an amendment of the strategy—
  - (a) to correct a minor error in the strategy; or
  - (b) to make another change that is not a change of substance; or
  - (c) on 1 occasion only, to extend the period for which the strategy is in force for a period of not more than 1 year.

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## **Division 4                      Review and progress reporting**

### **20            Review of State's waste management strategy**

- (1) The chief executive must conduct reviews of the State's waste management strategy—
  - (a) for the first review—before the end of 2 years after the commencement of this section; and
  - (b) for subsequent reviews—before the end of 3 years after each final review report is published.
- (2) However, reviews may be conducted more frequently as the Minister directs.

### **21            Preparation of draft review report on waste management strategy**

- (1) As part of the process of reviewing the State's waste management strategy, the chief executive must—
  - (a) prepare a review report in draft form; and
  - (b) give public notice when the draft has been prepared.
- (2) The notice must—
  - (a) be published on the department's website and in any other way the chief executive considers appropriate; and
  - (b) state where copies of the draft review report may be inspected; and
  - (c) invite written submissions from the public on the draft review report; and
  - (d) state a day by which the written submissions may be given to the chief executive.
- (3) The period for receiving submissions must be at least 28 days.
- (4) Without limiting what may be dealt with in a review report, a review report must have regard to goals and targets, however named, included in the waste management strategy.

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## **22 Publication of review report and amending or replacement waste management strategy**

- (1) The chief executive must, within a reasonable time after the period for receiving written submissions on the draft review report has ended, prepare, and publish in full on the department's website, a final report of the review (the *final review report*).
- (2) In preparing the final review report, the chief executive must consider all submissions on the draft review report given to the chief executive under section 21.
- (3) The final review report must outline the findings of the review and may recommend an amendment or replacement of the waste management strategy to implement findings of the review.
- (4) The chief executive may prepare and give to the Minister, for approval by gazette notice, a final amending or replacement waste management strategy to implement a recommendation mentioned in subsection (3) without having first prepared and consulted on a draft amending or replacement waste management strategy.

## **Part 2 Business plan for State's waste management strategy**

### **23 Preparation and approval of business plan**

- (1) The chief executive must, at least 1 month before the start of each financial year, give to the Minister for the Minister's approval a business plan for the department for the waste management strategy (the *WMS business plan*).
- (2) The WMS business plan must—



- (a) state the department's major projects, and its goals and priorities, for implementing the State's waste management strategy for the next 3 financial years; and
  - (b) include a proposed budget for the income and expenditure relating to the department's implementation of the State's waste management strategy.
- (3) The Minister may approve the WMS business plan as given, or with modifications.
  - (4) If the Minister has not approved the WMS business plan before the start of the next financial year, the chief executive may take the steps that are reasonable in the circumstances for implementing the WMS business plan as given to the Minister until the Minister's approval, or approval with modifications, is given.
  - (5) The chief executive may, at any time after the WMS business plan is approved, give an amendment of the plan to the Minister for approval.
  - (6) The Minister may approve the amendment as given, or with modifications.
  - (7) The chief executive must ensure that the WMS business plan, as in force from time to time, is available on the department's website and at the head office of the department.

## **24 Chief executive to report department's progress for business plan**

The chief executive must, within 3 months after the end of each financial year, prepare and give to the Minister a report on the implementation of the department's WMS business plan, including details of the income of, and expenditure from, the Waste and Environment Fund for the most recently completed financial year.

## Chapter 3 Waste levy

### Part 1 Preliminary

#### 25 Main purpose

The main purpose of this chapter 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 nil levy rate, for particular waste, including municipal solid waste.

#### 26 Definitions for ch 3

In this chapter—

***active landfill cell*** means the part of a landfill where waste is currently being disposed of.

***biosecurity related Act*** means an Act that includes security measures against the transmission of disease to plants or animals, or to humans from animals.

***biosecurity waste*** means waste made up of matter that is subject to the operation of a biosecurity related Act.

***charitable recycling entity*** means 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 and re-use program for—
  - (i) providing emergency assistance; or

- 
- (ii) otherwise supporting the charitable purposes of the entity.

**contaminated soil** means soil that is contaminated by a hazardous contaminant.

**disaster** see the *Disaster Management Act 2003*, section 13.

**disaster management waste** means waste generated by or because of a disaster that is or has been the subject of a declaration of a disaster situation under the *Disaster Management Act 2003*, but only within the limits, if any, declared by the chief executive by gazette notice for a particular disaster.

*Example—*

The chief executive may declare that waste is disaster management waste only if it is delivered at a levyable waste disposal site by a stated date.

**disaster situation** see the *Disaster Management Act 2003*, schedule.

**dredge spoil** means natural material that has been removed from a waterway to maintain maritime safety requirements for channels, shipping lanes and harbours or to undertake flood mitigation activities.

**exempt waste** means—

- (a) disaster management waste; or
- (b) waste approved by the chief executive to be exempt waste for a particular exempt waste application; or
- (c) lawfully managed and transported asbestos; or
- (d) contaminated soil, if the soil is being disposed of by or for the State or a local government as part of action taken by an authorised person under the Environmental Protection Act, section 467, or by a person as directed or authorised by an authorised person under that section, and either—

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- (i) the person responsible for the soil's contamination can not be identified; or
  - (ii) the person responsible for the soil's contamination has been identified, but the State or local government can not recover from the person the cost of disposal of the soil; or
- (e) dredge spoil; or
- (f) waste collected by or for the State or a local government to remediate the results of a person having committed an offence against the general littering provision or the illegal dumping of waste provision; or
- (g) other waste—
- (i) prescribed under a regulation to be exempt waste; or
  - (ii) for which there is in force under this chapter a declaration by the chief executive that the waste is exempt waste.

***exempt waste application*** see section 29(1).

***hazardous contaminant*** see the Environmental Protection Act, schedule 4.

***lawfully managed and transported asbestos*** means asbestos that has been managed and transported in compliance with the requirements applying, under the *Public Health Act 2005* and any other Act, to its management and transport.

***levyable waste*** means waste other than exempt waste.

***levyable waste disposal site*** see section 27.

***progressive capping*** means capping of active landfill cells at a waste facility on a cell by cell basis, but does not include temporary or daily covering.

***resource recovery area*** see section 61.

***waste levy*** see section 37.

***waste levy amount*** means an amount of waste levy.

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*waste levy zone* means the part of the State made up of the local government areas prescribed under a regulation as provided for in this chapter.

## **27 Meaning of *levyable waste disposal site***

- (1) A *levyable waste disposal site* is a waste facility, whether under the ownership or control of the State, a local government or otherwise, to which all of the following apply—
  - (a) levyable waste may be delivered to the facility;
  - (b) the operator of the facility is required to hold a registration certificate for the disposal of waste at the facility;
  - (c) waste delivered to the facility commonly includes waste that is subsequently disposed of to landfill at the facility.
- (2) A *levyable waste disposal site* does not include a part of a waste facility mentioned in subsection (1) that is a resource recovery area.

## **Part 2 Identifying exempt waste**

### **28 Chief executive may declare limits for disaster management waste**

- (1) The chief executive may by gazette notice declare limits applying to the status of waste as disaster management waste in relation to a particular disaster.

*Examples of declared limits—*

- a declaration that waste is disaster management waste only for a stated period
- a declaration that waste is disaster management waste only if it is disposed of at a facility stated in the gazette notice

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- (2) If the chief executive makes a declaration under subsection (1), the chief executive must take all reasonable steps to ensure that persons likely to be directly affected by the declaration are made aware of it, including for example by—
  - (a) advertising in newspapers, on radio or on television; and
  - (b) publishing notice of the declaration on the department's website.
- (3) The declaration is not invalid because of a failure to comply with subsection (2).

## **29 Application for approval of waste as exempt waste**

- (1) A person may make an application (an *exempt waste application*) asking the chief executive to approve that waste identified in the application is exempt waste.
- (2) However, an application under subsection (1) must be about one of the following categories of waste—
  - (a) waste that has been donated to a charitable recycling entity but that can not practicably be re-used, recycled or sold;
  - (b) waste collected by members of the community during an organised event directed at remediating the results of persons having committed an offence against the general littering provision or the illegal dumping of waste provision;
  - (c) contaminated soil;
  - (d) waste to be used at a levyable waste disposal site for progressive capping, batter construction, final capping, profiling and site rehabilitation;
  - (e) biosecurity waste.
- (3) The application must be—
  - (a) in the approved form; and

- (b) supported by enough information to allow the chief executive to decide the application; and
  - (c) accompanied by the fee prescribed under a regulation.
- (4) If the application is about biosecurity waste, the application may be made only by the chief executive of a department having responsibility for the administration of a biosecurity related Act operating in relation to the waste.

### **30 Chief executive may require additional information**

- (1) The chief executive may, by notice, require the applicant under an exempt waste application to give the chief executive further reasonable information or documents about the application by a reasonable date stated in the notice.
- (2) The chief executive may refuse the application if the applicant does not give the chief executive the further information or documents by the stated date, or a later date agreed between the chief executive and the applicant, without reasonable excuse.
- (3) The applicant may, before the stated date, agree with the chief executive about extending the time for providing the further information.

### **31 Deciding application**

- (1) The chief executive must decide either to grant or refuse the application within 10 business days after the later of the following days—
  - (a) the day the chief executive receives the application;
  - (b) if additional information or documents are requested under section 30—the day the chief executive receives the information or documents under that section.
- (2) A failure to make a decision under this section is taken to be a decision by the chief executive to refuse the application.

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- (3) In deciding whether to grant the application, the chief executive must consider the following—
  - (a) the objects of this Act;
  - (b) the information outlined in the application;
  - (c) any criteria prescribed under a regulation.

### **32 Grant of application**

- (1) If the chief executive grants the application, the chief executive must, within 5 business days, give the applicant notice of the approval stating the following—
  - (a) the approval has been granted;
  - (b) the waste that has been approved as exempt waste;
  - (c) the period of the approval;
  - (d) any conditions imposed on the approval.
- (2) If the chief executive imposes any conditions on the approval, the notice under subsection (1) must also include or be accompanied by an information notice for the decision to impose the conditions.
- (3) However, subsection (2) does not apply to a condition that is the same, or substantially the same, as a condition agreed to or asked for by the applicant.
- (4) If an approval has been granted, it may be amended by agreement between the chief executive and the holder of the approval.
- (5) If the holder asks for the amendment, the request must be accompanied by the fee prescribed under a regulation.

### **33 Refusal of application**

If the chief executive decides to refuse the application, the chief executive must, within 5 business days, give the applicant an information notice for the decision.



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**34 Chief executive may declare waste to be exempt waste without exempt waste application**

- (1) If the chief executive is satisfied that exceptional circumstances apply in relation to particular waste or a particular type of waste, or to the disposal of particular waste or a particular type of waste, the chief executive may by gazette notice declare the waste to be exempt waste without having received an application under this part.
- (2) The chief executive may declare waste to be exempt waste subject to any limits or conditions included in the declaration of the waste as exempt waste.
- (3) A declaration of waste as exempt waste under this section has effect subject to any limits or conditions included in the declaration.

**35 Cancellation of approval**

- (1) This section applies if the chief executive has approved waste to be exempt waste because of the granting of an application under this part.
- (2) The chief executive may cancel the approval if the chief executive considers there are reasonable grounds to cancel it.
- (3) Without limiting subsection (2), grounds may include—
  - (a) that there is a reasonable suspicion that the granting of the approval was based on incorrect information or that the approval was granted because of a false or misleading representation or declaration; or
  - (b) that the circumstances that were relevant to the granting of the approval have changed; or
  - (c) that the approval has not been complied with; or
  - (d) that it is desirable to cancel the approval having regard to the objects of this Act.

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### **36 Procedure for cancelling approval**

- (1) This section applies if the chief executive proposes to cancel an approval that was granted under this part following an application under this part.
- (2) The chief executive must give notice to the holder of the approval.
- (3) The notice must state the following—
  - (a) that the chief executive proposes to cancel the approval;
  - (b) the grounds for the proposed action;
  - (c) the facts and circumstances that form the basis for the grounds;
  - (d) when the proposed cancellation is intended to take effect;
  - (e) that the holder may make, within a stated period, written submissions to show why the proposed action should not be taken.
- (4) The stated period must end at least 15 business days after the holder is given the notice.
- (5) The chief executive must consider any submissions made under subsection (3)(e) within the stated period.
- (6) If the chief executive decides to take the proposed action, the chief executive must, within 10 business days after making the decision, give the holder an information notice for the decision.
- (7) The decision takes effect when the information notice is given.

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## Part 3                      Operation of the waste levy

### 37      Imposition of waste levy

- (1) The operator of a levyable waste disposal site is liable to pay the State a levy (the *waste levy*) on all levyable waste that is delivered to the site if—
  - (a) the levyable waste disposal site is inside the waste levy zone; or
  - (b) the levyable waste disposal site is outside the waste levy zone but the levyable waste was generated inside the waste levy zone.
- (2) Also, the operator of a levyable waste disposal site inside the waste levy zone is liable to pay the State a levy (also the *waste levy*) on all stockpiled waste at the site, whenever stockpiled, that is disposed of to landfill at the site unless—
  - (a) a waste levy amount payable at a rate of other than nil became payable on its delivery to the site under subsection (1); or
  - (b) the stockpiled waste is clean earthen material or disaster management waste that has been stockpiled separately from all other stockpiled waste at the site.

### 38      Calculating waste levy amount

- (1) The rate of the waste levy for each type of waste, as prescribed under a regulation, is the rate prescribed for that type under a regulation.
- (2) A regulation may provide that the rate for a particular type of waste is nil.
- (3) The amount of a waste levy imposed on waste is calculated in compliance with the requirements prescribed under a regulation.

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- (4) A regulation may provide for the total of waste levy amounts payable under this chapter in a month to be discounted in the way stated in the regulation.

### **39 Resource recovery deduction**

- (1) The operator of a levyable waste disposal site is entitled to claim a deduction against the total of waste levy amounts payable under this chapter in a month for a quantity of stockpiled waste that is exported from the site in that month for the purposes of—
  - (a) carrying out a recycling activity; or
  - (b) sale, after processing on the site has been performed; or
  - (c) if the exporting happens before 1 July 2012—inclusion in a resource recovery area; or
  - (d) a lawful use prescribed under a regulation.
- (2) The deduction must be calculated in the way prescribed under a regulation.
- (3) This section does not limit section 38(4).
- (4) This section does not apply to exports of waste from a small site until 1 July 2014.
- (5) In this section—

*stockpiled waste* does not include clean earthen material, disaster management waste or green waste that in each case has been stockpiled separately from all other stockpiled waste at the levyable waste disposal site.

### **40 Regulation identifying waste levy zone**

- (1) A regulation may identify local government areas that comprise the waste levy zone.
- (2) It is not necessary for the waste levy zone to comprise local government areas each of which is contiguous with another local government area comprised in the zone.

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## Part 4                      Obligations about the waste levy

### Division 1                Obligations of person delivering waste

#### 41      **Person delivering waste to levyable waste disposal site to give information as required by operator of site**

- (1) A person who delivers waste to a levyable waste disposal site must give the operator of the site all the information the operator reasonably requires to allow the operator to identify, in relation to the waste delivered—
- (a) how much of the waste is exempt waste and how much of it is levyable waste; and
  - (b) for any levyable waste—how much levyable waste there is for each prescribed type of levyable waste; and
  - (c) whether the waste was generated inside or outside the waste levy zone.

Maximum penalty—300 penalty units.

- (2) If the operator asks the person to give the information in the approved form, the person must comply with the request unless the person has a reasonable excuse.

Maximum penalty—300 penalty units.

- (3) For subsection (1)—

*person who delivers waste* includes—

- (a) any person who physically delivers the waste; and
- (b) if a person mentioned in paragraph (a) is acting as the agent or employee of another person, or is otherwise acting on behalf of another person—the other person.

## **Division 2                      Obligations of operator of levyable waste disposal site**

### **42        Remitting waste levy amounts to State**

- (1) The operator of a levyable waste disposal site must—
  - (a) within the prescribed period after the end of each levy period for the site, calculate the total amount of all waste levy amounts that became payable to the State by the operator for the levy period; and
  - (b) by the due date for payment of the amount, remit to the chief executive the total amount less any amount by which the total amount may be discounted under a regulation or may otherwise be the subject of a deduction.
- (2) If a waste levy amount owing by an operator remains unpaid after its due date for payment, 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.
- (3) The interest payable for a day as mentioned in subsection (2) is payable at the rate of 20% per annum, simple interest.
- (4) Any waste levy amount payable by the operator of a levyable waste disposal site and remaining unpaid after its due date for payment, and any interest payable on the unpaid amount, may be recovered by the chief executive in a court of competent jurisdiction as a debt payable by the operator to the State.
- (5) In this section—

***due date for payment***, of a waste levy amount for a levy period for a levyable waste disposal site, means—

  - (a) if an extension of time has been granted under section 58 or 59 for payment of the waste levy amount—the day provided for in the grant of the extension; or

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- (b) if there is a waste levy instalment agreement in place between the chief executive and the operator of the site who owes the amount—the day provided for in the agreement; or
  - (c) otherwise—the last day of the prescribed period after the end of the levy period.

***levy period***, for a levyable waste disposal site, means—

- (a) for a levyable waste disposal site other than a small site while it is a section 298 small site—any month; or
- (b) for a levyable waste disposal site that is a section 298 small site, until 30 June 2014—any of the following periods—
  - (i) the period starting on the commencement of this section and ending on 30 June 2012;
  - (ii) the period starting on 1 July 2012 and ending on 30 June 2013;
  - (iii) the period starting on 1 July 2013 and ending on 30 June 2014.

***prescribed period***, after the end of a levy period for a levyable waste disposal site, means the period that—

- (a) starts at the beginning of the first day of the first month after the end of the levy period; and
- (b) ends at the end of the twentieth day of the second month after the end of the levy period.

***section 298 small site*** means a small site the operator of which, under section 298, is not required to comply with the requirement of section 45(2) to measure and record waste in compliance with the waste measurement criteria prescribed under a regulation.

### **43 Weighbridge requirement provision**

- (1) If the operator of a levyable waste disposal site is required to hold a registration certificate for the disposal of more than

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10000t of waste in a year at the site, the operator must ensure that a weighbridge is installed at the site within 1 year after the commencement of this section.

Maximum penalty—300 penalty units.

- (2) If the operator of a levyable waste disposal site is required to hold a registration certificate for the disposal of more than 5000t, but not more than 10000t, of waste in a year at the site, the operator must ensure that a weighbridge is installed at the site within 2 years after the commencement of this section.

Maximum penalty—300 penalty units.

- (3) If a weighbridge is installed at a levyable waste disposal site, whether or not it is required under subsection (1) or (2), the operator of the site must ensure that subsections (4) to (9) are complied with in relation to the weighbridge.

Maximum penalty—200 penalty units.

- (4) The installation and operation of the weighbridge must comply with requirements for the weighbridge prescribed under a regulation.
- (5) A copy of any record of certification for the weighbridge obtained in complying with the *National Measurement Act 1960* (Cwlth) must be kept by the operator for 5 years after the certification.
- (6) The weighbridge must be kept in proper working order.
- (7) If any event results in the weighbridge being out of operation, the weighbridge must be brought back into operation in the shortest practicable time.
- (8) Further, if any event results in the weighbridge being out of operation for any period of more than 24 hours, the chief executive must be notified of the following within 3 days after the start of the period of the weighbridge being out of operation, whether or not the weighbridge is still out of operation—
- (a) the event that resulted in the weighbridge being out of operation; and



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- (b) when the weighbridge started being out of operation; and
  - (c) whether the weighbridge is still out of operation; and
  - (d) if the weighbridge is still out of operation—what actions are being taken to bring the weighbridge back into operation.
- (9) If the weighbridge is still out of operation when the chief executive is notified under subsection (8), the chief executive must be notified of its being brought back into operation within 3 days after it starts operating again.

#### **44 Measurement of waste by weighbridge**

- (1) This section applies if a weighbridge is installed at a levyable waste disposal site, whether or not it is required under the weighbridge requirement provision.
- (2) The operator of the site must ensure that the weighbridge is used to measure and record—
  - (a) amounts of waste delivered at the site; and
  - (b) amounts of stockpiled waste moved to landfill at the site; and
  - (c) amounts of stockpiled waste moved to a place outside the site at any time after its delivery to the site; and
  - (d) amounts of waste the subject of any other movement to, from or within the site if the movement of the waste is prescribed under a regulation.

Maximum penalty—300 penalty units.

- (3) Despite subsection (2), if waste is required to be measured and recorded under subsection (2), but the movement of the waste happens when 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 a regulation.

Maximum penalty—300 penalty units.

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- (4) Also, if waste is delivered to the site in a vehicle with a gross vehicle mass of less than 4.5t, the operator of the site may measure and record the waste in compliance with the weight measurement criteria prescribed under a regulation instead of measuring and recording it with the weighbridge.

#### **45 Measurement of waste other than by weighbridge**

- (1) This section applies to waste that is the subject of any delivery or movement in relation to a levyable waste disposal site if the delivery or movement is of a type mentioned in section 44(2)(a), (b), (c) or (d) and for any reason a weighbridge is not installed at the site, including for example because, under the weighbridge requirement provision, a weighbridge is not required to be installed, or is not yet required to be installed, at the site.
- (2) The operator of the site must ensure the waste is measured and recorded in compliance with the weight measurement criteria prescribed under a regulation.

Maximum penalty—300 penalty units.

#### **46 Electronic monitoring**

- (1) This section applies if the chief executive reasonably believes the operator of a levyable 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 data returns for the site, under this chapter.
- (2) The chief executive may, by notice to the operator, require the operator to install a suitably effective electronic monitoring system at the site.
- (3) The notice must—
  - (a) state how, and the location where, the system must be installed; and
  - (b) state the chief executive's reasonable requirements for a suitably effective system, including the documents in

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- the form of electronic monitoring records the system must be capable of generating; and
- (c) state the day by which the notice must be complied with; and
  - (d) include or be accompanied by an information notice for the chief executive's decision to give the notice.
- (4) The operator must—
- (a) comply with the notice; and
  - (b) keep each document in the form of an electronic monitoring record generated by the system for at least 1 year after the record is made.

Maximum penalty—200 penalty units.

#### **47 Volumetric survey for levyable waste disposal site**

- (1) From 1 June 2012, the operator of a levyable waste disposal site located within the waste levy zone must, in compliance with the requirements applying for volumetric surveys under this division—
- (a) in June of each year, ensure that a volumetric survey is carried out for—
    - (i) each landfill cell where waste has been disposed of since the last volumetric survey required under this Act was performed; and
    - (ii) all stockpiled waste at the site; and
  - (b) before the end of July in the same year, give the chief executive a copy of the results of the survey.

Maximum penalty—200 penalty units.

- (2) A person required to comply with subsection (1) continues to be a person who must comply with the subsection even if waste may no longer be delivered to the site, and even if the site ceases to be a levyable waste disposal site, but the carrying out of the survey and the giving of a copy of the

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results to the chief executive may happen earlier than when otherwise required under the subsection.

- (3) This section does not apply to a small site until 1 June 2014.

#### **48 Volumetric survey for new landfill cells**

- (1) Before any landfill cell is used for the first time for disposing of waste to landfill at a levyable waste disposal site located within the waste levy zone, the operator of the site must, in compliance with the requirements applying for volumetric surveys under this division—
- (a) ensure that a volumetric survey is carried out for the landfill cell; and
  - (b) before the end of the month immediately following the month in which the volumetric survey is carried out, give the chief executive a copy of the results of the survey in the approved form.

Maximum penalty—200 penalty units.

- (2) This section applies to a levyable waste disposal site whether or not waste has previously been disposed of to landfill at the site.

#### **49 Requirements applying for volumetric surveys**

- (1) This section states requirements applying for volumetric surveys under this division.
- (2) A volumetric survey must be performed in compliance with the requirements prescribed under a regulation.
- (3) The results of the volumetric survey must—
- (a) be in the approved form; and
  - (b) be accompanied by a topographical plan complying with specifications advised by the chief executive; and
  - (c) include information about the following—

- (i) the area of the levyable waste disposal site;
  - (ii) the site's landfill capacity;
  - (iii) any stockpiles of waste on the site; and
- (d) be certified as accurate by a surveyor under the *Surveyors Act 2003*.

## **50 Keeping of results of volumetric survey**

The operator of a levyable waste disposal site must ensure that a copy of the results of any volumetric survey performed under this division in relation to the site is kept as a document in hard copy or electronic form at the levyable waste disposal site for 5 years after the survey is performed.

Maximum penalty—200 penalty units.

## **51 Failure to comply with requirements for volumetric survey**

- (1) This section applies if the operator of a levyable waste disposal site fails to comply with a requirement under this division to carry out a volumetric survey or give a copy of the results of a volumetric survey to the chief executive.
- (2) The chief executive may arrange for the volumetric survey to be carried out at the site and for that purpose may direct an authorised person to enter the site and carry out the survey.
- (3) The chief executive may recover the reasonable cost of the survey from the operator as a debt payable by the operator to the State.

## **52 Submission of waste data returns**

- (1) The operator of a levyable waste disposal site must, within the prescribed period for the site, give the chief executive, in the approved form, the following returns (each a *waste data return*)—

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- (a) for a site the operator of which is required to hold a registration certificate for the disposal of more than 5000t of waste in a year at the site—
  - (i) a detailed data return; and
  - (ii) a levy summary return;
- (b) for a site the operator of which is required to hold a registration certificate for the disposal of 5000t or less of waste in a year at the site—a levy summary return;
- (c) any other return about the delivery or movement of waste as prescribed under a regulation.

Maximum penalty—300 penalty units.

- (2) Without limiting subsection (1), information that an approved form of waste data return may require includes information about any of the following—
  - (a) who delivered waste to the site;
  - (b) waste delivered to the site, including, for example, the types and amounts of waste delivered, how much of the waste was exempt waste, when the waste was delivered and the vehicle in which it was delivered;
  - (c) the waste held in stockpiles;
  - (d) the waste moved from stockpile to landfill;
  - (e) the waste moved from stockpile to a place outside the site, including, for example, the types and amounts of waste moved, its destination and its purchaser.
- (3) If an extension of time is given under section 58 or 59 for the payment of a waste levy amount for a levyable waste disposal site, an equivalent extension of time is taken to apply for the giving under this section of a waste data return for the site.
- (4) In this section—

***detailed data return*** means a return that provides comprehensive information about movements of waste into,

within and out of a levyable waste disposal site, and includes information on movements of individual loads of waste.

*levy summary return* means a return providing a summary or information for demonstrating how waste levy amounts payable for a particular levyable waste disposal site were calculated.

*prescribed period*, for a levyable waste disposal site, means the period that, under section 42, is the period that is the prescribed period after the end of a levy period for the site.

### **53 Requirement for operator of levyable waste disposal site to keep particular documents**

The operator of a levyable waste disposal site must keep at the site, or at another place agreed to by the chief executive and the operator, for the period stated for the document, the following documents—

- (a) for 5 years after a waste data return is given to the chief executive, a copy of the waste data return;
- (b) for 5 years after a waste data return is given to the chief executive, records containing any information that was used to support the preparation of the return, including the following records—
  - (i) weighbridge records;
  - (ii) if weight measurement criteria were used—records of vehicles delivering waste to the site;
  - (iii) for small sites that have used an alternative methodology under section 298—records that enable the chief executive to fairly calculate the total waste levy amount owing for the site in a levy period;
- (c) for 5 years after a claim for a resource recovery deduction mentioned in section 39 is made, records containing any information that was used to support the claim, including the following records—

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- (i) records of waste exported and its destination;
- (ii) sales receipts and other records evidencing the entitlement to the deduction;
- (d) for the period prescribed under a regulation, any other record prescribed under a regulation.

Maximum penalty—300 penalty units.

## **54 Waste levy evasion**

- (1) A person must not, by wilful act or omission, and with intent to deceive or defraud in order to evade the payment of some or all of a waste levy amount or interest payable on a waste levy amount—
  - (a) give or attempt to give the chief executive any certificate or record under this Act that contains information that is false or misleading in a material particular; or
  - (b) keep or attempt to keep an incorrect record required to be kept under this Act; or
  - (c) in any way falsify, destroy, alter or damage, or attempt to falsify, destroy, alter or damage, a record required to be kept under this Act; or
  - (d) produce or makes use of, or attempt to produce or make use of, any record the person knows is false or misleading in a material particular.

Maximum penalty—

- (a) 2000 penalty units or 2 years imprisonment; and
  - (b) twice the amount of any waste levy amount the payment of which the offender sought to evade, and twice the amount of any interest payable in relation to the failure to pay the waste levy amount by the due date for its payment.
- (2) In addition, the court, as part of the proceeding for the offence, may order the offender to pay an amount, as decided by the court, made up of any waste levy amount currently



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owed by the offender together with any interest payable in relation to the failure to pay the amount by the due date for its payment.

- (3) Subsections (1) and (2) do not stop the chief executive from taking action, separately from the proceeding for the offence, to recover any waste levy amount and interest payable by the person.

## **Division 3                      Payment options**

### **55            Application for waste levy instalment agreement**

- (1) The operator of a levyable waste disposal site may apply in the approved form to the chief executive to enter into an agreement (a *waste levy instalment agreement*) with the chief executive providing for the payment by instalments of a waste levy amount that is owing instead of in compliance with the requirements that would otherwise apply under this chapter for the payment of the amount.
- (2) The operator must include, with the application, the following—
  - (a) a description of the operator's financial situation that has resulted in the operator's inability to pay the waste levy amount by the due date for payment and how the financial situation came about;
  - (b) up-to-date management and financial records to verify the information given under paragraph (a).
- (3) The chief executive may agree to enter into a waste levy instalment agreement with the operator only if the chief executive is satisfied that the operator has demonstrated—
  - (a) an inability to pay the waste levy amount within the time required under this chapter; and
  - (b) how entering into the waste levy instalment agreement will allow the operator to pay the waste levy amount

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while at the same time allowing the operator to pay future waste levy amounts.

- (4) The chief executive must, within 15 business days after receiving the application—
  - (a) decide whether to enter or refuse to enter into an agreement; and
  - (b) if the chief executive refuses to enter into an agreement—give the applicant an information notice for the decision to refuse.
- (5) A waste levy instalment agreement may relate to 2 or more levyable waste disposal sites of which the same person is the operator.

## **56 Other requirements applying to waste levy instalment agreements**

- (1) An application to enter into a waste levy instalment agreement may be made at any time.
- (2) However—
  - (a) there may be only 1 waste levy instalment agreement in force between the operator of a levyable waste disposal site and the chief executive at any time; and
  - (b) only 1 waste levy instalment agreement may be entered into between the operator of a levyable waste disposal site and the chief executive in a financial year.
- (3) If an application to enter into a waste levy instalment agreement is made after the due date for payment of a waste levy amount the subject of the application and the agreement is entered into, interest is payable under this chapter 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.
- (4) However, if the application is refused, the requirements under this chapter for the payment of interest continue to apply unaffected by the making or refusal of the application.

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- (5) The period within which all waste levy amounts must be paid under a waste levy instalment agreement must not be longer than 6 months after the agreement is entered into.
- (6) If an instalment of a waste levy amount is not paid on or before an instalment day under a waste levy instalment agreement—
- (a) the waste levy instalment agreement is taken to be no longer in force; and
  - (b) the due date for payment of any waste levy amount provided for in the agreement becomes—
    - (i) if the amount, apart from the agreement, would have been required to be paid on a day (the *later day*) later than the instalment day—the later day; or
    - (ii) if the amount, apart from the agreement, would have been required to be paid on a day earlier than the instalment day—the day after the instalment day, or if that day is not a business day, the next business day after that day; and
  - (c) for an amount mentioned in paragraph (b)(ii), interest becomes payable on the amount as if the waste levy instalment agreement had not been entered into, but only on and from the day after the instalment day, whether or not the day after the instalment day is a business day.
- (7) In this section—
- instalment day*, under a waste levy instalment agreement, means a day when a payment is due under the agreement.

