Waste Reduction and Recycling Amendment Bill 2017

Explanatory Notes

Short title

The short title of the Bill is the Waste Reduction and Recycling Amendment Bill 2017.

Policy objectives and the reasons for them

The Bill amends the *Waste Reduction and Recycling Act 2011*

The objectives of the Bill are to:

- provide a head of power for the introduction of a:
    - lightweight plastic shopping bag ban;
    - container refund scheme for Queensland; and
- amend provisions in relation to End of Waste Codes to:
    - enable greater control on the use of end of waste resources, when necessary, to reduce the potential for environmental harm; and
    - streamline and clarify administrative arrangements for end of waste approvals.

The plastic shopping bag ban and the container refund scheme both require a legislative framework in order to implement these initiatives. The legislation ensures that:

- for plastic bags: all retailers are obliged to meet the requirement not to supply a banned plastic shopping bag; and
- for containers: that all beverage manufacturers that manufacture a beverage product in a container covered by the scheme are taking a stewardship responsibility to managing the empty containers and paying for the costs of the scheme; and that consumers have reasonable access to a refund when they return eligible empty containers to a container refund point.

End of Waste Codes

The end of waste framework entered into force on 8 November 2016 and replaced the beneficial use approval framework. During stakeholder consultations on potential regulatory provisions to clarify and support the administration of the end of waste framework, several concerns with the framework under the *Waste Reduction and Recycling Act 2011* were highlighted. The main issue concerned the inability to control the use of end of waste resources.

The intention of the end of waste framework is for a waste to be approved for use as a resource, provided it meets very strict quality criteria that minimise the potential for environmental harm when it was used as designated.

The need for controls on the end-user of the resource would therefore be unnecessary as the resource would be considered to be no different to another virgin material or non-waste resource. However, in certain cases (e.g. using biosolids from

sewage treatment plants as a soil fertiliser), stipulating strict quality criteria could increase the treatment costs in order to meet the quality criteria, which could be detrimental to the overall use of the resource.

This may lead to unintended outcomes, including the increased disposal of the waste to landfill. The amendments introduced by the Bill seek to enable better control of the end use of resources when necessary, to reduce the potential for environmental harm, whilst encouraging appropriate and acceptable uses of waste materials.

Achievement of policy objectives

The objectives are achieved by:

- amending Chapter 4 of the *Waste Reduction and Recycling Act 2011* to introduce a new:
    - Part 3A Banned plastic shopping bags;
    - Part 3B Beverage container refund scheme;
    - Part 5 Product Responsibility Organisation.
- amending Chapter 8 of the *Waste Reduction and Recycling Act 2011*

Alternative ways of achieving the objectives

There are no other viable alternatives that would achieve the policy objectives other than the proposed Bill. Neither a Container Refund Scheme nor plastic shopping bag ban can be introduced without the head of power that is provided through these amendments.

The current provisions of the Act specifically prohibit the chief executive from applying end user conditions on an End of Waste Code, making Act amendments to allow the application of end user conditions the only option.

Estimated Cost of Government Implementation

Any costs to government associated with implementation of the plastic bag ban are expected to be minimal. The costs to government are largely expected to be in the preparation and delivery of community and retailer awareness of the ban. Government has entered into a partnership with the National Retail Association to undertake extensive retailer engagement in the lead up to the introduction of the ban on 1 July 2018 and the Department of Environment and Heritage Protection will also undertake broad community messaging.

In relation to the container refund scheme some government expenditure will be required to deliver broad public messaging in the lead up to the 1 July 2018 commencement to provide information about the types of containers to which a refund applies and how the scheme will work.

However, it is also anticipated that once the Product Responsibility Organisation is appointed to run the scheme this entity will fulfil and maintain the communication and awareness role about the scheme and these costs will be borne as part of the operational costs of the scheme.

In the lead up to 1 July 2018 the government has identified there may be a need to provide some small-scale infrastructure grants to community groups and remote local governments and communities. These grants may include for the provision of collection cages or small-scale balers to ensure the efficient collection and transport of containers from remote locations.

There not expected to be any additional costs to government associated with the end of waste amendments.

Consistency with Fundamental Legislative Principles (FLPs)

The Bill is generally consistent with fundamental legislative principles. Potential breaches of Fundamental Legislative Principles are addressed below.

Legislation should not adversely affect rights and liberties, or impose obligations, retrospectively

Clause 24 Insertion of new ch 8A

Clause 24 of the Bill, which inserts a new section 173ZF, potentially has a degree of inconsistency with the principle that legislation should not impose obligations retrospectively. The new section enables the chief executive to request information from a previous holder of an approval about an approval that was transferred to another person, cancelled or expired within the last 5 years of requesting the information.

The limit of 5 years is consistent with other sections of the *Waste Reduction and Recycling Act 2011* not related to end of waste and other environmental legislation, such as the *Environmental Protection Act 1994* and the Environmental Protection Regulation 2008, that require persons to retain records for at least 5 years.

Additionally, clause 23 of the Bill, which inserts section 173K, enables conditions to be placed on the holder of an end of waste approval, which may include a requirement to keep records related to the approval for up to 5 years. A person would therefore be made aware of their obligation in the end of waste approval. Therefore the amendments will not impose an unreasonable obligation on the holder of an end of waste approval.

Consultation

In June 2015 the Queensland Government announced that it would investigate the feasibility of the introduction of a state-based container scheme for Queensland. An Implementation Advisory Group was established to assist with the investigation. At the same time the government announced that it would also investigate the introduction of a lightweight plastic shopping bag ban.

In July 2016 the Queensland Government announced its decision to introduce a Container Refund Scheme and in November 2016 announced the introduction of a lightweight plastic shopping bag ban in Queensland.

A discussion paper 'Implementing a lightweight plastic shopping bag ban in Queensland' was released for public consultation on 25 November 2016. During the consultation period, which closed on 20 February 2017 over 26 000 submissions were received. Over 96% of submissions supported the introduction of the ban on 1 July 2018 and over 60% of submissions supported the inclusion of biodegradable plastic shopping bags in the ban.

On 17 February 2017 the discussion paper 'Implementing Queensland's Container Refund Scheme' was released for public consultation. Submissions closed on 20 March 2017 with over 2600 submissions received during this period.

There is overwhelming public support for the introduction of a container refund scheme. While the beverage industry does have concerns regarding the potential impact of a scheme, the sector expressed a willingness and desire to work with government to help design an efficient and effective scheme to achieve the outcomes of reduced litter, increased recycling and opportunities for communities and social enterprise organisations.

Extensive consultation has also been undertaken through the Container Refund Scheme Implementation Advisory Group whose membership comprises of representation from:

- Australian Beverages Council
- Australian Council of Recycling
- Australian Food and Grocery Council
- Boomerang Alliance
- Container Deposit System Operators
- Local Government Association of Queensland
- National Association of Charitable Recycling Organisations
- National Retail Association
- Scouts Queensland
- Waste Management Association of Australia
- Waste Recycling Industry Association (Qld)

Consultation on the detail around the technical design elements and implementation has also been undertaken through four Technical Working Groups: Local Government; Resource Recovery; Beverage and Retail; and Community and Environment; as well as through bilateral discussions.

No public consultation was undertaken on the draft Bill. However, targeted and limited stakeholder consultation on the exposure draft was undertaken with the Advisory Group on 30 May 2017. Consultation with state government departments was undertaken prior to introduction of the Bill.

As part of the consultation process with key stakeholders it was identified that members of the Implementation Advisory Group have divergent views around certain aspects of the scheme. This includes mandating in legislation the establishment of collection zones across the state and requirements for monopoly Network Operators for these zones.

The Bill does not legislate a requirement for Network Operators; instead the entity running the scheme is able to enter into agreements with individual container refund point operators or with an entity acting on behalf of a number of refund point operators.

This approach provides flexibility to ensure that a network of container refund points is established across the state without restricting contracting arrangements to a particular zone or through a particular operator. However, reverse vending machine (RVM) suppliers and some parts of the waste and resource recovery industry have expressed concern that this does not provide enough certainty for the:

- community in knowing that there will be a container refund point available to them; and
- technology providers in being able to roll out RVM technology to provide for a modern and innovative scheme.

Community organisations and some waste and resource recovery representatives see competition and the lack of legislated monopoly Network Operators and zones as a positive for existing operators as it provides a more market-driven approach and doesn't lock particular players out of participating in the scheme if a monopoly Network Operator does not contract with them. It also makes it easier for and

organisation or company to provide state-wide coverage within their organisational framework without having to enter into separate arrangements within each zone.

The consultation process highlighted that competing interests within the same sector make the development of a definitive sectoral position on some issues difficult.

The scheme design elements and Bill provisions attempt to address concerns that had been raised around:

- providing state wide consumer convenience and access to the refund;
- dealing with beverage manufacturers and existing recycling operators fairly and equitably;
- minimising the potential impact on existing kerbside recycling services while providing opportunities for people in areas with no kerbside recycling; and
- encouraging and allowing for the uptake of innovation and technology

End of Waste Code

The amendments to the end of waste framework are largely in response to concerns raised by stakeholders during consultations conducted in late 2016 and early 2017. During the process to develop the regulations to support end of waste in September 2016, stakeholders were consulted, including those operating under the then beneficial use approval framework, and peak bodies representing waste generators, and the waste and resource recovery industry. Out of this process, a number of concerns about the provisions under the *Waste Reduction and Recycling Act 2011* were highlighted.

In February 2017, the end of waste framework was presented to a forum of stakeholders from the waste and resource recovery industry forum facilitated by the Waste Recycling Industry Association of Queensland (WRIQ). During this event, concerns with the end of waste framework were raised and reiterated, particularly around the inability to control the end use of resources under the framework.

In response to these concerns, potential amendments to the *Waste Reduction and Recycling Act 2011* were identified and discussed bilaterally with several peak body stakeholders during April and May 2017.

Peak bodies consulted included the Australian Council of Recycling, Australian Organics Recycling Association, Australian Sugar Milling Council, Australian Tyre Recyclers Association, Cement Concrete and Aggregates Australia, Queensland Farmers Federation, Queensland Resources Council, Waste Management Association of Australia, Waste Recycling Industry Association Queensland.

Consistency with legislation of other jurisdictions

Plastic shopping bag ban

Four other states and territories have a plastic shopping bag bans in place covering single-use lightweight plastic shopping bags. The provisions are consistent with the plastic bag ban legislation in other jurisdictions where a ban applies, with the exception that Queensland's ban also covers biodegradable plastic shopping bags. This is because these bags have the same potential impact on the environment and wildlife as a 'traditional' plastic bag if they are littered.

The Bill also provides for a regulation to prescribe that a different thickness of plastic bag, or different type of plastic bag, may be prescribed in regulation as a banned bag – or as a type that is not a banned bag.

This allows for thicker single-use plastic shopping bags to be included in the ban if the review finds that slightly thicker single-use bags are being provided as an alternative to the single-use lightweight bag. It also allows for regulation to declare that a certain type of bag is not a banned bag. This is in recognition of the fact that technologies may change that mean a biodegradable bag, for example, may be a suitable alternative in the future.

Container refund scheme

South Australia and the Northern Territory are currently the only Australian jurisdictions with established container schemes. A NSW scheme will commence on 1 December 2017, closely followed by the ACT and Western Australia.

The amendments provide consistency between schemes in relation to the amount of refund to be provided, and specifically consistency with the NSW scheme around the scope of containers included and excluded and the approved refund marking for the containers. The amendments are consistent with other legislation in that a scheme governance framework is established; however the governance arrangements are significantly different between jurisdictions.

End of Waste Codes

New South Wales, South Australia, and Victoria have legislation that provides for the reclassification of a waste into a resource or a product for a beneficial use. However, each jurisdiction achieves the reclassification by different means.

In all cases, each jurisdiction has the ability to put conditions on the end user of the resource, to ensure that the use or management of the resource is not likely to result in unacceptable risks of environmental harm.

Notes on provisions

Short title

Clause 1 states that the Act should be cited as the *Waste Reduction and Recycling Amendment Act 2017*.

Commencement

Clause 2 provides for commencement of section 4, to the extent that it inserts the following provisions, on 1 July 2018—

- new sections 99D and 99E;
- new section 99P;
- new chapter 4 part 3B, division 3, subdivisions 1 and 2;
- new sections 99ZB and 99ZH.

Subsection (2) provides that the following provisions commence on proclamation—

- section 4, to the extent that it inserts new chapter 4, part 3B, division 5;
- section 34, to the extent it inserts new sections 307.

Act amended

Clause 3 states that this Act amends the *Waste Reduction and Recycling Act 2011*.

Insertion of new ch 4, pts 3A and 3B

Clause 4 amends Chapter 4 (Priority wastes and resources) of the *Waste Reduction and Recycling Act 2011* to insert new provisions relating to the introduction of a lightweight plastic shopping bag ban (part 3A) and a container refund scheme (part 3B).

