ISAAC REGIONAL COUNCIL SUBMISSION

WASTE REDUCTION AND RECYCLING (WASTE LEVY) AND OTHER LEGISLATION AMENDMENT BILL 2018

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Presented by **Cr Anne Baker, Mayor & Gary Stevenson PSM, Chief Executive Officer**

ISAAC REGION
HELPING TO ENERGISE THE WORLD

SUBMISSION: WASTE REDUCTION AND RECYCLING (WASTE LEVY) AND OTHER LEGISLATION AMENDMENT BILL 2018 (QLD)

Isaac Regional Council (IRC) welcomes the opportunity to provide a submission to the Innovation, Tourism Development and Environment Committee in relation to the Waste Reduction and Recycling (Waste Levy) and Other Legislation Amendment Bill 2018 (Qld).

Notwithstanding, IRC is disappointed with the short submission timeframe and limited consultation with regional and rural local governments in relation to the Bill, particularly given the significant implications of the Bill on regional, rural and resource Councils. At a financial level, IRC is disappointed that the State Government has only broadly committed 70% of the funds which are collected through the waste levy to be returned to the waste industry. It is considered that 100% of the funds collected through the waste levy should directly benefit the waste industry and in turn foster the relevant purposes of the Bill to:

- *provide a source of funding for programs to assist local government, business and industry to establish better resource recovery practices, improve overall waste management performance and sustain Queensland's natural environment; and*
- *facilitate industry investment in resource recovery infrastructure.*

Council passed a resolution in a Special Meeting on 18 September 2018 as follows:

1. *Authorising the Mayor and Chief Executive Officer to make a submission to State Government regarding its Waste Reduction and Recycling (Waste Levy) and Other Legislation Amendment Bill 2018; and*
2. *Recording its strong dissatisfaction with the State Government's handling of the Waste Levy introduction including the timing and the implications of its imposition of the levy on local government particularly those outside south-eastern Queensland, and the broader merit of zero waste objectives and timeframes and relevance of waste to energy solutions to Regional Queensland.*

This submission is made in accordance with that resolution.

STATE OF WASTE IN THE ISAAC REGION

The Isaac region is situated 1,000km north-west of Brisbane and 900km south of Cairns. The region encompasses an area of 58,862 square kilometres, including both prime agricultural land and significant portions of the Bowen and Galilee Basins.

At any one time the full-time equivalent population in the Isaac region is estimated at 31,779. The Isaac Region includes the mining and agricultural towns of Moranbah, Middlemount, Dysart, Glenden, Nebo, Clermont and St Lawrence in addition to small coastal villages and rural localities. Moranbah is the main service centre for the region with an estimated population of 8,735.

The vast expanse of the Isaac local government area, which is approximately the size of Tasmania, brings with it significant financial and logistical waste challenges which are compounded by the impact of the mining industry on the Isaac region's waste facilities. Currently, the Isaac region's waste needs are serviced by the following 9 waste management facilities, which have been grouped with regard to their environmental relevant activities that will affect how they are treated for some sections of the Bill:

Facilities with an Environmental Authority to dispose of between 50 tonnes to 5,000 tonnes of waste per year:

- Camilla Waste Management Facility
- Middlemount Waste Management Facility
- Dysart Waste Management Facility
- St Lawrence Waste Management Facility
- Greenhill Waste Management Facility

Facilities with an Environmental Authority to dispose of between 2,000 and 5,000 tonnes of waste per year:

- Clermont Waste Management Facility
- Nebo Waste Management Facility
- Glenden Waste Management Facility

Facilities with an Environmental Authority to dispose of 50,000 to 100,000 tonnes of waste per year:

- Moranbah Waste Management Facility

ALTERNATIVE WAYS OF ACHIEVING POLICY OBJECTIVES

The Explanatory Note outlines that the Objects of the Bill are, inter alia, "to introduce a waste levy that will act as a price signal that encourages waste avoidance and resource recovery behaviours, and discourages disposal to landfill as the first option". The Explanatory Note further states "the lack of a price signal within Queensland has depressed investment from the resource recovery industry, reduced the capacity of government to support resource recovery initiatives and led to Queensland being a dumping ground for interstate waste… A waste levy underpins effective waste management strategies in New South Wales, Victoria, South Australia and Western Australia".

It should be noted that the Objects of the Bill as outlined in the Explanatory Memorandum could be considered to fail to reflect the true intent of the Bill, namely preventing Queensland from being a dumping ground for interstate waste.