## **57 Amendment of waste levy instalment agreement**

- (1) The operator of a levyable waste disposal site may apply to the chief executive for the amendment of a waste levy instalment agreement, but only for the purpose of—

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- (a) including an additional waste levy amount, if the additional waste levy amount is not greater than 10% of the total waste levy amount owing by the operator, but not the subject of the agreement, when the application is made; or
  - (b) extending the period for the repayment of the total waste levy amounts the subject of the agreement for a period of not more than 3 months.
- (2) Only 1 application under subsection (1) may be made for a waste levy instalment agreement.
- (3) The application must be in the approved form and must state—
  - (a) any additional waste levy amount sought to be included in the agreement; and
  - (b) the length of any extension sought; and
  - (c) the changed circumstances of the applicant that have resulted in the applicant's seeking the amendment.
- (4) The chief executive may agree to amend the waste levy instalment agreement with the operator only if the chief executive is satisfied that the operator has demonstrated—
  - (a) an inability to pay waste levy amounts owing within the time provided for in the agreement; and
  - (b) how amendment of the agreement will allow the operator to pay all waste levy amounts owing and future waste levy amounts.
- (5) The chief executive must, within 15 business days after receiving the application—
  - (a) decide whether to enter or refuse to enter into an amendment of the agreement; and
  - (b) if the chief executive refuses to enter into an amendment of the agreement—give the applicant an information notice for the decision to refuse.

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- (6) The making of an application under this section does not of itself affect the operator's obligations under the waste levy instalment agreement sought to be amended.

## **58 Application for extension of time to pay waste levy amount**

- (1) The operator of a levyable waste disposal site may apply to the chief executive for an extension of time within which the operator must pay a waste levy amount if the operator considers the operator can not pay the waste levy amount by the due date for payment of the amount.
- (2) The application—
- (a) must be made before the due date for payment of the waste levy amount; and
  - (b) must state the reasons why the extension is being applied for.
- (3) The chief executive may grant the application only if the chief executive is satisfied that it is not reasonable to expect the operator to pay the waste levy amount by the due date for payment.

*Example of when the chief executive might grant an application—*

The operator has suffered a significant electricity supply disruption or an extensive computer malfunction.

- (4) The chief executive must, within 5 business days after the due date for payment of the waste levy amount, decide whether to grant the application and—
- (a) if the decision is to grant the application—give the operator a notice stating a new due date for payment of the waste levy amount; or
  - (b) if the decision is to refuse the application—give the operator an information notice for the decision on the application.
- (5) An extension of time for payment must not be for more than 1 month.

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- (6) If the chief executive fails to advise the operator under subsection (4), the application for the extension is taken to have been refused.
- (7) The operator of a levyable waste disposal site can not make—
  - (a) more than 1 application for an extension of time for the payment of the same waste levy amount; or
  - (b) more than 2 applications under this section in a financial year.
- (8) Also, the operator of a levyable waste disposal site can not make an application under this section if the operator is conducting operations on the site for which the operator does not hold a registration certificate.

**59 Notice by chief executive for extension of time to pay waste levy amount**

- (1) The chief executive may by gazette notice grant an extension of time for the payment of a waste levy amount that has effect as if each operator of a levyable waste disposal site to whom the notice applies had applied for and been granted the extension.
- (2) The chief executive may grant an extension under this section only if the chief executive is satisfied that the extension is justified because of the happening of a significant emergency.

**60 Estimation of waste levy amount payable by operator of levyable waste disposal site**

- (1) The chief executive may take action under this section if, in relation to the payment of the waste levy and the calculation of the waste levy amount payable by the operator of a levyable waste disposal site for a particular period—
  - (a) the operator has not given the chief executive a waste data return within the prescribed period for the site under section 52; or

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- (b) the operator has given the chief executive information, whether or not in the form of a waste data return, that the chief executive considers on reasonable grounds to be incomplete or inaccurate; or
  - (c) whether or not paragraph (a) or (b) applies, the chief executive is satisfied on reasonable grounds that the waste levy amount payable by the operator for the period, as calculated by the operator, is incorrect.
- (2) The chief executive may decide an estimate of the amount of waste levy payable by the operator for the period (the *estimated waste levy amount*), and give the operator an information notice for the decision.
  - (3) If the chief executive decides an estimated waste levy amount, the estimated waste levy amount becomes the amount of waste levy payable by the operator for the period, and takes the place of any waste levy amount calculated by the operator.
  - (4) Subsection (3) does not stop a subsequent adjustment being made to the amount of waste levy payable by the operator for the period if a different amount is arrived at as a result of a review of the chief executive's decision on the estimated waste levy amount.
  - (5) Subsections (2) and (3) may be applied even if the due date for payment of the amount of waste levy payable has passed.

## Part 5                      Resource recovery area

### 61      Resource recovery area

The operator of a levyable waste disposal site forming the whole or part of a waste facility may declare an area at the facility as a *resource recovery area* if—

- (a) only the following activities are carried out in the area—

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- (i) storing waste for transport to another place for reprocessing or recycling;
  - (ii) sorting waste to extract resources for transport to another place for reprocessing or recycling;
  - (iii) an activity that is ancillary to sorting of waste;  
*Example of activity ancillary to sorting—*  
baling sorted waste
  - (iv) another activity prescribed under a regulation; and
- (b) the operator, or another entity that is responsible for the area, holds the approvals, licences or registration certificates required for carrying out all of the activities mentioned in paragraph (a) that the operator or other entity carries out in the area; and
  - (c) a physical barrier separates the area from the rest of the facility with not more than 3 points of access to and from the rest of the facility; and
  - (d) the area complies with the requirements prescribed for the area under a regulation; and
  - (e) there has not, within the last year, been a revocation of a declaration of a resource recovery area at the waste facility.

## **62 Declaration of resource recovery area**

- (1) The operator of a levyable waste disposal site declares a resource recovery area by giving the chief executive a notice complying with subsection (2)—
  - (a) for a proposed resource recovery area established before the commencement of this section—not more than 15 business days after the commencement; or
  - (b) for a proposed resource recovery area established after the commencement of this section—at least 15 business days before using the area as a resource recovery area.



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- (2) The notice must—
- (a) be in the approved form; and
  - (b) be accompanied by the following—
    - (i) a plan of the waste facility indicating the resource recovery area, clearly showing the points of access to and from the rest of the facility and including the GPS coordinates of the barrier between the resource recovery area and the rest of the facility;
    - (ii) a description of the activities to be carried out in the resource recovery area;
    - (iii) a statutory declaration stating whether the operator, or another entity that is responsible for the area, holds the approvals, licences or registration certificates required for carrying out the proposed activities in the resource recovery area; and
  - (c) be signed by the operator and any other entity that will be responsible for the area.
- (3) If the barrier mentioned in subsection (2)(b)(i) is moved, the operator must amend the plan, and give the chief executive a copy of the amended plan, within 7 days after the movement.
- Maximum penalty—300 penalty units.
- (4) If the activities mentioned in subsection (2)(b)(ii) change, the operator must give a notice to the chief executive advising of the change within 7 days after the change.
- Maximum penalty—300 penalty units.
- (5) If there is a change of the entity having responsibility for the operation of the resource recovery area, the entity having responsibility for the operation immediately before the change must notify the chief executive of the change within 7 days after the change happens.
- Maximum penalty—100 penalty units.
- (6) The operator of a levyable waste disposal site in relation to which a resource recovery area has been declared, or an entity

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having responsibility for the operation of a resource recovery area, may cancel the area's declaration as a resource recovery area.

- (7) The operator or entity must advise the chief executive of its intention to cancel the declaration at least 30 days before the cancellation is to take effect.

Maximum penalty—100 penalty units.

- (8) If a resource recovery area is cancelled under this section—
- (a) the cancelled area becomes part of the levyable waste disposal site; and
  - (b) all waste within the cancelled area, other than clean earthen material, disaster management waste or green waste that in each case has been stockpiled separately from all other stockpiled waste, is taken to have been delivered to the levyable waste disposal site and is, for the purposes of the waste levy, taken to be either—
    - (i) if the waste is regulated waste—regulated waste delivered to the levyable waste disposal site on the day the cancellation took effect; or
    - (ii) for all other waste—levyable waste delivered to the levyable waste disposal site on the day the cancellation took effect, and for which the waste levy is payable at the rate prescribed for commercial and industrial waste.

### **63 Effect of declaration of resource recovery area**

If the requirements under this part for the declaration of a resource recovery area have been complied with, and the declaration has not been revoked or cancelled—

- (a) the resource recovery area is not part of the levyable waste disposal site whose operator made the declaration; and
- (b) all waste that is moved from the resource recovery area to the levyable waste disposal site, other than clean

earthen material, disaster management waste or green waste that in each case has been stockpiled separately from all other stockpiled waste in the resource recovery area, is, for the purposes of the waste levy, taken to be either—

- (i) if the waste is regulated waste—regulated waste delivered to the levyable waste disposal site; or
- (ii) for all other waste—levyable waste delivered to the levyable waste disposal site, and for which the waste levy is payable at the rate prescribed for commercial and industrial waste.

#### **64 Revocation of resource recovery area by chief executive**

- (1) The chief executive may, by information notice given to the operator of a levyable waste disposal site, revoke the operator's declaration of an area as a resource recovery area if—
  - (a) the operator or another entity having responsibility for the resource recovery area is convicted of an offence under this part; or
  - (b) the chief executive is satisfied the area does not fulfil, or no longer fulfils, the requirements under this part for an area to be declared as a resource recovery area.
- (2) If a resource recovery area is revoked under this section—
  - (a) the revoked area becomes part of the levyable waste disposal site; and
  - (b) all waste within the revoked area, other than clean earthen material, disaster management waste or green waste that in each case has been stockpiled separately from all other stockpiled waste, is taken to have been delivered to the levyable waste disposal site and is, for the purposes of the waste levy, taken to be either—

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- (i) if the waste is regulated waste—regulated waste delivered to the levyable waste disposal site on the day the revocation took effect; or
- (ii) for all other waste—levyable waste delivered to the levyable waste disposal site on the day the revocation took effect, and for which the waste levy is payable at the rate prescribed for commercial and industrial waste.

## **65 Requirement to keep documents**

An entity having responsibility for the operation of a resource recovery area must keep the following documents relating to the area for at least 5 years after the happening of the event recorded—

- (a) any document that records waste delivered to the area, including its measurements;
- (b) any document that records waste removed from the area, including its destination and its measurements;
- (c) any document that records any other event for the resource recovery area as prescribed under a regulation.

Maximum penalty—300 penalty units.

## **66 Volumetric survey for resource recovery area**

- (1) From 1 June 2012, an entity having responsibility for a resource recovery area must, in compliance with the requirements stated in this section—
  - (a) in June of each year, ensure that a volumetric survey is carried out for all stockpiled waste at the resource recovery area; and
  - (b) before the end of July in the year, give the chief executive a copy of the results of the survey in the approved form.

Maximum penalty—200 penalty units.

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- (2) The volumetric survey must be performed in compliance with the requirements prescribed under a regulation.
  - (3) The results of the volumetric survey must—
    - (a) be in electronic form; and
    - (b) include a topographical plan complying with specifications advised by the chief executive; and
    - (c) include advice of the following—
      - (i) the area of the resource recovery area;
      - (ii) the stockpiles of waste on the area; and
    - (d) be certified as accurate by a surveyor under the *Surveyors Act 2003*.
  - (4) The entity having responsibility for a resource recovery area must ensure that a copy of the results of any volumetric survey performed under this section for the area is kept as a document in hard copy or electronic form, at the site whose operator made the declaration of the area as a resource recovery area, for 5 years after the survey is performed.

Maximum penalty—200 penalty units.
  - (5) Subsections (6) and (7) apply if the entity having responsibility for a resource recovery area fails to comply with subsection (1).
  - (6) The chief executive may arrange for the volumetric survey to be carried out at the resource recovery area and for that purpose may direct an authorised person to enter the resource recovery area and carry out the survey.
  - (7) The chief executive may recover the cost of the survey from the entity as a debt payable by the entity to the State.
  - (8) This section does not apply to a resource recovery area declared for a small site until 1 June 2014.
  - (9) A person required to comply with subsection (1) continues to be a person who must comply with the subsection even if the declaration of the area as a resource recovery area is revoked

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or cancelled, but the carrying out of the survey and the giving of a copy of the results to the chief executive may happen earlier than when otherwise required under the subsection.

## **67 Offences relating to resource recovery area**

- (1) Subsection (2) applies if the operator of a levyable waste disposal site has declared, or claims to have declared, a part of a waste facility as a resource recovery area under this part.
- (2) The entity having responsibility for the operation of the resource recovery area—
  - (a) must not carry out activities other than those mentioned in section 61(a) in the resource recovery area; and
  - (b) must ensure that the area complies with the requirements prescribed for the area under a regulation; and
  - (c) must ensure the physical barrier between the resource recovery area and the rest of the facility has no more than 3 points of access to and from the rest of the facility.

Maximum penalty—1665 penalty units.

- (3) The operator of a waste facility must not claim to have an area that is a resource recovery area if the operator has not declared the area in compliance with the requirements of this part, or if the declaration of the area as a resource recovery area has been revoked under this part.

Maximum penalty—1665 penalty units.

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## **Part 6 Waste and Environment Fund**

### **68 Establishment of fund**

The Waste and Environment Fund is established.

### **69 Object of Waste and Environment Fund**

The object of the Waste and Environment Fund is to provide funding for waste management initiatives and environmental initiatives.

### **70 Payment of amounts into Waste and Environment Fund**

- (1) The following amounts, on receipt by the department, must be paid into the Waste and Environment Fund—
  - (a) all waste levy amounts paid by operators of levyable waste disposal sites;
  - (b) all interest paid because of late payment of waste levy amounts payable by operators of levyable waste disposal sites.
- (2) The following amounts may also be paid into the fund—
  - (a) any amount appropriated by Parliament for the purposes of the fund;
  - (b) any amount paid into the fund at the direction of or with the approval of the Minister and the Treasurer;
  - (c) any amount paid into the fund under any other Act.
- (3) Amounts may be paid into the fund under subsection (1) without further appropriation.

### **71 Payment of amounts from Waste and Environment Fund**

- (1) The chief executive may, without further appropriation, make payments from the Waste and Environment Fund under subsection (2).

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- (2) A payment from the fund must be for 1 or more of the following—
  - (a) paying expenses incurred by the chief executive in collecting and administering the waste levy, including the conduct of audits and volumetric surveys of levyable waste disposal sites, progress reporting and compliance activities;
  - (b) paying amounts as performance payments, as provided for under a regulation, having regard to efficiency indicators and targets stated in the regulation;
  - (c) paying fees or expenses related to administering the fund;
  - (d) implementing the WMS business plan;
  - (e) providing funding, at the Minister’s discretion, that is consistent with the object of the fund;
  - (f) paying other amounts required or permitted under this Act to be paid out of the fund.
- (3) Subsection (4) applies if—
  - (a) the chief executive is authorised under subsections (1) and (2) to make a payment to any entity; and
  - (b) the entity has failed, and has not rectified the failure, to meet its obligations for—
    - (i) strategic waste management planning under this Act; or
    - (ii) payment of waste levy amounts by 2 or more due dates for payment of the amounts; or
    - (iii) providing data under this Act relating to waste management and resource recovery.
- (4) The chief executive may, with the approval of the Minister, and for the period approved by the Minister, withhold the payment.



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## 72 Administration of Waste and Environment Fund

- (1) Accounts for the Waste and Environment Fund must be kept as part of the departmental accounts of the department.
- (2) However, amounts received for the fund may be deposited in a departmental financial institution account of the department with other moneys of the department.
- (3) In this section—

*departmental accounts*, of a department, means the accounts of the department kept under the *Financial Accountability Act 2009*, section 69.

*departmental financial institution account*, of a department, means an account of the department kept under the *Financial Accountability Act 2009*, section 83.

*other moneys*, of the department, means all moneys of the department other than amounts received for the Waste and Environment Fund.

## Part 7 Miscellaneous

### 73 Review of efficacy of waste levy

The chief executive must review the efficacy of the waste levy—

- (a) within 2 years after commencement of this section; and
- (b) after the review for paragraph (a), at intervals of not more than 3 years from 1 review to the next.

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## **Chapter 4            Management of priority and                                  other products**

### **Part 1                    Preliminary**

#### **74            Purpose of chapter**

The purpose of this chapter is to encourage, and in particular circumstances to require, that persons who are involved in the life cycle of a product share responsibility for—

- (a) ensuring that, for the product, there is effective waste avoidance, reduction, re-use, recycling, recovery or treatment; and
- (b) managing the impacts of the product throughout its life cycle, including end-of-use management.

### **Part 2                    Priority products**

#### **75            Preparation and notification of draft priority product                                  statement**

- (1) The chief executive may—
  - (a) prepare a draft priority product statement for 1 or more products; and
  - (b) advertise the existence and availability of the statement by notice published on the department's website and in any other way the chief executive considers appropriate.
- (2) The notice must state—
  - (a) how copies of the draft priority product statement may be obtained or accessed; and

- (b) the period, of at least 28 days after publication of the notice, within which a person may make a written submission to the chief executive about any matter relevant to the statement.

## **76 Requirements for draft priority product statement**

- (1) The draft priority product statement must state—
  - (a) the products intended to be included in the final statement as priority products; and
  - (b) how each proposed product satisfies the priority product criteria under section 77; and
  - (c) management options under consideration for each product, including for example a product stewardship scheme, a disposal ban or a strategic waste planning option.
- (2) In deciding whether to include a product in the draft priority product statement, the chief executive must consider—
  - (a) whether the product satisfies the priority product criteria under section 77; and
  - (b) whether action is proposed or is currently in progress for the product through a national approach; and
  - (c) whether there are significant benefits from taking action to reduce impacts from disposal of the product.
- (3) In deciding the management options to be stated under subsection (1)(c), the chief executive must have regard to the waste and resource management hierarchy and the waste and resource management principles.
- (4) In preparing a draft priority product statement, the chief executive may consult with any expert reference group or other entity the chief executive considers appropriate.

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## 77 What are the priority product criteria for a product

A product satisfies the priority product criteria if at least 2 of the following apply to the product—

- (a) the product contains hazardous or toxic substances;
- (b) there is potential to reduce the consumption of resources through improved management of the product;
- (c) there is potential to reduce the environmental impacts of the product's disposal through improved management of the product;

*Examples of environmental impacts—*

green house gas emissions from landfill, occurrence of leachates

- (d) there is potential to reduce the social impacts of the product's disposal through improved management of the product;

*Examples of social impacts—*

danger to waste management workers, community concern, amenity

- (e) treating or disposing of the product involves a significant cost to the community;
- (f) improved management of the product is likely to create business opportunities that would contribute to the economy.

## 78 Inclusion of invitation for voluntary product stewardship scheme

- (1) The chief executive may include in the final priority product statement, for a particular product included in the final statement, an invitation (a *scheme invitation*) for persons to submit a proposed voluntary product stewardship scheme for accreditation.
- (2) However, in including a scheme invitation, the chief executive must have regard to the following—

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- (a) whether the product can be effectively managed under a voluntary product stewardship scheme;
  - (b) whether an approved program is in existence for the product and whether the program is being appropriately implemented.
- (3) A scheme invitation must state—
- (a) the period, of at least 18 months, within which any proposed voluntary product stewardship scheme would have to be submitted for accreditation; and
  - (b) the expected outcomes from any proposed voluntary product stewardship scheme; and
  - (c) that if no voluntary product stewardship scheme is accredited for the product, a regulation may be made to establish a regulated product stewardship scheme for the product.
- (4) A scheme invitation may state—
- (a) any limitations to the scope of a proposed voluntary product stewardship scheme, including for example geographic or business type or size limitations; and
  - (b) other matters relevant to a voluntary product stewardship scheme for the particular product.
- (5) The chief executive is not stopped from subsequently granting a single extension of the period mentioned in subsection (3)(a) for not more than 1 year at the request of the proposed scheme manager for a proposed voluntary product stewardship scheme.

## **79 Finalisation of priority product statement**

- (1) The chief executive must prepare, and give to the Minister, a final version of the priority product statement.
- (2) When preparing the final priority product statement, the chief executive must consider all submissions made to the chief

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executive on the draft priority product statement under section 75.

## **80 Approval of final priority product statement**

- (1) The final priority product statement does not have effect as a priority product statement under this Act until it has been approved by the Minister by gazette notice.
- (2) The priority product statement comes into effect on the day the Minister's approval is gazetted or on a later day stated in the gazette notice or in the priority product statement for that purpose.
- (3) The gazette notice in which the Minister approves the priority product statement must include details about where a copy of the priority product statement may be inspected and obtained.
- (4) The chief executive must publish the priority product statement on the department's website as soon as practicable after its approval.

## **81 Minor amendment of priority product statement**

- (1) A minor amendment of the priority product statement may be made without the requirements of this part having been complied with, other than the requirement for approval by the Minister by gazette notice.
- (2) In this section—  
*minor amendment*, of the priority product statement, means an amendment or replacement of the statement—
  - (a) to correct a minor error in the statement; or
  - (b) to make another change that is not a change of substance.

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## **82 Review of priority product statement**

- (1) At least once every 3 years, the chief executive must review the priority product statement and amend or replace the statement having regard to the outcome of the review.
- (2) If the process of review includes public consultation that in substance is equivalent to that required for the first draft priority product statement under this chapter, the chief executive may prepare and give to the Minister, for approval by gazette notice, a final amending or replacement priority product statement without having first prepared and consulted on a draft amending or replacement statement.

# **Part 3 Product stewardship schemes**

## **Division 1 Product stewardship schemes generally**

### **83 What is a *product stewardship scheme***

A *product stewardship scheme* is a scheme—

- (a) in which persons who are involved in the life cycle of a product share responsibility for the management and impact of the product throughout its life cycle, including end-of-use management; and
- (b) that seeks to redress the adverse impacts of a product.

### **84 What is a *voluntary product stewardship scheme***

A *voluntary product stewardship scheme* is a product stewardship scheme under which the participants in the scheme, as identified in the scheme, voluntarily share responsibility for the management and impact of the product.

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**85 What is a *regulated product stewardship scheme***

A *regulated product stewardship scheme* is a product stewardship scheme that is prescribed under a regulation under this part for a priority product.

**86 What is an *approved program***

An *approved program*, for a product, is a program, scheme or agreement applying to the product in a way that is substantially similar to the way a product stewardship scheme would apply to the product, but only if—

- (a) the State is a signatory to the program, scheme or agreement; or
- (b) the State has entered into a memorandum of understanding or similar arrangement supporting the application of the program, scheme or agreement; or
- (c) the State has been a party to the development and finalisation of the program, scheme or agreement; or
- (d) the program, scheme or agreement has been accredited or approved as part of a national product stewardship framework to which the State is a party.

**87 When is a product stewardship scheme in force for a product**

- (1) A product stewardship scheme is in force for a product if—
  - (a) it is a voluntary product stewardship scheme applying to the product, and the scheme has been accredited by the chief executive under this part; or
  - (b) it is a regulated product stewardship scheme applying to the product.
- (2) A product stewardship scheme mentioned in subsection (1)(a) is an *accredited product stewardship scheme*.



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**88 Accredited product stewardship scheme does not override laws**

An accredited product stewardship scheme has no effect to the extent it is inconsistent with any law of the State or the Commonwealth.

*Example—*

A provision of a voluntary product stewardship scheme for a product would have no effect to the extent it purported to require a participant in the scheme to deal with the product in a way prohibited under the Environmental Protection Act.

**Division 2 Accreditation of voluntary product stewardship schemes**

**89 Application for accreditation**

- (1) The person who is identified in a proposed voluntary product stewardship scheme as the scheme manager for the scheme may apply to the chief executive for accreditation of the scheme.
- (2) An application under subsection (1) must—
  - (a) be in the approved form; and
  - (b) include the information prescribed under a regulation; and
  - (c) be accompanied by the fee prescribed under a regulation; and
  - (d) if it is a proposed voluntary product stewardship scheme for a priority product—explain how the proposed scheme meets the requirements of this chapter for a product stewardship scheme for a priority product; and
  - (e) state whether a regulation is required to facilitate the implementation or operation of the scheme; and
  - (f) include evidence of the agreement of persons identified as participants in the scheme.

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## **90 Requirements for accreditation**

- (1) To qualify for accreditation under this part, the proposed voluntary product stewardship scheme must—
  - (a) identify the scheme manager for the scheme; and
  - (b) describe the scope of the scheme and identify, whether or not by reference to brand, the product to which the scheme applies; and
  - (c) include the following information—
    - (i) how long the scheme is to be in force;
    - (ii) targets for avoiding, re-using or recycling of waste for the product;
    - (iii) time frames for achieving each target;
    - (iv) the information that is to be collected, assessed and audited to gauge performance of the scheme;
    - (v) how the public is to be advised of information about the scheme; and
  - (d) list the classes of persons involved in the design, manufacture, sale, use, servicing, collection, recovery, recycling, treatment or disposal of the product; and
  - (e) list the participants in the scheme and assign to them their respective responsibilities for meeting the scheme's objectives; and
  - (f) state the arrangements for—
    - (i) making decisions under the scheme; and
    - (ii) the control and overall operation of the scheme; and
    - (iii) keeping records and making reports under the scheme; and
  - (g) state the date the scheme ends; and

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- (h) identify the processes for compliance with, and enforcement of, any agreements between the participants in the scheme; and
  - (i) provide for assessing the scheme's performance and for reporting on its performance to the Minister; and
  - (j) state a strategy for publication of the scheme; and
  - (k) state how information will be provided to purchasers, users and handlers of the product; and
  - (l) clearly outline how the scheme will be funded; and
  - (m) if the product under the proposed scheme is a priority product and the priority product statement includes recommendations for improving management of the product—show how those recommendations are taken account of.
- (2) The proposed scheme may include any other matter a producer of the product considers relevant.

## 91 Accreditation

In deciding whether to accredit a proposed voluntary product stewardship scheme for a product the chief executive must have regard to—

- (a) whether the application for accreditation meets the requirements of this part for an application; and
- (b) whether the proposed scheme meets the requirements of this part for accreditation; and
- (c) whether the proposed scheme's targets are likely to be met within the time frames stated in the scheme; and
- (d) whether the proposed scheme is likely to promote waste reduction or reduce environmental impact from disposing of the product without, in either case, causing greater impact over the life cycle of the product; and
- (e) whether the proposed scheme is consistent with the State's obligations under national arrangements; and

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- (f) if the product is a priority product that was the subject of a scheme invitation—whether the proposed scheme is likely to achieve the expected outcomes of any proposed voluntary product stewardship scheme stated in the invitation; and
- (g) if the product is a priority product, whether or not it was the subject of a scheme invitation—whether the proposed scheme takes account of recommendations included in the priority product statement for the priority product.

## **92 Inquiry about application**

Before deciding the application, the chief executive may by notice ask for further information from—

- (a) the scheme manager; or
- (b) through the scheme manager—any person who, in the opinion of the chief executive, is likely to be significantly affected by the scheme.

## **93 Deciding application**

- (1) As soon as practicable after deciding to accredit a proposed voluntary product stewardship scheme, the chief executive must give the scheme manager for the scheme notice of the decision to accredit.
- (2) If the chief executive refuses to grant the application, the chief executive must as soon as practicable give the applicant an information notice for the decision to refuse.

## **94 Register of accredited schemes**

- (1) When the chief executive accredits a voluntary product stewardship scheme, the chief executive must register the scheme on a register of accredited product stewardship schemes kept in the department.

- (2) The chief executive must ensure the register mentioned in subsection (1) is kept as an accurate record of information about the accreditation and history of currently and previously accredited product stewardship schemes.
- (3) The register must be kept by the chief executive as a searchable, public register.

## **95 Amendment of accredited product stewardship scheme**

- (1) The participants in an accredited product stewardship scheme may amend the scheme by agreement of all the participants.
- (2) The scheme manager for the scheme must advise the chief executive of the amendment within 10 business days after the amendment is made if the amendment is one of the following—
  - (a) adding to the participants in the scheme or removing any of the participants;
  - (b) changing the scheme manager for the scheme;
  - (c) adding to the brands of the product that are the subject of the scheme.
- (3) The chief executive must record, on the register of accredited product stewardship schemes, details of the amendment the chief executive considers appropriate.
- (4) An amendment under subsection (1) must not include an amendment that will have an adverse effect on achieving the scheme's objectives, including, for example, by affecting the ability of the scheme to meet its objectives within the time frames included in the scheme.
- (5) Subsection (4) does not stop the accreditation of a new voluntary product stewardship scheme to replace an existing accredited scheme.

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## **96 Expiry of accredited product stewardship scheme**

- (1) The accreditation of an accredited product stewardship scheme expires on the earlier of the following—
  - (a) the date stated in the scheme as the date the scheme ends;
  - (b) 5 years after the accreditation of the scheme.
- (2) However, the accreditation of an accredited product stewardship scheme (*scheme A*) continues in force, as provided for in subsection (3), after the date (the *expiry date*) it would otherwise end if—
  - (a) the scheme manager for scheme A has, not later than 6 months before scheme A's accreditation was due to end, applied to the chief executive for the accreditation of a new voluntary product stewardship scheme (*scheme B*) to replace scheme A; and
  - (b) the chief executive has not decided, on or before the expiry date, whether scheme B should be accredited.
- (3) Scheme A's accreditation continues in force until—
  - (a) the accreditation of scheme B takes effect, either in its form as first proposed or as subsequently changed in the application process; or
  - (b) the application process for scheme B's accreditation has been completed, including, for example, the completion of any review about the chief executive's decision on the proposed accreditation, and scheme B is not accredited.

## **97 Revocation of accreditation**

- (1) The Minister may revoke the accreditation of an accredited product stewardship scheme if the Minister is satisfied that—
  - (a) any of the following apply—
    - (i) reasonable steps are not being taken to implement the scheme;

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- (ii) the scheme's objectives are not being met, or are unlikely to be met, within the time frames stated in the scheme;
    - (iii) the reporting requirements included in the scheme are not being complied with; or
  - (b) the product the subject of the scheme was not a priority product when the scheme was accredited, but it has subsequently become a priority product and the objectives of the scheme are no longer adequate for the product.
- (2) Before revoking the accreditation of the product stewardship scheme, the Minister must—
- (a) give notice to the scheme manager for the scheme advising of the proposed action; and
  - (b) give the scheme manager a reasonable opportunity to make a submission to the Minister about the proposed revocation.
- (3) If the Minister decides to revoke the accreditation, and the revocation is under subsection (1)(a), the Minister must give the scheme manager for the scheme an information notice for the decision to revoke the accreditation.

## **Division 3                      Product stewardship schemes by regulation**

### **98            Regulation about product stewardship**

- (1) A regulation—
  - (a) may provide for the implementation and operation of a regulated product stewardship scheme for a priority product; or
  - (b) may include provisions to facilitate the accreditation of a proposed voluntary product stewardship scheme, or

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- the implementation and operation of an accredited product stewardship scheme or an approved program.
- (2) Without limiting subsection (1), the regulation may include any of the following—
- (a) the expected waste minimisation, treatment or disposal targets for the product the subject of the scheme or program and the required times for meeting the targets;
  - (b) reporting and information requirements, including information to be provided to purchasers, users and handlers of the product the subject of the scheme or program;
  - (c) if the regulation provides for the implementation and operation of a regulated product stewardship scheme—
    - (i) the scheme manager for the scheme and the obligations of the scheme manager; and
    - (ii) the duration of the scheme;
  - (d) if the regulation applies to a voluntary product stewardship scheme intended to be, but not yet, accredited—the period within which the application for accreditation is required to be made;
  - (e) the period within which any person is required to commence complying with any of the requirements or duties imposed on the person under the regulation.
- (3) The Minister must not recommend to the Governor in Council the making of a regulation under subsection (1)(a) for a priority product if—
- (a) there is currently an accredited product stewardship scheme for the product and it is expected that the scheme will still be in force after the regulation commences; or
  - (b) the time limit, as stated in a scheme invitation in the priority product statement as currently in force, for the submission for accreditation of a voluntary product stewardship scheme for the product has not yet elapsed.



