Local Government Waste Management Provisions

QUEENSLAND TREASURY CORPORATION

Presented to: Department of Environment and Science –

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Prepared by Queensland Treasury Corporation

Executive Summary

The management of waste by local governments is regulated under Part 2A of the *Waste Reduction and Recycling Regulation 2011* (Qld) and Chapter 5A of *Environmental Protection Regulation 2008* (Qld). The combined effect of these regulations gives local governments the power to regulate the management of general waste within their local government areas. Both regulations expire on 1 July 2018.

The Department of Environment and Science (DES) sought advice from Queensland Treasury Corporation (QTC) on options for dealing with the expiring provisions, including the implications for key stakeholders.

During its engagement, QTC met with representatives from industry and local governments, listed below. Local governments raised concerns about the expiry of the waste provisions, and the potential impact it would have on their waste services, finances and ratepayers. The waste industry raised concerns that the provisions as currently drafted means some local governments limit the extent to which the industry can provide commercial waste services.

Table 1: consultations

Local Council representatives	Industry Representatives
▪ Logan City Council	▪ Waste Recycling Industry Queensland
▪ Gold Coast City Council	▪ Waste Recycling Industry Queensland's members
▪ Brisbane City Council	▪ Local Authority Waste Management Advisory Committee
▪ Townsville City Council	▪ Waste Management Association of Australia
▪ Fraser Coast Regional Council	▪ JJ Richards
▪ Sunshine Coast Regional Council	▪ Cleanaway
▪ Ipswich City Council	▪ Suez
▪ Cook Shire Council	▪ Tox Free
▪ Cassowary Coast Regional Council	▪ Remondis
▪ Mackay Regional Council	▪ Veolia

While there are differing views on some issues, there is broad agreement by industry and local governments on a number of threshold principles, namely:

- To ensure State-wide consistency, the head of power for regulating waste services should be retained with the State, avoiding the making of individual local laws,
- local governments should retain the ability to mandate the provision of domestic waste services to allow for scale and consistency of services; and
- should councils wish to recover fees from commercial rate payers, rating powers would allow them to charge commercial premises a reasonable waste charge to cover the cost of community waste

The key policy issue where there is not a consistent view of stakeholders is the extent to which there should be competition in the collection of commercial and recyclable waste.

- Some local governments take the view that they should be able to mandate services, that this in turn provides for efficiencies in the provision of related services (eg landfill) and that competition (and associated price pressures) comes from the regular tendering of collection contracts. It is also argued that commercial operators will only collect in the more profitable part of the waste services market, thereby undermining the economies of scale that come from mandating all services.
- Industry representatives take the view that by not allowing competition, there is limited price pressure on existing council operations, and those who generate commercial waste are not deriving the benefits that come from price and service choice. It is also argued that a recent decision of the Queensland Competition Authority is consistent with this view, and that as a minimum, the QCA should have determinative powers where disputes arise.

Implementation issues will depend on the policy approach adopted and associated waste policy reforms.

Contents

1 Background

In Queensland, 29 out of the 77 local governments provide some type of non-domestic waste service. The majority of non-residential services are provided in South-East Queensland, with larger population or tourist areas, such as Toowoomba, Bundaberg, Rockhampton, Mackay and Townsville, also providing a reasonable number of non-domestic waste services. Such services can be on the basis of opt-in, mandatory utility charges or mandatory collections services. Some local governments levy a mandatory waste utility charge which covers both household and non-household properties, and which may or may not include a mandatory collection service, such as Brisbane, Burdekin, Douglas, Fraser Coast, Gold Coast, Noosa, Scenic Rim and Sunshine Coast councils. These local governments provide over 36% of the total non-residential waste services provided by local governments across the State.

The provisions for the management of waste by local governments are found under Part 2A *Waste Reduction and Recycling Regulation 2011* (Qld) and Chapter 5A *Environmental Protection Regulation 2008* (Qld) ('waste provisions'). The existing waste provisions have most recently been extended to expire on 1 July 2018.

The Department of Environment and Science (DES) has sought advice from Queensland Treasury Corporation (QTC) about the options available to it regarding the expiring provisions and the impacts of these options on the key stakeholders.

1.1 Legislation

Waste Reduction and Recycling Regulation

Part 2A *Waste Reduction and Recycling Regulation 2011* (Qld) comprises only one section – section 7. Section 7 provides a local government with the power to:

- designate areas within its local government area in which the local government may conduct general waste or green waste collection (by resolution), and
- decide the frequency of general waste or green waste collection in the designated areas.

