

**2021**

**THE LEGISLATIVE ASSEMBLY FOR THE  
AUSTRALIAN CAPITAL TERRITORY**

**WASTE MANAGEMENT AND RESOURCE RECOVERY AMENDMENT  
REGULATION 2021 (No 1)**

**SL2021-24**

**EXPLANATORY STATEMENT**

**Presented by  
Chris Steel MLA  
Minister for Transport and City Services**

## **WASTE MANAGEMENT AND RESOURCE RECOVERY AMENDMENT REGULATION 2021 (No 1)**

The Regulation **is not** a Significant Regulation. Significant Regulations are regulation that have been assessed as likely to have significant engagement of human rights and require more detailed reasoning in relation to compatibility with the *Human Rights Act 2004*.

This explanatory statement must be read in conjunction with the Regulation. It is not intended to be a comprehensive description of the Regulation. What is written about a provision is not to be taken as an authoritative statement of the meaning of a provision, this being a responsibility of the courts.

### **OVERVIEW OF THE REGULATION**

The purpose of the Waste Management and Resource Recovery Amendment Regulation 2021 (No 1) (the Regulation) is to enable the introduction of a household Food Organics and Garden Organics (FOGO) service in the Australian Capital Territory by allowing food waste to be placed in territory organic recycling containers. Other amendments to this Regulation include;

- modernised waste activity reporting;
- improved enforceability at waste facilities;
- simplified container deposit scheme administration;
- clarified and improve kerbside container management; and
- updated waste definitions and streamlined processes.

### **CONSULTATION ON THE PROPOSED APPROACH**

Internal consultation was conducted in 2020 with Transport Canberra and City Services ACT NoWaste Branch, Policy and Legislative Solutions team and Licencing and Compliance to confirm support for the introduction of FOGO and the other amendments in this regulation update.

Consultation was conducted with the Environmental Protection Authority (EPA) and Environmental Protection Policy. They welcomed the proposal to consolidate waste definitions to streamline and simplify waste sector regulation.

Consultation with the ACT Container Deposit Scheme Coordinator Exchange for Change has confirmed support for the proposed amendments.

### **CONSISTENCY WITH HUMAN RIGHTS**

Directorates are obliged under the *Human Rights Act 2004* (HR Act) to act and make decisions consistently with human rights. This includes ensuring any amendments result in a law that is proportionate – that is, that it limits rights in the least restrictive way possible to achieve the purpose of the legislation.

During the development of the Amendment Regulation due regard was given to its compatibility with human rights as set out in the HR Act. The amendments introduced in the Amendment Regulation give effect to a best practice.

As a law of the Territory, the Amendment Regulation may be seen as engaging the right to be presumed innocent until proven guilty in the HR Act.

An assessment of the Amendment Regulation against section 28 of the HR Act is provided below. Section 28 provides that human rights are subject only to reasonable limits set by laws that can be demonstrably justified in a free and democratic society.

## **Rights engaged**

The Amendment Regulation may engage the right to be presumed innocent until proven guilty, section 22 (1) of the HR Act, and the right to privacy, section 12 of the HR Act.

## ***Rights Limited***

### ***1. Nature of the right and the limitation (s28(a) and (c))***

#### ***Right to be presumed innocent until proven guilty***

Strict liability offences engage the presumption of innocence under section 22 (1) of the HR Act by removing the fault elements from an offence. This means an accused will be automatically presumed guilty unless they successfully raise the defence of reasonable and honest mistake.

The Amendment Regulation proposes to introduce some new strict liability offences related to kerbside waste container management and activities at waste facilities. This includes replace existing offence provisions with new, tiered, strict liability offences to support effective enforcement. These new offences require people not to contravene, alter or cover signs, or fail to comply with reasonable directions. The scale of the proposed new strict liability offences is lower than the existing offences.

The amendments would serve to clarify and define the limits of permissible conduct and confine the conduct that would attract a strict liability offence penalty.

#### ***Right to privacy***

Section 12 (a) of the HR Act provides that everyone has the right to not have their privacy interfered with unlawfully or arbitrability. The Amendment Regulation proposes to introduce a new capacity for regulators to identify owners of vehicles that are identified as being involved in non-compliance at waste facilities. The reasons for these proposed provisions and their impacts on human rights are to support improving enforceability of provisions at waste facilities.

