

# NORTHERN TERRITORY OF AUSTRALIA

## ENVIRONMENT PROTECTION (BEVERAGE CONTAINERS AND PLASTIC BAGS) ACT 2011

As in force at 12 April 2017

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# NORTHERN TERRITORY OF AUSTRALIA

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As in force at 12 April 2017

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## ENVIRONMENT PROTECTION (BEVERAGE CONTAINERS AND PLASTIC BAGS) ACT 2011

**An Act to establish a beverage container deposit scheme and to regulate the supply of plastic bags**

### **Part 1                      Introduction**

#### **1                      Short title**

This Act may be cited as the *Environment Protection (Beverage Containers and Plastic Bags) Act 2011*.

#### **2                      Commencement**

This Act commences on the day fixed by the Administrator by *Gazette* notice.

#### **3                      Object of Act**

The object of this Act is to minimise environmental pollution by:

- (a) establishing a container deposit scheme to:
  - (i) reduce beverage container waste by providing communities throughout the whole of the Territory, as far as practicable, with access to facilities for the collection of empty containers and the payment of refund amounts; and
  - (ii) increase resource recovery, reuse and recycling; and
- (b) regulating the supply of single use, non-biodegradable plastic bags.

## 4 Definitions

In this Act:

***acting in an official capacity***, in relation to an authorised officer, means the officer is exercising powers or performing functions under, or otherwise related to the administration of, this Act.

***administration***, of this Act, includes enforcement.

***affected person***, for a decision, means:

- (a) for a decision to refuse an application for a CDS approval – the applicant; or
- (b) for a decision to vary the conditions of, or suspend or cancel, a CDS approval – the holder of the approval.

***approved***, in relation to a waste management arrangement, means the arrangement has been approved under section 23A.

***approved collection depot***, means a collection depot for which a collection approval is in force.

***approved container*** means a regulated container:

- (a) for which a supply approval is in force; and
- (b) that bears the approved refund marking.

***approved form*** means a form approved under section 85.

***approved refund marking***, for a regulated container, means a marking or labelling about the refund amount prescribed by regulation for the container.

***Australian Standard*** means a standard published by Standards Australia Limited ABN 85 087 326 690.

***authorised officer***, see section 87(1).

***beverage***, see section 7.

***beverage retailer***, see section 8.

***biodegradable bag***, see section 52.

***CDS***, see section 10.



**CDS approval** means:

- (a) a collection approval; or
- (b) a coordinator approval; or
- (c) a supply approval.

**CDS coordinator** means:

- (a) a person who, whether personally or through an agent:
  - (i) coordinates the activities of CDS participants under the CDS; and
  - (ii) collects, handles and delivers for reuse, recycling or other appropriate disposal, regulated containers received from collection depots; or
- (b) a person who carries on activities of a kind prescribed by regulation.

**CDS participant** means each of the following:

- (a) a CDS coordinator or operator of a collection depot;
- (b) a manufacturer, distributor or beverage retailer of regulated containers;
- (c) others carrying out activities relating to the collection, reuse, recycling or other appropriate disposal of regulated containers.

**collection approval** means an approval under Part 2, Division 6 to operate a collection depot.

**collection depot** means a facility or premises for the collection and handling of regulated containers delivered to the facility or premises in consideration of the payment of refund amounts for containers, and includes:

- (a) a reverse vending machine; and
- (b) another facility or premises of a kind prescribed by regulation.

**Commonwealth CCA** means the *Competition and Consumer Act 2010* (Cth).

**condition**, for Part 2, Division 6, Subdivision 2, see section 29.

**connected**, for Part 4, see section 61.

**container**, see section 6.

**contaminated**, in relation to a container, means the container:

- (a) is unclean; or
- (b) is affected by a contaminant, including, for example, oil, paint, sand and stones.

**coordinator approval** means an approval under Part 2, Division 6 to carry on business as a CDS coordinator.

**coordinator arrangement** means a waste management arrangement made between CDS coordinators.

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

**corresponding law** means a law of a State or another Territory that:

- (a) establishes a scheme:
  - (i) regulating the supply of beverage containers; and
  - (ii) providing for the payment of refunds on the return of empty beverage containers to collection depots; and
- (b) is declared by regulation to be a corresponding law.

**manufacturer** includes a person who fills containers, or imports containers, for sale in the Territory.

**material type**, of an approved container, see section 8A.

**NT EPA** means the Northern Territory Environment Protection Authority established by section 6 of the *Northern Territory Environment Protection Authority Act 2012*.

**occupier**, for Part 4, see section 60.

**on**, for Part 4, see section 60.

**operator**, of a collection depot, means the entity carrying out the functions of the depot.

**operator arrangement** means a waste management arrangement made between an operator of an approved collection depot and a CDS coordinator.

**phase out period**, see section 53(1).

**place**, for Part 4, see section 60.

**premises**, for Part 4, see section 60.

**prohibited plastic bag**, see section 51.

**prohibition day**, see section 53(2).

**quarter** means each 3 month period during a financial year.

**refund amount**, for an approved container, means the amount prescribed by regulation for the container.

**regulated container** means a container to which the CDS applies.

*Note*

*Under section 9, containers may be exempted by regulation from the application of the CDS. Under section 42 of the Interpretation Act, a regulation may exempt a class of containers, including, for example, containers made of certain materials and containers used for certain beverages.*

**reverse vending machine** means a device that:

- (a) accepts empty approved containers by scanning the barcode on the containers or in another way recognises containers as approved containers; and
- (b) dispenses the refund amount for the containers placed in the device.

**review notice**, for a decision, means a written notice stating:

- (a) the decision; and
- (b) the reasons for the decision; and
- (c) the following details:
  - (i) an affected person may apply for a review of the merits of the decision;
  - (ii) the period allowed for applying for the review;
  - (iii) how to apply for the review.

**sell** includes:

- (a) supply on a gratuitous basis for commercial promotional purposes; and
- (b) offer or display for sale or such supply.

**start**, of the CDS, means the date on which Part 2 commences.

**supplier** means a CDS participant who holds a supply approval.

**supplier arrangement** means a waste management arrangement made between a supplier and a CDS coordinator.

**supplier barcode document** , see section 24A(1)(b)(i).

**supplier sales document**, see section 24A(1)(b)(ii).

**supply approval** means an approval under Part 2, Division 6 to supply regulated containers.

**variation**, for Part 2, Division 6, Subdivision 2, see section 29.

**waste management arrangement**, see section 11.

## **5            Application of Criminal Code**

Part IIAA of the Criminal Code applies to an offence against this Act.

*Note for section 5*

*Part IIAA of the Criminal Code states the general principles of criminal responsibility, establishes general defences, and deals with burden of proof. It also defines, or elaborates on, certain concepts commonly used in the creation of offences.*

# **Part 2            Container deposit scheme**

## **Division 1        Basic concepts**

### **6            Meaning of container**

- (1) A **container** is:
  - (a) a container that:
    - (i) is made to contain a beverage; and
    - (ii) when filled with the beverage, is sealed for storage, transport and handling before its sale or delivery for the use or consumption of its contents; or
  - (b) a container of a kind prescribed by regulation.
- (2) However, a container does not include a thing prescribed by regulation.

**7                      Meaning of *beverage***

- (1) A ***beverage*** is a liquid intended for human consumption by drinking.
- (2) However, a liquid of a kind prescribed by regulation is not a beverage.

**8                      Meaning of *beverage retailer***

- (1) A ***beverage retailer*** is a person whose business is, or includes, selling a beverage for the use or consumption of the beverage.
- (2) A ***beverage retailer*** includes:
  - (a) a person who is the owner of a vending machine used to sell a beverage unless the owner has let out (whether by lease, hire or other agreement) the machine to another person (the ***hirer***); and
  - (b) the hirer.

**8A                    Meaning of *material type***

- (1) The ***material type***, of an approved container, is the type of material from which the container is manufactured, including, for example, plastic, aluminium, glass and liquid paper board.
- (2) A reference in this Act to the material type of an approved container includes a reference to a category of the material type, including, for example:
  - (a) coloured plastic and clear plastic; and
  - (b) coloured glass and clear glass.

**9                      Containers exempted from application of CDS**

The CDS does not apply to containers prescribed by regulation.

**Division 2                      Establishment of CDS and waste management arrangements**

**10                    CDS established**

- (1) This Part establishes a container deposit scheme (the ***CDS***).

- (2) The matters covered by the CDS to achieve the object of minimising environmental pollution in the ways mentioned in section 3(a)(i) and (ii) include the following:
- (a) the prohibition of the supply in the Territory of regulated containers unless they are approved containers;
  - (b) the sorting, by operators of approved collection depots, of empty approved containers of any beverage products:
    - (i) by material type; and
    - (ii) regardless of the product names displayed on the containers;
  - (c) the approval of waste management arrangements between CDS participants that are appropriate for the CDS;
  - (d) the granting of CDS approvals and the imposition of conditions on those approvals;
  - (e) the delivery, by any members of the community, of empty approved containers to approved collection depots throughout the Territory for a refund of the refund amount for the containers;
  - (f) the acceptance by operators of approved collection depots of empty approved containers delivered to the depots and the method of payment of refund amounts for the containers;
  - (g) the acceptance by CDS coordinators of empty approved containers of any beverage products:
    - (i) delivered to the coordinators by operators of approved collection depots; and
    - (ii) sorted by the operators before delivery by material type, regardless of the product name displayed on the containers;
  - (h) the payments to be made by CDS coordinators to operators of approved collection depots in relation to empty approved containers accepted by the coordinators.
- (3) The CDS does not require beverage retailers to:
- (a) accept delivery of empty containers; or

- (b) pay the refund amount in exchange for delivered containers.

*Note for subsection (3)*

*A beverage retailer may, however, obtain a collection approval to operate a collection depot, for example, a reverse vending machine at the retailer's premises for the payment of refund amounts for containers.*

## **11 Waste management arrangements generally**

- (1) A **waste management arrangement** is a written arrangement that:
  - (a) is made between 2 or more CDS participants; and
  - (b) relates to approved containers or regulated containers, or both, as appropriate to the particular participants.
- (2) A waste management arrangement must include provisions dealing with the following matters, as relevant to the particular CDS participants:
  - (a) the collection, sorting, aggregation and transportation of the containers when empty;
  - (b) the reuse, recycling or other appropriate disposal of the containers when empty;
  - (c) the minimisation of the handling and sorting of the containers when empty;
  - (d) payments of the refund amount and other amounts to be made by a CDS coordinator to an operator of a collection depot in relation to the containers accepted by the coordinator;
  - (e) payments to be made by a supplier to a CDS coordinator in relation to dealing with the containers accepted by the coordinator;
  - (f) a dispute resolution process for settling disputes between the parties to the arrangement;
  - (g) matters prescribed by regulation.
- (3) A waste management arrangement may include provisions dealing with other matters.
- (4) However, a provision in a waste management arrangement that is contrary to a provision of this Act is of no effect.

