



Queensland

# Waste Reduction and Recycling Amendment Act 2017

Act No. 31 of 2017

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An Act to amend the Planning Act 2016, the Planning and Environment Court Act 2016 and the Waste Reduction and Recycling Act 2011 for particular purposes

[Assented to 13 September 2017]





Queensland

# Waste Reduction and Recycling Amendment Act 2017

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**The Parliament of Queensland enacts—**

## **Part 1 Preliminary**

### **1 Short title**

This Act may be cited as the *Waste Reduction and Recycling Amendment Act 2017*.

### **2 Commencement**

- (1) Section 4, to the extent it inserts the following provisions, commences on 1 July 2018—
  - (a) new sections 99D and 99E;
  - (b) new section 99P;
  - (c) new chapter 4, part 3B, division 3, subdivisions 1 and 2;
  - (d) new sections 99ZB and 99ZH.
- (2) The following provisions commence on a day to be fixed by proclamation—
  - (a) section 4, to the extent it inserts new chapter 4, part 3B, division 5;
  - (b) section 34, to the extent it inserts new section 307.

## **Part 2 Amendment of Waste Reduction and Recycling Act 2011**

### **3 Act amended**

This part amends the *Waste Reduction and Recycling Act 2011*.

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

Chapter 4—

*insert—*

### **Part 3A                      Banned plastic shopping bags**

#### **99A Objects of part**

The objects of this part are to—

- (a) reduce plastic pollution by reducing the number of plastic bags that become waste and enter the environment as litter; and
- (b) encourage retailers and consumers to—
  - (i) reduce the overall use of carry bags by considering whether it is necessary on every occasion to use a bag to carry goods; and
  - (ii) use alternative shopping bags.

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

- (1) A *banned plastic shopping bag* is a carry bag with handles—
  - (a) made, in whole or part, of plastic (whether or not the plastic is degradable) that has a thickness of less than—
    - (i) the thickness prescribed by regulation; or
    - (ii) if a thickness has not been prescribed by regulation—35 microns; or
  - (b) prescribed by regulation to be a banned plastic shopping bag.

- (2) However, each of the following is not a banned plastic shopping bag—
- (a) a barrier bag;
  - (b) a plastic bag that is, or is an integral part of, the packaging in which goods are sealed for sale;
  - (c) a bag that is prescribed by regulation to not be a banned plastic shopping bag.
- (3) An **alternative shopping bag** is a bag, other than a banned plastic shopping bag, that is suitable to be used to carry goods from a retailer's premises.
- (4) In this section—

**AS 4736** means the Australian Standard for biodegradable plastics as in force from time to time under that designation (regardless of the edition or year of publication of the standard).

**barrier bag** means a plastic bag used to carry unpackaged perishable food.

*Examples of unpackaged perishable foods—*

fruit, vegetables, meat, fish

**degradable**, for plastic, means plastic that is—

- (a) biodegradable, including material that is compostable under AS 4736; or
- (b) designed to degrade and break into fragments over time.

### **99C Meaning of *retailer***

A **retailer** is a person who sells goods in trade or commerce.

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### **99D Retailer not to give banned plastic shopping bag**

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

Maximum penalty—50 penalty units.

- (2) This section applies whether or not a price is charged for the banned plastic shopping bag.

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

A person must not give information that the person knows is false or misleading to another person about—

- (a) the composition of a banned plastic shopping bag; or
- (b) whether or not a plastic bag is a banned plastic shopping bag.

Maximum penalty—50 penalty units.

### **99F Retailer may charge for alternative shopping bag**

Nothing in this part prevents a retailer from charging for an alternative shopping bag.

### **99G Review of part**

- (1) The Minister must ensure a review of the operation of this part starts as soon as practicable, but no more than 3 months, after 1 July 2020.
- (2) The review must include a review of—
  - (a) the effect of this part on the community and retailers; and

- (b) the level of retailers' knowledge and understanding about the prohibition on giving banned plastic shopping bags to persons; and
- (c) the effectiveness of this part in reducing the quantity of banned plastic shopping bags—
  - (i) used; and
  - (ii) that becomes waste and is littered or disposed of to landfill.
- (3) The chief executive must give a report on the outcome of the review to the Minister within 6 months after the day the review starts.
- (4) The Minister must table the report in the Legislative Assembly within 12 sitting days after receiving the report.

## **Part 3B            Beverage container                           refund scheme**

### **Division 1        Introduction**

#### **Subdivision 1   Preliminary**

##### **99H 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 littered or disposed of to landfill; and

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- (c) ensure the manufacturers of beverage products meet their product stewardship responsibility in relation to their beverage products; and
- (d) provide opportunities for social enterprise, and benefits for community organisations, by—
  - (i) making funds available through the payment of refund amounts for empty beverage containers; and
  - (ii) creating opportunities for employment in activities related to collecting, sorting and processing containers for recycling; and
- (e) complement existing collection and recycling activities for recyclable waste.

*Example of existing collection and recycling activities—*

Local governments collect recyclable waste through kerbside waste collection services and arrange for the waste to be recycled.

## **99I How objects are to be achieved**

The objects are achieved by providing for a container refund scheme (the *scheme*) that—

- (a) encourages consumers to collect empty beverage containers for recycling by providing for refund amounts to be paid for the containers; and
- (b) encourages waste management service providers to ensure empty beverage containers collected through general waste services are recycled by providing for recovery amounts to be paid for containers sent for recycling; and



- (c) recognises the role of the manufacturers of beverage products in generating waste in the form of empty containers by requiring the manufacturers to—
  - (i) contribute to the cost of refund amounts paid for the containers and the cost of administering the scheme; and
  - (ii) ensure containers for their beverage products are made of materials that are suitable for recycling; and
- (d) is administered by the Product Responsibility Organisation.

### **99J Functions of Product Responsibility Organisation**

- (1) The Product Responsibility Organisation's main function is to administer and provide governance for the scheme.
- (2) Without limiting subsection (1), the Organisation has the following functions—
  - (a) to ensure ongoing, efficient and effective arrangements are available in Queensland for empty beverage containers to be collected, sorted and recycled;
  - (b) to establish a network of container refund points to, as far as practicable, provide communities in Queensland with access to a place for the return of empty beverage containers for the payment of refund amounts;
  - (c) to ensure manufacturers of beverage products fund the scheme by requiring the manufacturers to pay sufficient amounts under container recovery agreements;

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- (d) to set the amounts payable, or the method for working out the amounts payable, under the scheme—
  - (i) by manufacturers of beverage products to fund the scheme; and
  - (ii) to the operators of container refund points to pay the refund amounts for empty beverage containers and to handle, sort and transport the containers for recycling;
- (e) to identify manufacturers of beverage products who are not participating in the scheme, including, for example, because a manufacturer—
  - (i) is selling beverages in containers that are not registered; or
  - (ii) has not entered into a container recovery agreement with the Organisation;
- (f) to promote the scheme and the location of container refund points;
- (g) to receive and deal with complaints relating to the scheme from members of the public and entities participating in the scheme;
- (h) the functions given to it under this Act or another Act.

## **Subdivision 2 Definitions**

### **99K Definitions for part**

In this part—

*beverage* see section 99L.

*beverage product* see section 99N(1).

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**container** see section 99M.

**container approval**, for a beverage product, see section 99ZN.

**container collection agreement** see section 99ZA(1).

**container recovery agreement** see section 99Q.

**container refund point**—

- (a) means a facility or other place—
  - (i) at which empty containers may be returned in exchange for the payment of refund amounts; and
  - (ii) that may be operated on a permanent, temporary or mobile basis; and
- (b) includes a reverse vending machine.

**extraordinary circumstances exemption** see section 99ZY(2).

**manufacturer**, of a beverage product, see section 99O.

**material recovery agreement** see section 99ZF(1).

**material recovery facility** see section 99ZE.

**operator**, of a container refund point that is a reverse vending machine, means the person who—

- (a) if the owner of the reverse vending machine has leased or hired it to another person—leases or hires the reverse vending machine; or
- (b) otherwise—owns the reverse vending machine.

**recovery amount**, for a quantity of containers, see section 99ZG.

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**recovery amount protocol** see section 99ZK.

**refund amount** means the amount prescribed by regulation as the refund amount.

**refund declaration** see section 99T(2).

**refund marking** means the marking or labelling about the refund amount payable for a container under the scheme that complies with the requirements prescribed by regulation.

**registered**, for a container, means the container is included in the register of approved containers kept under section 99ZM(1).

**reverse vending machine** means a device for collecting empty containers that—

- (a) if the device recognises a container placed in the device as a container for which a refund amount is payable under the scheme by, for example, scanning the container's barcode—
  - (i) accepts the container; and
  - (ii) dispenses the refund amount for the container in a way stated on or near the machine; or
- (b) otherwise—refuses to accept the container.

**type**, of a container, see section 99N(2).

### **99L Meaning of *beverage***

- (1) A **beverage** is a liquid intended for human consumption by drinking.
- (2) However, a beverage does not include a liquid prescribed by regulation to not be a beverage for this section.

### **99M Meaning of *container***

- (1) A *container* is—
  - (a) a container that is made to—
    - (i) contain a beverage; and
    - (ii) when filled with a beverage, be sealed for storage, transport and handling before being sold for the beverage to be consumed; or
  - (b) another container prescribed by regulation as a container for this section.
- (2) However, a container does not include a container prescribed by regulation to not be a container for this section.

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

- (1) A *beverage product* is the combination of a particular beverage packaged in a container of a particular type.
- (2) The *type* of 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.

### **99O Meaning of *manufacturer***

- (1) A person is a *manufacturer* of a beverage product if the person—
  - (a) makes the beverage product, including, for example—
    - (i) by filling containers with a beverage; or

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- (ii) engaging another person under a contract to make the beverage product or fill containers with a beverage for the person; or
  - (b) imports the beverage product from a foreign country; or
  - (c) arranges for the distribution of the beverage product in Queensland.
- (2) For subsection (1)(a) and (b), it does not matter whether the beverage product is made in, or imported into, Queensland or another State.

## **Division 2            Sale of beverages in                                  containers**

### **99P Restriction on manufacturer selling beverage product**

- (1) A manufacturer of a beverage product must not sell the beverage product to another person to use or consume in Queensland, or to sell for use, consumption or further sale in Queensland, unless—
  - (a) a container recovery agreement is in force for the type of container used for the beverage product; and
  - (b) the container is registered; and
  - (c) the container displays—
    - (i) the refund marking; and
    - (ii) a barcode for the beverage product.

Maximum penalty—500 penalty units.

- (2) For this section, it does not matter whether the beverage manufacturer sells the beverage product in Queensland, in another State or somewhere

else.

### **99Q Container recovery agreement**

- (1) A *container recovery agreement* is a written agreement between the Organisation and a manufacturer of a beverage product about the type of container used for the product.
- (2) The purpose of a container recovery agreement is to ensure the manufacturer contributes to the cost of the scheme, including, for example, the cost of the refund amounts paid for empty containers under the scheme.
- (3) The Organisation must not enter into a container recovery agreement with the manufacturer for a type of container unless the Organisation is satisfied ongoing, effective and appropriate arrangements for the container type to be collected, sorted and recycled are available.
- (4) A container recovery agreement must include provisions about the following matters—
  - (a) the manufacturer's obligations in relation to paying amounts to the Organisation, including how each amount is worked out and when it is to be paid, to contribute to the costs of—
    - (i) refund amounts for empty containers of the manufacturer's beverage products to be paid under the scheme; and
    - (ii) the administration of the scheme, including amounts paid to the operators of container refund points under the scheme;
  - (b) the manufacturer's obligations in relation to giving information to the Organisation about the beverage products made or imported for

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- sale in Queensland by the manufacturer, including how and when the information is to be given;
- (c) a dispute resolution process for settling disputes between the Organisation and the manufacturer;
  - (d) when the agreement must be reviewed;
  - (e) a process for either party to the agreement to seek an earlier review of the agreement or an amendment to it;
  - (f) other matters prescribed by regulation.
- (5) A container recovery agreement must also include the standard terms, about a matter mentioned in subsection (4) or another matter, prescribed by regulation.

