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**THE LEGISLATIVE ASSEMBLY FOR
THE AUSTRALIAN CAPITAL TERRITORY**

WASTE MANAGEMENT AND RESOURCE RECOVERY BILL 2016

EXPLANATORY STATEMENT

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WASTE MANAGEMENT AND RESOURCE RECOVERY BILL 2016

Introduction

This explanatory statement relates to the Waste Management and Resource Recovery Bill 2016 (the Bill) as presented to the Legislative Assembly. It has been prepared to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the ACT Legislative Assembly.

This explanatory statement must be read in conjunction with the Bill. It is not, and is not intended to be, a comprehensive description of the Bill. What is written about a provision is not to be taken as an authoritative statement of the meaning of a provision, this being a responsibility of the Courts.

Overview of the Bill

The purpose of the Bill is to promote and reward responsible practices in waste management and resource recovery. The Bill has been developed following extensive industry and community consultation.

The Bill repeals and replaces the *Waste Minimisation Act 2001*. The objects in the Bill more closely align with the Government's waste management policy objectives, and there is a clearer relationship with the objects of other related legislation, particularly the *Environment Protection Act 1997*.

The regulatory framework established by the Bill directly supports the achievement of the resource recovery objectives in the *ACT Waste Management Strategy 2011-2025*. The Strategy is the principal Government policy statement outlining resource recovery aspirations and future directions.

The new regulatory framework established by the Bill is intended to facilitate and reward good practice in waste collection, transportation, recovery and reuse, and to discourage the disposal of waste into landfill. With this aim, the Bill includes:

- a) a clear expression of functions;
- b) a clear strategic policy and operational framework, so that the responsibilities of agencies in relation to the environment protection and operational aspects of waste management are easily understood;
- c) a robust, simple and inexpensive licensing system for waste facilities, and a registration system for waste transporters, that sets clear pathways for low cost regulatory arrangements for people who do the right thing;
- d) offences and penalties that reflect the need to manage and guide behaviour in waste management by facilitating and rewarding legitimate operators, while discouraging inappropriate practices;
- e) clearly articulated regulatory, investigation and enforcement powers including:

- i) data collection to inform policy and manage waste flows;
 - ii) powers to issue directions;
 - iii) entry, search and seizure powers; and
 - iv) penalties for offences; and
- f) a flexible charging structure that promotes waste avoidance and resource recovery over landfill.

The Bill also makes a consequential amendment to the *Clinical Waste Act 1990*.

Human rights implications—presumption of innocence

The Bill includes a number of provisions that contain offences of strict liability.

Offences of strict liability engage the right to be presumed innocent under section 22(1) of the *Human Rights Act 2004*, as they may reverse the onus of proof from the prosecution onto the defendant. While strict liability offences engage the presumption of innocence, they are not inherently incompatible with human rights.

Section 28(1) of the Human Rights Act provides that human rights are subject only to reasonable limits set by laws that can be demonstrably justified in a free and democratic society. Section 28(2) of the Act then provides that, in deciding whether a limit on a human right is reasonable, all relevant factors must be considered. Section 28(2) further provides five factors that must be considered when determining whether a limit on human rights is considered justified.

The limit that this Bill places on the right to the presumption of innocence in section 22(1) of the Human Rights Act is considered reasonable and justifiable in a free and democratic society, taking into account the factors enumerated in section 28(2) of the Human Rights Act, namely:

(a) The nature of the right affected

The right to presumption of innocence before the law is a very important right that has long been recognised in common law and, in the ACT, is now codified in section 22(1) of the Human Rights Act. However, the right may be subject to limits, particularly when those who are subject to an offence provision would be expected to be aware of its existence. The proposed strict liability offences are regulatory in nature, and target regulatory requirements that are central to the effective operation of a regulatory framework that aims to protect the environment and public health and safety:

- failing to comply with a condition of a licence;
- failing to return an amended, suspended or cancelled licence;
- failing to comply with a code of practice;
- failing to report waste activity;
- failing to comply with a direction;
- interfering with, or not cooperating with, an investigation.

(b) The importance of the purpose of the limitation

The purpose of providing a reverse onus of proof through the proposed strict liability offences is to ensure the effective enforcement of and compliance with key requirements in the Act. The limitation on the right to be presumed innocent in section 22(1) of the Human Rights Act is aimed at ensuring the effective operation of the regulatory framework.

(c) The nature and extent of the limitation

The strict liability offences engage the right to be presumed innocent by shifting the onus of proof from the prosecution onto a defendant. The offences generally apply to a person who is a commercial operator in waste, and can be considered to be regulatory offences.

The penalties are considered proportionate and not unduly harsh for offences of a regulatory nature.

(d) Any less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve

An evidential onus, rather than a strict liability offence, would be less restrictive on the right to be presumed innocent found in section 22(1) of the Human Rights Act. It would not, however, prove to be as effective in prosecuting the proposed offences. Strict liability offences provide that the defendant's act alone, rather than the reasons that the defendant acted in that way or his or her intention in so doing, should dictate the offence.

The inclusion of strict liability within an offence limits the range of defences that may be available for a person accused of the offence to which it applies; however, a number of defences remain open to the accused, depending on the particular circumstances of each case. Section 23(1)(b) of the *Criminal Code 2002* provides a specific defence to strict liability offences of mistake of fact. Section 23(3) of the Code provides that other defences may also be available for strict liability offences, including the defence of intervening conduct or event, as provided by section 39 of the Code.

