



Australian Capital Territory

# **Waste Minimisation Act 2001**

**A2001-31**

**Republication No 14**

**Effective: 17 December 2009 – 30 June 2011**

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Last amendment made by A2009-49

Authorised by the ACT Parliamentary Counsel

## About this republication

### The republished law

This is a republication of the *Waste Minimisation Act 2001* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 17 December 2009. It also includes any amendment, repeal or expiry affecting the republished law to 17 December 2009.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

### Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

### Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication does not include amendments made under part 11.3 (see endnote 1).

### Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

### Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

### Penalties

At the republication date, the value of a penalty unit for an offence against this law is \$110 for an individual and \$550 for a corporation (see *Legislation Act 2001*, s 133).



Australian Capital Territory

# Waste Minimisation Act 2001

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Australian Capital Territory

# Waste Minimisation Act 2001

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

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## Part 1 Preliminary

### 1 Name of Act

This Act is the *Waste Minimisation Act 2001*.

### 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 terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere in this Act.

For example, the signpost definition '*garbage*, for pt 3 (Waste disposal)—see section 21.' means that the term '*garbage*' is defined in that section for pt 3.

*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 Legislation Act, s 155 and s 156 (1)).

### 4 Notes

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

*Note* See the Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.



## **4A Offences against Act—application of Criminal Code etc**

Other legislation applies in relation to offences against this Act.

*Note 1 Criminal Code*

The Criminal Code, ch 2 applies to all offences against this Act (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg **conduct**, **intention**, **recklessness** and **strict liability**).

*Note 2 Penalty units*

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

## **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 ACT-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) In this section:

*ecologically sustainable development* means the effective integration of economic and environmental considerations in decision-making processes achievable through implementation of the following principles:

- (a) the precautionary principle;
- (b) the inter-generational equity principle;
- (c) conservation of biological diversity and ecological integrity;
- (d) improved valuation and pricing of environmental resources.

*the inter-generational equity principle* means 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.

*the precautionary principle* means 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.

## **Part 2                      Industry waste reduction**

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

#### **7                      Objects—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 the chief executive, 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 the chief executive with information, and to report to the chief executive, on the implementation of the IWRP;
  - (i) include any other matters prescribed by regulation.

## **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) the chief executive.
- (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.

## **10 Chief executive 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, the chief executive is to advertise the decision by publishing a notice in a daily newspaper, and in any other publication the chief executive considers appropriate.
- (2) The advertisement must invite written submissions to the chief executive 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 Industry members may be required to give background information**

- (1) The chief executive may, by written notice given to a person whom the chief executive believes on reasonable grounds is an industry member to whom a proposed IWRP would apply, require the person to give the chief executive stated information or a document that the chief executive reasonably needs to assist in the preparation of the IWRP.

*Note* For how documents may be given, see the Legislation Act, pt 19.5.

- (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 the chief executive.
- (4) A person must take all reasonable steps to comply with a requirement of a notice given to the person 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.

Maximum penalty (for each day): 50 penalty units.

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

- (1) The chief executive must prepare a report to the Minister on the scope of the proposed IWRP.
- (2) The report must include any relevant information obtained by the chief executive (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 the chief executive 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 EPA 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 the chief executive; 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 the chief executive and any nominated people or organisations, a draft IWRP must be prepared in accordance with the negotiation process, and be submitted to the chief executive within the time decided by the chief executive 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 chief executive without negotiation**

- (1) Despite section 13, the Minister may decide that the proposed IWRP is to be prepared by the chief executive 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 the chief executive 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 the chief executive 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 the chief executive without negotiation with industry members, the chief executive 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 the chief executive (and based on the factors that the chief executive 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 the chief executive 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 (Chief executive 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, the chief executive is to refer 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* The text of an applied, adopted or incorporated law or instrument, whether applied as in force from time to time or at a particular time, is taken to be a notifiable instrument if the operation of the Legislation Act, s 47 (5) or (6) is not disappplied (see s 47 (7)).

*Note 2* A notifiable instrument must be notified under the Legislation Act.

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

(1) The Minister may, in writing, approve an IWRP a draft of which has been referred 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.

(3) If the Minister approves an IWRP under subsection (1), the chief executive must publish notice of the approval in a daily newspaper, and in any other publication the chief executive considers appropriate.

(4) The notice under subsection (3) must include a statement that copies of the IWRP are available from the chief executive.

(5) The chief executive 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 (Industry members may be required to give background information), or who was otherwise involved in the negotiation of the plan, under this division; and
- (b) make copies of the IWRP available for inspection or purchase by anyone.

