



Australian Capital Territory

# Waste Management and Resource Recovery Act 2016

A2016-51

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Australian Capital Territory

# Waste Management and Resource Recovery Act 2016

A2016-51

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An Act to provide for the minimisation of waste, the recovery, recycling and re-use of resources, and for other purposes

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

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Waste Management and Resource Recovery Act 2016*.

### 2 Commencement

- (1) This Act commences on a day fixed by the Minister by written notice.

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

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

- (2) If this Act has not commenced before 1 July 2017, it automatically commences on that day.
- (3) The [Legislation Act](#), section 79 (Automatic commencement of postponed law) does not apply to this Act.

### 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 '*affected person* for an original decision, for part 16 (Reconsideration of decisions)—see section 114.' means that the term 'affected person' is defined in that section for part 16.

*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)).



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## 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.

## 5 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.

## 6 Relationship with Emergencies Act 2004

- (1) This Act does not apply to the exercise or purported exercise by a relevant person of a function under the [Emergencies Act 2004](#) for the purpose of protecting life or property, or controlling, extinguishing or preventing the spread of a fire.
- (2) In this section:
  - emergency service*—see the [Emergencies Act 2004](#), dictionary.
  - relevant person* means—
    - (a) the chief officer or a member of an emergency service; or
    - (b) any other person under the control of the chief officer of an emergency service; or
    - (c) a police officer.

**7 Relationship with other laws**

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

## Part 2                      Objects and principles

### 8                      Objects of Act

The objects of this Act are to—

- (a) manage waste according to the following hierarchy:
  - (i) minimise the generation of waste;
  - (ii) maximise the recovery and re-use of resources;
  - (iii) minimise the amount of waste that goes to landfill; and
- (b) support innovation and investment in waste management; and
- (c) promote responsibility for waste reduction; and
- (d) promote best-practice waste management.

### 9                      Principles to be taken into account

- (1) The objects of this Act are to be achieved by taking into account the following principles:
  - (a) the inter-generational equity principle;
  - (b) the polluter pays principle;
  - (c) the precautionary principle;
  - (d) the proximity principle;
  - (e) the waste minimisation principle.

- (2) In this section:

*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.

*polluter pays principle* means that polluters should bear the appropriate share of the costs that arise from their activities.

***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.

***proximity principle*** means that waste and recovered resources should be managed as close to the source of generation as possible.

***waste minimisation principle*** means that waste is handled in a way that minimises and, if practicable, eliminates harm to the environment.

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## Part 3 Important concepts

### 10 Meaning of *waste*

In this Act:

*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.

### 11 Meaning of *waste activity*

In this Act:

*waste activity*—

- (a) means any of the following activities carried out by a waste management business:
  - (i) collecting waste;
  - (ii) transporting waste;
  - (iii) storing, sorting, treating, processing, or disposing of waste; and

**Example—processing of waste**

- generating energy from waste material

**Example—disposing of waste**

- depositing waste in landfill

*Note 1* Collecting or transporting waste is carried out by a *waste transporter* (see s 13).

*Note 2* Storing, sorting, treating, processing, or disposing of waste happens at a *waste facility* (see s 14).

*Note 3* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

- (b) for part 9 (Codes of practice)—includes the generation of waste.

## 12 **Meaning of *waste management business***

In this Act:

*waste management business* includes—

- (a) any of the following carried on, by a person or a group of people acting together, with the dominant purpose of providing services in relation to the handling of waste:
- (i) a trade, industry, business or profession;
  - (ii) an activity carried on for a fee, benefit or reward; and
- (b) a person or activity prescribed by regulation.

## 13 **Meaning of *waste transporter***

In this Act:

*waste transporter* means a waste management business that does any of the following:

- (a) collects waste;
- (b) transports waste.

## 14 **Meaning of *waste facility***

In this Act:

*waste facility* means a site used by a waste management business for the storage, sorting, treatment, processing, or disposal of waste.

**15**      **Meaning of *waste facility licence***

In this Act:

*waste facility licence* means a licence issued under section 22.

## Part 4 Waste manager

### 16 Appointment

- (1) The director-general must appoint a public servant as the Waste Manager.

*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 [Legislation Act](#), s 207).

- (2) However, the director-general may appoint a person as the waste manager only if satisfied that the person has suitable qualifications and experience to exercise the functions of the waste manager.
- (3) An appointment is a notifiable instrument.

*Note* A notifiable instrument must be notified under the [Legislation Act](#).

### 17 Functions

- (1) The waste manager's functions are—
  - (a) to administer this Act; and
  - (b) any other function given to the waste manager by this Act or another territory law.
- (2) In the exercise of the waste manager's functions, the waste manager must have regard to the objects and principles stated in part 2 (Objects and principles).

*Note* A provision of a law that gives an entity (including a person) a function also gives the entity the powers necessary and convenient to exercise the function (see [Legislation Act](#), s 196 (1) and dict, pt 1, defs of *entity* and *function*).



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## Part 5 Waste facility licences

### 18 Requirement to hold a waste facility licence

A person must not operate a waste facility unless the person holds a waste facility licence.

*Note* Section 107 (Unauthorised waste activity) makes it an offence to operate a waste facility without a licence.

### 19 Application for licence

- (1) A person may apply to the waste manager for a licence.
- (2) The application must—
  - (a) be in writing; and
  - (b) include any information prescribed by regulation.

*Note 1* Giving false or misleading information is an offence against the [Criminal Code](#), s 338.

*Note 2* If a form is approved under s 127 for an application, the form must be used.

*Note 3* A fee may be determined under s 126 for an application.

### 20 Waste manager may request more information

- (1) The waste manager may, by written notice, require an applicant for a licence to give the waste manager more information—
  - (a) that the waste manager believes on reasonable grounds to be information needed to decide the application; and
  - (b) within a stated time; and
  - (c) at a stated place.
- (2) If the applicant does not comply with a requirement in the notice, the waste manager may refuse to consider the application further.

*Note* A decision under this section is a reviewable decision (see s 119).

**21 Change of information must be provided**

- (1) This section applies if the information in an application for a licence changes before the application is decided.
- (2) The applicant must give the waste manager written notice of the particulars of the change.

**22 Decision about application for licence**

- (1) The waste manager must, not later than 56 days after the day the waste manager receives an application under section 19—
  - (a) approve the application; or
  - (b) refuse the application.

*Note 1* A fee may be determined under s 126 for a licence.

*Note 2* Failure to approve an application within the required time is taken to be a decision not to approve the application (see [ACT Civil and Administrative Tribunal Act 2008](#), s 12).

*Note 3* A decision under this section is a reviewable decision (see s 119).

- (2) However, before approving an application for a licence, the waste manager must consult an entity, prescribed by regulation, before the waste manager approves a licence.

*Note* Power to make a regulation includes power to make different provision in relation to different matters or different classes of matters, and to make a regulation that applies differently by reference to stated exceptions or factors (see [Legislation Act](#), s 48).

- (3) Also, the waste manager—
  - (a) may approve the application only if satisfied that the applicant complies, and is likely to continue to comply, with the requirements of this Act; and
  - (b) may refuse the application if—
    - (i) the application is materially false or misleading; or

- (ii) the applicant has, within 2 years before the application was made, committed an offence under this Act or a corresponding law of a State.

*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).

- (4) If the waste manager refuses the application, the waste manager must as soon as practicable tell the applicant, in writing, the reason for the refusal.

*Note* For how documents may be served, see the [Legislation Act](#), pt 19.5.

- (5) If the waste manager approves the application the waste manager must, as soon as practicable after deciding the application—
  - (a) tell the applicant—
    - (i) that the application is approved; and
    - (ii) that the applicant must pay a fee for the licence (the *licence fee*) before the licence can be issued; and
    - (iii) the day the licence fee is due; and
  - (b) allocate a unique number for the licence; and
  - (c) as soon as practicable after the applicant has paid the licence fee—
    - (i) issue the licence; and
    - (ii) tell the applicant the unique number for the licence; and
  - (d) enter details for the licence in the register of waste facility licences.

## 23 Licence conditions

A licence is subject to—

- (a) a condition that the licensee must comply with this Act; and

- (b) any other condition the waste manager imposes when issuing the licence.

**Examples—conditions—par (b)**

- 1 stating how food waste must be managed at a waste facility
- 2 imposing time limits on the storage of skips after collection, before the skips must be taken to a waste facility
- 3 stating that a waste facility may not receive certain types of waste
- 4 imposing requirements about sorting or processing certain waste material before using the residual waste for energy generation

*Note 1* A decision under this section is a reviewable decision (see s 119).

*Note 2* 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).

*Note 3* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

## 24 Form of licence

- (1) A licence must—
  - (a) be in writing; and
  - (b) include the following information:
    - (i) the name of the licensee;
    - (ii) a unique identifying number;
    - (iii) the term of the licence;
    - (iv) the conditions on the licence;
    - (v) any other information prescribed by regulation.
- (2) A licence may include any other information the waste manager considers relevant.

## 25 Register of waste facility licences

- (1) The waste manager must keep a register of waste facility licences.

- (2) The register must include—
  - (a) information, if any, prescribed by regulation; and
  - (b) any other information the waste manager considers relevant.
- (3) The waste manager—
  - (a) may correct an error or omission in the register; and
  - (b) must change a detail included in the register to keep the register accurate and up-to-date.
- (4) The waste manager—
  - (a) must make the register available to an authorised person at no cost; and
  - (b) may make the register available to any other person.

*Note 1* The Territory privacy principles (the **TPPs**) apply to the waste manager (see *Information Privacy Act 2014*, sch 1). The TPPs deal with the collection, storage and exchange of personal information.

*Note 2* A fee may be determined under s 126 for s (4) (b).

