



# **Waste Reduction and Recycling Act 2011**

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Queensland

# Waste Reduction and Recycling Act 2011

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# Waste Reduction and Recycling Act 2011

**An Act to encourage the proper use of resources by improving ways of reducing and dealing with waste and to repeal the *Environmental Protection (Waste Management) Policy 2000***

## 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
  - chapter 15, part 1
  - sections 300 and 301
  - chapter 16, parts 1, 2 and 3.
- (2) Chapter 16, parts 4 to 7 commence on a day to be fixed by proclamation.

## Part 2 **Objects, applicable principles and application of Act**

### 3 **Objects of Act**

The objects of this Act are the following—

- (a) to promote waste avoidance and reduction, and resource recovery and efficiency actions;
- (b) to reduce the consumption of natural resources and minimise the disposal of waste by encouraging waste avoidance and the recovery, re-use and recycling of waste;
- (c) to minimise the overall impact of waste generation and disposal;
- (d) to ensure a shared responsibility between government, business and industry and the community in waste management and resource recovery;
- (e) to support and implement national frameworks, objectives and priorities for waste management and resource recovery.

### 4 **Achieving Act's objects**

- (1) If, under this Act, a function or power is conferred on a person, the person must perform the function or exercise the power in a way that best achieves the objects of this Act.
- (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) providing for the preparation of State, local government and industry strategic waste management plans;
- (c) price signalling, including through the introduction of a levy on waste delivered to a levyable waste disposal site;
- (d) providing for reporting requirements for the State, local governments and business and industry;
- (e) banning particular waste disposal;
- (f) identifying priority products or priority waste and associated management tools;
- (g) preparation, implementation and maintenance of a priority statement;
- (h) providing for product stewardship schemes;
- (i) waste tracking requirements;
- (j) making end of waste codes and granting end of waste approvals;
- (k) prohibiting particular conduct in relation to waste;
- (l) appointing authorised persons to investigate matters arising under this Act and otherwise to enforce this Act;
- (m) supporting approaches mentioned in paragraphs (a) to (l) 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.

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## **8A Meaning of *waste disposal site***

- (1) A *waste disposal site* is a waste facility to which both of the following apply—
  - (a) the operator of the facility is required to hold an environmental authority for the disposal of waste at the facility;
  - (b) waste delivered to the facility sometimes includes waste that is subsequently disposed of to landfill at the facility.
- (2) However, a waste facility is not a *waste disposal site* only because a type of exempt waste prescribed by regulation for this definition is disposed of to landfill at the facility.

## **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.

## **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      Waste management strategy**

### **Part 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.
- (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 or priority waste;
  - (h) standards, criteria and specifications for recycled materials and products containing recycled material;
  - (i) strategic waste management planning;
  - (j) data reporting.



---

## **Part 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.

## **Part 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.

## **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 part 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.

# **Part 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.

## **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.

## 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 discounted levy rate, for particular waste.

#### 26 Definitions for chapter

In this chapter—

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

*bad debt credit* see section 72K(1).

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***bad debt credit application*** means an application made under section 72L.

***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 publication on the department's website, for a particular disaster.

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

***discounted rate***, for the waste levy for residue waste, see section 44(4).

***dredge spoil*** means natural material that has been removed from a waterway—

- (a) for the purpose of creating, maintaining or enlarging a channel, basin, port, berth or other similar thing; or
- (b) to undertake flood mitigation activities in naturally occurring surface waters.

***due date for payment***, of a waste levy amount, means—

- (a) if an extension of time has been granted under section 72G, 72H or 72I for payment of the waste levy amount—the end of the extension; or
- (b) if there is a waste levy instalment agreement in place between the chief executive and the operator of a levyable waste disposal site who owes the amount—the day provided for in the agreement; or
- (c) otherwise—the end of the 28th day of the second month after the end of the levy period for the levyable waste disposal site of the operator who owes the amount.

***exempt waste*** means—

- (a) disaster management waste; or
- (aa) serious local event waste; or

- (b) waste approved by the chief executive to be exempt waste for a particular exempt waste application; or
- (c) 1 of the following types of waste if lawfully managed and transported—
  - (i) waste that is any of the following and is not mixed with other types of waste—
    - (A) non-friable asbestos-containing material;
    - (B) waste that has asbestos-containing material bonded to it;
    - (C) any disposal items used during asbestos removal work including plastic sheeting and disposal tools;
  - (ii) waste containing friable asbestos-containing material that has been removed by the holder of an asbestos removal licence issued under the *Work Health and Safety Act 2011* or under another licence or authority that authorises the removal of friable asbestos under a law of another State; or
- (d) dredge spoil if, for dredge spoil that is acid sulfate soil, the dredge spoil has been treated in accordance with best practice environmental management, within the meaning of the Environmental Protection Act, section 21, for the treatment and management of acid sulfate soils, as stated in a guideline prescribed by regulation; or
- (e) clean earth; or
- (f) waste collected by or for the State, a local government or a plantation licensee under the *Forestry Act 1959* to remediate the results of a person having done something that may be an offence under section 103 or 104; or
- (g) other waste—
  - (i) prescribed by 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 28(1).

***feedstock***, for a recycling activity, means the waste or other material that is to be used for the recycling activity.

***friable asbestos-containing material*** means material containing asbestos that is in powder form or that can be crumbled, pulverized or reduced to powder by hand when dry.

***lawfully managed and transported***, for asbestos or waste containing asbestos, means 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, that is delivered to a levyable waste disposal site.

***levyable waste disposal site***—

- (a) means a waste disposal site, whether under the ownership or control of the State, a local government or otherwise; but
- (b) does not include a part of the waste disposal site that is a resource recovery area.

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

- (a) for a section 325 small site, until 30 June 2021—either of the following periods—
- (i) the period starting on 1 July 2019 and ending on 30 June 2020;
- (ii) the period starting on 1 July 2020 and ending on 30 June 2021; or
- (b) otherwise—a month.

***monitoring system*** see section 62.

***non-friable asbestos-containing material*** means any manufactured material or thing that—

- (a) contains asbestos as part of its design; but
- (b) does not contain friable asbestos-containing material.

***non-levy zone*** means the part of the State outside the waste levy zone.

***progressive capping*** means capping of active landfill cells at a waste disposal site on a cell-by-cell basis.

***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.

***residue waste discounting application*** see section 44(1).

***resource recovery area*** see section 72R.

***section 325 small site*** means a small site the operator of which, under section 325, is not required to comply with the requirements of section 61(2) to measure and record waste in compliance with the weight measurement criteria.

***serious local event—***

- 1 A *serious local event* is a serious disruption in a community, caused by the impact of an event, that requires a significant coordinated response by a local government and other entities to help the community recover from the disruption.
- 2 For paragraph 1—
  - (a) a serious disruption is—
    - (i) loss of human life, or illness or injury to humans; or
    - (ii) widespread or severe property loss or damage; or



- (iii) widespread or severe damage to the environment; and
- (b) an event is an event under the *Disaster Management Act 2003*, section 16.

***serious local event waste***—

- (a) means waste generated by activities in the immediate preparation for, or by or because of, a serious local event—
  - (i) but only within the limits, if any, declared by the chief executive under section 27B, for the serious local event; and
  - (ii) subject to the requirements of section 27A; but
- (b) does not include waste generated by activities in general preparation for storms that are predicted or are likely to occur in a particular season each year or in anticipation of the next cyclone season.

***small site*** means a levyable waste disposal site the operator of which is required to hold an environmental authority for the disposal of 2,000 tonnes or less of waste in a year at the site.

***waste data return*** see section 72(1).

***waste levy*** see section 36.

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

***waste levy instalment agreement*** see section 72B(1).

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

***weight measurement criteria*** means the weight measurement criteria prescribed by regulation.

## **Part 2                      Identifying exempt waste**

### **Division 1                      Declaring limits for disaster management waste**

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

- (1) The chief executive may, by publication on the department's website, 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 stated site
  - a declaration that, after a stated day, waste is disaster management waste only if delivered by stated entities
- (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 advertising in newspapers, on radio or on television.
- (3) A declaration made under subsection (1) is not invalid because of a failure to comply with subsection (2).

### **Division 1A                      Serious local event waste**

#### **27A                      Notifying chief executive that waste is serious local event waste in particular circumstances**

- (1) This section applies if the chief executive officer of a local government reasonably believes—
- (a) there is or will be a serious local event in the local government's local government area; and

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- (b) an exemption from the levy on types of waste generated as a result of the serious local event and delivered to particular waste disposal sites should be allowed.
- (2) The chief executive officer must notify the chief executive as soon as practicable of the following matters in relation to waste that has been or will be generated as a result of the serious local event—
- (a) the type of waste that is to be serious local event waste;
- (b) the waste disposal sites at which the waste will be disposed of;
- (c) the period for which the waste is to be serious local event waste.
- (3) The maximum period for subsection (2)(c) is the period starting 7 days immediately before the serious local event starts or is predicted to start and ending 28 days after the serious local event ends.
- (4) If the chief executive officer acts under subsection (2), and subject to section 27B, the type of waste stated in the notice is serious local event waste if—
- (a) waste of that type is delivered to a stated waste disposal site during the stated period; and
- (b) the site operator of the waste disposal site does not charge for the delivery of the waste to the site.

## **27B Chief executive may declare limits for serious local event waste**

- (1) The chief executive may, by publication on the department's website, declare limits applying to the status of waste as serious local event waste in relation to a particular serious local event.

### *Examples of declared limits—*

- a declaration that waste is serious local event waste only for a stated period
- a declaration that waste is serious local event waste only if it is disposed of at a stated site

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- a declaration that, after a stated day, waste is serious local event waste only if delivered by stated entities
- (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 advertising in newspapers, on radio or on television.
  - (3) A declaration made under subsection (1) is not invalid merely because of a failure to comply with subsection (2).

## **Division 2                      Approval of waste as exempt waste**

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

- (1) A person may apply to the chief executive for approval of waste, identified in the application (an *exempt waste application*), as exempt waste.
- (2) However, the application may be about only 1 of the following types 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 a person having done something that may be an offence under section 103 or 104;
  - (c) earth contaminated with a hazardous contaminant from land recorded in the environmental management register or contaminated land register;
  - (d) waste to be used at a levyable waste disposal site for a purpose necessary for the operation of the site, including, for example, building infrastructure, temporary or daily covering, progressive capping, batter construction, final capping, profiling and site rehabilitation;

- (e) biosecurity waste;
  - (f) serious local event waste.
- (3) Also, if the application is about biosecurity waste, the application may be made only by the chief executive of the department in which the *Biosecurity Act 2014* is administered.
- (3A) In addition, if the application is about serious local event waste, the application may be made only by the chief executive officer of the local government in whose local government area the serious local event waste was generated.
- (4) The application must—
- (a) be in the approved form; and
  - (b) be supported by enough information to allow the chief executive to decide the application; and
  - (c) be accompanied by the fee prescribed by regulation.
- (5) In this section—
- biosecurity waste*** means waste made up of matter that is subject to the operation of the *Biosecurity Act 2014*.
- 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 or re-use program for—
    - (i) providing emergency assistance; or
    - (ii) otherwise supporting the charitable purposes of the entity.

**29 Chief executive may require additional information or documents**

- (1) Within 28 days after receiving an exempt waste application, the chief executive may, by notice given to the applicant, require the applicant to give the chief executive further reasonable information or documents about the application by a reasonable day stated in the notice.
- (2) The applicant may, before the stated day, agree with the chief executive about extending the time for providing the further information or documents.
- (3) The application is taken to be withdrawn if the applicant does not give the chief executive the further information or documents by the stated day or the end of any extension agreed between the chief executive and the applicant.

**30 Deciding application**

- (1) The chief executive must decide either to grant or to refuse an exempt waste application within 28 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 29—the day the chief executive receives the information or documents.
- (2) In deciding the application, the chief executive must consider—
  - (a) the objects of this Act; and
  - (b) the information outlined in the application.
- (3) However, the chief executive must refuse the application in the circumstances prescribed by regulation.
- (4) A failure to make a decision within the period required is taken to be a decision by the chief executive to refuse the application.

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### **31 Grant of application**

- (1) If the chief executive grants an exempt waste application, the chief executive must, within 5 business days after granting the application, give the applicant notice of the approval stating the following—
  - (a) the application 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) The period of the approval must not be more than 3 years.
- (3) If the chief executive imposes a condition on the approval that is not the same, or substantially the same, as a condition agreed to or asked for by the applicant, the notice must also include or be accompanied by an information notice for the decision to impose the condition.

### **32 Refusal of application**

If the chief executive refuses an exempt waste application, the chief executive must, within 5 business days after refusing the application, give the applicant an information notice for the decision.

### **33 Amendment of approval by agreement**

- (1) The chief executive may amend an approval of waste as exempt waste by agreement between the chief executive and the holder of the approval.
- (2) If the holder of the approval asks for the amendment, the request must be accompanied by the fee prescribed by regulation.

### **34 Cancellation or amendment of approval by chief executive**

- (1) The chief executive may cancel or amend an approval of waste as exempt waste if the chief executive considers there are reasonable grounds to cancel or amend it.
- (2) Without limiting subsection (1), the grounds for cancelling or amending the approval may include—
  - (a) that the chief executive is satisfied there is a reasonable suspicion that the granting of the approval was based on incorrect information; and
  - (b) that the chief executive is satisfied there is a reasonable suspicion that the approval was granted because of a false or misleading representation or declaration; and
  - (c) that the circumstances relevant to the granting of the approval have changed; and
  - (d) that the approval has not been complied with; and
  - (e) that it is desirable to cancel or amend the approval having regard to the objects of this Act.
- (3) Before cancelling or amending the approval (the *proposed action*), the chief executive must give the holder of the approval a notice stating the following—
  - (a) the proposed action;
  - (b) the grounds for taking the proposed action;
  - (c) the facts and circumstances that form the basis for the grounds;
  - (d) when the proposed action 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 for submissions must not end earlier than 21 days after the holder of the approval is given the notice.
- (5) The chief executive must consider all 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 of the approval an information notice for the decision.
- (7) The decision takes effect when the holder is given the information notice.

## **Division 3                    Declaring waste to be exempt waste**

### **35            Chief executive may declare waste to be exempt waste in exceptional circumstances**

- (1) This section applies if the chief executive is satisfied that exceptional circumstances apply for—
  - (a) particular waste or a type of waste; or
  - (b) the disposal of particular waste or a type of waste.
- (2) The chief executive may, by publication on the department's website, declare the waste to be exempt waste.
- (3) 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.
- (4) A declaration of waste as exempt waste has effect subject to any limits or conditions included in the declaration.

## **Part 3                            Operation of waste levy**

### **36            Imposition of waste levy**

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 in the waste levy zone; or

- (b) the levyable waste disposal site is in the non-levy zone and the waste was generated outside the non-levy zone.

### **37 Calculating waste levy amount**

- (1) The rate of the waste levy for each type of waste is the rate prescribed by regulation for that type.
- (2) The amount of waste levy imposed on waste is calculated in compliance with the requirements prescribed by regulation.

### **38 Offence to remove waste from levyable waste disposal site in particular circumstances**

The operator of a levyable waste disposal site must not, for sale or other commercial gain, remove from the site waste for which the waste levy was, or is to be, paid to the State.

Maximum penalty—50 penalty units.

### **39 When residue waste taken to be generated outside the non-levy zone**

If waste, used as feedstock for a recycling activity, was generated outside the non-levy zone, all of the residue waste generated by the recycling activity is taken, for this chapter, to be generated outside the non-levy zone.

### **40 Mixing waste generated outside non-levy zone with waste generated in the non-levy zone**

- (1) This section applies if waste generated outside the non-levy zone is mixed with waste generated in the non-levy zone before being delivered to a levyable waste disposal site in the non-levy zone.
- (2) The chief executive and the person who mixed the waste may agree in writing to a method of working out the waste that is taken to have been generated outside the non-levy zone and the total amount of that waste.

*Example—*

Fifty tonnes of waste generated outside the non-levy zone and 3,000 tonnes of waste generated in the non-levy zone are delivered to a resource recovery area in the non-levy zone in a month where they are mixed in a stockpile. Typically, 60% of waste delivered to the resource recovery area is delivered to the levyable waste disposal site. The chief executive and the operator of the relevant site agree that the first 30 tonnes of waste delivered from the resource recovery area to the levyable waste disposal site in the following month is taken to be waste generated outside the non-levy zone.

- (3) For this chapter—
- (a) if there is an agreement under subsection (2)—the mixed waste is taken to be generated as decided under the agreement; or
  - (b) otherwise—all the mixed waste is taken to have been generated outside the non-levy zone from the time the waste was mixed.

**41 Mixing types of waste that attract different rates of waste levy**

- (1) This section applies if—
- (a) different types of waste are mixed before being delivered to a levyable waste disposal site; and
  - (b) the different types of waste attract different rates of waste levy.
- (1A) For subsection (1)(b), the rate of the waste levy for exempt waste is taken to be zero.
- (2) All of the waste delivered is taken to attract the highest rate of waste levy that applies to any of the types of waste.

**42 Mixing types of waste that attract same rate of waste levy**

- (1) This section applies if—
- (a) different types of waste are mixed before being delivered to a levyable waste disposal site; and

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- (b) the different types of waste attract the same rate of waste levy.
- (1A) For subsection (1)(b), the rate of the waste levy for exempt waste is taken to be zero.
- (2) The operator of the site must, for sections 60 and 61, make a reasonable estimate of the amount of each type of waste included in the mixed waste using the information given to the operator under section 53.

#### **43 Regulation identifying waste levy zone**

- (1) A regulation may identify local government areas that make up the waste levy zone.
- (2) To remove any doubt, it is declared that it is not necessary for the waste levy zone to be made up of only local government areas that are contiguous with other local government areas.

## **Part 4 Discounting waste levy for residue waste**

#### **44 Application for discounted rate for waste levy for residue waste**

- (1) A person who conducts a recycling activity prescribed by regulation may apply to the chief executive for approval of a discounted rate for the waste levy for residue waste identified in the application (a *residue waste discounting application*).
- (2) The application must—
  - (a) be in the approved form; and
  - (b) be supported by enough information to allow the chief executive to decide the application; and
  - (c) be accompanied by the fee prescribed by regulation.

- (3) The Minister may recommend to the Governor in Council the making of a regulation under subsection (1) about a particular recycling activity only if the Minister is satisfied that—
  - (a) giving a discount on the waste levy for residue waste from the activity will have a significant impact on the activity becoming established and sustained in Queensland; and
  - (b) the activity optimises the market and material value that can be derived from the waste used as feedstock for the activity.
- (4) The *discounted rate* for the waste levy for residue waste is the rate prescribed by regulation.

#### **45 Chief executive may require additional information or documents**

- (1) Within 28 days after receiving a residue waste discounting application, the chief executive may, by notice given to the applicant, require the applicant to give the chief executive further reasonable information or documents about the application by a reasonable day stated in the notice.
- (2) The applicant may, before the stated day, agree with the chief executive about extending the time for providing the further information or documents.
- (3) The application is taken to be withdrawn if the applicant does not give the chief executive the further information or documents by the stated day or the end of any extension agreed between the chief executive and the applicant.

#### **46 Deciding application**

- (1) The chief executive must decide either to grant or to refuse a residue waste discounting application within 28 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 45—the day the chief executive receives the information or documents.
- (2) In deciding the application, the chief executive must consider all of the following—
  - (a) the objects of this Act;
  - (b) the information included in the application;
  - (c) any criteria prescribed by regulation;
  - (d) the applicant’s history of compliance with this Act and the Environmental Protection Act, including whether the applicant holds any licences, environmental authorities or other approvals for conducting the recycling activity.
- (3) However, the chief executive must refuse the application in the circumstances prescribed by regulation.
- (4) A failure to make a decision within the period required is taken to be a decision by the chief executive to refuse the application.

## **47 Grant of application**

- (1) If the chief executive grants a residue waste discounting application—
  - (a) in addition to any other conditions, the chief executive must impose a condition on the approval either—
    - (i) requiring the applicant to maintain as a minimum a stated recycling efficiency; or
    - (ii) limiting the amount of residue waste that will attract the discount rate in a period, including, for example, as a stated proportion of the amount of waste used as feedstock for the recycling activity in the period; and
  - (b) within 5 business days, the chief executive must give the applicant a notice stating the following—
    - (i) the application has been granted;

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- (ii) the discounted rate for the waste levy for the residue waste identified in the application;
  - (iii) the period of the approval;
  - (iv) any conditions imposed on the approval or prescribed by regulation.
- (2) The period of the approval must not—
- (a) be more than 3 years; or
  - (b) end after the residue waste discounting review date.
- (3) The notice must also include or be accompanied by an information notice for the decision to impose a condition on the approval unless the condition is the same, or substantially the same, as a condition agreed to or asked for by the applicant.
- (4) In addition to any conditions imposed by the chief executive, the approval is also subject to the conditions prescribed by regulation.
- (5) In this section—
- recycling efficiency* means a percentage of the feedstock for a recycling activity that is not disposed of as landfill as a result of the activity.
- residue waste discounting review date* means the day, as prescribed by regulation, for the review by the chief executive of the following—
- (a) the discounted rate for the waste levy for the residue waste;
  - (b) the recycling efficiency threshold for recycling activities;
  - (c) any other matters mentioned in this part as being prescribed by regulation.

## 48 Refusal of application

If the chief executive refuses a residue waste discounting application, the chief executive must, within 5 business days

after refusing the application, give the applicant an information notice for the decision.

#### **49 Amendment of approval by agreement**

- (1) The chief executive may amend an approval of a discounted rate for the waste levy for residue waste by agreement between the chief executive and the holder of the approval.
- (2) If the holder of the approval asks for the amendment, the request must be accompanied by the fee prescribed by regulation.

#### **50 Cancellation or amendment of approval by chief executive**

- (1) The chief executive may cancel or amend an approval of a discounted rate for the waste levy for residue waste if the chief executive considers there are reasonable grounds to cancel or amend it.
- (2) Without limiting subsection (1), the grounds for cancelling or amending the approval may include—
  - (a) that the chief executive is satisfied there is a reasonable suspicion that the holder of the approval has not implemented strategies or practices to progressively improve the efficiency of the holder's recycling activities during the period of the approval; and
  - (b) that the chief executive is satisfied there is a reasonable suspicion that the approval was granted because of a false or misleading representation or declaration; and
  - (c) that the circumstances relevant to the granting of the approval have changed; and
  - (d) that the conditions of the approval have not been complied with; and
  - (e) that it is desirable to cancel or amend the approval having regard to the objects of this Act.



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- (3) Before cancelling or amending the approval (the *proposed action*) the chief executive must give the holder of the approval a notice stating the following—
    - (a) the proposed action;
    - (b) the grounds for taking the proposed action;
    - (c) the facts and circumstances that form the basis for the grounds;
    - (d) when the proposed action is intended to take effect;
    - (e) that the holder of the approval may make, within a stated period, written submissions to show why the proposed action should not be taken.
  - (4) The stated period for submissions must not end earlier than 21 days after the holder of the approval is given the notice.
  - (5) The chief executive must consider all 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 of the approval an information notice for the decision.
  - (7) The decision takes effect when the holder is given the information notice.

## **51 Automatic cancellation of approval**

An approval of a discounted rate for the waste levy for residue waste is automatically cancelled if the business of conducting the recycling activity relevant to the approval ceases to be owned by the entity granted the approval, including, for example, because the ownership of the business is transferred to another entity.

## **Part 5**                      **Obligations relating to waste levy**

### **Division 1**                **Obligations of person delivering waste**

#### **52**      **Persons delivering waste**

A person is taken to deliver waste for this division if—

- (a) the person physically delivers the waste; or
- (b) the person engages or directs another person to physically deliver the waste on behalf of the person.

*Example—*

If an employee delivers waste to a levyable waste disposal site on behalf of the employee's employer, the obligations under this division apply to both the employee and the employer.

#### **53**      **Person delivering waste to waste disposal site to give information**

- (1) This section applies if a person delivers waste to a waste disposal site.
- (2) The person must give the operator of the waste disposal site the information (the *delivery information*) that the operator reasonably requires to identify—
  - (a) how much of the waste is exempt waste and how much of it is levyable waste; and
  - (b) for each type of waste required to be measured by the operator under section 59—how much waste there is; and
  - (c) whether the waste was generated in the waste levy zone, the non-levy zone or outside Queensland.

Maximum penalty—300 penalty units.

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- (3) Also, the delivery information must be given to the operator at least 24 hours before the waste is delivered if—
- (a) the waste disposal site is in the non-levy zone; and
  - (b) the waste was generated outside the non-levy zone; and
  - (c) the waste is delivered in a vehicle with a GCM or GVM of more than 4.5 tonnes.
- (4) However, subsections (2) and (3) do not apply to the person if the person knows the operator already has the delivery information when the information would otherwise be required under subsection (2) or (3).

*Example—*

The person delivering the waste is acting on behalf of another person and knows that the other person has already given the delivery information.

- (5) If the operator of the waste disposal site asks the person to give the operator the delivery information in the approved form, the person must comply with the request unless the person has a reasonable excuse.

Maximum penalty—300 penalty units.

- (6) If a person (the *principal*) engages or directs another person to deliver waste on behalf of the principal, it is a defence for subsection (2) or (5) for the principal to prove—
- (a) the principal gave the other person appropriate instructions; and
  - (b) the principal used all reasonable precautions to ensure the other person complied with this section; and
  - (c) the principal could not by the exercise of reasonable diligence have stopped the commission of the offence.
- (7) Nothing in this section prevents the person from giving delivery information for more than 1 consignment of waste to be delivered to the waste disposal site.

## 54 Person delivering particular waste to give information

- (1) This section applies if—
  - (a) a person delivers waste to—
    - (i) a resource recovery and transfer facility in the non-levy zone; or
    - (ii) an entity conducting a recycling activity in the non-levy zone; and
  - (b) the waste was generated outside the non-levy zone; and
  - (c) the person delivers the waste in a vehicle with a GCM or GVM of more than 4.5 tonnes.
- (2) The person must, at least 24 hours before delivering the waste, give the operator of the resource recovery and transfer facility or entity the information (the ***delivery information***) that the operator or entity reasonably requires to identify—
  - (a) how much of the waste is exempt waste and how much of it is levyable waste; and
  - (b) whether the waste was generated in the waste levy zone or outside Queensland.

Maximum penalty—300 penalty units.