- (4) The Minister may recommend to the Governor in Council the making of a regulation under subsection (1)(a) for a priority product only after considering the following—
  - (a) whether an approved program is in existence for the product and whether the program is being appropriately implemented;
  - (b) whether economic analysis supports the implementation of the proposed regulated product stewardship scheme;
  - (c) whether there are any constitutional or other impediments to the State's acting unilaterally in implementing a product stewardship scheme for the product.

## **Division 4                      Monitoring of schemes**

### **99            Monitoring of particular product stewardship scheme**

- (1) The chief executive may at any time conduct monitoring of the performance of an accredited or regulated product stewardship scheme.
- (2) The monitoring may have regard especially to the stated targets and objectives of the scheme.
- (3) If asked to do so by the chief executive, the scheme manager under a regulated product stewardship scheme must reimburse the chief executive for some or all of the expenses reasonably incurred by the department in the conduct of the monitoring.
- (4) An amount payable under subsection (3) may be recovered as a debt payable by the scheme manager to the chief executive.

## **Part 4 Disposal bans**

### **100 Application of this part**

- (1) This part applies to waste only if a regulation has identified the waste for the purposes of this part.
- (2) Without limiting subsection (1), waste may be identified according to its type.
- (3) This part does not apply to waste excluded under a regulation from the operation of this part.
- (4) Waste to which this part applies is *disposal ban waste*.

### **101 Prohibition on disposal of disposal ban waste**

The operator of a waste facility who is required to hold a registration certificate in relation to the disposal of waste at the facility must not dispose of disposal ban waste at the facility.

Maximum penalty—1000 penalty units.

### **102 Considerations for prescribing waste as disposal ban waste**

- (1) The Minister may recommend to the Governor in Council the making of a regulation that identifies waste for the purposes of this part only after considering all of the following—
  - (a) whether prohibition on the disposal of the waste is the most effective point of intervention in the life cycle of the waste;
  - (b) whether there are viable existing or potential collection systems and markets for any benefit that may be obtained from not disposing of the waste;
  - (c) whether the costs of monitoring, enforcement and market development are proportional to the benefits;

- (d) whether voluntary or other measures for the avoidance of disposal have been shown not to be effective;
  - (e) whether a prohibition on disposal is required to support an accredited product stewardship scheme, a regulated product stewardship scheme or an approved program.
- (2) The Minister, in considering the matters mentioned in subsection (1), may consult with any expert reference group or other entity the Minister considers appropriate.

## Chapter 5      Offences relating to littering and illegal dumping

### Part 1              Basic littering and illegal dumping offences

#### 103      General littering provision

- (1) A person must not litter at a place.  
Maximum penalty—
- (a) if the offence involves dangerous littering—40 penalty units; or
  - (b) otherwise—30 penalty units.
- (2) For subsection (1), a person litters at a place if the person deposits at the place an amount of waste that is less than 200L in volume.
- (3) However, a person who deposits at a place an amount of waste of less than 200L in volume (the *relevant waste*) does not litter at the place if—
- (a) the person is an occupier of the place; or

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- (b) the person deposits the relevant waste with the consent of an occupier of the place; or
  - (c) the person deposits the relevant waste by placing it in a bin or other container provided by an occupier of the place, or by another person with the agreement of an occupier, for the purpose of depositing the relevant waste.
- (4) Despite subsection (3), a person who deposits at a place on a road an amount of waste of less than 200L in volume (also the **relevant waste**)—
- (a) commits an offence under subsection (1) even if the person is an occupier of the place, or deposits the relevant waste with the consent of an occupier of the place; but
  - (b) does not commit an offence under subsection (1) if the person deposits the waste by placing it in a bin or other container provided by an occupier of the place, or by another person with the agreement of an occupier, and located at the place, for the purpose of depositing the relevant waste.

*Example for subsection (4)—*

A person would commit an offence under subsection (1) if the person, on a road under the control of a local government, deposited 50L of waste in a waste bin placed on the road by a road maintenance contractor, with the local government's agreement, for the purpose of collecting waste road material.

- (5) In this section—

**dangerous littering** means depositing waste that causes or is likely to cause harm to a person, property or the environment.

*Examples of dangerous littering—*

- throwing a lit cigarette onto dry grass in extreme fire danger conditions
- smashing a bottle and leaving the broken glass on a footpath
- leaving a syringe in a public place other than in a container intended for receiving used syringes

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## 104 Illegal dumping of waste provision

- (1) A person must not illegally dump waste at a place.  
Maximum penalty—
  - (a) if the offence involves depositing a volume of less than 2500L of waste—400 penalty units; or
  - (b) otherwise—1000 penalty units.
- (2) For subsection (1), a person illegally dumps waste at a place if the person deposits at the place an amount of waste that is 200L or more in volume.
- (3) However, a person who deposits at a place an amount of waste of 200L or more in volume (the *relevant waste*) does not illegally dump the relevant waste if—
  - (a) the person is an occupier of the place; or
  - (b) the person deposits the relevant waste with the consent of an occupier of the place; or
  - (c) the person deposits the waste by placing it in a bin or other container provided by an occupier of the place, or by another person with the agreement of an occupier, for the purpose of depositing the relevant waste.
- (4) Despite subsection (3), a person who deposits at a place on a road an amount of waste of 200L or more in volume (also the *relevant waste*)—
  - (a) commits an offence under subsection (1) even if the person is an occupier of the place, or deposits the relevant waste with the consent of an occupier of the place; but
  - (b) does not commit an offence under subsection (1) if the person deposits the relevant waste by placing it in a bin or other container provided by an occupier of the place, or by another person with the agreement of an occupier, and located at the place, for the purpose of depositing the relevant waste.

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- (5) Two or more deposits of waste at a place are taken to be 1 deposit of waste for this section if they together constitute a connected series of deposits.

*Example—*

A connected series of 3 deposits of waste at a place, each of a volume of approximately 80L, would constitute the deposit at the place of an amount of waste that is more than 200L in volume.

## Part 2                      Material that may become waste

### 105    What is *advertising material*

- (1) *Advertising material* means any of the following, if it includes any form of advertising for a commercial purpose—
- (a) a circular, a flyer, promotional matter, information or a letter;
  - (b) a newspaper, magazine or other publication distributed without charge to intended readers.
- (2) In this section—

*flyer* means a single sheet of printed material circulated to announce an event, promote a cause or advertise a product.

### 106    What is *unsolicited advertising material* for premises

- (1) Advertising material is *unsolicited advertising material* for premises if it is not addressed by name to an owner or occupier of the premises or to a person who is otherwise lawfully at the premises from time to time.

*Examples of unsolicited advertising material—*

advertising material addressed only as ‘To the householder’ or ‘To the occupier’

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- (2) However, the following are not *unsolicited advertising material* for premises—
- (a) a newspaper delivered to the premises, unless the owner or occupier of the premises has advised the publisher or distributor of the newspaper that the owner or occupier does not wish to receive the newspaper;
  - (b) material folded or inserted into a newspaper delivered to the premises if under this subsection the newspaper is not unsolicited advertising material for the premises.

### **107 Unlawful delivery provision**

- (1) A person must not deliver to premises any unsolicited advertising material for the premises if—
- (a) on an exterior receptacle or other place for receiving mail for the premises, or on a boundary fence or gate adjoining the footpath or other public access point for the premises, there is a legible sign or marking; and
  - (b) the sign or marking states ‘No Advertising Material’, ‘No Junk Mail’, ‘Australia Post Mail Only’ or words to similar effect or otherwise contains any words in English indicating, expressly or by implication, that unsolicited advertising material for the premises is not to be delivered to the premises; and
  - (c) the sign or marking is clearly visible to a person delivering the advertising material to the premises.
- (2) This section does not apply to the giving of unsolicited advertising material for premises personally to a person at the premises.
- (3) To remove any doubt, it is declared that this section does not apply to the delivery to premises of a newspaper unless, having regard to section 106(2), the newspaper is unsolicited advertising material for the premises.

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## **108 Secure delivery provision**

- (1) A person who delivers to premises any unsolicited advertising material for the premises must ensure that the material is placed securely—
  - (a) in a receptacle, slot or other place used for the delivery of mail to the premises; or
  - (b) in a receptacle or slot that is used for the delivery of newspapers to the premise; or
  - (c) under a door of the premises.
- (2) To remove any doubt, it is declared that this section does not apply to the delivery to premises of a newspaper unless, having regard to section 106(2), the newspaper is unsolicited advertising material for the premises.

## **109 Placing document on or in motor vehicle or on building or other fixed structure**

- (1) A person must not place any document in or on a motor vehicle without the express consent of a person who is a registered operator, owner or driver of the vehicle.
- (2) A person must not attach any document to any building or other fixed structure without the express consent of the owner or occupier of the building or structure, or of a person acting for the owner or occupier.
- (3) For subsections (1) and (2), it does not matter whether or not the document is advertising material.
- (4) A person does not contravene subsection (1) or (2) if the person places a document in or on a motor vehicle, or attaches a document to a building or other fixed structure—
  - (a) in the lawful performance of a function under an Act; or
  - (b) if the action is reasonable in the circumstances.

*Example of reasonable actions—*

- leaving a note on a motor vehicle providing contact details after causing accidental damage to the motor vehicle



- leaving a note on a motor vehicle to indicate that the place where the motor vehicle is parked is reserved for other purposes

(5) In this section—

*document* means any paper or other material on which there is writing or any drawing, figure, symbol or other expression.

## **110 Advice to chief executive about placing or attaching documents**

- (1) This section applies if the chief executive believes on reasonable grounds that documents have been distributed by being placed in or on motor vehicles, or attached to buildings or other fixed structures, in contravention of section 109.
- (2) The chief executive may give a notice under this section to a person who is an adult if the chief executive reasonably believes the person—
  - (a) authorised or arranged for the distribution of the documents; or
  - (b) authorised or arranged for printing of the documents; or
  - (c) placed or attached any of the documents.
- (3) A notice under subsection (2)(a) or (b) may require the person to advise the chief executive of the name and contact details of any person who placed or attached 1 or more of the documents.
- (4) A notice under subsection (2)(b) or (c) may require the person to advise the chief executive of the name and contact details of the person who authorised or arranged for distribution of the documents.
- (5) A person who is given a notice under this section must comply with the notice within 7 days after receiving the notice unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

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### **111 Advice to chief executive about delivering or distributing advertising material**

- (1) This section applies if the chief executive believes on reasonable grounds that advertising material has been distributed in an area by being delivered to premises in contravention of the unlawful delivery provision or the secure delivery provision.
- (2) The chief executive may give a notice under this section to a person who is an adult if the chief executive reasonably believes the person—
  - (a) authorised or arranged for the distribution of the advertising material; or
  - (b) authorised or arranged for the printing of the advertising material; or
  - (c) delivered any of the advertising material.
- (3) A notice under subsection (2)(a) or (b) may require the person to advise the chief executive of the name and contact details of any person who delivered any of the advertising material.
- (4) A notice under subsection (2)(b) or (c) may require the person to advise the chief executive of the name and contact details of the person who authorised or arranged for distribution of the advertising material.
- (5) A person who is given a notice under this section must comply with the notice within 7 days after receiving the notice unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

### **112 Avoiding accumulations of waste**

- (1) This section applies if a person (the *responsible entity*) authorises, or arranges for, the distribution of advertising material to premises in an area.

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- (2) The responsible entity must take reasonable steps to ensure that the advertising material does not, having regard to the way in which it is delivered to premises, become waste.

Maximum penalty—100 penalty units.

*Example of reasonable steps for subsection (2)—*

The advertising material is delivered in a way that is consistent with the Distribution Standards Board's code of practice for the delivery of advertising material.

- (3) If, in the delivery of any of the advertising material to any premises, a person contravenes the unlawful delivery provision or the secure delivery provision, the responsible entity must, if directed by the chief executive to do so, collect the material from the premises within the period directed by the chief executive.

Maximum penalty—100 penalty units.

- (4) This section does not apply to a newspaper unless, having regard to section 106(2), the newspaper is unsolicited advertising material for premises.

## **Part 3                      Vehicle littering or illegal    dumping offences**

### **Division 1                Preliminary**

#### **113      Application of pt 3**

- (1) This part applies to an offence against a relevant offence provision if the offence is a vehicle littering or illegal dumping offence.
- (2) An offence against a relevant offence provision is a *vehicle littering or illegal dumping offence* if—

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- (a) the offence is committed by a person who is, or becomes, an occupant of a vehicle that is associated with the commission of the offence; and
  - (b) under the *State Penalties Enforcement Act 1999*, an offence against the relevant offence provision is prescribed to be an offence to which that Act applies.
- (3) A vehicle is associated with the commission of an offence against a relevant offence provision if, for example, the person who committed the offence—
- (a) was in the vehicle when the offence was committed; or
  - (b) was leaving or had just left the vehicle when the offence was committed; or
  - (c) used the vehicle to transport waste to the place where the offence was committed; or
  - (d) committed the offence near the vehicle before entering the vehicle.
- (4) Despite subsection (1), this part does not apply to a vehicle littering or illegal dumping offence if—
- (a) the vehicle associated with the commission of the offence was a public passenger vehicle being used to transport members of the public; and
  - (b) the offence was committed by a person other than the driver of the vehicle.
- (5) In this section—
- relevant offence provision*** means the general littering provision or the illegal dumping of waste provision.

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## Division 2                      Applying State Penalties Enforcement Act 1999

### 114      Application of State Penalties Enforcement Act 1999

- (1) For the *State Penalties Enforcement Act 1999*, a vehicle littering or illegal dumping offence is an offence involving a vehicle as defined under that Act.
- (2) For applying the *State Penalties Enforcement Act 1999* to a vehicle littering or illegal dumping offence, the references in sections 17(3), 22(1)(c), 33(1)(d) and 157(2)(j) to an illegal user declaration, a known or unknown user declaration or a sold vehicle declaration are taken to include a reference to a passenger declaration.
- (3) Subsection (2) does not affect a person's right under the *State Penalties Enforcement Act 1999*, section 17(3) to give a SPEA declaration for a vehicle for the offence.
- (4) However, if a person gives a passenger declaration for the offence, another person may not give a SPEA declaration or a passenger declaration for the same offence.
- (5) In this section—

***SPEA declaration*** means an illegal user declaration, a known or unknown user declaration or a sold vehicle declaration under the *State Penalties Enforcement Act 1999*.

### 115      Effect of passenger declaration

- (1) This section applies if—
  - (a) a vehicle littering or illegal dumping offence happens; and
  - (b) an infringement notice for the offence is served on a prescribed person for the offence; and

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- (c) the prescribed person makes and gives to the administering authority for the infringement notice a passenger declaration for the offence.
- (2) The *State Penalties Enforcement Act 1999*, section 17 applies as if the person named in the declaration as the person who deposited the waste (the *passenger*) were the owner of the vehicle at the relevant time and date.
- (3) A proceeding for the offence may be started against the passenger only if a copy of the declaration has been served on the passenger.
- (4) In a proceeding for the offence against the passenger, the declaration is evidence that the passenger deposited the waste at the relevant time and date.
- (5) In a proceeding for the offence against the prescribed person, a court must not find the prescribed person guilty of the offence if it is satisfied, whether on the statements contained in the declaration or otherwise, the prescribed person did not deposit the waste at the relevant time and date.
- (6) In this section—

*administering authority*, for the infringement notice, means the administering authority for the notice under the *State Penalties Enforcement Act 1999*.

*relevant time and date* means the time and date stated in the infringement notice as the time and date of the vehicle littering or illegal dumping offence.

## **116 Service of infringement notice for vehicle littering or illegal dumping offence**

- (1) An infringement notice for a vehicle littering or illegal dumping offence may be served on the person named in a passenger declaration as the person who deposited the waste.
- (2) If the infringement notice is to be served by post, the notice may be addressed to the person at the person's address stated in the declaration.

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## 117 Chief executive (transport) must disclose information

- (1) This section applies if—
  - (a) an authorised person is reasonably satisfied that vehicle registry information may be used—
    - (i) in a proceeding against a person for a vehicle littering or illegal dumping offence; or
    - (ii) for the service of an infringement notice on a person for a vehicle littering or illegal dumping offence; and
  - (b) the authorised person asks the chief executive (transport) for the information.
- (2) The chief executive (transport) must disclose the information to the authorised person if—
  - (a) the chief executive (transport) reasonably considers that the information may be used—
    - (i) in a proceeding against the person for the vehicle littering or illegal dumping offence; or
    - (ii) for the service of an infringement notice on the person for the vehicle littering or illegal dumping offence; or
  - (b) the disclosure is authorised by the person to whom the information relates.

- (3) In this section—

**chief executive (transport)** means the chief executive of the department in which the *Transport Operations (Road Use Management) Act 1995* is administered.

**vehicle registry information** means information kept in the register of registered vehicles under a regulation under the *Transport Operations (Road Use Management) Act 1995*.

## **Division 3                      Public reporting of vehicle littering or illegal dumping offences**

### **118      Facilitating enforcement of vehicle littering or illegal dumping offence**

- (1) If a person (the *reporter*) observes an incident that the reporter considers to be the commission of a vehicle littering or illegal dumping offence, the reporter may give the chief executive a signed notice (a *vehicle littering or illegal dumping report*) containing information about the incident.
- (2) The chief executive must maintain arrangements for receiving and giving consideration to any vehicle littering or illegal dumping report, whether the report is given in hard copy or electronic form.
- (3) The chief executive must not, other than with the consent of the reporter, or to take action under this chapter, including starting a proceeding, release to any person a vehicle littering or illegal dumping report.
- (4) A vehicle littering or illegal dumping report should, if practicable, include enough information about the incident to allow the chief executive to form an opinion about whether a vehicle littering or illegal dumping offence has happened, and if so, the circumstances of the offence.
- (5) Without limiting subsection (4), the information may include the following—
  - (a) the reporter's name, street address and contact details;
  - (b) the date, the approximate time and the place of the incident;
  - (c) registration details of the vehicle involved;
  - (d) the make, model, body type and colour of the vehicle involved;
  - (e) the type and amount of waste deposited;



- (f) any other details that may in the circumstances help the chief executive;

*Example—*

the side of the vehicle from which waste was thrown

- (g) whether the reporter is prepared to give evidence about the incident in a court if asked to do so.
- (6) Without limiting the factors the chief executive may take into consideration in deciding whether to take any action in relation to a vehicle littering or illegal dumping report, the factors may include the following—
- (a) whether the reporter can be identified;
  - (b) whether there is enough detail in the report to allow the chief executive to form an opinion about whether a vehicle littering or illegal dumping offence has happened;
  - (c) whether the reporter has been identified, having regard to previous vehicle littering or illegal dumping reports or other previous correspondence, as a person who has given information that is vexatious or mischievous in nature;
  - (d) whether the reporter is prepared to give evidence in court about the circumstances of the vehicle littering or illegal dumping offence;
  - (e) whether the vehicle reported on is a vehicle to which this part applies.

## **Chapter 6            Strategic planning for waste reduction and recycling**

### **Part 1                    Preliminary**

#### **119    Purpose of chapter**

The purpose of this chapter is to provide, in a way that achieves the objects of this Act, for strategic planning for improving waste management—

- (a) at regional and individual local government level; and
- (b) at state government departmental level; and
- (c) at business and industry level.

#### **120    Meaning of *waste reduction and recycling plan***

A *waste reduction and recycling plan*, for an entity, is a plan that—

- (a) establishes strategic waste management, including waste reduction and recycling, planning requirements for the entity for—
  - (i) a particular aspect of waste management relevant to the entity; or
  - (ii) some or all aspects of waste management relevant to the entity; and
- (b) has been prepared and adopted in compliance with the requirements of this chapter.



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- and has been adopted by the local government, after the commencement of this section; and
- (c) each waste reduction and recycling plan is being implemented in accordance with its terms.
- (2) Without limiting subsection (1), the local government's waste reduction and recycling plans must, to the extent reasonably practicable, include the following—
- (a) waste reduction and recycling targets for—
- (i) waste generated by the local government in carrying out its activities; and
  - (ii) waste generated by households in the local government's local government area; and
  - (iii) other waste generated in the local government's local government area other than by the local government;
- (b) actions to be taken to improve waste reduction and recycling of—
- (i) waste generated by the local government in carrying out its activities; and
  - (ii) waste generated by households in the local government's local government area; and
  - (iii) other waste generated in the local government's local government area other than by the local government;
- (c) details of current and proposed waste infrastructure;
- (d) the management and monitoring of the local government's performance under the plans;
- (e) information about achieving continuous improvement in waste management;
- (f) other matters prescribed under a regulation about the requirements for a local government's waste reduction and recycling plans.

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**124 Matters to be complied with in the preparation and adoption of a local government's waste reduction and recycling plan**

- (1) A local government, in preparing or adopting a waste reduction and recycling plan for its local government area, must have regard to—
  - (a) current and predicted information about the following matters relating to its area—
    - (i) population profiles;
    - (ii) residential, industrial and commercial development;
    - (iii) amounts and types of waste generated; and
  - (b) the services, markets and facilities relevant to dealing with different types and amounts of waste; and
  - (c) the waste and resource management hierarchy; and
  - (d) the waste and resource management principles; and
  - (e) how the goals and targets of the State's waste management strategy will be achieved.
- (2) Subsection (1) does not limit the matters the local government may or ought to have regard to.
- (3) A waste reduction and recycling plan for a local government must provide for the plan to be in effect for a period (the *implementation period* for the plan) of at least 3 years.
- (4) Subsection (3) does not stop a waste reduction and recycling plan being amended or replaced within the implementation period for the plan.

**125 Adoption of plan following consultation**

- (1) A local government must by resolution adopt a waste reduction and recycling plan, or an amendment of a waste reduction and recycling plan, before the plan or amendment is implemented in its local government area.

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- (2) Before adopting the plan or amendment, the local government must consult with the public about the proposed plan or amendment.
- (3) The level of consultation must be appropriate in the circumstances, having regard to the level of significance of the plan or amendment.
- (4) However, if a new waste reduction and recycling plan is proposed to be adopted, or a proposed amendment of a waste reduction and recycling plan will substantially affect the operation of the plan, the proposed plan or amendment must be made available for public comment, including especially by households and businesses, for at least 28 days.
- (5) The local government must, in finalising a plan or amendment for adoption, take into account any submissions received about the plan or amendment.

## **126 Review of plan**

A local government must, at least every 3 years, review each waste reduction and recycling plan having effect in its local government area.

## **127 Amendment of plan**

- (1) A local government may adopt an amendment of a waste reduction and recycling plan having effect in its local government area if it considers the amendment to be appropriate, having regard to—
  - (a) changing waste reduction and recycling opportunities; and
  - (b) changing circumstances in which the plan operates; and
  - (c) other matters arising from a review of the plan as required under this part; and
  - (d) anything else the local government considers relevant.

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- (2) A local government may not adopt an amendment of a waste reduction and recycling plan having effect in 2 or more local government areas unless all the local governments adopt the amendment.

### **Division 3                      Chief executive action to prepare waste reduction and recycling plan for local government**

#### **128      Chief executive may prepare waste reduction and recycling plan**

- (1) This section applies if, in contravention of a local government's waste reduction and recycling plan obligation, the local government does not have in place a waste reduction and recycling plan addressing an aspect of waste reduction and recycling relevant to the local government.
- (2) The chief executive may prepare a waste reduction and recycling plan for the local government to address the aspect.
- (3) Before preparing the plan, the chief executive must give notice to the local government stating the following—
- (a) the chief executive's intention to prepare the plan;
  - (b) the reasons why it is necessary for the plan to be prepared;
  - (c) that the local government may make a written submission to the chief executive about the chief executive's intention to prepare the plan;
  - (d) that the submission must be received by the chief executive within 28 days after the local government receives the notice (the *submission period*).
- (4) The local government's written submission may include details of actions the local government intends to take to ensure it complies with its waste reduction and recycling plan obligation.

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- (5) If after the submission period ends, and the consideration of any submissions, the chief executive still proposes to prepare the plan, the chief executive must give the local government an information notice for the chief executive's decision to prepare the plan.
- (6) The chief executive must prepare and adopt the plan, to the greatest practicable extent, as if it were the local government.

*Example—*

The chief executive must consult on, and publicise, the plan to the same extent the local government would have been required to consult and publicise.

- (7) The plan, as prepared and adopted by the chief executive, has effect as, and may be taken to be, a waste reduction and recycling plan prepared and adopted by the local government, and must be implemented by the local government in accordance with its terms.
- (8) The local government must reimburse the chief executive for all costs, charges and expenses reasonably incurred by the chief executive in acting under this section.
- (9) An amount owing under subsection (8) may be recovered by the chief executive from the local government as a debt payable by the local government to the State, and may at the chief executive's discretion be retained from any amount otherwise payable by the State to the local government for any reason.

## **Division 4                      Requirements applying after    adoption of waste reduction and    recycling plan**

### **129      Copy of plan or amendment to be given to chief executive**

- (1) As soon as practicable after a local government adopts a waste reduction and recycling plan or an amendment of a plan, the



local government must give a copy of the plan or amendment to the chief executive.

- (2) Subsection (1) does not require the local government to give the chief executive a copy of a plan prepared and adopted by the chief executive in the place of the local government.
- (3) If 2 or more local governments together adopt the same plan or amendment, only 1 copy is required to be given to the chief executive.

### **130 Inspection and availability for purchase of plan**

- (1) A local government must ensure that—
  - (a) an up-to-date version of each waste reduction and recycling plan having effect in its local government area may be inspected free of charge during office hours at the local government's public office; and
  - (b) a copy of the version may be obtained from the local government for no cost, or for a reasonable fee as decided by the local government; and
  - (c) the plan is otherwise made publicly available in a way the local government considers appropriate for its local government area.
- (2) However, for a waste reduction and recycling plan adopted by 2 or more local governments, the local government must not charge a fee under subsection (1)(b) unless the same fee is charged by all the local governments that adopted the plan.

## **Part 3**                      **State entity strategic planning for waste**

### **Division 1**              **Introduction**

#### **131**      **Object of pt 3**

The object of this part is to provide for the chief executive officer of each State entity to prepare, adopt and implement a plan for managing the entity's waste in a way that best achieves the objects of this Act.

#### **132**      **What is a State entity and who is its chief executive officer**

- (1) Each of the following is a *State entity*—
  - (a) a department;
  - (b) an entity that—
    - (i) under the *Public Service Act 2008*, is a government entity; and
    - (ii) is prescribed under a regulation to be a State entity for this Act;
  - (c) an entity that is a government owned corporation, whether or not it is also a government entity under the *Public Service Act 2008*.
- (2) The *chief executive officer* of a State entity is the person who is—
  - (a) if the entity is a department—the chief executive of the department; or
  - (b) otherwise—the person who is the chief executive officer of the entity, by whatever name known.

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**Division 2**                      **Obligation of chief executive officer  
of State entity for waste reduction  
and recycling plan**

**133**    **State entity's waste reduction and recycling plan  
obligation**

- (1) On and from the day that is the first anniversary of the commencement of this section, the chief executive officer of a State entity has an obligation at all times to ensure that—
  - (a) all aspects of waste management for the entity are comprehensively addressed by a waste reduction and recycling plan for the entity; and
  - (b) the waste reduction and recycling plan has been adopted by the chief executive officer after the commencement of this section; and
  - (c) the waste reduction and recycling plan is being implemented in accordance with its terms.
- (2) Without limiting subsection (1), the State entity's waste reduction and recycling plan must include the following—
  - (a) waste reduction and recycling targets for waste generated by the State entity in carrying out its activities;
  - (b) actions to be taken to improve waste reduction and recycling of waste generated by the State entity in carrying out its activities;
  - (c) the management and monitoring of the State entity's performance under the plan;
  - (d) information about achieving continuous improvement in waste management;
  - (e) other matters prescribed under a regulation about the requirements for a State entity's waste reduction and recycling plan.

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- (3) If the State entity is a department (the *first department*), the chief executive of the first department may adopt, for the first department's waste reduction and recycling plan, the waste reduction and recycling plan of another department if the other department's plan sufficiently provides for the first department.

### **134 Matters to be complied with in the preparation and adoption of a State entity's waste reduction and recycling plan**

- (1) The chief executive officer of a State entity, in preparing or adopting a waste reduction and recycling plan for the entity, must have regard to—
  - (a) current and predicted information about the entity's waste; and
  - (b) the waste and resource management hierarchy; and
  - (c) the waste and resource management principles; and
  - (d) how the goals and targets of the State's waste management strategy will be achieved.
- (2) Subsection (1) does not limit the matters the chief executive officer of the State entity may or ought to have regard to.
- (3) A waste reduction and recycling plan for a State entity must provide for the plan to be in effect for a period (the *implementation period* for the plan) of at least 3 years.
- (4) Subsection (3) does not stop a waste reduction and recycling plan being amended or replaced within the implementation period for the plan.

### **135 Inspection and availability for purchase of plan**

The chief executive officer of a State entity must ensure that—

- (a) an up-to-date version of the State entity's waste reduction and recycling plan is published on the entity's website and may be inspected free of charge during

office hours at an office of the entity nominated by the chief executive officer; and

- (b) a copy of the version may be obtained from the State entity for no cost, or for a reasonable fee as decided by the chief executive officer.

### **136 Review of plan**

The chief executive officer of a State entity must, at least every 3 years, review the entity's waste reduction and recycling plan.

### **137 Amendment of plan**

The chief executive officer of a State entity may adopt an amendment of the entity's waste reduction and recycling plan if the chief executive officer considers the amendment to be appropriate, having regard to—

- (a) changing waste reduction and recycling opportunities; and
- (b) changing circumstances in which the plan operates; and
- (c) other matters arising from a review of the plan as required under this part; and
- (d) anything else the chief executive officer considers relevant.



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- (4) The chief executive may identify an entity as a planning entity only on the basis of 1 or more of the following, having regard to the entity's activities—
- (a) the total waste generated by the entity in carrying on its activities is more than the threshold prescribed under a regulation;
  - (b) the entity is a planning entity under subsection (2);
  - (c) waste generated by the entity in carrying on its activities is or includes waste that is a priority product prescribed under a regulation as a priority product to which this paragraph applies;
  - (d) waste generated by the entity in carrying on its activities is or includes waste that is regulated waste prescribed under a regulation as regulated waste to which this paragraph applies.
- (5) If an entity is identified as a planning entity on the basis of subsection (4)(a), all waste generated by the entity is **relevant waste** for the entity, regardless of whether the entity is also a planning entity on any other basis under this section.
- (6) If subsection (5) does not apply to a planning entity, the following waste is **relevant waste** for the entity—
- (a) if the entity is a planning entity on the basis of being part of a sector of planning entities—sector waste for the sector of planning entities;
  - (b) if the entity is identified as a planning entity on the basis of subsection (4)(c)—the priority product prescribed under subsection (4)(c);
  - (c) if the entity is identified as a planning entity on the basis of subsection (4)(d)—the regulated waste prescribed under subsection (4)(d).
- (7) For subsection (6), it does not matter if particular waste generated by an entity is relevant waste for the entity under more than 1 paragraph of the subsection.

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- (8) An entity that, apart from this subsection, could be identified as a planning entity in relation to a priority product on the basis of subsection (4)(c), can not be identified as a planning entity in relation to the product if the entity—
- (a) is a participant in an accredited product stewardship scheme or approved program applying to the product; and
  - (b) is meeting its obligations under the scheme or program in relation to the priority product.

