



Western Australia

Waste Avoidance and Resource Recovery Act 2007

Compare between:

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Waste Avoidance and Resource Recovery Act 2007

An Act to —

- **provide for waste avoidance and resource recovery; and**
- **establish the Waste Authority; and**
- **provide for waste services by local governments; and**
- **provide for levies on waste; and**
- **repeal the *Environmental Protection (Landfill) Levy Act 1998*²; and**
- **provide for related and consequential matters.**

Part 1 — Preliminary

1. Short title

This is the *Waste Avoidance and Resource Recovery Act 2007*¹.

2. Commencement

This Act comes into operation as follows:

- (a) sections 1 and 2 — on the day on which this Act receives the Royal Assent¹;
- (b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions¹.

3. Terms used

- (1) In this Act unless the contrary intention appears —

approved product stewardship plan means a product stewardship plan registered under section 45(3);

business plan means a business plan approved under section 39;

CEO means chief executive officer of the department of the Public Service principally assisting in the administration of this Act;

Chief Health Officer has the meaning given in the *Public Health Act 2016* section 4(1);

district means an area that has been declared to be a district under the *Local Government Act 1995*, and any place outside the boundaries of the district which is under the control of the local government for the district;

entity means any person or body, including a public authority;

EP Act means the *Environmental Protection Act 1986*;

EP authorisation means a licence, permit or approval granted under the EP Act;

extended producer responsibility scheme means a scheme for giving effect to a policy in which the producer's responsibility

for a product (including physical or financial responsibility) is extended to the post-consumer stage of the product's life-cycle;

inspector means an inspector appointed under the EP Act section 88 for the purposes of this Act and includes the CEO;

levy means a levy imposed under the *Waste Avoidance and Resource Recovery Levy Act 2007*;

local government includes a regional local government established for the purpose of providing waste services;

local government waste means —

- (a) waste from residential sources; and
- (b) any other waste of a kind prescribed by the regulations for the purposes of this paragraph,

but does not include sewage or waste of a kind prescribed by the regulations as excluded for the purposes of this definition;

member means a member of the Waste Authority appointed under section 11(1);

producer of a product includes a manufacturer, importer, supplier or distributor, of the product in this State or an entity having a proprietary interest in the name under which the product is manufactured, imported, supplied or distributed in this State;

product stewardship plan means a plan in which the producers of a product —

- (a) share responsibility with governments and consumers for the environmental impact of the product throughout its use, including end of use management; and
- (b) seek to reduce the adverse environmental impact of the product;

public authority means —

- (a) an agency or organisation as those terms are defined in the *Public Sector Management Act 1994*; or

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- (b) a body, corporate or unincorporate, that is established or continued for a public purpose by the State, regardless of the way it is established; or
- (c) a local government;

WARR Account means the Waste Avoidance and Resource Recovery Account established by section 79;

waste includes matter —

- (a) whether liquid, solid, gaseous or radioactive and whether useful or useless, which is discharged into the environment; or
- (b) prescribed by the regulations to be waste;

Waste Authority means the Waste Authority established by section 8;

waste collection permit has the meaning given by section 56(1);

waste facility means premises used for the storage, treatment, processing, sorting, recycling or disposal of waste;

waste service means —

- (a) the collection, transport, storage, treatment, processing, sorting, recycling or disposal of waste; or
- (b) the provision of receptacles for the temporary deposit of waste; or
- (c) the provision and management of waste facilities, machinery for the disposal of waste and processes for dealing with waste;

waste strategy means the waste strategy approved and in force under Part 4 Division 1.

- (2) If a term has a meaning in the EP Act, it has the same meaning in this Act unless the contrary intention appears in this Act.

[Section 3 amended: No. 19 of 2016 s. 200.]

4. State bound

This Act binds the State and, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

5. Objects of this Act

- (1) The primary objects of this Act are to contribute to sustainability, and the protection of human health and the environment, in Western Australia and the move towards a waste-free society by —
 - (a) promoting the most efficient use of resources, including resource recovery and waste avoidance; and
 - (b) reducing environmental harm, including pollution through waste; and
 - (c) the consideration of resource management options against the following hierarchy —
 - (i) avoidance of unnecessary resource consumption;
 - (ii) resource recovery (including reuse, reprocessing, recycling and energy recovery);
 - (iii) disposal.
- (2) The principles set out in the EP Act section 4A apply in relation to the objects of this Act.

6. Effect on other laws

- (1) Except as specifically provided by this Act, the provisions of this Act are complementary to and not in derogation of the provisions of any other law of the State.
- (2) Without limiting the generality of subsection (1), this Act is not to be construed so as to prevent a person from being prosecuted under any other enactment for an offence punishable by this Act, or from being liable under any other law of the State to any other or higher penalty or punishment than is provided for the offence by this Act.

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- (3) Nothing in this section affects the operation of the *Sentencing Act 1995* section 11.
- (4) Nothing in this Act in any way affects any right any entity has at law to prevent, control or abate pollution or environmental harm or obtain damages.

7. Chief Health Officer to be consulted on public health issues

- (1) Nothing in this Act limits the functions of the Chief Health Officer under the *Health (Miscellaneous Provisions) Act 1911* or the *Public Health Act 2016*.
- (2) The regulations may set out circumstances in which the CEO or the Waste Authority must consult the Chief Health Officer with respect to a decision that the CEO or Waste Authority proposes to make under this Act.

[Section 7 amended: No. 19 of 2016 s. 201 and 337.]

Part 2 — Waste Authority

8. Waste Authority established

A body called the Waste Authority is established.

9. Status

The Waste Authority is an agent of the State and has the status, immunities and privileges of the State.

10. Authority may use other names

- (1) In addition to its statutory name, the Waste Authority may use and operate under any other name approved by the Minister.
- (2) Notice of an approval under subsection (1) must be published in the *Gazette*.

11. Membership

- (1) The Waste Authority must comprise 5 members appointed by the Governor on the recommendation of the Minister.
- (2) The members are to be persons who, in the opinion of the Minister —
 - (a) have skill, experience and knowledge in matters relating to sustainability, waste services, or waste avoidance and resource recovery; or
 - (b) have a particular function or vocational interest relevant to the functions of the Waste Authority,

and who, in the opinion of the Minister, are able to make a contribution to the functions of the Waste Authority.

- (3) Before making a recommendation under subsection (1) the Minister must publish in a daily newspaper circulating throughout the State a notice calling for expressions of interest in appointment to the office of member.

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- (4) The Minister must consider expressions of interest lodged in accordance with the notice but may make a recommendation under subsection (1) whether or not the person recommended has lodged an expression of interest.
- (5) A member must not be a person who is employed in the Public Service under the *Public Sector Management Act 1994* Part 3.

12. Chairman and deputy chairman

One of the members is to be appointed by the Governor on the recommendation of the Minister to be the chairman of the Waste Authority and another to be the deputy chairman of the Waste Authority.

13. CEO may attend meeting

The CEO, or a delegate of the CEO, is entitled to attend any meeting of the Waste Authority and to take part in the consideration and discussion of any matter before a meeting, but cannot vote on any matter.

14. Constitution and proceedings

Schedule 1 sets out provisions as to the constitution and proceedings of the Waste Authority.

15. Remuneration and conditions of members

The remuneration and allowances and other conditions of office of a member are to be determined by the Governor on the recommendation of the Public Sector Commissioner.

[Section 15 amended: No. 39 of 2010 s. 89.]

16. Provision of services and facilities

- (1) The Minister must ensure that the Waste Authority is provided with such services and facilities as are reasonably necessary to enable it to perform its functions.

- (2) Without limiting subsection (1), the Minister may, by arrangement with the Department, and on such terms and conditions as may be mutually arranged with the Waste Authority, allow the Waste Authority to make use, either full-time or part-time, of —
 - (a) the services of any officer or employee employed in the Department; and
 - (b) any services or facilities of the Department.
- (3) This section does not limit section 17.

17. Use of staff and facilities of other departments, agencies and instrumentalities

- (1) Without limiting section 16, the Minister may, by arrangement with the relevant employing authority, allow the Waste Authority to make use, either full-time or part-time, of the services of any officer or employee —
 - (a) in the Public Service; or
 - (b) in a State agency or instrumentality; or
 - (c) otherwise in the service of the Crown in right of the State.
- (2) Without limiting section 16, the Minister may, by arrangement with —
 - (a) a department of the Public Service; or
 - (b) a State agency or instrumentality,make use of any facilities of the department, agency or instrumentality.
- (3) An arrangement under subsection (1) or (2) must be made on terms agreed to by the parties.

18. Committees

- (1) The Waste Authority, with the approval of the Minister, may —
 - (a) establish committees to assist the Waste Authority in the performance of its functions; and
 - (b) determine the constitution of any committee; and
 - (c) appoint —
 - (i) members of the Waste Authority; or
 - (ii) members of the Waste Authority and other persons,
to be members or deputy members of a committee established under paragraph (a); and
 - (d) discharge, alter, or reconstitute any such committee.
- (2) At least one member of each committee established under subsection (1) must be a member of the Waste Authority.
- (3) A committee established under subsection (1) must comply with any direction of the Waste Authority.
- (4) Subject to any direction of the Waste Authority, a committee established under subsection (1) may determine its own procedure.

Part 3 — Functions of Waste Authority

Division 1 — General

19. Functions of Waste Authority

- (1) Subject to this Act, the functions of the Waste Authority are those set out in Schedule 2.
- (2) It is also a function of the Waste Authority to do things that it determines to be conducive or incidental to the performance of a function referred to in subsection (1).

20. Powers generally

- (1) The Waste Authority has all the powers it needs to perform its functions.
- (2) Without limiting subsection (1) the Waste Authority may for the purpose of performing a function —
 - (a) request the Minister to seek information on matters related to this Act from any other Minister and, on receipt of that information, to give it to the Waste Authority; and
 - (b) obtain the advice of persons having special knowledge, experience or responsibility in regard to any matter related to this Act; and
 - (c) consult and collaborate with appropriate entities, whether or not in the State; and
 - (d) conduct, commission, promote and support research into resource efficiency, waste avoidance and resource recovery and any other matter related to this Act; and
 - (e) publish reports relating to any matter arising under this Act, including reports on the Waste Authority's findings, advice, considerations and recommendations; and
 - (f) provide information to the public on any matter related to this Act.

Division 2 — Accountability

21. Minister may give directions

- (1) The Minister may give written directions to the Waste Authority with respect to the exercise or performance of its functions, either generally or in relation to a particular matter, and the Waste Authority must give effect to any such direction.
- (2) The text of a direction under subsection (1) must be included in the annual report submitted under section 23.

22. Minister to have access to information

- (1) In this section —
document includes any tape, disk or other device or medium on which information is recorded or stored;
information means information specified, or of a description specified, by the Minister that relates to the functions of the Waste Authority;
officer of the Waste Authority means a person whose services are provided under section 16(1) or used under section 17(1).
- (2) The Minister is entitled to have information in the possession of the Waste Authority and, if the information is in or on a document, to have, and make and retain copies of, that document.
- (3) For the purposes of subsection (2) the Minister may —
 - (a) request the Waste Authority to provide information to the Minister; and
 - (b) request the Waste Authority to give the Minister access to information; and
 - (c) for the purposes of paragraph (b) make use of officers of the Waste Authority to obtain the information and provide it to the Minister.

- (4) The Waste Authority must comply with a request under subsection (3) and make its officers and facilities available to the Minister for the purposes of paragraph (c) of that subsection.

23. Annual report of the Waste Authority

- (1) The Waste Authority must, as soon as practicable after 1 July, and in any event on or before 31 October, in each year, prepare and give to the Minister a report on the operations and proceedings of the Waste Authority for the previous financial year.
- (2) The Minister must cause the Waste Authority's report to be laid before each House of Parliament within 7 sitting days of the House after the Minister has received it.

Part 4 — Management documents

Division 1 — Waste strategy

24. Purpose of waste strategy

The purpose of the waste strategy is to set out, for the whole of the State —

- (a) a long term strategy for continuous improvement of waste services, waste avoidance and resource recovery, benchmarked against best practice; and
- (b) targets for waste reduction, resource recovery and the diversion of waste from landfill disposal.

25. Waste Authority to prepare draft waste strategy

As soon as practicable after the commencement of this section the Waste Authority must prepare, or cause to be prepared, a draft waste strategy.

26. Consultation

In the preparation of the draft waste strategy the Waste Authority must consult such entities involved in waste services or waste avoidance and resource recovery in the State as the Waste Authority thinks appropriate.

27. Public notification of draft waste strategy

- (1) The draft waste strategy must be submitted, together with such reports and other material as the Waste Authority considers relevant, to the Minister for the Minister's consent to public submissions being sought.
- (2) If the Minister does not consent to public submissions being sought in respect of the draft waste strategy the Minister must return the draft waste strategy to the Waste Authority and request it to —
 - (a) consider or further consider any matter and deal with the matter in the draft waste strategy; and

- (b) revise the draft waste strategy in the light of its consideration or further consideration; and
 - (c) again submit the draft waste strategy to the Minister under this section.
- (3) If the Minister consents to public submissions being sought in respect of the draft waste strategy the Waste Authority must publish —
 - (a) in the *Gazette*; and
 - (b) in 2 issues of a daily newspaper circulating throughout the State,a notice —
 - (c) specifying the places at which copies of the draft waste strategy may be inspected and obtained; and
 - (d) stating the effect of section 28 and specifying the period referred to in that section.
- (4) The Waste Authority may fix and charge a fee for supplying a copy of the draft waste strategy.

28. Public submissions

Submissions in respect of the draft waste strategy may be made, in the form, if any, approved by the Waste Authority, by any entity —

- (a) within a period determined by the Waste Authority that is not less than 12 weeks after the day on which the notice is published in the *Gazette* under section 27(3)(a); and
- (b) by delivering or posting them so that they are received within that period at the offices of the Waste Authority.

29. Modified draft to be referred to entities who made submissions

- (1) The draft waste strategy, modified if the Waste Authority thinks fit after considering submissions under section 28, must be

referred by the Waste Authority to each entity which made a submission under that section together with a summary of the submissions, and may be referred by it to any other entity.

- (2) If an entity to whom the draft waste strategy is referred under subsection (1) considers that the Waste Authority should vary the draft, the entity may within 28 days after receipt of the draft, in writing, request the Waste Authority to make the variation.

30. Consideration by Minister

- (1) After considering all requests that have been duly lodged under section 29, the Waste Authority must submit to the Minister —
 - (a) the draft waste strategy, with the modifications, if any, it thinks fit to make; and
 - (b) a copy of each of the submissions and requests; and
 - (c) a report by the Waste Authority on the submissions and requests.
- (2) The Minister may direct that the draft waste strategy is to be modified as directed by the Minister.
- (3) The Waste Authority must amend the draft waste strategy as directed by the Minister and again submit the draft waste strategy to the Minister on or before the date directed by the Minister.

31. Approval of Minister

- (1) The Minister may approve, or refuse to approve, the draft waste strategy.
- (2) Notice that the waste strategy has been approved by the Minister must be published by the Minister in the *Gazette*.
- (3) The waste strategy comes into operation on the day of publication in the *Gazette* of a notice under subsection (1) or on a later day that is specified in the document.

- (4) The Waste Authority must ensure that a copy of the waste strategy is —
 - (a) available for inspection by members of the public at its principal place of business whenever that place is open to the public; and
 - (b) published on the internet.
- (5) The Waste Authority may fix and charge a fee for supplying a copy of the waste strategy.

32. Minor amendments to waste strategy

- (1) The Waste Authority may, with the approval of the Minister, make minor amendments to the waste strategy without complying with section 33.
- (2) The Waste Authority must include a report on minor amendments made under this section in its annual report under section 23.

33. Review and revision of waste strategy

- (1) The Waste Authority must review the waste strategy —
 - (a) whenever directed to do so by the Minister; and
 - (b) in any event, not later than 5 years after the Minister has under section 31 last approved the waste strategy or amendments to it or its continuation in force without amendment.
- (2) If, on a review under this section, the Waste Authority considers that the circumstances so require, the Waste Authority must prepare amendments to the waste strategy or a revised waste strategy.
- (3) If, on a review under this section, the Waste Authority considers that the waste strategy does not require amendment or revision the Waste Authority may determine that it is to continue in force without amendment.

- (4) The following provisions, as to consultation about, and approval of, the waste strategy, apply for the purposes of this section, with all necessary changes —
- (a) section 26, as if the reference in that section to the preparation of the draft waste strategy were a reference to the review of the waste strategy;
 - (b) sections 27, 28, 29, 30 and 31(1), as if the references in those provisions to the draft waste strategy were references to the proposed amendments to the waste strategy, the proposed revised waste strategy or a proposal that the existing waste strategy be continued in force without amendment;
 - (c) section 31(2) and (3) as if references in those provisions to a waste strategy were references to the amendment of the waste strategy, the proposed revised waste strategy or the continuation of the waste strategy.

34. Power to request report on waste strategy compliance

- (1) The CEO may request any entity to provide a report on —
- (a) its compliance with the waste strategy; or
 - (b) the reasons for any specified non-compliance by that entity with the waste strategy.
- (2) Such a request must be in writing and must specify the date by which the entity is requested to provide the report to the CEO.
- (3) The CEO may forward the report to the Waste Authority.
- (4) If an entity does not —
- (a) comply with the waste strategy; or
 - (b) comply with a request under this section,

the CEO may include, after consultation with the entity, a summary of the entity's failure in the Department's next annual report prepared for the purposes of the *Financial Management Act 2006* Part 5.

Division 2 — Business plans

35. Draft business plan to be submitted to Minister

- (1) Each year the Waste Authority must prepare a draft business plan.
- (2) The Minister may from time to time, by written notice to the Waste Authority —
 - (a) fix a day in each year by which a draft business plan is to be submitted under subsection (1); or
 - (b) cancel a notice given under paragraph (a).
- (3) Each draft business plan must be submitted to the Minister for approval not later than —
 - (a) the day fixed under subsection (2); or
 - (b) if there is for the time being no day so fixed — 3 months before the start of the next financial year.
- (4) The first draft business plan for the Waste Authority is to be in respect of the next full financial year after the commencement of this section.