### **99R Limits on amounts paid by small beverage manufacturers under container recovery agreements**

- (1) A small beverage manufacturer must not, under a container recovery agreement, be required to pay an amount to contribute to the costs of the scheme that is more than the amount worked out under a regulation.
- (2) In this section—  
*small beverage manufacturer* means a manufacturer of a beverage product who is prescribed by regulation to be a small beverage manufacturer.

## **Division 3      Refund amounts for empty containers and container refund points**



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## **Subdivision 1 Claiming refund amounts for empty containers**

### **99S Claiming refund amount from container refund point**

- (1) A person may claim a refund amount for an empty container by presenting the container at a container refund point.
- (2) The operator of the container refund point must accept the container and pay the person the refund amount for the container.

Maximum penalty—300 penalty units.

- (3) However, subsection (2) does not apply if—
  - (a) the container is not registered; or
  - (b) the refund marking is not displayed on the container; or
  - (c) the operator of the container refund point reasonably believes a refund amount has already been paid for the container; or
  - (d) if the person is required to give the operator a refund declaration under section 99T—the person does not comply with the requirement; or
  - (e) if a sign at the container refund point states that the operator of the container refund point pays refund amounts in a way other than in cash—the person refuses to accept the refund amount paid in the other way.

*Note—*

See section 99V for provisions about the ways the operator of a container refund point may pay refund amounts.

- (4) This section does not apply to a container refund point that is a reverse vending machine.

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### **99T Refund declaration and proof of identity**

- (1) A person who claims a refund amount at a container refund point under section 99S must give the operator of the container refund point a refund declaration if—
  - (a) the claim is for a bulk quantity of empty containers and the person has not entered into a bulk claim arrangement with the operator; or
  - (b) the operator asks the person for a refund declaration.

Maximum penalty—100 penalty units.

- (2) A *refund declaration* is a notice in which a person declares, for the containers for which the person is claiming a refund amount—
  - (a) the containers were collected in Queensland or a corresponding jurisdiction for the purpose of claiming the refund amount under the scheme or a corresponding scheme; and
  - (b) that the person reasonably believes—
    - (i) all the containers display the refund marking; and
    - (ii) all the containers are registered; and
    - (iii) a refund amount has not previously been paid for the containers.
- (3) A refund declaration must be—
  - (a) in the approved form; and
  - (b) signed by the person making the declaration; and
  - (c) accompanied by an official document containing the person's photograph (for

example, a passport or driver licence) as proof of the person's identity.

(4) In this section—

***bulk claim arrangement***, between a person and the operator of a container refund point, is an arrangement in writing—

- (a) under which the operator agrees to accept claims for refund amounts for bulk quantities of empty containers from the person; and
- (b) that states the person's obligations under the arrangement in relation to claiming the refund amounts and delivering empty containers to the container refund point.

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

### **99U Claiming refund amount from reverse vending machine**

- (1) A person may claim a refund amount for an empty container from a reverse vending machine by placing the container in the machine.
- (2) A refund amount is paid for the container when the reverse vending machine—
  - (a) accepts the container; and
  - (b) dispenses the refund amount for the container in a way mentioned in subsection (3); and
  - (c) gives the person a written record of—
    - (i) the container accepted; and
    - (ii) the refund amount for the container; and

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- (iii) how and, if the refund amount was not dispensed to the person, to whom the refund amount was dispensed.
- (3) A refund amount may be dispensed by a reverse vending machine in the following ways—
- (a) to the person claiming the refund amount—
- (i) in cash; or
- (ii) in another way stated on a sign that is on or near the machine;
- (b) if a sign on or near the machine states that refund amounts for empty containers accepted by the machine are paid to another entity—by paying the amount to the other entity.
- Example of an entity refund amounts may be paid to—*
- A reverse vending machine raises money for a charity by paying refund amounts to the charity.
- (4) A written record may be given under subsection (2)(c) electronically.

### **99V Ways refund amount may be paid**

- (1) The operator of a container refund point may pay refund amounts for containers presented at the container refund point—
- (a) in cash or another way; or
- (b) in 1 or more ways; or
- (c) in different ways for different quantities of containers.

*Examples of ways in which refund amounts may be paid—*

- in cash
- by electronic funds transfer to a bank account or credit card account

- as a voucher or card redeemable for cash, goods or services
- (2) If an operator pays a refund amount other than in cash, the operator must clearly display a sign at the container refund point that states—
- (a) the way the operator pays the refund amount; and
  - (b) if the operator pays the refund amount in different ways for different quantities of containers—the quantities of containers that apply for each different way.

### **99W When refund amount must not be claimed**

A person must not claim a refund amount for an empty container at a container refund point if the person knows, or ought reasonably to know—

- (a) a refund amount has already been paid for the container; or
- (b) a recovery amount has been paid to the operator of a material recovery facility for the container.

Maximum penalty—100 penalty units.

## **Subdivision 2 Other obligations of container refund point operators**

### **99X Obligations of operator of reverse vending machine**

- (1) This section applies to the operator of a container refund point that is a reverse vending machine.
- (2) The operator must ensure, as far as is reasonably practicable—

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- (a) the reverse vending machine is working properly; and
- (b) if the machine is not working properly—
  - (i) the machine is turned off; or
  - (ii) a sign or other method is used to indicate to users the machine is not working properly; and
- (c) the machine does not accept an empty container if the machine is not able to dispense a refund amount for the container; and
- (d) the machine does not dispense a refund amount for a container if—
  - (i) the container is not registered; or
  - (ii) the container does not display the refund marking and a barcode for a beverage product; and
- (e) the following information is clearly displayed on or near the machine—
  - (i) the types of container that can be accepted by the machine;
  - (ii) if the machine dispenses the refund amount for a container other than in cash—the way the refund amount is dispensed;

*Examples of ways other than cash in which a refund amount may be dispensed—*

- issuing a voucher or card redeemable for cash, goods or services
  - crediting the amount to a bank account or credit card account using electronic funds transfer
- (iii) if the refund amount for an empty container is dispensed by being paid to an entity other than the person who

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claims the refund amount—the entity to whom the refund amount is paid.

*Example of an entity to whom a refund amount may be paid—*

A reverse vending machine raises money for a charity by paying refund amounts to the charity.

Maximum penalty—300 penalty units.

### **99Y Container refund point operator must keep refund declarations**

- (1) The operator of a container refund point must—
  - (a) keep each refund declaration given to the operator for at least 5 years after the declaration was given; and
  - (b) for the proof of identity document mentioned in section 99T(3)(c) that accompanied the declaration—
    - (i) make a copy of the proof of identity document; and
    - (ii) keep the copy with the declaration for the period mentioned in paragraph (a); and
  - (c) if asked by an authorised person—produce the declaration and copy of the proof of identity document for inspection by the authorised person.

Maximum penalty—300 penalty units.

- (2) For this section, a document may be made, kept or produced for inspection—
  - (a) electronically; or
  - (b) by making, keeping or producing for inspection a copy of the document.

### **Subdivision 3 Container refund points**

#### **99Z Container collection agreement required to operate container refund point**

A person must not operate a container refund point unless a container collection agreement is in force for the container refund point.

Maximum penalty—500 penalty units.

#### **99ZA Container collection agreement**

- (1) A *container collection agreement* is a written agreement between the Organisation and the operator of a container refund point that includes provisions about the following matters—
  - (a) the operator's obligations under the agreement in relation to—
    - (i) sorting empty containers and transporting the containers, or arranging for the containers to be transported, to a waste facility for recycling; and
    - (ii) keeping records, and reporting to the Organisation, about the refund amounts paid and containers collected, sorted and transported for recycling by the operator; and
    - (iii) ensuring the container refund point is accessible to the public, including by operating the container refund point at particular times;
  - (b) the amounts payable to the operator under the agreement for—



- (i) refund amounts paid, or to be paid, by the operator for containers under subdivision 1; and
  - (ii) handling, sorting and transporting the containers for recycling;
  - (c) when and how the operator may claim amounts mentioned in paragraph (b) and when and how the Organisation must pay the amounts;
  - (d) if the agreement relates to a reverse vending machine—the types of containers to be collected using the machine;
  - (e) whether the operator may subcontract the operation of the container refund point and the operator's obligations to the Organisation if the operation is subcontracted;
  - (f) a dispute resolution process for settling disputes between the Organisation and the operator;
  - (g) the term of the agreement and when the agreement must be reviewed;
  - (h) a process for either party to the agreement to seek an earlier review of the agreement or an amendment to it;
  - (i) other matters prescribed by regulation.
- (2) A container collection agreement must also include the standard terms, about a matter mentioned in subsection (1) or another matter, prescribed by regulation.
- (3) The Organisation must give a person an information notice if—
- (a) the person asks the Organisation, in writing, to enter into a container collection

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agreement for the purpose of the person operating a container refund point; and

- (b) the Organisation decides not to enter into a container collection agreement with the person.

*Note—*

See chapter 9 for provisions about internal and external reviews for a decision under this subsection.

- (4) For subsection (3), the Organisation is taken to have decided not to enter into a container collection agreement with a person if the Organisation does not offer, in writing, to enter into an agreement with the person within 20 business days after the person makes the request mentioned in subsection (3)(a).

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

- (1) The operator of a container refund point may claim a collection amount from the Organisation for containers collected by the operator.
- (2) The claim must—
  - (a) be in the form required by the operator's container collection agreement; and
  - (b) be signed by the operator; and
  - (c) include details of—
    - (i) the number of containers the subject of the claim and the amount of the refund amounts paid for the containers; and
    - (ii) the waste facility to which the containers were transported for recycling; and
  - (d) be accompanied by the following—

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- (i) a declaration that the operator reasonably believes all the containers are registered and display the refund marking;
  - (ii) copies of any refund declarations and proof of identity documents mentioned in section 99T(3)(c) that relate to the containers;
  - (iii) a notice signed by the operator of the waste facility mentioned in paragraph (c)(ii) declaring the operator has received the containers for recycling.
- (3) The Organisation must pay the collection amount for the containers to the operator as required by the container collection agreement.
- (4) If the Organisation decides the collection amount claimed for the containers is not payable to the operator by the container collection agreement, the Organisation must give the operator an information notice for the decision.

*Note—*

See chapter 9 for provisions about internal and external reviews of a decision under this subsection.

- (5) For subsection (4), the Organisation is taken to have decided the collection amount is not payable to the operator under the container collection agreement if the Organisation does not pay the collection amount claimed for the containers within the time required under the agreement.
- (6) Subsection (2)(c)(ii) and (d)(iii) does not apply to a container the subject of an extraordinary circumstances exemption.
- (7) In this section—
- collection amount*** means an amount payable to the operator under a container collection agreement for—

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- (a) refund amounts paid, or to be paid, by the operator for containers under subdivision 1; and
- (b) handling, sorting and transporting the containers for recycling.

### **99ZC When container refund point operator must not claim payment**

- (1) The operator of a container refund point must not claim payment of an amount from the Organisation under a container collection agreement if the payment relates to a container and any of the following apply—
    - (a) the operator has not paid a refund amount for the container;
    - (b) the container is not registered;
    - (c) the operator knows, or ought reasonably to know, the container has been disposed of to landfill, whether or not the operator has paid a refund amount for the container.
- Maximum penalty—300 penalty units.
- (2) Subsection (1)(c) does not apply to a container that is the subject of an extraordinary circumstances exemption.

### **99ZD Operator must ensure containers sent for recycling**

- (1) This section applies if—
  - (a) the operator of a container refund point has paid a refund amount for a container; and
  - (b) the container is not the subject of an extraordinary circumstances exemption.
- (2) The operator must not allow the container to be

disposed of to landfill.

Maximum penalty—500 penalty units.

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

### **99ZE Meaning of *material recovery facility***

- (1) A *material recovery facility* is a facility or other place—
  - (a) 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) of another type prescribed by regulation as a material recovery facility.
- (2) However, a material recovery facility does not include a facility or other place prescribed by regulation to not be a material recovery facility.