Environmental Protection Regulation

Chapter 5A *Environmental Protection Regulation 2008* (Qld) gives local governments the power to manage waste. Chapter 5A applies to a local government unless it has made a local law about waste management which states it replaces this chapter (an action that is now being undertaken by a growing number of councils, as discussed below).

Provided a premises is within a designated area, as defined in Part 2A *Waste Reduction and Recycling Regulation 2011* (Qld), then the *Environmental Protection Regulation 2008* (Qld) provides local governments with the power to state how the owner or occupier of the premises is to store its general waste and remove its general waste (as that term is defined in the *Environmental Protection Regulation 2008* (Qld).

1.2 Local Councils' position

Local councils have raised concerns about the expiry of the waste provisions, especially the potential impact it may have on their waste collection services, local governments and ratepayers.

The Local Government Association of Queensland (LGAQ) engaged AEC Group Ltd in October 2016 to prepare a report, titled 'Review of Local Government Rating of Non-Domestic Properties for Waste Services' which stated that the use of these laws by councils to facilitate waste collection is:

> '*a valid exercise of a statutory function and … ensure[s] a number of outcomes are achieved that would not otherwise be achievable if waste collection services were left to the market, including the ability to achieve enhanced waste diversion outcomes for the commercial and industrial sector, minimising traffic movements and noise, maximising public safety, achieving greater economies of scale in the provision of high quality services to all ratepayers irrespective of location and size, increased certainty to inform contractual arrangements, and ability to fund waste management activities of broad community benefit*'.

In summary, the report concluded that:

> '*allowing non-domestic properties to 'opt-out' of Council waste management utility charges and services will not produce an overall cost saving to local communities, but will instead see non-domestic properties opt for*

(and the market provide) waste collection services that are less cost rather than conserving the community and environmental implications associated with waste disposal'.

As part of its engagement, QTC consulted with the LGAQ and the following local councils:

- Logan City Council
- Gold Coast City Council
- Brisbane City Council
- Townsville City Council
- Fraser Coast Regional Council
- Sunshine Coast Regional Council, and
- Ipswich City Council.

In their capacity as representatives of the Local Authority Waste Management Advisory Committee (LAWMAC), QTC also consulted with Cook Shire Council, Cassowary Coast Regional Council and Mackay Regional Council.

1.3 Industry's position

Concerns about extending Part 2A *Waste Reduction and Recycling Regulation 2011* (Qld) waste collection and the impact this may have on the waste and resource recovery (WARR) industry has been raised by WARR industry bodies. Specifically, the industry has raised concerns that the waste provisions are administered by some local governments in a way that results in restricted competition. This was the subject of a complaint made in 2012 to the Queensland Competition Authority that the Sunshine Coast Regional Council's (SCRC) management of bulk waste recycling services and pricing of services prevented Waste Contractors and Recyclers Association of Queensland (WCRAQ)[1] members from competing. The Authority ultimately found that:

'*SCRC's Waste and Resources Management business has a competitive advantage over potential competitors as a result of its local government ownership and that this advantage should be removed*'.

As discussed below at 2.3 below, the Council did not adopt the recommendations of the report.

As part of its engagement, QTC met with the following industry members:

- Waste Recycling Industry Queensland (WRIQ)
- Waste Recycling Industry Queensland's members – representatives from JJ Richards, Cleanaway, Suez, Tox Free, Remondis and Veolia, and
- Waste Management Association of Australia (WMAA).

2 Issues of concern

While it is acknowledged that there are a range of complex issues, with a significant number of stakeholders, consultations undertaken and advice obtained was from selected representative stakeholders only and has assisted to provide clarity around key issues. It is recognised that other stakeholders may have differing concerns, however, the engagement has sought to attain the position of the majority of those involved.

A summary of QTC's findings are listed below.

2.1 Collection of domestic waste

Currently all councils across Queensland mandate the provision of domestic waste services. Domestic waste services generally allow for the collection of general domestic waste (red bin lid), and recycling paper and packaging materials (yellow bin lid). Some councils also provide regular green waste collection (green bin lid), typically on an opt-in basis, or provide green waste drop off services via transfer stations and landfill sites. There are nearly 1.86 million households in Queensland with a domestic waste (red bin lid) kerbside collection service, with nearly 90% of these services also having a recycling paper and packaging materials collection (yellow bin lid).[2] Currently some councils are trialling the introduction of a separate food waste collection.[3] It is also acknowledged that waste collection services can vary across

[1] Now called the 'Waste Recycling Industry Queensland'.

[2] Source: 'Recycling and Waste in Queensland 2017', Department of Environment and Science.