For Chapter 4, *insert*—

Part 3A Banned plastic shopping bags

99A Objects of Part

The purpose of this section is to establish the objects for this part. The new section states that the objects are to:

- reduce the amount of plastic pollution by reducing the number of plastic bags that become waste and enter the environment as litter; and
- encourage retailers and consumers to consider whether a carry bag is necessary in the first instance and if a bag is needed then to use alternative shopping bags.

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

The purpose of this section is to define what is meant by a ***banned plastic shopping bag*** and what is meant by an acceptable ***alternative shopping bag*** that can be used to replace the banned bag.

A *banned plastic shopping bag* is defined as a carry bag with handles that is made in whole or part from plastic, whether or not the plastic is degradable. The bag may be made of a thickness that is less than the thickness that is prescribed in regulation, or unless otherwise prescribed, is of a thickness less than 35 microns.

A *banned plastic shopping bag* may also be a bag that is prescribed in regulation as a banned plastic shopping bag.

This allows for a regulation to ban, for example, a thicker single-use plastic shopping bag if these bags start to be supplied as an alternative to the lightweight single-use shopping bag. The intent of the ban is to move behaviour away from single-use plastic bags and towards reusable alternatives – not to simply substitute a single-use lightweight plastic bag with a slightly thicker single-use bag that has the same environmental and wildlife impacts if littered.

A banned bag must be a shopping bag. This means that bags that may be used by local governments at off-leash dog parks as 'dog poo' bags, nappy bags and other similar plastic bags are not included in the definition of a banned bag.

For the purposes of this Part, certain bags are not banned bags. Bags that are not included in the ban are 'barrier bags'; a plastic bag that is, or is an integral part of, the packaging in which goods are sealed for sale; and a bag that is prescribed in regulation as a bag that is not a banned plastic shopping bag.

A barrier bag may include a bag that is used for containing fruit and vegetables or deli products. A bag that is integral to a product's packaging may be a bread bag or similar. Regulation may also specifically state that a certain bag is not a banned bag. This will provide the opportunity to exempt certain bags from being a banned shopping bag if these bags can be demonstrated to meet the objectives of the ban.

An *alternative shopping bag* is defined as a bag other than a banned plastic shopping bag that is suitable for carrying goods from the retailer's premises.

A *barrier bag* is defined as a plastic bag that is used to carry unpackaged perishable food. These are typically 'bags on a roll' or bags without handles.

The definition of *degradable* means plastic that is biodegradable, including material that is compostable under AS 4736 – 'Biodegradable plastics – Biodegradable plastics suitable for composting and other microbial treatment'—and plastic that is designed to degrade and break into fragments over time.

99C Meaning of *retailer*

The purpose of this section is to ensure that all retailers are captured under the ban provisions. This is to ensure equity for all retailers and not place obligations solely on a particular retail sector.

While the voluntary Code of Practice to reduce the use of lightweight single-use plastic bags—in operation between 2002 and 2005—was successful in reducing the overall number of these bags supplied by 44%, it only applied to the major supermarkets. In order to avoid consumer confusion and ensure an equitable approach it is important that the ban applies equally to any retailer that provides a lightweight single-use plastic shopping bag.

A *retailer* is a person who sells goods in trade or commerce. For example, a retailer for this part may be a supermarket, convenience store, fast food outlet, farmer's market, pharmacy or other business where goods are sold to the public for use or consumption rather than for resale. This applies equally to the retail sale of goods online.

99D Retailer not to give banned plastic shopping bag

The purpose of this section, in relation to the provision of a banned bag, is to clearly state the obligations for a retailer.

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

This does not however preclude a person bringing their own bag into the store, but restricts the retailer from giving a banned bag to the person.

This offence carries a maximum penalty of 50 penalty units. A penalty unit is currently $121.90. For a company the infringement value is five times that of an individual. For an individual the infringement value would be $609.50 and for a company it would be $3047.50

This section applies whether or not the retailer charges for the banned bag when they give it to the person.

This means that irrespective of whether the retailer may decide that they will now charge the consumer for a banned plastic shopping bag, that bag is still a banned bag and cannot be provided.

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

The purpose of this section is to ensure that a person receiving a bag from a retailer knows that the retailer has not provided a banned bag and has not provided misleading information about the bag.

A retailer must not give information to another person that they know is false or misleading about the bag, including about what the bag is made of or the fact that it is not a banned bag if it is.

For example, it is an offence for a retailer to tell a person that the plastic shopping bag they have been given is not a degradable bag if it meets the definition of a degradable bag for the purposes of this Part – and is therefore a banned bag.

A maximum penalty of 50 penalty units applies for this offence.

99F Retailer may charge for an alternative shopping bag

The purpose of this section is to ensure that retailers are not limited in their ability to charge for an alternative bag if they wish. Lightweight plastic shopping bags (banned bags) are currently provided by retailers at no visible cost to the consumer. However many alternative bags will be more expensive than a lightweight single-use bag and retailers may wish to treat these bags as they would any other sale product.

99G Review of part

The purpose of this section is to provide a statutory requirement to review the operation and effectiveness of the plastic shopping bag ban against the objects of this part and any other criteria.

The Minister must ensure that this part is reviewed as soon as practicable. The review must commence no later than three months after 1 July 2020.

The purpose of the review is to monitor the knowledge within the community and retail sector about the ban. As time goes on after the initial information and messaging in relation to the ban, and as new retailers enter the market, there may be a need to reinforce the ban message.

The review must include a review of the effect of the plastic bag ban on the community and retailers; the level of retailer knowledge and understanding about the ban and the effectiveness of this part in reducing the quantity of banned bags that are used and that become litter or are disposed to landfill.

The Minister must be provided with a report of the outcomes of the review within six months of the review commencing and the report must be tabled by the Minister within 12 days of receiving the report.

Part 3B Beverage container refund scheme

Division 1 Introduction

Subdivision 1 Preliminary

99H Objects of part

The purpose of this section is to describe the objects of this Part for the container refund scheme.

The main objects of this part are to:

- increase the recovery and recycling of empty beverage containers
- reduce the number of empty beverage containers that are littered or disposed of to landfill
- ensure that manufacturers of beverage products take a product stewardship responsibility for their beverage products that generate waste in the form of empty containers
- provide opportunities for social enterprise and benefits for community organisations by—
    - making funds available through the payment of refund amounts for empty beverage containers and
    - creating opportunities for employment in activities related to collecting, sorting and processing containers for recycling
- complementing existing collection and recycling activities for recyclable waste

Queensland has one of the lowest recycling rates of mainland states and consistently ranks as one of the most littered states. The introduction of the container refund scheme will increase the recovery and recycling of beverage containers and, in that way, assist in improving Queensland's overall recycling rate and reduce the amount of litter in the environment.

The container refund scheme is established primarily as a stewardship scheme to ensure that beverage product manufacturers take responsibility for the empty containers generated as a result of the beverage products they put on the market.

There are likely to be significant opportunities for community and social enterprise organisations to benefit directly or indirectly from the introduction of the scheme. The objects of the scheme recognise that social enterprise and community organisations can participate in the scheme in a variety of ways as well as benefit from receipt of refund amounts either directly or indirectly.

The objects also reflect the fact that a number of local governments provide kerbside recycling services. The introduction of the container refund scheme

is intended to complement these existing services while at the same time providing the ability for people in local government areas without a kerbside service with the ability to recycle their empty beverage containers.

99I How objects are to be achieved

This section outlines how the objects of this part are achieved. The objects of this part are to be achieved by providing for a container refund scheme (the ***scheme***) that:

- encourages consumers to collect empty beverage containers for recycling by providing for refund amounts to be paid for the containers
- encourages waste management service providers to ensure empty beverage containers that are collected through general waste services are recycled by providing for recovery amounts to be paid for containers that are sent for recycling
- recognises the role of the manufacturers of beverage products in generating waste in the form of empty beverage containers by requiring manufacturers to:
    - contribute to the cost of refund amounts that are paid for the containers, and for the administration of the scheme; and
    - ensure that the containers that beverage products are packaged in are made of material that is suitable for recycling
- is administered by the Product Responsibility Organisation.

99J Functions of Product Responsibility Organisation

This section establishes the functions of the Product Responsibility Organisation (Organisation).

The main function of the Organisation is to administer and provide governance for the scheme.

The Organisation also has the following functions:

- to ensure ongoing, efficient and effective arrangements are available in Queensland for empty beverage containers to be collected, sorted and recycled
- to establish a network of container refund points to, as far as practicable, provide communities in Queensland with access to a place where empty containers can be returned for the payment of refund amounts
- to ensure beverage manufacturers fund the scheme by ensuring the amounts they are required to pay to the Organisation under container recovery agreements are sufficient to do so
- to set the amounts payable, or the method for working out the amounts payable, under the scheme:
    - by beverage manufacturers to the fund the scheme and
    - to operators of collection refund points to pay the operator the refund amounts for empty beverage containers and to handle, sort and transport the containers for recycling
- to identify beverage manufacturers who are not participating in the scheme, including for example because a beverage manufacturer:

- is selling beverages in containers that are not registered or
- has not entered into a container recovery agreement with the Organisation.

- to promote the scheme and the location of the container refund points
- to receive and deal with complaints relating to the scheme from members of the public and entities participating in the scheme
- the functions given to it under this Act or another Act

The function of identifying beverage manufacturers which are not scheme participants is intended to reduce the potential for 'free-riding' on the scheme whereby a beverage manufacturer may sell a beverage product into Queensland but is not contributing to the costs of its management under the scheme – including the costs of the refund amount and any handling and transport fees associated with the sorting and recycling of the empty beverage containers.

Subdivision 2 Definitions

99K Definitions for part

This section provides definitions in relation to the container refund scheme.

99L Meaning of *beverage*

To ensure clarity around what it is intended that the scheme covers a *beverage* is defined as a liquid that is intended for human consumption by drinking.

The limiting factor for this definition that dictates whether it is a beverage for the scheme is that the beverage must start as a liquid. It is not intended to cover beverages where they may become a liquid – such as a powder that becomes a liquid when mixed with a liquid, or a frozen or semi-frozen beverage product. The definition also does not cover a liquid that is not intended for human consumption such as, for example, milk manufactured for animal consumption.

A beverage does not include a liquid that is excluded from the scheme by regulation.

This means that if a regulation states that the scheme does not apply to specific beverages, the beverage prescribed is exempt from the scheme, irrespective of whether it fulfils the requirements of the definition under subsection (1) in that it is a liquid for human consumption.

99M Meaning of *container*

A *container* is defined as a container that is made to contain a beverage and is made to be sealed for storage, transport and handling before being sold for the beverage to be consumed.

A container may also be another container for the scheme that is prescribed in regulation.

This means that containers such as take-away coffee cups, juice containers and other containers that may be sealed at the point of purchase for the consumer to take-away for consumption are not covered by the scheme, irrespective of whether the beverage in the container meets the definition under section 99L(1) as being a beverage for human consumption.

The definition of a container also allows for a container to be excluded from the scheme by regulation.

This allows for a regulation to prescribe a container that is excluded from the requirements of the scheme whether or not it contains an included beverage product.

For example, water is an included beverage product but if the water is packaged in a container that is excluded under regulation the container is not eligible under the scheme.

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

A *beverage product* is the combination of a particular beverage that is packaged in a container of a particular type.

The *type* of container is the combination of the volume of beverage that the container is made to hold and the material that the container is made of.

This provides the ability to differentiate beverage products by the type of container that they are contained in. For example, beverages that would ordinarily meet the definition of a beverage in section 99L may be excluded if they are contained in a container that is of a volume or material that is excluded from the scheme – while allowing for that beverage to be included when it is contained in other container volumes or materials.

99O Meaning of *manufacturer*

The *manufacturer* of a beverage product is a person who makes the beverage product by filling containers with a beverage or engaging another person under a contract to make the beverage product or fill containers with a beverage for that person. The manufacturer is also a person who imports the beverage product from another country.

This definition covers a direct manufacturer, contract bottlers who don't supply direct to market but undertake a manufacturing process contracted exclusively to another entity or an importer who may not have a manufacturing facility in Australia.

Division 2 Sale of beverages in containers

99P Restriction on manufacturer selling beverage product

The purpose of this section is to impose on the manufacturer of a beverage product obligations in relation to their ability to sell their beverage product in Queensland.

This section applies to the manufacturer of a beverage product that is made or imported for sale in Queensland.

The manufacturer of a beverage product must not sell the beverage product to another person to use or consume in Queensland, or to sell for use or consumption, or further sale, in Queensland, unless particular requirements are met.

These requirements include that—

- a container recovery agreement is in force for the type of container used for the beverage product and
- the container is registered and
- the container displays the refund marking and a barcode for the beverage product.

It does not matter whether the beverage product is made in, or imported into, Queensland or somewhere else and whether the beverage manufacturer sells the beverage product in Queensland or somewhere else.

This subsection allows for a beverage manufacturer in Queensland to be covered by the provisions of this part even if they only manufacture a beverage product in Queensland and do not sell in Queensland.

