

Queensland



CITY OF BRISBANE (GARBAGE SERVICES) ACT 1985

**Reprinted as in force on 30 January 1996
(Act not amended up to this date)**

Reprint No. 1

**This reprint is prepared by
the Office of the Queensland Parliamentary Counsel
Warning—This reprint is not an authorised copy**

Information about this reprint

This Act is reprinted as at 30 January 1996.

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

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

- update citations and references (pt 4, div 2)
- update references (pt 4, div 3)
- express gender specific provisions in a way consistent with current drafting practice (s 24)
- use different spelling consistent with current drafting practice (s 26(2))
- use standard punctuation consistent with current drafting practice (s 27)
- use conjunctives and disjunctives consistent with current drafting practice (s 28)
- use expressions consistent with current drafting practice (s 29)
- relocate marginal or cite notes (s 34)
- use aspects of format and printing style consistent with current drafting practice (s 35)
- omit provisions that are no longer required (ss 36, 37 and 39)
- omit the enacting words (s 42A)
- number and renumber certain provisions and references (s 43)
- make all necessary consequential amendments (s 7(1)(k)).

Also see endnotes for information about—

- **when provisions commenced**
- **editorial changes made in the reprint, including—**
 - **table of changed names and titles**
 - **table of changed citations and remade laws**
 - **table of obsolete and redundant provisions**
 - **table of renumbered provisions.**

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CITY OF BRISBANE (GARBAGE SERVICES) ACT 1985

[reprinted as in force on 30 January 1996]

An Act to ensure the orderly and efficient collection, removal, transportation and disposal of rubbish and other waste in the City of Brisbane consistent with rights of employees performing such work pursuant to contracts of service or applicable awards (or both) and to conciliation and arbitration in respect of claims and disputes and for related purposes

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *City of Brisbane (Garbage Services) Act 1985*.

Interpretation

4.(1) In this Act—

“**award**” means any award, industrial agreement, or decision within the meaning of the *Conciliation and Arbitration Act 1904* (Cwlth) (as amended and in force for the time being) or the *Industrial Relations Act 1990*.

“**commercial refuse**” means refuse (other than garden refuse, interceptor waste or waste discharged into a sewer) resulting from the use or occupation of any premises or part thereof, being—

- (a) a hotel, motel, caravan park, cafe, food store, canteen or like premises; or

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- (b) any assembly building, institutional building, school, kindergarten or child minding centre; or
- (c) premises where any spectator sport or any game is played; or
- (d) any office, shop or other premises whatsoever where there is carried on any business or work, other than a manufacturing process.

“contractor” means a person who is party to a garbage contract with the Council, and includes a subcontractor.

“council” means Brisbane City Council.

“court” means the Supreme Court of Queensland.

“direction” means a direction in connection with an obligation, including a direction which forbids, limits or qualifies what may be done or which relates to the time or manner or performance of what is required or directed or permitted to be done.

“domestic refuse” means refuse (other than recyclable refuse, interceptor waste or waste discharged into a sewer) resulting from the ordinary domestic use or occupation of any premises or any part thereof, being—

- (a) a single unit dwelling;
- (b) premises containing 2 or more flats, apartments or other dwelling units, each used as a separate domicile;
- (c) a boarding house, hostel, lodging house or guest house.

“employee” means a person who is an employee of a contractor.

“garbage” means commercial refuse, domestic refuse, garden refuse, industrial refuse and nightsoil or any of them.

“garbage contract” means a contract between the council and a contractor whether entered into before or after the commencement of this Act for the provision of services by the contractor in connection with the collection, removal, transportation, and disposal of garbage or any of them.

“garden refuse” means grass cuttings, trees, bushes, shrubs, loppings of trees, bushes and shrubs and material of a like nature resulting from the ordinary use or occupation of any premises or any part thereof.

“industrial refuse” means interceptor waste and refuse other than—

- (a) waste discharged into a sewer or a treatment process;
- (b) domestic refuse, commercial refuse, garden refuse or recyclable refuse.