[3] For example, Cassowary Coast Regional Council provides a two bin system based on dry and wet waste.

the state, as a result of the local waste infrastructure available. In some regional and remote areas, where door to door waste collection services may not be provided, councils typically provide access to managed waste collection points.

The LGAQ has argued that the removal of councils' ability to levy mandatory waste charges for the management of domestic waste will cause domestic waste utility charges to increase by 10 to 20%, with the cost of self-haul disposal at council landfills increasing in the order of 20 to 30%. Both councils and industry agree that councils should retain the ability to mandate the provision of domestic waste services, regardless of whether the waste service is provided by council themselves or via contract with the private industry.

Policy consideration: Councils should retain the ability to mandate the provision of domestic waste services.

2.2 Making of local laws

Local governments have the power to create a local law for the management of waste. With some exceptions, a local government can make and enforce any local law that is necessary or convenient for the good rule and local government of its local government area (section 28 *Local Government Act 2009* (Qld)).

As can be seen in Table 2 below, numerous councils are in the process of implementing their own local law, or have already implemented a local law. In addition to those listed below, we understand that a number of other councils are commencing the process.

Table 2: local laws

Local laws passed and in force	Gold Coast City Council North Burnett Regional Council
Undertaking Public Consultation on proposed local laws	Noosa Shire Council Sunshine Coast Regional Council Fraser Coast Regional Council Moreton Bay Regional Council Scenic Rim Regional Council Bundaberg Regional Council

The way the State waste provisions are currently drafted means that these local laws will take precedent over the existing State waste provisions. This is something that will need to be considered should the policy decision be made to extend the waste provisions.

The general view of the councils is that these laws are being enacted in response to the uncertainty of the State position. Both industry and councils agree that their preference is for the State to retain the power in State laws. While some councils have invested significant resources into preparing their own local laws, they understand that there is a greater advantage in having the head of power to manage waste services at a State level. Similarly, industry wants to avoid having numerous, individual local laws across the State which could impact how they conduct business in each area.

Regardless, councils consider that they are now in a position where it has become necessary to commence preparing their own local laws in anticipation of the waste provisions expiring, in order to safeguard the provision of existing waste services within their local government area. In doing so, the councils have advised that their intention is to replicate the current waste provisions, so that councils retain the head of power for the delivery of waste management services.

Industry is concerned that in making local laws some councils have used the definition of 'general waste' to mean:

> *any of the following:*
>
> *(a) Commercial waste*
>
> *(b) Domestic waste*
>
> *(c) Recyclable waste'*

While the intention is for the definition to match one of two definitions from the Environmental Protection Regulation (2008) and is applied to provide more clarity as to which wastes streams are included, the practical effect of the of the definition of 'general waste' under local laws is that councils have the power to mandate collection of non-domestic waste in certain areas, with the potential for reducing the ability of the industry to compete for these types of waste. Councils have advised that they do not intend to expand their current service offering. The industry, however, is concerned that use of the definition is designed to expand councils' powers over the waste streams they can mandatorily collect.

Industry also has concerns with the robustness of the process undertaken in making the local law. Local government must not make a local law that contains an anti-competitive provision unless:

- the benefits of the restriction to the community as a whole outweigh the costs, and
- the objectives of the law could only be achieved by restricting competition.

To give effect to this, local governments are required to review anti-competitive provisions in any proposed local law before the law can be adopted. The prescribed procedures to be complied with are those set out in the Queensland Government's '*National Competition Policy Guidelines for conducting reviews on anti-competitive provisions in local laws*'.

Where a local government determines that there are potentially significant impacts from the anti-competitive provisions, the local government is required to review the anti-competitive provisions in accordance with a number of principles, including meaningful consultation with businesses, examination of reasonable alternatives and cost benefit analyses. In preparing their local waste management laws, the local councils have all identified that the proposed law contains anti-competitive provisions.

As part of the process, councils have each undertaken a public benefit test. One example of the public benefit test is the Gold Coast City Council, which received 20 formal submissions identifying a number of issues, including that the proposed local law is anti-competitive. In response, the Gold Coast City Council advised in its Public Interest Test Report that:

> '*council is not proposing that the nature of the restriction on competition under the proposed local law will be different from the nature of the restriction on competition which currently exists under Chapter 5A and section 7'*

The Gold Coast City Council therefore determined that the anti-competitive provisions be retained in the local law as:

- the benefits of the restriction to the community as a whole outweigh the costs, and
- the objectives of the law could only be achieved by restricting competition.