INTENT OF BILL COULD BE ACHIEVED THROUGH AMENDMENT OF ENVIRONMENTAL APPROVALS OR VIA REGULATION

The LGAQ Submission to the Independent Investigation into the Transport of Waste into Queensland provides a comprehensive overview of the legislative framework regarding existing waste disposal in Queensland:

The use of land for waste disposal is an environmentally relevant activity and requires approval under the *Environmental Protection Act 1994* (Qld). In addition to this approval, these facilities also require development approval under the *Planning Act 2016* (Qld).

It is the State Government's responsibility to seek any amendment to an existing environmental authority under the *Environmental Protection Act 1994* (Qld). Under section 215(1)(a), section 215(2)(n) and section 215(2)(q) of the *Environmental Protection Act 1994* (Qld), the Department of Environment and Heritage Protection (DEHP) may give consideration to an amendment deemed necessary because of 'a significant change in the way in which, or the extent to which, the activity is being carried out' if the State prescribes an appropriate circumstance for the amendment. Therefore, the State Government is capable of amending environmental authorities to impose a prohibition on interstate waste.

Alternatively, the State Government may seek to amend an environmental authority via Regulation if it considers the amendment necessary or desirable because of "another circumstance prescribed under a

regulation". An EA may be able to be utilised to impose a further condition on environmental authorities for waste disposal sites located in Southern Queensland requiring that waste not be accepted if it has been transported more than 150km for its source to the waste disposal site . The 150km limit is consistent with what is understood to be same range limit imposed on NSW waste transport operators, and consideration should be given to imposing that 150km travelling limit for the same reasons as those imposed on NSW waste transport operators.

The amendment of existing Environmental Approvals under the *Environmental Protection Act 1994* (Qld) or via Regulation which has the effect of prohibiting the acceptance of interstate waste at the refuse site or transfer station in relation to interstate waste would address the supposed intent of the Bill to regulate interstate waste and potentially reduce the need for the Bill (or part thereof).

LEARNINGS FROM OTHER STATES

The Explanatory Note states that "Queensland's approach to waste management and resource recovery continues to lag behind that of other states".

IRC Officers who have previously been employed in the New South Wales jurisdiction where the waste levy was in place have identified that the waste levy was not wholly effective in achieving some of the purposes of the Bill, namely "encourage[ing] waste avoidance and resource recovery behaviours, and discourage[ing] disposal to landfill as the first option", "facilitat[ing] industry investment in resource recovery infrastructure" and "provid[ing] certainty and security of feedstocks for advanced resource recovery and recycling technologies and processing". Officers identified examples of regional Councils driving 4-5 hours to a waste to energy plant to deliver waste. Ultimately the cost of transporting the waste was so prohibitive that those Councils re-diverted their waste to traditional landfills. It is suggested that the purposes of the Bill could be better achieved through State Government investment in waste to energy infrastructure or resource recovery infrastructure which are located at central access/transport nodes (for example, Clermont is a potential node which is easily accessible by Isaac, Central Highlands and Charters Towers).

Furthermore, given the issues in terms of efficacy experienced in other States, it is suggested that Section 73E be amended to provide for review in 18 months rather than 3 years and then at intervals of 5 years thereafter.

WORKPLACE HEALTH & SAFETY RAMIFICATIONS OF THE BILL

Currently, one third of the verbal abuse received by IRC employees is received at Council's waste management facilities. It expected that such threats will increase significantly with the imposition of the levy and Council holds significant concern for waste management facility staff, particularly those who work at isolated transfer stations and facilities and are required to deem volumes. In order to protect Council employees, IRC are currently investigating options to increase staff at waste management facilities and to install duress alarms, with such measures coming at a significant cost to Council. It is recommended that the State Government investigate options to alleviate the financial implications of this Bill on Council, noting that Council would not be required to investigate such options but for the introduction of the Bill.

COMMENTS WITH REFERENCE TO SPECIFIC SECTIONS OF THE BILL

The comments in this section directly reference the clauses and proposed sections of the Bill.

CLAUSE 2 – COMMENCEMENT

Pursuant to Clause 2(2) of the Bill, the main operative parts of the Bill are expressed to commence on 4 March 2019. It is suggested that this is an arbitrary timeframe and that the Bill should ideally commence at the start of the financial year (1 July 2019). If there is a need for a more expedited commencement of the Bill, it is suggested that 1 April 2019, the commencement of the fourth quarter of the financial year would

pose less disruption for local government, and assumedly the wider commercial waste generating community.

