



Waste Reduction and Recycling and Other Legislation Amendment Bill 2023

Report No. 31, 57th Parliament
Health and Environment Committee
April 2023

Health and Environment Committee

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Acknowledgements

The committee acknowledges the assistance provided by the Department of Environment and Science.

All web address references are current at the time of publishing.

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Chair's foreword

On behalf of the Health and Environment Committee, I present this report on the committee's examination of the Waste Reduction and Recycling and Other Legislation Amendment Bill 2023.

The committee's task was to consider the policy to be achieved by the legislation and the application of fundamental legislative principles – that is, to consider whether the Bill has sufficient regard to the rights and liberties of individuals, and to the institution of Parliament. The committee also examined the Bill for compatibility with human rights in accordance with the *Human Rights Act 2019*.

This report summarises the committee's examination of the Bill, including the views expressed in submissions and by witnesses at the committee's public hearing.

On behalf of the committee, I thank those who made written submissions to the inquiry into the Bill and provided evidence at the public hearing. I also thank the Department of Environment and Science and our Parliamentary Service staff.

I commend this report to the House.



Aaron Harper MP
Chair

Recommendations

Recommendation 1	2
The committee recommends that the Waste Reduction and Recycling and Other Legislation Amendment Bill 2023 be passed.	2

Executive Summary

The stated objectives of the Waste Reduction and Recycling and Other Legislation Amendment Bill 2023 (Bill) are to amend the *Waste Reduction and Recycling Act 2011* (WRR Act) and also the *Environmental Protection Act 1994* (EP Act) to:

- remove the automatic levy exemption for clean earth and subsequently remove the definition of ‘clean earth’, to take effect from 1 July 2023
- ban the outdoor release of lighter-than-air balloons, from 1 September 2023
- enable a thing to be prescribed by regulation to not be a waste, and move the definition of ‘waste’ from the EP Act to the WRR Act
- include the *circular economy principle* as a principle under the WRR Act
- authorise the chief executive (Department of Environment and Science) to make a decision about amending or suspending a Resource Recovery Area declaration
- authorise the chief executive (Department of Environment and Science) to make a decision about making a payment to a local government, including to mitigate direct effects of the waste levy on households in a local government area
- change the review period for the state’s waste management strategy from 3 to 5 years
- set an expiry date of 31 December 2025 for the exemption from the ban for a single-use plastic item that is an integral part of a shelf-ready product.

On 22 February 2023, the Health and Environment Committee (committee) was referred the Bill for examination, with a reporting date of 14 April 2023.

The committee held a public briefing on the Bill on 3 March 2023, followed by a public hearing and further public briefing on 27 March 2023. The committee called for submissions on the Bill for its inquiry and received 16 submissions. Submitters were broadly supportive of the Bill’s aims, with divergent views about whether or not the proposed reforms go far enough to secure best practice environmental outcomes. Submitters provided various suggestions for potential further reforms.

Pursuant to its obligations under section 93 of the *Parliament of Queensland Act 2001*, the committee examined the Bill in relation to its adherence to the requirements of the *Legislative Standards Act 1992* (LSA), identifying and considering two potential issues of ‘fundamental legislative principle’ (FLP) in the Bill. The committee’s examination of those FLP issues concluded that sufficient regard had been given in the Bill to the rights and liberties of individuals and to the institution of parliament, specifically that the identified potential breaches of fundamental legislative principle were justified by, and congruent with, the overarching objectives of the Bill. The committee also found that the explanatory notes tabled with the Bill were compliant with the requirements of the LSA.

The committee also considered the Bill’s compatibility with human rights under the *Human Rights Act 2019* (HRA) and the explanations given in the statement of compatibility. The committee concluded that no human rights issues were engaged by the Bill and is satisfied that the Bill is compatible with the HRA.

The committee has made one recommendation, being that the Bill be passed.

1 Introduction

1.1 Policy objectives of the Bill

The Bill amends the *Waste Reduction and Recycling Act 2011* (WRR Act) and the *Environmental Protection Act 1994* (EP Act) to:

- remove the automatic levy exemption for clean earth and subsequently remove the definition of ‘clean earth’, to take effect from 1 July 2023
- ban the outdoor release of lighter-than-air balloons, from 1 September 2023
- enable a thing to be prescribed by regulation to not be a waste, and move the definition of ‘waste’ from the EP Act to the WRR Act
- include the *circular economy principle* as a principle under the WRR Act
- authorise the chief executive¹ to make a decision about amending or suspending a Resource Recovery Area declaration
- authorise the chief executive² to make a decision about making a payment to a local government including to mitigate direct effects of the waste levy on households in a local government area
- change the review period for the state’s waste management strategy from 3 to 5 years
- set an expiry date of 31 December 2025 for the exemption from the ban for a single-use plastic item that is an integral part of a shelf-ready product.³

1.2 Legislative compliance

The committee’s examination included assessing whether or not the Bill complies with the Parliament’s requirements for legislation as contained in the *Parliament of Queensland Act 2001*, *Legislative Standards Act 1992* (LSA) and the *Human Rights Act 2019* (HRA).

1.2.1 Legislative Standards Act 1992

Issues related to fundamental legislative principles (FLPs) and our assessment of the Bill’s compliance with the LSA are discussed in relation to the Bill’s provisions in section 2 of this report.

Part 4 of the LSA requires that an explanatory note be circulated when a Bill is introduced. Explanatory notes were tabled on the introduction of the Bill. The notes contain the information required by Part 4 and a sufficient level of background information and commentary to facilitate understanding of the Bill’s aims and origins.