It also means that the beverage product does not have to be manufactured in Queensland, nor does Queensland have to be the first import location. Even if a beverage product is manufactured in another state but it is sold in Queensland, the manufacturer of that beverage product is responsible for contributing to the costs of the refund amount and the operation of the scheme in Queensland as the end-of-life container that the product was sold in is ultimately entering the system in Queensland.

99Q Container recovery agreement

This section defines the essential elements of the container recovery agreement which must be in effect under section 99P for a beverage produce that it made in, or imported into, Queensland.

A *container recovery agreement* is a written agreement between the Organisation and the manufacturer of a particular beverage product about the type of container used in the product.

The agreement allows the beverage manufacturer to include multiple containers under the same agreement without the need to enter into a new agreement with the Organisation for every container type used for their product.

The purpose of the agreement is to ensure that the manufacturer contributes to the cost of the scheme, including for example, the cost of the refund amounts that are paid for empty containers under the scheme.

The Organisation must not enter into an agreement with a manufacturer unless satisfied that there are ongoing, effective and appropriate arrangements available that allow the container type to be collected, sorted and recycled.

For example, if a manufacturer uses a container for a beverage product that is not able to be recycled, the Organisation is under no obligation to enter into an agreement with that manufacturer for that container type. However, this does not preclude the Organisation from entering into an agreement with that manufacturer for other container types that are able to be recycled.

This ensures that all containers for which an agreement is in place are able to be recycled under the scheme and that the Organisation is not responsible for ensuring the recovery of containers that cannot be recycled.

This clause also allows standard terms for a matter listed in subsection (4), or any other matter, to be prescribed by regulation. If standard terms are prescribed by regulation, they must be included in the agreement.

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

The purpose of this section is to recognise the diversity within the beverage industry and create an equitable cost-sharing arrangement for small and large beverage manufacturers, by placing a cap on the amounts payable by small manufacturers.

A small beverage manufacturer must not, under a container recovery agreement, be required to pay a contribution to the cost of running the scheme that is more than an amount that is calculated under a regulation.

This acknowledges the need for all manufacturers to contribute to the costs of the scheme but recognises that some manufacturers may have a small market share and the recovery of their containers will be proportionately small. This means that the potential costs and administrative burden involved with calculating their allocation of costs through a market share model may be disproportionate to the impact and recovery of their containers. This also allows small manufacturers to know in advance what their obligation costs will be and allow better budgeting for these costs.

S*mall beverage manufacturer* will be defined by regulation by reference to, for example, employee number; annual turnover attributed to the sale of the beverage product; or by volume of beverage product the manufacturer sells.

Division 3 Refund amounts for empty containers and container refund points

Subdivision 1 Claiming refund amounts for empty containers

99S Claiming refund amount from container refund point

The purpose of this section is to provide the arrangements whereby a person may claim a refund for empty containers presented at a container refund point.

A person may claim a refund amount for an empty container by presenting the container at a container refund point. When an empty container is presented, the operator of a container refund point must accept the empty container and pay the person the refund amount for the container.

The container refund point operator commits an offence if they do not pay the refund amount. A maximum penalty of 300 penalty units applies.

However, the operator is not obliged to pay the refund amount if:

- the container is not registered under s99ZM, or
- the refund marking is not displayed on the container (unless the transitional provisions apply), or
- the operator of the refund point reasonably believes that a refund amount has already been paid on the container or
- if the person is required to provide a refund declaration under section 99T and fails to do so or
- if the person refuses to accept the refund amount in a way other than cash if a sign at the refund point states that the operator pays refund amounts in another way.

For example, a refund point operator may clearly state that refund amounts above a certain threshold amount will be paid by electronic transfer to an account nominated by the recipient of the refund; or in the form of a retail voucher, gift card or other means. If the person does not wish to accept the terms of the refund operator the operator is not obliged to pay the refund as a cash transaction.

However, where an alternative arrangement to cash is provided, the value of the payment must match the refund amount as if it were given to the person in cash.

This section does not apply when the refund point is a reverse vending machine.

99T Refund declaration and proof of identity

The purpose of this section is to increase transparency and accountability through the scheme and minimise the potential for fraudulent refund claims against the scheme. This in turn will help to maintain an efficient and cost-effective scheme and reduce costs to beverage manufacturers.

It is not intended however that this section limit the quantity of containers for which a refund amount can be claimed but to put in place measures that allow the refund point operator to require additional evidence that the containers should legitimately have a refund amount paid on them under the scheme in Queensland.

This is achieved by requiring a person seeking a refund for a bulk quantity of containers to either provide a refund declaration or to have entered into a standing bulk claim arrangement with the operator of the container refund point. The amount of containers which will constitute a 'bulk quantity' will be prescribed by regulation.

A refund declaration is a notice under which the person seeking the refund that the containers were collected in Queensland or a jurisdiction with a corresponding scheme and that the person reasonably believes the containers are claimable under the scheme and that a refund amount hasn't been previously paid.

Subsection (1) states that a person who claims a refund amount at a container refund point under subsection 99S must give the operator of the refund point a refund declaration if—

- the claim is for a bulk quantity of empty containers and the person has not entered into a bulk container claim arrangement with the operator or
- the operator asks the person for a refund declaration.

This provides the refund point operator with the discretion to ask a person presenting containers at the refund point to provide a declaration if the operator believes that the containers may not be eligible for a refund – irrespective of whether the containers are in a bulk quantity or not.

This also allows a container refund point operator to establish an account with a person who regularly collects containers from, for example, commercial premises or with a community organisation that has containers regularly donated to them. In both instances bulk quantities of containers will be presented to the refund point for a refund amount. In these circumstances it would be burdensome for both participants to make a bulk quantity declaration each time the person presented containers at the refund point.

This section creates an offence for a person not to comply with the requirements of subsection (1) and carries a maximum penalty of 100 penalty units.

Subsection (2) defines a *refund declaration* as a notice in which a person declares that the empty containers for which a refund amount is being claimed:

- were collected in Queensland, or a corresponding jurisdiction, for the purposes of claiming the refund amount under the scheme or a corresponding scheme and
- the person reasonably believes that all the containers display the refund marking and all the containers are registered and a refund amount has not been previously paid for any of the containers presented.

A refund declaration must be made in the approved form and signed by the person making the declaration. It must also be accompanied by an official document that contains the person's photograph. For example, this may be the person's driver's licence or a passport.

A refund declaration is not required where a container refund point operator has established an account with a person who regularly collects containers from, for example, commercial premises or with a community organisation that has containers regularly donated to them. In both instances bulk quantities of containers will be presented to the refund point for a refund amount. In these circumstances it would be burdensome for both participants to make a bulk quantity declaration each time the person presented containers at the refund point, so a bulk claim arrangement may be entered into instead.

A *bulk claim arrangement* is between the operator of a container refund point and another person. Under the arrangement the operator agrees to accept claims for refund amounts for bulk quantities of empty containers from the person. The arrangement also states the person's obligations in relation to claiming the refund amounts and delivering empty containers to the container refund point

This section creates the offence of failing to comply with the requirement to provide a refund declaration.

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

99U Claiming refund amount from reverse vending machine

This section provides for specific ways that a person can claim a refund amount from a reverse vending machine.

A person may claim a refund amount from a reverse vending machine by placing the empty container in the machine. The refund amount is paid when the machine:

- accepts the container and
- dispenses the refund amount and
- gives the person using the machine a written record of:
    - the empty container accepted
    - the refund amount and
    - how and, if the refund amount was not given to the person, to whom the refund amount was given.

A reverse vending machine may dispense a refund amount directly to the person claiming the refund amount either in cash or in another way stated on a sign on or near the machine. The refund amount could also be paid to another entity where a sign states that the refund amounts for empty containers accepted by the machine are paid to a third party and not to the person placing the container in the machine.

The third party may or may not be able to be nominated by the person depositing the empty containers.

This allows for a person to choose, for example, a charity or other organisation to 'donate' their refund amount to. This constitutes the payment of a refund amount for the purposes of fulfilling the requirements of this section.

A written record may be given electronically. This means that the written record is not restricted to a paper receipt provided by the machine and may include a text message or email receipt containing the relevant information about the transaction.

99V Ways refund amount may be paid

This section provides for alternative ways to pay the refund amount. In order for an efficient and modern scheme to operate it is important to recognise that opportunities should be provided for the refund amounts to be paid in a way other than cash.

A container refund point operator may pay refund amounts in a variety of ways and may use different ways of making the payment for different quantities of empty containers.

This allows the container refund point operator to have discretion in, for example, the amount of cash that they may wish to pay. The operator may establish a cash threshold amount for their operation. This means that refund amounts that are more than the threshold would not be provided in cash and would be paid in another way. This reduces the risk to the operator in having to have on hand potentially large amounts of cash and allows better management arrangements for people with large volumes of containers such as commercial collectors.

However, this doesn't restrict the operator's discretion to choose to provide cash payment above the threshold amount if the operator believes the circumstances warrant it.

Any refund amounts that are paid in a way other than cash, such as through the provision of a voucher or transfers on to a card that is redeemable for cash or goods or services must be provided to the same value as the refund amount prescribed in regulation without discount.

If the refund point operator pays a refund amount in a way other than cash, the refund point operator must clearly display a sign at the container refund point that states the way that the operator pays the refund amount and, if the operator pays the refund amount in different ways for different quantities of containers, the quantities of empty containers that apply for each different way that is used.

For example, a refund point operator may set a lower cash threshold for containers in a material where high volume amounts of containers are presented and a higher cash threshold for containers of a material that is in

low volume or irregularly presented. This will help with cash management at the particular refund point.

99W When refund amount must not be claimed

The purpose of this section is to increase transparency and accountability through the scheme and minimise the potential for fraudulent refund claims against the scheme by providing the circumstances when a person must not claim a refund amount. This in turn will help to maintain an efficient and cost-effective scheme and reduce costs to beverage manufacturers in making double payments for containers that have already been presented.

A person must not claim a refund amount for an empty container at a container refund point if the person knows, or ought to reasonably know, that a refund amount has already been paid for the container at a container refund point (including a reverse vending machine) or that a recovery amount has been paid to a material recovery facility operator.

This section carries a maximum penalty of 100 penalty units.

Subdivision 2 Other obligations of container refund point operators

99X Obligations of operator of reverse vending machine

This section applies to the operator of a container refund point that is a reverse vending machine.

The operator of the reverse vending machine must ensure, as far as reasonably practical that:

- the reverse vending machine is working properly and
- if the machine is not working properly that the machine is turned off or a sign or other method is used to indicate that the machine is not operational and
- the machine does not accept an empty container if it is unable to dispense a refund amount for that container and
- the machine does not dispense a refund amount for an empty container if the container is not registered or the container does not display the refund marking and a barcode for a beverage product and
- the following information is clearly displayed on or near the machine:
    - the types of containers that can be accepted by the machine
    - if the machine dispenses the refund amount for an empty container in a way other than cash the way the refund amount is dispensed
    - if the refund amount for an empty container is dispensed by being paid to an entity other than the person who claims the refund, the entity that the refund amount is paid to.

There are a range of reverse vending machines that could be used in the operation of the scheme. Some of these are limited in the container material that is accepted through the machine – for example, some machines may only take aluminium cans and plastic bottles and not glass containers – while other machines will accommodate the range of eligible containers.

99Y Container refund point operator must keep refund declarations

This section outlines the record keeping obligations of the operator of a container refund point.

A document may be made, kept or produced for inspection electronically or by making, keeping or producing for inspection a copy of the document.

Subdivision 3 Container refund points

99Z Container collection agreement required to operate container refund point

This section states that a person must not operate a container refund point unless a container collection agreement is in force under section 99ZA for the container refund point.

99ZA Container collection agreement

This section sets out the essential elements of a container collection agreement which must be entered into between the Product Responsibility Organisation and the operator of a container refund point.

This section also allows standard terms for any element of the agreement, or any other matter, to be prescribed by regulation. If standard terms are prescribed by regulation, they must be included in the agreement.

For example, when the Organisation makes an offer to a person to enter into an agreement, the agreement provided must include the terms of the agreement in relation to any operational requirements for the operator, such as hours the operator must be open to the public and accessibility of the refund point. The agreement must also contain a schedule of fee payments for the refund point operator, including the amount of the handling fee that will be paid to the operator.

Review and appeal rights under Chapter 9 of the Act will arise if the Organisation declines, or is taken to have declined, to enter into a container collection agreement.

The Organisation is taken to have decided not to enter into a container collection agreement if the Organisation does not offer in writing to enter into an agreement with the person within 20 business days after the person makes the request.

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

Section 99ZB provides for the way in which the operator of a container refund point must make a claim from the Organisation for payment of the collection amount. The collection amount is the amounts payable under a container collection agreement for refund amounts paid, or to be paid, under subdivision 1 and for handling, sorting and transporting containers for recycling.

The Organisation’s obligation to pay the collection amount will be governed by the container collection agreement with the relevant container refund point operator. If the Organisation declines to pay a collection amount, or is taken to have declined under subsection (5), review and appeal rights under Chapter 9 will arise.