- (3) However, subsection (2) does not apply to the person if the person knows the operator or entity already has the delivery information when it is required under that subsection.

*Example—*

The person delivering the waste to a resource recovery and transfer facility is the operator of the facility.

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

Maximum penalty—300 penalty units.

- (5) If a person (the ***principal***) engages or directs another person to deliver waste on behalf of the principal, it is a defence for subsections (2) and (4) for the principal to prove—

- 
- (a) the principal gave the other person appropriate instructions; and
  - (b) the principal used all reasonable precautions to ensure the other person complied with this section; and
  - (c) the principal could not by the exercise of reasonable diligence have stopped the commission of the offence.
- (6) Nothing in this section prevents the person from giving delivery information for more than 1 consignment of waste to be delivered to the resource recovery and transfer facility or to the entity.
- (7) In this section—
- resource recovery and transfer facility* means a facility used for—
- (a) receiving, sorting, dismantling or baling waste; or
  - (b) storing waste before moving it, from the site where the relevant activity is carried out, for recycling, processing, treatment or disposal.

## **55 Giving false or misleading information when delivering waste**

- (1) This section applies to a person delivering waste to—
  - (a) a waste disposal site; or
  - (b) a resource recovery and transfer facility in the non-levy zone; or
  - (c) an entity conducting a recycling activity in the non-levy zone.
- (2) The person must not give the operator or entity information about the waste that the person knows is false or misleading in a material particular.  
Maximum penalty—300 penalty units.
- (3) However, subsection (2) does not apply to the person if the person, when giving information in a document—

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- (a) tells the operator or entity, to the best of the person's ability, how the document is false or misleading; and
  - (b) if the person has, or can reasonably obtain, the correct information—gives the correct information.
- (4) To remove any doubt, it is declared that subsection (2) applies to any information whether or not the person is required to give the information under section 53 or 54.

(5) In this section—

*operator* means the operator of the waste disposal site or resource recovery and transfer facility.

*resource recovery and transfer facility* see section 54(7).

## **Division 2                      Obligations of operators of waste disposal sites**

### **Subdivision 1                Remitting waste levy**

#### **56            Remitting waste levy amount to the State**

- (1) After receiving a summary data return from the operator of a levyable waste disposal site under section 72, the chief executive must give the operator an invoice stating the total amount of all waste levy amounts payable to the State by the operator for the levy period to which the return relates.
- (2) The operator must pay to the chief executive the total amount stated in the invoice by the due date for payment of the amount.
- (3) 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.
- (4) The interest payable for a day as mentioned in subsection (3) is payable at the same rate as that applying to unpaid tax under

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the *Taxation Administration Act 2001*, section 54 and the *Taxation Administration Regulation 2012*, section 8.

- (5) 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 with jurisdiction for the recovery of the amount as a debt payable by the operator to the State.
- (6) In this section—  
*summary data return* see section 72(5).

## Subdivision 2 Weighbridges

### 57 Weighbridge required

- (1) The operator of a waste disposal site in the waste levy zone must ensure a weighbridge is installed at the site from the beginning of the day on—
  - (a) if the operator is required to hold an environmental authority for the disposal of more than 10,000 tonnes of waste in a year at the site—1 July 2019; or
  - (b) if the operator is required to hold an environmental authority for the disposal of more than 5,000 tonnes, but not more than 10,000 tonnes, of waste in a year at the site—1 July 2021; or
  - (c) for any other operator—1 July 2024.

Maximum penalty—300 penalty units.

- (2) If a waste disposal site is in the non-levy zone and receives during the period from 1 July 2019 to 31 December 2019 at least 300 tonnes of levyable waste generated outside the non-levy zone, the operator must ensure a weighbridge is installed at the site by 30 June 2020.

Maximum penalty—300 penalty units.

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- (3) From 1 January 2020, if a waste disposal site is in the non-levy zone and receives at least 600 tonnes of levyable waste generated outside the non-levy zone during a year, the operator must ensure a weighbridge is installed at the site by 30 June in the following year.

Maximum penalty—300 penalty units.

## **58 Weighbridge requirements**

- (1) This section applies to the operator of a waste disposal site at which a weighbridge is installed.
- (2) The operator must ensure that—
- (a) the installation and operation of the weighbridge complies with the requirements prescribed by regulation for the weighbridge; and
  - (b) the weighbridge is kept in proper working order; and
  - (c) a copy of any record of certification for the weighbridge obtained in complying with the *National Measurement Act 1960* (Cwlth) is kept by the operator for 5 years after the certification.

Maximum penalty—200 penalty units.

- (3) If the weighbridge is out of operation, the operator must—
- (a) bring the weighbridge back into operation in the shortest practicable time; and
  - (b) keep a written record detailing the period for which the weighbridge was out of operation and the reason it was out of operation.

Maximum penalty—200 penalty units.

- (4) Further, if the weighbridge is out of operation for a period of more than 24 hours, the operator must notify the chief executive of the following details within 3 days after the weighbridge first became 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;
  - (b) when the weighbridge first became out of operation;
  - (c) whether the weighbridge is still out of operation;
  - (d) if the weighbridge is still out of operation—what actions are being taken to bring the weighbridge back into operation.

Maximum penalty—200 penalty units.

- (5) If the weighbridge is still out of operation when the chief executive is notified under subsection (4), the operator must notify the chief executive of its being brought back into operation within 3 days after it starts operating again.

Maximum penalty—200 penalty units.

## **Subdivision 3      Measurement of waste**

### **59      When waste or other material must be measured**

- (1) Waste, or an amount of other material that is more than 1 tonne, is required to be measured if—
  - (a) it is delivered to a levyable waste disposal site; or
  - (b) after being delivered to a levyable waste disposal site, it is moved to a place outside the site; or
  - (c) it is delivered in a vehicle with a GCM or GVM of more than 4.5 tonnes to a resource recovery area for a waste disposal site; or
  - (d) after being delivered to a resource recovery area for a waste disposal site—
    - (i) it is moved from the area to any other part of the site; or
    - (ii) it is moved to a place outside the site in a vehicle with a GCM or GVM of more than 4.5 tonnes.

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- (2) Subsection (1) does not apply in relation to a levyable waste disposal site in the non-levy zone if the operator of the site—
- (a) is required to hold an environmental authority for the disposal of not more than 5,000 tonnes of waste in a year at the site; and
  - (b) has taken all reasonable practical steps to ensure that levyable waste generated at a place outside the non-levy zone can not be lawfully delivered to the site.

## **60 Measurement of waste by weighbridge**

- (1) This section applies if a weighbridge is installed at a waste disposal site, whether or not it is required under section 57.
- (2) Each time waste or other material is required to be measured under section 59, the operator of the waste disposal site must ensure the weighbridge is used to measure and record the waste or other material.

Maximum penalty—300 penalty units.

*Note—*

See also section 42.

- (3) However, if it is not practicable to use the weighbridge to measure and record a particular amount of waste or other material, the operator may measure and record the waste in the way the operator and the chief executive agree to in writing.

*Examples of something that is impracticable to weigh using a weighbridge—*

- a large aircraft
- a large amount of waste that is taken to be delivered to the levyable part of a waste disposal site because of a cancellation or revocation of the declaration of the resource recovery area

- (4) The operator of the waste disposal site must ensure a record made under subsection (2) includes the information required by the chief executive.

Maximum penalty—300 penalty units.

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- (5) The information required by the chief executive under subsection (4) must be published on the department's website and may include only—
- (a) the type of waste or other material; and
  - (b) whether the waste was generated in the waste levy zone, the non-levy zone or outside Queensland; and
  - (c) details of any exemption or discount applying to the waste; and
  - (d) the vehicle used to move the waste or other material.
- (6) If the weighbridge is not in operation when an amount of waste or other material is required to be measured under section 59, the operator of the waste disposal site must ensure the waste or other material is measured and recorded in compliance with the weight measurement criteria.

Maximum penalty—300 penalty units.

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

- (1) This section applies if a weighbridge is not installed at a waste disposal site.
- (2) Each time waste or other material is required to be measured under section 59, the operator of the waste disposal site must ensure the waste or other material is measured and recorded in compliance with the weight measurement criteria.

Maximum penalty—300 penalty units.

*Note—*

See also section 42.

- (3) The operator of the waste disposal site must ensure a record made under subsection (2) includes the information required by the chief executive.

Maximum penalty—300 penalty units.

- (4) The information required by the chief executive under subsection (3) must be published on the department's website and may include only—

- (a) the type of waste or material; and
- (b) whether the waste was generated in the waste levy zone, the non-levy zone or outside Queensland; and
- (c) details of any exemption or discount applying to the waste; and
- (d) the vehicle used to move the waste or material.

## **Subdivision 4      Monitoring system**

### **62      What is a *monitoring system***

A *monitoring system* is a closed-circuit television or another system the chief executive approves as a monitoring system by publishing details of the system on the department's website.

### **63      When monitoring system may be required by chief executive**

- (1) This section applies if the chief executive reasonably believes the operator of a waste disposal site has not complied with the operator's obligation under this chapter to pay the waste levy or give the chief executive a waste data return for the site.
- (2) The chief executive may, by notice given to the operator, require the operator to install, maintain and operate a monitoring system at the site to record vehicle movements at the locations (each a *monitoring point*) stated in the notice.
- (3) The notice must also—
  - (a) state the day by which the monitoring system must be installed; and
  - (b) include or be accompanied by an information notice for the chief executive's decision to give the notice.
- (4) The operator must comply with the notice.

Maximum penalty—200 penalty units.

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## 64 Requirements for monitoring system

- (1) This section applies to the operator of a waste disposal site given a notice under section 63 requiring the operator to install, maintain and operate a monitoring system.
- (2) The operator must comply with the obligations stated in subsections (3) and (5).

Maximum penalty—200 penalty units.

- (3) The operator must—
  - (a) display signage at the waste disposal site in a way that is likely to make persons arriving at the site aware that a monitoring system is installed at the site; and
  - (b) ensure the monitoring system—
    - (i) meets the minimum requirements prescribed by regulation for the system; and
    - (ii) is kept in proper working order; and
    - (iii) records vehicles at each monitoring point in a way that identifies the vehicles; and

*Example of a way that identifies a vehicle—*

an image of the vehicle's registration

- (c) comply with any requirements prescribed by regulation about maintaining the monitoring system; and
- (d) store each recording in a secure place at the premises in compliance with any requirements prescribed by regulation for the storage; and
- (e) keep each recording available for inspection by an authorised person at the premises until the recording is erased or destroyed in compliance with paragraph (f); and
- (f) ensure a recording—
  - (i) is only erased or destroyed by the operator or a person approved by the operator; and

- (ii) is not erased or destroyed earlier than 60 days after it was made; and
  - (iii) is erased or destroyed no later than 90 days after it was made.
- (4) However, if a copy of a recording is given to an authorised person, the recording—
  - (a) need only be kept available for inspection by an authorised person until the authorised person has confirmed by written notice that the recording is viewable; and
  - (b) may be destroyed once the authorised person has confirmed by written notice that the recording is viewable.
- (5) The operator must not—
  - (a) allow the monitoring system to be operated by anyone other than—
    - (i) the operator of the site; or
    - (ii) a person approved by the operator; or
  - (b) allow a recording to be viewed by anyone other than an authorised person or a person mentioned in paragraph (a).
- (6) In this section—

***monitoring point*** means a monitoring point under section 63(2).

***recording*** means a video recording made by the monitoring system.

## 65 Requirements if monitoring system stops operating

- (1) This section applies to the operator of a waste disposal site given a notice under section 63 requiring the operator to install, maintain and operate a monitoring system.
- (2) If the monitoring system stops recording, the operator must—

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- (a) bring the system back into operation in the shortest practicable time; and
  - (b) keep a written record detailing the period within which the system was not recording and the reason it was not recording.

Maximum penalty—100 penalty units.

- (3) Further, if any event results in the monitoring system not recording for any period of more than 24 hours, the operator must notify the chief executive of the following details within 3 days after the system stops recording, whether or not the system is still not recording—
  - (a) the event that resulted in the monitoring system not recording;
  - (b) when the monitoring system stopped recording;
  - (c) whether the monitoring system is still not recording;
  - (d) if the monitoring system is still not recording—what actions are being taken to bring the monitoring system back into operation.

Maximum penalty—100 penalty units.

- (4) If the monitoring system is still not recording when the chief executive is notified under subsection (3) but later starts recording again, the operator must notify the chief executive that it is recording again within 3 days after it starts recording.

Maximum penalty—100 penalty units.

## **66 Operators required to give chief executive plan for monitoring system**

- (1) This section applies to the operator of a waste disposal site given a notice under section 63 requiring the operator to install, maintain and operate a monitoring system.
- (2) The operator must give the chief executive a plan for the monitoring system complying with subsection (3) within 21 days after the day the operator is required under the notice to install the monitoring system.

Maximum penalty—40 penalty units.

- (3) The plan for the monitoring system must contain a diagram of the system indicating the following in relation to the waste disposal site—
  - (a) how the components that comprise the system have been positioned;
  - (b) the scope of the coverage of recordings by the system.

## **Subdivision 5 Volumetric surveys**

### **67 Volumetric survey for levyable waste disposal site in waste levy zone**

- (1) From 1 June 2020, the operator of a levyable waste disposal site in the waste levy zone must, in each year, in compliance with the requirements for volumetric surveys under section 70—
  - (a) ensure that a volumetric survey is carried out in June for—
    - (i) each landfill cell where waste has been disposed of since the last volumetric survey required under this subdivision was carried out; and
    - (ii) all stockpiled waste at the site; and
  - (b) give the chief executive a copy of the results of the volumetric surveys required under paragraph (a) before the end of July.

Maximum penalty—200 penalty units.

- (2) This section continues to apply to the operator—
  - (a) regardless of whether waste may no longer be delivered to the site; and
  - (b) even if the site ceases to be a levyable waste disposal site.



- (3) However, if a matter mentioned in subsection (2) happens, 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 subsection (1).
- (4) This section does not apply to a small site until 1 June 2022.

**68 Volumetric survey for levyable waste disposal site in non-levy zone in particular circumstances**

- (1) This section applies to the operator of a levyable waste disposal site if—
  - (a) the site is in the non-levy zone; and
  - (b) either—
    - (i) from 1 July 2019 to 31 December 2019—at least 300 tonnes of levyable waste, generated outside the non-levy zone, is received at the site; or
    - (ii) from 1 January 2020—at least 600 tonnes of levyable waste, generated outside the non-levy zone, is received at the site during a year.
- (2) The operator of the levyable waste disposal site must—
  - (a) ensure that a volumetric survey is carried out between 1 January and 30 June of the following year for—
    - (i) each active landfill cell at the site; and
    - (ii) all stockpiled waste at the site; and
  - (b) give the chief executive a copy of the results of the survey before the end of July in the following year.

Maximum penalty—200 penalty units.

- (3) The volumetric survey must be carried out in compliance with the requirements applying for volumetric surveys under section 70.
- (4) This section continues to apply to the operator—
  - (a) regardless of whether waste may no longer be delivered to the site; and

- (b) even if the site ceases to be a levyable waste disposal site.
- (5) However, if a matter mentioned in subsection (4) happens, 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 subsection (2).
- (6) This section does not apply to a small site until 1 June 2022.

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

- (1) This section applies to the operator of—
  - (a) a levyable waste disposal site in the waste levy zone; or
  - (b) a levyable waste disposal site in the non-levy zone if at least 600 tonnes of levyable waste generated outside the non-levy zone was received at the site during the preceding 12 months.
- (2) Before a landfill cell is used for the first time for disposing of waste to landfill at the site, the operator of the site must, in compliance with the requirements applying for volumetric surveys under section 70—
  - (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.

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

## **70 Requirements for volumetric surveys**

- (1) This section states the requirements for carrying out volumetric surveys under this subdivision.

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- (2) A volumetric survey must be carried out in compliance with the requirements prescribed by 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) be certified as accurate by a surveyor under the *Surveyors Act 2003*.

## 71 Failure to carry out volumetric survey or give chief executive the results

- (1) This section applies if the operator of a levyable waste disposal site fails—
  - (a) to comply with a requirement under this subdivision to carry out a volumetric survey; or
  - (b) to 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 to facilitate the carrying out of 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.

## Subdivision 6 Waste data returns

### 72 Submission of waste data returns

- (1) The operator of a levyable waste disposal site must give the chief executive the returns (each a *waste data return*) required of the operator under subsections (2) and (3)—
  - (a) by the due date for the site; and

- (b) in the way decided by the chief executive as published on the department's website.

Maximum penalty—300 penalty units.

- (2) Each of the following operators must give the chief executive a summary data return—
  - (a) the operator of a levyable waste disposal site in the waste levy zone;
  - (b) the operator of a levyable waste disposal site in the non-levy zone if any levyable waste, generated at a place outside the non-levy zone, is received at the site during the levy period to which the return relates.
- (3) Each of the following operators must give the chief executive a detailed data return—
  - (a) the operator of a levyable waste disposal site in the waste levy zone if—
    - (i) the operator is required to hold an environmental authority for the disposal of more than 10,000 tonnes of waste in a year at the site; or
    - (ii) from 1 July 2021—the operator is required to hold an environmental authority for the disposal of more than 5,000 tonnes, but not more than 10,000 tonnes, of waste in a year at the site; or
    - (iii) from 1 July 2024—the operator is not mentioned in subparagraph (i) or (ii);
  - (b) the operator of a levyable waste disposal site in the non-levy zone if—
    - (i) the operator is required to hold an environmental authority for the disposal of more than 10,000 tonnes of waste in a year at the site; and
    - (ii) at least 50 tonnes of levyable waste, generated outside the non-levy zone, is received at the site during the levy period to which the return relates.

- (5) In this section—

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***detailed data return*** means a return providing comprehensive information about all movements of waste and other material required to be measured under section 59.

***due date***, for a levyable waste disposal site, means—

- (a) the end of the last business day of the month following the end of a levy period for the site; or
- (b) if the chief executive grants an extension of time under section 72G, 72H or 72I for submitting the returns for the site—the end of the extension.

***summary data return*** means a return providing a summary of information, required to be measured under section 59, that the chief executive may use to calculate amounts payable for a particular levy period for a levyable waste disposal site.

## **Subdivision 7      Record keeping**

### **72A      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, each of the following documents for the period stated for the document—

- (a) a copy of a waste data return for 5 years after the return is given to the chief executive;
- (b) records containing any information that was used to support the preparation of a waste data return, including each of the following records, for 5 years after the return is given to the chief executive—
  - (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 325, records that

enable the chief executive to fairly work out the total waste levy amount owing for the site in a levy period;

- (c) a record required to be kept under section 58(3)(b) and section 65(2)(b) for 5 years after the record is made;
- (d) a copy of the results of a volumetric survey of a landfill cell at the site for 5 years after the survey is carried out;
- (e) a copy of the results of a volumetric survey of stockpiled waste at the site for 5 years after the survey is carried out;
- (f) a copy of a notice the operator is required to give the chief executive under this chapter for 5 years after giving the notice;
- (g) any other record prescribed by regulation for the period prescribed by regulation.

Maximum penalty—300 penalty units.

## **Division 3                      Payment options**

### **Subdivision 1                Waste levy instalment agreements**

#### **72B    Waste levy instalment agreement**

- (1) A *waste levy instalment agreement* is an agreement between the operator of a levyable waste disposal site and the chief executive providing for the payment by instalments of a waste levy amount owed by the operator instead of in compliance with the requirements that would otherwise apply under this chapter for the payment of the amount.
- (2) A waste levy instalment agreement may relate to 2 or more levyable waste disposal sites for which the same person is the operator.

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## **72C Application for waste levy instalment agreement**

- (1) The operator of a levyable waste disposal site may apply to the chief executive to enter into a waste levy instalment agreement for a waste levy amount the operator must pay the State.
- (2) The application must be in the approved form and be accompanied by—
  - (a) a description of the operator's financial situation that caused the operator's inability to pay the waste levy amount by the due date for payment and how the financial situation came about; and
  - (b) up-to-date management and financial records to verify the information given under paragraph (a).
- (3) The chief executive must, within 20 days after receiving the application, decide either to grant or to refuse the application and—
  - (a) if the decision is to grant the application—give the operator a notice stating—
    - (i) the terms of the waste levy instalment agreement; and
    - (ii) the period within which all waste levy amounts must be paid under the waste levy instalment agreement; or
  - (b) if the decision is to refuse the application—give the operator an information notice for the decision.
- (4) The chief executive may grant the application only if satisfied the applicant 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 applicant to pay the waste levy amount while at the same time allowing the applicant to pay future waste levy amounts.
- (5) However—

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- (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; and
  - (c) the period within which all waste levy amounts must be paid under the waste levy instalment agreement must not be longer than 6 months after the agreement is entered into.
- (6) A failure to make a decision within the period required is taken to be a decision by the chief executive to refuse the application.

## **72D Amendment of waste levy instalment agreement**

- (1) The operator of a levyable waste disposal site may apply to the chief executive for an amendment of a waste levy instalment agreement to—
- (a) include an additional waste levy amount; or
  - (b) extend the period for the repayment of the total waste levy amount the subject of the agreement.
- (2) However—
- (a) any additional waste levy amount must not be greater than 10% of the total waste levy amount owing by the operator when the application is made, other than an amount already the subject of the agreement; and
  - (b) the period of any extension must not be more than 3 months; and
  - (c) the operator must not have previously made an application for the amendment of the waste levy instalment agreement.
- (3) The application must be in the approved form and 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 changes in the applicant's circumstances that have caused the applicant to seek the amendment.
- (4) The chief executive must, within 20 days after receiving the application, decide either to grant or to refuse the application and—
- (a) if the decision is to grant the application—give the operator a notice stating—
    - (i) the terms of the amended waste levy instalment agreement; and
    - (ii) the period within which all waste levy amounts must be paid under the amended waste levy instalment agreement; or
  - (b) if the decision is to refuse the application—give the operator an information notice for the decision.
- (5) The chief executive may grant the application only if satisfied the applicant 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 applicant to pay all waste levy amounts owing and future waste levy amounts.
- (6) The making of an application under this section does not of itself affect the applicant's obligations under the waste levy instalment agreement sought to be amended.

## **72E Interest affected by waste levy instalment agreement**

- (1) Subsection (2) applies for a waste levy instalment agreement if—

[s 72F]

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- (a) the application for the agreement was made after the due date for payment of a waste levy amount the subject of the application; and
  - (b) the agreement is entered into.
- (2) 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.
- (3) If an application for a waste levy instalment agreement is refused, the requirements under this chapter for the payment of interest continue to apply unaffected by the making or refusal of the application.

#### **72F Failure to pay an instalment under waste levy instalment agreement**

- (1) 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 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; 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.

- (2) In this section—  
*instalment day*, under a waste levy instalment agreement, means a day when a payment is due under the agreement.

## **Subdivision 2      Extension of time**

### **72G      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 to pay a waste levy amount if the operator believes the operator can not pay the amount by the due date for payment of the amount.
- (2) However—
- (a) the extension of time can not be for more than 1 month; and
  - (b) the operator can not apply for the extension of time if the operator is conducting operations at the site for which the operator does not hold an environmental authority; and
  - (c) the operator can not make more than—
    - (i) 1 application for an extension of time under this section or section 72H for the payment of the same waste levy amount; or
    - (ii) 2 applications under this section or section 72H in a financial year.
- (3) The application must—
- (a) be made before the due date for payment of the waste levy amount; and
  - (b) state the reasons why the extension is being applied for.
- (4) The chief executive must, within 5 business days after the due date for payment of the waste levy amount, decide either to grant or to refuse the application and—

[s 72H]

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- (a) if the decision is to grant the application—give the applicant 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 applicant an information notice for the decision.
- (5) The chief executive may grant the application only if satisfied that it is not reasonable to expect the applicant to pay the waste levy amount by the due date for payment.

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

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

- (6) A failure to make a decision within the period required is taken to be a decision by the chief executive to refuse the application.

## **72H Application for extension of time to submit waste data return and pay waste levy amount**

- (1) The operator of a levyable waste disposal site may apply to the chief executive for an extension of time to submit a waste data return and pay a waste levy amount if the operator considers the operator can not pay the amount by the due date for payment of the amount.
- (2) However—
- (a) the extension of time can not be for more than 1 month after—
    - (i) for submission of the waste data return—the due date for submission of the return; or
    - (ii) for payment of the waste levy amount—the due date for payment of the amount; and
  - (b) the operator can not apply for the extension of time if the operator is conducting operations at the site for which the operator does not hold an environmental authority; and
  - (c) the operator can not make more than—

- 
- (i) 1 application for an extension of time under this section or section 72G for the payment of the same waste levy amount; or
    - (ii) 2 applications under this section or section 72G in a financial year.
  - (3) The application must—
    - (a) be made by the due date for the submission of the waste data return for the site; and
    - (b) state the reasons why the extension is being applied for.
  - (4) The chief executive must, within 5 business days after the due date for the submission of the waste data return for the site, decide either to grant or to refuse the application and—
    - (a) if the decision is to grant the application—give the applicant a notice stating a new day by which the waste data return must be submitted and the new date by which the waste levy amount must be paid; or
    - (b) if the decision is to refuse the application—give the applicant an information notice for the decision.
  - (5) The chief executive may grant the application only if satisfied that it is not reasonable to expect the applicant to pay the waste levy amount by the due date for payment.

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

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

- (6) A failure to make a decision within the period required is taken to be a decision by the chief executive to refuse the application.

## **72I Public notice granting extension of time to submit waste data return and pay waste levy amount**

- (1) The chief executive may by publication on the department's website grant an extension of time to the operators of stated levyable waste disposal sites to do either of the following—
  - (a) pay a waste levy amount;

- (b) submit a waste data return and pay a waste levy amount.
- (2) The chief executive may grant an extension under this section only if satisfied that the extension is justified because of a significant emergency.