### **99ZF Material recovery agreement**

- (1) A *material recovery agreement* is a written agreement between the Organisation and the operator of a material recovery facility about the payment of recovery amounts to the operator for containers the operator sorts and prepares for recycling.
- (2) A material recovery agreement must contain provisions about the following matters—
  - (a) the types of containers the operator sorts and prepares for recycling;

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- (b) the arrangements the operator has in place for recycling the containers or sending the containers to a waste facility for recycling;
  - (c) whether recovery amounts for quantities of containers will be worked out based on the actual number of containers or the recovery amount protocol;
  - (d) when and how recovery amounts may be claimed by the operator and will be paid by the Organisation;
  - (e) a dispute resolution process for settling disputes between the Organisation and the operator;
  - (f) when the agreement must be reviewed;
  - (g) a process for either party to the agreement to seek an earlier review of the agreement or an amendment to it;
  - (h) other matters prescribed by regulation.
- (3) A material recovery agreement must also include the standard terms, about a matter mentioned in subsection (2) or another matter, prescribed by regulation.
- (4) The Organisation must give the operator of a material recovery facility an information notice if—
- (a) the operator asks the Organisation, in writing, to enter into a material recovery agreement for the purpose of claiming recovery amounts for containers; and
  - (b) the Organisation decides not to enter into a material recovery agreement with the operator.

*Note—*

See chapter 9 for provisions about internal and external reviews for a decision under this subsection.

- (5) For subsection (4), the Organisation is taken to have decided not to enter into a material recovery agreement with the operator of a material recovery facility if the Organisation does not offer, in writing, to enter into an agreement with the operator within 20 business days after the operator makes the request mentioned in subsection (4)(a).

### **99ZG Meaning of *recovery amount***

- (1) The *recovery amount* for a quantity of containers is—
- (a) if the number of containers in the quantity is known—the total of the refund amounts for the number of containers; or
  - (b) otherwise—the amount worked out under the recovery amount protocol for the quantity.
- (2) In this part, a recovery amount for a container—
- (a) has been claimed if the container is included in a quantity of containers for which a recovery amount has been claimed; and
  - (b) has been paid if the container is included in a quantity of containers for which a recovery amount has been paid.

### **99ZH Operator of material recovery facility may claim recovery amounts**

- (1) The operator of a material recovery facility may claim the recovery amount for a quantity of containers from the Organisation if the operator—
- (a) has entered into a material recovery agreement with the Organisation; and

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- (b) has recycled the containers or sent the containers to a waste facility for recycling.
- (2) The claim must be in the form required by the operator's material recovery agreement and accompanied by—
  - (a) a notice signed by the operator declaring—
    - (i) a refund amount has not been paid for any of the containers in the quantity; and
    - (ii) if the operator has recycled the containers—the operator has recycled the containers; and
  - (b) if the operator has sent the containers to a waste facility for recycling—a notice signed by the operator of the waste facility declaring the operator has received the containers for recycling; and
  - (c) if the operator is claiming a recovery amount worked out under the recovery amount protocol—evidence the operator has complied with the protocol for claiming the recovery amount.
- (3) The Organisation must pay the recovery amount for the quantity of containers to the operator as required under the material recovery agreement.
- (4) If the Organisation decides the recovery amount claimed for the quantity of containers is not payable under the material recovery agreement, the Organisation must give the operator an information notice for the decision.

*Note—*

See chapter 9 for provisions about internal and external reviews of a decision under this subsection.

- (5) For subsection (4), the Organisation is taken to have decided the recovery amount is not payable



under the material recovery agreement if the Organisation does not pay the recovery amount claimed for a quantity of containers within the time required by the agreement.

- (6) Subsections (1)(b) and (2)(a)(ii) and (b) do not apply to containers the subject of an extraordinary circumstances exemption.

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

- (1) The operator of a material recovery facility must not claim the recovery amount for a container if—
- (a) a refund amount has been paid for the container at a container refund point; or
  - (b) the container is not registered; or
  - (c) the operator has allowed the container to be, or knows the container has been, disposed of to landfill.

*Note—*

See section 99ZX for deciding if an operator has allowed a container to be disposed of to landfill.

Maximum penalty—300 penalty units.

- (2) Subsection (1)(c) does not apply to a container that is the subject of an extraordinary circumstances exemption.

### **99ZJ Operator must not allow containers to become landfill**

- (1) The operator of a material recovery facility must not allow a container to be disposed of to landfill if the operator has received a recovery amount for the container.

Maximum penalty—500 penalty units.

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*Note—*

See section 99ZX for deciding if an operator has allowed a container to be disposed of to landfill.

- (2) This section does not apply to a container that is the subject of an extraordinary circumstances exemption.

### **99ZK Recovery amount protocol**

- (1) A *recovery amount protocol* is a document, issued by the chief executive, that states the way in which recovery amounts for containers are worked out if the number of containers is not known.
- (2) Without limiting subsection (1), a recovery amount protocol may provide for ways to estimate the number of containers that are intermingled with other recyclable waste, for example—
  - (a) by sampling quantities of recyclable waste that include containers to work out the proportion of the waste that is containers; and
  - (b) estimating the number of containers in other quantities of recyclable waste using the proportion worked out from the sampling.
- (3) A recovery amount protocol is issued by the chief executive by publishing it on the department's website.
- (4) The chief executive must review a recovery amount protocol—
  - (a) if the Organisation or the operator of a material recovery facility asks the chief executive, in writing, to review the protocol; or
  - (b) at other times prescribed by regulation.

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### **99ZL Operator of material recovery facility must comply with protocol**

- (1) This section applies if a material recovery agreement provides for the recovery amounts for quantities of containers claimed by the operator of a material recovery facility to be worked out under the recovery amount protocol.
- (2) The operator of the material recovery facility must comply with the recovery amount protocol.  
Maximum penalty—300 penalty units.

## **Division 5      Approved containers for beverage products**

### **Subdivision 1   Register of approved containers**

#### **99ZM Organisation must establish and keep register**

- (1) The Organisation must keep an up-to-date register of approved containers.
- (2) An *approved container* is a container for a beverage product for which an approval is in force under—
  - (a) subdivision 2; or
  - (b) a corresponding law for a corresponding scheme.
- (3) The register must contain the following details for each approved container and the beverage product packaged in the container—
  - (a) a description of the beverage product, including the following—

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- (i) the type of beverage in the product;
- (ii) the volume of beverage in the product;
- (iii) the material the container, including its label, is made of;
- (b) the manufacturer of the beverage product who holds the approval;
- (c) the barcode for the beverage product;
- (d) if the approval was granted in a corresponding jurisdiction—the corresponding jurisdiction;
- (e) the following days—
  - (i) the day the approval was granted;
  - (ii) if the approval has ended—the day the approval ended;
- (f) any conditions of the approval.
- (4) The Organisation may also record in the register any other information the Organisation considers appropriate.
- (5) The register must be kept as a searchable, public register.

## **Subdivision 2 Applying for container approval**

### **99ZN Application**

A manufacturer of a beverage may apply to the chief executive for approval of a container for a beverage product (a *container approval*).

*Note—*

See chapter 8A for general provisions that apply to the application and to a container approval.

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### **99ZO Particular matters for deciding application**

The chief executive may grant the container approval only if satisfied—

- (a) a container recovery agreement between the Organisation and a manufacturer of the beverage product for the container type used in the product—
  - (i) is in force; or
  - (ii) has been agreed in principle by the Organisation pending the approval being granted; and
- (b) the container is suitable to be recycled; and
- (c) the way the refund marking is proposed to be displayed on the container is not likely to affect whether the container is suitable to be recycled; and
- (d) approval for the beverage product is not in force under a corresponding law for a corresponding scheme; and
- (e) approval for the beverage product has not been refused or cancelled under a corresponding law for a corresponding scheme.

*Note—*

See section 173V for the general criteria that apply for deciding the application.

### **99ZP Notice of container approval**

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

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about the decision to the Organisation within 10 business days after making the decision.

### **99ZQ Conditions of container approval**

- (1) It is a condition of a container approval that the holder must give the Organisation notice about any changes to the beverage product the subject of the approval, including, for example—
  - (a) the type of beverage in the product; or
  - (b) the volume of beverage in the product; or
  - (c) the material the container, including its label, is made of.

*Note—*

See section 173X for the chief executive's general power to impose conditions on a container approval.

- (2) The holder of a container approval must comply with the conditions of the approval.

Maximum penalty—300 penalty units.

### **99ZR Container approval continues in force**

- (1) A container approval continues in force until the approval is cancelled or surrendered.
- (2) However, if a container approval is suspended, the approval does not have effect for the period of the suspension.
- (3) Despite subsections (1) and (2), a person, other than a manufacturer of a beverage product the subject of the container approval, does not commit an offence against this part—
  - (a) if the container used for the beverage product is no longer registered because the container approval has been cancelled or surrendered, or is suspended; and

- (b) merely because the container used for the product is not registered.

### **99ZS Applying to amend container approval**

- (1) The holder of a container approval for a beverage product may apply to the chief executive to amend the approval, including a condition of the approval.

*Note—*

See chapter 8A, part 2 for general provisions that apply to the application.

- (2) Without limiting subsection (1), the holder may apply to amend—
  - (a) the type of beverage in the beverage product; or
  - (b) the volume of beverage in the product; or
  - (c) the material the container, including its label, is made of.

### **99ZT Deciding amendment application**

- (1) This section applies if the chief executive is deciding whether or not to amend a container approval—
  - (a) on an application made under section 99ZS; or
  - (b) after giving the holder of the approval a show cause notice about a proposed amendment under section 173ZB.
- (2) Section 99ZO applies as if the decision were a decision about whether to grant the container approval.

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### **99ZU Applying to transfer container approval**

- (1) The holder of a container approval may apply to the chief executive to transfer the approval to another person.

*Note—*

See chapter 8A, part 2 for general provisions that apply to the application.

- (2) The application must be accompanied by the signed consent of the proposed transferee.
- (3) The period for deciding the application is 10 business days.
- (4) If the chief executive decides to grant the application, the chief executive must, in addition to the notice under section 173W, give a notice about the decision to the proposed transferee and the Organisation within 5 business days after making the decision.

### **99ZV Grounds for suspending or cancelling container approval**

Each of the following is a ground for suspending or cancelling a container approval for a beverage product—

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



- (d) the container for the beverage product is no longer a container under the scheme;
- (e) the beverage in the beverage product is no longer a beverage under the scheme.

*Note—*

See chapter 8A, part 3 for general provisions that apply for suspending or cancelling a container approval.

## **Division 6            Miscellaneous**

### **99ZW Inconsistent provision has no effect**

A provision of any of the following agreements has no effect to the extent the provision is inconsistent with this Act—

- (a) a container recovery agreement;
- (b) a container collection agreement;
- (c) a material recovery agreement.

### **99ZX Disposal of containers to landfill**

- (1) This section applies for deciding, for this part, whether a person has disposed of, or allowed the disposal of, a container to landfill.
- (2) A person has allowed a container to be disposed of to landfill if—
  - (a) the person arranged for the container to be taken to a waste facility for recycling; and
  - (b) when the person made the arrangement, the person knew, or ought reasonably to have known, the operator of the waste facility was likely to dispose of, or allow the disposal of, the container to landfill; and
  - (c) the container is disposed of to landfill.

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- (3) A person has not disposed of, or allowed the disposal of, a container to landfill if—
  - (a) the person arranged for the container to be taken to a waste facility at which containers of that type can be recycled; and
  - (b) part of the container can not be recycled at the waste facility; and
  - (c) that part of the container is disposed of to landfill.

### **99ZY Extraordinary circumstances exemption**

- (1) This section applies if a container has become unsuitable to be recycled because of extraordinary circumstances.

*Example—*

The container becomes contaminated when the place at which the container is stored is inundated by water from a flooded river during a severe storm.

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

*Note—*

See chapter 8A for general provisions that apply to the application and an extraordinary circumstances exemption.

- (3) The chief executive may grant the exemption if satisfied—
  - (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; or
  - (ii) were beyond the operator's control.