## **26 Licensee must update details**

- (1) This section applies if, to the knowledge of a licensee, any of the information mentioned in section 25 (2) changes.
- (2) The licensee must tell the waste manager, in writing, about the change.

## **27 Licence not transferable**

A licence issued to a licensee may not be transferred to another person.

## **28 Surrender of licence**

- (1) A licensee may surrender a licence by giving the waste manager written notice (a **surrender notice**) of an intention to surrender the licence.

- (2) A surrender notice—
- (a) must include the following information:
    - (i) the name of the licensee;
    - (ii) the unique number for the surrendered licence;
    - (iii) the day on which the surrender notice is given to the waste manager by the licensee;
    - (iv) any other information prescribed by regulation; and
  - (b) may nominate a day, that is on or after the day on which the surrender notice is given to the waste manager, on which the licensee wishes the surrender to take effect.
- (3) The surrender of a licence takes effect on whichever of the following happens first—
- (a) the day that is—
    - (i) if the surrender notice does not nominate a day on which the surrender takes effect—28 days after the day the surrender notice is given to the waste manager; or
    - (ii) if the surrender notice does nominate a day on which the surrender takes effect—the later of—
      - (A) the nominated day; and
      - (B) the day the surrender notice is given to the waste manager; and
  - (b) if the licensee fails to pay the fee for the licence that is the subject of the surrender notice on the day (the *payment day*) the fee for the licence next becomes payable—the day after the payment day.

*Note* The day on which a licence ends is determined under s 29.

**29 Term of licence**

A licence—

- (a) begins on the day after the day the licence fee is paid; and
- (b) ends on whichever of the following happens first:
  - (i) if the licence is surrendered—the day the surrender of the licence takes effect under section 28 (Surrender of licence);
  - (ii) if the licence is cancelled—the day the licence cancellation takes effect under section 46 (4) (Taking regulatory action);
  - (iii) if the licensee fails to pay the fee for the licence on the day (the *payment day*) the fee for the licence next becomes payable—the day after the payment day.

## Part 6 Waste transporter registration

### 30 Requirement to be registered as waste transporter

A person must not operate as a waste transporter unless the person is registered.

*Note* Section 107 (Unauthorised waste activity) makes it an offence to carry on business as a waste transporter if not registered.

### 31 Application to be registered

- (1) A person may apply to the waste manager to be registered as a waste transporter.
- (2) The application must—
  - (a) be in writing; and
  - (b) include any information prescribed by regulation.

*Note 1* Giving false or misleading information is an offence against the [Criminal Code](#), s 338.

*Note 2* If a form is approved under s 127 for an application, the form must be used.

*Note 3* A fee may be determined under s 126 for an application.

### 32 Waste manager may request more information

- (1) The waste manager may, by written notice, require an applicant applying to be registered to give the waste manager more information—
  - (a) that the waste manager believes on reasonable grounds to be information needed to decide the application; and
  - (b) within a stated time; and
  - (c) at a stated place.
- (2) If the applicant does not comply with a requirement in the notice, the waste manager may refuse to consider the application further.

*Note* A decision under this section is a reviewable decision (see s 119).



**33 Change of information must be provided**

- (1) This section applies if the information in an application under section 31 changes before the application is decided.
- (2) The applicant must give the waste manager written notice of the particulars of the change.

**34 Decision about application for registration**

- (1) The waste manager must, not later than 30 days after the day the waste manager receives an application under section 31 (Application to be registered)—
  - (a) approve the application subject to a condition prescribed by regulation; or
  - (b) refuse the application.

*Note 1* A fee may be determined under s 126 for an application.

*Note 2* Failure to approve an application is taken to be a decision refusing to approve the application (see [ACT Civil and Administrative Tribunal Act 2008](#), s 12).

*Note 3* A decision under this section is a reviewable decision (see s 119).

- (2) However, the waste manager—
  - (a) may approve the application only if satisfied that the applicant complies, and is likely to continue to comply, with the requirements of this Act; and
  - (b) may refuse the application if—
    - (i) the application is materially false or misleading; or
    - (ii) the applicant has, within 2 years before the application was made, committed an offence under this Act or a corresponding law of a State.

*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).

- (3) If the waste manager refuses the application, the waste manager must as soon as practicable tell the applicant in writing the reason for the refusal.

*Note* For how documents may be served, see the [Legislation Act](#), pt 19.5.

- (4) If the waste manager approves the application the waste manager must—
- (a) as soon as practicable after deciding the application, tell the applicant—
- (i) that the application is approved; and
  - (ii) that the applicant must pay a fee for the registration (the **registration fee**) before the applicant's details can be entered in the register; and
  - (iii) the day the registration fee is due; and
- (b) as soon as practicable after the applicant has paid the registration fee—
- (i) enter the applicant's details in the register of waste transporters; and
  - (ii) allocate a unique registration number (a **registration number**) for the registered person; and
  - (iii) tell the registered person, in writing, that the person has been registered and the person's registration number.

*Note* A fee may be determined under s 126 for registration.

### **35 Waste transporter must display registration number**

- (1) A registered waste transporter must, within 30 days after being told the waste transporter's registration number, display the number clearly and permanently on any vehicle used by the registered waste transporter for transporting waste.
- (2) A regulation may prescribe requirements for the display of a registration number.

**36 Entry in register not transferable**

The registration of a waste transporter may not be transferred to another person.

**37 Register of waste transporters**

- (1) The waste manager must keep a register of registered waste transporters.
- (2) The register must include—
  - (a) information, if any, prescribed by regulation; and
  - (b) any other information the waste manager considers relevant.
- (3) The waste manager—
  - (a) may correct an error or omission in the register; and
  - (b) must change information included in the register to keep the register accurate and up-to-date.
- (4) The waste manager—
  - (a) must make the register available at no cost to an authorised person; and
  - (b) may make the register available to any other person.

*Note 1* The Territory privacy principles (the *TPPs*) apply to the waste manager (see *Information Privacy Act 2014*, sch 1). The TPPs deal with the collection, storage and exchange of personal information.

*Note 2* A fee may be determined under s 126 for s (4) (b).

**38 Waste transporter must update details**

- (1) This section applies if, to the knowledge of a registered waste transporter, any of the information mentioned in section 37 (2) changes.
- (2) The registered waste transporter must tell the waste manager, in writing, about the change.

**39 Approval of GPS tracking device**

- (1) The waste manager may, for section 40, approve a device that uses the global positioning system to keep track of the location of a motor vehicle.
- (2) An approval is a notifiable instrument.

*Note* A notifiable instrument must be notified under the [Legislation Act](#).

**40 GPS to be fitted to vehicles**

- (1) This section applies if a registered waste 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.
- (2) The waste manager may, by written notice, require the registered waste transporter to ensure that—
  - (a) an approved GPS tracking device is installed, used and maintained, in the way stated in the notice, on a vehicle that is used by the registered waste transporter to transport waste; and
  - (b) the device is not tampered with.

*Note* A decision under this subsection is a reviewable decision (see s 119).

- (3) A person commits an offence if—
  - (a) the person is a registered waste transporter; and
  - (b) notice under subsection (2) is given to the person; and
  - (c) the person engages in conduct; and
  - (d) as a result of the conduct waste is transported in a vehicle; and
  - (e) the vehicle does not have an approved GPS tracking device installed and maintained as required in the notice mentioned in subsection (2).

Maximum penalty: 100 penalty units.

- (4) A person commits an offence if—
- (a) the person tampers with a GPS tracking device installed in a vehicle; and
  - (b) the device was installed, and is required to operate, in the vehicle in accordance with a notice mentioned in subsection (2).

Maximum penalty: 100 penalty units.

- (5) In this section:

*approved GPS tracking device* means a device approved under section 39.

#### **41 Termination of registration by registered waste transporter**

- (1) A registered waste transporter may terminate its registration by giving the waste manager written notice of intention to terminate the registration (a *termination notice*).
- (2) A registration terminated in accordance with subsection (1) takes effect on whichever of the following happens first:
  - (a) if the termination notice does not state a date on which the registration takes effect—the day that is 4 weeks after the day the notice is given to the waste manager;
  - (b) if the termination notice states a date on which the registration takes effect—the stated date;
  - (c) the day on which the next fee for registration becomes payable.

#### **42 Term of registration**

A waste transporter's registration—

- (a) begins on the day the waste manager enters the waste transporter's details in the register of waste transporters; and

- (b) ends on whichever of the following happens first—
- (i) if the registration is terminated—the day the termination of the registration takes effect under section 41 (Termination of registration by registered waste transporter); or
  - (ii) if the registration is cancelled—the day registration cancellation takes effect under section 46 (3) (Taking regulatory action); or
  - (iii) if the waste transporter fails to pay the next fee for the registration on or before the day (the *payment day*) on which the fee becomes payable—on the day after the payment day.

## Part 7 Regulatory action

### 43 Definitions—pt 7

In this part:

*regulatory action*, against a person, means—

- (a) if the person is a licensee—any of the following actions:
  - (i) imposing, or amending, a condition on the licence;
  - (ii) suspending the licence for either a fixed period or until a particular event happens;
  - (iii) disqualifying the licensee from applying for another licence for a fixed period or until a particular event happens;
  - (iv) cancelling the licence; or
- (b) if the person is a registered waste transporter—any of the following actions:
  - (i) imposing or amending a condition on the registration;
  - (ii) suspending the registration for either a fixed period or until a particular event happens;
  - (iii) disqualifying the person from applying for registration for a fixed period or until a particular event happens;
  - (iv) cancelling the registration of the person.

*show cause notice*—see section 45 (1).