### **Subdivision 3 Chief executive's estimation of waste levy amount**

#### **72J Estimation of waste levy amount payable by operator of levyable waste disposal site**

- (1) The chief executive may decide an estimate of the waste levy amount payable by the operator of a levyable waste disposal site for a particular period (the *estimated waste levy amount*) if—
  - (a) the operator did not give the chief executive a waste data return by the due date for the site under section 72; or
  - (b) the operator gave 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) the chief executive is satisfied on reasonable grounds that the waste levy amount payable by the operator for the period is incorrect.
- (2) If the chief executive decides an estimated waste levy amount for the operator—
  - (a) that amount becomes the waste levy amount payable by the operator for the period; and
  - (b) the chief executive must give the operator an information notice for the decision.
- (3) To remove any doubt, it is declared that—
  - (a) the chief executive may act under this section even if the due date for payment of the waste levy amount payable has passed; and

- (b) the chief executive deciding an estimate of the waste levy amount payable by the operator for a period under this section does not change the due date for payment of the amount; and
- (c) nothing in this section stops a subsequent adjustment being made to the waste levy amount payable by the operator for the period if a different amount is decided under a review of the chief executive's decision on the estimated waste levy amount.

## Subdivision 4      **Bad debt credit**

### **72K      Eligibility for bad debt credit after insolvency or bankruptcy of customer**

- (1) The operator of a waste disposal site is eligible for a credit (a *bad debt credit*) for the waste levy amount payable by the operator on an amount of waste delivered to the site if—
  - (a) the operator was the operator of the site when the waste was delivered; and
  - (b) the waste was delivered to the site by another person (the *customer*) for consideration in money; and
  - (c) the operator included the waste in a summary data return for the site for the levy period in which the waste was delivered; and
  - (d) the operator paid the waste levy amount; and
  - (e) the operator issued an invoice to the customer for the delivery within 30 days after the waste was delivered to the site and—
    - (i) the invoice expressly included a service delivery charge for the operator's obligation to pay waste levy on the waste when delivered to the site; and
    - (ii) the service delivery charge, excluding any component for GST, was not more than the waste levy amount; and

- (f) the customer failed to pay the operator all or part of the amount due for delivery of the waste within 30 days after being given an invoice for the amount; and
  - (g) the customer became insolvent within 12 months after the delivery of the waste to the site; and
  - (h) the operator has been unable to recover the amount owing from the customer despite having taken reasonable steps to do so; and
  - (i) the operator has offset against the amount owing by the customer any amount owed by the operator to the customer that may be set off against that amount; and
  - (j) the operator has reduced the amount owing by the value of any enforceable security the operator holds in relation to the customer but an amount remains outstanding in relation to the delivery; and
  - (k) the operator has submitted all the waste data returns and paid all waste levy owing by the operator when applying for the bad debt credit.
- (2) However, the operator is not eligible for the bad debt credit if—
- (a) the operator and the customer are, or were when the waste was delivered, related entities; or
  - (b) it is for an amount of waste delivered to the site while the customer continued to owe the operator an amount, for a previous delivery of waste, more than 30 days after being given an invoice for the previous delivery; or
  - (c) the operator has previously received a bad debt credit for the relevant delivery of the waste.
- (3) A person is a *related entity* for another person if—
- (a) for individuals—they are members of the same family; or
  - (b) for an individual and a corporation—the individual or a member of the individual’s family—



- 
- (i) is a majority shareholder, director or secretary of the corporation or a related body corporate of the corporation; or
  - (ii) has an interest of 50% or more in the corporation; or
  - (c) for an individual and a trustee of a trust—the individual or a related entity under another provision of this section is a beneficiary of the trust; or
  - (d) for corporations—they are related bodies corporate; or
  - (e) for a corporation and a trustee of a trust—the corporation or a related entity under another provision of this section is a beneficiary of the trust; or
  - (f) for trustees of 2 or more trusts—
    - (i) a person is a beneficiary of both trusts; or
    - (ii) a person is a beneficiary of 1 trust and a related entity under another provision of this section is a beneficiary of the other trust.

(4) In this section—

*family*, for a person, means—

- (a) the person's spouse; or
- (b) a parent of the person or the person's spouse; or
- (c) a grandparent of the person or the person's spouse; or
- (d) a brother, sister, nephew or niece of the person or the person's spouse; or
- (e) a child of the person or the person's spouse; or
- (f) a grandchild of the person; or
- (g) the spouse of any person mentioned in paragraphs (b) to (f).

*insolvent* means insolvent under the Corporations Act, section 95A(2).

*operator*, of a waste disposal site, includes a former operator of the site.

*related body corporate* see the Corporations Act, section 50.

*summary data return* see section 72(5).

## **72L Application for bad debt credit**

- (1) The operator or former operator of a waste disposal site who is eligible for a bad debt credit may apply to the chief executive for relief.
- (2) The application must—
  - (a) be in the approved form; and
  - (b) be supported by enough information to allow the chief executive to decide the application.

## **72M Chief executive may require additional information or documents**

- (1) Within 28 days after receiving a bad debt credit application, the chief executive may, by notice given to the applicant, require the applicant to give the chief executive further reasonable information or documents about the application by a reasonable day stated in the notice.
- (2) The applicant may, before the stated day, agree with the chief executive about extending the time for providing the further information or documents.
- (3) The application is taken to be withdrawn if the applicant does not give the chief executive the further information or documents by the stated day or the end of any extension agreed between the chief executive and the applicant.

## **72N Deciding application**

- (1) The chief executive must decide either to grant or refuse a bad debt credit application within 30 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 72M—the day the chief executive receives the information or documents.
- (2) In deciding whether to grant or refuse the application, the chief executive must consider the information included in the application.
- (3) The chief executive must—
  - (a) grant a bad debt credit application if the applicant is eligible for the credit; or
  - (b) refuse a bad debt credit application if the applicant is not eligible for the credit.
- (4) A failure to make a decision within the period required is taken to be a decision by the chief executive to refuse the application.

## **72O Grant of application**

- (1) If the chief executive decides to grant a bad debt credit application, the chief executive must, within 5 business days after granting the application, give the applicant a notice stating—
  - (a) the application has been granted; and
  - (b) the amount of the bad debt credit.
- (2) The notice must also include or be accompanied by an information notice for the decision in relation to the amount of the bad debt credit.

## **72P Refusal of application**

If the chief executive decides to refuse a bad debt credit application, the chief executive must, within 5 business days after refusing the application, give the applicant an information notice for the decision.

## **72Q Payment of bad debt credit**

- (1) This section applies if the chief executive decides to grant a bad debt credit application.
- (2) The chief executive must deduct the amount of the bad debt credit from the waste levy amount the applicant is required to remit to the State under section 56 for the relevant levy period.
- (3) Also, if the total amount of the bad debt credit is more than the amount the applicant is required to remit to the State, the chief executive must pay the applicant an amount equal to the excess.
- (4) If the applicant is no longer the operator of a waste disposal site, the chief executive must pay the applicant an amount equal to the bad debt credit.
- (5) In this section—  
*relevant levy period*, for an application, means the levy period at the time the application is decided.

# **Part 6 Resource recovery area**

## **Division 1 Declaration of resource recovery area**

### **72R Resource recovery area**

The operator of a waste disposal site may declare an area within the site as a *resource recovery area* if—

- (a) a recycling activity is conducted in the area; and
- (b) the operator, or another entity that is responsible for the operation of the area, holds all licences, environmental authorities or other approvals required for conducting the recycling activity in the area; and
- (c) a physical barrier—
  - (i) separates the area from the rest of the site; and

- (ii) prevents vehicles from moving between the area and the rest of the site other than through points of access shown on the plan of the site accompanying a notice under section 72S or 72U; and
- (d) the area and the physical barrier comply with the requirements prescribed by regulation for the area and barrier; and
- (e) there has not, within the last year, been a revocation of a declaration of a resource recovery area at the site.

## **72S Declaration of resource recovery area**

- (1) The operator of a waste disposal site declares a resource recovery area by giving the chief executive notice of a proposed resource recovery area at least 20 days before using the area as a resource recovery area.
- (2) The notice must—
  - (a) be in the approved form; and
  - (b) state the day the declaration takes effect; and
  - (c) include a description of the activities to be carried out in the resource recovery area; and
  - (d) be accompanied by a plan of the waste disposal site indicating the resource recovery area and clearly showing—
    - (i) the physical barrier between the area and the rest of the site; and
    - (ii) the points of access allowing vehicles to move between the area and the rest of the site; and
  - (e) be signed by the operator and any other entity that will be responsible for the area.

## **72T Effect of declaration of resource recovery area**

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

- (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 is, for the purposes of the waste levy, taken to be waste delivered to the levyable waste disposal site.

*Note—*

If levyable waste is delivered to a levyable waste disposal site, the waste levy on the waste may be payable under section 36.

## **72U Amendment of resource recovery area**

- (1) The operator of a waste disposal site for which a resource recovery area has been declared may amend the area's declaration as a resource recovery area by giving the chief executive notice of the proposed amendment at least 20 days before the amendment is to take effect.
- (2) The notice must—
  - (a) be in the approved form; and
  - (b) state the day the amendment takes effect; and
  - (c) if the recycling activities to be conducted in the amended resource recovery area differ from the activities currently carried out in the area—include a description of the recycling activities to be conducted in the amended resource recovery area; and
  - (d) be accompanied by a plan of the waste disposal site indicating the amended resource recovery area and clearly showing—
    - (i) the physical barrier between the area and the rest of the site; and

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- (ii) the points of access allowing vehicles to move between the area and the rest of the site; and
  - (e) be signed by the operator and any other entity that will be responsible for the area.
- (3) The operator need not act under subsection (1) if the only change to the resource recovery area is a change to—
- (a) the recycling activities conducted in the area; or
  - (b) the physical barrier or points of access for the area that do not change the boundaries of the area; or
  - (c) the entity having responsibility for the operation of the area.
- (4) If an amendment of a resource recovery area under this section results in a part of the area being within the levyable waste disposal site—
- (a) that part of the area becomes part of the site; and
  - (b) all waste within that part of the area is, for the purposes of the waste levy, taken to be waste delivered to the site.

*Note—*

If levyable waste is delivered to a levyable waste disposal site, the waste levy on the waste may be payable under section 36.

## **72V Cancellation of resource recovery area**

- (1) The operator of a waste disposal site for which a resource recovery area has been declared may cancel the area's declaration as a resource recovery area by giving the chief executive notice of the proposed cancellation at least 30 days before the cancellation is to take effect.
- (2) The notice must state the day the cancellation takes effect.
- (3) If a resource recovery area is cancelled under this section—
  - (a) the cancelled area becomes part of the levyable waste disposal site; and

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- (b) all waste within the cancelled area is, for the purposes of the waste levy, taken to be waste delivered to the levyable waste disposal site.

*Note—*

If levyable waste is delivered to a levyable waste disposal site, the waste levy on the waste may be payable under section 36.

## **72W Revocation of resource recovery area by chief executive**

- (1) The chief executive may revoke a declaration by the operator of a waste disposal site of an area as a resource recovery area if—
  - (a) there is an active landfill cell within the area; or
  - (b) the amount of waste, including recyclable waste, stockpiled in the area is greater than the total amount of waste delivered to the area in the previous 12 months; or
  - (c) the operator or another entity having responsibility for the operation of the resource recovery area is convicted of an offence under this part; or
  - (d) the chief executive is satisfied the area does not fulfil, or no longer fulfils, the requirements under section 72R for an area to be declared as a resource recovery area.
- (2) Before revoking the declaration (the *proposed action*), the chief executive must give notice to the operator of the waste disposal site stating all of the following—
  - (a) the proposed action;
  - (b) the grounds for taking the proposed action;
  - (c) the facts and circumstances that form the basis for the grounds;
  - (d) when the proposed action is intended to take effect;
  - (e) that the operator may make, within a stated period, written submissions to show why the proposed action should not be taken.



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- (3) The stated period for submissions must not end earlier than 21 days after the operator of the waste disposal site is given the notice.
  - (4) The chief executive must consider all submissions made under subsection (2)(e).
  - (5) If the chief executive decides to take the proposed action, the chief executive must, within 10 business days after making the decision, give the operator of the waste disposal site an information notice for the decision.
  - (6) The decision takes effect when the information notice is given.
  - (7) If a resource recovery area is revoked under this section—
    - (a) the area becomes part of the levyable waste disposal site; and
    - (b) all waste within the area is, for the purposes of the waste levy, taken to be waste delivered to the levyable waste disposal site.

*Note—*

If levyable waste is delivered to a levyable waste disposal site, the waste levy on the waste may be payable under section 36.

## **Division 2                      Obligations relating to resource recovery area**

### **72X      Requirement to keep documents**

An entity having responsibility for the operation of a resource recovery area must keep the following documents for at least 5 years after the event that is the subject of the document happens—

- (a) any document that records waste delivered to the area, including its measurements;

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- (b) any document that records waste or other material removed from the area as mentioned in section 59(d), including its measurements;
- (c) a copy of the results of a volumetric survey of the area carried out under section 72Y or 72Z;
- (d) any document that records any other event for the area as prescribed by regulation.

Maximum penalty—300 penalty units.

**72Y Volumetric survey for resource recovery area in waste levy zone**

- (1) From 1 June 2020, this section applies for a resource recovery area for a waste disposal site in the waste levy zone.
- (2) The entity having responsibility for the operation of the resource recovery area must, in each year—
  - (a) ensure that a volumetric survey is carried out in June for all stockpiled waste at the resource recovery area; and
  - (b) give the chief executive a copy of the results of the volumetric survey in the approved form before the end of July.

Maximum penalty—200 penalty units.

- (3) The volumetric survey must be carried out in compliance with the requirements prescribed by regulation.
- (4) The results of the volumetric survey must—
  - (a) be in electronic form; and
  - (b) include a topographical plan complying with the specifications advised by the chief executive; and
  - (c) include details of the following—
    - (i) the area of the resource recovery area;
    - (ii) the stockpiles of waste, including recyclable waste, at the area; and

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- (d) be certified as accurate by a surveyor under the *Surveyors Act 2003*.
  - (5) This section continues to apply to the entity having responsibility for the operation of the resource recovery area even if the declaration of the area as a resource recovery area is cancelled or revoked.
  - (6) However, if a matter mentioned in subsection (5) happens, 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 subsection (2).
  - (7) This section does not apply to a resource recovery area for a small site until 1 June 2022.

## **72Z Volumetric survey for resource recovery area in non-levy zone**

- (1) This section applies for a resource recovery area declared for a waste disposal site if—
  - (a) the site is in the non-levy zone; and
  - (b) either—
    - (i) from 1 July 2019 to 31 December 2019—at least 300 tonnes of levyable waste, generated outside the non-levy zone, is received at the resource recovery area; or
    - (ii) from 1 January 2020—at least 600 tonnes of levyable waste, generated outside the non-levy zone, is received at the resource recovery area during a year.
- (2) The entity having responsibility for the operation of the resource recovery area must—
  - (a) before the end of June of the following year, ensure a volumetric survey is carried out for all stockpiled waste at the resource recovery area; and

- (b) before the end of July in the following year, give the chief executive a copy of the results of the survey in the approved form.

Maximum penalty—200 penalty units.

- (3) The volumetric survey must be carried out in compliance with the requirements prescribed by regulation.
- (4) 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 details of the following—
    - (i) the area of the resource recovery area;
    - (ii) the stockpiles of waste, including recyclable waste, at the area; and
  - (d) be certified as accurate by a surveyor under the *Surveyors Act 2003*.
- (5) This section continues to apply to the entity having responsibility for the operation of the resource recovery area even if the declaration of the area as a resource recovery area is cancelled or revoked.
- (6) However, if a matter mentioned in subsection (5) happens, 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 subsection (2).
- (7) This section does not apply to a resource recovery area declared for a small site until 1 June 2022.

### **73 Volumetric survey carried out by chief executive**

- (1) This section applies if the entity having responsibility for the operation of a resource recovery area—
  - (a) is required to carry out a volumetric survey under section 72Y(2)(a) or 72Z(2)(a); but

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- (b) fails to carry out the volumetric survey in compliance with the requirements prescribed by regulation.
  - (2) 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 area to facilitate the carrying out of the survey.
  - (3) The chief executive may recover the cost of carrying out the volumetric survey from the entity as a debt payable by the entity to the State.

### **73A Obligations of entity responsible for operation of resource recovery area**

- (1) This section applies if the operator of a waste disposal site has declared, or claims to have declared, an area as a resource recovery area under section 72S.
- (2) The entity having responsibility for the operation of the resource recovery area must ensure—
  - (a) there is not an active landfill cell within the area; and
  - (b) the area complies with the requirements for the area prescribed by regulation; and
  - (c) the physical barrier between the resource recovery area and the rest of the waste disposal site complies with the requirements prescribed by regulation; and
  - (d) the points of access allowing vehicles to move between the area and the rest of the waste disposal site comply with the requirements prescribed by regulation.

Maximum penalty—1,665 penalty units.

### **73B False claims about resource recovery area**

- (1) The operator of a waste disposal site must not claim to have a resource recovery area for the site if—
  - (a) the operator has not declared the area under section 72S;  
or

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(b) the declaration of the area has been cancelled or revoked under section 72V or 72W.

Maximum penalty—1,665 penalty units.

(2) The operator of a waste disposal site must not falsely claim a part of the site is within the resource recovery area for the site.

Maximum penalty—1,665 penalty units.

### **73C Changes affecting resource recovery area requiring notification**

(1) This section applies for a waste disposal site if a declaration of a resource recovery area is in effect for the site.

(2) If there is a change to the physical barrier or points of access for the resource recovery area that does not change the boundaries of the area, the operator of the waste disposal site must do all of the following within 7 days after the change happens—

(a) amend the plan of the waste disposal site;

(b) give the chief executive notice of the change in the approved form;

(c) give the chief executive a copy of the amended plan of the waste disposal site indicating the resource recovery area and clearly showing the physical barrier and points of access for the area.

Maximum penalty—300 penalty units.

(3) If the recycling activities declared to be conducted in the resource recovery area change, the operator of the waste disposal site must advise the chief executive of the change within 7 days after the change happens.

Maximum penalty—100 penalty units.

(4) 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 of the area immediately before the change must notify the chief executive of the change within 7 days after the change happens.

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Maximum penalty—100 penalty units.

## **Part 7                      Miscellaneous**

### **73D    Annual payment to local governments**

- (1) The chief executive must make to each local government affected by the waste levy an annual payment as prescribed by regulation.
- (2) A local government must use the amount paid to the local government to mitigate any direct impacts of the waste levy on households in the local government's local government area.
- (3) If the chief executive reasonably believes a local government has not used the amount paid to the local government as required, the chief executive must not make a further annual payment to the local government until it uses the amount as required.
- (4) All rate notices issued by a local government during the year to which the annual payment relates must include a statement that informs the ratepayer of the amount paid to the local government and the purpose of the payment.
- (5) If the chief executive reasonably believes a local government has not included the statement in the rate notices as required, the chief executive may refuse to make a further annual payment to the local government until it informs ratepayers of the amount paid and the purpose of the payment.
- (6) If the chief executive reasonably believes a local government has distributed misinformation in relation to an annual payment after receiving the payment, the chief executive may refuse to make a further annual payment to the local government until it informs the intended audience for the distribution how the misinformation is false or misleading.
- (7) A local government is taken to have distributed misinformation in relation to an annual payment if the local government—

- (a) included the misinformation in a rate notice or other document issued by the local government; or
- (b) published the misinformation on the local government's website; or
- (c) included the misinformation in an advertisement made by, or on behalf of, the local government.

(8) In this section—

***misinformation***, in relation to an annual payment, means a false or misleading statement about—

- (a) the impact of the waste levy on a local government; or
- (b) the purpose of the annual payment; or
- (c) the amount of the annual payment paid to a local government.

***rate notice***—

- (a) for the City of Brisbane—see the *City of Brisbane Regulation 2012*, schedule 4; or
- (b) for any other local government—see the *Local Government Regulation 2012*, schedule 8.

***ratepayer***, for a rate notice, means the entity given the notice.

### **73E Review of efficacy of waste levy**

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

- (a) within 3 years after the commencement; and
- (b) at intervals of not more than 10 years from 1 review to the next.



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## Chapter 4 Management of priority products and priority waste

### Part 1 Preliminary

#### 74 Purpose of chapter

The purpose of this chapter is—

- (a) to encourage, and in particular circumstances to require, persons who are involved in the life cycle of a product to share responsibility for—
  - (i) ensuring that, for the product, there is effective waste avoidance, reduction, re-use, recycling, recovery or treatment; and
  - (ii) managing the impacts of the product throughout its life cycle, including end-of-use management; and
- (b) otherwise—to improve the management of waste that is not a product.

#### 74A Definitions for ch 4

In this chapter—

*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.

## **Part 2**

# **Priority products and priority waste**

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

- (1) The chief executive may—
  - (a) prepare a draft priority statement for—
    - (i) 1 or more products; or
    - (ii) 1 or more categories of waste; 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 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 statement**

- (1) The draft priority statement must state—
  - (a) the products or category of waste intended to be included in the final statement as priority products or priority waste; and
  - (b) how each proposed product or the proposed category of waste satisfies the criteria under section 77; and
  - (c) the management options under consideration for each proposed product, a strategic waste planning option, an end of waste code or an end of waste approval.
- (2) In deciding whether to include a product or category of waste in the draft priority statement, the chief executive must consider—

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- (a) whether the product or category of waste satisfies the criteria under section 77; and
  - (b) whether action is proposed or is currently in progress for the product or category of waste through a national approach; and
  - (c) whether there are significant benefits from taking action to reduce impacts from disposal of the product or category of waste.
- (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 statement, the chief executive may consult with any expert reference group or other entity the chief executive considers appropriate.

## **77 Criteria for a priority product or priority waste**

A product or category of waste satisfies the criteria for a priority product or priority waste if at least 2 of the following apply to the product or category of waste—

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

*Examples of environmental impacts—*

greenhouse gas emissions from landfill, occurrence of leachates

- (d) there is potential to reduce the social impacts of the disposal of the product or category of waste through improved management of the product or waste;

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*Examples of social impacts—*

danger to waste management workers, community concern, amenity

- (e) treating or disposing of the product or category of waste involves a significant cost to the community;
- (f) improved management of the product or category of waste 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 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—
  - (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—

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- (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 statement**

- (1) The chief executive must prepare, and give to the Minister, a final version of the priority statement.
- (2) When preparing the final priority statement, the chief executive must consider all submissions made to the chief executive on the draft priority statement under section 75.

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

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

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

- (1) A minor amendment of the priority 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 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.

## **82 Review of priority statement**

- (1) At least once every 3 years, the chief executive must review the priority 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 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 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.

**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*.

**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



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- (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.

## **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

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- (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
  - (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 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
- (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 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.

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- (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.

## 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;
    - (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—

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- (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 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 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.



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## Part 3A                      Banned plastic shopping bags

### 99A    Objects of part

The objects of this part are to—

- (a) reduce plastic pollution by reducing the number of plastic bags that become waste and enter the environment as litter; and
- (b) encourage retailers and consumers to—
  - (i) reduce the overall use of carry bags by considering whether it is necessary on every occasion to use a bag to carry goods; and
  - (ii) use alternative shopping bags.

### 99B    Meaning of *banned plastic shopping bag* and *alternative shopping bag*

- (1) A *banned plastic shopping bag* is a carry bag with handles—
  - (a) made, in whole or part, of plastic (whether or not the plastic is degradable) that has a thickness of less than—
    - (i) the thickness prescribed by regulation; or
    - (ii) if a thickness has not been prescribed by regulation—35 microns; or
  - (b) prescribed by regulation to be a banned plastic shopping bag.
- (2) However, each of the following is not a banned plastic shopping bag—
  - (a) a barrier bag;
  - (b) a plastic bag that is, or is an integral part of, the packaging in which goods are sealed for sale;
  - (c) a bag that is prescribed by regulation to not be a banned plastic shopping bag.

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(3) An **alternative shopping bag** is a bag, other than a banned plastic shopping bag, that is suitable to be used to carry goods from a retailer's premises.

(4) In this section—

**AS 4736** means the Australian Standard for biodegradable plastics as in force from time to time under that designation (regardless of the edition or year of publication of the standard).

**barrier bag** means a plastic bag used to carry unpackaged perishable food.

*Examples of unpackaged perishable foods—*

fruit, vegetables, meat, fish

**degradable**, for plastic, means plastic that is—

- (a) biodegradable, including material that is compostable under AS 4736; or
- (b) designed to degrade and break into fragments over time.

### **99C Meaning of *retailer***

A **retailer** is a person who sells goods in trade or commerce.

### **99D Retailer not to give banned plastic shopping bag**

(1) A retailer must not give a banned plastic shopping bag to a person to use to carry goods the retailer sells from the retailer's premises.

Maximum penalty—50 penalty units.

(2) This section applies whether or not a price is charged for the banned plastic shopping bag.

### **99E Giving false or misleading information about banned plastic shopping bag**

A person must not give information that the person knows is false or misleading to another person about—

- (a) the composition of a banned plastic shopping bag; or
- (b) whether or not a plastic bag is a banned plastic shopping bag.

Maximum penalty—50 penalty units.

### **99F Retailer may charge for alternative shopping bag**

Nothing in this part prevents a retailer from charging for an alternative shopping bag.

### **99G Review of part**

- (1) The Minister must ensure a review of the operation of this part starts as soon as practicable, but no more than 3 months, after 1 July 2020.
- (2) The review must include a review of—
  - (a) the effect of this part on the community and retailers; and
  - (b) the level of retailers' knowledge and understanding about the prohibition on giving banned plastic shopping bags to persons; and
  - (c) the effectiveness of this part in reducing the quantity of banned plastic shopping bags—
    - (i) used; and
    - (ii) that becomes waste and is littered or disposed of to landfill.
- (3) The chief executive must give a report on the outcome of the review to the Minister within 6 months after the day the review starts.
- (4) The Minister must table the report in the Legislative Assembly within 12 sitting days after receiving the report.

## **Part 3B                      Beverage container refund scheme**

### **Division 1                      Introduction**

#### **Subdivision 1                  Preliminary**

##### **99H    Objects of part**

The main objects of this part are to—

- (a) increase the recovery and recycling of empty beverage containers; and
- (b) reduce the number of empty beverage containers that are littered or disposed of to landfill; and
- (c) ensure the manufacturers of beverage products meet their product stewardship responsibility in relation to their beverage products; and
- (d) provide opportunities for social enterprise, and benefits for community organisations, by—
  - (i) making funds available through the payment of refund amounts for empty beverage containers; and
  - (ii) creating opportunities for employment in activities related to collecting, sorting and processing containers for recycling; and
- (e) complement existing collection and recycling activities for recyclable waste.

*Example of existing collection and recycling activities—*

Local governments collect recyclable waste through kerbside waste collection services and arrange for the waste to be recycled.