## **18        Contravention of IWRP**

- (1) If the chief executive believes on reasonable grounds that an industry member has contravened an IWRP that applies to the member, the chief executive may give the industry member a copy of the IWRP and a written notice stating the contravention.

*Note*        For how documents may be given, see the Legislation Act, pt 19.5.

- (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 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.

*Note*        A decision requiring a person to remedy a contravention of an IWRP is a reviewable decision (see s 44), and the chief executive must give a reviewable decision notice to the person (see s 44A).

- (4) However, the chief executive may withdraw the notice within the stated period.
- (5) A person must take all reasonable steps to comply with 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.

Maximum penalty (for each day): 50 penalty units.

**19 Contravention of IWRP—annual report**

A report prepared for a financial year under the *Annual Reports (Government Agencies) Act 2004* by the administrative unit responsible for the administration of this Act must include details of each contravention during the year of a requirement of a notice under section 18.

*Note* **Financial year** has an extended meaning in the *Annual Reports (Government Agencies) Act 2004*.

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

**20 Regulations—pt 2**

- (1) For this part, a regulation 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) A regulation 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 the chief executive in relation to compliance with the scheme.

## Part 3                      Waste disposal

### 21            Definitions—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 ensure that the premises are not used as a waste facility.

Maximum penalty: 100 penalty units.

- (2) This section does not apply to the declared use of premises prescribed by regulation.

**26            Regulations for pt 3**

- (1) A regulation may make provision in relation to the storage, collection or disposal of waste.
- (2) A regulation 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 people on land for this part.

## **Part 4                      Enforcement**

### **Division 4.1              General**

#### **27              Definitions—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 people**

#### **28              Appointment of authorised people**

- (1) The chief executive may appoint a person as an authorised person for this Act.

*Note 1* For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3.

*Note 2* In particular, a person may be appointed for a particular provision of a law (see Legislation Act, s 7 (3)) and an appointment may be made by naming a person or nominating the occupant of a position (see s 207).

- (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 give an authorised person an identity card stating the person's name and that the person is an authorised person.
- (2) The identity card must show—
  - (a) a recent photograph of the person; and
  - (b) the card's date of issue and expiry; and
  - (c) anything else prescribed by regulation.
- (3) A person commits an offence if—
  - (a) the person stops being an authorised person; and



- (b) the person does not return the person's identity card to the chief executive as soon as practicable, but no later than 7 days after the day the person stops being an authorised person.

Maximum penalty: 1 penalty unit.

- (4) An offence against this section is a strict liability offence.

## **Division 4.3 Powers of authorised people**

### **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 take reasonable steps to comply with a requirement made of the person under subsection (1) (f).

Maximum penalty: 50 penalty units.

*Note* The Legislation Act, s 170 and s 171 deal with the application of the privilege against selfincrimination and client legal privilege.

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

- (1) An authorised person may require a person to state the person's name and home or business address if the authorised person believes, on reasonable grounds, that the person is committing or has just committed an offence against this Act.

*Note* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

- (2) The authorised person must tell the person the reason for the requirement and, as soon as practicable, record the reason.
- (3) The person may ask the authorised person to produce his or her identity card for inspection by the person.
- (4) A person must comply with a requirement made of the person under subsection (1) if the authorised person—
  - (a) tells the person the reason for the requirement; and
  - (b) complies with any request made by the person under subsection (3).

Maximum penalty: 10 penalty units.

- (5) An offence against this section is a strict liability offence.

### **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 commits an offence if—
- (a) the person interferes with a thing to which access has been restricted under subsection (4); and
  - (b) the person does not have the chief executive's approval to interfere with the thing.

Maximum penalty: 50 penalty units.

- (6) An offence against this section is a strict liability offence.

### **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**

### **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) A regulation 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 Notification and review of decisions

### 44 Meaning of *reviewable decision*—pt 5

In this part:

*reviewable decision* means a decision under section 18 to require a person to remedy a contravention of an IWRP.

### 44A Reviewable decision notices

If the chief executive makes a reviewable decision, the chief executive must give a reviewable decision notice to the person of whom the requirement under section 18 is made.

*Note 1* The chief executive must also take reasonable steps to give a reviewable decision notice to any other person whose interests are affected by the decision (see *ACT Civil and Administrative Tribunal Act 2008*, s 67A).

*Note 2* The requirements for reviewable decision notices are prescribed under the *ACT Civil and Administrative Tribunal Act 2008*.