The use of strict liability offences for waste activity is appropriate because the offences apply to people who choose to engage in a regulated activity. They are on notice that they must abide by the laws that govern the activity. They place themselves in a relationship of responsibility with the community.

It is on this basis that the Government believes that the use of strict liability offences contained in this Bill is relevant to the policy objectives of environment protection and community safety, both of which are demonstrably justifiable and reasonable.

Authorised people – power to enter premises

Division 12.2 of the Bill sets out the limited and specific circumstances in which authorised people may enter premises. The entry powers exercised by authorised people in this Bill are consistent with the powers exercised by authorised people in a range of other Territory legislation. Consistent with

these “template powers”, the Bill provides that an authorised person may enter premises:

- at any time those premises are open to the public; or
- with the occupier’s consent; or
- in accordance with a search warrant; or
- if the authorised person believes on reasonable grounds that:
 - there is a risk to the environment or to public health and safety; and
 - the risk is so serious and urgent that immediate entry to the premises without the authority of a search warrant is necessary

The latter power contemplates circumstances where information or documents held at premises may disclose, for example, the location of illegally dumped hazardous substances, and there is concern that the information may be destroyed or concealed during the time taken to obtain a search warrant.

Subclause 75(2)(b) provides a further limitation on the exercise of this power:

“subsection (1)(c) does not authorise entry into premises that are used for residential purposes, unless the premises are also the place from which a waste management business is conducted.”

The Government is aware that a significant number of medium and small waste transport businesses operate, wholly or in part, from residential premises. While there is, therefore, the potential for the entry power to affect people in private homes, the construction of this power ensures that it will only be exercised in those emergency situations that are clearly prescribed in the Act.

Under clause 75, in order to properly gain entry to residential premises without a warrant:

- the premises must be the place from which a waste management business is conducted; and
- an authorised officer must believe on reasonable grounds:
 - that there is a risk to the environment or to public health and safety; and
 - that the risk is so serious and urgent that immediate entry without a warrant is necessary.

Waste management is a widely regulated industry in Australian jurisdictions. Waste management businesses are generally aware of the legal requirements applicable to the industry and that authorised officers may require access to premises where they conduct their business.

In the event that circumstances are considered to be serious and urgent (i.e. an immediate risk of significant harm to property or the environment, or to public health), it is appropriate to allow entry without a warrant into residential premises from which the relevant business is being conducted.

On this basis the Government believes that the power to enter residential premises without a warrant contained in this Bill is relevant to the policy objectives of environment protection and community safety, both of which are demonstrably justifiable and reasonable.

Workplace Privacy Act 2011—GPS monitoring

Section 17 of the *Workplace Privacy Act 2011* provides that an employer may only conduct surveillance of a worker that involves the tracking of a vehicle or other thing using a tracking device if there is a notice clearly visible on the vehicle or other thing stating that the vehicle or thing is being tracked.

Clause 40 of the Bill provides that the waste manager may require a registered waste transporter to install an approved GPS tracking device in a vehicle, but limits the use of tracking devices to circumstances in which a waste transporter has been convicted of an offence against this Act or a corresponding Act, or has had its entitlement to be registered suspended or cancelled.

The provision for use of GPS tracking devices in these circumstances is considered to be appropriate, particularly as the Workplace Privacy Act requires that notice be given to any person who uses the relevant vehicle.

OUTLINE OF PROVISIONS OF THE BILL

LONG TITLE

The long title states that this is a Bill for an Act “to provide for the minimisation of waste, the recovery, recycling and re-use of resources, and for other purposes.”

Many of the provisions of this Bill relate directly to the recovery, recycling and re-use of resources through regulating the activities of waste management businesses (defined in clause 12).

The minimisation of waste, as the first stated purpose of the Bill, is also first in the hierarchy of waste management objectives in clause 8(a).

While the generation of waste is generally not the subject of direct regulatory action under the Bill, it will be the strong focus of the educational role of the Waste Manager and, potentially, future codes of practice under Part 9.

In the longer term, it should be expected that the generation of waste will be discouraged through differential fees and charges, which will aim to encourage the recovery and re-use of resources rather than sending material to landfill.

PART 1 PRELIMINARY

Clause 1. Name of Act

This clause provides that the name of the Act is the *Waste Management and Resource Recovery Act 2016*.

Clause 2. Commencement

This clause states that the Act commences on a day fixed by the Minister by written notice.

Section 79 of the *Legislation Act 2001* provides that, if a provision of the Act has not commenced within 6 months after the Act’s notification day, the provision automatically commences on the first day after that period.

Subclause 2(3) states that section 79 of the Legislation Act does not apply to this Act. Subclause 2(2) states that if this Act has not commenced before 1 July 2017, it automatically commences on that day.

Clause 3. Dictionary

The dictionary at the end of the Act is part of the substantive provisions of the Act.

Clause 4. Notes

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

Clause 5. Offences against Act – application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

Clause 6. Relationship with Emergencies Act 2004

Clause 6 makes it clear that this Act does not affect the performance of a function under the *Emergencies Act 2004* for the purposes of protecting life or property, or controlling, extinguishing or preventing the spread of a fire.

Clause 7. Relationship with other laws

This Act does not affect the operation of any other territory law.

PART 2 OBJECTS AND PRINCIPLES

Clause 8. Objects of Act

This clause clearly focuses the objects of the Act on minimising waste generation, maximising the recovery and reuse of resources and minimising the amount of waste going to landfill.