36. Contents of business plan

- (1) A business plan is to set out —
 - (a) the Waste Authority's objectives and priorities for the next 5 financial years; and
 - (b) financial projections for that period; and
 - (c) the Waste Authority's budget for the next financial year; and
 - (da) the services and facilities that are reasonably necessary to be provided or used under section 16 for the next financial year in order to enable the Waste Authority to perform its functions; and
 - (d) what the Waste Authority intends to do over the next financial year; and

- (e) the Waste Authority's policy for the application of moneys from the WARR Account for the next financial year; and
 - (f) a priority statement with respect to extended producer responsibility schemes in accordance with section 47; and
 - (g) any other matters that the Minister requires in writing.
- (2) A business plan must be consistent with the waste strategy.
- (3) The Waste Authority may seek the advice of such entities as the Waste Authority thinks fit as to the development of policy for the application of money from the WARR Account.

[Section 36 amended: No. 48 of 2009 s. 4.]

37. Minister's powers in relation to draft business plan

- (1) If the Minister has not approved a draft business plan by one month before the start of the next financial year, the Minister may, by written notice, direct the Waste Authority —
 - (a) to take specified steps in relation to the draft plan; or
 - (b) to make specified modifications to the draft plan.
- (2) The Waste Authority must comply with the direction as soon as is practicable.

38. Business plan pending approval

- (1) In subsection (2) —

latest draft plan means the draft business plan submitted, or last submitted, by the Waste Authority to the Minister before the start of the financial year with any modifications made by the Waste Authority, whether before or after that time, at the direction of the Minister.
- (2) If the Minister has not approved a draft business plan before the start of a financial year, the latest draft plan is to be the business

plan for the Waste Authority until a draft business plan is approved under section 39.

39. Approval and implementation of business plan

- (1) After amending its draft business plan in any way directed by the Minister, the Waste Authority must submit, on or before the date required by the Minister, a revised draft business plan to the Minister and the Minister may approve the plan.
- (2) When the Minister approves a draft business plan, it becomes the business plan for the relevant financial year or remainder of the year, as the case may be.
- (3) The Waste Authority must have regard to the business plan in carrying out its functions.
- (4) The Waste Authority must not depart significantly from its business plan without first obtaining the approval of the Minister.
- (5) The Waste Authority must ensure that a copy of its current business plan is —
 - (a) available for inspection by members of the public at its principal place of business whenever that place is open to the public; and
 - (b) published on the internet.
- (6) The Waste Authority may fix and charge a fee for supplying a copy of a business plan.

Division 3 — Waste plans

40. Waste plans

- (1) In this section —
plan for the future means a plan made under the *Local Government Act 1995* section 5.56.

- (2) A local government may include within its plan for the future a waste plan outlining how, in order to protect human health and the environment, waste services provided by the local government in the relevant district will be managed to achieve consistency with the waste strategy.
- (3) The waste plan may include —
 - (a) population and development profiles for the district;
 - (b) an assessment of significant sources and generators of waste received by the local government;
 - (c) an assessment of the quantities and classes of waste received by the local government;
 - (d) an assessment of the services, markets and facilities for waste received by the local government;
 - (e) an assessment of the options for reduction, management and disposal of waste received by the local government;
 - (f) proposed strategies and targets for managing and reducing waste received by the local government;
 - (g) proposed strategies and targets for the efficient disposal of waste received by the local government that cannot be recovered, reused or recycled;
 - (h) an implementation programme that identifies the required action, timeframes, resources and responsibilities for achieving these strategies and targets;
 - (i) such other matters as may be prescribed by the regulations.
- (4) The CEO may by written notice require a local government to include within its plan for the future a waste plan outlining how, in order to protect human health and the environment, waste services provided by the local government will be managed to achieve consistency with the waste strategy.
- (5) The notice may specify a reasonable period within which the waste plan must be included in the plan for the future.

- (6) The CEO may, on the request of a local government and at the expense of that local government, prepare a draft waste plan for that local government.

41. CEO's powers in relation to waste plan

- (1) If the CEO is of the opinion that a waste plan should, but does not, include a matter referred to in section 40(3), the CEO may, by written notice, require the local government to modify the waste plan to include that matter.
- (2) Before giving a notice to a local government under subsection (1) the CEO —
 - (a) must consult with the local government and have regard to its views; and
 - (b) if the local government so requests, must consult with the Waste Authority and have regard to its views.
- (3) A local government must comply with the notice as soon as is practicable.
- (4) If the local government does not comply with the notice issued under section 40(4) or under subsection (1), the CEO may serve notice in writing on the local government —
 - (a) specifying the relevant notice and the manner in which the local government has failed to comply with it; and
 - (b) advising the local government that the CEO intends to deal with the matter under section 42.
- (5) A local government aggrieved by a notice given to the local government under subsection (4) may apply to the State Administrative Tribunal for a review of the notice.

42. CEO may prepare or modify waste plan

- (1) When a notice has been served on a local government under section 41(4), the CEO may, after consulting and having regard to the views of the Waste Authority and the local government, take all such steps and prepare all such documents as are

necessary to ensure compliance with the notice referred to in section 40(4) or 41(1), as the case requires, as if the CEO were the local government.

- (2) A waste plan, or modification of a waste plan, for a local government prepared under this section has effect as if it were part of a plan for the future made by the local government.
- (3) All costs, charges and expenses incurred by the CEO in the exercise of any powers conferred by subsection (1) may be recovered from the local government as a debt due to the Crown or may be deducted from any moneys payable by the Crown to the local government.
- (4) A local government aggrieved by a waste plan, or modification of a waste plan, prepared under this section may apply to the State Administrative Tribunal for a review of the plan or modification.

43. Effect of waste plan

- (1) The CEO must have regard to the waste plan of a local government when exercising a function under this Act or any other Act that affects the operation of the waste plan.
- (2) A local government must perform its functions in respect of waste management in accordance with its waste plan as existing from time to time.

44. Report on waste plan

- (1) The CEO may require a local government to submit a report to the CEO on the implementation of its waste plan.
- (2) The CEO may require the local government to include in the report information about any or all of the following matters —
 - (a) the quantities of waste of each of the classes identified in the waste plan —
 - (i) collected or otherwise received by the local government and its contractors; or

- (ii) reused or recycled by the local government or transferred to other parties for reuse or recycling; or
 - (iii) held in stockpiles; or
 - (iv) disposed of to landfill;
 - (b) the number of premises serviced;
 - (c) changes made during the reporting period to the nature of the waste services provided;
 - (d) complaints lodged with the local government under section 71 and actions taken by the local government in response;
 - (e) any other matters specified in the waste plan;
 - (f) such other matters as the local government considers appropriate.
- (3) A local government aggrieved by a requirement under this section may apply to the State Administrative Tribunal for a review of the requirement.

Part 5 — Product stewardship

45. Product stewardship plans

- (1) A producer or group of producers may submit a product stewardship plan to the CEO.
- (2) A product stewardship plan must specify —
 - (a) the products dealt with under the plan; and
 - (b) targets and timeframes for avoidance, reduction, reuse or recycling of waste; and
 - (c) the information that will be collected, assessed and audited to ascertain whether the targets and timeframes specified in the plan have been met; and
 - (d) how the information will be made public; and
 - (e) any other matter the producer or group of producers considers relevant.
- (3) If the CEO is satisfied that the product stewardship plan deals with the matters specified in subsection (2) in an appropriate way, the CEO must register the plan.

46. Extended producer responsibility schemes

- (1) Before regulations are made for the purpose of implementing and operating an extended producer responsibility scheme, the Minister must have regard to —
 - (a) the nature of the product proposed to be dealt with under the proposed scheme; and
 - (b) whether there is an effective approved product stewardship plan in place, or a similar national plan, that is able to achieve the desired outcomes and is being actively implemented, monitored and reported on; and
 - (c) whether there is an Australian national scheme which adequately deals with the product proposed to be dealt with under the proposed scheme.

- (2) Where a regulation made in respect of a matter referred to in Schedule 3 Division 3 specifically provides that this subsection applies in respect of a provision of the regulation, a person who commits an offence under the provision is liable to a fine of \$50 000 and a daily penalty of \$5 000.

47. Statements with regard to extended producer responsibility schemes

- (1) The Waste Authority must —
- (a) include in its business plan each year a priority statement with respect to any extended producer responsibility schemes the Waste Authority proposes to recommend for implementation and operation under the regulations; and
 - (b) advertise the priority statement; and
 - (c) in the advertisement, invite submissions on any relevant matter relating to the priority statement.
- (2) Subsection (1) does not apply in respect of the first year after the commencement of this section.
- (3) The advertisement must be published —
- (a) in the *Gazette*; and
 - (b) twice in a newspaper circulating throughout the State; and
 - (c) otherwise as the Waste Authority considers appropriate.
- (4) Submissions may be made, in the form, if any, approved by the Waste Authority, by any entity —
- (a) within a period determined by the Waste Authority that is not less than 28 days after the day on which the notice is published under subsection (3)(a); and
 - (b) by delivering or posting them so that they are received within that period at the offices of the Waste Authority.

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- (5) The Waste Authority must have regard to the submissions when deciding whether or not to proceed with recommending the implementation and operation under the regulations of an extended producer responsibility scheme.

Part 6 — Waste services

Division 1 — Services provided by local governments

48. References to provision of waste service

A reference in this Part to a waste service provided by a local government includes a reference to a waste service provided on behalf of a local government pursuant to a contract.

49. Specified public authority may exercise functions of local government

- (1) The CEO, by notice published in the *Gazette*, may designate a specified area that is not part of a district as an area in which a specified public authority may perform and exercise the functions of a local government under this Act.
- (2) In subsection (1) —
specified means specified in a notice published under that subsection.
- (3) If a notice is published under subsection (1), this Act applies as if —
 - (a) a reference to a local government included a reference to the public authority specified in the notice; and
 - (b) a reference to a district included a reference to the area designated in the notice.

50. Provision of waste services

- (1) Subject to this Act and the EP Act, a local government may provide, or enter into a contract for the provision on its behalf of, waste services.
- (2) A local government does not require a waste collection permit or an EP authorisation to collect or transport local government waste but is otherwise subject to the provisions of the EP Act.

- (3) The CEO may, for the purpose of protecting human health or the environment, by written notice require a local government, or 2 or more local governments together, to provide, in relation to local government waste, a waste service of a kind specified in the notice.
- (4) The CEO must seek and have regard to the advice of the Waste Authority before issuing a notice under subsection (3).
- (5) The notice must be given to each local government required to provide the waste service.
- (6) The notice may apply to the whole of a local government district or districts or to a specified portion of a local government district or districts.
- (7) Subject to subsection (8) and the EP Act, the local government must comply with the notice.
- (8) The local government is not required to provide a waste service for which the local government is required to hold an EP authorisation until the authorisation has been granted, but must use reasonable endeavour to obtain the authorisation as soon as practicable after the notice is issued.
- (9) A local government aggrieved by a requirement in a notice given by the CEO under subsection (3) may apply to the State Administrative Tribunal for a review of the requirement.

51. Costs of providing combined waste service

- (1) If 2 or more local governments combine in providing a waste service, the CEO may, by written notice, determine the proportion of the cost of providing the service to be borne by each local government.
- (2) A local government aggrieved by a determination under subsection (1) may apply to the State Administrative Tribunal for a review of the determination.

52. Codes of practice

- (1) The Waste Authority may, with the approval of the Minister, make codes of practice for the provision of waste services —
 - (a) generally; or
 - (b) in relation to local government waste; or
 - (c) in relation to other particular types of situations.
- (2) A code must be made in consultation with such entities as have, in the opinion of the Waste Authority, a relevant interest in its provisions.
- (3) A code must not be inconsistent with any written law.
- (4) The *Interpretation Act 1984* section 43(7), (8) and (9) applies to a code as if it were subsidiary legislation.
- (5) The Waste Authority may amend or revoke a code or revoke it and substitute another code for it.
- (6) The Waste Authority must cause any code, and any amendment or substituted code, to be published for public information.

53. CEO may monitor and evaluate waste services

- (1) The CEO may monitor waste services provided by a local government —
 - (a) to determine whether a notice is needed under section 50(3); and
 - (b) to determine whether the prerequisites for issuing a waste collection permit under section 56 have been met; and
 - (c) to ascertain whether there has been compliance with section 71(1).
- (2) If monitoring under subsection (1) indicates a reason for concern, the CEO may —
 - (a) carry out a performance evaluation of the waste services —
 - (i) to determine whether a notice is needed under section 50(3); or

- (ii) to determine whether the prerequisites for issuing a waste collection permit under section 56 have been met; or
 - (iii) to ascertain whether there has been compliance with section 71(1);
- and
- (b) publish the results of the performance evaluation.
- (3) The CEO must seek and have regard to the advice of the Waste Authority as to —
 - (a) the appropriate performance of a waste service; and
 - (b) any other matters proposed to be evaluated,before carrying out a performance evaluation.
- (4) For the purposes of this section the CEO may by notice given to a local government request the local government to provide the CEO, or a person specified in the notice, with such reports and other information specified in the notice as are necessary for monitoring or evaluating waste services.
- (5) A local government must comply with a notice given to it under subsection (4).
- (6) A local government aggrieved by a request in a notice given by the CEO under subsection (4) may apply to the State Administrative Tribunal for a review of the request.

54. Expenses of evaluation

- (1) If the results of a performance evaluation of waste services provided by a local government indicate that —
 - (a) a requirement should be imposed under section 50(3); or
 - (b) the prerequisites for issuing a waste collection permit under section 56 have been met; or

- (c) there has not been compliance under section 71(1),
- any reasonable expenses incurred by the CEO in carrying out and publishing the results of the performance evaluation may be recovered from the local government as a debt due to the Crown or may be deducted from any moneys payable by the Crown to the local government.
- (2) The CEO must give the local government at least 28 days notice of the intention to recover or deduct the expenses and of the amount proposed to be recovered or deducted.
- (3) A local government given a notice under subsection (2) may apply to the State Administrative Tribunal for a review of the proposed recovery or deduction.

55. Disposal of waste by local government

Subject to any prescribed exceptions, and to the EP Act, all waste received by a local government —

- (a) becomes the property of the local government; and
- (b) may be destroyed, sold or otherwise disposed of by the local government.

Division 2 — Waste collection permits

56. Waste collection permit

- (1) The CEO may, subject to this section and regulations made for the purposes of this section, issue a permit to collect local government waste (a *waste collection permit*).
- (2) The CEO must not issue a waste collection permit to collect local government waste in a local government district or part of a district unless —
- (a) a local government does not collect the local government waste specified in the waste collection permit in that district or part of that district; or
- (b) the criteria specified in subsection (3) are met.

- (3) The CEO may issue a waste collection permit to collect local government waste in a local government district or part of a district if the CEO is of the opinion that —
 - (a) the collection by the local government of the local government waste specified in the waste collection permit in the district or part of a district is not adequate insofar as the waste management techniques employed are not consistent with modern practice; and
 - (b) the applicant for the waste collection permit is capable of carrying out improved waste collection.
- (4) If a waste collection permit to collect local government waste in a local government district or part of a district is in force, a local government must not collect that local government waste without the written approval of the CEO.
- (5) A person aggrieved by a decision of the CEO under this section may apply to the State Administrative Tribunal for a review of the decision.

57. Consistency with modern practice

When making a determination for the purposes of section 56 or 59 as to whether a waste management technique is consistent with modern practice the CEO —

- (a) must have regard to any relevant code of practice made by the Waste Authority under section 52 as to waste services; or
- (b) if there is no relevant code of practice, must have regard to the advice of the Waste Authority.

58. CEO to consult on issue, renewal or amendment of permit

Before issuing, renewing or amending a waste collection permit the CEO must seek and have regard to recommendations and advice on the issue, renewal or amendment of the permit from —

- (a) the Waste Authority; and

- (b) the Chief Health Officer; and
- (c) the local government in the district of which the waste collection is carried out.

[Section 58 amended: No. 19 of 2016 s. 202.]

59. Term and renewal of waste collection permit

- (1) The term of a waste collection permit must not exceed 3 years but the permit may be renewed from time to time.
- (2) The CEO must not renew a permit if —
 - (a) the local government in the district or part of the district in which waste collection under the permit is undertaken has advised the CEO under section 58 that it will undertake the collection of local government waste in that district or part of the district; and
 - (b) the CEO is of the opinion that the collection by the local government of the local government waste will be adequate insofar as the waste management techniques employed will be consistent with modern practice.
- (3) A person aggrieved by a decision of the CEO under this section may apply to the State Administrative Tribunal for a review of the decision.

60. Disposal of waste by holder of permit

Subject to any exclusions prescribed by regulations under this Act, and to the EP Act, all waste collected by the holder of a waste collection permit to collect that waste —

- (a) becomes the property of the holder of the permit; and
- (b) may be destroyed, sold or otherwise disposed of by the holder of the permit.

**Division 3 — Local laws and local government rates, fees
and charges**

61. Local laws in respect of waste management

- (1) A local government —

- (a) may, if the CEO consents; and
- (b) must, if the CEO so directs,

make local laws in accordance with the *Local Government Act 1995* Part 3 Division 2 Subdivision 2 for the purposes specified in section 64 or generally for carrying into effect the provisions of this Part.

- (2) A local government must repeal, amend or suspend the operation of a local law if directed to do so by the CEO.
- (3) The CEO must consult the local government before giving a direction, or refusing to consent to the making of a local law, under this section.
- (4) The CEO must not give a direction to make a local law unless the local law is relevant to the protection of human health or the environment.
- (5) A local government aggrieved by —
 - (a) a direction of the CEO given under this section; or
 - (b) a decision of the CEO to refuse to consent to the making of local laws,

may apply to the State Administrative Tribunal for a review of the direction or decision.

- (6) The *Local Government Act 1995* sections 3.14 and 3.17 do not apply in relation to local laws made under this Act.
- (7) The *Local Government Act 1995* sections 3.12(3) and (4) and 3.13 do not apply if the local government is acting on the direction of the CEO under subsection (1)(b) or (2).

- (8) A local law is inoperative to the extent that it is inconsistent with this Act or a regulation made under this Act.

62. Model local laws

- (1) The Governor may cause to be prepared and published in the *Gazette* model local laws the provisions of which a local law made under this Act may adopt by reference, with or without modification.
- (2) Model local laws have no effect except to the extent that they are adopted.
- (3) The Governor may, by notice published in the *Gazette*, amend a model local law published under this section.
- (4) An amendment to a model local law does not affect any local law that adopted the model local law before the amendment but the amendment may be adopted by a further local law.