1.2.2 Human Rights Act 2019

The committee did not identify any limitations on human rights in the Bill and considers therefore that the Bill is compatible with human rights.

A statement of compatibility was tabled with the introduction of the Bill as required by s 38 of the HRA. The statement contained a sufficient level of information to facilitate understanding of the Bill in relation to its compatibility with human rights.

1.3 Should the Bill be passed?

The committee is required to determine whether or not to recommend that the Bill be passed.

¹ Chief executive of the Department of Environment and Science, see s 33(11) *Acts Interpretation Act 1954*.

² Chief executive of the Department of Environment and Science, see s 33(11) *Acts Interpretation Act 1954*.

³ Explanatory notes, p 1.

Recommendation 1

The committee recommends that the Waste Reduction and Recycling and Other Legislation Amendment Bill 2023 be passed.

2 Examination of the Bill

This section discusses key issues raised during the committee's examination of the Bill. It does not discuss all consequential, minor or technical amendments.

2.1 Removal of the automatic levy exemption for clean earth

The WRR Act currently provides an automatic exemption for clean earth that is delivered to a levyable waste disposal site. This clean earth levy exemption has been in place since 1 July 2019, when the disposal levy was reintroduced. From 1 July 2019 - 1 July 2022, over 3.9 million tonnes of clean earth was delivered to levyable waste disposal sites, as reported under the clean earth exemption code. The use of this exemption code only advises that clean earth was delivered to a levyable waste disposal site, but it does not provide information on the use or disposal of that clean earth.⁴

On 11 December 2021 the Queensland Government announced its plan to remove the automatic levy exemption for clean earth delivered to a levyable waste disposal site, effective from 1 July 2023, following a first stage review of the efficacy of the waste levy.⁵ The proposed omission of s 26(e) and the schedule definition of clean earth from the WRR Act 'provides the ability to collect better information about the beneficial use of clean earth at a landfill facility'⁶ and 'removing the general exemption incentivises the reuse of clean earth over disposal.'⁷

Consultation was undertaken with local governments, landfill operators, civil contractors and other government departments to canvass options to reduce the potential application of the levy on clean earth that is used in the operation of the landfill, and not disposed of to landfill.

Consultation flagged the potential for additional costs to be incurred in managing clean earth from major infrastructure projects, as a result of removing the levy exemption. The explanatory notes advise that 'these additional costs can be largely avoided if clean earth is not disposed to landfill', and that there is the option 'for landfill operators to apply for an "operational purposes exemption" to include clean earth where that material is used for the good operation and maintenance of the levyable waste disposal site',⁸ such as using earthen material for landfill day cover,⁹ without this earth attracting a levy liability.¹⁰ Clean earth that is reused as clean fill or for other beneficial purposes outside of the landfill system is not subject to the waste levy.¹¹

At the committee's public briefing the Department of Environment and Science (the department) advised that '[b]y enabling the use of it at a landfill facility through an operational purpose exemption,

⁴ Department of Environment and Science, correspondence, 2 March 2023, p 2.

⁵ Department of Environment and Science, correspondence, 2 March 2023, p 2.

⁶ Department of Environment and Science, correspondence, 2 March 2023, p 2.

⁷ Department of Environment and Science, public briefing transcript, Brisbane, 3 March 2023, p 1.

⁸ Explanatory notes, p 3.

⁹ Other identified uses include daily cover, interim cover, final capping and as construction material for access roads, bunds or additional landfill cells, see LQAQ, submission 7, p 8.

¹⁰ Department of Environment and Science, public briefing transcript, Brisbane, 3 March 2023, p 1.

¹¹ Department of Environment and Science, correspondence, 2 March 2023, p 3.

we will be able to quantify what clean earth has been used for those operational purposes as opposed to the total amount delivered to a site and subsequently that portion that has been disposed of.’¹²

Removing the blanket clean earth levy exemption brings Queensland’s waste levy framework further into alignment with other jurisdictions where an automatic exemption does not apply.¹³

Clause 22 of the Bill amends s 26 of the WRR Act to remove ‘clean earth’ from the list of approved exemption categories and cl 23 omits the definition of ‘clean earth’ from the dictionary in the schedule.

The explanatory notes advise that ‘discussions with impacted sectors will continue to ensure a smooth transition and minimal disruption up to and following the removal of the exemption’.¹⁴

Submitters were generally supportive¹⁵ of the proposed removal of the clean earth levy exemption, with some concerns around how the operational purposes exemption will operate. Comments included, for example:

- ‘Clean fill is in demand in Queensland and therefore should not have a levy exemption’¹⁶
- ‘..will incentivise resource recovery of this material and divert from landfill.’¹⁷
- ‘policy position ... encourage[s] reuse rather than disposal’, but insufficient consultation with industry and presently unclear what the parameters of the operational purposes exemption will be and industry needs greater certainty around the exemption process.¹⁸

In response to the concerns raised, the department acknowledged the importance of clean earth in the good operation and maintenance of a landfill, and confirmed that removing the clean earth exemption is not intended to penalise operators of levyable waste disposal sites who use clean earth beneficially for operational activities such as day cover, batter profiling and final capping.

