

**Authorised Version**

**Circular Economy (Waste Reduction and  
Recycling) Act 2021**

**No. 55 of 2021**

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**Authorised Version**



**Victoria**

# **Circular Economy (Waste Reduction and Recycling) Act 2021<sup>†</sup>**

**No. 55 of 2021**

[Assented to 14 December 2021]

**The Parliament of Victoria enacts:**

## **Part 1—Preliminary**

### **Division 1—Purposes and commencement**

#### **1 Purposes**

The purposes of this Act are—

- (a) to introduce a circular economy in Victoria that maximises the continued use of products and waste material over their life cycle and accounts for their environmental impacts; and
- (b) to provide for the Head, Recycling Victoria; and

- (c) to require councils and Alpine Resort Management Boards to provide municipal residual waste and municipal recycling services; and
- (d) to support best practice procurement and contract management of waste and recycling services by councils and Alpine Resort Management Boards, and facilitate strategic procurement for councils and Alpine Resort Management Boards; and
- (e) to provide for service standards; and
- (f) to establish a container deposit scheme; and
- (g) to provide for data collection and reporting; and
- (h) to provide for a system of criminal and civil penalties and other enforcement measures; and
- (i) to make related and consequential amendments to other Acts.

## **2 Commencement**

- (1) Subject to subsection (2), this Act comes into operation on a day or days to be proclaimed.
- (2) If a provision of this Act does not come into operation before 1 December 2023, it comes into operation on that day.

## **Division 2—Interpretation**

### **3 Definitions**

- (1) In this Act—

*adverse publicity order* means an order made under section 136;

*advisory committee* means a committee established under section 37;

***Alpine Resort Management Board*** has the same meaning as Board has in section 3 of the **Alpine Resorts (Management) Act 1997**;

***auditor*** means a person appointed as an auditor under section 172;

***authorised officer*** means a person appointed as an authorised officer under section 149;

***beverage*** means a liquid intended for human consumption other than a medicine or a liquid prescribed to be exempt;

***body corporate*** has the same meaning as corporation has in section 57A of the Corporations Act;

***centralised data and information system*** means the system established by the Head, Recycling Victoria under section 51;

***civil penalty order*** means an order made under section 138;

***civil penalty provision*** means a provision of this Act that is specified by this Act as a civil penalty provision;

***commercially-sensitive information*** means information that relates to matters of a business, commercial or financial nature, the disclosure of which would be likely to unreasonably expose a person to disadvantage;

***container approval*** means an approval granted under section 99;

***container deposit scheme*** means the container deposit scheme established by Part 6;

***council*** has the same meaning as Council has in section 3(1) of the **Local Government Act 2020**;

***declared region*** means a region declared by the Head, Recycling Victoria under Division 4 of Part 2;

***de-identified information***, in relation to personal, commercially-sensitive or confidential information, means personal information that no longer relates to an identifiable individual or an individual who can be reasonably identified;

***Department*** means the Department of Environment, Land, Water and Planning;

***diverted material*** means any thing that is no longer required for its original purpose and, but for commercial or waste minimisation activities, would be disposed of or discarded;

***eligible container*** means a container designed to contain a beverage that is produced for the sale of the beverage to a consumer while the container is sealed, other than a container that is prescribed not to be an eligible container;

***enforceable undertaking*** means an undertaking accepted by the Head, Recycling Victoria under section 130;

***environment*** means—

- (a) the physical factors of the surroundings of human beings including the land, waters, atmosphere, climate, sound, odours and tastes; and
- (b) the biological factors of animals and plants; and
- (c) the social factors of aesthetics;

***Environment Protection Authority*** has the same meaning as Authority has in section 3(1) of the **Environment Protection Act 2017**;

***essential waste, recycling or resource recovery service*** means a waste, recycling or resource recovery service that is prescribed as an essential waste, recycling or resource recovery service;

***financial year*** has the same meaning as in the **Financial Management Act 1994**;

***first supplier***, in relation to an eligible container, means the person determined under section 98 to be the first supplier of the eligible container in Victoria;

***government agency*** means—

- (a) the Environment Protection Authority;  
or
- (b) Sustainability Victoria; or
- (c) a council; or
- (d) the Municipal Association of Victoria within the meaning of the **Municipal Association Act 1907**; or
- (e) an Alpine Resort Management Board;  
or
- (f) a public sector body prescribed to be a government agency; or
- (g) a public sector body of another State, a Territory or the Commonwealth prescribed to be a government agency;

***Head, Recycling Victoria*** means the person employed as the Head, Recycling Victoria under section 15;

***human health*** includes psychological health;

***IBAC*** has the same meaning as in the **Independent Broad-based Anti-corruption Commission Act 2011**;

***improvement notice*** means a notice issued under section 125;

***industrial waste*** means—

- (a) waste arising from commercial, industrial or trade activities or from laboratories; or
- (b) waste prescribed to be industrial waste;

***information gathering notice*** means a notice served under section 117;

***material recovery facility*** means either—

- (a) a mixed-stream material recovery facility that sorts—
  - (i) mixed recycling from municipal residual waste into separate paper, plastic, metal and glass streams or other prescribed material; and
  - (ii) industrial waste; or
- (b) a single-stream material recovery facility that—
  - (i) sorts material that has been sorted at a mixed-stream material recovery facility; or
  - (ii) takes single streams of waste and separates the component grades of the material;

***municipal food organics and garden organics service*** means a service provided by or on behalf of a council or Alpine Resort Management Board—

- (a) that collects, manages, transports, and processes food organics and garden organics; and



- (b) that is prescribed to be a municipal food organics and garden organics service—

but does not include any service prescribed not to be a municipal food organics and garden organics service;

***municipal district*** has the same meaning as in the **Local Government Act 2020**;

***municipal recycling material*** means the following arising from municipal or residential activities—

- (a) recycling (other than glass);
- (b) glass;

***municipal recycling service*** means a service provided by or on behalf of a council or Alpine Resort Management Board—

- (a) that collects, manages, transports, and processes or sorts, municipal recycling material; and
- (b) that is prescribed to be a municipal recycling service—

but does not include any service prescribed not to be a municipal recycling service;

***municipal residual waste service*** means a service provided by or on behalf of a council or Alpine Resort Management Board—

- (a) that collects, manages, transports, and disposes or processes, municipal residual waste; or
- (b) that is prescribed to be a municipal residual waste service—

but does not include any service prescribed not to be a municipal residual waste service;

***municipal residual waste*** means residual waste arising from municipal or residential activities;

***network operator*** means a person appointed as a network operator under section 91;

***network operator agreement*** means an agreement entered into by a network operator and the Minister under section 89;

***occasional reporting entity*** means a prescribed entity—

- (a) required to collect and retain prescribed information in accordance with section 40; and
- (b) that may be directed to give information in accordance with section 41;

***officer***, in relation to a body corporate, means—

- (a) a person who is an officer (as defined by section 9 of the Corporations Act) of the body corporate; or
- (b) a person (other than a person referred to in paragraph (a)), by whatever name called, who is concerned in, or takes part in, the management of the body corporate;

***personal information*** has the same meaning as in the **Privacy and Data Protection Act 2014**;

***place*** includes land, waters, a location, an area or a region;

***premises*** includes a structure, building or vehicle;

***prohibition notice*** means a notice issued under section 127;

***public sector body*** has the same meaning as in the  
**Public Administration Act 2004;**

***recycling*** includes—

- (a) reusing waste resources; and
- (b) recycling or reprocessing waste resources to make the same or different products; and
- (c) recycling, reusing or reprocessing food organics and garden organics;

***refund amount***, in relation to an eligible container or to a material recovery facility operator, means—

- (a) the amount prescribed to be the refund amount in relation to that eligible container or material recovery facility operator; or
- (b) if no amount is prescribed in relation to an eligible container or to a material recovery facility operator, the amount determined in accordance with any material recovery facilities protocol issued under section 103 that applies to that eligible container or material recovery facility operator;

***refund marking***, in relation to a suitable eligible container, means a prescribed marking or label;

***regular reporting entity*** means an entity that is required to regularly provide information to the Head, Recycling Victoria in accordance with sections 38 and 39 and includes—

- (a) a council; and
- (b) an Alpine Resort Management Board; and

- (c) a waste storage facility; and
- (d) a material recovery facility; and
- (e) any class of person or entity prescribed to be a regular reporting entity;

***reporting entity*** means any of the following—

- (a) a regular reporting entity;
- (b) an occasional reporting entity;

***resource recovery***, in relation to waste, means—

- (a) reprocessing the waste; or
- (b) extracting or recovering resources, material or energy from products or from waste or waste material; or
- (c) any thing prescribed to be resource recovery in relation to waste—

but does not include any thing prescribed not to be resource recovery in relation to waste;

***reuse***, in relation to—

- (a) waste—means the preparation and use of the waste for a purpose that is the same or similar to the purpose for which it was used before it became waste; or
- (b) diverted material—means the further use of the material in its existing form for its original or a similar purpose;

***Scheme Coordinator*** means the person appointed under section 82;

***Scheme Coordinator agreement*** means an agreement entered into by the Scheme Coordinator and the Minister under section 80;

***Secretary*** means the Secretary to the Department of Environment, Land, Water and Planning;

***show cause notice*** means a notice issued under section 121;

***service standard*** means a standard approved under section 63 and includes a standard that has been amended under section 67;

***suitable eligible container*** means an eligible container approved to be a suitable eligible container under section 99(3);

***Sustainability Victoria*** has the same meaning as in section 3 of the **Sustainability Victoria Act 2005**;

***traditional owners*** means—

- (a) the members of a registered Aboriginal party under the **Aboriginal Heritage Act 2006**; and
- (b) the members of a traditional owner group within the meaning of section 3 of the **Traditional Owner Settlement Act 2010**;

***Victoria Police*** has the same meaning as in the **Victoria Police Act 2013**;

***Victorian WorkCover Authority*** has the same meaning as Authority has in section 3 of the **Workplace Injury Rehabilitation and Compensation Act 2013**;

***waste*** includes any of the following—

- (a) matter, including solid, liquid, gaseous or radioactive matter, that is deposited, discharged, emitted or disposed of into the environment in a manner that alters the environment;

- (b) matter that is discarded, rejected, abandoned, unwanted or surplus, irrespective of any potential use or value;
- (c) any component or element of diverted material, if the component or element is disposed of or discarded;
- (d) matter prescribed to be waste;
- (e) matter referred to in paragraph (a), (b), (c) or (d) that is intended for, or is undergoing, resource recovery—

but does not include any matter prescribed not to be waste;

**waste minimisation** means—

- (a) the reduction of waste; or
- (b) the reuse, recycling or recovery of waste and diverted material;

**waste, recycling or resource recovery service**—  
see section 4;

**waste storage facility** means a facility, the primary purpose of which is to store waste.

- (2) In this Act, a reference to the disposal of waste includes a reference to an activity carried out in connection with the disposal of waste, but does not include resource recovery.

#### **4 What is a waste, recycling or resource recovery service?**

In this Act, **waste, recycling or resource recovery service** means—

- (a) a service that collects, transports, stores, treats, processes, sorts or recycles waste or recycling materials; or

- (b) a service that collects, transports, stores, treats, processes or sorts materials for resource recovery; or
- (c) a service that disposes of waste; or
- (d) a municipal residual waste service; or
- (e) a municipal recycling service; or
- (f) a service prescribed to be a waste, recycling or resource recovery service.

## **5 Objective**

- (1) The objective of this Act is to promote Victoria's transition to a circular economy.
- (2) A circular economy reduces waste, supports recycling and promotes circularity in the use and reuse of products for as long as possible, and supports the transition to a net-zero and resilient Victoria by—
  - (a) ensuring that products and materials are managed in accordance with the hierarchy set out in section 8(3) including by reducing the consumption of natural resources; and
  - (b) encouraging the reuse of recyclable material into new products and uses; and
  - (c) ensuring that waste and recycling services are reliable, transparent and meet community expectations; and
  - (d) supporting innovation in waste and recycling services, adapting readily to changing market conditions and building resilience; and
  - (e) encouraging meaningful and transparent engagement with the community and those involved in the provision of waste, recycling or resource recovery services; and

- (f) encouraging opportunities for community organisations relating to waste, recycling or resource recovery services; and
- (g) creating opportunities for diverse employment and livelihoods in waste, recycling or resource recovery services; and
- (h) encouraging economic, environmental and social benefits for the people of Victoria through a circular economy; and
- (i) supporting, monitoring and enforcing compliance with this Act; and
- (j) facilitating Victoria's contribution to national and international reduction of waste, support for recycling and promotion of the circularity in the use and reuse of products.

## **6 Principles of waste reduction, recycling and resource recovery**

It is the Parliament's intention that in the administration of this Act and the regulations regard should be given to the principles set out in this Division.

## **7 Effect of this Division**

The Parliament does not intend by this Division to create in any person a legal right or give rise to any civil cause of action.

## **8 Circular economy hierarchy**

- (1) Products and materials should be designed, produced, marketed and delivered, and any waste should be managed, in accordance with the principles set out in subsections (2) and (3).



- (2) A circular economy is prioritised, having regard to the entire life cycle of products and materials, including by—
- (a) producing and designing products and materials—
    - (i) with a reduced reliance on raw or virgin materials; and
    - (ii) to be reusable, durable, repairable and shareable; and
    - (iii) to have an extended life cycle; and
    - (iv) in a manner which eliminates waste or pollution; and
    - (v) in a manner that reduces the environmental impacts of production and consumption by—
      - (A) making productive use of natural resources and goods; and
      - (B) maximising the productive use of re-manufactured, reused, recycled and renewable resources; and
  - (b) promoting initiatives that support repairing and reusing products and materials so as to create more value in them; and
  - (c) marketing and delivering products and materials in a manner which avoids unnecessary or excessive purchasing or use of other products; and
  - (d) fostering action or innovation to manage climate change impacts and reduce greenhouse gas emissions.

- (3) Where waste does arise from the production and use of products and materials, it should be managed in the following order of preference—
- (a) waste should be avoided;
  - (b) waste should be minimised;
  - (c) waste should be reused;
  - (d) waste should be recycled;
  - (e) energy and other resources should be recovered from waste;
  - (f) waste should be treated so as to reduce the potential impacts of degradation;
  - (g) waste should be disposed of.

## **9 Principle of equity**

- (1) All people are entitled to equitable access to waste, recycling or resource recovery services and the benefits of a circular economy irrespective of their personal attributes, socio-economic status or location.
- (2) People should not be disproportionately affected by disruption, or risks of disruption, to waste, recycling or resource recovery services and any associated harm to human health and the environment.
- (3) The present generation should ensure that the state of the environment is maintained or enhanced so as to not compromise the ability of future generations to meet their needs.

## **10 Principle of shared responsibility**

It is the responsibility of all levels of government and industry, business, communities and the people of Victoria to support a circular economy by—

- (a) reducing or avoiding waste by improving product design and use; and
- (b) improving the quality and reusability of products; and
- (c) managing products and materials and their environmental impacts throughout their life cycle including disposal; and
- (d) recognising that persons who generate pollution and waste should bear the cost of containment, avoidance and abatement; and
- (e) considering climate change impacts and greenhouse gas emissions in the design, management and disposal of products and materials.

## **11 Integrated decision-making**

- (1) Actions and decisions related to the circular economy under this Act should be based on the best available evidence that is relevant and reliable in the circumstances.
- (2) Actions and decisions related to the circular economy under this Act should be based on an assessment of all the economic, social and environmental costs and benefits, taking into account externalities.
- (3) Decisions, policies, programs and processes related to the circular economy should seek to achieve best practice having regard to the decisions, policies, programs and processes of other States, the Territories, the Commonwealth, other countries and international bodies and organisations, related to the circular economy.

## **12 Principles of transparency and accountability**

- (1) Subject to exceptions provided for by law—
  - (a) decision-making under this Act and the regulations must be transparent; and
  - (b) relevant information must be easily accessible and understandable and public education about its availability must be facilitated.
- (2) Members of the public should—
  - (a) have access to reliable and relevant information in appropriate forms to facilitate a good understanding of issues and of how decisions are made under this Act; and
  - (b) be engaged and given opportunities to participate in decisions made under this Act, where appropriate to do so; and
  - (c) have their interests taken into account in decisions made under this Act.
- (3) Community involvement in decisions, policies, programs and processes relating to the circular economy that may affect current or future generations of the community should be facilitated by—
  - (a) providing appropriate information to the community; and
  - (b) providing opportunities for involvement; and
  - (c) undertaking appropriate and adequate consultation.
- (4) Decisions, policies, programs and processes relating to the circular economy should make a positive contribution to the aspirations and needs of the community to which they relate.

- (5) The intrinsic connection of traditional owners to Country should be acknowledged through partnership and involvement in policy development, planning, and decision-making for the delivery of Victoria's circular economy.

### **13 Risk management, proportionality and the precautionary principle**

- (1) A decision, action or thing directed towards minimising the following should be proportionate to the harm or risk of harm that is being addressed—
  - (a) harm or a risk of harm to human health or the environment;
  - (b) failure or disruption or a risk of failure or disruption to waste, recycling or resource recovery services and the stability of the market.
- (2) If there are threats of serious or irreversible harm to human health or the environment, lack of full scientific certainty should not be used as a reason for postponing measures to prevent or minimise those threats.
- (3) In the application of the precautionary principle set out in subsection (2), public and private decisions should be guided by—
  - (a) careful evaluation to avoid, wherever practicable, serious or irreversible harm to human health and the environment; and
  - (b) an assessment of the risk-weighted consequences of various options; and
  - (c) an evaluation of how the circular economy supports the transition to a net-zero and resilient Victoria.

### **Division 3—Application**

#### **14 Application to the Crown**

This Act binds the Crown in right of Victoria and, to the extent that the legislative power of the Parliament permits, the Crown in all its other capacities.

## **Part 2—Head, Recycling Victoria**

### **Division 1—Administration**

#### **15 Head, Recycling Victoria**

There is to be a Head, Recycling Victoria, employed under Part 3 of the **Public Administration Act 2004**, to provide leadership, stewardship and oversight of waste, recycling or resource recovery services and to support the development of a circular economy.

#### **16 Functions of the Head, Recycling Victoria**

The Head, Recycling Victoria has the following functions—

- (a) to administer the container deposit scheme created under this Act;
- (b) to provide strategic planning for waste, recycling or resource recovery services, including by developing and implementing strategies and plans that foster sustainable, resilient and effective markets within a circular economy;
- (c) to identify, monitor, manage and mitigate risks and harm associated with waste, recycling or resource recovery services;
- (d) to oversee and build capacity for municipal residual waste, recycling or resource recovery service delivery;
- (e) to support best practice procurement and contract management by councils, Alpine Resort Management Boards and service providers for waste, recycling or resource recovery services;

- (f) in conjunction with Sustainability Victoria, to advise councils, Alpine Resort Management Boards and businesses on best practices for waste, recycling or resource recovery services, systems, facilities, infrastructure and technology;
- (g) to collect, use, disclose and publish information and data in accordance with this Act;
- (h) to conduct inquiries under this Act, including as directed by the Minister;
- (i) to determine applications for exemptions from requirements under this Act;
- (j) to support, monitor and enforce compliance with requirements under this Act;
- (k) any other function conferred on the Head, Recycling Victoria by or under this Act or any other Act.

#### **17 Powers of the Head, Recycling Victoria**

The Head, Recycling Victoria has all the powers necessary to perform the functions of the Head, Recycling Victoria.

#### **18 Head, Recycling Victoria subject to general direction of the Minister**

- (1) The Head, Recycling Victoria, in performing functions and exercising powers as the Head, Recycling Victoria—
  - (a) is subject to the general direction and control of the Minister; and
  - (b) must comply with a direction given by the Minister, including a direction to provide information or advice.



- (2) Subject to subsection (3), the Minister must cause a direction given to the Head, Recycling Victoria to be published on a website maintained by the Department.
- (3) If the Minister considers that publication of a direction or part of a direction is not in the public interest, the direction or part is not required to be published in accordance with subsection (2).

## 19 Staff

There may be employed under Part 3 of the **Public Administration Act 2004** any other employees that are necessary for the administration of this Act.

## 20 Delegation by the Head, Recycling Victoria

- (1) The Head, Recycling Victoria, by instrument, may delegate to any person or class of person, employed under Part 3 of the **Public Administration Act 2004** in the administration of this Act, any powers or functions of the Head, Recycling Victoria under this Act or the regulations or any other Act or regulations.

### Note

See also section 42A of the **Interpretation of Legislation Act 1984**.

- (2) An instrument of delegation under subsection (1)—
  - (a) is subject to any terms and conditions stated in the instrument; and
  - (b) may be revoked by the Head, Recycling Victoria at any time.