63. Governor may amend or repeal local laws

- (1) The Governor may make a local law to amend the text of, or repeal, a local law.
- (2) Subsection (1) does not include the power to amend a local law to include in it a provision that bears no reasonable relationship to the local law as in force before the amendment.
- (3) The Minister must give a local government notice in writing of any local law that the Governor makes to amend the text of, or repeal, any of the local government's local laws.
- (4) A local law made under this section is to be taken, for all purposes, to be a local law made by the local government which made the local law that is amended or repealed.

64. Subject matter of local laws

- (1) In this section —

owner, in relation to premises comprised of or on land, has the meaning given in the *Local Government Act 1995* section 1.4.

- (2) Local laws may be made for all or any of the following purposes —

- (a) the provision and administration of waste services and related matters;
- (b) the establishment, provision, use and control of receptacles for the deposit and collection of waste, whether temporary or otherwise;
- (c) if a local government itself undertakes or contracts for removal of waste from premises, imposing on the owner or occupier of the premises requirements in connection with the removal so as to facilitate the removal, and prescribing the manner in which the requirement is to be complied with;
- (d) if a local government or the holder of a waste collection permit does not itself undertake or contract for removal of waste from premises, imposing on the owner or occupier of the premises a requirement to remove waste from the premises, and prescribing the manner in which the requirement is to be complied with;
- (e) if a local government itself undertakes or contracts for the removal of waste, requiring the waste to be placed in waste receptacles provided by the local government;
- (f) prescribing intervals at which the contents of the receptacles will be removed by a local government;
- (g) requiring the temporary placing of waste receptacles in streets or lanes by owners or occupiers of property for collection of waste, and requiring the replacement of the receptacles on the property;

- (h) providing for the maintenance by owners and occupiers of waste receptacles provided by a local government;
 - (i) providing for the issue of approvals to collect local government waste and remove it from premises;
 - (j) fixing fees and charges in relation to waste services provided by a local government and the issue of approvals under paragraph (i), and prescribing the persons liable and the method of recovery of amounts not duly paid.
- (3) A local law may provide that contravention of a provision of the local law is an offence, and may provide for the offence to be punishable on conviction by a penalty not exceeding a fine of \$5 000.
- (4) If the offence is of a continuing nature, the local law may make the person liable to a further penalty not exceeding a fine of \$500 in respect of each day or part of a day during which the offence has continued.
- (5) The local law may provide for the imposition of a minimum penalty for the offence.
- (6) The level of the penalty may be related to —
 - (a) the circumstances or extent of the offence; or
 - (b) whether the offender has committed previous offences and, if so, the number of previous offences that the offender has committed.
- (7) A local law may specify the method and the means by which any fines imposed are to be paid and collected, or recovered.

65. Enforcement of local laws

- (1) Local laws made by a local government under this Act may be enforced under the *Local Government Act 1995* as if the local laws were made by the local government under that Act.

- (2) If there is a conflict or inconsistency between this Act and the *Local Government Act 1995* in relation to the enforcement of a local law, the provisions of the *Local Government Act 1995* prevail.
- (3) Without limiting subsections (1) and (2), the *Local Government Act 1995* Part 9 Division 2 applies in relation to enforcement and legal proceedings for an offence against a local law.

66. Local government may impose waste collection rate

- (1) A local government may impose on rateable land within its district, and cause to be collected, an annual rate for the purpose of providing for the proper performance of all or any of the waste services it provides.
- (2) The annual rate must not exceed —
 - (a) 12 cents in the dollar on the gross rental value; or
 - (b) where the system of valuation on the basis of the unimproved value is adopted, 3 cents in the dollar on the unimproved value of the land in fee simple.
- (3) The provisions of the *Local Government Act 1995* relating to the making, payment and recovery of general rates apply with respect to rates referred to in subsection (1).

67. Local government may impose receptacle charge

- (1) A local government may, in lieu of, or in addition to a rate under section 66, provide for the proper disposal of waste, whether within its district or not, by making an annual charge per waste receptacle, payable in one sum or by equal monthly or other instalments in advance, in respect of premises provided with a waste service by the local government.
- (2) The charge is to be imposed on the owner (as defined in section 64(1)) or occupier, as the local government may decide, of any premises provided with a waste service by the local government.

- (3) The provisions of the *Local Government Act 1995* relating to the recovery of general rates apply with respect to a charge referred to in subsection (1).
- (4) In the case of premises being erected and becoming occupied during the year for which payment is to be made, the charge for the service provided is to be the sum that proportionately represents the period between the occupation of the premises and the end of the year for which payment is made.
- (5) Notice of any charge made under this section may be included in any notice of rates imposed under section 66 or the *Local Government Act 1995*, but the omission to give notice of a charge does not affect the validity of the charge or the power of the local government to recover the charge.
- (6) A charge may be limited to premises in a particular portion of the area under the control of the local government.
- (7) Charges under this section may be imposed in respect of and are to be payable for all premises in respect of which a waste service is provided, whether such premises are rateable or not.
- (8) A local government may make different charges for waste services rendered in different portions of its district.

68. Fees and charges fixed by local government

Nothing in this Part prevents or restricts a local government from imposing or recovering a fee or charge in respect of waste services under the *Local Government Act 1995* section 6.16.

Division 4 — Offences

69. Waste collection not to be carried out by unauthorised persons

A person other than a local government who, for fee or reward, collects local government waste in a local government district other than as authorised by —

- (a) a written contract with the local government; or

- (b) an approval to collect local government waste issued by a local government in accordance with regulations or local laws; or
- (c) a waste collection permit,

commits an offence.

Penalty: a fine of \$10 000 and a daily penalty of \$1 000.

70. Obstruction or hindrance

- (1) A person who obstructs or hinders a local government or its contractor, or the holder of a waste collection permit, in the collection of local government waste commits an offence.
Penalty: a fine of \$10 000.
- (2) An occupier does not commit an offence under this section by reason only of collecting or using, selling or otherwise disposing of the occupier's own local government waste.

71. Services to be provided in accordance with waste plan or permit

- (1) A waste service in respect of local government waste provided by a local government must be carried out —
 - (a) in accordance with section 43(2); and
 - (b) to the satisfaction of the CEO and, in the case of services carried out by a contractor on behalf of a local government, the local government.
- (2) If —
 - (a) a waste service is not carried out in accordance with subsection (1); or
 - (b) local government waste is not collected in accordance with a condition of a waste collection permit to collect that waste,

and, by reason of that failure, waste has accumulated on premises, the occupier of the premises may lodge an oral or written complaint with —

- (c) the local government in the case of services provided, or that had been undertaken to be provided, by the local government or its contractor; or
- (d) the CEO in the case of services provided, or that had been undertaken to be provided, by the holder of a waste collection permit.

(3) If a complaint is lodged —

- (a) under subsection (2)(c), the local government must give written notice of the complaint to the contractor (if any) by whom the services were, or should have been, provided; or
- (b) under subsection (2)(d), the CEO must give written notice of the complaint to the holder of the waste collection permit by whom the services were, or should have been, provided.

(4) If —

- (a) a complaint is lodged under subsection (2)(c) with a local government in respect of waste services it provided, or had undertaken to provide, itself; and
- (b) the requisite service has not been provided and the cause of complaint removed within 48 hours of the lodging of the complaint; and
- (c) the Chief Health Officer, by notice in writing given to the CEO, declares that the failure to provide the requisite service and remove the cause of complaint has the potential to pose a risk to human health,

the local government commits an offence.

Penalty: a fine of \$10 000.

(5) If —

- (a) notice is served under subsection (3) on a contractor or holder of a waste collection permit; and
- (b) the requisite service has not been provided and the cause of complaint removed within 48 hours of service of the notice under subsection (3); and
- (c) the Chief Health Officer, by notice in writing given to the contractor or holder of the waste collection permit, declares that the failure to provide the requisite service and remove the cause of complaint has the potential to pose a risk to human health,

the contractor or holder of the waste collection permit, as the case requires, commits an offence.

Penalty: a fine of \$10 000.

[Section 71 amended: No. 19 of 2016 s. 203.]

Division 5 — General

72. Accumulation of waste — prevention notice

(1) If —

- (a) waste has accumulated on premises; and
- (b) the CEO is of the opinion that the accumulation of waste has caused, is causing or is about to cause conditions detrimental to the environment or dangerous to human health,

an inspector or authorised person may take action under the EP Act section 73 or a prevention notice may be given under the EP Act section 73A.

(2) Nothing in this section limits the operation of the EP Act.

Part 7 — Collection and application of levy

Division 1 — Collection of levy imposed under *Waste Avoidance and Resource Recovery Levy Act 2007*

73. Payment of levy

- (1) A levy is due and payable at such time or times, and in such manner, as is prescribed by the regulations.
- (2) A levy is payable to the Minister.
- (3) The regulations may provide for the refund or deduction of amounts overpaid by way of levy and the payment of rebates.
- (4) Any levy paid is to be credited to an operating account of the Department established under the *Financial Management Act 2006* section 16(1)(a).

[Section 73 amended: No. 48 of 2009 s. 5.]

74. Financial assurance

The regulations may make provision —

- (a) empowering the CEO to require a licensee, or occupier required under the EP Act to hold a licence, to provide a financial assurance for the purpose of securing or guaranteeing payment of a levy; and
- (b) with respect to the form, amount, maintenance and termination of the financial assurance; and
- (c) with respect to the conditions and procedures under which the financial assurance may be called on or used; and
- (d) with respect to matters necessary for, or incidental to, the effective operation of a financial assurance.

75. Payment by instalments

- (1) The regulations may provide for the payment of an amount of the levy to be made by instalments, and, subject to subsection (2), each instalment is due and payable at a time ascertained in accordance with the regulations.
- (2) If —
 - (a) the regulations provide for the payment of an amount of a levy to be made by instalments; and
 - (b) an instalment is not paid at or before the time due for the payment of the instalment,

the whole of the amount of the levy unpaid becomes due and payable at that time.

76. Penalty for non-payment

- (1) If an amount of a levy remains unpaid after the day on which it becomes due for payment, there is payable to the Minister by way of penalty, in addition to the amount of the levy, an amount calculated at the rate of 20% per annum upon the amount of the levy from time to time remaining unpaid.
- (2) The amount by way of penalty referred to in subsection (1) is to be calculated from the time when the amount of the levy becomes payable.
- (3) Any amount paid by way of penalty under subsection (1) is to be credited to an operating account of the Department established under the *Financial Management Act 2006* section 16(1)(a).

[Section 76 amended: No. 48 of 2009 s. 6.]

77. Recovery of levy

The following amounts may be recovered by the Minister in a court of competent jurisdiction as debts due to the Minister —

- (a) a levy that is due and payable;

(b) an amount payable under section 76.

78. Evading levy

- (1) A person who, by any wilful act, default or neglect, or by any fraud, art or contrivance whatever, evades or attempts to evade payment of all or any amount of a levy commits an offence.
Penalty: a fine of \$10 000 and treble the amount evaded or attempted to be evaded.
- (2) The imposition on a person of a fine under subsection (1) does not affect the liability of the person to pay the levy and penalty under section 76.

Division 2 — Waste Avoidance and Resource Recovery Account

79. Waste Avoidance and Resource Recovery Account

- (1) There is to be established and kept as an agency special purpose account established under the *Financial Management Act 2006* section 16 an account to be called the “Waste Avoidance and Resource Recovery Account”.
- (2) The WARR Account is to be administered by the Waste Authority.
- (3A) The Minister is to direct in each financial year that there is to be credited to the WARR Account such amount of the levy credited to the Department’s operating account under section 73(4) as is specified by the Minister.
- (3B) The amount specified under subsection (3A) must be as follows —
 - (a) in the financial year ending 30 June 2010 — an amount not less than the difference between 25% of the forecast levy amount for that financial year and the amount of levy paid or payable for the period 1 July 2009 to 31 December 2009;

- (b) in any other financial year — not less than 25% of the forecast levy amount for the financial year.
- (3C) For the purposes of subsection (3B) the *forecast levy amount* for a financial year is —
 - (a) the estimate of the levy amount for the financial year set out in the budget papers for that financial year tabled in the Legislative Assembly; or
 - (b) if another means of determining the forecast levy amount for the financial year is prescribed — the forecast levy amount determined by those means.
- (3) In addition to the amount referred to in subsection (3A), the WARR Account is to be credited with —
 - [(a), (b) deleted]*
 - (c) income derived from the investment of moneys forming part of the WARR Account; and
 - (d) any other moneys lawfully payable to the credit of the WARR Account.

[Section 79 amended: No. 48 of 2009 s. 7.]

80. Application of moneys in WARR Account

- (1) Moneys held in the WARR Account are to be applied, in a manner that is consistent with the current business plan or as may be approved by the Minister —
 - (a) to fund programmes relating to the management, reduction, reuse, recycling, monitoring or measurement of waste; and
 - (b) to fund the preparation, review and amendment of the waste strategy, waste plans under Part 4 and extended producer responsibility schemes and the implementation of that strategy and those plans and schemes; and
 - (c) in payment of the costs of administering the WARR Account (including the costs of collecting levies and penalties and support and evaluation services); and

- (d) to fund the services and facilities referred to in section 36(1)(da); and
- (e) in payment of the other costs of the administration and enforcement of this Act, including the remuneration of members of the Waste Authority.

[(2) deleted]

- (3) Moneys held in the WARR Account may be paid to an entity by the Waste Authority for the purposes of subsection (1)(a) on such terms and conditions as the Waste Authority thinks fit.
- (4) An entity to whom moneys are paid under subsection (1)(a) who fails to ensure that —
 - (a) the moneys are only expended for the purposes of the programme and in accordance with any terms or conditions imposed by the Waste Authority; or
 - (b) a performance evaluation in respect of the programme for which the moneys are paid is carried out in accordance with any written direction of the Waste Authority; or
 - (c) at such time or times as are prescribed by the regulations, a special purpose audit is carried out by a registered company auditor of the allocation and expenditure of the moneys; or
 - (d) a report on the audit is prepared by the auditor and a copy of the report is provided to the Waste Authority as soon as is practicable after it is prepared,

commits an offence.

Penalty: a fine of \$10 000.

- (5) The annual report of the Department prepared for the purposes of the *Financial Management Act 2006* Part 5 must include a summary of any written performance evaluation carried out

pursuant to a direction of the Waste Authority by an entity to whom moneys are paid under subsection (3).

[Section 80 amended: No. 48 of 2009 s. 8.]

81. Application of *Financial Management Act 2006* and *Auditor General Act 2006*

- (1) The provisions of the *Financial Management Act 2006* and the *Auditor General Act 2006* regulating the financial administration, audit and reporting of departments apply to and in relation to the WARR Account.
- (2) The administration of the WARR Account is for the purposes of the *Financial Management Act 2006* section 52 to be regarded as a service of the Department.

[Section 81 amended: No. 48 of 2009 s. 9.]

Part 8 — Enforcement

Division 1 — Investigation and obtaining information

82. Power to require information or material

- (1) In this section —
authorised person means the CEO or an inspector authorised for the purposes of this section in writing by the CEO.
- (2) An authorised person, may, on the request of the Waste Authority or otherwise for the purpose of assisting the Waste Authority to perform its functions, require a person —
- (a) to provide oral or written answers to specified questions; or
 - (b) to produce to the authorised person specified material or material of a specified class, in the person's possession or control.
- (3) The authorised person may make the requirement —
- (a) if an oral response is required — orally; or
 - (b) in any other case — by notice given to the person to whom the requirement is addressed.
- (4) The authorised person must —
- (a) allow a person a reasonable time within which to comply with the requirement; and
 - (b) if the requirement is made by notice given to the person, specify the time allowed in the notice.
- (5) The authorised person may require a person to verify answers to questions by statutory declaration.
- (6) A person who does not comply with a requirement under this section within the time allowed under subsection (4) or within any further time allowed by the authorised person commits an offence.

Penalty: a fine of \$20 000.

83. Inspectors

- (1) An inspector appointed under the EP Act section 88 may also be appointed under that section for the purposes of this Act.
- (2) For the purposes of this Act, an inspector has all the functions that the inspector has under the EP Act, and for those purposes any relevant reference in the EP Act to “this Act” is to be read and construed as if it were a reference to this Act.
- (3) In addition to the functions of an inspector under the EP Act, an inspector may at any time, and with any assistance the inspector may require, enter any premises prescribed for the purposes of the EP Act Part V on which waste is deposited or stored and on those premises may do any act or thing, including the collection and removal of samples, records or other things, which in the opinion of the inspector is necessary to be done for a waste inspection.
- (4) In subsection (3) —
waste inspection, in relation to waste deposited or stored on premises prescribed for the purposes of the EP Act Part V, means an inspection for any or all of the following purposes —
 - (a) to ascertain whether there has been compliance with this Act;
 - (b) to gather information as to the composition of the waste;
 - (c) to gather information as to the processing of the waste;
 - (d) to gather information as to the transport of the waste;
 - (e) to gather information as to any environmental harm arising, or likely to arise, from the waste;
 - (f) to ascertain whether a liability to pay a levy or fee under this Act has been met;
 - (g) to gather information relevant to ascertaining the amount of a levy or fee under this Act;
 - (h) to audit records required to be kept under this Act;

- (i) to gather any information relevant to making a decision under this Act;
 - (j) any other purpose relevant to the administration of this Act.
- (5) When an inspector exercises a power of entry under subsection (3), the inspector may do any or all of the following —
 - (a) search the premises and examine anything on the premises;
 - (b) take possession of, and remove from the premises, samples, documents or anything else relevant to the inspection;
 - (c) take extracts from or make copies of, or download or print out, any documents found in the course of carrying out his or her functions under this Act;
 - (d) photograph or film anything on the premises;
 - (e) require any person who is on the premises —
 - (i) to state his or her full name and address; and
 - (ii) to answer (orally or in writing) questions put by the inspector that are relevant to the inspection; and
 - (iii) to give the inspector any information in the person's possession or control that is relevant to the inspection; and
 - (iv) to operate or allow the inspector to operate equipment or facilities on the premises for waste inspection purposes; and
 - (v) to give the inspector any translation, code, password or other information necessary to gain access to or to interpret and understand any document or information located or obtained by the inspector in the course of exercising his or her functions under this Act; and

- (vi) to give other assistance that the inspector reasonably requires to carry out the inspection.

- (6) A person who does not comply with a requirement under subsection (5)(e) commits an offence.

Penalty: a fine of \$20 000.