## **2. Rational connection between the limitation and the purpose (s28(d))**

Strict liability offences arise in a regulatory context where reasons such as public standards, environmental protection, safety, community wellbeing and the public interest in ensuring that regulatory schemes are observed require the sanction of criminal penalties. In particular, where a defendant can reasonably be expected to know what the requirements of the law are, the mental, or fault, element can justifiably be excluded.

In relation to the proposed amendment, information is freely available to ensure that people know what the requirements of the law are. In relation to the material that can be placed in kerbside waste containers, the ACT Recyclopaedia at <https://www.cityservices.act.gov.au/recyclopaedia/home> provides the details in a friendly and accessible website. The classifications relevant to each type of bin is well harmonised across different parts of Australia so that most of the knowledge people bring from other places is applicable also in the ACT. Further, a detailed communications plan is in place to support the proposed FOGO pilot and will be used to proactively inform and educate the public about the appropriate use of each bin. Evaluation of that communications program will inform whole-of-Canberra communication on appropriate bin usage to support the full roll-out at a later date. These communications materials can also inform people of the penalties that may apply for incorrect bin usage. The proposed strict liability offences for waste facilities will be communicated through signage placed prominently the facilities.

The rationale for inclusion of strict liability offences is to ensure that a sufficiently robust and consistent enforcement regime can operate as part of an escalating enforcement framework, without requiring prosecution in all cases, to meet the purpose of ensuring community wellbeing, environmental and safety standards. The issuing of infringement notices is guided by internal policy, where education and awareness is the primary mechanism used for compliance with the law.

The offences that are strict liability and intended to have infringement notices are designed to enable an effective response where parties have failed to meet obligations, and are intended to act to prevent a harm, being either a community wellbeing, environmental or public safety harm.

The framework is designed to encourage compliance, not disproportionately penalise those who fail to comply, and will work together with a comprehensive education and awareness package.

### *Right to privacy*

The proposed new vehicle offences may impinge on the HR Act's S12 (a) provision that everyone has the right to not have their privacy interfered with unlawfully or arbitrability. The Amendment Regulation proposes to introduce a new capacity for regulators to identify owners of vehicles that are identified as being involved in non-compliance at waste facilities, however the administrative arrangements required to

put these provisions into action would ensure that they could only be used to obtain personal information in response to clear offences, and not for arbitrary purposes. The right to privacy is removed from kerbside container management in relation to data-gathering incidents, such as waste collection vehicles capturing contents of waste through cameras. This does not engage the right to privacy as all data captured is de-identified and captured purely for statistical purposes.

The framework is designed to encourage compliance, not disproportionately penalise those who fail to comply, and will work together with a comprehensive education and awareness package.

### **3. Proportionality (s28 (e))**

Limiting the right to be presumed innocent until proven guilty via strict liability offences in these circumstances is considered to be reasonable and proportionate to the objective of the offence and its importance as a matter of public policy to achieve the intended objectives.

Limiting the right to privacy via vehicle registration number is considered to be reasonable and proportionate, as this right is only to be limited in circumstances where there are reasonable grounds that a person has or is about to commit an offence, or where there are reasonable grounds that a person may be able to assist with an investigation of an offence.

The regulation already contains several low-level offences including a range of strict liability offences. This is in keeping with the S128(2b) Regulation-making power in the *Waste Management and Resource Recovery Act 2016*, which provides for a regulation to “create offences for contraventions of the regulations and fix maximum penalties of not more than 40 penalty units for the offences”. The amendment proposes a clarification of some of the existing strict liability offences related to kerbside container collections, and the addition of some new, equivalent offences to apply at waste facilities. This is considered appropriate as it allows the Regulation to maintain its current approach of only providing for a range of minor offences which will attract penalties of up to 40 penalty units. The *Waste Management and Resource Recovery Act 2016* meanwhile, continues to provide for more serious offences that attract a maximum penalty of 500 penalty units. These are for offences that potentially have a high impact on the environment and on public health and safety and represent the most significant risk to the overarching purpose of waste management, which is to protect the environment, and public health and safety, through the effective regulation of waste activity.