## **21 Strategic plan**

- (1) Every 3 years, the Head, Recycling Victoria must prepare and submit to the Minister for approval a strategic plan for waste, recycling or resource recovery services.
- (2) A strategic plan must include the following—
  - (a) objectives to be achieved during the course of the plan;
  - (b) a community engagement strategy for the course of the plan, being a strategy consistent with the Charter of Engagement published under section 36;
  - (c) a regulatory strategy for the course of the plan;
  - (d) any other matters as directed by the Minister.
- (3) A strategic plan may include the following—
  - (a) the nature and scope of any priorities;
  - (b) business arrangements for the course of the plan;
  - (c) how the Head, Recycling Victoria intends to—
    - (i) identify, monitor, manage and mitigate risks and harm associated with waste, recycling or resource recovery services; and
    - (ii) support, promote and monitor compliance with, and enforce, requirements under this Act; and
    - (iii) use a proportionate and graduated approach to address non-compliance with requirements under this Act; and

- (iv) allocate resources to perform the functions of the Head, Recycling Victoria; and
- (v) use the data collection, reporting and information sharing framework of this Act or any other Act to perform the functions of the Head, Recycling Victoria;
- (d) targets and other measures by which the performance of the Head, Recycling Victoria and waste, recycling or resource recovery services may be assessed;
- (e) any other matters that the Head, Recycling Victoria considers appropriate.
- (4) If the Minister approves a strategic plan, the Head, Recycling Victoria must publish the plan on a website maintained by the Department.
- (5) The Head, Recycling Victoria must prepare and submit the first strategic plan under this section within 12 months of the commencement of this Part.

## **22 Annual report**

- (1) Subject to subsection (4), the Head, Recycling Victoria must submit an annual report on the operation of this Act to the Minister on or before 30 September each year.
- (2) An annual report under subsection (1) must include the following—
  - (a) the total number of written directions given by the Minister under this Act;
  - (b) the total number of written directions given by the Head, Recycling Victoria under this Act;

- (c) a description or summary of each written direction;
  - (d) a copy of each written direction as published in accordance with this Act;
  - (e) details of the community engagement activities undertaken by the Head, Recycling Victoria in accordance with any existing community engagement strategy.
- (3) The Minister must cause a report received under subsection (1) to be laid before each House of the Parliament within 21 sitting days of that House.
  - (4) The Head, Recycling Victoria must submit the first annual report under subsection (1) within 6 months of the commencement of this Part.

## **Division 2—Exemptions by Head, Recycling Victoria**

### **23 Power of the Head, Recycling Victoria to exempt**

- (1) The Head, Recycling Victoria, by written notice, may exempt a person or class of person from any provision of the regulations made under this Act or of a service standard.
- (2) An exemption under subsection (1)—
  - (a) may be given either unconditionally or on specified conditions; or
  - (b) may be limited to specified circumstances.
- (3) The Head, Recycling Victoria may give an exemption under subsection (1)—
  - (a) on the initiative of the Head, Recycling Victoria; or
  - (b) on the application of the person seeking to be exempted.

- (4) The Head, Recycling Victoria must not give an exemption under subsection (1) unless the Head, Recycling Victoria is satisfied that—
  - (a) the exemption will not pose a serious risk of failure of, or disruption to, waste, recycling or resource recovery services; and
  - (b) it is not practicable for the person or class of person to comply with the relevant provision; and
  - (c) the exemption is necessary to enable the efficient administration of the relevant provision.
- (5) An exemption given under subsection (1) takes effect—
  - (a) on the date on which it is given; or
  - (b) if a later date is specified in the exemption, that date.
- (6) An exemption given under subsection (1) remains in effect until—
  - (a) the date specified in the exemption; or
  - (b) it is revoked.

## **24 Application for exemption**

- (1) An application under section 23(3)(b) must—
  - (a) be made in the prescribed form; and
  - (b) contain any prescribed information; and
  - (c) be accompanied by any prescribed fee.
- (2) On receiving an application under section 23(3)(b), the Head, Recycling Victoria—
  - (a) subject to any conditions or circumstances the Head, Recycling Victoria considers appropriate, and specified in the exemption, may give an exemption to—

- (i) the person seeking to be exempted; or
  - (ii) a class of person to which the person seeking to be exempted belongs; or
- (b) may refuse the exemption.
- (3) The Head, Recycling Victoria must determine an application under section 23(3)(b) within 28 days of receiving it.

## **25 Amendment or revocation of exemption**

- (1) The Head, Recycling Victoria, by written notice, may amend or revoke an exemption given under section 23 to a person—
  - (a) on the initiative of the Head, Recycling Victoria; or
  - (b) on the application of the person to whom the exemption applies.
- (2) The Head, Recycling Victoria, by written notice, may amend or revoke an exemption given under section 23 to a class of person on the initiative of the Head, Recycling Victoria.

## **26 Application for amendment of exemption**

- (1) An application under section 25(1)(b) must—
  - (a) be made in the prescribed form; and
  - (b) be accompanied by any prescribed fee.
- (2) On receiving an application under section 25(1)(b), the Head, Recycling Victoria may—
  - (a) amend the exemption subject to any conditions or circumstances the Head, Recycling Victoria considers appropriate, specified in the exemption; or
  - (b) refuse to amend the exemption.

**27 Notice of exemption given to class of person**

- (1) The Head, Recycling Victoria must publish in the Government Gazette, and on a website maintained by the Department, notice of—
  - (a) an exemption given under section 23 to a class of person; and
  - (b) an amendment made to an exemption given under section 25(2) to a class of person.
- (2) A notice under subsection (1) must specify—
  - (a) the class of person to whom the exemption applies; and
  - (b) the provisions of the regulations to which the exemption relates; and
  - (c) any conditions or circumstances to which the exemption is subject.

**28 Person to whom exemption applies must notify Head, Recycling Victoria if unable to comply with any condition**

A person to whom an exemption given under section 23 applies must not, without reasonable excuse, fail to notify the Head, Recycling Victoria of the following as soon as reasonably practicable after becoming aware of it—

- (a) that the person is unable to comply with any condition to which the exemption is subject;
- (b) that the person is at risk of being unable to comply with any condition to which the exemption is subject.

Penalty: 40 penalty units.

**29 Person to whom exemption applies must comply with any condition**

A person to whom an exemption given under section 23 applies must comply with any condition to which that exemption is subject.

Penalty: 40 penalty units.

**Division 3—Inquiries by Head, Recycling Victoria**

**30 Inquiries by Head, Recycling Victoria**

- (1) The Head, Recycling Victoria may hold an inquiry for the purpose of determining any matter—
  - (a) related to the functions, duties or powers of the Head, Recycling Victoria under this Act; or
  - (b) related to the operation of this Act or the regulations.
- (2) An inquiry under this section may be held—
  - (a) on the initiative of the Head, Recycling Victoria in consultation with the Minister; or
  - (b) at the direction of the Minister.
- (3) In consulting the Minister in relation to an inquiry referred to in subsection (2)(a), the Head, Recycling Victoria must specify—
  - (a) the terms of reference of the inquiry; and
  - (b) the period (not exceeding 12 months) within which the Head, Recycling Victoria is to provide the Minister with a final report of the findings.
- (4) A direction under subsection (2)(b)—
  - (a) must be given in writing; and



- (b) must specify the terms of reference of the inquiry; and
- (c) may require the Head, Recycling Victoria—
  - (i) to follow specified directions; and
  - (ii) to consider specified matters; and
  - (iii) to make a draft report of the findings publicly available or available to specified persons or bodies; and
  - (iv) to provide the Minister with a final report of the findings within a specified period.
- (5) The Minister, by written notice, may amend—
  - (a) the terms of reference of an inquiry; or
  - (b) any requirement specified in a direction under subsection (2)(b).
- (6) The Head, Recycling Victoria must comply with a requirement of the Minister specified in a direction under this section.

### **31 Conduct of an inquiry**

- (1) Subject to the terms of reference, and any requirement specified in a direction under section 30, in holding an inquiry under section 30(1) the Head, Recycling Victoria—
  - (a) may determine the manner in which the inquiry is held or conducted; and
  - (b) may inform themselves in any way they consider appropriate.
- (2) Without limiting subsection (1), the Head, Recycling Victoria may—
  - (a) hold a hearing, or part of a hearing, in public; or

- (b) hold a hearing, or part of a hearing, in private if the Head, Recycling Victoria considers—
    - (i) that it would be in the public interest; or
    - (ii) that it is necessary for the protection of confidential or commercially-sensitive information; or
  - (c) receive oral or written submissions from any person (including from a person who is being represented by another person); or
  - (d) consult or obtain information from a person who has relevant specialised knowledge based on the person's training, study or experience; or
  - (e) require persons to provide documents or other things; or
  - (f) establish committees.
- (3) In holding an inquiry under section 30 the Head, Recycling Victoria—
- (a) is bound by the rules of natural justice; and
  - (b) is not bound by the rules of evidence; and
  - (c) is not required to act in a formal manner.

**32 Final report of Head, Recycling Victoria following inquiry**

- (1) The Head, Recycling Victoria must provide a report of the findings of, and the measures proposed by, an inquiry conducted under section 30 to the Minister—
- (a) in the case of an inquiry under section 30(2)(a), as soon as practicable after the completion of the inquiry; or

- (b) in the case of an inquiry under section 30(2)(b), within the period specified in the direction or an extended period approved by the Minister.
- (2) If the Head, Recycling Victoria is of the opinion that the report will contain confidential or commercially-sensitive information, the Head, Recycling Victoria—
  - (a) must divide the report into—
    - (i) a document containing the confidential or commercially-sensitive information; and
    - (ii) another document containing the rest of the report; and
  - (b) must recommend measures for the protection of the confidential and commercially-sensitive information contained in the report.

#### **Division 4—Declared regions**

##### **33 Head, Recycling Victoria may declare regions**

- (1) Subject to section 34, the Head, Recycling Victoria, by notice published in the Government Gazette, may—
  - (a) declare any region for the purposes of this Act; or
  - (b) vary a declaration of a region or revoke a declaration of a region.
- (2) If the Head, Recycling Victoria makes or varies a declaration under subsection (1), the Head, Recycling Victoria must also publish a copy of the declaration on a website maintained by the Department.

### **34 Procedure for declaring regions**

Before the Head, Recycling Victoria declares a region, or varies a declaration of a region, the Head, Recycling Victoria must—

- (a) publish in the Government Gazette a notice that—
  - (i) states the intention of the Head, Recycling Victoria to declare a region, or vary a declaration of a region; and
  - (ii) includes a summary of the proposed declaration or proposed variations to a declaration; and
  - (iii) invites public submissions on the proposal of the Head, Recycling Victoria for a period of at least 28 days after publication of the notice; and
  - (iv) specifies where a copy of the proposed declaration or proposed variations to a declaration and any other relevant information may be accessed; and
- (b) publish a copy of the notice and the proposed declaration or proposed variations to a declaration on a website maintained by the Department; and
- (c) provide a copy of the notice and the proposed declaration or proposed variations to a declaration to—
  - (i) each advisory committee; and
  - (ii) any other person as directed by the Minister.

### **35 When declaration takes effect**

- (1) A declaration or variations to a declaration take effect—
  - (a) on the date specified in the declaration, provided that the date specified is not before the date on which the declaration is published in the Government Gazette; or
  - (b) in any other case, 28 days after the declaration is published in the Government Gazette.
- (2) A declaration continues in effect until it is revoked.

## **Division 5—Engagement**

### **36 Charter of Engagement**

- (1) The Head, Recycling Victoria, in consultation with the Minister, must prepare a Charter of Engagement.
- (2) The Charter of Engagement must include the following—
  - (a) details of how the Head, Recycling Victoria intends to consult and engage with councils, Alpine Resort Management Boards, industry, regional communities and traditional owners;
  - (b) any prescribed matters.
- (3) The Head, Recycling Victoria must publish the Charter of Engagement on a website maintained by the Department.

## **Division 6—Advisory committees**

### **37 Advisory committees**

- (1) Subject to this section, the Minister may establish advisory committees from time to time to inform and advise the Minister and the Head, Recycling Victoria on any matters relating to the operation of this Act.
- (2) The Minister must establish at least one advisory committee that includes persons with relevant skills, knowledge and experience relating to local government and rural and regional communities.
- (3) The Minister must publish, on a website maintained by the Department, terms of reference relating to the composition and specific purpose of each advisory committee.

## **Part 3—Data collection**

### **Division 1—Reporting requirements of regular reporting entities and occasional reporting entities**

#### **38 Regular reporting entity must give certain information to Head, Recycling Victoria**

- (1) A regular reporting entity must give the Head, Recycling Victoria the prescribed information in accordance with the prescribed mandatory reporting requirements.
- (2) A regular reporting entity that contravenes subsection (1) commits an offence against that subsection and is liable to a penalty not exceeding 120 penalty units.
- (3) Subsection (1) is a civil penalty provision.

#### **39 Direction to provide additional information—regular reporting entity**

- (1) The Head, Recycling Victoria, by written direction, may require a regular reporting entity to provide information to the Head, Recycling Victoria that is in addition to the information provided in accordance with the mandatory reporting requirements prescribed under section 38.
- (2) Before issuing a direction under subsection (1), the Head, Recycling Victoria must be satisfied that the additional information is required to clarify or verify information that was provided in accordance with the mandatory reporting requirements prescribed under section 38.
- (3) A direction under this section must specify—
  - (a) the additional information required to be provided; and
  - (b) the time by which it must be provided.

- (4) The time specified under subsection (3)(b) must be reasonable in the circumstances.
- (5) A regular reporting entity must not, without reasonable excuse, refuse or fail to comply with a written direction under subsection (1).
- (6) A regular reporting entity that contravenes subsection (5) commits an offence against that subsection and is liable to a penalty not exceeding 120 penalty units.
- (7) Subsection (5) is a civil penalty provision.

**40 Collection and retention of information by occasional reporting entity**

An occasional reporting entity must collect and retain information—

- (a) of a prescribed kind or class; and
- (b) for the prescribed period.

**41 Direction to give information—occasional reporting entity**

- (1) The Head, Recycling Victoria, by written direction, may require an occasional reporting entity to give the Head, Recycling Victoria information—
  - (a) required to be collected and retained under section 40; and
  - (b) as specified in the direction.
- (2) A direction under subsection (1) must specify—
  - (a) the kind or class of information collected and retained under section 40 that must be given to the Head, Recycling Victoria; and
  - (b) the form and manner in which the information is to be provided; and



(c) the date by which, or period within which, the information must be provided.

- (3) An occasional reporting entity must not, without reasonable excuse, refuse or fail to comply with a written direction under subsection (1).

Penalty: 120 penalty units.

**42 Direction to provide additional information—occasional reporting entity**

- (1) The Head, Recycling Victoria, by written direction, may require an occasional reporting entity to provide information to the Head, Recycling Victoria that is in addition to any required under section 41.
- (2) Before issuing a direction under subsection (1), the Head, Recycling Victoria must be satisfied that the additional information is required to clarify or verify information that was provided under section 41.
- (3) A direction under this section must specify—
- (a) the additional information required to be provided; and
  - (b) the time by which it must be provided.
- (4) The time specified under subsection (3)(b) must be reasonable in the circumstances.
- (5) An occasional reporting entity must not, without reasonable excuse, refuse or fail to comply with a written direction under subsection (1).
- (6) An occasional reporting entity that contravenes subsection (5) commits an offence against that subsection and is liable to a penalty not exceeding 120 penalty units.
- (7) Subsection (5) is a civil penalty provision.

#### **43 Guidelines in relation to form and manner of information**

- (1) The Head, Recycling Victoria may issue guidelines in respect of information required to be provided to the Head, Recycling Victoria under this Division specifying—
  - (a) the form of the information; and
  - (b) the way in which the information is to be presented including any technical specifications.
- (2) For the purposes of a direction or any obligation to provide information under this Division, a reporting entity must comply with any guidelines issued under this section.
- (3) Guidelines issued under this section must be published on a website maintained by the Department.

### **Division 2—Exemption from reporting requirements**

#### **44 General exemption from reporting requirements**

- (1) The Head, Recycling Victoria, by written notice published in the Government Gazette, may exempt a class of regular reporting entity from any or all of the reporting requirements for that class of regular reporting entity under Division 1.
- (2) The Head, Recycling Victoria, by written notice published in the Government Gazette, may exempt a class of occasional reporting entity from any or all of the requirements for that class of occasional reporting entity under Division 1.
- (3) Subject to subsection (4), the Head, Recycling Victoria may grant an exemption under subsection (1) or (2) at the discretion of the Head, Recycling Victoria.

- (4) Before granting an exemption under subsection (1) or (2), the Head, Recycling Victoria must consider the prescribed criteria.
- (5) Notice of an exemption under subsection (1) or (2) must specify—
  - (a) the class of reporting entity to which the exemption applies; and
  - (b) the provisions of Division 1 and any regulations to which the exemption relates; and
  - (c) any conditions to which the exemption is subject.

**45 Exemption for individual reporting entity from reporting requirements**

- (1) A reporting entity may apply to the Head, Recycling Victoria for an exemption—
  - (a) in the case of a regular reporting entity, from any or all of the mandatory reporting requirements under section 38; or
  - (b) in the case of an occasional reporting entity, from—
    - (i) any or all of the requirements to collect and retain prescribed information under section 40; or
    - (ii) a direction to give information to the Head, Recycling Victoria under section 41.
- (2) An application under subsection (1)—
  - (a) in the case of an exemption from—
    - (i) any requirement under section 38 or a direction under section 41, must be made no later than 10 business days before the information is required; or

- (ii) any requirements under section 40, may be made at any time; and
  - (b) must be in the prescribed form; and
  - (c) must include the prescribed information; and
  - (d) must be accompanied by any prescribed fee.
- (3) Despite subsection (2)(a)(i), the Head, Recycling Victoria may grant a reporting entity an extension of time to make an application for an exemption on the written request of the reporting entity if the Head, Recycling Victoria considers it reasonable in the circumstances.
- (4) A request under subsection (3) must—
  - (a) be made before the information under section 38 or 41 is required; and
  - (b) explain why the reporting entity is seeking an extension of time to apply for an exemption.
- (5) On receiving an application under subsection (1), the Head, Recycling Victoria may, by written notice—
  - (a) grant a reporting entity an exemption from any or all of the requirements—
    - (i) under section 38 or 40; or
    - (ii) of a direction under section 41; or
  - (b) refuse to grant an exemption.
- (6) Before granting or refusing to grant an exemption under subsection (5), the Head, Recycling Victoria must consider the application and the prescribed criteria.

- (7) An exemption granted under subsection (5)(a)—
  - (a) may be subject to any conditions the Head, Recycling Victoria considers appropriate, specified in the exemption; and
  - (b) may be for a limited time as specified in the exemption; and
  - (c) may differ from the exemption applied for by the entity including with respect to scope, circumstance or duration.
- (8) An exemption given under this section takes effect from the day, and for the period, specified in the exemption.
- (9) The Head, Recycling Victoria may request further information from a reporting entity that has made an application under subsection (1) by written notice to the applicant specifying—
  - (a) the information required; and
  - (b) the date by which the information must be provided to the Head, Recycling Victoria.

#### **46 Renewal of exemption for individual reporting entity**

- (1) A reporting entity granted an exemption under section 45 may apply for renewal of that exemption.
- (2) An application under subsection (1) must—
  - (a) be in the prescribed form; and
  - (b) include the prescribed information; and
  - (c) be accompanied by any prescribed fee; and
  - (d) be made no later than 28 days before the exemption expires.

**47 Amendment or revocation of exemption on initiative of Head, Recycling Victoria**

- (1) This section applies if—
  - (a) the Head, Recycling Victoria requires information from a class of reporting entity or an individual reporting entity for the purposes of the Head, Recycling Victoria performing functions under this Act; and
  - (b) the class of reporting entity or individual reporting entity has been exempted from providing that information in accordance with an exemption granted under section 44 or 45.
- (2) If this section applies and after considering any submissions made in accordance with subsection (3), the Head, Recycling Victoria may amend or revoke an exemption granted under section 44 or 45.
- (3) At least 28 days before the proposed amendment or revocation of an exemption under subsection (2), the Head, Recycling Victoria must—
  - (a) if the proposed amendment or revocation is in respect of an exemption granted under section 44—
    - (i) give notice of the proposed amendment or revocation in the Government Gazette; and
    - (ii) invite the relevant class of reporting entity to make submissions in respect of the proposed amendment or revocation; or
  - (b) if the proposed amendment or revocation is in respect of an exemption granted under section 45—

- (i) give written notice of the proposed amendment or revocation to the reporting entity that holds the exemption proposed to be amended or revoked; and
- (ii) invite the reporting entity to make submissions in respect of the proposed amendment or revocation.