The Organisation is taken to have decided that the collection amount is not payable to the operator under the agreement if the Organisation does not pay the collection amount claimed with the time required under the agreement.

However where a container is the subject of an extraordinary circumstances declaration the operator is not required to provide information relating to the recycling of the containers.

A *collection amount* for this section means the amount payable to the operator under a container collection agreement for the refund amounts paid, or to be paid, by the operator for empty containers under subdivision 1; and for handling, sorting and transporting the containers for recycling.

99ZC When container refund point operator must not claim payment

The operator of a container refund point must not make a claim for payment from the Organisation under a container collection agreement if the payment relates to a container and any of the following apply:

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

The above does not apply in relation to a container for which an extraordinary circumstances exemption applies.

99ZD Operator must ensure containers sent for recycling

The purpose of this section is to ensure that where a refund amount has been paid, these containers are recycled.

This section applies if the operator of a container refund point has paid a refund amount and the container is not the subject of an extraordinary circumstances exemption.

If both the criteria in subsection (1) are satisfied, the operator must not allow the container to be disposed of to landfill.

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

99ZE Meaning of *material recovery facility*

A *material recovery facility* is a place where recyclable waste is sorted and prepared for recycling, whether or not the material received is actually recycled at the place.

A regulation may prescribe another place as a material recovery facility.

This allows specific facilities to be excluded from the definition of a material recovery facility for the purposes of the scheme.

99ZF Material recovery agreement

A *material recovery agreement* is a written agreement between the Organisation and the operator of the material recovery facility. The agreement is about the payments of recovery amounts (as defined in s99ZG) to the operator of the facility for the containers that the operator sorts and prepares for recycling.

A material recovery agreement must include the matters listed in subsection (4). If a regulation prescribes standard provisions for a matter in subsection (4), or for any other matter, they must be included in the agreement.

If the organisation declines, or is taken to have declined, to enter into an agreement under this section, review and appeal rights under Chapter 9 will arise.

The Organisation is taken to have declined to enter into an agreement with the operator if the Organisation does not offer, in writing, to enter into an agreement with the operator within 20 business days of receiving the request.

99ZG Meaning of *recovery amount*

The *recovery amount* payable under a material recovery agreement under section 99ZF for a quantity of containers can be provided in one of two ways:

- if the actual number of containers in the quantity is known – the total of the refund amount for the number of containers
- otherwise – the amount that is worked out under the material recovery protocol for the quantity of containers.

A recovery amount for a container—

- has been claimed if the container is included in a quantity of containers for which a recovery amount has been claimed and
- has been paid if the container is included in a quantity of containers for which a recovery amount has been paid.

This prevents a person from claiming for containers that have already been included in the quantity of containers that have been calculated under the protocol from being individually presented at a container refund point to make a further refund amount claim.

99ZH Operator of material recovery facility may claim recovery amounts

The operator of a material recovery facility may claim the recovery amount from the Organisation for a quantity of containers if the operator has entered into a material recovery agreement with the Organisation and the operator has recycled the containers or sent the containers for recycling.

The operator of a material recovery facility is not entitled to make a claim for a recovery amount unless a material recovery facility operator has an agreement with the Organisation and the containers are recycled. However, the requirement that the containers be recycled does not apply if an exceptional circumstances exemption applies.

The claim must be in the form required under the material recovery agreement and the claim must be accompanied by:

- a notice that is signed by the operator declaring that a refund amount has not been paid on any of the containers in the quantity and, if the operator has recycled the containers, that the operator has recycled the containers and
- a notice signed by the operator of a waste facility, if the operator has sent the containers to a waste facility for recycling, declaring that the operator has received the quantity of containers for recycling and
- evidence that the operator has complied with the protocol if the operator is claiming a recovery amount worked out under the protocol

The Organisation must pay the recovery amount for the quantity of containers to the operator as required under the material recovery agreement

However if the Organisation decides that the recovery amount claimed is not payable to the operator under the material recovery agreement, the Organisation must give the operator an information notice about the decision. This decision is subject to internal and external reviews. The Organisation must carry out an internal review and the external review must be available to the Queensland Civil and Administrative Tribunal.

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

The operator of a material recovery facility must not claim a recovery amount for a container if:

- a refund amount has been paid for the container at a container refund point or
- the container is not registered or
- the operator allows or knows that the container has been disposed of to landfill (unless an exceptional circumstances exemption applies).

In some circumstances a material recovery facility operator may establish the facility as a consolidation hub for containers from small, remote or mobile container refund points. In these circumstances the refund amount has already been paid on the containers when they were presented at the container refund point and the material recovery facility operator must not claim a recovery amount for these containers.

The material recovery facility operator will need to have in place the ability to keep separate and audit, if necessary, the containers that are received at the facility from container refund points and those that are received through other sources. This will allow the Organisation to verify any recovery amount claims if required. These arrangements should form part of the material recovery agreement between the Organisation and the material recovery facility operator.

A maximum penalty of 300 penalty units applies if the material recovery facility operator claims a recovery amount when any of the requirements in subsection (1) are satisfied.

99ZJ Operator must not allow containers to become landfill

The operator of a material recovery facility must not allow a container to be disposed of to landfill if the operator has received a recovery amount for the container, unless an exceptional circumstances exemption under section 99ZY applies.

This section is in place to prevent instances where the operator has made a claim for a recovery amount and the Organisation has paid against that claim on the basis that, for example the containers will be sent for recycling when there is sufficient quantity of material to send to a recycler. If the material recovery facility operator subsequently decides to dispose of the containers after the recovery amount has been paid they have committed an offence against this section.

99ZK Recovery amount protocol

A *recovery amount protocol* is a document issued by the chief executive that states the way that container recovery amounts are worked out if the actual number of containers is not known.

A recovery amount protocol may, for example, provide for ways to estimate the number of containers that are intermingled with other recyclable waste. The ways this could be done include:

- sampling quantities of recyclable waste received at the facility to work out the proportion of the waste that is eligible containers and
- estimating the number of containers using the proportion worked out from the sampling.

A recovery amount protocol is issued by the chief executive by publishing the protocol on the department's website.

The chief executive must review any recovery amount protocol—

- if the Organisation or the material recovery facility operator asks the chief executive in writing for a review of the protocol or
- at other times prescribed in regulation.

The review allows the methodology under the protocol to be assessed and modified if necessary to ensure that equitable arrangements are in place for the payment of the recovery amounts.

99ZL Operator of a material recovery facility must comply with protocol

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

The material recovery facility operator must comply with the material recovery protocol.

A maximum penalty of 300 penalty points applies if the material recovery facility operator makes a claim for a recovery amount and the calculation method is not in accordance with the protocol.

Division 5 Approved containers for beverage products

Subdivision 1 Register of approved containers

99ZM Organisation must establish and keep register

The Organisation must keep an up to date register of approved containers (the *register of approved containers*).

An *approved container* is a container for a beverage product where there an approval is in force or where the container is approved under a corresponding law for a corresponding scheme.

The register must contain the following details for each approved container and the beverage product packaged in the container—

- a description of the beverage product including the type and volume of the beverage in the product and the material the container is made of
- the manufacturer of the beverage product
- the barcode for the beverage product

- if the approval is granted in a corresponding jurisdiction, who the corresponding jurisdiction is
- the day: the container approval was granted; the approval ended (if ended)
- any conditions of the approval

The Organisation may also record any information that the Organisation considers appropriate. The register must be kept as a public searchable register.

Subdivision 2 Applying for container approval

99ZN Application

The purpose of this section is to establish that the manufacturer of a beverage may apply to the chief executive for approval of a container for a beverage product (a *container approval*).

The manufacturer of a beverage product need only apply for a container approval under this section where there is not already a container approval granted in a corresponding jurisdiction for a corresponding scheme.

There may be circumstances where a beverage manufacturer only manufactures a beverage product for sale in Queensland and has not had cause to apply for a container approval under another scheme.

99ZO Particular matters for deciding application

This section specifies that the chief executive may grant a container approval only if satisfied that—

- a container recovery agreement between the Organisation and the beverage manufacturer is in force or has been agreed in principle by the Organisation pending the approval being granted and
- the container is suitable to be recycled and
- the way the refund marking is proposed to be displayed on the container is not likely to affect whether the container is suitable to be recycled and
- an approval for the beverage product is not in force under a corresponding law for a corresponding scheme and
- an approval for the beverage product has not been refused or cancelled under a corresponding law for a corresponding scheme.

99ZP Notice of container approval

If chief executive decides to grant the container approval for a beverage product, the notice given to the manufacturer under section 173W must state the matters mentioned in 99ZM(3).

The chief executive must give a copy of the notice of the decision to the Organisation within 10 business days after making the decision.

This ensures that the Organisation is aware of the decision and is able to finalise any pending container recovery agreements.

99ZQ Conditions of container approval

It is a condition of a container approval that the holder of the approval must give the Organisation notice about any changes to the beverage product that is the subject of the approval, including—

- the type of beverage in the product
- the volume of beverage in the product
- the material the container is made of

The holder of the approval must comply with the conditions of the approval.

A maximum penalty of 300 penalty units applies.

99ZR Container approval continues in force

A container approval continues in force until the approval is cancelled or surrendered.

However, if a container approval is suspended, then the approval does not have effect for the period of the suspension.

A person, other than the manufacturer of the beverage product that is the subject of the approval, does not commit an offence against this part—

- if the container used in the beverage product is no longer registered because the container approval has been cancelled or suspended and
- merely because the container used in the product is not registered.

This means that a retailer, other than a retailer who may be the manufacturer of the beverage product the subject of an approval, does not commit an offence if the beverage product they sell is not registered.

99ZS Applying to amend container approval

The holder of a container approval may apply to the chief executive to amend the approval, including the condition of an approval.

The matters an approval holder may apply to amend include, but are not limited to—

- the type of beverage in the beverage product or
- the volume of beverage in the product or
- the material the container is made of.

99ZT Deciding amendment application

This section applies if the chief executive is deciding whether or not to amend a container approval—

- on an application made under section 99ZS or
- after giving the holder of the approval a show cause notice about a proposed amendment under section 173ZB.

Section 99ZO applies as if the decision were a decision about whether to grant the container approval.

99ZU Applying to transfer container approval

The holder of an approval may apply to the chief executive to transfer the approval to another person. The application must be accompanied by the

signed consent of the proposed transferee. The chief executive must decide the application within 10 business days.

If the chief executive decides to grant the application, in addition to the notice given under section 173W, the chief executive must also give a notice to the proposed transferee and the Organisation within five business days after making the decision.

99ZV Grounds for suspending or cancelling container approval

This section provides the grounds for suspending or cancelling a container approval. Each of the following is a ground for the suspension or cancellation—

- a container recovery agreement for the type of container in the beverage product is not, or is no longer in force between the beverage manufacturer and the Organisation
- the container is not or is no longer suitable to be recycled
- the way the refund marking is proposed to be displayed on the container affects or is likely to affect whether the container can be recycled
- the container in the beverage product is no longer a container under the scheme
- the beverage in the beverage product is no longer a beverage under the scheme.

For example, a regulation may prescribe that a certain container, that may have previously been included in the scheme is no longer a container for the purposes of the scheme.

Division 6 Miscellaneous

99ZW Inconsistent provision has no effect

This section establishes that a provision of any of the following agreements has no effect to the extent that it is inconsistent with the Act—

- a container recovery agreement
- a container collection agreement
- a material recovery agreement.

99ZX Disposal of containers to landfill

This section identifies circumstances in which a person will, and will not, be taken to have disposed of or allowed the disposal of, a container to landfill.

A person has allowed a container to be disposed of to landfill if—

- the person arranged for the container to be taken to a waste facility for recycling and
- the person knew or ought to have reasonably known that the operator of the waste facility was likely to dispose of, or allow the disposal of, the container to landfill when the person made the arrangement and
- the container is disposed of to landfill.

A person has not disposed of or allowed the disposal of, a container to landfill if—

- the person arranged for the container to be taken to a waste facility where containers of that type can be recycled and
- part of the container cannot be recycled at the facility and
- that part of the container is disposed of to landfill.

99ZY Extraordinary circumstances exemption

This section establishes the extraordinary circumstances exemption which recognises that there may be circumstances where the disposal of containers has become unavoidable.

This section applies if a container has become unsuitable to be recycled because of extraordinary circumstances. For example, this may include where a container has become contaminated if the place where the container is stored becomes inundated with flood waters rendering the container unsuitable for recycling.

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

The chief executive may grant the exemption if satisfied—

- the container has become unsuitable to be recycled and
- the circumstances that caused the container to become unsuitable to be recycled were extraordinary and could not have reasonably been foreseen or
- the circumstances were beyond the control of the operator.

99ZZ Authorisations for competition legislation

This section provides that the following things are specifically authorised for competition legislation—

- appointing a company to administer the scheme
- granting, amending, transferring, suspending, cancelling or surrendering a container approval
- a container collection agreement
- a container recovery agreement
- a material recovery agreement
- the conduct of a person negotiating, entering into and performing an agreement mentioned above.

