

Serial 136
Environment Protection (Beverage Containers and Plastic Bags) Bill 2010
Mr Hampton

A Bill for an Act to establish a beverage container deposit scheme and to
regulate the supply of plastic bags

NORTHERN TERRITORY OF AUSTRALIA

ENVIRONMENT PROTECTION (BEVERAGE CONTAINERS AND PLASTIC BAGS) ACT 2010

Act No. [] of 2010

Table of provisions

Part 1 Introduction

1	Short title	1
2	Commencement	1
3	Object of Act	1
4	Definitions	2
5	Application of Part IIAA of Criminal Code	5

Part 2 Container deposit scheme

Division 1 Basic concepts

6	Meaning of <i>container</i>	6
7	Meaning of <i>beverage</i>	6
8	Meaning of <i>beverage retailer</i>	6
9	Containers exempted from application of CDS	6

Division 2 Establishment, waste management arrangements and CDS principles

10	CDS established	7
11	Waste management arrangement	7
12	CDS principles	8

Division 3 Supply of beverages in regulated containers

13	Supply of regulated container to beverage retailer	9
14	Beverage retailer sale of beverages in approved container	9

Division 4 Approval requirements for CDS participants

15	Approval required for CDS coordinator	10
16	Approval required for collection depot operator	10

Division 5 Refund amount entitlement and payments

17	No refund for container purchased outside Territory or corresponding jurisdiction.....	10
18	Collection depot to pay refund amount for empty containers.....	12
19	How refund amount paid	13
20	Operator of collection depot may be reimbursed for costs	13

Division 6 CDS approvals

Subdivision 1 Application process for CDS approvals

21	Making application.....	14
22	CEO may require further information.....	14
23	Considering application	15
24	Conditions of approval.....	15
25	Notice of decision on application	15
26	Duration of approval	16
27	Renewal of approval.....	16
28	Approval not transferable.....	16

Subdivision 2 Variation of conditions of CDS approvals

29	Definitions.....	16
30	Variation of conditions – CEO's initiative	17
31	Variation of conditions – application by holder.....	17
32	CEO may require further information.....	17
33	Consideration of application	18
34	Notice of decision on application	18
35	Failure to decide application.....	18
36	When variation of conditions takes effect	18

Subdivision 3 Suspension and cancellation of CDS approvals

37	Grounds for suspending or cancelling approval.....	18
38	Show cause notice	19
39	Representations about show cause notices	19
40	Ending show cause process without further action.....	19
41	Suspension or cancellation.....	20

Subdivision 4 Miscellaneous matters

42	Contravention of condition.....	20
43	CDS approval holders to keep records.....	21
44	Annual returns by CDS approval holders	21
45	Sign at retail premises	21

Division 7	Reviews	
46	Application for review of decision	22
47	Operation and implementation of decision	22
48	Conduct of hearing	22
Division 8	General	
49	Minister may establish targets for reuse, recycling or other disposal of approved containers	23
50	Review of CDS	23
Part 3	Plastic bags	
Division 1	Basic concepts	
51	Meaning of <i>prohibited plastic bag</i>	24
52	Meaning of <i>biodegradable bag</i>	24
53	Meaning of <i>phase out period</i> and <i>prohibition day</i>	24
54	Part does not apply to exempt person	24
Division 2	Obligations of retailers and others	
55	Retailer must make alternative bags available during phase out period	25
56	Retailer must display notices during phase out period	25
57	Obligations of retailer after phase out period	26
58	Manufacturers and distributors must not represent prohibited plastic bags are not prohibited plastic bags	26
Division 3	General	
59	Review of Part	27
Part 4	Enforcement	
Division 1	Preliminary matters	
60	Definitions	27
61	When thing is <i>connected</i> with offence	28
Division 2	Powers of authorised officers to enter places	
62	Entry of place – general	28
63	Consent to entry	28
64	Entry of place – search warrant	29
65	Additional powers for entry of vehicle	29