- (9) In this section—

*sector waste*, for a sector of planning entities, means waste of the type ordinarily generated by the sector of planning entities or as identified, in the regulation prescribing the sector of planning entities, as waste ordinarily generated by the sector.

#### **140 Notification of status as planning entity**

- (1) This section applies if, under this part, the chief executive gives an entity an information notice for the chief executive's decision to identify the entity as a planning entity.
- (2) Without limiting what the information notice may or must include, the information notice must additionally include the following information—
- (a) that the entity must, under the planning entity's waste reduction and recycling plan obligation, adopt and implement a waste reduction and recycling plan for the entity's relevant waste;
  - (b) when the planning entity's waste reduction and recycling plan obligation will start to apply to the entity.



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## **Division 3                      Obligation of planning entity for waste reduction and recycling plan**

### **141      Planning entity's waste reduction and recycling plan obligation**

- (1) A planning entity has an obligation at all times to ensure that—
  - (a) all aspects of waste reduction and recycling for the entity's relevant waste are comprehensively addressed by a waste reduction and recycling plan for the entity; and
  - (b) the waste reduction and recycling plan has been adopted by the planning entity after the commencement of this section; and
  - (c) the waste reduction and recycling plan is being implemented in accordance with its terms.
- (2) However, if a sector of planning entities has prepared a waste reduction and recycling plan for the sector, a planning entity, to the extent it is a planning entity because it is part of a sector of planning entities, may, in relation to the entity's relevant waste that is also sector waste for the sector, adopt the sector's plan as its own plan if—
  - (a) the sector's plan complies with the requirements of this chapter for a waste reduction and recycling plan for a sector of planning entities; and
  - (b) the sector's plan effectively includes the requirements for a waste reduction and recycling plan for the entity in relation to the entity's relevant waste that is sector waste for the sector.
- (3) A planning entity must comply with the obligation stated in subsection (1) unless it has a reasonable excuse.

Maximum penalty—100 penalty units.

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- (4) However, subsection (3) does not start to apply to an entity until 1 year after it becomes a planning entity.

## **142 Requirements for waste reduction and recycling plan**

- (1) This section states requirements for a waste reduction and recycling plan for a planning entity or sector of planning entities.
- (2) The plan must have regard to—
- (a) current and predicted information about waste; and
  - (b) the waste and resource management hierarchy; and
  - (c) the waste and resource management principles; and
  - (d) the State’s waste management strategy; and
  - (e) any other matters prescribed under a regulation about the requirements for a waste reduction and recycling plan.
- (3) The plan must include the following information—
- (a) the amounts and types of waste that is currently generated;
  - (b) how the waste is to be dealt with, including how and in what amounts the types of waste are to be dealt with under each of the precepts making up the waste and resource management hierarchy;
  - (c) goals to reduce waste generated;
  - (d) indicators or performance measures on which performance under the plan will be assessed;
  - (e) actions that will be taken to reduce waste generation and to improve recycling;
  - (f) any other matters prescribed under a regulation about requirements for a waste reduction and recycling plan.
- (4) Subsection (2) does not limit the matters the plan may or ought to have regard to.

- (5) The plan must provide for it to be in effect for a period (the *implementation period* for the plan) of at least 3 years.
- (6) Subsection (5) does not stop the plan being amended or replaced within the implementation period.
- (7) The plan must provide for its review at least every 3 years.

**143 Other matters that may be included in a waste reduction and recycling plan**

- (1) Without limiting what is or is not otherwise required under this division for a waste reduction and recycling plan, a waste reduction and recycling plan for a planning entity or sector of planning entities may include or otherwise provide for the following—
  - (a) a description of the activities carried out that generate waste;
  - (b) a description of the raw materials, energy and other materials used to carry out the activities mentioned in paragraph (a);
  - (c) the conduct of an audit of waste generated in any relevant facility to establish a baseline for future measurement;
  - (d) methods for monitoring waste generated at any relevant facility;
  - (e) risk management strategies that document contingency plans and emergency procedures in relation to regulated waste generated or stored, including, for example, in relation to the spillage of waste;
  - (f) a purchasing policy that incorporates measures to minimise waste generated at any relevant facility through the use of product substitution, product changes, procedural changes and the replacement of disposable items with re-usable items;
  - (g) strategies for promoting the plan at relevant facilities;

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- (h) a mechanism for staff of the planning entities to provide feedback about the plan;
  - (i) staff training programs about effective waste management;
  - (j) procedures for segregating waste;
  - (k) procedures for identifying and implementing opportunities to improve waste management practices;
  - (l) opportunities, and actions to be taken, in product design, production and packaging to reduce waste;
  - (m) details of any management systems to be used to deal with waste.
- (2) In this section—
- relevant facility* means—
- (a) for a waste reduction and recycling plan for a sector of planning entities—a facility of any planning entity adopting the plan; or
  - (b) for a waste reduction and recycling plan being adopted by a planning entity on a single entity basis—a facility of the planning entity.

#### **144 Additional requirements for a waste reduction and recycling plan for a sector of planning entities**

- (1) This section states additional requirements for a waste reduction and recycling plan for a sector of planning entities.
- (2) The plan must—
  - (a) identify the planning entities adopting the plan; and
  - (b) explain how the planning entities are collectively to implement the plan; and
  - (c) describe the arrangements for the administration, funding and implementation of the plan, and identify

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who is responsible for administering and reporting on the plan; and

- (d) include any other matters prescribed under a regulation.

#### **145 Amendment of waste reduction and recycling plan**

- (1) A planning entity or sector of planning entities may adopt an amendment of a waste reduction and recycling plan for the entity or sector if the entity or sector considers the amendment to be appropriate, having regard to—
- (a) changing waste reduction and recycling opportunities; and
  - (b) changing circumstances in which the plan operates; and
  - (c) other matters arising from a review of the plan; and
  - (d) anything else the entity or sector considers relevant.
- (2) A planning entity that has adopted the waste reduction and recycling plan of a sector of planning entities is taken to have adopted an amendment of the plan unless the terms of the adoption preclude automatic adoption of the amendment.

#### **146 Requirement to give copy of adopted plan to chief executive**

- (1) This section applies if a planning entity adopts a waste reduction and recycling plan or an amendment of a waste reduction and recycling plan.
- (2) The planning entity must, within 10 days after the adoption of the plan or amendment, give the chief executive a copy of the plan, or the plan as amended, unless the plan is a waste reduction and recycling plan for a sector of planning entities and the chief executive already has a copy of the plan or the plan as amended.

## **Chapter 7      Reporting about waste management**

### **Part 1            Reporting on waste reduction and recycling plans**

#### **147      Local government reporting**

- (1) Within 2 months after the end of each financial year, a local government must give the chief executive a report about the operation, in the financial year, of all the local government's waste reduction and recycling plans in force in its local government area.
- (2) The report must be in the approved form and must otherwise comply with the requirements of this section.
- (3) However, the local government is not required to include in the report any information that has already been supplied to the chief executive in a waste data return in relation to a levyable waste disposal site operated by or for the local government.
- (4) Without limiting what the approved form may require, the approved form may require the following—
  - (a) details of any recycling programs conducted or managed by or for the local government during the year, including—
    - (i) the amounts and types of waste collected and recycled, or collected and delivered to some other entity for recycling, under the programs; and
    - (ii) the names and addresses of the facilities used in the programs;
  - (b) details of local government waste services to households;

- (c) amounts and types of waste delivered directly to waste facilities from individual households;
  - (d) the total amount of energy generated in the year from landfill gas;
  - (e) details of landfills operated by or for the local government during the year, including—
    - (i) the amounts and types of waste disposed of during the year to the landfills; and
    - (ii) the name, address, capacity and life expectancy of each landfill that started operation during the year; and
    - (iii) the name, address and capacity of each landfill that ceased operation during the year;
  - (f) the amounts and types of waste collected by or for the local government and disposed of to landfill at waste facilities other than those operated by or for the local government, and the addresses of the waste facilities.
- (5) The matters mentioned in subsection (4) must be addressed in relation to waste generated within or outside the local government's area.
- (6) The report must also give details of the following—
- (a) the types of waste generated by the local government in carrying out its activities;
  - (b) actions taken to reduce the amount of waste generated by the local government in carrying out its activities;
  - (c) actions taken to increase the use of recycled material by the local government;
  - (d) actions taken by the local government to improve the re-use and recycling of—
    - (i) waste generated by the local government; and
    - (ii) the types of waste generated in the local government area;

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- (e) the amount and types of waste that were the subject of offences against the general littering provision or the illegal dumping of waste provision and were collected by the local government;
- (f) progress made by the local government, having regard to—
  - (i) performance indicators, however referred to, included in the local government’s waste reduction and recycling plans; and
  - (ii) any other performance indicators prescribed under a regulation for gauging performance under local government waste reduction and recycling plans;
- (g) how the local government has contributed towards achieving the goals and targets under the State’s waste management strategy.

## **148 State entity reporting**

- (1) Within 2 months after the end of each financial year, the chief executive officer of a State entity must give the chief executive under this Act a report, in the approved form, about the operation, in the financial year, of the State entity’s waste reduction and recycling plan.
- (2) The report must include details of the following—
  - (a) the types and amounts of waste generated, recycled or disposed of by the entity in carrying out its activities;
  - (b) any actions taken by the entity to reduce the amount of waste generated by the entity;
  - (c) actions taken by the entity to recover and re-use or recycle waste;
  - (d) actions taken by the entity to increase the use of recycled materials;
  - (e) progress made by the entity, having regard to—



- 
- (i) performance indicators, however referred to, included in the entity's waste reduction and recycling plan; and
  - (ii) any other performance indicators prescribed under a regulation for gauging performance under State entity waste reduction and recycling plans;
  - (f) how the entity has contributed towards achieving the goals and targets under the State's waste management strategy;
  - (g) the amount and types of waste that were the subject of littering or illegal dumping and were collected by the entity;
  - (h) any other matters prescribed under a regulation about requirements for reporting on State entity waste reduction and recycling plans.
- (3) The report, or the substance of the report, must also be included in any annual report about the State entity under the *Financial Accountability Act 2009*.

## 149 Planning entity reporting

- (1) A planning entity must give the chief executive a report, in the approved form and otherwise in compliance with the requirements of this section, about the operation, in the period covered by the report, of any waste reduction and recycling plan adopted by the entity.

Maximum penalty—100 penalty units.

- (2) A report under subsection (1) must be given—
- (a) for the first report under this section—within 2 months after the end of the first full financial year after the commencement of this section; and
  - (b) for subsequent reports, and unless another interval is provided for under a regulation—at intervals of not more than 3 years after the giving of the first report.

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- (3) The period covered by a report must be—
  - (a) for the first report—the first full financial year mentioned in subsection (2)(a); and
  - (b) for any subsequent report—the period since the last period covered by a report under this section.
- (4) A report under subsection (1) must include details of the following—
  - (a) the types and amounts of waste generated, recycled or disposed of by the entity;
  - (b) any actions taken by the entity to reduce the amount of waste generated by the entity;
  - (c) actions taken by the entity to recover and re-use or recycle waste;
  - (d) actions taken by the entity to increase the use of recycled materials;
  - (e) progress made by the entity, having regard to performance indicators, however referred to, included in any waste reduction and recycling plan adopted by the entity;
  - (f) any other matters prescribed under a regulation about requirements for reporting on planning entity waste reduction and recycling plans.

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## Part 2 Reporting on waste recovery and disposal

### Division 1 Establishing status as reporting entity

#### 150 Identification of reporting entity

- (1) An entity is a *reporting entity* if—
  - (a) the chief executive has identified the entity as a reporting entity; and
  - (b) the chief executive has given the entity an information notice for the decision to identify the entity as a reporting entity; and
  - (c) any period for the internal or external review of the decision, including any period of appeal, has expired.
- (2) Also, an entity is a *reporting entity* if the entity is part of a sector of entities (a *sector of reporting entities*) prescribed under a regulation for this part.
- (3) Despite subsection (2), the chief executive is not stopped from identifying an entity as a reporting entity and giving it an information notice under subsection (1) on the basis that the entity is part of a sector of reporting entities.
- (4) The chief executive may identify an entity as a reporting entity only on the basis of 1 or more of the following, having regard to the entity's activities—
  - (a) the entity receives, sorts, recycles, treats or disposes of waste above a threshold prescribed under a regulation;
  - (b) the entity is a reporting entity under subsection (2).

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### **151 Notification of status as reporting entity**

- (1) This section applies if, under this part, the chief executive gives an entity an information notice for the chief executive's decision to identify the entity as a reporting entity.
- (2) Without limiting what the information notice may include, the information notice must include the following information—
  - (a) that the entity must, under the reporting entity obligation, within 2 months after the end of each financial year, give the chief executive a report about the entity's receiving, sorting, recycling, treatment or disposal of waste;
  - (b) when the reporting entity obligation will start to apply to the entity.

## **Division 2 Reporting requirements**

### **152 Reporting entity obligation**

- (1) A reporting entity has an obligation to give the chief executive, within 2 months after the end of each financial year, a report in the approved form and in compliance with the requirements under this division, about the entity's receiving, sorting, recycling, treatment or disposal of waste in the financial year.
- (2) A reporting entity that has an obligation under subsection (1) must comply with the obligation unless it has a reasonable excuse.

Maximum penalty—100 penalty units.

### **153 Requirements for report**

- (1) A report given by a reporting entity under this division must include details of the following—

- 
- (a) the types and amounts of waste received, sorted, recycled, treated or disposed of by the entity;
  - (b) the types and amounts of waste received from local government sources, and the types and amounts of waste received from other sources;
  - (c) the types and amounts of each of the following—
    - (i) waste recycled by the entity;
    - (ii) waste sent to other recyclers in Queensland;
    - (iii) waste sent to other recyclers in Australia other than in Queensland;
    - (iv) waste sent to other recyclers outside Australia;
  - (d) any other matters prescribed under a regulation about requirements for reporting on waste recovery and disposal.
- (2) However, the report is not required to include any information that has already been supplied to the chief executive in a waste data return in relation to a levyable waste disposal site.

## **Part 3 Reporting by chief executive**

### **154 Annual report on waste disposal and recycling**

- (1) The chief executive must, by 31 December in each year, prepare and make publicly available a report that summarises the amounts of waste and recycling reported in the most recently completed financial year.
- (2) In preparing the report, the chief executive must have regard to information in reports given to the chief executive under parts 1 and 2.
- (3) The report must include the following information and, if appropriate, an evaluation of the information—

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- (a) the amounts and types of waste reported as being recycled by local governments;
- (b) the amounts and types of waste reported as being recycled by reporting entities;
- (c) the amounts and types of waste reported as being disposed of by local governments;
- (d) the amounts and types of waste reported as being disposed of by reporting entities;
- (e) the amounts and types of waste reported as being the subject of littering or illegal dumping;
- (f) the number of product stewardship schemes in effect under this Act;
- (g) the number of local governments that have adopted a waste reduction and recycling plan and have reported on the plan;
- (h) the number of State entities that have adopted a waste reduction and recycling plan and have reported on the plan;
- (i) the number of planning entities that have adopted waste reduction and recycling plans, other than by adopting the waste reduction and recycling plan of a sector of reporting entities;
- (j) the number of waste reduction and recycling plans that are in place for sectors of reporting entities.

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# Chapter 8 Approval of resource for beneficial use

## Part 1 Preliminary

### 155 Definitions for ch 8

In this chapter—

*amend*, an approval, includes—

- (a) amending a condition imposed on the approval; and
- (b) removing a condition imposed on the approval; and
- (c) imposing a new condition on the approval; and
- (d) amending the period of the approval.

*approval* means a general or specific approval.

*best practice environmental management* see the Environmental Protection Act, section 21.

*disqualifying event* means—

- (a) a disqualifying event under the Environmental Protection Act, schedule 4; or
- (b) a conviction for an offence against this Act.

*environmental nuisance* see the Environmental Protection Act, section 15.

*general approval* means an approval of a resource of which everyone has the benefit.

*holder*, of a specific approval, means the person who has the benefit of the approval.

*material environmental harm* see the Environmental Protection Act, section 16.

*resource* includes a type of resource.

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*serious environmental harm* see the Environmental Protection Act, section 17.

*specific approval* means an approval of a resource of which only a stated person has the benefit.

## **Part 2**                      **Chief executive may approve resource**

### **156**    **Approval of resource**

The chief executive may, under this chapter, approve a resource if the chief executive considers the resource has a beneficial use other than disposal.

*Example of beneficial use—*

re-using or recycling a resource

*Note—*

Under the Environmental Protection Act, section 13, a resource approved under this chapter is not waste.

## **Part 3**                      **Specific approvals**

### **Division 1**                **Applications for specific approval of a resource**

#### **157**    **Application**

- (1) A person may apply to the chief executive for a specific approval of a resource if—



- (a) the person possesses the resource when the application is made; or
  - (b) the person has consent to make the application from the person who, when the application is made, has possession of the resource.
- (2) The application must—
- (a) be in the approved form; and
  - (b) include the following information about the resource—
    - (i) a description of it, including, for example, its physical state and its components and their concentrations;
    - (ii) details of any of its environmentally significant characteristics;
    - (iii) details of its origin, including, for example, its place of production and the type of activity resulting in its production;
    - (iv) details of the persons, premises or industry intended to receive it;
    - (v) details of the form of transportation, storage, re-use, recycling, energy recovery, reprocessing or other use proposed for it;
    - (vi) details of the benefits, and any end product, of its proposed use;
    - (vii) the quantity of it proposed to be used;
    - (viii) details of any waste minimisation scheme, waste management plan or industry code relevant to it;
    - (ix) any Australian or industry standards relevant to its end product;
    - (x) an assessment of the potential for material environmental harm, serious environmental harm or environmental nuisance arising from its proposed use;

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- (xi) an assessment of its alternative uses having regard to the waste and resource management hierarchy;
  - (xii) an assessment of the best practice environmental management for its proposed use;
  - (xiii) an assessment of commonly available technologies, methods or processes relevant to its proposed use;
  - (xiv) other information required under a regulation; and
- (c) state details of the proposed measures to ensure the applicant's proposed use of the resource is not likely to result in material environmental harm, serious environmental harm or environmental nuisance; and
- (d) be accompanied by the fee prescribed under a regulation.

### **158 Chief executive may require additional information**

- (1) 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 date stated in the notice.
- (2) The chief executive may refuse the application if the applicant does not give the chief executive the further information or documents by the stated date, or a later date agreed between the chief executive and the applicant, without reasonable excuse.
- (3) The applicant may, before the stated date, agree with the chief executive about extending the time for providing the further information.

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## **Division 2                      Deciding applications**

### **159      Deciding application**

- (1) The chief executive must decide either to grant or refuse the application within 40 business days after the later of the following days—
  - (a) the day the chief executive receives the application;
  - (b) if additional information is requested under section 158—the day the chief executive receives the information.
- (2) However, the chief executive may fix a later day for making a decision under subsection (1) by giving the applicant, within 40 business days after the later of the days mentioned in subsection (1)(a) and (b), a notice that the chief executive has fixed the later day.
- (3) The later day must not be more than 60 business days after the later of the days mentioned in subsection (1)(a) and (b).
- (4) A failure to make a decision under this section is taken to be a decision by the chief executive to refuse the application.

### **160      Criteria for decision**

- (1) In deciding whether to grant or refuse the application, the chief executive must consider the following—
  - (a) the waste and resource management hierarchy;
  - (b) the waste and resource management principles;
  - (c) the standard criteria under the Environmental Protection Act, schedule 4;
  - (d) any regulatory requirement under the Environmental Protection Act that an administering authority under that Act must comply with in relation to a development application under that Act and for that purpose the requirement applies—

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- (i) with any necessary or convenient changes; and
  - (ii) as if a reference to the administering authority were a reference to the chief executive and a reference to a development application were a reference to an application for a specific approval;
- (e) the best practice environmental management for the proposed use of the resource;
  - (f) the likelihood of any material environmental harm, serious environmental harm or environmental nuisance happening because of the proposed use of the resource;
  - (g) the benefit and sustainability of the proposed use of the resource;
  - (h) any alternative use of the resource;
  - (i) another matter prescribed under a regulation.
- (2) Also, the chief executive may consider the following—
- (a) the applicant's environmental record;
  - (b) the applicant's ability to comply with any proposed conditions of the approval;
  - (c) whether a disqualifying event has happened in relation to—
    - (i) if the applicant is an individual—the applicant or another person who is the applicant's partner; or
    - (ii) if the applicant is a corporation—
      - (A) the corporation; or
      - (B) any of the corporation's executive officers; or
      - (C) another corporation of which any of the corporation's executive officers is, or has been, an executive officer.

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## **161 Grant of application**

- (1) If the chief executive grants the application, the chief executive must, within 10 business days, give the applicant notice of the specific approval stating the following—
  - (a) the approval has been granted;
  - (b) the resource to which the approval relates;
  - (c) the person who has the benefit of the approval;
  - (d) the period of the approval;
  - (e) any conditions imposed on the approval.
- (2) If the chief executive imposes any conditions on the specific approval, the notice must include or be accompanied by an information notice for the decision to impose the conditions.
- (3) However, subsection (2) does not apply to a condition that is the same, or substantially the same, as a condition agreed to or asked for by the applicant.

## **162 Refusal of application**

If the chief executive decides to refuse the application, the chief executive must, within 10 business days, give the applicant an information notice for the decision.

# **Part 4 General approvals**

## **163 Chief executive may grant general approval**

- (1) The chief executive may grant a general approval for a resource.
- (2) The chief executive may act under subsection (1) even if a specific approval is in force for the resource.

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## **164 Criteria for decision**

In deciding whether to grant a general approval, the chief executive must consider the following—

- (a) the waste and resource management hierarchy;
- (b) the waste and resource management principles;
- (c) the best practice environmental management for the use of the resource;
- (d) the likelihood of any material environmental harm, serious environmental harm or environmental nuisance happening because of the proposed use of the resource;
- (e) the benefit and sustainability of the proposed use of the resource;
- (f) any alternative use for the resource;
- (g) any other matters the chief executive considers relevant.

## **165 Procedure for granting general approval**

- (1) This section applies if the chief executive proposes to grant a general approval.
- (2) The chief executive must publish a notice on the department's website and in any other way the chief executive considers appropriate.
- (3) The notice must state the following—
  - (a) that the chief executive proposes to grant a general approval for a particular resource;
  - (b) the reason for the proposed action;
  - (c) the conditions, if any, proposed to be imposed on the general approval;
  - (d) the period of the general approval;
  - (e) that any person may make, within a stated period, written submissions to the chief executive about the proposed action.



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- (g) sampling, analysis, monitoring and reporting in relation to the resource;
  - (h) measures or action to be taken to minimise against or remediate environmental impacts from the use of the resource, including material environmental harm, serious environmental harm or environmental nuisance.
- (3) A condition may be expressed to apply to anyone who has the benefit of the approval.
- (4) Without limiting subsection (3), a condition of a general approval may be expressed to apply to the producer, receiver, re-user, recycler or energy recoverer of the resource to which the approval relates.

#### **167 Failure to comply with condition of approval**

A person to whom a condition imposed on an approval applies must not fail to comply with the condition.

Maximum penalty—1665 penalty units.

## **Part 6                      Transfer, amendment,    cancellation or suspension    of approvals**

### **Division 1                Applications for transfer or    amendment of specific approvals**

#### **168 Application for transfer of benefit or amendment of    specific approval**

- (1) The holder of a specific approval may apply to the chief executive—



- (a) to transfer the benefit of the approval; or
  - (b) to amend the approval.
- (2) The application must—
- (a) be in the approved form; and
  - (b) for a transfer application—contain the signed consent of the proposed transferee to the transfer; and
  - (c) for an amendment—state the amendment sought and the reasons for it; and
  - (d) be accompanied by the fee prescribed under a regulation.
- (3) In deciding whether to grant the application—
- (a) the chief executive may consider the criteria under section 160; and
  - (b) for a transfer application—a reference to the applicant in the criteria is taken to be a reference to the proposed transferee.
- (4) The chief executive must decide either to grant or refuse the application within 40 business days after the later of the following days—
- (a) the day the chief executive receives the application;
  - (b) if additional information is requested under section 169—the day the chief executive receives the information.
- (5) If the chief executive decides to approve the application, the chief executive must, within 10 business days—
- (a) for a transfer application—give the applicant and the proposed transferee a notice stating—
    - (i) that the application has been approved; and
    - (ii) the day the transfer takes effect; or
  - (b) for an amendment application—give the applicant a notice stating—

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- (i) that the application has been approved; and
  - (ii) the day the amendment takes effect.
- (6) If the chief executive decides to refuse to approve the application, the chief executive must, within 10 business days, give—
  - (a) for a transfer application—the applicant and the proposed transferee an information notice for the decision; or
  - (b) for an amendment application—the applicant an information notice for the decision.
- (7) A failure to make a decision under subsection (4) is taken to be a decision by the chief executive to refuse the application.

## **169 Chief executive may require additional information**

- (1) 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 date stated in the notice.
- (2) The chief executive may refuse the application if the applicant does not give the chief executive the further information or documents by the stated date, or a later date agreed between the chief executive and the applicant, without reasonable excuse.
- (3) The applicant may, before the stated date, agree with the chief executive about extending the time for providing the further information.

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## **Division 2                      Other amendment, and cancellation and suspension, of approvals**

### **170      Amendment of approval**

- (1) The chief executive may amend a specific approval, by giving notice of the amendment to the holder of the approval, if the amendment corrects a clerical or formal error and does not adversely affect the interests of the holder.
- (2) The chief executive may amend a general approval, by publishing details of the amendment in a gazette notice, if the amendment corrects a clerical or formal error and does not adversely affect the interests of any person who has the benefit of the approval.
- (3) The chief executive may also amend an approval under section 172.

### **171      Cancellation or suspension of an approval**

- (1) The chief executive may cancel or suspend an approval if—
  - (a) an event mentioned in subsection (2) happens; and
  - (b) the chief executive complies with section 172.
- (2) For subsection (1)(a), the event is any of the following—
  - (a) the approval was granted because of a materially false or misleading representation or declaration;
  - (b) the approval was granted on the basis of certain matters or information that have changed and the change is likely to result in material environmental harm, serious environmental harm or environmental nuisance;
  - (c) a condition imposed on the approval has not been complied with.
- (3) Also, the chief executive may cancel or suspend a general approval if the chief executive—

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- (a) considers it is desirable to do so having regard to the objects of the Act; and

*Examples—*

- 1 The chief executive may decide to cancel a general approval because an alternative use of the resource has been identified that is higher in the preferred order of precepts under the waste and resource management hierarchy.
  - 2 The chief executive may decide to cancel a general approval because a product stewardship scheme has been introduced for the resource.
- (b) complies with section 172.

## **172 Procedure for amending, cancelling or suspending an approval**

- (1) This section applies if the chief executive proposes to—
  - (a) amend an approval under this section; or
  - (b) cancel or suspend an approval.
- (2) The chief executive must—
  - (a) for a specific approval—give a notice to the holder of the approval; or
  - (b) for a general approval—publish a notice on the department’s website and in any other way the chief executive considers appropriate.
- (3) The notice must state the following—
  - (a) the action the chief executive proposes to take;
  - (b) if the proposed action is an amendment—the proposed amendment;
  - (c) if the proposed action is suspension—the proposed suspension period;
  - (d) the grounds for the proposed action;
  - (e) the facts and circumstances that form the basis for the grounds;

- (f) that a relevant person for the approval may make, within a stated period, written submissions to show why the proposed action should not be taken.
- (4) The stated period must end at least 28 days after—
  - (a) for a specific approval—the holder of the approval is given the notice; or
  - (b) for a general approval—the notice is published.
- (5) The chief executive must consider any submissions made under subsection (3)(f) within the stated period.
- (6) If the chief executive decides to take the proposed action, the chief executive must, within 10 business days after making the decision—
  - (a) for a specific approval, give the holder of the approval an information notice for the decision; or
  - (b) for a general approval, publish a gazette notice stating the decision and the reasons for the decision.
- (7) The decision takes effect—
  - (a) for a specific approval, when the information notice is given; or
  - (b) for a general approval, when the gazette notice is published or on a later day stated in the gazette notice.
- (8) In this section—
  - relevant person***—
    - (a) for a specific approval, means the holder of the approval; or
    - (b) for a general approval, means any person who is acting under the approval.

## **Part 7 Register of approvals**

### **173 Register**

- (1) The chief executive must establish a register of approvals.
- (2) The register may be kept in electronic form.
- (3) The register must be open to the public.

## **Chapter 9 Reviews**

### **Part 1 Internal reviews**

#### **174 Internal review process**

Every external review of a decision to which an information notice relates must be in the first instance by way of an application for internal review.

#### **175 Who may apply for internal review**

A person who, under this Act, has been given, or who is entitled to be given, an information notice for a decision may apply to the chief executive for an internal review of the decision (an *internal review application*).

#### **176 Requirements for making application**

- (1) An internal review application must be—
  - (a) in the approved form; and
  - (b) supported by enough information to enable the chief executive to decide the application; and

- (c) made within 14 days after the applicant is given the information notice for the decision the subject of the application.
- (2) However, the chief executive may, at any time, extend the time for making an internal review application.

### **177 Decision not stayed**

- (1) An internal review application does not stay the decision the subject of the application (the *original decision*).
- (2) However, the applicant may immediately apply for a stay of the original decision to the relevant entity.
- (3) The relevant entity may stay the original decision to secure the effectiveness of the internal review and a later external review by QCAT.
- (4) The stay—
  - (a) may be given on conditions the relevant entity considers appropriate; and
  - (b) operates for the period fixed by the relevant entity; and
  - (c) may be amended or revoked by the relevant entity.
- (5) The period of the stay must not extend past the time when the chief executive makes the internal review decision about the original decision and any later period the relevant entity allows to enable the applicant to apply to QCAT for a review of the internal review decision.
- (6) An internal review application affects the original decision, or carrying out of the decision, only if the decision is stayed.
- (7) In this section—  
*relevant entity* means the chief executive or QCAT.

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## **178 Internal review**

- (1) The chief executive must, within 20 days after receiving an internal review application made under section 176—
  - (a) conduct an internal review of the decision the subject of the application (the *original decision*); and
  - (b) make a decision (the *internal review decision*) to—
    - (i) confirm the original decision; or
    - (ii) amend the original decision; or
    - (iii) substitute another decision for the original decision.
- (2) The application must not be dealt with by—
  - (a) the person who made the original decision; or
  - (b) a person in a less senior office than the person who made the original decision.
- (3) Subsection (2)—
  - (a) applies despite the *Acts Interpretation Act 1954*, section 27A; and
  - (b) does not apply to an original decision made personally by the chief executive.
- (4) If the internal review decision confirms the original decision, for the purpose of an external review, the original decision is taken to be the internal review decision.
- (5) If the internal review decision amends the original decision, for the purpose of an external review, the original decision as amended is taken to be the internal review decision.

## **179 Notice of internal review decision**

- (1) The chief executive must, within 10 days after making an internal review decision, give the applicant notice of the decision.



- (2) If the internal review decision is not the decision sought by the applicant, the notice must be accompanied by a QCAT information notice for the decision.
- (3) If the chief executive does not give the notice within the 10 days, the chief executive is taken to have made an internal review decision confirming the original decision.
- (4) In this section—  
*QCAT information notice* means a notice complying with the QCAT Act, section 157(2).

## Part 2 External reviews by QCAT

### 180 Who may apply for external review

A person given, or entitled to be given, a QCAT information notice under section 179 for an internal review decision may apply, as provided under the QCAT Act, to QCAT for an external review of the decision.

## Chapter 10 Authorised persons

### Part 1 Preliminary

#### 181 Definitions for ch 10

In this chapter—

*disposal order* see section 231(2).

*document certification requirement* see section 234(6).

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***document production requirement*** see section 234(2).

***electronic document*** means a document of a type under the *Acts Interpretation Act 1954*, section 36, definition *document*, paragraph (c).