#### **48 Application for amendment of exemption**

- (1) A reporting entity that holds an exemption granted under section 45 may apply to the Head, Recycling Victoria for an amendment of the exemption.
- (2) An application under subsection (1) must—
  - (a) be in the prescribed form; and
  - (b) specify the reason for the amendment; and
  - (c) be accompanied by any prescribed fee.
- (3) On receiving an application under this section, the Head, Recycling Victoria may—
  - (a) amend the exemption subject to any conditions the Head, Recycling Victoria considers appropriate, specified in the exemption; or
  - (b) refuse to amend the exemption.

#### **49 Reporting entity to whom exemption applies must notify Head, Recycling Victoria if unable to comply with any condition**

A reporting entity granted an exemption under section 44 or 45 must not, without reasonable excuse, fail to notify the Head, Recycling Victoria of the following as soon as reasonably practicable after becoming aware of it—

- (a) that the reporting entity is unable to comply with any condition to which the exemption is subject;
- (b) that the reporting entity is at risk of being unable to comply with any condition to which the exemption is subject.

Penalty: 40 penalty units.

### **Division 3—Information sharing and reporting**

#### **50 Head, Recycling Victoria may collect, use, disclose or publish information**

- (1) Subject to anything to the contrary in this Act or any other Act, the Head, Recycling Victoria may collect, use, disclose or publish any information or data if the collection, use, disclosure or publication is necessary for the Head, Recycling Victoria—
  - (a) to perform the functions or duties of the Head, Recycling Victoria under this Act or any other Act; or
  - (b) to exercise the powers of the Head, Recycling Victoria under this Act or any other Act.
- (2) Without limiting subsection (1), the Head, Recycling Victoria may—
  - (a) use or disclose information or data if—
    - (i) the Head, Recycling Victoria has reason to suspect that unlawful activity has been, is being, or may be, engaged in; and
    - (ii) the use or disclosure is a necessary part of the investigation or reporting of the matter by the Head, Recycling Victoria; or



- (b) disclose information or data to any of the following agencies to enable the Head, Recycling Victoria to perform any of their functions or exercise any of their powers in collaboration with that agency—
  - (i) a council;
  - (ii) Sustainability Victoria;
  - (iii) the Environment Protection Authority;
  - (iv) Victoria Police;
  - (v) the Australian Federal Police;
  - (vi) Victorian WorkCover Authority;
  - (vii) an Alpine Resort Management Board;
  - (viii) a prescribed person or body; or
- (c) collect or use information from a government agency if the collection or use is required for the purposes of determining the risk of failure of, or disruption to, waste, recycling or resource recovery services of the circular economy; or
- (d) collect or use information from, or disclose information to, a government agency if the collection, use or disclosure—
  - (i) is necessary for research or the compiling or analysis of statistics; and
  - (ii) does not include personal information; and
  - (iii) is in the public interest.

## **51 Centralised data and information system**

- (1) The Head, Recycling Victoria may establish a centralised data and information system to receive, collect, store and share information and

data relating to waste, recycling or resource recovery services and the circular economy.

- (2) The Head, Recycling Victoria must ensure that the centralised data and information system meets any prescribed requirements and standards.

## **52 Publication of information and reports**

- (1) At the discretion of the Head, Recycling Victoria and if it is in the public interest to do so, the Head, Recycling Victoria may publish information or reports relating to the state of any of the following—
  - (a) waste, recycling or resource recovery services;
  - (b) the circular economy.
- (2) Information or reports must be published on a website maintained by the Department.

## **53 Preparation of reports by Head, Recycling Victoria**

- (1) This section applies to a report prepared by the Head, Recycling Victoria under this Act if the information in that report cannot be disclosed in the manner specified in section 55(2)(i).
- (2) If, in the opinion of the Head, Recycling Victoria, a report will contain confidential or commercially-sensitive information, the Head, Recycling Victoria must divide the report into—
  - (a) a document containing the confidential or commercially-sensitive information; and
  - (b) another document containing the rest of the report.
- (3) If the Head, Recycling Victoria is required to publish a report to which this section applies, a reference to the report is to be read as a reference to the document described in subsection (2)(b).

**54 Minister may direct Head, Recycling Victoria to prepare a report**

- (1) The Minister may direct the Head, Recycling Victoria to prepare a report relating to a specified matter.
- (2) A direction under subsection (1) must be in writing and specify a timeframe for completion of the report.

**55 Unauthorised disclosure of confidential information**

- (1) A person must not disclose any confidential information or commercially-sensitive information obtained by the person during the exercise of a power or performance of a function or duty under, or in connection with, this Act or the regulations except in accordance with this Part.

Penalty: 120 penalty units.

- (2) Subsection (1) does not apply to the following disclosures of confidential information or commercially-sensitive information—
  - (a) a disclosure made in the exercise of a power or the performance of a function or duty under, or in connection with, this Act or any other Act or the regulations;
  - (b) a disclosure made with the consent of the person to whom the information relates;
  - (c) a disclosure made to a court or tribunal in the course of legal proceedings;
  - (d) a disclosure made pursuant to an order of a court or tribunal;
  - (e) a disclosure of information that is in the public domain at the time of the disclosure other than as the result of a disclosure prohibited under this Act or any other Act;

- (f) a disclosure made to an Australian legal practitioner for the purposes of obtaining legal advice or representation;
- (g) a disclosure to the IBAC made as required or authorised by or under this Act or the **Independent Broad-based Anti-corruption Commission Act 2011**;
- (h) a disclosure made under section 50 to a government agency;
- (i) a disclosure made such that the information is aggregated with other information and de-identified so as to conceal its source;
- (j) a disclosure to any of the following agencies to enable the agency to prevent, detect, investigate or prosecute an offence—
  - (i) the Environment Protection Authority;
  - (ii) Victoria Police;
  - (iii) the Australian Federal Police;
  - (iv) the Victorian WorkCover Authority;
  - (v) the IBAC;
  - (vi) a prescribed person or body;
- (k) a disclosure made to prevent or minimise a serious risk of—
  - (i) failure of, or disruption to, waste, recycling or resource recovery services; or
  - (ii) harm to human health or the environment;
- (l) a disclosure of information to a government agency if the disclosure—
  - (i) is necessary for research or the compiling or analysis of statistics; and

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- (ii) does not include personal information;  
and
- (iii) is in the public interest.

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## **Part 4—Procurement**

### **56 Procurement agreements between the Head, Recycling Victoria and councils and Alpine Resort Management Boards**

- (1) The Head, Recycling Victoria may enter into a written agreement with a council that intends to procure a waste, recycling or resource recovery service for the municipal district of the council.
- (2) The Head, Recycling Victoria may enter into a written agreement with an Alpine Resort Management Board that intends to procure a waste, recycling or resource recovery service for land within its alpine resort.
- (3) An agreement under subsection (1) or (2) may provide for any of the following—
  - (a) the process by which the council or Alpine Resort Management Board is to procure the waste, recycling or resource recovery service;
  - (b) requirements or provisions that must be included in a contract entered into by the council or Alpine Resort Management Board for the procurement of the waste, recycling or resource recovery service;
  - (c) the enforcement of a contract referred to in paragraph (b), including but not limited to penalties to which a party to the contract may be liable if the party fails to comply with the contract;
  - (d) conditions or standards with which the council or Alpine Resort Management Board must comply at any stage during the procurement process;

- (e) the enforcement of the agreement by the Head, Recycling Victoria, including but not limited to penalties to which the council or Alpine Resort Management Board may be liable if the council or Board—
    - (i) fails to comply with the agreement; or
    - (ii) withdraws from the agreement before the procurement process is complete;
  - (f) any prescribed matter.
- (4) The Head, Recycling Victoria may—
- (a) enter into more than one agreement under subsection (1) or (2) with a single council or Alpine Resort Management Board (as appropriate); or
  - (b) enter into a single agreement under subsection (1) or (2) with more than one council or Alpine Resort Management Board (as appropriate).
- (5) Despite anything to the contrary in an agreement under subsection (1) or (2), a council or Alpine Resort Management Board is not liable to a penalty under the agreement merely because the council or Board withdraws from that agreement before the relevant procurement process is complete if the Head, Recycling Victoria is satisfied that in the circumstances it would be manifestly unjust to require the council or Board to complete the procurement process.

**57 Head, Recycling Victoria may provide councils or Alpine Resort Management Boards with procurement advice and support**

- (1) The Head, Recycling Victoria may provide advice and support to a council or Alpine Resort Management Board for the purposes of enabling or facilitating the council or Board—

- (a) to enter into or manage a contract for the procurement of waste, recycling or resource recovery services; or
  - (b) to engage in procurement activities; or
  - (c) to engage in a prescribed activity.
- (2) Without limiting subsection (1), advice or support under that subsection may take one or more of the following forms—
  - (a) education and training for persons appointed or engaged by the council or Alpine Resort Management Board;
  - (b) manuals, recommendations or model contract provisions.

#### **58 Procurement guidelines**

- (1) The Head, Recycling Victoria may issue guidelines relating to the procurement of waste, recycling or resource recovery services by councils or Alpine Resort Management Boards.
- (2) A council or Alpine Resort Management Board that is subject to guidelines issued under subsection (1) must have regard to those guidelines.
- (3) If the Head, Recycling Victoria issues guidelines under subsection (1), the Head, Recycling Victoria must publish the guidelines on a website maintained by the Department.

#### **59 Matters the Head, Recycling Victoria must take into account**

- (1) When performing a function or duty or exercising a power under this Part, the Head, Recycling Victoria must take the following into account—
  - (a) a procurement process should be as streamlined as possible;



- (b) the provision of waste, recycling or resource recovery services should be consistent, high quality and localised;
  - (c) the provision of waste, recycling or resource recovery services should provide value for money and efficient use of resources;
  - (d) the provision of waste, recycling or resource recovery services should be continually improving;
  - (e) a procurement process should be transparent and fair and provide accountability;
  - (f) any prescribed matter.
- (2) When performing a function or duty or exercising a power under this Part, the Head, Recycling Victoria may take into account any matter that the Head, Recycling Victoria reasonably considers relevant.

## **Part 5—Waste and recycling services**

### **Division 1—Mandatory service provision by councils**

#### **60 Councils and Alpine Resort Management Boards to provide municipal residual waste and municipal recycling services**

- (1) A council must provide the following services, in accordance with this Act and the regulations—
  - (a) on and from a prescribed date—a municipal residual waste service to land in its municipal district;
  - (b) on and from a prescribed date—a municipal recycling service (other than for glass or for food organics and garden organics material) to land in its municipal district that is used primarily for residential purposes;
  - (c) on and from a prescribed date—a municipal recycling service for glass to land in its municipal district that is used primarily for residential purposes;
  - (d) on and from a prescribed date—a municipal food organics and garden organics service to land in its municipal district that is used primarily for residential purposes;
  - (e) on and from a prescribed date—a prescribed municipal service to land in its municipal district that is used for a prescribed purpose.
- (2) An Alpine Resort Management Board must provide the following services, in accordance with this Act and the regulations—
  - (a) on and from a prescribed date—a municipal residual waste service to land in its alpine resort;

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- (b) on and from a prescribed date—a municipal recycling service (other than for glass or for food organics and garden organics material) to land in its alpine resort;
- (c) on and from a prescribed date—a municipal recycling service for glass to land in its alpine resort;
- (d) on and from a prescribed date—a municipal food organics and garden organics service to land in its alpine resort;
- (e) on and from a prescribed date—a prescribed municipal service to land in its alpine resort that is used for a prescribed purpose.

**Note**

See definitions of *municipal food organics and garden organics service*, *municipal recycling service*, and *municipal residual waste service* in section 3(1).

- (3) Nothing in this Act entitles a person to a service under subsection (1) or (2) other than in accordance with this Part.

## **Division 2—Mandatory sorting by entities**

### **61 Entities to sort waste and recycling materials**

A prescribed entity, or an entity of a prescribed class, must comply with any prescribed requirement for the sorting and separating of waste or recycling materials that applies to it.

## **Division 3—Service standards**

### **62 Preparation of service standards**

- (1) The Head, Recycling Victoria may prepare a service standard.
- (2) The Head, Recycling Victoria must submit a service standard to the Minister for approval.

- (3) A service standard must provide for the quality and performance standards for the delivery of a waste, recycling or resource recovery service.
- (4) A service standard may provide for—
  - (a) the persons or classes or person to whom the standard applies; and
  - (b) the persons or classes or person exempt from the standard; and
  - (c) the services or classes of service to which the standard applies; and
  - (d) separating and sorting specified types of waste; and
  - (e) separating and sorting specified types of recycling material; and
  - (f) the methods of identifying types of waste and recycling material; and
  - (g) the contents of particular bins used in municipal residual waste or municipal recycling services provided for or on behalf of a council; and
  - (h) service performance and reporting, and may include the following—
    - (i) the rates of recycling of specified types of recycling material or classes of recycling material;
    - (ii) the rates of contamination of waste or recycling material;
    - (iii) the rates of waste sent to landfill;
    - (iv) the quality of recycling material;
    - (v) the details of the reuse of recycled material;

- (vi) comparisons of matters referred to in subparagraphs (i) to (v) across different periods of reporting;
- (vii) the continuity of service where risk of failure or disruption may arise; and
- (i) different standards or requirements for different types of services; and
- (j) different standards or requirements for different types of material or waste; and
- (k) different standards or requirements for different metropolitan or regional areas; and
- (l) any other matter the Head, Recycling Victoria considers relevant or that the Minister directs.

### **63 Making of service standards**

- (1) On receiving a service standard for approval, the Minister may—
  - (a) approve the standard; or
  - (b) refuse to approve the standard.
- (2) The Minister must publish notice of the approval of the standard in the Government Gazette.
- (3) A standard takes effect on a day or days specified in the standard.

### **64 Review of service standards**

- (1) The Minister—
  - (a) must review a service standard at intervals of no longer than 3 years; and
  - (b) may review a service standard at any time at the request of the Head, Recycling Victoria, if the Minister is satisfied that it is in the public interest to do so.

- (2) The Head, Recycling Victoria may make a request under subsection (1)(b) only if the Head, Recycling Victoria is satisfied that it is in the public interest to do so.
- (3) For the purposes of subsection (1), the Head, Recycling Victoria—
  - (a) must provide to the Minister advice relating to—
    - (i) the operation and performance of the standard during the preceding 3 years; and
    - (ii) any amendments required to be made to the standard to improve its operation; and
  - (b) may provide to the Minister advice relating to—
    - (i) compliance with the standard during the preceding 3 years; and
    - (ii) any amendments required to be made to the standard to improve compliance with it.
- (4) The advice referred to in subsection (3) must be provided to the Minister—
  - (a) within 6 months of the review taking place; or
  - (b) if the Minister specifies an earlier or later day, by that day.

**65 Notice of proposal to make, amend or revoke service standards**

- (1) The Minister must publish notice of the Minister's proposal to make, amend or revoke a service standard (a *proposal notice*).

- (2) A proposal notice must—
- (a) summarise the relevant standard; and
  - (b) specify where a copy of the standard may be inspected; and
  - (c) invite written comments on the standard; and
  - (d) specify the date by which a comment must be given, being a date which is at least 28 days after the date on which the proposal notice is published; and
  - (e) specify the address to which a comment must be sent; and
  - (f) be published in the Government Gazette and any other publication the Minister considers appropriate.
- (3) The Minister is not required to comply with this section if the Minister proposes to amend a service standard only to correct a mistake.

#### **66 Minister must consider advice**

Before deciding whether to make, amend or revoke a service standard, the Minister—

- (a) must consider any advice or comment the Minister receives—
  - (i) from the Head, Recycling Victoria; and
  - (ii) from an advisory committee referred to in section 37(2); and
  - (iii) under section 65(2); and
- (b) may consider any advice the Minister receives from any other advisory committee the Minister considers relevant.

**67 Minister may make, amend or revoke a service standard**

After considering any comment or advice received under this Part, the Minister may do any of the following—

- (a) make or refuse to make the service standard without any amendment;
- (b) amend or refuse to amend the service standard;
- (c) revoke or refuse to revoke the service standard.

**68 Minister may request review of service standards**

- (1) The Minister, by written notice, may direct the Head, Recycling Victoria—
  - (a) to review the operation of a service standard; and
  - (b) to report to the Minister on the results of that review.
- (2) The Head, Recycling Victoria must comply with a direction under subsection (1)—
  - (a) within 6 months of receiving it; or
  - (b) if the notice specified an earlier or later day, by that day.

**69 Offence to refuse or fail to comply with applicable service standards**

- (1) A person who provides a waste, recycling or resource recovery service must not, without reasonable excuse, refuse or fail to comply with a service standard that applies to the service.
- (2) A person who contravenes subsection (1) commits an offence against that subsection and is liable to a penalty not exceeding—



- (a) in the case of a natural person, 500 penalty units; or
- (b) in the case of a body corporate, 1200 penalty units.

(3) Subsection (1) is a civil penalty provision.

**70 Agreements must incorporate relevant service standards**

- (1) This section applies to a person who provides a waste, recycling or resource recovery service.
- (2) Any agreement entered into in connection with providing the waste, recycling or resource recovery service must incorporate by reference any service standard that applies to the service.
- (3) Any invitation for applications for agreements referred to subsection (2) must specify that the agreement must comply with the requirements set out in that subsection.

**71 Offence to refuse or fail to incorporate relevant service standards**

- (1) A person who provides a waste, recycling or resource recovery service must not, without reasonable excuse, refuse or fail to comply with section 70(2).
- (2) A person who contravenes subsection (1) commits an offence against that subsection and is liable to a penalty not exceeding—
  - (a) in the case of a natural person, 500 penalty units; or
  - (b) in the case of a body corporate, 1200 penalty units.
- (3) Subsection (1) is a civil penalty provision.

**72 Head, Recycling Victoria may issue notice requiring information**

- (1) The Head, Recycling Victoria may issue to a person providing a waste, recycling or resource recovery service a notice requiring the person to produce any of the following within the time specified in the notice—
  - (a) a copy of any agreement entered into in connection with providing the service;
  - (b) a document or class of document specified in the notice that is in the person's possession, custody or control;
  - (c) any information or class of information relating to a waste, recycling or resource recovery service specified in the notice that is known to the person.
- (2) A notice issued under subsection (1) must—
  - (a) be in writing; and
  - (b) specify the person to whom it is issued; and
  - (c) state the purpose of the notice; and
  - (d) state the period within which the person must comply with the notice being not less than 10 business days or the prescribed number of business days; and
  - (e) in the case of a notice issued to a natural person, notify the person that they may refuse or fail to give the document or information specified in the notice if doing so would tend to incriminate the person.

**73 Offence to fail to comply with notice**

- (1) A person must not, without reasonable excuse, refuse or fail to comply with a notice issued under section 72(1).

- (2) A person who contravenes subsection (1) commits an offence against that subsection and is liable to a penalty not exceeding—
  - (a) in the case of a natural person, 120 penalty units; or
  - (b) in the case of a body corporate, 240 penalty units.
- (3) Subsection (1) is a civil penalty provision.

**74 Duty of providers of essential waste, recycling or resource recovery services to minimise risk of failure, disruption or hinderance of service**

- (1) A person who is providing an essential waste, recycling or resource recovery service, so far as is reasonably practicable, must minimise the risk of serious failure, disruption or hinderance of the service.
- (2) A person who contravenes subsection (1) commits an offence against that subsection and is liable to a penalty not exceeding—
  - (a) in the case of a natural person, 500 penalty units; or
  - (b) in the case of a body corporate, 2500 penalty units.
- (3) Subsection (1) is a civil penalty provision.
- (4) In determining whether a person has contravened subsection (1), regard must be had to all the circumstances including the following matters—
  - (a) the nature and extent of the risk and the likelihood of it occurring;
  - (b) the degree of harm that would result if the risk occurred;
  - (c) what the person knew, or ought reasonably to have known, about the risk;

- (d) the measures available and suitable to reduce the risk;
- (e) the cost of reducing the risk;
- (f) the steps taken by the person to notify the Head, Recycling Victoria of the matters referred to in paragraphs (a) and (b).

## Part 6—Container deposit scheme

### Division 1—Preliminary

#### 75 Definitions

In this Part—

***automated collection point*** means a refund collection point that consists of a machine or other device from which refund amounts can be obtained by an operation that involves inserting empty containers into the device, whether or not some other action is required to activate the device;

***collection point arrangement*** means a collection point arrangement required to be included in a network operator agreement under section 90(1)(a);

***collection point operator*** means a person who has entered into a collection point arrangement to establish and operate a refund collection point;

***corresponding law*** means a law of another State or a Territory that provides for a container deposit scheme and that substantially corresponds with the relevant provisions of this Part;

***scheme arrangement*** means—

- (a) in relation to a Scheme Coordinator agreement, a supply arrangement, network arrangement or recovery arrangement required to be included in the Scheme Coordinator agreement under section 81(1); or
- (b) in relation to a network operator agreement, a collection point arrangement or collection refund

arrangement required to be included in the network operator agreement under section 90(1);

*supply* means supply in the course of business, whether by offer of sale or otherwise;

*supply arrangement* means a supply arrangement required to be included in a Scheme Coordinator agreement under section 81(1)(a).