The Act also aims to support investment and innovation in the waste industry, promote industry responsibility for managing waste and promote best practice in the industry.

Clause 9. Principles of ecologically sustainable development

To support the objects in clause 8, clause 9 requires the objects to be achieved taking into account the five principles defined in subclause 9(2).

PART 3 IMPORTANT CONCEPTS

Part 3 sets out the meaning of a number of important terms used throughout the Bill.

Clause 10. Meaning of waste

Clause 10 gives the meaning of **waste** for this Act.

Clause 11. Meaning of *waste activity*

Clause 11 gives the meaning of **waste activity** for this Act. “Waste activity” is the focus of regulatory provisions in the Bill, and generally includes only activity carried out by a “waste management business”, defined in clause 12. The exception is that additionally, for Part 9 (Codes of practice), “waste activity” includes waste generation by any person whether or not engaged in a waste management business. This allows code of practice to be approved, for example, in relation to domestic waste generation and disposal.

Clause 12. Meaning of *waste management business*

Clause 12 gives the meaning of **waste management business** for this Act.

Clause 13. Meaning of *waste transporter*

Clause 13 gives the meaning of **waste transporter** for this Act.

Clause 14. Meaning of *waste facility*

Clause 14 gives the meaning of **waste facility** for this Act.

Clause 15. Meaning of *waste facility licence*

Clause 14 gives the meaning of **waste facility licence** for this Act.

PART 4 WASTE MANAGER

Clause 16. Appointment

This clause requires the director-general to appoint a public servant as the Waste Manager.

The director-general must be satisfied that the person has suitable qualifications and experience to exercise the functions of the waste manager.

The appointment is a notifiable instrument.

Clause 17. Functions

This clause sets out the functions of the waste manager. The waste manager must administer the Act, and any functions given under this Act or another Act, having regard to the object and principles of the Act.

PART 5 WASTE FACILITY LICENCES

Clause 18. Requirement to hold a licence

This clause states that a person must not operate a waste facility unless the person holds a licence under this Part to operate the facility.

Clause 19. Application for licence

This clause requires a person who wishes to operate a waste facility to apply to the waste manager for a licence under this Part. An application must be in writing, and must include prescribed information. A form may be approved for this purpose.

Clause 20. Waste manager may request more information

Under this clause, the waste manager may, by written notice, require the applicant for a licence to give additional information or documents that are reasonably needed to decide the application.

The waste manager may refuse to consider the application further if the applicant does not comply with a requirement for further information.

Clause 21. Change of information must be provided

This clause states that, if the information in an application changes before the application is decided, the applicant must give the waste manager written notice of the particulars of the change.

Clause 22. Decision about application for licence

This clause sets a time limit for determining an application for a licence under the Act. The application for a licence must be approved or refused within 56 days after the application is received by the waste manager.

The waste manager may issue a licence only if satisfied that the applicant complies, and is likely to go on complying, with the requirements of the Act.

The clause requires the waste manager to consult with a prescribed entity before approving an application for a licence.

The waste manager may approve the application only if satisfied that the applicant complies, and is likely to continue complying, with the requirements of the Act.

The clause sets out procedural requirements to be followed by the waste manager when a decision has been made about the application.

Clause 23. Licence conditions

This clause makes it a condition of any licence that the licensee must comply with the Act and any other condition imposed by the waste manager when issuing the licence.

Clause 24. Form of licence

This clause sets out the information to be included in a licence. A regulation may prescribe other information to be included, and the waste manager may include anything else that is considered relevant.

Clause 25. Register of waste facility licences

This clause requires the waste manager to keep a register of waste facility licences and provides for the content of the register.

The waste manager must make the register available to an authorised person, and may make the register publicly available.

Clause 26. Licensee must update details

This clause requires a licensee to tell the waste manager, in writing, about any changes to information in the register of waste facility licences relating to the licensee.

Clause 27. Licence not transferable

This clause states that a licence may not be transferred to another person.

Clause 28. Surrender of licence

This clause states that a licensee may surrender a licence by giving written notice (a “surrender notice”) to the waste manager, and sets out how the surrender takes effect.

Subclause 28(2) sets out the requirements for a surrender notice.

Subclause 28(3) describes when a surrender of a licence takes effect in each of the possible circumstances.

Clause 29. Term of licence

Under this clause, the term of a licence begins on the day after the fee for the licence is paid. It remains in force while the licensee pays the determined fee for the licence and ends when the licence is cancelled or surrendered under the Act, or the licensee fails to pay the fee for the licence.

PART 6 WASTE TRANSPORTER REGISTRATION

Clause 30. Requirement to be registered as waste transporter

This clause states that a person must not operate as a waste transporter unless the person is registered under this Part.

Clause 31. Application to be registered

This clause requires a person who wishes to operate as a waste transporter to apply to the waste manager to be registered under this Part. An application must be in writing, and must include prescribed information. A form may be approved for this purpose.

Clause 32. Waste manager may request more information

Under this clause, the waste manager may, by written notice, require the applicant for registration to give additional information or documents that are reasonably needed to decide the application.

The waste manager may refuse to consider the application further if the applicant does not comply with a requirement for further information.

Clause 33. Change of information must be provided

This clause states that, if the information in an application to be registered changes before the application is decided, the applicant must give the waste manager written notice of the particulars of the change.

Clause 34. Decision about application for licence

This clause sets a time limit for determining an application for registration under the Act. The application must be approved or refused within 30 days after the “application day”, defined in subclause 34(5).