84. Authorised persons and analysts

- (1) An authorised person appointed under the EP Act section 87 may also be appointed under that section for the purposes of this Act.
- (2) For the purposes of this Act, an authorised person has all the functions that the person has under the EP Act, and for those purposes any relevant reference in the EP Act to “this Act” is to be read and construed as if it were a reference to this Act.
- (3) An analyst appointed under the EP Act section 94 may also be appointed under that section for the purposes of this Act.

85. Audit may be directed by CEO

- (1) In this section —
approved auditor, in relation to an audit, means a person approved by the CEO under subsection (5).
- (2) The CEO may direct a person who is involved in the control or management of premises on which waste is deposited or stored to engage and pay for an approved auditor to conduct an audit into and report to the CEO about all or any of the following —
 - (a) the composition or quantity of waste deposited or stored on the premises;
 - (b) the risk to people, property or the environment from waste deposited or stored on the premises;
 - (c) the safety of the premises or of any activities on the premises.
- (3) The direction must —
 - (a) state the reasons for and the objectives of the audit; and

- (b) specify the matters in subsection (2) to be audited; and
 - (c) set a date on or before which the report must be given to the CEO.
- (4) The CEO may at any time amend or cancel a direction given under this section.
- (5) For the purposes of this section the CEO may approve a person as an auditor in relation to an audit if the CEO is satisfied the person —
 - (a) has qualifications and experience that are appropriate to the audit; and
 - (b) is independent of the premises where the audit is to be conducted and of any business conducted there; and
 - (c) is able to conduct the audit and to prepare a report in accordance with the direction given as to the audit.
- (6) A person who does not comply with a direction given by the CEO under this section commits an offence.
Penalty: a fine of \$25 000.
- (7) A person aggrieved by a direction given by the CEO under this section may apply to the State Administrative Tribunal for a review of the direction.

Division 2 — General

86. Who can institute proceedings for offences

- (1) Proceedings for an offence against this Act are not to be instituted otherwise than by the CEO or a person authorised to do so by the CEO.
- (2) An authorisation under subsection (1) —
 - (a) must be in writing; and
 - (b) may be given generally or in relation to a specified offence or specified offences.

- (3) If a prosecution notice alleging an offence under this Act purports to be made or sworn by a person authorised to institute proceedings for offences of that kind, it is to be presumed, in the absence of proof to the contrary, that the prosecution notice was made or sworn by such a person.

87. Time for bringing prosecutions

- (1) A prosecution for an offence under this Act must be commenced within 2 years after the date on which the offence is alleged to have been committed.
- (2) Despite subsection (1), if a prosecution notice alleging an offence under this Act specifies the day on which evidence of the alleged offence first came to the attention of a person authorised to institute the prosecution under section 86 —
 - (a) the prosecution may be commenced within 2 years after that day; and
 - (b) the prosecution notice need not contain particulars of the day on which the offence is alleged to have been committed.
- (3) The day on which evidence first came to the attention of a person authorised to institute a prosecution under section 86 is the day specified in the prosecution notice, unless the contrary is shown.

88. Daily penalties

- (1) Without limiting the *Interpretation Act 1984* section 71, where an offence is committed by a person by reason of the contravention of a provision of this Act under which the person is required or directed to do any act or thing, or to refrain from doing any act or thing, that offence is to be taken to have continued so long as the act or thing so required or directed remains undone, or continues to be done, as the case may be.
- (2) In addition to a penalty specified for an offence, a person convicted of an offence is liable to a daily penalty not exceeding

the daily penalty specified for the offence for each day or part of a day during which the offence continues after written notice of the alleged offence has been given by the CEO to the offender.

- (3) In addition to a penalty specified for an offence, a person convicted of an offence is liable to a daily penalty not exceeding the daily penalty specified for the offence for each day or part of a day during which the offence continues after the offender is convicted.

89. Attempt, incitement or accessory after the fact

- (1) *The Criminal Code* section 555A applies to an offence under this Act as if it were a simple offence under that Code.
- (2) A person who becomes an accessory after the fact to an offence under this Act (the ***principal offence***) within the meaning of *The Criminal Code* section 10 commits an offence and is liable on conviction to the penalty to which a person convicted of the principal offence is liable.

90. Additional powers available to the court

The provisions of the EP Act Part VIA Division 4 apply to and in relation to this Act as if —

- (a) a reference in those provisions to “this Division” were a reference to this Part; and
- (b) a reference in those provisions to “this Act” were a reference to this Act.

Part 9 — General provisions

91. Confidentiality

The CEO, an inspector, authorised person or any other person performing functions under this Act must not, directly or indirectly, record, disclose or make use of any information obtained in the course of duty except —

- (a) for the purpose of performing functions under this Act; or
- (b) as required or allowed by this Act or under a written law; or
- (c) with the written consent of the person to whom the information relates.

Penalty: a fine of \$25 000.

92. Delegation

- (1) The Minister may delegate to a person referred to in subsection (4) any power or duty of the Minister under a provision of this Act (other than this section or section 80(1)).
- (2) The CEO may delegate to a person referred to in subsection (4) any power or duty of the CEO under another provision of this Act.
- (3) The Waste Authority may delegate to a person referred to in subsection (4) any power or duty of the Waste Authority under another provision of this Act.
- (4) A delegation under subsection (1), (2) or (3) may be made to —
 - (a) any officer or other person referred to in the EP Act section 22; or
 - (b) a public authority or officer or employee of a public authority; or
 - (c) any other person or committee of persons,specified in the instrument of delegation.

- (5) The delegation must be in writing executed by the Minister, CEO or Waste Authority, as the case requires.
- (6) A person to whom a power or duty is delegated under this section cannot delegate that power or duty.
- (7) A person exercising or performing a power or duty that has been delegated to the person under this section is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (8) Nothing in this section limits the ability of the Minister, the CEO or the Waste Authority to act through an officer or agent.

93. Other provisions of EP Act apply

Sections 93, 112, 112A, 115, 116, 117, 118, 119 and 120 of the EP Act apply to and in relation to this Act as if —

- (a) a reference in those sections to “this Act” were a reference to this Act; and
- (b) a reference in those sections to “the Authority” were a reference to the Waste Authority; and
- (c) a reference in section 112A to “Part VI” were a reference to this Act.

94. Protection from liability for wrongdoing

- (1) An action in tort does not lie against a person for anything that the person has done, in good faith, in the performance or purported performance of a function under this Act.
- (2) The protection given by subsection (1) applies even though the thing done as described in that subsection may have been capable of being done whether or not this Act had been enacted.
- (3) Despite subsection (1), the Crown is not relieved of any liability that it might have for another person having done anything as described in that subsection.

- (4) In this section, a reference to the doing of anything includes a reference to an omission to do anything.

95. Laying documents before Parliament

- (1) If a provision of this Act requires the Minister to cause a document to be laid before each House of Parliament, or be dealt with under this section, within a period and —
- (a) at the commencement of the period, a House of Parliament is not sitting; and
 - (b) the Minister is of the opinion that the House will not sit during that period,

the Minister must transmit a copy of the document to the Clerk of that House.

- (2) A copy of a document transmitted to the Clerk of a House is to be regarded as having been laid before that House.
- (3) The laying of a copy of a document that is regarded as having occurred under subsection (2) must be recorded in the Minutes, or Votes and Proceedings, of the House on the first sitting day of the House after the Clerk received the copy.

96. Regulations

- (1) The Governor may make regulations prescribing all matters required or permitted by this Act to be prescribed or necessary or convenient to be prescribed for carrying out this Act.
- (2) Without limiting subsection (1), regulations may be made under that subsection in respect of the matters set out in Schedule 3.
- (3) The EP Act section 123(3)(b) applies with respect to regulations made under this Act.
- (4) If a regulation made under this Act is inconsistent with a regulation made under the EP Act, the regulation made under the EP Act prevails to the extent of the inconsistency.

97. Regulations to operate as local laws

- (1) The Governor may make regulations that are to operate as if they were local laws for each district to which they apply.
- (2) Regulations made under this section may deal with any matter in respect of which local laws may be made under Part 6 Division 3.
- (3) Regulations under this section, other than those that only repeal or amend other regulations, are to contain a statement to the effect that they apply as if they were local laws.
- (4) A local government is to administer any regulation made under this section, to the extent that it relates to any place where the local government may perform functions, as if the regulation was a local law.

98. Regulations, local laws and waste strategy may adopt codes or legislation and other references

- (1) In this section —
code means a code, standard, rule, specification or other document, made in or outside Australia, that does not by itself have legislative effect in this State.
- (2) Regulations, local laws and the waste strategy may adopt, either wholly or in part with or without modifications and either specifically or by reference —
 - (a) any code; or
 - (b) any subsidiary legislation, made, determined or issued under any other Act or under any Act of the Commonwealth, another State or a Territory.
- (3) If the regulations, local laws or waste strategy adopt a code or subsidiary legislation, it is adopted as in force from time to time unless the regulations, local laws or waste strategy specify that a particular text is adopted.

s. 99

- (4) The CEO must ensure that any code or subsidiary legislation adopted under subsection (2) is —
 - (a) available for public inspection during normal office hours at a place prescribed by regulation; and
 - (b) published on, or accessible through, the Department's website on the internet or another site on the internet approved under the regulations.
- (5) In any proceedings under this Act, production of a copy of a code or subsidiary legislation adopted under subsection (2) purporting to be certified by the CEO to be a true copy as at any date or during any period is, without proof of the signature of the CEO, sufficient evidence of the content of the code or subsidiary legislation as at that date or during that period.

99. Review of Act

- (1) The Minister must carry out a review of the operation and effectiveness of this Act as soon as practicable after —
 - (a) the fifth anniversary of its commencement; and
 - (b) the expiry of each 5 yearly interval after that anniversary.
- (2) The Minister must prepare a report based on the review and, as soon as practicable after the report is prepared (and in any event not more than 12 months after the relevant anniversary), cause it to be laid before each House of Parliament.

100. Consequential amendments

Each Act specified in Schedule 4 is amended as set out in that Schedule.

101. Transitional and savings provisions

Schedule 5 sets out transitional and savings provisions.

102. *Waste Avoidance and Resource Recovery Levy Regulations 2008 and amendments validated*

- (1) The following regulations are to be taken to have been validly made and to have, and to have always had, full force and effect —
- (a) the *Waste Avoidance and Resource Recovery Levy Regulations 2008*;
 - (b) the *Waste Avoidance and Resource Recovery Levy Amendment Regulations 2009*;
 - (c) the *Waste Avoidance and Resource Recovery Levy Amendment Regulations 2011*.
- (2) The rights, obligations and liabilities of all persons are to be taken to be, and to have always been, the same as if the regulations listed in subsection (1) had been validly made.
- (3) Anything done, or purportedly done, before the *Waste Avoidance and Resource Recovery Amendment (Validation) Act 2014* section 4 comes into operation¹ is as valid and effective, and is to be taken to have always been as valid and effective, as it would have been if the regulations listed in subsection (1) had been valid at the time the thing was done.
- (4) In subsection (3), a reference to the doing of anything includes a reference to an omission to do anything.

[Section 102 inserted: No. 16 of 2014 s. 4.]

Schedule 1 — Constitution and proceedings of the Waste Authority

[s. 14]

Division 1 — General provisions

1. Meaning of terms used in this Schedule

In this Schedule —

chairman means chairman of the Waste Authority;

deputy chairman means the deputy chairman of the Waste Authority.

2. Term of office

A member holds office for such term, not exceeding 5 years, as is specified in the instrument of his or her appointment, but may from time to time be reappointed.

3. Resignation, removal

(1) The office of a member becomes vacant if the member —

- (a) resigns the office by written notice addressed to the Minister; or
- (b) is an insolvent under administration as defined in the *Corporations Act 2001* of the Commonwealth; or
- (c) is removed from office by the Minister under subclause (2).

(2) The Minister may remove a member from office if the Minister is satisfied that the member —

- (a) has neglected his or her duty; or
- (b) has misbehaved; or
- (c) is incompetent; or
- (d) is suffering from mental or physical incapacity impairing the performance of his or her functions; or
- (e) has been absent, without leave and reasonable excuse, from 3 consecutive meetings of the Waste Authority of which the member has had notice.

4. Leave of absence

The Waste Authority may grant leave of absence to a member on such terms and conditions as it thinks fit.

5. Chairman unable to act

If the chairman is unable to act by reason of sickness, absence or other cause, or during any vacancy in that office, the deputy chairman must perform the functions of the chairman.

6. Acting members

- (1) If a member, other than the chairman, is unable to act by reason of sickness, absence or other cause, the Minister may appoint a person to act in the place of that member during the unavailability or absence.
- (2) If the member who is the deputy chairman is performing the functions of the chairman, the Minister may appoint another person to act in the place of the deputy chairman.
- (3) While acting in the place of a member, the acting member has all of the functions, powers and immunities of the member.
- (4) The appointment of a person under this clause may be terminated at any time by the Minister.

7. Saving

An act or omission of a person acting in place of another under clause 5 or 6 cannot be questioned on the ground that the occasion for the acting had not arisen or had ceased.

Division 2 — Proceedings of Waste Authority

8. Meetings

- (1) Subject to this clause, meetings are to be held at the times and places that the Waste Authority determines.
- (2) A special meeting of the Waste Authority may at any time be convened by —
 - (a) the chairman; or
 - (b) any 3 members; or

(c) the Minister, if the Minister wishes the Waste Authority to discuss a matter on which the Minister has requested its advice.

- (3) The first meeting of the Waste Authority after the coming into operation of this Act is to be convened by the chairman.
- (4) The chairman, or the deputy chairman acting under clause 5, must preside at all meetings of the Waste Authority at which he or she is present or participating under clause 12.
- (5) If both the chairman and the deputy chairman are not present or participating under clause 12, the members present or participating are to appoint a member to preside.
- (6) At any meeting of the Waste Authority 3 members constitute a quorum.

9. Voting

- (1) At any meeting of the Waste Authority each member present or participating under clause 12 has a deliberative vote.
- (2) The member presiding has a casting vote in addition to a deliberative vote if the votes are otherwise equal.

10. Minutes

- (1) The Waste Authority must cause accurate minutes to be kept of the proceedings at its meetings.
- (2) The Waste Authority must submit to the Minister a copy of the minutes of a meeting within 14 days after the meeting at which the minutes were confirmed was held.

11. Resolution without meeting

- (1) A resolution of the Waste Authority in writing signed by each member, or assented to by each member by letter, facsimile, email or other similar means is as effectual as if it had been passed at a meeting of the Waste Authority.
- (2) The Waste Authority must cause a record to be kept of each resolution under subclause (1).

12. Holding meetings remotely

The presence of a member at a meeting of the Waste Authority need not be by attendance in person but may be by that member and each other member at the meeting being simultaneously in contact by telephone or other means of instantaneous communication.

13. Waste Authority to determine own procedures

Subject to this Act, the Waste Authority may determine its own procedures.

Division 3 — Disclosure of interests etc.

14. Disclosure of interests

- (1) A member of the Waste Authority who has a material personal interest in a matter being considered or about to be considered by the Waste Authority must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Waste Authority.

Penalty: a fine of \$10 000.

- (2) A disclosure under subclause (1) must be recorded in the minutes of the meeting.

15. Voting by interested members

A member of the Waste Authority who has a material personal interest in a matter that is being considered by the Waste Authority —

- (a) must not vote whether at a meeting or otherwise —
- (i) on the matter; or
 - (ii) on a proposed resolution under clause 16 in respect of that matter, whether relating to that member or a different member;

and

- (b) must not be present while the matter, or a proposed resolution of the kind referred to in paragraph (a)(ii), is being considered at a meeting.

16. Clause 15 may be declared inapplicable

Clause 15 does not apply if the Waste Authority has at any time passed a resolution that —

- (a) specifies the member, the interest and the matter; and
- (b) states that the members voting for the resolution are satisfied that the interest should not disqualify the member from considering or voting on the matter.

17. Quorum where clause 15 applies

- (1) Despite clause 8(6), if a member of the Waste Authority is disqualified under clause 15 in relation to a matter, a quorum is present during the consideration of the matter if at least 2 members are present who are entitled to vote on any motion that may be moved at the meeting in relation to the matter.
- (2) The Minister may deal with a matter insofar as the Waste Authority cannot deal with it because of subclause (1).

18. Minister may declare clauses 15 and 17 inapplicable

- (1) The Minister may by writing declare that clause 15 or 17 or both of them do not apply in relation to a specified matter either generally or in voting on particular resolutions.
- (2) The Minister must cause a copy of the declaration under subclause (1) to be laid before each House of Parliament, or be dealt with under section 95, within 14 days after a declaration is made.

Schedule 2 — Functions of the Waste Authority

[s. 19(1)]

1. To —
 - (a) advise and make recommendations to the Minister on matters relating to this Act; and
 - (b) inquire into and advise the Minister or the CEO on any matter relating to this Act on which the Minister or CEO requests advice; and
 - (c) advise and make recommendations to the CEO on the regulation of waste services; and
 - (d) advise and make recommendations to the CEO with respect to subsidiary legislation under this Act.
- 2A. To seek the advice of such other entities as the Waste Authority thinks fit for the purpose of providing advice to the Minister in relation to the setting and variation of a levy.
2. To act as an advocate for the objects of this Act.
3. To develop, promote and review the waste strategy and coordinate its implementation.
4. To monitor and assess the adequacy of, and report to the Minister on the operation of, the waste strategy, product stewardship plans and extended producer responsibility schemes.
5. To promote community awareness and understanding of resource efficiency, waste avoidance and resource recovery.
6. To support State and Commonwealth policies which will enhance progress towards zero waste.
7. To promote resource efficiency, waste avoidance and resource recovery.
8. To promote coordination between organisations seeking to prevent waste.
9. To liaise with local governments to ensure that the provisions of this Act are enforced in the districts of those local governments.
10. To cooperate with local governments to coordinate local efforts to prevent waste.

11. To receive representations on waste management issues from members of the public.
12. To promote market development for recovered resources and recycled materials.
13. To promote the development of locally owned resource recovery infrastructure.
- 14A. From time to time to develop and publish a statement of the objectives to be achieved by programmes funded under section 80(1)(a).
14. To ensure that the appropriate investigations, audits and inspections in relation to the application of moneys under section 80(1)(a) are carried out.
15. To take appropriate measures to bring the provisions of this Act to the attention of the public.
16. To do such other acts and things as are conducive to the prevention and control of waste.
17. To perform such other functions as are conferred on it under this Act or are referred to it by the Minister.