## **Division 2—Administration of container deposit scheme**

### **76 Functions of the Head, Recycling Victoria—container deposit scheme**

- (1) The Head, Recycling Victoria is responsible for the oversight and administrative direction of the container deposit scheme.
- (2) Without limiting subsection (1), the Head, Recycling Victoria has the following functions—
  - (a) to determine the process for deciding whether a person is the first supplier of an eligible container;
  - (b) to determine the process for deciding whether an eligible container is a suitable eligible container;
  - (c) to determine applications for the approval of containers under section 99;
  - (d) to publish guidelines under section 112;
  - (e) to monitor and enforce compliance with the container deposit scheme in accordance with this Part;
  - (f) to collect information and data relating to the container deposit scheme.

## **77 Powers of the Head, Recycling Victoria**

The Head, Recycling Victoria has the power to do all things that are necessary or convenient to be done for or in connection with the performance of the functions and duties of the Head, Recycling Victoria under this Part.

## **78 Delegation**

The Head, Recycling Victoria, by instrument, may delegate the following powers to the Scheme Coordinator—

- (a) any power of the Head, Recycling Victoria under this Part (other than this power of delegation);
- (b) any power of the Head, Recycling Victoria under Part 3 in connection with the container deposit scheme;
- (c) any power of the Head, Recycling Victoria under the regulations that relates to the container deposit scheme.

## **Division 3—Scheme Coordinator**

### **79 Functions of Scheme Coordinator**

The functions of the Scheme Coordinator are—

- (a) to manage and coordinate the administration of the container deposit scheme throughout Victoria; and
- (b) to collect information from network operators and report to the Head, Recycling Victoria on the administration of the container deposit scheme; and
- (c) to provide the Minister with an annual assessment; and

- (d) to collect contributions under supply arrangements towards the cost of the management, administration and operation of the container deposit scheme; and
- (e) to pay network fees to network operators; and
- (f) to pay refund amounts to material recovery facilities.

#### **80 Scheme Coordinator agreement**

- (1) The Minister may, in accordance with the regulations, invite applications to enter into a Scheme Coordinator agreement.
- (2) Without limiting subsection (1), the Minister may invite applications under that subsection from specific persons if the Minister considers it appropriate to do so.
- (3) The Minister may enter into a Scheme Coordinator agreement in accordance with section 81 with a person if, after consulting with the Head, Recycling Victoria, the Minister considers—
  - (a) the person has appropriate expertise and resources to carry out the functions of the Scheme Coordinator; and
  - (b) the person is a fit and proper person to carry out the functions of the Scheme Coordinator.
- (4) If the Minister enters into a Scheme Coordinator agreement with a person, the Minister must recommend to the Governor in Council that the person be appointed as the Scheme Coordinator under section 82.
- (5) If the Minister enters into a Scheme Coordinator agreement with a person, the Minister must not enter into another Scheme Coordinator agreement



if the other agreement would operate at the same time as the first agreement.

## **81 Content of Scheme Coordinator agreement**

- (1) A Scheme Coordinator agreement must include provisions that require the Scheme Coordinator to enter into and give effect to the following arrangements—
  - (a) arrangements requiring first suppliers to pay to the Scheme Coordinator contributions towards the cost of the management, administration and operation of the container deposit scheme (*supply arrangements*);
  - (b) arrangements with network operators requiring the Scheme Coordinator to pay to the network operators refund amounts and associated administration and handling costs for containers that are collected at the collection points (*network arrangements*);
  - (c) arrangements with material recovery facility operators requiring the Scheme Coordinator to pay to the material recovery facility operators refund amounts for recycling and resource recovery of eligible containers (*recovery arrangements*).
- (2) A Scheme Coordinator agreement must include provisions that the Minister considers necessary to ensure—
  - (a) that each scheme arrangement required under the Scheme Coordinator agreement specifies a methodology—
    - (i) for determining the amounts payable under that scheme arrangement; and
    - (ii) that is in accordance with any prescribed requirements; and

- (b) that the Scheme Coordinator does not act unfairly, or unreasonably discriminate, against or in favour of any particular network operator in negotiating, entering into, performing obligations under or enforcing any scheme arrangement.
- (3) A Scheme Coordinator agreement must include the following requirements relating to data, information and information technology—
  - (a) any agreed requirements for the use, disclosure, collection and retention of data and information;
  - (b) any prescribed requirements for the use, disclosure, collection and retention of data and information;
  - (c) any prescribed requirements regarding the form and content of information technology.
- (4) A Scheme Coordinator agreement may—
  - (a) specify the monitoring, reporting and audit requirements to be included in a scheme arrangement; and
  - (b) provide for the provision of information by, or disclosure of information to, the Scheme Coordinator under the agreement or a scheme arrangement; and
  - (c) provide for the exercise of powers and other functions under this Act by the Head, Recycling Victoria or an authorised officer in connection with the agreement or a scheme arrangement; and
  - (d) require a scheme arrangement to provide for the exercise of powers and other functions under this Act by the Head, Recycling Victoria or an authorised officer in

- connection with the scheme arrangement;  
and
- (e) specify any other measures to be taken by the Scheme Coordinator or a network operator to ensure that parties to the agreement or a scheme arrangement comply with the agreement or scheme arrangement;  
and
- (f) provide for the method by which disputes between parties to the agreement or a scheme arrangement are to be resolved; and
- (g) provide for any other matters in accordance with the terms of the agreement; and
- (h) include any other matters prescribed to be contained in the agreement.

## **82 Appointment of Scheme Coordinator**

- (1) The Governor in Council, on the recommendation of the Minister, may appoint a person as the Scheme Coordinator.
- (2) An appointment under subsection (1)—
  - (a) may be for a period of not more than 7 years;  
and
  - (b) is subject to any conditions or limitations specified in the appointment; and
  - (c) is subject to any prescribed conditions or limitations; and
  - (d) may at any time be varied or suspended by the Governor in Council on the recommendation of the Minister.
- (3) It is a condition of an appointment under subsection (1) that the Scheme Coordinator must comply with a direction under section 83 or 84.

- (4) An appointment under subsection (1) may be renewed for a further period of not more than 3 years.
- (5) A renewal of an appointment under subsection (4) must not be made more than twice.
- (6) The Governor in Council, on the recommendation of the Minister, must revoke the appointment of the Scheme Coordinator if the Scheme Coordinator—
  - (a) becomes an insolvent under administration; or
  - (b) is convicted or found guilty of an indictable offence or any offence that, if committed in Victoria, would constitute an indictable offence.
- (7) The Governor in Council, on the recommendation of the Minister, may at any time revoke the appointment of the Scheme Coordinator—
  - (a) if the Scheme Coordinator—
    - (i) becomes incapable of performing the Scheme Coordinator's duties; or
    - (ii) is negligent in the performance of the Scheme Coordinator's duties; or
    - (iii) engages in improper conduct; or
    - (iv) is convicted or found guilty of an offence against this Act or the regulations; or
    - (v) is convicted or found guilty of an offence involving dishonesty, fraud, violence or trafficking in drugs of dependence; or
    - (vi) is no longer suitable to be appointed as the Scheme Coordinator for any other reason; or

- (b) in accordance with any other circumstances authorised under the Scheme Coordinator agreement as a ground for the appointment to be revoked.

### **83 Ministerial directions to Scheme Coordinator**

The Minister may at any time give the Scheme Coordinator a written direction relating to the performance of the Scheme Coordinator's functions under this Act or any other Act if the Minister is satisfied that, in the circumstances, it is appropriate to make the direction.

### **84 Head, Recycling Victoria may give directions to Scheme Coordinator**

- (1) The Head, Recycling Victoria may at any time give the Scheme Coordinator a written direction relating to the performance of the Scheme Coordinator's functions under this Act or any other Act if the Head, Recycling Victoria is satisfied that, in the circumstances, it is appropriate to make the direction.
- (2) A direction under subsection (1) does not have effect to the extent that it is inconsistent with a direction of the Minister under section 83.

### **85 Directions to Scheme Coordinator must be published**

- (1) The Minister must publish directions under section 83 on a website maintained by the Department.
- (2) The Head, Recycling Victoria must publish directions under section 84 on a website maintained by the Department.

- (3) Subsections (1) and (2) do not apply in relation to a direction, or any part of a direction, if the Minister or the Head, Recycling Victoria (as appropriate) is satisfied that publication of that direction or part is not in the public interest.

#### **86 Scheme Coordinator must comply with direction**

- (1) If the Minister gives the Scheme Coordinator a direction under section 83, the Scheme Coordinator must not, without reasonable excuse, fail to comply with that direction.
- (2) Subsection (1) is a civil penalty provision.
- (3) If the Head, Recycling Victoria gives the Scheme Coordinator a direction under section 84, the Scheme Coordinator must not, without reasonable excuse, fail to comply with that direction.
- (4) Subsection (3) is a civil penalty provision.

#### **87 Annual assessment report**

- (1) The Scheme Coordinator must submit an annual assessment report on the Scheme Coordinator during a financial year to the Minister within 90 days after the end of that financial year.
- (2) An assessment report submitted under subsection (1) must include the following—
  - (a) a report on the exercise of powers and performance of functions under this Act by the Scheme Coordinator during the financial year;
  - (b) the amounts required to be paid to the Scheme Coordinator under supply arrangements during the financial year;
  - (c) any prescribed matter.
- (3) The Minister must publish an assessment report submitted under subsection (1) on a website maintained by the Department.

- (4) Subsection (3) does not apply in relation to an assessment report, or any part of an assessment report, if the Minister is satisfied that publication of that assessment report or part is not in the public interest.

## **Division 4—Network operators**

### **88 Functions of network operators**

The functions of a network operator are to meet the prescribed operation and performance requirements for network operators.

### **89 Network operator agreements**

- (1) The Minister may, in accordance with the regulations, invite applications to enter into a network operator agreement.
- (2) Without limiting subsection (1), the Minister may invite applications under that subsection from specific persons if the Minister considers it appropriate to do so.
- (3) The Minister may enter into a network operator agreement in accordance with section 90 with a person if the Minister considers—
- (a) the person has appropriate expertise and resources to carry out the functions of a network operator; and
  - (b) the person is a fit and proper person to carry out the functions of a network operator.
- (4) The Minister may enter into more than one network operator agreement that operate at the same time.

## **90 Content of network operator agreements**

- (1) A network operator agreement must include provisions that require the network operator to enter into and give effect to—
  - (a) arrangements or undertakings in connection with the establishment and operation of collection points (*collection point arrangements*); and
  - (b) arrangements or undertakings to pay refund amounts and associated handling costs for containers collected at those collection points (*collection refund arrangements*).
- (2) A network operator agreement must include provisions that the Minister considers necessary to ensure—
  - (a) that each scheme arrangement required under the network operator agreement specifies a methodology—
    - (i) for determining the amounts payable under that scheme arrangement; and
    - (ii) that is in accordance with any prescribed requirements; and
  - (b) that the network operator to whom the scheme arrangement applies does not act unfairly, or unreasonably discriminate, against or in favour of any particular collection point operator in negotiating, entering into, performing obligations under or enforcing any scheme arrangement.
- (3) A network operator agreement must include the following requirements relating to data, information and information technology—
  - (a) any agreed requirements for the use, disclosure, collection and retention of data and information;



- (b) any prescribed requirements for the use, disclosure, collection and retention of data and information;
  - (c) any prescribed requirements regarding the form and content of information technology.
- (4) A network operator agreement may—
  - (a) specify the monitoring, reporting and audit requirements to be included in a scheme arrangement; and
  - (b) provide for the provision of information by, or disclosure of information to, the network operator under the agreement or a scheme arrangement; and
  - (c) provide for the exercise of powers and other functions under this Act by the Head, Recycling Victoria or an authorised officer in connection with the agreement or a scheme arrangement; and
  - (d) require a scheme arrangement to provide for the exercise of powers and other functions under this Act by the Head, Recycling Victoria or an authorised officer in connection with the scheme arrangement; and
  - (e) specify any other measures to be taken by the network operator to ensure that parties to the agreement or a scheme arrangement comply with the agreement or scheme arrangement; and
  - (f) provide for the method by which disputes between parties to the agreement or a scheme arrangement are to be resolved.

## **91 Appointment of network operators**

- (1) If the Minister enters into a network operator agreement with a person, the Minister must appoint that person as a network operator.
- (2) An appointment under subsection (1)—
  - (a) may be for a period of not more than 5 years; and
  - (b) is subject to any conditions or limitations specified in the appointment; and
  - (c) is subject to any prescribed conditions or limitations; and
  - (d) may at any time be varied or suspended by the Minister.
- (3) It is a condition of an appointment under subsection (1) that the network operator must comply with a direction under section 92 or 93.
- (4) On the application of the network operator, the Minister may renew a network operator's appointment for a further period of not more than 3 years.
- (5) The Minister must not renew the appointment of a network operator under subsection (4) more than twice.
- (6) The Minister must revoke the appointment of a network operator if the network operator—
  - (a) becomes an insolvent under administration; or
  - (b) is convicted or found guilty of an indictable offence or any offence that, if committed in Victoria, would constitute an indictable offence.

- (7) The Minister may, at any time, revoke the appointment of a network operator—
- (a) if the network operator—
    - (i) becomes incapable of performing the duties of a network operator; or
    - (ii) is negligent in the performance of the duties of a network operator; or
    - (iii) engages in improper conduct; or
    - (iv) is convicted or found guilty of an offence against this Act or the regulations; or
    - (v) is convicted or found guilty of an offence involving dishonesty, fraud, violence or trafficking in drugs of dependence; or
    - (vi) is no longer suitable to be appointed as a network operator for any other reason; or
  - (b) in accordance with any other circumstances authorised under the network operator agreement as a ground for the appointment to be revoked.

## **92 Ministerial directions to network operators**

- (1) The Minister may at any time give a network operator a written direction relating to the performance of the network operator's functions under this Act or any other Act if the Minister is satisfied that, in the circumstances, it is appropriate to make the direction.
- (2) A direction under subsection (1) may be given to—
- (a) one or more network operators specified in the direction; or

- (b) one or more classes of network operator; or
- (c) all network operators.

**93 Head, Recycling Victoria may give directions to network operators**

- (1) The Head, Recycling Victoria may at any time give a network operator a written direction relating to the performance of the network operator's functions under this Act or any other Act if the Head, Recycling Victoria is satisfied that, in the circumstances, it is appropriate to make the direction.
- (2) A direction under subsection (1) may be given to—
  - (a) one or more network operators specified in the direction; or
  - (b) one or more classes of network operator; or
  - (c) all network operators.
- (3) A direction under subsection (1) does not have effect to the extent that it is inconsistent with a direction of the Minister under section 92.

**94 Directions to network operators must be published**

- (1) The Minister must publish directions under section 92 on a website maintained by the Department.
- (2) The Head, Recycling Victoria must publish directions under section 93 on a website maintained by the Department.
- (3) Subsections (1) and (2) do not apply in relation to a direction, or any part of a direction, if the Minister or the Head, Recycling Victoria (as appropriate) is satisfied that publication of that direction or part is not in the public interest.

## **95 Network operator must comply with direction**

- (1) If the Minister gives a network operator a direction under section 92, the network operator must not, without reasonable excuse, fail to comply with that direction.
- (2) Subsection (1) is a civil penalty provision.
- (3) If the Head, Recycling Victoria gives a network operator a direction under section 93, the network operator must not, without reasonable excuse, fail to comply with that direction.
- (4) Subsection (3) is a civil penalty provision.

## **96 Network arrangement payments**

- (1) The Scheme Coordinator must pay to a network operator an amount to refund the network operator's costs for performing functions and duties under the network operator agreement.
- (2) The amount under subsection (1) must—
  - (a) be determined by the Scheme Coordinator in consultation with the network operator to which the amount is to be paid; and
  - (b) be consistent with the Scheme Coordinator agreement and relevant network operator agreement.

## **97 Payments to collection point operators**

- (1) If a network operator enters into a collection refund arrangement with a collection point operator, the network operator must pay the collection point operator amounts to refund the collection point operator for—
  - (a) the collection of containers at a refund collection point; and

- (b) the associated handling costs for the collection of those containers, including but not limited to the sorting of the containers.
- (2) An amount under subsection (1) must—
  - (a) be determined by the network operator in consultation with the collection point operator to which the amount is to be paid; and
  - (b) be consistent with the relevant network operator agreement.

### **Division 5—First suppliers**

#### **98 Determination of first supplier**

- (1) A person, other than a prescribed person, must notify the Head, Recycling Victoria if the person supplies or intends to supply an eligible container in Victoria if required to do so by the regulations.
- (2) On receiving notice under subsection (1), the Head, Recycling Victoria must, in accordance with the process approved under subsection (3), determine whether or not the person is or will be the first supplier of the eligible container in Victoria.
- (3) The Head, Recycling Victoria must, by instrument in writing, approve the process in accordance with which the Head, Recycling Victoria determines whether a person who is supplying or intends to supply an eligible container is, or will be, the first supplier of that eligible container in Victoria.
- (4) When making a determination under subsection (2), the Head, Recycling Victoria—
  - (a) must make the determination in accordance with any prescribed process; and
  - (b) must take into account any prescribed factors; and

- (c) may request further information in accordance with the regulations.
- (5) The Head, Recycling Victoria may vary or revoke a determination under subsection (2) in accordance with the process approved under subsection (3).

## **Division 6—Approval of suitable eligible containers**

### **99 Application for approval as suitable eligible container**

- (1) The first supplier of an eligible container may apply to the Head, Recycling Victoria for the approval of that eligible container as a suitable eligible container.
- (2) An application for approval under subsection (1) must—
  - (a) be made in accordance with the process approved under subsection (4); and
  - (b) be accompanied by any prescribed fee.
- (3) On receiving an application under subsection (1), the Head, Recycling Victoria must either—
  - (a) approve the container as a suitable eligible container, subject to any conditions that are prescribed or specified in the approval; or
  - (b) refuse to approve the container as a suitable eligible container.
- (4) The Head, Recycling Victoria must, by instrument in writing, approve the process in accordance with which the Head, Recycling Victoria—
  - (a) determines whether or not an eligible container is approved as a suitable eligible container; and
  - (b) varies or revokes the approval of a suitable eligible container.

- (5) When determining whether or not to approve an eligible container as a suitable eligible container under subsection (3), the Head, Recycling Victoria—
  - (a) must take into account any prescribed factors; and
  - (b) may request further information in accordance with the regulations.
- (6) The Head, Recycling Victoria may vary or revoke an approval of a suitable eligible container under subsection (3) in accordance with the process approved under subsection (4).

## **Division 7—Disposal of suitable eligible containers**

### **100 Offence to dispose of suitable eligible containers at landfill site**

- (1) A person must not, without reasonable excuse, dispose of a suitable eligible container at a landfill site if a collection point operator has paid a refund amount in relation to that container.
- (2) Subsection (1) does not apply if the person disposes of the suitable eligible container in accordance with an exemption granted to the person under section 101 in force at the time of the disposal.
- (3) A person who contravenes subsection (1) commits an offence against that subsection and is liable to a penalty not exceeding—
  - (a) in the case of a natural person, 500 penalty units; or
  - (b) in the case of a body corporate, 2500 penalty units.
- (4) Subsection (1) is a civil penalty provision.



### **101 Landfill disposal exemptions**

- (1) A person may apply to the Minister for an exemption from section 100.
- (2) An application under subsection (1) must—
  - (a) be made in the prescribed form, if any; and
  - (b) contain any prescribed information; and
  - (c) be accompanied by any prescribed fee.
- (3) The Minister by instrument may grant an exemption from section 100 if the Minister is satisfied that—
  - (a) exceptional circumstances justifying the exemption exist; and
  - (b) granting the exemption will not pose a serious risk of failure of, or disruption to, any waste, recycling or resource recovery service; and
  - (c) it is not reasonably practicable for the applicant to comply with section 100.
- (4) The Minister may grant an exemption either on the application of a person under subsection (1) or on the Minister's own initiative.
- (5) An exemption—
  - (a) may be granted to a person or a class of persons; and
  - (b) may be subject to any terms and conditions the Minister considers appropriate; and
  - (c) remains in effect for the period specified in the exemption; and
  - (d) may be varied or revoked by the Minister at any time; and
  - (e) may be renewed by the Minister.

- (6) If the Minister grants an exemption to a class of persons, details of the exemption must be published in the Government Gazette as soon as reasonably practicable after the exemption is granted.
- (7) An exemption takes effect—
  - (a) if the exemption is published in the Government Gazette—
    - (i) on the day it is published in the Government Gazette; or
    - (ii) on any later day specified in the exemption; or
  - (b) in any other case, on the day specified in the exemption.