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## 99I How objects are to be achieved

The objects are achieved by providing for a container refund scheme (the *scheme*) that—

- (a) encourages consumers to collect empty beverage containers for recycling by providing for refund amounts to be paid for the containers; and
- (b) encourages waste management service providers to ensure empty beverage containers collected through general waste services are recycled by providing for recovery amounts to be paid for containers sent for recycling; and
- (c) recognises the role of the manufacturers of beverage products in generating waste in the form of empty containers by requiring the manufacturers to—
  - (i) contribute to the cost of refund amounts paid for the containers and the cost of administering the scheme; and
  - (ii) ensure containers for their beverage products are made of materials that are suitable for recycling; and
- (d) is administered by the Product Responsibility Organisation.

## 99J Functions of Product Responsibility Organisation

- (1) The Product Responsibility Organisation's main function is to administer and provide governance for the scheme.
- (2) Without limiting subsection (1), the Organisation has the following functions—
  - (a) to ensure ongoing, efficient and effective arrangements are available in Queensland for empty beverage containers to be collected, sorted and recycled;
  - (b) to establish a network of container refund points to, as far as practicable, provide communities in Queensland

- with access to a place for the return of empty beverage containers for the payment of refund amounts;
- (c) to ensure manufacturers of beverage products fund the scheme by requiring the manufacturers to pay sufficient amounts under container recovery agreements;
  - (d) to set the amounts payable, or the method for working out the amounts payable, under the scheme—
    - (i) by manufacturers of beverage products to fund the scheme; and
    - (ii) to the operators of container refund points to pay the refund amounts for empty beverage containers and to handle, sort and transport the containers for recycling;
  - (e) to identify manufacturers of beverage products who are not participating in the scheme, including, for example, because a manufacturer—
    - (i) is selling beverages in containers that are not registered; or
    - (ii) has not entered into a container recovery agreement with the Organisation;
  - (f) to promote the scheme and the location of container refund points;
  - (g) to receive and deal with complaints relating to the scheme from members of the public and entities participating in the scheme;
  - (h) the functions given to it under this Act or another Act.

## Subdivision 2 Definitions

### 99K Definitions for part

In this part—

*beverage* see section 99L.

**beverage product** see section 99N(1).

**container** see section 99M.

**container approval**, for a beverage product, see section 99ZN.

**container collection agreement** see section 99ZA(1).

**container recovery agreement** see section 99Q.

**container refund point**—

- (a) means a facility or other place—
  - (i) at which empty containers may be returned in exchange for the payment of refund amounts; and
  - (ii) that may be operated on a permanent, temporary or mobile basis; and
- (b) includes a reverse vending machine.

**extraordinary circumstances exemption** see section 99ZY(2).

**manufacturer**, of a beverage product, see section 99O.

**material recovery agreement** see section 99ZF(1).

**material recovery facility** see section 99ZE.

**operator**, of a container refund point that is a reverse vending machine, means the person who—

- (a) if the owner of the reverse vending machine has leased or hired it to another person—leases or hires the reverse vending machine; or
- (b) otherwise—owns the reverse vending machine.

**recovery amount**, for a quantity of containers, see section 99ZG.

**recovery amount protocol** see section 99ZK.

**refund amount** means the amount prescribed by regulation as the refund amount.

**refund declaration** see section 99T(2).

[s 99L]

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**refund marking** means the marking or labelling about the refund amount payable for a container under the scheme that complies with the requirements prescribed by regulation.

**registered**, for a container, means the container is included in the register of approved containers kept under section 99ZM(1).

**reverse vending machine** means a device for collecting empty containers that—

- (a) if the device recognises a container placed in the device as a container for which a refund amount is payable under the scheme by, for example, scanning the container's barcode—
  - (i) accepts the container; and
  - (ii) dispenses the refund amount for the container in a way stated on or near the machine; or
- (b) otherwise—refuses to accept the container.

**type**, of a container, see section 99N(2).

## **99L Meaning of *beverage***

- (1) A **beverage** is a liquid intended for human consumption by drinking.
- (2) However, a beverage does not include a liquid prescribed by regulation to not be a beverage for this section.

## **99M Meaning of *container***

- (1) A **container** is—
  - (a) a container that is made to—
    - (i) contain a beverage; and
    - (ii) when filled with a beverage, be sealed for storage, transport and handling before being sold for the beverage to be consumed; or



- (b) another container prescribed by regulation as a container for this section.
- (2) However, a container does not include a container prescribed by regulation to not be a container for this section.

### **99N Meaning of *beverage product* and *type* of container**

- (1) A *beverage product* is the combination of a particular beverage packaged in a container of a particular type.
- (2) The *type* of a container is the combination of—
  - (a) the volume of a beverage the container is made to hold; and
  - (b) the material the container is made of.

### **99O Meaning of *manufacturer***

- (1) A person is a *manufacturer* of a beverage product if the person—
  - (a) makes the beverage product, including, for example—
    - (i) by filling containers with a beverage; or
    - (ii) engaging another person under a contract to make the beverage product or fill containers with a beverage for the person; or
  - (b) imports the beverage product from a foreign country; or
  - (c) arranges for the distribution of the beverage product in Queensland.
- (2) For subsection (1)(a) and (b), it does not matter whether the beverage product is made in, or imported into, Queensland or another State.

## Division 2                      Sale of beverages in containers

### 99P      Restriction on manufacturer selling beverage product

- (1) A manufacturer of a beverage product must not sell the beverage product to another person to use or consume in Queensland, or to sell for use, consumption or further sale in Queensland, unless—
  - (a) a container recovery agreement is in force for the type of container used for the beverage product; and
  - (b) the container is registered; and
  - (c) the container displays—
    - (i) the refund marking; and
    - (ii) a barcode for the beverage product.

Maximum penalty—500 penalty units.

- (2) For this section, it does not matter whether the beverage manufacturer sells the beverage product in Queensland, in another State or somewhere else.

### 99Q      Container recovery agreement

- (1) A *container recovery agreement* is a written agreement between the Organisation and a manufacturer of a beverage product about the type of container used for the product.
- (2) The purpose of a container recovery agreement is to ensure the manufacturer contributes to the cost of the scheme, including, for example, the cost of the refund amounts paid for empty containers under the scheme.
- (3) The Organisation must not enter into a container recovery agreement with the manufacturer for a type of container unless the Organisation is satisfied ongoing, effective and appropriate arrangements for the container type to be collected, sorted and recycled are available.
- (4) A container recovery agreement must include provisions about the following matters—

- 
- (a) the manufacturer's obligations in relation to paying amounts to the Organisation, including how each amount is worked out and when it is to be paid, to contribute to the costs of—
    - (i) refund amounts for empty containers of the manufacturer's beverage products to be paid under the scheme; and
    - (ii) the administration of the scheme, including amounts paid to the operators of container refund points under the scheme;
  - (b) the manufacturer's obligations in relation to giving information to the Organisation about the beverage products made or imported for sale in Queensland by the manufacturer, including how and when the information is to be given;
  - (c) a dispute resolution process for settling disputes between the Organisation and the manufacturer;
  - (d) when the agreement must be reviewed;
  - (e) a process for either party to the agreement to seek an earlier review of the agreement or an amendment to it;
  - (f) other matters prescribed by regulation.
- (5) A container recovery agreement must also include the standard terms, about a matter mentioned in subsection (4) or another matter, prescribed by regulation.

**99R Limits on amounts paid by small beverage manufacturers under container recovery agreements**

- (1) A small beverage manufacturer must not, under a container recovery agreement, be required to pay an amount to contribute to the costs of the scheme that is more than the amount worked out under a regulation.
- (2) In this section—

*small beverage manufacturer* means a manufacturer of a beverage product who is prescribed by regulation to be a small beverage manufacturer.

## **Division 3                      Refund amounts for empty containers and container refund points**

### **Subdivision 1                Claiming refund amounts for empty containers**

#### **99S    Claiming refund amount from container refund point**

- (1) A person may claim a refund amount for an empty container by presenting the container at a container refund point.
- (2) The operator of the container refund point must accept the container and pay the person the refund amount for the container.

Maximum penalty—300 penalty units.

- (3) However, subsection (2) does not apply if—
  - (a) the container is not registered; or
  - (b) the refund marking is not displayed on the container; or
  - (c) the operator of the container refund point reasonably believes a refund amount has already been paid for the container; or
  - (d) if the person is required to give the operator a refund declaration under section 99T—the person does not comply with the requirement; or
  - (e) if a sign at the container refund point states that the operator of the container refund point pays refund amounts in a way other than in cash—the person refuses to accept the refund amount paid in the other way.

*Note—*

See section 99V for provisions about the ways the operator of a container refund point may pay refund amounts.

- (4) This section does not apply to a container refund point that is a reverse vending machine.

## **99T Refund declaration and proof of identity**

- (1) A person who claims a refund amount at a container refund point under section 99S must give the operator of the container refund point a refund declaration if—
- (a) the claim is for a bulk quantity of empty containers and the person has not entered into a bulk claim arrangement with the operator; or
  - (b) the operator asks the person for a refund declaration.

Maximum penalty—100 penalty units.

- (2) A ***refund declaration*** is a notice in which a person declares, for the containers for which the person is claiming a refund amount—
- (a) the containers were collected in Queensland or a corresponding jurisdiction for the purpose of claiming the refund amount under the scheme or a corresponding scheme; and
  - (b) that the person reasonably believes—
    - (i) all the containers display the refund marking; and
    - (ii) all the containers are registered; and
    - (iii) a refund amount has not previously been paid for the containers.
- (3) A refund declaration must be—
- (a) in the approved form; and
  - (b) signed by the person making the declaration; and

- (c) accompanied by an official document containing the person's photograph (for example, a passport or driver licence) as proof of the person's identity.
- (4) In this section—
- bulk claim arrangement***, between a person and the operator of a container refund point, is an arrangement in writing—
- (a) under which the operator agrees to accept claims for refund amounts for bulk quantities of empty containers from the person; and
  - (b) that states the person's obligations under the arrangement in relation to claiming the refund amounts and delivering empty containers to the container refund point.

***bulk quantity***, of empty containers, means the quantity of containers prescribed by regulation.

## **99U Claiming refund amount from reverse vending machine**

- (1) A person may claim a refund amount for an empty container from a reverse vending machine by placing the container in the machine.
- (2) A refund amount is paid for the container when the reverse vending machine—
  - (a) accepts the container; and
  - (b) dispenses the refund amount for the container in a way mentioned in subsection (3); and
  - (c) gives the person a written record of—
    - (i) the container accepted; and
    - (ii) the refund amount for the container; and
    - (iii) how and, if the refund amount was not dispensed to the person, to whom the refund amount was dispensed.
- (3) A refund amount may be dispensed by a reverse vending machine in the following ways—

- 
- (a) to the person claiming the refund amount—
- (i) in cash; or
  - (ii) in another way stated on a sign that is on or near the machine;
- (b) if a sign on or near the machine states that refund amounts for empty containers accepted by the machine are paid to another entity—by paying the amount to the other entity.

*Example of an entity refund amounts may be paid to—*

A reverse vending machine raises money for a charity by paying refund amounts to the charity.

- (4) A written record may be given under subsection (2)(c) electronically.

## **99V Ways refund amount may be paid**

- (1) The operator of a container refund point may pay refund amounts for containers presented at the container refund point—
- (a) in cash or another way; or
  - (b) in 1 or more ways; or
  - (c) in different ways for different quantities of containers.

*Examples of ways in which refund amounts may be paid—*

- in cash
  - by electronic funds transfer to a bank account or credit card account
  - as a voucher or card redeemable for cash, goods or services
- (2) If an operator pays a refund amount other than in cash, the operator must clearly display a sign at the container refund point that states—
- (a) the way the operator pays the refund amount; and
  - (b) if the operator pays the refund amount in different ways for different quantities of containers—the quantities of containers that apply for each different way.

## **99W When refund amount must not be claimed**

A person must not claim a refund amount for an empty container at a container refund point if the person knows, or ought reasonably to know—

- (a) a refund amount has already been paid for the container;  
or
- (b) a recovery amount has been paid to the operator of a material recovery facility for the container.

Maximum penalty—100 penalty units.

## **Subdivision 2 Other obligations of container refund point operators**

### **99X Obligations of operator of reverse vending machine**

- (1) This section applies to the operator of a container refund point that is a reverse vending machine.
- (2) The operator must ensure, as far as is reasonably practicable—
  - (a) the reverse vending machine is working properly; and
  - (b) if the machine is not working properly—
    - (i) the machine is turned off; or
    - (ii) a sign or other method is used to indicate to users the machine is not working properly; and
  - (c) the machine does not accept an empty container if the machine is not able to dispense a refund amount for the container; and
  - (d) the machine does not dispense a refund amount for a container if—
    - (i) the container is not registered; or
    - (ii) the container does not display the refund marking and a barcode for a beverage product; and



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- (e) the following information is clearly displayed on or near the machine—
- (i) the types of container that can be accepted by the machine;
  - (ii) if the machine dispenses the refund amount for a container other than in cash—the way the refund amount is dispensed;

*Examples of ways other than cash in which a refund amount may be dispensed—*

- issuing a voucher or card redeemable for cash, goods or services
  - crediting the amount to a bank account or credit card account using electronic funds transfer
- (iii) if the refund amount for an empty container is dispensed by being paid to an entity other than the person who claims the refund amount—the entity to whom the refund amount is paid.

*Example of an entity to whom a refund amount may be paid—*

A reverse vending machine raises money for a charity by paying refund amounts to the charity.

Maximum penalty—300 penalty units.

## **99Y Container refund point operator must keep refund declarations**

- (1) The operator of a container refund point must—
- (a) keep each refund declaration given to the operator for at least 5 years after the declaration was given; and
  - (b) for the proof of identity document mentioned in section 99T(3)(c) that accompanied the declaration—
    - (i) make a copy of the proof of identity document; and
    - (ii) keep the copy with the declaration for the period mentioned in paragraph (a); and

[s 99Z]

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- (c) if asked by an authorised person—produce the declaration and copy of the proof of identity document for inspection by the authorised person.

Maximum penalty—300 penalty units.

- (2) For this section, a document may be made, kept or produced for inspection—
  - (a) electronically; or
  - (b) by making, keeping or producing for inspection a copy of the document.

### **Subdivision 3      Container refund points**

#### **99Z      Container collection agreement required to operate container refund point**

A person must not operate a container refund point unless a container collection agreement is in force for the container refund point.

Maximum penalty—500 penalty units.

#### **99ZA      Container collection agreement**

- (1) A *container collection agreement* is a written agreement between the Organisation and the operator of a container refund point that includes provisions about the following matters—
  - (a) the operator’s obligations under the agreement in relation to—
    - (i) sorting empty containers and transporting the containers, or arranging for the containers to be transported, to a waste facility for recycling; and
    - (ii) keeping records, and reporting to the Organisation, about the refund amounts paid and containers collected, sorted and transported for recycling by the operator; and

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- (iii) ensuring the container refund point is accessible to the public, including by operating the container refund point at particular times;
  - (b) the amounts payable to the operator under the agreement for—
    - (i) refund amounts paid, or to be paid, by the operator for containers under subdivision 1; and
    - (ii) handling, sorting and transporting the containers for recycling;
  - (c) when and how the operator may claim amounts mentioned in paragraph (b) and when and how the Organisation must pay the amounts;
  - (d) if the agreement relates to a reverse vending machine—the types of containers to be collected using the machine;
  - (e) whether the operator may subcontract the operation of the container refund point and the operator’s obligations to the Organisation if the operation is subcontracted;
  - (f) a dispute resolution process for settling disputes between the Organisation and the operator;
  - (g) the term of the agreement and when the agreement must be reviewed;
  - (h) a process for either party to the agreement to seek an earlier review of the agreement or an amendment to it;
  - (i) other matters prescribed by regulation.
- (2) A container collection agreement must also include the standard terms, about a matter mentioned in subsection (1) or another matter, prescribed by regulation.
- (3) The Organisation must give a person an information notice if—
- (a) the person asks the Organisation, in writing, to enter into a container collection agreement for the purpose of the person operating a container refund point; and

[s 99ZB]

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- (b) the Organisation decides not to enter into a container collection agreement with the person.

*Note—*

See chapter 9 for provisions about internal and external reviews for a decision under this subsection.

- (4) For subsection (3), the Organisation is taken to have decided not to enter into a container collection agreement with a person if the Organisation does not offer, in writing, to enter into an agreement with the person within 20 business days after the person makes the request mentioned in subsection (3)(a).

### **99ZB Operator of container refund point may claim payment for containers collected**

- (1) The operator of a container refund point may claim a collection amount from the Organisation for containers collected by the operator.
- (2) The claim must—
  - (a) be in the form required by the operator’s container collection agreement; and
  - (b) be signed by the operator; and
  - (c) include details of—
    - (i) the number of containers the subject of the claim and the amount of the refund amounts paid for the containers; and
    - (ii) the waste facility to which the containers were transported for recycling; and
  - (d) be accompanied by the following—
    - (i) a declaration that the operator reasonably believes all the containers are registered and display the refund marking;
    - (ii) copies of any refund declarations and proof of identity documents mentioned in section 99T(3)(c) that relate to the containers;

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- (iii) a notice signed by the operator of the waste facility mentioned in paragraph (c)(ii) declaring the operator has received the containers for recycling.
- (3) The Organisation must pay the collection amount for the containers to the operator as required by the container collection agreement.
- (4) If the Organisation decides the collection amount claimed for the containers is not payable to the operator by the container collection agreement, the Organisation must give the operator an information notice for the decision.

*Note—*

See chapter 9 for provisions about internal and external reviews of a decision under this subsection.

- (5) For subsection (4), the Organisation is taken to have decided the collection amount is not payable to the operator under the container collection agreement if the Organisation does not pay the collection amount claimed for the containers within the time required under the agreement.
- (6) Subsection (2)(c)(ii) and (d)(iii) does not apply to a container the subject of an extraordinary circumstances exemption.
- (7) In this section—

*collection amount* means an amount payable to the operator under a container collection agreement for—

- (a) refund amounts paid, or to be paid, by the operator for containers under subdivision 1; and
- (b) handling, sorting and transporting the containers for recycling.

### **99ZC When container refund point operator must not claim payment**

- (1) The operator of a container refund point must not claim payment of an amount from the Organisation under a container collection agreement if the payment relates to a container and any of the following apply—

[s 99ZD]

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- (a) the operator has not paid a refund amount for the container;
- (b) the container is not registered;
- (c) the operator knows, or ought reasonably to know, the container has been disposed of to landfill, whether or not the operator has paid a refund amount for the container.

Maximum penalty—300 penalty units.

- (2) Subsection (1)(c) does not apply to a container that is the subject of an extraordinary circumstances exemption.

#### **99ZD Operator must ensure containers sent for recycling**

- (1) This section applies if—
  - (a) the operator of a container refund point has paid a refund amount for a container; and
  - (b) the container is not the subject of an extraordinary circumstances exemption.
- (2) The operator must not allow the container to be disposed of to landfill.

Maximum penalty—500 penalty units.

### **Division 4                      Recovery amounts for empty containers recycled by material recovery facilities**

#### **99ZE Meaning of *material recovery facility***

- (1) A *material recovery facility* is a facility or other place—
  - (a) at which recyclable waste is sorted and prepared for recycling, whether or not the waste is also recycled at the facility or place; or

- (b) of another type prescribed by regulation as a material recovery facility.
- (2) However, a material recovery facility does not include a facility or other place prescribed by regulation to not be a material recovery facility.

### **99ZF Material recovery agreement**

- (1) A *material recovery agreement* is a written agreement between the Organisation and the operator of a material recovery facility about the payment of recovery amounts to the operator for containers the operator sorts and prepares for recycling.
- (2) A material recovery agreement must contain provisions about the following matters—
  - (a) the types of containers the operator sorts and prepares for recycling;
  - (b) the arrangements the operator has in place for recycling the containers or sending the containers to a waste facility for recycling;
  - (c) whether recovery amounts for quantities of containers will be worked out based on the actual number of containers or the recovery amount protocol;
  - (d) when and how recovery amounts may be claimed by the operator and will be paid by the Organisation;
  - (e) a dispute resolution process for settling disputes between the Organisation and the operator;
  - (f) when the agreement must be reviewed;
  - (g) a process for either party to the agreement to seek an earlier review of the agreement or an amendment to it;
  - (h) other matters prescribed by regulation.
- (3) A material recovery agreement must also include the standard terms, about a matter mentioned in subsection (2) or another matter, prescribed by regulation.

[s 99ZG]

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- (4) The Organisation must give the operator of a material recovery facility an information notice if—
- (a) the operator asks the Organisation, in writing, to enter into a material recovery agreement for the purpose of claiming recovery amounts for containers; and
  - (b) the Organisation decides not to enter into a material recovery agreement with the operator.

*Note—*

See chapter 9 for provisions about internal and external reviews for a decision under this subsection.

- (5) For subsection (4), the Organisation is taken to have decided not to enter into a material recovery agreement with the operator of a material recovery facility if the Organisation does not offer, in writing, to enter into an agreement with the operator within 20 business days after the operator makes the request mentioned in subsection (4)(a).

### **99ZG Meaning of *recovery amount***

- (1) The ***recovery amount*** for a quantity of containers is—
- (a) if the number of containers in the quantity is known—the total of the refund amounts for the number of containers; or
  - (b) otherwise—the amount worked out under the recovery amount protocol for the quantity.
- (2) In this part, a recovery amount for a container—
- (a) has been claimed if the container is included in a quantity of containers for which a recovery amount has been claimed; and
  - (b) has been paid if the container is included in a quantity of containers for which a recovery amount has been paid.



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**99ZH Operator of material recovery facility may claim recovery amounts**

- (1) The operator of a material recovery facility may claim the recovery amount for a quantity of containers from the Organisation if the operator—
  - (a) has entered into a material recovery agreement with the Organisation; and
  - (b) has recycled the containers or sent the containers to a waste facility for recycling.
- (2) The claim must be in the form required by the operator's material recovery agreement and accompanied by—
  - (a) a notice signed by the operator declaring—
    - (i) a refund amount has not been paid for any of the containers in the quantity; and
    - (ii) if the operator has recycled the containers—the operator has recycled the containers; and
  - (b) if the operator has sent the containers to a waste facility for recycling—a notice signed by the operator of the waste facility declaring the operator has received the containers for recycling; and
  - (c) if the operator is claiming a recovery amount worked out under the recovery amount protocol—evidence the operator has complied with the protocol for claiming the recovery amount.
- (3) The Organisation must pay the recovery amount for the quantity of containers to the operator as required under the material recovery agreement.
- (4) If the Organisation decides the recovery amount claimed for the quantity of containers is not payable under the material recovery agreement, the Organisation must give the operator an information notice for the decision.

*Note—*

See chapter 9 for provisions about internal and external reviews of a decision under this subsection.

[s 99ZI]

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- (5) For subsection (4), the Organisation is taken to have decided the recovery amount is not payable under the material recovery agreement if the Organisation does not pay the recovery amount claimed for a quantity of containers within the time required by the agreement.
- (6) Subsections (1)(b) and (2)(a)(ii) and (b) do not apply to containers the subject of an extraordinary circumstances exemption.

### **99ZI When material recovery facility operator must not claim recovery amount**

- (1) The operator of a material recovery facility must not claim the recovery amount for a container if—
  - (a) a refund amount has been paid for the container at a container refund point; or
  - (b) the container is not registered; or
  - (c) the operator has allowed the container to be, or knows the container has been, disposed of to landfill.

*Note—*

See section 99ZX for deciding if an operator has allowed a container to be disposed of to landfill.

Maximum penalty—300 penalty units.

- (2) Subsection (1)(c) does not apply to a container that is the subject of an extraordinary circumstances exemption.

### **99ZJ Operator must not allow containers to become landfill**

- (1) The operator of a material recovery facility must not allow a container to be disposed of to landfill if the operator has received a recovery amount for the container.

Maximum penalty—500 penalty units.

*Note—*

See section 99ZX for deciding if an operator has allowed a container to be disposed of to landfill.

- (2) This section does not apply to a container that is the subject of an extraordinary circumstances exemption.

### **99ZK Recovery amount protocol**

- (1) A *recovery amount protocol* is a document, issued by the chief executive, that states the way in which recovery amounts for containers are worked out if the number of containers is not known.
- (2) Without limiting subsection (1), a recovery amount protocol may provide for ways to estimate the number of containers that are intermingled with other recyclable waste, for example—
  - (a) by sampling quantities of recyclable waste that include containers to work out the proportion of the waste that is containers; and
  - (b) estimating the number of containers in other quantities of recyclable waste using the proportion worked out from the sampling.
- (3) A recovery amount protocol is issued by the chief executive by publishing it on the department's website.
- (4) The chief executive must review a recovery amount protocol—
  - (a) if the Organisation or the operator of a material recovery facility asks the chief executive, in writing, to review the protocol; or
  - (b) at other times prescribed by regulation.

### **99ZL Operator of material recovery facility must comply with protocol**

- (1) This section applies if a material recovery agreement provides for the recovery amounts for quantities of containers claimed by the operator of a material recovery facility to be worked out under the recovery amount protocol.

- (2) The operator of the material recovery facility must comply with the recovery amount protocol.

Maximum penalty—300 penalty units.

## **Division 5                      Approved containers for beverage products**

### **Subdivision 1              Register of approved containers**

#### **99ZM Organisation must establish and keep register**

- (1) The Organisation must keep an up-to-date register of approved containers.
- (2) An *approved container* is a container for a beverage product for which an approval is in force under—
- (a) subdivision 2; or
  - (b) a corresponding law for a corresponding scheme.
- (3) The register must contain the following details for each approved container and the beverage product packaged in the container—
- (a) a description of the beverage product, including the following—
    - (i) the type of beverage in the product;
    - (ii) the volume of beverage in the product;
    - (iii) the material the container, including its label, is made of;
  - (b) the manufacturer of the beverage product who holds the approval;
  - (c) the barcode for the beverage product;
  - (d) if the approval was granted in a corresponding jurisdiction—the corresponding jurisdiction;

- (e) the following days—
  - (i) the day the approval was granted;
  - (ii) if the approval has ended—the day the approval ended;
- (f) any conditions of the approval.
- (4) The Organisation may also record in the register any other information the Organisation considers appropriate.
- (5) The register must be kept as a searchable, public register.