## OUTLINE OF PROVISIONS OF THE REGULATION AMENDMENT

### PART 1 PRELIMINARY

#### **Clause 1 – Name of Regulation**

This clause states that the name of the Regulation is the *Waste Management and Resource Recovery Amendment Regulation 2021 (No 1)*.

#### **Clause 2 – Commencement**

This clause sets out that the Regulation commences on 1 November 2021.

#### **Clause 3 – Legislation amended**

Indicates that the legislation amended is the *Waste Management and Resource Recovery Regulation 2017*.

#### **Clause 4 – Section 11**

Substitutes the existing section 11 with amended definitions and inserts new sections 11A, 11B, 11C as follows.

### **Section 11 Waste definitions**

Clause defines terms used in Part 4 of the Regulation

- **Domestic recyclable waste** means material mentioned in schedule 1, part 1.2, column 2 and any material included under section 11A (1) (a) but does not include any material excluded under section 11B (1) (a).
- **Domestic waste** means from residential premises, and includes domestic recyclable waste and organic waste, but does not include material mentioned in schedule 1, part 1.3, column 2 or any material excluded under section 11B (1) (b).
- **Garden waste** means plant material generated on urban land.
- **Organic waste** means garden waste and any material included under section 11A (1) (b) but does not include any material excluded under section 11B (1) (c).
- **Waste rectification notice** means a notice under section 24AA.
- **Occupier** means a person living at the premises, in charge of the premises or the owner or manager of a business carried out at the premises.
- **Territory waste container** means a waste container provided to an occupier by the Territory.
- **Organic waste container** means a territory waste container designated for organic waste only.
- **Occupier** means a person living at the premises, a person apparently in charge of the premises, or the owner or manager of the premises.

### **Section 11A Waste manager may declare that certain material is included in a waste definition**

This clause inserts a new section to allow for the Waste Manager to declare that a stated waste is either domestic recyclable waste or organic waste in a Notifiable Instrument. This section also allows for the Waste Manager to make a declaration for a stated area in the ACT for a stated period of time in a Notifiable Instrument.

### **Section 11B Waste manager may declare that certain material is excluded in a waste definition—Act s 64 (2) (a), (c) and (d)**

This clause inserts a new section to allow for the Waste Manager to declare that a stated waste is not a domestic recyclable waste or organic waste in a Notifiable Instrument.

### **Section 11C – Other definitions**

This clause inserts a new section to define occupiers, territory waste containers, waste containers and to refer to the definition for waste rectification notices.

#### ***Clause 5 – Section 12***

This clause provides for the relocation of Section 12, on responsibilities and liabilities of joint occupiers to a new location at 24AB.

#### ***Clause 6 – Section 13***

##### **Disposal of regulated waste at waste facility**

This clause substitutes the existing offence with a new version which removes the requirements for consent of the licensee from this offence. The penalty units for this offence have been reduced from 30 penalty units to 10 penalty units. A new 'knowingly dispose of regulated waste' offence has been included in section 24AD.

#### ***Clause 7 – Section 13 (as amended)***

This clause provides for the existing Section 13 on disposal of regulated waste at waste facility to be relocated as 24AC, amending it to 'knowingly dispose of regulated waste'.

#### ***Clause 8 – Section 14***

##### **Interfering with waste etc at waste facility**

This clause substitutes the existing Section 14 offence for a new offences on unauthorised conduct at a waste facility. The new offences are for contaminating waste and thereby making it unsuitable for its intended waste processing, and for entering an area without the consent of the operator of a waste facility. That may be in contravention of a sign, removing a waste container or damaging or altering a waste container or any part of the facility. These are strict liability offences with maximum penalties of 10 and 5 penalty units.

***Clause 9 – Section 14 (as amended)***

This clause provides for the existing Section 14 on unauthorised conduct at waste facility to be relocated as 24AF, amending it to ‘interfering with waste etc at a waste facility’.

***Clause 10 – Section 15***

**Waste transporter must give information about waste disposed at waste facility**

This clause substitutes the existing Section 15 offence for a new offence requiring waste transporters to comply with directions at waste facilities. It restricts the application of the offence so that it only applies if information is required by the operator of a waste facility, not also to a person who appears to be employed by the operator. The new offences are strict liability offences with maximum penalties of 10 and 5 penalty units.