**102 Person must notify the Head, Recycling Victoria if unable to comply with exemption**

A person to whom an exemption under section 101 is granted must not, without reasonable excuse, fail to notify the Head, Recycling Victoria of the following as soon as reasonably practicable after becoming aware of it—

- (a) that the person is unable to comply with a condition of the exemption;
- (b) that the person is not likely to be able to comply with a condition of the exemption.

Penalty: 60 penalty units.

**Division 8—Container deposit scheme protocols**

**103 Material recovery facilities protocol**

- (1) The Head, Recycling Victoria may by instrument issue a material recovery facilities protocol setting out—

- (a) the refund amount the Scheme Coordinator must pay to a material recovery facility operator under a recovery arrangement required to be included in the Scheme Coordinator agreement under section 81(1)(c); or
  - (b) the method for determining that refund amount.
- (2) Without limiting subsection (1), a material recovery facilities protocol may specify a refund amount that the Scheme Coordinator must pay—
  - (a) to a specified material recovery facility operator; or
  - (b) to a class of material recovery facility operator; or
  - (c) in relation to a class of eligible container.
- (3) If a material recovery facilities protocol sets out the method for determining the refund amount under subsection (1)(b), that method must be in accordance with any prescribed requirements.
- (4) A material recovery facilities protocol is taken to be a condition of any recovery arrangement described in section 81(1)(c) unless a prescribed refund amount is in effect in relation to the subject matter of that protocol.
- (5) The Head, Recycling Victoria may by instrument vary or revoke a material recovery facilities protocol at any time.

#### **104 Local government refund sharing protocol**

- (1) The Head, Recycling Victoria may by instrument issue a local government refund sharing protocol setting out—

- (a) the minimum share of any refund amount to which parties to a contract between a council or an Alpine Resort Management Board and a material recovery facility operator for waste and resource recovery services relating to eligible containers services are entitled; or
  - (b) the method for determining that minimum share.
- (2) If a local government refund sharing protocol sets out the method for determining the minimum share of a refund amount under subsection (1)(b), that method must be in accordance with any prescribed requirements.
- (3) A local government refund sharing protocol is taken to be a condition of any contract between a council or an Alpine Resort Management Board and a material recovery facility operator for waste and resource recovery services relating to eligible containers unless the contract expressly provides for the subject matter of that protocol.
- (4) The Head, Recycling Victoria may by instrument vary or revoke a local government refund sharing protocol at any time.

## **Division 9—Refund markings**

### **105 Offence not to have refund markings on suitable eligible containers**

- (1) A supplier must not, without reasonable excuse, supply or offer to supply to any person a beverage in a suitable eligible container that does not bear a refund marking.
- (2) A supplier who contravenes subsection (1) commits an offence against that subsection and is liable to a penalty not exceeding—

- (a) in the case of a natural person, 500 penalty units; or
  - (b) in the case of a body corporate, 2500 penalty units.
- (3) Subsection (1) is a civil penalty provision.

## **Division 10—Enforcement and offences**

### **106 Offence to refuse delivery of or refund for container**

- (1) Subject to section 108, if a person presents a suitable eligible container to a refund collection point for the purpose of claiming a refund amount, the collection point operator of that refund collection point must not, without reasonable excuse—
- (a) fail or refuse to take delivery of the container; or
  - (b) fail to pay to the person the refund amount for the container in accordance with subsection (5).
- (2) Subsection (1) does not apply—
- (a) if the suitable eligible container for which the refund amount is claimed does not bear a refund marking; or
  - (b) if the collection point operator reasonably believes—
    - (i) that the container was not acquired in Victoria; or
    - (ii) that the container was acquired before the commencement of this Part; or
    - (iii) that a refund amount has previously been paid for the container at any refund collection point; or

- (iv) that the container has previously been processed by a material recovery facility operator for reuse or recycling and a Scheme Coordinator has made, or is required to make, a payment in respect of the container to that operator under a Scheme Coordinator agreement; or
  - (c) if the person has refused to comply with a requirement of the collection point operator under section 108(1); or
  - (d) in any prescribed circumstances.
- (3) A person who contravenes subsection (1) commits an offence against that subsection and is liable to a penalty not exceeding—
  - (a) in the case of a natural person, 250 penalty units; or
  - (b) in the case of a body corporate, 1250 penalty units.
- (4) Subsection (1) is a civil penalty provision.
- (5) A refund amount payable under this section must be paid—
  - (a) in cash or in any other prescribed manner; and
  - (b) at the time the collection point operator accepts delivery of the suitable eligible container or at any later prescribed time.
- (6) Subsection (5)(a) does not prevent a collection point arrangement making further provision for limiting the manner in which a collection point operator may pay a refund amount.

### **107 Delivery to an automated collection point**

- (1) For the purposes of section 106(1), the collection point operator of an automated collection point is taken not to accept the delivery of a suitable eligible container if the container is inserted into, and rejected by, the automated collection point.
- (2) For the purposes of section 106(5)(b), the collection point operator of an automated collection point is taken not to have paid a refund amount at the time the operator accepts delivery of a suitable eligible container if—
  - (a) the container is inserted into, and not rejected by, the automated collection point; and
  - (b) the automated collection point fails to dispense payment of the refund amount for the container.

### **108 Refund declarations and proof of identity**

- (1) A collection point operator may require any person who presents a suitable eligible container to the refund collection point for the purpose of claiming a refund amount to provide the prescribed information to the operator.
- (2) A collection point operator may refuse to pay to a person a refund amount if the operator is not satisfied as to the identity of the person.
- (3) A collection point operator must not pay a refund amount to a person unless the person provides the prescribed information and proof of the person's identity if—
  - (a) the number of suitable eligible containers for which the person is claiming a refund amount at the refund collection point exceeds the prescribed number; or

- (b) the collection point operator knows, or ought reasonably to know, that the total number of suitable eligible containers presented to the refund collection point by the person or on the person's behalf within the period prescribed for the purpose of claiming a refund exceeds the prescribed number.
- (4) This section does not apply in relation to suitable eligible containers presented to, or refund amounts paid at, an automated collection point.

**109 Offence to claim refund for containers not subject to container deposit scheme**

- (1) A person must not present a container to a refund collection point for the purpose of claiming a refund amount if the person knows, or ought reasonably to have known, that—
  - (a) the container was not acquired in Victoria; or
  - (b) the container was acquired before the commencement of this Part; or
  - (c) a refund amount has previously been paid for the container at any refund collection point in or outside Victoria; or
  - (d) the container has previously been processed at a material recovery facility for reuse or recycling and a Scheme Coordinator has made, or is required to make, a payment in respect of the container to the operator of that facility under a Scheme Coordinator agreement.
- (2) A person who contravenes subsection (1) commits an offence against that subsection and is liable to a penalty not exceeding—
  - (a) in the case of a natural person, 500 penalty units; or



- (b) in the case of a body corporate, 2500 penalty units.
- (3) A person must not issue an invoice or other statement claiming a refund amount is payable to the person for a container under a scheme arrangement if the person knows, or ought reasonably to have known—
  - (a) that the container was not acquired in Victoria; or
  - (b) that the container was acquired before the commencement of this Part; or
  - (c) that a refund amount has previously been paid for the container at any refund collection point in or outside Victoria; or
  - (d) that the container has previously been processed at a material recovery facility for reuse or recycling and a Scheme Coordinator has made, or is required to make, a payment in respect of the container to the operator of that facility under a Scheme Coordinator agreement.
- (4) A person who contravenes subsection (3) commits an offence against that subsection and is liable to a penalty not exceeding—
  - (a) in the case of a natural person, 500 penalty units; or
  - (b) in the case of a body corporate, 2500 penalty units.
- (5) Subsections (1) and (3) are civil penalty provisions.

**110 Offence to supply beverage without supply arrangement with Scheme Coordinator and container approval**

- (1) A person must not supply or offer to supply a beverage in a container to any other person unless—
  - (a) a supply arrangement is in force between the person and the Scheme Coordinator in respect of a class of containers to which the container belongs; and
  - (b) an approval as a suitable eligible container is in force in respect of that class of containers.
- (2) A person who contravenes subsection (1) commits an offence against that subsection and is liable to a penalty not exceeding—
  - (a) in the case of a natural person, 500 penalty units; or
  - (b) in the case of a body corporate, 2500 penalty units.
- (3) Subsection (1) is a civil penalty provision.
- (4) It is a defence to a charge for an offence against subsection (1) if the beverage in the container has previously been supplied in Victoria.

**111 Enforcement of Scheme Coordinator agreements and network operator agreements**

- (1) The provisions of a Scheme Coordinator agreement or network operator agreement may be enforced—
  - (a) in accordance with penalty provisions; or
  - (b) in any other manner provided for in the agreement.

(2) A Scheme Coordinator or network operator who contravenes a provision of a Scheme Coordinator agreement or network operator agreement that is enforceable by a penalty provision is liable to pay, as a debt due to the State, an amount determined in accordance with the agreement to be the penalty for the contravention.

(3) In this section—

***penalty provision*** means a provision of a Scheme Coordinator agreement or network operator agreement that provides for the payment of a specified penalty for the contravention of a specified provision of the agreement.

## **Division 11—Miscellaneous**

### **112 Guidelines**

- (1) The Head, Recycling Victoria may prepare guidelines concerning the following—
- (a) the container deposit scheme generally;
  - (b) determinations as to whether a person is the first supplier of an eligible container;
  - (c) applications for the approval of an eligible container as a suitable eligible container.
- (2) Guidelines prepared under subsection (1) may—
- (a) be limited to a specified person or class of person; and
  - (b) specify circumstances or specify matters in relation to the container deposit scheme under this Act and the regulations.
- (3) Guidelines prepared under subsection (1) must—
- (a) be published on a website maintained by the Department; and
  - (b) be consistent with the regulations.

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**113 Competition and Consumer Act and Competition Code**

For the purposes of Part IV of the Competition and Consumer Act 2010 of the Commonwealth and the Competition Code within the meaning of the **Competition Policy Reform (Victoria) Act 1995**, the following things are authorised by this Act—

- (a) any conduct engaged in for the purpose of negotiating, entering into or making a Scheme Coordinator agreement, network operator agreement or scheme arrangement;
- (b) any conduct engaged in for the purpose of promoting, performing, giving effect to or otherwise done in connection with a Scheme Coordinator agreement, network operator agreement or scheme arrangement;
- (c) the grant or refusal of an approval of a container as a suitable eligible container under section 99.

## **Part 7—Enforcement**

### **Division 1—General offences**

#### **114 Offence to fail to keep records and information**

- (1) A person who is providing a waste, recycling or resource recovery service must not, without reasonable excuse, fail to keep records and information about the services provided, so far as is reasonably practicable.
- (2) A person who contravenes subsection (1) commits an offence against that subsection and is liable to a penalty not exceeding—
  - (a) in the case of a natural person, 250 penalty units; or
  - (b) in the case of a body corporate, 1200 penalty units.
- (3) Subsection (1) is a civil penalty provision.
- (4) For the purposes of subsection (1), records and information include—
  - (a) any agreements entered into in connection with providing the service; and
  - (b) any data or reports relating to—
    - (i) any risk of failure, disruption or hinderance of the service; and
    - (ii) any measure taken to eliminate or reduce those risks.

#### **115 Offence to give false or misleading information**

- (1) If under this Act or the regulations a person is required to give any information or produce any document to the Head, Recycling Victoria or an authorised officer, the person must not, without reasonable excuse, in response to that requirement—

- (a) give information that is false or misleading in a material particular; or
  - (b) make a statement that is false or misleading in a material particular; or
  - (c) produce a document that is false or misleading in a material particular.
- (2) A person who contravenes subsection (1) commits an offence against that subsection and is liable to a penalty not exceeding—
  - (a) in the case of a natural person, 500 penalty units; or
  - (b) in the case of a body corporate, 1800 penalty units.
- (3) Subsection (1) is a civil penalty provision.

#### **116 Offence to conceal information**

- (1) If under this Act or the regulations a person is required to give any information or produce any document to the Head, Recycling Victoria or an authorised officer, the person must not, without reasonable excuse, in response to that requirement conceal any information or document from the Head, Recycling Victoria or the officer.
- (2) A person who contravenes subsection (1) commits an offence against that subsection and is liable to a penalty not exceeding—
  - (a) in the case of a natural person, 500 penalty units; or
  - (b) in the case of a body corporate, 1800 penalty units.
- (3) Subsection (1) is a civil penalty provision.

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## **Division 2—Information gathering notices**

### **117 Head, Recycling Victoria may serve information gathering notice**

- (1) For the purpose of performing a function or duty or exercising a power under this Act, the Head, Recycling Victoria may serve an information gathering notice on a person requiring the person to do all or any of the following—
  - (a) provide to the Head, Recycling Victoria any information or class of information specified in the notice before a specified time and in a specified manner;
  - (b) produce to the Head, Recycling Victoria a document or class of document specified in the notice that is in the person's possession, custody or control, before a specified time and in a specified manner;
  - (c) appear before the Head, Recycling Victoria at a time and place specified in the notice to do all or any of the following—
    - (i) give information specified in the notice, either orally or in writing;
    - (ii) produce a document or class of document specified in the notice that is in the person's possession, custody or control.
- (2) A person must not, without reasonable excuse, refuse or fail to comply with a notice given under subsection (1).

Penalty: In the case of a natural person,  
120 penalty units;  
  
In the case of a body corporate,  
240 penalty units.

### **118 Form of information gathering notice**

An information gathering notice must—

- (a) be in writing; and
- (b) specify—
  - (i) the person on whom it is served; and
  - (ii) the purpose of the notice; and
  - (iii) the period for complying with the notice, being not less than 10 business days; and
- (c) in the case of a notice served on a natural person, explain that the person may refuse or fail to give the information specified in the notice if doing so would tend to incriminate the person.

### **119 Extension of time under information gathering notice**

The Head, Recycling Victoria, by written notice given to the person on whom an information gathering notice has been served, may—

- (a) extend the period for complying with the notice, if the Head, Recycling Victoria is satisfied that the circumstances of the case justify an extension; or
- (b) revoke or amend a requirement in the notice.

### **120 Court orders**

- (1) The Head, Recycling Victoria may apply to the Magistrates' Court for an order compelling a person to comply with an information gathering notice.
- (2) The Head, Recycling Victoria may apply under subsection (1) for an order whether or not a proceeding has been commenced for an offence against this Act or the regulations.



### **Division 3—Show cause notices**

#### **121 Show cause notices**

- (1) This section applies if the Head, Recycling Victoria or an authorised officer reasonably believes that a person has not complied with a provision of this Act or the regulations.
- (2) The Head, Recycling Victoria or an authorised officer (as the case requires) may issue the person with a written notice—
  - (a) specifying the name and address of the person to whom it is issued; and
  - (b) stating the action that the Head, Recycling Victoria or the authorised officer proposes taking under this Part; and
  - (c) stating the grounds for the proposed action; and
  - (d) outlining the facts and circumstances forming the basis for the grounds; and
  - (e) inviting the person to make written representations to the Head, Recycling Victoria or the authorised officer showing cause as to why the proposed action should not be taken; and
  - (f) specifying the period for making the written representations, being not less than 10 business days or the prescribed period; and
  - (g) specifying the method and address for submitting the written representations; and
  - (h) in the case of a notice issued to a natural person, explaining that the person may decline to make representations if doing so would tend to incriminate the person.

## **122 Representations about show cause notice**

- (1) A person to whom a show cause notice is issued may make written representations to the Head, Recycling Victoria or the authorised officer (as the case requires) in the period specified in the notice showing cause as to why the action proposed in the notice should not be taken.
- (2) The Head, Recycling Victoria or the authorised officer must consider all written representations made under subsection (1).

## **123 Ending show cause process without further action**

If, after considering all written representations made under section 122(1), the Head, Recycling Victoria or the authorised officer no longer believes that the person has not complied with a provision of this Act or the regulations, the Head, Recycling Victoria or the authorised officer—

- (a) must not take the further action under this Part proposed in the show cause notice; and
- (b) as soon as practicable, must give written notice to the person that the further action will not be taken.

## **124 Further action after show cause process**

If, after considering all written representations made under section 122(1), the Head, Recycling Victoria or the authorised officer believes that the person has not complied with a provision of this Act or the regulations, the Head, Recycling Victoria or the authorised officer—

- (a) may take the further action under this Part proposed in the show cause notice; and
- (b) as soon as practicable, must give written notice to the person that the further action will be taken.

## **Division 4—Improvement notices**

### **125 Improvement notice**

- (1) The Head, Recycling Victoria or an authorised officer may issue a person with an improvement notice if the Head, Recycling Victoria or the authorised officer (as the case requires) reasonably believes that the person—
  - (a) has contravened, or is contravening, a provision of this Act, the regulations or a subordinate instrument made under this Act; or
  - (b) has not complied, or is not complying, with an agreement or authority made or given under this Act; or
  - (c) has engaged in or proposes to engage in an activity that has caused or is likely to cause—
    - (i) failure of, or disruption to, a waste, recycling or resource recovery service; or
    - (ii) harm to human health or the environment from pollution or waste.
- (2) An improvement notice may require the person to whom it is issued—
  - (a) to take any action that the Head, Recycling Victoria or the authorised officer considers necessary to remedy—
    - (i) the contravention; or
    - (ii) the matters or activities that are causing the contravention; or

- (b) to remedy the activity that has caused or is likely to cause—
  - (i) the failure of, or disruption to, waste, recycling or resource recovery services; or
  - (ii) the harm to human health or the environment from pollution or waste.
- (3) An improvement notice must—
  - (a) be in writing; and
  - (b) specify the name and address of the person to whom the notice is issued; and
  - (c) state the grounds on which the notice is issued; and
  - (d) specify the actions that the person must take to comply with the notice; and
  - (e) specify the period within which the person must comply with the notice; and
  - (f) set out the penalty for failing to comply with the notice; and
  - (g) specify how the person may seek review of the decision to issue the notice.

#### **126 Offence to fail to comply with improvement notice**

- (1) A person to whom an improvement notice is issued must not, without reasonable excuse, fail to comply with the notice.
- (2) A person who contravenes subsection (1) commits an offence against that subsection and is liable to a penalty not exceeding—
  - (a) in the case of a natural person, 120 penalty units; or
  - (b) in the case of a body corporate, 240 penalty units.

(3) Subsection (1) is a civil penalty provision.

## **Division 5—Prohibition notices**

### **127 Prohibition notice**

- (1) The Head, Recycling Victoria or an authorised officer may issue a person with a prohibition notice if the Head, Recycling Victoria or the authorised officer (as the case requires) reasonably believes—
- (a) that the person—
    - (i) has contravened, or is contravening, a provision of this Act, the regulations or a subordinate instrument made under this Act; or
    - (ii) has not complied, or is not complying, with an agreement or authority made or given under this Act; or
    - (iii) has engaged in or proposes to engage in an activity that has caused or is likely to cause—
      - (A) failure of, or disruption to, waste, recycling or resource recovery services; or
      - (B) harm to human health or the environment from pollution or waste; and
  - (b) that, having regard to the immediacy of the risk and the degree of failure, disruption or harm that could occur, prohibiting the person from engaging in an activity is necessary to prevent or minimise the failure, disruption or harm.

- (2) A prohibition notice may—
- (a) prohibit the person to whom it is issued from engaging in the activity, whether or not the person is engaging in the activity at the time at which the notice is issued; and
  - (b) require the person to do any other thing that the Head, Recycling Victoria or the authorised officer reasonably considers necessary to prevent or minimise the harm or risk of harm.
- (3) A prohibition notice must—
- (a) be in writing; and
  - (b) specify the name and address of the person to whom the notice is issued; and
  - (c) state the grounds on which the notice is issued; and
  - (d) specify the actions that the person must take to comply with the notice; and
  - (e) specify the period within which the person must comply with the notice; and
  - (f) set out the penalty for failing to comply with the notice; and
  - (g) specify how the person may seek review of the decision to issue the notice.

### **128 Offence to fail to comply with prohibition notice**

- (1) A person to whom a prohibition notice is issued must not, without reasonable excuse, fail to comply with the notice.
- (2) A person who contravenes subsection (1) commits an offence and is liable to a penalty not exceeding—
- (a) in the case of a natural person, 240 penalty units; or

(b) in the case of a body corporate, 480 penalty units.

(3) Subsection (1) is a civil penalty provision.

### **Division 6—Court orders**

#### **129 Court orders**

- (1) On an application by the Head, Recycling Victoria, a court may make an order requiring a person to take any specific action, in such terms as the court considers appropriate, if the court is satisfied that a person is not complying or has not complied with—
  - (a) a prohibition notice; or
  - (b) an improvement notice.
- (2) Without limiting subsection (1), an order under that subsection may require a person to do a specified act or thing that the court considers reasonably necessary to prevent, minimise or remedy the non-compliance.
- (3) The Head, Recycling Victoria may apply for an order under subsection (1) whether or not proceedings have been taken for—
  - (a) an offence against this Act or the regulations; or
  - (b) a contravention of a civil penalty provision under this Act.
- (4) An application for an order under subsection (1) may be made ex parte.