Anything authorised to be done by subsection (1) is authorised only to the extent to which it would otherwise contravene the *Competition and Consumer Act 2010* (Cwlth) or the Competition Code of Queensland.

Competition legislation is defined as to be the *Competition and Consumer Act 2010* (Cwlth), section 51(1)(b) or the Competition Code of Queensland, section 51.

Insertion of new ch 4, pt 5

Clause 5 amends Chapter 4 (Priority wastes and resources) of the *Waste Reduction and Recycling Act 2011* to insert part 5.

Part 5 Product Responsibility Organisation

Division 1 Appointment and powers

102A Appointment

This section establishes the arrangements for appointment of a Product Responsibility Organisation by stating that the Minister may appoint an eligible company as the Product Responsibility Organisation for the container refund scheme.

102B Meaning of *eligible company*

This section establishes the requirements for a company seeking to be appointed as a Product Responsibility Organisation. Those requirements include that the company is registered under the Commonwealth Corporations Act, is carried out on a not for profit basis and has a board which includes a chair independent of the beverage industry, at least one director representing small beverage manufacturers and one director representing large beverage manufacturers, at least one director representing the interests of the community and two directors with legal or financial qualifications or experience who are independent of the beverage industry

This composition ensures that the Board is representative of large and small beverage manufacturers, in recognition of the fact that all beverage manufacturers have an obligation to contribute to the costs of the scheme.

Independent of the beverage industry means the person is not an executive officer, employee or business associate of the manufacturer of a beverage product.

A *large beverage manufacturer* means the manufacturer of a beverage product other than a small beverage manufacturer

A *small beverage manufacturer* has the meaning given under section 99R(2).

Stipulating the eligible company must maintain a board with a certain number and composition of directors provides for representation across the beverage industry to recognise the diversity of large and small manufacturers. All beverage manufacturers are paying for the costs of the scheme and the board makeup recognises this obligation. It also helps ensure that the Board is a balanced representation of beverage and non-beverage interests that will help the Organisation operate an efficient and effective scheme.

Requiring that the chair and two other directors are independent of the beverage industry provides a degree of transparency and equity in decision making for the board.

Nomination of board members will be the responsibility of the Organisation; however, the chair and the community interest director must also be approved by the Minister to ensure independence.

102C Powers

The Organisation has the powers that it needs to perform its functions.

Division 2 Application for appointment

Subdivision 1 Application

102D Minister may invite application for appointment

The Minister may invite an eligible company to apply for appointment as the Product Responsibility Organisation (Organisation) for the container refund scheme.

The invitation may state the outcomes to be met by the Organisation in a stated period after the appointment that relate to the functions of the Organisation and to administration of the scheme in a way that provides opportunities for social enterprise, innovation and the development of technology. The invitation may also include other requirements for the application.

For example the Minister's invitation may request information as to how the company, if appointed as the Organisation, would meet contemporary best practice arrangements to ensure Board diversity.

102E Application

This section states that, after receiving the invitation the eligible company (the *applicant*) may apply for appointment as the Product Responsibility Organisation.

102F Requirements for application

This section specifies the requirement for an application for registration as a Product Management Organisation, including compliance with any other requirements stated in the Minster's invitation.

102G Referral of application to chief executive for assessment

When the Minister receives an application the Minister must refer the application to the chief executive for assessment.

102H Withdrawing or amending application

The applicant may at any time withdraw the application or, with the agreement of the Minister, amend the application.

Subdivision 2 Assessing application

102I Chief executive assesses application

The chief executive must assess whether the applicant is suitable for appointment as the Product Responsibility Organisation and give the Minister a report about the applicant's suitability.

102J Particular matters for assessing application

Section 102J specifies the matters which must be considered and, if necessary, investigated, in assessing the suitability of an applicant for registration as a Product Responsibility Organisation, including the suitability of executive officers and business associates.

102K Chief executive may require further information or documents

Section 102K allows the chief executive to require an applicant for registration to provide any information or document reasonably necessary to decide the application. The application for registration will not be further considered until such time as the information or documents have been provided.

Subdivision 3 Deciding application

102L Minister decides application

After receiving the report from the chief executive the Minister must consider the application and the report and decide to either appoint the applicant as the Product Responsibility Organisation and impose any conditions on the appointment that the Minister considers necessary or desirable; or refuse the application.

The Minister must not decide to appoint the applicant unless the Minister is satisfied that the applicant has satisfactory plans to implement the information provided as part of the application and collectively the executive officers have the necessary skills, experience and knowledge that are required for the applicant to perform the functions of the Organisation effectively and efficiently.

102M Decision to make appointment

If Minister decides to appoint the applicant as the Product Responsibility Organisation then the Minister must, as soon as practicable after making the decision, give the applicant a notice about the decision.

The notice must state that the applicant is appointed as the product Responsibility Organisation for the scheme and when the appointment takes effect, as well as any conditions that are imposed on the appointment. If the appointment is subject to conditions, the notice must be an information notice for the decision.

102N Refusal of application

If the Minister refuses the application then the Minister must give the applicant an information notice for the decision within 10 business days of making the decision.

Subdivision 4 General

102O Appointment continues in force

The appointment of a company as the Organisation continues in force until it is cancelled. However, where the appointment is suspended the appointment does not have effect for the period of the suspension.

Division 3 Application to amend appointment

102P Applying to amend appointment

The company appointed as the Organisation may make application to the Minister to amend the appointment. This includes application to amend a condition of the appointment.

If the Minister receives an application to amend the appointment the Minister must refer the application to the chief executive for assessment.

102Q Assessing application

When an assessment application is referred by the Minister, the chief executive must assess the application and prepare and give to the Minister a report about the amendment application.

The section goes on to say that sections 102J (Particular matters for assessing application) and 102K (Chief executive may require further information or documents) apply for the purpose of the chief executive

assessing the amendment application and a reference to the application in those sections is a reference to the amendment application.

102R Deciding amendment application

This section applies after the Minister has been given the chief executive's assessment report about the amendment application.

The Minster must consider the amendment application and assessment report and decide to either grant or refuse the application. If the Minister decides to grant the application the Minister may also decide to impose or amend the conditions on the appointment that the Minister considers are necessary or desirable.

102S Decision to amend appointment

If the Minister decides to grant the company's amendment application, the Minister must give the company a notice of the decision. The notice must be given as soon as practicable after the decision is made and must state the following—

- how the appointment is amended
- any new conditions that have been imposed on the appointment
- amendment to any existing conditions of the appointment
- when the amendment takes effect

If the Minister imposes or amends any conditions of the appointment then the notice given under subsection (2) is an information notice for the decision.

102T Refusal of application

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

Division 4 Amendment, suspension, cancellation and appointment of administrator

Subdivision 1 General

102U Minister may amend appointment

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

This means that the Minister does not have to rely on the company making an amendment application before initiating an amendment.

102V Grounds for cancelling or suspending appointment as Organisation

This section establishes the grounds for suspending or cancelling the company's appointment. Grounds for suspension or cancellation include the fact the company is no longer an eligible company or the company is no longer suitable for appointment. The company as the Organisation may also have contravened a provision of this Act or a condition of its appointment or failed to achieve an outcome prescribed under section 102ZF (Regulation may prescribe outcomes to be achieved) during a particular period.

102W Immediate suspension

The Minister may immediately suspend the company's appointment as the Organisation if the Minister reasonably believes that a ground exists to suspend or cancel the appointment and the circumstances warrant the immediate suspension of the appointment to ensure the safety of persons or that the public interest in the scheme is not adversely affected.

If the Minister decides to suspend the company's appointment, the Minister must give the company an information notice for the decision to immediately suspend the appointment and provide a show cause notice for the action.

The suspension takes effect on the date the notice is given to the company and continues until the earliest of the following happens—

- the Minister ends the suspension
- the show cause notice is finally dealt with
- 30 business days after the notices are given to the company.

Subdivision 2 Process for taking proposed action

102X Show cause notice

This section applies if the minister proposes to amend, suspend or cancel (the *proposed action*) the company's appointment as the Organisation.

If the proposed action is suspension then the proposed action must include the appointment of an administrator.

The Minister must give notice (a *show cause notice*) of the proposed action to the company which must include details of the proposed action, any proposed amendment (if the action is to amend), the period of suspension (if the action is to suspend), and the grounds for the proposed action.

The notice must also state that the company may, within a stated period (the *show cause period*) make a written submission to the Minister about why the proposed action should not be taken.

The show cause period must end at least 28 days after the company is given the show cause notice.

The Minister may ask the chief executive to prepare a report about the submissions that have been made by the company during the show cause period.

102Y Decision about proposed amendment, suspension or cancellation

The Minister must decide within 20 business days whether or not to take the proposed action after the end of the show cause period. The Minister may extend the period for making a decision on one occasion and the extension can be for no more than 20 business days. The Minister may extend the period by giving notice of the extension to the company before the end of the show cause period.

The Minister must consider all submissions that the company makes during the show cause period, as well as the chief executive's report if the Minister has asked for the preparation of a report; the objects of this Act and how they are to be achieved as stated in sections three to five; and any other matters as prescribed in regulation.

If the Minister decides to take the proposed action then an information notice about the decision must be provided to the company within 10 business days

of making the decision. The decision to take the proposed action takes effect on the later of either the day the information notice is given to the company or a later day that may be stated in the information notice.

If the Minister decides not to take the proposed action then the Minister must give the company notice of the decision within five business days of making the decision.

Subdivision 3 Appointment of administrator

102Z Appointment of administrator

The Minister may appoint an administrator if the company's appointment as the Organisation is suspended or cancelled. If the appointment is suspended the administrator is appointed for the company as the Organisation. If the Minster cancels the company's appointment as the Organisation the administrator is appointed to perform the functions of the Organisation.

The administrator may also perform other functions that may be stated in the administrator's notice of appointment. The administrator is taken to be the Organisation.

The function of the administrator may be limited by the administrator's notice of appointment.

102ZA Powers

This section states that the administrator may do anything that is necessary or convenient to be done for or in connection with the administrator's functions.

102ZB Providing assistance

The purpose of this section is to ensure that the administrator has and is able to get the information that is reasonably needed in order to perform the functions as the administrator.

In performing the administrator's functions, the administrator may give a notice to an officer or employee, or a former officer or employee, of the company, that requires the person to produce documents that may be in the person's possession that the administrator reasonably needs to perform the functions or provide other information or assistance that the administrator reasonably needs to perform the functions.

A person that is required to do something under subsection (1) must comply with the requirements unless the person has a reasonable excuse.

It is a reasonable excuse for the person not to comply with the requirement if by doing so the person might incriminate themselves.

Subsection (4) states that for this section the company means—

- if the administrator is appointed under section 102Z(1)(a), the company whose appointment as the Organisation is suspended or
- if the administrator is appointed under section 102Z(1)(b), the company that was appointed as the Organisation most recently before the administrator was appointed.

102ZC Remuneration and costs

If the administrator appointed by the Minister is not a public service employee then the person is entitled to be paid the remuneration that is decided by the chief executive.

The costs of, and incidental to the performance of the administrator's functions are payable by the company.

The company has the meaning provided in section 102ZB(4).

Subdivision 4 Minor amendment

102ZD Minor amendment

The purpose of this section is to allow the Minister to make a minor amendment to the appointment of the company as the Organisation.

The Minister may make a minor amendment to the company's appointment as the Organisation by giving the company notice of the amendment.

This section applies despite subdivision 2 (Assessing application).

For this section a *minor amendment* of a company's appointment as the Organisation means an amendment of the appointment to correct a minor or formal error in the appointment or to make another change that is not a change of substance and does not adversely affect the company.

Division 4 Accountability, planning and reporting

Subdivision 1 Ministerial directions

102ZE Ministerial directions

The Minister may give the Organisation a written direction about its performance in relation its functions or the exercise of its powers. The Organisation must comply with any direction given to it by the Minister.

The Organisation must include in its annual report for a financial year under 102ZJ (Annual report) the details of each direction that has been given by the Minister in the year and the action taken by the Organisation in the year because of the direction.

This section allows the Minister to, for example, direct that the Organisation:

- investigate an emerging issue
- re-prioritise operations to ensure delivery against the strategic plan or
- as the first step in addressing performance issues associated with the operation of the scheme.

Subdivision 2 Outcomes, budget and planning

102ZF Regulation may prescribe outcomes to be achieved

The purpose of this section is to allow for a regulation to be made that prescribes the performance outcomes that the Organisation is to achieve in relation to its administration and delivery of the scheme.

A regulation may prescribe the outcomes that the Organisation is to achieve during the period stated in the regulation in relation to—

- the Organisation's functions including, for example, the outcomes in relation to the recovery and recycling of containers under the scheme or the accessibility of container refund points to members of the public or
- administering the scheme in a way that provides opportunities for social enterprise, innovation and the development of technology.

The Organisation must use its best endeavours to achieve an outcome that is prescribed under subsection (1).

102ZG Annual budget, strategic plan and operational plan

Before 31 March each year the Organisation must prepare and give to the Minister certain documents. The documents are to be prepared in a way prescribed in regulation and include a budget of estimated costs for the scheme for the next financial year, including the estimated costs of the Organisation itself; a strategic plan and an operational plan.