## **Subdivision 2 Applying for container approval**

### **99ZN Application**

A manufacturer of a beverage may apply to the chief executive for approval of a container for a beverage product (a *container approval*).

*Note—*

See chapter 8A for general provisions that apply to the application and to a container approval.

### **99ZO Particular matters for deciding application**

The chief executive may grant the container approval only if satisfied—

- (a) a container recovery agreement between the Organisation and a manufacturer of the beverage product for the container type used in the product—
  - (i) is in force; or
  - (ii) has been agreed in principle by the Organisation pending the approval being granted; and
- (b) the container is suitable to be recycled; and

[s 99ZP]

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- (c) the way the refund marking is proposed to be displayed on the container is not likely to affect whether the container is suitable to be recycled; and
- (d) approval for the beverage product is not in force under a corresponding law for a corresponding scheme; and
- (e) approval for the beverage product has not been refused or cancelled under a corresponding law for a corresponding scheme.

*Note—*

See section 173V for the general criteria that apply for deciding the application.

### **99ZP Notice of container approval**

- (1) If the chief executive decides to grant the container approval for a beverage product, the notice given to the manufacturer under section 173W must state the matters mentioned in section 99ZM(3) for the beverage product.
- (2) The chief executive must give a copy of the notice about the decision to the Organisation within 10 business days after making the decision.

### **99ZQ Conditions of container approval**

- (1) It is a condition of a container approval that the holder must give the Organisation notice about any changes to the beverage product the subject of the approval, including, for example—
  - (a) the type of beverage in the product; or
  - (b) the volume of beverage in the product; or
  - (c) the material the container, including its label, is made of.

*Note—*

See section 173X for the chief executive's general power to impose conditions on a container approval.

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- (2) The holder of a container approval must comply with the conditions of the approval.

Maximum penalty—300 penalty units.

### **99ZR Container approval continues in force**

- (1) A container approval continues in force until the approval is cancelled or surrendered.
- (2) However, if a container approval is suspended, the approval does not have effect for the period of the suspension.
- (3) Despite subsections (1) and (2), a person, other than a manufacturer of a beverage product the subject of the container approval, does not commit an offence against this part—
- (a) if the container used for the beverage product is no longer registered because the container approval has been cancelled or surrendered, or is suspended; and
  - (b) merely because the container used for the product is not registered.

### **99ZS Applying to amend container approval**

- (1) The holder of a container approval for a beverage product may apply to the chief executive to amend the approval, including a condition of the approval.

*Note—*

See chapter 8A, part 2 for general provisions that apply to the application.

- (2) Without limiting subsection (1), the holder may apply to amend—
- (a) the type of beverage in the beverage product; or
  - (b) the volume of beverage in the product; or
  - (c) the material the container, including its label, is made of.

### **99ZT Deciding amendment application**

- (1) This section applies if the chief executive is deciding whether or not to amend a container approval—
  - (a) on an application made under section 99ZS; or
  - (b) after giving the holder of the approval a show cause notice about a proposed amendment under section 173ZB.
- (2) Section 99ZO applies as if the decision were a decision about whether to grant the container approval.

### **99ZU Applying to transfer container approval**

- (1) The holder of a container approval may apply to the chief executive to transfer the approval to another person.

*Note—*

See chapter 8A, part 2 for general provisions that apply to the application.

- (2) The application must be accompanied by the signed consent of the proposed transferee.
- (3) The period for deciding the application is 10 business days.
- (4) If the chief executive decides to grant the application, the chief executive must, in addition to the notice under section 173W, give a notice about the decision to the proposed transferee and the Organisation within 5 business days after making the decision.

### **99ZV Grounds for suspending or cancelling container approval**

Each of the following is a ground for suspending or cancelling a container approval for a beverage product—

- (a) a container recovery agreement for the type of container for the beverage product is not, or is no longer, in force between the Organisation and a manufacturer of the product;



- (b) the container is not, or is no longer, suitable to be recycled;
- (c) the way the refund marking is proposed to be displayed on the container affects, or is likely to affect, whether the container can be recycled;
- (d) the container for the beverage product is no longer a container under the scheme;
- (e) the beverage in the beverage product is no longer a beverage under the scheme.

*Note—*

See chapter 8A, part 3 for general provisions that apply for suspending or cancelling a container approval.

## **Division 6                      Miscellaneous**

### **99ZW Inconsistent provision has no effect**

A provision of any of the following agreements has no effect to the extent the provision is inconsistent with this Act—

- (a) a container recovery agreement;
- (b) a container collection agreement;
- (c) a material recovery agreement.

### **99ZX Disposal of containers to landfill**

- (1) This section applies for deciding, for this part, whether a person has disposed of, or allowed the disposal of, a container to landfill.
- (2) A person has allowed a container to be disposed of to landfill if—
  - (a) the person arranged for the container to be taken to a waste facility for recycling; and
  - (b) when the person made the arrangement, the person knew, or ought reasonably to have known, the operator

[s 99ZY]

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- of the waste facility was likely to dispose of, or allow the disposal of, the container to landfill; and
- (c) the container is disposed of to landfill.
- (3) A person has not disposed of, or allowed the disposal of, a container to landfill if—
- (a) the person arranged for the container to be taken to a waste facility at which containers of that type can be recycled; and
  - (b) part of the container can not be recycled at the waste facility; and
  - (c) that part of the container is disposed of to landfill.

### **99ZY Extraordinary circumstances exemption**

- (1) This section applies if a container has become unsuitable to be recycled because of extraordinary circumstances.

*Example—*

The container becomes contaminated when the place at which the container is stored is inundated by water from a flooded river during a severe storm.

- (2) The operator of a container refund point or material recovery facility may apply to the chief executive for an exemption (an ***extraordinary circumstances exemption***) from the requirements under this part to—
- (a) recycle the container or send the container to be recycled; and
  - (b) not allow the container to be disposed of to landfill.

*Note—*

See chapter 8A for general provisions that apply to the application and an extraordinary circumstances exemption.

- (3) The chief executive may grant the exemption if satisfied—
- (a) the container has become unsuitable to be recycled; and

- (b) the circumstances that caused the container to become unsuitable to be recycled were extraordinary and either—
  - (i) could not have reasonably been foreseen; or
  - (ii) were beyond the operator's control.

### **99ZZ Authorisations for competition legislation**

- (1) The following things are specifically authorised for competition legislation—
  - (a) appointing, under part 5, a company to administer the scheme;
  - (b) granting, amending, transferring, suspending, cancelling or surrendering a container approval;
  - (c) a container collection agreement;
  - (d) a container recovery agreement;
  - (e) a material recovery agreement;
  - (f) the conduct of a person negotiating, entering into and performing an agreement mentioned in paragraph (c), (d) or (e).
- (2) Anything authorised to be done by subsection (1) is authorised only to the extent to which it would otherwise contravene the *Competition and Consumer Act 2010* (Cwlth) or the Competition Code of Queensland.
- (3) In this section—

**competition legislation** means the *Competition and Consumer Act 2010* (Cwlth), section 51(1)(b) or the Competition Code of Queensland, section 51.

## **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 an environmental authority in relation to the disposal of waste at the facility must not dispose of disposal ban waste at the facility.

Maximum penalty—1,000 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;

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- (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.

## **Part 5                      Product Responsibility Organisation**

### **Division 1                  Appointment and powers**

#### **102A Appointment**

The Minister may, under this part, appoint an eligible company as the Product Responsibility Organisation for the container refund scheme.

#### **102B Meaning of *eligible company***

- (1) An *eligible company* is a company that—
- (a) is registered under the Corporations Act; and
  - (b) is carried on other than for the profit or gain of its individual members; and
  - (c) has a constitution that, at all times—
    - (i) requires the company to maintain a board, constituted by 9 directors, that has the composition required under subsection (2); and
    - (ii) prohibits dividends being paid to, or the income, profits or assets of the company being distributed among, its members; and

- (iii) requires the persons appointed or employed as executive officers of the company to be eligible individuals; and
  - (iv) includes provisions about—
    - (A) the way the chair and directors are appointed and removed; and
    - (B) the way the chair and directors vote on and decide matters; and
    - (C) the remuneration and other entitlements of the chair and directors; and
    - (D) the way the constitution is amended; and
    - (E) another matter prescribed by regulation.
- (2) For subsection (1)(c)(i), the required composition of the board is as follows—
- (a) a chair who is—
    - (i) a director; and
    - (ii) independent of the beverage industry; and
    - (iii) approved by the Minister;
  - (b) at least 1 director who is an executive officer, employee or business associate of a small beverage manufacturer or an association that represents small beverage manufacturers;
  - (c) at least 1 director who is an executive officer, employee or business associate of a large beverage manufacturer;
  - (d) at least 1 director who—
    - (i) represents the interests of the community; and
    - (ii) is independent of the beverage industry; and
    - (iii) is approved by the Minister;
  - (e) at least 2 other directors who—
    - (i) have legal or financial qualifications and experience; and

- (ii) are independent of the beverage industry.
- (3) In this section—
- independent of the beverage industry*, for a person, means the person is not an executive officer, employee or business associate of a manufacturer of a beverage product.
- large beverage manufacturer* means a manufacturer of a beverage product other than a small beverage manufacturer.
- small beverage manufacturer* see section 99R(2).

## 102C Powers

The Organisation has the powers necessary for performing its functions.

*Note—*

See section 99J for the Organisation's functions.

## Division 2 Application for appointment

### Subdivision 1 Application

#### 102D Minister may invite application for appointment

- (1) The Minister may invite an eligible company to apply for appointment as the Product Responsibility Organisation for the container refund scheme.
- (2) The invitation may state—
- (a) outcomes to be met by the Organisation in a stated period after appointment—
- (i) relating to the Organisation's functions; and
- (ii) relating to administering the scheme in a way that provides opportunities for social enterprise, innovation and the development of technology; and
- (b) other requirements for the application.

## **102E Application**

After receiving the invitation, the eligible company (the *applicant*) may apply for appointment as the Product Responsibility Organisation.

## **102F Requirements for application**

- (1) The application must—
  - (a) be in writing; and
  - (b) include details of the applicant's plans for the following matters—
    - (i) establishing and administering the scheme generally, including the estimated costs of establishing and administering the scheme;
    - (ii) entering into container recovery agreements with manufacturers of beverage products, including—
      - (A) the proposed amounts to be paid by the manufacturers under the agreements to contribute to costs of the administration of the scheme; and
      - (B) a proposed timeframe for entering the agreements;
    - (iii) establishing a network of container refund points;
    - (iv) entering into container collection agreements with the operators of container refund points, including—
      - (A) a process for choosing persons with whom to enter into container collection agreements; and
      - (B) proposed arrangements for ensuring container refund points are accessible to the public, including proposed locations and operating times; and



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- (C) the proposed amounts to be paid to operators under the agreements for handling, sorting and transporting containers for recycling; and
  - (D) a proposed timeframe for entering the agreements;
  - (v) achieving any outcomes stated in the Minister's invitation;
  - (vi) setting the amounts payable under the scheme mentioned in section 99J(2)(d); and
  - (c) comply with any other requirements stated in the Minister's invitation.
- (2) The application must be accompanied by the following—
- (a) a copy of the applicant's constitution;
  - (b) evidence establishing the applicant is an eligible company and each of its executive officers is an eligible individual;
  - (c) a draft strategic plan and operational plan for establishing and administering the scheme;
  - (d) draft terms of a container recovery agreement, container collection agreement and material recovery agreement;
  - (e) a draft framework for resolving disputes between the applicant, manufacturers of beverage products, the operators of container refund points and the operators of material recovery facilities;
  - (f) draft policies for handling commercial or sensitive information about the beverage market;
  - (g) the signed consent of each person who the applicant considers is an executive officer or business associate of the applicant to—
    - (i) the collection of personal or background information about the person by the chief executive; and

- (ii) a criminal history check.

### **102G Referral of application to chief executive for assessment**

After receiving the application, the Minister must refer the application to the chief executive for assessment.

### **102H Withdrawing or amending application**

The applicant may, at any time—

- (a) withdraw the application; or
- (b) amend the application with the agreement of the Minister.

## **Subdivision 2 Assessing application**

### **102I Chief executive assesses application**

The chief executive must—

- (a) assess whether the applicant is suitable for appointment as the Product Responsibility Organisation; and
- (b) give the Minister a report about the applicant's suitability.

### **102J Particular matters for assessing application**

- (1) In assessing whether the applicant is suitable for appointment as the Organisation, the chief executive must consider and, if necessary, investigate the following—
  - (a) the application;
  - (b) the documents and evidence mentioned in section 102F(2) that accompanied the application;
  - (c) the applicant's business reputation, current financial position and financial background;

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- (d) the suitability of each executive officer and business associate to be associated with the applicant as the Organisation;
  - (e) whether, collectively, the executive officers have the skills, knowledge and experience required for the applicant to perform the functions of the Organisation effectively and efficiently.
- (2) In assessing the suitability of an executive officer or business associate of the applicant, the chief executive must consider and, if necessary, investigate the person's—
- (a) character or business reputation; and
  - (b) relevant skills, knowledge and experience; and
  - (c) current financial position and financial background.

### **102K Chief executive may require further information or documents**

- (1) The chief executive may, by notice, require the applicant to give the chief executive further information or a document reasonably required to decide the application.
- (2) When making the requirement, the chief executive must warn the applicant the application will not be considered further until the requirement is complied with.

## **Subdivision 3 Deciding application**

### **102L Minister decides application**

- (1) After receiving the chief executive's report about the applicant's suitability, the Minister must—
  - (a) consider the application and report; and
  - (b) decide to—
    - (i) appoint the applicant as the Product Responsibility Organisation and impose the conditions on the

appointment the Minister considers necessary or desirable; or

(ii) refuse the application.

- (2) The Minister must not decide to appoint the applicant unless the Minister is satisfied—
- (a) the applicant has satisfactory plans about the matters mentioned in section 102F(1)(b); and
  - (b) collectively, the executive officers have the skills, knowledge and experience required for the applicant to perform the functions of the Organisation effectively and efficiently.

### **102M Decision to make appointment**

- (1) If the Minister decides to appoint the applicant as the Product Responsibility Organisation, the Minister must, as soon as practicable after making the decision, give the applicant a notice about the decision.
- (2) The notice must—
- (a) state the applicant is appointed as the Product Responsibility Organisation; and
  - (b) state when the appointment takes effect; and
  - (c) state any conditions imposed on the appointment; and
  - (d) if the appointment is subject to conditions—be an information notice for the decision.

### **102N Refusal of application**

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

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## Subdivision 4      **General**

### **102O Appointment continues in force**

- (1) The appointment of a company as the Organisation continues in force until the appointment is cancelled.
- (2) However, if the appointment is suspended, the appointment does not have effect during the period of the suspension.

## Division 3              **Application to amend appointment**

### **102P Applying to amend appointment**

- (1) The company appointed as the Organisation may apply to the Minister to amend the appointment, including a condition of the appointment (an *amendment application*).
- (2) The Minister must refer an amendment application to the chief executive for assessment.

### **102Q Assessing application**

- (1) The chief executive must—
  - (a) assess the amendment application; and
  - (b) give the Minister a report about the amendment application.
- (2) Sections 102J and 102K apply—
  - (a) for the purpose of the chief executive assessing the amendment application; and
  - (b) as though a reference in those sections to the application is a reference to the amendment application.

### **102R Deciding amendment application**

- (1) This section applies after the Minister is given a report about the chief executive's assessment of an amendment application under section 102Q.
- (2) The Minister must—
  - (a) consider the amendment application and report about the chief executive's assessment of the amendment application; and
  - (b) decide to—
    - (i) grant the application; or
    - (ii) if the Minister decides to grant the application—impose or amend the conditions on the appointment the Minister considers are necessary or desirable; or
    - (iii) refuse the application.

### **102S Decision to amend appointment**

- (1) If the Minister decides to grant the company's amendment application, the Minister must give the company a notice about the decision.
- (2) The notice must be given as soon as practicable after the decision is made and state—
  - (a) how the appointment is amended; and
  - (b) any new conditions imposed on the appointment; and
  - (c) any existing conditions amended for the appointment; and
  - (d) when the amendment takes effect.
- (3) If the Minister imposes or amends any conditions on the appointment, the notice must also be an information notice for the decision to amend or impose the conditions.

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## 102T Refusal of application

If the Minister decides to refuse the amendment application, the Minister must give the company an information notice for the decision within 10 business day of making the decision.

## Division 4                    **Amendment, suspension, cancellation and appointment of administrator**

### Subdivision 1            **General**

#### 102U Minister may amend appointment

The Minister may, on the Minister's own initiative or on the recommendation of the chief executive, amend a company's appointment as the Organisation.

#### 102V Grounds for suspending or cancelling appointment as Organisation

Each of the following is a ground to suspend or cancel a company's appointment as the Organisation—

- (a) the company is no longer an eligible company;
- (b) an executive officer of the company is no longer an eligible individual;
- (c) the company is no longer suitable for appointment as the Organisation;
- (d) the company as the Organisation has contravened a provision of this Act;
- (e) the company has contravened a condition of its appointment as the Organisation;
- (f) the company as the Organisation has failed to comply with a direction of the Minister under section 102ZE;

[s 102W]

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- (g) the company as the Organisation has failed to achieve, and is unlikely to achieve, an outcome prescribed under section 102ZF during a particular period;
- (h) the company as the Organisation has contravened a compliance notice given to the company under chapter 11;
- (i) the company was appointed as the Organisation because of a materially false or misleading representation or declaration.

### **102W Immediate suspension**

- (1) The Minister may suspend the appointment of a company as the Organisation immediately if the Minister reasonably believes—
  - (a) a ground exists to suspend or cancel the company's appointment; and
  - (b) the circumstances warrant the immediate suspension of the appointment to ensure—
    - (i) the safety of persons; or
    - (ii) the public interest in the scheme is not adversely affected.
- (2) If the Minister decides to suspend the company's appointment under subsection (1), the Minister must give the company—
  - (a) an information notice for the decision to suspend the appointment immediately; and
  - (b) a show cause notice under section 102X.
- (3) The suspension—
  - (a) takes effect when the notices are given to the company; and
  - (b) continues until the earliest of the following happens—
    - (i) the Minister ends the suspension;
    - (ii) the show cause notice is finally dealt with;



- (iii) 30 business days after the notices are given to the company.

## Subdivision 2 Process for taking proposed action

### 102X Show cause notice

- (1) This section applies if the Minister proposes to—
  - (a) amend the company's appointment as the Organisation (the *proposed action*); or
  - (b) suspend or cancel the company's appointment as the Organisation (also the *proposed action*).
- (2) If the proposed action is suspension, the proposed action must also include appointing an administrator.
- (3) The Minister must give a notice (a *show cause notice*) about the proposed action to the company.
- (4) The show cause notice must state the following—
  - (a) the proposed action;
  - (b) if the proposed action is an amendment—the proposed amendment;
  - (c) if the proposed action is suspension—the period of the suspension;
  - (d) the grounds for the proposed action;
  - (e) the facts and circumstances that form the basis for the grounds;
  - (f) that the company may, within a stated period (the *show cause period*), make a written submission to the Minister about why the proposed action should not be taken.
- (5) The show cause period must end at least 28 days after the company is given the show cause notice.

- (6) The Minister may ask the chief executive to prepare a report about the submissions made by the company during the show cause period.

## **102Y Decision about proposed amendment, suspension or cancellation**

- (1) Within 20 business days after the end of the period for making submissions stated in the show cause notice, the Minister must decide whether or not to take the proposed action.
- (2) The Minister may decide—
  - (a) if the proposed action was to make a stated amendment—to make the stated amendment; or
  - (b) if the proposed action was to suspend the appointment for a stated period—to suspend the appointment for no longer than the stated period; or
  - (c) if the proposed action was to cancel the appointment—to suspend the appointment for a period or cancel the appointment.
- (3) However, the Minister may extend, on 1 occasion and by no more than 20 business days, the period for making a decision by giving a notice about the extension to the company before the end of the period.
- (4) In deciding whether or not to take the proposed action, the Minister must consider the following—
  - (a) all submissions made by the company during the show cause period;
  - (b) if the Minister asked the chief executive to prepare a report about the submissions—the chief executive’s report;
  - (c) the objects of this Act and how they are to be achieved, as stated in chapter 1, part 2;
  - (d) another matter prescribed by regulation.
- (5) If the Minister decides to take the proposed action, the Minister must, within 10 business days after making the

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decision, give the company an information notice for the decision.

- (6) The decision to take the proposed action takes effect on the later of the following days—
  - (a) the day the information notice is given to the company;
  - (b) a day stated in the information notice.
- (7) If the Minister decides not to take the proposed action, the Minister must give the company a notice about the decision within 5 business days after making the decision.

### **Subdivision 3      Appointment of administrator**

#### **102Z   Appointment of administrator**

- (1) The Minister may appoint an administrator—
  - (a) if the Minister suspends a company's appointment as the Organisation under section 102Y—for the company as the Organisation; or
  - (b) if the Minister cancels a company's appointment as the Organisation under section 102Y—to perform the functions of the Organisation.
- (2) An administrator, during the administrator's term of appointment and to the exclusion of any other person—
  - (a) has the function—
    - (i) for an administrator appointed under subsection (1)(a)—of conducting and managing the affairs of the company as the Organisation; or
    - (ii) for an administrator appointed under subsection (1)(b)—of being the Organisation under this Act; and
  - (b) has the other functions stated in the administrator's notice of appointment; and
  - (c) is taken to be the Organisation.

[s 102ZA]

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- (3) The function of the administrator under subsection (2)(a) may be limited by the administrator's notice of appointment.

### **102ZA Powers**

An administrator may do anything necessary or convenient to be done for, or in connection with, the administrator's functions.

### **102ZB Providing assistance**

- (1) An administrator appointed under section 102Z may, for performing the administrator's functions, by a notice given to an officer or employee or former officer or employee of the company, require the person to—

- (a) produce documents in the person's possession that the administrator reasonably requires to perform the functions; or
- (b) provide the other information or assistance the administrator reasonably requires to perform the functions.

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

Maximum penalty—100 penalty units.

- (3) It is a reasonable excuse for an individual not to comply with the requirement if doing so might tend to incriminate the individual.

- (4) In this section—

*the company* means—

- (a) if the administrator is appointed under section 102Z(1)(a)—the company whose appointment as the Organisation is suspended; or
- (b) if the administrator is appointed under section 102Z(1)(b)—the company that was appointed as

the Organisation most recently before the administrator was appointed.

### **102ZC Remuneration and costs**

- (1) If a person appointed as administrator is not a public service employee, the person is entitled to be paid the remuneration decided by the chief executive.
- (2) The costs of and incidental to the performance of the functions of the administrator are payable by the company.
- (3) In this section—  
*the company* see section 102ZB(4).

## **Subdivision 4 Minor amendment**

### **102ZD Minor amendment**

- (1) The Minister may make a minor amendment of a company's appointment as the Organisation by giving a notice about the amendment to the company.
- (2) This section applies despite subdivision 2.
- (3) In this section—  
*minor amendment*, of a company's appointment as the Organisation, means an amendment of the appointment—
  - (a) to correct a minor or formal error in the appointment; or
  - (b) to make another change that is not a change of substance and does not adversely affect the company.

## **Division 5                      Accountability, planning and reporting**

### **Subdivision 1                Ministerial directions**

#### **102ZE Ministerial directions**

- (1) The Minister may give the Organisation a written direction about the performance of its functions or the exercise of its powers.
- (2) The Organisation must comply with the direction.

*Note—*

Failure to comply with the direction is not an offence but may be a ground for suspending or cancelling a company's appointment as the Organisation. See section 102V.

- (3) The Organisation must include in its annual report for a financial year prepared under section 102ZJ details of—
  - (a) each direction given by the Minister under this section in the year; and
  - (b) action taken by the Organisation in the year because of the direction.

### **Subdivision 2                Outcomes, budget and planning**

#### **102ZF Regulation may prescribe outcomes to be achieved**

- (1) A regulation may prescribe outcomes to be achieved by the Organisation, during a period stated in the regulation, relating to—
  - (a) the Organisation's functions, including, for example, outcomes relating to—
    - (i) the recovery and recycling of containers under the scheme; or

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- (ii) the accessibility of container refund points to members of the public; or
  - (b) administering the scheme in a way that provides opportunities for social enterprise, innovation and the development of technology.
- (2) The Organisation must use its best endeavours to achieve an outcome prescribed under subsection (1).

*Note for subsection (2)—*

Failure to use best endeavours to achieve an outcome is not an offence but may be a ground for suspending or cancelling a company's appointment as the Organisation. See section 102V.

### **102ZG Annual budget, strategic plan and operational plan**

- (1) Before 31 March each year, the Organisation must prepare, in the way prescribed by regulation, and give the Minister the following documents—
  - (a) a budget of estimated costs of the scheme for the next financial year, including the estimated costs of—
    - (i) the Organisation; and
    - (ii) refund amounts to be paid for empty beverage containers under the scheme; and
    - (iii) the operation of container refund points, including handling, sorting and transporting empty beverage containers for recycling;
  - (b) a strategic plan;
  - (c) an operational plan.
- (2) During a financial year, the Organisation may amend its budget, strategic plan or operational plan for that year.
- (3) The Organisation must give the amended budget, strategic plan or operational plan to the Minister within 10 business days after making the amendment.

### **102ZH Approval of strategic plan**

- (1) The Organisation's strategic plan has no effect until it has been approved by the Minister.
- (2) The Minister must approve the strategic plan as soon as practicable after receiving the plan.
- (3) An amendment to a strategic plan has no effect until it has been approved by—
  - (a) for a minor amendment—the Organisation; or
  - (b) otherwise—the Minister.
- (4) In this section—

*minor amendment*, of a strategic plan, means an amendment of a minor nature that does not materially change the plan.

## **Subdivision 3 Reporting**

### **102ZI Quarterly reports**

- (1) The Organisation must give the Minister a report about its operations for each quarter in a financial year.
- (2) The report for a quarter must be given to the Minister—
  - (a) within 6 weeks after the end of the quarter; or
  - (b) if another period after the end of the quarter is agreed between the Organisation and the Minister—within the agreed period.
- (3) The report must include the information—
  - (a) stated in the Organisation's strategic plan; or
  - (b) prescribed by regulation.
- (4) In this section—

*quarter*, in a financial year, means the following periods in the year—

- (a) 1 July to 30 September;



- (b) 1 October to 31 December;
- (c) 1 January to 31 March;
- (d) 1 April to 30 June.

