



Australian Capital Territory

# Waste Minimisation Act 2001

No. 31 of 2001

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AUSTRALIAN CAPITAL TERRITORY

# Waste Minimisation Act 2001

No. 31 of 2001

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An Act relating to the management, regulation and reduction of waste, and for other purposes

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*[Notified in ACT Gazette S33: 21 June 2001]*

The Legislative Assembly for the Australian Capital Territory enacts as follows:

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## Part 1 Preliminary

### 1 Name of Act

This Act is the *Waste Minimisation Act 2001*.

### 2 Commencement

This Act commences on a day fixed by the Minister by notice in the Gazette.

*Note 1* The naming and commencement provisions automatically commence on the notification day (see *Legislation Act 2001*, s 75).

*Note 2* A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see *Legislation Act 2001*, s 77 (1)).

*Note 3* If a provision has not commenced within 6 months beginning on the notification day, it automatically commences on the first day after that period (see *Legislation Act 2001*, s 79).

### 3 Dictionary

The dictionary at the end of this Act is part of this Act.

*Note 1* The dictionary at the end of this Act defines certain words and expressions used in this Act, and includes references (*signpost definitions*) to other words and expressions defined elsewhere in this Act.

For example, the signpost definition ‘*garbage*—see section 21 (Definitions for pt 3).’ means that the expression ‘garbage’ is defined in that section.

*Note 2* A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see *Interpretation Act 1967*, s 11F and s 11G).

#### **4 Notes**

A note included in this Act is explanatory and is not part of this Act.

*Note* See *Interpretation Act 1967*, s 12 (1), (4) and (5) for the legal status of notes.

#### **5 Main objects of Act**

The main objects of this Act are as follows:

- (a) to establish a waste management hierarchy of the following order:
  - (i) avoidance;
  - (ii) reuse;
  - (iii) recycling and reprocessing;
  - (iv) disposal;
- (b) to ensure that government, industry and community representatives are involved in the development of Territory-wide waste policy;
- (c) to minimise the consumption of natural resources and the final disposal of waste by encouraging the avoidance of waste and the reuse and recycling of waste;
- (d) to ensure that industry shares with the community the responsibility for minimising and managing waste;
- (e) to promote and ensure the efficient resourcing of waste service planning and delivery;
- (f) to achieve integrated waste planning and services;
- (g) to promote and ensure environmentally responsible transporting, reprocessing and handling of waste.

## **6 Principles of ecologically sustainable development**

- (1) The objects of this Act are to be achieved in accordance with the principles of ecologically sustainable development.
- (2) For subsection (1), ecologically sustainable development is taken to require the effective integration of economic and environmental considerations in decision-making processes and to be achievable through implementation of the following principles:
  - (a) the precautionary principle, namely, that, if there is a threat of serious or irreversible environmental damage, a lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation;
  - (b) the inter-generational equity principle, namely, that the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations;
  - (c) conservation of biological diversity and ecological integrity;
  - (d) improved valuation and pricing of environmental resources.

## **Part 2**                      **Industry waste reduction**

### **Division 2.1**              **Industry waste reduction plans**

#### **7**      **Objects of pt 2**

The objects of this part are as follows:

- (a) to provide a framework for the preparation, implementation, monitoring and enforcement of industry waste reduction plans that are designed to achieve 1 or more of the following:
  - (i) minimising the amount of waste being created in the ACT;
  - (ii) minimising the consumption of natural resources;
  - (iii) ensuring greater industry responsibility for waste reduction;
  - (iv) encouraging an efficient and cost-effective approach to industry waste reduction;
  - (v) implementing national environment protection measures;
- (b) to encourage industry members—
  - (i) to participate, and cooperate with EMA, in the negotiation and preparation of an industry waste reduction plan for the industry; and
  - (ii) if such a plan is in force in relation to the industry—to comply with the plan;
- (c) to provide sanctions for unsatisfactory performance, or unwillingness to cooperate, in industry waste reduction plans;
- (d) to ensure that industry waste minimisation and management initiatives reflect best practice waste policy and waste minimisation and management objectives.