Division 3	Powers of authorised officers on entry of places	
66	Powers on entry of place	30
67	Seizure of things	31
68	Retention of things seized	32
69	Authorised officer may use help and force in exercising powers	33
Division 4	Other enforcement powers	
70	Power to require name and address	33
71	Power to require information from certain persons	34
72	Power to require CDS approval holder to produce document	34
Division 5	Offences	
73	Confidentiality of information	35
74	Misleading information or document	36
75	Obstruction of person acting in official capacity	37
76	Falsely representing to be authorised officer	38
Division 6	Criminal liability for offences	
77	Definitions	38
78	Conduct of representative	38
79	Criminal liability of partner in partnership	40
80	Criminal liability of manager of unincorporated association	40
81	Criminal liability of executive officer of body corporate	41
Division 7	Legal proceedings and evidentiary matters	
82	Alternative verdicts	42
83	Judicial notice	43
84	Evidentiary certificate	43
Part 5	Administrative matters	
85	Approved forms	43
86	Delegation by CEO	43
87	Authorised officers	44
88	Identity card	44
89	Production of identity card	44
90	Return of identity card	44
Part 6	Miscellaneous matters	
91	Protection from liability	45
92	Annual report	45

93	Regulations.....	45
----	------------------	----



NORTHERN TERRITORY OF AUSTRALIA

Act No. [] of 2010

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

[Assented to [] 2010]
[Second reading [] 2010]

The Legislative Assembly of the Northern Territory enacts as follows:

Part 1 Introduction

1 Short title

This Act may be cited as the *Environment Protection (Beverage Containers and Plastic Bags) Act 2010*.

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; 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 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 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.

CDS principles, see section 12.

CEO means the Chief Executive Officer of the Agency.

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.

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

connected, for Part 4, see section 61.

container, see section 6.

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

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

corresponding law means:

- (a) a law of another jurisdiction establishing a scheme that:
 - (i) regulates the supply of beverage containers; and
 - (ii) provides 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.

occupier, for Part 4, see section 61.

on, for Part 4, see section 61.

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

phase out period, see section 53(1).

place, for Part 4, see section 61.

premises, for Part 4, see section 61.

prohibited plastic bag, see section 51.

prohibition day, see section 53(2).

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 excluded by regulation from the application of the CDS. Under section 42 of the Interpretation Act, a regulation may exclude 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.

Note

Under section 19, a reverse vending machine is required to pay out the refund amount in cash or another way prescribed by regulation.

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.

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 Part IIAA 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.

9 Containers exempted from application of CDS

The CDS does not apply to containers prescribed by regulation.

Division 2 Establishment, waste management arrangements and CDS principles

10 CDS established

- (1) This Part establishes a container deposit scheme (the **CDS**) that includes the following features:
 - (a) prohibiting the supply in the Territory of regulated containers unless they are approved containers;
 - (b) empty approved containers can be delivered to approved collection depots for a refund of the refund amount for the containers;
 - (c) the approval of operators of collection depots and persons carrying on business as a CDS coordinator;
 - (d) imposing conditions on the approvals to ensure the reuse, recycling or other appropriate disposal of returned containers;
 - (e) waste management arrangements that give effect to the CDS principles.
- (2) 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 (2)

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 arrangement

- (1) A **waste management arrangement** is an arrangement made by CDS participants for:
 - (a) the collection, sorting and aggregation of regulated containers when empty; and
 - (b) the reuse, recycling or other appropriate disposal of the containers when empty.
- (2) The arrangement must give effect to the CDS principles.

12 CDS principles

- (1) For achieving the object of this Act, the Minister must develop principles for ensuring effective, efficient and equitable waste management arrangements (the *CDS principles*).
- (2) In developing the principles, the Minister must, as far as reasonably practicable, consult with:
 - (a) manufacturers, distributors and beverage retailers of regulated containers; and
 - (b) operators of collection depots and others carrying out activities relating to the collection, reuse, recycling or other appropriate disposal of regulated containers; and
 - (c) consumers of beverages in regulated containers.
- (3) The principles must deal with the following matters:
 - (a) the responsibilities of CDS participants in managing the collection, reuse, recycling or other appropriate disposal of regulated containers in a cost-effective and efficient way, including, for example, by:
 - (i) minimising handling and sorting of regulated containers; and
 - (ii) minimising costs to consumers and CDS participants while at the same time providing business opportunities and maximising benefits to the community and industry;
 - (b) as far as reasonably practicable, providing access to collection depots to communities in the Territory;
 - (c) establishing standard and transparent processes for receiving and paying refund amounts and handling costs by CDS participants;
 - (d) providing an accountable and transparent monitoring process;
 - (e) establishing ways to calculate refund amounts for containers delivered in bulk;
 - (f) resolving disputes between CDS participants.
- (4) The matters mentioned in subsection (3) do not limit the matters that may be dealt with in the principles.