***Clause 11 – Section 15 (as amended)***

This clause provides for the previous Section 15 requiring waste transporters to comply with directions etc at waste facilities to be relocated as 24AH.

***Clause 12 – Section 16***

This clause provides for the previous Section 16 on waste escaping from a vehicle to be relocated as 24AJ.

***Clause 13 – Section 17(1)***

This clause removes the specific mention of a ‘person’ occupying a premises so that an occupier may be another type of entity than a person.

***Clause 14 – Section 17(1)***

This clause inserts the phrase ‘on the premises’ to limit the application of the term ‘collection’ to the relevant premise.

***Clause 15 – Section 17 (as amended)***

This clause provides for the previous Section 17 on waste rectification notices to be relocated as 24AA.

***Clause 16 – New division 4.2***

**Division 4.2 Responsibilities in dealing with waste**

This clause provides for the previous Section 17 on waste rectification notices to be replaced with new sections to establish responsibilities in dealing with waste. It includes the following sections.



## **17A Occupier's responsibility**

This clause gives effect to clarify the occupier's responsibility on kerbside container management and proper management of waste containers.

## **17B Territory waste containers**

This clause inserts a new section to clarify that any waste container provided by the Territory, including the waste contained in it when put out for collection, is the property of the Territory.

### ***Clause 17 – Section 18(3)(a)***

This clause re-names the territory waste containers that were previously referred to as 'green' bins to 'organic' bins.

### ***Clause 18 – Section 18(3)(b)***

This clause expands the range of wastes that can be placed into territory organic bins so that they can receive 'organic' wastes, and not just 'garden' waste.

### ***Clause 19 – Section 18(5), definitions of domestic waste, garden waste and green waste container***

This clause removes the existing clauses which defined domestic waste, garden waste and green waste containers.

### ***Clause 20 – Section 18(5), New definition of organic waste container***

This clause introduces a new definition for an organic waste container, confirming that these containers are for organic waste only.

### ***Clause 21 – New section 19(3) and (4)***

This clause inserts new sections 19 (3) and 19 (4) to provide an exception to the existing offence for failure to keep waste in a waste container. The offence does not apply if there is an authorised waste collection arrangement, such as bulky waste collection. The evidential burden is minimal because the bulky waste service automatically provides the required written confirmation for this service.

### ***Clause 22 – Section 20(3), definition of waste container***

This clause removes the existing Section 20(3).

### ***Clause 23 – Section 22(1)(c)(i)***

This clause inserts a new subsection that states '*if the waste container is not a territory waste container*' to clarify that a person has not committed an offence if a territory waste container is not fitted with a lid that can be closed – as the provision of lids for territory waste containers is an ACT Government responsibility.

**Clause 24 – Section 23(3) and (4)**

This clause inserts *territory waste* before the word *container* to more accurately reflect that the section is about territory waste containers.

**Clause 25 – Section 23(5), definition of waste collection day**

This clause inserts *territory waste* before the word *container* to confirm that the waste collection day arrangements apply to territory waste containers.

**Clause 26 – Section 23(5), definition of waste container**

This clause removes the existing definition of waste container from this section as waste containers are now defined in Section 11.

**Clause 27 – Section 24 heading**

This clause updates the heading to better reflect the wording of the section.

**Clause 28 – New division 4.3 heading etc**

**Division 4.3 Waste rectification notices**

This clause inserts the heading for a new division 4.3, which is about waste rectification notices.

**Division 4.4 Dealing with waste at waste facilities**

This clause inserts the heading for a new division 4.4, which is about dealing with waste at waste facilities. Division 4.4 includes section 24AC to 24AJ.

**24AD Knowingly dispose of regulated waste at waste facility**

This clause inserts a new offence of 'knowingly dispose of regulated waste' to improve enforceability at waste facilities by providing more options for regulators to prove that alleged offenders knowingly disposed of waste at a waste facility.

**24AE Disposal of waste in contravention of sign on or near waste container at waste facility**

This clause is a new section to improve enforceability at waste facilities by providing clearer signage around accepted and non-accepted waste, which proves that an offender knowingly contradicted the sign. This is a strict liability offence of a maximum of 20 penalty units.