## **8 Scope of IWRP**

- (1) An industry waste reduction plan (or IWRP) must specify the industry, or the industry members, or both, to which the plan applies.
- (2) An IWRP may do any of the following:
  - (a) set waste reduction targets for the industry, having regard to national waste reduction targets;
  - (b) identify the opportunities and action to be taken in the areas of product design, production and packaging for reducing waste;
  - (c) identify the action to be taken to implement appropriate methods for reducing, reusing and recycling waste, for litter management and for the safe disposal of waste;
  - (d) identify how consumers are to be told about the impact on the environment of waste-generating products and packaging;
  - (e) specify the time frame for implementing proposed waste reduction targets and strategies;
  - (f) establish a public monitoring and reporting program;
  - (g) include details of the performance indicators to be used to monitor whether waste reduction targets set out in the IWRP are being reached;
  - (h) include a requirement for industry members to provide EMA with information, and to report to EMA, on the implementation of the IWRP;
  - (i) include any other matters prescribed under the regulations.

## **9 Criteria for deciding initiation of IWRP**

- (1) The Minister may decide that an IWRP is to be prepared in accordance with this Act for a particular industry.
- (2) An industry can be nominated for an IWRP by—

- (a) a member of the industry or a person on behalf of industry members; or
  - (b) EMA.
- (3) The Minister is to decide whether or not an IWRP is to be prepared for the nominated industry, taking into account the following matters:
- (a) the impact on the environment of the waste created by the activities of industry members;
  - (b) the environmentally sensitive nature, or the amount, of the natural resources consumed by industry members in the production or manufacturing processes of the industry;
  - (a) any other matter the Minister considers appropriate.
- (4) On the commencement of this section, the Minister is taken to have decided that an IWRP is to be prepared and implemented for the packaging materials industry.
- (5) Subsection (4) and this subsection expire 1 year after this section commences.

## **10 EMA to give public notice of proposed IWRP**

- (1) As soon as practicable after the Minister decides that an IWRP is to be prepared for an industry, EMA is to advertise the decision by publishing a notice in a daily newspaper published and circulating in the ACT, and in any other publication EMA considers appropriate.
- (2) The advertisement must invite written submissions to EMA on any relevant matter about the proposed IWRP and state a closing date (at least 1 month after the date when the advertisement is last published) for the making of submissions.

**11 EMA may require industry members to provide background information**

- (1) EMA may, by written notice given to a person whom EMA believes on reasonable grounds is an industry member to whom a proposed IWRP would apply, require the person to give EMA stated information or a document that EMA reasonably needs to assist in the preparation of the IWRP.
- (2) Without limiting subsection (1), the notice may require that the following information be provided in the way stated in the notice:
  - (a) the quantities and classes of items that are manufactured, imported or sold by the person in the ACT;
  - (b) the quantities and classes of wastes that are likely to be created because of the person's activities;
  - (c) information about what the person has done, or is doing, in relation to waste management and reduction of the consumption of natural resources.
- (3) A notice given to a person under this section must specify the date (at least 1 month after the date on which the notice was given to the person) by which the information or document must be given to EMA.
- (4) Any person must not, without reasonable excuse, contravene a requirement of a notice under this section.

Maximum penalty: 250 penalty units.
- (5) A person who contravenes subsection (4) commits a separate offence for each day (after the first day) during any part of which the contravention continues.
- (6) An offence against subsection (5) is punishable, on conviction, by a fine not exceeding 50 penalty units.

## **12 Report on how IWRP is to be prepared**

- (1) EMA must prepare a report to the Minister on the scope of the proposed IWRP.
- (2) The report must include any relevant information obtained by EMA (including that received by way of public submissions).
- (3) The report must also recommend to the Minister how the proposed IWRP should be prepared, including—
  - (a) a recommendation about the people and organisations (if any) that EMA considers should be involved in the negotiation of the proposed IWRP; or
  - (b) a recommendation that the proposed IWRP be prepared in accordance with section 14 (Preparation of IWRP by EMA without negotiation).

## **13 Preparation of IWRP—process of negotiation**

- (1) The Minister may—
  - (a) nominate the people and organisations (if any) that are to be involved in the negotiation of the proposed IWRP with EMA; and
  - (b) decide the time within which the proposed IWRP is to be finalised.
- (2) If the Minister decides that the proposed IWRP is to be negotiated between EMA and any nominated people or organisations, a draft IWRP must be prepared in accordance with the negotiation process, and be submitted to EMA within the time decided by EMA after consultation with the nominees.
- (3) After the draft IWRP is referred to the Minister, the Minister may—
  - (a) approve the draft IWRP; or
  - (b) reject the draft IWRP; or
  - (c) require changes to be made to the draft IWRP.