### **99ZZ Authorisations for competition legislation**

- (1) The following things are specifically authorised for competition legislation—
  - (a) appointing, under part 5, a company to administer the scheme;
  - (b) granting, amending, transferring, suspending, cancelling or surrendering a container approval;
  - (c) a container collection agreement;
  - (d) a container recovery agreement;
  - (e) a material recovery agreement;
  - (f) the conduct of a person negotiating, entering into and performing an agreement mentioned in paragraph (c), (d) or (e).
- (2) Anything authorised to be done by subsection (1) is authorised only to the extent to which it would otherwise contravene the *Competition and Consumer Act 2010* (Cwlth) or the Competition Code of Queensland.
- (3) In this section—

***competition legislation*** means the *Competition and Consumer Act 2010* (Cwlth), section 51(1)(b) or the Competition Code of Queensland, section 51.

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## **5 Insertion of new ch 4, pt 5**

Chapter 4—

*insert—*

### **Part 5                    Product Responsibility    Organisation**

#### **Division 1            Appointment and powers**

##### **102A Appointment**

The Minister may, under this part, appoint an eligible company as the Product Responsibility Organisation for the container refund scheme.

##### **102B Meaning of *eligible company***

- (1) An *eligible company* is a company that—
  - (a) is registered under the Corporations Act; and
  - (b) is carried on other than for the profit or gain of its individual members; and
  - (c) has a constitution that, at all times—
    - (i) requires the company to maintain a board, constituted by 9 directors, that has the composition required under subsection (2); and
    - (ii) prohibits dividends being paid to, or the income, profits or assets of the company being distributed among, its members; and
    - (iii) requires the persons appointed or employed as executive officers of the company to be eligible individuals; and

- (iv) includes provisions about—
  - (A) the way the chair and directors are appointed and removed; and
  - (B) the way the chair and directors vote on and decide matters; and
  - (C) the remuneration and other entitlements of the chair and directors; and
  - (D) the way the constitution is amended; and
  - (E) another matter prescribed by regulation.
- (2) For subsection (1)(c)(i), the required composition of the board is as follows—
  - (a) a chair who is—
    - (i) a director; and
    - (ii) independent of the beverage industry; and
    - (iii) approved by the Minister;
  - (b) at least 1 director who is an executive officer, employee or business associate of a small beverage manufacturer or an association that represents small beverage manufacturers;
  - (c) at least 1 director who is an executive officer, employee or business associate of a large beverage manufacturer;
  - (d) at least 1 director who—
    - (i) represents the interests of the community; and
    - (ii) is independent of the beverage industry; and

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- (iii) is approved by the Minister;
- (e) at least 2 other directors who—
  - (i) have legal or financial qualifications and experience; and
  - (ii) are independent of the beverage industry.
- (3) In this section—

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

*large beverage manufacturer* means a manufacturer of a beverage product other than a small beverage manufacturer.

*small beverage manufacturer* see section 99R(2).

## **102C Powers**

The Organisation has the powers necessary for performing its functions.

*Note—*

See section 99J for the Organisation's functions.

## **Division 2      Application for    appointment**

### **Subdivision 1    Application**

#### **102D Minister may invite application for    appointment**

- (1) The Minister may invite an eligible company to apply for appointment as the Product

Responsibility Organisation for the container refund scheme.

- (2) The invitation may state—
  - (a) outcomes to be met by the Organisation in a stated period after appointment—
    - (i) relating to the Organisation's functions; and
    - (ii) relating to administering the scheme in a way that provides opportunities for social enterprise, innovation and the development of technology; and
  - (b) other requirements for the application.

### **102E Application**

After receiving the invitation, the eligible company (the *applicant*) may apply for appointment as the Product Responsibility Organisation.

### **102F Requirements for application**

- (1) The application must—
  - (a) be in writing; and
  - (b) include details of the applicant's plans for the following matters—
    - (i) establishing and administering the scheme generally, including the estimated costs of establishing and administering the scheme;
    - (ii) entering into container recovery agreements with manufacturers of beverage products, including—
      - (A) the proposed amounts to be paid by the manufacturers under the

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- agreements to contribute to costs of the administration of the scheme; and
  - (B) a proposed timeframe for entering the agreements;
  - (iii) establishing a network of container refund points;
  - (iv) entering into container collection agreements with the operators of container refund points, including—
    - (A) a process for choosing persons with whom to enter into container collection agreements; and
    - (B) proposed arrangements for ensuring container refund points are accessible to the public, including proposed locations and operating times; and
    - (C) the proposed amounts to be paid to operators under the agreements for handling, sorting and transporting containers for recycling; and
    - (D) a proposed timeframe for entering the agreements;
  - (v) achieving any outcomes stated in the Minister's invitation;
  - (vi) setting the amounts payable under the scheme mentioned in section 99J(2)(d); and
  - (c) comply with any other requirements stated in the Minister's invitation.
- (2) The application must be accompanied by the following—



- (a) a copy of the applicant's constitution;
- (b) evidence establishing the applicant is an eligible company and each of its executive officers is an eligible individual;
- (c) a draft strategic plan and operational plan for establishing and administering the scheme;
- (d) draft terms of a container recovery agreement, container collection agreement and material recovery agreement;
- (e) a draft framework for resolving disputes between the applicant, manufacturers of beverage products, the operators of container refund points and the operators of material recovery facilities;
- (f) draft policies for handling commercial or sensitive information about the beverage market;
- (g) the signed consent of each person who the applicant considers is an executive officer or business associate of the applicant to—
  - (i) the collection of personal or background information about the person by the chief executive; and
  - (ii) a criminal history check.

### **102G Referral of application to chief executive for assessment**

After receiving the application, the Minister must refer the application to the chief executive for assessment.

### **102H Withdrawing or amending application**

The applicant may, at any time—

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- (a) withdraw the application; or
- (b) amend the application with the agreement of the Minister.

## **Subdivision 2 Assessing application**

### **102I Chief executive assesses application**

The chief executive must—

- (a) assess whether the applicant is suitable for appointment as the Product Responsibility Organisation; and
- (b) give the Minister a report about the applicant's suitability.

### **102J Particular matters for assessing application**

- (1) In assessing whether the applicant is suitable for appointment as the Organisation, the chief executive must consider and, if necessary, investigate the following—
  - (a) the application;
  - (b) the documents and evidence mentioned in section 102F(2) that accompanied the application;
  - (c) the applicant's business reputation, current financial position and financial background;
  - (d) the suitability of each executive officer and business associate to be associated with the applicant as the Organisation;
  - (e) whether, collectively, the executive officers have the skills, knowledge and experience required for the applicant to perform the functions of the Organisation effectively and efficiently.

- (2) In assessing the suitability of an executive officer or business associate of the applicant, the chief executive must consider and, if necessary, investigate the person's—
  - (a) character or business reputation; and
  - (b) relevant skills, knowledge and experience; and
  - (c) current financial position and financial background.

### **102K Chief executive may require further information or documents**

- (1) The chief executive may, by notice, require the applicant to give the chief executive further information or a document reasonably required to decide the application.
- (2) When making the requirement, the chief executive must warn the applicant the application will not be considered further until the requirement is complied with.

## **Subdivision 3 Deciding application**

### **102L Minister decides application**

- (1) After receiving the chief executive's report about the applicant's suitability, the Minister must—
  - (a) consider the application and report; and
  - (b) decide to—
    - (i) appoint the applicant as the Product Responsibility Organisation and impose the conditions on the appointment the Minister considers necessary or desirable; or

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- (ii) refuse the application.
- (2) The Minister must not decide to appoint the applicant unless the Minister is satisfied—
  - (a) the applicant has satisfactory plans about the matters mentioned in section 102F(1)(b); and
  - (b) collectively, the executive officers have the skills, knowledge and experience required for the applicant to perform the functions of the Organisation effectively and efficiently.

### **102M Decision to make appointment**

- (1) If the Minister decides to appoint the applicant as the Product Responsibility Organisation, the Minister must, as soon as practicable after making the decision, give the applicant a notice about the decision.
- (2) The notice must—
  - (a) state the applicant is appointed as the Product Responsibility Organisation; and
  - (b) state when the appointment takes effect; and
  - (c) state any conditions imposed on the appointment; and
  - (d) if the appointment is subject to conditions—be an information notice for the decision.

### **102N Refusal of application**

If the Minister decides to refuse the application, the Minister must give the applicant an information notice for the decision within 10 business days after making the decision.

## **Subdivision 4 General**

### **102O Appointment continues in force**

- (1) The appointment of a company as the Organisation continues in force until the appointment is cancelled.
- (2) However, if the appointment is suspended, the appointment does not have effect during the period of the suspension.

## **Division 3 Application to amend appointment**

### **102P Applying to amend appointment**

- (1) The company appointed as the Organisation may apply to the Minister to amend the appointment, including a condition of the appointment (an *amendment application*).
- (2) The Minister must refer an amendment application to the chief executive for assessment.

### **102Q Assessing application**

- (1) The chief executive must—
  - (a) assess the amendment application; and
  - (b) give the Minister a report about the amendment application.
- (2) Sections 102J and 102K apply—
  - (a) for the purpose of the chief executive assessing the amendment application; and

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- (b) as though a reference in those sections to the application is a reference to the amendment application.

### **102R Deciding amendment application**

- (1) This section applies after the Minister is given a report about the chief executive's assessment of an amendment application under section 102Q.
- (2) The Minister must—
  - (a) consider the amendment application and report about the chief executive's assessment of the amendment application; and
  - (b) decide to—
    - (i) grant the application; or
    - (ii) if the Minister decides to grant the application—impose or amend the conditions on the appointment the Minister considers are necessary or desirable; or
    - (iii) refuse the application.

### **102S Decision to amend appointment**

- (1) If the Minister decides to grant the company's amendment application, the Minister must give the company a notice about the decision.
- (2) The notice must be given as soon as practicable after the decision is made and state—
  - (a) how the appointment is amended; and
  - (b) any new conditions imposed on the appointment; and
  - (c) any existing conditions amended for the appointment; and

- (d) when the amendment takes effect.
- (3) If the Minister imposes or amends any conditions on the appointment, the notice must also be an information notice for the decision to amend or impose the conditions.

### **102T Refusal of application**

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

## **Division 4          Amendment, suspension,                                 cancellation and                                 appointment of                                 administrator**

### **Subdivision 1    General**

#### **102U Minister may amend appointment**

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

#### **102V Grounds for suspending or cancelling appointment as Organisation**

Each of the following is a ground to suspend or cancel a company's appointment as the Organisation—

- (a) the company is no longer an eligible company;

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- (b) an executive officer of the company is no longer an eligible individual;
- (c) the company is no longer suitable for appointment as the Organisation;
- (d) the company as the Organisation has contravened a provision of this Act;
- (e) the company has contravened a condition of its appointment as the Organisation;
- (f) the company as the Organisation has failed to comply with a direction of the Minister under section 102ZE;
- (g) the company as the Organisation has failed to achieve, and is unlikely to achieve, an outcome prescribed under section 102ZF during a particular period;
- (h) the company as the Organisation has contravened a compliance notice given to the company under chapter 11;
- (i) the company was appointed as the Organisation because of a materially false or misleading representation or declaration.

### **102W Immediate suspension**

- (1) The Minister may suspend the appointment of a company as the Organisation immediately if the Minister reasonably believes—
  - (a) a ground exists to suspend or cancel the company's appointment; and
  - (b) the circumstances warrant the immediate suspension of the appointment to ensure—
    - (i) the safety of persons; or
    - (ii) the public interest in the scheme is not adversely affected.



- (2) If the Minister decides to suspend the company's appointment under subsection (1), the Minister must give the company—
  - (a) an information notice for the decision to suspend the appointment immediately; and
  - (b) a show cause notice under section 102X.
- (3) The suspension—
  - (a) takes effect when the notices are given to the company; and
  - (b) continues until the earliest of the following happens—
    - (i) the Minister ends the suspension;
    - (ii) the show cause notice is finally dealt with;
    - (iii) 30 business days after the notices are given to the company.