### 44B Applications for review

The following people may apply to the ACAT for review of a reviewable decision:

- (a) a person of whom a requirement under section 18 is made;
- (b) any other person whose interests are affected by the decision.

*Note* If a form is approved under the *ACT Civil and Administrative Tribunal Act 2008* for the application, the form must be used.

## Part 6 Miscellaneous

### 45 Determination of fees

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

*Note* The Legislation Act contains provisions about the making of determinations and regulations relating to fees (see pt 6.3).

- (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.

- (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.

*Note* For other provisions about forms, see the Legislation Act, s 255.

- (3) An approved form is a notifiable instrument.

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

### 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 the Criminal Code, part 3.4 (False or misleading statements, information and documents); or
- (b) any other offence in relation to the falsity of the information or document.

*Note 1* A reference to an offence against a territory law includes a reference to a related ancillary offence, eg attempt (see Legislation Act, s 189).

*Note 2* The Legislation Act, s 171 deals with the application of client legal privilege.

## 52 Acts and omissions of representatives

## (1) In this section:

**person** means an individual.

*Note* See the Criminal Code, pt 2.5 for provisions about corporate criminal responsibility.

**representative**, of a person, means an employee or agent of the person.

**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 also taken to have been done or omitted to be done by the person.
- (5) However, subsection (4) does not apply if the person establishes that reasonable precautions were taken and appropriate diligence was exercised to avoid the act or omission.
- (6) A person who is convicted of an offence cannot be punished by imprisonment for the offence if the person 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* A regulation must be notified, and presented to the Legislative Assembly, under the Legislation Act.

- (2) A regulation may prescribe offences for contraventions of a regulation and prescribe maximum penalties of not more than 10 penalty units for offences against a regulation.

## Dictionary

(see s 3)

*Note 1* The Legislation Act contains definitions and other provisions relevant to this Act.

*Note 2* For example, the Legislation Act, dict, pt 1 defines the following terms:

- ACAT
- contravene
- corporation
- daily newspaper
- home address
- individual
- reviewable decision notice.

***authorised person*** means a person who is appointed as an authorised person under section 28.

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

***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.

***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.

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

***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.

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

***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.



***reviewable decision***, for part 5 (Notification and review of decisions)—see section 44.

***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 by regulation to be waste.

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

## Endnotes

1 About the endnotes

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## Endnotes

### 1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the Legislation Act, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

### 2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	par = paragraph/subparagraph
def = definition	pres = present
dict = dictionary	prev = previous
disallowed = disallowed by the Legislative Assembly	(prev...) = previously
div = division	pt = part
exp = expires/expired	r = rule/subrule
Gaz = Gazette	renum = renumbered
hdg = heading	reloc = relocated
IA = Interpretation Act 1967	R[X] = Republication No
ins = inserted/added	RI = reissue
LA = Legislation Act 2001	s = section/subsection
LR = legislation register	sch = schedule
LRA = Legislation (Republication) Act 1996	sdiv = subdivision
mod = modified/modification	sub = substituted
o = order	SL = Subordinate Law
om = omitted/repealed	<u>underlining</u> = whole or part not commenced or to be expired

### 3 Legislation history

**Waste Minimisation Act 2001 No 31**

notified 21 June 2001 (Gaz 2001 No S33)  
s 1, s 2 commenced 21 June 2001 (IA s 10B)  
remainder commenced 29 June 2001 (s 2 and Gaz 2001 No S40 (but see IA s 10C))

as amended by

**Legislation Amendment Act 2002 No 11 pt 2.51**

notified LR 27 May 2002  
s 1, s 2 commenced 27 May 2002 (LA s 75)  
pt 2.51 commenced 28 May 2002 (s 2 (1))

**Statute Law Amendment Act 2002 No 30 pt 3.90**

notified LR 16 September 2002  
s 1, s 2 taken to have commenced 19 May 1997 (LA s 75 (2))  
pt 3.90 commenced 17 September 2002

**Criminal Code 2002 No 51 pt 1.27**

notified LR 20 December 2002  
s 1, s 2 commenced 20 December 2002 (LA s 75 (1))  
pt 1.27 commenced 1 January 2003 (s 2 (1))

**Annual Reports Legislation Amendment Act 2004 A2004-9 sch 1 pt 1.39**

notified LR 19 March 2004  
s 1, s 2 commenced 19 March 2004 (LA s 75 (1))  
sch 1 pt 1.39 commenced 13 April 2004 (s 2 and see Annual Reports (Government Agencies) Act 2004 A2004-8, s 2 and CN2004-5)