[Schedule 2 amended: No. 48 of 2009 s. 10.]

Schedule 3 — Matters in respect of which regulations may be made

[s. 96]

Division 1 — General

1. Providing for the form and content of any notice.
2. Providing for the keeping, inspection and production of reports, records, returns, registers and other information.
3. Providing for the imposition of fees and charges.
4. Providing for the recovery of expenses incurred by the CEO or a local government.
5. Prescribing offences under the regulations and penalties for the commission of those offences not exceeding \$10 000, with or without a daily penalty of not more than \$1 000.
6. Providing for review by the State Administrative Tribunal of decisions made under the regulations.

Division 2 — Waste collection and facilities

7. Regulating the operation of waste facilities, and the treatment, storage, processing, recycling or disposal of waste at waste facilities.
8. Regulating the use of receptacles for waste.
9. Regulating waste services.
10. Regulating the transportation of waste.
11. Regulating the creation, collection, storage, handling, processing, recycling and disposal of waste.
12. Providing for waste collection permits.
13. Regulating the issue by local governments of approvals to collect local government waste.
14. Providing for the provision of information relating to the operation of waste facilities and the transportation of waste.

15. Prohibiting the disposal to landfill or other waste facilities of specified waste or classes of waste (including any products that are or have been included in an extended producer responsibility scheme).

Division 3 — Product stewardship

16. Making provision in relation to assisting in the negotiation of, and assessing the implementation and operation of, product stewardship plans.
17. Regulating the implementation, operation and enforcement of extended producer responsibility schemes.
18. Without limiting the *Interpretation Act 1984* section 43(8)(d), exempting persons or products, or classes of person or product, from all or any of the provisions of the regulations applying to extended producer responsibility schemes, and specifying circumstances in which and conditions subject to which an exemption applies.
19. Without limiting item 17, requiring a person who manufactures, distributes or sells a product to do all or any of the following —
- (a) provide consumer information on the use and disposal of the product and its by-products;
 - (b) operate collection facilities for the product and its by-products;
 - (c) collect or accept the product and its by-products for disposal from a consumer of the product;
 - (d) dispose of the product in accordance with the regulations.
20. Without limiting item 17, prescribing products for which a fee, deposit or bond for the collection, recycling or disposal of the product must be paid and —
- (a) regulating the collection of the fee, deposit or bond; and
 - (b) regulating the circumstances in which the fee, deposit or bond and a refund of the fee, deposit or bond will apply; and
 - (c) providing for the amount of the fee, deposit or bond or refund; and
 - (d) providing for the time at which the fee, deposit, bond or refund must be paid.

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21. Concerning the control and management of fees, deposits or bonds paid under the regulations including —
- (a) requiring the person who collects the fee, deposit or bond to forward the fee, deposit or bond to a person specified in the regulations; and
 - (b) making provision as to who is empowered to hold the fee, deposit or bond and where the fee, deposit or bond must be held; and
 - (c) providing for the application of the fee, deposit or bond and interest from the fee, deposit or bond.
22. Providing for the establishment of, and regulating the operation of, collection facilities for products and their by-products.
23. Requiring a producer of a product to formulate and implement a management plan with respect to the product, specifying the matters to be dealt with in the management plan, providing for approval of the management plan and requiring compliance with the management plan.
24. Providing for proof of payment of fees, deposits or bonds under the regulations and its evidential status.

Schedule 4 — Amendments and repeals

[s. 100]

[1. Omitted under the Reprints Act 1984 s. 7(4)(e).]

2. Environmental Protection Act 1986 amended

- (1) The amendments in this clause are to the *Environmental Protection Act 1986*.

[(2) Omitted under the Reprints Act 1984 s. 7(4)(e).]

[(3) Has not come into operation ².]

[(4-5) Omitted under the Reprints Act 1984 s. 7(4)(e).]

[3. Has not come into operation ².]

[4, 5. Omitted under the Reprints Act 1984 s. 7(4)(e).]

Schedule 5 — Savings and transitional provisions

[s. 101]

1. Term used: commencement day

In this Schedule —

commencement day means the day on which section 101 comes into operation¹.

2. Application of the *Interpretation Act 1984*

- (1) The provisions of the *Interpretation Act 1984* (for example sections 36 and 38) about the repeal of written laws and the substitution of other written laws for those so repealed apply to the repeal of the *Environmental Protection (Landfill) Levy Act 1998* and its substitution by the *Waste Avoidance and Resource Recovery Levy Act 2007* as if the repeal and substitution were effected under this Act.
- (2) The other provisions of this Schedule are additional to the provisions applied by subclause (1).

3. Local laws under *Health Act 1911* continued

- (1) Any local law made by a local government under the *Health Act 1911* section 112A or 134(20), (21), (22), (23), (24), (29) (in relation to waste services) or (30) and of effect on the commencement day continues to be of effect as if it were made under this Act and may be amended or repealed accordingly.
- (2) For the purposes of the *Local Government Act 1995* section 3.16(1) a local law referred to in subclause (1) and made after the coming into operation of the *Local Government Act 1995* is to be regarded as having commenced on the day on which it was made under the *Health Act 1911*.

4. Fees and charges fixed under *Health Act 1911* continued

- (1) Any charge fixed under the *Health Act 1911* section 106 that is imposed per waste receptacle continues to be of effect as if it were a charge imposed under section 67.
- (2) Any fee or charge for the removal of refuse fixed by resolution by a local government under the *Health Act 1911* section 344C and of

cl. 5

effect on the commencement day continues to be of effect as if it were a fee or charge prescribed by local law under this Act.

5. Regulations

The regulations made for the purposes of the *Environmental Protection Act 1986* Part VIIA or the *Environmental Protection (Landfill) Levy Act 1998* section 4 that were in force immediately before the commencement day continue in force as if they were regulations made under this Act and may be amended or repealed accordingly.

6. Waste Management and Recycling Fund³

(1) In this section —

former fund means the Waste Management and Recycling Fund established under the EP Act section 110H.

(2) On the commencement day any moneys standing to the credit of the former fund are to be credited to the WARR Account to be applied —

- (a) in the payment of any liabilities of the former fund which arose before the commencement day; and
- (b) for the purposes set out in section 80,

and the former account is then to be closed.

(3) The WARR Account is to be credited with any moneys that became payable to the former fund before the commencement day and that is paid after that day.

7. Waste Management (WA): devolution of assets and liabilities

(1) In this clause —

assets means —

- (a) property of every kind whether tangible or intangible, real or personal, corporeal or incorporeal; and
- (b) without limiting paragraph (a) includes choses in action, goodwill, rights, interests and claims of every kind in or to property, whether arising from, accruing under, created or evidenced by or the subject of, an instrument or otherwise and

whether liquidated or unliquidated, actual, contingent or prospective;

liability means any liability, duty or obligation whether actual, contingent or prospective, liquidated or unliquidated, or whether owned alone or jointly or jointly and severally with any other person;

right means any right, power, privilege or immunity whether actual, prospective or contingent;

Waste Management (WA) means the body established under the EP Act section 110L.

- (2) On and after the commencement day —
- (a) the assets and rights of Waste Management (WA) that were immediately before that day vested in Waste Management (WA) vest in the State by force of this clause; and
 - (b) the liabilities of Waste Management (WA) (including a share of a liability) immediately before that day become, by force of this clause, the liabilities of the State; and
 - (c) any proceeding or remedy that immediately before that day might have been brought or continued by or available against or to Waste Management (WA), may be brought or continued and are available, by or against or to the State; and
 - (d) all records and data of Waste Management (WA) pass to the State.
- (3) Any agreement or instrument subsisting immediately before the commencement day —
- (a) to which Waste Management (WA) was a party; or
 - (b) which contains a reference to Waste Management (WA),
- has effect on and after the commencement day as if —
- (c) the State were substituted for Waste Management (WA) as a party to the agreement or instrument; and
 - (d) any reference in the agreement or instrument to Waste Management (WA) were (unless the context otherwise requires) amended to be or include a reference to the State.

cl. 8

8. Transitional regulations

- (1) If there is no sufficient provision in this Act for dealing with a transitional matter, regulations under this Act may prescribe all matters that are required or necessary or convenient to be prescribed for dealing with the matter.
- (2) In subclause (1) —
transitional matter means a matter that needs to be dealt with for the purpose of —
 - (a) effecting the transition from the provisions repealed by this Act to the provisions of this Act; or
 - (b) effecting the transition from the provisions of an Act amended by a provision of this Act (the ***amending provision***) as in force before the commencement day to the provisions of that Act as in force after the commencement day.
- (3) Regulations made under subclause (1) may provide that specified provisions of this Act as in force on or after the commencement day, or of subsidiary legislation made under this Act, or of an Act amended by this Act —
 - (a) do not apply; or
 - (b) apply with specified modifications,to or in relation to any matter.
- (4) If regulations made under subclause (1) provide that a specified state of affairs is to be taken to have existed, or not to have existed, on and from a day that is earlier than the day on which the regulations are published in the *Gazette* but not earlier than the commencement day, the regulations have effect according to their terms.
- (5) In subclauses (3) and (4) —
specified means specified or described in the regulations.
- (6) If regulations contain a provision referred to in subclause (4), the provision does not operate so as to —
 - (a) affect in a manner prejudicial to any person (other than the State, an authority of the State or a local government), the rights of that person existing before the day of publication of those regulations; or

- (b) impose liabilities on any person (other than the State, an authority of the State or a local government) in respect of anything done or omitted to be done before the day of publication of those regulations.

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Notes

- ¹ This is a compilation of the *Waste Avoidance and Resource Recovery Act 2007* and includes the amendments made by the other written laws referred to in the following table ^{1a}. The table also contains information about any reprint.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Waste Avoidance and Resource Recovery Act 2007</i>	36 of 2007	21 Dec 2007	s. 1 and 2: 21 Dec 2007 (see s. 2(a)); s. 3, 100 (Sch. 4 cl. 2(1), (2) and (4) and 5) and s. 101 (Sch. 5 cl. 1, 7 and 8): 9 Jan 2008 (see s. 2(b) and <i>Gazette</i> 8 Jan 2008 p. 33); Act other than s. 1, 2, 3, 100 (Sch. 4 cl. 2(1), (2) & (4) & cl. 5) & s. 101 (Sch. 5 cl. 1, 7 & 8): 1 Jul 2008 (see s. 2(b) and <i>Gazette</i> 20 Jun 2008 p. 2705)
<i>Waste Avoidance and Resource Recovery Amendment Act 2009 Pt. 2</i>	48 of 2009	7 Dec 2009	s. 3 and 9: 8 Dec 2009 (see s. 2(b)); Pt. 2 other than s. 3 and 9: 1 Jan 2010 (see s. 2(c) and <i>Gazette</i> 22 Dec 2009 p. 5253)
<i>Public Sector Reform Act 2010 s. 89</i>	39 of 2010	1 Oct 2010	1 Dec 2010 (see s. 2(b) and <i>Gazette</i> 5 Nov 2010 p. 5563)
<i>Waste Avoidance and Resource Recovery Amendment (Validation) Act 2014</i>	16 of 2014	2 Jul 2014	2 Jul 2014 (see s. 2)
<i>Public Health (Consequential Provisions) Act 2016 Pt. 3 Div. 29 and Pt. 5 Div. 26</i>	19 of 2016	25 Jul 2016	Pt. 3 Div. 29: 24 Jan 2017 (see s. 2(1)(c) and <i>Gazette</i> 10 Jan 2017 p. 165); Pt. 5 Div. 26: 20 Sep 2017 (see s. 2(1)(c) and <i>Gazette</i> 19 Sep 2017 p. 4880)
Reprint 1: The <i>Waste Avoidance and Resource Recovery Act 2007</i> as at 16 Sep 2016 (includes amendments listed above except the <i>Public Health (Consequential Provisions) Act 2016</i>)			

^{1a} On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

Provisions that have not come into operation

Short title	Number and year	Assent	Commencement
<i>Waste Avoidance and Resource Recovery Act 2007</i> Sch. 4 cl. 2(3) and 3 ²	36 of 2007	21 Dec 2007	To be proclaimed (see s. 2(b))
<u><i>Waste Avoidance and Resource Recovery Amendment (Container Deposit) Act 2019</i> s. 3-8 ⁴</u>	<u>5 of 2019</u>	<u>20 Mar 2019</u>	<u>To be proclaimed (see s. 2(b))</u>
<u><i>Waste Avoidance and Resource Recovery Amendment (Container Deposit) Act (No. 2) 2019</i> s. 3 and 4 ⁵</u>	<u>6 of 2019</u>	<u>20 Mar 2019</u>	<u>Operative on commencement of the <i>Waste Avoidance and Resource Recovery Amendment (Container Deposit) Act 2019</i> s. 6 (see s. 2(b))</u>

² On the date as at which this compilation was prepared, the *Waste Avoidance and Resource Recovery Act 2007* Sch. 4 cl. 2(3) and 3 had not come into operation. They read as follows:

Schedule 4 — Amendments and repeals

[s. 100]

2. ***Environmental Protection Act 1986* amended**
 - (3) Part VIIA is repealed.
3. ***Environmental Protection (Landfill) Levy Act 1998* repealed**

The *Environmental Protection (Landfill) Levy Act 1998* is repealed.

³ The *Waste Avoidance and Resource Recovery Regulations 2008* r. 24 reads as follows:

24. Transitional provision — Waste Management and Recycling Fund

The *Waste Avoidance and Resource Recovery Act 2007* Schedule 5 clause 6 prevails to the extent that there is an inconsistency between that provision and Part VIIA Division 2 of the EP Act.

⁴ On the date as at which this compilation was prepared, the *Waste Avoidance and Resource Recovery Amendment (Container Deposit) Act 2019* s. 3-8 had not come into operation. They read as follows:

3. Act amended

This Act amends the *Waste Avoidance and Resource Recovery Act 2007*.

4. Long title amended

In the long title after the 2nd bullet point insert:

- **establish a container deposit scheme; and**

5. Section 19 amended

After section 19(1) insert:

(1A) A reference to “this Act” in Schedule 2 does not include a reference to Part 5A.

6. Part 5A inserted

After section 47 insert:

Part 5A — Container deposit scheme

Division 1 — Preliminary

47A. Objects of Part

The main objects of this Part are to —

- (a) **increase the recovery and recycling of empty beverage containers; and**

- (b) reduce the number of empty beverage containers that are disposed of as litter or to landfill; and
- (c) ensure that first responsible suppliers of beverage products take product stewardship responsibility in relation to their beverage products; and
- (d) provide opportunities for social enterprise, and benefits for community organisations, through participation in the container deposit scheme; and
- (e) create opportunities for employment; and
- (f) complement existing collection and recycling activities for recyclable waste.

47B. Overview of container deposit scheme

This Part establishes a container deposit scheme that includes the following general features —

- (a) a company will be appointed to the office of Coordinator of the scheme with responsibility for administering the scheme;
- (b) if a beverage is to be supplied in a container, various conditions must be met, including a supply agreement being in force that requires a contribution to the costs of the scheme (including the costs of refund amounts paid under the scheme);
- (c) a refund amount will be paid to a person who returns an empty container to a refund point;
- (d) containers that have been returned to a refund point must not be disposed of in a prohibited manner.

47C. Terms used

- (1) In this Part —

appointed day, for a section, has the meaning given in subsection (2);

beverage means —

- (a) a substance that is a liquid at room temperature and intended for human consumption by drinking; or
- (b) a thing or class of things prescribed by the regulations to be a beverage.

but does not include a thing or class of things prescribed by the regulations not to be a beverage;

beverage product means a product that consists of a particular beverage packaged in a container of a particular type;

civil penalty has the meaning given in section 47ZZ(1);

company means a company registered under the Corporations Act;

container means —

(a) a vessel that is made to be —

(i) filled with a beverage; and

(ii) sealed for storage, transport and handling before being supplied for the use or consumption of the beverage;

or

(b) a thing or class of things prescribed by the regulations to be a container.

but does not include a thing or class of things prescribed by the regulations not to be a container;

container approval has the meaning given in section 47F(1);

Coordinator means the company for the time being occupying the office of Coordinator of the scheme under section 47X;

Corporations Act means the *Corporations Act 2001* (Commonwealth);

corresponding law means a law of the Commonwealth or another State or a Territory that is prescribed by the regulations to be a law corresponding to this Act;

disposal premises means premises —

(a) which are used for the purpose of receiving waste; and

(b) in respect of which the occupier is required to hold a licence under the *Environmental Protection Act 1986*, whether or not the licence is in force;

eligible company has the meaning given in section 47V(1);

eligible individual means an individual who —

(a) is not an insolvent under administration within the meaning of the Corporations Act section 9; and

(b) is not disqualified from managing corporations, under the Corporations Act Part 2D.6; and

(c) has not been convicted of —

(i) an offence against this Act, the *Environmental Protection Act 1986* or a corresponding law; or

(ii) an indictable offence, or an offence that, if committed in Western Australia, would be an indictable offence, against another written law or another law of the Commonwealth or another State or a Territory;

exporter means a person who, within the meaning given in section 47P(2), exports a beverage product;

export rebate agreement has the meaning given in section 47P(3);

first responsible supplier has the meaning given in section 47D;

Interim Coordinator has the meaning given in section 47ZT(1);

material recovery agreement has the meaning given in section 47R(2);

material recovery facility means —

(a) a facility or other place at which recyclable waste is sorted and prepared for recycling, whether or not the waste is also recycled at the facility or place; or

(b) a facility or other place or class of facilities or places prescribed by the regulations to be a material recovery facility,

but does not include a facility or other place or class of facilities or places prescribed by the regulations not to be a material recovery facility;

MRF operator means the operator of a material recovery facility;

prohibited manner, in relation to the disposal of a container, means disposing of the container —

(a) at disposal premises; or

(b) by burial; or

(c) in contravention of the *Environmental Protection Act 1986* Part V Division 1; or

(d) in any other manner prescribed by the regulations to be a prohibited manner.

but does not include any manner of disposing of the container that is prescribed by the regulations not to be a prohibited manner;

refund amount means the amount prescribed for the purposes of section 47J;

refund mark means marking or labelling on a container that shows the refund amount and complies with the requirements prescribed by the regulations;

refund point means —

(a) a facility or other place for the return of empty containers in exchange for the payment of refund amounts; or

(b) a facility or other place or class of facilities or places prescribed by the regulations to be a refund point,

but does not include a facility or other place or class of facilities or places prescribed by the regulations not to be a refund point;

refund point agreement has the meaning given in section 47Q(1);

refund point operator means —

(a) the operator of a refund point; or

- (b) a person or class of persons prescribed by the regulations to be a refund point operator,
but does not include a person or class of persons prescribed by the regulations not to be a refund point operator;
scheme means the container deposit scheme established by this Part;
Scheme Account has the meaning given in section 47ZN(1);
scheme agreement means each of the following —
- (a) an export rebate agreement;
 - (b) a material recovery agreement;
 - (c) a refund point agreement;
 - (d) a supply agreement;
- supply* means —
- (a) to supply, by way of sale or otherwise, in the course of carrying on a business; or
 - (b) to supply free of charge for a commercial or promotional purpose,
but does not include a transaction or class of transactions prescribed by the regulations not to be a supply;
- supply agreement* has the meaning given in section 47O(1);
supply amounts has the meaning given in section 47O(1);
type, in relation to a container, is the combination of —
- (a) the volume of a beverage the container is made to hold;
and
 - (b) the material the container is made of.
- (2) A reference in a section in this Part to the *appointed day* for the section is a reference to the day fixed by the Minister by order published in the *Gazette* to be the appointed day for the purposes of that section.
- (3) Subject to subsection (4), for the purposes of this Part, a supply of a beverage product is *in the State* if —
- (a) the beverage product is received in the State (whether or not the supplier is located in the State); or
 - (b) under the regulations, it is taken to be in the State.
- (4) A supply of a beverage product is not in the State if, under the regulations, it is taken not to be in the State.
- (5) In sections 47ZE, 47ZF, 47ZM, 47ZN(1) and (2) and 47ZP a reference to a Coordinator includes a company that has been notified of its appointment to the office of Coordinator of the

scheme under section 47X but has not yet commenced occupying the office.