## **Subdivision 2 Process for taking proposed action**

### **102X Show cause notice**

- (1) This section applies if the Minister proposes to—
  - (a) amend the company's appointment as the Organisation (the *proposed action*); or
  - (b) suspend or cancel the company's appointment as the Organisation (also the *proposed action*).
- (2) If the proposed action is suspension, the proposed action must also include appointing an administrator.
- (3) The Minister must give a notice (a *show cause notice*) about the proposed action to the company.

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- (4) The show cause notice must state the following—
  - (a) the proposed action;
  - (b) if the proposed action is an amendment—the proposed amendment;
  - (c) if the proposed action is suspension—the period of the suspension;
  - (d) the grounds for the proposed action;
  - (e) the facts and circumstances that form the basis for the grounds;
  - (f) that the company may, within a stated period (the *show cause period*), make a written submission to the Minister about why the proposed action should not be taken.
- (5) The show cause period must end at least 28 days after the company is given the show cause notice.
- (6) The Minister may ask the chief executive to prepare a report about the submissions made by the company during the show cause period.

### **102Y Decision about proposed amendment, suspension or cancellation**

- (1) Within 20 business days after the end of the period for making submissions stated in the show cause notice, the Minister must decide whether or not to take the proposed action.
- (2) The Minister may decide—
  - (a) if the proposed action was to make a stated amendment—to make the stated amendment; or
  - (b) if the proposed action was to suspend the appointment for a stated period—to suspend the appointment for no longer than the stated period; or

- (c) if the proposed action was to cancel the appointment—to suspend the appointment for a period or cancel the appointment.
- (3) However, the Minister may extend, on 1 occasion and by no more than 20 business days, the period for making a decision by giving a notice about the extension to the company before the end of the period.
- (4) In deciding whether or not to take the proposed action, the Minister must consider the following—
  - (a) all submissions made by the company during the show cause period;
  - (b) if the Minister asked the chief executive to prepare a report about the submissions—the chief executive’s report;
  - (c) the objects of this Act and how they are to be achieved, as stated in chapter 1, part 2;
  - (d) another matter prescribed by regulation.
- (5) If the Minister decides to take the proposed action, the Minister must, within 10 business days after making the decision, give the company an information notice for the decision.
- (6) The decision to take the proposed action takes effect on the later of the following days—
  - (a) the day the information notice is given to the company;
  - (b) a day stated in the information notice.
- (7) If the Minister decides not to take the proposed action, the Minister must give the company a notice about the decision within 5 business days after making the decision.

### **Subdivision 3 Appointment of administrator**

#### **102Z Appointment of administrator**

- (1) The Minister may appoint an administrator—
  - (a) if the Minister suspends a company's appointment as the Organisation under section 102Y—for the company as the Organisation; or
  - (b) if the Minister cancels a company's appointment as the Organisation under section 102Y—to perform the functions of the Organisation.
- (2) An administrator, during the administrator's term of appointment and to the exclusion of any other person—
  - (a) has the function—
    - (i) for an administrator appointed under subsection (1)(a)—of conducting and managing the affairs of the company as the Organisation; or
    - (ii) for an administrator appointed under subsection (1)(b)—of being the Organisation under this Act; and
  - (b) has the other functions stated in the administrator's notice of appointment; and
  - (c) is taken to be the Organisation.
- (3) The function of the administrator under subsection (2)(a) may be limited by the administrator's notice of appointment.

#### **102ZA Powers**

An administrator may do anything necessary or

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convenient to be done for, or in connection with, the administrator's functions.

### **102ZB Providing assistance**

- (1) An administrator appointed under section 102Z may, for performing the administrator's functions, by a notice given to an officer or employee or former officer or employee of the company, require the person to—
  - (a) produce documents in the person's possession that the administrator reasonably requires to perform the functions; or
  - (b) provide the other information or assistance the administrator reasonably requires to perform the functions.
- (2) A person of whom a requirement has been made under subsection (1) must comply with it unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

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

*the company* means—

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

### **102ZC Remuneration and costs**

- (1) If a person appointed as administrator is not a public service employee, the person is entitled to be paid the remuneration decided by the chief executive.
- (2) The costs of and incidental to the performance of the functions of the administrator are payable by the company.
- (3) In this section—  
*the company* see section 102ZB(4).

## **Subdivision 4 Minor amendment**

### **102ZD Minor amendment**

- (1) The Minister may make a minor amendment of a company's appointment as the Organisation by giving a notice about the amendment to the company.
- (2) This section applies despite subdivision 2.
- (3) In this section—  
*minor amendment*, of a company's appointment as the Organisation, means an amendment of the appointment—
  - (a) to correct a minor or formal error in the appointment; or
  - (b) to make another change that is not a change of substance and does not adversely affect the company.

## **Division 5 Accountability, planning and reporting**

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## **Subdivision 1 Ministerial directions**

### **102ZE Ministerial directions**

- (1) The Minister may give the Organisation a written direction about the performance of its functions or the exercise of its powers.
- (2) The Organisation must comply with the direction.

*Note—*

Failure to comply with the direction is not an offence but may be a ground for suspending or cancelling a company's appointment as the Organisation. See section 102V.

- (3) The Organisation must include in its annual report for a financial year prepared under section 102ZJ details of—
  - (a) each direction given by the Minister under this section in the year; and
  - (b) action taken by the Organisation in the year because of the direction.

## **Subdivision 2 Outcomes, budget and planning**

### **102ZF Regulation may prescribe outcomes to be achieved**

- (1) A regulation may prescribe outcomes to be achieved by the Organisation, during a period stated in the regulation, relating to—
  - (a) the Organisation's functions, including, for example, outcomes relating to—
    - (i) the recovery and recycling of containers under the scheme; or

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- (ii) the accessibility of container refund points to members of the public; or
  - (b) administering the scheme in a way that provides opportunities for social enterprise, innovation and the development of technology.
- (2) The Organisation must use its best endeavours to achieve an outcome prescribed under subsection (1).

*Note for subsection (2)—*

Failure to use best endeavours to achieve an outcome is not an offence but may be a ground for suspending or cancelling a company's appointment as the Organisation. See section 102V.

### **102ZG Annual budget, strategic plan and operational plan**

- (1) Before 31 March each year, the Organisation must prepare, in the way prescribed by regulation, and give the Minister the following documents—
  - (a) a budget of estimated costs of the scheme for the next financial year, including the estimated costs of—
    - (i) the Organisation; and
    - (ii) refund amounts to be paid for empty beverage containers under the scheme; and
    - (iii) the operation of container refund points, including handling, sorting and transporting empty beverage containers for recycling;
  - (b) a strategic plan;
  - (c) an operational plan.
- (2) During a financial year, the Organisation may



amend its budget, strategic plan or operational plan for that year.

- (3) The Organisation must give the amended budget, strategic plan or operational plan to the Minister within 10 business days after making the amendment.

### **102ZH Approval of strategic plan**

- (1) The Organisation's strategic plan has no effect until it has been approved by the Minister.
- (2) The Minister must approve the strategic plan as soon as practicable after receiving the plan.
- (3) An amendment to a strategic plan has no effect until it has been approved by—
  - (a) for a minor amendment—the Organisation;  
or
  - (b) otherwise—the Minister.
- (4) In this section—

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

## **Subdivision 3 Reporting**

### **102ZI Quarterly reports**

- (1) The Organisation must give the Minister a report about its operations for each quarter in a financial year.
- (2) The report for a quarter must be given to the Minister—
  - (a) within 6 weeks after the end of the quarter;  
or

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- (b) if another period after the end of the quarter is agreed between the Organisation and the Minister—within the agreed period.
- (3) The report must include the information—
  - (a) stated in the Organisation’s strategic plan; or
  - (b) prescribed by regulation.
- (4) In this section—

**quarter**, in a financial year, means the following periods in the year—

  - (a) 1 July to 30 September;
  - (b) 1 October to 31 December;
  - (c) 1 January to 31 March;
  - (d) 1 April to 30 June.

### **102ZJ Annual report**

- (1) The Organisation must give the Minister a report about its operations for each financial year.
- (2) An annual report for a financial year must be given to the Minister by 30 September after the end of the financial year.
- (3) An annual report for a financial year must include the following—
  - (a) annual financial statements for the year that have been audited by a third-party auditor;
  - (b) details of the Organisation’s achievements during the year of—
    - (i) the objectives in its strategic and operational plans; or
    - (ii) an outcome prescribed under section 102ZF;
  - (c) the information—

- (i) stated in the Organisation's strategic plan; or
  - (ii) prescribed by regulation.
- (4) In this section—
- third-party auditor*** means a person who—
- (a) is appropriately qualified to audit the Organisation's annual financial statements; and
  - (b) is not an executive officer or business associate of the Organisation.

### **102ZK Organisation must inform Minister**

The Organisation must immediately inform the Minister about any matter that the Organisation considers may—

- (a) prevent, or significantly affect, its achievement of—
  - (i) the objectives in its strategic and operational plans; or
  - (ii) an outcome prescribed under section 102ZF; or
- (b) significantly impact on—
  - (i) its performance of its functions; or
  - (ii) its financial position or viability; or
  - (iii) public confidence in the integrity of the scheme.

### **102ZL Reporting to chief executive**

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

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- (2) The Minister may require the Organisation to report to the chief executive by, for example, giving stated information at stated times to the chief executive.
- (3) The Organisation must comply with the requirement.

*Note—*

Failure to comply with the requirement is not an offence but may be a ground for suspending or cancelling a company's appointment as the Organisation. See section 102V.

## **Subdivision 4 General**

### **102ZM Requirement to implement plans in application**

- (1) The Organisation must implement its plans for the following matters as stated in its application for appointment as the Organisation—
  - (a) establishing and administering the scheme generally;
  - (b) entering into container recovery agreements with manufacturers of beverage products;
  - (c) establishing a network of container refund points;
  - (d) entering into container collection agreements with the operators of container refund points;
  - (e) achieving any outcomes stated in the Minister's invitation under section 102D;
  - (f) setting the amounts payable under the scheme mentioned in section 99J(2)(d).
- (2) The Organisation must establish and operate a container refund point in a community if—

- (a) persons in the community do not have reasonable access to a container refund point; and
  - (b) the Organisation has not identified another person with whom to enter into a container collection agreement to operate a container refund point in the community.
- (3) This section applies subject to a condition of the Organisation's appointment.

*Note—*

Failure to comply with this section is not an offence but may be a ground for suspending or cancelling a company's appointment as the Organisation. See section 102V.

### **102ZN Status as eligible company**

- (1) The Organisation must, in each year, give the chief executive—
  - (a) a notice about whether the Organisation is, and has been during the previous year, an eligible company; and
  - (b) a copy of the Organisation's constitution.
- (2) The notice and copy must be given within 10 business days after the day that is the anniversary of the company's appointment as the Organisation.

### **102ZO Notice of particular events**

- (1) If any of the following events happens, the Organisation must give a notice about the event to the chief executive—
  - (a) an event that makes the Organisation no longer an eligible company;

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- (b) an event that makes an executive officer or business associate of the Organisation no longer an eligible individual;
  - (c) the appointment or employment of an executive officer of the Organisation ends;
  - (d) a person is appointed or employed as an executive officer of the Organisation;
  - (e) a shareholder or member of the Organisation stops being a shareholder or member of the Organisation;
  - (f) a person becomes a shareholder or member of the Organisation.
- (2) The notice must be given within 10 business days after the event happens.
- (3) A notice about an event mentioned in subsection (1)(a) must include the Organisation's plan and timetable for making the Organisation an eligible company.
- (4) A notice about an event mentioned in subsection (1)(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 chief executive; and
  - (b) a criminal history check.

## **Division 6            Miscellaneous**

### **102ZP Delegation**

- (1) The Organisation may delegate its functions and powers under this Act to a director or appropriately qualified employee of the

Organisation.

- (2) The chief executive officer of the Organisation (however described) may, with the Organisation's approval, subdelegate a function delegated to the chief executive officer under subsection (1) to an appropriately qualified employee of the Organisation.