**24AG Failure to comply with direction of waste facility operator**

This clause is relocated and amended making it an offence to not follow reasonable directions in relation to the management of provided by a waste facility operator at a waste facility. This is a strict liability offence of a maximum of 10 penalty units.

## **24AI Vehicle-related offences at waste facilities**

This clause is a new section that gives effect to improve enforceability at waste facilities by facilitating the issuing of infringement notices to the registered operator of a motor vehicle from which an offence is committed. This will also include provisions to link offences to passenger behaviour: where the operator of a motor vehicle has driven to a waste facility, this is considered to be deliberate conduct with an intention to dispose of waste or use the facility.

To facilitate this offence, consequential amendments are made to the *Magistrates Court (Waste Management and Resource Recovery Infringement Notices) Regulation 2017*.

### **Clause 29 – New section 24A(e)**

This clause adds subsection (e) which is the Western Australian legislation to the list of corresponding laws for the Container Deposit Scheme.

### **Clause 30 – Sections 24B and 24C**

#### **24B Liquids that are not beverages—Act, s64C, def *beverage*, par (b)**

This clause substitutes existing section and moves the lists of liquids that are not beverages and containers that are not included in the container deposit scheme to new Schedule 1A to consolidate these lists in the one place in the Regulation.

#### **24C What is not a container—Act, s 64E, def *container*, par (b)**

This clause substitutes existing sections and provides provisions that if a network operator is required to hold a waste facility licence, details of that licence, or a statement that a licence has been applied for, must be included in a network arrangement.

### **Clause 31 – Section 24G(b) and (c)**

This clause substitutes subsection (b) and reflects the current requirements under the scheme coordinator agreement. This clause also adds a new subsection (b) (iii) that adds the requirement for information relating to any approval or if an approval has been applied for under the *Planning and Development Act 2007*.

This clause also substitutes subsection (c) and provides that if a network operator is required to hold a waste facility licence, details of that licence, or a statement that a licence has been applied for, must be included in a network arrangement.

### **Clause 32 – Section 24P**

#### **24P Network operator agreements-content of collection point arrangements under agreement—ACT, S 64n (4) (b)**

This clause substitutes the existing section to require broad types of information in a collection point arrangement and better reflects current operational needs of the Container Deposit Scheme. This should be read in conjunction with changes made to section 24T.

### ***Clause 33 – Section 24Q***

#### **24Q Application for approval of collection point arrangements**

This clause substitutes current section and aligns with changes made to section 24P as it is no longer necessary for this section to be as prescriptive as all information detailed in section 24P will need to be included in a collection point arrangement.

### ***Clause 34 – New section 24T(2) (e) and (f)***

This clause inserts a new provision around the operating hours for collection points in each catchment area. The addition of these matters in considering a collection point arrangement aligns better with the information that must now be included in a collection point arrangement and better reflects current operational circumstances. This clause should be read in conjunction with changes to section 24P.

### ***Clause 35 new section 24Z(a)(ii)(AA)***

This clause inserts the requirement for the barcode to be readable on a container presented as part of the Container Deposit Scheme.

### ***Clause 36 – Section 24ZB***

#### **Declaration of number of containers**

This clause substitutes the existing section and removes the dates that have already passed to reflect current circumstances.

### ***Clause 37 – Section 25***

This clause substitutes the existing section and supports the removal of the existing table in Schedule 1 of the Regulation and allows the Waste Manager to determine waste categories for information and reporting purposes by notifiable instrument.

#### **25 Waste manager may determine waste categories for waste activities**

This clause states that the waste manager may determine waste categories for waste activities. The purpose of this clause is to enable the Waste Manager to enable the ACT to more closely align with the National Standard for Waste and Resource Recover Data and Reporting. The determination of a waste category for a waste activity does not affect the definition of a waste, merely the category it is recorded in for the purposes of reporting.

#### **25A Waste activity report information-waste received by waste facility—Act, s 65 (2) (a)**

This clause substitutes Subclause 25 (1) (a) (x) sets out the requirement for a registered waste transporter to provide, if known, the details of any additional waste activity carried out in relation to the waste collected from a licenced waste facility. This is to identify the fate of waste once it leaves a licenced waste facility.