## **Division 7—Enforceable undertakings**

### **130 Head, Recycling Victoria may accept enforceable undertaking**

- (1) The Head, Recycling Victoria may accept an enforceable undertaking from a person in connection with—
  - (a) any matter the Head, Recycling Victoria has a function or duty in relation to under this Act or the regulations, or any other Act or regulations made under any other Act; or
  - (b) any matter the Head, Recycling Victoria has a power over under this Act or the regulations, or any other Act or regulations made under any other Act.
- (2) An enforceable undertaking accepted by the Head, Recycling Victoria under subsection (1) must—
  - (a) be in writing; and
  - (b) be signed by the Head, Recycling Victoria and the person offering the undertaking.
- (3) A person may withdraw or vary an enforceable undertaking accepted under subsection (1) with the consent of the Head, Recycling Victoria.

### **131 Enforcement**

- (1) The Head, Recycling Victoria may apply to the Magistrates' Court for an enforcement order under subsection (2) if the Head, Recycling Victoria considers that a person has breached an enforceable undertaking.
- (2) If the court is satisfied that a person has breached an enforceable undertaking, the court may make any of the following orders—
  - (a) an order directing the person to comply with the enforceable undertaking;



- (b) an order that the person take any specified action for the purpose of complying with the enforceable undertaking;
- (c) an order that the person take any specified action to reduce the risk of failure, disruption or harm to a waste, recycling or resource recovery service or to human health or the environment resulting from the breach;
- (d) an order that the person pay an amount in compensation to the Head, Recycling Victoria for any costs reasonably incurred by the Head, Recycling Victoria in taking any action to reduce the risk of failure, disruption or harm to a waste, recycling or resource recovery service or to human health or the environment resulting from the breach;
- (e) an order that the person pay an amount in compensation to any other person who has suffered loss or damage as a result of the breach;
- (f) an order revoking the enforceable undertaking;
- (g) any other order that the court considers appropriate in the circumstances.

**132 No criminal proceedings while enforceable undertaking in effect**

If the Head, Recycling Victoria accepts an enforceable undertaking under section 130, the Head, Recycling Victoria must not, while the enforceable undertaking is in effect, commence criminal proceedings for an offence that is constituted by a contravention or alleged contravention that the enforceable undertaking is given in relation to.

**133 Proceedings following withdrawal of enforceable undertaking**

If the Head, Recycling Victoria accepts an enforceable undertaking under section 130, and the person withdraws the undertaking before the Head, Recycling Victoria is satisfied that the undertaking has been complied with, the Head, Recycling Victoria may commence proceedings for an offence that is constituted by a contravention or alleged contravention that the enforceable undertaking was given in relation to.

**134 No further proceedings if enforceable undertaking is complied with**

If the Head, Recycling Victoria accepts an enforceable undertaking under section 130, and the Head, Recycling Victoria is satisfied that the undertaking has been complied with, the Head, Recycling Victoria must not commence proceedings for an offence that is constituted by a contravention or alleged contravention that the enforceable undertaking was given in relation to.

**135 Contempt of court**

- (1) If a person is found in contempt of court for failing to comply with an order under section 131(2), the Head, Recycling Victoria may—
  - (a) do any thing that is necessary or expedient to carry out any action that remains to be done under the order and that is still practicable; and
  - (b) publicise the person's failure to comply with the order.
- (2) The Head, Recycling Victoria may recover any costs reasonably incurred in taking a specified action under this section as a debt due and payable by the person against whom the order under section 131(2) was made.

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## **Division 8—Adverse publicity orders**

### **136 Adverse publicity order**

- (1) If a court finds a person guilty of an offence against this Act or the regulations, the court may make an order requiring the person—
  - (a) to take either or both of the following actions within the period specified in the order—
    - (i) to publicise, in the way specified in the order, the offence, its consequences, the penalty imposed and any other related matter specified in the order;
    - (ii) to notify a specified person, or a specified class of person, in the way specified in the order, of the offence, its consequences, the penalty imposed and any other related matter specified in the order; and
  - (b) to give the Head, Recycling Victoria, within 7 days after the period specified in the order, evidence that the person has complied with the actions required by the order.
- (2) A court may make an order under subsection (1) either on its own initiative or on the application of the prosecution.
- (3) The court must not make an order under subsection (1) unless it is satisfied that the costs of complying with the order do not exceed the maximum penalty amount that the court may impose on the person for the offence concerned.
- (4) The court may make an order under subsection (1) in addition to or instead of—
  - (a) imposing a penalty for the offence; or
  - (b) making any other order that the court may make in relation to the offence.

## **Division 9—Civil penalties**

### **137 Civil penalties**

- (1) Subject to this Division, the Head, Recycling Victoria may apply to a court for a civil penalty order in relation to a person's contravention of a civil penalty provision.
- (2) The Head, Recycling Victoria may make an application under subsection (1) in addition, or as an alternative, to a criminal proceeding or an application for another order.
- (3) The court may make a civil penalty order in relation to a person's contravention of a civil penalty provision if the person—
  - (a) contravenes the provision in the course of operating a waste, recycling or resource recovery service; or
  - (b) is an officer of a body corporate who contravenes the provision in the course of operating a waste, recycling or resource recovery service.

### **138 Civil penalty order**

- (1) On an application under section 137, the court may make one or more of the following orders—
  - (a) an order that the person pay in respect of the civil penalty provision, a pecuniary penalty of not more than the maximum penalty specified in column 2 or 3 (as the case requires) of the table in this subsection opposite the provision;
  - (b) any other order that the court considers appropriate.

Circular Economy (Waste Reduction and Recycling) Act 2021  
No. 55 of 2021

Part 7—Enforcement

<i>Item</i>	<i>Column 1</i>  <i>Civil penalty provision</i>	<i>Column 2</i>  <i>Maximum penalty for a natural person</i>	<i>Column 3</i>  <i>Maximum penalty for a body corporate</i>
1	Section 38(1) (Regular reporting entity must give certain information to the Head, Recycling Victoria)	120 penalty units	120 penalty units
2	Section 39(5) (Direction to provide additional information—regular reporting entity)	120 penalty units	120 penalty units
3	Section 42(5) (Direction to provide additional information—occasional reporting entity)	120 penalty units	120 penalty units
4	Section 69(1) (Offence to refuse or fail to comply with applicable service standards)	500 penalty units	1200 penalty units
5	Section 71(1) (Offence to refuse or fail to incorporate relevant service standards)	500 penalty units	1200 penalty units
6	Section 73(1) (Offence to fail to comply with notice)	120 penalty units	240 penalty units
7	Section 74(1) (Duty of providers of essential waste, recycling or resource recovery services to minimise risk)	500 penalty units	2500 penalty units
8	Section 86(1) (Scheme Coordinator must comply with direction by Minister)	700 penalty units	700 penalty units
9	Section 86(3) (Scheme Coordinator must comply with direction by the Head, Recycling Victoria)	700 penalty units	700 penalty units
10	Section 95(1) (Network operator must comply with direction by Minister)	700 penalty units	700 penalty units

Authorised by the Chief Parliamentary Counsel

Circular Economy (Waste Reduction and Recycling) Act 2021  
No. 55 of 2021

Part 7—Enforcement

<i>Item</i>	<i>Column 1</i>  <i>Civil penalty provision</i>	<i>Column 2</i>  <i>Maximum penalty for a natural person</i>	<i>Column 3</i>  <i>Maximum penalty for a body corporate</i>
11	Section 95(3) (Network operator must comply with direction by the Head, Recycling Victoria)	700 penalty units	700 penalty units
12	Section 100(1) (Offence to dispose of suitable eligible container at a landfill site)	500 penalty units	2500 penalty units
13	Section 105(1) (Offence to supply suitable eligible container that does not bear a refund marking)	500 penalty units	2500 penalty units
14	Section 106(1) (Offence to refuse delivery of suitable eligible container or fail to pay refund amount)	250 penalty units	1250 penalty units
15	Section 109(1) (Offence to present container to refund collection point if container is not subject to container deposit scheme)	500 penalty units	2500 penalty units
16	Section 109(3) (Offence to issue invoice for containers not subject to container deposit scheme)	500 penalty units	2500 penalty units
17	Section 110(1) (Offence to supply container without supply arrangement or approval as suitable eligible container)	500 penalty units	2500 penalty units
18	Section 114(1) (Offence to fail to keep records and information)	250 penalty units	1200 penalty units
19	Section 115(1) (Offence to give false or misleading information)	500 penalty units	1800 penalty units
20	Section 116(1) (Offence to conceal information)	500 penalty units	1800 penalty units

Authorised by the Chief Parliamentary Counsel

Circular Economy (Waste Reduction and Recycling) Act 2021  
No. 55 of 2021

Part 7—Enforcement

<i>Item</i>	<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
	<i>Civil penalty provision</i>	<i>Maximum penalty for a natural person</i>	<i>Maximum penalty for a body corporate</i>
21	Section 126(1) (Offence to fail to comply with improvement notice)	120 penalty units	240 penalty units
22	Section 128(1) (Offence to fail to comply with prohibition notice)	240 penalty units	480 penalty units

- (2) In determining the amount of a penalty under this Division, the court may have regard to any relevant matter including, but not limited to, the following—
- (a) the nature and extent of the conduct constituting the contravention;
  - (b) the nature and extent of any loss or damage suffered as a result of the conduct including the cost of remedying the harm;
  - (c) the circumstances in which the contravention took place;
  - (d) whether the person who contravenes a civil penalty provision had previously contravened a civil penalty provision;
  - (e) any enforceable undertaking that is accepted by the Head, Recycling Victoria in relation to the conduct.
- (3) Nothing in this section is to be construed as limiting any other power of the court.
- (4) Proceedings under this section are civil proceedings for all purposes.

**139 Proceeding for civil penalty order after criminal proceeding**

A court must not make a civil penalty order against a person if the person has contravened a civil penalty provision and has been found guilty of an offence constituted by conduct that is the same, or substantially the same, as the conduct alleged to constitute the contravention.

**140 Criminal proceeding during proceeding for civil penalty order**

- (1) A proceeding for a civil penalty order is stayed if—
  - (a) a criminal proceeding is or has commenced against the person for an offence; and
  - (b) the offence is constituted by conduct that is the same, or substantially the same, as the conduct alleged to constitute the contravention.
- (2) If the person—
  - (a) is not found guilty of the offence—the proceeding for the civil penalty order may be resumed; or
  - (b) is found guilty of the offence—the proceeding for the civil penalty order is dismissed.

**141 Criminal proceeding after proceeding for civil penalty order**

A criminal proceeding may be commenced against a person for conduct that is the same, or substantially the same, as conduct constituting the contravention of a civil penalty provision regardless of whether a civil penalty order has been made against the person.



**142 Evidence admitted during proceeding for civil penalty order**

- (1) Evidence of information given or of documents produced by an individual is not admissible in a criminal proceeding against the person if—
  - (a) the person previously gave the evidence or produced the documents in a proceeding for a civil penalty order against the person (whether or not the order was made); and
  - (b) the conduct alleged to constitute the offence is substantially the same as the conduct that was claimed to constitute the contravention.
- (2) Subsection (1) does not apply to a criminal proceeding in respect of the falsity of the evidence given by the person in the proceeding for the civil penalty order.

**143 Conduct contravening more than one civil penalty provision**

- (1) If a person contravenes 2 or more civil penalty provisions, a proceeding for a civil penalty order may be commenced against the person in relation to the contravention of any one or more of those provisions.
- (2) Despite subsection (1), a person is not liable to pay more than one civil penalty in relation to the same conduct.

**144 Multiple contraventions of civil penalty provisions**

- (1) Subject to subsection (2), a court may order that a person pay a single civil penalty for multiple contraventions of a civil penalty provision if—
  - (a) the multiple contraventions are based on the same facts; or

(b) the multiple contraventions form, or are part of, a series of contraventions of the same or a similar nature.

(2) A single civil penalty ordered under subsection (1) must not exceed the sum of the maximum penalties that the court may have ordered if separate civil penalties were ordered for each of the contraventions.

**145 Multiple proceedings for civil penalty order to be heard together**

A court may direct that 2 or more proceedings for a civil penalty order are to be heard together.

**146 Jurisdictional limit of Magistrates' Court does not apply to civil penalty order**

The jurisdictional limit for a civil proceeding specified under section 100(1) of the **Magistrates' Court Act 1989** does not apply to a proceeding for a civil penalty order under this Part.

**147 Recovery of pecuniary penalty**

If a court orders a person to pay a civil penalty for the contravention of a civil penalty provision, the order is enforceable as a judgment debt.

**Division 10—Infringement notices**

**148 Power to issue infringement notice**

- (1) An authorised officer may serve an infringement notice on any person whom the officer has reason to believe has committed an offence against this Act or the regulations that is prescribed for the purposes of this subsection.
- (2) An offence referred to in subsection (1) for which an infringement notice may be served is an infringement offence within the meaning of the **Infringements Act 2006**.

- (3) The infringement penalty for an offence prescribed for the purposes of subsection (1) is the prescribed infringement penalty.
- (4) In this section, *authorised officer* includes the following—
  - (a) the Head, Recycling Victoria;
  - (b) a person authorised in writing by the Head, Recycling Victoria;
  - (c) a prescribed person or class of persons.

### **Division 11—Authorised officers**

#### **149 Appointment by Head, Recycling Victoria of authorised officers**

- (1) The Head, Recycling Victoria may appoint as an authorised officer, a person who is an employee, or a member of a class of employee, of—
  - (a) the Department; or
  - (b) the Environment Protection Authority; or
  - (c) a public sector body.
- (2) An appointment under subsection (1)—
  - (a) must be in writing; and
  - (b) is subject to any condition or limitation specified in the appointment; and
  - (c) is subject to any prescribed condition or limitation; and
  - (d) may be varied, suspended or revoked by the Head, Recycling Victoria at any time.

#### **150 Identification of authorised officers**

- (1) The Head, Recycling Victoria must issue to each authorised officer an identification card that complies with subsection (2).

- (2) An identification card must—
  - (a) contain a photograph of the person to whom it is issued; and
  - (b) state—
    - (i) the full name of the person to whom it is issued; and
    - (ii) that the person is an authorised officer for the purposes of this Act; and
  - (c) specify the date on which the appointment of the authorised officer ends.
- (3) An authorised officer must produce their identification card for inspection if asked to do so when performing a function or duty or exercising a power under this Act.
- (4) If a person to whom an identification card was issued under subsection (1) ceases to be an authorised officer, the person must return the card to the Head, Recycling Victoria as soon as practicable.

#### **151 Directions in respect of authorised officers**

- (1) The Head, Recycling Victoria may give directions in respect of the qualifications or training a person must have before the person may be appointed as an authorised officer including training relating to the conduct of an authorised officer.
- (2) A person or body who is given a direction under subsection (1) must comply with that direction.

#### **152 Authorised officer may request name and address**

- (1) An authorised officer may request a person to state their name and address if the officer reasonably believes that the person—

- (a) has committed or is committing, or is about to commit, an offence against this Act or the regulations; or
  - (b) may be able to assist in the investigation of an indictable offence against this Act that has been committed, or is suspected of having been committed, by another person.
- (2) The authorised officer must—
  - (a) inform the person of the reasons for the officer's belief; and
  - (b) in the case of a request under subsection (1)(a), give the person sufficient information to enable them to understand the nature of the offence the officer believes the person has committed or is committing or is about to commit.
- (3) A person who is requested under subsection (1) to state their name and address must not—
  - (a) refuse or fail to comply with the request; or
  - (b) state a name or address that is false in a material particular; or
  - (c) state an address other than the person's full and correct address.

Penalty: 20 penalty units.

### **153 Authorised officer may give directions**

- (1) An authorised officer may give a direction to a person to do, or cause to be done, any action or thing that the officer reasonably believes is necessary to address the existence or likely existence of an immediate risk of material harm to—

- (a) a waste, recycling or resource recovery service; or
  - (b) human health or the environment.
- (2) A person must not, without reasonable excuse, refuse or fail to comply with a direction given to the person under subsection (1).
- Penalty: In the case of a natural person,  
60 penalty units;
- In the case of a body corporate,  
120 penalty units.
- (3) A direction under subsection (1) may be given orally or in writing.

**154 Other authorised officers may assist**

The following persons may assist an authorised officer at that officer's request in the execution of the officer's functions under this Act—

- (a) a person appointed as an authorised officer under Part 9 of the **Conservation, Forests and Lands Act 1987**;
- (b) an auditor appointed under section 172.

**155 Offence to obstruct authorised officer**

If an authorised officer is performing a function or duty or exercising a power under this Act, a person must not do any of the following—

- (a) hinder, delay or obstruct the officer or any person assisting the officer;
- (b) conceal from the officer the location or existence of any person or thing;
- (c) use abusive, threatening or insulting language to the officer or any person assisting the officer.

Penalty: In the case of a natural person,  
60 penalty units;  
In the case of a body corporate,  
120 penalty units.

#### **156 Offence to assault or threaten authorised officer**

If an authorised officer is performing a function or duty or exercising a power under this Act, a person must not do any of the following—

- (a) assault the officer or any person assisting the officer;
- (b) directly or indirectly intimidate or threaten the officer or any person assisting the officer;
- (c) attempt to assault, intimidate or threaten the officer or any person assisting the officer.

Penalty: In the case of a natural person, 2 years imprisonment, or 240 penalty units, or both;  
In the case of a body corporate,  
1200 penalty units.

#### **157 Offence to impersonate**

A person must not falsely hold themselves out to be all or any of the following—

- (a) an authorised officer;
- (b) an auditor;
- (c) a person employed by the Head, Recycling Victoria who is performing a function or exercising a power under this Act.

Penalty: In case of natural person, 60 penalty units;  
In the case of a body corporate,  
300 penalty units.

## **Division 12—Powers of entry and inspection**

### **158 Authorised officer may enter and inspect any place or premises**

- (1) For the purposes of performing a function or duty or exercising a power under this Act, an authorised officer may enter and inspect a place or premises.
- (2) An authorised officer must not enter and inspect under subsection (1) any place or premises, or any part of a place or premises, used for residential purposes unless the authorised officer first obtains the written consent of the occupier.

#### **Note**

See also Division 13 (Search warrants).

- (3) Without limiting subsection (1), an authorised officer may enter and inspect a place or premises for the purpose of—
  - (a) determining if a person has contravened this Act or the regulations; or
  - (b) monitoring compliance with this Act or the regulations; or
  - (c) determining if there is a risk of—
    - (i) failure of, or disruption to, a waste, recycling or resource recovery service; or
    - (ii) harm to human health or the environment from a waste, recycling or resource recovery service; or
  - (d) inspecting or testing equipment or a vehicle.



- (4) An authorised officer may exercise a power to enter and inspect a place or premises—
  - (a) at any reasonable time; and
  - (b) at any other time if the authorised officer reasonably believes that there is an immediate risk of—
    - (i) failure of, or disruption to, a waste, recycling or resource recovery service; or
    - (ii) harm to human health or the environment from pollution or waste.

#### **159 Announcement on entry**

- (1) Immediately on entering a place or premises under this Division, an authorised officer must take all reasonable steps—
  - (a) to notify the occupier or the apparent occupier for the time being of the place or premises of the entry; and
  - (b) to produce their identification card for inspection by that person.
- (2) An authorised officer is not required to comply with subsection (1) if—
  - (a) to do so would unreasonably interfere with performing a function or duty or exercising a power under this Act or would cause unreasonable delay; or
  - (b) the person has been notified in advance of the entry.

#### **160 Persons assisting authorised officer**

- (1) An authorised officer may request the assistance of any person for the purposes of entry and inspection of any place or premises and the taking of any other action under this Division.

- (2) The occupier or person in management or control of a place or premises must allow the person assisting the authorised officer under this Division access to the place or premises.

Penalty: 60 penalty units.

- (3) If an authorised officer uses the assistance of an interpreter—
- (a) an enquiry or request made by the interpreter on behalf of the authorised officer is taken to be made by the authorised officer; and
  - (b) an answer given to the interpreter is taken to be given to the authorised officer.