The department advised that there is no intention to apply a levy to clean earth delivered to a levyable waste disposal site for beneficial or operational purposes, and that those landfill operators can apply for an operational purposes exemption so that no levy applies to them. It also noted the expectation that removal of the blanket levy exemption will incentivise project managers/other generators of clean earth to identify/prioritise on-site/reuse opportunities for the clean earth in preference to simply sending clean earth to landfill.¹⁹

2.2 Ban on the outdoor release of lighter-than-air balloons

On 1 July 2022 the Queensland Government announced that it intended to ban, commencing from 1 September 2023, the mass release of lighter-than-air balloons.²⁰

Discussions with environmental groups saw a shift from the ban on the mass release of lighter-than-air balloons which was announced in July 2022, to a proposed ban on the release of any number of lighter-than-air balloons outdoors.²¹ Rather than banning the balloons themselves, the intent of the

¹² Department of Environment and Science, public briefing transcript, Brisbane, 3 March 2022, p 7.

¹³ Explanatory notes, p 4.

¹⁴ Explanatory notes, p 3.

¹⁵ See for example submissions 9 and 11.

¹⁶ Scouts Queensland, submission 5, p 2.

¹⁷ Australian Council of Recycling, submission 9, p 2.

¹⁸ Cleanaway Waste Management Limited, submission 11, p 1.

¹⁹ Department of Environment and Science, correspondence, 20 March 2023, pp 13-14.

²⁰ Explanatory notes, p 1.

²¹ Explanatory notes, p 3.

ban is to prevent release outdoors so that the balloon does not become litter.²² The ban is supported by environment groups and is consistent with the national Pro Environment Balloon Alliance's stated aim of a ban on the deliberate release of balloons.²³

Submitters²⁴ supported the ban noting the environmental threat posed by balloon litter, including that wildlife such as seabirds and ocean animals can potentially choke on the plastic if they are eaten or become entangled in the balloon's string/ribbons. The submission from Scouts Australia referenced data that, between 2013-16, beach clean-ups removed 22,504 balloons (whole, burst and remnant) from Australian beaches, and noted a 2020 Australian study that showed that latex balloons had not degraded after 16 weeks in freshwater, saltwater and industrial compost conditions.

Clause 24 inserts a new s 99GJ into the WRR Act to introduce the new offence of releasing a lighter-than-air balloon (e.g. helium balloon). The section prohibits release of a lighter-than-air balloon unless it happens inside a building or structure and the balloon does not escape from the building or structure into the environment. Exceptions exist for scientific research (e.g. meteorology) conducted by a State or Commonwealth institution or an entity involved in scientific research.

Subsections (2) and (3) outline the conduct and circumstances that constitute a prohibited 'release' (essentially where the balloon is allowed to float in the atmosphere, without being attached to the 'earth's surface' or to 'a relevant weight', either because it was never secured or because the person did not take reasonable steps to ensure that an attached balloon could not detach itself and float away from whatever it was 'secured' to).

'Lighter-than-air balloon' is defined in subsection (5) as meaning an inflated balloon or a lantern that derives its support in the atmosphere from buoyancy, but does not include an inflated balloon or lantern that carries one or more persons (e.g. a hot air balloon or a blimp), or an inflated balloon or a lantern that is a remotely piloted aircraft.

Section 99GJ does not limit s 103 (general littering provision) that prohibits littering at a place.²⁵

Releasing a lighter-than-air balloon is currently a littering offence, and the proposed offence²⁶ for non-compliance with the ban on the outdoor release of a lighter-than-air balloon carries a maximum penalty of 50 penalty units (currently \$7,187.50).²⁷ This is a larger penalty than for a general littering offence (30 penalty units, currently \$4,312.50) or a dangerous littering offence (40 penalty units, currently \$5,750.00), but it is consistent with the penalty for non-compliance with the ban on single-use lightweight plastic shopping bags and single-use plastic items.²⁸

2.2.1 Fundamental legislative principles

'Fundamental legislative principles' are the 'principles relating to legislation that underlie a parliamentary democracy based on the rule of law'.²⁹ The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals
- the institution of Parliament.

²² Explanatory notes, p 3; statement of compatibility, p 2.

²³ Department of Environment and Science, correspondence, 2 March 2023, p 3.

²⁴ See for example submissions 1, 5, 7 and 12.

²⁵ Bill, cl 24, proposed new s 99GJ(4) WRR Act.

²⁶ Bill, cl 24, proposed new s 99GJ(1) WRR Act.

²⁷ See Penalties and Sentences Regulation 2015, s 3; *Penalties and Sentences Act 1992*, ss 5, 5A.

²⁸ Explanatory notes, p 3.

²⁹ *Legislative Standards Act 1992*, s 4.

We bring the following to the attention of the Legislative Assembly.

Rights and liberties of individuals

2.2.1.1 Penalties – releasing a lighter-than-air balloon

Legislation should have sufficient regard to the rights and liberties of individuals.³⁰

To have sufficient regard to the rights and liberties of individuals, the consequences of legislation should be relevant and proportionate, which includes requiring that a penalty should be proportionate to an offence, and penalties within legislation should be consistent with each other.³¹

The new offence in s 99GJ(1), which would become effective on 1 September 2023, provides for a maximum penalty of 50 penalty units for releasing a lighter-than-air balloon other than inside a building/another structure and provided that the balloon does not escape from the building or other structure into the environment. Exception from an offence is also made when the release is for scientific research.³²

As noted above, the 50 penalty units maximum penalty is consistent with the penalty for non-compliance with the ban on single-use lightweight plastic shopping bags and single-use plastic items, but is a larger penalty than for a general (30 penalty units) or dangerous (40 penalty units) littering offence.

The explanatory notes observe that ‘while this is a larger penalty ... the intent of the balloon release ban is to prevent the release action so that the balloon does not become litter’.³³

Committee comment

Given the desired deterrent effect of this offence provision, and its consistency with the penalties for non-compliance with the ban on certain single-use plastics, the committee is satisfied that the proposed new offence in s 99GJ has sufficient regard to the rights and liberties of individuals.