The waste manager may approve the application only if satisfied that the applicant complies, and is likely to continue complying, with the requirements of the Act.

The clause sets out procedural requirements to be followed by the waste manager when a decision has been made about the application.

Clause 35. Waste transporter must display registration number

This clause describes the requirement for a waste transporter, within 30 days of being told a transporter’s registration number, to display the registration number on any vehicle used by the transporter for transporting waste.

Clause 36. Entry in register not transferable

This clause states that registration under this Part may not be transferred to another person.

Clause 37. Register of waste transporters

This clause requires the waste manager to keep a register of registered waste transporters and provides for the form and content of the register.

The waste manager must make the register available to an authorised person, and may make the register publicly available.

Clause 38. Waste transporter must update details

This clause states that, if a registered waste transporter is aware that any of the information relevant to the transporter's registration changes, the transporter must tell the waste manager about the change.

Clause 39. Approval of GPS tracking device

This clause states that the waste manager may approve a global positioning system to keep track of the location of a vehicle.

Clause 40. GPS to be fitted to vehicles

This clause states that the waste manager may require a registered transporter to install, and not to tamper with, an approved GPS tracking device in a vehicle if the transporter:

- (a) has been convicted of an offence against this Act or a corresponding law of a State; or
- (b) has had its entitlement to be registered suspended or cancelled.

The clause also provides offences for failing to have a GPS device installed when required, and for tampering with a device.

Clause 41. Termination of registration by waste transporter

This clause states that a waste transporter may terminate its registration by giving a written "termination notice" to the waste manager, and describes when the registration ends.

Clause 42. Term of registration

Under this clause, a transporter's registration begins on the day the waste manager enters the waste transporter's details in the register of waste transporters. It remains in force indefinitely unless it ends under paragraph 42(b).

Paragraph 42(b) provides that registration ends:

- (i) if the registration is terminated – on the day the termination of the registration takes effect under section 41 (Termination of registration by registered waste transporter);

- (ii) if the waste manager cancels the registration – on the day the cancellation takes effect under subsection 46(3) (Taking regulatory action); or
- (iii) if the transporter fails to pay the registration fee on or before the day it becomes payable – on the day after that day.

PART 7 REGULATORY ACTION

Clause 43. Meaning of regulatory action—pt 7

This clause defines “regulatory action” and “show cause notice” for Part 7.

Clause 44. Waste manager may consider regulatory action against person

This clause sets out the conduct in relation to which the waste manager may consider taking regulatory action against a licensee or a registered waste transporter.

Clause 45. Notification of proposed regulatory action

Under this clause, if the waste manager proposes taking regulatory action against a person, the waste manager must give the person a show cause notice stating the grounds on which the waste manager considers the regulatory action may be taken, the details of the action and advising that the person may give a written submission to the waste manager about the proposed action.

The clause describes how a show cause notice is to be dealt with by the waste manager.

Clause 46. Taking regulatory action

This clause states that, if the waste manager is satisfied on reasonable grounds that regulatory action should be taken, the waste manager may take the action described in subclause 46(2).

Before taking regulatory action, the waste manager must tell the affected person in a “notice of regulatory action” that the action will be taken and when it will take effect.

Clause 47. Not taking regulatory action

This clause states that, if the waste manager has considered any submission from a person and is satisfied that regulatory action may not be taken, or is not appropriate, then the waste manager must tell the person that regulatory

action will not be taken in relation to the matters raised in the show cause notice.

Clause 48. Immediate suspension of licence or registration if risk to public safety

This clause enables the waste manager to give an “immediate suspension notice” to a person if the waste manager believes on reasonable grounds that the person’s licence or registration in the register of waste transporters should be suspended immediately because of a risk to public safety.

The clause describes when an immediate suspension notice takes effect, and when it ends.

Clause 49. Effect of suspension

This clause states that when a licence or registration is suspended it does not authorise the carrying on of any waste activity, the licensee or registered waste transporter is taken not to hold the licence or be registered, and the licensee is disqualified from applying for a licence or registration under this Act.

Clause 50. Offence – fail to return amended, suspended or cancelled licence

This clause provides that, if a licence is amended, suspended or cancelled, it is an offence not to return the licence to the waste manager.

An offence against this section is a strict liability offence. Penalty: 10 penalty units.

Clause 51. Action by waste manager in relation to amended or suspended licence

This clause sets out the waste manager’s obligations to return a licence to the licensee, when the licence is amended or a suspension of the licence ends.

PART 8 FINANCIAL ASSURANCES

Clause 52. Waste manager may require financial assurance

Clause 52 describes the circumstances in which the waste manager may require a person to provide a financial assurance.

A financial assurance may be required if the waste manager is satisfied that the assurance is justified to ensure compliance with a licence under this Act.

Subclause 52(2) sets out the matters to be considered before requiring a financial assurance.

This clause also describes the kinds of financial assurance that can be required. The assurance must not exceed the total amount that is necessary to remedy the foreseeable harm that could result from a failure to comply with the licence.

The waste manager may require a person to give a financial assurance even though the person has given a financial assurance under the *Environment Protection Act 1997*.

Clause 53. Show cause why financial assurance should not be provided

This clause sets out the process for inviting an applicant for a licence to show cause why a financial assurance should not be required in relation to the licence or agreement.

Clause 54. Non-provision of financial assurance

This clause states that, if a financial assurance is required for a licence, and is not provided, the waste manager must cancel the licence or agreement.

