Waste Reduction and Recycling Bill 2011

Explanatory Notes

Short title

The short title of the Bill is the *Waste Reduction and Recycling Bill 2011*.

Policy objectives of the Bill

The primary objective of the Bill is to create new legislation in respect to waste management and resource recovery in Queensland. The main objectives of the Bill in relation to waste management are to:

- 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

The objectives of the Bill are also to amend—

- The *Environmental Protection Act 1994* to:
- amend section 13—definition of waste. The definition of waste is amended to provide that:
    - if the approval of a resource under chapter 8 of the Waste Reduction Act is a specific approval the resource stops being a waste only in relation to the holder of the approval.
    - a resource approved under chapter 8 of the Waste Reduction Act becomes waste if—
        - it is delivered to a levyable waste disposal site; or

- it is deposited at a place that would, apart from its approval under chapter 8 constitute a contravention of the general littering provision or the illegal dumping of waste provision.

- omit:
  - Chapter 7, part 7—Special provisions about waste management
  - Chapter 8, Part 3A—Offences relating to depositing litter. Litter and illegal dumping provisions are contained in the Waste Reduction and Recycling Act 2011.
  - Chapter 9, part 2A—Power of authorised persons to give directions about litter removal
  - s 474A—Failure to comply with authorised person's direction to remove litter
  - s 520(1)(h) and (r)—Dissatisfied person
  - s 580(2)(t)—Regulation-making power
  - schedule 2, part 2, division 1—Original decisions
  - schedule 2, part 2, division 5, entries for section 369A(4) or (5), section 369A(6) and section 369B(2)
  - definitions in schedule 4 (Dictionary) for *deposit, infringement notice, infringement notice offence, litter, passenger declaration, place, prescribed person, vehicle littering offence* and *waste management works*

- The *Forestry Act 1959* (Forestry Act), the *Land Act 1994 (*Land Act), the *Land Title Act 1994* (Land Title Act) and the *Nature Conservation Act 1992* (Nature Conservation Act) to facilitate Queensland's contribution to national and international carbon sequestration efforts under the terms of the Commonwealth Carbon Credits (Carbon Farming Initiative) Bill 2011 (CFI Bill).
- The *Water Act 2000* to implement the National Water Initiative (NWI) risk assignment compensation framework for reductions in the value of water access entitlements.
- The *Water Supply (Safety and Reliability) Act 2008* to:
  - remove the requirement to obtain an approval for the temporary discharge of coal seam gas (CSG) recycled water to a natural

water source where equivalent approvals, conditioned to protect public health, have been issued under another Act

- allow sewerage service providers to consent to the discharge of seepage water from tunnels, car parks, basements, lift wells and similar constructed fixtures (with the exception of seepage water from mining and petroleum activities) to their sewerage infrastructure in the same way they can currently authorise the discharge of trade waste into their sewerage infrastructure.

The remaining amendments are in relation to the *Environmental Protection (Waste Management) Policy 2000* and the *Environmental Protection (Waste Management) Regulation 2000*.

Reasons for the objectives

The Bill makes provision for a new waste management Act to provide a contemporary waste management framework for Queensland. The Bill makes critical amendments to various Acts administered by the Department of Environment and Resource Management in relation to:

- the definition of waste and other actions in relation to waste management
- implementation of the National Water Initiative risk assignment framework
- discharge of seepage water
- discharge of coal seam gas (CSG) recycled water
- Carbon Farming Initiative

Waste management and resource recovery

Each year waste generation and disposal in Queensland increases. Queensland remains one of the worst recyclers and industry investment in recycling and waste management technologies and infrastructure is significantly behind other states.

For many years a number of key stakeholders in local government and the waste and recycling sector, as well as members of the public have commented that Queensland's approach to waste management is lagging behind that of other states. Queensland's only waste management strategy was released in 1996 and it was never reviewed or updated. Queensland's waste management legislative framework was enacted in 2000 and no

longer reflected contemporary waste management trends and technologies for improved waste management and resource recovery opportunities.

On 5 June 2010 a draft waste management strategy was released for public comment. The draft strategy highlighted the development of new legislation as the cornerstone to the waste reforms.

The Bill amends the *Environmental Protection Act 1994* for the purposes of streamlining and consolidating certain waste management requirements; amending the definition of waste to clarify intent for a resource; removing unnecessary process; providing regulatory simplification; and transferring provisions relating to approval of waste management works and litter and illegal dumping.

The Bill also amends the *Environmental Protection (Waste Management) Regulation 2000* to omit Part 5, division 1—Clinical and related waste management plans—and Part 6A—Beneficial use approvals; and repeals the *Environmental Protection (Waste Management) Policy 2000*.

Other Act amendments

Forestry Act 1959, Land Act 1994, Land Title Act 1994 and the Nature Conservation Act 1992

Carbon Farming Initiative

The Carbon Farming Initiative (CFI) is a carbon offsets scheme being established by the Commonwealth Government to provide new economic opportunities for farmers, forest growers and landholders and help the environment by reducing carbon pollution. The CFI aims to give farmers, forest growers and landholders access to domestic and international carbon markets, providing an investment incentive for environmental conservation and greenhouse gas emission reduction. By undertaking emission abatement activities that reduce or store carbon pollution, landowners can generate carbon credits, known as Australian Carbon Credit Units (ACCUs), that can then be sold domestically or internationally, either voluntarily or to meet regulatory requirements.

The CFI Bill sets up a scheme for the issue of ACCUs in relation to declared eligible sequestration offsets projects. The project proponent of a sequestration offsets project must satisfy a number of requirements under the CFI Bill before the project may be declared eligible but two of the main requirements are that the project proponent has the legal right to carry out the project and, under the terms of the legal right, holds the exclusive

carbon sequestration right for the project area. The legal right must be long-term (up to and beyond 100 years) and recognised as an interest in land under State law. The legal right may also burden more than one type of tenure.

The CFI Bill acknowledges that the nature of offsets schemes will evolve and requires reviews of the operation of the Act with regards to its integrity principles, such as ensuring sequestration offsets projects are meeting Commonwealth permanence obligations and that the projects are not resulting in unintended outcomes. A report of the first review must be tabled in the Federal Parliament by 31 December 2014.

As a result, the primary objective of the Waste Reduction and Recycling Bill 2011 is to provide for-

- a cross-tenure, long-term legal right to carry out a carbon sequestration project in Queensland (a 'carbon sequestration interest'); and
- the power to vest in a landholder (as grantor of a carbon sequestration interest) the Crown's statutory ownership of carbon in all forest products in a project area.

The secondary objective of the Waste Reduction and Recycling Bill 2011 is to provide for improvements in the administration of State land by clarifying, updating and improving provisions for the keeping of registers relating to land and, as a result of those changes, by providing for the continuation of particular interests in land (including carbon sequestration interests) from one form of tenure to another.

Water Act 2000

Queensland, together with other jurisdictions, committed to adopt the National Water Initiative risk assignment framework for compensation payable for reductions in the availability of water under a water access entitlement. The Agreement on Murray-Darling Basin Reform expanded the National Water Initiative risk assignment framework to provide for the Commonwealth to take on some of the liabilities of the Basin States in relation to reductions attributed to new knowledge. The Commonwealth *Water Act 2007* provides for the Commonwealth to take on a greater share of the payable compensation in the Murray-Darling Basin where the Basin States have adopted the risk assignment framework under the National Water Initiative by a certain date, agreed to by the Commonwealth, which must be before the Murray-Darling Basin Plan comes into effect.

The Murray-Darling Basin Plan under the Commonwealth *Water Act 2007* is proposed to commence in 2012. It is anticipated the Basin Plan will specify reductions in the amount of water available to water entitlement holders in the Murray-Darling Basin. To allow the Commonwealth to take on some of Queensland's liability, Queensland must apply the risk assignment framework provided in the National Water Initiative before the Basin Plan takes effect.

In the Queensland portion of the Murray-Darling Basin sub-artesian groundwater management areas are yet to be managed under water resource plans under the Water Act. In some areas water is managed under instruments, such as a moratorium under the Water Act and water sharing rules under provisions of the Water Regulation 2002.

It is anticipated that the Basin Plan may require reductions in the groundwater available for take, for example in the Upper Condamine Alluvium groundwater resource. The Commonwealth are implementing a *Water for the Future* program, part of which is to purchase water entitlements to help bridge the gap between the existing take of water and the amount of water that is available for take under the Basin Plan. However, water entitlements purchased under the program must meet the Commonwealth's requirements for security. For gaps remaining after the conclusion of the purchase program, it is anticipated that Queensland will need to make changes to planning instruments to reflect the amount of water available under the Basin Plan.

As part of adopting the National Water Initiative risk assignment framework for compensation, it is intended the Water Act allow existing instruments to be collectively made into management plans. The purpose of making the plan for the management of water is so that it may be eligible to be an interim water resource plan under the Commonwealth *Water Act 2007*. This will provide a mechanism for making water entitlements within the area to which the interim water resource plan applies eligible for voluntary buyback arrangements under the Water for the Future program and compensation under the National Water Initiative risk assignment framework, if appropriate.

Water Supply (Safety and Reliability) Act 2008

Authorising temporary critical discharge of Coal Seam Gas recycled water

The discharge of CSG recycled water into a natural water source is currently regulated under two legislative frameworks 1) the Water Supply Act—for the purpose of protecting public health in relation to drinking

water supplies of a drinking water service provider, and 2) the *Environmental Protection Act 1994* (Environmental Protection Act)—for the purpose of protecting the environment. Currently if an emergency direction, Transitional Environmental Program or an Environmental Protection Order under the Environmental Protection Act authorises or directs a discharge of CSG recycled water to a natural water source used by a drinking water service provider, a Water Supply Act approval is also required to discharge the water. Where the authorisation under the Environmental Protection Act can have appropriate conditions to protect public health in relation to drinking water supplies, as would be required under the Water Supply Act, it is considered appropriate to remove the requirement for an additional approval under the Water Supply Act. Due to the immediacy of emergency directions, any potential public health impacts will be managed either as a requirement of the emergency direction or by using emergency powers under the Water Supply Act.

Seepage water

Seepage water is currently a prohibited substance under the Water Supply Act. This means that it is an offence to discharge seepage water into the infrastructure of a sewerage service provider. A sewerage service provider may, however, authorise the discharge of water borne waste from business activities (trade waste) into their sewerage infrastructure under certain conditions. It is considered necessary to provide greater flexibility in the way seepage water is managed and to allow service providers to consent to and condition the discharge of seepage water (that is not from mining or petroleum activities) to their sewerage infrastructure. As such, the Bill will apply the existing provisions of the Water Supply Act for dealing with trade waste to dealing with seepage water (with the exception of seepage water from mining and petroleum activities).

The inability to discharge seepage water into the infrastructure of sewerage service providers has been identified as an issue for the Airport Link Project, a declared State significant project under the *State Development and Public Works Organisation Act 1971*. Construction of the Airport Link tunnel has resulted in interception of relatively small volumes of seepage water which has been utilised on site, however post construction it will be necessary to dispose of this water on an ongoing basis. Similar issues are likely to arise in the future as major projects are initiated.

How the objectives will be achieved

Waste management and resource recovery

Existing waste management legislation in Queensland is generally outdated. The waste management provisions contained in the *Environmental Protection Act 1994* are a legacy from the transfer of waste responsibilities from the Health Act to the environment portfolio in 1994 and do not reflect contemporary practices.

While the current framework provides an effective means of dealing with the environmental impacts after waste has been generated, it is less able to deal with waste reduction and resource recovery issues and has little capacity to address emerging issues such as product stewardship, greenhouse gas emissions from landfill and other issues of national significance. Despite amendments over a number of years, the current legislative framework does not reflect an ability to accommodate modern waste management practices, or community expectations for improved waste management and resource recovery practices.

The Bill provides for a specifically tailored approach to address waste management and resource recovery issues now and into the future. It provides a range of innovative regulatory mechanisms to enhance accountability, partnerships, self-regulation, and voluntary initiatives, as well as providing a greater enforcement capacity and strengthened penalties for litter and illegal dumping offences. By providing greater certainty in enforcement and administration, state and local government, business and industry and the community are able to better understand their rights and obligations regarding waste management broadly.

The Bill will achieve its objectives through a process that is guided by the waste and resource management hierarchy and policy principles including the polluter pays principle, the user pays principle, the proximity principle and the product stewardship principle.

The objects of the Bill are intended primarily to be achieved through approaches that may include—

- preparation, implementation and maintenance of a waste management strategy
- preparation and implementation of a business plan for the strategy
- price signalling, through the introduction of a levy on waste disposal

- providing for the preparation of State, local government and industry strategic waste management plans
- providing for reporting requirements for the State, local governments and business and industry
- identification of priority products and associated management tools, including product stewardship arrangements and disposal bans

Water Act 2000

The Bill implements the National Water Initiative risk assignment compensation framework for reductions in the value of water access entitlements in Queensland through amendments to the Water Act.

The risk assignment framework adopted under the Water Act will initially apply for changes made to water access entitlements regulated under Queensland Murray-Darling Basin water plans. These plans include water resource plans and resource operations plans under the Water Act within the area of the Murray-Darling Basin, and interim water resource plans under the Commonwealth *Water Act 2007*. The compensation framework applies to water access entitlements, which includes water allocations or other Water Act authorisations to take water if specified in a regulation.

For parts of Queensland outside of the Murray-Darling Basin, the Bill provides for the future application of the risk assignment framework to be specified by regulation. The existing compensation provision under the Water Act will be retained for areas not specified by regulation. This provides that reasonable compensation is payable if a change to a water resource plan is made within 10 years of its making and the change reduces the value of a water allocation.

As set out in the National Water Initiative, the framework in the Bill specifies the assignment of responsibility for compensation (risk assignment) for changes to water access entitlements that result in a reduction in value of the entitlement caused by climate change (including bushfire or drought etc), new knowledge or new policy. The risk assignment set out in the Bill is as follows:

In relation to changes caused by climate change the water entitlement holder bears 100% of the risk and therefore no compensation can arise as a result of the change.

In relation to changes caused by new knowledge, the risks arising are to be shared in the following way:

- Water entitlement holders to bear the first 3% reduction in value of the entitlement;
- State and Commonwealth governments to share 1/3 and 2/3 respectively reduction in value of water entitlements of between 3% and 6%; and
- State and Commonwealth governments to equally share reductions in value of water entitlements greater than 6%.

In relation to changes caused by new policy, 100% of the risk is assigned to the government whose policy has caused the change - i.e. if it is State policy, the State bears 100% risk, if it is Commonwealth policy; the Commonwealth bears 100% risk.

The Commonwealth Murray-Darling Basin Plan will be implemented through State water plans. For example, if reductions to water allocations in the Queensland Murray-Darling Basin are required to implement the Basin Plan, the reductions may be made through amendments to the relevant Queensland water resource plan and/or the accompanying resource operations plan.

The Bill includes a requirement for Queensland water resource plans to include a statement as to the purpose of any reduction in available water, for example that the change is due to climate change, new knowledge or government policy. This will help to identify the liability, if any, for payment of compensation for the change and will help to inform stakeholders about whether claims for compensation should be made to the Commonwealth or the State.

Under the framework provided in the Bill, compensation may be triggered for changes to water access entitlements that occur at any time, including at the time of replacement of an expiring water resource plan. This differs from the existing framework, which only provides compensation for changes that occur within the 10 year life of a water resource plan.

To provide for the detail in determining payable compensation, and to align with similar Commonwealth regulation making powers, the Bill provides for a regulation to set out the basis on which reductions in water access entitlements are calculated, the basis on which compensation for the reduced value of the water access entitlement is calculated, and the manner and time of payment of compensation.

The Bill provides for the making, by the Minister, of a water management plan by declaring by gazette notice that a particular instrument, or a

combination of instruments, is made into a management plan. It is intended that the water management plan may be eligible to be an interim water resource plan under the Commonwealth *Water Act 2007*. This will provide a mechanism for making water entitlements within the area to which the interim water resource plan applies eligible for voluntary buyback arrangements under the *Water for the Future* program, and compensation under the National Water Initiative risk assignment framework, if appropriate.

The establishment of an interim water resource plan for the purposes of that Commonwealth *Water Act 2007* will commit Queensland to implementing management arrangements that ensure that where the purchase of entitlements occurs, a corresponding reduction in take from the groundwater resource also occurs.

Water Supply (Safety and Reliability) Act 2008

Authorising temporary critical discharge of Coal Seam Gas recycled water

The Bill removes the requirement under the Water Supply Act to obtain an approval for temporary discharge of coal seam gas (CSG) recycled water to a natural water source used by a drinking water service provider where relevant approvals, conditioned to protect public health for drinking water supplies, have been issued under the Environmental Protection Act. Currently if an emergency direction, Transitional Environmental Program or an Environmental Protection Order under the Environmental Protection Act authorises or directs a discharge of CSG recycled water, to a natural water source used by a drinking water service provider, an approval is still required to discharge the water under the Water Supply Act. Approval under the Water Supply Act includes obtaining either a recycled water management plan or an exclusion decision.

The disposal of CSG recycled water, where an Environmental Protection Act authorisation has been obtained, will be authorised for the purposes of the Water Supply Act where these Environmental Protection Act authorisations include appropriate conditions to protect public health for drinking water supplies of a drinking water service provider. This Water Supply Act authorisation is intended for temporary critical discharge situations, for example where a CSG water dam is at risk of overtopping and failing from heavy rain and there is an urgent need to discharge the water. As such, this authorisation is limited to a prescribed time period.

The time period prescribed for Water Supply Act authorisation of temporary critical discharge twelve (12) months cumulative discharge. This

is to recognise that the discharges could be either short in duration, seasonal or otherwise intermittent, or only required during extreme weather events. At the end of such time period, the ongoing disposal of the CSG water will need to be approved under either a recycled water management plan or exclusion decision under the Water Supply Act.

Seepage water

The Bill amends the Water Supply Act to allow sewerage service providers to consent to the discharge of seepage water from tunnels, car parks, basements, lift wells and similar constructed fixtures (with the exception of seepage water from mining and petroleum activities) to their sewerage infrastructure in the same way they can currently authorise the discharge of trade waste into their sewerage infrastructure.

Seepage water is currently a prohibited substance under the Water Supply Act. Seepage water is grouped with other classes of water as a prohibited substance, including: floodwater, rainwater, roof water, stormwater, subsoil water and surface water. These classes of water are considered low risk compared to other prohibited substances; however, if discharged to a sewer, the volumes of these types of water could impact the sewerage network causing surging, damage and overflows.

The Bill provides a framework for sewerage service providers to give an approval to discharge seepage water into the service provider's sewerage infrastructure provided the seepage water is not seepage water from mining or petroleum activities.

In order to prevent impacts on sewerage networks, the power provided in the Bill for a sewerage service provider to consent to discharges of seepage water is confined to particular circumstances. In order to give consent to a discharge of seepage water the Bill includes a requirement for the sewerage service provider to be satisfied that the amount, type and strength of the proposed discharge will not harm the sewerage infrastructure or the health and safety of anyone working on the sewerage, and that the sewerage treatment plant to treat the seepage water is capable of treating the seepage water to an acceptable level.

The Bill also makes consequential amendments the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009* to support this amendment to provide service providers, established under this Act, the powers necessary in the event that a seepage water approval is given.

Alternative ways of achieving the objectives

Waste management and resource recovery

There are no alternative ways of achieving the Bill's policy objectives that would provide stakeholders with clarity and certainty and achieve the policy objectives other than the proposed Bill. The possibility of amending the *Environmental Protection Act 1994* was explored. This action was not considered to be suitable as substantial amendments would be required.

The *Environmental Protection Act 1994* establishes a legislative framework that predominantly deals with managing the environmental impacts associated with activities broadly. Many of the reforms that are providing legislative tools to improve waste reduction and recycling, collect better data and introduce a price signal on disposal to encourage better recycling, market development and job creation are not suitable for inclusion in an Act with the primary aim of protecting the environment.

Forestry Act 1959, Land Act 1994, Land Title Act 1994* and the *Nature Conservation Act 1992

Carbon Farming Initiative

The objectives of the Waste Reduction and Recycling Bill 2011 in relation to the Carbon Farming Initiative will be met by amending the *Forestry Act 1959*, the *Land Act 1994,* the *Land Title Act 1994* and the *Nature Conservation Act 1992*.

In Queensland, the State is the statutory owner of the carbon sequestration right for native forest timber and vegetation on non-freehold land, including most land amended to provide for the vesting of the State's carbon sequestration right held by a lease under the Land Act, and on deeds of grant in trust (including deeds of grant in trust for Aborigines and Torres Straits Islanders).The State is also the owner of the carbon sequestration right in all timber and vegetation located within a forest entitlement area that is reserved to the Crown under the terms of a deed of grant or free holding lease under the Land Act.

The Forestry Act and the Nature Conservation Act must be in the owner of a lot (including the State as a landholder) if the carbon sequestration right in the lot is vested in the Crown under the Forestry Act or Nature Conservation Act.

The Forestry Act provides for a person to enter into an agreement with another person about natural resource product on the land (which includes

carbon sequestration by a tree or vegetation) and, for the purposes of the Land Act and the Land Title Act, such an agreement is a profit a prendre.

For the purposes of the Land Act, the profit a prendre provisions are restricted to leases which may be used for agricultural or timber plantation purposes and the natural resource product subject to the profit a prendre must be a cultivation, garden, orchard or plantation that is owned by the lessee or the grantee of the profit a prendre as an improvement.

The terms of the CFI Bill would exclude an improvement on a lease as being suitable for an eligible sequestration offsets project.

Under the Land Title Act, the profit a prendre provisions are not restricted to dealings with natural resource product on the land. The profit a prendre may, for example, give the grantee the right to enter upon the land and harvest the crops for a number of years. The profit a prendre provisions under the Land Title Act are applied consistently to all profits a prendre disregarding their permitted use. Any change to those provisions must take that point into account.

Under the CFI Bill, the provisions relating to eligible sequestration projects are intended to be amended, if required, following the expected reviews of the operation of the CFI Bill. Also, a project proponent is required to maintain an eligible sequestration offsets project, including any scheme obligations for the project, for 100 years. During this period, the project area may be amended by addition of more land. In consequence, the CFI Bill requires the term of the project to be extended for a further 100 years. At any time, the land containing the project area may be surrendered to, or taken by and vested in, the State. The State, in helping Australia meet its emission reduction targets, may desire the eligible sequestration project to remain as a registered interest in land.

Rather than introduce changes to State legislation that may create inconsistencies in the rights of holders of profits a prendre, it is more appropriate to introduce a new form of registered interest in land (a carbon sequestration interest).

The Forestry Act, the Land Act, the Land Title Act and the Nature Conservation Act are to be amended to provide-

- for the creation of carbon sequestration interests in land (which includes the exclusive right to the benefit of carbon sequestration in a specified area); and
- for further dealings with the carbon sequestration interest.

Currently the Forestry Act requires the keeping of a register for timber reserves and the Nature Conservation Act requires the keeping of a register for protected areas and forest reserves. These registers are kept separately from the Automated Titles System that contains the freehold land register, which is required to be kept under the Land Title Act, and the leasehold land register, the register of reserves, etc., which are required to be kept under the Land Act. Land kept in the Automated Titles System may be referred to as registered land.

The Automated Titles System is the most appropriate place for keeping records on the transfer of carbon sequestration rights and for the creation and continuation of carbon sequestration interests in land.

The Forestry Act and the Nature Conservation Act are to be amended to make timber reserves, protected areas and forest reserves registered land. As registered land, the particulars of timber reserves, protected areas and forest reserves will be kept in the Automated Titles System and dealings with those tenures (including changes in description) will take effect on registration of any necessary documentation.

Provision for the continuation of particular interests in land will be made by amendments to the Forestry Act, the Land Act and the Nature Conservation Act.

Water Act 2000

Not adopting the National Water Initiative risk assignment framework is not a viable alternative as adopting the framework will be of benefit to Queensland water access entitlement holders and the State.

Water Supply (Safety and Reliability) Act 2008

Authorising temporary critical discharge of Coal Seam Gas recycled water

There are no alternative ways to remove the requirement for multiple approvals to authorise the release of CSG recycled water into a natural water source used by a drinking water service provider, as approvals under both the Water Supply Act and Environmental Protection Act are a statutory requirement.

Seepage water

Amendments to provide sewerage service providers the discretion to accept seepage water (that is not seepage water from mining or petroleum activities) into their sewerage infrastructure, simply removes an existing

legislative impediment. As such, there are no alternative ways to achieve the same policy objective.

Alternatives to the Bill

There are no other viable alternatives that would achieve the policy objectives other than the proposed Bill.

Estimated cost of government implementation

Waste management and resource recovery

The introduction of the waste disposal levy provides the funding mechanism for administration of waste management programs, compliance and enforcement. The levy revenue from 1 December 2011 to 1 July 2014 is estimated to be around $338 million. The Bill establishes the Waste and Environment Fund, to receive levy monies and to be the source for funds to finance projects and programs. $159 million of these funds will be used to implement the business plan covering the period 1 December 2011 to 30 June 2015. This funding allocation will be known as the Waste Avoidance and Resource Efficiency (WARE) Fund. All government administrative and compliance costs associated with the provisions of the Bill will be met from levy revenue.

Other administrative costs such as the possible re-issue of identity cards for existing authorised persons are to be met by the normal operating budget. Departmental authorised person training will be undertaken as part of the normal operating budget.

Forestry Act 1959, Land Act 1994, Land Title Act 1994 and the Nature Conservation Act 1992

The Bill is expected to impose additional costs on the State Government in implementing the administrative changes needed to facilitate the carbon farming initiative, such as including the particulars of protected areas under the Nature Conservation Act in the Automated Titles System, training staff in changes in their administrative processes resulting from the changes, and releasing fact sheets to the public on the creation and further dealings with carbon sequestration interests in Queensland. The costs are expected to be funded through the realignment of existing resources.

The administrative changes will provide for greater consistency and efficiency in administering State land under more than one Act and permit

the State, as a landholder, to benefit under the terms of the CFI Bill. The benefit would be both environmental and financial.

Water Act 2000

Costs associated with reductions in water entitlements in the Queensland portion of the Murray-Darling Basin cannot fully be assessed until the Commonwealth's *Water for the Future* initiative is finalised. A key element in this program is to provide a mechanism to reduce water use in the Murray-Darling Basin, which will reduce the required reductions to water entitlements as part of implementing the Basin Plan. This program is likely to continue until 2019.

For all other areas of the State which are specified under a regulation, costs associated with reductions in entitlements currently regulated under a water resource plan cannot be assessed until the process to review and replace an expiring water resource plan is commenced. This is likely to happen at ten year intervals for each individual water resource plan.

Water Supply (Safety and Reliability) Act 2008

Amendments to the Water Supply Act will not result in costs to government. Amendments to authorise temporary critical discharge of CSG recycled water will achieve savings for business and government through regulatory simplification.

Consistency with Fundamental Legislative Principles (FLPs)

Section 4 of the *Legislative Standards Act 1992* requires that legislation have sufficient regard to the rights and liberties of individuals. Whether legislation has sufficient regard to the rights and liberties of individuals depends on whether, for example, the legislation:

- is consistent with principles of natural justice;
- does not reverse the onus of proof in criminal proceedings without adequate justification; or
- allows the delegation of administrative power only in appropriate cases and to appropriate persons.

The Bill is generally consistent with fundamental legislative principles. Potential breaches of Fundamental Legislative Principles (FLPs) for the Bill are noted below.

Waste management and resource recovery

Legislation makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review—*Legislative Standards Act 1992*, section 4(3)(a)

The Bill contains provisions that create a number of obligations on certain persons, such an a waste disposal site operator, and provides for administrative decisions about a range of issues, including application for waste to be exempt from application of the levy; beneficial use approvals and accreditation of product stewardship schemes.

In all circumstances where an administrative decision may be made to refuse an application, the proponent has the right to request an internal review of the decision and, if not satisfied with the outcome of the review, to request an external review of the decision. The Queensland Civil and Administrative Tribunal are nominated in the Bill as the external review party.

Legislation is consistent with principles of natural justice—*Legislative Standards Act 1992*, section 4(3)(b) and does not reverse the onus of proof in criminal proceedings without adequate justification—*Legislative Standards Act 1992*, section 4(3)(d)

Chapter 5 of the Bill contains provisions relating to littering offences involving a vehicle. The provisions create the ability for an authorised person to issue a penalty infringement notice for this offence to the registered operator of the vehicle, either on the basis of information received from a public report or as observed by the authorised person. This creates a reverse onus of proof on the registered operator to prove that they were not the offender, rather than the authorised person having to prove that they were the offender.

Natural justice involves procedural fairness and a right to be heard, which has been addressed in the legislation by providing the ability for the registered operator of the vehicle to provide a declaration to the administering authority under the *State Penalties Enforcement Act 1999* in relation to the offence if they are not the actual offender. A person also has the right to elect to have the matter heard in Court.

In the case of littering from a vehicle (for instance, throwing a lit cigarette from a vehicle into dry grass or a glass bottle being thrown from a vehicle at a person) the possible greater environmental damage, as well as potential

for property damage and personal injury, indicate there is a broader public interest in placing the responsibility on the owner of the vehicle in the first instance.

Legislation should only confer power to enter premises, and search for or seize documents or other property, with a warrant issued by a judge or other judicial officer—*Legislative Standards Act 1992*, section 4(3)(e)

The Bill introduces a limited extension of the standard enforcement provisions allowing entry and search without a warrant that allows an authorised person to enter and search a vehicle. Clause 203 allows for entry and clause 206 allows an authorised person to stop or move a vehicle. However the application of both these provisions is limited to an offence against clauses 40 and 103.

Clause 40—Person delivering waste to a levyable waste disposal site to give information as required by site operator—will only affect persons who deliver waste to a site and are asked, at the site, to give accurate information about the waste that is being delivered. Clause 103—Illegal dumping of waste offence provision—involves the depositing of waste of more than 200L in volume.

The circumstances under which an authorised person has the power to enter without a warrant sufficiently limit these powers. It is considered that entry without a warrant is a suitably proportionate approach to the enforcement of two of the more significant provisions of the Bill.