## **14 Preparation of IWRP by EMA without negotiation**

- (1) Despite section 13, the Minister may decide that the proposed IWRP is to be prepared by EMA without negotiation with any nominated industry members.
- (2) The Minister's decision may be based on, but is not limited to, an assessment of the following matters:
  - (a) the past performance of the industry in collecting, recycling or reducing waste created by the activities of industry members;
  - (b) whether industry members have participated, sought to participate, or are likely to participate, with EMA in the preparation of an IWRP for the industry;
  - (c) the diversity, complexity or competitive nature of the industry.
- (3) The Minister may also decide that the proposed IWRP is to be prepared by EMA if—
  - (a) the industry has failed to participate, or participate fully, in preparing a draft IWRP in accordance with section 13; or
  - (b) the Minister is of the opinion that any draft IWRP prepared in accordance with section 13 is inadequate.
- (4) If the Minister decides that the proposed IWRP is to be prepared by EMA without negotiation with industry members, EMA is to decide the contents of the IWRP.
- (5) Without limiting section 8 (Scope of IWRP), the contents of the IWRP may include waste reduction targets decided by EMA (and based on the factors that EMA considers appropriate).
- (6) After the draft IWRP is referred to the Minister, the Minister may, in writing—
  - (a) approve the draft IWRP; or
  - (b) reject the draft IWRP; or
  - (c) require changes to be made to the draft IWRP.

## **15 Preparation of IWRP to implement national measure**

- (1) The Minister may, in writing, direct EMA to prepare an IWRP for an industry to implement a national environment protection measure.
- (2) A draft IWRP prepared under this section may be prepared without complying with the following sections:
  - section 10 (EMA to give public notice of proposed IWRP)
  - section 12 (Report on how IWRP is to be prepared)
  - section 13 (Preparation of IWRP—process of negotiation).
- (3) Once the draft IWRP is prepared, EMA is to submit it to the Minister for approval.
- (4) After the draft IWRP is referred to the Minister, the Minister may, in writing—
  - (a) approve the draft IWRP; or
  - (b) require changes to be made to the draft IWRP.

## **16 IWRP may apply other instruments etc**

An IWRP may apply, adopt or incorporate any instrument, or any provision of an instrument, as in force from time to time.

*Note 1* A statutory instrument such as an IWRP may also apply, adopt or incorporate (with or without change) a law or instrument (or a provision of a law or instrument) as in force at a particular time (see *Legislation Act 2001*, s 47 (1)).

*Note 2* If a statutory instrument applies, adopts or incorporates a law or instrument (or a provision of a law or instrument), the law, instrument or provision may be taken to be a notifiable instrument that must be notified under the *Legislation Act 2001* (see s 47 (2)-(6)).

## **17 Notice of approval of IWRP**

- (1) The Minister may, in writing, approve an IWRP a draft of which has been given to the Minister under this division.
- (2) An approval under subsection (1) is a notifiable instrument.

*Note* A notifiable instrument must be notified under the *Legislation Act 2001*.

- (3) If the Minister approves an IWRP under subsection (1), EMA must publish notice of the approval in a daily newspaper circulating in the ACT, and in any other publication EMA considers appropriate.
- (4) The notice under subsection (3) must include a statement that copies of the IWRP are available from EMA.
- (5) EMA must also—
  - (a) give a copy of the IWRP to any industry member or other person who made a submission, or who provided information under section 11 (EMA may require industry members to give background information), or who was otherwise involved in the negotiation of the plan, under this Part; and
  - (b) make copies of the IWRP available for inspection or purchase by anyone.

## **18 Contravention of IWRP**

- (1) If EMA believes on reasonable grounds that an industry member has contravened an IWRP that applies to the member, EMA may give the industry member a copy of the IWRP and a written notice stating the contravention.
- (2) For this section, the contravention of the IWRP includes the failure to meet any of the requirements stated in the IWRP.
- (3) The notice under subsection (1) must—
  - (a) require the member to remedy the contravention within a stated period of at least 1 month after the date the notice is given to the member; and
  - (b) be in accordance with the requirements of the code of practice in force under the *Administrative Appeals Tribunal Act 1989*, section 25B (1).
- (4) However, EMA may withdraw the notice within the stated period.

- (5) A person must not, without reasonable excuse, contravene a requirement of a notice given to the person under this section.

Maximum penalty: 250 penalty units.

- (6) A person who contravenes subsection (5) commits a separate offence for each day (after the first day) during any part of which the contravention continues.
- (7) An offence against subsection (6) is punishable, on conviction, by a fine not exceeding 50 penalty units.