## **12                      Coordinator arrangement**

- (1) Each CDS coordinator must make a waste management arrangement with each other CDS coordinator.
- (2) A coordinator arrangement may be made by:
  - (a) all of the CDS coordinators entering into one arrangement; or
  - (b) any of the CDS coordinators entering into an arrangement with any of the other coordinators in a way that ensures all of the arrangements have the effect of one arrangement between all of the coordinators.
- (3) A coordinator arrangement must include provisions that contain the agreements specified in the Schedule.
- (4) An agreement made as specified in the Schedule is taken to form part of the coordinator arrangement.
- (5) For section 51(1)(d)(i) of the Commonwealth CCA and with reference to section 51(1C)(e) of that Act, CDS coordinators are authorised to:
  - (a) make a coordinator arrangement; and
  - (b) include in the coordinator arrangement provisions that:
    - (i) deal with the matters mentioned in section 11(2); and
    - (ii) contain the agreements specified in the Schedule; and
  - (c) give effect to the coordinator arrangement.

*Note for subsection (5)*

*The effect of this subsection is that anything mentioned in paragraphs (a) to (c) that is done by a CDS coordinator is not to be regarded in deciding whether the coordinator has contravened Part IV of the Commonwealth CCA.*

- (6) This section does not limit section 11.



## **Division 3                      Supply of beverages in regulated containers**

### **13                      Supply of regulated container to beverage retailer**

- (1) A person must not supply a beverage in a regulated container to a beverage retailer for sale by the retailer unless the container is an approved container.

Fault elements:

The person:

- (a) intentionally supplies the beverage in a regulated container; and
- (b) is reckless as to whether the container is an approved container.

Maximum penalty:        400 penalty units.

- (2) A person must not supply a beverage in a regulated container to a beverage retailer for sale by the retailer unless the container is an approved container.

Maximum penalty:        100 penalty units.

- (3) An offence against subsection (2) is an offence of strict liability.

### **14                      Beverage retailer sale of beverages in approved container**

- (1) A beverage retailer must not sell a beverage in a regulated container unless the container is an approved container.

Fault elements:

The retailer:

- (a) intentionally sells the beverage in a regulated container; and
- (b) is reckless as to whether the container is an approved container.

Maximum penalty:        400 penalty units.

- (2) A beverage retailer must not sell a beverage in a regulated container unless the container is an approved container.

Maximum penalty:        100 penalty units.

- (3) An offence against subsection (2) is an offence of strict liability.

## **Division 4            Approval requirements for CDS participants**

### **15            Approval required for CDS coordinator**

A person must not carry on business as a CDS coordinator unless the person is the holder of a coordinator approval.

Fault element:            The person intentionally carries on business as a CDS coordinator.

Maximum penalty:        200 penalty units.

### **16            Approval required for collection depot operator**

- (1) A person must not operate a collection depot unless the person is the holder of a collection approval.

Fault element:            The person intentionally operates a collection depot.

Maximum penalty:        200 penalty units.

- (2) It is a defence to a prosecution for an offence against subsection (1) if the defendant establishes a reasonable excuse.

## **Division 5            Delivery, acceptance and refund amounts**

### **17            No refund for container purchased outside Territory or corresponding jurisdiction**

- (1) A person commits an offence if:
- (a) the person delivers an approved container to an approved collection depot for claiming the refund amount for the container; and
  - (b) the container:
    - (i) was not purchased in the Territory or a corresponding jurisdiction; or
    - (ii) was purchased before the start of the CDS.

Fault elements:

The person:

- (a) intentionally delivers the container for claiming the refund amount; and

- (b) is reckless as to whether the container was purchased:
  - (i) in the Territory or a corresponding jurisdiction; or
  - (ii) before the start of the CDS.

Maximum penalty:        200 penalty units.

- (2) In a proceeding for an offence against subsection (1), the court must presume, in the absence of evidence to the contrary, the container:
  - (a) was not purchased in the Territory or a corresponding jurisdiction; or
  - (b) was purchased before the start of the CDS.
- (3) The operator of an approved collection depot may ask a person delivering containers for claiming refund amounts to complete a declaration in the approved form stating the person has no reason to believe the containers:
  - (a) were not purchased in the Territory or a corresponding jurisdiction; and
  - (b) were purchased before the start of the CDS.
- (4) The operator of an approved collection depot commits an offence if:
  - (a) within any 48 hour period, a person delivers to the depot more than the bulk quantity of containers for claiming refund amounts; and
  - (b) the operator does not ask the person to complete a declaration of a kind mentioned in subsection (3).

Maximum penalty:        20 penalty units.

- (5) An offence against subsection (4) is an offence of strict liability.
- (6) The operator of an approved collection depot commits an offence if the operator does not:
  - (a) keep each declaration made under this section (or a copy of the declaration) at the operator's place of business in the Territory for 3 years after the date of the declaration; or
  - (b) have the document mentioned in paragraph (a) available for inspection at all reasonable times by an authorised officer.

Maximum penalty:        20 penalty units.

(7) An offence against subsection (6) is an offence of strict liability.

(8) In this section:

**bulk quantity**, of containers, means:

- (a) 1 500 containers; or
- (b) if another quantity is prescribed by regulation – the other quantity.

**18            Acceptance of empty approved containers by operator of collection depot**

(1) Subject to subsections (4) and (6), the operator of an approved collection depot must accept an empty container, delivered to the depot by a person for claiming the refund amount, if the container:

- (a) is an approved container; and
- (b) was purchased in the Territory, or a corresponding jurisdiction, after the start of the CDS.

Maximum penalty:        50 penalty units.

(2) An offence against subsection (1) is an offence of strict liability.

(3) It is a defence to a prosecution for an offence against subsection (1) if the defendant establishes a reasonable excuse.

(4) The operator is not required to accept an empty container delivered to the collection depot if any of the following circumstances apply:

- (a) the operator is unable:
  - (i) to verify that a supply approval is in force for the container; or
  - (ii) to identify the approved refund marking on the container (for example, because the container is crushed or the label has been removed or is illegible);
- (b) the container is contaminated;
- (c) the container has a removable lid on it;
- (d) the operator has asked for a declaration under section 17(3) for the container and the request has not been complied with;
- (e) a circumstance stated in the collection approval relating to the approved depot.

- (5) However, the operator of the collection depot must not refuse to accept an empty container in a circumstance mentioned in subsection (4)(a) to (e) if the approved waste management arrangement relating to containers delivered to that collection depot requires acceptance in that circumstance.
- (6) Before accepting empty approved containers at a collection depot for payment of the refund amount, the operator may require the person delivering the containers to sort them by material type.

**19                      Payment of refund amount by operator of collection depot**

- (1) The operator of an approved collection depot must pay a refund amount:
  - (a) for an approved container the operator is required to accept under section 18(1); and
  - (b) to the person who delivered the container to the depot; and
  - (c) in accordance with subsection (3).

Maximum penalty:        50 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.
- (3) A refund amount for an empty approved container must be paid in cash or in another way prescribed by regulation.

**20                      Acceptance of and payment for empty approved containers by CDS coordinator**

- (1) This section applies if:
  - (a) the operator of an approved collection depot delivers to a CDS coordinator empty approved containers of any beverage products:
    - (i) that have been sorted by material type, regardless of the product names displayed on the containers; and
    - (ii) for which the operator has paid a refund amount under section 19(1); and
  - (b) there is an approved operator arrangement between the operator and coordinator in relation to approved containers; and

- (c) the operator claims from the coordinator a refund amount for the containers and other amounts payable in accordance with the approved operator arrangement (***related amounts***).
- (2) The CDS coordinator must accept the approved containers unless any of the following circumstances apply:
  - (a) the coordinator is unable:
    - (i) to identify the container as being an approved container; or
    - (ii) to be satisfied the container was purchased in the Territory, or a corresponding jurisdiction, after the start of the CDS;
  - (b) the container is contaminated;
  - (c) the container has a removable lid on it.
- (3) However, the CDS coordinator must not refuse to accept a container in a circumstance mentioned in subsection (2)(a) to (c) if the approved operator arrangement requires acceptance in that circumstance.
- (4) The CDS coordinator must pay the operator the refund amount and related amounts in accordance with the approved operator arrangement.

## **Division 6                CDS approvals**

### **Subdivision 1    Application process for CDS approvals**

#### **21                Making application**

- (1) An application for a CDS approval must be:
  - (a) made in the approved form to the NT EPA; and
  - (b) accompanied by:
    - (i) a copy of each proposed waste management arrangement relevant to the approval; and
    - (ii) in relation to an application for a coordinator approval – a copy of the agreements mentioned in section 12(3) entered into by the parties to the agreement; and
    - (iii) any additional information to enable the NT EPA to decide the application.

- (2) If the application is for a supply approval, the application can be made by a manufacturer, distributor or beverage retailer of containers.
- (3) If the application is for a collection approval, the application must state the days and times during which it is proposed to open the collection depot to the public.

## **22            NT EPA may require further information**

The NT EPA may, by written notice, require the applicant to give the NT EPA further documents or information within the reasonable period stated in the notice.

## **23            Deciding application**

- (1) The NT EPA must consider the application and decide whether or not to grant a CDS approval.
- (2) The NT EPA may grant a CDS approval only if:
  - (a) the NT EPA has, under section 23A, approved each waste management arrangement relevant to the approval; and
  - (b) in relation to a collection approval – the NT EPA has taken into account the proposed location of the collection depot and the provisions of each relevant waste management arrangement and is satisfied the depot will be:
    - (i) accessible to the general public in that location; and
    - (ii) open on a consistent and regular basis; and
  - (c) in relation to a supply approval – the NT EPA is satisfied:
    - (i) the material types of the containers (including the labels) are suitable for recycling, reuse or other disposal considered appropriate by the NT EPA; and
    - (ii) the way the refund marking is proposed to be applied to the containers is not likely to render the containers unsuitable for recycling, reuse or other disposal considered appropriate by the NT EPA.

## **23A            Approval of waste management arrangement**

- (1) The NT EPA may approve a proposed waste management arrangement if satisfied:
  - (a) the arrangement includes provisions that deal with the matters mentioned in section 11(2); and
  - (b) in relation to a coordinator arrangement – it includes provisions mentioned in section 12(3); and
  - (c) if the arrangement includes other provisions – the provisions are not inconsistent with this Act; and
  - (d) all the provisions of the arrangement are appropriate for the CDS.
- (2) If the NT EPA refuses to approve a varied or replacement waste management arrangement given to it in accordance with a condition mentioned in section 24(b), the NT EPA must give the holder of the CDS approval a review notice for the refusal.

*Note for subsection (2)*

*A refusal to approve a proposed waste management arrangement relating to an application for a CDS approval is a reason for refusing to grant the CDS approval. The review notice in that circumstance must be given under section 25(4).*

- (3) For section 51(1)(d)(i) of the Commonwealth CCA and with reference to section 51(1C)(e) of that Act, the NT EPA is authorised to approve a coordinator arrangement that includes provisions the CDS coordinators are authorised by section 12(5)(b) to include.

## **24                Conditions of CDS approval generally**

A CDS approval is subject to the following conditions:

- (a) the holder of the CDS approval must have in place one or more approved waste management arrangements relevant to the approval;
- (b) if an approved waste management arrangement is varied or replaced, the holder of the approval must give the varied or replacement arrangement to the NT EPA:
  - (i) for approval under section 23A; and
  - (ii) if necessary – for a variation of the conditions of the CDS approval;



- (c) the conditions mentioned in section 24A(1), 24B or 24C that are relevant to the approval;
- (d) any other conditions imposed by the NT EPA and stated in the approval.