***forfeiture order*** see section 227(1).

***former owner*** see section 226(1).

***general power*** see section 211(1).

***help requirement*** see section 212(1).

***identity card***, for a provision about authorised persons, means an identity card issued under section 187.

***information requirement*** see section 237(3).

***offence warning***, for a direction or requirement of an authorised person, means a warning that, without reasonable excuse, it is an offence for the person to whom the direction or requirement is made not to comply with it.

***owner***, for a thing that has been seized under this chapter, includes a person who would be entitled to possession of the thing had it not been seized.

***personal details requirement*** see section 232(5).

***person in control***—

- (a) of a vehicle, includes—
  - (i) the vehicle's driver or rider; and
  - (ii) anyone who reasonably appears to be, claims to be, or acts as if he or she is, the vehicle's driver or rider or the person in control of the vehicle; or
- (b) of another thing, includes anyone who reasonably appears to be, claims to be, or acts as if he or she is, the person in possession or control of the thing.

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## **Part 2**                      **General matters about authorised persons**

### **Division 1**                **Functions**

#### **182**    **Functions of authorised persons**

An authorised person has the following functions—

- (a) to investigate, monitor and enforce compliance with this Act;
- (b) to investigate or monitor whether an occasion has arisen for the exercise of powers under this Act;
- (c) to facilitate the exercise of powers under this Act.

### **Division 2**                **Appointment**

#### **183**    **Appointment and qualifications**

- (1) The chief executive may, by instrument in writing, appoint any of the following persons as an authorised person—
  - (a) a public service officer;
  - (b) an employee of the department;
  - (c) a person prescribed under a regulation.
- (2) However, the chief executive may appoint a person as an authorised person only if the chief executive is satisfied the person is qualified for appointment because the person has the necessary expertise or experience.

#### **184**    **Appointment conditions and limit on powers**

- (1) An authorised person holds office on any conditions stated in—

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- (a) the authorised person's instrument of appointment; or
  - (b) a signed notice given to the authorised person; or
  - (c) a regulation.
- (2) The instrument of appointment, a signed notice given to the authorised person or a regulation may limit the authorised person's powers.
- (3) In this section—  
*signed notice* means a notice signed by the chief executive.

### **185 When office ends**

- (1) The office of a person as an authorised person ends if any of the following happens—
- (a) the term of office stated in a condition of office ends;
  - (b) under another condition of office, the office ends;
  - (c) the authorised person's resignation under section 186 takes effect.
- (2) Subsection (1) does not limit the ways the office of a person as an authorised person ends.
- (3) In this section—  
*condition of office* means a condition under which the authorised person holds office.

### **186 Resignation**

- (1) An authorised person may resign by signed notice given to the chief executive.
- (2) However, if holding office as an authorised person is a condition of the authorised person holding another office, the authorised person may not resign as an authorised person without resigning from the other office.

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## **Division 3                      Identity cards**

### **187      Issue of identity card**

- (1) The chief executive must issue an identity card to each authorised person.
- (2) The identity card must—
  - (a) contain a recent photo of the authorised person; and
  - (b) contain a copy of the authorised person’s signature; and
  - (c) identify the person as an authorised person under this Act; and
  - (d) state an expiry date for the card.
- (3) This section does not prevent the issue of a single identity card to a person for this Act and other purposes.

### **188      Production or display of identity card**

- (1) In exercising a power in relation to a person in the person’s presence, an authorised person must—
  - (a) produce the authorised person’s identity card for the person’s inspection before exercising the power; or
  - (b) have the identity card displayed so it is clearly visible to the person when exercising the power.
- (2) However, if it is not practicable to comply with subsection (1), the authorised person must produce the identity card for the person’s inspection at the first reasonable opportunity.
- (3) For subsection (1), an authorised person does not exercise a power in relation to a person only because the authorised person has entered a place as mentioned in section 192(1)(a)(iii), (iv) or (v).

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## **189 Return of identity card**

If the office of a person as an authorised person ends, the person must return the person's identity card to the chief executive within 21 days after the office ends unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

## **Division 4 Miscellaneous provisions**

### **190 References to exercise of powers**

If—

- (a) a provision of this chapter refers to the exercise of a power by an authorised person; and
  - (b) there is no reference to a specific power;
- the reference is to the exercise of all or any authorised persons' powers under this chapter or a warrant, to the extent the powers are relevant.

### **191 Reference to document includes reference to reproductions from electronic document**

A reference in this chapter to a document includes a reference to an image or writing—

- (a) produced from an electronic document; or
- (b) not yet produced, but reasonably capable of being produced, from an electronic document, with or without the aid of another article or device.

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## **Part 3                      Entry of places by authorised persons**

### **Division 1                Power to enter**

#### **192      General power to enter places**

- (1) An authorised person may enter a place—
  - (a) if—
    - (i) an occupier of the place consents under division 2 to the entry and section 195 has been complied with for the occupier; or
    - (ii) the entry is authorised under a warrant and, if there is an occupier of the place, division 3, subdivision 2 has been complied with for the occupier; or
    - (iii) it is a public place and the entry is made when it is open to the public; or
    - (iv) it is a place of business that is open for carrying on the business; or
    - (v) it is vacant land in relation to which the authorised person reasonably suspects an offence against section 103(1) or 104(1) has been or is being committed; or
  - (b) if it is a waste facility and entry is made during the daytime; or
  - (c) under section 204.
- (2) Subsection (1)(a)(iv) is not limited by subsection (1)(b).
- (3) Subsection (1)(a)(iv) or (b) does not authorise entry to any part of the place where a person resides.
- (4) If the power to enter arose only because an occupier of the place consented to the entry, the power is subject to any

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conditions of the consent and ceases if the consent is withdrawn.

- (5) If the power to enter is under a warrant, the power is subject to the terms of the warrant.
- (6) If the power to enter arose only because an occupier of the place consented to the entry, the consent may provide consent for re-entry and is subject to the conditions of consent.
- (7) If the power to enter is under a warrant, the re-entry is subject to the terms of the warrant.
- (8) In this section—

*vacant land* means land on which there are no structural improvements other than fencing.

## **Division 2                      Entry by consent**

### **193      Application of div 2**

This division applies if an authorised person intends to ask an occupier of a place for consent to the authorised person or another authorised person entering the place under section 192(1)(a)(i).

### **194      Incidental entry to ask for access**

For the purpose of asking the occupier for the consent, the authorised person may, without the occupier's consent or a warrant—

- (a) enter land around premises at the place to an extent that is reasonable to contact the occupier; or
- (b) enter part of the place the authorised person reasonably considers members of the public ordinarily are allowed to enter when they wish to contact an occupier of the place.



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**195 Matters authorised person must tell occupier**

Before asking for the consent, the authorised person must give a reasonable explanation to the occupier—

- (a) about the purpose of the entry, including the powers intended to be exercised; and
- (b) that the occupier is not required to consent; and
- (c) that the consent may be given subject to conditions and may be withdrawn at any time.

**196 Consent acknowledgement**

- (1) If the consent is given, the authorised person may ask the occupier to sign an acknowledgement of the consent.
- (2) The acknowledgement must state—
  - (a) the purpose of the entry, including the powers intended to be exercised; and
  - (b) the following has been explained to the occupier—
    - (i) the purpose of the entry, including the powers intended to be exercised;
    - (ii) that the occupier is not required to consent;
    - (iii) that the consent may be given subject to conditions and may be withdrawn at any time; and
  - (c) the occupier gives the authorised person or another authorised person consent to enter the place and exercise the powers; and
  - (d) the time and day the consent was given; and
  - (e) any conditions of the consent.
- (3) If the occupier signs the acknowledgement, the authorised person must immediately give a copy to the occupier.
- (4) However, if it is impractical for the authorised person to give the occupier a copy of the acknowledgement immediately, the authorised person must give the copy as soon as practicable.

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- (5) If—
- (a) an issue arises in a proceeding about whether the occupier consented to the entry; and
  - (b) an acknowledgement complying with subsection (2) for the entry is not produced in evidence;
- the onus of proof is on the person relying on the lawfulness of the entry to prove the occupier consented.

## **Division 3            Entry under warrant**

### **Subdivision 1        Obtaining warrant**

#### **197    Application for warrant**

- (1) An authorised person may apply to a magistrate for a warrant for a place.
- (2) The authorised person must prepare a written application that states the grounds on which the warrant is sought.
- (3) The written application must be sworn.
- (4) The magistrate may refuse to consider the application until the authorised person gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

*Example—*

The magistrate may require additional information supporting the written application to be given by statutory declaration.

#### **198    Issue of warrant**

- (1) The magistrate may issue a warrant for the place if the magistrate is satisfied there are reasonable grounds for suspecting that there is at the place, or will be at the place

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within the next 7 days, a particular thing or activity that may provide evidence of an offence against this Act.

- (2) The warrant must state—
- (a) the place to which the warrant applies; and
  - (b) that a stated authorised person or any authorised person may with necessary and reasonable help and force—
    - (i) enter the place and any other place necessary for entry to the place; and
    - (ii) exercise the authorised person’s powers; and
  - (c) particulars of the offence that the magistrate considers appropriate; and
  - (d) the name of the person suspected of having committed the offence unless the name is unknown or the magistrate considers it inappropriate to state the name; and
  - (e) the evidence that may be seized under the warrant; and
  - (f) the hours of the day or night when the place may be entered; and
  - (g) the magistrate’s name; and
  - (h) the day and time of the warrant’s issue; and
  - (i) the day, within 14 days after the warrant’s issue, the warrant ends.

## **199 Electronic application**

- (1) An application under section 197 may be made by phone, fax, email, radio, videoconferencing or another form of electronic communication if the authorised person reasonably considers it necessary because of—
- (a) urgent circumstances; or
  - (b) other special circumstances, including, for example, the authorised person’s remote location.

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- (2) The application—
  - (a) may not be made before the authorised person prepares the written application under section 197(2); but
  - (b) may be made before the written application is sworn.

## **200 Additional procedure if electronic application**

- (1) For an application made under section 199, the magistrate may issue the warrant (the *original warrant*) only if the magistrate is satisfied—
  - (a) it was necessary to make the application under section 199; and
  - (b) the way the application was made under section 199 was appropriate.
- (2) After the magistrate issues the original warrant—
  - (a) if there is a reasonably practicable way of immediately giving a copy of the warrant to the authorised person, including, for example, by sending a copy by fax or email, the magistrate must immediately give a copy of the warrant to the authorised person; or
  - (b) otherwise—
    - (i) the magistrate must tell the authorised person the information mentioned in section 198(2); and
    - (ii) the authorised person must complete a form of warrant, including by writing on it the information mentioned in section 198(2) provided by the magistrate.
- (3) The copy of the warrant mentioned in subsection (2)(a), or the form of warrant completed under subsection (2)(b) (in either case the *duplicate warrant*), is a duplicate of, and as effectual as, the original warrant.
- (4) The authorised person must, at the first reasonable opportunity, send to the magistrate—

- 
- (a) the written application complying with section 197(2) and (3); and
  - (b) if the authorised person completed a form of warrant under subsection (2)(b)—the completed form of warrant.
- (5) The magistrate must keep the original warrant and, on receiving the documents under subsection (4)—
- (a) attach the documents to the original warrant; and
  - (b) give the original warrant and documents to the clerk of the court of the relevant magistrates court.
- (6) Despite subsection (3), if—
- (a) an issue arises in a proceeding about whether an exercise of a power was authorised by a warrant issued under this section; and
  - (b) the original warrant is not produced in evidence;
- the onus of proof is on the person relying on the lawfulness of the exercise of the power to prove a warrant authorised the exercise of the power.
- (7) This section does not limit section 197.
- (8) In this section—
- relevant magistrates court*, in relation to a magistrate, means the Magistrates Court that the magistrate constitutes under the *Magistrates Act 1991*.

## 201 Defect in relation to a warrant

- (1) A warrant is not invalidated by a defect in—
  - (a) the warrant; or
  - (b) compliance with this subdivision;unless the defect affects the substance of the warrant in a material particular.
- (2) In this section—

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*warrant* includes a duplicate warrant mentioned in section 200(3).

## **Subdivision 2      Entry procedure**

### **202      Procedure**

- (1) This section applies if an authorised person is intending to enter a place under a warrant issued under this division.
- (2) Before entering the place, the authorised person must do or make a reasonable attempt to do the following things—
  - (a) identify himself or herself to a person who is an occupier of the place and is present by producing the authorised person's identity card or another document evidencing the authorised person's appointment;
  - (b) give the person a copy of the warrant;
  - (c) tell the person the authorised person is permitted by the warrant to enter the place;
  - (d) give the person an opportunity to allow the authorised person immediate entry to the place without using force.
- (3) However, the authorised person need not comply with subsection (2) if the authorised person reasonably believes that entry to the place is required to ensure the execution of the warrant is not frustrated.
- (4) In this section—

*warrant* includes a duplicate warrant mentioned in section 200(3).

## **Division 4              Procedure for certain other entries**

### **203      Procedure**

- (1) This section applies if—

- 
- (a) an authorised person is intending to enter a place under section 192(1)(a)(iv) or (b); and
  - (b) an occupier of the place is present at the place.
- (2) Before entering the place, the authorised person must do or make a reasonable attempt to do the following things—
- (a) identify himself or herself to the occupier by producing the authorised person's identity card or another document evidencing the authorised person's appointment;
  - (b) tell the occupier the purpose of the entry;
  - (c) tell the occupier the authorised person is permitted under this Act to enter the place.

## **Division 5                      Entry of stationary vehicles by authorised persons**

### **204      Power to enter**

- (1) An authorised person may enter and stay in a vehicle if the vehicle is stationary and the authorised person reasonably suspects, or is aware, that a thing in or on the vehicle may provide evidence of the commission of an offence against section 41(1) or 104(1).

*Note—*

See part 4, division 1 for authorised person's powers to stop moving vehicle.

- (2) An authorised person may not enter a part of a vehicle under subsection (1) that is used only as a living area.
- (3) The power to enter under this section is in addition to the powers under section 192(1)(a)(ii).

### **205      Procedure for entry**

- (1) Subsection (2) applies if—

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- (a) an authorised person is intending to enter a vehicle under section 204; and
  - (b) the person in control of the vehicle is present at the vehicle.
- (2) Before entering the vehicle, the authorised person must do, or make a reasonable attempt to do, each of the following things—
- (a) identify himself or herself to the person in control by producing the authorised person's identity card or another document evidencing the authorised person's appointment;
  - (b) tell the person the purpose of the entry;
  - (c) seek the consent of the person to the entry;
  - (d) tell the person the authorised person is permitted under this Act to enter the vehicle without the person's consent.
- (3) If the person in control of the vehicle is not present at the vehicle, the authorised person must take reasonable steps to advise the person or any registered operator of the vehicle of the authorised person's intention to enter the vehicle.
- (4) Subsection (3) does not require the authorised person to take a step the authorised person reasonably believes may frustrate or otherwise hinder the performance of the authorised person's functions or the purpose of the intended entry.
- (5) In this section—
- registered operator**, of a vehicle, means—
- (a) if it is registered in Queensland—the person in whose name the vehicle is registered under the *Transport Operations (Road Use Management) Act 1995*; or
  - (b) if it is registered in another State—the person in whose name the vehicle is registered under the Act of the State that corresponds to the *Transport Operations (Road Use Management) Act 1995*.



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## **Part 4                      Other authorised persons'    powers and related matters**

### **Division 1                      Stopping or moving vehicles**

#### **206      Application of div 1**

This division applies if an authorised person reasonably suspects, or is aware, that a thing in or on a vehicle may provide evidence of the commission of an offence against section 41(1) or 104(1).

#### **207      Power to stop or move**

- (1) If the vehicle is moving, the authorised person may, to exercise his or her powers, signal or otherwise direct the person in control of the vehicle to stop the vehicle and to bring the vehicle to, and keep it at, a convenient place within a reasonable distance to allow the authorised person to exercise the powers.
- (2) If the vehicle is stopped, the authorised person may direct the person in control of the vehicle—
  - (a) not to move it until the authorised person has exercised the authorised person's powers; or
  - (b) to move the vehicle to, and keep it at, a stated reasonable place to allow the authorised person to exercise the powers.
- (3) When giving the direction under subsection (2), the authorised person must give the person in control an offence warning for the direction.

#### **208      Identification requirements if vehicle moving**

- (1) This section applies if the authorised person proposes to give a direction under section 207(1) and the vehicle is moving.

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- (2) The authorised person must clearly identify himself or herself as an authorised person exercising the authorised person's powers.
- (3) When the vehicle stops, the authorised person must—
  - (a) have with him or her the authorised person's identity card; and
  - (b) immediately produce the identity card for the inspection of the person in control of the vehicle.
- (4) Subsection (3) applies despite section 188.

## **209 Failure to comply with direction**

- (1) The person in control of the vehicle must comply with a direction under section 207 unless the person has a reasonable excuse.  
Maximum penalty—60 penalty units.
- (2) It is a reasonable excuse for the person not to comply with a direction if—
  - (a) the vehicle was moving and the authorised person did not comply with section 208; or
  - (b) to comply immediately would have endangered someone else or caused loss or damage to property, and the person complies as soon as it is practicable to do so.
- (3) Subsection (2) does not limit subsection (1).
- (4) A person does not commit an offence against subsection (1) if—
  - (a) the direction the person fails to comply with is given under section 207(2); and
  - (b) the person is not given an offence warning for the direction.

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## Division 2                      **General powers after entering places**

### 210      **Application of div 2**

- (1) The powers under this division may be exercised if an authorised person enters a place under—
  - (a) section 192(1)(a)(i), (ii), (iv), (v) or (b); or
  - (b) section 204.
- (2) However, if the authorised person enters under section 192(1)(a)(i) or (ii), the powers under this division are subject to any conditions of the consent or terms of the warrant.

### 211      **General powers**

- (1) The authorised person may do any of the following (each a *general power*)—
  - (a) search any part of the place;
  - (b) inspect, examine or film any part of the place or anything at the place;
  - (c) take for examination or analysis a thing, or a sample of or from a thing, at the place;
  - (d) place an identifying mark in or on anything at the place;
  - (e) take an extract from, or copy, a document at the place, or take the document to another place to copy;
  - (f) produce an image or writing at the place from an electronic document or, to the extent it is not practicable, take a thing containing an electronic document to another place to produce an image or writing;
  - (g) take to, into or onto the place and use any person, equipment and materials the authorised person reasonably requires for exercising the authorised person's powers under this division;

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- (h) remain at the place for the time necessary to achieve the purpose of the entry.
- (2) The authorised person may take a necessary step to allow the exercise of a general power.
- (3) If the authorised person takes a document from the place to copy it, the authorised person must copy and return the document to the place as soon as practicable.
- (4) If the authorised person takes from the place an article or device reasonably capable of producing a document from an electronic document to produce the document, the authorised person must produce the document and return the article or device to the place as soon as practicable.
- (5) In this section—
  - examine* includes analyse, test, account, measure, weigh, grade, gauge and identify.
  - film* includes photograph, videotape and record an image in another way.
  - inspect*, a thing, includes open the thing and examine its contents.

## 212 Power to require reasonable help

- (1) The authorised person may make a requirement (a *help requirement*) of an occupier of the place or a person at the place to give the authorised person reasonable help to exercise a general power, including, for example, to produce a document or to give information.
- (2) A help requirement may require the person to give the authorised person any translation, code, password or other information necessary to gain access to or interpret and understand any document or information obtained by the authorised person under a general power.
- (3) When making the help requirement, the authorised person must give the person an offence warning for the requirement.

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### **213 Offence to contravene help requirement**

- (1) A person of whom a help requirement has been made must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

- (2) It is a reasonable excuse for an individual not to comply with a help requirement if complying might tend to incriminate the individual or expose the individual to a penalty.
- (3) However, subsection (2) does not apply if a document or information the subject of the help requirement is required to be held or kept by the defendant under this Act.

## **Division 3 Seizure and forfeiture**

### **Subdivision 1 Power to seize**

#### **214 Seizing evidence at a place that may be entered without consent or warrant**

An authorised person who enters a place the authorised person may enter under this Act without the consent of an occupier of the place and without a warrant may seize a thing at the place if the authorised person reasonably believes the thing is evidence of an offence against this Act.

#### **215 Seizing evidence at a place that may be entered only with consent or warrant**

- (1) This section applies if—
  - (a) an authorised person is authorised to enter a place only with the consent of an occupier of the place or a warrant; and
  - (b) the authorised person enters the place after obtaining the consent or under a warrant.

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- (2) If the authorised person enters the place with the occupier's consent, the authorised person may seize a thing at the place only if—
  - (a) the authorised person reasonably believes the thing is evidence of an offence against this Act; and
  - (b) seizure of the thing is consistent with the purpose of entry as explained to the occupier when asking for the occupier's consent.
- (3) If the authorised person enters the place under a warrant, the authorised person may seize the evidence for which the warrant was issued.
- (4) The authorised person may also seize anything else at the place if the authorised person reasonably believes—
  - (a) the thing is evidence of an offence against this Act; and
  - (b) the seizure is necessary to prevent the thing being—
    - (i) hidden, lost or destroyed; or
    - (ii) used to continue, or repeat, the offence.
- (5) The authorised person may also seize a thing at the place if the authorised person reasonably believes it has just been used in committing an offence against this Act.

## **216 Seizure of property subject to security**

- (1) An authorised person may seize a thing, and exercise powers relating to the thing, despite a lien or other security over the thing claimed by another person.
- (2) However, the seizure does not affect the other person's claim to the lien or other security against a person other than the authorised person or a person acting for the authorised person.

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## **Subdivision 2 Powers to support seizure**

### **217 Requirement of person in control of thing to be seized**

- (1) To enable a thing to be seized, an authorised person may require the person in control of it—
  - (a) to take it to a stated reasonable place by a stated reasonable time; and
  - (b) if necessary, to remain in control of it at the stated place for a stated reasonable time.
- (2) The requirement—
  - (a) must be made by notice; or
  - (b) if for any reason it is not practicable to give a notice, may be made orally and confirmed by notice as soon as practicable.

### **218 Offence to contravene seizure requirement**

A person of whom a requirement is made under section 217 must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—60 penalty units.

### **219 Power to secure seized thing**

- (1) Having seized a thing under this division, an authorised person may—
  - (a) leave it at the place where it was seized (the *place of seizure*) and take reasonable action to restrict access to it; or
  - (b) move it from the place of seizure.
- (2) For subsection (1)(a), the authorised person may, for example—

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(a) seal the thing, or the entrance to the place of seizure, and mark the thing or place to show access to the thing or place is restricted; or

(b) for equipment—make it inoperable; or

*Example—*

make it inoperable by dismantling it or removing a component without which the equipment can not be used

(c) require a person the authorised person reasonably believes is in control of the place or thing to do an act mentioned in paragraph (a) or (b) or anything else an authorised person could do under subsection (1)(a).

## **220 Offence to contravene other seizure requirement**

A person must comply with a requirement made of the person under section 219(2)(c) unless the person has a reasonable excuse.

Maximum penalty—60 penalty units.

## **221 Offence to interfere**

(1) If access to a seized thing is restricted under section 219, a person must not tamper with the thing or with anything used to restrict access to the thing without—

(a) an authorised person's approval; or

(b) a reasonable excuse.

Maximum penalty—60 penalty units.

(2) If access to a place is restricted under section 219, a person must not enter the place in contravention of the restriction or tamper with anything used to restrict access to the place without—

(a) an authorised person's approval; or



(b) a reasonable excuse.

Maximum penalty—60 penalty units.

### **Subdivision 3      Safeguards for seized things**

#### **222      Receipt and information notice for seized thing**

- (1) This section applies if an authorised person seizes anything under this division unless—
  - (a) the authorised person reasonably believes there is no-one apparently in possession of the thing or it has been abandoned; or
  - (b) because of the condition, nature and value of the thing it would be unreasonable to require the authorised person to comply with this section.
- (2) The authorised person must, as soon as practicable after seizing the thing, give an owner or person in control of the thing before it was seized—
  - (a) a receipt for the thing that generally describes the thing and its condition; and
  - (b) an information notice for the decision to seize it.
- (3) However, if an owner or person from whom the thing is seized is not present when it is seized, the receipt and information notice may be given by leaving them in a conspicuous position and in a reasonably secure way at the place at which the thing is seized.
- (4) The receipt and information notice may—
  - (a) be given in the same document; and
  - (b) relate to more than 1 seized thing.
- (5) The authorised person may delay giving the receipt and information notice if the authorised person reasonably suspects giving them may frustrate or otherwise hinder an investigation by the authorised person under this Act.

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- (6) However, the delay may be only for so long as the authorised person continues to have the reasonable suspicion and remains in the vicinity of the place at which the thing was seized to keep it under observation.

### **223 Access to seized thing**

- (1) Until a seized thing is forfeited or returned, the authorised person who seized the thing must allow an owner of the thing—
  - (a) to inspect it at any reasonable time and from time to time; and
  - (b) if it is a document—to copy it.
- (2) Subsection (1) does not apply if it is impracticable or would be unreasonable to allow the inspection or copying.
- (3) The inspection or copying must be allowed free of charge.

### **224 Return of seized thing**

- (1) This section applies if a seized thing has some intrinsic value and is not—
  - (a) forfeited or transferred under subdivision 4 or 5; or
  - (b) subject to a disposal order under division 4.
- (2) The authorised person must return the seized thing to an owner—
  - (a) generally—at the end of 1 year after the seizure; or
  - (b) if a proceeding for an offence involving the thing is started within the 1 year—at the end of the proceeding and any appeal from the proceeding.
- (3) Despite subsection (2), if the thing was seized as evidence, the authorised person must return the thing seized to an owner as soon as practicable after the authorised person is satisfied—

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- (a) its continued retention as evidence is no longer required; and
  - (b) its continued retention is not necessary to prevent it being used to continue, or repeat, an offence against this Act; and
  - (c) it is lawful for the owner to possess it.
- (4) Nothing in this section affects a lien or other security over the seized thing.

## **Subdivision 4 Forfeiture**

### **225 Forfeiture by chief executive**

- (1) The chief executive may decide a seized thing is forfeited to the State if an authorised person—
- (a) after making reasonable inquiries, can not find an owner; or
  - (b) after making reasonable efforts, can not return it to an owner; or
  - (c) reasonably believes it is necessary to keep the thing to prevent it being used to commit the offence for which it was seized.
- (2) However, the authorised person is not required to—
- (a) make inquiries if it would be unreasonable to make inquiries to find an owner; or
  - (b) make efforts if it would be unreasonable to make efforts to return the thing to an owner.

*Example for paragraph (b)—*

The owner of the thing has migrated to another country.

- (3) Regard must be had to the thing's condition, nature and value in deciding—
- (a) whether it is reasonable to make inquiries or efforts; and

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- (b) if inquiries or efforts are made—what inquiries or efforts, including the period over which they are made, are reasonable.

## **226 Information notice for forfeiture decision**

- (1) If the chief executive decides under section 225(1) to forfeit a thing, the chief executive must as soon as practicable give a person who owned the thing immediately before the forfeiture (the *former owner*) an information notice for the decision.
- (2) The information notice may be given by leaving it at the place where the thing was seized, in a conspicuous position and in a reasonably secure way.
- (3) The information notice must state that the former owner may apply for a stay of the decision if he or she seeks a review of the decision.
- (4) However, subsections (1) to (3) do not apply if—
  - (a) the decision was made under section 225(1)(a) or (b); and
  - (b) the place where the thing was seized is—
    - (i) a public place; or
    - (ii) a place where the notice is unlikely to be read by the former owner.

## **227 Forfeiture on conviction**

- (1) If a court convicts a person of an offence against this Act, the court may order (a *forfeiture order*) the forfeiture to the State of—
  - (a) anything used to commit the offence; or
  - (b) anything else the subject of the offence.
- (2) The court may make the order—
  - (a) whether or not the thing has been seized; and

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- (b) if the thing has been seized—whether or not the thing has been returned to the former owner of the thing.
  - (3) The court may make any order to enforce the forfeiture it considers appropriate.
  - (4) This section does not limit the court's powers under another law.

### **228 Procedure and powers for making forfeiture order**

- (1) A forfeiture order may be made on a conviction on the court's initiative or on an application by the prosecution.
- (2) In deciding whether to make a forfeiture order for a thing, the court—
  - (a) may require notice to be given to anyone the court considers appropriate, including, for example, any person who may have any property in the thing; and
  - (b) must hear any submissions that any person claiming to have any property in the thing may wish to make.

## **Subdivision 5 Dealing with property forfeited or transferred to State**

### **229 When thing becomes property of the State**

A thing becomes the property of the State if—

- (a) the thing is forfeited to the State under section 225(1) or 227; or
- (b) the owner of the thing and the State agree, in writing, to the transfer of the ownership of the thing to the State.

### **230 How property may be dealt with**

- (1) This section applies if, under section 229, a thing becomes the property of the State.

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- (2) The chief executive may deal with the thing as the chief executive considers appropriate, including, for example, by destroying it or giving it away.
- (3) The chief executive must not deal with the thing in a way that could prejudice the outcome of any review or appeal relating to the forfeiture under this Act or the QCAT Act.
- (4) If the chief executive sells the thing, the chief executive may, after deducting the costs of the sale, return the proceeds of the sale to the former owner of the thing.
- (5) This section is subject to any disposal order made for the thing.

## Division 4                      Disposal orders

### 231      Disposal order

- (1) This section applies if a court convicts a person of an offence against this Act.
- (2) The court may make an order (a *disposal order*), on its own initiative or on an application by the prosecution, for the disposal of any of the following things owned by the person—
  - (a) anything that was the subject of, or used to commit, the offence;
  - (b) another thing the court considers is likely to be used by the person or another person in committing a further offence against this Act.
- (3) The court may make a disposal order for a thing—
  - (a) whether or not it has been seized under this Act; and
  - (b) if the thing has been seized—whether or not it has been returned to the former owner.
- (4) In deciding whether to make a disposal order for a thing, the court—

- (a) may require notice to be given to anyone the court considers appropriate, including, for example, any person who may have any property in the thing; and
  - (b) must hear any submissions that any person claiming to have any property in the thing may wish to make.
- (5) The court may make any order to enforce the disposal order that it considers appropriate.
- (6) This section does not limit the court's powers under another law.

## **Division 5                      Other information-obtaining powers**

### **232      Power to require name and address**

- (1) This section applies if an authorised person—
- (a) finds a person committing an offence against this Act or contravening a prescribed provision; or
  - (b) finds a person in circumstances that lead the authorised person to reasonably suspect the person has just committed an offence against this Act or contravened a prescribed provision; or
  - (c) has information that leads the authorised person to reasonably suspect a person has just committed an offence against this Act or contravened a prescribed provision.
- (2) The authorised person may require the person to state the person's name and address.
- (3) The authorised person may also require the person to give evidence of the correctness of the stated name or address if, in the circumstances, it would be reasonable to expect the person to—
- (a) be in possession of evidence of the correctness of the stated name or address; or

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- (b) otherwise be able to give the evidence.
- (4) When making a personal details requirement, the authorised person must give the person an offence warning for the requirement.
- (5) A requirement under this section is a *personal details requirement*.
- (6) In this section—
  - address*, of a person, includes the person's residential and business address and, for a person temporarily in Queensland, includes the place where the person is living in Queensland.
  - prescribed provision* means section 107(1), 108 or 109(1) or (2).

### **233 Offence to contravene personal details requirement**

- (1) A person of whom a personal details requirement has been made must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.
- (2) A person may not be convicted of an offence under subsection (1) unless—
  - (a) the person is found guilty of the offence in relation to which the personal details requirement was made; or
  - (b) if the personal details requirement was made in relation to a contravention of a prescribed provision mentioned in section 232—the court is satisfied beyond reasonable doubt that the person contravened the prescribed provision.