CLAUSE 6 – REPLACEMENT OF CH 3 (OBLIGATIONS OF OPERATOR OF WASTE DISPOSAL SITE

Section 26 – Definitions for Chapter

Definition of exempt waste: The Explanatory Note is at pains to highlight that there will be no direct cost impacts of the levy on households: "A crucial element of the legislation to implement the levy will be measures that avoid direct cost impacts to households. It will provide for payments to local governments to offset the costs of the levy on municipal solid waste". However the definition of "exempt waste" under Section 26 does not include Council waste (other than MSW) or waste generated at State Government institutions (schools, hospitals, police stations, fire stations etc). It is therefore inevitable from a local government perspective at least that costs associated with levyable Council waste will need to be recovered through rates to cover the additional Council expenses.

Definition of waste levy zone and non-levy zone: It is noted that what constitutes a waste levy zone and by implication what is not included in that zone and is therefore the non-levy zone is specifically dealt with in the Regulation which is currently open for consultation. It is noted that unlike other States, the proposed Regulation does not include a more sub-zonal nuance within the definition of waste levy zone to ameliorate the disparate effects that the Bill will have on regional and rural councils. It is recommended that a sub-zonal nuance is reflected in the Regulation to allow for a differential waste levy to apply to regional and rural councils and to therefore counter the significant burden that the costs of transportation of waste for processing at distant regional infrastructure place on such Councils, including IRC.

Definition of levyable waste disposal site: It is noted that a "levyable waste disposal site" is "a waste disposal site, whether under the ownership or control of the State, a local government or otherwise, but, does not include a part of the waste disposal site that is a resource recovery area". Relevantly, pursuant to the *Waste Reduction and Recycling Act 2011* (Qld), a "waste disposal site" is a facility where the operator of the facility is required to hold an environmental authority for the disposal of waste at the facility and where waste delivered to the facility commonly includes waste that is subsequently disposed of to landfill at the facility. The definition of "levyable waste disposal site" therefore captures any facility for which an environmental authority is held for the disposal of waste which is not a resource recovery area. It is suggested that this definition needs to include a reference that a levyable waste disposal site is a waste disposal site within the levy zone, otherwise there is a risk that the definition could also apply to the non-levy zone. An alternative means of addressing the disparate impact of the levy on regional centres is to exclude from the definition of levyable waste disposal site facilities for which the environmental authority is for less than 5,000 tonnes per year, however further options are also considered below however it is appreciated that this may be contrary to the purposes of the Bill.

Section 28 – Application for approval of waste as exempt waste

It is recommended that Section 28(2) also include an exemption for recycle shops co-located with levyable waste disposal sites which would operate in a similar way to the charitable recycling entity category. The reasons for this recommendation are further detailed in relation to Section 38.

Section 37 – Calculating the waste levy amount

It is noted that the waste levy for each type of waste is prescribed by the proposed Regulation for that type. An excerpt from the Regulation that has guided Council with respect to its comments is as below:

Table 2: Proposed waste levy rates (per tonne of waste delivered)	**2019**	**2020**	**2021**	**2022**
Acid sulfate soil	$70	$75	$80	$85

Earth contaminated with a hazardous contaminant from land listed on the environmental management register or contaminated land	$70	$75	$80	$85
Regulated waste category 1 (other than acid sulfate soil or earth contaminated with a hazardous contaminant from land listed on the environmental management register or contaminated land)	$150	$155	$160	$165
Regulated waste category 2 (other than acid sulfate soil or earth contaminated with a hazardous contaminant from land listed on the environmental management register or contaminated land)	$100	$105	$110	$115
Other levyable waste	$70	$75	$80	$85

It is considered that the abovementioned levies are too high for regional Councils for the following reasons:

- The current rates in New South Wales and Victoria have been arrived at over many years, with substantial escalation. The starting rates were considerably lower. This was to allow time and certainty to industry to develop and invest into alternative waste management systems.
- Both New South Wales and Victoria have rates for the Metropolitan and regional areas that are substantially different. This is to recognise the challenge of transportation in regional communities. Capital investment will more likely occur in the larger population centres first, as there will be a faster return for the investment. Regional communities will require support to work towards the new strategy and the commencing $70 per tonne levy, will have detrimental impacts on regional communities compared to South East Queensland.
- With the absence of alternative waste treatment processes to enable waste generators, they have no ability to avoid the $70 per tonne levy. This is particularly acute in regional Queensland. For Commercial and Industrial waste, the choice will be to either pay the levy or potentially use illegal means to dispose, as there are little alternative processes available. Council is very concerned about the potential for significant increased illegal landfilling and dumping activities.
- There is generally insufficient waste in regional towns to enable the development of multiple processing facilities in all the major regional towns. Therefore, if a processing facility was set up in a particular regional location, all Councils that transport their waste to that facility, would need to bear the additional transport costs to access any new regional infrastructure or processes.
- The levy, at $70 per tonne, is to provide a disincentive for interstate transportation of waste. However, the likelihood that material will be transported further north of South East Queensland (SEQ) is very low. The reason is in addition to the transportation costs and most regional Local Government landfills already have a high gate fees, compared to SEQ, due to the lower tonnes being managed for the similar capital outlay.