### **102ZJ Annual report**

- (1) The Organisation must give the Minister a report about its operations for each financial year.
- (2) An annual report for a financial year must be given to the Minister by 30 September after the end of the financial year.
- (3) An annual report for a financial year must include the following—
  - (a) annual financial statements for the year that have been audited by a third-party auditor;
  - (b) details of the Organisation’s achievements during the year of—
    - (i) the objectives in its strategic and operational plans; or
    - (ii) an outcome prescribed under section 102ZF;
  - (c) the information—
    - (i) stated in the Organisation’s strategic plan; or
    - (ii) prescribed by regulation.
- (4) In this section—

***third-party auditor*** means a person who—

  - (a) is appropriately qualified to audit the Organisation’s annual financial statements; and
  - (b) is not an executive officer or business associate of the Organisation.

### **102ZK Organisation must inform Minister**

The Organisation must immediately inform the Minister about any matter that the Organisation considers may—

- (a) prevent, or significantly affect, its achievement of—
  - (i) the objectives in its strategic and operational plans; or
  - (ii) an outcome prescribed under section 102ZF; or
- (b) significantly impact on—
  - (i) its performance of its functions; or
  - (ii) its financial position or viability; or
  - (iii) public confidence in the integrity of the scheme.

### **102ZL Reporting to chief executive**

- (1) The Minister may act under this section for the purpose of monitoring, assessing or reporting on the Organisation's performance of its functions.
- (2) The Minister may require the Organisation to report to the chief executive by, for example, giving stated information at stated times to the chief executive.
- (3) The Organisation must comply with the requirement.

*Note—*

Failure to comply with the requirement is not an offence but may be a ground for suspending or cancelling a company's appointment as the Organisation. See section 102V.

## **Subdivision 4      General**

### **102ZM Requirement to implement plans in application**

- (1) The Organisation must implement its plans for the following matters as stated in its application for appointment as the Organisation—

- 
- (a) establishing and administering the scheme generally;
  - (b) entering into container recovery agreements with manufacturers of beverage products;
  - (c) establishing a network of container refund points;
  - (d) entering into container collection agreements with the operators of container refund points;
  - (e) achieving any outcomes stated in the Minister's invitation under section 102D;
  - (f) setting the amounts payable under the scheme mentioned in section 99J(2)(d).
- (2) The Organisation must establish and operate a container refund point in a community if—
- (a) persons in the community do not have reasonable access to a container refund point; and
  - (b) the Organisation has not identified another person with whom to enter into a container collection agreement to operate a container refund point in the community.
- (3) This section applies subject to a condition of the Organisation's appointment.

*Note—*

Failure to comply with this section is not an offence but may be a ground for suspending or cancelling a company's appointment as the Organisation. See section 102V.

### **102ZN Status as eligible company**

- (1) The Organisation must, in each year, give the chief executive—
  - (a) a notice about whether the Organisation is, and has been during the previous year, an eligible company; and
  - (b) a copy of the Organisation's constitution.
- (2) The notice and copy must be given within 10 business days after the day that is the anniversary of the company's appointment as the Organisation.

### **102ZO Notice of particular events**

- (1) If any of the following events happens, the Organisation must give a notice about the event to the chief executive—
  - (a) an event that makes the Organisation no longer an eligible company;
  - (b) an event that makes an executive officer or business associate of the Organisation no longer an eligible individual;
  - (c) the appointment or employment of an executive officer of the Organisation ends;
  - (d) a person is appointed or employed as an executive officer of the Organisation;
  - (e) a shareholder or member of the Organisation stops being a shareholder or member of the Organisation;
  - (f) a person becomes a shareholder or member of the Organisation.
- (2) The notice must be given within 10 business days after the event happens.
- (3) A notice about an event mentioned in subsection (1)(a) must include the Organisation's plan and timetable for making the Organisation an eligible company.
- (4) A notice about an event mentioned in subsection (1)(d) or (f) must be accompanied by the signed consent of the person who is the subject of the notice to—
  - (a) the collection of personal or background information about the person by the chief executive; and
  - (b) a criminal history check.

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## **Division 6                      Miscellaneous**

### **102ZP Delegation**

- (1) The Organisation may delegate its functions and powers under this Act to a director or appropriately qualified employee of the Organisation.
- (2) The chief executive officer of the Organisation (however described) may, with the Organisation's approval, subdelegate a function delegated to the chief executive officer under subsection (1) to an appropriately qualified employee of the Organisation.

### **102ZQ Obtaining the criminal history of an individual**

- (1) This section applies in relation to an individual who—
  - (a) is an executive officer or business associate of the Organisation or an applicant under division 2; and
  - (b) has given written consent to the chief executive obtaining the individual's criminal history.
- (2) The chief executive may ask the commissioner of the police service for a written report about the individual's criminal history, including a brief description of the circumstances of any conviction mentioned in the individual's criminal history.
- (3) After receiving the request, the police commissioner must give the report about the individual's criminal history to the chief executive.
- (4) However, the duty imposed on the police commissioner applies only to information in the commissioner's possession or to which the commissioner has access.

### **102ZR Corporations Act displacement**

A provision of this part, to the extent the provision is incapable of concurrent operation with a provision of the

Corporations Act, is declared to be a Corporations legislation displacement provision for section 5G of that Act.

*Note—*

Section 5G of the Corporations Act provides that if a State law declares a provision of a law of a State to be a Corporations legislation displacement provision, any provision of the Corporations legislation with which the State provision would otherwise be inconsistent does not apply to the extent necessary to avoid the inconsistency.

## 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
  - (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

## 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 2,500L of waste—400 penalty units; or
- (b) if the offence involves depositing a volume of 2,500L or more of waste—whichever is the greater of the following amounts—
  - (i) 1,000 penalty units;
  - (ii) a fine that is twice the waste levy amount that would have been payable, when the waste was dumped, by the operator of a levyable waste disposal site if the waste had been delivered to the site.

*Note—*

If a corporation commits an offence against this provision, an executive officer of the corporation may be taken, under section 268, to have also committed the offence.

- (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.
- (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’

- (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,

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having regard to section 106(2), the newspaper is unsolicited advertising material for the premises.

### **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.

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Maximum penalty—40 penalty units.

**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.

- (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—
- (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.

## **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
  - (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.



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- (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.

## **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

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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—



## **Division 2                      Obligation of local government for waste reduction and recycling plans**

### **123      Local government's waste reduction and recycling plan obligation**

- (1) On and from the day prescribed under a regulation, a local government has an obligation at all times to ensure that—
  - (a) all aspects of waste management in its local government area are comprehensively addressed by 1 or more waste reduction and recycling plans; and
  - (b) each waste reduction and recycling plan has been prepared by the local government or with its approval, and has been adopted by the local government; 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.

**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.
- (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.



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## **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.
- (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.
  - (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

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otherwise payable by the State to the local government for any reason.

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

### **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 but is not a government owned corporation; and
    - (ii) is prescribed under a regulation to be a State entity for this Act.
- (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.

## **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 prescribed under a regulation, 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

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- (b) the waste reduction and recycling plan has been adopted by the chief executive officer; 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.
- (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

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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.

## **Part 4                      Planning entity strategic   planning for waste**

### **Division 1                Introduction**

#### **138      Object of pt 4**

The object of this part is to provide for each entity that is a planning entity to implement a plan for managing the entity's waste in a way that best achieves the objects of this Act.

### **Division 2                Establishing status as planning   entity**

#### **139      Identification of planning entity and of what is relevant                   waste for a planning entity**

- (1) An entity is a *planning entity* if—
  - (a) the chief executive has identified the entity as a planning entity; and
  - (b) the chief executive has given the entity an information notice for the decision to identify the entity as a planning 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 *planning entity* if the entity is part of a sector of entities (a *sector of planning entities*) prescribed under a regulation.
- (3) Despite subsection (2), the chief executive is not stopped from identifying an entity as a planning entity and giving it an information notice under subsection (1) on the basis that the entity is part of a sector of planning entities.
- (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;



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- (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.
- (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.

### **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; 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.

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- (3) A planning entity must comply with the obligation stated in subsection (1) unless it has a reasonable excuse.

Maximum penalty—100 penalty units.

- (4) However, subsection (3) does not start to apply to a planning entity until the day prescribed under a regulation.

## **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.

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- (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;
  - (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

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.

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## **Chapter 7      Reporting about waste management and waste disposal and recycling**

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

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

- (1AA) This section does not start to apply to a local government until 2 months after the end of the first full financial year after the day prescribed for the local government under section 123(1).
- (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 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



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- (ii) the types of waste generated in the local government area;
  - (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**

- (1AA) This section does not start to apply to the chief executive officer of a State entity until 2 months after the end of the first full financial year after the day prescribed for the State entity under section 133(1).
- (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.

## **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 day prescribed for the planning entity under section 141(4); 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.
- (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.

## 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—
  - (a) receives, sorts, recycles, treats or disposes of waste above a threshold prescribed under a regulation; and
  - (b) is part of a sector of entities (a *sector of reporting entities*) prescribed under a regulation.
- (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).
- (5) A regulation for this section may prescribe different thresholds for—

- (a) different entities; or
- (b) different types of waste; or
- (c) entities in different locations in the State.

### **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 waste disposal site.

## **Part 3 Reporting on waste disposal and recycling**

### **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 given to the chief executive under parts 1 and 2 and chapter 3, part 5.

- (3) The report must include the following information and, if appropriate, an evaluation of the information—
- (a) the total amount of the waste levy paid to the State;
  - (b) the amount and types of waste on which the waste levy was paid to the State;
  - (c) the amounts and types of waste on which the waste levy would have been paid if it were not exempt waste;
  - (d) the number of levyable waste disposal sites in the waste levy zone and non-levy zone that received waste on which the waste levy was paid to the State;
  - (e) the amounts of annual payments made to local governments under section 73D;
  - (f) the amounts and types of waste reported as being recycled by local governments;
  - (g) the amounts and types of waste reported as being recycled by reporting entities;
  - (h) the amounts and types of waste reported as being disposed of by local governments;
  - (i) the amounts and types of waste reported as being disposed of by reporting entities;
  - (j) the amounts and types of waste reported as being the subject of littering or illegal dumping;
  - (k) the number of product stewardship schemes in effect under this Act;
  - (l) the number of local governments that have adopted a waste reduction and recycling plan and have reported on the plan;
  - (m) the number of State entities that have adopted a waste reduction and recycling plan and have reported on the plan;
  - (n) 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;
- (o) the number of waste reduction and recycling plans that are in place for sectors of reporting entities.

## Chapter 8 Provisions for end of waste

### Part 1 Preliminary

#### 155 Purpose of chapter

- (1) The purpose of this chapter is to provide for the process by which the chief executive decides when and how waste stops being waste and becomes a resource.
- (2) Waste stops being a waste and becomes a *resource* when, in accordance with an end of waste code or end of waste approval, it stops being waste and becomes a resource.
- (3) A person is a *resource user* while the person uses a resource in a way, or for a purpose, that complies with an end of waste code or end of waste approval.
- (4) If a person stops using a resource in a way, or for a purpose, that complies with an end of waste code or end of waste approval—
  - (a) the person stops being a resource user; and
  - (b) the resource stops being a resource and becomes waste.

#### 156 Definitions for ch 8

In this chapter—

*amend*, an end of waste approval, includes—



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

*end of waste approval* see section 159(2).

*end of waste code* see section 159(1).

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

*registered resource producer* means a person who is registered for an end of waste code under section 173B.

*resource* see section 155.

*resource user* see section 155(3).

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

*technical advisory panel* see section 173G.

## **157 Effect of operating under end of waste code if unregistered**

- (1) This section applies if—
  - (a) a person, under an end of waste code, produces a resource and uses, sells or gives away the resource; and
  - (b) the person is not a registered resource producer for the code.
- (2) The resource is taken to be waste until the person becomes a registered resource producer for the code.

## **158 Compliance with end of waste code**

- (1) A registered resource producer for an end of waste code for a resource must not do any of the following unless the producer complies with the requirements of the code—
  - (a) produce the resource;

(b) use, sell or give away the resource.

Maximum penalty—1,665 penalty units.

- (2) A person, other than a registered resource producer, must not use a resource in a way, or for a purpose, that does not comply with an end of waste code for the resource.

Maximum penalty—1,665 penalty units.

### **159 Chief executive may make end of waste codes and grant end of waste approvals**

- (1) The chief executive may make a code (an *end of waste code*) that states—

(a) for registered resource producers—when a particular waste stops being a waste and becomes a resource; or

(b) for resource users—conditions about using a resource, including, for example, conditions about how, and the purposes for which, a resource may be used.

- (2) The chief executive may grant an approval (an *end of waste approval*) to a person that states—

(a) when a particular waste stops being a waste and becomes a resource; or

(b) conditions about using a resource, including, for example, conditions about how, and the purposes for which, a resource may be used.

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## **Part 2**                      **End of waste codes**

### **Division 1**                      **Process for making end of waste codes**

#### **159A Chief executive's decision to make end of waste code**

The chief executive may decide to make a draft end of waste code for a particular waste—

- (a) on the chief executive's own initiative; or
- (b) after inviting submissions under section 160.

#### **159B Schedule of proposed end of waste codes**

- (1) The chief executive must keep an up-to-date schedule of draft end of waste codes the chief executive has decided to prepare.
- (2) Without limiting subsection (1), the chief executive must update the schedule after considering submissions under section 161 and deciding whether or not to make a draft end of waste code for a particular waste.
- (3) The schedule must state—
  - (a) the following for each proposed draft end of waste code included in the schedule—
    - (i) the particular waste to be the subject of the draft code;
    - (ii) the proposed use of a resource under the draft code;
    - (iii) when the process for making the draft code will start and end;
    - (iv) whether a technical advisory panel will be established to prepare the draft code and, if so, when the panel will be required to give the draft code to the chief executive;

- (v) that a person may register the person's interest in being consulted when the draft code is being prepared; and
  - (b) other information prescribed by regulation.
- (4) The chief executive must publish the schedule—
- (a) on the department's website; and
  - (b) in any other way the chief executive considers appropriate.

## **160 Public notice inviting submissions about potential end of waste codes**

- (1) The chief executive must, by notice given at least once every year, invite the public to make a submission about whether there is any particular waste for which an end of waste code should be prepared.
- (2) The notice must—
- (a) state—
    - (i) that a person may make a submission to the chief executive about any particular waste for which an end of waste code should be prepared; and
    - (ii) the period, of at least 28 days, (the *submission period*) during which the submissions may be made; and
    - (iii) how to make a submission; and
  - (b) be published on the department's website.
- (3) A submission made under this section must be in the approved form.

## **161 Consideration of submissions**

The chief executive must consider all submissions made during the submission period before deciding whether or not to make a draft end of waste code for a particular waste.

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## 162 Preparation of end of waste code

- (1) Subsection (2) applies if the chief executive decides to prepare a draft end of waste code (the *draft code*).
- (2) The chief executive may establish a technical advisory panel under section 173G to prepare the draft code.
- (3) If the chief executive establishes a technical advisory panel to prepare the draft code—
  - (a) the chief executive may require the panel to include particular requirements in the draft code; and
  - (b) the panel must prepare and give the chief executive the draft code by the day stated in the schedule.
- (4) However, the technical advisory panel may, after having regard to the matters mentioned in section 163(1) but within 2 months of being established, recommend to the chief executive that the draft code should not be prepared.
- (5) The technical advisory panel's recommendation under subsection (4) must be given to the chief executive in writing and include the panel's reasons for the recommendation.
- (6) If the chief executive does not establish a technical advisory panel to prepare the draft code, the chief executive must prepare the draft code by the day stated in the schedule.
- (7) In this section—

*schedule* means the schedule published under section 159B.

## 163 Matters to be considered in preparing end of waste code

- (1) In preparing a draft end of waste code, the chief executive or a technical advisory panel must have regard to the following matters—
  - (a) the objects of this Act;
  - (b) the proposed use of a particular resource under the proposed end of waste code;

- (c) whether the proposed use of a particular resource may, or is likely to, cause any serious environmental harm or material environmental harm;
  - (d) the waste and resource management hierarchy;
  - (e) any other matter prescribed by regulation.
- (2) This section does not limit the matters the chief executive or a technical advisory panel may consider in preparing a draft end of waste code.

#### **164 End of waste code prepared by technical advisory panel**

- (1) This section applies if a technical advisory panel prepares a draft end of waste code (the *draft code*).
- (2) Subsection (3) applies if the chief executive is satisfied a technical advisory panel has not—
- (a) had regard to a matter mentioned in section 163; or
  - (b) included a requirement in the draft code that the chief executive required the panel to include in the draft code.
- (3) The chief executive may—
- (a) ask the technical advisory panel to amend the draft code; or
  - (b) refuse to accept the draft code.
- (4) The chief executive may amend the draft code before publishing it under section 166.

### **Division 2 Making end of waste codes**

#### **165 Publication of draft end of waste code**

- (1) Before the chief executive decides to make an end of waste code, the chief executive must publish the following on the department's website—
- (a) a copy of the draft end of waste code; and

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- (b) a notice stating—
    - (i) that a person may make a submission to the chief executive about the draft end of waste code; and
    - (ii) the period, of at least 28 days (the *consultation period*), during which the submission may be made; and
    - (iii) how to make a submission; and
    - (iv) another matter prescribed by regulation.
  - (2) The chief executive must ensure the draft end of waste code and notice continue to be available from the department's website throughout the consultation period.
  - (3) The chief executive must consider all submissions made under subsection (1) before deciding whether or not to make the end of waste code.

## **166 Notice of making end of waste code**

- (1) If the chief executive decides to make an end of waste code, the chief executive must notify the making of an end of waste code by gazette notice.
- (2) The gazette notice must state—
  - (a) the name of the end of waste code; and
  - (b) the date the end of waste code was made; and
  - (c) where a copy of the end of waste code may be inspected.
- (3) The end of waste code takes effect on the later of the following—
  - (a) the day the gazette notice is published;
  - (b) the day stated in the gazette notice for that purpose;
  - (c) the day stated in the end of waste code for that purpose.





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**172 Procedure for amending, cancelling or suspending end of waste code**

- (1) This section applies if the chief executive proposes—
  - (a) to amend an end of waste code; or
  - (b) to cancel or suspend an end of waste code.
- (2) The chief executive must—
  - (a) give notice of the proposed action to each registered resource producer for the end of waste code; and
  - (b) publish a notice of the proposed action—
    - (i) on the department’s website; and
    - (ii) in any other way the chief executive considers appropriate.
- (3) A notice under subsection (2) must state the following—
  - (a) the action the chief executive proposes to take;
  - (b) if the proposed action is an amendment of an end of waste code—the proposed amendment;
  - (c) if the proposed action is suspension—the proposed period of the suspension;
  - (d) the reasons for the proposed action;
  - (e) the facts and circumstances that form the basis for the reasons;
  - (f) for a notice given to a registered resource producer—that the registered resource producer may, within a stated period, make a written submission to the chief executive about the proposed action;
  - (g) for a notice published under subsection (2)(b)—that any person may, within a stated period, make a written submission to the chief executive about the proposed action.
- (4) The stated period must not end before 28 days after whichever of the following happens last—

- (a) the day the notice is given to the registered resource producer under subsection (2)(a);
  - (b) the day the notice is published under subsection (2)(b).
- (5) The chief executive may decide whether or not to take the proposed action after considering—
- (a) all submissions made under subsection (3) within the stated period; and
  - (b) if the proposed action is an amendment of an end of waste code—
    - (i) the effect of the amendment on the use of a particular resource; and
    - (ii) whether the effect of the amendment on the use of a particular resource is likely to cause any serious environmental harm or material environmental harm; and
    - (iii) the waste and resource management hierarchy; and
    - (iv) any advice, information or comment provided by any technical advisory panel; and
  - (c) another matter prescribed by regulation.
- (6) Within 10 business days after making a decision, the chief executive must give each registered resource producer for the end of waste code—
- (a) if the decision is to take the proposed action—an information notice for the decision; or
  - (b) if the decision is not to take the proposed action—a notice stating the decision.
- (7) A decision to take the proposed action takes effect for a registered resource producer on the later of the following days—
- (a) the day the information notice is given to the registered resource producer;
  - (b) a later day stated in the information notice for that purpose.

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**173 Publication and notification of amended end of waste code**

- (1) This section applies if the chief executive amends an end of waste code under section 172.
- (2) The chief executive must—
  - (a) publish a copy of the amended end of waste code—
    - (i) on the department’s website; and
    - (ii) in any other way the chief executive considers appropriate; and
  - (b) notify the amendment of the end of waste code by gazette notice.
- (3) The gazette notice must state—
  - (a) the name of the end of waste code; and
  - (b) the date the end of waste code was amended; and
  - (c) where a copy of the amended end of waste code may be inspected.
- (4) The amended end of waste code takes effect on the later of the following—
  - (a) the day the gazette notice is published;
  - (b) the day stated in the gazette notice;
  - (c) the day stated in the amended end of waste code.

**173A Minor amendment of end of waste code**

- (1) The chief executive may make a minor amendment of an end of waste code by publishing a notice of the amendment—
  - (a) on the department’s website; and
  - (b) in any other way the chief executive considers appropriate.
- (2) The chief executive may make the minor amendment to the end of waste code—

- (a) on the chief executive's own initiative; or
  - (b) on an application made under section 168 for a minor amendment of an end of waste code.
- (3) This section applies despite section 172.
- (4) In this section—
- minor amendment*, of an end of waste code, means an amendment of the code—
- (a) to correct a minor or formal error in the code; or
  - (b) to make another change that is not a change of substance and does not adversely affect the interests of a registered resource producer or a person who is likely to receive a resource from the registered resource producer.

## **Division 4                      Registration of end of waste resource producers**

### **173B Registration of end of waste resource producers**

- (1) A person becomes a registered resource producer for an end of waste code by giving the chief executive a notice that the person intends to become a registered resource producer for the code.
- (2) The notice must—
  - (a) be in the approved form; and
  - (b) include the information prescribed by regulation; and
  - (c) be accompanied by the fee prescribed by regulation.
- (3) A person stops being a registered resource producer for an end of waste code by giving the chief executive a notice in the approved form.

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### **173C Cancellation or suspension of registration**

- (1) The chief executive may cancel or suspend a registered resource producer's registration if the chief executive reasonably believes the registered resource producer has failed to comply with a requirement of an end of waste code.
- (2) The chief executive may act under subsection (1) regardless of whether the chief executive has given the registered resource producer a show cause notice under chapter 11.

### **173D Procedure for cancelling or suspending registration**

- (1) Before cancelling or suspending a registered resource producer's registration under section 173C, the chief executive must give the person a notice stating the following—
  - (a) the action the chief executive proposes to take;
  - (b) if the proposed action is suspension—the period of the suspension;
  - (c) the reasons for the proposed action;
  - (d) the facts and circumstances that form the basis for the reasons;
  - (e) that the person may, within a stated period, make a written submission to the chief executive about why the proposed action should not be taken.
- (2) For subsection (1)(e), the stated period must not end less than 28 days after the registered resource producer is given the notice.
- (3) The chief executive must consider any submissions made under subsection (1).
- (4) Within 5 business days after deciding whether or not to take the proposed action, the chief executive must give the registered resource producer—
  - (a) if the decision is to take the proposed action—an information notice for the decision; or

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- (b) if the decision is not to take the proposed action—a notice stating the decision.
- (5) A decision to take the proposed action takes effect the day the information notice is given to the registered resource producer.

### **173E Particular circumstances when end of waste approval lapses**

- (1) This section applies if the holder of an end of waste approval relating to a particular waste becomes a registered resource producer for an end of waste code for the same waste.
- (2) The person’s end of waste approval lapses.

### **173F Register of registered resource producers**

- (1) The chief executive must maintain a register of registered resource producers for each end of waste code.
- (2) The register may be kept in electronic form.
- (3) The chief executive may publish information from the register in a way the chief executive considers appropriate.
- (4) However, the chief executive must not publish confidential information included in the register.
- (5) In this section—
  - confidential information***—
    - (a) means information that—
      - (i) could identify an individual; or
      - (ii) is about a person’s current financial position or financial background; or
      - (iii) would be likely to damage the commercial activities of a person to whom the information relates; but
    - (b) does not include—

- (i) information that is publicly available; or
- (ii) statistical or other information that could not reasonably be expected to identify an individual to whom it relates.

## Division 5                      Miscellaneous

### 173G Technical advisory panels

- (1) The chief executive may establish a panel (a *technical advisory panel*)—
  - (a) to—
    - (i) consider matters relating to the development of a draft end of waste code; and
    - (ii) if necessary, prepare a draft end of waste code; or
  - (b) to consider and provide advice, information or comment about—
    - (i) a draft end of waste code prepared by the chief executive; or
    - (ii) an amendment of an end of waste code.
- (2) A regulation may prescribe matters for a technical advisory panel, including, but not limited to, the following matters—
  - (a) the terms of reference for the panel;
  - (b) the appointment of members of the panel;
  - (c) the composition of the panel membership;
  - (d) the resignation of members of the panel;
  - (e) the disclosure of interests of members of the panel;
  - (f) the termination of appointment of members of the panel.

### **173H Chief executive may seek advice, comment or information about pt 2**

- (1) The chief executive may ask any entity for advice, comment or information about the operation of this part, including, for example, the operation of an end of waste code.
- (2) There is no particular way advice, comment or information must be asked for and received and the request may be by public notice.

## **Part 3 End of waste approvals**

### **173I Application**

- (1) A person may apply to the chief executive for an end of waste approval to conduct a trial for 1 kind of waste to demonstrate whether or not the waste is suitable to be used as a resource.

*Note—*

See chapter 8A for general provisions that apply to the application and to an end of waste approval.

- (2) The application must be accompanied by a written report about the application, in the approved form, prepared by a suitably qualified person.
- (3) A regulation may prescribe matters about preparing a written report.
- (4) In this section—  
***suitably qualified person***, in relation to a written report, means a person who—
  - (a) has the qualifications and experience appropriate for preparing the report; and
  - (b) meets any other criteria prescribed by regulation.



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### **173J Particular matters for making decision**

- (1) In deciding whether to grant the end of waste approval, the chief executive must consider whether—
  - (a) the proposed management of the particular waste or the use of a particular resource is likely to cause any serious environmental harm, material environmental harm or environmental nuisance; and
  - (b) it is reasonably practicable for an end of waste code to be made for the particular waste the subject of the application.