2.3 What is ‘waste’?

The Bill amends the definition of ‘waste’. The current definition of waste in s 13 of the EP Act provides that a thing is a waste, whether of value or not, unless it is an end of waste resource – which only happens if an end of waste code or approval is in place.

Currently the only way that a waste can be reclassified as not waste is when it becomes an end-of-waste resource through the development of the end-of-waste code or approval. The proposed amendment allows another pathway for a thing to not be a waste (it could be prescribed in regulation as not a waste).³⁴

As advised by the department, ‘[t]he amendment to the definition provides an additional mechanism to allow a thing to not be a waste and complements the existing end of waste framework. The end of waste code and approval framework may be used to provide that a thing is an end of waste resource where specific issues require management or conditions of use are required – or where it may be for a limited sector or application. A thing may be prescribed to not be a waste in regulation where there is broad application and generation of low-risk materials.’³⁵

³⁰ *Legislative Standards Act 1992*, s 4(2)(a).

³¹ *Legislative Standards Act 1992*, s 4(2)(a); Office of the Queensland Parliamentary Counsel (OQPC), *Fundamental legislative principles: the OQPC notebook*, 2008, p 120.

³² Bill, cl 24, proposed new s 99GJ WRR Act.

³³ Explanatory notes, p 3.

³⁴ Department of Environment and Science, public briefing transcript, Brisbane, 3 March 2023, p 2.

³⁵ Department of Environment and Science, correspondence, 20 March 2023, p 4.

Clauses 3 and 4 of the Bill omit the s 13 definition of 'waste' from the EP Act. Clause 5 amends the EP Act, Schedule 4 Dictionary, to reflect that the (former) s 13 definition of 'waste' is replaced with the new definition in s 8AA of the WRR Act. Moving the definition of 'waste' from the EP Act to the WRR Act is intended to 'strengthen the case for consideration of principles including circular economy and product stewardship, as well as protection of the environment, when deciding about prescribing a thing to not be a waste.'³⁶

Clause 9 inserts new s 8AA (Meaning of *waste*) into the WRR Act. Subsection (1) defines 'waste' as including anything from an industrial, commercial, domestic or other activity that is left over, an unwanted by-product, or surplus to the industrial, commercial, domestic or other activity that generated the waste. Waste does not include a resource or a thing prescribed by regulation not to be a waste.³⁷ Waste can be a gas, liquid, solid or energy, or a combination of any of those,³⁸ and a thing can be waste whether or not it is of value.³⁹

Despite subsection (2), a thing that is a resource, or is prescribed by regulation not to be waste, becomes waste if the thing is disposed of at a waste disposal site, or is deposited at a place in a way that would, if the thing were waste, contravene either the general littering or illegal dumping provisions, or, if the thing is a resource, it is deposited at a place in a way that is not permitted under an end of waste code or end of waste approval.⁴⁰

The Minister may recommend to the Governor in Council the making of a regulation under ss (2)(b), prescribing a thing not to be a waste, only after conducting public consultation about that proposed change and considering the results of consultation, whether the change is likely to achieve the objects of the WRR and EP Acts, and whether there are more effective alternatives to achieve the outcome.⁴¹

Submitters were divided on the merits of allowing things to be prescribed by regulation as 'not a waste'. For example, the Australian Council on Recycling (ACOR) welcomed the proposal, but queried how the amended definition will interact with the end-of-waste codes and suggested steps should be taken towards a nationally harmonised definition of end-of-waste.⁴² The Local Government Association of Queensland (LGAQ) welcomed the change to the definition of 'waste' but questioned whether it went far enough and cautioned that allowing prescription by regulation 'risks unintended consequences.'⁴³

2.4 Expiry of the exemption from ban for single-use plastic items integral to a shelf-ready product

Currently there is an open-ended exemption for otherwise banned single-use plastic items that are integrated into/attached to shelf-ready products (e.g. plastic straws attached to juice boxes, plastic forks in pre-packed salads, spoons in the lids of yoghurt pots and plastic plates holding frozen meals).

The Bill⁴⁴ proposes to time-limit the exemption for these items, with the exemption expiring on 31 December 2025, consistent with the timeframe of the agreed 2025 National Packaging Targets that

³⁶ Explanatory notes, p 2.

³⁷ Bill, cl 9, proposed new s 8AA(2) WRR Act.

³⁸ Bill, cl 9, proposed new s 8AA(3) WRR Act.

³⁹ Bill, cl 9, proposed new s 8AA(4) WRR Act.

⁴⁰ Bill, cl 9, proposed new s 8AA(5) WRR Act.

⁴¹ Bill, cl 9, proposed new s 8AA(6) WRR Act.

⁴² Submission 9, p 1.

⁴³ Submission 7, p 7.

⁴⁴ Bill, cl 19 amending s 99GC(2).

100 per cent of Australian packaging is reusable, recyclable, or compostable by 2025 and national work to phase out problematic and unnecessary single-use plastic packaging.⁴⁵

Submitters were all broadly supportive of the change that would see single-use plastics integral to shelf-ready products banned after 2025.⁴⁶ The submission from Boomerang Alliance⁴⁷ called for the ‘exemption for banned items in pre-packaged products’ to be removed earlier, in 2023. Great Barrier Reef Marine Park Authority⁴⁸ also supported an earlier expiry of the exemption if possible. No More Butts⁴⁹ suggested that plastic tobacco filters and vaping devices should be classified as banned single-use plastics. Waste Management and Resource Recovery Association of Australia⁵⁰ supported the move towards eliminating single use plastics, but cautioned that states creating bespoke bans for their own jurisdictions makes it challenging for consumers and national retailers to respond to different jurisdictional requirements, and suggested that future considerations should be aligned nationally.