### **234 Power to require production of document**

- (1) An authorised person may require a person to make available for inspection by an authorised person, or to produce to the



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authorised person for inspection, at a reasonable time and place nominated by the authorised person—

- (a) a document issued to the person under this Act or required to be kept by the person under this Act; or
  - (b) if a document or information required to be kept by a person under this Act is stored or recorded by means of a device—a document that is a clear written reproduction of the stored or recorded document or information.
- (2) A requirement under subsection (1) is a *document production requirement*.
  - (3) For an electronic document, compliance with the document production requirement requires the making available or production of a clear written reproduction of the electronic document.
  - (4) The authorised person may keep the document to copy it.
  - (5) If the authorised person copies the document, or an entry in the document, the authorised person may require the person responsible for keeping the document to certify the copy as a true copy of the document or entry.
  - (6) A requirement under subsection (5) is a *document certification requirement*.
  - (7) The authorised person must return the document to the person as soon as practicable after copying it.
  - (8) However, if a document certification requirement is made of a person, the authorised person may keep the document until the person complies with the requirement.

### **235 Offence to contravene document production requirement**

- (1) A person of whom a document production requirement has been made must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—60 penalty units.

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- (2) It is a reasonable excuse for an individual not to comply with a document production requirement if complying might tend to incriminate the individual or expose the individual to a penalty.
- (3) However, subsection (2) does not apply if a document or information the subject of the document production requirement is required to be held or kept by the person under this Act.
- (4) If a court convicts a person of an offence against subsection (1), the court may, as well as imposing a penalty for the offence, order the person to comply with the document production requirement.

### **236 Offence to contravene document certification requirement**

- (1) A person of whom a document certification requirement has been made must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

- (2) It is a reasonable excuse for an individual not to comply with a document certification requirement if complying might tend to incriminate the individual or expose the individual to a penalty.
- (3) However, subsection (2) does not apply if the document certification requirement relates to a document or information that is required to be held or kept by the person under this Act.

### **237 Power to require information**

- (1) This section applies if an authorised person reasonably believes—
  - (a) an offence against this Act has been committed; and
  - (b) a person may be able to give information about the offence.

- (2) The authorised person may, by notice given to the person, require the person to give the authorised person information related to the offence at a stated reasonable time and place.
- (3) A requirement under subsection (2) is an *information requirement*.
- (4) For information that is an electronic document, compliance with the information requirement requires the giving of a clear image or written version of the electronic document.
- (5) In this section—  
*information* includes a document.

### **238 Offence to contravene information requirement**

- (1) A person of whom an information requirement is made must comply with the requirement unless the person has a reasonable excuse.  
Maximum penalty—50 penalty units.
- (2) It is a reasonable excuse for an individual not to give the information if giving the information might tend to incriminate the individual or expose the individual to a penalty.

## **Part 5 Miscellaneous provisions**

### **Division 1 Damage**

#### **239 Duty to avoid inconvenience and minimise damage**

In exercising a power, an authorised person must take all reasonable steps to cause as little inconvenience, and do as little damage, as possible.

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*Note—*

See also section 241.

## **240 Notice of damage**

- (1) This section applies if—
  - (a) an authorised person damages something when exercising, or purporting to exercise, a power; or
  - (b) a person (the *assistant*) acting under the direction or authority of an authorised person damages something.
- (2) However, this section does not apply to damage the authorised person reasonably considers is trivial or if the authorised person reasonably believes—
  - (a) there is no-one apparently in possession of the thing; or
  - (b) the thing has been abandoned.
- (3) The authorised person must give notice of the damage to a person who appears to the authorised person to be an owner, or person in control, of the thing.
- (4) However, if for any reason it is not practicable to comply with subsection (3), the authorised person must—
  - (a) leave the notice at the place where the damage happened; and
  - (b) ensure it is left in a conspicuous position and in a reasonably secure way.
- (5) The authorised person may delay complying with subsection (3) or (4) if the authorised person reasonably suspects complying with the subsection may frustrate or otherwise hinder the performance of the authorised person's functions.
- (6) The delay may be only for so long as the authorised person continues to have the reasonable suspicion and remains in the vicinity of the place.
- (7) If the authorised person believes the damage was caused by a latent defect in the thing or circumstances beyond the control

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of the authorised person or the assistant, the authorised person may state the belief in the notice.

- (8) The notice must state—
- (a) particulars of the damage; and
  - (b) that the person who suffered the damage may claim compensation under section 241.

## **Division 2                      Compensation**

### **241                      Compensation**

- (1) A person may claim compensation from the State if the person incurs loss because of the exercise, or purported exercise, of a power by or for an authorised person including a loss arising from compliance with a requirement made of the person under this chapter.
- (2) However, subsection (1) does not include loss arising from a lawful seizure.
- (3) The compensation may be claimed and ordered in a proceeding—
  - (a) brought in a court with jurisdiction for the recovery of the amount of compensation claimed; or
  - (b) for an alleged offence against this Act the investigation of which gave rise to the claim for compensation.
- (4) A court may order the payment of compensation only if it is satisfied it is just to make the order in the circumstances of the particular case.
- (5) In considering whether it is just to order compensation, the court must have regard to any relevant offence committed by the claimant.
- (6) A regulation may prescribe other matters that may, or must, be taken into account by the court when considering whether it is just to order compensation.

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- (7) Section 239 does not provide for a statutory right of compensation other than as is provided by this section.
- (8) In this section—  
*loss* includes costs and damage.

### **Division 3                      Other offences relating to authorised persons**

#### **242      Giving authorised person false or misleading information**

- (1) A person must not, in relation to the administration of this Act, give an authorised person information, or a document containing information, that the person knows is false or misleading in a material particular.

Maximum penalty—1665 penalty units.

- (2) Subsection (1) applies to information or a document given in relation to the administration of this Act whether or not the information or document was given in response to a specific power under this Act.

#### **243      Obstructing authorised person**

- (1) A person must not obstruct an authorised person, or someone helping an authorised person, exercising a power under this Act unless the person has a reasonable excuse.

Maximum penalty—165 penalty units.

- (2) If a person has obstructed an authorised person, or someone helping an authorised person, and the authorised person decides to proceed with the exercise of the power, the authorised person must warn the person that—
  - (a) it is an offence to cause an obstruction unless the person has a reasonable excuse; and
  - (b) the authorised person considers the person's conduct an obstruction.

(3) In this section—

*obstruct* includes assault, hinder, resist, attempt to obstruct and threaten to obstruct.

#### **244 Impersonating authorised person**

A person must not impersonate an authorised person.

Maximum penalty—50 penalty units.

## **Chapter 11 Show cause notices and compliance notices**

### **Part 1 Preliminary**

#### **245 Definitions for ch 11**

In this chapter—

*compliance notice* see section 248(1).

*prescribed provision* means—

- (a) section 41(1), 43(1), (2) or (3), 44(2) or (3), 45(2), 47(1), 48(1), 52(1), 53, 65, 66(1) or (4), 67(2), 101, 103(1), 104(1), 107(1), 108, 109(1) or (2), 112(2), 141(3), 146(2), 149(1), 152(2), 167, 296(1) or (4) or 297(1) or (4); or
- (b) a provision of a regulation prescribed for the purpose of this paragraph.

*show cause notice* see section 246(2).

## Part 2 Show cause notices

### 246 Giving show cause notice

- (1) This section applies if the chief executive reasonably believes a person has contravened a prescribed provision.
- (2) Before giving a compliance notice about the contravention, the chief executive must give the person a notice (a *show cause notice*) inviting the person to show cause why the compliance notice should not be given.
- (3) Despite subsection (2), the chief executive need not give a show cause notice if the chief executive reasonably considers it is not appropriate in the circumstances to give the notice.

*Example—*

The chief executive might not give a show cause notice if the chief executive considers urgent action is necessary to address a danger to public health or safety or giving the notice would be likely to adversely affect the effectiveness of the compliance notice.

### 247 General requirements of show cause notice

- (1) A show cause notice must—
  - (a) be in writing; and
  - (b) outline the facts and circumstances forming the basis for the chief executive's belief that a compliance notice should be given to the person; and
  - (c) state that submissions may be made about the show cause notice; and
  - (d) state how the submissions may be made; and
  - (e) state where the submissions may be made or sent; and
  - (f) state a period within which the submissions must be made.
- (2) The period stated in the notice must end at least 14 business days after the notice is given.



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## Part 3 Compliance notices

### 248 Giving compliance notice

- (1) If the chief executive reasonably believes a person has contravened, or is contravening, a prescribed provision, the chief executive may give a notice (a **compliance notice**) to the person requiring the person to do either or both of the following—
  - (a) to refrain from contravening the prescribed provision;
  - (b) to remedy the contravention in the way stated in the notice.
- (2) The compliance notice must include or be accompanied by an information notice for the decision to give the person a compliance notice.

### 249 Restriction on giving compliance notice

- (1) This section applies if the chief executive gives a person a show cause notice about a contravention of a prescribed provision.
- (2) The chief executive may give the person a compliance notice about the contravention only if the chief executive—
  - (a) has considered all submissions made by the person about the show cause notice within the period stated in that notice; and
  - (b) still believes it is appropriate to give the compliance notice.

### 250 General requirements of compliance notices

- (1) A compliance notice must state the following—
  - (a) that the chief executive believes the person has contravened or is contravening a prescribed provision;

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- (b) the particular prescribed provision the chief executive believes has been, or is being, contravened;
  - (c) briefly, how it is believed the prescribed provision has been, or is being, contravened;
  - (d) if the notice requires the person to refrain from contravening the prescribed provision—either of the following—
    - (i) a period for which the requirement applies;
    - (ii) if the notice relates to a contravention of section 107(1), 108, 109(1) or (2) or 146(2)—that the requirement applies until further notice;
  - (e) if the notice requires the person to remedy the contravention—the time by which the person must remedy the contravention;
  - (f) that it is an offence to fail to comply with the compliance notice unless the person has a reasonable excuse;
  - (g) the maximum penalty for failing to comply with the compliance notice.
- (2) The time under subsection (1)(e) must be reasonable having regard to the action required to remedy the contravention.
- (3) The notice may also state the reasonable steps the chief executive considers necessary to remedy the contravention, or avoid further contravention, of the prescribed provision.
- (4) If the compliance notice requires the person to do more than 1 thing, it may state different periods within which the things are required to be done.

## **251 Person must comply with notice**

A person who is given a compliance notice must comply with the notice unless the person has a reasonable excuse.

Maximum penalty—

- (a) if the compliance notice relates to a contravention of section 107(1), 108, 109(1) or (2) or 146(2)—40 penalty units;
- (b) otherwise—300 penalty units.

## Chapter 12 Waste audits

### Part 1 Preliminary

#### 252 Definitions for ch 12

In this chapter—

*recipient* see section 253(1).

*waste audit* see section 253(1).

*waste report* see section 253(1).

### Part 2 Chief executive may require conduct of waste audits

#### 253 When waste audit required

- (1) If the chief executive reasonably suspects that a person is contravening or has contravened a prescribed provision, the chief executive may give the person (the *recipient*) a notice requiring the person to commission an audit of the matter (a *waste audit*), and to give a report (a *waste report*) on the audit to the chief executive, under this chapter.
- (2) The notice must—

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- (a) state the grounds on which the requirement is made; and
  - (b) outline the facts and circumstances forming the basis for the grounds; and
  - (c) state the scope of the waste audit; and
  - (d) state the day (at least a reasonable period after the notice is given) by which the recipient must give the waste report to the chief executive.
- (3) The notice must include or be accompanied by an information notice for the decision to give the notice.
- (4) In this section—
- prescribed provision* means section 42(1), 43(1), (2) or (3), 44(2) or (3), 45(2), 47(1), 48(1), 52(1), 53, 54(1), 65, 66(1) or (4), 67(2) or (3), 101, 104, 296(1) or 297(1).

#### **254 Recipient must comply with notice**

The recipient must comply with the notice unless the recipient has a reasonable excuse.

Maximum penalty—300 penalty units.

## **Part 3 Other provisions**

#### **255 Who may conduct waste audit**

- (1) The recipient must commission a suitably qualified person to conduct the waste audit.
- (2) The person commissioned by the recipient must be independent of the recipient and of the premises to which the waste audit relates.
- (3) In this section—

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*suitably qualified person*, in relation to the conduct of a waste audit, means a person who has the qualifications and experience appropriate for conducting the audit.

## **256 Declarations to accompany waste report**

- (1) A waste report given to the chief executive must be accompanied by a statutory declaration by the recipient and the person who carried out the waste audit.
- (2) The recipient's declaration must be made—
  - (a) if the recipient is an individual—by the recipient; or
  - (b) if the recipient is a corporation—by an executive officer of the corporation acting on the corporation's behalf.
- (3) The recipient's declaration must state that the recipient—
  - (a) has not knowingly given any false or misleading information to the person who carried out the waste audit; and
  - (b) has given all relevant information to the person who carried out the waste audit.
- (4) A declaration by the person who carried out the waste audit must—
  - (a) state his or her qualifications and experience relevant to the audit; and
  - (b) state that he or she has not knowingly included any false, misleading or incomplete information in the report; and
  - (c) state that he or she has not knowingly failed to reveal any relevant information or document to the chief executive; and
  - (d) certify that—
    - (i) the report addresses the relevant matters for the audit and is factually correct; and

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- (ii) the opinions expressed in it are honestly and reasonably held.

### **257 Costs of waste audit and report**

The recipient must bear the costs of commissioning a waste audit and of the waste report.

## **Chapter 13 Court orders**

### **258 Court may make particular orders**

- (1) This section applies if a court convicts a person of a prescribed offence.
- (2) The court may, on application by the prosecution, make either or both of the following orders against the defendant—
  - (a) a rehabilitation or restoration order;
  - (b) a monetary benefit order.
- (3) Subsection (4) applies if the court finds that, because of the act or omission constituting the offence, another person has—
  - (a) suffered a reduction in the value of, or damage to, property; or
  - (b) incurred costs or expenses in replacing or repairing property, or in preventing or minimising, or attempting to prevent or minimise, a reduction or damage mentioned in paragraph (a).
- (4) In addition to any order the court makes under subsection (2), the court may, on application by the prosecution, order the defendant to pay to the other person an amount of compensation the court considers appropriate for the reduction or damage suffered, or costs or expenses incurred.
- (5) An order under this section must state the period within which the order must be complied with.

(6) This section does not limit the court's powers under the *Penalties and Sentences Act 1992* or any other law.

(7) In this section—

***monetary benefit order*** 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.

***prescribed offence*** means an offence against section 41(1), 43(1), (2) or (3), 44(2) or (3), 45(2), 47(1), 48(1), 52(1), 53, 54(1), 66(1), 67(2) or (3), 101, 104(1), 167, 296(1) or 297(1).

***rehabilitation or restoration order*** means an order requiring the person against whom it is made to take stated action to rehabilitate or restore the land that was adversely affected because of the act or omission constituting the offence in relation to which the order is made.

## **259 Court may order recovery of chief executive's costs**

- (1) This section applies if a court convicts a person of an offence against this Act.
- (2) The court may order the person to pay an amount to the chief executive representing the reasonable costs the chief executive incurred in investigating and prosecuting the offence.

## **260 Chief executive may take action and recover costs**

- (1) This section applies if a rehabilitation or restoration order is made against a person under section 258, and the person fails to comply with the order within the period stated in the order.
- (2) The chief executive may carry out work or take any other action reasonably necessary to fulfil the requirements of the order.
- (3) The costs reasonably incurred by the chief executive in carrying out work or taking other action under subsection (2) are a debt payable by the person to the chief executive.

## **261 Restraint of contraventions of Act etc.**

- (1) A proceeding may be brought in a Magistrate's Court by a prescribed person for an order to remedy or restrain an offence against this Act, or a threatened or anticipated offence against this Act.
- (2) If the court is satisfied—
  - (a) an offence against this Act has been committed (whether or not it has been prosecuted); or
  - (b) an offence against this Act will be committed unless restrained;the court may make the orders it considers appropriate to remedy or restrain the offence.
- (3) An order—
  - (a) may direct the person against whom the order is made (the *defendant*)—
    - (i) to stop an activity that is or will be a contravention of this Act; or
    - (ii) to do anything required to comply with, or to cease a contravention of, this Act; and
  - (b) may be in the terms the court considers appropriate to secure compliance with this Act; and
  - (c) must specify the time by which the order is to be complied with; and
  - (d) may include an order for the defendant to pay the costs reasonably incurred by the chief executive in monitoring the defendant's actions in relation to the offence.
- (4) The court's power to make an order to stop an activity may be exercised whether or not—
  - (a) it appears to the court the defendant intends to engage, or to continue to engage, in the activity; or
  - (b) the defendant has previously engaged in an activity of that kind.



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- (5) The court's power to make an order to do anything may be exercised whether or not—
- (a) it appears to the court the defendant intends to fail, or to continue to fail, to do the thing; or
  - (b) the defendant has previously failed to do a thing of that kind.
- (6) Without limiting the powers of the court, the court may make an order—
- (a) restraining the use of plant or equipment or a place; or
  - (b) requiring the demolition or removal of plant or equipment, a structure or another thing; or
  - (c) requiring the rehabilitation or restoration of land.
- (7) The court's power under this section is in addition to its other powers.
- (8) A person must not contravene an order made under this section.
- Maximum penalty—3000 penalty units or 2 years imprisonment.
- (9) In this section—
- prescribed person***, in relation to a proceeding, means—
- (a) the Minister; or
  - (b) the chief executive; or
  - (c) someone whose interests are affected by the subject matter of the proceeding.

**262 Power of court to make order pending determination of proceeding**

- (1) This section applies if a proceeding has been brought by a person in a Magistrate's Court under section 261 and the court has not decided the proceeding.
- (2) On the person's application, the court may make an order of a kind mentioned in section 261 pending its deciding the

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proceeding if it is satisfied it would be proper to make the order.

- (3) The court's power to make an order to stop an activity may be exercised whether or not—
  - (a) it appears to the court the person against whom the order is made intends to engage, or to continue to engage, in the activity; or
  - (b) the person has previously engaged in an activity of that kind.
- (4) The court's power to make an order to do anything may be exercised whether or not—
  - (a) it appears to the court the person against whom the order is made intends to fail, or to continue to fail, to do the thing; or
  - (b) the person has previously failed to do a thing of that kind.
- (5) The court's power under this section is in addition to its other powers.
- (6) A person must not contravene an order made under this section.

Maximum penalty for subsection (6)—3000 penalty units or 2 years imprisonment.

## Chapter 14 Miscellaneous

### 263 Delegation by chief executive

- (1) The chief executive may delegate the chief executive's powers under this Act as the chief executive to—
  - (a) an appropriately qualified—
    - (i) authorised person; or

- (ii) public service officer; or
  - (b) a local government.
- (2) A delegation of a chief executive's power to a local government may permit the subdelegation of the power to an appropriately qualified entity.

## **264 General duties about documents or records**

- (1) A person must not, in relation to the administration of this Act, 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.

Maximum penalty—1665 penalty units.

- (2) A person who is required to keep a document under this Act must not, without a reasonable excuse—
- (a) keep it as an incorrect document; or
  - (b) destroy, alter or damage it; or
  - (c) give it to the chief executive or an authorised person if the information contained in it is incorrect or incomplete in a material particular.

Maximum penalty—1000 penalty units.

## **265 Giving chief executive false or misleading information**

- (1) A person must not, in relation to the administration of this Act, give the chief executive information, or a document containing information, that the person knows is false or misleading in a material particular.

Maximum penalty—1665 penalty units.

- (2) Subsection (1) applies to information or a document given in relation to the administration of this Act whether or not the information or document was given in response to a specific power under this Act.

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## **266 Protection of officials from liability**

- (1) An official does not incur civil liability for an act done, or omission made, honestly and without negligence under this Act.
- (2) If subsection (1) prevents a civil liability attaching to an official, the liability attaches instead to the State.
- (3) In this section—  
*official* means a following person—
  - (a) the Minister;
  - (b) the chief executive;
  - (c) an authorised person;
  - (d) a person acting under the direction of a person mentioned in paragraph (a), (b) or (c).

## **267 Summary proceedings for offences**

- (1) Proceedings for an offence against this Act are to be taken in a summary way under the *Justices Act 1886*.
- (2) A proceeding for an offence against this Act must start—
  - (a) within 1 year after the commission of the offence; or
  - (b) within 1 year after the offence comes to the complainant's knowledge, but within—
    - (i) for an offence against section 54—6 years after the commission of the offence; or
    - (ii) otherwise—2 years after the commission of the offence.

## **268 Executive officers must ensure corporation complies with Act**

- (1) The executive officers of a corporation must ensure the corporation complies with this Act.

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- (2) If a corporation commits an offence against a provision of this Act, each of the corporation's executive officers also commits an offence, namely, the offence of failing to ensure the corporation complies with the provision.

Maximum penalty—the penalty for the contravention of the provision by an individual.

- (3) Evidence the corporation has been convicted of an offence against a provision of this Act is evidence that each of the executive officers committed the offence of failing to ensure the corporation complies with the provision.

- (4) However, it is a defence for an executive officer to prove—

(a) if the officer was in a position to influence the conduct of the corporation in relation to the offence—the officer exercised reasonable diligence to ensure the corporation complied with the provision; or

(b) the officer was not in a position to influence the conduct of the corporation in relation to the offence.

- (5) In this section—

*executive officer*, of a corporation, means any person, by whatever name called and whether or not the person is a director of the corporation, who is concerned, or takes part, in the management of the corporation.

## **269 Application of Acts to local governments**

This Act, and for the purposes of this Act, other Acts apply to a local government in the same way as they apply to a body corporate.

## **270 Approval of forms**

The chief executive may approve forms for use under this Act.

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## **271 Regulation-making power**

- (1) The Governor in Council may make regulations under this Act.
- (2) Without limiting subsection (1), a regulation may provide for any of the following—
  - (a) the removal, collection, transport, deposit, storage or disposal of waste;
  - (b) setting standards, controls or procedures for the manufacture, generation, sale, use, transport, receipt, storage, treatment or disposal of waste, including for—
    - (i) local government administration of waste; or
    - (ii) waste tracking; or
    - (iii) dealing with polychlorinated biphenyls; or
    - (iv) managing clinical and related waste; or
    - (v) used packaging materials; or
    - (vi) storage, disposal, receipt or treatment of waste or equipment for dealing with waste;
  - (c) giving effect to, and enforcing compliance with, a national environment protection measure under a law forming part of a national scheme;
  - (d) supporting and implementing national frameworks, objectives and priorities for waste management and resource recovery;
  - (e) setting the amounts of performance payments that may be payable to entities and the efficiency indicators and targets relevant to eligibility for payment.
- (3) A regulation may provide—
  - (a) for fees payable under this Act and the matters for which they are payable; and
  - (b) for a maximum penalty of 20 penalty units for a contravention of the regulation.

- (4) Subject to the *National Measurement Act 1960* (Cwlth), a regulation may impose requirements for a weighbridge that are additional to requirements applying to the weighbridge under another Act or under a law of the Commonwealth.

## Chapter 15 Transitional provisions

### Part 1 Transitional provisions relating to approvals under the Environmental Protection (Waste Management) Regulation 2000

#### 272 Interpretation for pt 1

- (1) In this part—

*commencement* means the commencement of this part.

*Environmental Protection Act* means the *Environmental Protection Act 1994* as in force before the commencement.

*existing approval* means an existing general approval or an existing specific approval.

*existing general approval* means a general approval under the repealed provision in force immediately before the commencement.

*existing specific approval* means a specific approval under the repealed provision in force immediately before the commencement.

*repealed provision* means the *Environmental Protection (Waste Management) Regulation 2000*, part 6A, as in force before the commencement.

- (2) In this part, a reference to the Environmental Protection Act in relation to a right of review or appeal includes, if the context permits, a reference to the *Environmental Protection (Waste Management) Regulation 2000*, part 7, division 3, as in force before the commencement.

### **273 Matters relating to existing approvals**

- (1) On the commencement an existing approval is taken to be an approval of the same type granted under chapter 8 of this Act.
- (2) Subject to this Act, the existing approval remains in force for the remaining period of the approval.
- (3) Subsection (4) applies in relation to any transfer, amendment, cancellation or suspension of an existing approval (the *relevant action*) the process for which has commenced but has not been finalised under the repealed provision immediately before the commencement.
- (4) The relevant action may continue under the repealed provision as if this Act had not been enacted and the result of the relevant action applies to an existing approval as an approval under chapter 8 of this Act.
- (5) However, the review and appeal rights relating to the relevant action under the Environmental Protection Act continue to apply as if this Act had not been enacted.

### **274 Applications for approvals made before the commencement**

- (1) This section applies to an application for an approval made under the repealed provision, but not finally dealt with, before the commencement.
- (2) The application may continue to be dealt with under the repealed provision as if this Act had not been enacted.
- (3) If the approval is granted, it is taken to be an approval of the same type granted under chapter 8 of this Act.



- (4) The review and appeal rights relating to the application, or an approval granted on the application, under the Environmental Protection Act continue to apply as if this Act had not been enacted.

## **275    Reviews and appeals**

- (1) A review or appeal under the Environmental Protection Act relating to a matter under the repealed provision that has started but not been finalised before the commencement may continue as if this Act had not been enacted.
- (2) A right of appeal under the Environmental Protection Act relating to a decision on a review mentioned in subsection (1) continues as if this Act had not been enacted.
- (3) If, immediately before the commencement, a person has a right of review or appeal under the Environmental Protection Act relating to a matter under the repealed provision, the right continues as if this Act had not been enacted.
- (4) On a review or appeal mentioned in this part the reviewer or court may make any order necessary or convenient to be made to assist the transition of an approval under the repealed provision as an approval under chapter 8 of this Act.

## **276    Offences**

- (1) Proceedings for an offence against the repealed provision may be continued or started and the provisions of the Environmental Protection Act necessary or convenient to be used in relation to the proceedings continue to apply as if this Act had not been enacted.
- (2) For subsection (1), the *Acts Interpretation Act 1954*, section 20, applies, but does not limit the subsection.

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## **Part 2**

# **Discounted levy for residue waste disposal until 30 June 2014**

### **277 Definition for pt 2**

In this part—

*residue waste* means the waste from a recycling activity that is commonly disposed of to landfill after the recoverable components have been removed from material.

*Example of residue waste—*

In metal recycling, the residue waste is the mainly non-metal component that results from recycling products such as motor vehicles, whitegoods, televisions and computers that have reached the end of their useful life.

### **278 Application for discounting of waste levy amount**

- (1) A person who conducts a recycling activity may make an application (a *residue waste discounting application*) asking the chief executive to approve a discounted rate for the waste levy to residue waste identified in the application.
- (2) The application must be—
  - (a) in the approved form; and
  - (b) supported by enough information to allow the chief executive to decide the application; and
  - (c) accompanied by the fee prescribed under a regulation.
- (3) This section does not limit section 38(4).

### **279 Chief executive may require additional information**

- (1) The chief executive may, by notice given to the applicant within 10 business days after receiving the application, require the applicant under a residue waste discounting application to give the chief executive further reasonable

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information or documents about the application by a reasonable date stated in the notice.

- (2) The chief executive may refuse the application if the applicant does not give the chief executive the further information or documents by the stated date, or a later date agreed between the chief executive and the applicant, without reasonable excuse.
- (3) The applicant may, before the stated date, agree with the chief executive about extending the time for providing the further information.

## **280 Deciding application**

- (1) The chief executive must decide either to grant or refuse the application within 10 business days after the later of the following days—
  - (a) the day the chief executive receives the application;
  - (b) if additional information is requested under section 279—the day the chief executive receives the information.
- (2) A failure to make a decision under this section is taken to be a decision by the chief executive to refuse the application.
- (3) In deciding whether to grant the application, the chief executive must consider the following—
  - (a) the objects of this Act;
  - (b) the information included in the application;
  - (c) any criteria prescribed under a regulation (the *residue waste discounted levy rate criteria*).
- (4) The residue waste discounted levy rate criteria must include, for each type of residue waste, a residue waste efficiency threshold requirement to be met by the applicant.

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## **281 Grant of application**

- (1) If the chief executive grants the application, the chief executive must, within 5 business days, give the applicant notice of the grant stating the following—
  - (a) the application has been granted;
  - (b) the discounted rate of waste levy that is to apply to the residue waste the subject of the application, which must be the discounted rate prescribed under a regulation for the residue waste;
  - (c) the period of the approval, which must not exceed 1 year and must not apply after 30 June 2014;
  - (d) any conditions imposed on the approval.
- (2) Also, if the chief executive imposes any conditions on the approval, the notice must include or be accompanied by an information notice for the decision to impose the conditions.
- (3) However, subsection (2) does not apply to a condition that is the same, or substantially the same, as a condition agreed to or asked for by the applicant.

## **282 Refusal of application**

If the chief executive decides to refuse the application, the chief executive must, within 5 business days, give the applicant an information notice for the decision.

## **283 Cancellation of grant**

- (1) This section applies if the chief executive has granted a residue waste discounting application.
- (2) The chief executive may cancel the grant of the application if the chief executive considers there are reasonable grounds to cancel it.
- (3) Without limiting subsection (2), grounds may include—

- 
- (a) that there is a reasonable suspicion that the application was granted because of a false or misleading representation or declaration; or
  - (b) that the circumstances that were relevant to the granting of the application have changed; or
  - (c) that the conditions included in the granting of the application have not been complied with; or
  - (d) that it is desirable to cancel the grant having regard to the objects of this Act.

**284 Procedure for cancelling grant of residue waste discounting application**

- (1) This section applies if the chief executive proposes to cancel the grant of a residue waste discounting application.
- (2) The chief executive must give notice to the holder of the grant.
- (3) The notice must state the following—
  - (a) that the chief executive proposes to cancel the grant of the application;
  - (b) the grounds for the proposed cancellation;
  - (c) the facts and circumstances that form the basis for the grounds;
  - (d) when the proposed cancellation is intended to take effect;
  - (e) that the holder may make, within a stated period, written submissions to show why the proposed cancellation should not be carried out.
- (4) The stated period must end at least 15 business days after the holder is given the notice.
- (5) The chief executive must consider any submissions made under subsection (3)(e) within the stated period.
- (6) If the chief executive decides to cancel the grant of the application, the chief executive must, within 10 business days

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after making the decision, give the holder of the grant an information notice for the decision.

- (7) The decision takes effect when the information notice is given.

### **285 Automatic cancellation of grant**

The grant of a residue waste discounting application is automatically cancelled if the business of conducting a recycling activity that was relevant to the application ceases to be in the grant holder's ownership, including, for example, because the business is transferred into the ownership of another entity.

## **Part 3 Exemption from waste levy for residue waste until 30 June 2014**

### **286 Definition for pt 3**

In this part—

*transition period* means the period starting on 1 December 2011 and ending on 30 June 2014.

### **287 Application for approval of residue waste as exempt waste for transition period**

- (1) An entity that conducts a recycling activity may, not later than 30 June 2012, make an application (a *transition period exempt residue waste application*) to the chief executive asking the chief executive to approve that residue waste identified in the application is exempt waste in the transition period.

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- (2) A transition period exempt residue waste application must be an application for an approval having effect for a period ending not later than 30 June 2014.
  - (3) The application must—
    - (a) be in the approved form; and
    - (b) state the name, location and activities of the applicant's facilities that produce residue waste; and
    - (c) state the amount and type of residue waste the subject of the application that is expected to be produced in the period for which the approval is to have effect; and
    - (d) include information that shows the following—
      - (i) conduct of a recycling activity by the applicant on or before 1 December 2011;
      - (ii) that the applicant meets any residue waste efficiency threshold requirements under the residue waste discounted levy rate criteria;
      - (iii) that payment of the waste levy on the residue waste, even at the discounted rate available under part 2, would cause the applicant financial hardship to an extent that would stop its business from operating;
      - (iv) the applicant has put measures in place to progressively minimise the amount of its residue waste generation.