It is recommended that the Queensland government consider introducing a two-band levy system in line with New South Wales and Victoria, with differential rates between metropolitan and regional areas. It is also recommended that a $35 per tonne be the initial waste levy price for regional Queensland.

In addition to the differential waste levy for regional Queensland, consideration should be given to a regionalised levy structure, whereby regional centres within the levy zone have subsidies applied to offset the additional costs involved with recycling and resource recovery when compared with South East Queensland (SEQ). It is considered that this would allow the regional waste industry to develop and enable the aggregation of waste by compensating a Local Government Area for transport where they do not have a waste processing facility.

Conversely, and particularly noting transportation costs from regional mines sites, it is suggested that a $70 per tonne levy is not prohibitive enough to alter the current waste disposal practices of multi-national mining companies and will be unlikely to achieve the purpose of the Bill, to “act as a price signal that encourages waste avoidance and resource recovery behaviours, and discourages disposal to landfill as the first option”.

Section 38 – Offence to remove waste from levyable waste disposal site in particular circumstances

IRC is of the view that this Section is of the Bill is counter-intuitive to encouraging resource recovery activities. IRC would need to make significant investment in operating a recycle shop outside the waste levyable area when currently identified recyclable items are able to be recovered within then levyable waste disposal site.

Section 41 – Mixing different types of waste will attract a higher levy

It is appreciated that the intent of this Section is to encourage waste separation prior to it entering the levyable waste disposal site. However, in practice, the Section will require significant education of all waste disposers. For this reason, to allow Council to roll out its waste education strategy, it is recommended that a transitional provision is inserted into this Section.

Section 53 Person delivering waste to levyable waste disposal site to give information

Section 53(2)(a) of the Bill refers to "how much of the waste is exempt waste and how much of it is levyable waste". It is suggested that "how much" is a vague parameter and this will create difficulties in terms of the practical application of this section. The reference to "how much" by extension also makes the application of Section 55 precarious.

Section 57 – Weighbridge required

Section 57(2) states "If the levyable waste disposal site is in the waste levy zone, the operator must ensure a weighbridge is installed at the site" does not provide a linkage to the transitional timeframes referred to in Section 57(1). In IRC's respectful view, the literal interpretation of Section 57(2) is that from the commencement date, all levyable waste disposal sites in the waste levy zone should ensure that they have a weighbridge. It is recommended that this is clarified within the Bill to allow a clear interpretation and implementation of Section 57(1) by local government, for example by amending Section 57(2) to state "From 1 July 2024, if the levyable waste disposal site is in the waste levy zone, the operator must ensure a weighbridge is installed at the site.

Section 58 – Weighbridge requirements

IRC has already commenced readiness preparations for the waste management changes and has two existing weighbridges installed at two sites.

It is noted further that Bill provides no defence in relation to Section 58(4) in the event of natural disaster or power outage which would be likely to affect the operation of a weighbridge. In short, if power is impacted then the weighbridge will not be operational. It is suggested that a defence be included in relation to this section during natural disaster events and power outages.

Section 59 and Section 60 – When waste or other material must be measured & Measurement of waste by weighbridge

It is appreciated that Section 59, through the use of the word "or", prevents a situation where a local government would be required to double measure waste. However, in our respectful view this important clarification is undone in Section 60(2) where it states that "each time waste or other material is required to be measured under section 59, the operator of the waste disposal site must ensure the weighbridge is used to measure and record the waste or other material". The ramification of that Section is that in each of the scenarios in Section 59, there will be a need to re-measure for as many of those scenarios as are applicable. It is suggested that this Section be amended to state: "when waste or other material is required to be measured under section 59, the operator of the waste disposal site must ensure the weighbridge is used to measure and record the waste or other material". If this amendment to the Bill is not made there will

be disastrous ramifications for local government areas with already overburdened refuse sites due to the cumulative impacts of the mining industry.

Further, this Section adds complexity to current operational requirements on the ground and there is a significant need for the State government to conduct training in relation to same. It is recommended that a grace provision is included in this Section to allow for that training to occur.