In respect of the issue of timing of the exemption expiry, the department advised that the 2025 date is consistent with national and other jurisdictions agreed timeframes and that ‘[p]roviding a harmonised approach to other jurisdictions and agreed national targets provides consistency and reduces confusion for brand owners about the timeframes they are working towards.’ They further noted that many brand owners have already been working to find alternatives to plastics for integration into their shelf-ready products, with some already substituting in bamboo or compostable items for plastics.⁵¹

2.5 Amending or suspending declaration of a Resource Recovery Area

Operators of a waste disposal site for which a resource recovery area has been declared can, under the WRR Act, amend (per s 72U), or cancel (per s 72V), the area's declaration.

Revoking a declaration is the only action currently available to the chief executive under the WRR Act to address regulatory issues, with the effect of such revocation being to sterilise the use of the site for further resource recovery area activities for a period of 12 months.⁵²

To address this, the Bill inserts a new s 72VA into the WRR Act to authorise the chief executive to initiate an amendment to, or suspension of, a declaration.

This ‘enforcement escalation pathway’ supports regulatory intervention where the chief executive is satisfied that the preconditions for declaring a resource recovery area are no longer met, and will allow an investigation or monitoring of waste disposal site activities to occur without (at that stage) revoking the declaration.⁵³ It will allow the site operator to continue operations within the declared area (without the interruption inherent to a revocation) if an investigation determines no further action is required, or when ‘remedial’ actions are taken to satisfy the preconditions of a resource recovery area declaration.

Clause 15 of the Bill inserts a new s 72VA(1) into the WRR Act to provide that the chief executive may amend or suspend the declaration of a resource recovery area if satisfied that one or more of the matters in section 72R(a)-(e) do not, or no longer, apply in relation to the resource recovery area; or

⁴⁵ Explanatory notes, p 2.

⁴⁶ See for example submissions 1, 5, 12, 13, 14 and 16.

⁴⁷ Submission 1, p 3.

⁴⁸ Submission 13, p 2.

⁴⁹ Submission 14, p 2.

⁵⁰ Submission 16, p 1.

⁵¹ Department of Environment and Science, correspondence, 20 March 2023, p 11.

⁵² Explanatory notes p 2; Department of Environment and Science, public briefing transcript, Brisbane, 3 March 2023, p 2.

⁵³ Explanatory notes p 2.

where conducting a recycling activity in the resource recovery area would prejudice investigation of the commission/possible commission of an offence against a division 2 obligation related to the resource recovery area.

If the chief executive proposes to amend or suspend a resource recovery area declaration (the 'proposed action'), the chief executive must first give a show cause notice about the proposed action to the operator of the waste disposal site for which the resource recovery area is declared.⁵⁴

The show cause notice must state the proposed action (e.g. the proposed amendment or proposed suspension period), the reasons for the proposed action, and advise the operator that they may, within the show cause period, do certain specified actions to avoid the proposed action being taken, and/or make a written submission about why the proposed action should not be taken.⁵⁵

Subsections (4)-(7) provide for - a minimum 3 week show cause period, the timeframe for the chief executive to make a decision following the end of the show cause period, that the chief executive must have regard to any written submissions from the operator or actions taken by the operator during the show cause period, that the chief executive may take the proposed action or not take the action, and what notices must be given to the operator about the decision.

2.5.1 Fundamental legislative principles

As noted above, fundamental legislative principles are the 'principles relating to legislation that underlie a parliamentary democracy based on the rule of law'⁵⁶ and include that legislation has sufficient regard to the rights and liberties of individuals and the institution of Parliament.

We bring the following to the attention of the Legislative Assembly.

Rights and liberties of individuals

2.5.1.1 Administrative power – amendment or suspension of resource recovery area declaration

Legislation should make rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review.⁵⁷

As noted above, proposed new s 72VA(1) enables the chief executive to amend or suspend a resource recovery area declaration if satisfied of certain matters and only after undertaking a show cause process with the site operator.

If the chief executive decides to take the proposed amendment/suspension action, they must give the operator an information notice for the decision. A person given an information notice for a decision may apply for internal review of that decision under Part 9 (Reviews) of the Act.⁵⁸ If the internal review decision is not the decision sought by the operator, they may then apply to the Queensland Civil and Administrative Tribunal for an external review of the decision.⁵⁹

Committee comment

The committee notes that the chief executive's power to amend or suspend a resource recovery area declaration cannot be exercised arbitrarily. The taking of either of those actions can only occur when certain circumstances, prescribed in proposed new s 72VA(1), are met, and the operator may make

⁵⁴ Proposed s 72VA(2).

⁵⁵ Proposed s 72VA(3).

⁵⁶ *Legislative Standards Act 1992* s 4.

⁵⁷ *Legislative Standards Act 1992*, s 4(3)(a) & (c).

⁵⁸ WRR Act, s 175.

⁵⁹ WRR Act, s 174.

submissions on the proposed action and/or take practical steps to avoid the proposed action being taken.

The mandatory show cause process that must be undertaken with the operator as a precondition to taking action contains reasonable timeframes for the operator to make a submission and for the making and communicating of decisions. Avenues for both internal and external review are also available.

In light of these statutory safeguards, the committee is satisfied that proposed new s 72VA has sufficient regard to the rights and liberties of individuals.