**44 Waste manager may consider regulatory action against person**

The waste manager may consider taking regulatory action against a licensee, or a registered waste transporter, only if the waste manager is satisfied on reasonable grounds that—

- (a) for action against a licensee—the person engaged in any of the following conduct:
  - (i) stopped operating a waste facility that is the subject of the licence;
  - (ii) used false or misleading information to obtain the licence;
  - (iii) contravened a condition of the licence;
  - (iv) failed to comply with a provision of this Act; or
- (b) for action against a registered waste transporter—the registered waste transporter engaged in any of the following conduct:
  - (i) used false or misleading information to become a registered waste transporter;
  - (ii) contravened a condition of being registered;
  - (iii) failed to comply with a provision of 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).

**45 Notification of proposed regulatory action**

- (1) If the waste manager proposes taking regulatory action against a person, the waste manager must give the person a written notice (a *show cause notice*) stating—
  - (a) the grounds on which, under section 44, the waste manager considers regulatory action may be taken; and
  - (b) details of the proposed regulatory action; and



- (c) that the person may, not later than 14 days after the day the person is given the notice, give a written submission to the waste manager about the proposed regulatory action.
- (2) The waste manager must consider any submission received by the waste manager in response to the show cause notice when making a decision to take or not take regulatory action against the person.
- (3) However, subsection (2) does not apply if the waste manager gives the person an immediate suspension notice under section 48 (Immediate suspension of licence or registration if risk to public safety).

#### **46 Taking regulatory action**

- (1) This section applies if the waste manager—
  - (a) has considered a submission mentioned in section 45 (2) received from a person; and
  - (b) is satisfied on reasonable grounds that it is appropriate, in all the circumstances, to take the regulatory action.
- (2) The waste manager may—
  - (a) if the proposed regulatory action is imposing or amending a condition on a licence, or on a registration—impose or amend the condition; or
  - (b) if the proposed regulatory action is suspending a licence or a registration—take any of the following action:
    - (i) the action mentioned in paragraph (a);
    - (ii) suspend the licence or registration for a period; or
  - (c) if the proposed regulatory action is disqualifying a person from applying for a further licence or further registration—take any of the following action:
    - (i) the action mentioned in paragraph (b);
    - (ii) disqualify the person from applying for a further licence or further registration for a period; or

- (d) if the proposed regulatory action is cancelling a licence or a registration—take any of the following action:
  - (i) the action mentioned in paragraph (c);
  - (ii) cancel the licence or registration.

*Note* A decision under this subsection is a reviewable decision (see s 119).

- (3) Before taking regulatory action against a person under this section the waste manager must tell the person, by written notice (a ***notice of regulatory action***)—
  - (a) the regulatory action that will be taken; and
  - (b) the day on which the regulatory action takes effect (the ***day of effect***).
- (4) Regulatory action takes effect against a person on the day of effect.
- (5) In this section:

***proposed regulatory action***, in relation to a person, means regulatory action mentioned in a show cause notice given to the person under section 45 (1).

#### **47 Not taking regulatory action**

- (1) This section applies if, after considering a submission under section 45 (2) received from a person, the waste manager is satisfied on reasonable grounds that regulatory action against the person—
  - (a) may not be taken; or
  - (b) may be taken, but that in all the circumstances it is not appropriate to take the action.
- (2) The waste manager must give the person written notice telling the person that regulatory action will not be taken against the person in relation to the matters raised in the show cause notice.

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

- (1) This section applies if—
  - (a) the waste manager gives a show cause notice, under section 45 (1), to a person; and
  - (b) having regard to the grounds stated in the notice, 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.
- (2) The waste manager must give the person a written notice (an *immediate suspension notice*) suspending the person's licence or registration.
- (3) A suspension under this section takes effect when the immediate suspension notice is given to the licensee.
- (4) A suspension under this section ends—
  - (a) if regulatory action is taken against the person—when whichever of the following happens first:
    - (i) regulatory action takes effect;
    - (ii) 30 days after the day the immediate suspension notice is given to the person; or
  - (b) if regulatory action is not taken against the person—when whichever of the following happens first:
    - (i) when the person is given written notice of the waste manager's decision not to take regulatory action;
    - (ii) 30 days after the day the immediate suspension notice is given to the person.

*Note* A decision under this section is a reviewable decision (see s 119).

**49 Effect of suspension**

- (1) A suspended licence or registration does not authorise the carrying on of any activity under the licence or registration during the suspension.
- (2) If the waste manager suspends a licence or registration, the person whose licence or registration is suspended is, during the suspension—
  - (a) taken not to—
    - (i) hold the licence; or
    - (ii) be registered; and
  - (b) disqualified from applying for a licence or registration.

**50 Offence—fail to return amended, suspended or cancelled licence**

- (1) A person commits an offence if—
  - (a) the person was issued a licence; and
  - (b) the waste manager decides to amend, suspend or cancel the licence in a decision made under this part; and
  - (c) the person fails to return the licence to the waste manager within 7 days after the day the person is given a reviewable decision notice under section 119 (Notice of decisions on reconsideration) about the decision.

Maximum penalty: 10 penalty units.

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

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

- (1) This section applies if—
  - (a) a licence is amended or suspended under this part; and
  - (b) the licence is returned to the waste manager.

- (2) For an amended licence, the waste manager must—
  - (a) return the amended licence to the licensee; or
  - (b) give the licensee a replacement licence that includes the amendment.
- (3) For a suspended licence, if the suspension ends before the end of the term of the licence, the waste manager must return the licence to the licensee when the suspension ends.

## Part 8 Financial assurances

### 52 Waste manager may require financial assurance

- (1) The waste manager may require a licensee to provide a financial assurance to the waste manager if satisfied that the assurance is justified to ensure compliance with a licence.
- (2) Before requiring a financial assurance under subsection (1), the waste manager must consider—
  - (a) the nature of the waste activity; and
  - (b) the compliance record of the licensee; and
  - (c) the likelihood that remedial action will be necessary if the licensee fails to comply with a condition of the licence.
- (3) A financial assurance must be in the form of—
  - (a) an unconditional bank guarantee; or
  - (b) a bond; or
  - (c) an insurance policy; or
  - (d) another form of security that the waste manager considers appropriate.
- (4) The waste manager must not require a financial assurance of an amount greater than the total amount that the waste manager reasonably believes is necessary to remedy the foreseeable harm that could result from the failure to comply with the licence.
- (5) A financial assurance must be provided—
  - (a) for the period stated in the licence; or
  - (b) if no period is stated, until the end of the licence.
- (6) The waste manager may require the licensee to give a financial assurance under this part, even though the person has given a financial assurance under the *Environment Protection Act 1997*, division 9.4.

**53 Show cause why financial assurance should not be provided**

- (1) If the waste manager proposes to issue a licence subject to a condition requiring a financial assurance, the waste manager must give written notice of the waste manager's intention to impose the condition to the person who applies for the licence (the *applicant*).
- (2) A notice under subsection (1) must—
  - (a) state the grounds on which the condition is proposed; and
  - (b) state the amount and form of the financial assurance proposed; and
  - (c) invite the applicant to show cause why the condition should not be imposed; and
  - (d) state the date, not earlier than 20 working days after the date of the notice, by which any representations under paragraph (c) must be made.
- (3) Within 20 working days after the end of the period allowed under subsection (2) (d) for representations, the waste manager must—
  - (a) tell the applicant whether or not the condition will be imposed; and
  - (b) if it will be imposed—state in the notice the date, not earlier than 10 working days after the date of the notice, by which the financial assurance must be provided.

**54 Non-provision of financial assurance**

If a financial assurance required as a condition of a licence is not provided by the due date, the waste manager must cancel the licence.

**55 Claim on or realisation of financial assurance**

- (1) This section applies if the waste manager incurs, or will incur, costs and expenses in taking action to remedy harm—
  - (a) caused, or likely to be caused, by failure to comply with a licence; and
  - (b) that is within the class of harm in relation to which the financial assurance may be claimed or realised; and
  - (c) that was not allowed under this Act.
- (2) The waste manager may recover the reasonable costs and expenses of taking the action by making a claim on or realising the financial assurance or part of it.

**56 Notice before claim on or realisation of financial assurance**

- (1) Before acting under section 55 (2), the waste manager must give to the licensee in relation to which the financial assurance was provided, a written notice—
  - (a) stating the harm caused, or likely to be caused, by the failure to comply with the licence; and
  - (b) giving details of the action taken, or to be taken, to remedy the harm; and
  - (c) stating the amount of the financial assurance to be claimed or realised; and
  - (d) inviting the licensee to make a written representation to the waste manager by a stated date, not earlier than 20 working days after the date of the notice, to show why the financial assurance should not be claimed or realised as proposed.



- (2) The waste manager must, within 20 working days after the date stated in the invitation under subsection (1) (d) and taking into account any representations made in response to the invitation—
  - (a) decide whether or not to make a claim on or realise the financial assurance or part of it; and
  - (b) give the licensee written notice of the decision.

### **57 Financial assurance not affect other action**

A financial assurance may be called on and used, despite and without affecting—

- (a) the liability of a licensee or former licensee to any penalty for an offence for a contravention to which the assurance relates; and
- (b) any other action that might be taken or is required to be taken in relation to any contravention or other circumstances to which the assurance relates.

### **58 Recovery of extra costs**

- (1) This section applies if the amount recovered by the waste manager by a claim on or by realising a financial assurance (the *realised assurance*) is less than the reasonable costs and expenses that the waste manager incurred or will incur in taking action to remedy the harm caused, or likely to be caused, by a failure to comply with a condition of a licence (the *reasonable costs and expenses*).
- (2) The waste manager may give the licensee written notice requiring the licensee to pay a stated amount that is the difference between the reasonable costs and expenses and the realised assurance.
- (3) The notice must state the date, not earlier than 20 working days after the date of the notice, by which the stated amount is required to be paid.