**Criminal Code (Theft, Fraud, Bribery and Related Offences) Amendment Act 2004 A2004-15 sch 1 pt 1.37, sch 2 pt 2.97**

notified LR 26 March 2004  
s 1, s 2 commenced 26 March 2004 (LA s 75 (1))  
sch 1 pt 1.37, sch 2 pt 2.97 commenced 9 April 2004 (s 2 (1))

**Statute Law Amendment Act 2005 A2005-20 sch 3 pt 3.72**

notified LR 12 May 2005  
s 1, s 2 taken to have commenced 8 March 2005 (LA s 75 (2))  
sch 3 pt 3.72 commenced 2 June 2005 (s 2 (1))

## Endnotes

4 Amendment history

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**Criminal Code Harmonisation Act 2005 A2005-54 sch 1 pt 1.37**

notified LR 27 October 2005

s 1, s 2 commenced 27 October 2005 (LA s 75 (1))

sch 1 pt 1.37 commenced 24 November 2005 (s 2)

**Statute Law Amendment Act 2005 (No 2) A2005-62 sch 1 pt 1.5**

notified LR 21 December 2005

s 1, s 2 commenced 21 December 2005 (LA s 75 (1))

sch 1 pt 1.5 commenced 11 January 2006 (s 2 (1))

**ACT Civil and Administrative Tribunal Legislation Amendment Act 2008 (No 2) A2008-37 sch 1 pt 1.105**

notified LR 4 September 2008

s 1, s 2 commenced 4 September 2008 (LA s 75 (1))

sch 1 pt 1.105 commenced 2 February 2009 (s 2 (1) and see ACT Civil and Administrative Tribunal Act 2008 A2008-35, s 2 (1) and CN2009-2)

**Statute Law Amendment Act 2009 A2009-20 sch 3 pt 3.77**

notified LR 1 September 2009

s 1, s 2 commenced 1 September 2009 (LA s 75 (1))

sch 3 pt 3.77 commenced 22 September 2009 (s 2)

**Statute Law Amendment Act 2009 (No 2) A2009-49 sch 3 pt 3.84**

notified LR 26 November 2009

s 1, s 2 commenced 26 November 2009 (LA s 75 (1))

sch 3 pt 3.84 commenced 17 December 2009 (s 2)

## 4 Amendment history

**Commencement**

s 2 om R1 (IA s 43 (4))

**Offences against Act—application of Criminal Code etc**

s 4A ins A2005-54 amdt 1.245

**Principles of ecologically sustainable development**

s 6 am 2002 No 30 amdt 3.978

**Objects—pt 2**

s 7 am A2005-20 amdt 3.462; A2005-62 amdt 1.19

**Scope of IWRP**

s 8 am A2005-20 amdt 3.462; A2005-62 amdt 1.19

**Criteria for deciding initiation of IWRP**

s 9 (4), (5) exp 29 June 2002 (s 9 (5))  
am A2005-20 amdt 3.462; A2005-62 amdt 1.19

**Chief executive to give public notice of proposed IWRP**

s 10 hdg sub A2005-62 amdt 1.7  
s 10 am A2005-20 amdt 3.462; A2005-62 amdt 1.19; A2009-20  
amdt 3.221

**Industry members may be required to give background information**

s 11 hdg sub A2005-62 amdt 1.8  
s 11 am 2002 No 30 amdts 3.979-3.981; A2005-20 amdt 3.462;  
A2005-54 amdt 1.246; A2005-62 amdt 1.9, amdt 1.19

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

s 12 am A2005-20 amdt 3.462; A2005-62 amdt 1.10, amdt 1.19

**Preparation of IWRP—process of negotiation**

s 13 am A2005-20 amdt 3.462; A2005-62 amdt 1.19

**Preparation of IWRP by chief executive without negotiation**

s 14 hdg sub A2005-62 amdt 1.11  
s 14 am A2005-20 amdt 3.462; A2005-62 amdt 1.19

**Preparation of IWRP to implement national measure**

s 15 am A2005-20 amdt 3.462; A2005-62 amdt 1.12, amdt 1.13,  
amdt 1.19

**Notice of approval of IWRP**

s 17 am A2005-20 amdt 3.462; A2005-62 amdt 1.14, amdt 1.15,  
amdt 1.19; A2009-20 amdt 3.222

**Contravention of IWRP**

s 18 am 2002 No 30 amdts 3.982-3.984; A2005-20 amdt 3.462;  
A2005-54 amdt 1.247; A2005-62 amdt 1.19; A2008-37  
amdt 1.552