Legislation allows the delegation of legislative power only in appropriate cases and to appropriate persons—*Legislative Standards Act 1992*, section 4(4)(a)

A central element of the Bill is the introduction of a waste disposal levy. Operators of a waste disposal site disposing of levyable waste are required to pay the applicable levy amount for every tonne of levyable waste disposed at the site. The levy is an amount per tonne prescribed in regulation, with different levy amounts prescribed for different types of waste as identified in the regulation.

It is arguable that all key components for the new levy should be contained in primary legislation.

However, it is also necessary to ensure that new funding arrangements are sufficiently responsive and flexible in order to meet the policy objectives of the legislation in providing funding for waste management and environment initiatives as well as providing a price signal to discourage

unnecessary disposal and encourage improved recycling and resource recovery. As such, it would not be practical to have the amending provisions for a levy contained in the Bill due to the lead times required to amend the primary legislation.

Also, given the potential financial impact of any levy increase, it is likely that a Regulatory Assessment Statement would be required prior to any increase. Further, the Bill creates a requirement for periodic reviews of the efficacy of the levy. The levy rate is currently set for four years and subject to any annual CPI increases. The first efficacy review must be undertaken within two years of the introduction of the levy.

Forestry Act 1959, Land Act 1994, Land Title Act 1994 and the Nature Conservation Act 1992

The Bill provisions amending the above legislation are generally consistent with fundamental legislative principles. In most cases, CFI amendments are to give effect to a requirement under the CFI Bill and any adverse administrative action is likely to be resolved by the Commonwealth under the terms of the CFI Bill. The State will act to facilitate operation of the CFI Bill.

Water Act 2000

Whether legislation adversely affects the rights and liberties of individuals

The Bill includes amendments to implement the National Water Initiative risk assignment compensation framework for changes to water access entitlements. These amendments may be seen to affect the rights and liberties of water allocation holders to which the National Water Initiative framework is applied because, for a change in the reliability in the water allocation attributed to new knowledge the holder of the allocation will bear the first 3% reduction.

Currently the Water Act provides that reasonable compensation is payable by the State if a change to a water resource plan reduces the value of a water allocation and the change is made within ten years after the plan is approved. While to date compensation has not been paid by the State under this provision, as no changes to water resource plans which decrease the value of water allocations have been made during the ten year life of a plan, the provision canvasses that reasonable compensation is payable where there is a reduction in value—which could be a reduction of <3%.

There are several reasons why it is considered appropriate in this case:

- the Intergovernmental Agreement on a National Water Initiative was agreed upon the by the Council of Australian Governments and represents Australia's blueprint for water reform. It commits each State, including Queensland, to implementing the agreed risk assignment framework. Extensive public consultation occurred before the National Water Initiative was finalised. As such, for a reduction attributable to new knowledge, a 3% reduction is considered the acceptable level of risk to be borne by the holder of the entitlement at a national policy level; and
- while implementing the National Water Initiative risk assignment framework will potentially affect the rights of water allocation holders who may have been eligible in the future for changes made under water resource plans, the new framework makes a broader range of water entitlement holders eligible for compensation in situations where there is a reduction in value of their entitlement.

The new provisions apply to reductions that are made at the end of the ten year life of a water resource plan, not just changes in the interim, effectively increasing the rights of entitlement holders to compensation by providing increase security for the value of an entitlement. As such, the benefits overall for water entitlement holders in Queensland resulting from adopting the framework is considered to negate any rights that are impeded by requiring some water allocation holders to bear the first 3% reduction attributable to new knowledge. The disadvantage to some individuals is outweighed by the advantages to Queensland as a whole from the implementation of the National Water Initiative and Murray Darling Basin reforms.

Whether legislation allows the delegation of administrative power only in appropriate cases and to appropriate persons

To align with similar regulation making powers under the Commonwealth *Water Act 2007*, the amendments to the Water Act enable the basis on which compensation covered by the National Water Initiative risk assignment framework is to be calculated and the manner and time of the payment of compensation to be prescribed by regulation. It is arguable that these matters should be set out in the Act and that the provision is an inappropriate delegation of power.

The provision is justified in this case however because it is essential these matters match the equivalent processes adopted by the Commonwealth in order to provide a consistent framework. Under the Commonwealth *Water*

Act 2007 these matters are to be prescribed by regulation. The Commonwealth has not yet made the necessary regulation. Further, the power is constrained by the requirement in the Bill that the compensation be reasonable.

Whether legislation has sufficient regard to the institution of Parliament—LSA s 4(2)

The Bill proposes a regulation making power to prescribe additional areas to which the new compensation provisions apply. This could be perceived as a Henry VIII provision not having sufficient regard to the institution of Parliament as it would allow the Governor in Council to decide further application of the compensation framework.

The regulation making power is considered appropriate in this case as the exercise of this power would only be beneficial to those affected. A regulation made under the authority of this provision would extend the application of compensation rights to additional areas which would make a greater number of entitlement holders potentially eligible for compensation under the new framework.

The application of the new compensation framework to additional areas is also dependent on the negotiation of suitable agreements with the Commonwealth about the supplementing the payment of compensation.

Water Supply (Safety and Reliability) Act 2008

Whether legislation has sufficient regard to rights and liberties of individuals

The Bill includes amendments to the Water Supply Act to ensure that approved temporary critical discharge of water into a water supply is not an offence. Approved temporary critical discharge of water must be carried out under a Transitional Environmental Program, an Environmental Protection Order or an emergency direction under the *Environmental Protection Act 1994* (Environmental Protection Act approval).

The proposed amendments will address the situation where if a Transitional Environmental Program, Environmental Protection Order or emergency direction, allows an approved temporary critical discharge of water, and is carried out by an entity for a scheme that already has an approved recycled water management plan or exclusion decision under the Water Supply Act. The Bill provides that in the event of an inconsistency in the conditions of the Environmental Protection Act approval and the approved recycled water management plan or exclusion decision, the

conditions under the Environmental Protection Act approval prevail to the extent of any inconsistency.

It is arguable that this may adversely affect rights and liberties previously granted under an authorisation.

Approved temporary critical discharge of water must be carried out under a Transitional Environmental Program, an Environmental Protection Order or an emergency direction under the Environmental Protection Act. Therefore the conditions under these authorisations are required to be complied with. So the new conditions that any existing recycled water management plan or exclusion decision would be subject to are already applied under the other Environmental Protection Act authorisations (Transitional Environmental Program, Environmental Protection Order or emergency direction). Therefore these conditions are not a new requirement.

A temporary critical discharge of CSG recycled water will be allowed only to prevent or respond to an emergency situation and will be conditioned to protect public health for drinking water supplies. Even to the extent that the rights and liberties of the holder of a recycled water management plan or exclusion decision may be affected, it is justified as on balance there is a greater need to protect public health in this circumstance.

Consultation

Waste management and resource recovery

The Department of Environment and Resource Management conducted extensive stakeholder and public consultation on the waste reforms. In June 2010 the Queensland Government released the draft waste management strategy for public consultation. The draft strategy was accompanied by a waste disposal levy consultation paper outlining the proposed levy approach. A start date of 1 July 2011 for the levy was also announced at the release of the draft strategy. Consultation on the draft strategy and the proposed levy was undertaken over a 10 week period. During this time, discussions were also held with stakeholders in relation to the proposed levy approach.

Some of the feedback from the public consultation period for the draft Strategy and from stakeholder discussions has helped in the development of the Bill.

A Regulatory Assessment Statement on the impact of the levy was also released for public consultation in December 2010.

No public consultation was held on the draft Bill. However, extensive targeted stakeholder consultation has been undertaken with local government, the waste and recycling sector, business and industry and environment and community groups. Queensland Government departments were also consulted on the development of the Bill.

Stakeholders were provided with two formal opportunities to comment on provisions of the Bill. Stakeholders, such as the National Association of Charitable Recycling Organisations and the Australian Landfill Owners Association, were also involved in targeted consultation on aspects of the Bill at various stages of its development.

First round of consultation

An early consultation draft of the Bill was provided to stakeholders in December 2010, with comments to be received by 28 January 2011. This timeframe was necessary in order to ensure that the Bill could commence by 1 July 2011 to give effect to the introduction of the levy as announced in June 2010.

During January 2011 a series of natural disaster events impacted much of Queensland. These events significantly reduced the ability of stakeholders to comment on the draft Bill. As a result the consultation period was extended by a month to 28 February 2011.

The disasters across Queensland also significantly impacted the ability of some local governments to install the infrastructure necessary to collect information in relation to the levy that is required by legislation. A number of private sector landfill and recycling facilities were also impacted. The general business and industry sector was also concerned about the impact of a levy commencing on 1 July 2011 on businesses struggling to recover from the effects of the natural disasters.

As such the Queensland Government agreed to defer the levy until 1 December 2011. This decision also provided an opportunity for a second round of targeted stakeholder consultation on the Bill.

Ten submissions were received by 28 February 2011. Stakeholders who provided a formal submission were:

- Waste Contractors and Recyclers Association (Qld)
- Local Government Association of Queensland

- Cairns Regional Council
- Moreton Bay Regional Council
- Australian Industry Group
- Scenic Rim Regional Council
- Gold Coast City Council
- Rockhampton City Council
- Australian Landfill Owners Association
- Council of Mayors Southeast Queensland

Second round of consultation

The second round of consultation, which commenced on 31 May 2011 allowed stakeholders to provide comment on a more complete Bill than the consultation period in December 2010.

By the end of the consultation period on 30 June 2011, 14 submissions had been received.

Stakeholders providing a formal submission as part of this consultation process were:

- Queensland Conservation Council
- Master Builders Association
- Waste Management Association of Australia (Qld Branch)
- Gold Coast City Council
- Brisbane City Council
- Central Queensland Local Government Association
- Western Downs Regional Council
- Waste Contractors and Recyclers Association (Qld)
- Australian Landfill Owners Association
- Local Government Association of Queensland
- Moreton Bay Regional Council
- Logan City Council

- Redland City Council
- Sunshine Coast Regional Council

Stakeholder feedback at this stage helped to clarify certain provisions of the Bill and some amendment were made to provisions on the basis of feedback. This included, for example, amendment to the provision requiring volumetric surveys every six months. Stakeholder feedback indicated that annual volumetric surveys would be more appropriate. Consequently this provision was amended.

Stakeholder Advisory Committee and Technical Working Groups

A Stakeholder Advisory Committee was established in June 2010. The purpose of this Committee was to provide advice and feedback to the Department on the proposed package of waste reforms, including provisions of the Bill. The Committee met approximately every eight weeks. Stakeholders represented on the Stakeholder Advisory Committee are:

- Local Government Association of Queensland
- Waste Contractors and Recyclers Association (Qld)
- Waste Management Association of Australia (Qld Branch)
- Australian Council of Recycling
- Australian Industry Group
- Queensland Chamber of Commerce and Industry
- Master Builders Queensland
- Urban Development Institute of Australia
- Council of Mayors Southeast Queensland
- Keep Australia Beautiful (Qld)
- Queensland Conservation Council

Technical Working Groups were also formed to provide detailed advice and input into the design of the legislative framework and levy approach and to help develop the program areas.

Each organisation participating in the Stakeholder Advisory Committee process was represented on the Technical Working Groups. As the Technical Working Groups were established to provide operational and

technical advice on the practical application of the proposed legislative provisions and programs, more people were invited to participate.

Local government representatives from Southeast Queensland, Central Queensland, North Queensland, Western Downs Region and Fraser Coast/Burnett Region were members of the Technical Working Groups to ensure regional issues were adequately captured and addressed.

The waste sector provided four members per group, consisting of representatives from waste transporters, landfill operators, waste educators and recyclers. Across the Stakeholder Advisory Committee and various Technical Working Group memberships, close to 40 companies and organisations were represented.

One of the roles of the Stakeholder Advisory Committee members was to circulate available information from the meetings to the broader membership base for each organisation represented. This ensured that representative feedback was obtained.

Training and information sessions

Specific training will be provided to waste disposal site operators to ensure they are aware of, and know how to use, the levy reporting system and the obligations of a waste disposal site operator under the legislation.

Authorised officer training will also be provided to the authorised person in relation to the changes to the legislation, evidence gathering and reporting, reasonableness of issuing an infringement notice for particular littering offences and case studies and examples of appropriate use of infringement notices for certain offences.

A number of business and industry information sessions were undertaken in April and May and several more were conducted during July to ensure businesses were aware of the changes. These sessions were conducted in partnership with industry organisations such as the Queensland Chamber of Commerce and Industry. Broad information sessions across the state will also be held in October and November in the lead up to commencement of all provisions of the Bill.

Consultation on other legislation amendments

Forestry Act 1959, Land Act 1994, Land Title Act 1994 and the Nature Conservation Act 1992

The Queensland Government is acting to facilitate the operation of the Commonwealth's CFI Bill and has had exhaustive consultation with all key

stakeholders—including peak rural industry bodies (including AgForce and Queensland Farmers Federation), key regional NRM bodies (including Terrain NRM and SEQ Catchments), and the Indigenous Land Council. Among the stakeholders, there is consensus on the need for legislative amendment.

Water Act 2000

The Australian Government Department of Sustainability, Environment, Water, Population and Communities, Agforce and Queensland Farmers Federation have been consulted on the proposal to adopt the National Water Initiative risk assignment framework for compensation. Agforce and Queensland Farmers Federation have been consulted on the proposed amendment.

Water Supply (Safety and Reliability) Act 2008

Seepage water

Consultation with the peak industry body, the Queensland Water Directorate has been undertaken. Through the Office of the Water Supply Regulator, within the Department of Environment and Resource Management, consultation with the three distributor-retailers (Allconnex, Queensland Urban Utilities and Unity Water) was undertaken.

Consultation with the Airport Link Project proponent has been undertaken.

Results of consultation

No significant issues were raised by stakeholders in relation to the consultation draft. Some amendments were made to the Bill as a result of the feedback from stakeholder submissions during the consultation period.

Consistency with legislation of other jurisdictions

Waste management and resource recovery

While the Bill is specific to the State of Queensland, there are some consistencies with other states. The levy approach is the greatest point of consistency. The approach taken in Queensland mirrors that of other states whereby the operator of a waste disposal site is responsible for paying the levy to the state. In some areas, such as the provision of a discounted levy for the residue waste from recycling activities and the $0 levy for municipal solid waste, the Queensland legislation is different. Some of the Bill's

product stewardship provisions provide a complementary framework to the Commonwealth's product stewardship legislation.

Carbon Farming Initiative

Those provisions in the Bill that relate to the CFI are specific to the State of Queensland and have been prepared to facilitate the terms of the CFI Bill. All other States will need to make similar amendments to their legislation-such as the *Climate Change Act 2010* (Victoria) and the *Carbon Rights Act 2003* (West Australia) - to facilitate and benefit from the terms of the CFI Bill.

However, before the end of 2015, the CFI provisions in the Waste Reduction and Recycling Bill require a review on the operation of the CFI provisions having regard to the CFI Bill and other factors. Consistency with the introduced legislative amendments of other jurisdictions will be addressed in the review.

National Water Initiative

New South Wales has adopted the National Water Initiative risk assignment framework in legislation. The proposed provisions of the Queensland Water Act to adopt the framework are generally consistent with those of New South Wales.

Notes on provisions

Chapter 1 Preliminary

Part 1 Introduction

1 Short title

Clause 1 states that the short title of the Bill may be cited as the *Waste Reduction and Recycling Act 2011*.

2 Commencement

Clause 2 states that the following provisions commence on 1 December 2011:

- Chapter 3, part 3—operation of the waste levy; and Chapter 3, part 4—obligations about the waste levy; and Chapter 3, part 7- review of efficacy of waste levy.
- Section 62—effect of a declaration of resource recovery area and section 64—requirement to keep documents.
- Chapter 5—Offences relating to littering and illegal dumping; Chapter 6—Strategic planning for waste reduction and recycling; Chapter 7—Reporting about waste management; Chapter 8 – Approval of resource for beneficial use.
- Chapter 15, part 1—Transitional provisions relating to approvals under the Environmental Protection (Waste Management) Regulation 2000.
- Section 299—Existing strategic plans under repealed waste management policy; and section 300—Clinical and related waste management plan.
- Chapter 16, part 1—Repeal; Chapter 16, part 2—Amendment of Environmental protection Act 1994 and Chapter 16, part 3—Amendment of Environmental Protection (Waste Management) Regulation 2000.

Clause 2 also states that Chapter 16, parts 4 to 7 commence on a day to be fixed by proclamation.

The remaining provisions of the Bill commence on Royal Assent.

Part 2 Purposes, applicable principles and application of Act

3 Objects of Act

Clause 3 details the objects of the Bill. The Bill contains provisions that will—

(a) promote waste avoidance and reduction, and resource recovery and efficiency actions;

(b) reduce the consumption of natural resources and minimise the disposal of waste by encouraging waste avoidance and the recovery, reuse and recycling of waste;

(c) minimise the overall impact of waste generation and disposal;

(d) ensure a shared responsibility between government, business and industry and the community in waste management and resource recovery;

(e) support and implement national frameworks, objectives and priorities for waste management and resource recovery.

4 Achieving Act's objects

Clause 4 states that if a person is conferred a function or power under the Bill, the person must perform the function in the way that best achieves the objects of the Bill. However, without limiting a person's power or function under the Bill, achieving the objects of the Bill is to be guided, where practicable, by the waste and resource management hierarchy and the policy principles (the waste and resource management principles) of: the *polluter pays principle*; the *user pays principle*; the *proximity principle*; and the *product stewardship principle*.

5 Approach to achieving Act's objects

Clause 5 states that the objects of the Bill will be achieved primarily using approaches that may include:

(a) preparation, implementation and maintenance of a waste management strategy and waste management strategy business plan

(b) price signalling, including through the introduction of a levy on waste disposal

(c) providing for the preparation of State, local government and industry strategic waste management plans

(d) providing for reporting requirements for the State, local governments and business and industry

(e) introduction of bans on waste disposal

(f) identification of priority products and associated management tools, including the preparation, implementation and maintenance of a priority product statement

(g) providing for product stewardship arrangements

(h) waste tracking requirements

(i) granting of beneficial use approvals

(j) prohibiting particular conduct in relation to waste

(k) providing for the appointment of authorised persons to investigate matters arising under this Act and otherwise to enforce this Act and

(l) supporting some or all of the approaches mentioned above through the making of regulations under this Act.

6 Act binds all persons

Clause 6 states that the Bill is binding on all persons, including the State and, to the extent the legislative power of the Queensland Parliament permits, the Commonwealth and other States and Territories. However, the Commonwealth or another State or Territory cannot be prosecuted for an offence under the Act.

Part 3 Interpretation

Division 1 Dictionary

7 Definitions

Clause 7 provides that the dictionary in the schedule defines particular words used in the Bill.

Division 2 Key definitions and concepts

8 The concept of *disposal*

Clause 8 defines the concept of ***disposal***.

The Bill commonly uses the term disposal in relation to waste. The primary outcome from implementation of the Bill is intended to be a reduction in the amount of waste that permanently—or indefinitely—becomes incorporated into land, commonly referred to as becoming landfill.

Subclause 8(3) states that a reference to disposal in relation to waste should be taken to mean the deposit of waste into or onto land. It does not include the deposit of waste on a temporary or short term basis.

Subclause 8(4) states that subclause 8(3) does not limit what ***disposal*** may be taken to mean in an appropriate context.

9 Meaning of *waste and resource management hierarchy*

Clause 9 describes the waste and resource management hierarchy. The hierarchy provides a preferred order of considerations in relation to waste and resource management options. The preferred order is—

(a) REDUCE and AVOID unnecessary resource consumption and waste generation

(b) REUSE waste resources without further manufacturing

(c) RECYCLE waste resources to make the same or different products

(d) RECOVER waste resources, including the recovery of energy

(e) TREAT waste before disposal, including reducing the hazardous nature of waste

(f) DISPOSE of waste only if no viable alternative.

The waste and resource management hierarchy establishes the framework for the prioritisation of waste management practices to achieve an outcome that is environmentally, socially and financially sustainable.

10 Meaning of *polluter pays principle*

Clause 10 provides the definition for the ***polluter pays principle***. The *polluter pays principle* states that all costs associated with the management of waste should be borne by the persons who generated the waste. These costs may include the costs of minimising the amount of waste generated; containing, treating and disposing of the waste; and rectifying any environmental harm caused by the waste.

11 Meaning of *user pays principle*

Clause 11 provides the definition for the ***user pays principle***. The *user pays principle* states 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. In determining the full costs associated with the use of a resource, any government subsidy, incentive payment or grant similar payment must not be included in the calculation.

12 Meaning of *proximity principle*

Clause 12 provides the definition for the ***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.

The intent of the proximity principle is to limit the impact of transporting the waste long distances and also encourage communities, businesses and regions to take responsibility for their own waste rather then relying on other areas. It also provides an opportunity for market and infrastructure development in regional areas to provide improved waste management and resource recovery services.

13 Meaning of *product stewardship principle*

Clause 13 provides the definition for ***product stewardship principle***. This principle states that there is a shared responsibility between all persons involved in the life cycle of a product for managing the environmental, social and economic impact of the product. The intent of this section is that the design, production, and use of products should be considered in order to minimise the environmental harm that may be caused by waste generated from the production, use or disposal of the product.

This principle recognises that different roles and responsibilities may apply at each stage in the life cycle of a product.

The *product stewardship principle* does not apply to an entity:

(a) in relation to a matter to which the National Environment Protection (Used Packaging) Measure (the NEPM) applies;

(b) or if the entity is a signatory to the Australian Packaging Covenant—in relation to a matter to which the covenant applies;

(c) or if the entity is a signatory to a national product stewardship arrangement, or a State based product stewardship arrangement approved or accredited under this Act, and is meeting its obligations under the arrangement—in relation to a matter to which the arrangement applies.

This means that if an entity is participating in an existing packaging or product stewardship program for a matter—for example, mobile phones or used packaging—the entity does not have to apply the product stewardship principle under the Bill to the matter that may be covered by the existing arrangement.

A product stewardship arrangement may be voluntary or mandatory or may include both voluntary and mandatory aspects.

Chapter 2 Management documents

Part 1 Waste management strategy

Division 1 Introduction

14 Waste management strategy

Clause 14 provides for the making of a waste management strategy for Queensland to help in achieving the objects of the Act. 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

Clause 15 identifies what the strategy may include the following:

a. waste avoidance

b. resource efficiency

c. resource recovery

d. product design

e. consumption

f. product stewardship

g. priority products

h. standards, criteria and specifications for recycled materials and products containing recycled material

i. strategic waste management planning

j. data reporting

Division 2 Draft waste management strategy

16 Preparation of draft strategy

Clause 16 states that the chief executive must prepare a draft waste management strategy. The chief executive must give public notice when a draft of the strategy has been prepared. The notice must be published on the department's website and in any other way that the chief executive considers appropriate. The notice must state where copies of the draft strategy can be inspected and invite written submissions from the public.

The notice must also state a day by which the written submissions may be given to the chief executive.

Subclause 16(4) states that the period for receiving submissions must be at least 28 days.

Division 3 Making of waste management strategy

17 Submissions to be considered when preparing final strategy

Clause 17 states that the chief executive must prepare a final version of the Strategy and give the final version of the Strategy to the Minister. In preparing a final version of the Strategy, the chief executive must consider all submissions on the Strategy that have been given to the chief executive under section 16.

18 Approval of final strategy

Clause 18 states that the final version of the Strategy must be approved by the Minister by gazette notice. The Strategy comes into effect as the State's waste management strategy on the day that the Minister's approval is gazetted, or on a later day that may be stated in the gazette notice for that purpose. The gazette notice approving the Strategy must include details about where a copy of the Strategy can be obtained. As soon as practicable after approval the chief executive must publish the waste management strategy in full on the department's website.

19 Minor amendment of waste management strategy

Clause 19 provides for a minor amendment to the Strategy without complying with the requirements of division 2 in relation to preparation of a notice and consultation. For this section, minor amendment means an amendment to the Strategy—

a. to correct a minor error

b. to make another change that is not a change of substance or

c. on one occasion only, to extend the period for which the strategy is in force for a period of not more than one year.

Division 4 Review and progress reporting

20 Review of State's waste management strategy

Clause 20 states that the chief executive must conduct reviews of the State's strategy. For the first review, this must be carried out before the end of two years after the commencement of this section. For subsequent reviews, before the end of three years after each final review report is published. This clause does not prevent reviews from being conducted more frequently as the Minister directs.

21 Preparation of draft review report on waste management strategy

Clause 21 states that the chief executive, as part of reviewing the State's strategy, must prepare a draft review report and give public notice that a draft report has been prepared. The notice must be published on the department's website and in any other way the chief executive considers appropriate. The notice must state where copies of the draft report can be inspected and invite written submissions from the public. The notice must also state the day by which written submission may be given to the chief executive.

Subclause 21(3) states that the period for receiving submissions on the draft review report must be at least 28 days.

Subclause 21(4) states that, without limiting what may be dealt with in a review report, a report must have regard to the goals and targets include din the waste management strategy.

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

Clause 22 states that the chief executive must, within a reasonable time after the period has ended for receiving written submissions on the draft review report, prepare and publish on the department's website a final review report. In preparing the final report the chief executive must consider all submissions on the draft report given to the chief executive under section 21.

Subclause 22(3) states that the final report must outline the findings of the review and may recommend an amendment or replacement of the strategy to implement the findings of the review.

The chief executive may give to the Minister, for approval by gazette notice, a final amending or replacement strategy to implement a recommendation mentioned in subsection (3) without having first prepared and consulted on a draft amending or replacement strategy.

Part 2 Business plan for State's waste management strategy

23 Preparation and approval of business plan

Clause 23 states that at least one month before the start of each financial year the chief executive must give to the Minister a business plan for the department for the waste management strategy, for the Minister's approval.

The business plan must state the department's major projects, and its goals and priorities for implementing the Strategy for the next three financial years; and include a proposed budget for the income and expenditure relating to the department's implementation of the Strategy.

The Minister may approve the business plan as provided, or may approve the plan with modifications. If the Minister does not approve the business plan before the start of the next financial year, the chief executive may take steps that are reasonable in the circumstances for implementing the business plan as has been given to the Minister, until the Minister's approval or approval with modifications.

Subclause 23(5) allows the chief executive to give the Minister an amendment of the plan at any time after the plan has been approved.

The Minister may approve the amendment as given, or with modifications.

The chief executive must ensure that the business plan is available on the department's website and at the department's head office.

24 Chief executive to report department progress for business plan

Clause 24 states that three months after the end of each financial year the chief executive must prepare and give to the Minister a report on the implementation of the business plan. The report must include details of the income of and expenditure from the Waste and Environment Fund for the most recently completed financial year.

Clause 25 provides the definitions for terms used in Chapter 3. Terms are defined for this Chapter in relation to exemptions, levyable waste, waste levy amount and waste levy zone.

Clause 25 provides a specific definition for exempt wastes. These are wastes that have an automatic exemption status and there is no application for exemption, or where the chief executive approves the waste to be exempt waste for a particular exempt waste application. The following wastes are defined as *exempt waste*:

a. disaster management waste

b. waste declared by the chief executive to be exempt waste for a particular exempt waste application

c. lawfully managed and transported asbestos

d. contaminated soil where the soil is being disposed of by or on behalf of the State or a local government as part of measures to reduce a public health or environmental risk and:

    i. the person who is responsible for the contamination can't be found or

    ii. if the person responsible for the contamination can be found the cost of disposal is unable to be recovered.

e. dredge spoil

f. litter or illegally dumped waste that is collected by or on behalf of the state or a local government

g. other waste that may be prescribed under regulation as exempt waste or waste for which a declaration under this chapter is in force.

Clause 25 provides specific definitions in relation to the stated exempt waste, including—

Disaster management waste

Waste generated by or as a result of a disaster that is or has been the subject of a declaration of a disaster situation under the *Disaster Management Act 2003,* but only within the limits, if any, declared by the chief executive by gazette notice for a particular disaster, is exempt from application of the levy. For example, the chief executive may declare that waste is disaster management waste only if it is delivered to a levyable waste disposal site by a stated date.

Lawfully managed and transported asbestos

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

Dredge spoil

For the purposes of the exemption from the levy, dredge spoil is defined as natural material that has been removed from a waterway in order to maintain maritime safety requirements for channels, shipping lanes and harbours, or to undertake flood mitigation activities.

26 Meaning of *levyable waste disposal site*

Clause 26 provides the meaning of levyable waste disposal site. A levyable waste disposal site is any waste facility that may be owned by the state government, a local government or a private entity to which all of the following apply—

a. levyable waste may be delivered to the facility;

b. the operator of the facility is required to hold a registration certificate for the disposal of waste at the facility;

c. waste delivered to the facility commonly includes waste that is subsequently disposed of as landfill at the facility.

For example, if the operator of a waste facility holds a registration certificate for the disposal of waste at a facility but disaster management waste—as exempt waste—is the ***only*** waste delivered to the site, the waste facility is not a levyable waste disposal site. Clause 25 states that levyable waste means waste other than exempt waste. If a waste facility does not meet all the criteria it is not a levyable waste disposal site.

A levyable waste disposal site does not include that part of a waste facility that is a resource recovery area.

Part 2 Identifying exempt waste

27 Chief executive may declare limits for disaster management waste

Clause 27 states the chief executive may declare limits for disaster management waste and provides why and how a declaration can be made.

The chief executive may declare a limit applying to the status of waste being classified as disaster management waste and therefore exempt waste under section 25. Examples of declared limits may include the period of time for which waste will be considered disaster management waste or that waste is disaster management waste only if disposed of at a facility stated in the notice.

Declarations must be made through gazette notice and the chief executive must take all reasonable steps to ensure persons likely to be directly affected by the declaration are made aware of it.

Subclause 27(3) states that a declaration is not invalid if the chief executive fails to make affected parties aware of the declaration.

28 Application for approval of waste as exempt waste

Clause 28 states the circumstances for which a person may apply for waste to be exempt from the levy.

A person may make an application (*exempt waste application*) asking the chief executive to approve that waste identified in the application (the *identified waste*) be exempt waste.

An application can only be made for one of the following categories—

(a) waste that has been donated to a charitable recycling entity but that can not practicably be re-used, recycled or sold.

This does not include waste that is produced as part of the commercial or administrative operation of the organisation. An exempt waste application

under this category can only be made by a charitable recycling entity as defined in section 25.

