## Elements of offence: s143 POEO Act – Unlawful transporting or depositing of waste If answer to this question is "no" Premises Material is Waste is being used **ELEMENT NO: 4** "WASTE" [RANSPORTED] **ELEMENT NO: 1** If the answer If the answer t ANY of **ELEMENT NO: 2 ELEMENT NO: 3** "WASTE FACILITY" IS THE USE OF THE PREMISES questions is "yes" IS THE SUBSTANCE "WASTE"? IS THE WASTE TRANSPORTED AND ARE THE PREMISES BEING USED **AS A "WASTE FACILITY" DEPOSITED?** TO AS A WASTE FACILITY? Waste is not **Premises** Material is LAWFUL? answer to this RANSPORTED not being answer o this answer ALL of these "WASTE" used as a questio n is "no questio n is "no' Questions to be answered "WASTE Evidence/Avenues of Questions to be Questions to be Question to be Evidence/avenues of Evidence/Avenues of FACILITY' (a) If waste is being applied to land: answered considered enquiry enquiry answered enquiry Check Check (i) does a resource recovery exemption (a) Is substance · Where has the Is waste being stored, What, if anything, is whether whether apply? [See: causing an alteration in substance\* come from: Is the waste transported · Where has the waste treated, processed. being done to waste breach of breach of Check www.environment.nsw.gov.au/waste/ the environment? address; and deposited? come from? sorted or disposed of at other pollution while at the premises: other whether generalRRE.htmll pollution offences. (b) Is substance name of facility; address; the premises? photographs breach of offences (ii) are all of the requirements of that If the waste is discarded, rejected, other pollution identity of people name of facility; witness being stored, If there is offences. resource recovery exemption being unwanted, surplus or involved identity of people statements. treated, harm or complied with? abandoned? If there is · Photos of delivery involved. including from processed or likely harm, harm or likely (b) Has an environmental protection licence sorted, check (c) As for (b), but is trucks, including logos on check ss · Photos of delivery persons who harm, check s 144 POEO. been granted in relation to the premises: 116, 120(1) substance also intended sides of trucks and trucks, including logos provided ss 115, 116, and 142A (i) if so, does it permit the use of the If waste is for sale or for recycling. 120(1) and on sides of trucks and number plates. substance as to POEO. disposed of 142A POEO. premises as a waste facility? processing, recovery or · Witness statements: number plates. what they were check s 115 If the matter (ii) are all of the requirements of that If waste is purification by a Vehicle registration truck driver(s); POFO. told would be done has been deposited in a licence being complied with? separate operation from people at premises; search. deposited in If there is with it. public place (c) Is development consent required to use a public harm or likely that which produced the · Witness statements: o people at source of or an open place or an harm, check the premises as a waste facility? substance? substance truck driver(s); private place open private ss 115, 116, check s 145 (i) if so, has one been obtained? (d) Is the substance: Documentary evidence people at place check 120(1) and POEO. (ii) Are all of the requirements of that a processed, s 145 142A POEO. (i) from drivers, people at premises: POEO. licence been complied with? If waste is recycled, re-used or premises and from source people at source deposited in a recovered substance of substance. of substance. public place If answer to (a) and (b) or to (c) is "no" produced wholly or · What was the Documentary or an open partly from waste: substance used for prior to evidence from drivers. private place check s 145 Transporting or No breach of s 143 and being placed in current people at premises and POEO. depositing of waste is POEO Act. (ii) applied to location or brought onto from source of unlawful land by: these premises? substance (including Breach of s 143 of POEO · Was the substance, or transport contracts and **DEFENCES** (A) spraying, spreading or any part of the substance, invoices). depositing the or any precursor input into material on the or part of the feedstock for Questions to be answered Evidence/Avenues of Honest and reasonable mistake: <u>enqu</u>iry land; or the substance a • Interview with defendant did the defendant honestly and (B) ploughing, discarded, rejected reasonably believe in a state of facts to determine state of mind. injecting or mixing unwanted, surplus or which would make the defendant's whether reasonable abandoned substance? into the land; or (C) filling, raising, · Is the substance or any act innocent (if true)? precautions were taken, · Owner of waste: did the owner whether approved notice reclaiming or part of the substance a contouring the discarded, rejected or have no control over the commission was given, whether waste of the offence and did the owner take surplus substance from a was deposited. land NOTE: a substance may manufacturing, refining or reasonably precautions and exercise Observations, expert still be a waste even if it due diligence to prevent commission evidence to determine production or some other has been re-processed. of the offence? cause, whether reasonable process. re-used or recycled. · Approved notice: was an precautions were taken. approved notice for use of the Examination of approved premises as a waste facility given to the defendant? If the answer to all of these questions · Waste not deposited: was the is "yes" waste transported by the defendant Is the waste: not deposited by the defendant or Asbestos waste? OR any other person at the place to Hazardous waste? which it was transported? If the answer to any of these questions is "yes" Take samples and get expert advice as this will affect the penalty Defence established no Breach of s 143 POEO breach of s 143 POEO

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