- (4) Subsection (4) applies if—
- (a) the waste manager has given a licensee written notice under subsection (1); and
  - (b) the licensee has failed to pay the stated amount by the stated date.
- (5) Any part of the stated amount that remains unpaid, together with interest on the unpaid amount, is a debt due to the Territory by the holder.

*Note* A rate of interest may be determined under s 126 for s (4).

## **59 Money held by Territory as financial assurance**

- (1) If an amount of money is held by the Territory as a financial assurance or part of a financial assurance in relation to a licence, the following provisions apply:
- (a) interest accrues on so much of the original amount as from time to time remains unclaimed by the waste manager under section 55 (Claim on or realisation of financial assurance);
- Note* A rate of interest may be determined under s 126 for par (a).
- (b) for any claim the waste manager may make under section 55, the financial assurance is taken to include any accrued interest other than interest to which the licensee is entitled to be paid under paragraph (c);
  - (c) during the period the financial assurance is required, on each anniversary of the payment of the original amount, the licensee is entitled to be paid by the Territory so much of the interest that accrued during the year that ended on the day before the anniversary as remains unclaimed by the waste manager under section 55.
- (2) Subsection (3) applies if—
- (a) the financial assurance is no longer required by the waste manager; or

- (b) the licence has ended.
- (3) The Territory must pay to the licensee any part of the original amount and accrued interest that remains unclaimed by the waste manager under section 55.

## Part 9 Codes of practice

### 60 Code of practice—approval

- (1) The Minister may approve a code of practice in relation to a waste activity.

**Examples—codes of practice in relation to a waste activity**

- 1 code of practice for disposal of waste from a demolition or construction site
- 2 code of practice for collection, handling and treatment of putrescibles waste
- 3 code of practice for storage and placement for collection of domestic waste

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

- (2) An approved code of practice may apply, adopt or incorporate an instrument, as in force from time to time.

*Note 1* The text of an applied, adopted or incorporated 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 disapplied (see s 47 (7)).

*Note 2* A notifiable instrument must be notified under the [Legislation Act](#).

*Note 3* A reference to an instrument includes a reference to a provision of an instrument (see [Legislation Act](#), s 14 (2)).

- (3) An approved code of practice is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

### 61 Failure to comply with approved code of practice

- (1) A person commits an offence if—
- (a) an approved code of practice applies to the person; and
  - (b) the person engages in conduct; and
  - (c) the conduct results in a failure to comply with a requirement of the approved code of practice; and

- (d) the person is reckless about whether the conduct complies with the approved code of practice.

Maximum penalty: 100 penalty units.

- (2) A person commits an offence if—
  - (a) an approved code of practice applies to the person; and
  - (b) the person fails to comply with a requirement of the approved code of practice.

Maximum penalty: 50 penalty units.

- (3) An offence against subsection (2) is a strict liability offence.
- (4) Subsections (1) and (2) do not apply if—
  - (a) a written direction has been given to the person under section 62 in relation to the requirement; and
  - (b) the person has complied with the direction.

*Note* The defendant has an evidential burden in relation to the matters mentioned in s (4) (see [Criminal Code](#), s 58).

## **62 Direction to comply with approved code**

- (1) An authorised person may give a person a written direction to rectify a breach of an approved code of practice if the authorised person believes on reasonable grounds that—
  - (a) the person has been, is or is likely to be, in breach of a requirement of the code; and
  - (b) the person has not previously been convicted, or found guilty, of an offence under section 61.
- (2) A direction must—
  - (a) state the requirement of the approved code of practice that has been breached and the conduct constituting the breach; and
  - (b) state a reasonable time within which the direction must be complied with; and

- (c) include a statement that the person may be prosecuted under section 61 if the person fails to comply with the direction.
- (3) The authorised person may withdraw a written direction if, after giving the direction to a person, the authorised person discovers that the person has previously been convicted, or found guilty, of an offence under section 61.

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## Part 10 Waste storage and collection

### 63 Definitions—pt 10

In this part:

*store* includes keep.

*waste* does not include—

- (a) sewage; or
- (b) a thing prescribed by regulation.

*waste collection service* means a service for collecting waste.

### 64 Waste collection service

- (1) The waste manager may—
    - (a) establish a waste collection service in the Territory, in accordance with a regulation; and
    - (b) direct that waste collected by a waste collection service be reused, recycled or used as landfill.
- Note* Words in the singular number include the plural (see [Legislation Act](#), s 145 (b)).
- (2) A regulation may make provision in relation to the following:
    - (a) collection or disposal of waste;
    - (b) eligibility to operate a waste collection service;
    - (c) operation of a waste collection service, including responsibilities and liabilities of the service;
    - (d) storing waste for collection by a waste collection service, including requirements relating to the use or maintenance of containers for storing waste;
    - (e) entry of people on land for a purpose under this part.

## Part 11 Reporting

### 65 Waste activity report

- (1) A licensee or registered waste transporter must give the waste manager a report (a *waste activity report*), in writing, about waste activities carried out in a reporting period.

*Note* If a form is approved under s 127 for this provision, the form must be used.

- (2) The report must—
  - (a) contain information prescribed by regulation; and
  - (b) be given to the waste manager not later than 1 month after the end of the reporting period.
- (3) In this section:  
*reporting period* means the period prescribed by regulation.

### 66 Offence—fail to report to waste manager

- (1) A person commits an offence if the person—
  - (a) is required to give the waste manager a report under section 65; and
  - (b) fails to give the report to the waste manager in accordance with section 65 (2).

Maximum penalty: 50 penalty units.

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



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## Part 12 Exemptions

### 67 Declaration exempting person or activity

- (1) The waste manager may, on application or on the manager's own initiative, declare the following exempt from a provision of this Act:
- (a) a person or class of people;
  - (b) waste activity of a particular kind or generally.

*Note 1* If a form is approved under s 127 for an application, the form must be used.

*Note 2* A fee may be determined under s 126 for an application.

*Note 3* 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) A declaration under subsection (1) may be made only—

- (a) in an emergency; or

**Examples—emergency**

- fire
- flood
- fuel shortage

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

- (b) if the waste manager is satisfied that—

- (i) it is not practicable to comply with the provision; and
- (ii) noncompliance with the provision will not have any significant adverse effect on public health, property or the environment.

*Note* A decision under this section is a reviewable decision (see s 119).

- (3) An exemption in a declaration may include conditions.

- (4) A declaration—
- (a) made in circumstances mentioned in subsection (2) (a)—is a notifiable instrument; and
    - Note* A notifiable instrument must be notified under the [Legislation Act](#).
  - (b) made in circumstances mentioned in subsection (2) (b)—is a disallowable instrument.
    - Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).
- (5) A declaration made in an emergency may commence when it is made or on a later date stated in the declaration.

## **68 Renewal of declaration**

- (1) The waste manager may renew a declaration.
- (2) An exemption, under a declaration, given to a person within 5 years after the expiry of an earlier exemption, and in the same terms as the earlier exemption, is taken to be a renewal of the earlier exemption.

## **69 Term of declaration**

A declaration, including renewal of the declaration, may not be in force for a total period of more than 5 years.

## **Part 13                      Enforcement**

### **Division 13.1              Directions**

#### **70                      Direction to stop contravening Act etc**

- (1) This section applies if the waste manager believes on reasonable grounds that a person is contravening this Act, a condition of a licence or a condition of registration as a waste transporter.

*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 waste manager may direct the person to comply with this Act, or the condition by doing, or not doing, a thing (a ***compliance direction***).

*Note*      A decision under this section is a reviewable decision (see s 119).

- (3) A compliance direction may require the person to carry out remedial action if the waste manager considers the action is necessary to restore land that is damaged because of the person's contravention.

- (4) A compliance direction must be in writing and state—

- (a) the thing required to be done, or not done; and
- (b) the period for compliance with the direction.

*Note*      The power to make a direction includes the power to amend or repeal the direction. The power to amend or repeal the direction is exercisable in the same way, and subject to the same conditions, as the power to make the direction (see [Legislation Act](#), s 46).

#### **71                      Directions—stockpiling materials and delivering waste**

- (1) The waste manager may give a person directions in relation to the following:

- (a) stockpiling waste;
- (b) delivering waste to a named waste facility;
- (c) an activity prescribed by regulation.

- (2) The waste manager may give a person a direction under subsection (1) (b) even though the direction is contrary to the person's obligation in relation to the delivery of the waste under a licence.

*Note* A decision under this section is a reviewable decision (see s 119).

- (3) A direction must be in writing and state—
- (a) the thing required to be done, or not done; and
  - (b) the period for compliance with the direction.

*Note* The power to make a direction includes the power to amend or repeal the direction. The power to amend or repeal the direction is exercisable in the same way, and subject to the same conditions, as the power to make the direction (see [Legislation Act](#), s 46).

## 72 Offence—fail to comply with direction

- (1) A person commits an offence if—
- (a) the waste manager gives the person a direction under section 70 or section 71; and
  - (b) the person fails to comply with the direction.

Maximum penalty: 50 penalty units.

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

## Division 13.2 Authorised people

### Subdivision 13.2.1 General

#### 73 Definitions—div 13.2

In this division:

*connected*—a thing is *connected* with an 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.

**premises** includes land.

**warrant** means a warrant issued under subdivision 13.2.3 (Search warrants).

## 74 Appointment

The director-general may appoint a public servant 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 [Legislation Act](#), s 207).

## 75 Identity cards

- (1) The director-general must give each authorised person an identity card that states the person's name and appointment as an authorised person, and shows—
- (a) a recent photograph of the person; and  
(b) the date of issue of the card; and  
(c) the date of expiry of the card; and  
(d) anything else prescribed by regulation.

- (2) A person commits an offence if the person—
- (a) stops being an authorised person; and
  - (b) does not return the person’s identity card to the director-general as soon as practicable (but within 7 days) after the day the person stops being an authorised person.