2.6 Payments to local governments

The WRR Act currently allows for annual payments to local governments, with the payments used to ensure that there are no direct costs to households from the levy on household waste disposal. A four-year lump sum advance payment was provided to 43 eligible local governments in June 2022. Payments are provided for under the Waste Reduction and Recycling Regulation 2011⁶⁰ however if councils identify an underpayment across the 4 years, there is currently no mechanism to make an additional payment without amending the regulation. The Bill proposes amendments⁶¹ that will allow the chief executive to make a decision regarding an additional payment to a local government on request, and where the chief executive is satisfied that the payment is necessary.⁶²

Proposed s 73DA allows a regulation to prescribe an amount for a financial year to be paid by the chief executive to a local government affected by the waste levy. Proposed s 73DB allows a local government to request payment of an additional amount for the financial year to further mitigate the direct effects of the waste levy on households in the local government area. Subsection (3) allows the chief executive to pay the additional amount if considered appropriate, or to refuse the request. For example, under proposed s 73DC(3), if a local government who has received an annual payment makes a request to the chief executive for an additional payment, the chief executive must consider whether the local government has used the annual payment received, in the manner described in s 73DC(1), before making a decision to make the additional payment.

Under proposed s 73DC(1) a local government who receives the annual payment or any additional payment must use those payments to mitigate any direct effects of the waste levy on households in the local government area. If the chief executive believes that a local government has not used an annual or additional payment as required by subsection (1), subsection (3) precludes the chief executive from making any further annual payments or additional payments to the local government until satisfied that the local government has used the payment(s) as required under subsection (1).

Proposed s 73DD(1) clarifies that where a local government issues more than one rates notice in a financial year, the local government complies if they provide information⁶³ about the payment(s) on the first rate notice it issues for the financial year after receipt of an annual payment or any additional payment. If the chief executive believes that the local government has issued a non-compliant rates notice the chief executive may refuse to make further annual or additional payments to the local government until satisfied that the local government has informed (e.g. by issuing a compliant rates notice) the entity receiving the rates notice about the amount of the payment and the purpose for which it has been/will be used (see subsections (3) and (4)).

⁶⁰ Current s 73D, WRR Act.

⁶¹ Bill, cl 17 replacing s 73D WRR Act with new ss 73D, DA, DB and DC.

⁶² Department of Environment and Science, public briefing transcript, Brisbane, 3 March 2023, p 2. Other current requirements for councils for receiving payments will also continue (e.g. must provide information about the payment on a rates notice).

⁶³ The amount of the payment and the purpose for which it has been/will be used, per subsection (2).

Proposed s 73DE applies where the chief executive believes that a local government has distributed misinformation about a payment after receiving it, for example by including misinformation in a rate notice/other document issued by the local government or publishing it on the local government's website or including it in an advertisement made by/on behalf of the local government.⁶⁴ Misinformation is defined for the section as meaning a false or misleading statement about the effect of the waste levy on a local government, or about the purpose or amount of the payment(s).⁶⁵ In those circumstances, the chief executive may refuse to make any further annual or additional payments to the local government until satisfied that the local government has informed the information recipients as to how the distributed information was false or misleading.

Submitters' views varied in their feedback on the payments to local governments. Some noted that the intention of the waste levy is to divert material from landfill for resource recovery, and were concerned that payments to councils to mitigate the effects of the waste levy on households would undermine the aim of the levy by reducing or removing incentives to reduce household waste.⁶⁶ LGAQ welcomed the proposed changes that would allow for additional payments to local governments 'to rectify potential shortfalls into the future' but also submitted its concerns about the changes to what amounts to misinformation under s 73DE, seeking clarification that the section is not intended to limit political expression of elected councillors.⁶⁷

In respect of LGAQ's concerns, the department advised that the amendment was not intended to limit or require elected council representatives to self-sensor in relation to payments to local governments, noting:

The amendment relates to, for example, where a householder may be told that there is a direct correlation between a rate increase and the application of the levy to household waste disposal – without referencing the fact of a payment to the local government to offset that cost.⁶⁸

In respect of the above noted concerns, the department advised that the payments to local governments 'meet the Government's commitment to ensure that there are no direct costs to households as a result of the levy.'⁶⁹

2.7 Inclusion of the *circular economy principle* as a principle under the WRR Act

The WRR Act currently contains the waste and resource recovery management hierarchy, and the Waste Management and Resource Recovery Strategy outlines a strategic priority to transition to a circular economy, but there has been no corresponding reference in the WRR Act. The Bill provides amendments to the WRR Act to include the circular economy principle to ensure that circular economy considerations form part of decision-making processes such as procurement, funding and project decisions.⁷⁰

Clauses 7 and 8 of the Bill amend ss 3 and 4 of the WRR Act to reference the 'circular economy' and 'circular economy principle' by making an object of the Act, the promotion and facilitation of Queensland's transition to a circular economy, and promotion of activities across government, business, industry and the community that extend the lifecycle of product and materials.

⁶⁴ See proposed new ss 73DE(1) and (3).

⁶⁵ Proposed new s 73DE(4).

⁶⁶ See for example submissions 1, Boomerang Alliance; and 9, Australian Council of Recycling.

⁶⁷ Submission 7, pp 6 and 10.

⁶⁸ Department of Environment and Science, correspondence, 20 March 2023, p 10.

⁶⁹ Department of Environment and Science, correspondence, 20 March 2023, p 11.

⁷⁰ Department of Environment and Science, public briefing transcript, Brisbane, 3 March 2023, p 2; and Department of Environment and Science, correspondence, 20 March 2023, p 5.