#### **161 Powers on entry**

- (1) An authorised officer who enters a place or premises under this Division may do or cause to be done anything that the authorised officer reasonably believes is necessary for the purpose of performing a function or duty or exercising a power under this Act.
- (2) Without limiting subsection (1), an authorised officer may do any of the following—
- (a) inspect, examine and make enquiries about a thing at the place or premises;
  - (b) take and remove samples of a substance or thing at the place or premises;
  - (c) carry out testing and examination;
  - (d) take photographic, audio, video or any other type of recording;
  - (e) examine, copy or take extracts from a document;
  - (f) inspect, examine or test any plant, equipment, vehicle or other thing;

- (g) bring equipment or material to the place or premises;
  - (h) seize and remove a thing connected with a suspected contravention of this Act or the regulations;
  - (i) request the assistance of a person at the place or premises;
  - (j) take any other action.
- (3) For the purposes of subsection (2)(c) and (f), the authorised officer may carry out or cause to be carried out any testing or examination of a thing, including testing that results in the destruction of the thing.
- (4) An authorised officer must take reasonable steps to—
- (a) minimise disruption caused by the entry and inspection of the place or premises and the taking of any action under this section; and
  - (b) ensure that the authorised officer does not remain at the place or premises any longer than is reasonably necessary.

**162 Authorised officer may require production of documents**

- (1) An authorised officer who enters a place or premises under this Division may do all or any of the following for the purpose of performing a function or duty or exercising a power under this Act—
- (a) request that a person produce a document, or part of a document, located at the place or premises, that is in the person's possession or control;
  - (b) examine the document or part of the document;

- (c) retain the document or part of the document for as long as is reasonably necessary to fulfil the purpose that it is required for;
  - (d) take extracts from and make copies of the document or part of the document.
- (2) A person must not, without reasonable excuse, refuse or fail to comply with a request made under subsection (1)(a).

Penalty: In the case of a natural person,  
60 penalty units;

In the case of a body corporate,  
240 penalty units.

**163 Authorised officer may require information or answers**

- (1) For the purpose of performing a function or duty or exercising a power under this Act, an authorised officer who enters a place or premises under this Division may request that a person at the place or premises give any information or answer any question.
- (2) An authorised officer must only require information or answers from a person if the officer reasonably believes that the person has knowledge of a matter or thing relevant to another person's compliance with this Act or the regulations.
- (3) A person must not, without reasonable excuse, refuse or fail to comply with a request made under subsection (1).

Penalty: In the case of a natural person,  
60 penalty units;

In the case of a body corporate,  
240 penalty units.

**164 Report to be given about entry and inspection of place or premises**

- (1) An authorised officer who enters and inspects a place or premises under this Division must give a report concerning the entry and inspection to—
  - (a) the occupier or apparent occupier for the time being of the place or premises; and
  - (b) the Head, Recycling Victoria.
- (2) The report—
  - (a) must be given when, or as soon as practicable after, the authorised officer leaves the place or premises; and
  - (b) must be in writing and include the following—
    - (i) the time of entry and departure;
    - (ii) the purpose of the entry and inspection;
    - (iii) a description of any actions taken at the place or premises;
    - (iv) a summary of the authorised officer's observations at the place or premises;
    - (v) the procedure for contacting the authorised officer for further details of the entry and inspection.

**Division 13—Search warrants**

**165 Authorised officer may apply for search warrant**

- (1) An authorised officer may apply to a magistrate for the issue of a search warrant in relation to a particular place or particular premises.
- (2) An authorised officer may only apply for a search warrant under subsection (1) if the officer reasonably believes that—

- (a) there is, or may be within the next 72 hours, a particular thing (including a document) at the place or premises; and
- (b) the particular thing may afford evidence of the commission of an offence against this Act or the regulations.

#### **166 Issue of warrant**

- (1) A magistrate, on an application under section 165, may issue a search warrant in accordance with the **Magistrates' Court Act 1989** if the magistrate is satisfied, by evidence on oath or affidavit of the authorised officer, that there are reasonable grounds for suspecting that—
  - (a) there is, or may be within the next 72 hours, a particular thing (including a document) at a place or premises; and
  - (b) the particular thing may afford evidence of the commission of an offence against this Act or the regulations.
- (2) A search warrant under this section must state—
  - (a) the name of the authorised officer to whom the warrant is issued; and
  - (b) particulars of the alleged offence in respect of which the warrant has been issued; and
  - (c) the place or premises to which the warrant relates; and
  - (d) any conditions to which the warrant is subject; and
  - (e) a description of the thing that the search is made for; and
  - (f) whether entry is authorised to be made at any time or during specified hours; and

- (g) that the warrant authorises entry on only one occasion; and
  - (h) a day, not later than 7 days after the day on which the warrant is issued, that the warrant ceases to have effect.
- (3) The rules that apply to search warrants under the **Magistrates' Court Act 1989** extend and apply to a search warrant issued under this section.

**167 What may a search warrant authorise?**

A search warrant issued under section 166 may authorise an authorised officer and any assistants the authorised officer considers necessary—

- (a) to enter the place or premises named or described in the warrant; and
- (b) to search for the thing named or described in the warrant.

**168 Announcement before entry with warrant**

- (1) Before executing a search warrant issued under section 166, the authorised officer named in the warrant—
- (a) must announce the fact of being authorised by the warrant to enter the place or premises; and
  - (b) must give any person on the place or premises an opportunity to allow entry to it.
- (2) The authorised officer need not comply with subsection (1) if the officer reasonably believes that immediate entry to the place or premises is required to ensure—
- (a) the safety of any person; or
  - (b) that the effective execution of the warrant is not frustrated.

### **169 Copy of warrant to be given to occupier**

If an occupier or apparent occupier is present at a place or premises in respect of which a search warrant issued under section 166 is being executed, the authorised officer must—

- (a) produce their identification card for inspection; and
- (b) give a copy of the warrant to the occupier or apparent occupier.

## **Division 14—Return and forfeiture of seized things**

### **170 Return of seized things**

- (1) As soon as possible after an authorised officer seizes or obtains a thing (including a document) under this Part, the authorised officer must return the thing to the owner unless—
  - (a) the Head, Recycling Victoria considers it necessary to retain the thing because it may afford evidence in a proceeding that has been, or may be, commenced for an offence against this Act or the regulations; or
  - (b) the thing is forfeited to the Head, Recycling Victoria under section 171; or
  - (c) the Head, Recycling Victoria is otherwise authorised, whether by an Act or other law or by a court order, to retain, destroy or dispose of the thing.
- (2) The Head, Recycling Victoria may return the thing unconditionally or on such terms and conditions as the Head, Recycling Victoria considers appropriate to minimise the risks of harm to human health or the environment from pollution or waste.



- (3) If the Head, Recycling Victoria imposes terms and conditions on the return of a thing under subsection (2), the owner of the thing must comply with those terms and conditions.

Penalty: In the case of a natural person,  
60 penalty units;

In the case of a body corporate,  
300 penalty units.

#### **171 Forfeiture of seized things**

- (1) Any thing (including a document) that an authorised officer has seized under this Part is forfeited to the Head, Recycling Victoria if the Head, Recycling Victoria—
- (a) cannot find the owner despite making reasonable enquiries; or
  - (b) cannot return it to the owner despite making reasonable efforts; or
  - (c) considers it necessary to retain the thing to prevent the commission of an offence against this Act or the regulations.
- (2) If a thing is forfeited under subsection (1)(c), the Head, Recycling Victoria, unless the Head, Recycling Victoria cannot find the owner despite making reasonable enquiries, must—
- (a) give the owner written notice of the forfeiture; and
  - (b) set out how the owner may apply to VCAT for review of the decision to forfeit the thing.

## **Division 15—Audits**

### **172 Appointment of auditors**

- (1) The Head, Recycling Victoria may appoint as an auditor, a person who is—
  - (a) an employee, or a member of a class of employee, of the Department; or
  - (b) a prescribed person or a person of a prescribed class of person.
- (2) An appointment under subsection (1)—
  - (a) must be in writing; and
  - (b) must not exceed 3 years; and
  - (c) is subject to any condition or limitation specified in the appointment; and
  - (d) is subject to any prescribed condition or limitation; and
  - (e) may be varied, suspended or revoked by the Head, Recycling Victoria in accordance with the regulations.

### **173 Functions of an auditor**

- (1) An auditor has the following functions—
  - (a) to perform any function conferred on them by this Act or any other Act or the regulations;
  - (b) to perform any prescribed function.
- (2) In performing a function referred to in subsection (1), an auditor must do so having regard to—
  - (a) any guidelines issued by the Minister under section 181; and
  - (b) any guidelines issued by the Head, Recycling Victoria under section 112; and
  - (c) any prescribed matter.

## **Division 16—Miscellaneous**

### **174 Persons who may take proceedings**

Proceedings for an offence against this Act or the regulations may only be taken by—

- (a) an authorised officer; or
- (b) an employee of the Department appointed by the Head, Recycling Victoria for the purposes of this section; or
- (c) a prescribed person or a person of a prescribed class of person.

### **175 Written statement of authorised officers to be evidence**

A written statement purporting to be signed by an authorised officer is prima facie evidence of the matters stated in it if it is to the effect—

- (a) that a map, photograph or other document is accurate; or
- (b) that a contravention of this Act or the regulations occurred at a particular location; or
- (c) that a document that purports to set out the cost of work carried out by the Head, Recycling Victoria is accurate.

### **176 Conduct of employee, agent or officer taken to be conduct of body corporate**

For the purposes of this Act, any conduct engaged in or on behalf of a body corporate by an employee, agent or officer of the body corporate, is taken to be conduct engaged in by the body corporate if the employee, agent or officer is acting within the actual scope of their employment or authority.

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**177 Criminal liability of officers of bodies corporate—  
accessorial liability**

- (1) If a body corporate or council commits an offence against a provision specified in subsection (2), an officer of the body corporate or council also commits an offence against the provision if the officer—
- (a) authorised or permitted the commission of the offence by the body corporate or council; or
  - (b) was knowingly concerned in any way (whether by act or omission) in the commission of the offence by the body corporate or council.
- (2) For the purposes of subsection (1), the following provisions are specified—
- (a) section 74 (Duty of providers of essential waste, recycling or resource recovery services to minimise risk of failure, disruption or hinderance of service);
  - (b) section 71 (Offence of failing to incorporate service standards);
  - (c) section 100(1) (Offence to dispose of suitable eligible container at a landfill site);
  - (d) section 105(1) (Offence to supply suitable eligible container that does not bear a refund marking);
  - (e) section 106(1) (Offence to refuse delivery of suitable eligible container or fail to pay refund amount);
  - (f) section 109(1) (Offence to present container to refund collection point if container is not subject to the container deposit scheme);

- (g) section 110(1) (Offence to supply container without supply arrangement or approval as suitable eligible container);
  - (h) section 115 (General offence to provide false or misleading information);
  - (i) section 116 (General offence to conceal information);
  - (j) section 117(2) (Offence of failing to provide information under an information gathering notice);
  - (k) section 126 (Offence to fail to comply with an improvement notice);
  - (l) section 128 (Offence to fail to comply with prohibition notice).
- (3) Without limiting any other defence available to the officer, an officer of a body corporate or council may rely on a defence that would be available to the body corporate or council if it were charged with the offence with which the officer is charged and, in doing so, the officer bears the same burden of proof that the body corporate or council would bear.
- (4) An officer of a body corporate or council may commit an offence against a provision specified in subsection (2) whether or not the body corporate or council has been prosecuted for, or found guilty of, an offence against that provision.
- (5) This section does not affect the operation of Subdivision (1) of Division 1 of Part II of the **Crimes Act 1958**.

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## Part 8—General

### Division 1—VCAT review

#### 178 Which decisions are reviewable

- (1) The following table sets out—
- (a) decisions made under this Act that are reviewable in accordance with this Division (*reviewable decisions*); and
  - (b) who is eligible to apply for review of a reviewable decision (the *eligible person* in relation to the reviewable decision).

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Item</i>	<i>Reviewable decision</i>	<i>Eligible person in relation to the reviewable decision</i>
1	Section 23 (power of the Head, Recycling Victoria to exempt a person or class of person from regulations or service standard)	A person refused an exemption. A person given an exemption that is different to the one applied for.
2	Section 25 (power of the Head, Recycling Victoria to amend or revoke an exemption given under section 23)	A person in respect of whom an exemption under section 23 applies.
3	Section 45 (power of the Head, Recycling Victoria to exempt entity from reporting requirements)	A person refused an exemption. A person granted an exemption that is different to the one applied for.
4	Section 47 (power of the Head, Recycling Victoria to amend or revoke exemption from reporting requirements on initiative of the Head, Recycling Victoria)	The person who held or holds the exemption.

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<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Item</i>	<i>Reviewable decision</i>	<i>Eligible person in relation to the reviewable decision</i>
5	Section 48(3) (decision of the Head, Recycling Victoria to amend or refuse to amend exemption from reporting requirements on application)	The applicant for an amendment of an exemption
6	Section 99(3) (power of the Head, Recycling Victoria to refuse to approve a container as a suitable eligible container)	Applicant for approval of a container as a suitable eligible container
7	Section 99(6) (power of the Head, Recycling Victoria to vary or revoke an approval of a suitable eligible container)	Person adversely affected by the decision
8	Section 117 (power of the Head, Recycling Victoria to serve an information gathering notice)	A person served with an information gathering notice
9	Section 125 (power of the Head, Recycling Victoria to issue an improvement notice)	A person issued with an improvement notice
10	Section 127 (power of the Head, Recycling Victoria to issue a prohibition notice)	A person issued with a prohibition notice

(2) As soon as possible after making a reviewable decision, the decision maker must advise, in writing, the applicant and any other person who has made a written comment on the application of—

(a) the outcome of the application; and

- (b) the right of an eligible person under section 45(1) of the **Victorian Civil and Administrative Tribunal Act 1998** to request the decision maker to give a written statement of reasons for the decision; and
  - (c) the right of an eligible person to apply to VCAT for review of the decision.
- (3) A failure of a decision maker to comply with subsection (2) does not affect the validity of the decision.

### **179 Reviews by VCAT**

- (1) A person may apply to VCAT for review of a reviewable decision if the person is an eligible person in relation to the reviewable decision.
- (2) The application must be made within 28 days after the later of—
  - (a) the day on which the decision is made; or
  - (b) if, under section 45 of the **Victorian Civil and Administrative Tribunal Act 1998**, the person requests a statement of reasons for the decision, the day on which—
    - (i) the statement of reasons is given to the person; or
    - (ii) the person is informed under section 46(5) of that Act that a statement of reasons will not be given.

## **Division 2—Supplementary provisions**

### **180 Power of Minister to delegate**

- (1) The Minister by instrument may delegate to any person or class of persons, employed under Part 3 of the **Public Administration Act 2004** in the administration of this Act, any powers or



functions of the Minister under this Act or the regulations.

**Note**

See also section 42A of the **Interpretation of Legislation Act 1984**.

- (2) An instrument of delegation under subsection (1)—
  - (a) is subject to any terms and conditions stated in the instrument; and
  - (b) may be revoked by the Minister at any time.

**181 Minister may issue guidelines for administration, compliance and enforcement**

- (1) The Minister, by notice published in the Government Gazette—
  - (a) may issue guidelines relating to—
    - (i) the administration of this Act; and
    - (ii) compliance with, and the enforcement of, this Act; and
  - (b) may amend or revoke the guidelines.
- (2) The Minister must publish on the Department's website a notice of—
  - (a) the issue of guidelines under this section; and
  - (b) the amendment or revocation of guidelines under this section.
- (3) The issue, amendment or revocation of guidelines under this section takes effect—
  - (a) on the day on which the notice under subsection (2) is published; or
  - (b) on a later day specified in guidelines.

(4) The Minister must ensure that a copy of any guidelines issued under subsection (1) is available during business hours for inspection on request without charge—

(a) at the Department's office; or

(b) by electronic means.

### **182 Review of operation of Act**

(1) The Minister must cause a review to be conducted of the first 5 years of operation of this Act.

(2) The person who undertakes the review must give the Minister a written report of the review.

(3) The Minister must cause a copy of the report of the review to be laid before each House of the Parliament within 7 sitting days of that House after the review is completed.

### **183 Regulations**

(1) The Governor in Council may make regulations for or with respect to any matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.

(2) Without limiting any power of the Governor in Council to make regulations under this Act, the Governor in Council may make regulations—

(a) for or with respect to any of the matters set out in Schedule 1;

(b) prescribing forms;

(c) prescribing fees;

(d) regulating or prohibiting the waiver or refund of fees;

(e) prescribing offences;

- (f) prescribing a penalty for any contravention of the regulations not exceeding—
    - (i) 100 penalty units for a natural person;
    - (ii) 500 penalty units for a body corporate, or 5 times the penalty prescribed for such a contravention by a natural person, whichever is lesser;
  - (g) prescribing offences under this Act or the regulations to be infringement offences;
  - (h) in relation to each infringement offence, prescribing the penalty in respect of the offence.
- (3) Regulations made under this Act—
- (a) may be of general or limited application;
  - (b) may differ according to differences in time, place or circumstances;
  - (c) may leave any matter or thing to be from time to time approved, determined, applied, dispensed with or regulated by a specified person or class of person;
  - (d) may provide in a specified case or class of case for the exemption of persons or things or a class of person or things from any of the provisions of the regulations, whether unconditionally or on specified conditions, and either wholly or to the extent specified;
  - (e) may confer powers or impose duties in connection with the regulations on any specified person or specified class of person;
  - (f) may apply, adopt or incorporate, with or without modification, any matter contained in any document, code, standard, rule, specification or method formulated, issued,

prescribed or published by any authority or body whether—

- (i) wholly or partially or as amended by the regulations;
- (ii) as formulated, issued, prescribed (whether under this Act or any other Act) or published at the time the regulations are made or at any time before then;
- (iii) as formulated, issued, prescribed (whether under this Act or any other Act) or published from time to time.

## Part 9—Savings and Transitional Provisions

### 184 Definitions

In this Part—

***board*** means a board of directors of a WRR Group under section 389 of the **Environment Protection Act 2017** as in force immediately before the commencement day;

***commencement day*** means the day on which section 193 comes into operation;

***WRR Group*** means a Waste and Resource Recovery Group continued under section 382 of the **Environment Protection Act 2017** as in force immediately before the commencement day;

***liabilities*** means all liabilities, duties and obligations, whether actual, contingent or prospective;

***property*** means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description;

***rights*** means all rights, powers, privileges and immunities, whether actual, contingent or prospective.

### 185 Application of Interpretation of Legislation Act 1984

Except where the contrary intention appears, this Part, and any regulations made under this Part, do not affect or take away from the **Interpretation of Legislation Act 1984**.

## **186 Abolition of WRR Groups**

- (1) On the commencement day—
  - (a) each WRR Group is abolished; and
  - (b) each board is abolished; and
  - (c) a person holding office as a member of a board ceases to hold office.
- (2) On the commencement day—
  - (a) the Crown is the successor in law of a WRR Group; and
  - (b) all rights, property and assets that immediately before that day were vested in a WRR Group, by force of this section, vest in the Crown; and
  - (c) all debts, liabilities and obligations of a WRR Group become, by force of this section, debts, liabilities and obligations of the Crown; and
  - (d) the Crown, by force of this section, is substituted as a party to any proceeding pending in any court or tribunal to which a WRR Group was a party immediately before the commencement day and the Crown has the same rights in the proceeding as a WRR Group; and
  - (e) the Crown, by force of this section, is substituted as a party to any arrangement or contract entered into by or on behalf of a WRR Group as a party and in force immediately before that day.

**187 Transfer of executive officers and Chief Executive Officer of WRR Group**

- (1) A person who immediately before the commencement day was an executive officer appointed by a WRR Group under section 399(1) of the **Environment Protection Act 2017**—
- (a) is taken on that day to be employed as an executive under Part 3 of the **Public Administration Act 2004** subject to the terms and conditions determined by the Secretary in accordance with subsection (2); and
  - (b) is taken on that day to have accrued an entitlement to benefits under their employment under Part 3 of the **Public Administration Act 2004** equivalent to the entitlement the person had accrued as an executive officer of a WRR Group before that day.
- (2) The terms and conditions determined by the Secretary for the purposes of subsection (1)(a) must be no less favourable overall than the terms and conditions applying to the person's appointment as an executive officer of a WRR Group immediately before the commencement day.
- (3) The person who immediately before the commencement day was the Chief Executive Officer appointed by the Metropolitan Waste and Resource Recovery Group under section 399(2) of the **Environment Protection Act 2017**—
- (a) is taken on that day to be employed as an executive under Part 3 of the **Public Administration Act 2004** subject to the terms and conditions determined by the

- Secretary in accordance with subsection (4);  
and
- (b) is taken on that day to have accrued an entitlement to benefits under their employment under Part 3 of the **Public Administration Act 2004** equivalent to the entitlement the person had accrued as the Chief Executive Officer of the Metropolitan Waste and Resource Recovery Group before that day.
- (4) The terms and conditions determined by the Secretary for the purposes of subsection (3)(a) must be no less favourable overall than the terms and conditions applying to the person's appointment as the Chief Executive Officer of the Metropolitan Waste and Recovery Group immediately before the commencement day.