Maximum penalty: 1 penalty unit.

- (3) Subsection (2) does not apply to a person if the person’s identity card is—
- (a) lost or stolen; or
  - (b) destroyed by someone else.
- (4) An offence against this section is a strict liability offence.

**76 Authorised person must show identity card on exercising power**

- (1) If an authorised person exercises a power under this Act that affects an individual, the authorised person must first show the authorised person’s identity card to the individual.
- (2) If an authorised person exercises a power under this Act that affects a person, other than 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.

**Example—person other than an individual**

- corporation
- partnership

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

## **Subdivision 13.2.2 Powers**

### **77 Power to enter premises**

- (1) For this Act, an authorised person may—
  - (a) at any reasonable time, enter premises that the public is entitled to use or that are open to the public (whether or not on payment of money); or
  - (b) at any time, enter premises with the occupier's consent; or
  - (c) at any time, enter premises if the authorised person believes on reasonable grounds that—
    - (i) there is a risk to the environment or to public health and safety; and
    - (ii) the risk is so serious and urgent that immediate entry to the premises without the authority of a search warrant is necessary; or
  - (d) enter premises in accordance with a search warrant.
- (2) However—
  - (a) subsection (1) (a) does not authorise entry into a part of the premises that is being used only for residential purposes; and
  - (b) 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.
- (3) An authorised person may, without the consent of the occupier of premises, enter land around the premises to ask for consent to enter the premises.
- (4) To remove any doubt, an authorised person may enter premises under subsection (1) without payment of an entry fee or other charge.

- (5) An authorised person may—
- (a) for subsection (1) (a), (b) or (c)—enter the premises with necessary assistance; and
  - (b) for subsection (1) (d)—enter the premises with necessary assistance and force.

*Note* A search warrant to enter premises, issued under this Act, permits an authorised person to enter premises with any necessary assistance and force.

- (6) In this section:

***necessary assistance***, for an authorised person entering premises, includes the attendance of 1 or more people who, in the opinion of the authorised person, have knowledge or skills that could assist the authorised person carry out his or her function.

## **78 Production of identity card**

An authorised person and any other person other than a police officer who is accompanying the authorised person may not remain at premises entered under this part if the authorised person does not produce his or her identity card when asked by the occupier.

## **79 Consent to entry**

- (1) When seeking the consent of an occupier to enter premises under section 77 (1) (b) (Power to enter premises), an authorised person must—
- (a) produce his or her identity card; and
  - (b) tell the occupier—
    - (i) the purpose of the entry; and
    - (ii) the reason for, and identity of, any other person accompanying the authorised person; and
    - (iii) that anything found and seized under this part may be used in evidence in court; and



- (iv) that consent may be refused.
- (2) If the occupier consents, the authorised person must ask the occupier to sign a written acknowledgment (an *acknowledgment of consent*)—
  - (a) that the occupier was told—
    - (i) the purpose of the entry; and
    - (ii) the reason for, and identity of, any other person accompanying the authorised person; and
    - (iii) that anything found and seized under this part may be used in evidence in court; and
    - (iv) 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 find that the occupier did not consent to entry to the premises by the 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 of consent for the entry is not produced in evidence; and
  - (c) it is not proved that the occupier consented to the entry.

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

- (1) An authorised person who enters premises under this part may, for this Act, do 1 or more of the following in relation to the premises or anything at the premises:
  - (a) inspect or examine;
  - (b) take measurements or conduct tests;

- (c) take samples;
- (d) make sketches, drawings or any other kind of record (including photographs, films, audio, video or other recordings);
- (e) require the occupier, or anyone at the premises, to give the authorised person reasonable help to exercise a power under this part.

*Note* The [Legislation Act](#), s 170 and s 171 deal with the application of the privilege against self-incrimination and client legal privilege.

- (2) A person must take all reasonable steps to comply with a requirement made of the person under subsection (1) (e).

Maximum penalty: 50 penalty units.

## 81 Power to seize things

- (1) An authorised person who enters premises under this part with the occupier's consent may seize anything at the premises if seizure of the thing is consistent with the purpose of the entry told to the occupier when seeking the occupier's consent.
- (2) An authorised person who enters premises under a warrant under this part may seize anything at the premises that the authorised person is authorised to seize under the warrant.
- (3) An authorised person who enters premises under this part (whether with the occupier's consent, under a warrant or otherwise) may seize anything at the premises 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 seized thing, or anything containing a seized thing, to which access has been restricted under subsection (4); and
  - (b) the person does not have an authorised person’s approval to interfere with the thing.

Maximum penalty: 50 penalty units.

- (6) An offence against subsection (5) is a strict liability offence.

## **82 Direction to give name and address**

- (1) This section applies if an authorised person believes on reasonable grounds that a person—
  - (a) has committed, is committing or is about to commit an offence against this Act; or
  - (b) may be able to assist in the investigation of 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 may direct the person to give the authorised person, immediately, any of the following personal details (***a name and address direction***):
  - (a) the person’s full name;
  - (b) the person’s home address.

*Note 1* The authorised person must first show the person the authorised person’s identity card (see s 76).

*Note 2* The power to make a direction includes the power to amend or repeal the direction. The power to amend or repeal the direction is exercisable in the same way, and subject to the same conditions, as the power to make the direction (see [Legislation Act](#), s 46).

- (3) If the authorised person believes on reasonable grounds that a personal detail given by a person in response to a name and address direction is false or misleading, the authorised person may direct the person to produce evidence immediately of the correctness of the detail (an *evidence direction*).
- (4) If an authorised person gives a direction to a person, the authorised person must tell the person that it is an offence if the person fails to comply with the direction.
- (5) If an authorised person gives a direction to a person, the authorised person must give the direction in a language, or in a way of communicating, that the authorised person believes on reasonable grounds the person is likely to understand.

**83 Offence—fail to comply with direction to give name and address**

- (1) A person commits an offence if the person—
  - (a) is the subject of—
    - (i) a name and address direction; or
    - (ii) an evidence direction; and
  - (b) fails to comply with the direction.

Maximum penalty: 5 penalty units.

*Note* It is an offence to make a false or misleading statement or give false or misleading information (see [Criminal Code](#), pt 3.4).

- (2) An offence against this section is a strict liability offence.
- (3) This section does not apply to a person if the authorised person, before giving the direction, did not—
  - (a) produce the authorised person’s identity card for inspection by the person; or

- (b) warn the person that failure to comply with the direction is an offence.

*Note* The defendant has an evidential burden in relation to the matters mentioned in s (3) (see [Criminal Code](#), s 58).

- (4) In this section:

*direction* means a name and address direction or an evidence direction.

*evidence direction*—see subsection 82 (3).

*name and address direction*—see subsection 82 (2).

### **Subdivision 13.2.3 Search warrants**

#### **84 Warrants generally**

- (1) An authorised person may apply to a magistrate for a warrant to enter premises.
- (2) The application must—
  - (a) be sworn; and
  - (b) 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 connected with an offence against this Act; and
  - (b) the thing or activity—
    - (i) is, or is being engaged in, at the premises; or
    - (ii) may be, or may be engaged in, at the premises within the next 14 days.

- (5) The warrant must state—
- (a) that an authorised person may, with any necessary assistance and force, enter the premises and exercise the authorised person’s powers under this part; and
  - (b) the offence for which the warrant is issued; and
  - (c) the things 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 day of the warrant’s issue, when the warrant ends.

## **85 Warrants—application other than in person**

- (1) An authorised person may apply for a warrant by phone, fax, radio, email, letter 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 give a copy to the authorised person if it is practicable to do so.
- (5) If it is not practicable to give a copy of the warrant to the authorised person—
- (a) the magistrate must tell the authorised person—
    - (i) what the terms of the warrant are; and
    - (ii) the date and time the warrant was issued; and

- (b) the authorised person must complete a form of warrant (the *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 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 mentioned in subsection (7), the magistrate must attach them to the warrant.
- (9) A court must find 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.

## **86 Search warrants—announcement before entry**

- (1) An authorised person must, before anyone enters premises under a search warrant—
  - (a) announce that the authorised person is authorised to enter the premises; and
  - (b) give anyone at the premises an opportunity to allow entry to the premises; and

- (c) if the occupier of the premises, or someone else who apparently represents the occupier, is present at the premises—  
identify himself or herself to the person.
- (2) The authorised person is not required to comply with subsection (1) if the authorised person believes on reasonable grounds that immediate entry to the premises is required to ensure—
  - (a) the safety of anyone (including the authorised person or any person assisting); or
  - (b) that the effective execution of the warrant is not frustrated.

**87 Details of search warrant to be given to occupier etc**

If the occupier of the premises, or someone else who apparently represents the occupier, is present at the premises while a search warrant is being executed, the authorised person or a person assisting must make available to the person—

- (a) a copy of the warrant; and
- (b) a document setting out the rights and obligations of the person.

**88 Occupier entitled to be present during search etc**

- (1) If the occupier of the premises, or someone else who apparently represents the occupier, is present at the premises while a search warrant is being executed, the person is entitled to observe the search being conducted.
- (2) However, the person is not entitled to observe the search if—
  - (a) to do so would impede the search; or
  - (b) the person is under arrest, and allowing the person to observe the search being conducted would interfere with the objectives of the search.
- (3) This section does not prevent 2 or more areas of the premises being searched at the same time.



## **Subdivision 13.2.4 Return and forfeiture of things seized**

### **89 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 under section 81 (Power to seize things).
- (3) A receipt under this section must include the following:
  - (a) a description of the thing seized;
  - (b) an explanation of why the thing was seized;
  - (c) the authorised person's name, and how to contact the authorised person;
  - (d) if the thing is moved from the premises where it is seized—where the thing is to be taken.