- (5) However, the principles cannot require the payment of any fees, costs or other charges by a CDS participant to the Territory.
- (6) The Minister must publish the principles on the Agency's website.

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 Refund amount entitlement and payments

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

18 Collection depot to pay refund amount for empty containers

- (1) This section applies if:
- (a) a person delivers empty approved containers to an approved collection depot for claiming the refund amount for the containers; and
 - (b) the containers were purchased in the Territory, or a corresponding jurisdiction, after the start of the CDS; and
 - (c) the operator of the depot accepts delivery of the containers.

Note for subsection (1)

Before accepting empty containers for payment of the refund, the operator of a collection depot may require the person delivering the containers to the depot to sort the containers according to the type of material, including, for example, cardboard, glass and plastic.

- (2) The operator of the depot must pay the refund amount for each container to the person delivering them.

Fault element: The operator is reckless as to whether the containers were purchased in the Territory, or a corresponding jurisdiction, after the start of the CDS.

Maximum penalty: 50 penalty units.

- (3) In a proceeding for an offence against subsection (2), the court must presume, in the absence of evidence to the contrary, the containers were purchased in the Territory, or a corresponding jurisdiction, after the start of the CDS.
- (4) Subsection (2) does not apply if:
- (a) the containers are contaminated when delivered to the depot;
or
 - (b) the refund amount for the containers has already been paid to a person who delivered them to an approved collection depot;
or
 - (c) the operator of the depot asked for a declaration under section 17(3) for the containers and the request was not complied with.
- (5) For subsection (4)(a), a container is contaminated if it:
- (a) is unclean; or
 - (b) is affected by a contaminant, including, for example, oil, paint, sand and stones; or
 - (c) has a lid on it.

19 How refund amount paid

- (1) The operator of an approved collection depot must pay the refund amount for an approved container as follows:
- (a) for a refund amount dispensed from a reverse vending machine:
 - (i) in cash; or
 - (ii) in a way prescribed by regulation;
 - (b) otherwise – in cash.

Maximum penalty: 50 penalty units.

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

20 Operator of collection depot may be reimbursed for costs

- (1) This section applies if:
- (a) a manufacturer supplies a beverage in an approved container;
and

- (b) a person delivers the empty container to an approved collection depot; and
 - (c) the operator of the depot pays the refund amount for the container to the person; and
 - (d) the operator delivers the container to a CDS coordinator.
- (2) The operator of the depot may, by written notice, require the CDS coordinator to pay:
- (a) the refund amount; and
 - (b) the reasonable costs incurred by the operator relating to sorting, cleaning, storing, packing and processing the container for ensuring the container can be reused, recycled or otherwise disposed of.
- (3) The CDS coordinator must, within 30 days after receiving the notice, pay the amount to the operator of the depot.
- (4) If the CDS coordinator does not pay the amount within the 30-day period, the operator of the depot may recover the amount as a debt payable to the operator.

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 CEO; and
 - (b) accompanied by additional information to enable the CEO 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.

22 CEO may require further information

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

23 Considering application

- (1) The CEO must consider the application and grant or refuse to grant it.
- (2) The CEO may grant the application only if satisfied:
 - (a) there is an ongoing, effective and appropriate waste management arrangement in place for the containers to which the application relates; and
 - (b) for a supply approval:
 - (i) the container material (including the label) is suitable for recycling, reuse or other disposal considered appropriate by the CEO; 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 CEO.