“interceptor” means any apparatus used to intercept substances in sewage, waste water or trade waste and to prevent their discharge into sewers, septic tanks, other treatment devices or other waste disposal systems.

“interceptor waste” means any matter intercepted by and held in an interceptor.

“nightsoil” includes all human faecal matter and human urine and matter mixed with them and the contents of devices for the treatment of those matters and that urine.

“obligation” means an obligation, prohibition or restriction pursuant to or in accordance with—

- (a) a contract; or
- (b) a direction; or
- (c) this Act; or
- (d) an award.

“recyclable refuse” means clean and inoffensive refuse declared to be recyclable refuse under an approval and having reference only to that approval, granted by the council pursuant to the *Health Act 1937*, section 98A.

“refuse container” means a container of the type approved by the chief health officer (of the department in which the *Health Services Act 1991* is administered) for the State for the storage of domestic refuse, commercial refuse or, as the case may be, industrial refuse.

“subcontract” means a contract for the performance of all or any part of a garbage contract and includes any subsequent subcontract.

“subcontractor” means a person to whom all or any part of the performance of a garbage contract is subcontracted, whether by a person who is a party to a garbage contract or otherwise.

(2) A direction is not a direction for the purposes of this Act unless it is a

lawful direction which consistent with all applicable laws, awards, and contractual provisions.

(3) An obligation is not an obligation for the purposes of this Act unless it is a lawful obligation which is consistent with all applicable laws, awards and contractual provisions.

(4) An act or omission does not constitute noncompliance with an obligation for the purposes of this Act if the act or omission occurs—

- (a) by accident without negligence; or
- (b) in consequence of an honest and reasonable but mistaken belief which, if correct, would have justified the act or omission; or
- (c) under such circumstances of sudden or extraordinary emergency that an ordinary person possessing ordinary power of self-control could not reasonably be expected to act otherwise.

(4A) It shall be for the person who seeks to rely upon a provision of subsection (4) to assert and prove that the requirements thereof are satisfied.

(5) For the purposes of this Act, the purposes of an act or omission are both what is intended and the foreseeable consequences of that act or omission.

(6) For the purposes of this Act, the act or omission of a person who was at the time of the act or omission—

- (a) the holder of an office within the meaning of the *Conciliation and Arbitration Act 1904* (Cwlth) (as amended and in force for the time being) of an organisation of employees within the meaning of that Act, or a person who was an officer of a branch of the organisation; or
- (b) a person elected by a group of employees as their delegate to represent them in any matter with such an organisation of employees to which they belong, shall be deemed to be the act or omission of the organisation and the purposes of the officer or person shall be deemed to be the purposes of the organisation.

(7) For the purposes of this Act, the act or omission of a person who was at the time of the act or omission an officer within the meaning of the *Industrial Conciliation and Arbitration Act 1961* of an industrial union of employees within the meaning of that Act or a branch of the industrial union

shall be deemed to be the act or omission of the industrial union and the purposes of the officer shall be deemed to be the purposes of the industrial union.

Nothing to exclude or limit other rights at law

5. Nothing in this Act shall exclude or limit any right or power of the council under any Act or law.

Delegation

6. The council may delegate to the mayor or to any officer of the council all or any of its powers, functions, authorities, duties and discretions under a garbage contract or this Act.

Proceedings not to be brought for offences

7.(1) No proceeding shall be brought as for an offence against this Act in respect of any noncompliance with an obligation.

(2) However, nothing in this Act shall exclude, limit or qualify the jurisdiction and power of the court to enforce compliance, and to punish for noncompliance, with an order of the court.

Construction of Act

9. In the interpretation of a provision of this Act, a construction that would promote the object of the Act shall be preferred to a construction that would not promote that object.

PART 2—CONTROL OF GARBAGE SERVICES

Directions to contractors

10.(1) The council may give directions either orally or in writing to a contractor in connection with the performance of a garbage contract,

including the performance of a subcontract, and the contractor shall comply fully with all such directions.