47D. First responsible supplier

- (1) Subject to subsection (2), the **first responsible supplier** of a beverage product is —
 - (a) the person who first supplies the beverage product in the State; or
 - (b) the person who, under the regulations, is taken to be the first responsible supplier of the beverage product.
- (2) A person is not the first responsible supplier of a beverage product if, under the regulations, the person is taken not to be the first responsible supplier of the beverage product.
- (3) Unless the regulations provide otherwise, if a person (the **transporter**) only transports a beverage product between the supplier of the beverage product and the recipient of the beverage product, each of the following is not a supply of the beverage product —
 - (a) the transfer of the beverage product from the supplier to the transporter;
 - (b) the transfer of the beverage product from the transporter to the recipient.
- (4) Unless the regulations provide otherwise, if a person (the **contract bottler**) is engaged under a contract to make a beverage product or fill containers with a beverage for another person (the **contract counterparty**), in circumstances where the beverage product is manufactured solely for the contract counterparty, the transfer of the beverage product from the contract bottler to the contract counterparty following completion of the manufacturing process is not a supply.
- (5) For the purposes of subsections (1)(b) and (2), the regulations may provide for circumstances in which a person, or a person who belongs to a prescribed class or who meets prescribed criteria —
 - (a) is taken to be the first responsible supplier of a beverage product or class of beverage products; or
 - (b) is taken not to be the first responsible supplier of a beverage product or class of beverage products.
- (6) Without limiting subsection (5), the circumstances referred to in that subsection may include circumstances where a person has entered into an agreement with another person as to who is to be the first responsible supplier of a beverage product.

Division 2 — Supply of beverage products

47E. Requirement for supply agreement, container approval, refund mark and barcode

- (1) Subsection (2) applies on and after the appointed day for this section.
- (2) A person who is the first responsible supplier of a beverage product commits an offence when the beverage product is first supplied in the State unless, at that time —
 - (a) a supply agreement is in force between the person and the Coordinator in relation to the beverage product; and
 - (b) a container approval that applies to the beverage product is in force (whether or not it is held by the person); and
 - (c) the container used for the beverage product bears a refund mark and a barcode that complies with the requirements prescribed by the regulations.

Penalty for this subsection: a fine of \$75 000.

- (3) If a person charged with an offence against subsection (2) supplied the beverage product in the State, the person is taken, in any proceedings for the offence, to be the first responsible supplier of the beverage product unless the contrary is shown.
- (4) Regulations may deal with any matter in relation to the supply of beverage products or a person who supplies beverage products.

47F. Container approval

- (1) On and after the appointed day for this section, a person may apply to the CEO for an approval (a ***container approval***) that applies to a beverage product or class of beverage products.
- (2) The CEO may, subject to the regulations, grant or refuse to grant the container approval.
- (3) A container approval is subject to —
 - (a) any conditions prescribed by the regulations; and
 - (b) any further conditions the CEO —
 - (i) considers necessary or desirable to impose; and
 - (ii) specifies in the approval.
- (4) The first responsible supplier of a beverage product must not contravene a condition of a container approval that applies to the beverage product.

Penalty for this subsection: a fine of \$10 000.

47G. Regulations relating to container approvals

Regulations may deal with any matter in relation to container approvals or applications for container approvals, and may (without limitation) —

- (a) deal with, or with any matter in relation to, any of the following —
 - (i) the manner and form in which an application for a container approval is to be made and the process for applying;
 - (ii) the information that must accompany an application for a container approval or otherwise be provided to the CEO;
 - (iii) the payment of fees in relation to container approvals or applications for container approvals;
 - (iv) the matters to be considered in deciding whether to grant a container approval and the criteria that must be met before a container approval is granted;
 - (v) the grounds on which a container approval may be refused or taken to be refused;
 - (vi) the way in which the grant of, or refusal to grant, a container approval is to be communicated;
 - (vii) the conditions to be imposed on a container approval, including the term of a container approval;
 - (viii) the amendment of a container approval by the CEO (including the amendment or revocation of conditions on the approval or the imposition of new conditions);
 - (ix) the transfer of a container approval by the holder;
 - (x) the suspension or cancellation of a container approval by the CEO;
 - (xi) the maintenance by the Coordinator of a public database of container approvals, including the information to be included, the information required to be provided to the Coordinator, the payment of fees or charges and the requirements the database must comply with;

and

- (b) require the verification of information or documents by statutory declaration; and
- (c) prescribe offences in relation to the supply by a person or class of persons of beverage products that do not have a container approval; and
- (d) provide for any of the following —
 - (i) circumstances in which an approval (however described) under a corresponding law is taken to be a container approval;
 - (ii) circumstances in which a container approval is taken to be held, including where an approval (however described) is held under a corresponding law, or where a person has complied with prescribed requirements of a corresponding law;
 - (iii) the conditions that apply to a container approval referred to in subparagraphs (i) and (ii).

47H. Review by State Administrative Tribunal

A person who is, or intends to be, the first responsible supplier of a beverage product may apply to the State Administrative Tribunal for a review of —

- (a) a decision of the CEO to refuse to grant a container approval that applies to the beverage product; or
- (b) a decision of the CEO to refuse to transfer a container approval that applies to the beverage product to or from the person (but only if, in the case of a transfer of a container approval to the person, the current holder of the container approval has consented to the application for review); or
- (c) a decision of the CEO to amend, suspend or cancel a container approval that applies to the beverage product.

Division 3 — Return of containers

47I. Requirements for refund point operators

- (1) A person (other than the Coordinator) must not act as a refund point operator in respect of a refund point unless a refund point agreement is in force between the person and the Coordinator in respect of the refund point.

Penalty for this subsection: a fine of \$75 000.
- (2) Regulations may prescribe eligibility criteria that must be met before a person may act as a refund point operator.

47J. Refund amount

Regulations may prescribe an amount as the refund amount for the purposes of this Part.

47K. Regulations relating to refund points and refund amounts

Regulations may deal with any matter in relation to refund points, refund amounts or the acceptance of empty containers at refund points, and may (without limitation) —

(a) prescribe the circumstances in which a refund point operator —

(i) is or is not required to accept delivery of an empty container presented by a person to a refund point; and

(ii) is or is not required to pay to the person the refund amount;

and

(b) deal with, or with any matter in relation to, the manner in which refund amounts are to be paid; and

(c) prescribe any conditions that must be met before a person may receive a refund amount (including any information that a person must give); and

(d) prohibit a person or class of persons from claiming, or attempting to claim, payment of a refund amount —

(i) to which they are not entitled under this Act; or

(ii) in prescribed circumstances;

and

(e) require information or documents given by a person to be verified by statutory declaration.

47L. Coordinator as refund point operator

(1) The Coordinator must not act as a refund point operator unless directed to do so by the Minister.

(2) The Minister may direct the Coordinator to act as a refund point operator in respect of a refund point —

(a) if —

(i) persons in part of the community do not have reasonable access to a refund point; and

(ii) the Coordinator has not identified another person with whom to enter into a refund point agreement to operate the refund point;

or

- (b) if the achievement of the objects of this Part may be materially adversely affected without the provision of the refund point.

47M. Collected or returned containers must not be disposed of in a prohibited manner

- (1) In this section, an empty container is a *collected container* if —

- (a) a container approval is in force that applies to the beverage product for which the container was used; and
 - (b) the container has been collected or received by an MRF operator (other than where the container was returned to a refund point).

- (2) In this section, an empty container is a *returned container* if —

- (a) a container approval is in force that applies to the beverage product for which the container was used; and
 - (b) the container has been returned to a refund point.

- (3) On and after the appointed day for this section, the Coordinator must not dispose of, or allow the disposal of, a collected container or a returned container in a prohibited manner.

Penalty for this subsection: a fine of \$250 000.

- (4) On and after the appointed day for this section, an MRF operator must not dispose of, or allow the disposal of, a collected container or a returned container in a prohibited manner.

Penalty for this subsection: a fine of \$50 000.

- (5) On and after the appointed day for this section, a person (other than the Coordinator or an MRF operator) must not dispose of, or allow the disposal of, a container in a prohibited manner if —

- (a) the container is a collected container or a returned container; and
 - (b) the person knows, or ought reasonably to know, that the container is a collected container or a returned container.

Penalty for this subsection: a fine of \$50 000.

- (6) If an exemption has been granted in respect of a container under section 47N, subsections (3), (4) and (5) do not apply to the container.

- (7) For the purposes of subsections (3), (4) and (5), a person has allowed the disposal of a container in a prohibited manner if —

- (a) the person arranged for the container to be disposed of; and
 - (b) when the person made the arrangement, or at any later time prior to the disposal, the person knew, or ought

- reasonably to have known, that the container was likely to be disposed of in a prohibited manner; and
- (c) the container was disposed of in a prohibited manner.
- (8) A person has not disposed of, or allowed the disposal of, a container in a prohibited manner if —
- (a) the person took the container, or arranged for the container to be taken, to a facility at which containers of that type can be recycled; and
- (b) part of the container could not be recycled at the facility; and
- (c) only that part of the container was disposed of in a prohibited manner.
- (9) Nothing in this section or section 47N affects the liability of a person for disposing of a container in a manner that contravenes the *Environmental Protection Act 1986* or any other written law.

47N. Extraordinary circumstances exemption

- (1) This section applies if a container has become unsuitable to be recycled because of extraordinary circumstances.
- (2) On and after the appointed day for this section, a person may apply to the CEO for an exemption from the requirements of section 47M in respect of the container.
- (3) The CEO may grant the exemption, subject to any conditions that the CEO specifies in the exemption, if satisfied that —
- (a) the container has become unsuitable to be recycled; and
- (b) the circumstances that caused the container to become unsuitable to be recycled were extraordinary and either —
- (i) could not have reasonably been foreseen by the person; or
- (ii) were beyond the person's control.
- (4) A person who has been granted an exemption must comply with any condition specified in the exemption.
- Penalty for this subsection: a fine of \$50 000.

Division 4 — Scheme agreements and scheme participants

47O. Supply agreement

- (1) The Coordinator may enter into a written agreement (a *supply agreement*) with a person in relation to one or more beverage products that includes provisions about —

- (a) unless the regulations provide otherwise, the person's obligation to pay to the Coordinator amounts (*supply amounts*) to contribute to the costs of —
 - (i) paying refund amounts in relation to containers used for the beverage products that are returned to refund points; and
 - (ii) paying amounts to MRF operators in relation to containers used for the beverage products that are collected or received by the MRF operators; and
 - (iii) administering the scheme, including the costs of paying other amounts to refund point operators and any other costs reasonably incurred by the Coordinator in carrying out its functions;
 - and
 - (b) any other matter prescribed by the regulations.
- (2) On and after the appointed day for this section, if a supply agreement requires a person to pay supply amounts, the person must pay the supply amounts to the Coordinator in accordance with this Act and the terms of the supply agreement.
Civil penalty: \$50 000.
- (3) The Coordinator must not claim, or attempt to claim, payment from a person under a supply agreement —
 - (a) if the Coordinator is not entitled to the payment under this Act or the supply agreement; or
 - (b) in any other circumstances prescribed by the regulations.Civil penalty: \$50 000.

47P. Export rebate agreement

- (1) In this section —
scheme container means a container in relation to which a supply amount has been paid under a supply agreement.
- (2) A person *exports* a beverage product —
 - (a) if the person supplies the beverage product from the State to a place outside of the State, unless under the regulations the supply of the beverage product is taken not to be an export; or
 - (b) if under the regulations, the person is taken to export the beverage product.
- (3) The Coordinator may enter into a written agreement (an *export rebate agreement*) with an exporter that includes provisions about —

- (a) the Coordinator's obligation to make payments to the exporter in relation to scheme containers used for beverage products that the person exports; and
 - (b) any other matter prescribed by the regulations.
 - (4) An exporter must not claim, or attempt to claim, payment from the Coordinator under an export rebate agreement —
 - (a) if the exporter is not entitled to the payment under this Act or the export rebate agreement; or
 - (b) in any other circumstances prescribed by the regulations.
- Civil penalty: \$50 000.

47Q. Refund point agreement

- (1) The Coordinator may enter into a written agreement (a **refund point agreement**) with a person that includes provisions about —
 - (a) the Coordinator's obligation to make payments to the person for certain costs incurred by the person in operating a refund point; and
 - (b) any other matter prescribed by the regulations.
 - (2) A refund point operator must not claim, or attempt to claim, payment from the Coordinator under a refund point agreement —
 - (a) if the refund point operator is not entitled to the payment under this Act or the refund point agreement; or
 - (b) in any other circumstances prescribed by the regulations.
- Civil penalty: \$50 000.

47R. Material recovery agreement

- (1) In this section, a container is an **approved container** if a container approval is in force that applies to the beverage product for which the container was used.
- (2) The Coordinator may enter into a written agreement (a **material recovery agreement**) with an MRF operator that includes provisions about —
 - (a) the Coordinator's obligation to make payments to the MRF operator in relation to empty approved containers the MRF operator collects or receives (other than containers that have been returned to a refund point); and
 - (b) any other matter prescribed by the regulations.
- (3) An MRF operator must not claim, or attempt to claim, payment from the Coordinator under a material recovery agreement —
 - (a) if the MRF operator is not entitled to the payment under this Act or the material recovery agreement; or
 - (b) in any other circumstances prescribed by the regulations.

Civil penalty: \$50 000.

47S. Regulations relating to scheme agreements and scheme participants

(1) In this section —

scheme participant means each of the following —

(a) a party to a scheme agreement (other than the Coordinator);

(b) any other person who is —

(i) the first responsible supplier of a beverage product; or

(ii) an exporter; or

(iii) a refund point operator; or

(iv) an MRF operator.

(2) Regulations may deal with any matter in relation to a scheme participant, a scheme agreement or payments under a scheme agreement.

(3) Without limiting subsection (2), regulations may do any of the following —

(a) deal with the content of a scheme agreement, including the matters or terms that must be included in a scheme agreement;

(b) require a scheme agreement to be approved by the Minister or CEO or be in a form or format approved by the Minister or CEO;

(c) deal with, or with any matter in relation to, the review, amendment, assignment, novation, termination or term of a scheme agreement;

(d) deal with, or with any matter in relation to, the following —

(i) the cases or classes of cases in which a supply agreement is not to require a person to pay supply amounts, or is to require a person to pay reduced supply amounts;

(ii) the circumstances in which a requirement in a supply agreement to pay supply amounts has effect (including any conditions that must be met before payment is required);

(iii) the scheme participants or classes of scheme participants that may be entitled to payment under a scheme agreement;

- (iv) the circumstances in which a scheme participant is entitled to payment under a scheme agreement (including any conditions that must be met before a scheme participant is entitled to payment);
- (v) how the amounts to be paid under a scheme agreement are to be calculated;
- (vi) without limiting subparagraph (v), how supply amounts under a supply agreement are to be calculated, including the means for estimating the number of containers that will be returned to refund points that were used for beverage products to which the supply agreement relates;
- (vii) without limiting subparagraph (v), how payments under an MRF agreement are to be calculated, including the means for estimating the number of containers collected or received by an MRF operator;
- (viii) the terms and conditions of payment under a scheme agreement;
- (ix) the manner in which the Coordinator or a scheme participant is required to make claims for payment under a scheme agreement;
- (x) the assessment of claims for payment under a scheme agreement;
- (e) impose obligations on a scheme participant, including in relation to complying with a scheme agreement, supplying beverage products, exporting beverage products, operating refund points, collecting or receiving beverage products, record keeping and reporting;
- (f) require information or documents given by a scheme participant or the Coordinator to be verified by statutory declaration;
- (g) deal with, or with any matter in relation to, an MRF operator sharing, with a local government operating a waste collection service, payments received by the MRF operator from the Coordinator, including —
 - (i) agreements between MRF operators and the local governments in respect of the sharing of payments, including the period within which an agreement must be reached, and the consequences of failing to reach an agreement; and

- (ii) how payments are to be shared in the absence of any agreement.

47T. Content of scheme agreements not limited

Subject to the regulations, nothing in this Division limits the matters for which a scheme agreement may provide.