### **90 Moving things to another place for examination or processing under search warrant**

- (1) A thing 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 if—
  - (a) both of the following apply:
    - (i) there are reasonable grounds for believing that the thing is or contains something to which the warrant relates;
    - (ii) it is significantly more practicable to do so having regard to the timeliness and cost of examining or processing the thing at another place and the availability of expert assistance; or
  - (b) the occupier of the premises agrees in writing.

- (2) The thing may be moved to another place for examination or processing for not longer than 72 hours.
- (3) An authorised person may apply to a magistrate for an extension of time if the authorised person believes on reasonable grounds that the thing cannot be examined or processed within 72 hours.
- (4) The authorised person must give notice of the application to the occupier of the premises, and the occupier is entitled to be heard on the application.
- (5) If a thing is moved to another place under this section, the authorised person must, if practicable—
  - (a) tell the occupier of the premises the address of the place where, and time when, the examination or processing will be carried out; and
  - (b) allow the occupier or the occupier's representative to be present during the examination or processing.
- (6) The provisions of this part relating to the issue of search warrants apply, with any necessary changes, to the giving of an extension under this section.

## **91 Access to things seized**

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

- (a) inspect the thing; and
- (b) photograph the thing; and
- (c) if the thing is a document—take extracts from, or make copies of, the thing.

**92 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) an infringement notice for an offence connected with the thing is not served on the owner within 1 year after the day of the seizure and either—
    - (i) a prosecution for an offence connected with the thing is not begun within the 1-year period; or
    - (ii) a prosecution for an offence connected with the thing is begun within the 1-year period but the court does not find the offence proved; or
  - (b) an infringement notice for an offence connected with the thing is served on the owner within 1 year after the day of the seizure, the infringement notice is withdrawn and—
    - (i) a prosecution for an offence connected with the thing is not begun within 1 year after the day of the seizure; or
    - (ii) a prosecution for an offence connected with the thing is begun within 1 year after the day of the seizure but the court does not find the offence proved; or
  - (c) an infringement notice for an offence connected with the thing is served on the owner within 1 year after the day of the seizure, liability for the offence is disputed in accordance with the *Magistrates Court Act 1930*, section 132 (Disputing liability for infringement notice offence) and—
    - (i) an information is not laid in the Magistrates Court against the person for the offence within 60 days after the day notice is given under that section; or
    - (ii) the Magistrates Court does not find the offence proved.

- (2) If anything seized under this part is not required to be returned or reasonable compensation is not required to be paid under subsection (1), the thing—
- (a) is forfeited to the Territory; and
  - (b) may be sold, destroyed or otherwise disposed of as the waste manager directs.

### **Subdivision 13.2.5 Miscellaneous**

#### **93 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 at premises entered under this part in the absence of the occupier, the notice may be given by leaving it secured in a conspicuous place at the premises.

#### **94 Compensation for exercise of enforcement powers**

- (1) A person may claim 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—
- (a) an authorised person; or
  - (b) 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 it is 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 14                      Enforceable undertakings

### 95                      Definitions—pt 14

In this part:

*enforceable undertaking* means a proposed undertaking that has been accepted by the waste manager under section 97.

*proposed undertaking*—see section 96 (3).

*undertakings register*—see section 98.

### 96                      Making of proposed undertakings

- (1) This section applies if the waste manager believes on reasonable grounds that a person has committed an offence against part 15 (Offences) (the *alleged offence*).
- (2) The waste manager may give the person written notice stating—
  - (a) that the waste manager believes the person has committed the alleged offence; and
  - (b) the grounds for the waste manager's belief; and
  - (c) the facts of the alleged offence; and
  - (d) the following:
    - (i) that the person may enter an enforceable undertaking with the waste manager for the alleged offence under this part;
    - (ii) information about the effect of—
      - (A) entering an enforceable undertaking, including the consequences of contravening the undertaking; and
      - (B) not entering an enforceable undertaking;
    - (iii) how the person may enter and withdraw from an enforceable undertaking;

- (iv) the assurances about the person's future conduct that the waste manager would be prepared to accept for an enforceable undertaking.
- (3) If the person wishes to enter into an enforceable undertaking with the waste manager, the person must give the waste manager a written proposal (a ***proposed undertaking***) about the person's future conduct as a result of the alleged offence.
- (4) The proposed undertaking must—
- (a) acknowledge that the waste manager believes that the person has committed an alleged offence; and
  - (b) contain a statement by the person—
    - (i) that the person understands that the proposed undertaking becomes an enforceable undertaking when accepted by the waste manager; and
    - (ii) setting out assurances about the person's future conduct for the enforceable undertaking; and
    - (iii) agreeing to be bound by the enforceable undertaking; and

**Examples—assurances about person's future conduct**

- 1 to stop certain conduct
- 2 to take particular action to compensate people adversely affected by an alleged offence committed against a stated provision of this Act
- 3 to take particular action to rectify a state of affairs that arose as a direct or indirect result of the alleged offence
- 4 to take particular action (including implementing particular systems) to prevent future offences against this Act
- 5 to implement publicity or education programs
- 6 to install a GPS device in a vehicle operated by a waste transporter

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

- (c) include any other information prescribed by regulation.

*Note* If a form is approved under s 127 for this provision, the form must be used.

**97 Acceptance of proposed undertaking**

- (1) If the waste manager accepts a proposed undertaking the waste manager must by written notice tell the person that gave the undertaking that the undertaking has been accepted and is an enforceable undertaking for this Act.
- (2) On acceptance of the proposed undertaking, the undertaking becomes enforceable (an *enforceable undertaking*).

**98 Register of enforceable undertakings**

- (1) The waste manager must keep a register of enforceable undertakings (the *undertakings register*).
- (2) The undertakings register must include the following details for each undertaking:
  - (a) the name of the person that gave the undertaking;
  - (b) particulars of the undertaking given;
  - (c) the date the undertaking takes effect;
  - (d) anything else prescribed by regulation.
- (3) The undertakings register may include any other information the waste manager considers relevant.
- (4) The undertakings register may be kept in any form, including electronically, that the waste manager decides.
- (5) The waste manager may—
  - (a) correct a mistake, error or omission in the undertakings register; and
  - (b) change a detail included in the register to keep the register up-to-date.



**99 Withdrawal from or amendment of enforceable undertaking**

- (1) The person that gave an enforceable undertaking may withdraw from or amend the undertaking only with the waste manager's written agreement.
- (2) However, the undertaking may not be amended to provide for a different alleged offence.

**100 Ending enforceable undertaking**

- (1) The waste manager may end an enforceable undertaking by written notice to the person that gave the undertaking if satisfied on reasonable grounds that the undertaking is no longer necessary or desirable to ensure that the person complies with this Act.
- (2) The waste manager may act under subsection (1) on the waste manager's own initiative or on the application of the person that gave the undertaking.
- (3) The undertaking ends when the person that gave the undertaking receives the waste manager's notice.

**101 Undertaking not admission of fault etc**

- (1) This section applies if a person gives the waste manager a proposed undertaking in relation to an alleged offence, whether or not the undertaking is accepted by the waste manager.
- (2) Giving the proposed undertaking is neither—
  - (a) an express or implied admission of fault or liability by the person in relation to the alleged offence; nor
  - (b) relevant to deciding fault or liability in relation to the alleged offence.
- (3) Neither a proposed undertaking nor an enforceable undertaking is admissible in evidence in a court or tribunal in any proceeding for the alleged offence.

**102 Contravention of enforceable undertakings**

- (1) 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 (2).
- (2) If the Magistrates Court is satisfied that the enforceable undertaking has been contravened, the court may make 1 or more of the following orders:
  - (a) an order requiring the person who gave the undertaking to ensure that the undertaking is not contravened;
  - (b) an order requiring the person who gave the undertaking to pay to the Territory the amount assessed by the court as the value of the benefits anyone derived, directly or indirectly, from the contravention of the undertaking;
  - (c) an order that the court considers appropriate requiring the person who gave the undertaking to compensate someone who has suffered loss or damage because of the contravention of the undertaking;
  - (d) any other order that the court considers appropriate.

**103 Effect of enforceable undertaking on other proceedings**

A proceeding may not be brought against a person for an alleged offence mentioned in an enforceable undertaking 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 15**                      **Offences**

### **Division 15.1**              **Liability of managers etc**

#### **104**              **Criminal liability of partners—pt 15**

- (1) This section applies if a partnership through a partner, servant or agent—
  - (a) engages in conduct; and
  - (b) the conduct is an offence against this part.
- (2) Each partner (a *liable partner*) in the partnership is taken to commit the offence.
- (3) It is a defence to a prosecution for an offence against this part if a liable partner proves that—
  - (a) the partner did not know about the conduct that constituted the offence; and
  - (b) either—
    - (i) the partner took reasonable precautions and exercised appropriate diligence to ensure the partnership did not engage in the conduct; or
    - (ii) the partner was not in a position to influence the partnership in relation to the conduct.

*Note*              The defendant has a legal burden in relation to the matters mentioned in s (3) (see [Criminal Code](#), s 59).

#### **105**              **Criminal liability of executive officers—pt 15**

- (1) An executive officer of a corporation is taken to commit an offence if—
  - (a) the corporation commits a relevant offence; and
  - (b) the officer was reckless about whether the relevant offence would be committed; and

- (c) the officer was in a position to influence the conduct of the corporation in relation to the commission of the relevant offence; and
- (d) the officer failed to take reasonable steps to prevent the commission of the relevant offence.

**Maximum penalty:** The maximum penalty that may be imposed for the commission of the relevant offence by an individual.

- (2) Subsection (1) does not apply if the corporation has a defence to a prosecution for the relevant offence.

*Note* The defendant has an evidential burden in relation to the matters mentioned in s (2) (see [Criminal Code](#), s 58).