A *charitable recycling entity* means an entity that—

a. operates on a not-for profit basis; and

b. is registered as a charity under the Collections Act 1966; and

c. is a Deductible Gift Recipient for the purposes of laws administered by the Australian Taxation Office of the Commonwealth; and

d. actively and consistently operates a recycling and reuse program for—

i. providing emergency assistance; or

ii. otherwise supporting the charitable purposes of the entity.

(b) waste collected by members of the community in the course of an organised event directed at remediating or illegal dumping. An example of such an event would be Clean Up Australia Day.

(c) contaminated soil.

For the purposes of this section, contaminated soil for which an exempt waste application can be made is contaminated soil other then contaminated soil that is automatically exempt waste as per the definition for exempt waste in section 25.

(d) Waste to be used at a levyable waste disposal site for progressive capping, batter construction, final capping, profiling and site rehabilitation.

(e) Biosecurity waste.

The application must be in the approved form, supported by enough information to allow a decision to be made and accompanied by the fee prescribed under a regulation.

The regulation will provide criteria against which applications must be assessed and the information requirements for an application. Criteria and information requirements may vary for each category of exempt waste application.

Subclause 28(4) states that applications regarding biosecurity waste may only be made by the chief executive of a department having responsibility for the administration of a biosecurity related Act in relation to waste. A

biosecurity related Act is an Act that includes security measures against the transmission of disease to plants or animals, or to humans from animals. These include the following Acts:

(a) the Agricultural Standards Act 1994;

(b) the Apiaries Act 1982;

(c) the Diseases in Timber Act 1975;

(d) the Exotic Diseases in Animals Act 1981;

(e) the Fisheries Act 1994;

(f) the Land Protection (Pest and Stock Route Management) Act 2002;

(g) the Plant Protection Act 1989;

(h) the Stock Act 1915.

29 Chief executive may require additional information

Clause 29 provides that the chief executive may by notice to the applicant require additional information or documents about the application.

The chief executive may refuse the application if the applicant does not give the chief executive the further information or documents by a stated date, without reasonable excuse. The applicant may, before the stated date, apply to the chief executive to extend the time for providing the further information.

30 Deciding application

Clause 30 provides that chief executive must decide to grant or refuse the application within 10 business days from when the chief executive receives the application or receives any additional information or documents that may have been requested. In deciding whether to grant the application, the chief executive must consider the following—

(a) the objects of this Act;

(b) the information outlined in the application;

(c) any criteria prescribed under a regulation.

31 Grant of application

Clause 31 states that if the chief executive grants the application, the chief executive must, within 5 business days, give the applicant notice of the approval stating the following—

(a) the approval has been granted;

(b) the waste that has been approved as exempt waste;

(c) the period of the approval;

(d) any conditions imposed on the approval.

Conditions that may be applied to an approval for exempt waste include for example: a maximum tonnage of waste that is covered by the approval; specifying a particular waste disposal site where the exempt waste must be taken to; a restriction on who may use the exemption such as, the applicant organisation or a waste transport contractor specified in the application; a restriction on the vehicle used to transport the waste; specifying a type of waste not covered by the exemption such as regulated waste; etc.

If the chief executive imposes any conditions on the approval, the chief executive must also give the applicant an information notice about the decision to impose the conditions. An information notice is not required if the conditions are the same, or substantially the same, as agreed to or asked for by the applicant.

32 Refusal of application

Clause 32 provides that if the chief executive decides to refuse the application, the chief executive must, within 5 business days, give the applicant an information notice about the decision.

33 Chief executive may declare waste to be exempt waste without exempt waste application

Clause 33 provides that if the chief executive is satisfied that exceptional circumstances apply in relation to particular waste or a particular type of waste, or to the disposal of particular waste or a particular type of waste, the chief executive may by gazette notice declare the waste to be exempt waste without having received an application under this part.

A declaration of waste as exempt waste under this section is subject to any limits or conditions included in the declaration.

34 Cancellation of approval

Clause 34 applies if the chief executive has approved waste to be exempt waste. Subclause 34(2) allows the chief executive to cancel the approval if the chief executive considers there are reasonable grounds to cancel it.

Without limiting subsection (2), grounds may include—

(a) that there is a reasonable suspicion that the approval was granted because of a false or misleading representation or declaration; or

(b) that the circumstances that were relevant to the granting of the approval have changed; or

(c) that the limits or conditions included in the granting of the approval have not been complied with; or

(d) that it is desirable to cancel the approval having regard to the objects of the Act.

35 Procedure for cancelling approval

Clause 35 details the procedure that must be undertaken if the chief executive proposes to cancel an approval for waste exemption.

The chief executive must give notice to the holder of the approval of the intention to cancel the approval and invite the holder of the approval to make written submissions to show why the approval should not be cancelled. The minimum period for submissions is 15 business days after the holder is given the notice.

The chief executive must consider any submissions made in making a decision about the proposed cancellation. If the chief executive decides to cancel the approval, the chief executive must, within 10 business days after making the decision give the holder an information notice about the decision.

The decision takes effect when the information notice is given.

Part 3 Operation of the waste levy

36 Imposition of waste levy

Clause 36 provides for the imposition of a 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 delivered to the site if the site is located within the levy zone or, if the site is outside the levy zone, on levyable waste that was generated within the levy zone. The latter is to ensure that waste is not moved to waste disposal sites outside the levy zone for the purposes of avoiding the levy.

Subclause 36(2) states that the operator of a levyable waste disposal site inside the levy zone is liable to pay the levy on all waste that is stockpiled at the site, whenever it was stockpiled, and that waste is subsequently disposed of to landfill at the site. The levy becomes payable when the stockpiled waste is disposed to landfill whether the stockpile was made of waste delivered to the site before or after the commencement of this section.

However, there are two circumstances where there is no levy on stockpiled waste that is disposed of to landfill. These are referred to in subclauses 36(2)(a) and 36(2)(b).

Subclause 36(2)(a) provides that the levy does not apply where a levy amount other than nil becomes payable on delivery of the waste.

For example, a levyable waste such as commercial and industrial waste will attract a $35 per tonne levy on its delivery to a levyable waste disposal site. If that waste is stockpiled and later disposed of to landfill, there will be no further levy on the disposal of that stockpiled waste as the levy liability has already been created on its delivery.

However, if a levyable waste attracts a levy rate of nil on its delivery to a levyable waste disposal site (e.g. municipal solid waste) and is stockpiled on the site, any residue from such waste will attract a levy under subclause 36(2) when it is subsequently disposed of to landfill. This approach ensures that disposal of residue waste from resource recovery activities attracts the same levy regardless of whether such activities are conducted on a levyable waste disposal site or at another location.

Subclause 36(2)(b) provides that the levy does not apply to stockpiled waste disposed to landfill if the stockpiled waste is disaster management

waste that has been stockpiled separately from all other stockpiled waste at the site.

The rate applicable to stockpiled waste disposed of to landfill and the levy rates applicable to various types of waste on its delivery to the site - including municipal solid waste, commercial and industrial waste and other types of waste - will be prescribed by the regulation.

37 Calculating waste levy amount

Clause 37 provides for the waste levy rate for each type of waste to be prescribed in regulation. The regulation also may provide for a levy rate for a particular type of waste to be nil. For example, municipal solid waste (MSW) has a nil levy rate.

The reason for prescribing the levy rate in regulation rather than in primary legislation is that it is essential that levy rates are sufficiently responsive to meet the policy objectives of the legislation in providing funding for improved waste management and resource recovery programs. It would not be practical to have the amending provisions for the levy contained in the primary legislation because of the lead times required for amendment of primary legislation. Any substantial changes to the levy rates would require a Regulatory Assessment Statement (RAS) and significant consultation with affected stakeholders prior to any decision being made. However, if such a position is substantiated through the efficacy review of the levy and subsequent RAS the flexibility of amending subordinate legislation is necessary.

Subclause 37(3) states that the amount of levy imposed on waste is to be calculated in accordance with the requirements prescribed in regulation. The regulation provides the formulas to be used in calculating the levy amount to be paid.

Subclause 37(4) states that a regulation may also provide for the total of waste levy amounts that are payable under this Chapter in a month to be discounted in the way stated in regulation.

38 Resource recovery deduction

Clause 38 entitles the operator of a levyable waste disposal site to claim a deduction against the total of waste levy amounts payable under this Chapter in a month for waste that is exported from the site in that month for the purposes of—

a. carrying out a recycling activity; or

b. sale, after processing on the site has been performed; or

c. if the exporting happens before 1 July 2012—inclusion in a resource recovery area; or

d. a lawful use prescribed under a regulation.

The resource recovery deduction must be calculated in the way prescribed under regulation.

This section does not limit section 37(4), in relation to the way the total levy amounts may be discounted.

39 Regulation identifying waste levy zone

Clause 39 states that a regulation may identify local government areas that form the waste levy zone. For this clause, it is not necessary for the levy zone to be made up of local government areas that are contiguous with another local government area in the zone. For example, Mt Isa City Council forms part of the levy zone; however this local government area is not contiguous with another local government area in the levy zone.

Part 4 Obligations about the waste levy

Division 1 Obligations of person delivering waste

40 Person delivering waste to levyable waste disposal site to give information as required by operator of site

Clause 40 states that a person delivering waste to a levyable waste disposal site, or an agent, employee or another person acting on their behalf, must give the site operator all information the operator reasonably requires about the waste delivered to the site.

The information that a person delivering waste to a levyable waste disposal site may be required to provide to the site operator includes:

a. how much of the waste is exempt waste and how much of it is levyable waste; and

b. for levyable waste—how much levyable waste there is for each prescribed type of levyable waste; and

c. whether the waste was generated inside or outside the waste levy zone.

A maximum penalty of 300 penalty units applies for a contravention of this section.

Division 2 Obligations of operator of levyable waste disposal site

41 Remitting waste levy amounts to State

Clause 41 provides the timeframe within which the levyable waste disposal site operator must pay waste levy amounts to the State.

The operator of a levyable waste disposal sites, other than a small site, will have, for waste levy amounts accrued in a month (the *levy period*), until the 20th day of the second month after the levy period to make the payment to the State.

A transitional arrangement will apply to small sites. The levy period for small sites, until 1 July 2014, is 30 June each year. These sites will only be required to make an annual payment due by 20th July each year. From 1 July 2014, any small sites operating as a levyable waste disposal site will be required to make monthly payments as all other levyable waste disposal sites.

A small site is defined as a site that is required to hold a registration certificate under the *Environmental Protection Act 1994* to dispose of 2000t or less of waste in a year.

If a waste levy amount owing by the site operator remains unpaid after its due date, interest at the rate of 20% is payable on unpaid levy amounts and such amounts become a debt due and owing to the State. Interest is payable on the unpaid amount starting on the day after the due date for payment and ending on the day the amount is actually paid.

The due date for payment may be the date provided for in a waste levy instalment agreement (if one is in place) or the last day of the prescribed period after the end of the levy period.

42 Weighbridge requirement provision

Clause 42 requires installation of weighbridges on a levyable waste disposal site—

- within one year from the commencement of this section if the site is required to hold a registration certificate for disposal of more than 10000t of waste in a year; or
- within two years from the commencement of this section if the site is required to hold a registration certificate for disposal of more than 5000t of but no more than 10000t of waste in a year.

Clause 42 also prescribes requirements that apply to a site where a weighbridge is installed. These requirements include that the weighbridge must be maintained in proper working order and must be certified every year in accordance with the *National Measurement Act 1960* (Cwlth). Further, clause 42 provides that the chief executive must be notified of an event which results in the weighbridge being out of operation for longer than 24 hours.

The chief executive must be notified of the following within three days after the start of the period of the weighbridge being out of operation, whether or not the weighbridge is still out of operation:

a. the event that resulted in the weighbridge being out of operation; and

b. when the weighbridge started being out of operation; and

c. whether the weighbridge is still out of operation; and

d. if the weighbridge is still out of operation—what actions are being taken to bring the weighbridge back into operation.

If the weighbridge is still out of operation when the chief executive is notified, the site operator must notify the chief executive of its operation within three days after it starts operation again.

A maximum penalty of 300 penalty units applies if the operator fails to install a weighbridge at a site within the prescribed time.

A maximum penalty of 200 penalty units applies for a contravention in relation to offences including not maintaining the weighbridge in proper working order and for not notifying the chief executive.

43 Measurement of waste by weighbridge

Clause 43 applies if a weighbridge is installed at a levyable waste disposal site, whether or not it is required under Clause 42; for example, if the weighbridge was installed prior to commencement of this section. The operator of a levyable waste disposal site which has a weighbridge installed must use the weighbridge to measure and record:

a. the waste delivered to the site; the waste moved from stockpile to landfill; and

b. the waste moved from a stockpile to a place outside of the levyable waste disposal site; and

c. the amounts of stockpiled waste moved to a place outside the site at any time after its delivery to the site; and

d. amounts of waste that are subject to any other movement that may be prescribed under regulation to, from or within the site.

The requirements of clause 43 will ensure that movement of waste is accurately recorded to enable the waste levy to be calculated properly.

A maximum of 300 penalty units applies for a contravention where the weighbridge is not used to measure and record the movements of waste.

Despite the requirement to use the weighbridge, where installed, to measure and record waste, subclause 43(3) states that if the movement of the waste happens when the weighbridge is not in operation the operator of the site must ensure that the waste is measured and recorded in compliance with the weight measurement criteria prescribed under regulation.

Subclause 43(4) allows for waste that is delivered in a vehicle that has a gross vehicle mass of less than 4.5 tonnes, to be measured and recorded in accordance with the weight measurement criteria instead of measuring and recording it with the weighbridge.

44 Measurement of waste other than by weighbridge

Clause 44 provides that where waste cannot be measured with a weighbridge then the operator must ensure that waste is measured and recorded in accordance with a weight measurement criteria prescribed under a regulation. This is to ensure that the levy can still be calculated based on these records and in the absence of weighbridge records.

Subclause 44(2) states that the site operator must ensure the waste is measured and recorded in compliance with the weight measurement criteria. A maximum penalty of 300 penalty units applies for contravention of this section.

45 Electronic monitoring

Clause 45 gives the chief executive the power to require by notice that an operator of a levyable waste disposal site install and maintain an electronic monitoring system if the chief executive believes that the operator has complied with the operator's obligations to pay the waste levy or has failed to submit waste data returns in accordance with the legislation.

A notice issued under this clause must include information that states how and the location where the system is to be installed and the day by which the notice must be complied with.

Electronic monitoring systems will be of assistance to the chief executive in tracking waste movements for that site and estimating the sites levy liability if necessary.

The decision to require the operator to install such a system is reviewable under chapter 9.

The operator must comply with the notice and must keep each electronic monitoring record that is generated by the system for at least one year after the record is made. A maximum penalty of 300 penalty units applies for a contravention.

46 Volumetric survey for levyable waste disposal site

Clause 46 requires, from June 2012, an operator of a levyable waste disposal site located in the waste levy zone to carry out a volumetric survey and to submit the results of the survey to the chief executive before the end of July in the same year. For example, for 2012, a site operator must undertake a volumetric survey for each levyable waste disposal site under their control in June 2012 and provide the results to the chief executive by the end of July 2012.

A volumetric survey must be carried out for each landfill cell where waste has been disposed of since the last volumetric survey required under this Act was performed; and all stockpiled waste at the site. This section does not apply to a small site until 1 June 2014.

For the operator of a levyable waste disposal site other than a small site, a maximum penalty of 200 penalty units applies for a contravention.

47 Volumetric survey for new landfill cells

Clause 47 requires that, before any landfill cell is used for the first time for disposing of waste to landfill at a levyable waste disposal site in the waste levy zone, the operator undertakes a volumetric survey for the new landfill cell before it is used for waste disposal. Before the end of the month immediately following the month in which the volumetric survey is carried out, the operator must give the chief executive a copy of the results of the survey in the approved form. For example, a new landfill cell is constructed and a volumetric survey is carried out in August 2012. The operator must submit the results of the volumetric survey to the chief executive before the end of September 2012.

A maximum penalty of 200 penalty units applies for a contravention.

This section applies whether or not waste has previously been disposed of at the site.

48 Requirements applying for volumetric surveys

Clause 48 sets out the specific requirements for a volumetric survey. These include that the results of the survey be in the approved form; be accompanied by a topographical plan of the site; and include information about the area of the site, the site's landfill capacity and the stockpiles of waste on the site. A surveyor under the *Surveyors Act 2003* must certify the survey.

The approved form for submission of survey results will be an electronic form.

49 Keeping of results of volumetric survey

Clause 49 requires the operator of a levyable waste disposal site to keep a copy of the results of the survey performed under this division in relation to the site. The results must be kept as hard copy document form for five years after the survey was performed.

A maximum penalty of 200 penalty units applies for a contravention.

50 Failure to comply with requirements for volumetric survey

Clause 50 allows the chief executive to commission a volumetric survey and to recover the costs from the levyable waste disposal site operator if the operator of a levyable waste disposal site fails to carry out a volumetric survey or to provide a copy of the results to the chief executive.

The chief executive may recover the reasonable cost of the survey from the operator a as debt payable by the operator to the State.

51 Submission of waste data returns

Clause 51 requires the operator of a levyable waste disposal site to submit a waste data return within the prescribed timeframe to the chief executive, so that the chief executive has information on which to calculate and verify levy liability. Two types of waste data returns are referred to:

- detailed data return which contains detailed information about the delivery and movements of individual waste loads; and
- levy summary return which provides information capable of demonstrating how the levy liability for the levy period was arrived at.

This clause also outlines the information that may be required in an approved form for a waste data returns. The information is a guide only and does not include all information that may be required in an approved form for a waste data return.

This clause outlines the requirements in relation to giving a data return for the various sizes of levyable waste disposal site. For a site the operator of which is required to hold a registration certificate for the disposal of more than 5000t of waste in a year, a detailed data return and a levy summary return are required to be submitted within the prescribed period stated in section 41. For a site the operator of which is required to hold a registration certificate for the disposal of 5000t or less of waste in a year, a levy summary return is required to be submitted within the prescribed period stated in section 41.

If an extension of time is given under section 57 – Application for extension of time to pay waste levy amount – an equivalent extension of time applies to the submission of data returns under this section.

52 Requirement for operator of levyable waste disposal site to keep particular documents

Clause 52 requires an operator of a levyable waste disposal site to keep the following documents:

- waste data returns for five years after submission; and
- records containing all information that was used to prepare waste data returns; and
- records containing any information that was used to support a resource recovery deduction claim; and
- any other record prescribed under a regulation.

Access to these documents may be needed to verify the accuracy of the waste data returns and levy payments.

Access to the information used in the preparation of returns is essential given that only levyable waste disposal sites that are required to hold a registration certificate for disposing of more than 5000t of waste in a year will be required to submit detailed data returns. Other sites will only be required to submit a levy summary return.

A maximum penalty of 300 penalty units applies for a contravention.

53 Waste levy evasion

Clause 53 creates an offence for wilfully evading the payment of the waste levy or interest payable on a waste levy amount. For example this section applies in situations where an operator has entered false information into a waste data return in order to reduce their levy liability. This section would also apply where an operator has wilfully failed to maintain a weighbridge in proper working order with intent to reduce their levy liability.

A maximum penalty of 2000 penalty units or two years imprisonment applies; and twice the amount of any waste levy amount the payment of which the offender sought to evade, and twice the amount of interest payable in relation to the failure to pay the waste levy amount by the due date for its payment.

Division 3 Payment options

54 Application for waste levy instalment agreement

Clause 54 allows an operator of a levyable waste disposal site to apply for entry into a waste levy instalment agreement where they are unable to pay the waste levy within the time required and if they would be able to pay the levy amount by entering into an instalment agreement.

In applying for an instalment agreement, the operator must include in the application a description of the operator's financial situation that has resulted in the inability to pay the waste levy amount by the due date, and how the financial situation came about. The operator must also provide up-to-date management and financial records to verify the information provided in relation to the financial situation of the operator.

The chief executive may agree to enter into an instalment agreement with the operator only if the chief executive is satisfied that the operator has demonstrated an inability to pay the levy amount within the time required; and how entering into the instalment agreement will allow the operator to pay the waste levy amount while at the same time allowing the operator to pay future levy amounts.

The chief executive has 15 business days from receiving the application to decide whether to grant or refuse the application. If the chief executive decides to refuse the application, the chief executive must give the operator an information notice about the decision to refuse.

An instalment agreement may relate to two or more levyable waste disposal sites that are operated by the same person.

The decision to refuse to enter into an instalment agreement is reviewable under chapter 9.

55 Other requirements applying to waste levy instalment agreements

Clause 55 provides that an operator can only enter into one instalment agreement in a financial year and at any one time. Clause 55 also provides that if an application is made after the due date interest is payable 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.

If an instalment agreement is refused the requirements under this chapter for the payment of the interest continue to apply unaffected by the making or refusal of the application.

Subclause 55(5) states that all waste levy amounts must be paid under an instalment agreement within six months of the agreement being entered into.

If an instalment amount is not paid then the agreement is taken to be no longer in force and the whole levy amount becomes due the day after the instalment day unless the original due day for an amount under the instalment agreement is in the future then this becomes the due day.

56 Amendment of waste levy instalment agreement

Clause 56 allows an operator of a levyable waste disposal site to apply for an amendment of an instalment agreement to include an additional amount not greater than 10% of the total waste levy amount owing by the operator at the time of application or to extend the period for repayment of the total waste levy amount by no more than three months. This extension can be in addition to the six month original period. The maximum period for an instalment agreement can therefore be nine months if the chief executive agrees to an extension under this section. An operator must demonstrate inability to pay the levy and how an amendment of the agreement will allow the operator to pay all waste levy amounts owing.

57 Application for extension of time to pay waste levy amount

Clause 57 gives an operator of a levyable waste disposal site the opportunity to apply for an extension of time for up to one month to pay the waste levy amount. An application must be made before the due date for payment and state the reasons for why the extension is being applied for. The chief executive should only grant an application if it would be unreasonable to expect the operator to pay the waste levy amount by the due date. For example where an operator has suffered a significant electricity supply disruption, or an extensive computer malfunction it may be unreasonable to expect payment by the due date. An operator cannot make more than one application for an extension of time for the payment of the same waste levy amount or more than two applications under this section in one financial year.

An operator cannot make an application under this section if the operator is conducting operations on the site for which the operator does not hold a registration certificate.

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

Clause 58 allows the chief executive to by gazette notice grant an extension of time for the payment of a waste levy if satisfied that the extension is justified because of the happening of a significant emergency.

59 Estimation of waste levy amount payable by operator of levyable waste disposal site

Clause 59 allows the chief executive to estimate the levy liability of an operator of levyable waste disposal site where the operator has not given the chief executive a waste data return within the time prescribed or has given the chief executive information that is incomplete or inaccurate or the waste levy amount payable as calculated by the operator is incorrect.

The chief executive may estimate the operator's liability and give an information notice of the decision to the operator. The levy amount estimated by the chief executive becomes the amount that must be paid by the operator therefore replacing any amount that may have been arrived at by the operator.

The chief executive may estimate a waste levy amount even if the due date for payment of the amount of waste levy payable has passed.

The operator may apply for a review of the decision under chapter 9.

Part 5 Resource recovery area

60 Resource recovery area

Clause 60 enables the operator of a levyable waste disposal site that forms the whole or part of a waste facility to establish a resource recovery area at the facility. The operator can only establish a resource recovery area if –

- the activities proposed to be carried out in that area are one of the following -

- storing or sorting waste for transport to another place for reprocessing or recycling; or
- an activity that is ancillary to sorting waste - such as baling waste; or
- another activity prescribed under a regulation.

- where the proposed activity requires an approval, licence or registration certificate – the operator, or another entity who will be responsible for carrying out all of the activities in the resource recovery area has obtained these under the relevant legislation;
- the resource recovery area is separated by a physical barrier from the rest of the waste facility
- there is a maximum of three points of access between the area and the facility;
- the area complies with any requirements under the regulation; and
- there has been no revocation of a resource recovery area within the previous 12 months in relation to the same waste facility.

61 Declaration of resource recovery area

Clause 61 sets out the process for declaring an area as a resource recovery area. If the operator of a levyable waste disposal site declares a resource recovery area the operator must give the chief executive a notice complying with this section:

a. for a proposed resource recovery area established before the commencement of this section – not more than 15 business days after the commencement; or

b. for a proposed resource recovery area established after the commencement of this section – at least 15 business days before using the area as a resource recovery area.

The notice to the chief executive must be made in the approved form and be accompanied by information including a plan of the site indicating the resource recovery area and clearly showing the points of access to and from the rest of facility, along with the GPS coordinates of the barrier between the resource recovery area and the rest of the facility; a description of the activities to be carried out in the resource recovery area; and a statutory

declaration that all appropriate approvals, licences or registration certificates are held by the responsible entity.

Subclause 61(3) states that the operator must amend the plan if the barrier is moved and must give the chief executive a copy of the amended plan within seven days after the change. Subclause 61(4) states that the operator must give a notice to the chief executive advising of a change in the activities within the resource recovery area within seven days after the change. A maximum penalty of 300 penalty units applies for a contravention of (3) and (4).

If there is a change to the entity having responsibility for the operation of the resource recovery area, the entity with responsibility immediately before the change must notify the chief executive of the change within seven days after the change occurs. A maximum penalty of 100 penalty units applies for a contravention.

62 Effect of declaration of resource recovery area

Clause 62 sets out the effects of declaring an area as a resource recovery area. An area declared as a resource recovery area is not part of the levyable waste disposal site. This mean that waste delivered directly to the resource recovery area does not attract the levy, regardless of whether the resource recovery area and the levyable waste disposal site share common infrastructure such as a weighbridge.

However, all waste going from the resource recovery area into the levyable waste disposal site becomes levyable waste whether or not the waste was exempt at the point of delivery to a resource recovery area. The waste moved from the resource recovery area into the levyable waste disposal site attracts the levy at the following rates –

- for regulated waste - the rate applicable to regulated waste at the lower, higher or pre-classified rate; or
- for any other waste including waste to which a nil rate applies on delivery: the rate applicable to commercial and industrial waste.

63 Revocation of resource recovery area by chief executive

Clause 63 gives the chief executive the power to revoke a resource recovery area declaration if the operator having responsibility for the resource recovery area is convicted of an offence under this part or the area no longer fulfils the requirements of a resource recovery area. The chief

executive's decision to revoke the area on the basis that it no longer fulfils the requirements of a resource recovery area is reviewable under chapter 9.

On revocation the area becomes part of the levyable waste disposal site and as a result waste becomes levyable at the rate applicable to either regulated or commercial and industrial waste levy rates as per section 62. This applies even if the waste was exempt waste on delivery.

64 Requirement to keep documents

Clause 64 requires an entity responsible for a resource recovery area to keep records for five years of all waste delivered to or removed from the area and of any other event in relation to the resource recovery area as prescribed under a regulation.

A maximum penalty of 300 penalty units applies for a contravention.

65 Volumetric survey for resource recovery area

Clause 65 requires an entity responsible for a resource recovery area to arrange for a volumetric survey in June of each year commencing in 2012, and before the end of July in the same year, give the chief executive a copy of the results of the survey in the approved form.

A maximum penalty of 200 penalty units applies the volumetric survey is not carried out by the due date or if a copy of the results of any volumetric survey are not kept.

This section does not apply until 1 June 2014 for a resource recovery area declared for a small site.

66 Offences relating to resource recovery area

Clause 66 makes it an offence to:

- carry out activities other than those mentioned in section 60(a) in the resource recovery area;
- fail to comply with the requirements prescribed for the area under a regulation;
- fail to maintain the physical barrier between the resource recovery area and the rest of the facility;

- have more than three points of access to and from the rest of the facility;
- claim an area as a resource recovery area if the operator has not declared the area in accordance with the requirements of this part, or if the declaration of the area as a resource recovery area has been revoked under this part.

As a resource recovery area creates a 'levy free' zone within the waste facility where the levyable waste disposal site is located, it is important that the entity responsible for the area complies with requirements of a resource recovery area set out in clause 60.

Part 6 Waste and Environment Fund

67 Establishment of fund

Clause 67 establishes the Waste and Environment Fund.

68 Object of Waste and Environment Fund

Clause 68 states that the object of the Waste and Environment Fund is to provide funding for waste management initiatives and environmental initiatives.

69 Payment of amounts into Waste and Environment Fund

Clause 69 provides the amounts that either must be or may be paid into the fund. All waste levy amounts paid by operators of levyable waste disposal sites and all interest paid because of late payment of waste levy amounts payable by operators of levyable waste disposal sites must be paid into the Waste and Environment Fund when they are received by the department.

Subclause 69(2) allows that any amount appropriated by Parliament for the purposes of the fund; any amount paid into the fund at the direction of or with the approval of the Minister and the Treasurer; or any amount paid into the fund under any other Act must also be paid into the Fund. These amounts *may* be paid into the fund under subsection (1) without further appropriation.

70 Payment of amounts from Waste and Environment Fund

Clause 70 provides the circumstances for which amounts may be paid out of the Waste and Environment Fund and also that payments may be withheld as a consequence of an entity failing to meet its obligations.

The chief executive may make payments from the Waste and Environment Fund for one or more of the following—

- paying expenses incurred by the chief executive in collecting and administering the waste levy;
- paying amounts as performance payments, as provided for under a regulation;
- paying fees or expenses related to administering the fund;
- paying an amount for the implementation of the WMS business plan;
- providing funding, at the Minister's discretion, that is consistent with the object of the fund;
- paying other amounts required or permitted under this Act to be paid out of the fund.

Subclause 70(3) states that if the chief executive is authorised to make a payment to any entity and the entity has failed, and has not rectified the failure, to meet its obligations for:

a. strategic waste management planning under this Act; or

b. payment of waste levy amounts by two or more due dates for payment of the amounts; or

c. providing data as required under this Act.

Then the chief executive may, with the approval of the Minister and for the period approved by the Minister, withhold the payment.

71 Administration of Waste and Environment Fund

Clause 71 requires that accounts for the Waste and Environment Fund must be kept as part of the departmental accounts of the department while it allows however, that amounts received for the fund may be deposited in a departmental financial institution account of the department with other moneys of the department.

It includes the definitions of *departmental accounts*, *departmental financial institution account* and *other moneys* for the purposes of this section.

Part 7 Miscellaneous

72 Review of efficacy of waste levy

Clause 72 provides that the chief executive must review the efficacy of the waste levy within two years after the commencement of the levy and then at intervals of not more than three years from one review to the next. This will ensure that the levy rates, application and other issues relevant to the levy remain current and able to achieve the objects of the Act and any goals and targets of the State's waste management strategy.