Clause 55. Claim on or realisation of financial assurance

This clause provides for the waste manager to make a claim against a financial assurance.

Clause 56. Notice before claim on or realisation of financial assurance

This clause states that, before claiming against a financial assurance, the waste manager must give notice of the intended claim and the reasons for it.

Before deciding whether to make the claim, the waste manager must invite the licensee to make representations to show why the amount should not be claimed.

Clause 57. Financial assurance not affect other action

This clause provides that a claim against a financial assurance does not affect any other liability of a person, or any other action that might be taken in relation to any contravention or other circumstances to which the assurance relates.

Clause 58. Recovery of extra costs

This clause provides for the waste manager to recover reasonable costs and expenses in excess of the realised amount of a financial assurance.

Clause 59. Money held by Territory as financial assurance

This clause states how interest accrued on a financial assurance is to be dealt with when a claim is made, the entitlement of a person to that interest, and the obligation of the Territory to pay unclaimed amounts to licensees.

PART 9 CODES OF PRACTICE

Clause 60. Code of practice – approval

This clause empowers the Minister to approve a code of practice in relation to a waste activity. For this Part “waste activity” includes the generation of waste by any person.

A code of practice is a disallowable instrument.

Clause 61. Failure to comply with approved code of practice

This clause creates a strict liability offence of failing to comply with an approved code of practice.

If a person is reckless about whether a requirement of an approved code of practice has been complied with, strict liability does not apply, but the penalty is higher.

The offence does not apply to a person who has complied with a written direction in relation to the relevant requirement.

Clause 62. Direction to comply with approved code

This clause provides for an authorised person to give a written direction to a person to rectify a breach of an approved code of practice.

A direction may not be given if the person has previously been convicted, or found guilty, of an offence of failing to comply with a requirement of an approved code of practice.

PART 10 REPORTING

Clause 63. Waste activity report

This clause requires a licensee and a registered waste transporter to give the waste manager a “waste activity report” about the waste activities the person carried out in the “reporting period”.

A report must contain the prescribed information and be given to the waste manager not later than one month after the end of the reporting period. The reporting period is to be prescribed by regulation.

Clause 64. Offence – fail to report to waste manager

This clause makes it a strict liability offence to fail to provide a report required by clause 56. Maximum penalty: 50 penalty units.

Provision of accurate data on waste activity is critical to the effective management of the waste industry. Failing to report this activity would assist people in avoiding the payment of charges to the Territory and would significantly compromise the capacity of Government agencies to understand how waste is being managed.

It is appropriate in this case to impose a penalty higher than 50 penalty units.

PART 11 EXEMPTIONS

Clause 65. Declaration exempting person or activity

This clause provides for the waste manager to exempt a person or class of people, or a waste activity, from any provision of this Act. An exemption can be given on a person's application or on the waste manager's own initiative.

An exemption may only be given:

- (a) in an emergency, in a notifiable instrument; or
- (b) if it is not practicable to comply with the provision, in a disallowable instrument, provided noncompliance will not have any significant adverse effect on public health, property or the environment.

A declaration made in an emergency may commence when it is made, or on a later date stated in the declaration.

An exemption may be subject to conditions.

Clause 66. Renewal of declaration

This clause states that the waste manager may renew a declaration of exemption.

Subclause 66(2) provides that an exemption given within 5 years after the expiry of an earlier exemption for the same thing is taken to be a renewal of the earlier exemption. The intention of this provision is to avoid the breaching of section 67 by declaring "rolling" exemptions.

Clause 67. Term of declaration

This clause states a declaration under section 66, including renewal of the declaration, may not be in force for a total period of more than 5 years.

PART 12 ENFORCEMENT

Division 12.1 Directions

Clause 68. Direction to stop contravening Act etc

This clause states that, if the waste manager believes on reasonable grounds that a person is contravening this Act, or a condition of a licence or a condition of registration as a waste transporter, the waste manager may direct the person to comply by doing, or not doing, a thing.

The “compliance direction” may direct a person to take remedial action to restore damaged land. The direction must also state the period for compliance with the direction.

Clause 69. Directions – stockpiling materials and delivering waste

This clause provides that the waste manager may give a person a direction to take action in relation to:

- (a) stockpiling materials at a facility;
- (b) delivering waste to a particular waste facility;
- (c) a prescribed activity.

A direction to deliver waste to a particular facility may be given even though the direction is contrary to the person’s obligation in relation to the delivery of the waste under a licence.

Clause 70. Offence – fail to comply with direction

This clause creates a strict liability offence of failing to comply with a direction.

Division 12.2 Authorised people

Subdivision 12.2.1 General

Clause 71. Definitions – div 12.2

This clause provides definitions for Division 12.2.

Clause 72. Appointment

This clause states that the director-general may appoint a public servant as an authorised person for this Act.

Clause 73. Identity cards

This clause requires the director-general to give each authorised person an identity card and sets out what the card must show.

Clause 73 (2) creates a strict liability offence for a person to fail to return an identity card to the director-general when the person stops being an authorised person.

Clause 74. Authorised person must show identity card on exercising power

This clause states that an authorised person may not exercise a power under this Act that affects an individual before showing the individual the authorised person's identity card.

In relation to a person that is not an individual, the authorised person must first show the authorised person's identity card to an individual the authorised person believes on reasonable grounds is an employee, officer or agent of the person.

Subdivision 12.2.2 Powers

Clause 75. Power to enter premises

Waste activity inherently involves a potential risk to the environment and to public health and safety. Clause 75 provides for authorised people to enter premises for the purposes of investigating an offence in relation to the activities of a waste management business.