- (3) In deciding whether the executive officer took (or failed to take) all reasonable steps to prevent the commission of the offence, a court must consider any action the officer took directed towards ensuring the following (to the extent that the action is relevant to the act or omission):
  - (a) that the corporation arranges regular professional assessments of the corporation's compliance with the provision to which the relevant offence relates;
  - (b) that the corporation implements any appropriate recommendation arising from such an assessment;
  - (c) that the corporation's employees, agents and contractors have a reasonable knowledge and understanding of the requirement to comply with the provision to which the relevant offence relates;
  - (d) any action the officer took when the officer became aware that the relevant offence was, or might be, about to be committed.
- (4) Subsection (2) does not limit the matters the court may consider.
- (5) This section applies whether or not the corporation is prosecuted for, or convicted of, the relevant offence.

(6) In this section:

*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.

*relevant offence* means an offence against any of the following:

- (a) section 66 (Offence—fail to report to waste manager);
- (b) section 72 (Offence—fail to comply with direction);
- (c) section 107 (Unauthorised waste activity);
- (d) section 108 (1) (Fail to comply with condition of licence or registration);
- (e) section 109 (Unlawful transporting or depositing of waste);
- (f) section 110 (Use of place as waste facility without lawful authority);
- (g) section 111 (Consent required for certain waste activities);
- (h) section 112 (False or misleading information about waste);
- (i) section 113 (Taking prescribed waste to landfill or other facility).

## **Division 15.2      Specific offences**

### **106      Meaning of *waste site*—div 15.2**

In this division:

*waste site* means a place used for the storage, sorting, treatment, processing, or disposal of waste.

### **107      Unauthorised waste activity**

- (1) A person commits an offence if—
  - (a) the person engages in conduct; and

- (b) the conduct is a waste activity; and
- (c) the person—
  - (i) if the waste activity includes operating a waste facility—does not hold a licence in relation to the facility; or
  - (ii) if the waste activity includes collection or transportation of waste—is not registered as a waste transporter.

Maximum penalty: 200 penalty units.

- (2) A person who engages in consecutive conduct that contravenes subsection (1) commits a separate offence for each day or part of each day of consecutive conduct that happens immediately after the first day the person engaged in the conduct.

Maximum penalty (for each additional day or part of each additional day): 50 penalty units.

### **108 Fail to comply with condition of licence or registration**

- (1) A person commits an offence if—
  - (a) the person—
    - (i) holds a licence; or
    - (ii) is registered as a waste transporter; and
  - (b) the licence or registration is subject to a condition; and
  - (c) the person fails to comply with the condition.

Maximum penalty: 50 penalty units.

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

### **109 Unlawful transporting or depositing of waste**

- (1) A person commits an offence if—
  - (a) the person engages in conduct; and

- (b) as a result of the conduct the person—
  - (i) transports waste to a place; or
  - (ii) causes or permits waste to be transported to a place; and
- (c) the place is not—
  - (i) if the place is in the ACT—a waste facility operated by a person that is a licensee in relation to the facility; or
  - (ii) 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.

Maximum penalty: 500 penalty units.

- (2) In a proceeding for an offence under this section the defendant bears the onus of proving—
  - (a) if the defendant is charged with transporting, or causing or permitting waste to be transported to a place in the ACT—that the place is a waste facility that was operated by a person that is a licensee in relation to the facility; or
  - (b) if the defendant is charged with transporting, or causing or permitting waste to be transported to a place outside the ACT—that the place is a waste facility that was operated by a person that is authorised to operate the facility under a corresponding law of another State.
- (3) It is a defence to a prosecution for an offence against subsection (1) if—
  - (a) for a prosecution that charges a defendant with having caused or permitted waste to be transported—the defendant proves—
    - (i) that the commission of the offence was due to causes over which the defendant had no control; and
    - (ii) that the defendant took reasonable precautions and exercised due diligence to prevent the commission of the offence; or

- (b) generally—the defendant proves that—
- (i) an approved notice was, at the time of the alleged offence, given to the defendant by the owner or occupier of the place to which the waste was transported or was displayed at the place; and
  - (ii) the approved notice stated that the place could lawfully be used as a waste facility for the waste; and
  - (iii) the defendant had no reasonable basis to believe that the place could not lawfully be used as a waste facility for the waste.
- (4) It is not a defence to a prosecution for an offence against subsection (1) if the defendant proves that the owner or occupier of a place told the defendant, other than in the form of an approved notice, that at the time of the offence the place could be lawfully used as a waste facility.
- (5) In this section:
- approved notice*** means a notice, in a form approved by the waste manager that—
- (a) states that the place to which the notice relates can lawfully be used as a waste facility for the waste stated in the notice; and
  - (b) contains a certification by the owner or occupier of the place that the statement is correct.

## **110 Use of place as waste facility without lawful authority**

- (1) A person (the ***first person***) commits an offence if—
- (a) the first person is the owner or occupier of a place; and
  - (b) the first person engages in conduct; and
  - (c) as a result of the conduct another person uses the place; and



- (d) the first person is reckless about whether the other person uses the place as a waste site; and

*Note* The fault element of recklessness can be satisfied by proof of intention, knowledge or recklessness (see [Criminal Code](#), s 20 (4)).

- (e) the place is not a waste facility in relation to which the first person holds a licence.

Maximum penalty: 500 penalty units.

- (2) A person who engages in consecutive conduct that contravenes subsection (1) commits a separate offence for each day or part of each day of consecutive conduct that happens immediately after the first day the person engaged in the conduct.

Maximum penalty (for each additional day or part of each additional day): 200 penalty units.

## **111 Consent required for certain waste activities**

A person commits an offence if—

- (a) the person carries out a waste activity; and  
(b) the activity is prescribed by regulation; and  
(c) the person does not have the waste manager’s written consent to carry out the activity.

*Note 1* The waste manager may exempt people and activities from a provision of this Act (see s 67).

*Note 2* 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).

Maximum penalty: 100 penalty units.

## **112 False or misleading information about waste**

- (1) A person commits an offence if the person—  
(a) engages in conduct; and

- (b) the conduct results in information about waste being given to another person in the course of dealing with the waste; and
- (c) the person knows that the information is false or misleading in a material particular.

Maximum penalty: 200 penalty units.

- (2) A person commits an offence if the person—
  - (a) engages in conduct; and
  - (b) the conduct results in information about waste being given to another person in the course of dealing with the waste; and
  - (c) the information is false or misleading in a material particular; and
  - (d) the person is reckless as to whether the information is false or misleading in a material particular.

Maximum penalty: 100 penalty units.

- (3) It is a defence to a prosecution for an offence against subsection (2) if the defendant proves that the defendant took reasonable steps to ensure that the information was not false or misleading in a material particular.

*Note* The defendant has a legal burden in relation to the matters mentioned in s (3) (see [Criminal Code](#), s 59).

- (4) If the court is satisfied that a person charged with an offence under subsection (1) is not guilty of that offence but is satisfied on the evidence that the person is guilty of an offence under subsection (2), the court may find the person guilty of the offence under subsection (2).
- (5) For this section, information is taken to be given to a person in the course of dealing with waste if it is given—
  - (a) in the course of an activity relating to the sale or disposal of waste; or

- (b) in the course of an activity relating to the storage, collection, transport, handling, deposit, transfer, processing, recycling, recovery, re-use or use of the waste.
- (6) Proceedings for an offence against this section may be commenced only at the request of the waste manager.
- (7) In this section:
- give information* includes cause or permit information to be given.
  - information* includes a record containing information.
  - information about waste* means information about any of the following:
    - (a) the type, classification, characteristics, composition or quantity of the waste;
    - (b) the actual or proposed storage, collection, transport, handling, deposit, transfer, disposal, processing, recycling, recovery, re-use or use of the waste;
    - (c) the hazards or potential harm to the environment or human health associated with the waste or an activity referred to in paragraph (b).

### **113 Taking prescribed waste to landfill or other facility**

A person commits an offence if the person—

- (a) engages in conduct; and
- (b) as a result of the conduct waste is taken to—
  - (i) landfill; or
  - (ii) a facility prescribed by regulation; and

(c) the waste is waste prescribed by regulation.

*Note* Power to make a statutory instrument (including a regulation) includes power to make different provision in relation to different matters or different classes of matters, and to make an instrument that applies differently by reference to stated exceptions or factors (see [Legislation Act](#), s 48).

Maximum penalty: 150 penalty units.

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## Part 16 Reconsideration of decisions

### 114 Definitions—pt 16

In this part:

*affected person*, for an original decision, means a person mentioned in schedule 1, column 4 in relation to the original decision.

*original decision* means a decision mentioned in schedule 1, column 3 (other than item 12) under a provision of this Act mentioned in column 2 in relation to the decision.

*reconsideration application*—see section 115 (2).

### 115 Applications for reconsideration

- (1) This section applies if—
  - (a) the waste manager has made an original decision; and
  - (b) an application has not previously been made under this section for reconsideration of the original decision; and
  - (c) the ACAT has not decided an application for review of the original decision.
- (2) An affected person for an original decision may apply for reconsideration of the original decision (a *reconsideration application*).

*Note* If a form is approved under s 127 for an application, the form must be used.
- (3) The reconsideration application must—
  - (a) be in writing signed by the applicant; and
  - (b) set out the grounds on which reconsideration is sought.
- (4) The reconsideration application must be made not later than—
  - (a) 20 working days after the day the applicant is told about the original decision by the waste manager; or

- (b) any longer period allowed by the waste manager.

*Note* The waste manager may extend the period after the end of the period being extended (see [Legislation Act](#), s 151C (3)).