## **19 Annual reports by EMA**

EMA must include in each annual report under the *Annual Reports (Government Agencies) Act 1995* particulars of each contravention during the year of a requirement of a notice under section 18.

## **Division 2.2 Regulations relating to industry waste reduction**

### **20 Regulations for pt 2**

- (1) For this part, the regulations may make provision in relation to the following matters:
- (a) restricting the sale of prescribed products;
  - (b) requiring the implementation and operation of prescribed waste management schemes, including recycling, reuse, refundable deposit or take back and utilisation schemes in relation to products that result in the creation of waste.
- (2) Without limiting subsection (1) (b), the regulations may make provision in relation to the following matters about a prescribed waste management scheme:
- (a) the percentage of products to be recovered under the scheme that must be used in reuse or reprocessing;

- (b) requiring the provision of a performance bond to ensure compliance with the scheme;
- (c) the forfeiture of a performance bond;
- (d) the documentation or particulars to be given to EMA in relation to compliance with the scheme.

## Part 3 Waste disposal

### 21 Definitions for pt 3

In this part:

*garbage* includes all waste from premises other than sewage, garden waste and prescribed waste.

*garbage service* means the collection and disposal of garbage.

### 22 Supply of garbage service

The Minister may make provision for the supply of a garbage service.

### 23 Ownership of garbage

When garbage is collected in the course of a garbage service provided under section 22, it becomes the property of the Territory.

### 24 Waste disposal facilities

The Minister may make provision for the disposal of waste, including facilities for disposal by way of reuse, recycling or landfill.

### 25 Unlawful use of land as waste disposal facility

- (1) The owner or occupier of premises must not use the premises, or allow the premises to be used, as a waste facility.

Maximum penalty: 100 penalty units.

- (2) Subsection (1) does not apply to any declared use of the premises under the regulations.

**26 Regulations for pt 3**

- (1) The regulations may make provision in relation to the storage, collection or disposal of waste.
- (2) Without limiting subsection (1), the regulations may make provision in relation to the following matters:
  - (a) the provision of garbage services, including the conditions on which garbage services may be provided, and the liability of persons in relation to the services;
  - (b) the storage and keeping of garbage on premises;
  - (c) bins or other containers for holding garbage on premises;
  - (d) the collection or removal of garbage from premises;
  - (e) the keeping or removal of waste, other than garbage, on premises;
  - (f) the entry of persons on land for this part.

## **Part 4**                      **Enforcement**

### **Division 4.1**              **General**

#### **27**      **Definitions for pt 4**

In this part:

*connected*—a thing is *connected* with a particular offence if—

- (a) the offence has been committed in relation to it; or
- (b) it will provide evidence of the commission of the offence; or
- (c) it was used, is being used, or is intended to be used, to commit the offence.

*occupier*, of premises, includes—

- (a) a person believed on reasonable grounds to be an occupier of the premises; and
- (b) a person apparently in charge of the premises.

*offence* includes an offence that there are reasonable grounds for believing has been, is being, or will be committed.

### **Division 4.2**              **Authorised persons**

#### **28**      **Appointment of authorised persons**

- (1) The chief executive may, in writing, appoint a person to be an authorised person for this Act or a provision of this Act.
- (2) A person must not be appointed as an authorised person unless—
  - (a) the person is an Australian citizen or a permanent resident of Australia; and
  - (b) the chief executive has certified in writing that, after appropriate inquiry, the chief executive is satisfied on

reasonable grounds that the person is suitable for appointment, having regard in particular to—

- (i) whether the person has any criminal convictions; and
- (ii) the person's employment record; and
- (c) the chief executive has certified in writing that the person has satisfactorily completed adequate training to exercise the powers of an authorised person proposed to be given to the person.

## **29 Identity cards**

- (1) The chief executive must issue an authorised person with an identity card that states the person's name and appointment as an authorised person, and shows—
  - (a) a recent photograph of the person; and
  - (b) the date of issue of the card; and
  - (c) the date of expiry for the card; and
  - (d) anything else prescribed under the regulations.
- (2) Within 7 days after ceasing to be an authorised person, a person must return the identity card to the chief executive.

Maximum penalty (subsection (2)): 1 penalty unit.