This clause sets out the conditions upon which an authorised person is authorised to enter premises.

An authorised person may generally enter residential premises only with the occupier's consent.

Subclause 75(1)(c) empowers an authorised officer to enter premises at any time without a warrant if the authorised person believes on reasonable grounds that there is a risk to the environment or to public health and safety, and that the circumstances are so serious and urgent that immediate entry to the premises without the authority of a search warrant is necessary.

In the event that circumstances are considered to be serious and urgent (e.g. an immediate risk of significant harm to property or the environment, or to public health, or an immediate suspicion of fraudulent activity or other offence), it is appropriate to allow entry without a warrant into residential premises from which the relevant business is being conducted.

Subclause 75(1)(c) limits the right of a person to privacy. However, subclause 75(2)(b) states that subclause 75(1)(c) does not authorise entry into premises that are used for residential purposes, unless the premises are also the place from which a waste management business is conducted.

Clause 76. Production of identity card

This clause protects the privacy rights of an occupier of premises. An authorised person, and any other person other than a police officer who is accompanying the authorised person, may not remain on premises if the authorised person does not show his or her identity card when asked by the occupier.

Clause 77. Consent to entry

This clause protects the right to privacy of an occupier of premises by outlining various conditions to be complied with by an authorised person when seeking the occupier's consent to enter premises.

Clause 78. General powers on entry to premises

This clause outlines the activities an authorised person may undertake after entering premises. Occupiers or anyone else at the premises will be obliged to provide reasonable assistance to an authorised person in carrying out these activities.

Clause 79. Power to seize things

This clause empowers an authorised person who has entered premises, with the consent of the occupier, to seize anything if its seizure is consistent with the purpose for entering the premises.

If entry is under a warrant, the authorised person may seize anything that is authorised by the warrant.

Whether entry is with consent or under a warrant, an authorised person may seize anything 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 being concealed, lost or destroyed, or being used to commit, continue or repeat the offence.

It is a strict liability offence for a person to interfere with a seized item to which access has been restricted, without the authorised person's approval.

Clause 80. Direction to give name and address

This clause empowers an authorised person to direct a person to give their full name and home address to the authorised person. The clause sets out the circumstances in which a direction may be given, and the manner in which it is to be given.

Clause 81. Offence – fail to comply with direction to give name and address

This clause creates a strict liability offence of failing to comply with a direction under section 80.

The offence does not apply if the authorised person did not produce his or her identity card for inspection and warn the person that failure to comply with the direction is an offence.

Subdivision 12.2.3 Search warrants

Clause 82. Warrants generally

This clause outlines the procedures an authorised person must follow to obtain a warrant for entry to premises. It also describes the circumstances in which a magistrate may issue a warrant and what the warrant must state.

Clause 83. Warrants – application other than in person

This clause empowers an authorised person to obtain a warrant by means other than in person. The clause sets out a process for warrants to be obtained in urgent or special circumstances.

Clause 84. Search warrants – announcement before entry

This clause protects the right to privacy of occupiers of premises by requiring an authorised person to undertake specific actions before executing a search warrant under the Act. The requirement does not apply if a person's safety is at risk or if immediate entry is required to ensure that the execution of the warrant is not frustrated.

Clause 85. Details of search warrant to be given to occupier etc

This clause requires an authorised person to make available to the occupier of premises a copy of the warrant and a document setting out the rights and obligations of the person.

Clause 86. Occupier entitled to be present during search etc

This clause makes it clear that the occupier of premises, or someone who apparently represents the occupier, is entitled to be present at the premises while a search warrant is being executed, and to observe the search, unless the person's presence would impede the search or its objectives.

Subdivision 12.2.4 Return and forfeiture of things seized

Clause 87. Receipt for things seized

This clause provides that, for anything seized, a receipt must be given to the person from whom it was seized, setting out the required details.

Clause 88. Moving things to another place for examination or processing under search warrant

This clause sets out the conditions on which a thing that is found at premises entered under a search warrant may be moved to another place for examination or processing to decide whether it may be seized under the warrant.

Clause 89. Access to things seized

This clause makes it clear that anyone who would be entitled to inspect and photograph a seized thing, and to take extracts from it or make copies, may do so after the thing is seized under this Act.

Clause 90. Return of things seized

This clause provides that, when certain circumstances apply, a thing seized under this Part must be returned or compensation paid to its owner.

Subdivision 12.2.5 Miscellaneous

Clause 91. Damage etc to be minimised

This clause requires an authorised person to minimise damage when taking enforcement action under the Act and to provide notice to the owner of anything damaged, setting out the details of the damage and advising that compensation may be sought.

Clause 92. Compensation for exercise of enforcement powers

This clause provides for a person to claim compensation from the Territory, when a thing has been damaged through an enforcement action, and for a court to order compensation be paid to the owner if it would be just in the circumstances to do so.

PART 13 ENFORCEABLE UNDERTAKINGS

The Bill provides for people to give enforceable undertakings as an alternative to prosecution. An enforceable undertaking allows an alleged offender to voluntarily enter into a binding agreement to undertake tasks to settle an alleged contravention of the law.

Enforceable undertakings provide an additional tool, at the instigation of an alleged offender, to address an alleged contravention of the Act without the immediate need for formal prosecution.

The making of an enforceable undertaking will not be an admission of liability or fault.

The introduction of enforceable undertakings provides a better hierarchy of enforcement.