Chapter 4 Management of priority and other products

Part 1 Preliminary

73 Purpose of chapter

Clause 73 states that the purpose of this chapter is to encourage and, in certain circumstances, to mandate that persons involved in the life of a product share responsibility for ensuring that there is effective waste management for the product and for management of the impacts of the product throughout its life, including end of use management.

Impact for a product, as defined in the Dictionary (Schedule), means the product's impact, from the perspective of waste and resource management, throughout the life cycle of the product.

This chapter gives effect to the *product stewardship principle* which is established in chapter 1 of this Bill as one of the guiding waste and resource management principles in achieving the objects of the Act.

Voluntary action is the preferred approach and it is the intention of this chapter that, where practicable, voluntary measures are fully explored before regulatory intervention. Under this chapter voluntary approaches to product stewardship are recognised through an accreditation process. Also, existing or national schemes to which the State is a party, referred to as 'approved schemes', are recognised as having equal status to schemes accredited under this chapter. Except in certain circumstances, organisations fulfilling their product stewardship obligations via such schemes are not subject to the regulatory measures in this chapter.

Part 2 Priority products

74 Preparation and notification of draft priority product statement

Clause 74 provides that the chief executive may prepare a draft priority product statement for one or more products and advertise the availability of the statement by notice on the department's website. The notice must state how copies of the draft statement can be obtained and provide the period, which must be at least 28 days after publication of the notice, within which a person may make a written submission about the statement.

75 Requirements for draft priority product statement

Clause 75 sets out what must be contained in a draft priority product statement, including the proposed *priority products* and how they satisfy the *priority product criteria*. *Priority product* is defined in the Dictionary (Schedule) as a product stated to be a priority product under the State's priority product statement as currently in force. The *priority product criteria* are set out in clause 76.

The statement must also provide the possible management options under consideration for each of the products in the statement. The possible management options given as examples are a product stewardship scheme or a disposal ban (established under chapter 4) or a strategic waste planning option (established under chapter 6). There is a wide range of other

possible management options in addition to those quoted in this clause including, for example, a community education campaign or market development program.

In deciding to include a product in the statement, the chief executive must consider whether the product satisfies the priority product criteria, whether national action is proposed or already in progress, and whether there are significant benefits from acting to reduce impacts from disposal of the product.

In deciding the possible management options to be stated for each product in the draft priority product statement, the chief executive must have regard to the waste and resource management hierarchy and principles. The hierarchy and principles are established in chapter 1.

In preparing the draft statement, the chief executive may consider the advice of an expert reference group.

76 What are the priority product criteria for a product

Clause 76 states that a product satisfies the priority product criteria if at least two of the listed criteria apply to it. Criteria for determining a priority product include whether the product contains hazardous or toxic substances; if there is potential to reduce the consumption of resources through improved management of the product; or if there is potential to reduce the environmental or social impacts of the product's disposal through improved management of the product. Examples of environmental impacts that could be reduced include greenhouse gas emissions from landfill or generation of leachate. Examples of social impacts include community concern about the management or disposal of a product, and amenity.

77 Inclusion of invitation for voluntary product stewardship scheme

Clause 77 explains that the chief executive may include in a final priority product statement an invitation for persons, in relation to a particular product that is included in the statement, to submit a proposed voluntary product stewardship scheme for accreditation. A process for accreditation of schemes is provided under part 3 of this chapter. If such an invitation is included, the chief executive must have regard to whether the product can be effectively managed under a voluntary product stewardship scheme, and whether there is already an approved program for the product that is being

appropriately implemented. Approved programs as defined in section 85 and are programs or schemes for products to which the State is a party or has approved in the way described.

Subclause (3) outlines the things that must be stated in the invitation. The invitation must state the period, of at leats 18 months, within which any proposed product stewardship scheme would have to be submitted for accreditation; the expected outcomes from any proposed voluntary scheme; and that if a voluntary scheme is not accredited for a product, a regulation may be made to establish a regulated product stewardship scheme for the product.

Subclause (4) outlines the things that an invitation may include. An invitation may contain any limitations to the scope of a proposed voluntary product stewardship scheme, including for example any geographic, business type or size limitations.

Irrespective of subclause (3), the chief executive may grant a single extension of time for not more than one year at the request of the proposed scheme manager.

78 Finalisation of priority product statement

Clause 78 requires the chief executive to consider any public submissions in preparing the final product stewardship statement for submission to the Minister.

79 Approval of final priority product statement

Clause 79 provides for the final product stewardship statement to be gazetted and come into effect, and for public access to the statement. The final statement does not have effect until it is approved by the Minister through gazette notice.

80 Minor amendment of priority product statement

Clause 80 provides that the Minister may approve by gazette notice the correction of a minor error or other minor change to the statement.

81 Review of priority product statement

Clause 81 requires the statement to be reviewed at least every three years and appropriately amended.

A process of review incorporating public consultation the equivalent of that required for the production of the initial draft statement may result in approval by gazette notice of a final amending or replacement statement without the need for further processes.

Part 3 Product stewardship schemes

Division 1 Product stewardship schemes generally

82 What is a *product stewardship scheme*

Clause 82 defines a product stewardship scheme. A product stewardship scheme is a scheme whereby persons who are involved in the life of a product share responsibility for the management and impact of that product through the life of the product, and seeks to redress the adverse impacts of the product. This includes end of use management—commonly known as end-of-life.

83 What is a *voluntary product stewardship scheme*

Clause 83 defines a voluntary scheme. The definition uses the term *participant,* defined in the Dictionary as a person who has agreed to participate in a product stewardship scheme. Participants, as identified in the scheme, voluntarily share responsibility for the management and impact of the product.

84 What is a *regulated product stewardship scheme*

Clause 84 defines a regulated product stewardship scheme. This means a product stewardship scheme that is prescribed under a regulation for a priority product.

85 What is an *approved program*

Clause 85 defines an approved program. An approved program is one where the State has been involved in some part of the process, either as a signatory, through a memorandum of understanding or has been a party to its development. A program may also be an approved program if it has

been accredited or approved as part of a national product stewardship framework to which the State is a party

86 When is a product stewardship scheme in force for a product

Clause 86 provides that a product stewardship scheme is in force if, for a voluntary scheme, the scheme has been accredited by the chief executive under this part, or if the scheme is a regulated product stewardship scheme. An accredited voluntary product stewardship scheme is an *accredited product stewardship scheme*.

87 Accredited product stewardship scheme does not override laws

Clause 87 clarifies that an accredited product stewardship scheme cannot override any State or Commonwealth law. For example, a product stewardship scheme for a product that may also be a regulated waste would have no effect to the extent that obligations under the scheme required a participant to deal with the product in a way that may be prohibited by or in contravention of the *Environmental Protection Act 1994*.

Division 2 Accreditation of voluntary product stewardship schemes

88 Application for accreditation

Clause 88 allows a person identified in a proposed voluntary product stewardship scheme as the scheme manager for the scheme to apply for accreditation of the scheme.

This clause sets out the requirements for the application. For example, the application must include evidence of the agreement of the scheme participants and be accompanied by the fee prescribed in regulation.

This clause does not limit the type of product for which an application may be made, so that accreditation may cover products that are neither priority products nor the subject of a priority product statement scheme invitation. The intention is to encourage voluntary approaches to product stewardship by providing recognition through the accreditation process.

89 Requirements for accreditation

Clause 89 lists the requirements a proposed scheme must include in order to qualify for accreditation. For example, a proposed scheme must identify the scheme manager and participants, the scheme funding arrangements, the products or brands to which the scheme applies, and the targets and timeframes for avoiding, reusing or recycling of waste for the product.

If the scheme is for a priority product then the scheme must show how it accounts for any recommendations made in a priority product statement for improving management of the product.

90 Accreditation

Clause 90 states that in considering whether to accredit a proposed voluntary product stewardship scheme the chief executive must have regard to factors such as whether the requirements of this part in relation to the application and the scheme have been met; whether the proposed scheme's targets may feasibly be met; and whether the proposed scheme is consistent with the State's obligations under national arrangements.

91 Inquiry about application

Clause 91 allows the chief executive, before making a decision, to ask for further information from the scheme manager or, through the scheme manager, from any person who is likely to be significantly affected by the scheme.

92 Deciding application

Clause 92 requires the chief executive to send to the scheme manager either a notice of the decision to accredit the scheme or an information notice advising of a decision to refuse accreditation.

93 Register of accredited schemes

Clause 93 requires accredited schemes to be placed on a public register. The register must be kept by the chief executive as a searchable public register.

94 Amendment of accredited product stewardship scheme

Clause 94 allows for the amendment of an accredited scheme with the agreement of all the participants.

The scheme manager must promptly advise the chief executive of any amendment to the scheme's participants, scheme manager, or brands. The chief executive must record the amendment appropriately on the register.

However, a scheme must not be amended in such as way as to adversely affect the achievement of the scheme's objectives. This does not prevent the replacement of an accredited scheme with a new scheme.

95 Expiry of accredited product stewardship scheme

Clause 95 provides that a scheme expires at the earlier of the end date stated in the scheme or five years after accreditation. This clause also provides for an accredited scheme to continue in force for a longer period if this is required for the purpose of accrediting a new proposed scheme.

96 Revocation of accreditation

Clause 96 allows the Minister to revoke a scheme's accreditation. To do so the Minister must be satisfied that implementation or reporting of the scheme is not satisfactory, or that the product subsequent to accreditation has become a priority product and the scheme objectives are no longer adequate for the product.

Before revoking a scheme the Minister must give notice of this intention to, and allow submissions from, the scheme manager. If the Minister decides to revoke the scheme because of unsatisfactory implementation or reporting, the Minister must give the scheme manager an information notice about the decision.

Division 3 Product stewardship schemes by regulation

97 Regulation about product stewardship

Clause 97 allows for a regulation to establish and operate a product stewardship scheme. A product stewardship scheme can only be regulated for a priority product.

This clause also allows for regulation in support of voluntary schemes. This could be a regulation to facilitate the accreditation of a proposed voluntary product stewardship scheme, or the implementation or operation of an accredited scheme or approved program.

The regulation can specify factors such as the expected waste minimisation, treatment or disposal targets for the product, reporting and information requirements, and the identity and duties of the scheme manager.

The Minister must not recommend the making of a regulated product stewardship scheme if there is already an accredited scheme, or if the time limit given in a scheme invitation for submission for accreditation of a voluntary product stewardship scheme has not expired. Also, the Minister may recommend the making of a regulated product stewardship scheme only after consideration of factors including whether economic analysis supports the implementation of the proposed scheme.

The provisions of this clause ensure that regulation is only established on the basis of robust analysis of the possibilities of voluntary action and the benefits of mandatory action.

Division 4 Monitoring of schemes

98 Monitoring of particular product stewardship scheme

Clause 98 provides for the chief executive to conduct monitoring of the performance of a product stewardship scheme. The scheme manager of a regulated product stewardship scheme must reimburse monitoring expenses incurred by the department if asked to do so by the chief executive.

Part 4 Disposal bans

99 Application of this part

Clause 99 states that this part applies only to *disposal ban waste* which has been identified in regulation for this purpose. This part does not apply to waste that is excluded under a regulation from the operation of this part.

The identification of disposal ban waste may be according to the type of waste.

100 Prohibition on disposal of disposal ban waste

Clause 100 prohibits the operator of a waste facility from disposing of disposal ban waste at the facility. If a waste is prescribed in regulation as disposal ban waste this does not preclude the operator of a waste facility from receiving this waste at the site for temporary stockpiling. However, the waste cannot be disposed of at the site or at any other waste disposal site.

This part applies whether or not the waste facility is located in the waste levy zone or is a levyable waste disposal site.

A maximum penalty of 1000 penalty units applies for a contravention of this clause.

101 Considerations for prescribing waste as disposal ban waste

Clause 101 provides the criteria that the Minister must consider when recommending making a regulation in relation to disposal ban waste. The criteria to be considered include factors such as whether a disposal ban is the most effective point of intervention in the life cycle of the waste; whether there are viable existing or potential collection systems and markets for any benefit that may be obtained from not disposing of the waste; and whether the costs of monitoring, enforcing and developing markets are proportional to the benefits. The Minister must also consider whether voluntary or other measures for avoiding the disposal have not been effective and whether a prohibition on disposal is required to support an accredited product stewardship scheme (a voluntary scheme), a regulated product stewardship scheme (a scheme required under regulation) or an approved program (a national scheme).

In considering the criteria, the Minister may consult with any expert reference group or other entity the Minister considers appropriate.

The intention of this provision is to ensure that a disposal ban is applied only where it provides the most effective solution for the management of a product. These criteria also provide transparency and certainty for those who may be affected by a disposal ban.

Chapter 5 Offences relating to littering and illegal dumping

Part 1 Basic littering and illegal dumping offences

102 General littering provision

Clause 102 provides the general littering offences of the Act. It amends and replaces section 440D of the *Environmental Protection Act 1994*. It states that a person must not litter at a place and that a person litters at a place if the person deposits at the place less than 200L of waste in volume. A maximum penalty of 30 penalty units applies for a contravention of the general littering provisions.

An offence involving littering may include the littering of small items such as straws, ATM receipts and bus tickets, takeaway food and drink containers, cigarette packets, cigarette butts and chewing gum.

If the offence involves dangerous littering a maximum penalty of 40 penalty units applies. Dangerous littering is depositing waste that causes or is likely to cause harm to a person, property or the environment. Examples of dangerous littering include—

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

These examples do not restrict the application of a dangerous littering offence to other actions, such as smashing a bottle and leaving the broken glass near a children's playground or on a sporting ground.

Subclause 102(3) states that there are certain circumstances in which a person can deposit an amount of waste that is less than 200L in volume and not litter at the place. These are–

- if the person is an occupier of the place

- if the person has the occupiers consent
- if the person deposits the relevant waste into a bin or other container provided by an occupier of a place, or by another person with the agreement of occupier, for the purpose of depositing that relevant waste.

For example, a person litters at a place if the person deposits household waste into a skip bin that has been provided for the purpose of receiving builders waste from a construction site and the person is not the occupier of the place where the bin is located, or does not have the occupiers consent to use the bin for that purpose.

103 Illegal dumping of waste provision

Clause 103 states that a person must not illegally dump waste at a place. For this clause, a person illegally dumps waste if they deposit at the place waste that is 200L or more in volume. A maximum penalty of 1000 penalty units applies for the illegal dumping of waste at a place that is greater than 2500L in volume. If the offence involves depositing a volume of waste less than 2500L a maximum penalty of 400 penalty units applies.

There are certain circumstance in which a person can deposit 200L or greater of waste and not commit an offence. These are–

- if the person is an occupier of the place
- if the person has the occupiers consent
- if the person deposits the waste into a bin or other container provided for that purpose.

An illegal dumping offence will occur if a person undertakes two or more deposits of waste at a place that add up to 200L or greater if together they constitute a connected series of deposits.

Part 2 Material that may become waste

104 What is advertising material

Clause 104 provides the definition for advertising material for the purposes of this Chapter. Advertising material includes any of the following if it includes any form of advertising that is for a *commercial* purpose—

- a circular, a flyer, promotional matter, information or a letter;
- any newspaper, magazine or other publication distributed without charge to intended readers.

105 What is unsolicited advertising material for premises

Clause 105 provides information about unsolicited advertising material.

Advertising material is unsolicited advertising material if it is not addressed by name to an owner or occupier of the premises, or to a person who is lawfully at the premises from time to time. Advertising material addressed 'to the householder' or 'to the occupier' is considered unsolicited advertising material.

It is not unsolicited advertising material if–

- the material has been paid for, asked to receive it or implied consent to receive (such as a newspaper, magazine);
- the material is addressed by name to a previous occupier if that person had paid for, asked to receive it, or has previously implied consent to receive and the sender has not been notified to stop delivery;
- the material is inserted into a publication that is not unsolicited advertising material; for example catalogues folded into a newspaper.

For example, in the case of a free community newspaper delivery, a person may imply consent to receive the newspaper if they do not notify the publisher that they do not wish to receive the publication.

106 Unlawful delivery provision

Clause 106 states that the delivery of unsolicited advertising material to a premises is unlawful if there is a clear sign or marking on an external

receptacle or other place for receiving mail, stating 'No Advertising Material', 'No Junk Mail' or words to similar effect. This approach is consistent with the regulation of litter under other Australian jurisdictions.

The sign or marking must be legible, clearly visible to the deliverer, located in a suitable place and state in English the requirement to not receive unsolicited advertising. 'No Junk Mail', 'No Advertising Material' or 'Australia Post Mail Only' are suitable terms for a sign or marking.

An offence is not committed if unsolicited advertising material is personally given to a person at the premises. For example, this allows that a delivery person who speaks with a person at the premises can provide that person with unsolicited advertising material if that person consents.

107 Secure delivery of unsolicited advertising material

Clause 107 requires the deliverer of advertising material to deliver the material securely. The deliverer must ensure that the material is placed securely in one of the following appropriate places—

- in a receptacle, slot, or other place used for the delivery of mail to the premises; or
- in a receptacle or slot that is used for the delivery of newspapers to the premise; or
- under the door of the premises.

Unsuitable places for the delivery of unsolicited advertising material include but are not limited to, leaving the material unsecured on top of a fence post, or on public land such as footpaths and median strips. For example, if a person has impliedly consented to the delivery of a free community newspaper, the deliverer must still ensure that the delivery is secure.

108 Placing document on or in a motor vehicle or on a building or other fixed structure

Clause 108 states that documents should not be placed in or on motor vehicles without the express consent of a person responsible for the motor vehicle. This section also states that a person must not attach any document to any building or other fixed structure without the express consent of the owner or occupier, or of a person acting for the owner or occupier. For this part it does not matter if the document is advertising material.

A person doesn't contravene this section if the action is made in the lawful performance of a function under an Act or if the action is reasonable in the circumstances. For example, it is not a contravention of this section for a parking inspector to affix a parking ticket to a vehicle. A reasonable circumstance may include leaving a note on a motor vehicle providing contact details after causing accidental damage to the motor vehicle.

109 Advice to chief executive about persons responsible for placing or attaching documents

Clause 109 applies if the chief executive reasonably believes 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 108.

This section allows a notice be given to a person who is an adult if the chief executive reasonably believes the person—

- authorised or arranged for the distribution of the documents; or
- authorised or arranged for printing of the documents; or
- placed or attached any of the documents.

The notice may require the person to advise the chief executive of the name and contact details of—

- any person who placed or attached one or more of the documents; or
- the person who authorised or arranged for distribution of the documents.

A maximum penalty of 40 penalty units applies if the person does not comply with the notice within seven days unless they have a reasonable excuse.

110 Advice to chief executive about delivering or distributing advertising material

Clause 110 applies if the chief executive reasonably believes that advertising material has been distributed in an area in contravention of the unlawful delivery provision (section 106) or the secure delivery provision (section 107).

This section allows a notice to be given to a person who is an adult if the chief executive reasonably believes that the person—

- authorised or arranged for the distribution of the advertising material; or
- authorised or arranged for printing of the advertising material; or
- delivered any of the advertising material.

The notice 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; or
- the person who authorised or arranged for distribution of the advertising material.

A maximum penalty of 40 penalty units applies if the person fails to comply with a notice within seven days unless they have a reasonable excuse.

111 Avoiding accumulations of waste

Clause 111 requires a person who authorises, or arranges for, the distribution of advertising material to take all reasonable steps to ensure that the advertising material does not become waste. A maximum penalty of 100 penalty units applies if the responsible entity fails to take all reasonable steps to ensure that the advertising material does not become waste. For example it is a failure to take all reasonable steps if—

- the advertising material is designed in such a way that it does not fit securely in an appropriate receptacle or slot or other place used for the delivery of mail; or
- the distribution of the material results in overflowing mailboxes and scattered paper.

Material may become waste if it is not delivered in an appropriate manner, for example unsecured material may become wind blown and end up as waste.

An authorised officer can direct a person to collect unsolicited advertising material if the person contravenes the unlawful delivery provision or the secure delivery provision. A maximum penalty of 100 penalty units applies if the person fails to comply with the direction within the period required by the chief executive.

Part 3 Vehicle littering or illegal dumping offences

Division 1 Preliminary

112 Application of pt 3

Clause 112 applies if the offence is a vehicle littering or illegal dumping offence. This section replicates, with minor amendments, s440F of the EP Act. Section 440F of the EP Act will be repealed. It provides that a littering or illegal dumping offence becomes a vehicle littering or illegal dumping offence if—

- it is committed by a person who is or becomes an occupant of a vehicle associated with the offence; and
- 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.

A vehicle is associated with a littering or illegal dumping offence if the person who committed the offence —

- was in the vehicle when the offence was committed; or
- was leaving or had just left the vehicle when the offence was committed; or
- used the vehicle to transport waste to a place where the offence was committed; or
- committed the offence near the vehicle before entering the vehicle.

This section does not apply to offences involving public passenger vehicles being used to transport members of the public if a person other than the driver of the vehicle; that is, a passenger, commits the offence. However, a driver of a public transport vehicle can commit a vehicle littering and illegal dumping offence.

Examples of public passenger vehicles for this part include public and privately operated ferries, barges, buses, trains, trams, and taxi cabs.

It is a motor vehicle littering or illegal dumping offence for material to blow off the back of a motor vehicle and become waste or for waste to blow off the back of a motor vehicle. An offence involving a trailer being towed by a motor vehicle is treated as a vehicle littering or illegal dumping offence. This does not impact on other legislation that has similar offences.

Division 2 Applying State Penalties Enforcement Act

113 Application of State Penalties Enforcement Act 1999

Clause 113 provides for the application of the *State Penalties Enforcement Act 1999* (SPEA) in the context of vehicle littering offences and confirms that a person may provide a SPEA declaration for a vehicle offence. This section replicates with minor amendments, s440G of the EP Act. Section 440G of the EP Act will be repealed.

A vehicle littering or illegal dumping offence is an offence involving a vehicle as defined under the *State Penalties Enforcement Act 1999*. In applying that Act 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.

A person retains the right under the *State Penalties Enforcement Act 1999*, section 17(3) to give a SPEA declaration for a vehicle for the offence. If the person gives a passenger declaration for the offence, another person may not give a SPEA declaration or a passenger declaration for the same offence.

114 Effect of passenger declaration

Clause 114 applies if a vehicle littering or illegal dumping offence happens, an infringement notice for the offence is served and that person provides a passenger declaration for the offence. This section replicates with minor amendments, s440H of the EP Act. Section 440H of the EP Act will be repealed.

The section provides the effect of a passenger declaration in relation to a vehicle littering or illegal dumping offence—

- that the *State Penalties Enforcement Act 1999*, section 17 (Liability for infringement notice offences involving vehicles)

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;

- a proceeding for the offence may be started against the passenger only if a copy of the declaration has been served on the passenger;
- states that 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;
- 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 litter at the relevant time and date.

The passenger declaration may be used in Court should the person elect to have the matter heard in Court. The declaration provides the authorised person with the reasonable belief that the person named in the passenger declaration committed the offence.

115 Service of infringement notice for vehicle littering or illegal dumping offence

Clause 115 provides that an infringement notice for a vehicle littering offence may be served on the person named in the passenger declaration as the person who deposited the waste. This section replicates with minor amendments, s440I of the EP Act. Section 440I of the EP Act will be repealed.

116 Chief executive (transport) must disclose information

Clause 116 applies if an authorised person is reasonably satisfied that vehicle registry information may be used in a proceeding against a person for a vehicle littering or illegal dumping offence or for the service of an infringement notice on a person for a littering or illegal dumping offence and the authorised person asks the chief executive (transport) for the information. The chief executive (transport) is required to disclose information relating to a littering or illegal dumping offence. This section replicates with minor amendments, s440J of the EP Act. Section 440J of the EP Act will be repealed.

The section applies if an authorised person is reasonably satisfied that vehicle registry information may be used in a proceeding against a person for a vehicle littering offence or for the service of an infringement notice on a person for a vehicle littering offence. The authorised person must ask the chief executive (transport) for the information.

The chief executive (transport) must disclose the information to the authorised person if –

- the chief executive (transport) reasonably considers that the information may be used –
  - in a proceeding against a person for a vehicle littering offence; or
  - for the service of an infringement notice on a person for a vehicle littering offence; and
- the disclosure is authorised by the person to whom the information relates.

Division 3 Public reporting of vehicle littering or illegal dumping offences

117 Facilitating enforcement of vehicle littering or illegal dumping offence

Clause 117 establishes a reporting system that enables members of the public to report vehicle littering offences to the administering authority. Reports received through this system will be used by the administering authority only for the purposes of enforcement.

If a person observes something they consider a vehicle littering or illegal dumping offence, they can submit a report about the incident using the vehicle littering and illegal dumping public reporting process. A report must not be released without the consent of the reporter unless it is in connection with taking action under this chapter, including starting a proceeding.

A vehicle littering or illegal dumping report should include enough information about the incident to determine whether a vehicle littering or illegal dumping offence has happened, and if so, the circumstances of the offence. Exclusion of certain information may prevent action from being

taken, for example, if the identity of the person cannot be made due to inaccurate or absent data on the vehicle registration.

The report information may include the following—

- the reporter's name, street address and contact details;
- the date, the approximate time and the place of the incident;
- registration details of the vehicle involved;
- the make, model, body type and colour of the vehicle involved;
- the type and amount of waste deposited;
- any other details that may in the circumstances provide help to the chief executive, for example, the side of the vehicle from which waste was thrown;
- whether the reporter is prepared to give evidence about the incident in a court if asked to do so.

The intent is that a reporter should provide as much additional information as they can about the incident and not be limited by the information specified in this section.

A range of factors may be considered in deciding not to take action, including but not limited to—

- that the reporter is not able to be identified;
- that there is not enough detail in the report to allow the chief executive to form an opinion about whether a vehicle littering or illegal dumping offence has occurred;
- that 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;
- that the reporter is not prepared to give evidence in court about the circumstances of the vehicle littering or illegal dumping offence;
- that the vehicle reported on is not a vehicle to which this part applies.

Chapter 6 Strategic planning for waste reduction and recycling

Part 1 Preliminary

118 Purpose of chapter

Clause 118 explains that the purpose of this chapter is to provide, in a way that achieves the objects of the Bill, for strategic planning for improving waste management at local and state government, and business and industry level.

119 Meaning of *waste reduction and recycling plan*

Clause 119 states that a *waste reduction and recycling plan* (a plan) is a plan prepared and adopted in accordance with this chapter that establishes strategic waste management requirements for particular, or some or all, aspects of waste management relevant to an entity. The succeeding parts spell out what these requirements are for local government, state government, and business and industry.

Part 2 Local government strategic planning for waste

Division 1 Introduction

120 Object of pt 2

Clause 120 outlines that this part provides for local governments to prepare and implement a strategic plan. This part replaces the provisions of the *Environmental Protection (Waste Management) Policy 2000* for local government strategic waste planning (sections 25-33), and enhances these provisions to require the inclusion of performance indicators and to link the plan to the goals and objectives of the State's waste strategy.

121 Local governments combining on a regional basis

Clause 121 allows local governments to prepare regional plans for some or all aspects of waste management strategic planning. These plans for multiple local governments were previously known as '*cooperative plans'* under the *Environmental Protection (Waste Management) Policy 2000*.

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

122 Local government's waste reduction and recycling plan obligation

Clause 122 sets out the obligations of local governments to prepare, adopt and implement a plan that comprehensively addresses waste management in the local government area.

This clause specifies the contents that must be in a plan. This includes waste reduction and recycling targets and actions for three areas: waste generated by the local government, household waste, and other waste generated in the local government area. With regard to the first item, local governments, in common with state government entities, are required to strategically plan for waste generated by their own activities e.g. administration of council's offices and depots. Second, local governments are the principle managers of municipal solid waste which includes household waste. Third, local governments are also commonly involved in waste initiatives targeting business and industry – for example, by providing recycling facilities at local government waste disposal or transfer stations for agricultural chemical containers or used oil.

The requirements in this clause about the contents of a plan only apply '*to the extent reasonably practicable'*. This means that while for example it would be reasonably practicable for a local government to oversee a range of targets and actions for improving household waste management, it would only be reasonably practicable for local governments to plan for some aspects of business and industry waste, in a way that is locally appropriate. This is because a large portion of waste generated by business and industry is handled entirely by the private waste management sector. Also, business and industry waste, and local government involvement in management of these wastes, varies considerably between local governments.

This clause also stipulates that a plan must cover waste infrastructure, management and monitoring of performance under the plan, and achieving continuous improvement in waste management.

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

Clause 123 ensures that in preparing a plan a local government has regard to relevant local factors such as the current and predicted information about population, development, waste generation and waste facilities in the local government's area. This clause also requires the local government to take account of broader considerations such as the waste and resource management hierarchy and principles, and how the goals and targets of the waste management strategy will be achieved.

This clause also provides that a plan must be in effect for at least 3 years, although it can be amended or replaced within a shorter timeframe.

124 Adoption of plan following consultation

Clause 124 sets out the process for local government to adopt a plan or an amendment, following appropriate public consultation and consideration of submissions. A new plan or a significant amendment must be made available for public comment for at least 8 weeks.

125 Review of plan

Clause 125 requires a local government to review their plan at least every 3 years.

126 Amendment of plan

Clause 126 allows a local government to amend a plan as it considers appropriate. In doing so, the local government must have regard to changing opportunities and circumstances, or other factors arising from a plan review. All local governments covered by a shared plan must agree to amendment of such a plan.

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

127 Chief executive may prepare waste reduction and recycling plan

Clause 127 allows the chief executive to prepare a waste reduction and recycling plan for the local government, if the local government has failed to do so, or has failed to do so in regard to an aspect of waste management relevant to the local government.

Before doing so, the chief executive must first advise the local government of this intention and the reasons for it, and invite the local government to make a submission. The preferred outcome would be for the local government, in their submission, to explain how they intend to act to comply with their strategic waste planning obligation.

If the chief executive, after considering any submissions, still decides to prepare a plan, an information notice must be sent to the local government about this decision. Insofar as is possible, the chief executive must prepare and adopt the plan as if it were the local government. For example, the requirements to consult on and publicise the plan would apply to the chief executive in the same way as they would have applied to the local government.

Any plan adopted by the chief executive has the same standing as a plan adopted by the local government, and the local government must implement the plan in accordance with its terms.