During the financial year the Organisation may amend any of the documents that it has provided to the Minister. The Organisation must give any amended document prepared under subsection (1) to the Minister within 10 business days of making the amendment.

102ZH Approval of strategic plan

The purpose of this section is to provide the ability for the Minister to approve the Organisation's strategic plan.

The Organisation's strategic plan has no effect until it has been approved by the Minister. The Minister must approve the strategic plan as soon as practicable after receiving the plan from the Organisation.

An amendment to a strategic plan has no effect until it has been approved by the Organisation in the case of a minor amendment or otherwise by the Minister.

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

Subdivision 3 Reporting

102ZI Quarterly reports

The Organisation must give the Minister a report about its operations for each quarter in a financial year.

A report for each quarter must be given to the Minister within six weeks of the end of the quarter or within a time period after the end of the quarter that is agreed between the Organisation and the Minister. The report must include the information that is stated in the Organisation's strategic plan or that is prescribed by regulation.

A *quarter* for this section means the following periods in the year: 1 July to 30 September; 1 October to 31 December; 1 January to 31 March; and 1 April to 30 June.

102ZJ Annual report

The Organisation must give the Minister a report about its operations for each financial year.

An annual report for a financial year must be given to the Minister by 30 September after the end of the financial year to which the report applies.

An annual report must include annual financial statements that have been audited by a third party auditor; details of the Organisation's achievements during the year in relation to the objectives in its strategic and operational plans or an outcome prescribed under section 102ZF or the information stated in the Organisation's strategic plan or prescribed by regulation.

A *third party auditor* means a person who is appropriately qualified to audit the Organisation's annual financial statements and is not an executive officer or business associate of the Organisation.

102ZK Organisation must inform Minister

This section states that the Organisation must immediately inform the Minister about any matter that the Organisation considers may—

- prevent or significantly affect its achievement of the objectives in its strategic or operational plans or an outcome prescribed under section 102ZF or
- significantly impact on the performance of its functions; its financial position or viability; or public confidence in the integrity of the scheme.

102ZL Reporting to chief executive

The Minister may act under this section for the purpose of monitoring, assessing or reporting on the Organisation's performance of its functions.

The Minister may require the Organisation to report to the chief executive by, for example, giving stated information at stated times to the chief executive and the Organisation must comply with the request.

Subdivision 4 General

102ZM Requirement to implement plans in application

The purpose of this section is to require the Organisation to implement the plans that were provided to the Minister as part of the application to act as the Product Responsibility Organisation or to achieve any outcomes stated in the Minister's invitation.

This section also requires that Organisation must establish and operate a container refund scheme in a community if people in the community do not have reasonable access to a container refund point and the Organisation has not identified another person to enter into a container collection agreement to operate a container refund point in the community.

This section applies subject to a condition of the Organisation's appointment.

102ZN Status as eligible company

Once a year the Organisation must provide to the chief executive notice about whether the Organisation is and has been during the previous year an eligible company and a copy of the Organisation's constitution. The notice and the copy of the constitution must be given to the chief executive within 10 business days after each day that is the anniversary of the company's appointment as the Organisation.

102ZO Notice of particular events

Subsection (1) states that the Organisation must give notice to the chief executive about any of the events that mean that the Organisation is no longer an eligible company or about appointments and employment of an executive officer of the Organisation.

The Organisation must give the chief executive a notice about the event within 10 business days of the event occurring. A notice about an event in subsection (1)(a) must include the Organisation's plan and timetable for making the Organisation an eligible company.

A notice about an event in subsection (1)(d) or (f) must be accompanied by the signed consent of the person who is the subject of the notice to the following—

- the collection of personal or background information about the person by or for the chief executive and
- a criminal history check.

Division 6 Miscellaneous

102ZP Delegation

The purpose of this section is to allow the Organisation to delegate the functions and powers that it has under this Act to a director or an appropriately qualified employee of the Organisation.

The chief executive officer of the Organisation (however this role is described) may, with the approval of the Organisation, sub-delegate a function that has been delegated to the chief executive officer under subsection (1) to an appropriately qualified employee of the Organisation.

102ZQ Obtaining the criminal history of an individual

The purpose of this section is to allow a criminal history to be obtained in relation to an individual. This applies to an individual who is an executive officer or business associate of the Organisation or who is an applicant under division 2 and who has given written consent to the chief executive to obtain the individual's criminal history.

The chief executive may ask the police commissioner for a written report about the criminal history of the individual and to provide a brief description of the circumstances of a conviction that is mentioned in the individual's criminal history. If requested the police commissioner must give the report to the chief executive after receiving the request. The duty that this request imposes on the police commissioner applies only to the information to which the commissioner has access or is in the possession of the commissioner.

102ZR Corporations Act displacement

This section states that a provision for this part, to the extent that it cannot operate concurrently with a provision of the Corporations Act, is a Corporations legislation displacement provision for section 5G of that Act.

Section 5G provides that if a state law declares a provision of state law to be a Corporations legislation displacement provision then any provision of the Corporations legislation that the state law may be inconsistent with does not apply to the extent that is necessary to avoid the inconsistency.

6 Amendment of s 155 (Purpose of chapter)

Clause 6 amends section 155 by clarifying the point at which waste stops being a waste and by defining the concept of a resource user for an end of waste code and end of waste approval.

Section 155 is amended to make it clear that an end of waste code or end of waste approval will determine the point at which a particular waste stops being a waste and becomes a resource. The language used in the pre-amendment provision indicated that a waste ceased being a waste when it was managed in accordance with a code or approval. This did not help to convey the intent that there would be a clearly defined point at which a waste would be considered a resource.

A code or approval may, for example, stipulate that a waste becomes a resource only after the waste meets a certain quality stipulated in the code or approval and is delivered to the site of use. This would enable the department to better regulate certain wastes destined to become a resource, which, until used as intended, still have the potential to cause environmental harm, for example during transportation from the producer to the user.

Section 155 is also amended by inserting a new definition for the term 'resource user'. A resource user refers to a person who uses a resource in a manner designated under an end of waste code or end of waste approval. The term is introduced and defined because the Bill, if passed, will enable the department to control the use of resources when necessary, by placing conditions on persons who use a resource under an end of waste code or end of waste approval.

Section 155 also makes it clear that a person can cease to be a resource user, and a resource can revert to being a waste. If a person stops using the resource as designated under the end of waste code or end of waste approval, the person is no longer considered a resource user under the *Waste Reduction and Recycling Act 2011*, and the resource used by that person also reverts to being a waste. This provision ensures that waste-related offences under the *Waste Reduction and Recycling Act 2011* can be applied if necessary.

This is necessary because an end of waste code or approval will be made (and the quality criteria stipulated) based on a consideration of risks of environmental harm associated with using a particular waste for one or more specific end uses. If the resource is used in a manner that has not been considered in the end of waste code or approval it may cause environmental harm. Reverting the resource to a waste in these circumstances will discourage the intentional misuse of end of waste codes or approvals as a mechanism to subvert waste management requirements and will ensure that waste-related offences under the *Waste Reduction and Recycling Act 2011* can be applied.

7 Amendment of s 156 (Definitions for ch 8)

Clause 7 amends section 156 by inserting the term 'resource user' into the definitions for Chapter 8, and referencing the definition described in new section 155(3).

8 Amendment of s 157 (Effect of operating under end of waste code if unregistered)

Clause 8 amends section 157 by ensuring that a person who produces a resource and uses it for their own purpose in accordance with an end of waste code can obtain the benefits of operating under the code by registering for the code with the department. This is in addition to the existing benefit provided to a person who registers with the department and sells or gives away a resource under a code. If a person complies with a code but fails to register with the department, the waste is still considered a waste.

This amendment ensures that every person who produces a resource under an end of waste code and registers with the department for that code can obtain the benefit of the code, regardless of how the resource is subsequently disseminated to its end use (i.e., sold, given away, or used directly by the person producing it).

9 Replacement of ss 158 and 159

Section 158 Compliance with end of waste code

Clause 9 replaces section 158 with a new section that prescribes offences for not complying with the requirements of an end of waste code. An offence is prescribed for a registered resource producer who produces and uses, sells or gives away a resource under an end of waste code but does not comply with the requirements of the code. The maximum penalty for the offence is 1665 penalty units.

Prior to this amendment, registered resource producers who used a resource themselves, without complying with the code, were not liable for the offence. This amendment ensures that all registered resource producers are liable for the offence, regardless of how the resource is subsequently handled (i.e. whether it is sold, given away, or used directly by the person producing it).

The new section 158 also prescribes an offence for any person, other than a registered resource producer, who uses a resource in an unauthorised manner. The maximum penalty for this offence is 1665 penalty units. Registered resource producers are excluded from this offence as they are already covered by the pre-existing offence prescribed in section 158.

This amendment is necessary to ensure adherence to the requirements stipulated in an end of waste code. Making an end of waste code involves the assessment of a particular waste and one or more specific end uses. This informs the quality criteria for the waste and other requirements to be met under the code. If the resource is used in an unauthorised manner that has not been considered in the assessment process, environmental harm may occur.

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

Clause 9 also amends section 159 by enabling the chief executive to make an end of waste code or end of waste approval that includes conditions for the end-user of a resource. This is in addition to the pre-existing ability to make a code or approval that applies to the person producing the resource under the code or approval.

This amendment enables the department to better regulate the end-users of resources when necessary to reduce the potential for environmental harm, whilst encouraging appropriate and acceptable uses of waste materials. End-user conditions will be considered in cases where there is a high risk of environmental harm occurring due to the improper use of the resource. End-user conditions may, for example, include conditions regulating the temporary storage of the resource and how the resource may be used, or conditions that require reporting to the department on the quantity of resources received and used over time.

10 Insertion of new ss 159A and 159B

Clause 10 inserts two new sections, 159A and 159B.

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

Section 159A enables the chief executive to develop a draft end of waste code on the chief executive's own initiative. This is in addition to the existing ability of the chief executive to develop a draft code by inviting public nominations of codes to be developed at least once annually (section 160). Prior to this amendment, the chief executive did not have the ability to initiate the development of a draft end of waste code, without first launching the public nomination process.

The new section is intended to provide the chief executive with the flexibility to develop new codes when needed. New draft codes may need to be developed: to replace expiring general approvals that were continued from the former beneficial use approval framework; and for new wastes and/or resource uses which have been tried and successfully proven under an end of waste approval. A draft code developed on the chief executive's own initiative will be subject to the same publication process as a draft code developed through the public nomination process (sections 165 and 166).

Section 159B Schedule of proposed end of waste codes

Section 159B requires the chief executive to prepare, publish and maintain a schedule of end of waste codes proposed to be developed. For each proposed code, the schedule must state the particular waste and proposed use of the waste as a resource, and the date on which the process for making the proposed code will start and end. The schedule must also state the deadline for a technical advisory panel, if established, to provide the department with the draft code.

The schedule, which must be published on the department's website, must also invite stakeholders to register their interest in being consulted on the draft code.

The schedule must be updated as needed, including after deciding whether or not to prepare a draft code nominated by the public (section 161). The schedule should also be updated, if under the new section 159A, the department decides to initiate the development of a draft code outside of the public nomination process.

This amendment provides the department with the flexibility to specify different preparation timeframes for each draft end of waste code, based on for example, the complexity of the waste or proposed use, and the total number of draft codes to be prepared.

This amendment will also provide industry with clarity around the outcome of the submission process; the codes proposed to be developed; and provide the department with the latitude to plan and manage the preparation and release of draft end of waste codes over time. This will benefit industry by ensuring that stakeholders are not overwhelmed by the simultaneous release of multiple draft codes. Stakeholders would be given sufficient time to consider each draft code and provide high quality submissions.

11 Amendment of s 160 (Public notice inviting submissions about potential end of waste codes)

Clause 11 amends section 160 to correct a drafting error that refers to a particular 'waste or resource' for which a draft end of waste code should be prepared. An end of waste code can only be made for a particular 'waste' to state when the waste becomes a resource.

12 Amendment of s 161 (Consideration of submissions)

Clause 12 amends section 161 to correct a drafting error that refers to a draft end of waste code being made for a particular 'waste or resource'. An end of waste code can only be made for a particular 'waste' to state when the waste becomes a resource.

13 Amendment of s 162 (Preparation of end of waste code by technical advisory panel)

Clause 13 amends the title of section 162 by deleting the reference to a technical advisory panel. The amended section heading better reflects the amended content, which now includes the preparation of an end of waste code by the department.

Clause 13 amends sections 162(2) to clarify that the chief executive can decide whether or not to establish a technical advisory panel to prepare a draft end of waste code. This discretion is important, because a technical advisory panel will not always be required. For example, the department has accumulated knowledge and experience of the operation of specific and general approvals under the former beneficial use approval framework. This existing knowledge and experience could be used to prepare a draft end of waste code without the need to establish a technical advisory panel.