### **102ZQ Obtaining the criminal history of an individual**

- (1) This section applies in relation to an individual who—
  - (a) is an executive officer or business associate of the Organisation or an applicant under division 2; and
  - (b) has given written consent to the chief executive obtaining the individual's criminal history.
- (2) The chief executive may ask the commissioner of the police service for a written report about the individual's criminal history, including a brief description of the circumstances of any conviction mentioned in the individual's criminal history.
- (3) After receiving the request, the police commissioner must give the report about the individual's criminal history to the chief executive.
- (4) However, the duty imposed on the police commissioner applies only to information in the commissioner's possession or to which the commissioner has access.

### **102ZR Corporations Act displacement**

A provision of this part, to the extent the provision is incapable of concurrent operation with a

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provision of the Corporations Act, is declared to be a Corporations legislation displacement provision for section 5G of that Act.

*Note—*

Section 5G of the Corporations Act provides that if a State law declares a provision of a law of a State to be a Corporations legislation displacement provision, any provision of the Corporations legislation with which the State provision would otherwise be inconsistent does not apply to the extent necessary to avoid the inconsistency.

## 6 Amendment of s 155 (Purpose of chapter)

Section 155(2)—

*omit, insert—*

- (2) Waste stops being a waste and becomes a **resource** when, in accordance with an end of waste code or end of waste approval, it stops being waste and becomes a resource.
- (3) A person is a **resource user** while the person uses a resource in a way, or for a purpose, that complies with an end of waste code or end of waste approval.
- (4) If a person stops using a resource in a way, or for a purpose, that complies with an end of waste code or end of waste approval—
  - (a) the person stops being a resource user; and
  - (b) the resource stops being a resource and becomes waste.

## 7 Amendment of s 156 (Definitions for ch 8)

Section 156—

*insert—*

**resource user** see section 155(3).



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

Section 157(1)(a)—

*omit, insert—*

- (a) a person, under an end of waste code, produces a resource and uses, sells or gives away the resource; and

**9 Replacement of ss 158 and 159**

Sections 158 and 159—

*omit, insert—*

**158 Compliance with end of waste code**

- (1) A registered resource producer for an end of waste code for a resource must not do any of the following unless the producer complies with the requirements of the code—

- (a) produce the resource;
- (b) use, sell or give away the resource.

Maximum penalty—1,665 penalty units.

- (2) A person, other than a registered resource producer, must not use a resource in a way, or for a purpose, that does not comply with an end of waste code for the resource.

Maximum penalty—1,665 penalty units.

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

- (1) The chief executive may make a code (an *end of waste code*) that states—

- (a) for registered resource producers—when a particular waste stops being a waste and becomes a resource; or

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- (b) for resource users—conditions about using a resource, including, for example, conditions about how, and the purposes for which, a resource may be used.
- (2) The chief executive may grant an approval (an *end of waste approval*) to a person that states—
  - (a) when a particular waste stops being a waste and becomes a resource; or
  - (b) conditions about using a resource, including, for example, conditions about how, and the purposes for which, a resource may be used.

## 10 Insertion of new ss 159A and 159B

Chapter 8, part 2, division 1—

*insert—*

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

The chief executive may decide to make a draft end of waste code for a particular waste—

- (a) on the chief executive's own initiative; or
- (b) after inviting submissions under section 160.

### **159B Schedule of proposed end of waste codes**

- (1) The chief executive must keep an up-to-date schedule of draft end of waste codes the chief executive has decided to prepare.
- (2) Without limiting subsection (1), the chief executive must update the schedule after considering submissions under section 161 and deciding whether or not to make a draft end of waste code for a particular waste.

- (3) The schedule must state—
- (a) the following for each proposed draft end of waste code included in the schedule—
    - (i) the particular waste to be the subject of the draft code;
    - (ii) the proposed use of a resource under the draft code;
    - (iii) when the process for making the draft code will start and end;
    - (iv) whether a technical advisory panel will be established to prepare the draft code and, if so, when the panel will be required to give the draft code to the chief executive;
    - (v) that a person may register the person's interest in being consulted when the draft code is being prepared; and
  - (b) other information prescribed by regulation.
- (4) The chief executive must publish the schedule—
- (a) on the department's website; and
  - (b) in any other way the chief executive considers appropriate.

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

Section 160, 'or resource'—

*omit.*

**12 Amendment of s 161 (Consideration of submissions)**

Section 161, 'or resource'—

*omit.*

[s 13]

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

- (1) Section 162, heading, ‘by technical advisory panel’—  
*omit.*
- (2) Section 162(2)—  
*omit, insert—*
  - (2) The chief executive may establish a technical advisory panel under section 173G to prepare the draft code.
- (3) Section 162(3)(b), ‘within 6 months after being established’—  
*omit, insert—*  
by the day stated in the schedule
- (4) Section 162(4), ‘decide’—  
*omit, insert—*  
recommend to the chief executive
- (5) Section 162(5)—  
*omit, insert—*
  - (5) The technical advisory panel’s recommendation under subsection (4) must be given to the chief executive in writing and include the panel’s reasons for the recommendation.
  - (6) If the chief executive does not establish a technical advisory panel to prepare the draft code, the chief executive must prepare the draft code by the day stated in the schedule.
  - (7) In this section—  
***schedule*** means the schedule published under section 159B.

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

Section 165(1)(b)—

*insert—*

(iv) another matter prescribed by regulation.

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

Section 168—

*omit, insert—*

**168 Application for amendment of end of waste code**

A person may apply to the chief executive to amend an end of waste code.

*Note—*

See chapter 8A, part 2 for general provisions that apply to the application.

**16 Omission of ss 169 and 170**

Sections 169 and 170—

*omit.*

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

(1) Section 172(6)—

*omit, insert—*

(6) Within 10 business days after making a decision, the chief executive must give each registered resource producer for the end of waste code—

(a) if the decision is to take the proposed action—an information notice for the decision; or

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- (b) if the decision is not to take the proposed action—a notice stating the decision.
- (2) Section 172(7), ‘The decision’—  
*omit, insert—*  
A decision to take the proposed action

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

Section 173—

*omit, insert—*

**173 Publication and notification of amended end of waste code**

- (1) This section applies if the chief executive amends an end of waste code under section 172.
- (2) The chief executive must—
  - (a) publish a copy of the amended end of waste code—
    - (i) on the department’s website; and
    - (ii) in any other way the chief executive considers appropriate; and
  - (b) notify the amendment of the end of waste code by gazette notice.
- (3) The gazette notice must state—
  - (a) the name of the end of waste code; and
  - (b) the date the end of waste code was amended; and
  - (c) where a copy of the amended end of waste code may be inspected.
- (4) The amended end of waste code takes effect on the later of the following—
  - (a) the day the gazette notice is published;

- (b) the day stated in the gazette notice;
- (c) the day stated in the amended end of waste code.

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

Section 173B—

*insert—*

- (3) A person stops being a registered resource producer for an end of waste code by giving the chief executive a notice in the approved form.

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

(1) Section 173D(4)—

*omit, insert—*

- (4) Within 5 business days after deciding whether or not to take the proposed action, the chief executive must give the registered resource producer—
  - (a) if the decision is to take the proposed action—an information notice for the decision; or
  - (b) if the decision is not to take the proposed action—a notice stating the decision.

(2) Section 173D(5), ‘The decision’—

*omit, insert—*

A decision to take the proposed action

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

Section 173E(1), ‘or resource’—

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*omit.*

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

Section 173F—

*insert—*

- (3) The chief executive may publish information from the register in a way the chief executive considers appropriate.
- (4) However, the chief executive must not publish confidential information included in the register.
- (5) In this section—

***confidential information—***

- (a) means information that—
  - (i) could identify an individual; or
  - (ii) is about a person's current financial position or financial background; or
  - (iii) would be likely to damage the commercial activities of a person to whom the information relates; but
- (b) does not include—
  - (i) information that is publicly available; or
  - (ii) statistical or other information that could not reasonably be expected to identify an individual to whom it relates.

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

Chapter 8, part 3—

*omit, insert—*



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## Part 3                      End of waste approvals

### 173I Application

- (1) A person may apply to the chief executive for an end of waste approval to conduct a trial for 1 kind of waste to demonstrate whether or not the waste is suitable to be used as a resource.

*Note—*

See chapter 8A for general provisions that apply to the application and to an end of waste approval.

- (2) The application must be accompanied by a written report about the application, in the approved form, prepared by a suitably qualified person.
- (3) A regulation may prescribe matters about preparing a written report.
- (4) In this section—

*suitably qualified person*, in relation to a written report, means a person who—

- (a) has the qualifications and experience appropriate for preparing the report; and
- (b) meets any other criteria prescribed by regulation.

### 173J Particular matters for making decision

- (1) In deciding whether to grant the end of waste approval, the chief executive must consider whether—
  - (a) the proposed management of the particular waste or the use of a particular resource is likely to cause any serious environmental harm, material environmental harm or environmental nuisance; and

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- (b) it is reasonably practicable for an end of waste code to be made for the particular waste the subject of the application.

*Note—*

See section 173V for the general criteria that apply for deciding the application.

- (2) The period for deciding the application is 40 business days and the period may be extended for 20 business days.
- (3) If the chief executive decides to grant the end of waste approval, the notice given to the applicant under section 173W must state the particular waste to which the approval relates.

### **173K Conditions of end of waste approval**

- (1) A condition imposed on an end of waste approval under section 173X may impose an obligation on—
  - (a) the holder of the approval; or
  - (b) a resource user of a resource under the approval.
- (2) The holder of, or a resource user or other person acting under, an end of waste approval must comply with the conditions of the approval.

Maximum penalty—1,665 penalty units.

*Note for subsection (2)—*

If a corporation commits an offence against this provision, an executive officer of the corporation may be taken, under section 268, to have also committed the offence.

### **173L Extending end of waste approval**

- (1) The holder of an end of waste approval may apply to the chief executive, on 1 occasion, to extend the

approval.

*Note—*

See chapter 8A, part 2 for general provisions that apply to the application.

- (2) The application must be made at least 2 months before the end of waste approval expires.
- (3) In deciding the application, the chief executive must consider—
  - (a) the matters mentioned in section 173J(1); and
  - (b) whether the waste and resource to which the approval relates would be more appropriately managed as a waste management ERA.

*Note—*

See section 173V for the general criteria that apply for deciding the application.

### **173M Applying to amend end of waste approval**

- (1) The holder of an end of waste approval may apply to the chief executive to amend the approval (an ***amendment application***).

*Note—*

See chapter 8A, part 2 for general provisions that apply to the application.

- (2) The application must be accompanied by a written report about the application, in the approved form, prepared by a suitably qualified person.
- (3) A regulation may prescribe matters about preparing a written report.
- (4) The period for deciding the application is—
  - (a) if the application is for a minor amendment of the approval—10 business days; or

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(b) otherwise—40 business days.

(5) In this section—

*environmental harm* see the Environmental Protection Act, section 14.

*minor amendment*, of an approval, means an amendment of the approval—

(a) to correct a minor or formal error in the approval; or

(b) to make a change that is not a change of substance and does not—

(i) relate to the characteristics of the resource, including, for example, the physical, chemical or biological properties of the resource; or

(ii) relate to the use of the resource; or

(iii) significantly increase any environmental harm caused by the use of the resource; or

(iv) adversely affect the interests of the holder of the approval or another person; or

(c) of a type prescribed by regulation.

*suitably qualified person*, in relation to a written report, means a person who—

(a) has the qualifications and experience appropriate for preparing the report; and

(b) meets any other criteria prescribed by regulation.

### **173N Deciding amendment application**

(1) This section applies if the chief executive is deciding whether or not to amend an end of waste approval—

- 
- (a) on an application made under section 173M;  
or
  - (b) after giving the holder of the approval a show cause notice about a proposed amendment to the approval under section 173ZB.
- (2) In deciding the application, the chief executive must consider—
- (a) the effect of the amendment on the management of the particular waste or the use of a particular resource; and
  - (b) whether the effect of the amendment on the management of a particular waste or the use of a particular resource may, or is likely to, cause any serious environmental harm, material environmental harm or environmental nuisance; and
  - (c) any relevant advice, information or comment provided by a technical advisory panel.