Even though councils undertake the processes required of them in introducing a potentially anti-competitive law, there is concern by industry that an assessment of the issues raised by the community or industry does not generally result in a different outcome to that originally proposed by council. The Department of Local Government, Racing and Multicultural Affairs has confirmed that its role is limited to ensuring the process has been undertaken, not to adjudicate on the issues raised and councils' responses. Councils ascertain that they have undertaken the process on the basis that they have acted in the best interest of their ratepayers.

> ***Policy consideration: The head of power to regulate waste services in Queensland should be retained with the State, avoiding the making of individual local laws.***
>
> ***Retaining the power with the State would not however provide clarity about the policy intent with the current definition of 'general waste' in the State regulations.***

2.3 Anti-competitive concerns

Industry has raised concerns about the potential anti-competitive behaviour of local councils under the waste provisions, including how the waste provisions restrict competition and the avenues available for complaint or redress.

Significant business activity

If the local government conducts general waste or green waste collection as a significant business activity, then under the competitive neutrality principle, Chapter 3, Part 2, Division 2 *Local Government Act 2009* (Qld) provides that:

> *'any entity that is conducting a business activity in competition with the private sector should not enjoy a net advantage over competitors only because the entity is in the public sector'.*

A 'significant business activity' is defined as a business activity of a local government that is conducted in competition, or potential competition, with the private sector and meets the threshold under a regulation. The threshold for the 2017-18 financial year is $9.35m.

The waste provisions in themselves do not confer on local governments the right to establish monopolies in their local government areas for the provision of waste management services. Instead, what could be viewed as restricting competition by a regulatory body is the right of councils to impose a mandatory charge on all premises for waste collection. As can be seen in Table 3 below, currently Gold Coast City Council, Brisbane City Council, Fraser Coast

Regional Council, Sunshine Coast Regional Council and Noosa Shire Council all have a mandatory commercial waste collection charge.

Table 3: mandatory commercial waste services

Council	Mandatory waste charge?	Commercial waste can be collected by a different provider?
Logan City Council	x	✓
Gold Coast City Council	✓*	x*
Brisbane City Council	✓	✓
Townsville City Council	x	✓
Fraser Coast Regional Council	✓	x
Sunshine Coast Regional Council	✓	x
Noosa Shire Council	✓	x
Ipswich City Council	x	✓

** in designated areas only*

While occupiers of some commercial premises in these council areas are not obliged to use council services, they are required to pay for the service regardless of use. It is therefore arguable that this compulsory charge reduces the incentive for occupiers to acquire waste collection services from a party other than council.

In some councils, including Sunshine Coast Regional Council and Noosa Shire Council, occupiers do not have the ability to opt-out of the mandatory waste collection services.

Full cost pricing

If a local government conducts a significant business activity, it must assess whether the costs of conducting the activity in accordance with the competitive neutrality principle outweigh the benefits of so doing. The local government must list its significant business activities in its annual report, and state in each case whether the competitive neutrality principle was applied. The local government may comply with the competitive neutrality principle by creating a new business unit to undertake the activity (commercialisation), or by pricing the activity on a commercial basis (full cost pricing).

Full cost pricing means that a council's forecast revenue, considered from a total activity perspective, for the relevant activity must be sufficient to cover the forecast total costs for that activity. Industry has raised concerns that the mandatory waste charge imposed by councils for commercial waste collections does not comply with the requirements of full cost pricing. Alternatively, it is the LGAQ's position that the total revenues of the waste utility charges cover the total costs incurred by local councils for their waste management activities. Practically, in circumstances where the majority of waste collection and management contracts are awarded following competitive tender, it is fair to assume that the costs of these services should reflect the best value available in the market at time of tender.

Advice provided by Arup is that the ability to aggregate individual costs allows Councils to provide a reasonable uniform pricing regime across their geographical areas and a waste management charging regime that should ideally be transparent and qualify charges for ratepayers. This allows for greater transparency about the makeup of the waste charges and recognition that these costs also cover services common to the community (including street bins, landfill remediation, education, compliance functions and street cleaning). For example, the Brisbane City Council waste management service charge includes:

> *'the ongoing provision of Council waste management services, facilities and activities. These include, but are not limited to: general waste service provision, collection and disposal, street sweeping, litter collection, cleansing parks and footpaths, and provision of waste management facilities'.*

Jurisdiction to determine disputes

Chapter 6, Part 2 of the *Local Government (Beneficial Enterprises and Business Activities) Regulation 2010* sets out the competitive neutrality process, including the process to complain to the Queensland Competition Authority (QCA). The *Queensland Competition Authority Act 1997* (Qld) also provides the relevant Minister with the power to declare a government business activity to be a 'monopoly business activity' and with the power to then refer the activity to the QCA for an investigation into its pricing practices or for ongoing monitoring of its pricing practices. This was the process undertaken by the WRIQ in 2012, which complained about Sunshine Coast Regional Council's:

- attempts to enforce a monopoly over bulk waste recycling services, and

- pricing of services in a way that prevented the Waste Contractors and Recyclers Association of Queensland members from competing.