## **Division 4.3 Powers of authorised persons**

### **30 Power to enter premises**

- (1) For this Act, an authorised person may—
  - (a) enter any premises at any time with the occupier's consent; or
  - (b) enter premises in accordance with a warrant under this part.
- (2) An authorised person may, without the occupier's consent, enter the land around premises to ask for consent to enter the premises.

### **31 Production of identity card**

An authorised person must not remain on premises entered under this part if, when asked by the occupier, the authorised person does not produce his or her identity card.

### **32 Consent to entry**

- (1) When seeking the consent of an occupier to enter premises under this part, an authorised person must—
  - (a) produce his or her identity card; and
  - (b) tell the occupier—
    - (i) the purpose of the entry; and
    - (ii) that anything found and seized under this part may be used in evidence in court; and
    - (iii) that consent may be refused.
- (2) If the occupier consents, the authorised person must ask the occupier to sign a written acknowledgment—
  - (a) that the occupier was told—
    - (i) the purpose of the entry; and
    - (ii) that anything found and seized under this part may be used in evidence in court; and
    - (iii) that consent may be refused; and
  - (b) that the occupier consented to the entry; and
  - (c) stating the time, and date, when consent was given.
- (3) If the occupier signs an acknowledgment of consent, the authorised person must immediately give a copy to the occupier.
- (4) A court must assume that an occupier of premises did not consent to an entry to the premises by an authorised person under this part if—

- (a) the question whether the occupier consented to the entry arises in a proceeding in the court; and
- (b) an acknowledgment under this section is not produced in evidence for the entry; and
- (c) it is not proved that the occupier consented to the entry.

### **33 Warrants**

- (1) An authorised person may apply to a magistrate for a warrant to enter premises.
- (2) The application must be sworn and state the grounds on which the warrant is sought.
- (3) The magistrate may refuse to consider the application until the authorised person gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.
- (4) The magistrate may issue a warrant only if satisfied there are reasonable grounds for suspecting—
  - (a) there is a particular thing or activity (the *evidence*) connected with an offence against this Act; and
  - (b) the evidence is at the premises, or may be at the premises, within the next 14 days.
- (5) The warrant must state—
  - (a) that an authorised person may, with necessary help and force, enter the premises and exercise the authorised person’s powers under this part; and
  - (b) the offence for which the warrant is sought; and
  - (c) the evidence that may be seized under the warrant; and
  - (d) the hours when the premises may be entered; and

- (e) the date, within 14 days after the warrant's issue, the warrant ends.

### **34 Warrants—application made other than in person**

- (1) An authorised person may apply for a warrant by phone, fax, radio or other form of communication if the authorised person considers it necessary because of—
  - (a) urgent circumstances; or
  - (b) other special circumstances.
- (2) Before applying for the warrant, the authorised person must prepare an application stating the grounds on which the warrant is sought.
- (3) The authorised person may apply for the warrant before the application is sworn.
- (4) After issuing the warrant, the magistrate must immediately fax a copy to the authorised person if it is practicable to do so.
- (5) If it is not practicable to fax a copy to the authorised person—
  - (a) the magistrate must—
    - (i) tell the authorised person what the terms of the warrant are; and
    - (ii) tell the authorised person the date and time the warrant was issued; and
  - (b) the authorised person must complete a form of warrant (*warrant form*) and write on it—
    - (i) the magistrate's name; and
    - (ii) the date and time the magistrate issued the warrant; and
    - (iii) the warrant's terms.
- (6) The faxed copy of the warrant, or the warrant form properly completed by the authorised person, authorises the entry and the exercise of the authorised person's powers under this part.

- (7) The authorised person must, at the first reasonable opportunity, send to the magistrate—
  - (a) the sworn application; and
  - (b) if the authorised person completed a warrant form—the completed warrant form.
- (8) On receiving the documents, the magistrate must attach them to the warrant.
- (9) A court must assume that a power exercised by an authorised person was not authorised by a warrant under this section if—
  - (a) the question arises in a proceeding before the court whether the exercise of power was authorised by a warrant; and
  - (b) the warrant is not produced in evidence; and
  - (c) it is not proved that the exercise of power was authorised by a warrant under this section.

### **35 General powers on entry to premises**

- (1) An authorised person who enters premises under this part may, for this Act, do any of the following in relation to the premises or anything on the premises:
  - (a) inspect or examine;
  - (b) take measurements or conduct tests;
  - (c) take samples of or from anything on the premises;
  - (d) take photographs, films, or audio, video or other recordings;
  - (e) subject to section 37 (Power to seize evidence), seize a thing;
  - (f) require the occupier, or a person on the premises, to give the authorised person reasonable help to exercise a power under this part.