#### **24A        Conditions of supply approval**

- (1) The following conditions are imposed on a supply approval:
  - (a) the containers to which the approval relates must bear the approved refund marking;
  - (b) in relation to each supplier arrangement, the supplier must:
    - (i) if approved containers to which the arrangement relates are for sale in the Territory and display a barcode – give the CDS coordinator with whom the arrangement is made a document listing those barcodes (a **supplier barcode document**); and
    - (ii) within the prescribed period – give that coordinator a document for each quarter specifying the total number of approved containers, by reference to material types, that have been sold by the supplier in the Territory during the quarter (a **supplier sales document**).
- (2) In this section:

**prescribed period**, for a quarter, means 21 days after the end of the quarter.

#### **24B        Condition of collection approval**

It is a condition of a collection approval that the operator of the approved collection depot must ensure, as far as reasonably practicable in the circumstances applicable to the depot, that the depot is:

- (a) accessible to the general public; and
- (b) open to the general public on a consistent and regular basis.

## **24C            Conditions of coordinator approval**

The following conditions are imposed on a coordinator approval:

- (a) if the CDS coordinator has made a supplier arrangement – the coordinator must, within 7 days after receiving a supplier barcode document from the supplier, give a copy of that document to:
  - (i) each other CDS coordinator; and
  - (ii) each operator with whom the coordinator has an operator arrangement;
- (b) if the coordinator is given a copy of another coordinator's supplier barcode document – the coordinator must, within 7 days after receiving the copy, give a further copy to each operator of an approved collection depot with whom the coordinator has an operator arrangement;
- (c) the coordinator must not require an operator to sort empty approved containers into more than the number of material types prescribed by regulation;
- (d) the coordinator must have in place adequate facilities and arrangements to ensure the coordinator is able to accept all empty approved containers the coordinator is required to accept under section 20;
- (e) the coordinator must not refuse to accept empty approved containers for the reason only that the containers have not been sorted by reference to the product names they display;
- (f) the coordinator must not, before accepting empty approved containers, require an operator to sort the containers by reference to the product names they display.

## **25            Notice of decision on application**

- (1) If the NT EPA grants an application for an approval, the NT EPA must give the applicant notice of the decision.
- (2) The notice must state the conditions to which the approval is subject under section 24.
- (3) In addition, the notice for a supply approval must state the containers to which the approval relates by reference to:
  - (a) the manufacturer or distributor of the containers; and

(b) any one or more of the following:

- (i) product name;
- (ii) container contents when full;
- (iii) container capacity;
- (iv) container material;
- (v) another factor the NT EPA considers relevant.

(4) If the NT EPA refuses an application for an approval, the NT EPA must give the applicant a review notice for the refusal.

## **26        Duration of approval**

A CDS approval remains in force for the period, not exceeding 5 years, stated in it.

## **27        Renewal of approval**

- (1) An application for the renewal of a CDS approval must be made by the holder of the approval.
- (2) This Division applies (with the necessary changes) to the application as if it were an application for a CDS approval.
- (3) If the application is made before the CDS approval ends, the approval continues in force until the application is decided.

## **28        Approval not transferable**

A CDS approval is not transferable by the holder of the approval.

# **Subdivision 2    Variation of conditions of CDS approvals**

## **29        Definitions**

In this Division:

**condition**, of an approval, means a condition of the approval imposed by the NT EPA.

**variation**, of a condition of CDS approval, means:

- (a) amend an existing condition of the approval; or
- (b) impose a new condition of the approval; or
- (c) remove an existing condition of the approval.

**30                      Variation of conditions – NT EPA's initiative**

- (1) The NT EPA may decide to vary the conditions of a CDS approval if:
  - (a) an amendment to, or replacement of, an approved waste management arrangement relevant to the approval requires it; or
  - (b) the NT EPA becomes aware of information that, had it been known at the time the approval was granted or renewed, would have resulted in the NT EPA imposing different conditions on the approval.
- (2) Before deciding to vary the conditions, the NT EPA must:
  - (a) give written notice to the holder of the approval:
    - (i) of the particulars of the proposed variation; and
    - (ii) that the holder may make written submissions to the NT EPA about the proposed variation within a reasonable period of at least 21 days stated in the notice; and
  - (b) have regard to written submissions made to the NT EPA by the holder before the stated day.
- (3) If the NT EPA decides to vary the conditions of the approval, the NT EPA must immediately give the holder a review notice for the decision.

**31                      Variation of conditions – application by holder**

- (1) The holder of a CDS approval may apply to the NT EPA for the variation of conditions of the approval.
- (2) The application must be:
  - (a) in the approved form; and
  - (b) accompanied by sufficient documents and information to enable the NT EPA to decide the application, including the documents and information stated in the approved form.

**32                      NT EPA may require further information**

The NT EPA may, by written notice, require the applicant to give the NT EPA further documents or information within the reasonable period stated in the notice.

**33                      Consideration of application**

- (1) The NT EPA must consider the application and grant or refuse to grant it.
- (2) The NT EPA must refuse to grant the application unless satisfied the approval could be granted subject to the varied conditions.

**34                      Notice of decision on application**

- (1) If the NT EPA decides to vary the conditions of the approval, the NT EPA must immediately give the holder written notice for the decision.
- (2) If the NT EPA refuses to grant the application, the NT EPA must immediately give the holder a review notice for the decision.

**35                      Failure to decide application**

The NT EPA is taken to have refused the application if the NT EPA does not decide the application within 30 days after:

- (a) the application is made; or
- (b) if the NT EPA gives the applicant notice to give the NT EPA further documents or information – the end of the period stated in the notice for giving the document or information.

**36                      When variation of conditions takes effect**

The variation of conditions of a CDS approval takes effect on:

- (a) the day notice of the decision is given to the holder of the approval; or
- (b) the later day of effect stated in the notice.

**Subdivision 3      Suspension and cancellation of CDS approvals**

**37                      Grounds for suspending or cancelling approval**

Each of the following is a ground for suspending or cancelling a CDS approval:

- (a) the holder of the approval has contravened a provision of this Act;
- (b) the holder of the approval has failed to comply with:
  - (i) a condition of the approval; or

- (ii) an approved waste management arrangement relevant to the approval;
- (c) the holder of the approval has failed to achieve a target within the period stated in a notice given to the holder under section 49(3);
- (d) an approved waste management arrangement relevant to the approval can no longer operate according to its provisions;
- (e) the NT EPA becomes aware of information that, had it been known at the time the application for approval or renewal of approval was made, would have given a reason for refusing the application.

### **38                      Show cause notice**

- (1) If the NT EPA believes a ground exists to suspend or cancel a CDS approval, the NT EPA must give the holder of the approval written notice under this section.
- (2) The notice must state the following:
  - (a) the action (the ***proposed action***) the NT EPA proposes taking under this Division;
  - (b) the grounds for the proposed action;
  - (c) an outline of the facts and circumstances forming the basis for the grounds;
  - (d) if the proposed action is suspension of the approval – the proposed suspension period;
  - (e) an invitation to the holder to show cause within a period stated in the notice (being at least 7 days after the date of the notice) why the proposed action should not be taken.

### **39                      Representations about show cause notices**

- (1) The holder of the approval may make written representations about the show cause notice to the NT EPA in the period stated in the notice.
- (2) The NT EPA must consider all written representations made under subsection (1) (the ***accepted representations***).

**40                      Ending show cause process without further action**

If, after considering the accepted representations for the show cause notice, the NT EPA no longer believes a ground exists to suspend or cancel the approval the NT EPA:

- (a) must not take any further action about the show cause notice; and
- (b) must give written notice to the holder of the approval that no further action is to be taken about the show cause notice.

**41                      Suspension or cancellation**

(1) This section applies if:

- (a) after considering the accepted representations for the show cause notice, the NT EPA:
  - (i) still believes a ground exists to suspend or cancel the approval; and
  - (ii) believes suspension or cancellation of the approval is warranted; or
- (b) there are no accepted representations for the show cause notice.

(2) The NT EPA may:

- (a) if the proposed action stated in the show cause notice was to suspend the approval for a stated period – suspend the approval for not longer than the stated period; or
- (b) if the proposed action stated in the show cause notice was to cancel the approval – either cancel the approval or suspend it for a period.

(3) The NT EPA must immediately give a review notice for the decision to the holder of the approval.

(4) The decision takes effect on:

- (a) the day the review notice is given to the holder; or
- (b) if a later day of effect is stated in the notice – the later day.

## **Subdivision 4    Miscellaneous matters**

### **42                      Contravention of condition**

The holder of a CDS approval must not engage in conduct that results in a contravention of a condition of the approval.

Fault elements:

The person:

- (a) intentionally engages in the conduct; and
- (b) is reckless as to whether the conduct would result in a contravention of a condition of the approval.

Maximum penalty:        100 penalty units.

### **43                      CDS approval holders to keep records**

- (1) The holder of a CDS approval must keep records of the holder's CDS activities in the approved form.

Maximum penalty:        20 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.

### **44                      Annual returns by CDS approval holders**

- (1) The holder of a CDS approval must in each year, before the date prescribed by regulation, give the NT EPA an annual return in the approved form.

Maximum penalty:        20 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.
- (3) If the holder does not comply with subsection (1), the NT EPA may, by written notice, require the holder to remedy the default with 14 days after giving the notice.
- (4) If the holder does not comply with the notice within the 14-day period, the approval is suspended until the notice is complied with.
- (5) If the holder does not comply with the notice within 6 months after the notice is given, the approval is cancelled.
- (6) The NT EPA must give written notice of the suspension or cancellation to the holder.



**45            Sign at retail premises**

- (1) The NT EPA may, by written notice, require a beverage retailer of a beverage in an approved container to ensure there is placed at the premises where the retailer supplies the beverage a sign stating:
  - (a) a refund amount will be paid for the delivery of an empty approved container to an approved collection depot; and
  - (b) the location of approved collection depots in the vicinity of the premises.
- (2) The retailer must comply with the notice.

Maximum penalty:       20 penalty units.
- (3) An offence against subsection (2) is an offence of strict liability.

**Division 7            Reviews**

**46            Application for review of decision**

- (1) An affected person for a decision may apply to the Local Court for a review of the merits of the decision.
- (2) The application must be made within 30 days after:
  - (a) the person receives a review notice for the decision; or
  - (b) if paragraph (a) does not apply – the person becomes aware of the decision.

**47            Operation and implementation of decision**

- (1) The application for review does not affect the operation or implementation of the decision.
- (2) However, the Local Court may make an order staying or otherwise affecting the operation or implementation of so much of the decision as the Court considers appropriate to effectively hear and decide the application.
- (3) The order:
  - (a) is subject to the conditions stated in the order; and
  - (b) has effect:
    - (i) for the period stated in the order; or

- (ii) if no period is stated – until the Court decides the application.