The QCA found that the Councils had a competitive advantage that should be removed. Council did not agree with the findings of the QCA.

> '*[Sunshine Coast Regional Council's] Waste and Resources Management business has a competitive advantage over potential competitors as a result of its local government ownership and that this advantage should be removed'*

The local government is not obligated to implement the recommendation. In the case of the Sunshine Coast Regional Council, the recommendation was not implemented.

Similarly, Chapter 3, Part 2 of the *Local Government Regulation 2012* sets out a process by which an affected person may complain either to the local government or to the Queensland Productivity Commission (QPC) about a failure of the local government to undertake the business activity in accordance with the competitive neutrality principle. QPC is required to investigate the complaint and report to the local government on whether the complaint is substantiated. Like the QCA, the QPC powers are only recommendatory.

Other potential avenues available to industry to make complaint about potential anti-competitive behaviour include the:

- Australian Competition and Consumer Commission, however, as councils in Queensland impose or collect levies for the management of waste services, the legal advice obtained by QTC concludes that Part IV *Competition and Consumer Act 2010* (Cth) does not apply to waste management services in Queensland, and
- Ombudsman, which private operators may complain to. The legal advice obtained, however, is that this is unlikely to be an appropriate forum. Consistent with this, according to the AEC Report, the Queensland Ombudsman stated that:

'as the issue of councils' involvement in 'monopoly type' waste recycling processes has broader policy implications for business and the development of the State's Waste Strategy, I consider this Office is not best placed to deal with those issues through the current complaint'.

> ***Policy consideration: While there are a number of potential avenues for complaint if it was alleged that the waste provisions restricted competition, only a complaint to the Queensland Competition Authority or Queensland Productivity Commission is likely to have any practical application. These avenues for complaint, however, have limitations, including that the Queensland Competition Authority and Queensland Productivity Commission powers only have recommendatory powers. Government should consider if the current powers of the regulatory bodies are sufficient to monitor and enforce policy intent.***

2.4 Compulsory waste collection

Industry is concerned by the current practice of some councils mandating the collection of non-domestic waste in some (or all) areas, either directly by Council or under contract from Council to a waste services provider. It is the councils' position that regulating the collection of waste services is necessary to manage the overall cost of waste services, to ensure that all commercial businesses are serviced and to be able to control and regulate collection services (including to meet requirements regarding health, amenity and safety).

Cost

The LGAQ has suggested that the removal of councils' ability to levy mandatory collection of domestic waste will cause domestic waste utility charges to increase by 10 to 20%, with the cost of self-haul disposal at council landfills increasing in the order of 20 to 30%. As stated above no stakeholder disputes that councils should retain the power to mandatorily provide domestic waste services. The QCA though was not convinced that sufficient or reliable data was provided by LGAQ to support the potential increased costs (to domestic customers and by inference to commercial customers).

Industry has also identified a risk of an increase to costs with the removal of some competitors. There are concerns that the longer local councils operate as the sole provider of waste collection services within their local council area, the more chance there is that smaller waste businesses that only operate within that area may go out of business. This may reduce competition for that local government area (or lead to competition only being with national waste providers). Although this affects competition to some extent, the larger players in the industry will likely still compete to ensure that the cost for collection of non-domestic waste is competitive.

Competitive service provision

It is argued by LGAQ that the inability of local councils to charge a universal service offering could lead to the private sector focusing only on more profitable waste collection areas, including large non-domestic waste generators, with particular materials (such as bulk paper and cardboard) being targeted. There is concern from councils that this would lead to smaller and non-metropolitan customers not being effectively serviced for a reasonable price (with councils being effectively forced to provide services to these customers) and lower valued recycling commodities being deposited in general waste (and thus targeted resource recovery rates not being achieved). Industry and local governments agree that private waste providers would likely target more profitable waste collection services, and that the provision of cost effective waste collection services for all customers within any local government area is vital.

Mandatory council services means that some large commercial customers cannot be serviced by their national private waste contractor in designated areas. These national contracts can provide customers (who are large generators of waste across the State) with the ability to have greater control over how their waste is treated, managed and reported. For example, Coles uses its national contract to drive recycling and waste conversion with specific key performance indicators, including tonnes of waste to landfill and units of soft plastics recycled, reported as part of its annual report.