## **288 Chief executive may require additional information**

- (1) The chief executive may, by notice, require the applicant to give the chief executive further reasonable information or documents about the application.
- (2) The chief executive may refuse the application if the applicant does not give the chief executive the further information or documents, without reasonable excuse.

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## **289 Deciding application**

- (1) The chief executive must decide either to grant or refuse the application within a time that is reasonable in the circumstances.
- (2) A failure to make a decision under this section is taken to be a decision by the chief executive to refuse the application.
- (3) In deciding whether to grant the application, the chief executive must consider the following—
  - (a) the objects of this Act;
  - (b) the information included in the application;
  - (c) whether adequate measures have been put in place to progressively minimise the amount of the applicant's residue waste generation.
- (4) Also, the chief executive may consult with any expert reference group or other entity the chief executive considers suitable to provide advice in relation to financial hardship.
- (5) In deciding to grant the application, the chief executive must be satisfied of the following—
  - (a) conduct of a recycling activity by the applicant on or before 1 December 2011;
  - (b) that the applicant meets any residue waste efficiency threshold requirements under the residue waste discounted levy rate criteria;
  - (c) that payment of the waste levy on the residue waste, even at the discounted rate available under part 2, would cause the applicant financial hardship to an extent that would stop its business from operating.

## **290 Grant of application**

- (1) If the chief executive grants the application, the chief executive must give the applicant notice of the grant stating the following—



- (a) the application has been granted;
  - (b) the period, which must end on or before the end of the transition period, for which the residue waste identified in the application is approved to be exempt waste;
  - (c) any conditions imposed on the approval including any limits on the types and amounts of residue waste that may be disposed of as exempt waste in the period mentioned in paragraph (b).
- (2) Also, if the chief executive imposes any conditions on the approval, the notice must include or be accompanied by an information notice for the decision to impose the conditions.
- (3) However, subsection (2) does not apply to a condition that is the same, or substantially the same, as a condition agreed to or asked for by the applicant.

## **291 Refusal of application**

If the chief executive decides to refuse the application, the chief executive must give the applicant an information notice for the decision.

## **292 Cancellation of grant**

- (1) This section applies if the chief executive has granted a transition period exempt residue waste application.
- (2) The chief executive may cancel the grant of the application if the chief executive considers there are reasonable grounds to cancel it.
- (3) Without limiting subsection (2), grounds may include—
- (a) that there is a reasonable suspicion that the application was granted because of a false or misleading representation or declaration; or
  - (b) that the circumstances that were relevant to the granting of the application have changed; or

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- (c) that the limits or conditions included in the granting of the application have not been complied with; or
- (d) that it is desirable to cancel the grant having regard to the objects of the Act.

### **293 Procedure for cancelling grant of transition period exempt waste application**

- (1) This section applies if the chief executive proposes to cancel the grant of a transition period exempt residue waste application.
- (2) The chief executive must give notice to the holder of the grant.
- (3) The notice must state the following—
  - (a) that the chief executive proposes to cancel the grant of the application;
  - (b) the grounds for the proposed cancellation;
  - (c) the facts and circumstances that form the basis for the grounds;
  - (d) when the proposed cancellation is intended to take effect;
  - (e) that the holder may make, within a stated period, written submissions to show why the proposed cancellation should not be taken.
- (4) The stated period must end at least 15 business days after the holder is given the notice.
- (5) The chief executive must consider any submissions made under subsection (3)(e) within the stated period.
- (6) If the chief executive decides to cancel the grant of the application, the chief executive must, within 10 business days after making the decision give the holder of the grant an information notice for the decision.
- (7) The decision takes effect when the information notice is given.

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**294 Automatic cancellation of grant**

The grant of a transition period exempt residue waste application is automatically cancelled if the business of conducting a recycling activity that was relevant to the application ceases to be in the grant holder's ownership, including, for example, because the business is transferred into the ownership of another entity.

**Part 4 General provisions**

**295 Existing waste management strategy and business plan**

- (1) The document in existence as a document of the department immediately before the commencement of this section and known as Queensland's Waste Reduction and Recycling Strategy 2010–2020—
  - (a) is taken to be the State's first waste management strategy under this Act; and
  - (b) has effect as if it had been made under this Act on the commencement of this section.
- (2) The document in existence as a document of the department immediately before the commencement of this section and known as the Business Plan for Queensland's Waste Reduction and Recycling Strategy 2010–2020—
  - (a) is taken to be the State's first WMS business plan under this Act; and
  - (b) has effect as if it had been made under this Act on the commencement of this section.

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**296 Volumetric survey of levyable waste disposal site before waste levy commencement**

- (1) The operator of a levyable waste disposal site located within the waste levy zone must, in compliance with the requirements stated in this section—
  - (a) within the period of 14 days immediately preceding 1 December 2011, ensure that a volumetric survey is carried out for—
    - (i) each active landfill cell at the site; and
    - (ii) all stockpiled waste at the site; and
  - (b) before the end December 2011, give the chief executive a copy of the results of the survey in the approved form.

Maximum penalty—200 penalty units.

- (2) The volumetric survey must be performed in compliance with the requirements prescribed under a regulation.
- (3) The results of the volumetric survey must—
  - (a) be in electronic form; and
  - (b) include a topographical plan complying with specifications advised by the chief executive; and
  - (c) include advice of the following—
    - (i) the area of the levyable waste disposal site;
    - (ii) the site's landfill capacity;
    - (iii) the stockpiles of waste on the site; and
  - (d) be certified as accurate by a surveyor under the *Surveyors Act 2003*.
- (4) The operator of the levyable waste disposal site must ensure that a copy of the results of the volumetric survey is kept as a document in hard copy form at the levyable waste disposal site for 5 years after the survey is performed.

Maximum penalty—200 penalty units.

- (5) Subsections (6) and (7) apply if the operator of a levyable waste disposal site fails to comply with subsection (1).
- (6) The chief executive may arrange for the volumetric survey to be carried out at the site and for that purpose may direct an authorised person to enter the site and carry out the survey.
- (7) The chief executive may recover the cost of the survey from the operator as a debt payable by the operator to the State.

**297 Volumetric survey of resource recovery area before waste levy commencement**

- (1) The entity having responsibility for the operation of a resource recovery area must, in compliance with the requirements stated in this section—
  - (a) within the period of 14 days immediately preceding 1 December 2011, ensure that a volumetric survey is carried out for all stockpiled waste on the area; and
  - (b) before the end December 2011, give the chief executive a copy of the results of the survey in the approved form.

Maximum penalty—200 penalty units.

- (2) The volumetric survey must be performed in compliance with the requirements prescribed under a regulation.
- (3) The results of the volumetric survey must—
  - (a) be in electronic form; and
  - (b) include a topographical plan complying with specifications advised by the chief executive; and
  - (c) include advice of the following—
    - (i) the area of the resource recovery area;
    - (ii) the stockpiles of waste on the area; and
  - (d) be certified as accurate by a surveyor under the *Surveyors Act 2003*.

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- (4) The entity having responsibility for a resource recovery area must ensure that a copy of the results of the volumetric survey is kept as a document in hard copy form at the levyable waste disposal site whose operator declared the resource recovery area for 5 years after the survey is performed.

Maximum penalty—200 penalty units.

- (5) Subsections (6) and (7) apply if the entity having responsibility for a resource recovery area fails to comply with subsection (1).
- (6) The chief executive may arrange for the volumetric survey to be carried out at the resource recovery area and for that purpose may direct an authorised person to enter the resource recovery area and carry out the survey.
- (7) The chief executive may recover the cost of the survey from the entity as a debt payable by the entity to the State.

## **298 Temporary relaxation from s 45(2) requirements for small site**

Until 30 June 2014, the operator of a small site is not required to comply with the requirement of section 45(2) to measure and record waste in compliance with the weight measurement criteria prescribed under a regulation if all of the following apply—

- (a) the operator has, before 1 December 2011, notified the chief executive of a proposed alternative methodology for measuring and recording waste at the site;
- (b) the notification to the chief executive identifies the small site and includes details of the proposed alternative methodology;
- (c) the proposed alternative methodology enables 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;

- 
- (d) the operator is implementing the alternative methodology in accordance with its terms.

### **299 Offences against repealed littering provisions**

- (1) Proceedings for an offence against any of the repealed littering provisions may be continued or started, and the provisions of the Environmental Protection Act and the *State Penalties Enforcement Act 1999* necessary or convenient to be used in relation to the proceedings continue to apply, as if this Act had not been enacted.
- (2) For subsection (1), the *Acts Interpretation Act 1954*, section 20, applies, but does not limit the subsection.

### **300 Existing strategic plans under repealed waste management policy**

- (1) For 1 year after the commencement of this section, part 7, division 1 of the repealed waste management policy, and any waste management strategic plan in force for a local government area under the repealed policy, continues to have effect as if this Act had not been enacted.
- (2) Subsection (1) has effect in a local government area other than in relation to any aspect of waste management in the local government area that is the subject of a waste reduction and recycling plan that comes into force under this Act.
- (3) For 1 year after the commencement of this section, part 7, division 2 of the repealed waste management policy, and any strategic plan for managing a department's waste in force for a department under the repealed policy, continues to have effect as if this Act had not been enacted.
- (4) Subsection (3) has effect for a department other than in relation to any aspect of waste management for the department that is the subject of a waste reduction and recycling plan that comes into force under this Act.

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### **301 Clinical and related waste management plan**

- (1) This section applies if—
  - (a) immediately before the commencement of this section, there was in force for an entity a clinical and related waste management plan (the *clinical plan*) under the *Environmental Protection (Waste Management) Regulation 2000*, part 5, division 1; and
  - (b) the entity is a planning entity under this Act.
- (2) Unless the entity sooner adopts a waste reduction and recycling plan under this Act, the clinical plan has effect as a waste reduction and recycling plan for the entity as if it had been adopted by the entity in compliance with this Act.

## **Chapter 16 Repeal and amendment of other legislation**

### **Part 1 Repeal**

#### **302 Repeal**

The Environmental Protection (Waste Management) Policy 2000, SL No. 180 is repealed.

### **Part 4 Amendment of Forestry Act 1959**

*Editor's note—*

This part had not commenced on or before the reprint date.



**316 Act amended**

*This part amends the Forestry Act 1959.*

**317 Replacement of s 32AA (Chief executive to notify chief executive (lands) of change to State forest)**

*Section 32AA—*

*omit, insert—*

**‘32AA Chief executive to lodge document for setting apart and declaration or change**

*‘(1) This section applies if a regulation is made under this part for—*

*(a) the setting apart and declaration of a State forest or timber reserve; or*

*(b) the revocation, amalgamation or other change to a State forest or timber reserve.*

*‘(2) The chief executive must lodge for registration with the chief executive (lands) a document evidencing the setting apart and declaration, revocation, amalgamation or other change.*

*‘(3) The document must—*

*(a) be lodged as soon as practicable after the regulation is made; and*

*(b) comply with any requirements of the chief executive (lands).*

*‘(4) If a revocation, amalgamation or other change to a State forest or timber reserve affects a part of a lot within the meaning of the Land Act 1994, the document lodged must be accompanied by a plan of subdivision for the change.*

**‘32AB When setting apart and declaration, revocation or amalgamation etc. takes effect**

*‘The setting apart and declaration of, or revocation, amalgamation or other change to, a State forest or timber*

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*reserve takes effect on registration of the document evidencing the declaration or change under the Land Act 1994, section 279A.*

**318 Amendment of pt 6B, hdg (Natural resource products)**

*Part 6B, heading—*

*omit, insert—*

**‘Part 6B                      Agreements about forest products’.**

**319 Amendment of s 61J (Agreement about natural resource products)**

*Section 61J, ‘natural resource’—*

*omit, insert—*

*‘forest’.*

**320 Insertion of new pt 6C**

*After part 6B—*

*insert—*

**‘Part 6C                      Carbon abatement products**

**‘Division 1                  Preliminary**

**‘61K Definitions for pt 6C**

*‘In this part—*

*carbon abatement product means all or any of the following—*

*(a) living biomass;*

- (b) *dead organic matter;*
- (c) *soil;*
- (d) *carbon sequestration by, and carbon stored in, a carbon abatement product mentioned in paragraphs (a) to (c).*

**owner, of land, means—**

- (i) *if the land is registered in the freehold land register—the registered owner of the land; or*
- (ii) *if the land is vested in fee simple—the vested person for the land; or*
- (iii) *if the land is the subject of a lease other than a State lease under the Land Act 1994—the lessee of the land; or*
- (iv) *if the land is a reserve under the Land Act 1994—the trustee of the reserve; or*
- (v) *if the land is the subject of an occupation licence under the Land Act 1994—the licensee.*

#### **‘61L Chief executive may keep guidelines**

- ‘(1) *The chief executive may keep guidelines about the making of an application under this part.*
- ‘(2) *The Land Act 1994, section 420B applies to the chief executive for the guidelines—*
  - (a) *as if a reference to the chief executive in that section were a reference to the chief executive administering this Act; and*
  - (b) *with other necessary changes.*

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**‘Division 2                    Applying for and obtaining right to  
deal with carbon abatement  
products**

**‘61M   Applying for right**

- ‘(1) *The owner of land may apply to the chief executive to be granted a right to deal with carbon abatement product on the land.*
- ‘(2) *The application must be in the approved form.*

**‘61N   Deciding application**

- ‘(1) *The chief executive must decide whether to approve the application.*
- ‘(2) *In deciding the application, the chief executive must consider whether the land the subject of the application will, or is likely to, be used or dealt with under this Act in a way that is inconsistent with the grant of the proposed right.*
- ‘(3) *The chief executive may grant the application subject to conditions.*

**‘61O   Notice of decision**

- ‘(1) *As soon as practicable after deciding the application, the chief executive must give written notice of the decision to—*
- (a) *the applicant; and*
- (b) *if the chief executive approves the application—*
- (i) *for an application relating to land registered in the freehold land register—the registrar of titles; or*
- (ii) *for an application relating to land registered in the land registry under the Land Act 1994—the chief executive (lands).*
- ‘(2) *The notice must state—*

- 
- (a) *the decision; and*
  - (b) *if the chief executive refuses the application, or approves the application with conditions not agreed to in writing by the applicant—*
    - (i) *the reasons for the decision; and*
    - (ii) *that the applicant may seek an internal review of the decision; and*
    - (iii) *how the review is started.*

### **‘Division 3                    Internal reviews of decisions on application**

#### **‘61P    Applying for internal review**

- ‘(1) *The applicant may apply to the Minister for an internal review of the chief executive’s decision.*
- ‘(2) *The application must—*
  - (a) *be made within 42 days after notice of the decision was given to the applicant, or any longer period allowed by the Minister; and*
  - (b) *be written; and*
  - (c) *include details of the grounds on which the applicant seeks review of the decision.*

#### **‘61PA    Decision on reconsideration**

- ‘(1) *After reviewing the decision (the **original decision**), the Minister must make a further decision (the **review decision**) to confirm the original decision or substitute a new decision.*
- ‘(2) *The Minister must immediately give written notice of the review decision to—*
  - (a) *the applicant; and*

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- (b) *if notice of the original decision was given to the registrar of titles or chief executive (lands) and the review decision is to substitute a new decision—*
- (i) *for an application relating to freehold land—the registrar of titles; or*
- (ii) *for an application relating to land registered in the land registry under the Land Act 1994—the chief executive (lands).’.*

**321 Insertion of new pt 10, div 3**

*After part 10, division 2—*

*insert—*

**‘Division 3                      Amendments under Waste  
Reduction and Recycling Act 2011**

**‘133 Existing State forest or timber reserve**

- ‘(1) *This section applies to a State forest or timber reserve declared and set apart under this Act as in force immediately before the commencement of this section.*
- ‘(2) *As soon as practicable after the commencement, the chief executive must give the chief executive (lands) written notice of the existence of the State forest or timber reserve.*
- ‘(3) *To remove any doubt, it is declared that section 32AB does not apply to the State forest or timber reserve.’.*

**322 Amendment of sch 3 (Dictionary)**

- (1) *Schedule 3, definitions carbon sequestration and owner—*  
*omit.*
- (2) *Schedule 3—*  
*insert—*  
***‘carbon abatement product, for part 6C, see section 61K.***



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**324 Amendment of s 275 (Registers comprising land registry)**

- (1) Section 275(c) to (h)—  
*renumber as section 275(g) to (l).*
- (2) Section 275(ba)—  
*omit, insert—*  
*‘(c) a register of State forests and timber reserves;*  
*(d) a register of nature conservation areas;*  
*(e) a register of specified national parks;*  
*(f) a register of land that has been vested in fee simple;’.*

**325 Amendment of s 276 (Registers to be kept by chief executive)**

- (1) Section 276(c) to (h)—  
*renumber as section 276(g) to (l).*
- (2) Section 276(ba)—  
*omit, insert—*  
*‘(c) a register of State forests and timber reserves;*  
*(d) a register of nature conservation areas;*  
*(e) a register of specified national parks;*  
*(f) a register of land that has been vested in fee simple;’.*

**326 Insertion of new s 279A**

*After section 279—*

*insert—*

**‘279A Registration of documents lodged or matters notified under particular Acts**

- ‘(1) If a document is lodged with the chief executive under a provision of the Forestry Act 1959 or Nature Conservation Act*



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*1992, the chief executive must register the document in the appropriate register.*

- ‘(2) If the chief executive is notified of a matter under a provision of the Forestry Act 1959 or Nature Conservation Act 1992 that affects land registered in the land registry, the chief executive must record the matter in the appropriate register.’*

**327 Insertion of new s 280A**

*After section 280—*

*insert—*

**‘280A Particulars that must be recorded for specified national parks**

- ‘(1) This section applies to land within a specified national park, the particulars of which are registered in more than 1 appropriate register.*
- ‘(2) The chief executive must record in each appropriate register particulars sufficient to identify the information kept in each of the other appropriate registers relating to the land.’*

**328 Amendment of s 373E (Application of div 8B)**

*Section 373E, ‘a natural resource product’—*

*omit, insert—*

*‘forest products’.*

**329 Amendment of s 373F (Definitions for div 8B)**

*Section 373F, definitions carbon sequestration and natural resource product—*

*omit.*

**330 Amendment of s 373E (Application of div 8B)**

*Section 373E, ‘natural resource product’—*

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*omit, insert—  
'forest product'.*

### **331 Insertion of new ch 6, pt 4, div 8C**

*Chapter 6, part 4—  
insert—*

## **'Division 8C Carbon abatement interests**

### **'Subdivision 1 Preliminary**

#### **'373R Definitions for div 8C**

*'In this division—*

***carbon abatement interest**, for land, means an interest in the land consisting of the exclusive right to the economic benefits associated with carbon sequestration on the land.*

***carbon abatement product** means all or any of the following—*

- (a) living biomass;*
- (b) dead organic matter;*
- (c) soil;*
- (d) carbon sequestration by, and carbon stored in, a carbon abatement product mentioned in paragraphs (a) to (c).*

***carbon sequestration**, for living biomass, dead organic matter or soil, includes—*

- (a) the process by which the biomass, matter or soil removes and stores carbon dioxide from the atmosphere; and*
- (b) the use of the biomass, matter or soil to avoid, reduce or eliminate greenhouse gas emissions.*

**owner—**

- (a) *of freehold land, means the registered owner of the land; or*
- (b) *of land vested in fee simple—the vested person for the land; or*
- (c) *of non-freehold land, means the State and any of the following—*
  - (i) *if the land is the subject of a lease other than a State lease—the lessee of the land; or*
  - (ii) *if the land is a reserve—the trustee of the reserve; or*
  - (iii) *if the land is the subject of an occupation licence—the licensee.*

## **‘Subdivision 2      Creation and registration**

### **‘373S Creation only by registration**

- ‘(1) *A carbon abatement interest for land—*
  - (a) *is created by registering the document creating the interest in the appropriate register; and*
  - (b) *can not be created other than under this division.*
- ‘(2) *A document creating a carbon abatement interest must—*
  - (a) *be validly executed; and*
  - (b) *include—*
    - (i) *a description adequate to identify the land the subject of the interest; and*
    - (ii) *the terms of the interest, including the right to use the land; and*
    - (iii) *the period for which the interest is granted.*

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- ‘(3) *If the carbon abatement interest relates to a part of a lot, the document may only be registered if—*
- (a) a plan of survey has been registered, designating the part of the lot as being the subject of a carbon abatement interest; and*
  - (b) the document includes a description identifying the part of the lot designated on the registered plan of survey.*
- ‘(4) *This section does not limit the matters that the appropriate form for a document creating a carbon abatement interest may require to be included in the document.*

### **‘373T Consent of relevant Minister required**

- ‘(1) *A document creating a carbon abatement interest for land must not be registered without the consent of the following (each a **relevant Minister**)—*
- (a) if the land is within a State forest, timber reserve or forest entitlement area—the Minister administering the Forestry Act 1959;*
  - (b) if the land is within a nature conservation area or specified national park—the Minister administering the Nature Conservation Act 1992;*
  - (c) if the land is unallocated State land, trust land, lease land or licence land—the Minister.*
- ‘(2) *In deciding whether to consent to the registration of a carbon abatement interest, the relevant Minister must consider whether the land will, or is likely to, be used or dealt with in a way that is inconsistent with the proposed carbon abatement interest.*
- ‘(3) *Consent by a relevant Minister under this section may be given subject to conditions.*

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**‘373U Requirements for registration**

*‘The chief executive may register a document creating a carbon abatement interest for land only if—*

- (a) the proposed grantor of the interest is an owner of the land; and*
- (b) the chief executive is satisfied the proposed grantor is the holder of the right to deal with carbon abatement product on the land; and*
- (c) all holders of a registered interest in the land whose interest may be affected by the proposed carbon abatement interest consent to the proposed grant; and*
- (d) there are no existing carbon abatement interests registered for the part of land to which the proposed carbon abatement interest relates.*

**‘373V Additional requirements if granted by lessee of term lease**

*‘(1) This section applies if—*

- (a) an owner who is the lessee of a term lease proposes to grant a carbon abatement interest for land; and*
- (b) the proposed interest is for a period greater than the remaining term of the term lease.*

*‘(2) The document creating the interest may be registered only if the State—*

- (a) is a party to the interest; and*
- (b) has approved the terms of the document.*

**‘373W Grantor and grantee may be the same**

*‘A carbon abatement interest may be registered even though the proposed grantor and proposed grantee of the interest are the same.*

### **‘Subdivision 3      Amendments and dealings**

#### **‘373X Amending interest**

- ‘(1) A carbon abatement interest may be amended only by registering a document amending the carbon abatement interest.*
- ‘(2) However, the amendment can not—*
  - (a) increase or decrease the area of land the subject of the interest; or*
  - (b) add or remove a party to the interest.*

#### **‘373Y Surrendering or removing interest**

- ‘(1) On lodgement of a document surrendering a carbon abatement interest to which land is subject, the chief executive may register the surrender to the extent shown in the document.*
- ‘(2) On registration of the document the interest is surrendered to the extent shown in the document.*
- ‘(3) Also, the chief executive may remove a carbon abatement interest from land if—*
  - (a) a request to remove the carbon abatement interest is lodged that establishes—*
    - (i) the period of time for which the interest was intended to exist has ended; or*
    - (ii) an event upon which the interest was intended to end has happened; or*
  - (b) the chief executive receives a request to remove the interest under an Act of the Commonwealth.*

#### **‘373Z Continuation of interest**

- ‘(1) This section applies if—*

- (a) *a change happens for land or an interest in land registered in an appropriate register (a **registration change**), resulting in—*
- (i) *the cancellation of the particulars for the land or interest in the appropriate register; and*
  - (ii) *if the change relates to land—the registration of the particulars in another appropriate register; and*

*Examples of a registration change for land—*

- *a national park is revoked under the Nature Conservation Act 1992, resulting in the removal of the particulars of the land from the register of nature conservation areas, and the registration of the particulars in the register of unallocated State land*
- *a deed of grant in trust is surrendered, resulting in the removal of the particulars of the interest from the freehold land register, and registration of the particulars in the register of unallocated State land*

- (b) *a carbon abatement interest is registered for the land or interest.*

‘(2) *However, this section does not apply in relation to a carbon abatement interest to which the State is a party under section 373V(2).*

‘(3) *If a registration change happens for land or an interest in land, the relevant Minister for the land may give written approval for the interest to continue.*

‘(4) *If the carbon abatement interest is continued under subsection (3), the continuation must be recorded in the appropriate register.*

### **‘373ZA Dealing with a carbon abatement interest**

‘(1) *The holder of a carbon abatement interest for land may transfer, mortgage or pass to a beneficiary the holder’s interest over the land.*

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- (2) *However, before dealing with the interest the grantee must obtain the consent of the relevant Minister for the land.*
- (3) *Divisions 1 and 4 and sections 377 to 380 apply to a dealing with a carbon abatement interest—*
- (a) *as if the interest were a lease; and*
  - (b) *as if a reference to a lessee were a reference to the holder of the interest; and*
  - (c) *with other necessary changes.’.*

### **332 Insertion of new ch 9, pt 1J**

*Chapter 9—*

*insert—*

#### **‘Part 1J                      Transitional provision for amendments under Waste Reduction and Recycling Act 2011**

#### **‘521ZC Existing profit a prendre relating to natural resource product**

- (1) *This section applies to a profit a prendre relating to a natural resource product registered under chapter 6, part 4, division 8B as in force immediately before the commencement of this section (previous part 4, division 8B).*
- (2) *Previous part 4, division 8B continues to apply for the profit a prendre as if the Waste Reduction and Recycling Act 2011 had not been enacted.’.*

### **333 Amendment of sch 6 (Dictionary)**

- (1) *Schedule 6, definitions appropriate register, carbon sequestration and natural resource product—*



*omit.*

(2) *Schedule 6—*

*insert—*

***‘appropriate register means—***

- (a) *for leases and matters relating to leases—the leasehold land register;*
- (b) *for reserves and matters relating to reserves—the register of reserves;*
- (c) *for State forests and timber reserves and matters relating to State forests and timber reserves—the register of State forests and timber reserves;*
- (d) *for nature conservation areas and matters relating to specified protected areas—the register of nature conservation areas;*
- (e) *for specified national parks and matters relating to specified national parks—the register of specified national parks;*
- (f) *for licences and permits and matters relating to licences and permits—the register of licences and permits;*
- (g) *for unallocated State land and matters relating to unallocated State land—the register of unallocated State land;*
- (h) *for State housing leases and matters relating to State housing leases—the register of State housing leases;*
- (i) *for land vested in fee simple and matters relating to the land—the register of land vested in fee simple.*

***carbon abatement interest***, for chapter 6, part 4, division 8C, see section 373R.

***carbon abatement product***, for chapter 6, part 4, division 8C, see section 373R.

***carbon sequestration***, for chapter 6, part 4, division 8C, see section 373R.

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*forest products*, for chapter 6, part 4, division 8B, see the *Forestry Act 1959*.

*nature conservation area* means the following under the *Nature Conservation Act 1992*—

- (a) *national parks (scientific)*;
- (b) *national parks*;
- (c) *national parks (recovery)*;
- (d) *conservation parks*;
- (e) *resources reserves*;
- (f) *forest reserves*.

*owner*, for chapter 6, part 4, division 8C, see section 373R.

*relevant Minister*, for land for chapter 6, part 4, division 8C, see section 373T(1).