(2) Where an oral direction is given under subsection (1) that direction shall, as soon as practicable after it is given, be reduced to writing and a copy thereof given to the contractor.

Directions to employees

11.(1) A contractor shall give such directions to the contractor's employees as are necessary to ensure full compliance with all obligations upon that contractor.

(2) Directions may be given by a contractor orally or in writing and to employees generally or to any 1 or more employees.

Employee to comply with directions

12. An employee shall comply fully with all obligations upon that employee.

Contractor to supply details of directions

13. A contractor shall forthwith provide the council in writing with full details of all directions given by the contractor and in respect of any noncompliance by an employee with an obligation upon that employee.

Council may direct dismissal of employee

14.(1) Subject to subsection (2), the council may give a direction in writing to a contractor to terminate the employment of an employee who has not complied or is not complying fully with the obligations upon that employee and the contractor shall terminate the employment of that employee in accordance with that direction.

(2) The council shall not direct a contractor to terminate the employment of an employee without first affording the contractor and the employee such opportunity as the council considers adequate to show cause to the council why that employee's employment should not be terminated.

(3) Nothing in this Act shall exclude or limit any entitlement of either a contractor or an employee to terminate the employment of the employee.

PART 3—INTERFERENCE WITH GARBAGE SERVICES

Acts and omissions constituting noncompliance with obligations

15. A person shall not—

- (a) by act or omission interfere with, interrupt, hinder or prevent compliance in any respect with an obligation; or
- (b) by act or omission attempt to interfere with, interrupt, hinder or prevent compliance in any respect with an obligation; or
- (c) do or omit to do or attempt to do any act for the purpose or for purposes which include the purpose of interfering with, interrupting, hindering or preventing compliance in any respect with an obligation; or
- (d) threaten to interfere with, interrupt, hinder or prevent or to do or omit to do any act for the purpose or for purposes which include the purpose of interfering with, interrupting, hindering or preventing compliance in any respect with an obligation; or
- (e) conspire to interfere with, interrupt, hinder or prevent to do or omit to do any act for the purpose or for purposes which include the purpose of interfering with, interrupting, hindering or preventing compliance in any respect with an obligation; or
- (f)—
 - (i) by act or omission aid, abet, counsel, procure, incite, encourage, induce (whether by threats or promises or otherwise);
 - (ii) be in any way, directly or indirectly, knowingly concerned in or party to;noncompliance in any respect with an obligation.

PART 4—ENFORCEMENT AND REMEDIES

Power of court on application of council

16.(1) On the application of the council—

- (a) the court may grant an order in such terms as it deems appropriate requiring a person who is not complying, or who has threatened or is proposing not to comply fully, with all or any obligations upon that person to comply with those obligations or with the obligation or obligations specified in the order;
- (b) the court may grant such an order in respect of a person who has previously not complied fully with all obligations upon that person although that person is complying fully with the obligations upon that person and proposes to continue to do so;
- (c) the court may grant an interim or interlocutory order pending final determination of an application for an order under paragraph (a) or (b).

(2) An order shall not be granted under subsection (1) that requires a person to continue to perform work as an employee in respect of any period subsequent to the termination of the employee's employment.

(3) The council shall not be required to give an undertaking as to damages or otherwise in connection with an order granted under subsection (1).

(4) The court may on application by a party to an order granted under subsection (1) rescind, vary or stay the operation of the order.

Imposition of pecuniary penalties

17.(1) On the application of the council at any time during the period of noncompliance or within 1 year after the expiration of that period, the court may order a person who has not complied or is not complying fully with an order of the court to pay a pecuniary penalty not exceeding—

- (a) \$250 000 in the case of a body corporate, an organisation of employees within the meaning of the *Conciliation and Arbitration Act 1904* (Cwlth) (as amended and in force for the time being) or

an industrial union of employees within the meaning of the *Industrial Conciliation and Arbitration Act 1961*;

(b) \$50 000 in the case of any other person.