Subdivision 4 – Monitoring devices

Subdivision 4 deals with monitoring systems and defines same as closed-circuit television or approved systems. IRC wishes to flag the potential that if legislation, which seeks to regulate surveillance of workplace activities (similar to the current legislation in New South Wales and Victoria) is enacted, there is a risk that local governments that are subjected to CCTV requirements under the Bill will be in breach of any workplace surveillance Act, in the event of complaint by a local government employee.

Sections 64 and 65 of the Bill make it an offence to contravene various requirements in relation to monitoring systems. It is noted that no provision is made in the said sections providing a defence for non-compliance in the event of natural disaster events. It is suggested that an appropriate defence should be included.

Subdivision 5 – Volumetric surveys

IRC understands the importance of volumetric surveys in levying waste but highlights that Section 67(2) imposes an unnecessary and onerous administrative burden on Council to continue to provide volumetric survey results to the Chief Executive in circumstances where waste may no longer be delivered to the site or the site cease to be a levyable waste disposal site. It is suggested that provision for a notice allowing local governments to provide a notice that a site is no longer used or is no longer a levyable waste disposal site could be incorporated into legislation to prevent a need for provision of volumetric data where the site is redundant.

Subdivision 7 – Record keeping

IRC again wishes to highlight that Section 72A includes no defence in the event that records which are required to be kept at site for 5 years are destroyed during natural disaster events or through circumstances beyond the control of Council.

It is further suggested that Section 72C(6) be removed to require the chief executive to provide a decision rather than a deemed refusal.

Section 72G – Application for extension of time to pay waste levy amount

It is appreciated that the Bill has included some provision for extensions of time within which to pay waste levies, however, it suggested that this Section could be improved permit an automatic extension of time for payment of the levy amount in circumstances where individual local governments have been impacted by a natural disaster event.

Part 6 – Resource recovery area

With reference to Section 72R, it is considered that at some waste management facilities that installation of a physical barrier is not feasible for those sites. For example, one of our waste management facilities was newly constructed in 2017 and does not have a physical barrier installed between the saw tooth arrangement and the recyclable areas. It is suggested that this requirement goes against the purpose of the Bill to encourage resource recovery activities as in effect this Section will mean that no resource recovery area can be declared at the majority of our waste management facilities.

CLAUSE 7 – AMENDMENT OF SECTION 104

Whilst it is acknowledged that the Bill attempts to deter illegal dumping behaviour, the ramification of the Bill is that it will inevitably increase illegal dumping behaviour. IRC seeks clarification in relation to who is expected to police illegal dumping and if local government is tasked with that responsibility, there is a need for provision of funds for additional local laws/compliance staffing and CCTV resources to be provided to Council to effectively deal with the increased illegal dumping behaviour that this Bill will inevitably create.

CLAUSE 9 – REPLACEMENT OF CHAPTER 7, PART 3 (REPORTING BY CHIEF EXECUTIVE)

Section 154 – Annual report on waste disposal and recycling

IRC appreciates that the chief executive will report on various matters which will indicate whether the Bill is effective in practice. Notwithstanding same, it is noted that one matter the chief executive will report on pursuant to Section 154(3)(l) is "the number of local governments that have adopted a waste reduction and recycling plan and have reported on the plan". IRC wishes to highlight that reporting on this matter will pose a significant reputational risk for regional and rural Councils, especially those impacted by the mining sector, who are disadvantaged due to unequal opportunities to access and distances to recycling facilities when compared to SEQ Councils.

SECTION 14 – INSERTION OF NEW CH 12A

Section 257D – Evidentiary provisions

The effect of Section 257D(1) is that it gives power to the Chief Executive to deem evidence and will essentially apply the judicial notice rule to those matters. Whilst it is noted that similar provisions exist in Commonwealth and State Evidence Acts, the power to deem in those instances is given to an expert in the matter (a forensic scientist or DNA analyst), and not to a chief executive of a state entity who administers/implements/decides penalties under the legislation. It is suggested that this Section offends the principles of natural justice and does not afford "a stated person" with sufficient procedural fairness and should therefore be removed.

CONCLUSION

IRC appreciates the opportunity to provide a submission in relation to the *Waste Reduction and Recycling (Waste Levy) and Other Legislation Amendment Bill 2018* (Qld) and would welcome the opportunity to provide further assistance to the Innovation, Tourism Development and Environment Committee in relation to any amendments to this Bill given the significant ramifications of the Bill on IRC's local government area.

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