### **25B Waste activity report information-waste collected from waste facility— Act s 65 (2) (a)**

Subclause 25 (1) (b) (vii) sets out the requirement for a registered waste transporter to provide, if known, the details of any additional waste activity carried out in relation to the waste that they have transported. This is to identify the fate of waste where it is transported out of the ACT.

### **25C Waste activity report information-registered waste transporter—Act, s 65 (2) (a)**

Clause 25 (2) empowers the waste manager to notify a licensee or registered waste transporter in writing that a report need not include information.

It also empowers the waste manager to waive the requirement to provide the prescribed information, providing that the licensee for a waste facility or a registered transporter provides all of the information required by the electronic information system (designated by the Waste Manager as suitable to report).

As such, if the licensee or registered transporter does not provide the information required by the electronic information system or refuses to use the system, the default is that they have to provide the prescribed information in the regulation as detailed in the relevant sections 25A through to 25C (2) (b). An example would be a waste transporter who repeatedly refuses to provide all the information required into the electronic information system, they would then revert back to having to provide all the information required under the regulation or be in breach of their reporting licence conditions.

### **Clause 38 – New section 28**

#### **28 Certain statutory instruments may incorporate another law or instrument**

This clause inserts a new section and enables incorporate external material by reference in the following statutory instruments:

- A declaration by the Waste manager under section 11A that certain material is included in a waste definition;
- A declaration by the Waste manager under section 11B that certain material is excluded from a waste definition;
- A determination by the waste manager under section 25 of categories for waste activities. The section provides for these statutory instruments to incorporate a law or Australian Standard, as in force from time to time (rolling incorporation); or another instrument as in force on the day the statutory instrument is made (point-in-time incorporation)

The Legislation Act, section 47 (5) provides that an incorporated document or incorporated provisions are taken to be a notifiable instrument. A notifiable instrument must be notified on the legislation register under the Legislation Act. However, the Legislation Act, s 47 (5) may be displaced by subordinate law (this regulation) (see s 47 (7)). The Legislation Act, s 47 (5) is displaced for these

statutory instruments because the maker of the statutory instrument must ensure the incorporated instrument is accessible in the ways set out in s 28 (5). The Legislation Act, s 47 (6) provides that an incorporated document or incorporated provisions, and any later changes to them, are taken to be notifiable instruments. A notifiable instrument must be notified on the legislation register under the Legislation Act. However, the Legislation Act, s 47 (6) may be displaced by subordinate law (this regulation) (see s 47 (7)). The Legislation Act, s 47 (6) is displaced for these statutory instruments because legislation is readily accessible, for example, at public libraries and over the Internet, and there is therefore no need for it to be published on the legislation register. Where the incorporated material is an Australian Standard, these are subject to copyright and may be purchased over the Internet.

## **Clause 39 – Schedule 1**

### **Schedule 1 Waste definitions**

This clause replaces existing schedule 1 of the Regulation. Schedule 1 now includes all of the waste category definitions which appear within the Regulation. This schedule should be read in conjunction with section 11.

#### **Part 1.1 General**

This part defines Electronic waste as meaning waste electronic equipment, as defined in the *Environment Protection Act 1997*.

#### **Part 1.2 Domestic recyclable waste**

This table states the types of materials classified as domestic recyclable wastes in Section 11A.

#### **Part 1.2 Domestic waste – excluded material**

This table states a range of materials that are excluded from the definition of domestic waste and may not be placed in territory waste containers

### **Schedule 1A Container deposit scheme**

#### **Part 1A.1 Beverages**

##### **1A1 Definitions – pt 1A.1**

This subclause provides a definition of beverages for the purposes of the Container Deposit Scheme.

##### **1A.2 Liquids that are not beverages S24B**

This subclause details what liquids are classified as not a beverage for the purposes of the Container Deposit Scheme.

## **Part 1A.2 Containers**

### **1A.3 Definitions – pt 1A.2**

This subclause details what is classified as a container for the purposes of the Container Deposit Scheme.

### **1A.4 What is not a container – s 24C**

This table details what is classified as not a container for the purposes of the Container Deposit Scheme.

## **40 Dictionary, new definitions**

The Dictionary defines terms introduced in the amendment Regulation.