

# Waste Reduction and Recycling Regulation 2023

Explanatory notes for SL 2023 No. 127

made under the

*Environmental Protection Act 1994*  
*Rural and Regional Adjustment Act 1994*  
*State Penalties Enforcement Act 1999*  
*Waste Reduction and Recycling Act 2011*

## General Outline

### Short title

*Waste Reduction and Recycling Regulation 2023*

### Authorising law

Section 580 of the *Environmental Protection Act 1994*  
Section 44 of the *Rural and Regional Adjustment Act 1994*  
Section 165 of the *State Penalties Enforcement Act 1999*  
Section 271 of the *Waste Reduction and Recycling Act 2011*

### Policy objectives and the reasons for them

The *Waste Reduction and Recycling Regulation 2023* will replace the *Waste Reduction and Recycling Regulation 2011* which is due to expire on 31 August 2023 in accordance with section 54 of the *Statutory Instruments Act 1992*.

A review of the *Waste Reduction and Recycling Regulation 2011* confirmed a need for continued regulatory action. The *Waste Reduction and Recycling Regulation 2023* is required to provide for the effective operation of the *Waste Reduction and Recycling Act 2011* (the Act).

The *Waste Reduction and Recycling Regulation 2023* is in substantially similar form to the existing legislation. Amendments have been made to reflect current drafting practice and ensure clear alignment with the policy objectives of the Act.

In Queensland, the Act and its subordinate legislation, the *Waste Reduction and Recycling Regulation 2011* (the Regulation) provide a waste management framework that supports avoidance, reuse, recycling and safe disposal of waste, through setting regulatory requirements and providing enabling heads of power for waste reduction and recycling activities.

The main objectives of the Act in relation to waste management are:

- promote waste avoidance and reduction;
- reduce the overall impact of waste generation;
- promote resource recovery and efficiency actions;
- promote the sustainable use of natural resources;
- encourage the use of recovered resources;
- ensure a shared responsibility between government, business and industry and the community;
- support and implement national frameworks; and
- promote and facilitate Queensland's transition to a circular economy.

The objective of the Regulation is to provide a regulatory mechanism for the implementation of the Act.

## **Achievement of policy objectives**

The policy objectives of the Regulation are to be met by:

- Setting standards, controls or procedures for the manufacture, generation, sale, use, transport, receipt, storage, treatment or disposal of waste, including for:
  - dealing with polychlorinated biphenyls;
  - managing clinical and related waste;
  - used packaging materials; and
  - storage, disposal, receipt or treatment of waste or equipment for dealing with waste.
- Describing waste reporting requirements and identifying reporting entities.
- Giving effect to the container refund scheme by:
  - stating the refund rate for people returning empty beverage containers to a container refund point;
  - defining a “small beverage manufacturer” and the frequency of their scheme payment obligations;
  - setting scheme targets, including container recovery targets and container refund point accessibility targets, to be achieved by the Product Responsibility Organisation; and
  - providing for refund sharing arrangements between Material Recovery Facility operators and local governments in relation to containers collected through the kerbside system.
- Providing a framework for the effective operation for the waste levy, including:
  - defining the types of waste to which the levy applies, including commercial and industrial waste and construction and demolition waste and regulated waste;
  - stating the applicable levy rates for each type of waste and levy zone;

- prescribing the local government areas that make up the waste levy zones;
- providing the formulas for calculating the waste levy rate to be paid;
- prescribing the rate of payments to local governments to offset impact on households;
- identifying types of wastes that are exempt from the levy;
- identifying categories of waste disposal sites that are exempt from the levy;
- providing the criteria for deciding applications for generator-submitted levy exemptions for certain types of waste;
- prescribing additional activities as recycling activities;
- providing efficiency thresholds and discounted levy rates for applications for residual waste from recycling activities;
- prescribing the discounted rate for the waste levy for residual waste from recycling activities;
- prescribing requirements for a resource recovery area and additional activities that may be undertaken in a resource recovery area; and
- prescribing requirements for measuring waste or other material other than by a weighbridge.

There have been no substantial changes to the Regulation, however, the removal of redundant provisions and clarification of policy intent in others has resulted in the renumbering of some provisions. The remake of the Regulation has also necessitated consequential amendments to other subordinate legislation.