#### **48            Conduct of hearing**

- (1) At the hearing of the application, fresh evidence or evidence in addition to or in substitution for the evidence before the NT EPA may be given.
- (2) In deciding the application, the Local Court may:
  - (a) confirm the decision; or
  - (b) vary the decision; or
  - (c) set aside the decision and substitute its own decision for the decision; or
  - (d) refer the matter to which the application relates to the NT EPA for reconsideration, either generally or in relation to stated matters, and for substitution of another decision.
- (3) In referring the matter to the NT EPA, the Court must:
  - (a) advise the NT EPA of its reasons for doing so; and
  - (b) give to the NT EPA the directions it considers appropriate for the reconsideration of the whole or any part of the matter being remitted.
- (4) The Court may make the orders it considers appropriate to give effect to its decision and the orders as to costs it considers just.
- (5) A decision under subsection (2)(b) or (c) is taken for this Act (other than this Division) to be the decision of the NT EPA.

### **Division 8            General**

#### **49            Minister or NT EPA may establish targets for reuse, recycling or other disposal of approved containers**

- (1) The Minister or NT EPA:
  - (a) may establish targets for the reuse, recycling or other appropriate disposal of approved containers; and
  - (b) if targets are established – must publish them on the NT EPA's website.

- (2) The targets may:
  - (a) apply generally to all CDS participants; or
  - (b) apply to particular classes of CDS participants; or
  - (c) set targets that must be achieved by the holders of a particular class of CDS approvals.
- (3) If targets are established for subsection (2)(c), the NT EPA must give each holder of the class of CDS approval a notice stating:
  - (a) the targets to be achieved; and
  - (b) the period of time within which the holder is required to achieve the target; and
  - (c) that a failure to achieve a target is a ground for suspending or cancelling the CDS approval.
- (4) The NT EPA must monitor compliance with established targets.

## **50            Review of CDS**

- (1) Within 2 years after the start of the CDS, the Minister must review the kinds of containers to which the CDS applies.
- (2) In addition, the Minister must review the operation of the CDS at intervals of 5 years after it starts.
- (3) The Minister must table a copy of a report of a review in the Legislative Assembly within 6 sitting days after completing it.

## **Part 3            Plastic bags**

### **Division 1        Basic concepts**

#### **51            Meaning of *prohibited plastic bag***

- (1) A ***prohibited plastic bag*** is:
  - (a) a carry bag:
    - (i) the body of which comprises (in whole or part) polyethylene with a thickness of less than 35 microns; and
    - (ii) that has handles; or
  - (b) a bag of a kind prescribed by regulation.

(2) However, each of the following is not a prohibited plastic bag:

- (a) a biodegradable bag;
- (b) a plastic bag that is, or forms an integral part of, the packaging in which goods are sealed prior to sale;
- (c) a bag of a kind prescribed by regulation.

**52            Meaning of *biodegradable bag***

A ***biodegradable bag*** is a carry bag comprised of material of a type that:

- (a) has been assessed and tested in accordance with the Australian Standard prescribed by regulation, as in force from time to time; and
- (b) can be designated, in accordance with the Standard, as compostable.

**53            Meaning of *phase out period* and *prohibition day***

- (1) The ***phase out period*** is the period from the day this Part commences to the day immediately preceding the prohibition day.
- (2) The ***prohibition day*** is the day prescribed by regulation.

**54            Part does not apply to exempt person**

This Part, or a provision of this Part, does not apply to a person exempted by regulation.

**Division 2            Obligations of retailers and others**

**55            Retailer must make alternative bags available during phase out period**

- (1) A retailer commits an offence if, during the phase out period, the retailer:
  - (a) makes a prohibited plastic bag available to a customer for carrying goods purchased, or to be purchased, from the retailer; and
  - (b) is not able to provide an alternative bag to the customer on the customer's request.

Maximum penalty:        50 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.
- (3) It is a defence to a prosecution for an offence against subsection (1) if the defendant establishes a reasonable excuse.
- (4) Subsection (1) does not prevent a retailer from charging a customer a fee for an alternative bag.
- (5) In this section:

**alternative bag** means any of the following:

- (a) a biodegradable bag;
- (b) a carry bag designed to be used on a regular basis over a period of 2 years;
- (c) a carry bag of a kind prescribed by regulation.

#### **56            Retailer must display notices during phase out period**

- (1) A retailer commits an offence if, during the phase out period, the retailer:
  - (a) makes a prohibited plastic bag available at any premises to a customer for carrying goods purchased, or to be purchased, from the retailer; and
  - (b) does not display a notice in the premises in accordance with the requirements prescribed by regulation.

Maximum penalty:        50 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.
- (3) It is a defence to a prosecution for an offence against subsection (1) if the defendant establishes a reasonable excuse.

#### **57            Obligations of retailer after phase out period**

- (1) A retailer must not, on or after the prohibition day, make a prohibited plastic bag available to a customer for carrying goods purchased, or to be purchased, from the retailer.

Maximum penalty:        50 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.
- (3) This section applies whether or not the customer is charged a fee for the prohibited plastic bag.

**58      Manufacturers and distributors must not represent prohibited plastic bags are not prohibited plastic bags**

A person commits an offence if the person:

- (a) is a manufacturer or distributor of plastic bags; and
- (b) sells, supplies or otherwise provides prohibited plastic bags to another person; and
- (c) before, or in the course of, selling, supplying or providing the bags, represents to the other person that the bags are not prohibited plastic bags.

Fault elements:

The person:

- (a) intentionally sells, supplies or provides the bags; and
- (b) intentionally represents the bags are not prohibited plastic bags; and
- (c) is reckless as to whether the bags are prohibited plastic bags.

Maximum penalty:      200 penalty units.

**Division 3      General**

**59      Review of Part**

- (1) The Minister must, as soon as practicable after the second anniversary of the prohibition day, appoint a person to prepare a report on:
  - (a) the effect on the community of section 57; and
  - (b) the extent to which this Part has been effective in restricting the supply of prohibited plastic bags; and
  - (c) other matters the Minister considers to be relevant to the review.
- (2) The person must report to the Minister within 6 months after the appointment.
- (3) The Minister must table a copy of the report in the Legislative Assembly within 6 sitting days after receiving it.

## **Part 4            Enforcement**

### **Division 1       Preliminary matters**

#### **60            Definitions**

In this Part:

***connected***, see section 61.

***occupier***, of a place, means the person in occupation or control of the place, or if the place has different parts occupied or controlled by different persons, the person in occupation or control of the part concerned, and includes a person who reasonably appears to be an occupier of the place.

***on***, in relation to place, includes at and in the place.

***place*** includes vacant land, premises and a vehicle.

***premises*** includes:

- (a) a building; and
- (b) a part of a building; and
- (c) land on which a building is situated.

#### **61            When thing is *connected* with offence**

For this Part, a thing is ***connected*** with an offence if:

- (a) the offence has been committed in relation to the thing; or
- (b) the thing will afford evidence of the commission of the offence;  
or
- (c) the thing was used, is being used or is intended to be used for the purpose of committing the offence.

### **Division 2       Powers of authorised officers to enter places**

#### **62            Entry of place – general**

- (1) For the administration of this Act, an authorised officer may enter:
  - (a) a place (other than residential premises) at any reasonable time; or

- (b) any place at any time:
  - (i) with the consent of the occupier of the place; or
  - (ii) under a search warrant issued under this Division for the place.
- (2) An authorised officer who enters a place under subsection (1) must not remain on the place if the officer does not produce the officer's identity card when asked by the occupier of the place.

### **63                      Consent to entry**

- (1) An authorised officer seeking the consent of an occupier of a place to the officer's entry into or onto the place must:
  - (a) if the officer is an appointed authorised officer – show the officer's identity card to the occupier; and
  - (b) give the occupier the reasons why entry is sought; and
  - (c) inform the occupier that the occupier may refuse to give consent.
- (2) If:
  - (a) it is material in proceedings for a court to be satisfied the occupier consented to entry under this Part; and
  - (b) written consent of the occupier is not produced in evidence;

the court may presume, in the absence of evidence to the contrary, the occupier did not give consent.

### **64                      Entry of place – search warrant**

- (1) An authorised officer may apply to a Local Court Judge, by information on oath, for a search warrant for a place if the officer reasonably believes an offence against this Act is about to be, is being or has been committed on the place.
- (2) The Judge may issue a search warrant only if satisfied about the matters set out in the information.
- (3) The search warrant authorises the officer named in the warrant, and any other person assisting the officer, to enter the place and to exercise an authorised officer's powers under this Division.
- (4) The search warrant must state:
  - (a) the purpose for which it is issued; and



- (b) the nature of the offence or contravention for which the entry is authorised; and
  - (c) the hours during which entry to the place is authorised or state that the entry is authorised at any time of the day or night; and
  - (d) the date, within 30 days after the warrant's issue, the warrant ceases to have effect.
- (5) The authorised officer executing the search warrant must, if asked by the occupier of the place or another person on the place, produce the warrant for the person's inspection.

## **65 Additional powers for entry of vehicle**

- (1) An authorised officer may enter a vehicle if the officer has reasonable grounds for suspecting:
- (a) the vehicle is being, has been or is likely to be, used in the commission of an offence against this Act; or
  - (b) the vehicle, or a thing on the vehicle, may provide evidence of the commission of an offence against this Act.
- (2) For entering a vehicle under this Part, an authorised officer may require the person in control of the vehicle:
- (a) to stop, move or not to move the vehicle; or
  - (b) to bring the vehicle to a stated place and remain in control of the vehicle until the officer permits the vehicle to depart; or
  - (c) to give the officer reasonable help.
- (3) A person commits an offence if the person engages in conduct that results in a contravention of the officer's requirement.

Fault elements:

The person:

- (a) intentionally engages in the conduct; and
- (b) is reckless as to whether the conduct would result in a contravention of the requirement.

Maximum penalty: 100 penalty units.

- (4) It is a defence to a prosecution for an offence against subsection (3) if the defendant establishes a reasonable excuse.

## **Division 3                      Powers of authorised officers on entry of places**

### **66                      Powers on entry of place**

- (1) An authorised officer who enters a place under Division 2 may do any of the following:
  - (a) inspect or examine the place or anything found on the place;
  - (b) break open and search fixtures and fittings, furniture and furnishings or boxes, packages and other containers (of any description) found on the place;
  - (c) take measurements of, or conduct tests in relation to, the place or anything found on the place;
  - (d) take photographs, films or audio, video or other recordings of the place or anything found on the place;
  - (e) take and remove from the place samples for analysis of anything found on the place;
  - (f) if the place is a vehicle – subject to section 67, seize it;
  - (g) subject to section 67, seize anything found on the place;
  - (h) take copies of, or extracts from, documents found on the place;
  - (i) require a person on the place to:
    - (i) answer questions or provide information; or
    - (ii) make available documents kept on the place; or
    - (iii) give the officer reasonable help to exercise powers under this section.
- (2) After taking a sample under subsection (1)(e) or seizing a thing under subsection (1)(f) or (g), the authorised officer must give a receipt for the sample or thing to:
  - (a) the occupier of the place; or
  - (b) the person whom the officer reasonably believes was in possession of the sample or thing immediately before it was taken or seized.
- (3) A requirement under subsection (1)(i) must be given by written notice.