*specified national parks* means the following under the *Nature Conservation Act 1992*—

- (a) *national parks (Aboriginal land)*;
  - (b) *national parks (Torres Strait Islander land)*;
  - (c) *national parks (Cape York Peninsula Aboriginal land)*;
  - (d) *indigenous joint management areas*.’
- (3) *Schedule 6, definition national park, paragraphs (c) and (d)*—  
*omit.*
- (4) *Schedule 6, definition national park, paragraph (e)*—  
*renumber as paragraph (c).*



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*carbon sequestration*, by living biomass, dead organic matter or soil, includes—

- (a) *the process by which the biomass, matter or soil removes and stores carbon dioxide from the atmosphere; or*
- (b) *the use of the biomass, matter or soil to avoid, reduce or eliminate greenhouse gas emissions.*

## **‘Subdivision 2      Creation and registration**

### **‘970      Creation only by registration**

- ‘(1) *A carbon abatement interest over a lot—*
  - (a) *is created by registering an instrument of carbon abatement interest for the lot; and*
  - (b) *can not be created other than under this division.*
- ‘(2) *An instrument of carbon abatement interest must—*
  - (a) *be validly executed; and*
  - (b) *include—*
    - (i) *a description sufficient to identify the lot the subject of the interest; and*
    - (ii) *the terms of the interest; and*
    - (iii) *the period for which the interest is granted.*
- ‘(3) *If the carbon abatement interest relates to a part of a lot, the instrument may only be registered if—*
  - (a) *a plan of survey has been registered, designating the part of the lot as being the subject of a carbon abatement interest; and*
  - (b) *the instrument includes a description identifying the part of the lot designated on the registered plan of survey.*

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*‘(4) This section does not limit the matters that the appropriate form for an instrument of carbon abatement interest may require to be included in the instrument.*

**‘97P Requirements for registration**

*‘The registrar may register an instrument creating a carbon abatement interest for a lot only if—*

- (a) the proposed grantor of the interest is the registered owner of the lot; and*
- (b) the registrar is satisfied the registered owner is the holder of the right to deal with the carbon abatement product for the lot; and*
- (c) all holders of a registered interest in the land whose interest may be affected by the proposed carbon abatement interest consent to the proposed grant; and*
- (c) there are no existing carbon abatement interests registered for the part of the lot to which the proposed carbon abatement interest relates.*

**‘97Q Grantor and grantee may be the same**

*‘A carbon abatement interest may be registered even though the proposed grantor and proposed grantee of the interest are the same.*

**‘97R Particular interests not to be registered**

- ‘(1) This section applies in relation to land in the area of a specified national park.*
- ‘(2) The registrar must not register a carbon abatement interest for the land in the freehold land register.*

### **‘Subdivision 3      Amendments and dealings**

#### **‘97S      Amending interest**

- ‘(1) *A carbon abatement interest may be amended by registering an instrument of amendment of the carbon abatement interest.*
- ‘(2) *However, the amendment can not—*
  - (a) *increase or decrease the area of land the subject of the interest; or*
  - (b) *add or remove a party to the interest.*

#### **‘97U      Surrendering or removing an interest**

- ‘(1) *On lodgment of an instrument surrendering a carbon abatement interest to which a lot is subject, the registrar may register the surrender to the extent shown in the instrument of surrender.*
- ‘(2) *On registration of the instrument of surrender the interest is surrendered to the extent shown in the document.*
- ‘(3) *Also, the registrar may remove a carbon abatement interest from the indefeasible title of a lot if—*
  - (a) *a request to remove the carbon abatement interest is lodged, and the request establishes that—*
    - (i) *the period of time for which the carbon abatement interest was intended to exist has ended; or*
    - (ii) *an event upon which the carbon sequestration was intended to end has happened; or*
  - (b) *the registrar receives a request to remove the interest under an Act of the Commonwealth.’.*

### **336      Amendment of sch 6 (Dictionary)**

*Schedule 6—*



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- (c) *the amalgamation or other change to a protected area under section 32; or*
- (d) *the appointment or revocation of trustees under section 31.*
- ‘(2) *The chief executive must lodge for registration with the chief executive (lands) a document evidencing the matter the subject of the regulation.*
- ‘(3) *The document must—*
  - (a) *be lodged as soon as practicable after the regulation is made; and*
  - (b) *comply with any requirements of the chief executive (lands).*
- ‘(4) *If the dedication, revocation, amalgamation or other change to a protected area affects a part of a lot within the meaning of the Land Act 1994, the document lodged must be accompanied by a plan of subdivision for the change.*

**‘33B When dedication, revocation or amalgamation etc. takes effect**

- ‘(1) *A dedication, revocation, or amalgamation or other change to a protected area made under this subdivision takes effect on registration, under the Land Act 1994, section 279A, of the document evidencing the dedication, revocation, amalgamation or other change.*
- ‘(2) *Also, an appointment or revocation of trustees under section 31 takes effect on registration, under the Land Act 1994, section 279A, of the document evidencing the appointment or revocation.’*

**339 Insertion of new s 37A**

*After section 37—*

*insert—*



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**‘37A Leases must be registered**

*‘As soon as practicable after a lease is granted under section 34 or 35, or renewed under section 37, the executive must lodge the lease or renewed lease with the chief executive (lands) for registration.’*

**340 Insertion of new pt 4, div 2, sdiv 4A**

*Part 4, division 2—*

*insert—*

**‘Subdivision 4A Carbon abatement products**

**‘39D Definition for sdiv 4A**

*‘In this subdivision—*

*owner, of land in the area of a conservation park or resources reserve, means the trustee appointed for the land under section 31.*

**‘39E Chief executive may keep guidelines**

- ‘(1) The chief executive may keep guidelines about the making of an application under this part.*
- ‘(2) The Land Act 1994, section 420B applies to the chief executive for the making of the guidelines—*
  - (a) as if a reference to the chief executive in that section were a reference to the chief executive administering this Act; and*
  - (b) with other necessary changes.*

**‘39F Application for right to deal with carbon abatement products**

- ‘(1) An owner may apply to the chief executive to be granted a right to deal with carbon abatement products on the land.*

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*‘(2) The application must be in the approved form.*

**‘39G Deciding application**

*‘(1) The chief executive must decide whether to approve the application.*

*‘(2) In deciding the application, the chief executive must consider whether the land the subject of the application will, or is likely to, be used or dealt with under this Act in a way that is inconsistent with the grant of the proposed right.*

*‘(3) The chief executive may grant the application subject to conditions.*

**‘39H Notice of decision**

*‘(1) As soon as practicable after deciding the application, the chief executive must give written notice of the decision to the following—*

*(a) the applicant; and*

*(b) if the chief executive approves the application—*

*(i) for an application relating to land registered in the freehold land register—the registrar of titles; or*

*(ii) for an application relating to land registered in the land registry under the Land Act 1994—the chief executive (lands).*

*‘(2) The notice must state—*

*(a) the decision; and*

*(b) if the chief executive refuses the application, or approves the application with conditions not agreed to in writing by the applicant—*

*(i) the reasons for the decision; and*

*(ii) that the applicant may seek an internal review of the decision; and*

(iii) *how the review is started.*

**‘39I Internal review of chief executive’s decision**

- ‘(1) *The applicant may apply to the Minister for an internal review of the chief executive’s decision.*
- ‘(2) *The application must—*
- (a) *be made within 42 days after notice of the decision was given to the applicant, or any longer period allowed by the Minister; and*
  - (b) *be written; and*
  - (c) *include details of the grounds on which the applicant seeks review of the decision.*

**‘39J Decision on reconsideration**

- ‘(1) *After reviewing the decision (the **original decision**), the Minister must make a further decision (the **review decision**) to confirm the original decision or substitute a new decision.*
- ‘(2) *The Minister must immediately give written notice of the review decision to—*
- (a) *the applicant; and*
  - (b) *if notice of the original decision was given to the registrar of titles or chief executive (lands) and the Minister substitutes a new decision—*
    - (i) *for an application relating to land registered in the freehold land register—the registrar of titles;*
    - (ii) *for an application relating to land registered in the land registry under the Land Act 1994—the chief executive (lands).’.*

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**341 Amendment of s 42AD (Leases etc. over national park (Cape York Peninsula Aboriginal land))**

Section 42AD—

*insert—*

- ‘(3) *If a lease is granted under subsection (1), the chief executive must, as soon as practicable after the grant, lodge the lease with the chief executive (lands) for registration.*’

**342 Amendment of s 42AE (Particular powers about permitted uses in national park (Cape York Peninsula Aboriginal land))**

Section 42AE—

*insert—*

- ‘(3) *If a lease is granted under subsection (1), the chief executive must, as soon as practicable after the grant, lodge the lease with the chief executive (lands) for registration.*’

**343 Amendment of s 42AN (Leases etc. over land in indigenous joint management area)**

Section 42AN—

*insert—*

- ‘(3) *If a lease is granted under subsection (1), the chief executive must, as soon as practicable after the grant, lodge the lease with the chief executive (lands) for registration.*’

**344 Insertion of new pt 4, div 3, sdiv 4**

Part 4, division 3—

*insert—*

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## **‘Subdivision 4      Registration**

### **‘42AQ Chief executive to lodge document for dedication, declaration or change**

- ‘(1) *This section applies if a regulation is made for—*
- (a) *the dedication or declaration of the following under this division—*
    - (i) *a national park (Aboriginal land);*
    - (ii) *a national park (Torres Strait Islander land);*
    - (iii) *a national park (Cape York Peninsula Aboriginal land);*
    - (iv) *an indigenous joint management area; or*
  - (b) *the revocation, amalgamation or other change to an indigenous joint management area under subdivision 3.*
- ‘(2) *The chief executive must lodge for registration with the chief executive (lands) a document evidencing the matter the subject of the regulation.*
- ‘(3) *The document must—*
- (a) *be lodged as soon as practicable after the dedication, declaration, revocation, amalgamation or change is made; and*
  - (b) *comply with any requirements of the chief executive (lands).*
- ‘(4) *If the dedication, declaration, revocation, amalgamation or other change mentioned in subsection (1) affects a part of a lot with the meaning of the Land Act 1994, the document must be accompanied by a plan of subdivision for the change.*

### **‘42AR When dedication etc. takes effect**

*‘A dedication, declaration, revocation, amalgamation of, or other change mentioned in section 42AQ(1) takes effect on*

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*registration, under the Land Act 1994, section 279A, of the document evidencing the dedication, declaration, amalgamation or other change.’.*

### **345 Insertion of new s 50A**

*After section 50—*

#### **‘50A Chief executive to lodge with or notify particular matters to chief executive (lands)**

- ‘(1) This section applies if—*
- (a) a conservation agreement is entered into, varied or replaced under this division for relevant land; or*
  - (b) a regulation is made under section 49(3).*
- ‘(2) The chief executive must lodge for registration with the chief executive (lands)—*
- (a) the agreement; or*
  - (b) a document complying with any requirements of the chief executive (lands) that evidences the matter the subject of the regulation.*
- ‘(3) The agreement or document must be lodged as soon as practicable after the agreement or covenant is made.*
- ‘(4) Also, as soon as practicable after the following actions are taken under this division, the chief executive must notify the chief executive (lands) of the action—*
- (a) the declaration of a protected area under section 46;*
  - (b) the termination or revocation of a conservation agreement under section 47;*
  - (c) the compulsory declaration of a nature refuge under section 49;*
  - (d) the revocation of a protected area.*
- ‘(5) The chief executive (lands) must record the action in the appropriate register under the Land Act 1994.*

‘(6) *In this section—*

*relevant land means land registered in the land registry under the Land Act 1994.*’.

### **346 Insertion of new ss 70EA and 70EB**

*After section 70E—*

*insert—*

#### **‘70EA Chief executive to lodge document for dedication or revocation**

‘(1) *If a regulation is made under section 70C or 70E for the dedication or revocation of a forest reserve, the chief executive must lodge for registration with the chief executive (lands) a document evidencing the matter the subject of the regulation.*

‘(2) *The document must—*

(a) *be lodged as soon as practicable after the regulation is made; and*

(b) *comply with any requirements of the chief executive (lands).*

‘(3) *If the dedication or revocation affects a part of a lot within the meaning of the Land Act 1994, the document lodged must be accompanied by a plan of subdivision for the change.*

#### **‘70EB When dedication, revocation or amalgamation takes effect**

*‘A dedication or revocation of a forest reserve made under this division takes effect on registration of the document evidencing the dedication or revocation under the Land Act 1994.’.*

### **347 Amendment of s 133 (Chief executive to keep register)**

(1) *Section 133(1)(a) and (b)—*

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*omit.*

- (2) *Section 133(1)(c) to (i)—  
renumber as section 133(1)(a) to (g).*

**348 Insertion of new pt 12, div 4**

*After part 12, division 3—*

*insert—*

**‘Division 4 Transitional provisions for  
amendments under Waste  
Reduction and Recycling Act 2011**

**‘187 Existing protected areas and indigenous joint  
management areas**

- ‘(1) *This section applies to a protected area or indigenous joint management area dedicated or declared under this Act as in force immediately before the commencement of this section.*
- ‘(2) *As soon as practicable after the commencement, the chief executive must give the chief executive (lands) written notice of the existence of the protected area or indigenous joint management area.*
- ‘(3) *To remove any doubt, it is declared that sections 33B, 42AR and 70EB do not apply to the protected area or indigenous joint management area.*

**‘188 Existing leases and conservation agreements must  
still be registered**

- ‘(1) *This section applies for a lease granted under any of the following provisions as in force immediately before the commencement of this section (the **commencement**), if the lease is still in force after the commencement—*
- (a) *section 34;*



- 
- (b) *section 42AD(1);*
  - (c) *section 42AE(1);*
  - (d) *section 42AN(1).*
- ‘(2) *Also, this section applies for a conservation agreement entered into before the commencement, if the agreement—*
- (a) *is still in force after the commencement; and*
  - (b) *relates to relevant land under section 50A.*
- ‘(3) *As soon as practicable after the commencement, the chief executive must lodge the lease or agreement with the chief executive (lands) for registration.*
- ‘(4) *For the Land Act 1994, chapter 6, part 2, the lease or agreement is taken to have been registered on the day the lease was granted or the agreement was entered into.’*

### **349 Amendment of schedule (Dictionary)**

*Schedule—*

*insert—*

*‘carbon abatement product means all or any of the following—*

- (a) *living biomass;*
- (b) *dead organic matter;*
- (c) *soil;*
- (d) *carbon sequestration by, and carbon stored in, a carbon abatement product mentioned in paragraphs (a) to (c).*

*carbon sequestration, for living biomass, dead organic matter or soil, includes—*

- (a) *the process by which the biomass, matter or soil removes and stores carbon dioxide from the atmosphere; and*

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(b) *the use of the biomass, matter or soil to avoid, reduce or eliminate greenhouse gas emissions.*

***chief executive (lands)** means the chief executive within the meaning of the Land Act 1994.*

***owner**, of land for part 4, division 2, subdivision 4A, see section 39D.*

***registrar of titles** means the registrar of titles under the Land Title Act 1994.’*

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# Schedule Dictionary

## section 7

***accredited product stewardship scheme*** see section 87(2).

***active landfill cell*** see section 26.

***advertising material*** see section 105.

***amend***, an approval, for chapter 8, see section 155.

***appropriately qualified***—

- 1 *Appropriately qualified*, for an entity to whom a power under this Act may be delegated, includes having the qualifications, experience or standing appropriate to exercise the power.

*Example of standing*—

a person's classification level in the public service

- 2 If the power may be subdelegated by a local government, the following are *appropriately qualified* entities for the subdelegation—
  - (a) the local government's mayor;
  - (b) a standing committee or a chairperson of a standing committee of the local government;
  - (c) the local government's chief executive officer;
  - (d) an employee of the local government, having the qualifications, experience or standing appropriate to exercise the power.

*Example of standing for paragraph (d)*—

the employee's classification level in the local government

***approval***, for chapter 8, see section 155.

***approved form*** means a form approved by the chief executive under section 270.

***approved program*** see section 86.

**authorised person** means a person holding office as an authorised person under an appointment under section 183.

**best practice environmental management**, for chapter 8, see section 155.

**biosecurity related Act** see section 26.

**biosecurity waste** see section 26.

**charitable recycling entity** see section 26.

**chief executive officer**, of a State entity, see section 132.

**clean earth** means earth that has trace elements and contaminant levels within the interim ecologically-based investigation levels for urban land use under the document titled ‘Schedule B(1)—Guidelines on the Investigation of Soil and Groundwater’, forming part of the National Environment Protection (Assessment of Site Contamination) Measure 1999, made by the National Environment Protection Council under the *National Environment Protection Council Act 1994* (Cwlth), section 14(1).

**clean earthen material** means—

- (a) either of the following, if pulverised so that no piece has any dimension of more than 100mm—
  - (i) bricks, pavers or ceramics;
  - (ii) concrete that does not have any steel reinforcing rods embedded in it; or
- (b) clean earth.

**commencement**, for chapter 15, part 1, see section 272.

**commercial and industrial waste** means waste that is prescribed under a regulation as commercial and industrial waste.

**compliance notice**, for chapter 11, see section 248(1).

**contaminated soil** see section 26.

**controlled waste NEPM** means the National Environment Protection (Movement of Controlled Waste between States and Territories) Measure, made by the National Environment

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Protection Council under the *National Environment Protection Council Act 1994* (Cwlth).

**conviction** includes a finding of guilt or the acceptance of a plea of guilty by a court, whether or not a conviction is recorded.

**deliver to** includes deposit at.

**deposit**, waste, at a place, means—

- (a) throw, drop or otherwise put the waste at, in or on the place; or
- (b) leave the waste at, in or on the place; or
- (c) deal with the waste in a way that causes or allows it to fall, blow, wash or otherwise escape onto the place; or

*Examples for paragraph (c)—*

A person transports waste in a trailer on a road in a way that causes the waste to be blown out of the trailer and onto the road, or leaves waste on private land where it is then washed by rain onto a road.

- (d) dispose of the waste to landfill at the place.

**disaster** see section 26.

**disaster management waste** see section 26.

**disaster situation** see section 26.

**disposal**, in relation to waste, see section 8.

**disposal ban waste** see section 100(4).

**disposal order**, for chapter 10, see section 231(2).

**disqualifying event**, for chapter 8, see section 155.

**document**, required to be kept under this Act, includes any record or return required to be kept under this Act.

**document certification requirement**, for chapter 10, see section 234(6).

**document production requirement**, for chapter 10, see section 234(2).

**domestic premises** means either—

- (a) a single unit private dwelling; or
- (b) premises containing 2 or more separate flats, apartments or other dwelling units.

***dredge spoil*** see section 26.

***electronic document***, for chapter 10, see section 181.

***environmentally significant characteristic*** means a characteristic mentioned in the controlled waste NEPM, schedule A, list 2.

***Environmental Protection Act*** means—

- (a) for chapter 15, part 1—see section 272; or
- (b) otherwise—the *Environmental Protection Act 1994*.

***environmental nuisance***, for chapter 8, see section 155.

***executive officer***, of a corporation, means—

- (a) if the corporation is the Commonwealth or a State—a chief executive of a department of government or a person who is concerned with, or takes part in, the management of a department of government, whatever the person's position is called; or
- (b) if paragraph (a) does not apply—a person who is—
  - (i) a member of the governing body of the corporation; or
  - (ii) concerned with, or takes part in, the corporation's management;

whatever the person's position is called and whether or not the person is a director of the corporation.

***exempt waste*** see section 29(1).

***exempt waste application*** see section 26.

***existing approval***, for chapter 15, part 1, see section 272.

***existing general approval***, for chapter 15, part 1, see section 272.

***existing specific approval***, for chapter 15, part 1, see section 272.

**external review**, for a decision, means a review of the decision by QCAT under the QCAT Act.

**final review report** see section 22(1).

**forfeiture order**, for chapter 10, see section 227(1).

**former owner**, for chapter 10, see section 226(1).

**general approval**, for chapter 8, see section 155.

**general littering provision** means section 103.

**general power**, for chapter 10, see section 211(1).

**goods** means goods that are intended to be used, or are of a kind likely to be used, for personal, domestic or household use or consumption.

**green waste** means waste that is grass cuttings, trees, bushes, shrubs, material lopped from trees, untreated timber or other waste that is similar in nature.

**hazardous contaminant** see section 26.

**help requirement**, for chapter 10, see section 212(1).

**holder**, of a specific approval, for chapter 8, see section 155.

**identity card**, for chapter 10, see section 181.

**illegal dumping of waste provision** means section 104.

**impact**, in relation to a product, means the product's impact, from the perspective of waste and resource management, throughout the life cycle of the product.

**information notice**, for a decision, means a notice stating—

- (a) the decision; and
- (b) the reasons for the decision; and
- (c) the review details.

**information requirement**, for chapter 10, see section 237(3).

**infringement notice** see the *State Penalties Enforcement Act 1999*, schedule 2.

**internal review application**, for chapter 9, see section 175.

**internal review decision**, for chapter 9, see section 178(1)(b).

**land** includes—

- (a) the airspace above land; and
- (b) land that is, or is at any time, covered by waters; and
- (c) waters.

**lawfully managed and transported asbestos** see section 26.

**levyable waste** see section 26.

**levyable waste disposal site** see section 27.

**levy period** see section 42(5).

**material environmental harm**, for chapter 8, see section 155.

**motor vehicle** see the *Transport Operations (Road Use Management) Act 1995*, schedule 4.

**municipal solid waste**—

1 *Municipal solid waste* is waste—

- (a) generated as a result of the ordinary day-to-day use of domestic premises and either—
  - (i) taken from the premises by or on behalf of the person who generated the waste; or
  - (ii) collected by or on behalf of a local government as part of a waste collection and disposal system regularly operating in its local government area; or
- (b) generated from any of the following activities carried out by or on behalf of a local government—
  - (i) street sweeping;
  - (ii) maintenance of parks, gardens or other public spaces;
  - (iii) servicing of street litter bins;
  - (iv) occasional bulky items collection from domestic premises.

2 However, waste is not *municipal solid waste*—



- (a) if it is taken from domestic premises under a commercial arrangement; or

*Example—*

waste collected in a skip supplied by a commercial operator

- (b) if it is generated at domestic premises as a result of a commercial arrangement; or

*Example—*

waste generated by a builder paid to perform renovations

- (c) to the extent it is the subject of a commercial activity prescribed under a regulation.

***newspaper*** means a paper or pamphlet that—

- (a) contains—
- (i) public news, information or occurrences; or
  - (ii) remarks or observations on public news, information or occurrences; and
- (b) is printed for sale or distribution; and
- (c) is published periodically or in parts or numbers at intervals of not more than 31 days between the publication of any 2 of the papers, pamphlets, parts or numbers;

but does not include a paper or pamphlet that contains only material that is totally commercial in nature.

***notice*** means a written notice.

***occupier***, of a place, includes a person who exercises or may exercise lawful authority or control in relation to the place, and includes a person apparently in charge of the place.

***offence warning***, for chapter 10, see section 181.

***operator***, of a waste facility, means the person who controls, and effectively has responsibility for, the operation of the waste facility, including, for example, according to the circumstances, any of the following—

- (a) the State;

- (b) a local government;
- (c) a public authority;
- (d) a corporation;
- (e) an individual.

***original decision***, for chapter 9, see section 178(1)(a).

***owner***, for chapter 10, see section 181.

***packaging NEPM*** means the National Environment Protection (Used Packaging Materials) Measure, made by the National Environment Protection Council under the *National Environment Protection Council Act 1994* (Cwlth).

***participant***, in a product stewardship scheme, means a person who has agreed to participate in the scheme.

***passenger declaration***, for a vehicle littering or illegal dumping offence, means a statutory declaration, made by a prescribed person for the offence, stating—

- (a) that the person was not the person who deposited the waste; and
- (b) the name and address of the person who deposited the waste.

***personal details requirement***, for chapter 10, see section 232(5).

***person in control***, for chapter 10, see section 181.

***place*** includes premises and a place, including a public place, on land.

*Note—*

This Act adopts a definition of *land* that includes waters.

***planning entity*** see section 139.

***polluter pays principle*** see section 10(1).

***premises*** includes a building and the land on which the building is situated, and also includes any of the following—

- (a) vacant land;
- (b) a vacant house;

- 
- (c) a building that is for sale or rent and that is clearly signed as being for sale or rent;
  - (d) a dwelling house or other building under construction.

***prescribed person***, for a vehicle littering or illegal dumping offence, means—

- (a) the person in whose name the vehicle associated with the commission of the offence is registered under a registration Act; or
- (b) a person named in a known user declaration or a sold vehicle declaration under the *State Penalties Enforcement Act 1999* in relation to the offence.

***prescribed provision***, for chapter 11, see section 245.

***priority product*** means a product stated to be a priority product under the priority product statement as currently in force.

***priority product statement*** means the document approved and gazetted as the priority product statement under chapter 4, part 2.

***produce*** includes manufacture or otherwise provide.

***producer***, of a product, includes any of the following—

- (a) the manufacturer of the product;
- (b) a person who imports the product into Queensland;
- (c) a person who supplies the product in Queensland;
- (d) a person who has a legal or equitable interest in the name under which the product is supplied in Queensland.

***product*** includes any packaging for the product.

***product stewardship principle*** see section 13.

***product stewardship scheme*** see section 83.

***progressive capping*** see section 26.

***proximity principle*** see section 12.

***public place*** means—

- (a) a place, or part of the place—
- (i) the public is entitled to use, is open to members of the public or is used by the public, whether or not on payment of money; or

*Examples of a place that may be a public place under subparagraph (i)—*

a beach, a park, a road

- (ii) the occupier of which allows, whether or not on payment of money, members of the public to enter; or

*Examples of a place that may be a public place under subparagraph (ii)—*

a saleyard, a showground

- (b) a place that is a public place under another Act.

***reasonably believes*** means believes on grounds that are reasonable in the circumstances.

***reasonably suspects*** means suspects on grounds that are reasonable in the circumstances.

***recipient***, for chapter 12, see section 253(1).

***recycling activity*** means any of the following activities, if lawfully performed—

- (a) metal recovery using a shredding or fragment process;
- (b) glass recovery using optical equipment capable of separating glass of a higher quality from glass of a lower quality;

*Note—*

The activity mentioned in paragraph (b) is commonly known as ‘glass beneficiation’.

- (c) timber recovery, if all or part of the material is painted or treated with chemical preservatives;
- (d) concrete recycling in which concrete is processed to produce product to a particular specification;
- (e) tyre recycling;

- (f) plastics recycling using an extrusion process;
- (g) battery recycling;
- (h) the activity known as e-waste recycling, including the recycling of televisions and computers, together with printers and other computer peripherals;
- (i) an activity carried on at a plant specialising in—
  - (i) sorting and preparing recyclable waste for marketing to users; or
  - (ii) the mechanical or biological treatment of waste;
- (j) another activity prescribed under a regulation as a recycling activity.

*Example of plant—*

a plant commonly known as a material recovery facility

*Example of activity—*

an activity commonly known as an alternative waste technology

**registered operator**, of a vehicle that is a motor vehicle, means the registered operator of the vehicle under the *Transport Operations (Road Use Management) Act 1995*.

**registration Act** see the *State Penalties Enforcement Act 1999*, schedule 2.

**registration certificate** means a registration certificate under the Environmental Protection Act.

**regulated product stewardship scheme** see section 85.

**regulated waste** means waste that is prescribed under a regulation as regulated waste.

**relevant waste**, for a planning entity, see section 139.

**repealed littering provisions** means the following repealed provisions of the Environmental Protection Act—

- (a) chapter 8, part 3A;
- (b) section 474A.

**repealed provision**, for chapter 15, part 1, see section 272.

***repealed waste management policy*** means the repealed *Environmental Protection (Waste Management) Policy 2000*.

***reporting entity*** see section 150.

***residue waste*** see section 277.

***residue waste discounted levy rate criteria*** see section 280(3).

***residue waste discounting application***, for chapter 15, part 2, see section 278(1).

***resource***, for chapter 8, see section 155.

***resource recovery area*** see section 61.

***resource recovery deduction*** means a deduction from a waste levy amount otherwise payable, as provided for under section 39.

***review details***, for an information notice for a decision, means a statement in the information notice as follows—

- (a) that the person given the notice may apply for a review of the decision to which the notice relates under chapter 9, part 1;
- (b) about the period or time allowed for making the application for a review;
- (c) about how to apply for a review.

***road*** means—

- (a) an area of land dedicated to public use as a road; or
- (b) an area that is open to or used by the public and is developed for, or has as 1 of its main uses, the driving or riding of motor vehicles; or
- (c) a bridge, culvert, ferry, ford, tunnel or viaduct; or
- (d) a pedestrian or bicycle path; or
- (e) a part of an area, bridge, culvert, ferry, ford, tunnel, viaduct or path mentioned in any of paragraphs (a) to (d).

***scheme invitation*** see section 78(1).

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***scheme manager***, for a product stewardship scheme, means the entity identified in the scheme as the scheme manager for the scheme.

***sector of planning entities*** see section 139(2).

***sector of reporting entities*** see section 150(2).

***sector waste***, for a sector of planning entities, see section 139(9).

***secure delivery provision*** means section 108.

***serious environmental harm***, for chapter 8, see section 155.

***show cause notice***, for chapter 11, see section 246(2).

***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 of waste in a year at the site.

***specific approval***, for chapter 8, see section 155.

***state entity*** see section 132.

***stockpiled waste***, in relation to a levyable waste disposal site, means waste that is stockpiled at the site.

***transition period***, for chapter 15, part 3, see section 286.

***transition period exempt residue waste application***, for chapter 15, part 3, see section 287.

***unlawful delivery provision*** means section 107.

***unsolicited advertising material***, for premises, see section 106.

***untreated timber*** means timber that has not been painted or treated with chemical preservatives to protect it against damage from insects, fungus, rot or the weather or other infestations or damage.

***user pays principle*** see section 11(1).

***vehicle***—

- (a) means a vehicle under the *Transport Operations (Road Use Management) Act 1995*; and
- (b) includes a vessel under that Act.

*vehicle littering or illegal dumping offence* see section 113(2).

*vehicle littering or illegal dumping report* see section 118(1).

*voluntary product stewardship scheme* see section 84.

*waste* see the Environmental Protection Act, section 13.

*Waste and Environment Fund* means the Waste and Environment Fund established under chapter 3.

*waste and resource management hierarchy* see section 9.

*waste and resource management principles* see section 4(2)(b).

*waste audit*, for chapter 12, see section 253(1).

*waste data return* see section 52(1).

*waste facility*—

- 1 A *waste facility* is a facility for the recycling, reprocessing, treatment, storage, incineration, conversion to energy, sorting, consolidation or disposal (including by disposal to landfill) of waste.
- 2 However, 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 carried out under the Environmental Protection Act (the *relevant activity*), if—
  - (a) the waste is generated only by, and its generation is ancillary to, the operation of the relevant activity; and
  - (b) the relevant activity is not a waste management ERA; and
  - (c) the facility is operated by, for, or in direct association with, the entity carrying out the relevant activity.

*waste levy* see section 37.

*waste levy amount* see section 26.

*waste levy instalment agreement* see section 55(1).



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**waste levy zone** see section 26.

**waste management ERA** means any of the following activities to the extent the activity is prescribed under the Environmental Protection Act as an environmentally relevant activity—

- (a) metal recovery;
- (b) crushing, milling, grinding or screening of materials;
- (c) battery recycling;
- (d) composting and soil conditioner manufacturing;
- (e) drum and container reconditioning;
- (f) regulated waste recycling or reprocessing;
- (g) regulated waste storage;
- (h) regulated waste transport;
- (i) regulated waste treatment;
- (j) tyre recycling;
- (k) waste disposal;
- (l) waste incineration and thermal treatment;
- (m) operation of a waste transfer station.

**waste management strategy**, for the State, means the State's waste management strategy under this Act.

**waste reduction and recycling plan** see section 120.

**waste reduction and recycling plan obligation**—

- (a) for a local government, means the local government's obligation under section 123; and
- (b) for a planning entity, means the planning entity's obligation under section 141; and
- (c) for a State entity, means the State entity's obligation under section 133.

**waste report**, for chapter 12, see section 253(1).

*weighbridge requirement provision* means section 43.

*WMS business plan* see section 23(1).

## Endnotes

### 1 Index to endnotes

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### 2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 1 December 2011. Future amendments of the Waste Reduction and Recycling Act 2011 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

### 3 Key

#### Key to abbreviations in list of legislation and annotations

Key	Explanation	Key	Explanation
AIA	= Acts Interpretation Act 1954	(prev)	= previously
amd	= amended	proc	= proclamation
amdt	= amendment	prov	= provision
ch	= chapter	pt	= part
def	= definition	pubd	= published
div	= division	R[X]	= Reprint No. [X]
exp	= expires/expired	RA	= Reprints Act 1992
gaz	= gazette	reloc	= relocated
hdg	= heading	renum	= renumbered
ins	= inserted	rep	= repealed
lap	= lapsed	(retro)	= retrospectively
notfd	= notified	rv	= revised edition
num	= numbered	s	= section
o in c	= order in council	sch	= schedule
om	= omitted	sdiv	= subdivision
orig	= original	SIA	= Statutory Instruments Act 1992
p	= page	SIR	= Statutory Instruments Regulation 2002
para	= paragraph	SL	= subordinate legislation
prec	= preceding	sub	= substituted
pres	= present	unnum	= unnumbered
prev	= previous		

## 4 Table of reprints

Reprints are issued for both future and past effective dates. For the most up-to-date table of reprints, see the reprint with the latest effective date.

If a reprint number includes a letter of the alphabet, the reprint was released in unauthorised, electronic form only.

Reprint No.	Amendments included	Effective	Notes
0A	none	28 October 2011	certain provs commenced
0B	2011 Act No. 40	24 November 2011	
0C	—	1 December 2011	majority provs commenced

## 5 List of legislation

### **Waste Reduction and Recycling Act 2011 No. 31**

date of assent 28 October 2011

ss 1–2 commenced on date of assent

ch 3 pts 3–4, 7, ss 63, 65, ch 5–8, ch 15 pt 1, ss 300–301, ch 16 pts 1–3 commenced

1 December 2011 (see s 2(1))

ch 16 pts 4–7 not yet proclaimed into force (see s 2(2))

remaining provisions commenced on date of assent

amending legislation—

### **Water and Other Legislation Amendment Act 2011 No. 40 pts 1, 3A**

date of assent 24 November 2011

commenced on date of assent

## 6 List of annotations

### **What is “unsolicited advertising material” for premises**

s 106 amd 2011 No. 40 s 7B

### **Unlawful delivery provision**

s 107 amd 2011 No. 40 s 7C

### **Secure delivery provision**

s 108 amd 2011 No. 40 s 7D

### **Avoiding accumulations of waste**

s 112 amd 2011 No. 40 s 7E

**CHAPTER 16—REPEAL AND AMENDMENT OF OTHER LEGISLATION**  
**PART 2—AMENDMENT OF ENVIRONMENTAL PROTECTION ACT 1994**  
**pt 2 (ss 303–312) om R0C (see RA ss 7(1)(k) and 40)**

**PART 3—AMENDMENT OF ENVIRONMENTAL PROTECTION (WASTE MANAGEMENT) REGULATION 2000**

**pt 3 (ss 313–315)** om R0C (see RA ss 7(1)(k) and 40)

**PART 8—AMENDMENT OF SOUTH-EAST QUEENSLAND WATER (DISTRIBUTION AND RETAIL RESTRUCTURING) ACT 2009**

**pt 8 (ss 350–387)** om R0A (see RA ss 7(1)(k) and 40)

**PART 9—AMENDMENT OF WATER ACT 2000**

**pt 9 (ss 388–393)** om R0A (see RA ss 7(1)(k) and 40)

**PART 10—AMENDMENT OF WATER SUPPLY (SAFETY AND RELIABILITY) ACT 2008**

**Division 1—Preliminary**

**div 1 (s 394)** om R0A (see RA ss 7(1)(k) and 40)

**Division 2—Amendments about coal seam gas water**

**div 2 (ss 395–396)** om R0A (see RA ss 7(1)(k) and 40)

**Division 3—Amendments about seepage water**

**div 3 (ss 397–408)** om R0A (see RA ss 7(1)(k) and 40)

**SCHEDULE—DICTIONARY**

def “**newspaper**” ins 2011 No. 40 s 7F