Notable changes have been listed below.

#### **Section 11B – Rate of waste levy – Act, s 37**

Section 11B has been amended to ensure that it is accurately and clearly describing the waste levy rate and its application according to the zone of origin and destination of the disposed waste. This amendment will not have any effect on the operational application of the waste levy or waste levy rates.

#### **Insertion of new pts 3AA and 3AB, sections 11N (Banned plastic shopping bags – Act, s99B) and 11O (Banned single-use plastic items – Act, s99GC)**

Two new sections (11N and 11O) have been inserted to give effect to the announced ban on additional single-use plastic items – cotton buds with a plastic stem; expanded polystyrene loose packaging (packing peanuts) and personal care and cleaning products containing rinseable plastic microbeads. The ban on single-use heavyweight plastic shopping bags is given effect by providing that a plastic shopping bag of 35 microns or more is a banned bag unless it is capable of meeting stated reusability design standards for size and durability; and contains at least 80 per cent recycled content (if it is a non-compostable bag).

#### **Part 4- Strategic planning for waste reduction and recycling**

Part 4 has been allowed to expire. Reporting by prescribed planning entities was a policy intervention aimed at raising awareness of waste generation (particularly clinical waste) by specific sectors as set out in the current section 39. In the absence of effective implementation of this framework, many of the prescribed planning entities are unaware of their requirements under the Act and are non-compliant, while those who are compliant face additional regulatory burden with limited value. More recent policy initiatives, such as the enactment of the waste levy framework and single use plastic item bans, have provided superior and more effective interventions to reduce waste across all sectors, and in these prescribed sectors.

## **Section 40 - Prescribed sector of reporting entities—Act, section 150**

Section 40 has been allowed to expire. This section prescribes sectors of entities who are required to submit reports on types and amounts of waste processed under the Act. The current framework is not utilised and, since the introduction of the waste levy, reporting associated with the levy has been the key area of focus.

## **Consistency with policy objectives of authorising law**

The Regulation is consistent with the objectives of the Act, which is to provide a contemporary waste management framework for Queensland that supports the responsible avoidance, reuse, recycling, recovery, treatment and disposal of waste.

## **Inconsistency with policy objectives of other legislation**

The Regulation is consistent with the objectives of other legislation.

## **Alternative ways of achieving policy objectives**

A non-regulatory approach was considered and not adopted due to the potential for significant health and environmental harm resulting from the inappropriate disposal of hazardous wastes; and the strong economic incentives that exist for unsafe and/or environmentally unsustainable waste disposal.

The introduction of the waste disposal levy in 2019 has effectively reduced the transport of waste for disposal into Queensland by 62% over four years. Without this regulatory measure Queensland would continue to be a target for disposal of large quantities of interstate waste from States and Territories where waste levies apply. Similarly, the economic incentives to avoid levy payments are too great to consider the removal of regulations that prescribe obligations for measuring and reporting waste disposal.

The health and environmental risks associated with the management of polychlorinated biphenyls (PCBs) has been widely documented. Without regulations, Queensland is unlikely to be able to manage the disposal of PCB materials in accordance with the objectives of the Stockholm Convention, which has listed PCBs as Persistent Organic Pollutants for phasing out and eventual elimination.

Voluntary phase-out measures may be a reasonable alternative for single-use plastic items, and some companies have already been working towards replacing targeted items with alternatives. However, without the support of regulatory obligations that require all parties to take action, voluntary phase-outs can be slow and free-riders will often see the benefit of this action without sharing in the costs of such action.

While non-regulatory interventions already play a significant role in the Queensland Government's approach to minimising harm associated with waste and supporting the transition to a circular economy, the risks and economic drivers associated with waste disposal mean that regulation is still essential to achieve the outcomes of the Act.

## Benefits and costs of implementation

The implementation of the *Waste Reduction and Recycling Regulation 2023* will continue to be undertaken as part of the administration and enforcement of the Act.

The detailed statement of costs and benefits associated with remaking the Regulation is contained in the *Discussion Paper for the Sunset Review of the Waste Reduction and Recycling Regulation* that has been published on the Department of the Environment and Science's (DES) website.

Changes to the Regulation presents financial and administrative benefits to business, the community and Government. The new Regulation reduces regulatory burden where possible, for example through removal of prescribed reporting requirements for sectors, and clarifies policy intent.