(4) When making the requirement, the authorised officer must inform the person it is an offence not to comply with the requirement unless the person establishes a reasonable excuse.

(5) A person commits an offence if the person engages in conduct that results in a contravention of the requirement.

Fault element:                      The person intentionally engages in the conduct.

Maximum penalty:                100 penalty units.

(6) It is a defence to a prosecution for an offence against subsection (5) if the defendant establishes a reasonable excuse.

(7) Without limiting subsection (6), it is a reasonable excuse for an individual to fail to comply with the requirement if complying with the requirement might tend to incriminate the individual.

## **67                      Seizure of things**

(1) An authorised officer may seize a thing under section 66(1)(f) or (g) only if the officer reasonably believes the thing:

(a) is connected with an offence against this Act and the seizure is necessary to prevent the thing from being:

(i) concealed, lost, damaged or destroyed; or

(ii) used to commit the offence; or

(b) is connected with an offence against this Act and the seizure is necessary to conduct tests for adducing evidence for a prosecution for the offence.

(2) After seizing the thing, the authorised officer may:

(a) take, or direct another person to take, the thing to the place stated by the officer; or

(b) give directions about handling and storing the thing that the officer considers appropriate.

(3) A person commits an offence if the person:

(a) interferes with or disposes of the seized thing; or

(b) removes the seized thing from:

(i) the place on which it was seized; or

- (ii) the place to which it was taken by or under the direction of the authorised officer.

Fault elements:

The person:

- (a) intentionally engages in the conduct; and
- (b) is reckless as to whether an authorised officer seized the thing.

Maximum penalty:        100 penalty units.

- (4) Subsection (3) does not apply if the person has the written consent of the NT EPA.

## **68        Retention of things seized**

The following provisions apply in relation to a thing seized:

- (a) it must be held by the authorised officer for adducing evidence for a prosecution for an offence against this Act unless the NT EPA authorises its release to its owner or the person who had possession of it immediately before its seizure;
- (b) if a prosecution for an offence against this Act is started within 12 months after the seizure and the defendant is found guilty, the court may order the thing be forfeited to the Territory;
- (c) the officer must release the thing to its owner or the person who had possession of it immediately before its seizure if:
  - (i) a prosecution for an offence against this Act is not started within 12 months after the seizure; or
  - (ii) on a prosecution being started within that period, the defendant is not found guilty or the court does not make an order under paragraph (b).

## **69        Authorised officer may use help and force in exercising powers**

An authorised officer may exercise a power under this Part with the help, and using the force, that is reasonable in the circumstances.

## **Division 4                      Other enforcement powers**

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

- (1) This section applies if an authorised officer:
  - (a) finds a person committing an offence against this Act; or
  - (b) finds a person in circumstances that lead the officer to reasonably suspect the person has just committed an offence against this Act; or
  - (c) has information that leads the officer to reasonably suspect a person has just committed an offence against this Act.
- (2) The authorised officer may require the person to state the person's name and address.
- (3) When making the requirement, the authorised officer must inform the person it is an offence to contravene the requirement unless the person establishes a reasonable excuse.
- (4) The authorised officer may require the person to give evidence of the correctness of the person's name or address if the officer reasonably suspects the name or address given is false.
- (5) A person commits an offence if the person engages in conduct that results in a contravention of a requirement given to the person under this section by an authorised officer.

Maximum penalty:        100 penalty units.

- (6) An offence against subsection (5) is an offence of strict liability.
- (7) It is a defence to a prosecution for an offence against subsection (5) if the defendant establishes a reasonable excuse.

### **71                      Power to require information from certain persons**

- (1) This section applies if an authorised officer reasonably suspects:
  - (a) an offence against this Act has been committed; and
  - (b) a person may be able to give information about the offence.
- (2) The authorised officer may, by written notice, require the person to give information about the suspected offence.

(3) When making the requirement, the authorised officer must inform the person it is an offence to fail to give the information unless the person establishes a reasonable excuse.

(4) A person commits an offence if the person engages in conduct that results in a contravention of the requirement.

Fault element:            The person intentionally engages in the conduct.

Maximum penalty:        100 penalty units.

(5) It is a defence to a prosecution for an offence against subsection (4) if the defendant establishes a reasonable excuse.

(6) Without limiting subsection (5), it is a reasonable excuse for an individual to fail to answer the question if complying with the requirement might tend to incriminate the individual.

## **72            Power to require CDS approval holder to produce document**

(1) For the administration of this Act, an authorised officer may, by written notice, require the holder of a CDS approval to produce a document held or kept by the approval holder under this Act to the officer for inspection.

(2) The notice must state it is an offence to fail to produce the document unless the approval holder establishes a reasonable excuse.

(3) The authorised officer may keep a produced document to take an extract from, or make a copy of, the document.

(4) The approval holder must comply with the notice.

Maximum penalty:        100 penalty units.

(5) An offence against subsection (4) is an offence of strict liability.

(6) It is a defence to a prosecution for an offence against subsection (4) if the defendant establishes a reasonable excuse.

(7) Without limiting subsection (6), it is a reasonable excuse for an approval holder to fail to produce a document if complying with the requirement might tend to incriminate the approval holder.

## **Division 5            Offences**

### **73            Confidentiality of information**

- (1) A person commits an offence if:
- (a) the person obtains information in the course of carrying out functions connected with the administration of this Act; and
  - (b) engages in conduct that results in the disclosure of the information to someone else.

Fault elements:

The person:

- (a) intentionally engages in the conduct; and
- (b) is reckless as to whether the conduct would result in the disclosure of the information.

Maximum penalty:      200 penalty units or imprisonment for 2 years.

- (2) Subsection (1) does not apply to a person disclosing information:
- (a) for the administration of this Act; or
  - (b) with the consent of the person to whom the information relates; or
  - (c) for legal proceedings arising out of the operation of this Act.

### **74            Misleading information or document**

- (1) A person must not give misleading information to:
- (a) an authorised officer acting in an official capacity; or
  - (b) a CDS participant for the participant's carrying out of activities under the CDS.

Fault elements:

The person:

- (a) intentionally gives the information to the officer or participant; and
- (b) knows the information is misleading; and

(c) knows:

- (i) the officer is acting in an official capacity; or
- (ii) the information is for the participant's carrying out of activities under the CDS.

Maximum penalty:      400 penalty units or imprisonment for  
2 years.

(2) A person must not give a document containing misleading information to:

- (a) an authorised officer acting in an official capacity; or
- (b) a CDS participant for the participant's carrying out of activities under the CDS.

Fault elements:

The person:

- (a) intentionally gives the document to the officer or participant;  
and
- (b) knows the document contains misleading information; and
- (c) knows:
  - (i) the officer is acting in an official capacity; or
  - (ii) the document is for the participant's carrying out of activities under the CDS.

Maximum penalty:      400 penalty units or imprisonment for  
2 years.

(3) Subsection (2) does not apply if the person, when giving the document:

- (a) draws the misleading aspect of the document to the attention of the authorised officer or CDS participant; and
- (b) to the extent to which the person can reasonably do so – gives the officer or participant the information necessary to correct the document.



(4) In this section:

***misleading information*** means information that is misleading in a material particular or because of the omission of a material particular.

## **75            Obstruction of person acting in official capacity**

(1) A person must not obstruct an authorised officer, or person assisting an authorised officer (the ***assistant***), acting in an official capacity.

Fault elements:

The person:

- (a) knows the officer or assistant is acting in an official capacity;  
and
- (b) intentionally obstructs the officer or assistant.

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

(2) It is a defence to a prosecution for an offence against subsection (1) if the defendant establishes a reasonable excuse.

(3) In this section:

***obstruct*** includes resist and hinder.

## **76            Falsely representing to be authorised officer**

A person must not falsely represent, by words or conduct, that the person or another person is an authorised officer.

Fault element:            The person intentionally represents the  
person or other person is an authorised  
officer with an intention to deceive.

Maximum penalty:      200 penalty units or imprisonment for  
2 years.

## **Division 6                Criminal liability for offences**

### **77                Definitions**

In this Division:

**declared provision** means each of the following provisions:

- (a) section 13(1) and (2), 14(1) and (2), 15(1), 16(1), 17(1), (4) and (6), 18(1), 42, 55(1), 56(1), 57(1), 58, 71(4), 73(1), 74(1) and (2), 75(1) and 76;
- (b) a provision of the Regulations prescribed by regulation.

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

### **78                Conduct of representative**

- (1) This section applies to a prosecution for an offence against a declared provision of this Act.

*Note for subsection (1)*

*This section deals with prosecutions of individuals. Part IIAA, Division 5, of the Criminal Code contains provisions about corporate criminal responsibility.*

- (2) Conduct engaged in by a representative of a person within the scope of the representative's actual or apparent approval is taken to have been also engaged in by the person.
- (3) However, subsection (2) does not apply if the person proves the person took reasonable steps to prevent the conduct.
- (4) In deciding whether the person took reasonable steps to prevent the conduct, a court must consider:
  - (a) any action the person took to ensure the representative had a reasonable knowledge and understanding of the requirement to comply with the contravened provision; and
  - (b) the level of management, control or supervision that was appropriate for the person to exercise over the representative.
- (5) Subsection (4) does not limit the matters the court may consider.
- (6) If it is relevant to prove a person had a fault element in relation to a physical element of an offence, it is enough to show:
  - (a) the conduct relevant to the physical element was engaged in by a representative of the person within the scope of the representative's actual or apparent approval; and

- (b) the representative had the fault element in relation to the physical element.
- (7) A person may rely on section 43AX of the Criminal Code in relation to conduct by a representative that would be an offence by the person only if:
  - (a) the representative was under a mistaken but reasonable belief about the facts that, had they existed, would have meant that the conduct would not have constituted an offence; and
  - (b) the person proves the person exercised due diligence to prevent the conduct.

*Note for subsection (7)*

*Section 43AX of the Criminal Code provides a person is not criminally responsible if the person engaged in conduct under a mistake of fact in relation to an offence of strict liability.*

- (8) A person (the **defendant**) may not rely on section 43BA of the Criminal Code in relation to a physical element of an offence brought about by another person if the other person is a representative of the defendant.

*Note for subsection (8)*

*Section 43BA of the Criminal Code provides a person is not criminally responsible in circumstances of an intervening conduct or event.*

- (9) A person who is convicted of an offence cannot be punished by imprisonment for the offence if the person would not have been convicted of the offence without subsection (2) or (6).
- (10) In this section:

**fault element** includes intention, knowledge, recklessness, opinion, belief and purpose, but does not include negligence.

**person** means an individual.

## **79       Criminal liability of partner in partnership**

- (1) A partner in a partnership commits an offence if:
  - (a) another partner in the partnership (the **offender**) commits an offence in the course of the activities of the partnership by contravening a declared provision (a **relevant offence**); and
  - (b) the partner was in a position to influence the conduct of the offender in relation to the contravention; and

- (c) the partner failed to take reasonable steps to prevent the contravention.

Fault element:                      The partner was reckless about whether the contravention would happen.

Maximum penalty:                The maximum penalty that may be imposed on an individual for the relevant offence.