Clause 93. Definitions – pt 13

This clause provides definitions for Part 13.

Clause 94. Making of proposed undertakings

This clause provides that the waste manager may advise a person that the waste manager believes that the person has committed an offence against Part 14 (Offences) and that the person may enter an enforceable undertaking in relation to the alleged offence.

The person may give a “proposed undertaking” to the waste manager, acknowledging the waste manager’s belief that the alleged offence has been committed, giving assurances about the person’s conduct and stating that, on acceptance by the waste manager, the undertaking is an enforceable undertaking.

Regulations may prescribe other information to be provided for the undertaking.

Clause 95. Acceptance of proposed undertaking

This clause sets out how a proposed undertaking becomes an enforceable undertaking.

If the waste manager accepts a proposed undertaking, the waste manager must notify the person who gave the proposed undertaking that it is accepted and is an enforceable undertaking.

Clause 96. Register of enforceable undertakings

This clause requires the waste manager to keep a register of enforceable undertakings.

Clause 97. Withdrawal from or amendment of enforceable undertaking

This clause states that the person who gave an enforceable undertaking may, with the agreement of the waste manager, withdraw from or amend the undertaking; however, the undertaking may not be amended to provide for a different alleged offence.

Clause 98. Ending enforceable undertaking

This clause provides that the waste manager may end an enforceable undertaking by written notice to the person who gave the undertaking. An undertaking may be ended on the waste manager's own initiative or on the application of the person that gave the undertaking.

Clause 99. Undertaking not an admission of fault etc

This clause states that the giving of a proposed undertaking is not an admission of fault or liability by the person who gave it, and it is not relevant to deciding fault or liability in relation to the alleged offence.

Neither a proposed undertaking nor an enforceable undertaking is admissible in evidence in a court or tribunal in any proceeding for the alleged offence.

Clause 100. Contravention of enforceable undertakings

This clause provides that, if the waste manager believes on reasonable grounds that an enforceable undertaking has been contravened, the waste manager may apply to the Magistrates Court for an order under subsection 100(2).

Subclause 100(2) sets out the orders that the court may make.

Clause 101. Effect of enforceable undertaking on other proceedings

This clause states that a proceeding may not be brought against a person for an alleged offence if:

- (a) the enforceable undertaking is in force in relation to the alleged offence; and
- (b) the person has not failed to comply with the enforceable undertaking in relation to the alleged offence.

PART 14 OFFENCES

This Part sets out a number of offences relating to waste activity.

Clauses 107 (Unlawful transporting or depositing of waste) and 108 (Use of place as waste facility without lawful authority) provide for offences that attract a maximum penalty of 500 penalty units. These are considered to be the most serious offences under the Act, as they potentially have a high impact on the environment and on public health and safety. They represent the most significant risk to the overarching purpose of waste management, which is to protect the environment, and public health and safety, through the effective regulation of waste activity.

The Regulation made under this Act will prescribe a range of additional offences, some of which will attract penalties of up to 40 penalty units. Failure to comply with those requirements will be an offence.

Division 14.1 Liability of managers etc

Clause 102. Criminal liability of partners – pt 14

This clause sets out the circumstances in which a partner, servant or agent of a partnership personally commits an offence under this Act. Each partner in the partnership is taken to have committed the offence, but subclause 102(3) sets out the circumstances in which a defence may be available to a “liable partner”.

Clause 103. Criminal liability of executive officers – pt 14

This clause sets out the circumstances in which an executive officer of a corporation personally commits a “relevant offence” under this Act.

“Relevant offence” is defined for this clause.

Division 14.2 Specific offences

Clause 104. Meaning of waste site – div 14.2

This clause provides that “waste site” means a place used for the storage, sorting, treatment, processing, or disposal of waste.

Clause 105. Unauthorised waste activity

This clause is intended to make clear the requirement that a waste management business must not conduct waste activity without a current licence or registration, as the case requires. It is to be considered separately from the offence in clause 108, which relates to the unlawful use of a place as a “waste site” by any person.

Clause 105 provides that it is an offence for a person to conduct a waste activity if:

- (a) where the waste activity includes operating a waste facility – the person does not hold a licence in relation to the facility; or
- (b) where the waste activity includes collection or transport of waste – the person is not registered as a waste transporter.

A separate offence is committed for each day on which the offence continues after the first day of the offence.

Clause 106. Fail to comply with condition of licence or registration

This clause makes it a strict liability offence to fail to comply with a condition of a licence or registration.

Clause 107. Unlawful transporting or depositing of waste

This clause states that it is an offence to transport waste, or to cause or permit waste to be transported, to a place that is not a licensed waste facility or, if the place is outside the ACT, is not a waste facility operated by a person that is authorised to operate the facility under a corresponding law of another State.

In any proceedings for an offence under this provision the defendant bears the onus of proving that the place to which the waste was transported is either a licensed waste facility in the ACT or, if the place is outside the ACT, a waste facility operated by a person that is authorised to operate the facility under a corresponding law of another State.

The clause sets out the circumstances in which a defence is available to a person in proceedings under this provision.

Clause 108. Use of place as waste facility without lawful authority

This clause makes it an offence for a person to recklessly allow a place to be used by another person as a “waste site” unless it is a place for which the person holds a licence under this Act.

For the purposes of this offence, clause 104 defines a “waste site” as a place used for the storage, sorting, treatment, processing or disposal of waste. It is not a “waste facility”, as defined in clause 14, because it is not a site used by a waste management business.