Clause 10 inserts new s 9A (Meaning of *circular economy principle* and *circular economy*) into the WRR Act to provide that ‘the circular economy principle is the principle that, to promote waste avoidance and minimise the impact of waste on the environment and human health, all products and materials should be kept in the economy for as long as they have value or remain useful’.

Proposed new s 9A states that the circular economy principle recognises that waste generation can be avoided by manufacturers designing circular products and materials, by business and industry adopting business models that support and incentivise the use of circular products and materials, and by remanufacturing hubs working with resource recovery facilities to prevent circular products and materials being disposed of to landfill. Further, the principle provides that unavoidable waste should be managed in accordance with the waste and resource recovery management hierarchy,⁷¹ that ecosystems are regenerated by reducing the demand for virgin materials, and that the adoption of circular products and materials (those that can be reused, repaired, refurbished, repurposed or remanufactured) should be incentivised in ways that increase the value of the products and materials.⁷²

At the public briefing, the department advised that the transition to a circular economy is aimed at:

... improving the recognition of the value of materials within our economy, keeping products and materials at their highest possible value within our circulating economy for the longest possible time. It draws in concepts like repair and refurbishment to prolong the life of products, right through to ensuring that materials in products at end of life can be circulated within the economy and then used for remanufacture of goods or for other beneficial purposes.⁷³

Submitters were broadly supportive of the legislative recognition of circular economy principles.⁷⁴

Boomerang Alliance submitted that universally held views on the principles of a circular economy require the management of products and materials ‘so that they remain and circulate in the economy to their highest resource value’. They argued that the words used in defining the circular economy principle in the Bill, ‘... for as long as they have value or remain useful’, are unnecessary to the expressed principles of a circular economy, and subjective, risking ‘unnecessary reinterpretation’.⁷⁵

Boomerang Alliance contended that the Bill ‘should reflect the universally held Principles, without additions’, and submitted its concern over what it perceives as unnecessary wording adjustments to established principles in s 9A(2), and the omission of ‘key participants of a life cycle’, noting:

In recognising the key participants in a circular economy (subsection 2) the Bill seeks to identify those participants and the actions required to make the system function. ...The bill lists manufacturers, business and industry, remanufacturing hubs and resource recovery, unavoidable waste (which does not exist under an ideal circular economy), ecosystem regeneration and adoption of circular economy products/incentivisation.

... They have also omitted key participants of a life cycle, namely consumers, waste/material collectors and not explicitly referenced, secondary resource markets. Without these components, a circular economy does not work.

... A consumer needs to know how to use a product correctly to maximise its usefulness and lifespan. A consumer needs to know how and where to repair, reuse or discard a used product at the end of its life. Without the consumer doing this correctly, there will be limited discarded resources going to repair, re-

⁷¹ See WRR Act, s 9.

⁷² Bill, cl 10.

⁷³ Department of Environment and Science, public briefing transcript, Brisbane, 3 March 2023, p 3.

⁷⁴ See for example submissions 1, 4, 7, 8, 9, 11, 12, 13 and 16.

⁷⁵ Submission 1, p 1.

manufacturing hubs or resource recovery facilities. The consumer is an essential part of a circular economy. In the current iteration of the Bill, the consumer does not exist.⁷⁶

In response to these concerns, the department advised:

The principle as proposed in the Bill meets the intent of the principles of circular economy while providing for matters that should be considered in relation to circular economy outcomes. DES does not consider that the current proposal limits the application or consideration of circular economy matters. DES agrees that consumers play an important role in the success of the circular economy. However, DES does not consider it appropriate to include specific actions within a principles statement. This information can be provided through the development of guidance material and through the delivery of education and behaviour change messaging.⁷⁷

The Environment Institute of Australia and New Zealand⁷⁸ also submitted its support for the inclusion of circular economy objectives in legislation, while noting its concern that certain ‘critical aspects of strategy and implementation of Circular Economy principles are not currently included in the proposed amendment.’ ACOR strongly supported including circular economy principles in the WRR Act, noting that it ‘aligns with the commitment of all Australian governments to “keep materials in use and foster markets to achieve a circular economy by 2030”.’⁷⁹

The submission from Waste and Recycling Industry of Queensland (WRIQ) noted:

There are obstacles to progress the change needed, not least there is still no clarity or a single definition or understanding of the Circular Economy or ‘Circularity’, a point that has now been raised in over 100 published critiques. There is no doubt that the term is uncritical, extremely descriptive and highly normative and that the concept is far from new. WRIQ notes its support for the wording proposed for new s9A at this time.⁸⁰

2.8 Extension of the review period for the state’s waste management strategy

The Waste Management and Resource Recovery Strategy (waste strategy) is currently required to be reviewed every 3 years, with the chief executive required to release a draft review report for public consultation before preparing a final review report.

Clause 12 of the Bill proposes to change the current s 20 WRR Act review date for the waste strategy to provide that the chief executive must conduct a review of the waste strategy within 5 years of publishing each final report. The explanatory notes advise that ‘the previous timeframe of three years did not provide sufficient time to measure real achievement against the targets in the Strategy, with five years providing improved ability to undertake trend analysis and assess the impacts from implementation of policies and programs.’⁸¹ Further, the department advised that the additional 2 years allows more time to collect data to evaluate the impact of policies and actions taken to support the waste strategy’s implementation and to achieve its targets.⁸²

At the committee’s public briefing on the Bill, the department advised that:

... One of the issues that has been experienced in terms of conducting a review in that three-year period is in the context of the data collection and cycle. We have ultimately struggled to have more than two years’ worth of data to inform the evaluation ...