**Contravention of IWRP—annual report**

s 19 sub A2004-9 amdt 1.53  
am A2005-20 amdt 3.462  
sub A2005-62 amdt 1.16

**Regulations—pt 2**

s 20 am A2005-20 amdt 3.462; A2005-62 amdt 1.19

**Unlawful use of land as waste disposal facility**

s 25 sub A2005-54 amdt 1.248

**Appointment of authorised people**

s 28 am 2002 No 30 amdt 3.985

**Identity cards**

s 29 sub A2005-54 amdt 1.249

## Endnotes

4 Amendment history

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

s 35 am A2005-54 amdt 1.250

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

s 36 sub A2005-54 amdt 1.251  
am A2009-49 amdt 3.211

### **Power to seize evidence**

s 37 am A2005-54 amdt 1.252

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

s 41 om A2004-15 amdt 2.205

### **Notification and review of decisions**

pt 5 hdg sub A2008-37 amdt 1.553

### **Meaning of *reviewable decision*—pt 5**

s 44 am A2005-20 amdt 3.462; A2005-62 amdt 1.19  
sub A2008-37 amdt 1.553

### **Reviewable decision notices**

s 44A ins A2008-37 amdt 1.553

### **Applications for review**

s 44B ins A2008-37 amdt 1.553

### **Miscellaneous**

pt 6 hdg ins A2008-37 amdt 1.553

### **Approved forms**

s 46 am 2002 No 30 amdt 3.986

### **Delegation of EPA's functions**

s 47 am 2002 No 30 amdt 3.987, amdt 3.988; A2005-20 3.462  
om A2005-62 amdt 1.17

### **Selfincrimination etc**

s 48 am 2002 No 11 amdt 2.109; 2002 No 51 amdt 1.57; A2004-15  
amdt 2.206

### **Legal professional privilege**

s 49 om 2002 No 11 amdt 2.110

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

s 50 om A2004-15 amdt 2.207

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

s 51 om A2004-15 amdt 2.207

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

s 52 sub A2004-15 amdt 1.41

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

s 55 exp 12 September 2001 (s 55 (3))

**Transitional—notice of approval of IWRP**

s 56 exp 12 September 2001 (s 56 (3))

**Dictionary**

dict am 2002 No 30 amdt 3.989; A2005-20 amdt 3.460; A2008-37 amdt 1.554; A2009-20 amdt 3.223, amdt 3.224; A2009-49 amdt 3.213  
 def **EMA** om A2005-20 amdt 3.461  
 def **EPA** ins A2005-20 amdt 3.461  
 om A2005-62 amdt 1.18  
 def **reviewable decision** ins A2008-37 amdt 1.555

## 5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (\*) in column 1. Electronic and printed versions of an authorised republication are identical.

Republication No and date	Effective	Last amendment made by	Republication for
R1 29 June 2001	29 June 2001– 12 Sept 2001	not amended	new Act
R2 13 Sept 2001	13 Sept 2001– 27 May 2002	not amended	commenced expiry
R3 29 May 2002	28 May 2002– 29 June 2002	A2002-11	amendments by A2002-11
R4 30 June 2002	30 June 2002– 16 Sept 2002	A2002-11	commenced expiry
R5 3 Oct 2002	17 Sept 2002– 31 Dec 2002	A2002-30	amendments by A2002-30
R6 1 Jan 2003	1 Jan 2003– 8 Apr 2004	A2002-51	amendments by A2002-51
R7 9 Apr 2004	9 Apr 2004– 12 Apr 2004	A2004-15	amendments by A2004-15

## Endnotes

5 Earlier republications

<b>Republication No and date</b>	<b>Effective</b>	<b>Last amendment made by</b>	<b>Republication for</b>
R8 13 Apr 2004	13 Apr 2004– 1 June 2005	A2004-15	amendments by A2004-9
R9 2 June 2005	2 June 2005– 23 Nov 2005	A2005-20	amendments by A2005-20
R10 24 Nov 2005	24 Nov 2005– 10 Jan 2006	A2005-54	amendments by A2005-54
R11* 11 Jan 2006	11 Jan 2006– 1 Feb 2009	A2005-62	amendments by A2005-62
R12 2 Feb 2009	2 Feb 2009– 21 Sept 2009	A2008-37	amendments by A2008-37
R13 22 Sept 2009	22 Sept 2009– 16 Dec 2009	A2009-20	amendments by A2009-20

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