- (2) This section does not affect the liability of the offender.
- (3) This section applies whether or not the offender is prosecuted for, or convicted of, the relevant offence, but does not apply if the offender would have a defence to a prosecution for the relevant offence.
- (4) In this section:

**partner**, of a partnership, includes a person who is concerned with, or takes part in, the management of the partnership.

**partnership** does not include an incorporated limited partnership formed under the *Partnership Act 1997*.

## 80                      Criminal liability of manager of unincorporated association

- (1) A manager of an unincorporated association commits an offence if:
  - (a) another manager of the association (the **offender**) commits an offence in the course of the activities of the association by contravening a declared provision (a **relevant offence**); and
  - (b) the manager was in a position to influence the conduct of the offender in relation to the contravention; and
  - (c) the manager failed to take reasonable steps to prevent the contravention.

Fault element:                      The manager was reckless about whether the contravention would happen.

Maximum penalty:                The maximum penalty that may be imposed on an individual for the relevant offence.

- (2) This section does not affect the liability of the offender.
- (3) This section applies whether or not the offender is prosecuted for, or convicted of, the relevant offence, but does not apply if the offender would have a defence to a prosecution for the relevant offence.

(4) In this section:

**manager**, of an unincorporated association, means a person who is concerned with, or takes part in, the management of the association.

## **81                      Criminal liability of executive officer of body corporate**

(1) An executive officer of a body corporate commits an offence if:

- (a) the body corporate commits an offence (a **relevant offence**) by contravening a declared provision; and
- (b) the officer was in a position to influence the conduct of the body corporate in relation to the contravention; and
- (c) the officer failed to take reasonable steps to prevent the contravention; and
- (d) the officer was reckless about whether the contravention would happen.

Maximum penalty:            The maximum penalty that may be imposed on an individual for the relevant offence.

(2) In deciding whether the executive officer took (or failed to take) reasonable steps to prevent the contravention, a court must consider the following:

- (a) any action the officer took directed towards ensuring the following (to the extent the action is relevant to the contravention):
  - (i) the body corporate arranged regular professional assessments of the body corporate's compliance with the declared provision;
  - (ii) the body corporate implemented any appropriate recommendation arising from an assessment under subparagraph (i);
  - (iii) the body corporate's representatives and contractors had a reasonable knowledge and understanding of the requirement to comply with the declared provision;
- (b) any action the officer took when the officer became aware that the contravention was, or could be, about to happen.

(3) Subsection (2) does not limit the matters the court may consider.

- (4) This section does not affect the liability of the body corporate.
- (5) This section applies whether or not the body corporate is prosecuted for, or convicted of, the relevant offence.
- (6) This section does not apply if the body corporate would have a defence to a prosecution for the relevant offence.
- (7) In this section:

**executive officer**, of a body corporate, means a director or other person who is concerned with, or takes part in, the management of the body corporate.

## Division 7                      Legal proceedings and evidentiary matters

### 82                      Alternative verdicts

- (1) This section applies if, on the trial of a person charged with an offence against a provision mentioned in the following Table (the **prosecuted offence**), the trier of fact:
  - (a) is not satisfied beyond reasonable doubt the person committed the prosecuted offence; but
  - (b) is satisfied beyond reasonable doubt the person committed the offence, or the offence of attempting to commit the offence, mentioned in the Table opposite the prosecuted offence (the **alternative offence**).
- (2) The trier of fact may find the person not guilty of the prosecuted offence but guilty of the alternative offence.

**Table                      Alternative verdicts**

Prosecuted offence	Alternative offence
section 13(1)	section 13(2)
section 14(1)	section 14(2)

### 83                      Judicial notice

In any proceeding, a signature purporting to be the signature of the chairperson of the NT EPA is evidence of the signature it purports to be.

**84        Evidentiary certificate**

In a proceeding for an offence against this Act, a certificate signed by the chairperson of the NT EPA stating any of the following matters is evidence of the matter:

- (a) a stated liquid is a beverage;
- (b) a stated container is a glass container;
- (c) a stated plastic bag is a prohibited plastic bag;
- (d) a stated person was an authorised officer on a stated day;
- (e) a stated notice or other document was made, given or issued on a stated day.

**Part 5                    Administrative matters****85        Approved forms**

The NT EPA may approve forms for this Act.

**87        Authorised officers**

- (1) An **authorised officer** is a person appointed under subsection (2) as an authorised officer.
- (2) The NT EPA may appoint a public sector employee or other person as an authorised officer.
- (3) However, the NT EPA may appoint a person as an authorised officer only if satisfied the person has the appropriate qualifications or experience to exercise the powers and perform the functions of an authorised officer.
- (4) An authorised officer has the powers and functions of an authorised officer under this Act as stated in the appointment.

**88        Identity card**

- (1) The NT EPA must give each authorised officer an identity card stating the person's name and that the person is an authorised officer.
- (2) The identity card must:
  - (a) show a recent photograph of the officer; and
  - (b) show the card's date of issue and expiry; and

(c) be signed by the officer.

- (3) This section does not prevent the issue of a single identity card to a person for this and another Act.

## **89 Production of identity card**

An authorised officer exercising a power or performing a function under this Act in relation to a person must, if asked by the person, produce the officer's identity card for the person's inspection.

## **90 Return of identity card**

- (1) A person who ceases to be an authorised officer must return the person's identity card to the NT EPA within 21 days after the cessation.

Maximum penalty: 5 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.
- (3) It is a defence to a prosecution for an offence against subsection (1) if the person establishes a reasonable excuse.

# **Part 6 Miscellaneous matters**

## **91 Protection from liability**

- (1) A person is not civilly or criminally liable for an act done or omitted to be done by the person in good faith in the exercise of a power or performance of a function as any of the following:

- (a) an authorised officer;
- (b) a person assisting an authorised officer under Part 4.

- (2) Subsection (1) does not affect any liability the Territory would, apart from that subsection, have for the act or omission.

- (3) In this section:

**exercise**, of a power, includes the purported exercise of the power.

**performance**, of a function, includes the purported performance of the function.



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**91A Acquisition on just terms**

If the operation of this Act would, apart from this section, result in an acquisition of property from a person otherwise than on just terms:

- (a) the person is entitled to receive from the Territory the compensation necessary to ensure the acquisition is on just terms; and
- (b) a court of competent jurisdiction may decide the amount of compensation or make the orders it considers necessary to ensure the acquisition is on just terms.

**92 Annual report**

- (1) The NT EPA must prepare a report for each financial year about the administration of this Act.
- (2) The Minister must table the annual report in the Legislative Assembly within 4 months after the end of the financial year.

**93 Regulations**

- (1) The Administrator may make regulations under this Act.
- (2) A regulation may provide for the following:
  - (a) matters to improve the efficiency or effectiveness of the whole CDS or any feature of the CDS;
  - (b) fees payable under this Act;
  - (c) applying, adopting or incorporating (with or without changes) the whole or part of a document as in force or existing at a particular time or from time to time;
  - (d) an offence against a regulation to be an offence of strict or absolute liability but not with a penalty exceeding 100 penalty units.
- (2A) A regulation may be made for a matter mentioned in subsection (2)(a) even if the improvement of the efficiency or effectiveness of a particular matter results in another matter being less efficient or effective.
- (3) A regulation may contain transitional provisions for containers:
  - (a) that become regulated containers (whether on the start of the CDS or a later date); and

(b) that are:

- (i) held by manufacturers, distributors or beverage retailers for sale; or
- (ii) sold but not delivered as empty containers for payment of the refund amount under the CDS.

## **Part 7 Transitional matters for Environment Protection (Beverage Containers and Plastic Bags) Legislation Amendment Act 2014**

### **94 Definitions**

In this Part:

***amended***, in relation to a specified provision, means the provision of this Act as in force on and after the commencement day.

***amendment Act*** means the *Environment Protection (Beverage Containers and Plastic Bags) Legislation Amendment Act 2014*.

***appropriate WMA*** means a waste management arrangement that meets the criteria for approval mentioned in section 23A(1)(a) to (d).

***CEO*** means the CEO as defined in the former Act.

***commencement day*** means the day on which this Act commences.

***existing validated approval***, see section 96(4).

***former***, in relation to a specified provision, means the provision as in force immediately before the commencement day.

***former Act*** means this Act as in force before the commencement day.

***related WMA***, in relation to an existing validated approval, means a waste management arrangement to which that approval relates.

***replacement approval***, see section 98(2).

### **95 Existing application relating to CDS approval**

- (1) The NT EPA must decide an existing application under amended Part 2, Division 6, Subdivision 1 or 2 (as relevant).

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- (2) To enable the NT EPA to decide the existing application, it may require the applicant to give information in addition to the information given to the CEO.

- (3) In this section:

**existing application** means an application for any of the following that was made, but not decided, under former Part 2, Division 6, Subdivision 1 or 2 (as relevant):

- (a) a CDS approval;
- (b) the renewal of a CDS approval;
- (c) the variation of conditions of a CDS approval.

## **96 Validation of CDS approvals**

- (1) The grant or purported grant of a CDS approval before the commencement day is declared to be, and to always have been, a valid exercise of power by the CEO.
- (2) The validity of the grant or purported grant is not affected merely because a waste management arrangement to which the CDS approval relates may not have been completely effective for the purposes of the former Act.
- (3) If a CDS approval that was the subject of a grant or purported grant mentioned in subsection (1) is no longer in force immediately before the commencement day, it is declared that the approval was valid and had effect under the former Act in accordance with the conditions to which the approval was subject.
- (4) If a CDS approval that was the subject of a grant or purported grant mentioned in subsection (1) is in force immediately before the commencement day, it is declared that the approval is, and always has been, a validated approval (an **existing validated approval**).

## **97 Continuation of existing validated approval and related WMA**

- (1) An existing validated approval continues in force on and after the commencement day subject to the following conditions:
  - (a) in relation to each approval – the conditions stated in the approval under former section 24(3);
  - (b) in relation to a supply approval – the conditions mentioned in section 24A(1);

- (c) in relation to a collection approval – the condition mentioned in section 24B;
- (d) if a related WMA is also an appropriate WMA – the condition mentioned in amended section 24(b), in relation to the appropriate WMA, as if a reference in that paragraph to an approved waste management arrangement were a reference to an appropriate WMA;
- (e) if a related WMA that is also an appropriate WMA ceases to meet the criteria for approval mentioned in section 23A(1)(a) to (d) as a result of the granting of a replacement approval to a CDS participant who is a party to the related WMA – the condition that the holder of the approval must, after being given a notice under section 98(2), enter into one or more appropriate WMAs to enable the holder to apply for a replacement approval as requested in the notice;
- (f) if no related WMA is an appropriate WMA – the condition that the holder of the approval must, after being given a notice under section 98(2), enter into one or more appropriate WMAs to enable the holder to apply for a replacement approval as requested in the notice.