- (2) A person must not, without reasonable excuse, contravene a requirement under paragraph (1) (f).

Maximum penalty (subsection (2)): 50 penalty units.

### **36 Power to require name and address**

- (1) An authorised person may require a person to state the person's name and address if the authorised person—
- (a) finds a person committing an offence against this Act; or
  - (b) has reasonable grounds for believing that a person has just committed an offence against this Act.

- (2) In exercising a power under subsection (1), an authorised person must—

- (a) tell the person the reasons for the requirement; and
- (b) as soon as practicable, record those reasons.

- (3) A person must not, without reasonable excuse, contravene a requirement under subsection (1).

Maximum penalty: 5 penalty units.

- (4) However, a person is not required to comply with a requirement under subsection (1) if, when asked by the person, the authorised person does not produce his or her identity card.

### **37 Power to seize evidence**

- (1) An authorised person who enters premises under a warrant under this part may seize the evidence for which the warrant was issued.
- (2) An authorised person who enters premises under this part with the occupier's consent may seize a thing on the premises if—
- (a) the authorised person is satisfied on reasonable grounds that the thing is connected with an offence against this Act; and

- (b) seizure of the thing is consistent with the purpose of the entry as told to the occupier when seeking the occupier's consent.
- (3) An authorised person may also seize anything on premises entered under this part if satisfied on reasonable grounds that—
  - (a) the thing is connected with an offence against this Act; and
  - (b) the seizure is necessary to prevent the thing from being—
    - (i) concealed, lost or destroyed; or
    - (ii) used to commit, continue or repeat the offence.
- (4) Having seized a thing, an authorised person may—
  - (a) remove the thing from the premises where it was seized (the *place of seizure*) to another place; or
  - (b) leave the thing at the place of seizure but restrict access to it.
- (5) A person must not, without the chief executive's approval, interfere with a thing to which access has been restricted under subsection (4).

Maximum penalty (subsection (5)): 50 penalty units, imprisonment for 6 months or both.

### **38 Receipt for things seized**

- (1) As soon as practicable after a thing is seized by an authorised person under this part, the authorised person must give a receipt for it to the person from whom it was seized.
- (2) If, for any reason, it is not practicable to comply with subsection (1), the authorised person must leave the receipt, secured conspicuously at the place of seizure.

### **39 Access to things seized**

A person who would, apart from the seizure, be entitled to a thing seized under this part may—

- (a) inspect it; and
- (b) if it is a document—take extracts from it or make copies of it.

#### **40 Return of things seized**

- (1) A thing seized under this part must be returned to its owner, or reasonable compensation must be paid to the owner by the Territory for the loss of the thing, if—
  - (a) a prosecution for an offence relating to the thing is not begun within 90 days after the day of the seizure; or
  - (b) the court does not find the offence proved in a prosecution for an offence relating to the thing.
- (2) A thing seized under this part is forfeited to the Territory if a court—
  - (a) finds an offence relating to the thing to be proved; and
  - (b) orders the forfeiture.
- (3) If subsection (2) (a) applies, but a court does not order the forfeiture of the thing seized, the chief executive must return the thing to its owner or the Territory must pay reasonable compensation to the owner for the loss of the thing.

### **Division 4.4 Miscellaneous**

#### **41 Hindering or obstructing authorised person**

A person must not, without reasonable excuse, hinder or obstruct an authorised person in the exercise of a function under this Act.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

#### **42 Damage etc to be minimised**

- (1) In the exercise, or purported exercise, of a function under this part, an authorised person must take all reasonable steps to ensure that the

authorised person, and any person assisting the authorised person, causes as little inconvenience, detriment and damage as is practicable.

- (2) If an authorised person, or a person assisting an authorised person, damages anything in the exercise or purported exercise of a function under this part, the authorised person must give written notice of the particulars of the damage to the person whom the authorised person believes on reasonable grounds is the owner of the thing.
- (3) If the damage happens on premises entered under this part in the absence of the occupier, the notice may be given by securing it in a conspicuous place on the premises.