### **173O Applying to transfer end of waste approval**

- (1) The holder of an end of waste approval may apply to the chief executive to transfer the approval to another person.

*Note—*

See chapter 8A, part 2 for general provisions that apply to the application.

- (2) The application must be accompanied by the signed consent of the proposed transferee.
- (3) The period for deciding the application is 10 business days.
- (4) If the chief executive decides to grant the application, the chief executive must, in addition

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to the notice under section 173W, give a notice about the decision to the proposed transferee within 5 business days after making the decision.

### **173P Grounds for suspending or cancelling end of waste approval**

- (1) Each of the following is a ground for suspending or cancelling an end of waste approval—
  - (a) there is no longer a use, or likely to be a future use, for a particular resource under the approval;
  - (b) the management of a particular waste or the use of a particular resource under the approval has caused, or is likely to cause, serious environmental harm, material environmental harm or environmental nuisance that is unlawful under the Environmental Protection Act, section 493A;
  - (c) the use of the particular waste or a resource the subject of the approval is otherwise unlawful.
- (2) Also, it is a ground for cancelling an end of waste approval that—
  - (a) an end of waste code for a particular resource to which the end of waste approval relates is in effect; and
  - (b) the chief executive reasonably believes the holder of the end of waste approval may operate under the end of waste code.

### **173Q Chief executive may seek advice, comment or information**

The chief executive may ask any entity for advice, comment or information about the operation of

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this part at any time.

## **24 Insertion of new ch 8A**

After chapter 8—

*insert—*

# **Chapter 8A General provisions for approvals**

## **Part 1 Preliminary**

### **173R Application of chapter**

- (1) This chapter applies to the following approvals (each an *approval*) under this Act—
  - (a) a container approval under chapter 4, part 3B, division 5;
  - (b) an extraordinary circumstances exemption;
  - (c) an end of waste approval under chapter 8, part 3.
- (2) In particular, part 2 applies to making and deciding applications for an approval to be granted, amended, extended or transferred.
- (3) This chapter does not limit or otherwise affect a requirement under another provision of this Act about a particular approval or making or deciding a particular application.

## **Part 2 Applications**

### **173S Application**

An application must be—

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- (a) in the approved form; and
- (b) accompanied by any other information or documents prescribed by regulation for the application; and
- (c) accompanied by the fee prescribed by regulation.

### **173T Chief executive may require additional information or documents**

- (1) The chief executive may, by notice, require the applicant to give the chief executive further information or documents the chief executive reasonably requires to decide the application.
- (2) The notice must—
  - (a) be given to the applicant within 20 business days after the chief executive receives the application; and
  - (b) state a reasonable period within which the applicant must comply with the notice.
- (3) The chief executive and the applicant may, before the stated period ends, agree to extend the period.
- (4) The application is taken to have lapsed if the applicant does not comply with the notice.

### **173U Deciding application**

- (1) The chief executive must decide to grant or refuse to grant the application within the required decision-making period for the application.
- (2) However, the chief executive may extend, on 1 occasion, the required decision-making period for deciding the application by giving the applicant a notice about the extension before the end of the period.



- 
- (3) The extension must not be more than—
- (a) if another provision of this Act states a period by which the required decision-making period may be extended—the stated period; or
  - (b) otherwise—10 business days.
- (4) A failure to make a decision under this section is taken to be a decision to refuse to grant the application.
- (5) In this section—
- required decision-making period***, for an application, means the period—
- (a) that starts on the later of the following days—
    - (i) the day the chief executive receives the application;
    - (ii) if further information or documents are requested under section 173T—the day the chief executive receives the information or documents; and
  - (b) that ends after either of the following periods—
    - (i) if another provision of this Act states a period for deciding the application—the stated period;
    - (ii) otherwise—20 business days.

### **173V General criteria for deciding application**

- (1) In deciding the application, the chief executive must consider the following—
- (a) the objects of this Act and how they are to be achieved, as stated in chapter 1, part 2;

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- (b) the waste and resource management hierarchy;
  - (c) a matter for the decision stated in another provision of this Act;
  - (d) another matter prescribed by regulation for the decision.
- (2) This section does not limit the matters the chief executive may consider in making the decision.

### **173W Granting application**

- (1) If the chief executive decides to grant the application, the chief executive must give the applicant a notice about the decision within 5 business days after making the decision.
- (2) If the decision is to grant an approval, the notice must state the following—
  - (a) that the approval has been granted;
  - (b) the person to whom the approval is granted;
  - (c) if the approval is granted for a term—when the approval ends;
  - (d) a matter stated in another provision of this Act for the notice;
  - (e) any conditions imposed on the approval;
  - (f) if conditions are imposed on the approval—the reasons for the conditions.
- (3) If the decision is to amend an approval, the notice must state the following—
  - (a) how the approval is amended;
  - (b) any new conditions imposed on the approval;
  - (c) any existing conditions amended for the approval;

- (d) when the amendment takes effect.
- (4) If the chief executive imposes or amends any conditions on the approval, the notice must also be an information notice for the decision to impose the conditions.

### **173X Conditions of approval**

If the chief executive decides to grant or amend an approval, the chief executive may impose the conditions on the approval the chief executive considers necessary or desirable.

### **173Y Refusal of application**

If the chief executive decides to refuse to grant the application, the chief executive must, within 10 business days of making the decision, give the applicant an information notice for the decision.

## **Part 3                      Amendment,    suspension or    cancellation**

### **173Z Amendment of approval**

The chief executive may, on the chief executive's own initiative, amend an approval.

### **173ZA Suspension or cancellation of approval**

The chief executive may suspend or cancel an approval if the chief executive is satisfied—

- (a) a ground for suspending or cancelling the approval stated in another provision of this Act exists; or

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- (b) the approval was granted because of a materially false or misleading representation or declaration; or
- (c) the approval was granted on the basis of particular matters or information that have changed and the change is likely to cause serious environmental harm, material environmental harm or environmental nuisance; or
- (d) a condition imposed on the approval has not been complied with; or
- (e) a request for information about the approval under section 173ZF has not been complied with; or
- (f) it is necessary or desirable to do so having regard to the objects of the Act.

### **173ZB Show cause notice**

- (1) This section applies if the chief executive proposes to—
  - (a) amend an approval (the *proposed action*); or
  - (b) suspend or cancel an approval (also the *proposed action*).
- (2) The chief executive must give a notice (a *show cause notice*) about the proposed action to the holder of the approval.
- (3) The show cause notice must state the following—
  - (a) the proposed action;
  - (b) if the proposed action is an amendment—the proposed amendment;
  - (c) if the proposed action is suspension—the proposed period of the suspension;
  - (d) the grounds for the proposed action;

- (e) the facts and circumstances that form the basis for the grounds;
  - (f) that the holder may, within a stated period (the *show cause period*), make a written submission to the chief executive about why the proposed action should not be taken.
- (4) The show cause period must end at least 28 days after the holder of the approval is given the show cause notice.

**173ZC Decision about proposed amendment, suspension or cancellation**

- (1) Within 20 business days after the end of the period for making submissions stated in the show cause notice, the chief executive must decide whether or not to take the proposed action.
- (2) The chief executive may decide—
  - (a) if the proposed action was to make a stated amendment—to make the stated amendment; or
  - (b) if the proposed action was to suspend the appointment for a stated period—to suspend the appointment for no longer than the stated period; or
  - (c) if the proposed action was to cancel the appointment—to suspend the appointment for a period or cancel the appointment.
- (3) However, the chief executive may extend, on 1 occasion and by no more than 20 business days, the period for making a decision by giving a notice about the extension to the applicant before the end of the period.
- (4) In deciding whether or not to take the proposed action, the chief executive must consider the following—

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- (a) all submissions made by the holder of the approval during the show cause period;
  - (b) if the proposed action is an amendment—the effect of the proposed amendment;
  - (c) the objects of this Act and how they are to be achieved, as stated in chapter 1, part 2;
  - (d) the waste and resource management hierarchy;
  - (e) another matter prescribed by regulation.
- (5) If the chief executive decides to take the proposed action, the chief executive must, within 10 business days after making the decision, give the holder of the approval an information notice for the decision.
- (6) The decision to take the proposed action takes effect on the later of the following days—
- (a) the day the information notice is given to the holder of the approval;
  - (b) a day stated in the information notice.
- (7) If the chief executive decides not to take the proposed action, the chief executive must give the holder of the approval a notice about the decision within 5 business days after making the decision.

### **173ZD Minor amendment of approval**

- (1) The chief executive may make a minor amendment of an approval by giving a notice about the amendment to the holder of the approval.
- (2) This section applies despite sections 173ZB and 173ZC.
- (3) In this section—

*minor amendment*, of an approval, means an amendment of the approval—

- (a) to correct a minor or formal error in the approval; or
- (b) to make a change that is not a change of substance and does not adversely affect the interests of the holder of the approval or another person.

## **Part 4                      Miscellaneous**

### **173ZE Surrender of approval**

The holder of an approval may surrender the approval by giving the chief executive a notice about the surrender.

### **173ZF Request for information about approval**

- (1) The chief executive may, by notice, require any of the following persons to give the chief executive information about an approval—
  - (a) the holder of the approval;
  - (b) if the approval was transferred to another person in the 5 years before the notice was given—a previous holder of the approval;
  - (c) if the approval was cancelled, surrendered or otherwise ended in the 5 years before the notice was given—a person who was the holder of the approval.
- (2) The notice must state—
  - (a) the information required; and
  - (b) why the information is required; and

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- (c) the day by which the information is to be given to the chief executive.

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

Section 175, ‘to the chief executive’—

*omit.*

**26 Amendment of s 176 (Requirements for making application)**

- (1) Section 176(1)(a) to (c)—

*renumber* as section 176(1)(b) to (d).

- (2) Section 176(1)—

*insert*—

- (a) made to—

(i) for a decision made by the Organisation under chapter 4, part 3B—the Organisation; or

(ii) otherwise—the chief executive; and

- (3) Section 176(1)(c), as renumbered, ‘the chief executive to decide the application’—

*omit, insert*—

the application to be decided

- (4) Section 176(2), after ‘chief executive’—

*insert*—

or Organisation

**27 Amendment of s 177 (Decision not stayed)**

Section 177(7), after ‘chief executive’—

*insert*—



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, Organisation

**28 Amendment of s 178 (Internal review)**

(1) Section 178(1), after ‘chief executive’—  
*insert—*

or Organisation

(2) Section 178(3)(b)—  
*omit, insert—*

(b) does not apply to an original decision made—

(i) personally by the chief executive; or

(ii) by the board of directors of the Organisation.

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

Section 179, after ‘chief executive’—  
*insert—*

or Organisation

**30 Amendment of s 245 (Definitions for ch 11)**

(1) Section 245, heading, ‘ch 11’—  
*omit, insert—*

**chapter**

(2) Section 245, definition *prescribed provision*, paragraph (a), after ‘52(2),’—

*insert—*

99Q(3), 99ZB(3), 99ZH(3), 99ZM(1),

(3) Section 245, definition *prescribed provision*, paragraph (a), ‘158, 173P’—

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*omit, insert—*

158(1) or (2), 173K(2)

(4) Section 245, definition *prescribed provision*, paragraph (b)—  
*renumber* as paragraph (c).

(5) Section 245, definition *prescribed provision—*

*insert—*

(b) a provision of chapter 4, part 5, division 5;  
or

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

(1) Section 268(4), definition *deemed executive liability provision*, ‘either’—

*omit, insert—*

any

(2) Section 268(4), definition *deemed executive liability provision*, second and third dot points—

*omit, insert—*

- section 158(1) or (2)
- section 173K(2).