*Note—*

See section 173V for the general criteria that apply for deciding the application.

- (2) The period for deciding the application is 40 business days and the period may be extended for 20 business days.
- (3) If the chief executive decides to grant the end of waste approval, the notice given to the applicant under section 173W must state the particular waste to which the approval relates.

### **173K Conditions of end of waste approval**

- (1) A condition imposed on an end of waste approval under section 173X may impose an obligation on—
  - (a) the holder of the approval; or
  - (b) a resource user of a resource under the approval.
- (2) The holder of, or a resource user or other person acting under, an end of waste approval must comply with the conditions of the approval.

Maximum penalty—1,665 penalty units.

*Note for subsection (2)—*

If a corporation commits an offence against this provision, an executive officer of the corporation may be taken, under section 268, to have also committed the offence.

### **173L Extending end of waste approval**

- (1) The holder of an end of waste approval may apply to the chief executive, on 1 occasion, to extend the approval.

*Note—*

See chapter 8A, part 2 for general provisions that apply to the application.

- (2) The application must be made at least 2 months before the end of waste approval expires.
- (3) In deciding the application, the chief executive must consider—
  - (a) the matters mentioned in section 173J(1); and
  - (b) whether the waste and resource to which the approval relates would be more appropriately managed as a waste management ERA.

*Note—*

See section 173V for the general criteria that apply for deciding the application.

### **173M Applying to amend end of waste approval**

- (1) The holder of an end of waste approval may apply to the chief executive to amend the approval (an *amendment application*).

*Note—*

See chapter 8A, part 2 for general provisions that apply to the application.

- (2) The application must be accompanied by a written report about the application, in the approved form, prepared by a suitably qualified person.
- (3) A regulation may prescribe matters about preparing a written report.
- (4) The period for deciding the application is—
  - (a) if the application is for a minor amendment of the approval—10 business days; or
  - (b) otherwise—40 business days.

(5) In this section—

*environmental harm* see the Environmental Protection Act, section 14.

*minor amendment*, of an approval, means an amendment of the approval—

- (a) to correct a minor or formal error in the approval; or
- (b) to make a change that is not a change of substance and does not—
  - (i) relate to the characteristics of the resource, including, for example, the physical, chemical or biological properties of the resource; or
  - (ii) relate to the use of the resource; or
  - (iii) significantly increase any environmental harm caused by the use of the resource; or
  - (iv) adversely affect the interests of the holder of the approval or another person; or
- (c) of a type prescribed by regulation.

*suitably qualified person*, in relation to a written report, means a person who—

- (a) has the qualifications and experience appropriate for preparing the report; and
- (b) meets any other criteria prescribed by regulation.

### **173N Deciding amendment application**

- (1) This section applies if the chief executive is deciding whether or not to amend an end of waste approval—
  - (a) on an application made under section 173M; or
  - (b) after giving the holder of the approval a show cause notice about a proposed amendment to the approval under section 173ZB.
- (2) In deciding the application, the chief executive must consider—

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- (a) the effect of the amendment on the management of the particular waste or the use of a particular resource; and
- (b) whether the effect of the amendment on the management of a particular waste or the use of a particular resource may, or is likely to, cause any serious environmental harm, material environmental harm or environmental nuisance; and
- (c) any relevant advice, information or comment provided by a technical advisory panel.

### **173O Applying to transfer end of waste approval**

- (1) The holder of an end of waste approval may apply to the chief executive to transfer the approval to another person.

*Note—*

See chapter 8A, part 2 for general provisions that apply to the application.

- (2) The application must be accompanied by the signed consent of the proposed transferee.
- (3) The period for deciding the application is 10 business days.
- (4) If the chief executive decides to grant the application, the chief executive must, in addition to the notice under section 173W, give a notice about the decision to the proposed transferee within 5 business days after making the decision.

### **173P Grounds for suspending or cancelling end of waste approval**

- (1) Each of the following is a ground for suspending or cancelling an end of waste approval—
  - (a) there is no longer a use, or likely to be a future use, for a particular resource under the approval;
  - (b) the management of a particular waste or the use of a particular resource under the approval has caused, or is likely to cause, serious environmental harm, material

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- environmental harm or environmental nuisance that is unlawful under the Environmental Protection Act, section 493A;
- (c) the use of the particular waste or a resource the subject of the approval is otherwise unlawful.
- (2) Also, it is a ground for cancelling an end of waste approval that—
- (a) an end of waste code for a particular resource to which the end of waste approval relates is in effect; and
  - (b) the chief executive reasonably believes the holder of the end of waste approval may operate under the end of waste code.

### **173Q Chief executive may seek advice, comment or information**

The chief executive may ask any entity for advice, comment or information about the operation of this part at any time.

## **Chapter 8A General provisions for approvals**

### **Part 1 Preliminary**

#### **173R Application of chapter**

- (1) This chapter applies to the following approvals (each an *approval*) under this Act—
  - (a) a container approval under chapter 4, part 3B, division 5;
  - (b) an extraordinary circumstances exemption;

- (c) an end of waste approval under chapter 8, part 3.
- (2) In particular, part 2 applies to making and deciding applications for an approval to be granted, amended, extended or transferred.
- (3) This chapter does not limit or otherwise affect a requirement under another provision of this Act about a particular approval or making or deciding a particular application.

## **Part 2 Applications**

### **173S Application**

An application must be—

- (a) in the approved form; and
- (b) accompanied by any other information or documents prescribed by regulation for the application; and
- (c) accompanied by the fee prescribed by regulation.

### **173T Chief executive may require additional information or documents**

- (1) The chief executive may, by notice, require the applicant to give the chief executive further information or documents the chief executive reasonably requires to decide the application.
- (2) The notice must—
  - (a) be given to the applicant within 20 business days after the chief executive receives the application; and
  - (b) state a reasonable period within which the applicant must comply with the notice.
- (3) The chief executive and the applicant may, before the stated period ends, agree to extend the period.
- (4) The application is taken to have lapsed if the applicant does not comply with the notice.

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### 173U Deciding application

- (1) The chief executive must decide to grant or refuse to grant the application within the required decision-making period for the application.
- (2) However, the chief executive may extend, on 1 occasion, the required decision-making period for deciding the application by giving the applicant a notice about the extension before the end of the period.
- (3) The extension must not be more than—
  - (a) if another provision of this Act states a period by which the required decision-making period may be extended—the stated period; or
  - (b) otherwise—10 business days.
- (4) A failure to make a decision under this section is taken to be a decision to refuse to grant the application.
- (5) In this section—

*required decision-making period*, for an application, means the period—

  - (a) that starts on the later of the following days—
    - (i) the day the chief executive receives the application;
    - (ii) if further information or documents are requested under section 173T—the day the chief executive receives the information or documents; and
  - (b) that ends after either of the following periods—
    - (i) if another provision of this Act states a period for deciding the application—the stated period;
    - (ii) otherwise—20 business days.

### 173V General criteria for deciding application

- (1) In deciding the application, the chief executive must consider the following—

- (a) the objects of this Act and how they are to be achieved, as stated in chapter 1, part 2;
  - (b) the waste and resource management hierarchy;
  - (c) a matter for the decision stated in another provision of this Act;
  - (d) another matter prescribed by regulation for the decision.
- (2) This section does not limit the matters the chief executive may consider in making the decision.

### **173W Granting application**

- (1) If the chief executive decides to grant the application, the chief executive must give the applicant a notice about the decision within 5 business days after making the decision.
- (2) If the decision is to grant an approval, the notice must state the following—
  - (a) that the approval has been granted;
  - (b) the person to whom the approval is granted;
  - (c) if the approval is granted for a term—when the approval ends;
  - (d) a matter stated in another provision of this Act for the notice;
  - (e) any conditions imposed on the approval;
  - (f) if conditions are imposed on the approval—the reasons for the conditions.
- (3) If the decision is to amend an approval, the notice must state the following—
  - (a) how the approval is amended;
  - (b) any new conditions imposed on the approval;
  - (c) any existing conditions amended for the approval;
  - (d) when the amendment takes effect.



- (4) If the chief executive imposes or amends any conditions on the approval, the notice must also be an information notice for the decision to impose the conditions.

### **173X Conditions of approval**

If the chief executive decides to grant or amend an approval, the chief executive may impose the conditions on the approval the chief executive considers necessary or desirable.

### **173Y Refusal of application**

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

## **Part 3 Amendment, suspension or cancellation**

### **173Z Amendment of approval**

The chief executive may, on the chief executive's own initiative, amend an approval.

### **173ZA Suspension or cancellation of approval**

The chief executive may suspend or cancel an approval if the chief executive is satisfied—

- (a) a ground for suspending or cancelling the approval stated in another provision of this Act exists; or
- (b) the approval was granted because of a materially false or misleading representation or declaration; or
- (c) the approval was granted on the basis of particular matters or information that have changed and the change

- is likely to cause serious environmental harm, material environmental harm or environmental nuisance; or
- (d) a condition imposed on the approval has not been complied with; or
  - (e) a request for information about the approval under section 173ZF has not been complied with; or
  - (f) it is necessary or desirable to do so having regard to the objects of the Act.

### **173ZB Show cause notice**

- (1) This section applies if the chief executive proposes to—
  - (a) amend an approval (the *proposed action*); or
  - (b) suspend or cancel an approval (also the *proposed action*).
- (2) The chief executive must give a notice (a *show cause notice*) about the proposed action to the holder of the approval.
- (3) The show cause notice must state the following—
  - (a) the proposed action;
  - (b) if the proposed action is an amendment—the proposed amendment;
  - (c) if the proposed action is suspension—the proposed period of the suspension;
  - (d) the grounds for the proposed action;
  - (e) the facts and circumstances that form the basis for the grounds;
  - (f) that the holder may, within a stated period (the *show cause period*), make a written submission to the chief executive about why the proposed action should not be taken.
- (4) The show cause period must end at least 28 days after the holder of the approval is given the show cause notice.

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### **173ZC Decision about proposed amendment, suspension or cancellation**

- (1) Within 20 business days after the end of the period for making submissions stated in the show cause notice, the chief executive must decide whether or not to take the proposed action.
- (2) The chief executive may decide—
  - (a) if the proposed action was to make a stated amendment—to make the stated amendment; or
  - (b) if the proposed action was to suspend the appointment for a stated period—to suspend the appointment for no longer than the stated period; or
  - (c) if the proposed action was to cancel the appointment—to suspend the appointment for a period or cancel the appointment.
- (3) However, the chief executive may extend, on 1 occasion and by no more than 20 business days, the period for making a decision by giving a notice about the extension to the applicant before the end of the period.
- (4) In deciding whether or not to take the proposed action, the chief executive must consider the following—
  - (a) all submissions made by the holder of the approval during the show cause period;
  - (b) if the proposed action is an amendment—the effect of the proposed amendment;
  - (c) the objects of this Act and how they are to be achieved, as stated in chapter 1, part 2;
  - (d) the waste and resource management hierarchy;
  - (e) another matter prescribed by regulation.
- (5) 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 of the approval an information notice for the decision.

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- (6) The decision to take the proposed action takes effect on the later of the following days—
  - (a) the day the information notice is given to the holder of the approval;
  - (b) a day stated in the information notice.
- (7) If the chief executive decides not to take the proposed action, the chief executive must give the holder of the approval a notice about the decision within 5 business days after making the decision.

### **173ZD Minor amendment of approval**

- (1) The chief executive may make a minor amendment of an approval by giving a notice about the amendment to the holder of the approval.
- (2) This section applies despite sections 173ZB and 173ZC.
- (3) In this section—

*minor amendment*, of an approval, means an amendment of the approval—

  - (a) to correct a minor or formal error in the approval; or
  - (b) to make a change that is not a change of substance and does not adversely affect the interests of the holder of the approval or another person.

## **Part 4                      Miscellaneous**

### **173ZE Surrender of approval**

The holder of an approval may surrender the approval by giving the chief executive a notice about the surrender.

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### **173ZF Request for information about approval**

- (1) The chief executive may, by notice, require any of the following persons to give the chief executive information about an approval—
  - (a) the holder of the approval;
  - (b) if the approval was transferred to another person in the 5 years before the notice was given—a previous holder of the approval;
  - (c) if the approval was cancelled, surrendered or otherwise ended in the 5 years before the notice was given—a person who was the holder of the approval.
- (2) The notice must state—
  - (a) the information required; and
  - (b) why the information is required; and
  - (c) the day by which the information is to be given to the chief executive.

## **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 for an internal review of the decision (an *internal review application*).

## **176 Requirements for making application**

- (1) An internal review application must be—
  - (a) made to—
    - (i) for a decision made by the Organisation under chapter 4, part 3B—the Organisation; or
    - (ii) otherwise—the chief executive; and
  - (b) in the approved form; and
  - (c) supported by enough information to enable the application to be decided; and
  - (d) 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 or Organisation 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

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- (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, Organisation or QCAT.

## 178 Internal review

- (1) The chief executive or Organisation 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—

- (i) personally by the chief executive; or
  - (ii) by the board of directors of the Organisation.
- (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 or Organisation 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 or Organisation does not give the notice within the 10 days, the chief executive or Organisation 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.



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## 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).

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

*electronic document* means a document of a type under the *Acts Interpretation Act 1954*, schedule 1, 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.

## **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

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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—
  - (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.

## **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

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person has entered a place as mentioned in section 192(1)(a)(iii), (iv) or (v).

### **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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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.

### **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.



- (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 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.
- (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—

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

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## 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.

[s 204]

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- (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 53(2) 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—
  - (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*.

## **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 53(2) 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.



- (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.

## **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;

- (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.

### **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—

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- (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.
- (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.

## **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—

- (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.
- (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.



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## **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—
  - (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
  - (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

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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
  - (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.
- (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
  - (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 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.
- (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



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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.

*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 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.
- (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—1,665 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 chapter

In this chapter—

*compliance notice* see section 248(1).

*prescribed provision* means—

- (a) section 38, 53(2), 54(2), 57(2) or (3), 58(2), 60(2), (4) or (6), 61(2) or (3), 63(4), 64(2), 66(2), 67(1), 68(2), 69(2), 72(1), 72A, 72X, 72Y(2), 72Z(2), 73A(2), 99Q(3), 99ZB(3), 99ZH(3), 99ZM(1), 101, 103(1), 104(1), 107(1), 108, 109(1) or (2), 112(2), 141(3), 149(1), 152(2), 158(1) or (2), 173K(2), 301E or 301F; or
- (b) a provision of chapter 4, part 5, division 5; or
- (c) 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.

## 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—

[s 249]

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- (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.
- (3) Subsection (4) applies if the contravention of a prescribed provision is a contravention of section 57(2) or (3).
- (4) The chief executive may give the person a compliance notice about the contravention only if the chief executive is satisfied that the waste disposal site where the weighbridge is required to be installed is not planned to be closed within 1 year after the requirement in section 57(2) or (3) started to apply to the operator of the site.

### **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;
  - (b) the particular prescribed provision the chief executive believes has been, or is being, contravened;



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- (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, or 109(1) or (2)—40 penalty units;  
or

- (b) if the compliance notice relates to a contravention of section 58(2) or (3)—200 penalty units; or
- (c) 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—
  - (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 56(2), 57(2) or (3), 58(2), 60(2), (4) or (6), 61(2) or (3), 67(1), 68(2), 69(2), 72(1), 72A, 72X, 72Y(2), 72Z(2), 73A(2), 73B(1) or (2), 101, 104, 301E or 301F.

#### **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—
- 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
    - (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 12A Legal proceedings**

### **257A Application of chapter**

This chapter applies to a legal proceeding under this Act.

### **257B Appointments and authority**

The following must be presumed unless a party to the proceeding, by reasonable notice, requires proof of it—

- (a) the chief executive's appointment;
- (b) an authorised person's appointment.

### **257C Signatures**

A signature purporting to be the signature of the following person is evidence of the signature it purports to be—

- (a) the chief executive;
- (b) an authorised person.

### **257D Evidentiary provisions**

- (1) A certificate purporting to be signed by the chief executive and stating any of the following matters is evidence of the matter—
  - (a) on a stated day a stated waste levy amount was payable by a stated person;
  - (b) on a stated day a stated person was given a stated notice or direction under this Act;

- (c) a stated amount that is or was payable under this Act by a stated person had or had not been paid by the person on a stated day;
  - (d) a stated document is a copy of a document issued, given, received or kept by the chief executive under this Act;
  - (e) on a stated day, or during a stated period, a stated person was or was not the holder of an approval, agreement, extension or other authority given under this Act;
  - (f) on a stated day, or during a stated period, a stated person was or was not the holder of an environmental approval or other authority given under the Environmental Protection Act;
  - (g) an approval, agreement, extension or other authority given under this Act or an environmental approval or other authority given under the Environmental Protection Act—
    - (i) was or was not issued or given for a stated term; or
    - (ii) was or was not in force on a stated day or during a stated period; or
    - (iii) was or was not subject to a stated condition;
  - (h) the reasonable costs incurred by the chief executive in investigating and prosecuting an offence.
- (2) In a proceeding for an offence against this Act, the production by the prosecutor of a certificate purporting to be signed by an appropriately qualified person (the *analyst*) and stating any of the following matters is evidence of the matter stated in the certificate—
- (a) the analyst received from a stated person the sample mentioned in the certificate;
  - (b) the analyst analysed the sample on a stated day and at a stated place;
  - (c) the results of the analysis.

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## 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 53(2), 57(2) or (3), 58(2), (3) or (4), 60(2), (4) or (6), 61(2) or (3), 69(2), 72(1), 73A(2), 73B(1) or (2), 101, 104(1), 158(1) or (2), 173K(2), 264(1) or (2), 265(1), 265A(2), 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.
- (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—3,000 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 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)—3,000 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—1,665 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—1,000 penalty units.

- (3) However, if a person contravenes subsection (1) or (2) with the intent to evade payment of the waste levy, the person is liable to a maximum penalty of—
- (a) 2 years imprisonment; or
  - (b) whichever is the greater of the following amounts—
    - (i) 2,000 penalty units;
    - (ii) a fine that is twice the waste levy amount the payment of which the person 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.

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## **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 the person knows is false or misleading in a material particular.

Maximum penalty—1,665 penalty units.

- (2) However, if the person gave the information to the chief executive with the intent to evade payment of the waste levy, the person is liable to a maximum penalty of—
- (a) 2 years imprisonment; or
  - (b) whichever is the greater of the following amounts—
    - (i) 2,000 penalty units;
    - (ii) a fine that is twice the waste levy amount the payment of which the person 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.
- (3) Subsection (1) applies to information given in relation to the administration of this Act whether or not the information was given in response to a specific power under this Act.
- (4) Subsection (1) does not apply to a person if the person, when giving information in a document—
- (a) tells the chief executive, to the best of the person's ability, how the document is false or misleading; and
  - (b) if the person has, or can reasonably obtain, the correct information—gives the correct information.

## **265A Giving chief executive incomplete information**

- (1) This section applies to a person who is required under chapter 3 to give a document to the chief executive.
- (2) The person must not give the chief executive a document the person knows, or ought reasonably to know, contains incomplete information in a material particular.

Maximum penalty—1,665 penalty units.

- (3) However, if the person gave the document to the chief executive with the intent to evade payment of the waste levy, the person is liable to a maximum penalty of—
  - (a) 2 years imprisonment; or
  - (b) whichever is the greater of the following amounts—
    - (i) 2,000 penalty units;
    - (ii) a fine that is twice the waste levy amount the payment of which the person 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.
- (4) Subsection (2) does not apply to a person if the person, when giving document—
  - (a) tells the chief executive of the extent to which the document is incomplete; and
  - (b) if the person has, or can reasonably obtain, the complete information—gives the information.
- (5) It is enough for a complaint for an offence against subsection (2) to state the person knew, or ought reasonably to have known, the document was incomplete, without specifying whether the person knew it was incomplete or whether the person ought reasonably to have known it was incomplete.

## **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) This section does not apply to an official if the official is a State employee within the meaning of the *Public Service Act 2008*, section 26B(4).

(4) In this section—

*official* means any of the following persons—

- (a) the Minister;
- (b) an authorised person;
- (c) a person acting under the direction of—
  - (i) a person mentioned in paragraph (a) or (b); or
  - (ii) the chief executive.

## **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 officer may be taken to have committed offence**

- (1) If a corporation commits an offence against a deemed executive liability provision, each executive officer of the corporation is taken to have also committed the offence if—
  - (a) the officer authorised or permitted the corporation's conduct constituting the offence; or
  - (b) the officer was, directly or indirectly, knowingly concerned in the corporation's conduct.
- (2) The executive officer may be proceeded against for, and convicted of, the offence against the deemed executive

liability provision whether or not the corporation has been proceeded against for, or convicted of, the offence.

- (3) This section does not affect either of the following—
- (a) the liability of the corporation for the offence against the deemed executive liability provision;
  - (b) the liability, under the Criminal Code, chapter 2, of any person, whether or not the person is an executive officer of the corporation, for the offence against the deemed executive liability provision.
- (4) In this section—
- deemed executive liability provision* means any of the following provisions—
- section 104(1)
  - section 158(1) or (2)
  - section 173K(2).

## **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.

## **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;
  - (f) the recycling efficiency threshold for recycling activities;
  - (g) the day, prescribed by regulation, by which the chief executive must review the following—
    - (i) the discounted rate for the waste levy for residue waste;
    - (ii) the recycling efficiency threshold for recycling activities;
    - (iii) any other matters mentioned in chapter 3, part 4 as being prescribed by regulation.
- (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 the requirements applying to the weighbridge under another Act or under a law of the Commonwealth.

## Chapter 15 Transitional provisions for Act No. 31 of 2011

### 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.

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*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.

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- (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.



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—

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- (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.
- (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;

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- (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
  - (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.

## **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.

## **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—

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- (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*.
- (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

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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.

### **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 15A Validation and transitional provisions for Waste Reduction and Recycling and Other Legislation Amendment Act 2013

### Part 1 Preliminary

#### 301A Definitions for ch 15A

In this chapter—

*commencement* means the commencement of this section.

*levyable waste disposal site* means a levyable waste disposal site under the unamended Act, section 27.

*resource recovery area* means a resource recovery area under the unamended Act, section 61.

*unamended Act* means this Act as in force before the commencement.

*Waste and Environment Fund* means the Waste and Environment Fund under the unamended Act, schedule.

*waste levy* means the waste levy under the unamended Act, section 37.

*waste levy amount* means a waste levy amount under the unamended Act, section 26.



- (b) despite the repeal of section 60.
- (2) Subsection (1) applies until 1 July 2018.

### **301E Keeping of particular documents in relation to resource recovery areas**

Despite the repeal of section 65, an entity having responsibility for the operation of a resource recovery area before the commencement 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 area as prescribed under a regulation.

Maximum penalty—300 penalty units.

### **301F Keeping of results of volumetric survey for resource recovery area**

Despite the repeal of section 66, the entity having responsibility for a resource recovery area before the commencement must ensure that a copy of the results of any volumetric survey performed under that 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.

### **301G Waste levy amounts and the Waste and Environment Fund**

- (1) Any transactions in relation to waste levy amounts that, before the commencement, would have been managed through the Waste and Environment Fund are to be managed after the

commencement through the departmental accounts of the department.

(2) In this section—

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

### **301H Discounted levy and waste levy exemption**

Chapter 15, parts 2 and 3 are taken to have had effect only until 30 June 2012.

### **301I Existing strategic plans under repealed waste management policy**

- (1) This section applies despite section 300.
- (2) Section 300(1) and (2) continues in effect until a waste reduction and recycling plan under section 123 is adopted by the local government.
- (3) Section 300(3) and (4) continues in effect until a waste reduction and recycling plan under section 133 is adopted by the chief executive officer of a State entity.

### **301J Clinical and related waste management plans**

Despite section 301(2), the planning entity to which section 301 applies must, by the day prescribed under a regulation, have a new waste reduction and recycling plan that complies with chapter 6.

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## Chapter 16 Other transitional provisions

### Part 1 Transitional provisions for Environmental Protection and Other Legislation Amendment Act 2014

#### 302 Definitions for ch 16

In this chapter—

*amending Act* means the *Environmental Protection and Other Legislation Amendment Act 2014*.

*former Act* means this Act as in force immediately before the commencement.

*general approval* means a general approval under the former Act.

*specific approval* means a specific approval under the former Act.

#### 303 Existing general approvals

- (1) This section applies to a general approval that was in force immediately before the commencement.
- (2) The general approval continues in force for its term provided for under the former Act.
- (3) Despite the replacement of chapter 8 under the amending Act, the following provisions as in force under the former Act continue to apply for the general approval—
  - (a) chapter 8, part 5;
  - (b) chapter 8, part 6, division 2 to the extent it provides for the cancellation or suspension of an approval;

- (c) chapters 9, 10, 11 and 14 to the extent they relate to a general approval.
- (4) Subsection (5) applies if—
  - (a) an end of waste code is made; and
  - (b) the end of waste code relates to a particular waste or resource to which the general approval relates.
- (5) The general approval ends on the later of the following days—
  - (a) the day before the end of waste code takes effect;
  - (b) a later day fixed by the chief executive for that purpose by notice published on the department's website.
- (6) A person who is registered under a general approval that ends is taken to be a registered resource producer from the day on which the approval ends.
- (7) Section 158 does not apply to a person who was carrying out an activity in accordance with a general approval that ends until 1 year after the general approval ends.
- (8) However, subsection (3) continues to apply as if the general approval has not ended under subsection (5).

### **304 Existing specific approvals**

- (1) This section applies if, immediately before the commencement, a person was the holder of a specific approval under the former Act.
- (2) Despite the replacement of chapter 8 under the amending Act, chapter 8, part 5 of the former Act continues to apply to the specific approval.
- (3) From the commencement, the specific approval is taken to be an end of waste approval for the particular resource or waste to which the specific approval relates.



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### **305 Existing applications**

- (1) This section applies to any of the following applications made under the former Act but not decided before the commencement—
  - (a) an application for a general approval or specific approval;
  - (b) an application for an amendment or transfer of a general approval or specific approval.
- (2) On the commencement, the application lapses.

### **306 Existing show cause procedure**

- (1) This section applies if, before the commencement—
  - (a) the chief executive gave a person operating under a general approval, or the holder of a specific approval, a show cause notice under the former Act, section 246; and
  - (b) the chief executive had not decided whether or not to give the person a compliance notice.
- (2) The chief executive must decide under the former Act whether or not to give the person a compliance notice.