Division 5 — Coordinator of the scheme

Subdivision 1 — Preliminary

47U. Terms used

- (1) In this Division —

beverage supplier means —

- (a) a person who supplies beverage products; or
(b) a person who does not supply beverage products, but who is taken under this Act to be the first responsible supplier of a beverage product;

business associate, of a corporation means —

- (a) a member or shareholder of the corporation; or
(b) a person who otherwise holds a beneficial interest in the corporation; or
(c) another person whom the Minister is satisfied is associated with the ownership or management of the corporation or is in a position to control or influence the affairs of the corporation,

but does not include an executive officer of the corporation;

corporation has the meaning given in the Corporations Act section 57A;

executive officer, of a corporation, means a person (whatever the person's position is called and whether or not the person is a director of the corporation) who —

- (a) is a member of the governing body of the corporation; or
(b) is concerned with, or takes part in, the corporation's management;

independent of the beverage industry, in relation to a person, means that the person is not a beverage supplier or an executive officer, employee or business associate of a beverage supplier;

independent of the waste industry, in relation to a person, means that the person is not a provider of a waste service, or an executive officer, employee or business associate of a provider of a waste service;

major beverage supplier means a beverage supplier other than a minor beverage supplier;

minor beverage supplier means a beverage supplier or class of beverage suppliers that is prescribed by the regulations to be a minor beverage supplier.

47V. Eligible company

(1) An eligible company is a company that —

- (a) is carried on other than for the profit or gain of its individual members; and
- (b) has a constitution that complies with subsection (2).

(2) The constitution of a company complies with this subsection if it, at all times —

- (a) requires the company to maintain a board, constituted by 9 directors, that has the composition required under subsection (3); and
- (b) prohibits dividends being paid to, or the income, profits or assets of the company being distributed among, its members; and
- (c) requires the persons appointed or employed as executive officers of the company to be eligible individuals; and
- (d) includes provisions about —
 - (i) the way the chair and directors are appointed and removed; and
 - (ii) the way the chair and directors vote on and decide matters; and
 - (iii) the remuneration and other entitlements of the chair and directors; and
 - (iv) the way the constitution is amended; and
 - (v) any other matter prescribed by the regulations.

(3) The required composition of the board is the following —

- (a) a chair who is —
 - (i) a director; and
 - (ii) independent of the beverage industry; and
 - (iii) independent of the waste industry; and
 - (iv) approved by the Minister;
- (b) at least 1 director who is an executive officer, employee or business associate of a minor beverage supplier or an association that represents minor beverage suppliers;
- (c) at least 1 director who is an executive officer, employee or business associate of a major beverage supplier;

- (d) at least 1 director who —
 - (i) is independent of the beverage industry; and
 - (ii) has experience in the recycling and waste industry (including, but not limited to, experience in waste recovery, processing, transport or logistics);
 - (e) in addition to the chair, at least 1 other director who —
 - (i) represents the interests of the community; and
 - (ii) is independent of the beverage industry; and
 - (iii) is independent of the waste industry; and
 - (iv) is approved by the Minister;
 - (f) at least 2 other directors who —
 - (i) have legal or financial qualifications and experience; and
 - (ii) are independent of the beverage industry; and
 - (iii) are independent of the waste industry.
- (4) Regulations may deal with any matter in relation to the Minister's approval under subsection (3)(a)(iv) and (e)(iv) and may (without limitation) deal with the grounds on which the Minister may refuse to approve a person.

Subdivision 2 — Appointment of Coordinator of the scheme

47W. Office of Coordinator of the scheme

- (1) An office of Coordinator of the scheme is established.
- (2) The office of Coordinator of the scheme is not —
 - (a) an office in the Public Service; or
 - (b) an organisation for the purposes of the *Public Sector Management Act 1994*; or
 - (c) an office established for a public purpose.
- (3) The *Public Sector Management Act 1994* does not apply to, or in relation to, the appointment of the Coordinator and the Coordinator is not subject to that Act.
- (4) The Coordinator is not an agent of the State and does not have the status, immunities and privileges of the State.

47X. Appointment of Coordinator

- (1) The Minister may appoint an eligible company to the office of Coordinator of the scheme.
- (2) The Minister may invite eligible companies to apply for appointment to the office of Coordinator of the scheme, and may

assess any applications received, in any manner the Minister considers appropriate.

(3) The appointment of an eligible company to the office of Coordinator of the scheme must be by notice in writing given to the eligible company.

(4) The notice must specify —

(a) the day on which the eligible company is to commence occupying the office; and

(b) whether the appointment is indefinite or for a period specified in the notice; and

(c) any other matter prescribed by the regulations.

47Y. Conditions of appointment

(1) The Minister may attach conditions to an appointment under section 47X(1).

(2) The conditions must be specified in the notice of appointment.

(3) Regulations may deal with any matter in relation to the Minister's power to attach conditions under subsection (1) or amend or revoke or attach new conditions under section 47ZQ(1)(a) and may (without limitation) deal with the content of a condition or amendment.

47Z. Functions of Coordinator

(1) The Coordinator's main function is to administer and provide governance for the scheme.

(2) Without limiting subsection (1), the Coordinator has the following functions —

(a) to enter into, and manage, supply agreements in order to ensure contributions are made to the costs of the scheme;

(b) to establish and maintain databases of container approvals and scheme agreements;

(c) to enter into, and manage, export rebate agreements;

(d) to establish a network of refund points by entering into refund point agreements and, if directed to do so by the Minister, by acting as a refund point operator;

(e) to enter into, and manage, refund point agreements;

(f) to enter into, and manage, material recovery agreements;

(g) to ensure arrangements are in place for —

(i) returning and collecting containers; and

(ii) handling, sorting, processing, verifying, transporting and recycling containers that have

been returned to a refund point or collected or received by an MRF operator;

- (h) to determine the amounts payable under the scheme to and by the Coordinator under scheme agreements;
 - (i) to make and receive the payments referred to in paragraph (h);
 - (j) to ensure arrangements are in place for verifying the validity of payments claimed and made under the scheme;
 - (k) to raise and maintain public awareness of the scheme, including how the scheme operates and the location of refund points;
 - (l) to receive and deal with complaints relating to the scheme from members of the public and entities participating in the scheme;
 - (m) to obtain data on recycling rates for containers prior to the commencement of the scheme and throughout its operation in order to measure the outcomes of the scheme;
 - (n) any other functions given under this Act or another Act.
- (3) Regulations may deal with any matter in relation to the Coordinator's functions, and may (without limitation) —
- (a) give the Coordinator additional functions; and
 - (b) deal with any matter in relation to the Coordinator's performance of its functions.

47ZA. Powers of Coordinator

The Coordinator has all the powers it needs to perform its functions.

47ZB. Delegation by Coordinator

- (1) The Coordinator may delegate any function of the Coordinator under another provision of this Act or another written law to —
 - (a) a director of the Coordinator; or
 - (b) the chief executive officer of the Coordinator (however described); or
 - (c) an appropriately qualified employee of the Coordinator.
- (2) The delegation must be in writing executed by the Coordinator.
- (3) Except as provided in subsection (4), a person to whom a function is delegated under this section cannot delegate that function.
- (4) A delegation under subsection (1)(b) to the chief executive officer of the Coordinator (however described) may expressly authorise

the chief executive officer to further delegate the function to an appropriately qualified employee of the Coordinator.

(5) A person performing a function that has been delegated to the person under this section is taken to do so in accordance with the terms of the delegation, unless the contrary is shown.

(6) Nothing in this section limits the ability of the Coordinator to perform a function through an officer or agent.

Subdivision 3 — Operations of Coordinator

47ZC. Coordinator must not act unfairly

(1) In negotiating, entering into, performing obligations under or enforcing a scheme agreement, the Coordinator must not act unfairly, or unreasonably discriminate, against or in favour of any person.

(2) The Coordinator must not enter into an agreement that is, or contains a provision that is, inconsistent with this Act.

47ZD. Coordinator performance targets

Regulations may deal with any matter in relation to performance targets for the Coordinator, and may (without limitation) deal with, or with any matter in relation to —

(a) the performance targets and other measures by which the performance of the Coordinator is to be judged, which may include targets in relation to —

(i) the number, location and accessibility to the public of refund points; and

(ii) the rate of return or collection of containers (including by reference to any particular area of operation);

and

(b) the period for which a performance target is to be judged; and

(c) how the Coordinator is to report on its performance against a performance target; and

(d) the consequences of the Coordinator failing to achieve a performance target, which may include the Minister giving a written direction, appointing an administrator to the Coordinator, or amending or revoking the appointment of the Coordinator.

47ZE. Business plan of Coordinator

(1) The Coordinator must prepare a draft business plan and give it to the Minister at each of the following times —

- (a) in the case of the first draft business plan given by a particular Coordinator — at a time directed by the Minister;
 - (b) in the case of subsequent plans — no later than 3 months before the start of each financial year that has not been covered by a business plan given to the Minister.
 - (2) A draft business plan given under subsection (1) must cover the following period (the **relevant period**) —
 - (a) in the case of a plan given under subsection (1)(a) — the period directed by the Minister; and
 - (b) in any other case — the financial year following the day on which the plan is given.
 - (3) A draft business plan must be prepared and given in accordance with any requirements prescribed by the regulations and must include —
 - (a) a budget of estimated costs of the scheme for the relevant period, including the estimated costs of —
 - (i) the Coordinator; and
 - (ii) refund amounts to be paid under the scheme;
 - and
 - (iii) the operation of refund points, including handling, sorting, processing, verifying, transporting and recycling containers;
 - and
 - (b) in the case of —
 - (i) a plan given under subsection (1)(a) — a strategic plan for the duration of the Coordinator's term of appointment or any other period directed by the Minister; and
 - (ii) any subsequent plan — an update of the original strategic plan for the duration of the Coordinator's term of appointment or any other period directed by the Minister;
 - and
 - (c) an operational plan for the relevant period.

47ZF. Approval of business plan

- (1) In this section —
 - relevant period** means a financial year or another period referred to in section 47ZE(2)(a).

- (2) If the Coordinator gives the Minister a draft business plan in relation to a relevant period under section 47ZE or subsection (3), the Minister may, by written notice —

 - (a) approve the draft business plan; or
 - (b) direct the Coordinator to, within the period specified in the notice —

 - (i) take specified steps in relation to the draft business plan or make specified modifications to the draft business plan; and
 - (ii) submit a revised draft business plan.
- (3) The Coordinator must comply with a direction under subsection (2)(b) as soon as is practicable and in any event within the period specified in the notice.
- (4) A draft business plan in relation to a relevant period that has been approved under subsection (2)(a) is the business plan for that period.
- (5) If the Minister has not approved a draft business plan in relation to a relevant period before the start of that period, the business plan for that period is, until a business plan is approved for the period, the business plan for the previous relevant period with any modifications determined by the Minister.

47ZG. Amendment to business plan

- (1) The Coordinator may amend a business plan during the period covered by the plan.
- (2) The Coordinator must give the amended business plan to the Minister within 10 business days after making the amendment.
- (3) The Minister may, by written notice, approve the amended business plan.
- (4) An amendment to a business plan, other than a minor amendment that does not materially change the plan, has no effect until the amended business plan has been approved by the Minister.

47ZH. Compliance with business plan

- (1) In this section —

business plan, for a period, means the business plan that is the business plan for that period under section 47ZF(4) or (5), as amended by any amendments that have effect under section 47ZG.
- (2) The Coordinator must have regard to the business plan for the current period in carrying out its functions.

(3) The Coordinator must not depart significantly from the business plan for the current period without first obtaining the approval of the Minister.

(4) The Coordinator must ensure that a copy of the business plan for the current period is —

(a) available for inspection by members of the public at its principal place of business whenever that place is open to the public; and

(b) published on the internet.

47ZI. Reporting by Coordinator

Regulations may deal with any matter in relation to the provision or publication of information by the Coordinator or the reporting and notification obligations of the Coordinator, and may (without limitation) —

(a) require the Coordinator to provide or publish prescribed information or a prescribed class of information; and

(b) prescribe the format of information to be provided or published; and

(c) require the Coordinator to notify the Minister about a prescribed matter or event.

47ZJ. Notification of events

(1) In this section —

criminal record check, in relation to a person, means a document issued by the Police Force of Western Australia, the Australian Federal Police or the police force of another State or a Territory that sets out the criminal convictions (if any) of the person for offences under the law of the State, the Commonwealth or the other State or Territory.

(2) The Coordinator must notify the CEO within 10 business days after any of the following events happens —

(a) the Coordinator ceases to be an eligible company;

(b) an executive officer of the Coordinator ceases to be an eligible individual;

(c) the appointment or employment of an executive officer of the Coordinator ends;

(d) a person is appointed or employed as an executive officer of the Coordinator;

(e) a shareholder or member of the Coordinator ceases to be a shareholder or member of the Coordinator;

- (f) a person becomes a shareholder or member of the Coordinator;
 - (g) the Coordinator becomes aware that a business associate of the Coordinator is not an eligible individual.
 - (3) A notice about an event mentioned in subsection (2)(a) must include the Coordinator's plan and timetable for making the Coordinator an eligible company.
 - (4) A notice about an event mentioned in subsection (2)(d) or (f) must be accompanied by the signed consent of the person who is the subject of the notice to —
 - (a) the collection of personal or background information about the person by the CEO; and
 - (b) a criminal record check.

47ZK. CEO to have access to information, agreements and databases

- (1) In this section —
 - document* includes any tape, disk or other device or medium on which information is recorded or stored;
 - information* means information specified, or of a description specified, by the CEO that relates to the functions of the Coordinator.
- (2) The CEO is entitled —
 - (a) to have information in the possession of the Coordinator and, if the information is in or on a document, to have, and make and retain copies of, that document; and
 - (b) without limiting paragraph (a) —
 - (i) to have, and make and retain copies of, any scheme agreement; and
 - (ii) to have access to, and extract and retain data from, any database established by the Coordinator under this Act.
- (3) For the purposes of subsection (2) the CEO may request the Coordinator to —
 - (a) provide information, agreements or data to the CEO; and
 - (b) give the CEO access to information, agreements or a database.
- (4) The Coordinator must comply with a request under subsection (3).

Subdivision 4 — Scheme Account

47ZL. Terms used

- In this Subdivision —

approved governance plan, for a Scheme Account, means the plan most recently approved by the CEO for that Scheme Account under section 47ZM(4), as amended by any amendments that have effect under section 47ZM;

bank account means an account held at a bank as defined in the *Financial Management Act 2006* section 3;

scheme funds means any moneys prescribed by the regulations.

47ZM. Governance plan for Scheme Account

- (1) The Coordinator must prepare a draft governance plan for a Scheme Account and give it to the CEO at each time directed by the CEO.
- (2) A draft governance plan must be prepared and given in accordance with any requirements prescribed by the regulations and must —
 - (a) in the case of the first draft governance plan given by a particular Coordinator — set out the Coordinator's proposed governance arrangements for a Scheme Account, including details of —
 - (i) how the funds in the Scheme Account will be controlled and accounted for during the Coordinator's appointment; and
 - (ii) how the funds in the Scheme Account will be transferred to the person who replaces the Coordinator as Coordinator following any expiry, revocation or other termination of the Coordinator's appointment;
 - and
 - (b) in the case of any subsequent plan — consist of an update of the original governance plan.
- (3) Subsection (1) does not apply to an Interim Coordinator.
- (4) If the Coordinator gives the CEO a draft governance plan under subsection (1) or (5), the CEO may, by written notice —
 - (a) approve the draft governance plan; or
 - (b) direct the Coordinator to, within the period specified in the notice —
 - (i) take specified steps in relation to the draft governance plan or make specified modifications to the draft governance plan; and
 - (ii) submit a revised draft governance plan.
- (5) The Coordinator must comply with a direction under subsection (4)(b) as soon as is practicable and in any event within the period specified in the notice.

- (6) If the Coordinator wishes to amend the governance plan, the Coordinator must give the amended governance plan to the CEO within 10 business days after making the amendment.
- (7) The CEO may, by written notice, approve the amended governance plan.
- (8) An amendment to a governance plan, other than a minor amendment that does not materially change the plan, has no effect until the amended governance plan has been approved by the CEO.

47ZN. Scheme Account

- (1) The Coordinator must establish a bank account (the *Scheme Account*) in accordance with subsection (2).

Penalty for this subsection:

- (a) a fine of \$250 000;
- (b) a daily penalty of a fine of \$2 500 for each day or part of a day during which the offence continues.

- (2) The Scheme Account must be established by the Coordinator —

- (a) after the first occasion on which the CEO approves a draft governance plan given to the CEO under section 47ZM by that Coordinator; and
- (b) before the earlier of —
 - (i) 10 business days after the approval; or
 - (ii) the day on which the Coordinator commences occupying the office of Coordinator of the scheme.

- (3) The Coordinator must maintain the Scheme Account in accordance with this Act and the approved governance plan for the Scheme Account.

Penalty for this subsection: a fine of \$250 000.

- (4) The Coordinator —

- (a) must credit all scheme funds to the Scheme Account; and
- (b) must not credit any moneys other than scheme funds to the Scheme Account.

Penalty for this subsection: a fine of \$250 000.

47ZO. Regulations relating to Scheme Account and governance plans

Regulations may deal with any matter in relation to the Scheme Account, the use of moneys in the Scheme Account, draft governance plans or approved governance plans for the Scheme Account.

Subdivision 5 — Appointment of administrator or Interim Coordinator and other Ministerial powers

47ZP. Ministerial directions

- (1) The Minister may —
 - (a) give written directions to the Coordinator with respect to the performance of its functions under this or any other Act, either generally or in relation to a particular matter; and
 - (b) amend or revoke a direction given under paragraph (a).
- (2) Regulations may deal with any matter in relation to a power of the Minister under subsection (1) and may (without limitation) deal with —
 - (a) the grounds on which the Minister may give, amend or revoke a direction; and
 - (b) the process that must be followed in relation to the giving, amending or revoking of a direction; and
 - (c) the content of a direction or amendment.
- (3) The Coordinator must comply with a direction given under subsection (1).

Civil penalty: \$125 000.

47ZQ. Amendment, administration and revocation

- (1) The Minister may, if the Minister considers it appropriate, do any one or more of the following —
 - (a) amend or revoke the conditions that apply to the appointment of the Coordinator or attach new conditions to the appointment;
 - (b) appoint an administrator to the Coordinator or remove an administrator that has been appointed;
 - (c) revoke the appointment of the Coordinator.
- (2) Without limiting the grounds on which the Minister may exercise a power under subsection (1), the Minister may exercise the power if the Coordinator has contravened a provision of this Part or a regulation made for the purposes of this Part.
- (3) Regulations may deal with any matter in relation to a power of the Minister under subsection (1) and may (without limitation) deal with —
 - (a) the grounds on which the Minister may exercise a power under subsection (1); and
 - (b) the process that must be followed in relation to the Minister's exercise of a power under subsection (1).