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

Chapter 16, heading—

*omit, insert—*

**Chapter 16 Other transitional provisions**

**33 Insertion of new ch 16, pt 1, hdg**

Chapter 16—

*insert—*

**Part 1 Transitional provisions  
for Environmental  
Protection and Other  
Legislation  
Amendment Act 2014**

**34 Insertion of new ch 16, pt 2**

After section 306—

*insert—*

**Part 2 Transitional provisions  
for Waste Reduction  
and Recycling  
Amendment Act 2017**

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

- (1) This section applies if, during the phase out period, a person asks a retailer for an alternative shopping bag to use to carry goods that the retailer sells from the retailer's premises.
- (2) The retailer must offer to give or sell the person an alternative shopping bag.  
Maximum penalty—50 penalty units.
- (3) In this section—

*phase out period* means the period that starts on the commencement and ends on 30 June 2018.

### **308 Transition period for displaying refund marking on beverage containers**

- (1) A manufacturer of a beverage product does not commit an offence against section 99P(2) if, before the manufacture transition day, the manufacturer sells a beverage product in a container that does not display the refund marking.
- (2) Also, a person does not commit an offence against a provision of chapter 4, part 3B if, before the collection transition day, the person does any of the following things in relation to a container that does not display the refund marking—
  - (a) claims a refund amount for the container at a container refund point, including a reverse vending machine;
  - (b) accepts the container and pays a refund amount for the container;
  - (c) allows a reverse vending machine to accept the container and dispense a refund amount for the container;
  - (d) claims a recovery amount for the container from the Organisation;
  - (e) makes a declaration in an approved form about the container displaying a refund marking.
- (3) In this section—

*collection transition day* means the day that is 6 months after the manufacture transition day.

*manufacture transition day* means the day, prescribed by regulation, that is at least 1 year after the day a regulation prescribing the requirements for the refund marking made under section 99K, definition *refund marking* commences.

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**35 Amendment of schedule (Dictionary)**

- (1) Schedule, definitions *amendment application*, *show cause notice* and *transfer application*—  
*omit.*
- (2) Schedule—  
*insert—*

*alternative shopping bag* see section 99B(3).

*amendment application*—

- (a) for chapter 4, part 5—see section 102P(1);  
or
- (b) for chapter 8, part 3—see section 173M(1).

*applicant*, for chapter 4, part 5, division 2, see section 102E.

*approval*, for chapter 8A, see section 173R(1).

*banned plastic shopping bag* see section 99B(1).

*beverage*, for chapter 4, part 3B, see section 99L.

*beverage product*, for chapter 4, part 3B, see section 99N(1).

*business associate*, of a corporation—

- (a) means—
- (i) a member or shareholder of the corporation; or
- (ii) a person who otherwise holds a beneficial interest in the corporation; or
- (iii) another person whom the chief executive believes 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

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(b) does not include an executive officer of the corporation.

**container**, for chapter 4, part 3B, see section 99M.

**container approval**, for a beverage product, for chapter 4, part 3B, see section 99ZN.

**container collection agreement** see section 99ZA(1).

**container recovery agreement** see section 99Q.

**container refund point** see section 99K.

**container refund scheme** means the container refund scheme established under chapter 4, part 3B.

**corresponding jurisdiction** means a jurisdiction in which a corresponding law is in force.

**corresponding law** means a law of another jurisdiction that—

- (a) establishes a corresponding scheme; and
- (b) is prescribed by regulation for this definition.

**corresponding scheme** means a scheme established under a law of another jurisdiction that, for that jurisdiction—

- (a) regulates the supply of beverages in containers; and
- (b) provides for a refund to be paid for the return of empty beverage containers to a particular person or place.

**criminal history**, of a person, means the person's criminal history within the meaning of the *Criminal Law (Rehabilitation of Offenders) Act 1986*.

**eligible company**, for chapter 4, part 5, see section

102B.

***eligible individual*** means an individual who—

- (a) is not insolvent under administration under the Corporations Act, section 9; and
- (b) is not disqualified from managing corporations, under the Corporations Act, part 2D.6; and
- (c) does not have a conviction, other than a spent conviction, for an offence against—
  - (i) this Act; or
  - (ii) a provision of a corresponding law; or
  - (iii) a provision of the Environmental Protection Act relating to a waste management ERA; and
- (d) does not have a conviction, other than a spent conviction, for an indictable offence against another law.

***environmental nuisance*** see the Environmental Protection Act, section 15.

***extraordinary circumstances exemption*** see section 99ZY(2).

***manufacturer***, of a beverage product, see section 99O.

***material recovery agreement*** see section 99ZF.

***material recovery facility***, for chapter 4, part 3B, see section 99ZE.

***operator***, of a container refund point that is a reverse vending machine, for chapter 4, part 3B, see section 99K.

***Organisation*** means the company appointed under chapter 4, part 5 as the Product Responsibility Organisation for the container refund scheme.

***proposed action***—

- (a) for chapter 4, part 5, division 4—see section 102X(1); or
- (b) for chapter 8A—see section 173ZB(1).

***recovery amount***, for a quantity of containers, for chapter 4, part 3B, see section 99ZG.

***recovery amount protocol***, for chapter 4, part 3B, see section 99ZK.

***refund amount***, for chapter 4, part 3B, see section 99K.

***refund declaration***, for chapter 4, part 3B, see section 99T(2).

***refund marking***, for chapter 4, part 3B, see section 99K.

***registered***, for a container, for chapter 4, part 3B, see section 99K.

***resource user***, for chapter 8, see section 155(3).

***retailer*** see section 99C.

***reverse vending machine***, for chapter 4, part 3B, see section 99K.

***scheme*** means the container refund scheme.

***sell*** includes supply free of charge for a commercial or promotional purpose.

***show cause notice***—

- (a) for chapter 4, part 5, division 4—see section 102X(3); or
- (b) for chapter 8A—see section 173ZB(2); or
- (c) for chapter 11—see section 246(2).

***show cause period***—

- (a) for chapter 4, part 5, division 4—see section 102X(4)(f); or



(b) for chapter 8A—see section 173ZB(3)(f).

*spent conviction* means a conviction—

(a) for which the rehabilitation period under the *Criminal Law (Rehabilitation of Offenders) Act 1986* has expired under that Act; and

(b) that is not revived under section 11 of that Act.

*type*, of a container, for chapter 4, part 3B, see section 99N(2).

(3) Schedule, definition *end of waste approval*, ‘159’—

*omit, insert—*

159(2)

(4) Schedule, definition *end of waste code*, ‘159’—

*omit, insert—*

159(1)

## Part 3                      Amendment of Planning Act 2016

### 36      Act amended

This part amends the *Planning Act 2016*.

### 37      Amendment of s 78 (Making change application)

Section 78(3)(bb), ‘under part 6, division 3’—

*omit, insert—*

for an application that was called in under a call in provision

[s 38]

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**38 Amendment of s 79 (Requirements for change applications)**

(1) Section 79(1)(b)(iii)—

*omit.*

(2) Section 79—

*insert—*

(1A) Also, a change application must be accompanied by the written consent of the owner of the premises the subject of the application to the extent—

(a) the applicant is not the owner; and

(b) the application is in relation to—

(i) a material change of use of premises or reconfiguring a lot; or

(ii) works on premises that are below high-water mark and outside a canal; and

(c) the premises are not excluded premises.

(3) Section 79(2)(a), ‘subsection (1)’—

*omit, insert—*

subsections (1) and (1A)

(4) Section 79(2)(b), ‘subsection (1)(b)(iii)’—

*omit, insert—*

subsection (1A)

**39 Amendment of s 83 (Notice of decision)**

Section 83(1)(f), ‘called in—the Minister that’—

*omit, insert—*

called in under a call in provision—the Minister who

---

**40 Amendment of s 86 (Extension applications)**

(1) Section 86(2)(b)—

*omit, insert—*

(b) accompanied by the required fee.

(2) Section 86—

*insert—*

(2A) Also, the extension application must be accompanied by the written consent of the owner of the premises the subject of the development approval to the extent—

(a) the applicant is not the owner; and

(b) the development approval is for—

(i) a material change of use of premises or reconfiguring a lot; or

(ii) works on premises that are below high-water mark and outside a canal; and

(c) the premises are not excluded premises.

(3) Section 86(3)(a), ‘subsection (2)’—

*omit, insert—*

subsections (2) and (2A)

(4) Section 86(3)(b), ‘subsection (2)(b)(ii)’—

*omit, insert—*

subsection (2A)

(5) Section 86(3)(d), ‘subsection (2)(b)(i)’—

*omit, insert—*

subsection (2)(b)

[s 41]

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## 41 Insertion of new ch 8, pt 1A

Chapter 8—

*insert—*

### **Part 1A Transitional and saving provisions for Waste Reduction and Recycling Amendment Act 2017**

#### **324 Definitions for part**

In this part—

*amending Act* means the *Waste Reduction and Recycling Amendment Act 2017*.

*existing change application* means a change application made before the commencement.

*former*, in relation to a provision, means the provision as in force immediately before the provision was amended or repealed under the amending Act.

#### **324A Responsible entity for particular existing change applications**

- (1) This section applies to an existing change application made to the Minister to change a development approval given for an application that was called in under—
  - (a) the old Act, chapter 6, part 11, division 2; or
  - (b) the repealed *Integrated Planning Act 1997*, chapter 3, part 6, division 2.
- (2) Despite former section 78(3), the Minister is taken to be, and is taken to always have been, the responsible entity for the change application.

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### **324B Requirement for owner's consent for particular existing change applications**

- (1) This section applies to an existing change application to which former section 79(1)(b)(iii) applied if, under section 79(1A), the application would not be required to be accompanied by the written consent of the owner of the premises the subject of the application.
- (2) The existing change application is not invalid merely because it did not comply with former section 79(1)(b)(iii).
- (3) A decision of the responsible entity for the existing change application to accept the application under former section 79(2) is not invalid merely because the application did not comply with former section 79(1)(b)(iii).
- (4) Subsection (5) applies if, on the commencement, the responsible entity for the existing change application had not decided to accept the application under former section 79(2).
- (5) Section 79(2), as in force on the commencement, applies for making a decision about accepting the existing change application.

### **324C Requirement for owner's consent for particular existing extension applications**

- (1) This section applies to an existing extension application to which former section 86(2)(b)(ii) applied if, under section 86(2A), the application would not be required to be accompanied by the written consent of the owner of the premises the subject of the development approval.
- (2) The existing extension application is not invalid merely because it did not comply with former section 86(2)(b)(ii).
- (3) A decision of the assessment manager for the

[s 41]

---

existing extension application to accept the application under former section 86(3) is not invalid merely because the application did not comply with former section 86(2)(b)(ii).

- (4) Subsection (5) applies if, on the commencement, the assessment manager for the existing extension application had not decided to accept the application under former section 86(3).
- (5) Section 86(3), as in force on the commencement, applies for making a decision about accepting the existing extension application.
- (6) In this section—

*existing extension application* means an extension application made before the commencement.

### **324D Existing appeals—excluded applications**

- (1) This section applies if—
  - (a) a person appealed to the P&E Court or a tribunal before the commencement; and
  - (b) the appeal is in relation to an excluded application and is about a matter mentioned in—
    - (i) former schedule 1, section 1, table 1, item 1 or 2; or
    - (ii) former schedule 1, section 1, table 2, item 2 or 3; and
  - (c) the appeal had not been decided before the commencement.
- (2) On and from the commencement, the appeal is of no further effect.

---

**42 Amendment of sch 1 (Appeals)**

- (1) Schedule 1, section 1, table 1, item 1, from ‘other than’ to ‘Minister’—

*omit, insert—*

other than an excluded application

- (2) Schedule 1, section 1, table 1, item 2, from ‘other than’ to ‘Minister’—

*omit, insert—*

other than an excluded application

- (3) Schedule 1, section 1, table 2, items 2 and 3, from ‘other than’ to ‘Minister’—

*omit, insert—*

other than an excluded application

**43 Amendment of sch 2 (Dictionary)**

Schedule 2—

*insert—*

***call in provision*** means—

- (a) chapter 3, part 6, division 3; or
- (b) the old Act, chapter 6, part 11, division 2; or
- (c) the repealed *Integrated Planning Act 1997*, chapter 3, part 6, division 2.

***excluded application*** means—

- (a) a change application, or development application, called in under a call in provision; or
- (b) a change application, or development application, decided by the P&E Court; or





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