The local government must also reimburse the chief executive for the costs of preparing the plan.

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

128 Copy of plan or amendment to be given to chief executive

Clause 128 requires the local government to give the chief executive a copy of a plan or an amended plan as soon as practicable after adoption. Only

one copy of a plan adopted by more than 1 local government need be given to the chief executive.

129 Inspection and availability for purchase of plan

Clause 129 requires the local government to make the plan publicly available, by keeping a copy for inspection free of charge at an office, by providing copies for a reasonable fee, and by other means the local government chooses. If multiple local governments adopt the same plan they must all charge the same fee.

Part 3 State entity strategic planning for waste

Division 1 Introduction

130 Object of pt 3

Clause 130 replaces the provisions of the *Environmental Protection (Waste Management) Policy 2000* in relation to state government strategic waste planning, and updates these provisions to improve public accountability and link the planning requirements to the goals and objectives of the State's waste strategy.

131 What is a S*tate entity* and who is its *chief executive officer*

Clause 131 defines a state entity with reference to the *Public Service Act 2008.* The *Acts Interpretation Act 1958* provides that "in an Act, a reference to a department is a reference to an entity that is a department of government under the *Public Service Act 2008"* - section 33(6). For the purposes of this part, state entities includes state government departments, and other types of state entities as prescribed in regulation. This clause also extends the obligation for strategic waste planning to government owned corporations.

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

132 State entity's waste reduction and recycling plan obligation

Clause 132 sets out the obligations of State entities to prepare, adopt and implement a plan that comprehensively addresses waste management for the State entity.

This clause outlines the contents that must be in a plan. This includes waste reduction and recycling targets and actions for waste generated by the State entity. A plan must also cover management and monitoring of performance under the plan, and achieving continuous improvement in waste management.

A department may adopt another department's plan if it sufficiently covers the first department's obligations for strategic waste planning.

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

Clause 133 ensures that in preparing a plan a State entity has regard to current and predicted information about the waste it generates. This clause also requires the State entity to take account of considerations such as the waste and resource management hierarchy and principles, and how the goals and targets of the waste management strategy will be achieved. A plan must be in effect for at least three years, although it can be amended or replaced within a shorter timeframe.

134 Inspection and availability for purchase of plan

Clause 134 ensures that an up-to-date version of the plan is available for public inspection or purchase.

135 Review of plan

Clause 135 requires a State entity to review their plan at least every three years.

136 Amendment of plan

Clause 136 allows the chief executive officer of a State entity to appropriately amend the entity's plan, having regard to changing circumstances or other matters arising from review of the plan.

Part 4 Planning entity strategic planning for waste

Division 1 Introduction

137 Object of pt 4

Clause 137 explains that this part requires planning entities to implement a plan for managing their waste in a way that best achieves the objects of this Act. Planning entities are businesses identified under clause 138.

Division 2 Establishing status as planning entity

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

Clause 138 provides that a planning entity is an entity which has been identified as such by the chief executive, and has received an information notice about the chief executive's decision for which the decision review period has expired.

In addition, members of a sector of planning entities prescribed in regulation are also planning entities, regardless of whether or not they have received a notice. However, this does not stop the chief executive from giving individual members of the sector an information notice about the decision to identify them as planning entities. Whether it would be feasible for the chief executive to do so would depend on whether details identifying each member of the sector were available at a point in time. Regardless, any sector members that did not receive a notice and any new members entering the sector would still be planning entities by virtue of being part of the prescribed sector of planning entities.

The chief executive may only identify a planning entity on the basis of whether the entity generates waste above a prescribed threshold, or is a part of a prescribed sector of planning entities, or generates waste that is a regulated waste or a priority product that is prescribed in this regard.

These considerations also determine the relevant waste for which each type of planning entity is required to plan. For those identified as planning entities by virtue of generating waste above a prescribed threshold, all the waste generated is considered as relevant waste. For other types of planning entities, the relevant waste is limited to the cause of identification as a planning entity. For example, a planning entity identified by virtue of generating a regulated waste that is prescribed in this regard, must strategically plan for that regulated waste. An entity that is part of a prescribed sector of planning entities must plan strategically for the waste that would ordinarily be generated by the sector, or waste identified as such in regulation.

An entity is not considered a planning entity in relation to a product for which they are already undertaking action recognised under this chapter, such as meeting their obligations as a participant in an accredited product stewardship scheme for the product.

139 Notification of status as planning entity

Clause 139 applies to an information notice the chief executive may give about a decision to identify an entity as a planning entity. The information notice must state that the entity must adopt and implement a waste reduction and recycling plan for the relevant waste, and when this obligation will start to apply. The obligation of planning entities is explained in clause 140.

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

140 Planning entity's waste reduction and recycling plan obligation

Clause 140 sets out the obligation of planning entities to prepare, adopt and implement a waste reduction and recycling plan that comprehensively

addresses all aspects of waste reduction and recycling in regard to their relevant waste. The relevant waste is determined according to clause 138.

A planning entity that is part of a prescribed sector of planning entities may adopt a plan prepared for that sector, if the plan covers the relevant waste for which the entity is required to plan.

A planning entity commits an offence if they fail to comply with their obligation within 12 months of it commencing to apply.

141 Requirements for a waste reduction and recycling plan

Clause 141 states the requirements for a plan for a planning entity or a sector of planning entities.

A plan must have regard to current and predicted information about waste, and about any other requirements prescribed in regulation. The plan must also have regard to the waste and resource management hierarchy and principles and the State's waste management strategy.

A plan must include information such as amounts of waste generated, the goals and actions for improving waste management, and the performance measures on which progress under the plan can be assessed, and any other requirements as stated in regulation.

A plan must be in effect for at least three years but can be amended or replaced at an earlier date. A plan must also provide for its review at least every three years.

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

Clause 142 lists other matters that may be included in a plan, such as the conduct of a baseline waste audit, methods for monitoring waste, and ways for staff to provide feedback on the plan.

143 Additional requirements for a waste reduction and recycling plan for a sector of planning entities

Clause 143 states the additional requirements that must be contained in a plan for a sector of reporting entities. These include identifying the planning entities adopting the plan, and explaining how and by whom the plan will be administered and reported on.

144 Amendment of waste reduction and recycling plan

Clause 144 allows a planning entity or a sector of planning entities to amend a plan as it considers appropriate, having regard to changing opportunities and circumstances, or other factors arising from a plan review.

All those that have adopted a plan for a sector of planning entities are taken to have adopted any amendment of the plan, unless the terms of adoption preclude automatic adoption of amendments.

145 Requirement to give copy of adopted plan to chief executive

Clause 145 requires that a copy of the plan must be given to the chief executive with 10 days of being adopted or amended. This requirement does not apply where the chief executive already has a copy of a plan for a sector of planning entities. A penalty applies to non-compliance with this clause. Non-compliance with this clause may result in a show cause notice being issued.

Chapter 7 Reporting about waste management

Part 1 Reporting on waste reduction and recycling plans

This part sets out the requirements for annual reporting on local government, state government, and business sector planning entity waste reduction and recycling plans that are established under chapter 6 parts 2, 3 and 4 respectively.

146 Local government reporting

Clause 146 sets out the annual reporting requirements for local governments that have strategic waste planning obligations under chapter 6 part 2. This provision replaces the annual reporting provision in section 34 of the *Environmental Protection (Waste Management) Policy 2000.*

Local governments must report on waste generated by their own activities, in addition to more generally reporting on waste in their local government area. The requirement to report waste generated from their own activities brings local governments into line with the existing reporting by state government departments.

Local governments must under chapter 3 submit monthly data for wastes delivered to their levyable waste disposal sites (as defined in clause 26) for disposal and payment of the corresponding waste levy amounts. This data does not need to be reported again under this part.

147 State entity reporting

Clause 147 replaces the annual reporting provision for state government departments in section 40 of the *Environmental Protection (Waste Management) Policy 2000*. This clause enhances the previous provisions by specifying what the report must contain, including what progress the department has made with regard to the performance indicators in its waste reduction and recycling plan, and how the department has contributed towards achieving the goals and targets of the State's waste management strategy.

148 Planning entity reporting

Clause 148 requires the businesses identified as *planning entities* under part 4 of chapter 6 to report on their waste reduction and recycling plans. A penalty applies to non-compliance with this clause.

These reports will not be annual (as are government sector reports) but will be at 3 year intervals unless otherwise stipulated in regulation.

The reason for this is that the government sector reports are required both to track the progress of plan implementation and to provide data for the state government's annual waste summary report for the state. Also, it is in the public interest for local and state government entities to report annually and show leadership in waste minimisation.

The data in business reports, on the other hand, will vary greatly between business sectors and waste types, and may not be required for the state government's annual waste summary report. In some cases a reporting interval either shorter or longer than the 3 year default may be set in regulation. However, preparation of reports is potentially resource-intensive and this should be taken into account when determining the appropriate interval for reporting on business waste plans.

Part 2 Reporting on waste recovery and disposal

This part establishes a requirement for annual reporting by operators of private sector waste disposal and recovery facilities. Currently these entities report by means of a voluntary annual survey, which results in a variable level of completeness and accuracy of the data. The intention of this part is to introduce mandatory reporting for the private waste sector which, together with the mandatory reporting already required of local governments, will over time enable the tracking of trends in waste management and progress in terms of the State's waste management strategy.

Division 1 Establishing status as reporting entity

149 Identification of *reporting entity*

Clause 149 provides that a reporting entity is an entity which has been identified as such by the chief executive, and has received an information notice about the chief executive's decision for which the decision review period has expired.

In addition, members of a sector of reporting entities prescribed in regulation are also reporting entities, regardless of whether or not they have received a notice. However, this does not stop the chief executive from giving individual members of the sector an information notice about the decision to identify them as reporting entities.

The chief executive may only identify a planning entity on the basis that it receives, sorts, recycles, treats or disposes of waste above a prescribed threshold, or is part of a prescribed sector of reporting entities.

150 Notification of status as reporting entity

Clause 150 applies to an information notice the chief executive may give about a decision to identify a reporting entity. The information notice must state that the entity is required to report within 2 months after the end of the financial year about their recovery or disposal of waste. The information notice must also state when the reporting entity's obligation will start to apply. This obligation is explained in clause 151.

Division 2 Reporting requirements

151 Reporting entity obligation

Clause 151 establishes the obligation of businesses identified as reporting entities to report annually about their recovery, treatment or disposal of waste.

A reporting entity commits an offence if without reasonable excuse they fail to comply with an obligation under this clause.

152 Requirements for report

Clause 152 states the details that must be reported, such as the types and amounts of wastes recycled, treated or disposed, and the source and destination of these wastes. Other requirements for reporting may be stated in regulation.

Reporting entities that are also private sector operators of *levyable waste disposal sites* (as defined in clause 26) must under chapter 3 submit monthly data for wastes delivered to their facilities for disposal and payment of the corresponding waste levy amounts. This data does not need to be reported again under this part.

Part 3 Reporting by chief executive

153 Annual report on waste disposal and recycling

Clause 153 requires the chief executive to publish an annual summary of the data reported under chapter 7. The Bill is introducing mandatory reporting for the private waste management sector, and this, together with the government sector reporting, means that the annual report will have value as a comprehensive picture of state-wide waste management which will allow analysis of trends in disposal and recovery.

Chapter 8 Approval of resource for beneficial use

Part 1 Preliminary

154 Definitions for ch 8

Clause 154 provides definitions for Chapter 8.

Part 2 Chief executive may approve resource

155 Approval of resource

Clause 155 allows the chief executive to approve a resource if the chief executive considers the resource has a beneficial use other than disposal.

Provisions for granting these approvals are being omitted from Part 6A of the *Environmental Protection (Waste Management) Regulation 2000* and transferred to the Waste Reduction and Recycling Act 2011.

Queensland's Waste Reduction and Recycling Strategy 2010-2020 strives for higher resource recovery and recycling rates and aims to transform the

perception of waste from being a seen as ‘waste’ to being valued as a ‘resource’. Approving a resource for beneficial use provides an incentive for alternatives to disposal being considered for some wastes.

The resource may be approved for beneficial use through a specific approval or a general approval. A specific approval means an approval of a resource of which only a stated person has the benefit. A general approval means an approval of a resource of which everyone has the benefit.

An approval provides benefits to the holder of a specific approval, or anyone operating under a general approval, because some of the requirements under that Act that relate to waste may no longer apply. For example, a specific or general approval will exempt the resource from being considered waste under the circumstances described under section 13 of the Environmental Protection Act 1994.

Part 3 Specific approvals

Division 1 Applications for specific approval of a resource

156 Application

Clause 156 provides that a person may apply for a specific approval if the person possesses the resource when the application is made; or the person has consent to make the application from the person who, when the application is made, has possession of the resource.

An application must be in an approved form and be accompanied by the fee prescribed under a regulation. The clause also outlines what information must be provided about the resource in the application, and includes:

- a description of the resource, including, for example, its physical state and its components and their concentrations;
- details of any of its environmentally significant characteristics (a full list is included in the National Environmental Protection (movement of controlled waste between States and Territories) Measure, schedule A, list 2 and includes, for example, whether

the material is explosive, flammable, oxidising, poisonous, infectious, corrosive, toxic etc);

- details of its origin, including, for example, its place of production and the type of activity resulting in its production;
- details of the persons, premises or industry intended to receive it;
- details of the form of transportation, storage, re-use, recycling, energy recovery, reprocessing or other use proposed for it;
- details of the benefits, and any end product, of its proposed use;
- the quantity of it proposed to be used;
- details of any waste minimisation scheme, waste management plan or industry code relevant to it;
- any Australian or industry standards relevant to its end product;
- an assessment of the potential for material environmental harm, serious environmental harm or environmental nuisance arising from its proposed use;
- an assessment of its alternative uses having regard to the waste and resource management hierarchy;
- an assessment of the best practice environmental management for its proposed use;
- an assessment of commonly available technologies, methods or processes relevant to its proposed use;
- other information required under a regulation; and
- details of the proposed measures to ensure the applicant's proposed use of the resource is not likely to result in material environmental harm, serious environmental harm or environmental nuisance.

157 Chief executive may require additional information

Clause 157 allows the chief executive to give an applicant a notice to provide further information or documents about the application within a reasonable time. If the additional information is not provided without a reasonable excuse, the chief executive may refuse the application. However, the applicant may seek an extension of time to provide the information.

Division 2 Deciding applications

158 Deciding application

Clause 158 sets out the timeframes within which the chief executive must decide to either grant or refuse an application. The timeframe is either 40 business days after receiving the application or, if further information was requested, 40 business days after receiving the information. However, the chief executive may extend the date for deciding the application by giving a notice to the applicant before the decision is due. The date of the extension must not be more than 60 business days after either receiving the application, or 60 business days after the date any additional information was provided by the applicant in response to a notice from the chief executive. If the chief executive does not make a decision to grant or refuse the application within the required timeframe, it is taken to be a decision by the chief executive to refuse the application.

159 Criteria for decision

Clause 159 provides criteria the chief executive must and may consider when deciding whether to grant or refuse an application for a specific approval.

The criteria that the chief executive must consider include:

- the waste and resource management hierarchy;
- the waste and resource management principles;
- the standard criteria under the Environmental Protection Act, schedule 4;
- any regulatory requirement under the Environmental Protection Act that an administering authority under that Act must comply with in relation to a development application under that Act and for that purpose the requirement applies—
  - — with any necessary or convenient changes; and
  - — as if a reference to the administering authority were a reference to the chief executive and a reference to a development application were a reference to an application for a specific approval;

- the best practice environmental management for the proposed use of the resource;
- the likelihood of any material environmental harm, serious environmental harm or environmental nuisance happening because of the proposed use of the resource;
- the benefit and sustainability of the proposed use of the resource;
- any alternative use of the resource;
- another matter required under a regulation.

The criteria that the chief executive may consider include:

- the applicant's environmental record;
- the applicant's ability to comply with any proposed conditions of the approval;
- whether a disqualifying event has happened in relation to—
  - — if the applicant is an individual—the applicant or another person who is the applicant's partner; or
  - — if the applicant is a corporation –
    - the corporation; or
    - any of the corporation's executive officers; or
    - another corporation of which any of the corporation's executive officers is, or has been, an executive officer.

160 Grant of application

Clause 160 requires the chief executive to give the applicant a notice within 10 business days after making a decision to grant the application. The notice must state that the approval has been granted; the resource to which the approval relates; the person who has the benefit of the approval; the period of the approval; and any conditions imposed on the approval. If a condition is imposed on the approval, an information notice must be given to the applicant about the decision to impose the conditions. An information notice states the decision, the reasons for the decision and provides information about their ability to apply for a review of the decision.

161 Refusal of application

Clause 161 requires the chief executive to give the applicant an information notice within 10 business days after the decision has been made to refuse the application.

Part 4 General approvals

162 Chief executive may grant general approval

Clause 162 gives the chief executive the power to grant a general approval for a resource, even if a specific approval is in force for the resource.

163 Criteria for decision

Clause 163 provides the following criteria the chief executive must consider when deciding whether to grant a general approval:

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

164 Procedure for granting general approval

Clause 164 sets out the following procedure for granting a general approval.

The chief executive must publish a notice on the department's website and in any other way the chief executive considers appropriate. The notice must state that the chief executive proposes to grant a general approval for a

particular resource; the reason for the proposed action; the conditions, if any, proposed to be imposed on the approval; the period of the approval; and that any person may make, within a stated period, at least 28 days after the notice is published, written representations to the chief executive about the proposed action.

The chief executive must consider all representations received within the stated period. If the chief executive decides to grant the approval the chief executive must publish a gazette notice containing details of the approval, including any conditions imposed on the approval and the period of the approval. The decision takes effect when the gazette notice is published or on a later day stated in the gazette notice

Part 5 Conditions of approvals

165 Conditions of approval

Clause 165 allows the chief executive to impose the relevant conditions on an approval, including both a specific approval and a general approval. Conditions may relate to but do not need to be limited to the following:

- the characteristics of the resource, including, for example, its physical state and its components and their concentrations;
- the origin and destination of the resource;
- transporting or storing the resource;
- any treatment or process for re-using, recycling, energy recovery, reprocessing or other use of the resource;
- any waste resulting from a treatment or process for re-using, recycling, energy recovery, reprocessing or other use of the resource;
- the quantity of the resource that may be used under the approval and time frames relating to its use;
- sampling, analysis, monitoring and reporting in relation to the resource;
- measures or action to be taken to minimise against or remediate environmental impacts from the use of the resource, including

material environmental harm, serious environmental harm, or environmental nuisance.

It may be necessary for conditions to be put on approvals to minimise environmental impacts from the use of the resource and this section allows a condition to be applied to anyone who has the benefit of the approval. For a general approval, a condition may be expressed to apply to the producer, receiver, re-user, recycler or energy recoverer of the resource to which the approval relates.

166 Failure to comply with a condition of approval

Clause 166 provides an offence if a person to whom a condition imposed on an approval applies fails to comply with the condition. The maximum penalty for this offence is 1665 penalty units.

Part 6 Transfer, amendment, cancellation or suspension of approvals

Division 1 Applications for transfer or amendment of specific approvals

167 Application for transfer of benefit or amendment of specific approval

Clause 167 sets out an application process to transfer the benefit of a specific approval; or to amend a specific approval. A person must apply to the chief executive in the approved form and pay the fee prescribed in the regulation. For a transfer application, the application must contain the signed consent of the proposed transferee and for an amendment application; the application must state the amendment sought and the reasons for it.

The clause outlines matters the chief executive may consider in deciding whether to grant the application, and outlines the timeframes for making a decision to either grant or refuse the application.

The clause also outlines the actions that the chief executive must take after deciding whether to grant or refuse the application, including requirements

to give a notice about the decision, including an information notice for any decision to refuse an application within 10 business days of making the decision.

168 Chief executive may require additional information

Clause 168 allows the chief executive to give an applicant a notice to provide further information or documents about the application within a reasonable time. If the additional information is not provided without a reasonable excuse, the chief executive may refuse the application. However, the applicant may seek an extension of time to provide the information.

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

169 Amendment of approval

Clause 169 outlines when an amendment allows the chief executive to amend a specific approval, by giving notice of the amendment to the holder of the approval, if the amendment corrects a clerical or formal error and does not adversely affect the interests of the holder.

The chief executive may also amend a general approval under this section, by publishing details of the amendment in a gazette notice, if the amendment corrects a clerical or formal error and does not adversely affect the interests of any person who has the benefit of the approval.

The clause also allows amendments to be made to specific approvals and to general approvals if the procedure for amending them under section 171 if complied with.

170 Cancellation or suspension of an approval

Clause 170 allows the chief executive to cancel or suspend an approval if the procedure for the particular approval under section 171 is followed and the cancellation or suspension relates to one of the following:

- the approval was granted because of a materially false or misleading representation or declaration;

- the approval was granted on the basis of certain matters or information that have changed and the change is likely to result in material environmental harm, serious environmental harm or environmental nuisance;
- a condition imposed on the approval has not been complied with
- the chief executive considers it is desirable to do so having regard to the objects of the Act. For example the chief executive may decide to cancel a general approval because an alternative use of the resource has been identified that is higher in the preferred order of precepts under the waste and resource management hierarchy.

171 Procedure for amending, cancelling or suspending an Approval

Clause 171 sets out the procedures for amending, cancelling or suspending an approval.

For a specific approval, the chief executive must give a notice to the holder of the approval stating the proposed action to be taken, the grounds for the action, including the facts and circumstances that form the basis for the grounds; and that the holder of the approval may make written representations, within a stated period, to show why the proposed action should not be taken. The chief executive must consider any representation received and give the holder of the approval an information notice about the decision within 10 business days after making the decision.

For a general approval, the chief executive must publish a notice on the department's website and in any other way the chief executive considers appropriate stating the proposed action to be taken; the grounds for the action; including the facts and circumstances that form the basis for the grounds within a stated period, and that any person who is acting under the approval may make written representations to show why the proposed action should not be taken. The chief executive must consider any representation received and publish a gazette notice stating the decision within 10 business days after making the decision.

Part 7 Register of approvals

172 Register

Clause 172 provides that the chief executive must establish a register of approvals and the register may be kept in electronic form and must be open to the public. This section is to encourage accountability to the public and to provide an indication of the types of waste for which beneficial use approvals are granted. This section is also important for compliance purposes so that people are aware of what wastes have been approved for beneficial use.

Chapter 9 Reviews

Part 1 Internal reviews

173 Internal review process

Clause 173 requires any review of a decision, in the first instance, to be by way of an internal review. This provides an opportunity for the administering authority to internally review the decision prior to the matter being referred to QCAT if the person applying for the review is not satisfied with the outcome of the internal review.

174 Who may apply for internal review

Clause 174 states that a person who has been given, or is entitled to be given, an information notice for a decision may apply to the chief executive for an internal review of the decision.

Rights of review provide the person who is affected by a decision a reasonable opportunity to present the person's case and to respond to information that the decision maker based the decision on.

175 Requirements for making application

Clause 175 sets out the requirements for making an internal review application. The application must be in the approved form; be supported by enough information to enable the chief executive to decide the application and be made within 14 days after the applicant is given an information notice. However, chief executive may extend the time for making the decision.

176 Decision not stayed

Clause 176 provides that an internal review application does not automatically stay the decision the subject of the application (the original decision). However, the applicant may immediately apply for a stay of the original decision to the relevant entity (the chief executive or QCAT) that may stay the original decision to secure the effectiveness of the internal review and a later external review by QCAT. Requirements applying to the stay are outlined in this section and include, for example, that the stay may be given on conditions the relevant entity considers appropriate; and operates for the period fixed by the relevant entity; and may be amended or revoked by the relevant entity.

177 Internal review

Clause 177 outlines the process to be followed and the decisions that can be made if the chief executive receives an internal review application. An internal review can confirm the original decision, amend the original decision or substitute another decision for the original decision. The review must not be dealt with by the person who made the original decision or a person in a less senior office than the person who made the original decision, unless the decision was made personally by the chief executive.

178 Notice of internal review decision

Clause 178 ensures that the applicant receives a notice of the internal review decision within 10 days of the decision being made. If the decision is not the decision sought by the applicant, the notice must be accompanied by a QCAT information notice. If the notice is not given, the chief executive is taken to have made an internal review decision confirming the original decision.

Part 2 External reviews by QCAT

179 Who may apply for external review

Clause 179 sets out who can apply for an external review by QCAT. A person who is entitled to be given, an information notice and who has requested an internal review may also apply to QCAT for an external review of the decision as provided under the QCAT Act.

Chapter 10 Authorised persons

Part 1 Preliminary

180 Definitions for ch 10

Clause 180 sets out the definitions for this chapter.

Part 2 General matters about authorised persons

Division 1 Functions

181 Functions of authorised persons

Clause 181 outlines the functions of an authorised officer, which are to:

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

Division 2 Appointment

182 Appointment and qualifications

Clause 182 states that the chief executive may, by instrument in writing, a public service officer; an employee of the department; a person prescribed under a regulation as an authorised person. The clause ensures that chief executive only appoints a person if the chief executive is satisfied that the person has the necessary expertise or experience.

183 Appointment conditions and limit on powers

Clause 183 specifies that an authorised person holds office on the conditions stated in their instrument of appointment or a signed notice given to the authorised person or in a regulation. The instrument of appointment, the signed notice or a regulation, may limit the powers of an authorised person.

184 When office ends

Clause 184 states that the office of an authorised person ends if the term of office stated in a condition of office ends, or under another condition of office, the office ends, or the authorised person resigns. However it does not limit the ways the office of a person as an authorised person ends.

185 Resignation

Clause 185 provides that an authorised person may resign by signed notice given to the chief executive. 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

186 Issue of identity card

Clause 186 requires the chief executive to issue an identity card to each authorised person containing a recent photo of the person, a copy of their

signature, identifying them as an authorised person under the Act and stating the expiry date of the card. This clause does not prevent a single identity card being issued to a person for this Act and other purposes.

187 Production or display of identity card

Clause 187 ensures that the authorised officer produces or displays their identity card when exercising powers under this Act or at the first reasonable opportunity. The purpose of the clause is to ensure authorised officers can be easily identified.

188 Return of identity card

Clause 188 requires an authorised officer to return the person's identity card to the chief executive within 21 days after the office ends unless the person has a reasonable excuse. The maximum penalty for this offence is 50 penalty units.

Division 4 Miscellaneous provisions

189 References to exercise of powers

Clause 189 states that if a provision of this chapter refers to the exercise of a power by an authorised person; and 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.

190 Reference to document includes reference to reproductions from electronic document

Clause 190 provides that a reference to a document includes a reference to an image or writing produced from an electronic document; or not yet produced, but reasonably capable of being produced, from an electronic document, with or without the aid of another article or device.

Part 3 Entry to places by authorised persons

Division 1 Power to enter places

191 General power to enter places

Clause 191 outlines the circumstance when an authorised person may enter a place, including for example, if:

- an occupier of the place consents to the entry; or
- the entry is authorised under a warrant and; or
- it is a public place and the entry is made when it is open to the public; or
- it is a place of business that is open for carrying on the business; or
- it is vacant land in relation to which the authorised person reasonably suspects an offence against the litter and illegal dumping offences has been committed; or
- if it is a waste facility and entry is made during the daytime.

Businesses to which entry is authorised under this section include businesses regulated under the Bill. For example businesses captured by reporting requirements under Chapter 7 or product stewardship schemes under Chapter 5, Part 3. Vacant land under this section includes any land on which there are no structural improvements other than fencing. Experience using illegal dumping and littering provisions under the EP Act indicate that there is often an immediate need to respond to incidents of illegal dumping on vacant land as they are not within public view and have the potential to create public health or environmental issues that require an immediate response. Experience has also shown that in certain instances it is difficult to find and obtain permission from the owner of vacant land for entry onto the land.

This section does not authorise entry to any part of the place where a person resides. If entry was authorised by consent then the power is subject to any conditions of the consent and ceases if the consent is withdrawn. The consent may provide consent for re-entry and is subject to the

conditions of consent. If the power to enter is under a warrant, the re-entry is subject to the terms of the warrant.

Division 2 Entry by consent

192 Application of div 2

Clause 192 provides that this division applies if an authorised person intends to ask an occupier of a place for consent to enter the place.

193 Incidental entry to ask for access

Clause 193 provides that the authorised person may, without the occupier's consent or a warrant, enter land around premises at the place to an extent that is reasonable to contact the occupier, or 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 for the purpose of asking the occupier for consent.

194 Matters authorised person must tell occupier

Clause 194 ensures that the authorised officer has explained to the occupier the purpose of the entry, including the powers intended to be exercised; that the occupier is not required to give consent; and that the consent may be given subject to conditions and may be withdrawn at any time.

195 Consent acknowledgement

Clause 195 provides that where consent is given the authorised person may ask the occupier to sign an acknowledgement of consent stating

- the purpose of the entry, including the powers intended to be exercised;
- that the occupier has been explained that the purpose of the entry including the power intended to be exercised;
- that the occupier is not required to consent;
- that the occupier gives the authorised person consent to enter the place and exercise the powers;

- the time and day the consent was given; and
- any conditions of the consent.

If the person signs the acknowledgment, a copy must be given to the person.

Division 3 Entry under warrant

Subdivision 1 Obtaining warrant

196 Application for warrant

Clause 196 states that an authorised person may apply to a magistrate for a warrant for a place.

The authorised person must prepare a written application that states the grounds on which the warrant is sought; the written application must be sworn; and 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.

197 Issue of warrant

Clause 197 provides that the magistrate may issue a warrant for the place if 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.

The warrant must state the place to which the warrant applies; and that a stated authorised person or any authorised person may with necessary and reasonable help and force enter the place and any other place necessary for entry to the place; and exercise the authorised person's powers. The warrant must state the particulars of the offence that the magistrate considers appropriate, 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, the evidence that may be seized under the warrant, the hours of the day or night when the place may be entered, the magistrate's name, the day and time of the warrant's issue and the day, within 14 days after the warrant's issue, that the warrant ends.

198 Electronic application

Clause 198 allows an application for a warrant to be made by phone, fax, email, radio, videoconferencing or another form of electronic communication if the authorised person reasonably considers it necessary because of urgent circumstances or other special circumstances, including, for example, the authorised person's remote location. The application may not be made before the authorised person prepares the written application but may be made before the written application is sworn.