*Example for subsection (1)(e)*

*A related WMA that is an operator arrangement may cease to meet the criteria for approval because a replacement coordinator approval contains provisions that have the effect of requiring the CDS coordinator who is a party to the operator arrangement to make arrangements with the holder of the existing validated collection approval for the sorting of empty approved containers by reference to material type.*

- (2) If an existing validated approval has more than one related WMA and not all of those WMAs are appropriate WMAs, the NT EPA may give the holder of the approval a notice requiring the holder to submit one or more waste management arrangements, within the period specified in the notice, to enable the NT EPA to decide whether or not to approve the arrangements under section 23A to replace the related WMAs.
- (3) The NT EPA may extend the period specified in a notice given under subsection (2), by a further period not exceeding the duration of the original period, if:
  - (a) the holder of the existing validated approval applies to the NT EPA in writing for the extension before the end of the original period; and

- (b) the NT EPA is satisfied it is reasonable in the circumstances to extend the period.
- (4) If the holder of an existing validated approval does not comply with a notice given to the holder under subsection (2) within the period it specifies, or as extended under subsection (3):
  - (a) the NT EPA may take action under Part 2, Division 6, Subdivision 3 on the ground that the holder has contravened the requirement of the NT EPA; and
  - (b) if the NT EPA takes that action – a reference in section 37(a) to a provision of this Act is taken to be a reference to a requirement of the NT EPA under subsection (2).
- (5) A related WMA continues to apply on and after the commencement day according to its provisions as in force on the commencement day, as follows:
  - (a) in relation to an appropriate WMA mentioned in subsection (1)(d) – until the earliest of the following:
    - (i) the day on which the appropriate WMA is varied or replaced by an approved waste management arrangement as a result of compliance with the condition imposed by subsection (1)(d);
    - (ii) the day on which the existing validated approval ceases to be in force;
  - (b) in relation to a related WMA mentioned in subsection (1)(e) or (f) – until the existing validated approval is cancelled under section 100;
  - (c) in relation to a related WMA the subject of a notice given under subsection (2) – until the earliest of the following:
    - (i) the day on which the related WMA is replaced by an approved waste management arrangement;
    - (ii) the day on which the existing validated approval ceases to be in force (which may be as a result of cancellation by the NT EPA following action taken under Part 2, Division 6, Subdivision 3).
- (6) This section does not prevent the holder of a CDS approval granted under the former Act from applying to the NT EPA for the cancellation of the approval because the holder has ceased to be a CDS participant.

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**98 CDS approval required to replace existing validated approval**

- (1) This section applies in relation to an existing validated approval if the condition in section 97(1)(e) or (f) applies.
- (2) The NT EPA must give the holder of the existing validated approval a notice requesting the holder to apply, within the relevant prescribed period, for a CDS approval to replace the existing validated approval (a **replacement approval**).
- (3) The notice must be given:
  - (a) in relation to the existing validated approval to which the condition in section 97(1)(e) applies – as soon as practicable after the NT EPA becomes aware that the related WMA has ceased to be an appropriate WMA; and
  - (b) in relation to the existing validated approval to which the condition in section 97(1)(f) applies – as soon as practicable after the commencement day.
- (4) The notice must state that the existing validated approval will be cancelled:
  - (a) if the holder of the existing validated approval applies for, and is granted, a replacement approval; or
  - (b) if the holder does not apply for a replacement approval:
    - (i) within the relevant prescribed period; or
    - (ii) if applicable – before the expiry of the period extended under subsection (5).
- (5) Subject to section 99(6), the NT EPA may extend the relevant prescribed period, by no more than 6 months, if:
  - (a) the holder of the existing validated approval applies to the NT EPA for the extension:
    - (i) in writing; and
    - (ii) no later than 30 days before the end of the relevant prescribed period; and
  - (b) the NT EPA is satisfied it is reasonable in the circumstances to extend the period.

- (6) If the NT EPA refuses to extend the relevant prescribed period:
  - (a) it must give the holder of the existing validated approval a review notice; and
  - (b) Part 2, Division 7 applies.
- (7) Part 2, Division 6, Subdivision 1 applies in relation to an application for a replacement approval.
- (8) In this section:

***relevant prescribed period*** means the following period:

- (a) in relation to an existing validated approval to which the condition in section 97(1)(e) applies – 2 months after the day on which the notice is given to the holder under subsection (2);
- (b) in relation to an existing validated approval to which the condition in section 97(1)(f) applies:
  - (i) if the existing validated approval is a coordinator approval – 6 months after the day on which the notice is given to the holder under subsection (2); or
  - (ii) if the existing validated approval is a collection approval or supply approval – 8 months after the day on which the notice is given to the holder under subsection (2).

## **99 Arbitration**

- (1) This section applies if the parties to a related WMA are unable to reach agreement about the provisions of an appropriate WMA within the prescribed period.
- (2) If the appropriate WMA is a coordinator arrangement, the matters in dispute must be decided by an arbitrator in the Territory.
- (3) If the appropriate WMA is a supplier arrangement or operator arrangement, the parties to the related WMA may agree that the matters in dispute be decided by an arbitrator in the Territory.
- (4) A notice relating to arbitration, signed by the parties to the related WMA, must be given to the NT EPA before the end of the negotiation period and must state:
  - (a) that the parties are unable to reach agreement about the provisions of the appropriate WMA; and

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- (b) the matter is to be referred to an arbitrator in the Territory; and
  - (c) whether or not the parties have reached an agreement about the arbitrator who is to decide the matter; and
  - (d) if the parties have reached an agreement mentioned in paragraph (c) – the details of the arbitrator.
- (5) If the parties are unable to reach an agreement mentioned in subsection (4)(c), the NT EPA must appoint an arbitrator.
- (6) The NT EPA may extend the negotiation period, as necessary, to enable the completion of arbitration, the signing of an appropriate WMA and the granting of a replacement approval.
- (7) An arbitrator's decision for this section is binding on the parties to the arbitration proceedings.
- (8) However, if the arbitrator's decision relates to a coordinator arrangement and a CDS coordinator disagrees with the decision, the coordinator:
- (a) may elect:
    - (i) not to be bound by the decision; and
    - (ii) not to continue as a CDS coordinator; and
  - (b) if the coordinator makes that election – must give written notice of the election, within 7 days after being notified of the arbitrator's decision, to:
    - (i) the arbitrator and each CDS participant who was a party to the arbitration proceedings; and
    - (ii) the NT EPA.
- (9) The costs of arbitration must be shared equally by the parties, including a CDS coordinator who has decided not to continue as a CDS coordinator.
- (10) In this section:
- negotiation period*** means the following:
- (a) the relevant prescribed period under section 98;
  - (b) if the period has been extended under section 98(5) – the extended period.



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***prescribed period*** means the period that ends 14 days before the end of the negotiation period.

**100 Cancellation of existing validated approval**

- (1) The NT EPA must cancel an existing validated approval:
  - (a) if the NT EPA has granted a CDS approval to replace the existing validated approval – on the day the CDS approval is granted (unless the existing validated approval has ceased to be in force on the date stated in it); or
  - (b) if a circumstance mentioned in section 98(4)(b) applies – on the day after the expiry of the relevant period; or
  - (c) if notice is given to the NT EPA under section 99(8)(b) – on the day the notice is given.
- (2) The NT EPA must give a notice of cancellation under subsection (1)(b) to the person who held the existing validated approval.

**101 Continuation of certain rights under existing validated approval**

- (1) Subsection (3) applies in relation to the holder of an existing validated approval that is a collection approval if the holder:
  - (a) delivered relevant containers to a CDS coordinator before the commencement day; or
  - (b) delivers relevant containers to a CDS coordinator on or after the commencement day.
- (2) Subsection (3) also applies if the existing validated approval is cancelled and the person who previously held the approval:
  - (a) paid a refund amount for relevant containers delivered to the person on or before the day on which the person was given a cancellation notice; and
  - (b) delivers the relevant containers to a CDS coordinator on or after that day.
- (3) Former section 20(2) to (4) continues to apply, as if former section 20 had not been repealed by the amendment Act, in relation to the rights of the operator:
  - (a) to require and receive payment from the CDS coordinator; and

- (b) if the coordinator does not pay the amount as required – to recover the amount as a debt payable to the operator.

- (4) In this section:

**relevant containers** means containers to which a circumstance mentioned in former section 20(1)(a) to (c) applies.

**cancellation notice** means a notice given under section 100(2).

## **102 Suspension or cancellation of CDS approval under Part 2**

- (1) This section applies if the CEO:
  - (a) gave a show cause notice to the holder of a CDS approval under former section 38; and
  - (b) had not, before the commencement day, made a decision in relation to the suspension or cancellation of the approval.
- (2) The NT EPA must continue to deal with the matter under amended Part 2, Division 6, Subdivision 3.

## **103 Offences**

- (1) A prosecution for an offence against amended section 18(1) or amended section 19(1) may be commenced only in relation to approved containers delivered to the collection depot on or after the commencement day.
- (2) The repeal of former section 18(2) or former section 19(1) does not affect the starting or continuation of a prosecution in relation to approved containers delivered to the approved collection depot before the commencement day.

## **104 Continuation of approved forms**

An approved form in use immediately before the commencement day continues to have effect as if it had been approved by the NT EPA under amended section 85.

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## Schedule      **Agreements for coordinator arrangement provisions**

section 12(3)

### 1      **Definitions**

**accepted containers** means empty approved containers that:

- (a) are the subject of a primary coordinator's approved supplier arrangements; and
- (b) have been accepted by a secondary coordinator from an operator of an approved collection depot.

**market share**, of a CDS coordinator, means the coordinator's share of the total number of all approved containers sold in the Territory during a quarter calculated by reference to the numbers stated in all of the sales declarations for that quarter.

**primary coordinator**, in relation to approved containers, means a CDS coordinator who is a party to an approved supplier arrangement relating to those containers.

**sales declaration** means a statutory declaration given under an agreement mentioned in clause 2.

**secondary coordinator**, in relation to approved containers, means a CDS coordinator who:

- (a) accepts the containers, when empty, from an operator with whom the coordinator has an approved operator arrangement; and
- (b) is not a party to the approved supplier arrangement relating to those containers.

### 2      **Quarterly sales declaration**

- (1) An agreement that each CDS coordinator must give to each other coordinator, in each quarter, a statutory declaration stating the following:
  - (a) the total number of approved containers, by reference to material types, anticipated to be sold in the Territory during the current quarter;
  - (b) the total number of approved containers, by reference to material types, actually sold in the Territory during the previous quarter;

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- (c) an adjustment of the numbers of approved containers for the previous quarter, taking into account the difference between:
    - (i) the number anticipated to be sold during that quarter as stated in the previous statutory declaration; and
    - (ii) the number actually sold during that quarter as stated for paragraph (b).
  - (2) The agreement must require the statutory declaration to be given by a CDS coordinator within 7 days after the day on which the coordinator has been given all of the supplier sales documents for the previous quarter.
  - (3) For subclause (1)(a), the total number of approved containers anticipated to be sold during the current quarter, by material type, is to be stated as the total number of those containers actually sold by the supplier in the previous quarter.
  - (4) For subclause (1)(b), the total number of approved containers actually sold during the previous quarter is as specified in all of the supplier sales documents for that quarter.