One specific mandated collection which was subject to QCA's 2012 review is the collection of recycling. The mandate of compulsory bulk waste recycling services prohibits industry from competing with council in this area. The QCA found that:

> *'under the current arrangements [Sunshine Coast Regional Council's] bulk recycling services do not bear the full cost of the service they impose.'*

The QCA therefore recommended that bulk waste recycling services be removed from mandatory bulk waste service charges, allowing the competitive collection and disposal of bulk recycled waste. Should it be needed, the QCA recommended the introduction of a community service obligation (CSO) that would allow all service providers to compete on a similar basis. Similarly, the QCA held that:

> *'[Sunshine Coast Regional Council] should ensure appropriate differential pricing and alternatives for recycling and disposal of bulk waste, including consideration of a landfill levy to replace the State levy…. In order to encourage commercial recycling and fund recycling programmes and enforcement activity.'*

The LGAQ disagrees with the implementation of a CSO, as this would see the burden of meeting waste diversion targets across the community rather than on those actually generating the waste in the first place. The LGAQ argues that the removal of the power to levy mandatory waste management charges on non-domestic properties would:

- impact the ability of councils to ensure that recyclable material generated as waste is diverted from landfill
- allow service providers and customers to take up the lowest cost option, which would primarily be a general waste service with very few recycling services
- inconsistent provision of recycling services over time as a result of the fluctuating market of recyclables
- cause volumes of recyclable materials to be disposed of to landfill, causing increased pressure on local landfill capacity, and
- reduce kerbside recycling rate from 20% to 5% and therefore reduce the viability of recycling services.

For this reason, it was the LGAQ's position that the status quo is the only cost effective means to deliver a consistent, affective and reliable recycling service.

An issue with maintaining the status quo, however, is that Queensland is currently the second worst performing State or Territory in Australia (second to the Northern Territory) when it comes to waste recovery rates (Queensland currently achieves approximately 45% recovery rate for headline waste streams,[4] while South Australia, the best performer in the country, currently achieves 78%). Although performance varies by location, maintaining the 'status quo' does not appear to produce best practice recycling outcomes

Ability to control and regulate collection activities

The LGAQ has also argued that by removing the ability of councils to levy mandatory waste utility charges, there will be:

- no centralised coordinated transport approach, leading to:
  - increased overall truck movements (estimated up to three times as many as current)

[4] Headline wastes are considered to be municipal solid waste, commercial and industrial waste and construction and demolition waste. Source: 'Recycling and Waste in Queensland 2017', Department of Environment and Science.

  - inability to effectively control the volume and frequency of heavy vehicle traffic, resulting in negative noise, congestion and public safety impacts
  - inability to effectively control traffic congestion impacts in heavy traffic areas and narrow streets
  - increase likelihood of long-haul transport of waste, and
  - increased carbon footprint of provision of waste collection services
- an inability to control waste collection times, leading to:
  - private waste collectors operating at the most convenient and cost effective times, which may increase safety and amenity impact, and
  - sporadic and disorganised collection which could cause noise, congestion and safety impacts multiple times across the day, and
- an inability to control the amenity relating to waste collection, leading to:
  - an inability to control the location, time and frequency of servicing
  - an ability to control the types of bins, which may be an eyesore, and
  - a lack of control of bin pickups and bin condition/odour.

While it is acknowledged that these are real concerns to local governments and ratepayers, there is an ability for local councils to use other instruments already available to them to control some of these potential adverse impacts. For example, the *Heavy Vehicle National Law Act 2012* (Qld) grants the Regulator the power to authorise heavy vehicle use in particular areas or routes during particular hours of stated days. This piece of legislation has already been utilised by the Brisbane City Council in setting restrictions on the parking of heavy good vehicles near residential properties. Similarly, the New South Wales equivalent (the *Heavy Vehicle (Adoption of National Law) Act 2013 (NSW)*) has been utilised by the City of Sydney to control the timing and number of heavy good vehicles (including waste service vehicles) within the city at any time. Councils also have the authority under section 440 *Environmental Protection Act 1994* (Qld) to enact a local law prohibiting the making of a stated noise, including the time at which the noise is made. Finally, while it may be more challenging for established developments (opposed to new developments), existing planning and regulatory mechanisms exist which can be used by councils to address any concerns that they have with regard to the social and environmental impacts associated with collection (noise, amenity, traffic).