It should be noted that although the chief executive may decide not to establish a technical advisory panel to prepare a draft code, the chief executive can, under section 173H, still seek advice, information or comment on the draft code from any entity, including a technical advisory panel established for that purpose.

Section 162(3) is also amended to require the technical advisory panel to prepare a draft end of waste code by the day stipulated in the schedule of proposed end of waste codes.

Clause 13 also amends section 162(4) to make it clear that a technical advisory panel may recommend to the chief executive, rather than 'decide', that a draft end of waste code should not be prepared. Section 162(5) requires the technical advisory panel to provide the chief executive with written justification for the recommendation. These amendments reinforce the advisory role of the panel, and clarify that the ultimate decision on whether to prepare a draft end of waste code lies with the chief executive.

Clause 13 also inserts new subsections (6) and (7), which describe the draft code preparation process if the chief executive decides not to establish a technical advisory panel. The chief executive must prepare the draft code by the deadline stated in the schedule of proposed end of waste codes that must be published under the new section 159B.

14 Amendment of s 165 (Publication of draft end of waste code)

Clause 14 amends section 165 to allow a regulation to prescribe additional matters that must be included in the notice that accompanies the publication of a draft end of waste code for consultation.

15 Replacement of s 168 (Application for amendment of end of waste code)

Section 168 Application for amendment of end of waste code

Clause 15 introduces a structural amendment to section 168 by splitting the provisions for an application across section 168 and provisions in the new Chapter 8A, Part 2. The amended section does not amend the requirements for an application to amend an end of waste code which are prescribed in the pre-amendment *Waste Reduction and Recycling Act 2011*.

16 Omission of ss 169 and 170

Clause 16 deletes sections 169 and 170. Section 169 required the chief executive to notify an applicant of a decision to refuse to grant an amendment application within 10 business days of making the decision. This requirement is now addressed in the new section 173Y, which applies to applications to grant, amend, extend or transfer an approval. The new section 173Y also requires an applicant to be notified within 10 business days of deciding to refuse an amendment application.

Clause 16 deletes section 170, which enabled the chief executive to require an applicant to provide additional information or documents to help decide an amendment application. This process has been amended and is now addressed in the new section 173T. The amended process, described in section 173T, requires the chief executive to issue the applicant with a notice requesting additional information within 20 business days after receiving the application. The application is taken to have lapsed if the applicant does not comply with the notice.

17 Amendment of s 172 (Procedure for amending, cancelling or suspending end of waste code)

Clause 17 amends section 172 by requiring the chief executive to notify a registered resource producer if it is decided not to proceed with a proposal to amend, cancel or suspend an end of waste code. Prior to this amendment, a registered resource producer was required to be notified, only if it was decided to amend, cancel or suspend the code. This amendment provides closure to the process by ensuring that the registered resource producer is notified of the decision outcome in the appropriate manner, regardless of the decision.

Clause 17 also amends section 172(7) by clarifying that 'the decision' refers to a 'decision to take the proposed action', which is a decision to amend, cancel or suspend an end of waste code. This provides context to the provision and removes ambiguity.

18 Replacement of s 173 (Publication of amended end of waste code)

Section 173 Publication and notification of amended end of waste code

Clause 18 amends section 173 by requiring that an amended end of waste code be gazetted. The gazette notice must state the name of the end of waste code, the date it was amended, and where a copy of the amended code may be inspected. The amended end of waste code takes effect on the day the gazette notice is published, or the date stated in the gazette notice or the end of waste code, whichever is later.

As the making of an end of waste code must be notified by gazette under section 166, it is reasonable to require that the amendment of an end of waste code also be

notified by gazette. This ensures a consistent approach to placing official end of waste codes into the public domain.

19 Amendment of s 173B (Registration of end of waste resource producers)

Clause 19 amends section 173B by enabling a registered resource producer to notify the chief executive (in the approved form) if they no longer wish to operate under an end of waste code. This deregistration process will enable the department to maintain an updated register of registered resource producers, and will ensure the department focuses its resources into monitoring the compliance of active registered resource producers.

20 Amendment of s 173D (Procedure for cancelling or suspending registration)

Clause 20 amends section 173D by requiring the chief executive to notify a registered resource producer if it is decided not to proceed with a proposal to cancel or suspend their registration. Prior to this amendment, a registered resource producer was required to be notified only if it was decided to cancel or suspend their registration. This amendment provides closure to the process by ensuring that the registered resource producer is notified of the decision outcome in the appropriate manner, regardless of the decision.

Clause 20 also amends section 173D by clarifying that 'the decision' refers to a 'decision to take the proposed action', which is a decision to cancel or suspend a registered resource producer's registration. This provides context to the provision and removes ambiguity.

21 Amendment of s 173E (Particular circumstances when end of waste approval lapses)

Clause 21 amends section 173E by correcting a drafting error that refers to an end of waste approval relating to a particular 'waste or resource'. An end of waste approval can only be granted for a particular 'waste' to state when the waste becomes a resource.

22 Amendment of s 173F (Register of registered resource producers)

Clause 22 amends section 173F by enabling the register of registered resource producers to be made public. The register may be made public by publishing information other than confidential information, in any way the chief executive considers appropriate, including, for example, on the department's website.

A public register will enable industry and the general public to be aware of persons that are lawful resource producers and from whom they can lawfully obtain a resource for use. This awareness will contribute to public monitoring and reporting of the activities of registered resource producers under the end of waste framework.

The definition for 'confidential information' includes any information that could identify an individual, their current financial circumstances, or that would be likely to damage their commercial activities. Confidential information excludes information about a person that is publicly available, and other information that could not reasonably be expected to identify the person.

23 Replacement of ch 8, pt 3 (End of waste approvals)

Clause 23 replaces Chapter 8, Part 3 with an updated Part 3, which has been redrafted, mainly to reorganise the provisions and reduce repetition of common provisions.

Part 3 End of waste approvals

Section 173I Application

The replacement section 173I states that a person may apply to the chief executive for an end of waste approval to conduct a trial to demonstrate that one kind of waste can be used as a resource. This section makes it clear that an end of waste approval is to be used for demonstration purposes, for example, where the practical use of a waste as a resource—based on a conceptual or theoretical model—needs to be proven, and where there may be uncertainties or assumptions about the potential for environmental harm that need to be verified. The further intention is for an end of waste approval to be used to help inform the decision on whether the waste and proposed use would be suitable for an end of waste code.

This section also describes the information required in an application for an end of waste approval. This section does not amend the information required in an application for an end of waste approval which is prescribed in the pre-amendment *Waste Reduction and Recycling Act 2011*.

Section 173J Particular matters for making decision

The replacement section 173J describes the criteria that the chief executive must consider when deciding on an end of waste approval application and the timeframe for making a decision. In addition to the decision-making criteria already prescribed in the pre-amendment *Waste Reduction and Recycling Act 2011*, the replacement section also requires the chief executive to consider whether the proposed management of the waste or use of the resource is likely to cause any environmental nuisance. Section 15 of the *Environmental Protection Act 1994* defines environmental nuisance.

The replacement section 173J enables the chief executive to make a decision on an end of waste approval application within 40 business days, which may be extended by a further 20 business days. Under the general provisions in section 173U(5), the decision-making period of 40 business days commences on the later of receiving the application, or receiving any additional information or documents requested. Before the end of the 40 business days, the chief executive can, under section 173U(2), give notice of the extension to the applicant.

This amendment increases the decision-making period to 40 business days from the 20 business days allowed in the pre-amendment *Waste Reduction and Recycling Act 2011*. An end of waste approval is intended to be used where the use of a particular waste as a resource has been proven conceptually, but the practical application is yet to be proven. As a consequence the application will, more often than not, involve complex issues and inherent risks and uncertainties that need to be properly considered and addressed to minimise the potential for environmental harm to occur. Experts may also need to be consulted to ensure all potential issues have been considered. Forty business days is considered a reasonable amount of time to allow the application to be properly considered and decided.

Section 173K Conditions of end of waste approval

The replacement section 173K describes the broad scope of conditions that may be imposed on an end of waste approval, and prescribes a penalty for non-compliance with the conditions.

A condition on an end of waste approval may impose an obligation on a resource user. This is in addition to the ability to impose an obligation on the holder of an end of waste approval which has been retained from the pre-amendment *Waste Reduction and Recycling Act 2011*.

An end of waste approval for a particular waste would have been granted based on a consideration of the risks of environmental harm associated with using the waste for one or more specific end uses. If the resource is used in a manner that has not been considered in the approval it may cause environmental harm. It is therefore necessary to restrict the use of a resource to those designated in the approval. This can only be done with some certainty by placing an obligation on the resource user to use the resource in the manner designated in the end of waste approval.

Additionally, an end of waste approval is intended to be used to prove the practical application of using a particular waste as a resource and to determine if an end of waste code could be developed for the waste. In some cases, there may be risks of environmental harm that have not been considered previously that will only be exposed during the use of the resource. In these cases, it would be necessary, for example, to control the manner in which the resource is used and to monitor for environmental impacts in order to determine the potential for environmental harm. This can only be done by placing certain conditions on the resource user.

This section also introduces a penalty of 1665 penalty units for the user of a resource or another person acting under an end of waste approval who fails to comply with the conditions of the approval. This is in addition to the existing penalty of 1665 penalty units prescribed for the holder of an end of waste approval.

The new penalty is intended to deter the misuse and inappropriate use of resources under an approval.

Section 173L Extending end of waste approval

The replacement section 173L describes the process for the holder of an end of waste approval to apply once to the chief executive to extend the approval. The replacement section clarifies that an approval holder, rather than ‘a person’ may make an extension application. This ensures that only the person to whom the approval applies can apply for an extension.

The replacement section 173L also requires an extension application to be made at least 2 months before the end of waste approval expires. Under the pre-amendment *Waste Reduction and Recycling Act 2011*, an application had to be made at least 1 month before the expiry of the approval.

The increase from 1 month to 2 months is required in order to accommodate the increased decision-making period introduced in replacement section 173U.

In that section, the chief executive is allowed 20 business days, extendable by a further 10 business days, to decide on an extension application. Consequently,

requiring that an application to extend an approval be submitted within 2 months of the approval expiring, ensures that the application can be considered and decided by the chief executive before the approval expires.

Section 173M Applying to amend end of waste approval

The replacement section 173M describes the application process to amend an end of waste approval. The replacement section introduces the ability to decide on a 'minor amendment' application within 10 business days. Other amendment applications that are not minor amendments, must be decided within 40 business days rather than the 20 business days under the pre-amendment *Waste Reduction and Recycling Act 2011*.

This section also defines a 'minor amendment', as an amendment that: corrects a minor or formal error in the approval; does not involve a change to the characteristics of the resource; does not relate to the use of the resource; does not significantly increase environmental harm caused by the use of the resource; or does not adversely affects the interest of the holder or another person. Additional types of minor amendments may also be prescribed by regulation.

These types of applications can typically be assessed and decided quickly as they do not involve a reassessment of the potential for environmental harm. The introduction of this provision responds to industry requests to provide certainty that applications involving minor amendments will be dealt with quickly.

In other cases, an amendment application could entail complex changes to any aspect of an end of waste approval, which could require the department to reassess the risks of environmental harm associated with the amendment application. The reassessment and decision-making process could take as long as the original approval application. This provisions enables the department to consider these types of amendment applications in 40 business days, which mirrors the decision timeframe for the original application under replacement section 173J.

This section enables additional types of minor amendments to be prescribed by regulation, which raises the potential fundamental legislative principle that legislation should allow for the delegation of legislative power only in appropriate cases. Prescribing these matters in regulation ensures that there is sufficient flexibility to allow for continuous improvement of the process.

Section 173N Deciding amendment application

The replacement section 173N describes some of the criteria that the chief executive must consider in deciding whether or not to amend an end of waste approval on the basis of an amendment application or an amendment proposed by the chief executive. Section 173V contains the remaining criteria that must be considered for an amendment application.

In addition to the existing criteria that must be considered under the pre-amendment *Waste Reduction and Recycling Act 2011,* section 173N introduces a new requirement for the chief executive to consider any relevant advice, information or comment provided by a technical advisory panel; and whether the proposed management of the waste or use of the resource is likely to cause environmental nuisance (as defined in section 15 of the *Environmental Protection Act 1994*).

Section 173O Applying to transfer end of waste approval

The replacement section 173O describes the application process to transfer an end of waste approval to another person, and the timeframes for communicating the decision on the application. It introduces the requirement for the chief executive to notify the applicant and the transferee of the decision to approve the transfer of an end of waste approval within 5 business days of making the decision. This ensures that both the applicant and the transferee are made aware of the decision. This section does not change any other aspect of the application or decision-making process for an end of waste approval transfer prescribed in the pre-amendment *Waste Reduction and Recycling Act 2011*.

Section 173P Grounds for suspending or cancelling end of waste approval

The replacement section 173P describes the grounds for cancelling or suspending an end of waste approval, which may be used by the chief executive under section 173ZA to suspend or cancel an approval. In addition to the grounds for cancelling or suspending an end of waste approval already prescribed in the pre-amendment *Waste Reduction and Recycling Act 2011*, the replacement section introduces a new ground, specifically, whether the proposed management of the waste or use of the resource has caused or is likely to cause environmental nuisance. Section 15 of the *Environmental Protection Act 1994* defines environmental nuisance.