199 Additional procedure if electronic application

Clause 199 provides that for an electronic application, the magistrate may issue the warrant (the *original warrant*) if satisfied it was necessary to make the application and the way the application was made was appropriate. After the magistrate issues the original warrant the magistrate must immediately give a copy of the warrant to the authorised person (where reasonably practicable) or otherwise tell the authorised person the information contained in the warrant and the authorised person must complete a form of warrant, including by writing on it the information required for issuing a warrant under the earlier section provided by the magistrate.

Any copy of the warrant given to the authorised person (*duplicate warrant*) is as effectual as the original. This clause also provides that the authorised person must, at the first reasonable opportunity, send to the magistrate the written application complying with section 196(2) and (3); and secondly if the authorised person completed a form of warrant under subsection (2)(b)—the completed form of warrant.

The magistrate must keep the original warrant and, on receiving the documents from the authorised officer mentioned above attach the documents to the original warrant; and give the original warrant and documents to the clerk of the court of the relevant magistrates court.

200 Defect in relation to a warrant

Clause 200 provides that a warrant (including a duplicate warrant mentioned in section 199(3)) is not invalidated by a defect in the warrant or compliance with this subdivision unless the defect affects the substance of the warrant in a material particular.

Subdivision 2 Entry procedure

201 Procedure

Clause 201 provides that if an authorised person is intending to enter a place under a warrant issued under this division before entering the place, the authorised person must unless the authorised person reasonably believes that entry to the place is required to ensure the execution of the warrant is not frustrated:

- 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;
- give the person a copy of the warrant;
- tell the person the authorised person is permitted by the warrant to enter the place; and
- give the person an opportunity to allow the authorised person immediate entry to the place without using force.

References to warrants in this section include references to duplicate warrants mentioned in section 199(3).

Division 4 Procedure for certain other entries

202 Procedure

Clause 202 ensures that the authorised officer provides identification, notifies the occupier of the reason for entry where the occupier is present at the place and that the officer is permitted to enter the place without consent under this act including for the purposes of carrying out a waste inspection.

Division 5 Entry of stationary vehicles by authorised persons

203 Power to enter

Clause 203 gives an authorised person the power to enter and stay in a vehicle if the vehicle is stationary and the officer reasonably suspects, or is aware, that a thing in or on the vehicle may provide evidence of the commission of an offence against section 40 or 103 however an authorised person may not enter a part of a vehicle under subsection that is used only as a living area. The power to enter under this section is in addition to the powers under clause 191(1)(a)(ii).

204 Procedure for entry

Clause 204 requires an authorised person who is exercising powers of entry under section 203 where the person in control of the vehicle is present, to 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, tell the person the purpose of the entry, seek the consent of the person to the entry and tell the person the authorised person is permitted under this Act to enter the vehicle without the person's consent. Where the person in control of the vehicle is not present at the vehicle, the officer must take reasonable steps to advise the person or any registered operator of the vehicle of the officer's intention to enter the vehicle unless the officer reasonably believes this may frustrate or otherwise hinder the performance of the officer's functions or the purpose of the intended entry. Registered operator of a vehicle means, 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 if it is registered in another State the person in whose name the vehicle is registered under the corresponding Act of that State.

Part 4 Other authorised persons' powers and related matters

Division 1 Stopping or moving vehicles

205 Application of div 1

Clause 205 provides that this division applies if an authorised person reasonably suspects, or is aware, that a thing in or on vehicle may provide evidence of the commission of an offence against section 40 or 103.

206 Power to stop or move

Clause 206 gives an authorised person the power signal or otherwise direct the person in control of a vehicle to stop in order to allow the authorised person to exercise his/her powers. If the vehicle is stopped, the authorised person may direct the person in control of the vehicle not to move it or to move it so the authorised person can exercise his/her powers. For example this section is necessary for when an authorised person needs to determine the type of waste being transported.

207 Identification requirements if vehicle moving

Clause 207 requires an authorised person to clearly identify himself or herself as an authorised person when stopping a vehicle under section 206, when the vehicle stops. The authorised person must immediately produce the authorised person's identity card for the inspection of the person in control of the vehicle.

208 Failure to comply with direction

Clause 208 provides that a person in control of a vehicle who fails to comply with a direction under section 206(1) is guilty of an offence unless the person has a reasonable excuse. The maximum penalty for this offence is 60 penalty units. It is a reasonable excuse if 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. A person is not guilty of an offence under this section if the person was not given an offence warning for the direction.

Division 2 General powers after entering places

209 Application of div 2

Clause 209 provides that the powers under this division may be exercised when an authorised person enters a place under section 191(1)(a)(i), (ii), (iv), (v) or (b) or 203. If the authorised person enters under section 191(1)(a)(i) or (ii), the powers under this division are subject to any conditions of the consent or terms of the warrant.

210 General powers

Clause 210 provides an authorised person with general powers to:

- search any part of the place;
- inspect a thing (includes opening the thing and examining its contents);
- examine (includes analysing, testing, accounting, measuring, weighing, grading, gauging and identifying the thing);
- film any part of the place or anything at the place (including photograph, videotape and record an image in another way.
- take for examination or analysis a thing, or a sample of or from a thing, at the place;
- place an identifying mark in or on anything at the place;
- take an extract from, or copy, a document at the place, or take the document to another place to copy;
- 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;
- 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;
- remain at the place for the time necessary to achieve the purpose of the entry.

The authorised person may take a necessary step to allow the exercise of a general power. 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. 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.

211 Power to require reasonable help

Clause 211 gives an authorised person the power to require help 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. 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. When making the help requirement, the authorised person must inform the person that it is an offence not to comply with a help requirement without a reasonable excuse.

212 Offence to contravene help requirement

Clause 212 establishes a penalty for a failure of a person to comply with a help requirement without a reasonable excuse. 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 unless the document or information is required to be held or kept by the person under this Act.

Division 3 Seizure and forfeiture

Subdivision 1 Power to seize

213 Seizing evidence at a place that may be entered without consent or warrant

Clause 213 gives an authorised person who enters a place that he/she is authorised to enter under this Act without a warrant the power to seize a thing that the authorised person reasonably believes is evidence of an offence against this Act.

214 Seizing evidence at a place that may be entered only with consent or warrant

Clause 214 gives an authorised person, who has consent of the occupier for entry, the power to seize a thing the authorised person reasonably believes the thing is evidence of an offence against this Act and seizure of the thing is consistent with the purpose of entry as explained to the occupier when asking for the occupier's consent. If entry was authorised by consent or under a warrant an authorised person may seize evidence for which the warrant was issued and anything else at the place, the authorised person reasonably believes is evidence of an offence against this Act; the seizure is necessary to prevent the thing being hidden, lost or destroyed; or used to continue, or repeat, the offence. 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.

215 Seizure of property subject to security

Clause 215 provides that 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. 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

216 Requirement of person in control of thing to be seized

Clause 216 gives an authorised person the power to require a person in control of a thing to be seized to take it to a reasonable place at a stated reasonable time and if necessary to remain in control of it at the place for a stated reasonable time. Section 216 requires the requirement to be made by notice or orally (where not practicable) and confirmed by notice as soon as practicable.

217 Offence to contravene seizure requirement

Clause 217 makes it an offence not to comply with a seizure requirement without a reasonable excuse.

218 Power to secure seized thing

Clause 218 provides that an authorised person may leave a seized thing at the place where it was seized and take reasonable action to restrict access to it or move it from the place or require the person in control of the thing to take any of these steps. To restrict access to the seized thing the authorised person may seal the thing or entry to the place, mark the thing or place or make the thing inoperable.

219 Offence to contravene other seizure requirement

Clause 219 creates an offence for non compliance with clause 218(2)(c) unless the person has a reasonable excuse.

220 Offence to interfere

Clause 220 makes it an offence to tamper with a seized thing to which access is restricted under section 218, without an authorised person's approval or a reasonable excuse. It is also an offence under this clause to enter the place or tamper with anything used to restrict access to the place under section 218 without an authorised person's approval or a reasonable excuse.

Subdivision 3 Safeguards for seized things

221 Receipt and information notice for seized thing

Clause 221 requires a receipt (describing the thing and its condition) and an information notice about the decision to seize the thing under this division, to be given to a person as soon as practicable after the thing has been seized. If the person is not present when the thing is seized, the receipt and information notice may be left in a conspicuous position and in a reasonably secure way at the place at which the thing is seized. The receipt and information notice may be given in the same document and relate to more than 1 seized thing.

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. 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.

A receipt and information notice do not need to be given if the authorised person reasonably believes there is no-one apparently in possession of the thing or the thing has been abandoned; or because of the condition, nature and value of the seized thing it would be unreasonable to require the authorised person to comply with this section.

222 Access to seized thing

Clause 222 requires that until a seized thing is forfeited or returned, the authorised person who seized the thing must allow an owner of the thing, to inspect it at any reasonable time and from time to time and if it is a document copy it unless it is impracticable or would be unreasonable. The inspection or copying must be allowed free of charge. This provision is important to ensure that rights of a person to access their property are not taken away unless it is impracticable or unreasonable to uphold them.

223 Return of seized thing

Clause 223 requires the authorised person to return the seized thing to an owner at the end of 1 year after the seizure and 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. This only applies to a

seized thing that has some intrinsic value and that is not forfeited or transferred under subdivision 4 or 5 and not subject to a disposal order under division 4. However if the thing was seized as evidence, the authorised person must return the thing seized to an owner as soon as practicable it is no longer required as evidence and it is not necessary to prevent it being used to continue or repeat an offence against this Act and it is lawful for the owner to possess it. Nothing in this section affects a lien or other security over the seized thing.

Subdivision 4 Forfeiture

224 Forfeiture by chief executive

Clause 224 gives the chief executive the power to decide to forfeit a seized thing to the State if after making reasonable inquiries, cannot find an owner or after making reasonable efforts, cannot return it to an owner or reasonably believes it is necessary to keep the thing to prevent it being used to commit the offence for which it was seized. The authorised person is not required to make inquiries if it would be unreasonable to make inquiries to find an owner or make efforts if it would be unreasonable to make efforts to return the thing to an owner. For example if the owner of the thing has migrated to another country. Regard must be had to the thing's condition, nature and value.

225 Information notice for forfeiture decision

Clause 225 applies if the chief executive decides under section 224(1) to forfeit a thing, the chief executive must as soon as practicable give a person who owned the thing immediately before the forfeiture (the former owner) an information notice for the decision.

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. 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.

226 Forfeiture on conviction

Clause 226 allows the court to order on the conviction of a person for an offence against this Act, the forfeiture to the State of anything used to commit the offence or anything else the subject of the offence.

The court may make the order whether or not the thing has been seized and if the thing has been seized—whether or not the thing has been returned to the former owner of the thing.

The court may make any order to enforce the forfeiture it considers appropriate. This section does not limit the court's powers under another law. This section is important to ensure that a thing used to commit an offence is not returned if it is highly likely that it will be used to commit the offence again.

227 Procedure and powers for making forfeiture order

Clause 227 allows the court to make a forfeiture order on conviction on the court's initiative or on an application by the prosecution. In deciding whether to make a forfeiture order for a thing, the court 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 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

228 When thing becomes property of the State

Clause 228 a thing becomes the property of the State if the thing is forfeited to the State or the owner of the thing and the State agree, in writing, to the transfer of the ownership of the thing to the State.

229 How property may be dealt with

Clause 229 allows the chief executive to deal with the thing if it becomes property of the state under section 228 as the chief executive considers appropriate, including for example by destroying it or giving it away. 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. 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. This section is subject to any disposal order made for the thing.

Division 4 Disposal orders

230 Disposal order

Clause 230 allows the court to make a disposal order if a person is convicted of an offence against this Act for the disposal of any of anything that was the used to commit the offence or another thing the court considers is likely to be used in committing a further offence against this Act. The court may make any order to enforce the disposal order that it considers appropriate.

Division 5 Other information-obtaining powers

231 Power to require name and address

Clause 231 gives an authorised officer the power to require name and address from a person suspected of being in breach of the Act.

This section applies if an authorised person finds a person committing an offence against this Act or contravening a prescribed provision; or 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 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.

The authorised person may require the person to state the person's name and address. 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

232 Offence to contravene personal details requirement

Clause 232 creates an offence for contravening a personal details requirement unless the person has a reasonable excuse. A person may not be convicted of this offence unless the person is found guilty of the offence in relation to which the personal details requirement was made.

233 Power to require production of document

Clause 233 allows an authorised person to require a person to produce a document, including an electronic document, for inspection by at a reasonable time and place. The authorised person can keep the document to copy it but must return it as soon as practicable. The authorised person may require the person responsible for keeping the document to certify the copy and may keep the document until the person complies with this requirement.

234 Offence to contravene document production requirement

Clause 234 specifies the offence and penalty for failing to comply with a document production requirement without a reasonable excuse. For example a reasonable excuse could be if complying might incriminate the individual or expose the individual to a penalty unless the document is required to be held or kept by the person under this Act. If a court convicts a person of an offence against this section, the court may, as well as imposing a penalty for the offence, order the person to comply with the document production requirement.

235 Offence to contravene document certification requirement

Clause 235 specifies the offence and penalty for contravening a document certification requirement without a reasonable excuse. A reasonable excuse might be if complying with this section will incriminate the individual or expose the individual to a penalty unless it relates to a document or information that is required to be held or kept by the person under this Act.

236 Power to require information

Clause 236 provides that the administering authority may require a person to provide information relevant to the administration or enforcement of the Act. It is often necessary to rely on evidence other than that able to be collected from the site of the offence. To do this successfully, the

cooperation of the community is required. Where this is not possible, coercive powers are needed and this provision provides these powers.

237 Offence to contravene information requirement

Clause 237 specifies the offence and penalty for not complying with an information requirement under clause 236 without a reasonable excuse. A reasonable excuse is that the information might tend to incriminate the individual or expose the individual to a penalty.

Part 5 Miscellaneous provisions

Division 1 Damage

238 Duty to avoid inconvenience and minimise damage

Clause 238 requires an authorised person must take all reasonable steps to cause as little inconvenience, and do as little damage, as possible.

239 Notice of damage

Clause 239 provides for the accountability of authorised officers when evidence is seized or damaged. This section applies if an authorised person exercising a power under the Act or a person acting under the direction of an authorised person damages something. Notice is not necessary where the authorised person reasonably believes there is no-one in possession of the thing or the thing has been abandoned.

Division 2 Compensation

240 Compensation

Clause 240 provides that a person is entitled to claim compensation from the State if the person incurs a cost, damage or loss because of the exercise, or purported exercise, of a power by or for an authorised person under this chapter. Section 240 also provides that a claim for compensation may be

made in a proceeding in a court with appropriate jurisdiction. The court must have regard to any relevant offence committed by the claimant and may order payment of compensation only if it is satisfied it is just to make the order. 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.

Division 3 Other offences relating to authorised persons

241 Giving authorised person false or misleading information

Clause 241 provides that it is an offence to give an authorised officer a document containing false or misleading information whether or not the information was given in response to an authorised person's information requirement. The purpose of this action is act as a deterrent and to ensure that authorised officers are able to obtain accurate and reliable information.

242 Obstructing authorised person

Clause 242 provides that it is an offence to obstruct an authorised person or someone helping an authorised person. If a person has so obstructed and the authorised person decides to proceed with the exercise of the power, the authorised person must warn the person that:

- it is an offence to cause an obstruction unless the person has a reasonable excuse; and
- the authorised person considers the person's conduct an obstruction.

243 Impersonating authorised person

Clause 243 provides that it is an offence to impersonate an authorised officer.

Chapter 11 Show Cause notices and compliance notices

Part 1 Preliminary

Clause 244 Definitions for chapter 11

Part 2 Show cause notices

245 Giving show cause notice

Clause 245 applies if the chief executive reasonably believes a person has contravened a prescribed provision.

A prescribed provision means— an offence or contravention in relation to the following sections of the Bill: 40(1), 42(1), (2) or (3), 43(2) or (3), 44(2), 46(1), 47(1), 51(1), 52, 64, 65(1) or (4), 66(2), 100, 102(1), 103(1), 106(1), 107, 108(1) or (2), 111(2), 140(3), 145(2), 148(1), 151(2), 166, 295(1) or (4) or 296(1) or (4); or a provision of a regulation prescribed for the purpose of this paragraph.

Clause 245 provides that the chief executive must, before giving an enforcement notice, give a person a show cause notice if the assessing authority reasonably believes the person has contravened a prescribed provision. However, subclause (3) provides an exception to this general rule. If the assessing authority reasonably considers that it is not appropriate to give a show cause notice in the circumstances, the assessing authority may proceed directly to issuing an enforcement notice. There are several circumstances where a show cause notice may diminish the effectiveness of the enforcement notice as an enforcement tool. To allow compliance issues to be resolved more quickly and effectively, this Bill is intended to give assessing authorities greater flexibility to proceed directly to issuing an enforcement notice, if the circumstances warrant this. For example, this would be appropriate in a situation where issuing a show cause notice would reduce the effectiveness of the enforcement notice.

246 General requirements of cause notice

Clause 246 states that a show cause notice must:

- be made in writing
- outline the facts and circumstances forming the basis for the chief executive's belief that a compliance notice should be given to the person;
- state that representations may be made about the show cause notice;
- state how the representations may be made;
- state where the representations may be made or sent; and
- state a period within which the representations must be made (at least 14 business days after the notice is given).

Part 3 Compliance notices

247 Giving compliance notice

Clause 247 allows the chief executive, if the chief executive reasonably believes a person has contravened, or is contravening, a prescribed provision, the chief executive may give a notice (a compliance notice) to the person requiring the person to do either or both of the following—

(a) to refrain from contravening the prescribed provision;

(b) to remedy the contravention in the way stated in the notice.

The compliance notice must include or be accompanied by an information notice for the decision to give the person a compliance notice.

248 Restriction on giving compliance notice

Clause 248 provides that if the chief executive elects to give a show cause notice, the chief executive may give the enforcement only if, after considering all representations made by the person about the show cause notice within the time stated in the notice, the chief executive still believes it is appropriate to give the compliance notice.

249 General requirements of compliance notices

Clause 249 sets out the requirements for a compliance notice. A compliance notice must state the following—

- that the chief executive believes the person has contravened or is contravening a prescribed provision;
- the particular prescribed provision the chief executive believes has been, or is being, contravened;
- briefly, how it is believed the prescribed provision has been, or is being, contravened;
- if the notice requires the person to refrain from contravening the prescribed provision—either of the following—
    - a period for which the requirement applies;
    - if the notice relates to a contravention of section 106(1)—Unlawful delivery provision, 107—Secure delivery provision, 108(1) or (2)—Placing document on or in motor vehicle or on building or other fixed structure or 145(2)—Requirement to give copy of adopted plan to chief executive that the requirement applies until further notice;
- if the notice requires the person to remedy the contravention—the time by which the person must remedy the contravention (must be a reasonable time having regard to the action required to remedy the contravention);
- that it is an offence to fail to comply with the compliance notice unless the person has a reasonable excuse;
- the maximum penalty for failing to comply with the compliance notice.

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. If the compliance notice requires the person to do more than one thing, it may state different periods within which the things are required to be done.

250 Person must comply with notice

Clause 250 specifies the offence and penalty for not complying with a compliance notice. If the compliance notice relates to a contravention of any of the following sections: 106(1)—Unlawful delivery provision, 107—Secure delivery provision, 108(1) or (2)—Placing document on or in motor vehicle or on building or other fixed structure or 145(2)—Requirement to give copy of adopted plan to chief executive, a maximum penalty of 40 penalty units applies. For any other contravention a maximum penalty of 300 penalty units applies.

Chapter 12 Waste audits

Part 1 Preliminary

251 Definitions for ch 12

Clause 251 provides definitions *recipient*, *waste audit* and *waste report* for chapter 12.

Part 2 Chief executive may require conduct of waste audits

252 When waste audit required

Clause 252 states that 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 (a *waste audit*) and to give a report (a *waste report*) on the audit to the chief executive.

The notice must state that grounds on which the requirement is made; outline the facts and circumstances that form the basis of the grounds; the scope of the waste audit and the day by which the recipient must give the chief executive the waste report.

A *prescribed provision* means the following sections— 41(1), 42(1), (2) or (3), 43(2) or (3), 44(2), 46(1), 47(1), 51(1), 52, 53(1), 64, 65(1) or (4), 66(2) or (3), 100, 103, 295(1) or 296(1).

253 Recipient must comply with notice

Clause 253 states that the recipient must comply with the notice unless the recipient has a reasonable excuse. A maximum penalty of 300 penalty units applies for a contravention.

Part 3 Other provisions

254 Who may conduct waste audit

Clause 254 ensures that an audit is carried out by an independent, suitably qualified person to ensure that information is accurate and reliable.

255 Declarations to accompany waste report

Clause 255 provides for an accountability mechanism to ensure the audit is credible. The report given to the chief executive must be accompanied by a statutory declaration. The declaration must be made by the recipient if the recipient is an individual or, if the recipient is a corporation, by the executive officer of the corporation acting on behalf of the corporation. The clause outlines the information that must be provided in the declaration and must state that the recipient has not knowingly given any false or misleading information to the person who conducted the waste audit and has given all relevant information to the person who conducted the waste audit.

256 Costs of waste audit and report

Clause 256 states that the recipient must bear the cost of commissioning an audit and report.

Chapter 13 Court orders

257 Court may make particular orders

Clause 257 applies if a court convicts a person of a prescribed offence. 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.

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.

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.

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.

A prescribed offence means an offence against any one of the following sections: 40(1), 42(1), (2) or (3), 43(2) or (3), 44(2), 46(1), 47(1), 51(1), 52, 53(1), 65(1), 66(2) or (3), 100, 103(1), 166, 295(1) or 296(1).

258 Court may order recovery of chief executive's costs

Clause 258 applies if a court convicts a person of an offence against this Act. 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.

259 Chief executive may take action and recover costs

Clause 259 allows the chief executive to carry out work or take any other action reasonably necessary to fulfil the requirements of the rehabilitation or restoration order and recover the costs incurred from the person. This

section is important where a rehabilitation or restoration order has been made and a person has failed to comply with the order then the chief executive may take action and recover costs.

260 Restraint of contraventions of Act etc

Clause 260 allows a proceeding to be brought in a magistrate's court for an order to remedy or restrain an offence against this Act, or a threatened or anticipated offence against this Act, by the Minister, the chief executive or someone whose interests are affected by the subject matter of the proceeding.

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.

An order may direct the defendant to stop an activity that is or will be a contravention of this Act or do anything required to comply with, or to cease a contravention of, this Act.

The order must specify the time by which the order is to be complied with; and 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.

Without limiting the powers of the court, the court may make an order that restrains the use of plant or equipment or a place; or require the demolition or removal of plant or equipment, a structure or another thing.

A person must not contravene an order under this section. A maximum penalty of 3000 penalty units applies for a contravention.

261 Power of court to make order pending determination of proceeding

Clause 261 allows the court to make an interim enforcement order, pending the determination of a proceeding for a restraint order. 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.

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.

Chapter 14 Miscellaneous

262 Delegation by chief executive

Clause 262 allows the chief executive to delegate the chief executive's powers under this Act as the chief executive to an appropriately qualified authorised person or public service officer or to a local government. A delegation of a chief executive's power to a local government may permit the sub-delegation of the power to an appropriately qualified entity.

263 General duties about records or documents

Clause 263 states that 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.

The maximum penalty for the offence is 1665 penalty units.

This clause also states that a person who is required to keep a record or document under this Act must not, without a reasonable excuse—

(a) keep it as an incorrect record or 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.

The maximum penalty for the offence is 1000 penalty units.

264 Giving chief executive false or misleading information

Clause 264 states that a person must not, in relation to the administration of this Act, give the chief executive information or a record or document containing information that the person knows is false or misleading in a material particular.

The maximum penalty for the offence is 1665 penalty units.

The section applies to information or a record or document given in relation to the administration of this Act whether or not the information or the record or document was given in response to a specific power under this Act.

265 Protection of officials from liability

Clause 265 provides that an official, including the Minister, the chief executive, an authorised person or a person acting under the direction of the Minister, chief executive or an authorised person, does not incur civil liability for an act done, or omission made, honestly and without negligence under this Act. However if this section prevents a civil liability attaching to an official, the liability attaches instead to the State. This section is important to protect authorised persons from liability for actions taken in the course of their duties.

266 Summary proceedings for offences

Clause 266 allows proceedings for an offence against this Act to be taken in a summary way under the *Justices Act 1886*. A proceeding must start within one year after the commission of the offence or within one year after the offence comes to the complainant's knowledge. However, for an offence against section 53 the proceeding must occur within six years after the commission of the offence. For other offences, the proceeding must occur within two years after the commission of the offence.

267 Executive officers must ensure corporation complies with Act

Clause 267 states that the executive officers of a corporation must ensure the corporation complies with this Act.

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

The penalty is that which applies to the breach of the relevant provision. For example, in the case of any of the offences relating to a resource recovery area under section 66 each of the corporation's executive officers could be in breach of that provision and liable to a maximum of 1665 penalty units.

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

It is a defence for an executive officer to prove—

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

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

268 Application of Act to local governments

Clause 268 provides that this Act applies to a local government as if the local government were a body corporate. A proceedings may be taken under this Act against a local government, and a local government may be dealt with as if it were a body corporate and proceedings may be taken under this Act against a local government in its own name.

269 Approval of forms

Clause 269 allows the chief executive to approve forms for use under this Act.

270 Regulation-making power

Clause 270 states that the Governor in Council may make regulations under this Act.

A regulation may provide for any of the following—

- the removal, collection, transport, deposit, storage or disposal of waste;
- setting standards, controls or procedures for the manufacture, generation, sale, use, transport, receival, storage treatment or disposal of waste, including for—
    - local government administration of waste; or
    - waste tracking; or
    - dealing with polychlorinated biphenyls; or
    - managing clinical and related waste; or
    - used packaging materials; or
    - storage, disposal, receival or treatment of waste or equipment for dealing with waste;
- giving effect to, and enforcing compliance with, a national environment protection measure under a law forming part of a national scheme
- supporting and implementing national frameworks, objectives and priorities for waste management and resource recovery.
- setting the amounts of performance payments that may be payable to entities and the efficiency indicators and targets relevant to eligibility for payment.

A regulation may provide for fees payable under this Act and the matters for which they are payable and for a maximum penalty of 20 penalty units for a contravention of the regulation.

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

Chapter 15 Transitional provisions

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

271 Definitions for pt 1

Clause 271 provides definitions for chapter 15.

272 Matters relating to existing approvals

Clause 272 allows an existing approval to be an approval of the same type granted under chapter 8 of this Act on commencement of this Act. An action (amendment, cancellation or suspension of an existing approval) for which the process has commenced but has not been finalised can continue under this clause. For example if someone had applied for a transfer of an approval before this Act commenced the process for transferring the approval happens under the repealed legislation. Any decision made under the old legislation; for example, to grant or refuse the transfer is made under the repealed provisions however once the decision is made the approval is considered to be an approval under chapter 8 of this Act. Review and appeal rights relating to the repealed provisions also continue to apply.

273 Applications for approvals made before the commencement

Clause 273 allows an application for an approval made under the repealed provision, but not finally dealt with, before the commencement to be dealt with under the repealed provision as if this Act had not been enacted. If an approval is granted under this section, it is taken to be an approval of the same type granted under chapter 8 of this Act. The review and appeal rights relating to the application, or an approval granted on the application, under the *Environmental Protection Act 1994* continue to apply as if this Act had not been enacted.

274 Reviews and appeals

Clause 274 allows a review or appeal under the *Environmental Protection Act 1994* 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. A right of appeal under the Environmental Protection Act relating to a decision on a review continues as if this Act had not been enacted. If, immediately before the commencement, a person has a right of review or appeal under the *Environmental Protection Act 1994* relating to a matter under the repealed provision, the right continues as if this Act had not been enacted. 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.

275 Offences

Clause 275 provides that proceedings for an offence against the repealed provision may be continued or started and the provisions of the *Environmental Protection Act 1994* necessary or convenient to be used in relation to the proceedings continue to apply as if this Act had not been enacted. The *Acts Interpretation Act 1954*, section 20, applies but does not limit this section.

Part 2 Discounted levy for residue waste disposal until 30 June 2014

276 Definitions

Clause 276 provides a definition of ***residue waste*** for this part.

277 Application for discounting of waste levy amount

Clause 277 provides that a person who conducts a recycling activity may make an application asking the chief executive to apply a discounted rate for the waste levy to residue waste identified in the application. The application must be must be in an approved form, supported by enough information to allow the chief executive to decide the application and accompanied by the fee prescribed under a regulation.

278 Chief executive may require additional information

Clause 278 gives the chief executive the power to require the applicant under clause 277 to give the chief executive further reasonable information or documents about the application by a reasonable date stated in the notice. 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, without reasonable excuse.

The applicant may, before the stated date, apply to the chief executive to extend the time for providing the further information.

279 Deciding application

Clause 279 provides that the chief executive must decide either to grant or refuse an application within 10 business days after the later of the following days the day the chief executive receives the application or if additional information is requested under section 278—the day the chief executive receives the information. A failure to make a decision under this section is taken to be a decision by the chief executive to refuse the application. In deciding whether to grant the application, the chief executive must consider the following

- the objects of this Act;
- the information outlined in the application;
- any criteria prescribed under a regulation.

The criteria mentioned in above must include, for each type of residue waste, a residue efficiency threshold required to be achieved by the applicant.

280 Grant of application

Clause 280 requires the chief executive to give the applicant a notice within 5 business days of granting the application stating:

- the application has been granted;
- 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;

- the period of the approval, which must not exceed 1 year, and must not apply after 30 June 2014;
- any conditions imposed on the approval.

If the chief executive imposes any conditions on the approval unless the condition is the same as a condition asked for or agreed to by the applicant, an information notice must be given about the decision to impose the conditions in order to provide the applicant with the opportunity to seek a review of this decision.

281 Refusal of application

Clause 281 requires the chief executive to give the applicant an information notice about the decision to refuse the application within 5 business days of making the decision.