2.5 Compulsory waste charge

Currently only some councils charge a mandatory waste charge to cover the cost of community waste (including collection and disposal, street sweeping, litter collection and cleansing parks and footpaths). Other councils acknowledge that they fund these services from other parts of their operations.

It is argued by the LGAQ that by removing the ability of councils to levy mandatory waste utility charges, there would be increased whole of community waste management costs. Consistent with this point, the Sunshine Coast Regional Council had a cost benefit analysis prepared which found that:

> *'significant net costs would be incurred by moving to a policy where mandatory waste collection charges are not levied.'*

Waste management services are an essential service and it is therefore not argued by industry or council that a mandatory levy to manage waste generated in public and common areas and to ensure public health and safety is necessary. Commercial businesses are yet to be consulted, however to some extent, the practise of community waste charge already exists in some councils, including Brisbane City Council, where a mandatory waste collection levy, equivalent to the minimum service provision, is charged to commercial businesses, even though they may elect to have their waste collected by a separate provider.

> ***Policy consideration: councils should be able to charge a commercial premises a reasonable waste charge to cover the cost of community waste.***

3 Potential options

In light of the expiring waste provisions, DES has considered four options for the future of the local government waste management provisions provided in Chapter 5A of the *Environmental Protection Regulation 2008* (Qld) and Part 2A of the *Waste Reduction and Recycling Regulation 2011 (Qld).* In summary, these options are:

- do nothing and allow the waste provisions to expire on 1 July 2018
- allow the waste provisions to expire on 1 July 2018, with DES to develop a model local law to assist Councils to make their own local laws

- allow Part 2A *Waste Reduction and Recycling Regulation 2011* (Qld) to expire. However, Chapter 5A *Environmental Protection Regulation 2008* (Qld) is extended indefinitely, with DES to develop a model local law to assist Councils to make their own local laws, or
- extend the waste provisions indefinitely, however the government amends the waste provisions to clarify that they only relate to domestic waste or waste generated at a domestic premises.

Further information about the options considered by DES in attached at Annexure A.

3.1 Allow waste provisions to expire

Allowing the waste provisions to expire (DES' options 1 and 2), will likely result in the replication of the waste provisions into numerous local laws (albeit with some minor variations) at unnecessary cost. The issues identified surrounding the policy issues of competition and council's current ability to mandate the collection of non-domestic waste will not be addressed. This option is also inconsistent with councils and industry's desire for the State to retain the power in State laws.

Further, the development of a model local law by DES will be of little utility in circumstances where a number of councils have already drafted their own local laws with the majority of other councils anticipated to also replicate the local laws already prepared.

3.2 Allow designation provisions to expire

Allowing Part 2A *Waste Reduction and Recycling Regulation 2011* (Qld) to expire (DES' option 3) would mean that councils have no power to designate areas. This option would however retain Chapter 5A *Environmental Protection Regulation 2008* (Qld), which, subject to some amendments to reflect the removal of designation under the *Waste Reduction and Recycling Regulation 2011* (Qld), would still provide councils with the powers to determine how waste is to be collected.

This option would allow the *Environmental Protection Regulation 2008* (Qld) to focus on the environmental, health and safety issues regarding waste collection. The power to rate for waste collection services would be regulated by local governments under their existing rating powers (the existing powers also allow the councils that want to charge a community waste charge to do so). Separating environmental and rating powers for waste management has been the practice in other jurisdictions in Australia.

It does not however address the policy intent surrounding council's ability to continue to mandate the collection of non-domestic waste.

3.3 Extend waste provisions

It is not contested by stakeholders that councils should retain the ability to mandate the provision of domestic waste services to create scalable operations and consistent services. Amending the waste provisions to clarify that they only relate to domestic waste or waste generated at a domestic premises would be consistent with this.

What is not clear is the policy intent that would allow councils to retain the power to mandate the provision of non-domestic waste services. While it is industry's preference to have a competitive market for the collection of commercial waste, councils have raised concerns regarding increased costs and poorer waste outcomes and management of waste collection practices should they lose the powers to mandate commercial waste collection. While it can be argued that the issues identified can be addressed through other means already available to councils, whether these powers should be amended is ultimately a policy decision to be determined by DES. Should it be determined that non-domestic waste services should not be mandated, then the definition of 'general waste' in the *Environmental Protection Regulation 2008* (Qld) should be amended to reflect that it only relates to the domestic waste stream (for waste collection services), as proposed in option 4 .