## **Part 2 Transitional provisions for Waste Reduction and Recycling Amendment Act 2017**

### **307 Retailer must offer alternative shopping bag during phase out period**

- (1) This section applies if, during the phase out period, a person asks a retailer for an alternative shopping bag to use to carry goods that the retailer sells from the retailer's premises.

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- (2) The retailer must offer to give or sell the person an alternative shopping bag.

Maximum penalty—50 penalty units.

- (3) In this section—

*phase out period* means the period that starts on the commencement and ends on 30 June 2018.

### **308 Transition period for displaying refund marking on beverage containers**

- (1) A manufacturer of a beverage product does not commit an offence against section 99P(2) if, before the manufacture transition day, the manufacturer sells a beverage product in a container that does not display the refund marking.

- (2) Also, a person does not commit an offence against a provision of chapter 4, part 3B if, before the collection transition day, the person does any of the following things in relation to a container that does not display the refund marking—

- (a) claims a refund amount for the container at a container refund point, including a reverse vending machine;
- (b) accepts the container and pays a refund amount for the container;
- (c) allows a reverse vending machine to accept the container and dispense a refund amount for the container;
- (d) claims a recovery amount for the container from the Organisation;
- (e) makes a declaration in an approved form about the container displaying a refund marking.

- (3) In this section—

*collection transition day* means the day that is 6 months after the manufacture transition day.

*manufacture transition day* means the day, prescribed by regulation, that is at least 1 year after the day a regulation

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prescribing the requirements for the refund marking made under section 99K, definition *refund marking* commences.

## Part 3                      **Transitional provisions for Waste Reduction and Recycling (Waste Levy) Amendment Act 2019**

### Division 1                **Exemption from waste levy for particular residue waste during transition period**

#### 309      **Definitions for division**

In this division—

***Cairns Bedminster facility*** means the facility in Cairns for mechanical biological treatment using Bedminster technology to sort non-organic materials from mixed solid waste and compost the remaining organic material through drum composting and maturation.

***construction and demolition waste*** means waste generated as a result of carrying out building work within the meaning of the *Building Act 1975*, section 5.

***material recovery facility*** means a facility for conducting a recycling activity that comprises sorting any waste other than construction and demolition waste, and preparing recyclable waste for marketing to users.

***qualifying period*** means the period starting on 1 July 2018 and ending on the commencement.

***transition period*** means—

- (a) for the Cairns Bedminster facility—the period starting on the commencement and ending on 30 June 2026; or

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- (b) otherwise—the period starting on the commencement and ending on 30 June 2022.

*transition period exempt residue waste application* see section 310(1).

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

- (1) An entity that conducted a recycling activity during the qualifying period may apply to the chief executive for an approval that residue waste identified in the application (a *transition period exempt residue waste application*) is exempt waste for the transition period.
- (2) For an application relating to a material recovery facility, the application must—
  - (a) be made on or before 30 June 2019; and
  - (b) be in the approved form; and
  - (c) be supported by enough information to allow the chief executive to decide the application, including evidence that the applicant conducted a recycling activity during the qualifying period.
- (3) For an application relating to the Cairns Bedminster facility, the application must—
  - (a) be in the approved form; and
  - (b) be supported by enough information to allow the chief executive to decide the application.
- (4) For an application not mentioned in subsection (2) or (3), the application must—
  - (b) be in the approved form; and
  - (c) be supported by enough information to allow the chief executive to decide the application, including evidence that—
    - (i) the applicant conducted a recycling activity during the qualifying period; and

- (ii) payment of the waste levy on the residue waste from the applicant's recycling activity would cause the applicant financial hardship to an extent that would stop its business from operating.

### **311 Chief executive may require additional information or documents**

- (1) Within 28 days after receiving a transition period exempt residue waste application, the chief executive may, by notice given to the applicant, require the applicant to give the chief executive further reasonable information or documents about the application by a reasonable day stated in the notice.
- (2) The application is taken to be withdrawn if the applicant does not give the chief executive the further information or documents by the stated day.

### **312 Deciding application**

- (1) The chief executive must decide either to grant or to refuse a transition period exempt residue waste application within a period that is reasonable in the circumstances.
- (2) In deciding 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 will be implemented to progressively minimise the amount of the applicant's residue waste generation;
  - (d) whether adequate measures will be implemented to ensure the applicant will be able to keep conducting the recycling activity after the transition period ends;
  - (e) the applicant's history of compliance with this Act and the Environmental Protection Act, including whether the applicant holds any licences, environmental authorities or other approvals for conducting the recycling activity.

- (3) 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.
- (4) The chief executive must not grant the application unless satisfied the applicant conducted a recycling activity during the qualifying period and—
  - (a) for a material recovery facility—
    - (i) the applicant's performance history achieves as a minimum the recycling efficiency threshold; or
    - (ii) the strategies or practices proposed in the application to progressively improve the efficiency of the applicant's recycling activity will enable the applicant to achieve as a minimum the recycling efficiency threshold during the period of the exemption; or
  - (b) for the Cairns Bedminster facility—the applicant will be able to achieve as a minimum the recycling efficiency threshold; or
  - (c) for any other applicant—payment of the waste levy on the residue waste from the recycling activity would cause the applicant financial hardship to an extent that would stop its business from operating.
- (5) However, subsection (4)(a) does not apply for a material recovery facility if the chief executive is satisfied that—
  - (a) it is not reasonably practical for the applicant to achieve as a minimum the recycling efficiency threshold; and
  - (b) the strategies or practices proposed in the application to progressively improve the efficiency of the applicant's recycling activity will enable the applicant to achieve a recycling efficiency during the period of the exemption that is as close to the recycling efficiency threshold as is reasonably practical in the circumstances.
- (6) A failure to make a decision within a period that is reasonable in the circumstances is taken to be a decision by the chief executive to refuse the application.

(7) In this section—

*recycling efficiency threshold* means—

- (a) for a material recovery facility—85% of the feedstock for a recycling activity is not disposed of as landfill as a result of the activity; or
- (b) for the Cairns Bedminster facility—33% of the feedstock for a recycling activity is not disposed of as landfill as a result of the activity.

### **313 Grant of application**

(1) If the chief executive grants a transition period exempt residue waste application, the chief executive must—

- (a) in addition to any other conditions, impose a condition on the approval either—
  - (i) requiring the applicant maintain as a minimum a stated recycling efficiency; or
  - (ii) limiting the amount of residue waste that will attract the discount rate in a period, including, for example, as a stated proportion of the amount of waste that is used as feedstock for the recycling activity in the period; and
- (b) give the applicant notice of the grant stating the following—
  - (i) the application has been granted;
  - (ii) the period for which the residue waste identified in the application is approved to be exempt waste;
  - (iii) 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 subparagraph (ii);
  - (iv) any conditions prescribed by regulation applying to the approval.

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- (2) If the application relates to the Cairns Bedminster facility, the period mentioned in subsection (1)(b)(ii) must not be more than 3 years.
- (3) The notice must include or be accompanied by an information notice for the decision to impose a condition unless the condition is the same, or substantially the same, as a condition agreed to or asked for by the applicant.
- (4) The approval is subject to any conditions imposed by the chief executive and any conditions prescribed by regulation.
- (5) In this section—  
*recycling efficiency* means a percentage of the feedstock for a recycling activity that is not disposed of as landfill as a result of the activity.

### **314 Refusal of application**

If the chief executive refuses a transition period exempt residue waste application, the chief executive must give the applicant an information notice for the decision.

### **315 Cancellation or amendment of approval by chief executive**

- (1) The chief executive may cancel or amend an approval that residue waste is exempt waste granted under section 312 if the chief executive considers there are reasonable grounds to cancel or amend it.
- (2) Without limiting subsection (1), the grounds for cancelling or amending the approval may include—
  - (a) that the chief executive is satisfied there is a reasonable suspicion that the approval holder has not implemented strategies or practices to progressively improve the efficiency of the holder's recycling activities during the period of the approval; and



- (b) that the chief executive is satisfied there is a reasonable suspicion that the application was granted because of a false or misleading representation or declaration; and
  - (c) the circumstances that were relevant to the granting of the application have changed; and
  - (d) that the limits or conditions of the approval have not been complied with; and
  - (e) that it is desirable to cancel the approval having regard to the objects of this Act.
- (3) Before cancelling or amending the approval (the ***proposed action***), the chief executive must give notice to the holder of the approval stating the following—
- (a) the proposed action;
  - (b) the grounds for taking the proposed action;
  - (c) the facts and circumstances that form the basis for the grounds;
  - (d) when the proposed action 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 for submissions must not end earlier than 21 days after the holder of the approval is given the notice.
- (5) The chief executive must consider all submissions made under subsection (3)(e).
- (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 of the approval an information notice for the decision.
- (7) The decision takes effect when the information notice is given to the holder of the approval.

### **316 Automatic cancellation of approval**

An approval that residue waste is exempt waste, granted under section 312, is automatically cancelled if the business of conducting the recycling activity relevant to the approval ceases to be owned by the entity granted the approval, including, for example, because ownership of the business is transferred to another entity.

## **Division 2 Exemption from weighbridge requirements for particular sites until 30 June 2029**

### **317 Application for exemption from s 57 until 30 June 2029**

- (1) This section applies to the operator of a levyable waste disposal site in existence at the commencement for which the operator holds an environmental authority for the disposal of not more than 2,000 tonnes of waste in a year at the site.
- (2) The operator may apply to the chief executive for an exemption during the transition period from the requirements under section 57.
- (3) The application must—
  - (a) be made before 1 January 2024; and
  - (b) be in the approved form.
- (4) In this section—

*transition period* means the period starting at the beginning of 1 July 2024 and ending at the end of 30 June 2029.

### **318 Chief executive may require additional information or documents**

- (1) Within 28 days after receiving an application made under section 317, the chief executive may, by notice given to the applicant, require the applicant to give the chief executive

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

- (2) The application is taken to be withdrawn if the applicant does not give the chief executive the further information or documents by the stated day.

### **319 Deciding application**

- (1) The chief executive must decide either to grant or to refuse an application made under section 317 within a period that is reasonable in the circumstances.
- (2) In deciding the application, the chief executive must consider—
  - (a) the objects of this Act; and
  - (b) the information included in the application.
- (3) A failure to make a decision within a period that is reasonable in the circumstances is taken to be a decision by the chief executive to refuse the application.

### **320 Grant of application**

- (1) If the chief executive grants an application made under section 317, the chief executive must give the applicant a notice stating—
  - (a) the application has been granted; and
  - (b) any conditions imposed on the approval.
- (2) Also, if the chief executive imposes a condition on the approval, the notice must include or be accompanied by an information notice for the decision to impose the condition.
- (3) However, subsection (2) does not apply to a condition that is substantially the same as a condition agreed to or asked for by the applicant.

### **321 Refusal of application**

If the chief executive refuses an application made under section 317, the chief executive must give the applicant an information notice for the decision.

## **Division 3 Other matters**

### **322 Exemption from using weighbridge for stated period in stated circumstances**

Until the end of 30 June 2020, the operator of a waste disposal site is not obliged to use a weighbridge to measure waste or other material as required under section 59 if—

- (a) the operator has, before the commencement, given the chief executive written notice that it is not practicable to use the weighbridge to measure and record waste or other material delivered to the site in a vehicle with a GCM or GVM of 4.5 tonnes or less; and
- (b) the notice mentioned in paragraph (a) identifies the site and explains the steps the operator is taking to ensure it will be practicable to use the weighbridge to measure and record waste or other material at the site by 1 July 2020; and
- (c) the waste or other material is moved in a vehicle with a GCM or GVM of 4.5 tonnes or less; and
- (d) the operator complies with the weight measurement requirements prescribed by regulation.

### **323 Volumetric survey of levyable waste disposal site to be carried out within stated period**

- (1) Between **1 June 2019 and the end of August 2019**, the operator of a levyable waste disposal site in the waste levy zone must—
  - (a) 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) 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 carried out in compliance with the requirements prescribed by 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 details of the following—
    - (i) the area of the levyable waste disposal site;
    - (ii) the site's landfill capacity;
    - (iii) the stockpiles of waste at the site; and
  - (d) be certified as accurate by a surveyor under the *Surveyors Act 2003*.
- (4) After carrying out the volumetric survey under this section, the operator must ensure that a copy of the results of the survey is kept as a document in hard copy form at the levyable waste disposal site for at least 5 years after the survey is carried out.

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 carrying out the volumetric survey from the operator as a debt payable by the operator to the State.

**324 Volumetric survey of resource recovery area to be carried out within stated period**

- (1) Between 1 June 2019 and the end of August 2019, the entity having responsibility for the operation of a resource recovery area for a waste disposal site in the waste levy zone must—
  - (a) ensure that a volumetric survey is carried out for all stockpiled waste at the area; and
  - (b) 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 carried out in compliance with the requirements prescribed by 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 details of the following—
    - (i) the area of the resource recovery area;
    - (ii) the stockpiles of waste at the area; and
  - (d) be certified as accurate by a surveyor under the *Surveyors Act 2003*.

- (4) After carrying out the volumetric survey under this section, the entity must ensure that a copy of the results of the survey is kept as a document in hard copy form at the levyable waste disposal site for at least 5 years after the survey is carried out.

Maximum penalty—200 penalty units.

- (5) Subsections (6) and (7) apply if an entity having responsibility for the operation of 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 area and carry out the survey.

- (7) The chief executive may recover the cost of the volumetric survey from the entity as a debt payable by the entity to the State.

**325 Temporary relaxation from s 59 measuring requirements for small site**

Until the end of 30 June 2021, the operator of a small site is not obliged to measure waste as required under section 59 if—

- (a) the operator has, before the commencement, given the chief executive written notice of a proposed alternative methodology for measuring and recording waste at the site; and
- (b) the notice mentioned in paragraph (a) identifies the site and includes details of the proposed alternative methodology; and
- (c) the proposed alternative methodology enables the operator to fairly work out the total of the waste levy amount owing to the chief executive on waste delivered, or moved from stockpile to landfill, at the site; and
- (d) the operator is implementing the alternative methodology in accordance with its terms.

## Schedule Dictionary

### section 7

***accredited product stewardship scheme*** see section 87(2).

***acid sulfate soil*** means soil or sediment containing iron sulfides that produces sulphuric acid when exposed to air.

***active landfill cell*** see section 26.

***advertising material*** see section 105.

***alternative shopping bag*** see section 99B(3).

***amend***, an end of waste approval, for chapter 8, see section 156.

***amendment application***—

- (a) for chapter 4, part 5—see section 102P(1); or
- (b) for chapter 8, part 3—see section 173M(1).

***applicant***, for chapter 4, part 5, division 2, see section 102E.

***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 8A, see section 173R(1).

***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.

***bad debt credit***, for chapter 3, see section 72K(1).

***bad debt credit application***, for chapter 3, see section 26.

***banned plastic shopping bag*** see section 99B(1).

***beverage***, for chapter 4, part 3B, see section 99L.

***beverage product***, for chapter 4, part 3B, see section 99N(1).

***business associate***, of a corporation—

- (a) means—
- (i) a member or shareholder of the corporation; or
  - (ii) a person who otherwise holds a beneficial interest in the corporation; or
  - (iii) another person whom the chief executive believes is associated with the ownership or management of the corporation or is in a position to control or influence the affairs of the corporation; but
- (b) does not include an executive officer of the corporation.

***business days*** does not include a business day that occurs during the period starting on 20 December in a year and ending on 5 January in the following year.

***chief executive officer***, of a State entity, see section 132.

***clean earth***—

- (a) means earth that is not contaminated with waste or otherwise contaminated with a hazardous contaminant; but
- (b) does not include acid sulphate soil, other than acid sulphate soil that—
  - (i) is not contaminated with waste, or otherwise contaminated with a hazardous contaminant, other than naturally occurring iron sulphides that produce sulphuric acid when exposed to air; and
  - (ii) has been treated in accordance with best practice environmental management, within the meaning of the Environmental Protection Act, section 21, for the treatment and management of acid sulfate soils, as stated in a guideline prescribed by regulation.

**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).

**container**, for chapter 4, part 3B, see section 99M.

**container approval**, for a beverage product, for chapter 4, part 3B, see section 99ZN.

**container collection agreement** see section 99ZA(1).

**container recovery agreement** see section 99Q.

**container refund point** see section 99K.

**container refund scheme** means the container refund scheme established under chapter 4, part 3B.

**contaminated land register** see the Environmental Protection Act, schedule 4.

**controlled waste NEPM** means the National Environment Protection (Movement of Controlled Waste between States and Territories) Measure, made by the National Environment 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.

**corresponding jurisdiction** means a jurisdiction in which a corresponding law is in force.

**corresponding law** means a law of another jurisdiction that—

- (a) establishes a corresponding scheme; and
- (b) is prescribed by regulation for this definition.

**corresponding scheme** means a scheme established under a law of another jurisdiction that, for that jurisdiction—

- (a) regulates the supply of beverages in containers; and
- (b) provides for a refund to be paid for the return of empty beverage containers to a particular person or place.

**criminal history**, of a person, means the person's criminal history within the meaning of the *Criminal Law (Rehabilitation of Offenders) Act 1986*.

**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**, for chapter 3, see section 26.

**disaster management waste**, for chapter 3, see section 26.

**disaster situation**, for chapter 3, see section 26.

***discounted rate***, for the waste levy for residue waste, see section 44(4).

***disposal***, in relation to waste, see section 8.

***disposal ban waste*** see section 100(4).

***disposal order***, for chapter 10, see section 231(2).

***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***, for chapter 3, see section 26.

***due date for payment***, of a waste levy amount, for chapter 3, see section 26.

***earth*** means natural materials such as clay, gravel, sand, soil and rock.

***electronic document***, for chapter 10, see section 181.

***eligible company***, for chapter 4, part 5, see section 102B.

***eligible individual*** means an individual who—

- (a) is not insolvent under administration under the Corporations Act, section 9; and
- (b) is not disqualified from managing corporations, under the Corporations Act, part 2D.6; and
- (c) does not have a conviction, other than a spent conviction, for an offence against—
  - (i) this Act; or
  - (ii) a provision of a corresponding law; or

- (iii) a provision of the Environmental Protection Act relating to a waste management ERA; and
- (d) does not have a conviction, other than a spent conviction, for an indictable offence against another law.

***end of waste approval***, for chapter 8, see section 159(2).

***end of waste code***, for chapter 8, see section 159(1).

***environmental authority*** means an environmental authority under the Environmental Protection Act.

***environmentally significant characteristic*** means a characteristic mentioned in the controlled waste NEPM, schedule A, list 2.

***environmental management register*** see the Environmental Protection Act, schedule 4.

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

***Environmental Protection Act*** means—

- (a) for chapter 15, part 1—see section 272; or
- (b) otherwise—the *Environmental Protection Act 1994*.

***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 26.

***exempt waste application***, for chapter 3, 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.

***extraordinary circumstances exemption*** see section 99ZY(2).

***feedstock***, for a recycling activity, for chapter 3, see section 26.

***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).

***friable asbestos-containing material***, for chapter 3, see section 26.

***GCM*** see the *Transport Operations (Road Use Management—Vehicle Registration) Regulation 2010*, schedule 8.

***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.

***GVM*** see the *Transport Operations (Road Use Management) Act 1995*, schedule 4.

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

***help requirement***, for chapter 10, see section 212(1).

***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**, for asbestos or waste containing asbestos, for chapter 3, see section 26.

**levyable waste**, for chapter 3, see section 26.

**levyable waste disposal site** see section 26.

**levy period**, for chapter 3, see section 26.

**manufacturer**, of a beverage product, see section 99O.

**material environmental harm**, for chapter 8, see section 156.

**material recovery agreement** see section 99ZF.

**material recovery facility**, for chapter 4, part 3B, see section 99ZE.

**monitoring system**, for chapter 3, see section 62.

**motor vehicle** see the *Transport Operations (Road Use Management) Act 1995*, schedule 4.

**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.

***non-friable asbestos-containing material***, for chapter 3, see section 26.

***non-levy zone*** see section 26.

***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 container refund point that is a reverse vending machine, for chapter 4, part 3B, see section 99K.

***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.



**Organisation** means the company appointed under chapter 4, part 5 as the Product Responsibility Organisation for the container refund scheme.

**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 statement as currently in force.

**priority statement** means the document approved and gazetted as the priority statement under chapter 4, part 2.

**priority waste** means a category of waste stated to be a priority waste under the priority statement as currently in force.

**produce** includes manufacture or otherwise provide.

**producer**, for chapter 4, see section 74A.

**product**—

- (a) means a product that has reached the end of its useful life; and
- (b) includes a product that has not been used and any packaging for the product.

**product stewardship principle** see section 13.

**product stewardship scheme** see section 83.

**progressive capping**, for chapter 3, see section 26.

**proposed action**—

- (a) for chapter 4, part 5, division 4—see section 102X(1); or
- (b) for chapter 8A—see section 173ZB(1).

**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).

**recovery amount**, for a quantity of containers, for chapter 4, part 3B, see section 99ZG.

**recovery amount protocol**, for chapter 4, part 3B, see section 99ZK.

**recycling activity** includes—

- (a) re-using waste resources; and
- (b) recycling waste resources to make the same or different products; and
- (c) recovering waste resources, including extracting energy from those resources.

**recycling efficiency threshold** means the percentage of feedstock used for a recycling activity that is not disposed of as landfill as a result of the activity.

**refund amount**, for chapter 4, part 3B, see section 99K.

**refund declaration**, for chapter 4, part 3B, see section 99T(2).

**refund marking**, for chapter 4, part 3B, see section 99K.

**registered**, for a container, for chapter 4, part 3B, see section 99K.

**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*.

**registered resource producer**, for an end of waste code, for chapter 8, see section 156.

**registration Act** see the *State Penalties Enforcement Act 1999*, schedule 2.

**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 26.

**residue waste discounting application**, for chapter 3, see section 44(1).

**resource**, for chapter 8, see section 155.

**resource recovery area** see section 72R.

**resource user**, for chapter 8, see section 155(3).

**retailer** see section 99C.

***reverse vending machine***, for chapter 4, part 3B, see section 99K.

***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*** means the container refund scheme.

***scheme invitation*** see section 78(1).

***scheme manager***, for a product stewardship scheme, means the entity identified in the scheme as the scheme manager for the scheme.

***section 325 small site***, for chapter 3, see section 26.

***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.

**sell** includes supply free of charge for a commercial or promotional purpose.

**serious environmental harm**, for chapter 8, see section 156.

**serious local event**, for chapter 3, see section 26.

**serious local event waste**, for chapter 3, see section 26.

**show cause notice**—

- (a) for chapter 4, part 5, division 4—see section 102X(3); or
- (b) for chapter 8A—see section 173ZB(2); or
- (c) for chapter 11—see section 246(2).

**show cause period**—

- (a) for chapter 4, part 5, division 4—see section 102X(4)(f); or
- (b) for chapter 8A—see section 173ZB(3)(f).

**small site** see section 26.

**spent conviction** means a conviction—

- (a) for which the rehabilitation period under the *Criminal Law (Rehabilitation of Offenders) Act 1986* has expired under that Act; and
- (b) that is not revived under section 11 of that Act.

**state entity** see section 132.

**technical advisory panel**, for chapter 8, part 2, see section 173G.

**type**, of a container, for chapter 4, part 3B, see section 99N(2).

**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 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***, for chapter 3, see section 72(1).

***waste disposal site*** see section 8A.

***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 any of the following facilities—
  - (a) 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 if—
    - (i) the waste is or was generated only by, and its generation is or was ancillary to, the operation of the activity; and
    - (ii) the activity is not a waste management ERA; and

- (iii) the facility is operated by or for the entity carrying out the activity; and
  - (iv) the facility is authorised under the same environmental authority as the activity;
- (b) a facility that is lawfully operated for the sole purpose of disposing of waste generated by 1 or more resource activities carried out under the Environmental Protection Act if—
  - (i) the waste is or was generated only by, and its generation is or was ancillary to, the operation of 1 or more of the resource activities; and
  - (ii) the facility is operated by or for an entity carrying out 1 or more of the resource activities; and
  - (iii) the facility is authorised under the same environmental authority as 1 of the resource activities;
- (c) a facility that is lawfully operated for the sole purpose of disposing of waste generated by the processing, handling, storage or transport of materials from a resource activity carried out under the Environmental Protection Act if—
  - (i) the waste is or was generated only by, and its generation is or was ancillary to, the processing, handling, storage or transport of the materials from the resource activity; and
  - (ii) the facility is operated by or for the entity carrying out the resource activity; and
  - (iii) the facility is authorised under the same environmental authority as the resource activity;
- (d) a facility that is lawfully operated for the sole purpose of disposing of waste generated to remediate contaminated land recorded in the



environmental management register or contaminated land register if—

- (i) the waste was generated by an activity (the ***initial activity***) lawfully carried out on the contaminated land before the initial activity became an environmentally relevant activity under the Environmental Protection Act (the ***relevant activity***); and
- (ii) from the day the initial activity became the relevant activity, the waste is or was generated by the relevant activity carried out on the contaminated land; and
- (iii) all of the following apply—
  - (A) the waste is or was generated only by, and its generation is or was ancillary to, the operation of the initial activity or relevant activity;
  - (B) the relevant activity is not a resource activity under the Environmental Protection Act or a waste management ERA;
  - (C) the facility is operated by or for the entity carrying out the relevant activity;
  - (D) the facility is authorised under the same environmental authority as the relevant activity.

***waste levy*** see section 36.

***waste levy amount*** see section 26.

***waste levy instalment agreement***, for chapter 3, see section 72B(1).

***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) mechanically crushing, milling, grinding, shredding or sorting waste;
- (c) mechanically reprocessing waste;
- (d) battery recycling;
- (e) composting organic material, anaerobically digesting organic material or manufacturing soil conditioner;
- (f) waste reprocessing or treatment;
- (g) waste storage;
- (h) regulated waste transport;
- (i) regulated waste treatment;
- (j) tyre recycling;
- (k) waste disposal;
- (l) waste incineration, thermal waste reprocessing or thermal treatment;
- (m) operating a waste transfer station or resource recovery facility;
- (n) maintaining a decommissioned waste disposal facility.

**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).

**weight measurement criteria**, for chapter 3, see section 26.