### **43 Compensation**

- (1) A person may claim reasonable compensation from the Territory if the person suffers loss or expense because of the exercise, or purported exercise, of a function under this part by an authorised person or a person assisting an authorised person.
- (2) Compensation may be claimed and ordered in a proceeding for—
  - (a) compensation brought in a court of competent jurisdiction; or
  - (b) an offence against this Act brought against the person making the claim for compensation.
- (3) A court may order the payment of reasonable compensation for the loss or expense only if satisfied it is just to make the order in the circumstances of the particular case.
- (4) The regulations may prescribe matters that may, must or must not be taken into account by the court in considering whether it is just to make the order.

## Part 5                      Miscellaneous

### 44      Review of decisions

Application may be made to the administrative appeals tribunal for review of a decision by EMA under section 18 (Contravention of IWRP) to require a person to remedy a contravention of an IWRP.

### 45      Determination of fees

- (1) The Minister may, in writing, determine fees for this Act.

*Note*      The *Legislation Act 2001*, ss 56 and 57 deal with fees.

- (2) A determination under subsection (1) is a disallowable instrument.

*Note*      A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

- (3) In this section:

*fee* includes—

- (a) a fee that is a tax; and
- (b) a charge or other amount (whether or not it is a tax).

### 46      Approved forms

- (1) The Minister may, in writing, approve forms for this Act.
- (2) If the Minister approves a form for a particular purpose, the approved form must be used for that purpose.
- (3) An approved form is a notifiable instrument.

*Note*      A notifiable instrument must be notified under the *Legislation Act 2001*.

### 47      Delegation of EMA's functions

EMA may, in writing, delegate EMA's functions under this Act to—

- (a) a public employee; or
- (b) an authorised person; or
- (c) a person prescribed under the regulations.

#### **48 Selfincrimination etc**

- (1) A person is not excused from providing information or producing a document when required to do so under this Act on the ground that the information or document may tend to incriminate the person.
- (2) However—
  - (a) the provision of the information or document; or
  - (b) any other information, document or thing obtained as a direct or indirect consequence of providing the information or document;is not admissible in evidence against the person in a criminal proceeding.
- (3) Subsection (2) does not apply to a proceeding for—
  - (a) an offence against section 50 (Providing false or misleading information) or section 51 (Providing false or misleading documents); or
  - (b) any other offence in relation to the falsity of the information or document; or
  - (c) an offence against the *Crimes Act 1900*, part 8 (Aiding and abetting, accessories, attempts, incitement and conspiracy) that relates to an offence mentioned in paragraph (a) or (b).

#### **49 Legal professional privilege**

In response to a requirement under this Act, a person does not have to—

- (a) make available information or a document; or

(b) answer a question;

if the person is entitled to claim, and does claim, legal professional privilege in relation to the requirement.

## **50 Providing false or misleading information**

A person must not, in purported compliance with a requirement under this Act, knowingly give information that is false or misleading in a material particular.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

## **51 Providing false or misleading documents**

A person must not, in purported compliance with a requirement under this Act, produce a document (or a copy of a document) that the person knows is false or misleading in a material particular.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

## **52 Acts and omissions of representatives**

(1) In this section:

*representative* means—

- (a) for a corporation—an executive officer, employee or agent of the corporation; or
- (b) for an individual—an employee or agent of the individual.

*state of mind*, of a person, includes—

- (a) the person's knowledge, intention, opinion, belief or purpose; and
- (b) the person's reasons for the intention, opinion, belief or purpose.

- (2) This section applies to a prosecution for any offence against this Act.
- (3) If it is relevant to prove a person's state of mind about an act or omission, it is enough to show—
  - (a) the act was done or omission made by a representative of the person within the scope of the representative's actual or apparent authority; and
  - (b) the representative had the state of mind.
- (4) An act done or omitted to be done on behalf of a person by a representative of the person within the scope of the representative's actual or apparent authority is taken to have been done or omitted to be done also by the person, unless the person proves the person could not, by the exercise of reasonable diligence, have prevented the act or omission.
- (5) An individual who is convicted of an offence cannot be punished by imprisonment for the offence if the individual would not have been convicted of the offence without subsection (3) or (4).

### **53 Criminal liability of officers of corporation**

- (1) If a corporation commits an offence against this Act, an executive officer of the corporation—
  - (a) commits the offence; and
  - (b) is liable, on conviction, to a penalty not exceeding the maximum penalty that may be imposed for the commission of the offence by an individual.
- (2) It is a defence to a prosecution for an offence against subsection (1) that—
  - (a) the defendant exercised due diligence to prevent the corporation from doing the act or making the omission alleged to constitute the offence or an element of the offence committed by the corporation; or

- (b) an officer or employee of the corporation occupying the defendant's position could not reasonably have been expected to know of the contravention; or
  - (c) the corporation would not have been found guilty of the offence because of its being able to establish a defence available to it under this Act.
- (3) An executive officer may, under subsection (1), be prosecuted for and convicted of an offence whether or not the corporation has been prosecuted for or convicted of the offence.