*Notes for clause 2*

- 1 *All of the statutory declarations for a quarter show the total sales in the Territory of approved containers by reference to material types.*
- 2 *The numbers of approved containers stated by a CDS coordinator in the coordinator's statutory declaration indicate the market share of the coordinator relevant to the calculations mentioned in clauses 6, 7 and 8.*

### **3      Sorting empty approved containers**

An agreement that each coordinator must specify in each approved operator arrangement the material types (including categories of material types), into which empty approved containers must be sorted by the operator.

### **4      Weighing and counting accepted containers**

- (1) An agreement about the method to be used by a secondary coordinator for the following:
  - (a) weighing accepted containers;
  - (b) counting accepted containers;
  - (c) recording the weight or numbers of the accepted containers.

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- (2) The agreement must require the secondary coordinator to weigh or count the accepted containers in the material types into which they are sorted when accepted.

## **5 Operator costs and process fee**

- (1) An agreement that a primary coordinator must pay an amount to a secondary coordinator in relation to:
- (a) operator costs; and
  - (b) a process fee.
- (2) For subclause (1)(a), **operator costs** are:
- (a) the refund amounts paid by the secondary coordinator to an operator for accepted containers; and
  - (b) the amount paid by the secondary coordinator to the operator for the collection, sorting, aggregation and delivery of the accepted containers by the operator.
- (3) For subclause (1)(b), the **process fee** is the fee for the secondary coordinator carrying out the processes necessary to prepare accepted containers for transportation to a person or place for reuse, recycling or appropriate disposal.
- (4) The agreement must:
- (a) require the secondary coordinator to keep:
    - (i) a record of the number of accepted containers by reference to each material type; and
    - (ii) documents to verify the method used for counting the containers; and
  - (b) specify the basis on which the process fee is payable (for example, the payment of a specified amount for each accepted container dealt with by the secondary coordinator).
- (5) The agreement must require the secondary coordinator to calculate the amount payable by the primary coordinator in relation to accepted containers using:
- (a) a method of calculation specified in the agreement; or
  - (b) the following formula:
- $$A = B \times (C + D)$$

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where:

**A** is the amount claimed.

**B** is the market share of the primary coordinator in relation to the containers based on the most recent sales declarations.

**C** is the operator costs in relation to the containers.

**D** is the process fee in relation to the containers.

(6) The agreement must require:

- (a) the secondary coordinator to give the primary coordinator a written claim for payment accompanied by copies of documents that provide evidence of the calculation of the amount claimed; and
- (b) the primary coordinator to pay the secondary coordinator the amount payable within the time specified in the agreement, which must not exceed 14 days after receipt of the claim.

## **6 Transportation costs and proceeds of sale**

- (1) An agreement that, for the transportation by a secondary coordinator of accepted containers to a person or place for reuse, recycling or appropriate disposal and for the sale of the containers:
  - (a) the primary coordinator must pay an amount to the secondary coordinator if the transportation costs exceed the proceeds of the sale; or
  - (b) the secondary coordinator must pay an amount to the primary coordinator if the proceeds of the sale exceed the transportation costs.
- (2) The agreement must require the secondary coordinator to calculate the amount payable by the primary coordinator or secondary coordinator, in relation to the accepted containers, using:
  - (a) a method of calculation specified in the agreement; or
  - (b) the following formula:

$$A = B \times (C - D)$$

where:

**A** is the amount payable.

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**B** is the market share of the primary coordinator in relation to the containers based on the most recent sales declarations.

**C** is the cost of transportation of the containers.

**D** is the amount received by the secondary coordinator from the proceeds of the sale of the containers following transportation.

(3) The agreement must require:

- (a) the secondary coordinator to give the primary coordinator a written statement of the amount payable accompanied by copies of documents that provide evidence of the calculation of the amount; and
- (b) the coordinator who is liable to pay the amount to do so within the time specified in the agreement, which must not exceed 14 days after the day on which the statement is given by the secondary coordinator.

## **7 Revision of claims for payment**

- (1) An agreement that a secondary coordinator must revise a claim made under clause 5 or 6 if the primary coordinator's market share, as calculated, requires revision because of an adjustment of the numbers of accepted containers stated in subsequent sales declarations.
- (2) The agreement must require the secondary coordinator to give the primary coordinator a written statement showing the revision, and how it is calculated, and specify that:
  - (b) if the primary coordinator is liable to pay an additional amount to the secondary coordinator, the amount must be paid within the time specified in the agreement, which must not exceed 14 days after receipt of the statement; and
  - (c) if the secondary coordinator is liable to refund an amount to the primary coordinator because of an overpayment, the amount must be refunded within the time specified in the agreement, which must not exceed 14 days after the statement is given.

## **8 Audits**

- (1) An agreement that one auditor, named in the agreement, must be appointed by the CDS coordinators to:
  - (a) conduct an audit of each coordinator's relevant information for a financial year; and

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- (b) give each coordinator a written report in relation to all of that information.
- (2) The agreement must specify:
- (a) the time within which the auditor must conduct the audit and give the report; and
- (b) how the CDS coordinators will pay the auditor's costs.
- (3) An agreement that if, at any time, a CDS coordinator reasonably believes any of the relevant information given by another coordinator is inaccurate:
- (a) the coordinator may request the auditor named in the agreement mentioned in subclause (1) to audit the relevant information and give the coordinator a written report in relation to the information; and
- (b) if the auditor's report states that the relevant information is inaccurate, the coordinator who gave that information must pay the auditor's costs; and
- (c) if the auditor's report states that the relevant information is accurate, the coordinator who requested the audit must pay the auditor's costs.
- (4) The agreement under subclause (3) must specify that:
- (a) if inaccurate information is found by the auditor, and a primary coordinator has paid a secondary coordinator more than the coordinator was entitled to be paid, the secondary coordinator must refund the relevant amount to the primary coordinator within 28 days after receiving the auditor's report; and
- (b) if inaccurate information is found by the auditor, and a primary coordinator has paid a secondary coordinator less than the coordinator was entitled to be paid, the primary coordinator must pay the relevant amount to the secondary coordinator within 28 days after receiving the auditor's report.
- (5) In this clause:

**auditor** means a person who has the necessary formal qualifications to audit relevant information and is not a CDS participant or an employee of a CDS participant.

**relevant information** means financial and other information that is relevant to the matters that are the subject of a coordinator agreement.



**9 Statutory declarations**

An agreement that the CDS coordinators may require that any information to be given under an agreement mentioned in clauses 3 to 8 must be given by statutory declaration.

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## ENDNOTES

### 1 KEY

Key to abbreviations

<b>amd</b> = amended	<b>od</b> = order
<b>app</b> = appendix	<b>om</b> = omitted
<b>bl</b> = by-law	<b>pt</b> = Part
<b>ch</b> = Chapter	<b>r</b> = regulation/rule
<b>cl</b> = clause	<b>rem</b> = remainder
<b>div</b> = Division	<b>renum</b> = renumbered
<b>exp</b> = expires/expired	<b>rep</b> = repealed
<b>f</b> = forms	<b>s</b> = section
<b>Gaz</b> = <i>Gazette</i>	<b>sch</b> = Schedule
<b>hdg</b> = heading	<b>sdiv</b> = Subdivision
<b>ins</b> = inserted	<b>SL</b> = Subordinate Legislation
<b>lt</b> = long title	<b>sub</b> = substituted
<b>nc</b> = not commenced	

### 2 LIST OF LEGISLATION

***Environment Protection (Beverage Containers and Plastic Bags) Act 2011 (Act No. 2, 2011)***

Assent date	4 March 2011
Commenced	pt 2: 3 January 2012 (Gaz S72, 12 December 2011); rem: 1 May 2011 (Gaz G15, 13 April 2011, p 11)

***Statute Law (Miscellaneous Provisions) Act 2011 (Act No. 44, 2011)***

Assent date	21 December 2011
Commenced	27 January 2012 ((other than amdts to <i>Darwin Port Corporation Act</i> and <i>Marine Act</i> listed in the Sch to Act) Gaz S3, 27 January 2012))

***Environment Protection (Beverage Containers and Plastic Bags) Legislation Amendment Act 2014 (Act No. 17, 2014)***

Assent date	2 June 2014
Commenced	ss 9 (to extent it ins s 20), 11 (to extent it ins s 24C), 20 (to extent it ins s 101) and 25: 1 January 2017 (Gaz G51, 21 December 2016, p 11); rem: 30 June 2014 (Gaz S46, 30 June 2014)

***Local Court (Related Amendments) Act 2016 (Act No. 8, 2016)***

Assent date	6 April 2016
Commenced	1 May 2016 (s 2, s 2 <i>Local Court (Repeals and Related Amendments) Act 2016</i> (Act No. 9, 2016) and Gaz S34, 29 April 2016)

***Statute Law Revision Act 2017 (Act No. 4, 2017)***

Assent date	10 March 2017
Commenced	12 April 2017 (Gaz G15, 12 April 2017, p 3)

### 3 GENERAL AMENDMENTS

General amendments of a formal nature (which are not referred to in the table of amendments to this reprint) are made by the *Interpretation Legislation Amendment Act 2018* (Act No. 22, 2018) to: ss 1, 3 and 79.

### 4 LIST OF AMENDMENTS

s 3	amd No. 17, 2014, s 4
s 4	amd No. 44, 2011, s 26; No. 17, 2014, s 5
s 5 hdg	amd No. 4, 2017, s 34
s 8A	ins No. 17, 2014, s 6
pt 2	
div 2 hdg	sub No. 17, 2014, s 7
ss 10 – 12	sub No. 17, 2014, s 7
pt 2	
div 5 hdg	amd No. 17, 2014, s 22
s 17	amd No. 17, 2014, s 8
ss 18 – 20	sub No. 17, 2014, s 9
s 21	amd No. 17, 2014, s 10
s 22	amd No. 17, 2014, s 22
s 23	sub No. 17, 2014, s 11
s 23A	ins No. 17, 2014, s 11
s 24	sub No. 17, 2014, s 11
ss 24A – 24C	ins No. 17, 2014, s 11
s 25	amd No. 17, 2014, s 22
s 26	amd No. 17, 2014, s 12
s 29	amd No. 17, 2014, s 22
s 30	amd No. 17, 2014, s 13
ss 31 – 35	amd No. 17, 2014, s 22
s 37	amd No. 17, 2014, s 14
ss 38 – 41	amd No. 17, 2014, s 22
ss 44 – 45	amd No. 17, 2014, s 22
s 48	amd No. 17, 2014, s 22
s 49	sub No. 17, 2014, s 15
s 64	amd No. 8, 2016, s 45
ss 67 – 68	amd No. 17, 2014, s 22
s 77	amd No. 17, 2014, s 22
ss 83 – 85	amd No. 17, 2014, s 22
s 86	rep No. 17, 2014, s 16
ss 87 – 88	amd No. 17, 2014, s 22
s 90	amd No. 17, 2014, s 22
s 91A	ins No. 17, 2014, s 17
s 92	sub No. 17, 2014, s 18
s 93	amd No. 17, 2014, s 19
pt 7 hdg	ins No. 17, 2014, s 20
ss 94 – 104	ins No. 17, 2014, s 20
s 105	ins No. 17, 2014, s 20
	exp No. 17, 2014, s 105(5)
sch	ins No. 17, 2014, s 21