- (4) Nothing in this Subdivision is intended to exclude or limit the operation of the Corporations Act Chapter 5.

47ZR. Appointment of administrator

- (1) This section applies if the Minister appoints an administrator to the Coordinator under section 47ZQ(1)(b).

- (2) The Minister may, in the notice of appointment —

- (a) limit the functions or powers of the administrator; or
(b) attach conditions to the appointment of the administrator.

- (3) Subject to any limits and conditions in its notice of appointment, an administrator, during the administrator's term of appointment and to the exclusion of any other person —

- (a) has control of the Coordinator's business, property and affairs; and
(b) may carry on that business and manage that property and those affairs; and
(c) may terminate or dispose of all or part of that business, and may dispose of any of that property; and
(d) may perform any function that the Coordinator or any of its officers could perform if the administrator had not been appointed; and
(e) has the other functions stated in the administrator's notice of appointment.

- (4) Nothing in subsection (3) limits the generality of anything else in it.

- (5) Subject to any limits and conditions in its notice of appointment, the administrator has all the powers it needs to perform its functions.

- (6) When performing a function the administrator is taken to be acting as the Coordinator's agent.

- (7) The appointment of an administrator under section 47ZQ(1)(b) ends by force of this subsection if an administrator is appointed to the Coordinator under the Corporations Act Part 5.3A.

- (8) Regulations may deal with any matter in relation to an administrator appointed under section 47ZQ(1)(b).

47ZS. Only the administrator can deal with the Coordinator's property

- (1) In this section —

Australian ADI has the meaning given in the Corporations Act section 9;

Court means the Supreme Court of Western Australia.

(2) This section applies if —

- (a) an administrator is appointed to the Coordinator under section 47ZQ(1)(b); and
- (b) during the term of the administrator's appointment, the Coordinator purports to enter into, or a person purports to enter into on behalf of the Coordinator, a transaction or dealing affecting property of the Coordinator.

(3) The transaction or dealing is void unless —

- (a) the administrator entered into it on the Coordinator's behalf; or
- (b) the administrator consented to it in writing before it was entered into; or
- (c) it was entered into under an order of the Court.

(4) Subsection (3) does not apply to a payment made —

- (a) by an Australian ADI out of an account kept by the Coordinator with the ADI; and
- (b) in good faith and in the ordinary course of the ADI's banking business; and
- (c) on or before the day on which the administrator gives to the Australian ADI written notice of the administrator's appointment.

(5) Subsection (3) has effect subject to an order that the Court makes after the purported transaction or dealing.

(6) If, because of subsection (3), the transaction or dealing is void, or would be void apart from subsection (5), an officer or employee of the Coordinator commits an offence if the officer or employee —

- (a) purported to enter into the transaction or dealing on the Coordinator's behalf; or
- (b) was in any other way, by act or omission, directly or indirectly, knowingly concerned in, or party to, the transaction or dealing.

Penalty for this subsection: a fine of \$10 000.

47ZT. Interim Coordinator

- (1) If the appointment of a company to the office of Coordinator of the scheme is revoked or otherwise terminated, the Minister may appoint a person (the *Interim Coordinator*) to perform the functions of the Coordinator for a specified period or until the Minister appoints an eligible company to the office of Coordinator of the scheme under section 47X.

- (2) The Minister may, in the notice of appointment —
 - (a) limit the functions or powers of the Interim Coordinator;
 - or
 - (b) attach conditions to the appointment of the Interim Coordinator.
- (3) Subject to any limits and conditions in its notice of appointment, the Interim Coordinator, during its term of appointment and to the exclusion of any other person —
 - (a) has the functions of the Coordinator under this Act; and
 - (b) has any other functions stated in the notice of appointment.
- (4) Subject to any limits and conditions in its notice of appointment, the Interim Coordinator has all the powers it needs to perform its functions.
- (5) Unless this Act expressly provides otherwise, or the context otherwise requires, during the term of an Interim Coordinator's appointment, this Act applies to the Interim Coordinator as if a reference in this Act to the Coordinator were a reference to the Interim Coordinator.
- (6) The application of this Act to the Interim Coordinator under subsection (5) is subject to any modifications that are necessary or are prescribed by the regulations.
- (7) Regulations may deal with any matter in relation to the Interim Coordinator.

47ZU. Remuneration and costs

- (1) If a person appointed as an administrator under section 47ZQ(1)(b) or as an Interim Coordinator under section 47ZT(1) is not employed in the Public Sector (as defined in the *Public Sector Management Act 1994*), the person is entitled to be paid the remuneration determined by the CEO.
- (2) The costs of and incidental to the performance of the functions of an administrator appointed under section 47ZQ(1)(b) are payable by the company to which the administrator is appointed.
- (3) Unless the CEO directs otherwise, the costs of and incidental to the performance of the functions of an Interim Coordinator are payable by the company (not itself also being an Interim Coordinator) that was the Coordinator most recently before the Interim Coordinator.

47ZV. Providing assistance

(1) An administrator appointed under section 47ZQ(1)(b) may, for the purpose of performing its functions, by a notice given to an officer or employee or former officer or employee of the Coordinator, require the person to —

(a) produce documents in the person's possession that the administrator reasonably requires to perform the functions; or

(b) provide other information or assistance the administrator reasonably requires to perform the functions.

(2) An Interim Coordinator may, for the purpose of performing its functions, by a notice given to an officer or employee or former officer or employee of a person who was previously the Coordinator, require the officer or employee or former officer or employee to —

(a) produce documents in the possession of the officer or employee or former officer or employee that the Interim Coordinator reasonably requires to perform the functions; or

(b) provide other information or assistance the Interim Coordinator reasonably requires to perform the functions.

(3) A person must comply with a requirement under subsection (1) or (2) unless the person has a reasonable excuse.

Penalty for this subsection:

(a) a fine of \$10 000;

(b) a daily penalty of a fine of \$1 000 for each day or part of a day during which the offence continues.

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

47ZW. Review by State Administrative Tribunal

(1) In this section —

affected person means —

(a) a company that has been appointed to the office of Coordinator of the scheme; or

(b) a person who has been appointed to perform the functions of the Coordinator under section 47ZT(1).

(2) An affected person may apply to the State Administrative Tribunal for a review of —

(a) the Minister's decision to amend or revoke the conditions that apply to the appointment of the affected person, or to

attach new conditions to the appointment (except where the amendment, revocation or attachment was made or done at the request of, or with the agreement of, the affected person); or

(b) the Minister's decision to appoint an administrator to the affected person; or

(c) the Minister's decision to revoke the appointment of the affected person; or

(d) the Minister's decision to give the affected person a direction under section 47ZP.

Subdivision 6 — Transitional arrangements

47ZX. Transitional arrangements between Coordinators

Regulations may deal with any matter in relation to the transition from a person who is, or has been, the Coordinator or an Interim Coordinator (the *previous Coordinator*) to a person who subsequently is to, or has, become the Coordinator or an Interim Coordinator (the *subsequent Coordinator*) and may (without limitation), deal with, or with any matter in relation to the following —

(a) the transfer of funds from the Scheme Account established by the previous Coordinator, or the subsequent Coordinator's access to that Scheme Account or funds in that Scheme Account;

(b) the novation, from the previous Coordinator to the subsequent Coordinator, of any agreement or class of agreements the previous Coordinator has entered into in relation to the scheme (despite anything in the agreements to the contrary);

(c) the amendment, modification, assignment or termination of any agreement or class of agreements the previous Coordinator has entered into in relation to the scheme (despite anything in the agreements to the contrary);

(d) the production of documents in the previous Coordinator's possession to the subsequent Coordinator;

(e) the provision of information, databases, assets or assistance by the previous Coordinator to the subsequent Coordinator.

Division 6 — Miscellaneous

47ZY. Penalties for Coordinator, Interim Coordinator and directors of Coordinator

- (1) If an offence under this Part expressly applies to the Coordinator, the penalty that is expressed to apply to that offence is, for the purposes of the *Sentencing Act 1995* section 40, a statutory penalty expressly provided for a body corporate.
- (2) If the Coordinator commits an offence under this Act and, by virtue of section 93 and the *Environmental Protection Act 1986* section 118, a person who is a director or who is concerned in the management of the Coordinator is convicted of the same offence, the person is liable to a fine that is one-fifth of the maximum fine that could be imposed on a company occupying the office of Coordinator of the scheme convicted of the offence under this Act.
- (3) If the Interim Coordinator is an individual and is convicted of an offence that expressly applies to the Coordinator, the Interim Coordinator is liable to a fine that is one-fifth of the maximum fine that could be imposed on a company occupying the office of Coordinator of the scheme convicted of the offence under this Act.

47ZZ. Civil penalty provisions

- (1) In this section —
civil penalty, for a civil penalty provision, means —
 - (a) in the case of a provision referred to in paragraph (a) of the definition of civil penalty provision, the amount following the expression “Civil penalty:” below that provision; or
 - (b) in the case of a provision referred to in paragraph (b) of the definition of civil penalty provision, the amount prescribed under regulations referred to in subsection (2)(b).
civil penalty provision means —
 - (a) a provision of this Act below which the expression “Civil penalty:” followed by an amount, expressed in dollars, appears; or
 - (b) a provision of the regulations prescribed as a civil penalty provision under regulations referred to in subsection (2)(a).
- (2) Regulations may —
 - (a) provide that a provision of the regulations that imposes an obligation on a person (including an obligation in

relation to compliance with prescribed provisions of a scheme agreement) is a civil penalty provision; and

- (b) prescribe, for a contravention of a provision referred to in paragraph (a), the amount that may, in accordance with the regulations, be demanded from or imposed on a person who contravenes the civil penalty provision, being an amount not exceeding \$25 000; and
- (c) provide for and regulate the taking of proceedings in respect of an alleged contravention of a civil penalty provision (*civil penalty proceedings*); and
- (d) provide for the making of an order that a person found in civil penalty proceedings to have contravened the civil penalty provision is to pay an amount not exceeding the civil penalty for the civil penalty provision; and
- (e) provide for other orders that can be made in civil penalty proceedings; and
- (f) provide for the enforcement of orders made in civil penalty proceedings generally, and in particular, provide for the demand for payment of the civil penalty and the enforcement of that demand; and
- (g) provide for the manner in which amounts received by way of civil penalties are to be dealt with and applied.

47ZZA. Inconsistent provision has no effect

Unless the regulations provide otherwise, a provision of any of the following agreements has no effect to the extent the provision is inconsistent with this Act —

- (a) a scheme agreement;
- (b) any other agreement entered into by the Coordinator, a first responsible supplier of a beverage product, an exporter, a refund point operator or an MRF operator, in each case in order to carry out its functions under this Act or to implement the scheme.

47ZZB. Beverages consumed on interstate or international journeys

Regulations may deal with, or with any matter in relation to, beverage products supplied, used or consumed on interstate or international journeys that begin or end in, or pass through, the State and may (without limitation) provide for payment obligations and the payment of refund amounts.

47ZZC. Power to require information or material

- (1) In this section —

authorised person means the CEO or a person authorised, for the purposes of this section, in writing by the CEO;

relevant matter means the following —

- (a) the scheme, including its administration and proper operation;
- (b) the performance of the Coordinator;
- (c) compliance with this Act or any contractual arrangements relating to the scheme.

(2) An authorised person may require a person —

- (a) to provide oral or written answers to specified questions in relation to a relevant matter; or
- (b) to produce to the authorised person specified material or material of a specified class that is —
 - (i) in relation to a relevant matter; and
 - (ii) in the person's possession or control.

(3) The authorised person may make the requirement —

- (a) if an oral response is required — orally; or
- (b) in any other case — by notice given to the person to whom the requirement is addressed.

(4) The authorised person must —

- (a) allow a person a reasonable time within which to comply with the requirement; and
- (b) if the requirement is made by notice given to the person, specify the time allowed in the notice.

(5) The authorised person may require a person to verify information or documents by statutory declaration.

(6) A person must comply with a requirement under this section within the time allowed under subsection (4) or within any further time allowed by the authorised person.

Penalty for this subsection:

- (a) a fine of \$20 000;
- (b) a daily penalty of a fine of \$2 000 for each day or part of a day during which the offence continues.

(7) The CEO must ensure that each authorised person (other than the CEO) is issued with an authority in writing signed by the CEO and bearing a photograph of that authorised person.

(8) The authorised person must carry the authority when performing functions under this section and, if it is practicable to do so, produce the authority before making a requirement under this section.

47ZZD. Disclosure of information

- (1) Regulations may allow the Minister or CEO to publish, or require another person to publish, in the manner prescribed by the regulations, any prescribed information or class of information relating to the scheme.
- (2) Any person who publishes information in accordance with this Act is taken, for the purposes of section 93 and the *Environmental Protection Act 1986* section 120, to have disclosed the information with the prior permission in writing of the Minister.

47ZZE. Performance audit

- (1) The CEO may —
 - (a) carry out an audit of the Coordinator's activities under this Act; or
 - (b) direct the Coordinator to engage and pay for an auditor, approved by the CEO, to conduct an audit of, and report to the CEO about, the Coordinator's activities under this Act.
- (2) A direction given under subsection (1)(b) must specify —
 - (a) the matters to be audited; and
 - (b) a day on or before which the report must be given to the CEO.
- (3) The CEO may at any time amend or cancel a direction given under subsection (1)(b).
- (4) For the purposes of this section the CEO may approve a person as an auditor if the CEO is satisfied the person —
 - (a) has qualifications and experience that are appropriate to the audit; and
 - (b) is independent of the Coordinator and any business conducted by it; and
 - (c) is able to conduct the audit and to prepare a report in accordance with the directions given.
- (5) The Coordinator must cooperate with the CEO in the CEO's conduct of an audit under subsection (1)(a) and provide any information and documents that the CEO requests.
- (6) The Coordinator must comply with a direction given by the CEO under subsection (1)(b).

Civil penalty: \$250 000.
- (7) Regulations may deal with any matter in relation to audits under this section and may (without limitation) deal with any matter in relation to the recovery of expenses incurred by the CEO.

47ZZF. False or misleading information

(1) A person must not do anything set out in subsection (2) —

(a) in connection with an application for a container approval; or

(b) in connection with a claim for payment under a scheme agreement or any other agreement between a person and the Coordinator; or

(c) in, or in connection with, a notice or document given under this Part or regulations made for the purposes of this Part; or

(d) in compliance, or purported compliance, with a requirement under this Part or regulations made for the purposes of this Part.

Penalty for this subsection: a fine of \$50 000.

(2) The things to which subsection (1) applies are making a statement or giving information that —

(a) the person knows is false or misleading in a material particular; or

(b) omits anything without which the statement or information is, to the person's knowledge, misleading in a material particular.

47ZZG. Authorisations for competition legislation

(1) The following are specifically authorised for the purposes of the *Competition and Consumer Act 2010* (Commonwealth) and the Competition Code of Western Australia —

(a) appointing, under Division 5, a company to the office of Coordinator of the scheme;

(b) granting, refusing, amending, transferring, suspending or cancelling a container approval;

(c) an export rebate agreement;

(d) a material recovery agreement;

(e) a refund point agreement;

(f) a supply agreement;

(g) the conduct of a person negotiating, entering into or performing an agreement mentioned in paragraph (c), (d), (e) or (f);

(h) the conduct of a person that is authorised or required by or under the conditions of a container approval.

(2) Anything authorised to be done by subsection (1) is authorised only to the extent that it would otherwise contravene the

Competition and Consumer Act 2010 (Commonwealth) Part IV or the Competition Code of Western Australia.

47ZZH. Corporations Act displacement

(1) In this section —

Corporations legislation means the Corporations legislation to which the Corporations Act Part 1.1A applies.

(2) A provision of this Part, to the extent the provision is incapable of concurrent operation with a provision of the Corporations Act, is declared to be a Corporations legislation displacement provision for the purposes of section 5G of that Act in relation to the Corporations legislation generally.

47ZZI. Powers in relation to transitional matters

(1) In this section —

specified means specified or described in transitional regulations; *transitional matter* —

(a) means a matter or issue of a transitional nature that arises as a result of the enactment of the *Waste Avoidance and Resource Recovery Amendment (Container Deposit) Act 2019* or the coming into operation of provisions of that Act or regulations under this Act; and

(b) includes a saving or application matter or issue; *transitional regulations* means regulations referred to in subsection (2).

(2) If there is not sufficient provision in this Part for dealing with a transitional matter, regulations may prescribe anything required, necessary or convenient to be prescribed in relation to that matter.

(3) Transitional regulations may provide that specified provisions of this Act —

(a) do not apply to or in relation to any matter; or

(b) apply with specified modifications to or in relation to any matter.

(4) If transitional regulations provide that a specified state of affairs is taken to have existed, or not to have existed, on and from a day that is earlier than the day on which the regulations are published in the *Gazette* but not earlier than the day on which the *Waste Avoidance and Resource Recovery Amendment (Container Deposit) Act 2019* section 6 comes into operation, the regulations have effect according to their terms.

(5) If transitional regulations contain a provision referred to in subsection (4), the provision does not operate so as to —

- (a) affect in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the day of publication of those regulations; or
- (b) impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the day of publication of those regulations.
- (6) Transitional regulations made in relation to a matter referred to in subsection (3) must be made within whatever period is reasonably and practicably necessary to deal with a transitional matter.

7. Section 69 amended

- (1) In section 69 delete "A person other than" and insert:
 - (1) A person other than
- (2) In section 69 in the Penalty delete "Penalty:" and insert:
 - Penalty for this subsection:
- (3) At the end of section 69 insert:
 - (2) Subsection (1) does not apply to a person who collects local government waste in the course of acting as a refund point operator (as defined in section 47C).

8. Section 94 amended

- (1) In section 94(1) delete "An action" and insert:
 - Subject to subsection (3A), an action
- (2) After section 94(3) insert:
 - (3A) Subsection (1) does not apply to anything that a person has done in the performance or purported performance of the functions of the Coordinator of the container deposit scheme established by Part 5A.

⁵ On the date as at which this compilation was prepared, the *Waste Avoidance and Resource Recovery Amendment (Container Deposit) Act (No. 2) 2019* s. 3 and 4 had not come into operation. They read as follows:

3. Act amended

This Act amends the *Waste Avoidance and Resource Recovery Act 2007*.

4. Section 47ZZJ inserted

After section 47ZZI insert:

47ZZJ. Imposition of tax

To the extent that this Part, or regulations made under or for the purposes of this Part, provide for a tax, the tax is imposed.