Section 173Q Chief executive may seek advice, comment or information

The replacement section 173Q enables the chief executive to seek further technical expertise, in the form of advice, comment or information on any aspect of Part 3 (End of waste approvals). This section does not change the powers of the chief executive to seek advice, comment or information about an end of waste approval, which are prescribed in the pre-amendment *Waste Reduction and Recycling Act 2011*.

24 Insertion of new ch 8A

Clause 24 inserts a new Chapter 8A, which prescribes general provisions for end of waste approvals. The majority of the provisions inserted under the new chapter do not change the meaning of provisions under the pre-amended *Waste Reduction and Recycling Act 2011*.

Chapter 8A General provisions for approvals
Part 1 Preliminary

Section 173R Application of chapter

The new section 173R states that Chapter 8A of the *Waste Reduction and Recycling Act 2011* applies to end of waste approvals, and in particular to making and deciding applications for an approval to be granted, amended, extended or transferred.

Part 2 Applications

Section 173S Application

The new section 173S describes the general (or common) requirements for applications to grant, amend, extend or transfer an end of waste approval. It does not

amend the requirements prescribed in the pre-amendment *Waste Reduction and Recycling Act 2011*.

Section 173T Chief executive may require additional information or documents

The new section 173T describes the process by which the chief executive may, by notice, require an applicant to provide additional information to support an application, including an application to grant, amend, extend or transfer an end of waste approval.

The chief executive can ask the applicant for further information if it is reasonable to do so, within 20 business days after receiving the application. The notice must stipulate a reasonable period for the applicant to provide the information. This period can be extended if both parties agree that more time is required.

If the applicant does not comply with the information request, the application is taken to have 'lapsed' rather than 'withdrawn' as required in the pre-amendment *Waste Reduction and Recycling Act 2011*. Taking an application to have 'lapsed' is consistent with the approach and language used in legislation such as the *Environmental Protection Act 1994* and therefore improves consistency across related legislative frameworks.

This section also gives the chief executive new powers to request additional information for applications to extend and to transfer an end of waste approval. This improves the consistency between the various application processes under the end of waste framework. If there was no ability to request additional information, the chief executive could be required to refuse the application simply for a lack of information.

Section 173U Deciding application

The new section 173U describes the decision-making timeframes for applications to grant, amend, extend, or transfer an approval, except where the timeframes are specified in other provisions of the Bill.

Timeframes for deciding on an application to grant and amend an approval are specified in sections 173J(2) and 173M(4) respectively.

There are no existing timeframes prescribed for deciding on an extension application. Therefore, section 173U introduces a new requirement for the chief executive to decide on an application to extend an end of waste approval within 20 business days of receiving the application or any additional information requested, whichever is later. This period may be extended for a further 10 business days, by giving the applicant a notice of the extension. If a decision is not made by the chief executive, it is taken to be a refusal of the application. Prior to this amendment, no timeframes were prescribed for deciding on an extension application.

Section 173U does not amend the existing timeframes for deciding on an application to transfer an approval.

Section 173V General criteria for deciding application

The new section 173V describes some of the criteria that the chief executive must consider in deciding on an application to grant, amend, extend or transfer an end of waste approval. The remaining criteria that must be considered for an application to grant and amend an approval are provided in sections 173J(1) and 173N(2)

respectively. Section 173V does not limit the matters the chief executive may consider.

Section 173V does not introduce any new criteria for deciding on an application to grant or extend an end of waste approval application.

Section 173V introduces a new requirement for the chief executive to consider the objects of the *Waste Reduction and Recycling Act 2011* in deciding on an application to amend an approval.

For an application to transfer an approval, section 173V also introduces a new requirement for the chief executive to consider the waste and resource management hierarchy, and any other matter prescribed by regulation.

Section 173W Granting application

The new section 173W states that an applicant must be informed within 5 business days of making a decision to grant an application. This includes an application to grant, amend, extend or transfer an approval. It also describes the information for the notice that must be issued for a decision to grant and to amend an approval.

Section 173W corrects an error in the pre-amendment *Waste Reduction and Recycling Act 2011* by clarifying that only one notice—an information notice—must be issued if the chief executive grants an application that imposes or amends any conditions of the approval. No other amendments have been introduced to the existing notice requirements prescribed in the pre-amendment *Waste Reduction and Recycling Act 2011*.

Section 173X Conditions of approval

The new section 173X enables the chief executive to impose conditions on an end of waste approval or an amended end of waste approval. The chief executive has the discretion to impose any condition on an end of waste approval that is deemed necessary or desirable. As such, there is no need to further specify the types of conditions in regulation.

Section 173Y Refusal of application

The new section 173Y describes the general process to be followed if the chief executive decides to refuse to grant an application for an end of waste approval, or an application to amend, extend or transfer an approval. The new section does not amend the process prescribed in the pre-amendment *Waste Reduction and Recycling Act 2011*.

Part 3 Amendment, suspension or cancellation

Section 173Z Amendment of approval

The new section 173Z enables the chief executive to initiate the amendment of an end of waste approval. The new section does not amend the chief executive's ability to initiate an amendment to an approval prescribed in the pre-amendment *Waste Reduction and Recycling Act 2011.*

On the commencement of the end of waste provisions in November 2016, a 'specific approval' in force under the former beneficial use approval framework, transitioned into an 'end of waste approval'. Each 'transitional approval' will expire on the date stipulated in the approval unless the approval is extended, cancelled, suspended or surrendered, or the period of the approval is amended in accordance with the provisions of the *Waste Reduction and Recycling Act 2011*.

It is intended that transitional approvals will be streamlined into end of waste codes where merited and in accordance with the decision-making and consultation processes outlined in the end of waste provisions. In these cases, section 173Z will enable the department to amend the period of a transitional approval until it is decided whether or not it is appropriate to make an end of waste code for the waste and resource use in the transitional approval. This would allow the legitimate use of end of waste resources to continue while the end of waste approval is streamlined into an end of waste code.

Section 173ZA Suspension or cancellation of approval

The new section 173ZA identifies several grounds which can be used by the chief executive to cancel or suspend an end of waste approval. Other grounds for cancelling or suspend an end of waste approval are described in section 173P.

Section 173ZA retains the grounds for cancelling or suspending an end of waste approval prescribed in the pre-amendment *Waste Reduction and Recycling Act 2011*, and enables the chief executive to also consider whether it is otherwise necessary or desirable to suspend or cancel the approval, or whether the approval was granted on the basis of information that has changed in a way that is likely to cause an environmental nuisance. Section 15 of the *Environmental Protection Act 1994* defines environmental nuisance.

Section 173ZB Show cause notice

The new section 173ZB describes the process by which the chief executive must issue a show cause notice if the chief executive proposes to amend, cancel, or suspend an end of waste approval. The new section replaces the term 'notice' with 'show cause notice' but does not otherwise amend the process prescribed in the pre-amendment *Waste Reduction and Recycling Act 2011*.

Section 173ZC Decision about proposed amendment, suspension or cancellation

The new section 173ZC partly describes the process for the chief executive to decide on a proposal to amend, suspend or cancel an end of waste approval. Section 173N(2) also describes the other part of the process.

Section 173ZC introduces a requirement for the chief executive to notify the approval holder if it is decided not to proceed with a proposal to amend, suspend, or cancel an approval. This provides closure to the process by ensuring the holder is notified of the outcome of the decision making process.

Aside from this amendment, the new section 173ZC together with section 173N(2) do not amend the process for deciding on a proposal to amend, suspend or cancel an end of waste approval prescribed in the pre-amendment *Waste Reduction and Recycling Act 2011*.

Section 173ZD Minor amendment of approval

The new section 173ZD enables the chief executive to make a minor amendment to an end of waste approval and describes the process to be followed. This section does not amend the ability of the chief executive to make a minor amendment to an end of waste approval prescribed in the pre-amendment *Waste Reduction and Recycling Act 2011*.

Part 4 Miscellaneous

Section 173ZE Surrender of approval

The new section 173ZE enables the holder of an end of waste approval to surrender the approval by giving notice to the chief executive. The new section does not amend the ability of a holder to surrender an approval, which is prescribed in the pre-amendment *Waste Reduction and Recycling Act 2011*.

Section 173ZF Request for information about approval

The new section 173ZF enables the chief executive to request information about an active or inactive end of waste approval. Information can be requested from the current holder of an approval and the past holder of an inactive approval. However, information can only be requested about approvals that have been transferred, cancelled, surrendered or that have otherwise ended within the 5 years before the request is made.

The request for information must state the information required, why the information is required, and the deadline for providing the information.

This section will enable the chief executive to seek information about an end of waste approval from a past or present holder that could be used, for example, to inform the development of a new end of waste code, or to monitor activities carried out under an approval. The time limit of 5 years is consistent with the minimum time prescribed for persons to retain records under other sections of the *Waste Reduction and Recycling Act 2011*. This provision does not limit the ability of the chief executive to also require the holder of an approval to report information as a condition of the approval.

25 Amendment of s 175 (Who may apply for internal review)

Clause 25 deletes specific reference to the chief executive to allow for entities who have an agreement in place with the Product Responsibility Organisation to request an internal review of decisions made by the Organisation.

26 Amendment of s 176 (Requirements for making application)

Clause 26 clarifies that an application for an internal review may be made to the Product Responsibility Organisation. It also transfers existing provisions (under s 175) for review of decisions made by the chief executive to this subsection.

27 Amendment of s 177 (Decision not stayed)

Clause 27 expands the meaning of **relevant entity** from chief executive or QCAT to also include the Product Responsibility Organisation.

28 Amendment of s 178 (Internal review)

Clause 28 broadens the existing internal review provisions to include decisions made personally by chief executive and the Production Responsibility Organisation including the board of directors.

29 Amendment of s 179 (Notice of internal review decision)

Clause 29 provides clarity that a notice of internal review decision made by the Product Responsibility Organisation like the existing provision for the chief executive must give the application a notice of the decision within ten days.

30 Amendment of s 245 (Definitions for ch 11)

Clause 30 inserts definitions for the following prescribed provision s99Q(3)**,** s99ZB(3), s99ZH(3) and s99M(1) which relate to show cause notices and compliance notices if the chief executive believes a prescribed provision has been contravened.

31 Amendment of s 268 (Executive officer may be taken to have committed offence)

Clause 31 amends the definition of deemed executive liability to include compliance with end of waste code (s 158(1) or (2)) and conditions of end of waste approval (s173K(2)).

32 Amendment of ch 16, hdg (Transitional provisions for Environmental Protection and Other Legislation Amendment Act 2014)

Clause 32 omits the heading for Chapter 16 and replaces it with **Chapter 16 Other transitional provisions**

33 Insertion of new ch 16, pt 1, hdg

Clause 33 inserts a new heading for Chapter 16 **Part 1 Transitional provisions for Environmental Protection and Other Legislation Amendment Act 2014**

34 Amendment of new ch 16, pt 2

Clause 34 inserts **Part 2 Transitional provisions for Waste Reduction and Recycling Amendment Act 2017** for chapter 16.

307 Retailer must offer alternative plastic shopping bag during phase out period

The purpose of this section is to ensure that an alternative shopping bag is available should a customer request a bag.

This section applies to a retailer if, during the phase out period, a consumer asks the retailer for an alternative bag to carry the goods that the retailer sells from their premises. The retailer must offer to give or sell the consumer an alternative shopping bag.

The phase out period means the period that starts on the commencement and ends at the end of 30 June 2018.

Nothing in this section precludes the retailer from continuing to provide a single-use lightweight plastic shopping bag that would otherwise be banned from 1 July 2018, if the consumer does not request an alternative bag.

308 Transition period for displaying refund marking on beverage containers

The purpose of this section is to provide time for beverage manufacturers to display the refund marking on containers. It also provides a time period within which the operator of a container refund point may continue to receive a container that does not display a refund marking and still provide the refund amount to the person presenting the container.

The beverage product manufacturer does not commit an offence against section 99P(2) if the manufacturer sells a beverage product in a container that does not display the refund marking before the manufacture transition day.

A person also does not commit an offence against a provision of chapter 4, part 3B if the person claims a refund amount; accepts the container and pays a refund amount; claims a recovery amount or makes a declaration in an approved form about the container displaying a refund marking before the collection transition day.

The *collection transition day* means the day that is six months after the manufacture transition day. This means that a container refund point operator can accept a container that does not display the refund mark for six months following the day that the refund mark is to be displayed.

The *manufacture transition day* means the day prescribed in regulation that is at least one year after the day a regulation prescribing the refund marking requirements made under section 99K commences. This provides beverage manufacturers with a certain period of time to display the refund marking on containers that will be eligible for a refund under the scheme.

35 Amendment of sch (Dictionary)

Clause 35 amends the dictionary to the *Waste Reduction and Recycling Act 2011.*