282 Cancellation of grant

Clause 282 allows the chief executive to cancel an approval for residue waste discounting if the chief executive considers there are reasonable grounds to cancel it. Grounds for cancelling an application may include

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

283 Procedure for cancelling grant of residue waste discounting application

Clause 283 requires the chief executive to give notice to the holder of an approval for residue waste discounting if intending to cancel the approval. The chief executive must give notice to the holder of the grant. The notice must state the following—

- that the chief executive proposes to cancel the grant of the application;
- the grounds for the proposed action;
- the facts and circumstances that form the basis for the grounds;
- when the proposed cancellation is intended to take effect;
- that the holder may make, within a stated period, written representations to show why the proposed action should not be taken.

The stated period must end at least 15 business days after the holder is given the notice. The chief executive must consider any representations by the holder within the stated period.

If the chief executive decides to take the proposed action, the chief executive must, within 10 business days after making the decision give the holder an information notice about the decision. The decision takes effect when the information notice is given.

284 Automatic cancellation of grant

Clause 284 states that 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

285 Definitions

Clause 285 provides the definition for transition period. The transition period means the period starting on 1 December 2011 and ending on 30 June 2014.

286 Application for approval of residue waste as exempt waste for transition period.

Clause 286 states that an entity conducting a recycling activity may make an 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. If an entity makes an application, the application must be made no later than 30 June 2012.

The application must be made in the approved form and state the name, location and activities of the applicant's facilities that produce the residue waste identified in the application. The application must also state the amount and type of residue waste that is expected to be produced in the period for which the approval is to have effect.

The application must also include information that shows conduct of a recycling activity by the applicant on or before 1 December 2011; that the applicant meets any residue waste efficiency threshold requirements under the residue waste discounted levy rate criteria; that the 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 the business from operating; and the applicant has put measures in place to progressively minimise the amount of its residue waste generation.

287 Chief executive may require additional information

Clause 287 states that the chief executive may, by notice, require the applicant to give the chief executive further reasonable information or documents about the application.

The chief executive may refuse the application if the applicant does not give the chief executive the further information or documents and does not have a reasonable excuse for not doing so.

288 Deciding application

Clause 288 requires the chief executive to make a decision to either grant or refuse an application in a time that is reasonable in the circumstances.

A failure to make a decision under this section is taken to be a refusal of the application.

In deciding to grant the application the chief executive must consider: the objects of the Act; the information included in the application; and whether

adequate measures have been put in place to progressively minimise the amount of residue waste generated by the applicant.

The chief executive may also consider the advice of any expert reference group that the chief executive considers suitable to provide advice in relation to financial hardship.

In deciding to grant the application the chief executive must be satisfied that the applicant was conducting the activity on or before 1 December 2011; the applicant meets any efficiency threshold requirements and that payment of the levy, even at the discounted rate, would cause the applicant financial hardship to an extent that would stop its business from operating.

289 Grant of application

Clause 289 states that, if the chief executive grants the application, the chief executive must give the applicant notice that the application has been granted. The notice must state the period, which must end on or before the end of the transition period (30 June 2014) for which the residue waste identified in the application is approved to be exempt waste; and 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.

If the chief executive imposes conditions on the approval, the notice must include or be accompanied by an information notice for the decision to impose the conditions. However, the chief executive does not have to give the applicant an information notice if a condition is the same or substantially the same as a condition agreed to or asked for by the applicant.

290 Refusal of application

Clause 290 states that the chief executive must give the applicant an information notice if the chief executive decides to refuse the application. A decision to refuse is a reviewable decision under chapter 9.

291 Cancellation of grant

Clause 291 states that, if the chief executive has granted an application under this part, the chief executive may cancel the grant of the application if the chief executive considers that there are reasonable grounds to do so.

The grounds a chief executive may have for cancelling a grant of application include: if there is a reasonable suspicion that the application was granted because of false or misleading representation or declaration; the circumstances relevant to the granting of the application at the time have changed; the limits or conditions have not been complied with; it is desirable to cancel the grant having regard to the objects of the Act.

292 Procedure for cancelling grant of transition period exempt waste application

Clause 292 states that if the chief executive proposes to cancel the grant of application, the chief executive must give notice to the holder of the grant. The notice must state: that the chief executive proposes to cancel the grant; the grounds for the cancellation; the facts and circumstances forming the basis for the grounds; when the proposed cancellation is intended to take effect; and that the holder may make, within a stated period, written representations to show why the proposed cancellation should not occur.

The stated period for making a written representation ends at least 15 business days after the holder is given the notice. The chief executive must consider any representations made within the stated period. If the chief executive decides to cancel the grant, the chief executive must give the holder of the grant an information notice within 10 business days of making the decision.

A decision to cancel a grant takes effect when the information notice is given.

293 Automatic cancellation of grant

Clause 293 states that a grant of application under this part is automatically cancelled if the business that was relevant at the time of the application ceases to be in the grant holder's ownership. This includes circumstances where a business is transferred into the ownership of another entity.

Part 4 General provisions

294 Existing waste management strategy and business plan

Clause 294 provides that the existing *Queensland's Waste Reduction and Recycling Strategy 2010-2020* is taken to be the State's first waste management strategy under this Act and has effect as if it had been made under this Act on the commencement of this section. This clause also provides that the existing Business Plan for the waste management strategy is taken to be the State's first WMS business plan under this Act and has effect as if it had been made under this Act on the commencement of this section. This section ensures that provisions of this Act that relate to the waste management strategy and business plan apply to the existing strategy and business plan.

295 Volumetric survey of levyable waste disposal site before waste levy commencement

Clause 295 requires an operator of a levyable waste disposal site located within the waste levy zone to ensure a volumetric survey is carried out for each active landfill cell and all stockpiled waste at the site within the 14 days immediately preceding 1 December 2011. A copy of the results of the survey must be given to the chief executive before the end of December 2011 in the approved form.

A maximum penalty of 200 penalty units applies if the operator fails to carry out the volumetric survey.

The results of the volumetric survey must:

- be in electronic form; and
- include a topographical plan complying with specifications advised by the chief executive; and
- include advice of the following—
    - the area of the levyable waste disposal site;
    - the site's landfill capacity;
    - the stockpiles of waste on the site; and
- be certified as accurate by a surveyor under the *Survey*ors *Act 2003*.

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

A maximum penalty of 200 penalty units applies if the operator fails to keep a copy of the results of the survey.

If an operator of a levyable waste disposal site fails to undertake and submit a volumetric survey the chief executive may arrange for a volumetric survey for each landfill cell and all stockpiled waste held at the operator's site, and recover the cost of the survey from the operator as a debt payable to the State. It is necessary for a volumetric survey to be undertaken for a landfill and any stockpiles at the landfill to provide baseline data of waste at the site before commencement of the levy.

296 Volumetric survey of resource recovery area before waste levy commencement

Clause 296 requires an entity having responsibility for the operation of a resource recovery area to ensure a volumetric survey is carried out for all stockpiled waste on the area within the period of 14 days immediately preceding 1 December 2011and to give the chief executive a copy of the results of the survey in the approved form before the end of December 2011. The volumetric survey must be performed in accordance with the requirements prescribed under a regulation.

The results of the volumetric survey must—

- be in electronic form; and
- include a topographical plan complying with specifications advised by the chief executive; and
- include advice of the following—
    - the area of the resource recovery area;
    - the stockpiles of waste on the area; and
- be certified as accurate by a surveyor under the *Surveyors Act 2003*.

The entity having responsibility for a resource recovery area must ensure that a copy of the results of the volumetric survey performed under this section in relation to the area is kept 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.

A maximum penalty of 200 penalty units applies if an operator fails to conduct the survey and give the chief executive a copy of the results within the prescribed time or fails to keep a copy of the results in accordance with the requirements of this section.

If an entity having responsibility for the operation of a resource recovery area fails to comply with a requirement to conduct and submit a volumetric survey under this clause the chief executive may arrange for a volumetric survey for all stockpiled waste on the area, and recover the cost of the survey from the entity as a debt payable to the State. It is necessary for a volumetric survey to be undertaken on a resource recovery area to provide baseline data of waste at the site before commencement of the levy.

297 Temporary relaxation from s 44(2) requirements for small site

Clause 297 provides that the operator of a small site is not required to comply with the requirement of section 44(2) to ensure that the waste is measured and recorded in compliance with the weight measurement criteria prescribed under a regulation, providing the operator has, before 1 December 2011, notified the chief executive of the details of a proposed alternative methodology for measuring and recording waste at a particular site and identified the small sites and details of the proposed alternative methodology. The proposed alternative methodology must enable 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, and the operator must implement the alternative methodology in accordance with its terms.

298 Offences against repealed littering provisions

Clause 298 provides that proceedings for an offence against any of the repealed littering provisions may be continued or started, and the provisions of the *Environmental Protection Act 1994* and the *State Penalties Enforcement Act 1999* necessary or convenient to be used in relation to the proceedings continue to apply, as if this Act had not been enacted.

299 Existing strategic plans under repealed waste management policy

Clause 299 provides that for one 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. This applies to 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.

Also, for one 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. This applies to a department other than in relation to any aspect of waste management for the department is the subject of a waste reduction and recycling plan that comes into force under this Act.

300 Clinical and related waste management plan

Clause 300 applies if, 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 the entity is a planning entity under this Act. Unless the entity sooner adopts a waste reduction and recycling plan under this Act, the clinical plan has effect as a waste reduction and recycling plan for the entity as if it had been adopted by the entity in compliance with this Act.

Chapter 16 Repeal and amendment of other legislation

Part 1 Repeal

301 Repeal

Clause 301 repeals the *Environmental Protection (Waste Management) Policy 2000*.

Part 2 Amendment of Environmental Protection Act 1994

302 Act amended

Clause 302 states that this part amends the *Environmental Protection Act 1994 (EP Act)*.

303 Amendment of s 13 (Waste)

Clause 303 amends the definition of waste under section 13 of the *EP Act*.

The definition is to be amended to ensure that where waste has been approved as a resource under chapter 8 of the *Waste Reduction and Recycling Act*:

- the resource stops being waste only in relation to the holder of the approval; and
- the resource becomes waste again—
  - when it is delivered to a levyable waste disposal site; or
  - if it is deposited at a place in a way that would, apart from its approval under that chapter, constitute a contravention of the general littering provision or the illegal dumping of waste provision- when the depositing starts.

304 Omission of ch 7, pt 7 (Special provisions about waste management)

Clause 304 omits Chapter 7, part 7 of the *EP Act.* Part 7 relates to waste management works and approvals for waste management works granted under section 369A.

305 Omission of ch 8, pt 3A (Offences relating to depositing litter)

Clause 305 omits Chapter 8, part 3A of the *EP Act* as this part is being replaced by new litter and illegal dumping provisions in Chapter 5 of the *Waste Reduction and Recycling Act*.

306 Omission of ch 9, pt 2A (Power of authorised persons to give directions about litter removal)

Clause 306 omits Chapter 9, part 2A of the *EP Act.* The litter provisions in the *EP Act* are being replaced by new litter and illegal dumping provisions in Chapter 5 of the *Waste Reduction and Recycling Act*.

Chapter 11, Part 3 of the *Waste Reduction and Recycling Act* contains provisions about giving compliance notices. These provisions may be used to require a person to remove waste or take another action to remediate a littering or illegal dumping offence.

307 Omission of s 474A (Failure to comply with authorised person's direction to remove litter)

Clause 307 omits section 474A of the *EP Act.* Chapter 11, Part 3 of the *Waste Reduction and Recycling Act* contains provisions about giving compliance notices which may be to require a person to remove waste or take another action to remediate a littering or illegal dumping offence. It is an offence not to comply with a compliance notice.

308 Amendment of section 520 (Dissatisfied person)

Clause 311 omits section 520(1)(h) and (r) of the *EP Act* which relate to persons dissatisfied with a decision regarding a waste management works approval.

309 Amendment of s 580 (Regulation-making power)

Clause 309 omits section 580(2)(t) of the *EP Act*.

310 Amendment of sch 2 (Original decisions)

Clause 310 omits schedule 2, part 2, division 1 and omits schedule 2, part 2, division 5, entries for section 369A(4) or (5), section 369A(6) and section 369B(2) of the *EP Act*.

311 Amendment of sch 4 (Dictionary)

Clause 311 omits in schedule 4 (Dictionary), the following definitions: *deposit, infringement notice, infringement notice offence, litter, passenger declaration, place, prescribed person, vehicle littering offence and waste management works.*

Part 3 Amendment of Environmental Protection (Waste Management) Regulation 2000

312 Regulation amended

Clause 312 provides that this part amends the *Environmental Protection (Waste Management) Regulation 2000*.

313 Omission of pt 5, div 1 (Clinical and related waste management plans)

Clause 313 omits Part 5, division 1 of the *Environmental Protection (Waste Management) Regulation 2000* in relation to clinical and related waste management plans as similar provisions will be included in the regulation made under Chapter 6 Strategic Planning for Waste Reduction and Recycling.

314 Omission of pt 6A (Approval of resource for beneficial use)

Clause 314 omits Part 6A of the *Environmental Protection (Waste Management) Regulation 2000*. Similar provisions to this effect are contained in Chapter 8.

Part 4 Amendment to the Forestry Act 1959

315 Act amended

Clause 315 confirms the Act being amended by Part 3 is the Forestry Act 1959.

316 Replacement of s32AA (Chief executive to notify chief executive (lands) of change to State forest)

Clause 316 replaces section 32AA of the *Forestry Act 1959* and replaces the section with a new section 32AA that requires the particulars of State forests and timber reserves to be recorded in the land registry kept under the *Land Act 1994* if the State forest or timber reserve is declared, amended or revoked

New section 32AB confirms that a State forest or timber reserve is declared, amended or revoked on registration of the particulars of the State forest or timber reserve in the land registry. The Governor in Council, by regulation, will still need to approve any declaration, amendment or revocation but the particulars of the regulation will take legal effect on registration.

In effect, State forests and timber reserves will become registered land in the same way that reserves under the *Land Act 1994* are now registered land.

In consequence, the land practice manual kept by the chief executive under section 286A of the *Land Act 1994* may be amended to provide for the development of practices for providing more consistent and efficient processes in dealing with State land under more than one Act. This is required to provide, for example, for dealing with carbon abatement interests which may burden more than one lot under more than one Act (a carbon abatement project may burden a reserve under the Land Act 1994 and a State forest under the *Forestry Act 1959*).

317 Amendment of pt6B, hdg (Natural resource products)

Clause 317 and *clause 318* amend the heading for Part 6B of the *Forestry Act 1959* and section 61J by inserting 'forest products' in replacement for 'natural resource products'.

Although it was intended profits a prendre under the *Land Act 1994* and the *Land Title Act 1994* would be the appropriate interest for carbon sequestration projects in Queensland, the terms of the Carbon Credits (Carbon Farming Initiative) Bill 2011 (Commonwealth) require introduction of a new interest (carbon abatement interest).

Under the current provisions of the *Land Act 1994* , the profit a prendre provisions are limited to land held under a lease granted for agricultural or timber plantation purposes and the natural resource product must be owned by the lessee as an improvement. The definition for improvement, as provided by the dictionary (schedule 6) of the Land Act, supports the natural resource product would need to be a "cultivation, garden, orchard or plantation".

The terms of the Carbon Credits (Carbon Farming Initiative) Bill 2011 (Commonwealth) are tenure neutral. Rather than expand the profit a prendre provisions to reserves and unallocated State land under the Land Act and to State forests and timber reserves under the *Forestry Act 1959*, it is preferred to continue to allow a lessee under the *Land Act 1994* to enter into a profit a prendre with another person to enter onto the lease land and, for example, remove part of the cultivation, garden, orchard or plantation.

319 Insertion of new pt6C

Clause 319 inserts Part 6C in the *Forestry Act 1959* to provide for the vesting of carbon rights in a landholder if the right to carbon is the property of the Crown under section 45 of the *Forestry Act 1959*.

To be an eligible offsets sequestration project under the Carbon Credits (Carbon Farming Initiative) Bill 2011 (Commonwealth), the proponent for the project must have the legal right to carry out the project on the land (in Queensland, be the holder of the carbon abatement interest) and hold the carbon sequestration right for the project area.

New section 61K of the *Forestry Act 1959* defines the terms carbon abatement product and owner of land for the purposes of Part 6C.

New section 61L provides for the chief executive to keep guidelines about the making of an application for the vesting of the carbon right in the owner

of land. This provision will provide for consistency and impartiality in dealing with applications.

New section 61M provides for the owner of land to apply for the right to deal with the right to carbon (the carbon abatement product) in the land if the product is the property of the Crown under section 45 of the *Forestry Act 1959*.

New section 61N provides for the making of a decision on whether the carbon abatement product should be vested in the owner who may then transfer the vested right to the grantee of the carbon abatement interest. In making a decision, the Minister must consider whether the land will, or is likely to be used or dealt with under the *Forestry Act 1959* in a way that may be inconsistent with the grant if the proposed right. The Carbon Credits (Carbon Farming Initiative) Bill 2011 (Commonwealth) requires the Crown lands Minister to provide written certification to the Commonwealth that the State will not deal with the project area in a way that is inconsistent with the carbon sequestration right.

New section 61O requires the Minister to give written notice of an approved application to the registrar of titles. In receipt of such advice, the registrar must notify the title for the land that the Crown's carbon right in the project area has been vested in the owner of the land. Such a notification will help satisfy one of the requirements for registration of a carbon abatement interest under section 373U of the *Land Act 1994* and section 97P of the *Land Title Act 1994*.

Alternatively, if the Minister decides to refuse the application, written notice of the refusal must be given to the owner of the land.

New section 61P provides for the review of the Minister's decision to refuse the application. The review will address the reasons for the making of the original decision taking into account the grounds provided by the owner of the land.

New section 61PA provides for the Minister to make a review decision and to give the applicant written notice of the review decision.

320 Insertion of new pt 10, div 3

Clause 320 inserts a new section 133 in the *Forestry Act 1959* that requires the recording of the particulars of all current State forests and timber reserves in the land registry kept under the Land Act. This section applies to a State forest or timber reserve declared and set apart under this Act as in

force immediately before the commencement of the *Waste Reduction and Recycling Act 2011*.

321 Amendment of sch 3 (Dictionary)

Clause 321 amends the dictionary (schedule 3) of the *Forestry Act 1959*.

Part 5 Amendments to the Land Act 1994

322 Act amended

Clause 326 confirms Part 5 amends the *Land Act 1994*.

323 Amendment of s275 (Registers comprising land registry)

Clauses 323 and *324* amend section 275 and section 276 of the *Land Act 1994* by introducing into the land registry a register of State forests and timber reserves, a register of nature conservation areas (a title given to particular protected areas under the *Nature Conservation Act 1992*), a register of specified national parks (a title given to national parks which are co-existent with other tenure types such as Aboriginal land), and a register of land vested in fee simple (being land which has been vested in an entity under an Act for an estate in fee simple but which has not been granted in fee simple).

These registers are being created to ensure that the particulars of all land which may be subject to a carbon abatement interest, and particulars relating to carbon abatement interests, will be held in a central place: the land registry.

325 Insertion of new s279A

Clause 325 inserts section 279A in the *Land Act 1994* and supports the requirement for registration under new section 32AA of the *Forestry Act 1959* and new sections 33A and 42AQ of the *Nature Conservation Act 1992*.

326 Insertion of new s280A

Clause 326 inserts section 280A in the *Land Act 1994*. The new section is required to ensure there is a noting on each title for co-existent tenures of the other tenures existence. For example, the title reference for Aboriginal land will be noted with the title reference for the co-existent national park (Aboriginal land). This section supports new section 97S of the *Land Title Act 1994*.

327 Amendment of s373E (Application of div 8B)

Clauses 327, 328 and 329 amend sections 373E and 373F of the *Land Act 1994*. Under the current provisions of the Land Act, the profit a prendre provisions are limited to land held under a lease granted for agricultural or timber plantation purposes and the natural resource product must be owned by the lessee as an improvement. The definition for improvement, as provided by the dictionary (schedule 6) of the Land Act, supports the natural resource product would need to be a "cultivation, garden, orchard or plantation".

The terms of the Carbon Credits (Carbon Farming Initiative) Bill 2011 (Commonwealth) are tenure neutral. Rather than expand the profit a prendre provisions to reserves and unallocated State land under the *Land Act 1994*, it is preferred to continue to allow a lessee under the *Land Act 1994* to enter into a profit a prendre with another person to enter onto the lease land and, for example, remove part of the cultivation, garden, orchard or plantation.

330 Insertion of new ch 6, pt 4, div 8B

Clause 330 inserts Part 8C (Carbon abatement interests) in the *Land Act 1994*.

Carbon abatement interests are to be the interest in Queensland to provide for the legal right to carry out an eligible offsets sequestration project on land in Queensland under the Carbon Credits (Carbon Farming Initiative) Bill 2011 (Commonwealth).

New section 373R provides the definitions for Part 8C.

New section 373S provides for the creation of a carbon abatement interest in land kept in the land registry under section 276 of the *Land Act 1994*.

New section 373T requires a carbon abatement interest to have Ministerial consent before registration. In making a decision on whether a carbon abatement interest may be registered, the Minister must consider whether the land will, or is likely to be used or dealt with under the *Forestry Act 1959*, *Land Act 1994* or the *Nature Conservation Act 1992* in a way that may be inconsistent with creation of the interest. The Carbon Credits (Carbon Farming Initiative) Bill 2011 (Commonwealth) requires the Crown lands Minister to provide written certification to the Commonwealth that the State will not deal with the project area in a way that is inconsistent with the carbon sequestration right.

New section 373U supports the requirements of determining an eligible carbon sequestration project under section 27 of the Carbon Credits (Carbon Farming Initiative) Bill 2011 (Commonwealth). For example, the Administrator under the Carbon Credits (Carbon Farming Initiative) Bill 2011 (Commonwealth) must be satisfied that the applicant for an eligible offsets sequestration project holds the applicable carbon sequestration right in relation to the project area.

New section 373V confirms the owner of the land may grant a carbon abatement interest to themselves if they wish to be the project proponent for an eligible sequestration project.

New section 373W provides for the amendment of a carbon abatement interest.

New section 373X provides for the surrender or removal of a carbon abatement interest, which may be required if the interest is declared under the Carbon Credits (Carbon Farming Initiative) Bill 2011 (Commonwealth) as being no longer an eligible project.

New section 373Y provides for the continuation of a carbon abatement interest from form of tenure to another. For example, unallocated State land subject to a carbon abatement interest may be dedicated under the Nature Conservation Act 1992 as a national park (recovery) and the carbon abatement interest continued as an interest in the national park (recovery).

New section 373Z provides for further dealings with the carbon abatement interest.

331 Insertion of new chp 9, pt 1J

Clause 331 inserts a transitional provision for amendments under the Waste Reduction and Recycling Act 2011. New section 521ZC applies to a profit

a prendre relating to a natural resource product registered under chapter 6, part 4, division 8B as in force immediately before the commencement of this section. Previous part 4, division 8B continues to apply for the profit a prendre as if the Waste Reduction and Recycling Act 2011 had not been enacted.

332 Amendment of sch 6 (Dictionary)

Clause 332 amends the dictionary (schedule 6) of the *Land Act 1994*.

Part 6 Amendments to the Land Title Act 1994

333 Act amended

Clause 333 confirms this part amends the *Land Title Act 1994*.

334 Insertion of new pt 6, div 4C

Clause 334 inserts Division 4C (Carbon abatement interests) in the *Land Title Act 1994*.

Carbon abatement interests are to be the interest to provide for the legal right to carry out an eligible offsets sequestration project on freehold land in Queensland under the Carbon Credits (Carbon Farming Initiative) Bill 2011 (Commonwealth).

New section 97N provides the definitions for Division 4C.

New section 97O provides for the creation of a carbon abatement interest in freehold land.

New section 97P supports the requirements of determining an eligible carbon sequestration project under section 27 of the Carbon Credits (Carbon Farming Initiative) Bill 2011 (Commonwealth). For example, the Administrator under the Carbon Credits (Carbon Farming Initiative) Bill 2011 (Commonwealth) must be satisfied that the applicant for an eligible offsets sequestration project holds the applicable carbon sequestration right in relation to the project area.

New section 97Q requires the consent of the relevant Minister before registration of a carbon abatement interest if the freehold land is a deed of

grant in trust or is a forest entitlement area. In making a decision on whether a carbon abatement interest may be registered, the Minister must consider whether the land will, or is likely to be used or dealt with under the Forestry Act 1959, Land Act 1994 or the Nature Conservation Act 1992 in a way that may be inconsistent with creation of the interest. The Carbon Credits (Carbon Farming Initiative) Bill 2011 (Commonwealth) requires the Crown lands Minister to provide written certification to the Commonwealth that the State will not deal with the project area in a way that is inconsistent with the carbon sequestration right.

New section 97R confirms the owner of the land may grant a carbon abatement interest to themselves if they wish to be the project proponent for an eligible sequestration project.

New section 97T provides for the amendment of a carbon abatement interest.

New section 97U provides for the surrender or removal of a carbon abatement interest, which may be required if the interest is declared under the Carbon Credits (Carbon Farming Initiative) Bill 2011 (Commonwealth) as being no longer an eligible project.

335 Amendment of sch 6 (Dictionary)

Clause 335 amends the dictionary (schedule 6) of the *Land Title Act 1994*

Part 7 Amendment of the Nature Conservation Act 1992

336 Act amended

Clause 336 confirms the Act being amended by this part is the *Nature Conservation Act 1992*.

337 Insertion of new ss33A and 33B

Clause 337 inserts new section 33A that requires the particulars of regulations made under sections 29, 30, 31 and 32 of the *Nature Conservation Act 1992* to be recorded in the land registry kept under the *Land Act 1994.*

Clause 337 also inserts new section 33B which confirms that a dedication, amendment or other change to a protected area under subdivision 2 takes effect on registration of the particulars of the action in the land registry. The Governor in Council, by regulation, will still need to approve any dedication, amendment or revocation but the particulars of the regulation will take legal effect on registration.

In effect, protected areas under the *Nature Conservation Act 1992* will become registered land in the same way that reserves under the *Land Act 1994* are now registered land.

In consequence, the land practice manual kept by the chief executive under section 286A of the *Land Act 1994* may be amended to provide for the development of practices for providing more consistent and efficient processes in dealing with State land under more than one Act. This is required to provide, for example, for dealing with carbon abatement interests which may burden more than one lot under more than one Act (a carbon abatement project may burden a reserve under the Land Act 1994 and a national park under the *Nature Conservation Act 1992*).

338 Insertion of new s 37A

Clause 338 inserts a new section 37A stating that the chief executive must, as soon as practicable after a lease is granted under section 34 or 35, or renewed under section 37, lodge the lease or renewed lease with the chief executive (lands) for registration.

339 Insertion of new pt 4, div 2, sdiv 4A

Clause 339 inserts new Part 4 Division 2 subdivision 4A (Carbon abatement products).

Under section 61(1) of the *Nature Conservation Act 1992*, all natural resources (which would include the right to carbon in the natural resources) in a protected area are the property of the State.

Similar to the amendments made to the *Forestry Act 1959* (clause 322), the provisions applying to carbon abatement products in new subdivision 4A are to provide for the vesting of the State's property in the owner of the land and, by registration of a carbon abatement interest, in the holder of the interest.

To be an eligible offsets sequestration project under the Carbon Credits (Carbon Farming Initiative) Bill 2011 (Commonwealth), the proponent for

the project must have the legal right to carry out the project on the land (in Queensland, be the holder of the carbon abatement interest) and hold the carbon sequestration right for the project area.

New section 39D of the *Nature Conservation Act 1992* defines the term owner for the subdivision 4A.

New section 39E provides for the chief executive to keep guidelines about the making of an application for the vesting of the carbon right in the owner of land. This provision will provide for consistency and impartiality in dealing with applications.

New section 39F provides for the owner of land to apply for the right to deal with the right to carbon (the carbon abatement product) in the land.

New section 39G provides for the making of a decision on whether the carbon abatement product should be vested in the owner who may then transfer the vested right to the grantee of the carbon abatement interest. In making a decision, the Minister must consider whether the land will, or is likely to be used or dealt with under the *Nature Conservation Act 1992* in a way that may be inconsistent with the grant if the proposed right. The Carbon Credits (Carbon Farming Initiative) Bill 2011 (Commonwealth) requires the Crown lands Minister to provide written certification to the Commonwealth that the State will not deal with the project area in a way that is inconsistent with the carbon sequestration right.

New section 39H requires the Minister to give written notice of an approved application to the registrar of titles. In receipt of such advice, the registrar must notify the title for the land that the State's carbon right in the project area has been vested in the owner of the land. Such a notification will help satisfy one of the requirements for registration of a carbon abatement interest under section 373U of the *Land Act 1994* and section 97P of the *Land Title Act 1994*.

Alternatively, if the Minister decides to refuse the application, written notice of the refusal must be given to the owner of the land.

New section 39I provides for the Minister's decision to refuse the application to be reviewed. The review will address the reasons for the making of the original decision taking into account the grounds provided by the owner of the land.

New section 39J provides for the Minister to make a review decision and to give the applicant written notice of the review decision.

340 Amendment of s 42AD (Leases, etc. over national park (Cape York Peninsula Aboriginal land))

Clause 340 amends section 42AD to state that if a lease is granted under subsection (1) of this section the chief executive must, as soon as practicable after the grant, lodge the lease with the chief executive (lands) for registration.

341 Amendment of s 42AE (Particular powers about permitted uses in national park (Cape York Peninsula Aboriginal land))

Clause 341 amends section 42AE to state that if a lease is granted under subsection (1) of this section the chief executive must, as soon as practicable after the grant, lodge the lease with the chief executive (lands) for registration.

342 Amendment of s 42AN (Leases etc. over land in indigenous joint management area)

Clause 342 amends section 42AN to state that if a lease is granted under subsection (1) of this section the chief executive must, as soon as practicable after the grant, lodge the lease with the chief executive (lands) for registration.

343 Insertion of new pt 4, div 3, sdiv 4

Clause 343 inserts a new subdivision into Part 4, division 3.

New section 42AQ requires the particulars of protected areas (Aboriginal land and Torres Strait Islander land) and indigenous joint management areas to be recorded in the land registry kept under the *Land Act 1994*

New section 42AR confirms that a dedication, amendment or other change to a protected areas (Aboriginal land and Torres Strait Islander land) or indigenous joint management areas takes effect on registration of the particulars of the action in the land registry. The Governor in Council, by regulation, will still need to approve any dedication, amendment or revocation but the particulars of the regulation will take legal effect on registration.