#### **188 Transfer of WRR Group staff**

- (1) A person who immediately before the commencement day was employed under section 400 of the **Environment Protection Act 2017**—
- (a) is taken on that day to be a person employed under Part 3 of the **Public Administration Act 2004** (other than an executive within the meaning of that Act) subject to the terms and conditions determined by the Secretary in accordance with subsection (2); and
- (b) is taken on that day to have accrued an entitlement under their employment under Part 3 of the **Public Administration Act 2004** to benefits equivalent to the entitlement the person had accrued as an employee of a WRR Group before that day.



- (2) The terms and conditions determined by the Secretary for the purposes of subsection (1)(a) must be no less favourable overall than the terms and conditions applying to the person's employment under section 400 of the **Environment Protection Act 2017** immediately before the commencement day.

### **189 Superseded references**

A reference to a WRR Group in any Act or any instrument (including a subordinate instrument) made under or for the purposes of any Act or any other document (by whatever name) prepared or made under or for the purposes of any Act, must be construed as a reference to (as appropriate) the Crown or the Head, Recycling Victoria—

- (a) so far as the reference relates to any period on or after the commencement day; and
- (b) if not inconsistent with the subject matter.

### **190 Declared regions**

A waste and resource recovery region within the meaning of section 3(1) of the **Environment Protection Act 2017** immediately before the commencement of section 197 of this Act is taken to be a declared region until a declaration by the Head, Recycling Victoria takes effect in accordance with section 33.

### **191 Regulations dealing with transitional matters**

- (1) The Governor in Council may make regulations containing provisions of a transitional nature, including matters of an application or savings nature, arising as a result of the enactment of this Act, including any repeals and amendments made by or as a result of the enactment of this Act.

- (2) Regulations made under this section may—
  - (a) have a retrospective effect to a day on or after a day that is not earlier than the day on which this section comes into operation;
  - (b) be of limited or general application;
  - (c) differ according to time, place or circumstance;
  - (d) leave any matter or thing to be decided by a specified person or class of person.
- (3) To the extent to which regulations made under this section take effect from a date that is earlier than the date of their making, the regulations do not operate so as—
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of their making; or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of their making.
- (4) Regulations made under this section—
  - (a) have effect despite anything to the contrary in any Act (other than this Act or the **Charter of Human Rights and Responsibilities Act 2006**) or in any subordinate instrument; and
  - (b) may continue in effect for a period of not more than 2 years.
- (5) This section is **repealed** on the second anniversary of its commencement.

## **Part 10—Repeals and Amendments**

### **Division 1—Environment Protection Act 2017 repeals**

#### **192 Simplified outline—Chapter 13**

Section 381(2) of the **Environment Protection Act 2017** is repealed.

#### **193 Repeal of Part 13.2**

Part 13.2 of the **Environment Protection Act 2017** is repealed.

### **Division 2—Amendments**

#### **Subdivision 1—Alpine Resorts (Management) Act 1997**

##### **194 Contributions**

For section 13(1)(a) of the **Alpine Resorts (Management) Act 1997** substitute—

"(a) a municipal recycling service, and a municipal residual waste service, within the meaning of section 3(1) of the **Circular Economy (Waste Reduction and Recycling) Act 2021**;"

##### **195 Functions of Boards**

For section 38(1)(d)(i) of the **Alpine Resorts (Management) Act 1997** substitute—

"(i) a municipal recycling service, a municipal residual waste service, and a municipal food organics and garden organics service, within the meaning of section 3(1) of the **Circular Economy (Waste Reduction and Recycling) Act 2021**;"

## **Subdivision 2—Climate Change Act 2017**

### **196 Schedule 1—Acts and decisions or actions**

In Schedule 1 to the **Climate Change Act 2017**  
**insert—**

**"Circular Economy (Waste  
Reduction and Recycling)  
Act 2021**

A recommendation of the Minister  
to make, amend or revoke  
regulations.

A decision of the Minister to make,  
amend or revoke a service standard  
under section 67.

A decision of the Head, Recycling  
Victoria under section 23 to exempt  
a person or class of person from a  
provision of a service standard.

A decision of the Head, Recycling  
Victoria relating to the approval of  
suitable eligible containers.

A decision of the Minister to grant  
an exemption under section 101 in  
relation to disposal of suitable  
eligible containers at landfill sites."

## **Subdivision 3—Environment Protection Act 2017**

### **197 Definitions**

In section 3(1) of the **Environment Protection  
Act 2017—**

(a) **insert** the following definitions—

***"declared region*** has the same meaning as  
in the **Circular Economy (Waste  
Reduction and Recycling) Act 2021**;

***Head, Recycling Victoria*** has the same  
meaning as in the **Circular Economy  
(Waste Reduction and Recycling)  
Act 2021**";

- (b) in the definition of *draft Regional Waste and Resource Recovery Implementation Plan*, for "a Waste and Resource Recovery Group" **substitute** "the Head, Recycling Victoria";
- (c) the definitions of *Barwon South West Waste and Resource Recovery Group*, *Barwon South West Waste and Resource Recovery Region*, *Gippsland Waste and Resource Recovery Group*, *Gippsland Waste and Resource Recovery Region*, *Goulburn Valley Waste and Resource Recovery Group*, *Goulburn Valley Waste and Resource Recovery Region*, *Grampians Central West Waste and Resource Recovery Group*, *Grampians Central West Waste and Resource Recovery Region*, *Local Government Waste Forum*, *Loddon Mallee Waste and Resource Recovery Group*, *Loddon Mallee Waste and Resource Recovery Region*, *Metropolitan Waste and Resource Recovery Group*, *Metropolitan Waste and Resource Recovery Region*, *North East Waste and Resource Recovery Group*, *North East Waste and Resource Recovery Region*, *Waste and Resource Recovery Group* and *waste and resource recovery region* are repealed.

**198 Objectives of the Victorian Waste and Resource Recovery Infrastructure Planning Framework**

In section 406(d) of the **Environment Protection Act 2017**, for "Waste and Resource Recovery Groups" **substitute** "the Head, Recycling Victoria".

**199 Preparation of draft Regional Waste and Resource Recovery Implementation Plans**

(1) For section 415(1) and (2) of the **Environment Protection Act 2017** substitute—

"(1) Within 12 months after the relevant day, the Head, Recycling Victoria must—

- (a) prepare a draft Regional Waste and Resource Recovery Implementation Plan for each declared region; and
- (b) submit each draft to Sustainability Victoria and to the Authority."

(2) After section 415(3) of the **Environment Protection Act 2017** insert—

"(4) In this section, *relevant day* means the later of—

- (a) the day on which the existing State-Wide Waste and Resource Recovery Infrastructure Plan takes effect; and
- (b) the day on which section 199 of the **Circular Economy (Waste Reduction and Recycling) Act 2021** comes into operation."

**200 Objective of Regional Waste and Resource Recovery Implementation Plans**

In section 416 of the **Environment Protection Act 2017**, for "waste and resource recovery region" substitute "declared region".

**201 Content of Regional Waste and Resource Recovery Implementation Plans**

In section 417 of the **Environment Protection Act 2017**, for "waste and resource recovery region" (wherever occurring) substitute "declared region".

**202 Consultation on Regional Waste and Resource Recovery Implementation Plans**

In section 418 of the **Environment Protection Act 2017**—

- (a) for "section 415(2)" **substitute** "section 415";
- (b) for "a Waste and Resource Recovery Group" **substitute** "the Head, Recycling Victoria".

**203 Integration in preparation of Regional Waste and Resource Recovery Implementation Plans**

(1) In section 419(1) of the **Environment Protection Act 2017**—

- (a) for "section 415(2)" **substitute** "section 415";
- (b) for "relevant Waste and Resource Recovery Group" **substitute** "Head, Recycling Victoria".

(2) In section 419(2) and (3) of the **Environment Protection Act 2017**, for "relevant Waste and Resource Recovery Group" **substitute** "Head, Recycling Victoria".

(3) In section 419(3)(b) of the **Environment Protection Act 2017**, for "waste and resource recovery region" **substitute** "declared region".

(4) In section 419(4) of the **Environment Protection Act 2017**—

- (a) for "A Waste and Resource Recovery Group" **substitute** "The Head, Recycling Victoria";
- (b) for "section 415(2)" **substitute** "section 415".

**204 Minister's approval of Regional Waste and Resource Recovery Implementation Plans**

- (1) In section 420(1)(c) of the **Environment Protection Act 2017**, for "relevant Waste and Resource Recovery Group" **substitute** "Head, Recycling Victoria".
- (2) In section 420(2) of the **Environment Protection Act 2017**—
  - (a) for "a Waste and Resource Recovery Group" **substitute** "the Head, Recycling Victoria";
  - (b) in paragraph (b), for "Waste and Resource Recovery Group" **substitute** "Head, Recycling Victoria".

**205 Publication of Regional Waste and Resource Recovery Implementation Plans**

For section 422(a) of the **Environment Protection Act 2017** **substitute**—

- "(a) the Head, Recycling Victoria must publish the Plan or the revised copy of the Plan (as the case requires) on a website maintained by the Department of Environment, Land, Water and Planning; and".

**206 Amendment of Regional Waste and Resource Recovery Implementation Plans**

- (1) For section 423(1) of the **Environment Protection Act 2017** **substitute**—

"(1) The Head, Recycling Victoria may at any time prepare draft amendments to a Regional Waste and Resource Recovery Implementation Plan."



- (2) In section 423(2) of the **Environment Protection Act 2017**, for "a Waste and Resource Recovery Group" **substitute** "the Head, Recycling Victoria".

**207 Consistency with Regional Waste and Resource Recovery Implementation Plans**

- (1) In section 424(1), (2) and (3) of the **Environment Protection Act 2017**, for "with the" **substitute** "with any".
- (2) In section 424(2) and (3) of the **Environment Protection Act 2017**, for "waste and resource recovery region" (wherever occurring) **substitute** "declared region".

**208 Review of Regional Waste and Resource Recovery Implementation Plans**

- (1) For section 425(1) of the **Environment Protection Act 2017 substitute**—
- "(1) Within 12 months after the relevant day, the Head, Recycling Victoria must—
- (a) conduct a review of each existing Regional Waste and Resource Recovery Implementation Plan; and
  - (b) prepare a draft revised Plan in relation to each existing Plan."

(2) After section 425(2) of the **Environment Protection Act 2017 insert**—

"(3) In this section, *relevant day* means the later of—

    - (a) the day on which the State-Wide Waste and Resource Recovery Infrastructure Plan is reviewed under section 414; and

- (b) the day on which section 208 of the **Circular Economy (Waste Reduction and Recycling) Act 2021** comes into operation."

**209 Municipal and Industrial Waste Levy Trust Account**

Section 448(3)(c) of the **Environment Protection Act 2017** is repealed.

**210 Schedule 1—Regulations**

Item 3.2 of Schedule 1 to the **Environment Protection Act 2017** is repealed.

**Subdivision 4—Sustainability Victoria Act 2005**

**211 Functions**

For section 7(n) and (o) of the **Sustainability Victoria Act 2005** substitute—

- "(n) provide information, advice and support to the Head, Recycling Victoria under the **Circular Economy (Waste Reduction and Recycling) Act 2021** and assist the Head, Recycling Victoria in developing and implementing strategies and plans that foster sustainable, resilient and effective markets within a circular economy;
- (o) in conjunction with the Head, Recycling Victoria, advise councils, Alpine Resort Management Boards and businesses on best practices for waste, recycling or resource recovery services, systems, facilities, infrastructure and technology;"

### **Division 3—Repeal of this Part**

#### **212 Repeal of this Part**

This Part is repealed on the first anniversary of its commencement.

#### **Note**

The repeal of this Part does not affect the continuing operation of the amendments made by it (see section 15(1) of the **Interpretation of Legislation Act 1984**).

## **Schedule 1—Subject matter for Regulations**

### **1 Entities to sort waste and recycling materials**

- 1.1 Requiring an entity or a class of entity to separate and sort waste of a specified kind.
- 1.2 Exceptions to any requirement to separate and sort any kind of waste that applies to an entity or class of entity.
- 1.3 Requiring an entity or a class of entity to separate and sort recycling materials of a specified kind.
- 1.4 Exceptions to any requirement to separate and sort any kind of recycling material that applies to an entity or class of entity.
- 1.5 Separating and sorting requirements including—
  - (a) that a particular requirement does or does not apply to a particular kind of waste or class of waste; and
  - (b) that a particular requirement does or does not apply to a particular kind or class of recycling material; and
  - (c) that a particular requirement differs according to the source of the waste or recycling materials; and
  - (d) that a particular requirement differs according to geographical location.

### **2 Container deposit scheme**

- 2.1 Applications under section 80 to enter into a Scheme Coordinator agreement.
- 2.2 Applications under section 89 to enter into a network operator agreement.
- 2.3 Notifications under section 98(1) including, but not limited to, information that must be provided with a notification.

- 2.4 Fees payable for a determination under section 98(2) of whether or not a person is or will be the first supplier of an eligible container in Victoria.
- 2.5 The factors that may or must be considered when determining whether a person is or will be the first supplier of an eligible container in Victoria.
- 2.6 Persons or classes of person who are or are not to be taken to be first suppliers of an eligible container in Victoria.
- 2.7 The provision of information by first suppliers to the Head, Recycling Victoria or Scheme Coordinator.
- 2.8 Applications for the approval of a suitable eligible container.
- 2.9 Criteria for eligible containers.
- 2.10 Factors to be taken into account when determining whether an eligible container is a suitable eligible container, including but not limited to material composition or dimensions.
- 2.11 The refund amount for a suitable eligible container or material recovery facility operator.
- 2.12 The method by which the refund amount is determined for a suitable eligible container or class of material recovery facility operator.
- 2.13 Use, disclosure, collection and retention of data requirements in relation to a Scheme Coordinator agreement or network operator agreement.
- 2.14 The requirements for any methodology for payments under Scheme Coordinator agreements or network operator agreements.
- 2.15 The requirements for any method for determining a refund under a material recovery facilities protocol or a local government refund sharing protocol.

### **3 Committees**

- 3.1 Regulating the procedures of an advisory committee.

### **4 Council and Alpine Resort Management Board services**

- 4.1 The particular kind of waste in respect of which a council or Alpine Resort Management Board must provide waste, recycling or resource recovery services.
- 4.2 The particular kind of recycling material in respect of which a council or Alpine Resort Management Board must provide waste, recycling or resource recovery services.
- 4.3 The particular waste, recycling or resource recovery services which must be provided by councils or Alpine Resort Management Boards under this Act including—
- (a) service standards; and
  - (b) prescribing any additional waste, recycling or resource recovery service which must be provided by councils or Alpine Resort Management Boards.

### **5 Procurement**

- 5.1 Processes for the procurement of waste, recycling or resource recovery services under Part 4.
- 5.2 Contract management support for contracts entered into by councils and Alpine Resort Management Boards for the procurement of waste, recycling or resource recovery services.
- 5.3 Matters for which a procurement agreement under section 56 must provide.
- 5.4 The activities in relation to which the Head, Recycling Victoria may provide advice and support under section 57.

5.5 Matters that may be included in guidelines issued under section 58.

5.6 Matters that the Head, Recycling Victoria must take into account when performing a function or duty or exercising a power under Part 4.

## **6 Records**

6.1 Specifying requirements for the keeping of records by a person who is providing a waste, recycling or resource recovery service, relating to the production, collection, transfer, transport, receipt, handling, storage, management, containment, treatment, processing, disposal or use of waste and recycling materials.

## **7 Recycling materials**

7.1 Prescribing any recycling material or class of recycling material.

7.2 Regulating the use or reuse of recycled materials or substances.

7.3 Regulating or prohibiting any matter that may be recycled.

7.4 Regulating or prohibiting the disposal of recycling materials.

7.5 Regulating or prohibiting the production, collection, transfer, receipt, handling, storage, use, management, treatment and processing of recycling materials.

## **8 Waste**

8.1 Prescribing any matter or class of matter as or as not waste.

8.2 Prescribing any matter or class of matter as or as not industrial waste.

8.3 Regulating or prohibiting the disposal of waste material.

8.4 Regulating the use or reuse of waste materials or substances.

8.5 Regulating or prohibiting the disposal of waste, or a class of waste, at a landfill site.

8.6 Regulating or prohibiting the production, generation, collection, transfer, receipt, handling, storage, use, management, containment, treatment and processing of waste.

**9 Waste, recycling or resource recovery services**

9.1 Prescribing any service to be or not to be a waste, recycling or resource recovery service.

9.2 Regulating waste, recycling or resource recovery services.

9.3 Allocating responsibility for operations in waste, recycling or resource recovery services.

9.4 Prescribing any thing or process to be resource recovery in relation to waste.

**10 Municipal services**

10.1 Prescribing a service to be or not to be a municipal recycling service.

10.2 Prescribing a service to be or not to be a municipal residual waste service.

**11 Regular reporting entities and occasional reporting entities**

11.1 Prescribing an entity to be a regular reporting entity.

11.2 Prescribing an entity to be an occasional reporting entity.



**12 Reporting requirements for regular reporting entities and occasional reporting entities in respect of prescribed information**

12.1 The mandatory reporting requirements for the provision of prescribed information by regular reporting entities to the Head, Recycling Victoria including—

- (a) the type of information to be reported; and
- (b) the timing and frequency at which information must be given to the Head, Recycling Victoria.

12.2 Prescribing the kind or class of information to be retained by occasional reporting entities and the period for which this information must be retained.

12.3 Prescribing different types of information that is required to be provided by specific classes of regular reporting entity.

12.4 Prescribing the criteria to be considered by the Head, Recycling Victoria before granting, amending or refusing an exemption under Division 2 of Part 3.

12.5 In relation to an application for an exemption from reporting requirements and an application for renewal of an exemption—

- (a) prescribing the information to be included in an application; and
- (b) prescribing the form of the application; and
- (c) prescribing the fee to accompany the application.

12.6 In relation to an application for an amendment of an exemption—

- (a) prescribing the information to be included in an application; and

- (b) prescribing the form of the application; and
- (c) prescribing the fee to accompany the application.

### **13 Information sharing and reporting**

- 13.1 Prescribing a public sector body to be a government agency.
- 13.2 Prescribing a public sector body of another State, or a Territory or the Commonwealth to be a government agency.
- 13.3 Prescribing a person or body for the purposes of the disclosure of information or data under section 50.
- 13.4 Prescribing a person or body for the purposes of disclosing confidential information or commercially-sensitive information.

### **14 Manner in which information and data to be provided**

- 14.1 Specifying the manner in which prescribed information or information specified in a direction may be provided to the Head, Recycling Victoria including the following—
  - (a) through a data and information system established and maintained by the Head, Recycling Victoria under section 51;
  - (b) through surveys provided by the Head, Recycling Victoria to a person or entity required to provide information and that are completed and returned to the Head, Recycling Victoria by the person or entity;
  - (c) in writing or an electronic report capable of being—
    - (i) posted or emailed to the Head, Recycling Victoria; or

- (ii) uploaded to a website maintained by the Department or to a prescribed software application or prescribed information technology;
  - (d) by prescribed technologies that allow data to be provided to the Head, Recycling Victoria in real time;
  - (e) through regular or strategic independent audits.
- 14.2 The prescribed requirements and standards a centrally managed data and information system must meet.

## **15 Exemptions by Head, Recycling Victoria**

- 15.1 Forms and fees and applications for exemption by the Head, Recycling Victoria under Division 2 of Part 2.

## **16 Show cause notices**

- 16.1 Prescribing periods of time for the purposes of show cause notices.

## **17 Infringement offences**

- 17.1 Prescribing infringement offences and penalties.
- 17.2 Prescribing authorised officers who may issue infringement notices.

## **18 Authorised officers**

- 18.1 Prescribing conditions or limitations for the appointment of authorised officers.

## **19 Auditors**

- 19.1 Prescribing the functions of auditors.
- 19.2 Regulating the conduct and oversight of auditors.
- 19.3 Regulating the carrying out of audits.
- 19.4 Prescribing persons or classes of persons who may be appointed as auditors.

19.5 Prescribing conditions and limitations for the appointment of auditors.

19.6 Prescribing matters relating to the variation, suspension or revocation of appointments of auditors.

**20 Proceedings**

20.1 Prescribing persons or classes of person who may take proceedings for offences against this Act or the regulations.

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## Endnotes

### 1 General information

See [www.legislation.vic.gov.au](http://www.legislation.vic.gov.au) for Victorian Bills, Acts and current authorised versions of legislation and up-to-date legislative information.

<sup>†</sup> *Minister's second reading speech—*

*Legislative Assembly: 28 October 2021*

*Legislative Council: 19 November 2021*

The long title for the Bill for this Act was "A Bill for an Act to introduce a circular economy in Victoria, to provide for the Head, Recycling Victoria, to provide for a regulatory framework for waste, recycling or resource recovery services, to make related and consequential amendments to other Acts and for other purposes."