The State will also retain the ability to generate levy revenue that is partially designated for investment in waste reduction and resource recovery initiatives and infrastructure across Queensland.

## Consistency with fundamental legislative principles

The Regulation has sufficient regard to the rights and liberties of individuals and the institution of Parliament, and complies with the fundamental legislative principles under the *Legislative Standards Act 1992*. Changes to the regulation are intended to ensure that all provisions are unambiguous and drafted in a sufficiently clear and precise way.

### ***Offences, penalties and record keeping requirements***

The *Waste Reduction and Recycling Regulation 2023* continues the majority of offence and record keeping provisions from the previous *Waste Reduction and Recycling Regulation 2011*, which are required to support implementation of the Regulation and Act.

In considering whether the legislation has sufficient regard to the rights and liberties of individuals (Legislative Standards Act, section 4(2)(a)), these offence and record-keeping provisions are only made where it is appropriate and necessary to ensure the effective enforcement of waste management and resource recovery requirements, such as the handling of potentially harmful waste materials, and the implementation of the waste disposal levy. The offences are reasonable and proportionate to environmental, social and economic risks associated with the activities and are consistent with the way existing offences are established under the Act.

### ***Links to External documents***

There are some provisions in the regulation that incorporate references to external documents, such as guidelines and standards. These include:

- Section 8- reference to 'Australian and New Zealand Guidelines for Fresh and Marine Water Quality, Volume 1, The Guidelines.
- Section 9, reference to Queensland Acid Sulfate Soil Technical Manual—Soil Management Guidelines v 4.0'.

- Section 11 refers to ‘Schedule B3—Guideline on Laboratory Analysis of Potentially Contaminated Soils’ made by the National Environment Protection Council.
- Section 11H Criteria for deciding residue waste discounting application refers to industry benchmarks, or best practice guidelines.
- Section 41ZA refers to Australian/New Zealand Standard for Reusable containers for the collection of sharp items used in human and animal medical applications: AS/NZS 4261:1994’ and “Australian Standard for Non-reusable containers for the collection of sharp medical items used in health care areas: AS 4031-1992” published by Standards Australia.

Section 4(2)(b) of the *Legislative Standards Act 1992* requires legislation to have sufficient regard to the institution of Parliament. Incorporating external documents that are not subject to Parliamentary scrutiny potentially raises an issue about whether there is an appropriate delegation of legislative power.

The external documents referenced contain highly technical information and guidance, and it is not considered practical to include all of these details in the regulation. All of the documents are readily available on the DES website, or other external websites. Any significant amendments to these documents will generally only be done in consultation with relevant stakeholders. For these reasons, it is considered that the references to the external documents in the Regulation are justified.

## Consultation

The *Discussion Paper for the Sunset Review of the Waste Reduction and Recycling Regulation* was published on the DES website and written submissions invited.

Peak bodies for the waste and recycling industry and local governments were also consulted on the proposed changes through information sessions.

Stakeholders were generally in support of the remake clarifying policy intent, removing redundant provisions and reducing regulatory burden on stakeholders, and no significant issues were raised with the majority of the proposed amendments.

In accordance with *The Queensland Government Guide to Better Regulation* (the Guide), the Office of Best Practice Regulation (OBPR) was consulted in relation to the sunset review and regulatory proposal. OBPR provided advice stating that DES had satisfactorily met the objectives for sunset reviews as set out in the Guide, that the proposal is unlikely to result in significant adverse impacts and that no further regulatory impact analysis is required under the Guide.

Amendments in relation to the single-use plastic items bans give effect to announced policy decisions concerning this action.

To ensure that retailers and suppliers are aware of the changes, particularly concerning the plastic shopping bag requirements, DES and the National Retail Association have worked with these sectors to map the supply of compliant bags and understand the amount of stock-on-hand (i.e. stock that has been ordered prior to the 1 September 2023 commencement date) for which alternatives, such as recycling may need to be found.

As with the previous single-use lightweight plastic shopping bag ban, which commenced on 1 July 2018 and the single-use plastic items bans, which commenced on 1 September 2021, DES will take an education first approach to ensure that retailers and suppliers are fully aware of the changes and plans are in place, as necessary, for dealing with excess stock.

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