344 Insertion of new s 50A

Clause 344 provides a new section (s 50A) that applies if a conservation agreement is entered into, varied or replaced under this division for relevant land; or a regulation is made under section 49(3).

345 Insertion of new ss70EA and 70EB

Clause 345 inserts new sections 70EA and 70EB in the *Nature Conservation Act 1992*.

New section 70EA requires the particulars of the dedication or revocation of a forest reserve to be recorded in the land registry kept under the *Land Act 1994.*

New section 70EB confirms that a dedication or revocation of a forest reserve take effect on registration of the particulars of the action in the land registry. The Governor in Council, by regulation, will still need to approve any dedication or revocation but the particulars of the regulation will take legal effect on registration.

In effect, forest reserves under the *Nature Conservation Act 1992* will become registered land in the same way that reserves under the *Land Act 1994* are now registered land.

In consequence, the land practice manual kept by the chief executive under section 286A of the *Land Act 1994* may be amended to provide for the development of practices for providing more consistent and efficient processes in dealing with State land under more than one Act. This is required to provide, for example, for dealing with carbon abatement interests which may burden more than one lot under more than one Act (a carbon abatement project may burden a reserve under the *Land Act 1994* and a forest reserve under the *Nature Conservation Act 1992*).

346 Amendment of s 133 (Chief executive to keep register)

Clause 346 omits section 133(1)(c) to (i) and renumbers it as section 133(1)(a) to (g)

347 Insertion of new pt 12, div 4

Clause 347 inserts a new section 187 into the *Nature Conservation Act 1992* to state that this section applies to a protected area or indigenous joint management area dedicated or declared under this Act (the NC Act) as in

force immediately before commencement of the *Waste Reduction and Recycling Act 2011*.

348 Amendment of schedule (Dictionary)

Clause 348 provides that this part amends the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009*.

Part 8 Amendment of South-East Queensland Water (Distribution and Retail Restructuring) Act 2009

349 Act amended

Clause 349 provides that this part amends the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009.*

350 Amendment of s 11 (Functions)

Clause 350 amends section 11 of the Act to reflect the expansion of the trade waste provisions for distributor-retailers to apply for seepage water.

351Amendment of s 53ARB (Application of div 1)

Clause 351 amends section 53ARB of the Act to reflect the expansion of the trade waste provisions for distributor-retailers to apply for seepage water.

352 Amendment of ch 2C, hdg (Trade waste provisions for distributor-retailers)

Clause 352 amends the heading of chapter 2C of the Act to reflect the expansion of the trade waste provisions for distributor-retailers to apply for seepage water.

353 Amendment of ch 2C, pt 1, hdg (General provisions about trade waste officers)

Clause 353 amends the heading of part 1 of chapter 2C of the Act to reflect the expansion of the trade waste provisions for distributor-retailers to apply for seepage water.

354 Amendment of s 53CK (Appointment and other provisions)

Clause 354 amends section 53CK of the Act to expand the application of this provision to apply for seepage water. Specifically, this clause replaces the term trade waste officer with discharge officer. This reflects that such officers will now have functions relating to seepage water as well as trade waste.

355 Amendment of s 53CL (Functions)

Clause 355 amends section 53CL of the Act to expand the function of trade waste officers to apply to seepage water and reflect the name change of trade waste officers to discharge officers.

This clause provides functions to discharge officers, in addition to their existing trade waste functions, to (1) consider and decide seepage water approval applications; (2) monitor and enforce compliance with chapter 2, part 6 of the *Water Supply (Safety and Reliability) Act 2008* (Water Supply Act) and chapter 2, part 7 of the Water Supply Act to the extent it relates to seepage water and the distributor-retailer's sewerage infrastructure; and (3) take discharge compliance action.

356 Amendment of ch 2C, pt 2, hdg (Powers of trade waste officers)

Clause 356 amends the heading of part 2 of chapter 2C of the Act to reflect the expansion of the trade waste provisions for distributor-retailers to apply for seepage water.

357 Amendment of s 53CM (General powers of entry)

Clause 357 amends section 53CM of the Act to expand the general powers of entry for trade waste officers to apply to the officer's new seepage water functions, and reflect the name change of trade waste officers to discharge officers by the Bill.

This clause allows discharge officers to enter a place of business the subject of a seepage water approval. In addition, for the purpose of section 53CM the Bill makes it clear that the term seepage water approval includes a seepage water approval the subject of suspension under the Water Supply Act.

358 Amendment of ch 2C, pt 2, div 2, hdg (Entry to take trade waste compliance action)

Clause 358 amends the heading of division 2, part 2 of chapter 2C of the Act to reflect the expansion of the trade waste provisions for distributor-retailers to apply for seepage water.

359 Amendment of s 53CN (Power to enter)

Clause 359 amends section 53CN of the Act to expand the power of entry for a trade waste officer to take compliance action to apply to a place the subject of a seepage water approval and to reflect the name change of trade waste officer to discharge officer.

360 Amendment of s 53CO (Power to enter place subject to approved inspection program)

Clause 360 amends section 53CO of the Act to reflect the expansion by the Bill of the trade waste provisions for distributor-retailers to apply for seepage water. Specifically, this clause recognises that trade waste officers will be known as discharge officers and that their functions and powers are expanded to deal with seepage water.

361 Amendment of s 53CP (Approving an inspection program)

Clause 361 amends section 53CP of the Act to reflect the expansion by the Bill of the trade waste provisions for distributor-retailers to apply for seepage water. Specifically, this clause recognises that trade waste officers will be known as discharge officers and that their functions and powers are expanded to deal with seepage water.

362 Amendment of s 53CR (Application for warrant)

Clause 362 amends section 53CR of the Act to reflect the expansion by the Bill of the trade waste provisions for distributor-retailers to apply for

seepage water. Specifically, this clause recognises that trade waste officers will be known as discharge officers and that their functions and powers are expanded to deal with seepage water.

363 Amendment of s 53CS (Issue of warrant)

Clause 363 amends section 53CS of the Act to reflect the expansion by the Bill of the trade waste provisions for distributor-retailers to apply for seepage water. Specifically, this clause recognises that trade waste officers will be known as discharge officers and that their functions and powers are expanded to deal with seepage water. The clause also amends section 53CS in recognition that a trade waste offence will be a discharge offence.

364 Amendment of s 53CT (Application by electronic communication and duplicate warrant)

Clause 364 amends section 53CT of the Act to reflect the expansion by the Bill of the trade waste provisions for distributor-retailers to apply for seepage water. Specifically, this clause recognises that trade waste officers will be known as discharge officers and that their functions and powers are expanded to deal with seepage water.

365 Amendment of s 53CV (Entry with consent)

Clause 365 amends section 53CB of the Act to reflect the expansion by the Bill of the trade waste provisions for distributor-retailers to apply for seepage water. Specifically, this clause recognises that trade waste officers will be known as discharge officers and that their functions and powers are expanded to deal with seepage water.

366 Amendment of s 53CW (Entry under warrant)

Clause 366 amends section 53CW of the Act to reflect the expansion by the Bill of the trade waste provisions for distributor-retailers to apply for seepage water. Specifically, this clause recognises that trade waste officers will be known as discharge officers and that their functions and powers are expanded to deal with seepage water.

367 Amendment of s 53CX (Other entries)

Clause 367 amends section 53CX of the Act to reflect the expansion by the Bill of the trade waste provisions for distributor-retailers to apply for seepage water. Specifically, this clause recognises that trade waste officers will be known as discharge officers and that their functions and powers are expanded to deal with seepage water.

368 Amendment of s 53CY (Application of div 6)

Clause 368 amends section 53CY of the Act to reflect the expansion by the Bill of the trade waste provisions for distributor-retailers to apply for seepage water. Specifically, this clause recognises that trade waste officers will be known as discharge officers and that their functions and powers are expanded to deal with seepage water.

369 Amendment of s 53CZ (General powers after entry)

Clause 369 amends section 53CZ of the Act to reflect the expansion by the Bill of the trade waste provisions for distributor-retailers to apply for seepage water. Specifically, this clause recognises that trade waste officers will be known as discharge officers and that their functions and powers are expanded to deal with seepage water.

370 Amendment of s 53DA (Failure to help trade waste officer)

Clause 370 amends the heading of section 53DA of the Act to reflect the expansion of the trade waste provisions for distributor-retailers to apply to seepage water.

371 Amendment of s 53DB (Application of div 7)

Clause 371 amends section 53DB of the Act to reflect that division 7, Personal details requirements, now applies for seepage water. As such, this section will now refer to a discharge officer and discharge offence instead of trade waste officer and trade waste offence.

372 Amendment of s 53DC (Power to require name and residential address)

Clause 372 amends section 53DC of the Act to reflect the expansion by the Bill of the trade waste provisions for distributor-retailers to apply for

seepage water. Specifically, this clause recognises that trade waste officers will be known as discharge officers and that their functions and powers are expanded to deal with seepage water.

373 Amendment of s 53DD (Power to require evidence of name or residential address)

Clause 373 amends section 53DD of the Act to reflect the expansion by the Bill of the trade waste provisions for distributor-retailers to apply for seepage water. Specifically, this clause recognises that trade waste officers will be known as discharge officers and that their functions and powers are expanded to deal with seepage water.

374 Amendment of s 53DE (Exception if trade waste offence not proved)

Clause 374 amends section 53CE of the Act to reflect the expansion by the Bill of the trade waste provisions for distributor-retailers to apply for seepage water. Specifically, this clause recognises that trade waste officers will be known as discharge officers and that their functions and powers are expanded to deal with seepage water. The clause also amends section 53DE in recognition that a trade waste offence will be a discharge offence.

375 Amendment of s 53DF (Duty to avoid damage)

Clause 375 amends section 53DF of the Act to reflect the expansion by the Bill of the trade waste provisions for distributor-retailers to apply for seepage water. Specifically, this clause recognises that trade waste officers will be known as discharge officers and that their functions and powers are expanded to deal with seepage water.

376 Amendment of s 53DG (Notice of damage)

Clause 376 amends section 53DG of the Act to reflect the expansion by the Bill of the trade waste provisions for distributor-retailers to apply for seepage water. Specifically, this clause recognises that trade waste officers will be known as discharge officers and that their functions and powers are expanded to deal with seepage water.

377 Amendment of s 53DH (Content of notice of damage)

Clause 377 amends section 53DH of the Act to reflect the expansion by the Bill of the trade waste provisions for distributor-retailers to apply for seepage water. Specifically, this clause recognises that trade waste officers will be known as discharge officers and that their functions and powers are expanded to deal with seepage water.

378 Amendment of ch 2C, pt 3, hdg (Trade waste compliance notices)

Clause 378 amends the heading of part 3, chapter 2C to reflect the expansion of the trade waste provisions for distributor-retailers to apply for seepage water.

379 Amendment of s 53DJ (Who may give a trade waste compliance notice)

Clause 379 amends section 53DJ of the Act to reflect the expansion by the Bill of the trade waste provisions for distributor-retailers to apply to seepage water. Specifically, this clause renames a trade waste compliance notice as a discharge compliance notice and also reflects that trade waste officers will now be known as discharge officers.

380 Amendment of s 53DK (Requirements for trade waste compliance notice)

Clause 380 amends section 53DK of the Act to expand a trade waste compliance notice to apply in relation to seepage water approvals. This clause renames a trade waste compliance notice as a discharge compliance notice and also reflects that trade waste officers will now be known as discharge officers. The clause does not change the requirements of a trade waste, now discharge compliance notice.

381 Amendment of s 53DL (Offence to contravene trade waste compliance notice)

Clause 381 amends section 53DL of the Act to reflect the expansion of a trade waste compliance notice to apply in relation to seepage water approvals. This clause renames a trade waste compliance notice as a discharge compliance notice.

382 Amendment of s 53DM (Action distributor-retailer may take if trade waste compliance notice contravened)

Clause 382 amends section 53DM of the Act to reflect the expansion of the trade waste provisions for distributor-retailers to seepage water. Specifically, this provision replaces the term trade waste compliance action with discharge compliance action to reflect that a compliance action may be taken for contravention of a discharge compliance notice relating to seepage water.

383 Amendment of s 53DN (Recovery of costs of trade waste compliance action)

Clause 383 amends section 53DN of the Act to reflect the expansion of the trade waste provisions for distributor-retailers to seepage water. Specifically, this clause allows a distributor-retailer to recover any reasonable expense in relation to a discharge compliance action, which includes a compliance action relevant to a seepage water approval.

384 Amendment of s 100D (Application of Water Supply Act internal and external review provisions for decisions under Act)

Clause 384 amends section 100D of the Act to reflect the expansion of the trade waste provisions for distributor-retailers to seepage water.

385 Insertion of new ch 6, pt 5

Clause 385 inserts new chapter 6, part 5 of the Act.

‘Part 5 Transitional provision for Waste Reduction and Recycling Act 2011

‘118 Trade waste officers

New section 118 sets out transitional arrangements to provide for a person appointed as a trade waste officer by a distributor-retailer prior to commencement of the Bill. For an appointment in force immediately before commencement of this section, the person appointed as a trade

waste officer is taken to be appointed as a discharge officer. This means the functions and powers of discharge officers relating to seepage water will automatically apply to existing trade waste officers. In addition, this section makes it clear that if a person's appointment as a trade waste officer was subject to a condition, including a suspension, then the continued appointment as a discharge officer is also subject to the condition.

386 Amendment of sch (Dictionary)

Clause 386 provides updates to the dictionary to reflect changes made by the Bill.

The definitions for *trade waste compliance action*, *trade waste compliance notice*, *trade waste offence* and *trade waste officer* are omitted by the Bill.

New definitions for *discharge compliance action, discharge compliance notice, discharge offence, discharge officer, seepage water*, and *seepage water approval* are included by the Bill.

The definition for *approval holder* is amended by the Bill.

Part 9 Amendment of Water Act 2000

387 Act amended

Clause 387 provides that this part amends the *Water Act 2000*.

388 Insertion of new Ch8, pt 3, div 1, hdg

Clause 388 inserts the new division heading 'Division 1, Preliminary' into chapter 8, part 3 of the Act.

389Amendment of s 984 (Definitions for pt 3)

Clause 389 amends section 984 of the Act to include definitions for the purpose of part 3 of chapter 8 of the Act.

390 Insertion of new ch 8, part 3, div 2, hdg

Clause 390 inserts the new division heading 'Division 2, Particular water allocation holders' in chapter 8, part 3 of the Act.

391 Amendment of s 986 (Compensation for reduced value of entitlement to water)

Clause 391 amends the heading of section 986 (Compensation for reduced value of entitlement to water) to 'Particular reductions in allocation's value'. The clause also amends section 986 of the Act to reflect the inclusion of the National Water Initiative compensation framework in the Bill. Under the Bill, the compensation framework inserted by Chapter 8, part 3, Division 3 is an alternative to the compensation framework under existing section 986. When a water access entitlement becomes regulated under a water resource plans or interim water resource plans to which new section 986A applies, the compensation framework under section 986 will no longer apply to the that water access entitlement. The only exception to this occurs under new section 986G(3), if the Commonwealth has not provided funding to meet its obligations to supplement compensation and, within the Queensland Murray Darling Basin area, pay the State's share of liability for a reduction, unless the reduction is the result of a change in State policy.

392 Insertion of new ch 8, pt 3, div 3

Clause 392 inserts the division, 'Division 3, Particular water access entitlement owners', after section 986 of the Act. The new division provides a framework for compensation payable for reductions in the value of water entitlements, in accordance with the framework under National Water Initiative.

Division 3 Particular water access entitlement owners

Subdivision 1 Preliminary

New section 986A Application of div 3

New section 986A provides that this division applies to:

- a water access entitlement that is regulated under a water resource plan within the area of the Murray-Darling Basin;
- interim water resource plans under the Commonwealth *Water Act 2007*; or

- another water resource plan where the area is prescribed by regulation.

The division applies to these plans where a change is made to such a plan, or a plan is replaced by another plan, that reduces the reduces the long term sustainable diversion limit and thereby reduces the value of the entitlement or the water that may be taken under the entitlement. In these circumstances compensation may be payable under this division.

This section makes it clear that compensation is not payable in the following circumstances:

- the change increases the total amount of water available under the water resource plan;
- the change is required to give effect to a court decision;
- the change is for the purpose of restoring water to the environment because of natural decreases in water availability within an area to which a water resource plan applies, including, for example, a reduction resulting from climate change, drought or bush fires;
- the water access entitlement is reduced by less than 3% and for the purpose of providing additional water to the environment because of new scientific knowledge that demonstrates that the amount previously allocated to the environment is inadequate.

Subdivision 2 Compensation for a particular changes for the environmental update purpose

New section 986B Compensation entitlement

New section 986B provides that the owner of the water access entitlement is entitled to be paid reasonable compensation by the State, in accordance with the framework outlined in this section, for a reduction because new scientific knowledge that demonstrates the amount previously allocated to the environment is inadequate. However, compensation is subject to the State having in force an agreement with the Commonwealth and the Commonwealth providing funding to meet its obligations under the agreement (see new section 986G).

New section 986C Designated plans and replacements

New section 986C provides that the framework for compensation for reductions attributed to new knowledge for designated plans (plans within the Queensland Murray-Darling Basin area) and replacements is:

1. no compensation is payable for a reduction 3% or less
2. for water resource plans within the Murray-Darling Basin, compensation is payable for a reduction of more than 3% over any 10-year period starting after the end of the period for which the first water resource plan relating to the area for which the water access entitlement applies was in force
3. however, only one third of the compensation payable for a reduction of more than 3%, but not more than 6%, over any relevant 10-year period is liable to be paid;
4. also, only one half of the compensation payable for a reduction of more than 6% over any relevant 10-year period is liable to be paid.

New section 986D Prescribed area plans

New section 986D provides that the framework for compensation for reductions attributed to new knowledge for prescribed water resource plan areas (these will be areas outside the Queensland Murray-Darling Basin area) is:

1. no compensation is payable for a reduction 3% or less;
2. for water resource plans outside the Murray-Darling Basin that are brought under the new compensation framework by regulation, compensation is payable for a reduction of more than 3% over any 10-year period starting after the making of the regulation.
3. however, in the case of 2, 3 or 4 above, only one third of the compensation payable for a reduction of more than 3%, but not more than 6%, over any relevant 10-year period is liable to be paid
4. also, in the case of 2, 3 or 4 above, only one half of the compensation payable for a reduction of more than 6% over any relevant 10-year period is liable to be paid.

New section 986E Interim water resource plans

New section 986E provides that the framework for compensation for reductions attributed to new knowledge for interim water resource plans is:

1. no compensation is payable for a reduction 3% or less
2. for interim water resource plans, compensation is payable for a reduction of more than 3% over any 10-year period starting after the making of the relevant plan for the management of water by the Minister
3. however, in the case of 2, 3 or 4 above, only one third of the compensation payable for a reduction of more than 3%, but not more than 6%, over any relevant 10-year period is liable to be paid
4. also, in the case of 2, 3 or 4 above, only one half of the compensation payable for a reduction of more than 6% over any relevant 10-year period is liable to be paid.

Subdivision 3 Compensation for particular policy changes

New section 986F Compensation entitlement

New section 986F provides that reasonable compensation is payable to the holder of a water access entitlement for a reduction in the water available under a water access entitlement through a change to, or the replacement of, a water resource plan which because of a change State government policy. To make such a change easily identifiable, the Bill requires that the water resource plan state that such a change is a change in State government policy. Also, the Bill makes it clear that a change in State government policy does not include a change to reflect a change in Commonwealth government policy. This is because the Commonwealth would be liable to pay compensation in this case.

Subdivision 4 Restrictions on compensation entitlement

New section 986G Restrictions

New section 986G provides that the new compensation framework under the new chapter 8, part 3, division 3 only applies while an agreement is in force between the State and the Commonwealth for:

- supplementing the payment of compensation under this section; and
- paying the States share of liability in the Murray Darling Basin (except where the liability results from State policy)

A separate agreement would be required to apply this section to water access entitlements in the Murray-Darling Basin as for water access entitlements in other parts of the State. If the Commonwealth has not provided funding to meet its obligations under these agreements, no compensation is payable under this section by the State. Note, compensation may still be payable under section 986 of the Act.

Division 4 Miscellaneous provisions

New section 986H Regulation-making power

New section 986H provides that the basis on which compensation covered by the National Water Initiative risk assignment framework is to be calculated and the manner in which the compensation will be paid are as prescribed by regulation.

New section 986I Water resource plan to identify particular changes

New section 986I requires that changes made to a water resource plan for the purposes of:

- clause 49 of the National Water Initiative; or
- changes that are for the purpose of restoring water to the environment because of a decrease in natural water availability within an area to which a water resource plan applies, including,

for example, a decrease resulting from climate change, drought or bush fires be identified in the relevant water resource plan;

are to be identified as a change for that purpose in the water resource plan.

The purpose of the new section 986C is to ensure that water access entitlement holders can identify whether a change will result in compensation and, of so, whether a claim should be made to the State or to the Commonwealth. It is intended that a change in the context of this section would include the circumstance where a plan is replaced, and the replacement plan includes a change, the subject of this section, from the plan it is replacing.

New section 986J Making water management plans by declaration

New section 986J empowers the Minister, by gazette notice, to declare that particular instruments are made into a plan for the management of water. The gazettal of instruments does not affect the existence or operation of the instruments identified. Any rights, liabilities, obligations or information under the plan are the same as under the instruments identified in the gazette notice.

The plan for the management of water does not change or duplicate any rights, liabilities, obligations or information under the instruments.

The purpose of making the plan for the management of water is so that it may be eligible to be an interim water resource plan under the Commonwealth *Water Act 2007*. This provides a mechanism for making water within the area to which the interim water resource plan applies eligible for voluntary buyback arrangements under the *Water for the Future* program and compensation under new section 986A, if appropriate.

Part 10 Amendment of Water Supply (Safety and Reliability) Act 2008

393 Act amended

Clause 393 provides that this part amends the *Water Supply (Safety and Reliability) Act 2008*.

394 Insertion of new ch 3, pt 9A, div 4A

Clause 387 inserts a new division 4A in part 9A of chapter 3 of the Act to provide for coal seam gas recycled water emergency releases.

'Division 4A Provisions for CSG emergency releases

'329GA What is a CSG emergency release

New section 329GA provides for what is a CSG emergency release. In accordance with this section the release of coal seam gas recycled water directly or indirectly into a water source by a CSG entity is considered a CSG emergency release in certain circumstances.

These circumstances include:

- Where the release of water is necessary to avoid or respond to an emergency situation; and
- Where the release may impact on the drinking water supply of a drinking water service provider; and
- Where the release is authorised or required under a transitional environmental program, environmental protection order or emergency direction under the *Environmental Protection Act 1994* (Environmental Protection Act); and
- If the CSG entity complies with the Environmental Protection Act authorisation.

This section makes it clear that a CSG emergency release may consist of a one off release or series of releases, however only if the one off release or series of releases continue for a combined period of 12 months or less.

This section also defines ***CSG entity*** to mean an entity who is the holder of a CSG environmental authority.

329GB Relationship with Environmental Protection Act 1994 for CSG emergency release

New section 329GB provides for the circumstance an authorisation under the Environmental Protection Act for a CSG emergency release is inconsistent with a condition or requirement of a recycled water management plan or an exclusion decision under the Act.

In these circumstances, the authorisation under the Environmental Protection Act prevails to the extent of any inconsistency. This could result in the holder operating contrary to the conditions of a recycled water management plan or exclusion decision.

The Bill provides that sections 197 and 199 do not apply to the provider for the CSG emergency release to the extent the provider complies with the Environmental Protection Act authorisation for the release.

329GC Obligations for continued release of recycled water after CSG emergency release

New section 329GC provides for the circumstance when a CSG emergency release becomes a supply of recycled water under a CSG recycled water scheme, and it is intended or anticipated that further releases (supply) may continue to happen after this.

In this circumstance this section requires recycled water provider or scheme manager to either prepare a recycled water management plan for approval by the regulator or apply for an exclusion decision within three months of the CSG emergency release becoming the supply of recycled water.

This section provides an exemption from the offence, under section 196, for supply of recycled water without an approved recycled water management plan for:

- the three month period in which the provider must prepare the recycled water management plan or apply for an exclusion decision, and
- subsequently until an information notice is given for the regulators decision on the providers application.

Under this section the three month period is referred to as the compliance period. This section defines ***compliance period*** to mean 3 months from the day the CSG emergency release becomes the supply of recycled water under a CSG recycled water scheme.

395 Amendment of sch 3 (Dictionary)

Clause 395 amends the Dictionary.

The definition for *CSG environmental authority* is omitted by the Bill and replaced with a new definition of CSG environmental authority.

A definition for *CSG emergency release* is included: ***CSG emergency release*** see section 329GA.

A definition of *CSG environmental authority* is included: ***CSG environmental authority*** means a coal seam gas environmental authority within the meaning of the *Environmental Protection Act 1994*, section 310D.

A definition of *EP Act authorisation* is included:

EP Act authorisation, for a CSG emergency release, means—

(a) a transitional environmental program under the *Environmental Protection Act 1994*, if the program contains public health conditions for the release; or

(b) an environmental protection order issued under the *Environmental Protection Act 1994,* chapter 7, part 5, if the order contains public health conditions for the release; or

(c) a direction or an emergency direction given under the *Environmental Protection Act 1994*, section 467 or 468 requiring the release.

A definition of *public health conditions* is included: ***public health conditions***, of an EP Act authorisation for the release of coal seam gas water, means conditions or requirements—

(a) imposed to protect public health; and

(b) about assessing and minimising any impacts of the release on the drinking water supply of a drinking water service provider.

The clause amends the definition of *supply* to make it clear that the release of recycled water, directly or indirectly, into a water source, if the recycled water is used by a drinking water service provider in a drinking water service, is not considered the supply of recycled water if the release is a CSG emergency release. This effectively means that the offence relating to the supply of recycled water without a recycled water management plan or an exclusion decision does not apply while the release is a CSG emergency release.

Division 3 Amendments about seepage water

396 Amendment of ch 2, pt 6, hdg (Trade waste)

Clause 396 inserts and seepage water approvals after waste.

397 replacement of s 180 (Trade waste approvals)

Clause 397 amends section 180 of the Act to apply to approvals for the discharge of seepage water in addition to trade waste approvals. This clause amends section 180 to allow a sewerage service provider under the Act to give a person a seepage water approval to authorise the discharge of seepage water into their sewerage infrastructure.

Significantly, this section provides that a seepage water approval may only be given for seepage water other than seepage water from mining activities or petroleum activities within the meaning of the *Environmental Protection Act 1994*.

The existing conditions under which the sewerage service provider may give the approval are retained. However, the existing condition requiring a sewerage service provider to be satisfied that the sewerage treatment plant is capable of treating the waste is expanded to reflect seepage water to ensure the plant is capable of treating the discharge.

This clause also provides that a sewerage service provider can not give a seepage water approval if the regulator has given the sewerage service provider a regulator notice prohibiting the sewerage service provider from giving that type of approval.

398 Amendment of s 181 (Approval may be conditional)

Clause 398 amends section 181 of the Act to expand the application of the provision to seepage water approvals. This clause allows the conditions that can currently be placed on a trade waste approval to be applied to a seepage water approval. It also makes it clear that conditions may include permissible limits of salinity and that a condition may include works that must be constructed for the treatment or storage of waste. In addition, as currently required for trade water approvals, this clause provides that if the regulator gives a notice requiring the sewerage service provider impose particular conditions on a seepage water approval, then the approval must be given subject to those conditions.

399 Amendment of s 182 (Criteria for suspending or cancelling trade waste approval)

Clause 399 amends section 182 of the Act to expand the application of the provision to seepage water approvals. This clause allows a sewerage service provider to suspend or cancel a seepage water approval in the same circumstances currently provided to suspend or cancel a trade waste approval, as well as an ability to suspend or cancel a seepage water approval because the seepage water has stopped.

400 Amendment of s 183 (Suspending or cancelling trade waste approval)

Clause 400 amends the heading of section 183 of the Act to reflect the application of the trade waste provisions to seepage water.

401 Amendment of s 184 (Immediate suspension or cancellation)

Clause 401 amends section 184 of the Act to expand its application to seepage water approvals.

402 Amendment of s 185 (Amending trade waste approval)

Clause 402 amends section 185 of the Act to expand its application to seepage water approvals.

403 Amendment of s 193 (Discharging particular materials)

Clause 403 amends section 193 of the Act to apply the offence, for discharge of trade waste into a sewerage service provider's infrastructure without approval, to the discharge of seepage water without approval. This is not considered to be a new offence as such an activity would currently attract an offence of the same number of penalty units under subsection 193(2) of the Act, as seepage water is currently a prohibited substance. This is simply moving the offence to subsection 193(1) to reflect that seepage water is now to be managed in the same way as trade waste.

This amendment also includes a note to make it clear that a sewerage service provider can not give a person an approval, under section 180, to discharge seepage water from a mining activity or petroleum activity,

within the meaning of the *Environmental Protection Act 1994*, into sewerage infrastructure.

404 Amendment of s 330 (Notice to sewerage service provider)

Clause 404 amends section 330 of the Act to expand its application to seepage water. This clause allows the regulator to give a notice to a sewerage service provider prohibiting the provider from giving a seepage water approval, or requiring the provider to impose particular conditions on the approval. The power to give a notice in relation to a seepage water approval is the same as the existing power in relation to trade waste approvals.

405 Amendment of s 331 (Report about compliance with notice)

Clause 405 amends section 331 of the Act to reflect the application of the trade waste provisions to seepage water. Specifically, what is currently referred to as a trade waste report will now be referred to more generally by the provision as report.

406 Amendment of sch 1 (Prohibited substances)

Clause 406 amends schedule 1 of the Act to remove seepage water as a prohibited substance under the Act. This reflects the expansion of the trade waste provisions by the Bill to apply to seepage water.

407 Amendment of sch 3 (Dictionary)

Clause 407 amends the dictionary to include and amend definitions relevant to the Bill.

The Bill omits the current definition of trade waste approval and provides a new definition: ***trade waste approval*** see section 180(1)(a).

A definition is included for *seepage water*: ***seepage water*** means water that seeps from the ground into that part of a structure that is built below ground level. The Bill provides examples of structures built below ground level, including tunnels for traffic, underground carparks, basements, lift wells.

A definition is included for seepage water approval: ***seepage water approval*** see section 180(1)(b).