⁷⁶ Submission 1, p 2.

⁷⁷ Department of Environment and Science, correspondence, 20 March 2023, p 4.

⁷⁸ Submission 8, p 4.

⁷⁹ Submission 9, p 2.

⁸⁰ Submission 12, p 5.

⁸¹ Explanatory notes, p 7.

⁸² Explanatory notes, p 2.

... We prepared reports at the end of last year. We have also been able to access a further year of data, which is quite useful in terms of considering what trends we are actually seeing. When you just compare one year beside another, it is really challenging to know if you are looking at a trend or just seeing an anomaly that might be associated with things like disasters and those kinds of things that can impact material flows through waste chains.⁸³

This point was recognised by some submitters, with WRIQ acknowledging the rationale behind amending the waste strategy review date from 3 to 5 years, given that the lesser quantum of data from a shorter timeframe weakens meaningful analysis and trend identification. WRIQ also observed that the Act is silent on the criteria for the review.⁸⁴ The LGAQ and the Waste Management and Resource Recovery Association of Australia both recommended that the government align the review dates for the waste strategy and local waste reduction and recycling plans to each being a 5-year review cycle.⁸⁵

⁸³ Department of Environment and Science, public briefing transcript, Brisbane, 3 March 2023, p 4.

⁸⁴ Submission 12, p 4.

⁸⁵ Submission 7, pp 6 and 9; submission 16, Annexure A; see also s 126 WRR Act which requires that a local government must, at least every 3 years, review each waste reduction and recycling plan having effect in its local government area.

Appendix A – Submitters

Sub #	Submitter
1	Boomerang Alliance
2	Oceania Clean Energy Solutions
3	John Simpson
4	Cement Concrete & Aggregates Australia
5	Scouts Queensland
6	Confidential
7	Local Government Association of Queensland
8	Environment Institute of Australia and New Zealand South East Qld Division
9	Australian Council of Recycling
10	Confidential
11	Cleanaway Waste Management Limited
12	Waste Recycling Industry Queensland
13	Great Barrier Reef Marine Park Authority
14	No More Butts Ltd
15	Confidential
16	Waste Management and Resource Recovery Association of Australia

Appendix B – Officials at public briefings

Public Briefings on 3 March 2023 and 27 March 2023

Department of Environment and Science

- Andrew Connor, Executive Director, Office of Circular Economy, Environment and Heritage Policy and Programs
- Kylie Hughes, Director, Office of Circular Economy, Environment and Heritage Policy and Programs

Appendix C – Witnesses at public hearing

Australian Council of Recycling

- Suzanne Toumbourou, Chief Executive Officer
- Aziza Kuypers, Policy and Communications Officer

Cleanaway

- Mark Biddulph, Head of Corporate Affairs
- Srikar Rapole, Remediation Engineer

Boomerang Alliance

- Toby Hutcheon, Campaign Manager

Great Barrier Reef Marine Park Authority

- Fred Nucifora, Director, Pacific Engagement, Strategic Policy and Partnerships Branch

Statement of Reservation

LNP Committee Members Statement of Reservation

The Palaszczuk Government makes no shortage of environmental announcements but when it comes to delivering and assessing progress, they do all they can to avoid accountability.

This was again exposed during the Committee's consideration when the Department confirmed in the public hearings that they failed to meet the current Waste Reduction and Recycling Act requirements for reviewing Queensland's waste management strategy. At the public briefing on 3 March with Circular Economy officials:

Mr O'CONNOR: The department was required to release a review last year and the department did not achieve that; is that correct?

Mr Connor: The department was required to complete the review last year. We did complete a review. We did not publish the review report for the 28-day period and accept that that is a necessary part of the process, but we did have the opportunity to obtain a third year's worth of data, which we saw as being important to make an informed evaluation about the strategy settings, so we are taking an opportunity to revise our initial report prior to publishing for a 28-day period.

WRIQ's submission confirms the review took place in June 2022. It was not released for consultation or indeed at all. It was kept hidden from the public by the State Government, in breach of their own legislation.

If the Opposition had not raised this omission, would the Palaszczuk Government have ever released this critical assessment of Queensland's waste management and recycling progress?

The overdue Waste Strategy Review was finally released and perhaps we now know why it was hidden: the Department's own assessment found Queensland is only on track to reach two out of nine waste targets.

In key areas, Queensland is actually going backwards on Labor's watch. More household waste is going into landfill now than before the waste levy was announced half a decade ago. Queensland's municipal solid waste recycling rates have also gone backwards since 2018 from 31% to 27% despite a target of 50% by 2025.

The review also found an enormous failure in public awareness with only a quarter of Queenslanders knowing they are supposed to be reducing the amount of waste they produce every year.

Under Labor, Queensland is falling far behind almost every other part of Australia on the road to a circular economy so we become a society which produces less waste.

The LNP also shares the concerns raised by the LGAQ regarding the broadening of the definition of 'misinformation' under section 73DE of the Bill, who stated in their submission that they reject, "*any attempts to censor councils from making public any concerns about potential impacts*".

After more eight years in power, if the Palaszczuk Government does not start focussing more on outcomes over announcements their failures will keep Queensland behind the rest of Australia and put the environmental credentials of the Brisbane 2032 Olympic and Paralympic Games at risk.



Sam O'Connor MP
Member for Bonney
Shadow Minister for Environment and the Great Barrier Reef
Shadow Minister for Science and Innovation
Shadow Minister for Youth



Rob Molhoek MP
Member for Southport
Deputy Chair