A person who contravenes this provision commits a separate offence for each day, after the first day, on which the offence continues.

Clause 109. Consent required for certain waste activities

This clause states that a person commits an offence if the person carries out a “regulated waste activity” without the consent of the waste manager.

Clause 110. False or misleading information about waste

This clause states that it is an offence, in the course of dealing with waste, to give information about waste to another person that is false or misleading in a material particular.

It is a defence to a prosecution for an offence involving recklessness if the defendant proves that the defendant took all reasonable steps to ensure that the information was not false or misleading in any material particular.

A higher penalty applies if the person knows the information is false or misleading.

Clause 111. Taking prescribed waste to landfill or other facility

This clause makes it an offence to take waste that is prescribed by regulation to a landfill or other prescribed facility.

This clause is intended to provide flexibility in a regulatory environment with changing technology, operational capability and community expectations about the recovery and reuse of resources. The intention is to progressively prescribe waste and facilities under this provision as technology allow the recovery of a wider range of resources.

PART 15 RECONSIDERATION OF DECISIONS

Clause 112. Definitions – pt 15

This clause provides definitions for Part 15.

Clause 113. Applications for reconsideration

This clause provides that an “affected person” (a person mentioned in Schedule 1 to this Act, column 4) for an “original decision” (a decision mentioned in Schedule 1 to this Act, column 3) may apply for reconsideration of the original decision. The clause sets out the process for making an application.

Reconsideration is not available if the ACAT has decided an application for review of the original decision.

Clause 114. Notice to ACAT of application

This clause states that, when a person applies for reconsideration of an original decision and also applies to the ACAT for review of that decision, the waste manager must tell the ACAT that an application for reconsideration has been made.

Clause 115. Reconsideration

This clause sets out the procedure to be followed by the director-general when the waste manager receives an application for reconsideration of an original decision.

The director-general is to reconsider the original decision within 20 days (or a further period if agreed between the applicant and the director-general) of the waste manager receiving the application, and either make a substitute decision or confirm the original decision.

However, the director-general must not reconsider the original decision if the ACAT has decided an application for review of the original decision.

Clause 116. No action by director-general within time

This clause states when the director-general is taken to have confirmed the original decision, if the director-general has not make a substitute decision within the required time.

Clause 117. Notice of decisions on reconsideration

This clause requires the director-general to give notice of a reconsideration decision to the applicant and to the waste manager.

PART 16 NOTIFICATION AND REVIEW OF DECISIONS

Clause 118. Definitions – pt 16

This clause provides definitions for Part 16.

Clause 119. Reviewable decision notices

This clause requires the person who makes a reviewable decision to give a reviewable decision notice to each person mentioned in column 4 of Schedule 1 to this Act in relation to the decision.

Clause 120. Applications for review

This clause provides that the people listed in column 4 of Schedule 1 to this Act may apply to the ACAT for a review of a reviewable decision. Any other person whose interests are affected by the decision may apply for a review in the ACAT.

PART 17 MISCELLANEOUS

Clause 121. Delegation

This clause provides that the waste manager may delegate the waste manager's functions under this Act or another territory law to a public servant.

Clause 122. Protection from liability

This clause states that an official is not civilly liable for conduct engaged in honestly and without recklessness in the exercise of a function under this Act or in the reasonable belief that the conduct was in the exercise of a function under this Act.

Any civil liability that would, apart from this section, attach to the official attaches instead to the Territory.

Clause 123. Service of documents

This clause states that a document may be given to the waste manager by giving it to the director-general.

Clause 124. Determination of fees and rates of interest

This clause gives the Minister power to determine fees and interest rates for this Act.

“Fee” includes a fee that is a tax and a charge or other amount (whether or not it is a tax).

Clause 125. Approved forms

This clause gives the waste manager power to approve forms for this Act. If an approved form is notified for a purpose, the form must be used for that purpose.

Clause 126. Regulation-making power

This clause gives the Executive power to make regulations for this Act.

A regulation may provide for the exclusion of a person or activity from a provision of the Act. An exclusion may be prescribed for an indefinite term.

A regulation may create offences for contraventions of the regulations and fix maximum penalties of not more than 40 penalty units for the offences.

PART 18 REPEAL AND CONSEQUENTIAL AMENDMENT

Clause 127. Legislation repealed

The *Waste Minimisation Act 2001*, the *Waste Minimisation Regulation 2001* and all legislative instruments under that Act and Regulation are repealed.

Clause 128. Clinical Waste Act 1990, part 5 heading, new note

This clause inserts a new note into the *Clinical Waste Act 1990* before Part 5, section 28, stating that the *Waste Management and Resource Recovery Act 2016* imposes requirements, and creates offences, in relation to a person that stores, transports or disposes of clinical waste.

PART 30 TRANSITIONAL

Clause 300. Transitional regulation

This clause provides that a regulation may prescribe transitional matters necessary or convenient to be prescribed because of the enactment of this Act.

A regulation may also modify this Part (including in relation to another territory law) to make provision in relation to anything that, in the Executive's opinion, is not, or is not adequately or appropriately, dealt with in this part.

Clause 301. Expiry – pt 30

This clause provides that Part 30 expires 12 months after the day it commences.

SCHEDULE 1 REVIEWABLE DECISIONS

Schedule 1 lists the decisions under the Act that may be reviewed by the ACAT.

DICTIONARY

The Dictionary contains definitions of words and terms for this Act. Other important terms are defined in Part 3.