This option however, does propose to retain Part 2A *Waste Reduction and Recycling Regulation 2011* (Qld), providing councils with the power to designate areas. Although the ability to designate areas could be limited to the collection of domestic waste, there may not be any benefit to retain this section as councils could rely on their existing rate powers for the collection of waste charges

3.4 Policy consideration

Part 2A *Waste Reduction and Recycling Regulation 2011* (Qld) could be allowed to expire on 1 July 2018 and Chapter 5A *Environmental Protection Regulation 2008* (Qld) extended indefinitely. There appears to be no need for DES to develop any new model local laws, noting the progress already made by many councils.

Whether the waste provisions should be amended to clarify that they only relate to domestic waste or waste generated at a domestic premises is ultimately a policy decision for DES. In considering this issue, it should also be acknowledged that in some local council areas true markets do not exist and in these regional and remote areas single service provision for waste is the only option. This being said, should it be determined that non-domestic waste services should not be mandated, then the definition of 'general waste' in the *Environmental Protection Regulation 2008* (Qld) should be amended to reflect that it only relates to the domestic waste stream for the provision of waste services.

4 Implementation considerations

Stakeholders have suggested that where councils have already committed to long term contracts with their waste collection service providers that any alteration to State regulations should consider:

- the potential significant financial implications for councils through potential penalties to be incurred under existing contractual terms
- the impact on upfront investments made by collection service providers and downstream contracts and investments
- the impact on contractual arrangements that are in progress, and
- the impact of preventing councils from processing waste at alternative waste facilities, further impacting the recycling rate achieved and preventing customers from being able to contribute to moving towards local and state recycling targets.

It is acknowledged that there are existing contractual arrangements in place between councils and industry for the collection of non-domestic waste, some with significant tenure. Such contracts were entered on acceptable practices and in line with the waste regulations at the time, and therefore should be considered as part of any regulation amendment.

Annexure A - Department of Environment and Science's proposed options

Option 1 – allow waste provisions to expire

Allow the current provisions in both Part 2A *Waste Reduction and Recycling Regulation 2011* (Qld) and Chapter 5A *Environmental Protection Regulation 2008* (Qld) to expire on 1 July 2017

Option 2 – allow waste provisions to expire, but prepare model local law

Allow the current provisions in both Part 2A *Waste Reduction and Recycling Regulation 2011* (Qld) and Chapter 5A *Environmental Protection Regulation 2008* (Qld) to expire on 1 July 2017.

Once the provisions expire, local governments without local laws for waste administration can continue to develop local laws for local government waste management. The Department of Environment and Science will develop a model or template local law prior to 1 July 2018 for voluntary adoption by Councils. A model or template local law would include provisions clarifying the intent of the provisions and limiting the designation of areas to domestic waste collection unless it's a high density mixed use area. A model local law, as opposed to a template local law, is provided for in the *Local Government Act 2009* (Qld). It is estimated that making a model local law will take 9 to 12 months.

Option 3 – extend expiry of *Environmental Protection Regulation* only, and prepare model local law

Amend the *Environmental Protection Regulation 2008* (Qld) to remove the expiry date in chapter 5A so as to not expire on 1 July 2018, but instead continues indefinitely. Once section 7 *Waste Reduction and Recycling Regulation 2011* (Qld) expires, local governments without local laws for waste management can continue to make local laws. The Department of Environment and Science will develop a model or template local law prior to 1 July 2018 for voluntary adoption by Councils. A model or template local law would include provisions clarifying the intent of the provisions and limiting the designation of areas to domestic waste collection unless it's a high density mixed use area.

Option 4 – extend expiry of waste provisions, but clarify intent

Amend Part 2A *Waste Reduction and Recycling Regulation 2011* (Qld) and Chapter 5A *Environmental Protection Regulation 2008* (Qld) to remove expiry dates so that the provisions continue indefinitely and clarify the intent of the provisions by:

- Educating local governments regarding the original intent of the legislation – that is, that section 7 *Waste Reduction and Recycling Regulation 2011* (Qld) was intended to apply to domestic premises and not limit commercial operators collecting commercial waste. Further, undertake an independent review of local government competitive neutrality, or
- Amending provisions in both *Waste Reduction and Recycling Regulation 2011* (Qld) and *Environmental Protection Regulation 2008* (Qld) to minimise interpretations that provide for anticompetitive waste management behaviours by amending the provisions to:
  - clarify that s 7 *Waste Reduction and Recycling Regulation 2011* (Qld) does not limit the ability for a private provider to collect waste generated other than by a domestic premises
  - clarify that section 7 *Waste Reduction and Recycling Regulation 2011* (Qld) only relates to domestic waste (as opposed to general waste) and green waste or waste from domestic premises, and
  - include flexibility for premises in high density/ mixed use or similar areas.

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