(2) A penalty so imposed shall be paid to the council within the time fixed by the order whereupon the council shall pay one-half of any amount received into the city fund of the council and the other half of such amount to the consolidated fund of Queensland.

(3) Nothing in this section—

(a) shall impose any obligation upon the council to apply for a pecuniary penalty; or

(b) shall impose—

(i) any obligation upon the council to recover a pecuniary penalty; or

(ii) any liability to make any payment to the consolidated fund of Queensland in respect of a pecuniary penalty;

ordered to be paid but not received by the council.

Jurisdiction of court

18.(1) The original jurisdiction of the court under this part shall be exercised by a single judge sitting without a jury.

(2) Except as otherwise provided in this part, the court shall have and may exercise all its powers and authorities in any proceeding under this Act and its ordinary practices and procedures shall apply in such proceedings.

ENDNOTES

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2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). However, no amendments have commenced operation on or before that day. Future amendments of the City of Brisbane (Garbage Services) Act 1985 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

3 Key

Key to abbreviations in list of legislation and annotations

AIA	=	Acts Interpretation Act 1954	(prev)	=	previously
amd	=	amended	proc	=	proclamation
ch	=	chapter	prov	=	provision
def	=	definition	pt	=	part
div	=	division	pubd	=	published
exp	=	expires/expired	R[X]	=	Reprint No.[X]
gaz	=	gazette	RA	=	Reprints Act 1992
hdg	=	heading	reloc	=	relocated
ins	=	inserted	renum	=	renumbered
lap	=	lapsed	rep	=	repealed
notfd	=	notified	s	=	section
om	=	omitted	sch	=	schedule
o in c	=	order in council	sdiv	=	subdivision
p	=	page	SIA	=	Statutory Instruments Act 1992
para	=	paragraph	SL	=	subordinate legislation
prec	=	preceding	sub	=	substituted
pres	=	present	unnum	=	unnumbered
prev	=	previous			

4 List of legislation

City of Brisbane (Garbage Services) Act 1985 No. 95

date of assent 13 December 1985

ss 1–2 commenced on date of assent

remaining provisions commenced 19 December 1985 (proc pubd gaz
19 December 1985 p 475A)

5 List of annotations

Commencement

s 2 om R1 (see RA s 37)

Arrangement

s 3 om R1 (see RA s 36)

Act subject to legislative power of the State

s 8 om R1 (see RA s 39)

6 Table of changed names and titlesTABLE OF CHANGED NAMES AND TITLES
under the Reprints Act 1992 ss 23 and 23A

Old	New	Reference provision
consolidated revenue fund	consolidated fund	Financial Administration and Audit Act 1977 s 112
director-general of health and medical services	chief health officer (of the department in which the Health Services Act 1991 is administered)	Health Services Act 1991 s 7.4

7 Table of changed citations and remade lawsTABLE OF CHANGED CITATIONS AND REMADE LAWS
under the Reprints Act 1992 ss 21A and 22

Old	New	Reference provision
Industrial Conciliation and Arbitration Act 1961	Industrial Relations Act 1990	Industrial Relations Act 1990 s 617A

8 Table of obsolete and redundant provisionsTABLE OF OBSOLETE AND REDUNDANT PROVISIONS
under the Reprints Act 1992 s 39

Omitted provision	Provision making omitted provision obsolete/redundant
Act to be interpreted not to exceed Parliament's legislative power	Acts Interpretation Act 1954 s 9
definitions to be read in context	Acts Interpretation Act 1954 s 32A

9 Table of renumbered provisionsTABLE OF RENUMBERED PROVISIONS
under the Reprints Act 1992 s 43

Previous	Renumbered as
4(4)(a)	4(4)
4(4)(a)(i)	4(4)(a)
4(4)(a)(ii)	4(4)(b)
4(4)(a)(iii)	4(4)(c)
4(4)(b)	4(4A)
7, 1st sentence	7(1)
7, 2nd sentence	7(2)