24 Conditions of approval

- (1) A CDS approval is subject to the condition that the holder must have in place an effective waste management arrangement for the containers to which the approval relates.
- (2) In addition, a supply approval is subject to the condition that containers to which the approval relates must bear the approved refund marking.
- (3) The CEO may grant a CDS approval subject to the other reasonable conditions stated in it having regard to the CDS principles.
- (4) Without limiting subsection (3), a supply approval may be granted subject to conditions of a transitional nature covering the application of the approval to containers that are:
 - (a) held by manufacturers, distributors or beverage retailers for sale; or
 - (b) sold but not delivered as empty containers for payment of the refund amount under the CDS.

25 Notice of decision on application

- (1) If the CEO grants an application for an approval, the CEO 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).
- (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 CEO considers relevant.
- (4) If the CEO refuses an application for an approval, the CEO must give the applicant a review notice for the refusal.

26 Duration of approval

A CDS approval remains in force for the period, not less than 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 CEO.

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 – CEO's initiative

- (1) The CEO may decide to vary the conditions of a CDS approval if the CEO becomes aware of information that, if it had been known when the approval was granted or renewed, the CEO would have imposed conditions or different conditions on the approval.
- (2) Before deciding to vary the conditions, the CEO 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 CEO 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 CEO by the holder before the stated day.
- (3) If the CEO decides to vary the conditions of the approval, the CEO 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 CEO 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 CEO to decide the application, including the documents and information stated in the approved form.

32 CEO may require further information

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

33 Consideration of application

- (1) The CEO must consider the application and grant or refuse to grant it.
- (2) The CEO 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 CEO decides to vary the conditions of the approval, the CEO must immediately give the holder written notice for the decision.
- (2) If the CEO refuses to grant the application, the CEO must immediately give the holder a review notice for the decision.

35 Failure to decide application

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

- (a) the application is made; or
- (b) if the CEO gives the applicant notice to give the CEO 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 the waste management arrangement or CDS principles applying to the holder's approval and it is necessary to suspend or cancel the approval to achieve the objects of this Act;

- (c) the approval was granted or renewed because of a materially false or misleading representation;
- (d) the CEO becomes aware of information that, if it had been known when the application for the approval or its renewal was granted, the CEO would have refused the application.

38 Show cause notice

- (1) If the CEO believes a ground exists to suspend or cancel a CDS approval, the CEO 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 CEO 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 CEO in the period stated in the notice.
- (2) The CEO 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 CEO no longer believes a ground exists to suspend or cancel the approval the CEO:

- (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 CEO:
 - (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 CEO 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 CEO 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 CEO 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 CEO 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 CEO must give written notice of the suspension or cancellation to the holder.

45 Sign at retail premises

- (1) The CEO 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 CEO 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 CEO for reconsideration, either generally or in relation to stated matters, and for substitution of another decision.
- (3) In referring the matter to the CEO, the Court must:
- (a) advise the CEO of its reasons for doing so; and
 - (b) give to the CEO 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 CEO's decision.

Division 8 General

49 Minister may establish targets for reuse, recycling or other disposal of approved containers

- (1) The Minister may establish targets for the reuse, recycling or other appropriate disposal of approved containers.
- (2) The Minister must publish the targets on the Agency's website.
- (3) The Minister must monitor the extent to which the targets are being achieved.

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 magistrate, 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 magistrate 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 CEO.

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 CEO 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(2), 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*.

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 CEO 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 CEO 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 CEO may approve forms for this Act.

86 Delegation by CEO

The CEO may delegate any of the CEO's powers and functions under this Act to a public sector employee.

87 Authorised officers

- (1) An *authorised officer* is a person appointed under subsection (2) as an authorised officer.
- (2) The CEO may appoint a public sector employee or other person as an authorised officer.
- (3) However, the CEO 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 CEO 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 CEO 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.

92 Annual report

The Minister must, within 3 months after the end of each financial year:

- (a) prepare a report about the administration of this Act for the year; and
- (b) table a copy of the report in the Legislative Assembly.

93 Regulations

(1) The Administrator may make regulations under this Act.

(2) A regulation may provide for the following:

- (a) matters relating to the CDS principles;
- (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.

- (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.