## 116 Notice to ACAT of application

- (1) This section applies if—
  - (a) an affected person makes a reconsideration application; and
  - (b) the person also applies to the ACAT for review of the original decision, whether before or after applying for reconsideration; and
  - (c) the ACAT gives the waste manager notice of the application for review.
- (2) The waste manager must tell the ACAT, in writing, about the reconsideration application.

## 117 Reconsideration

- (1) If the waste manager receives a reconsideration application, the director-general must—
  - (a) reconsider the original decision; and
  - (b) not later than 20 working days after the day the waste manager receives the application—
    - (i) make any decision in substitution for the original decision that the waste manager could have made when making the original decision; or
    - (ii) confirm the original decision.

*Note* A decision under this section is a reviewable decision (see s 119).

- (2) However, the director-general must not take action under subsection (1) (b) if the ACAT has decided an application for review of the original decision.

- (3) The period mentioned in subsection (1) (b) may be extended for a stated period by agreement between the director-general and the applicant.
- (4) In reconsidering the original decision, the director-general—
  - (a) must consider—
    - (i) any information available to the waste manager when the waste manager made the original decision; and
    - (ii) information given in the reconsideration application; and
  - (b) may consider any other relevant information.
- (5) The director-general must ensure that, if the original decision is made on the waste manager's behalf by someone else (the *original decision-maker*), the director-general or someone other than the original decision-maker reconsiders the decision.

### **118 No action by waste manager within time**

If the director-general does not make a substitute decision, or confirm the original decision, by the end of the 20 working days, or the extended period, mentioned in section 117 (3), the director-general is taken to have confirmed the original decision.

### **119 Notice of decisions on reconsideration**

As soon as practicable after reconsidering the original decision, the director-general must give written notice of the decision on the reconsideration to—

- (a) the applicant; and
- (b) the waste manager.

*Note* If the notice is given to a person who may apply to the ACAT for review of the decision to which it relates, the notice must be a reviewable decision notice (see s 121).

## Part 17 Notification and review of decisions

### 120 Definitions—pt 17

In this part:

*decision-maker*, for a reviewable decision, means the decision-maker mentioned in schedule 1, column 5 for the decision.

*reviewable decision* means a decision mentioned in schedule 1, column 3 under a provision of this Act mentioned in column 2 in relation to the decision.

### 121 Reviewable decision notices

If the decision-maker makes a reviewable decision, the decision-maker must give a reviewable decision notice to each person mentioned in schedule 1, column 4 in relation to the decision.

*Note 1* The decision-maker 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 a reviewable decision notice are prescribed under the [ACT Civil and Administrative Tribunal Act 2008](#).

### 122 Applications for review

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

- (a) a person mentioned in schedule 1, column 4 in relation to the decision;
- (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 18 Miscellaneous

### 123 Delegation

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

*Note* For the making of delegations and the exercise of delegated functions, see the [Legislation Act](#), pt 19.4.

### 124 Protection from liability

- (1) An official is not civilly liable for conduct engaged in honestly and without recklessness—
  - (a) in the exercise of a function under this Act; or
  - (b) in the reasonable belief that the conduct was in the exercise of a function under this Act.
- (2) Any civil liability that would, apart from this section, attach to the official attaches instead to the Territory.
- (3) In this section:

**conduct** means an act or omission to do an act.

**official** means—

- (a) the waste manager; or
- (b) an authorised officer; or
- (c) anyone else exercising a function under this Act.

### 125 Service of documents

A document may be given to the waste manager by giving it to the director-general.

*Note 1* For how documents may be served generally, see the [Legislation Act](#), pt 19.5.

*Note 2* The director-general may delegate the function under this section to a public sector officer, for example, a public servant (see [Public Sector Management Act 1994](#), s 36C).

**126 Determination of fees and rates of interest**

- (1) The Minister may determine—
- (a) fees for this Act; and
  - (b) the annual percentage rate at which interest payable under section 58 (Recovery of extra costs) is to be calculated; and
  - (c) the annual percentage rate at which interest accruing under section 59 (1) (a) (Money held by Territory as financial assurance) is to be calculated.

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

- (2) In particular, fees may be determined—
- (a) so that the fee increases as the quantity of waste increases; and
  - (b) so that different fees apply depending on the waste facility to which waste is being transferred; and
  - (c) according to the type of waste to which the waste activity relates.

**Example—different fee depending on facility**

A lower fee might be set for taking waste to a re-processing facility; a higher fee might apply if the waste were being taken to landfill.

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

- (3) A determination is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

- (4) 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).

**127 Approved forms**

- (1) The waste manager may approve forms for this Act.
- (2) If the waste manager 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](#).

**128 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—
  - (a) make provision in relation to the exclusion of a person or activity from a provision of this Act; and

*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).

- (b) create offences for contraventions of the regulations and fix maximum penalties of not more than 40 penalty units for the offences.

## Part 19 Repeals and consequential amendment

### 129 Legislation repealed

- (1) The following legislation is repealed:
  - *Waste Minimisation Act 2001* (A2001-31)
  - *Waste Minimisation Regulation 2001* (SL2001-24).
- (2) All other legislative instruments under the *Waste Minimisation Act 2001* and the *Waste Minimisation Regulation 2001* are repealed.

### 130 Clinical Waste Act 1990 Part 5 heading, new note

*insert*

*Note* 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

### 150 Transitional regulation

- (1) A regulation may prescribe transitional matters necessary or convenient to be prescribed because of the enactment of this Act.
- (2) A regulation may 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.
- (3) A regulation under subsection (2) has effect despite anything elsewhere in this Act.

### 151 Expiry—pt 30

This part expires 12 months after the day it commences.

*Note* Transitional provisions are kept in the Act for a limited time. A transitional provision is repealed on its expiry but continues to have effect after its repeal (see [Legislation Act](#), s 88).

## Schedule 1 Reviewable decisions

(see pt 16)

column 1 item	column 2 section	column 3 decision	column 4 person	column 5 decision-maker
1	20 (2)	refuse to consider application until additional information provided	applicant for licence	waste manager
2	22 (1)	decision about application for licence	applicant for licence	waste manager
3	23 (b)	impose condition on licence	applicant for licence	waste manager
4	32 (1)	require applicant to provide additional information	applicant for registration	waste manager
5	34 (3)	decision about application for registration	applicant for registration	waste manager
6	40 (2)	require waste transporter to fit GPS	waste transporter	waste manager
7	46 (2)	take regulatory action	licensee	waste manager
8	48	immediately suspend licence	licensee	waste manager
9	67	refuse to give exemption	applicant	waste manager
10	70 (2)	issue compliance direction	person directed	waste manager
11	71 (1)	issue direction	person directed	waste manager
12	117 (1)	reconsideration of original decision	person applying for reconsideration	director-general

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## 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
- ACT
- administrative unit
- appoint
- chief officer (fire and rescue)
- Criminal Code
- director-general (see s 163)
- disallowable instrument (see s 9)
- fail
- function
- give
- may (see s 146)
- Minister (see s 162)
- must (see s 146)
- notifiable instrument (see s 10)
- penalty unit (see s 133)
- person
- police officer
- under.

***affected person***, for an original decision, for part 16 (Reconsideration of decisions)—see section 114.

***authorised person*** means a person appointed under section 74.

***connected***, with an offence, for division 13.2 (Authorised people)—see section 73.

***corresponding law***, of a State, means a law of the state about the registration or licensing of people who carry out waste activities.

*Note* ***State*** includes the Northern Territory (see [Legislation Act](#), dict, pt 1).

**decision-maker**, for a reviewable decision, for part 17 (Notification and review of decisions)—see section 120.

**enforceable undertaking**, for part 14 (Enforceable undertakings)—see section 95.

**environmental protection agreement**—see the [Environment Protection Act 1997](#), dictionary.

**licence** means a waste facility licence.

**licensee**, in relation to a licence, means the person that is the holder of the licence.

**occupier**, of premises, for division 13.2 (Authorised people)—see section 73.

**offence**, for division 13.2 (Authorised people)—see section 73.

**original decision**, for part 16 (Reconsideration of decisions)—see section 114.

**person** includes an unincorporated body.

**premises**, for division 13.2 (Authorised people)—see section 73.

**proposed undertaking**, for part 14 (Enforceable undertakings)—see section 96 (3).

**reconsideration application**, for part 16 (Reconsideration of decisions)—see section 115 (2).

**registered**, in relation to a waste transporter, means entered in the register of waste transporters.

**register of waste facility licences** means the register kept under section 25.

**register of waste transporters** means the register kept under section 37.

**registration number**—see section 34 (4) (b) (ii).

**regulatory action**, against a person, for part 7 (Regulatory action)—see section 43.



**reviewable decision**, for part 17 (Notification and review of decisions)—see section 120.

**show cause notice**, for part 7 (Regulatory action)—see section 43.

**store**, for part 10 (Waste storage and collection)—see section 63.

**undertakings register**, for part 14 (Enforceable undertakings)—see section 95.

**warrant**, for division 13.2 (Authorised people)—see section 73.

**waste**—

(a) for this Act generally—see section 10; and

(b) for part 10 (Waste storage and collection)—see section 63.

**waste activity**—see section 11.

**waste collection service**, for part 10 (Waste storage and collection)—see section 63.

**waste facility**—see section 14.

**waste facility licence**—see section 15.

**waste management business**—see section 12.

**waste manager** means the Waste Manager appointed under section 16.

**waste site**, for division 15.2 (Specific offences)—see section 106.

**waste transporter**—see section 13.

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## Endnotes

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 7 June 2016.

**2 Notification**

Notified under the [Legislation Act](#) on 24 August 2016.

**3 Republications of amended laws**

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

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I certify that the above is a true copy of the Waste Management and Resource Recovery Bill 2016, which was passed by the Legislative Assembly on 4 August 2016.

Clerk of the Legislative Assembly

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