#### **54 Regulation-making power**

- (1) The Executive may make regulations for this Act.

*Note* Regulations must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

- (2) The regulations may prescribe offences for contraventions of the regulations and prescribe maximum penalties of not more than 10 penalty units for offences against the regulations.

#### **55 Transitional—determination of fees**

- (1) This section applies to a determination under section 45 (Determination of fees) made before the commencement of the *Legislation Act 2001*, part 6.3 (Making of certain statutory instruments about fees).
- (2) The *Legislation Act 2001*, part 6.3 applies to the determination as if it were in force when the determination was made.
- (3) This section expires on the commencement of the *Legislation Act 2001*, part 6.3.

#### **56 Transitional—notice of approval of IWRP**

- (1) This section applies to an approval under section 17 (Notice of approval of IWRP) given before the commencement of the

*Legislation Act 2001*, chapter 8 (Commencement and exercise of powers before commencement).

- (2) The *Legislation Act 2001*, chapter 8 applies to the approval as if it were in force when the approval was given.
- (3) This section expires on the commencement of the *Legislation Act 2001*, chapter 8.

## Dictionary

(see s 3)

**authorised person** means a person who is appointed as an authorised person under section 28 (Appointment of authorised persons).`

**connected** with an offence, for part 4 (Enforcement)—see section 27 (Definitions for pt 4).

**consumer packaging** means packaging products made of any material, or combination of materials, for the containment, protection, marketing or handling of retail consumer products.

**covenant** means the National Packaging Covenant, including all annexes and schedules, approved by a joint meeting of the Australian and New Zealand Environment and Conservation Council and the National Environment Protection Council dated 2 July 1999.

**EMA** means the Environment Management Authority.

**executive officer**, of a corporation, means a person, by whatever name called and whether or not the person is a director of the corporation, who is concerned with, or takes part in, the corporation's management.

**garbage**, for part 3 (Waste disposal)—see section 21 (Definitions for pt 3).

**garbage services**, for part 3 (Waste disposal)—see section 21 (Definitions for pt 3).

**industry** means any manufacturing, industrial, commercial, wholesale or retail activity or process that can result in the generation, recycling, treatment, transport, storage or disposal of waste.

**industry member**, in relation to an industry, means a person—

- (a) who creates waste, or disposes of waste, in relation to an activity carried on by the person in the industry; or
- (b) engaged in the industry who manufactures, imports or sells a product or item that creates waste or results in the creation of waste; or
- (c) engaged in the collection, transportation, reprocessing, recycling or refilling of a product or item that creates waste or results in the creation of waste; or
- (d) representing the interests of the industry (including an association whether or not incorporated).

***industry waste reduction plan*** (or ***IWRP***) means an industry waste reduction plan in force under part 2 (Industry waste reduction).

***national environment protection measure*** means a measure in force under the *National Environment Protection Council Act 1994*, section 13.

***occupier***, for part 4 (Enforcement)—see section 27 (Definitions for pt 4).

***offence***, for part 4 (Enforcement)—see section 27 (Definitions for pt 4).

***premises*** includes a building of any description, or any part of a building, and any land whether built on or not.

***recycle***, in relation to a product, means to recover the product and use it as a raw material to produce another product.

***reuse***, in relation to a product, means to use the product for the same or similar purpose as its original use, without subjecting the product to a manufacturing process.

***waste*** includes the following:

- (a) any substance (whether solid, liquid or gaseous) that is discharged, emitted or deposited in the environment in such

volume, constituency or manner as to cause an alteration in the environment;

- (b) any discarded, rejected, unwanted, surplus or abandoned substance, whether or not intended for sale, recycling, reprocessing, recovery or purification by a separate operation from that which produced it;
- (c) any other substance declared under the regulations to be waste.

**waste facility** means premises used for the storage, treatment, reprocessing, sorting or disposal of waste, and includes a landfill.

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## Endnote

### Penalty units

The *Interpretation Act 1967*, s 33AA deals with the meaning of offence penalties that are expressed in penalty units.

*[Presentation speech made in Assembly on 3 May 2001]*

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