SUPREME COURT OF QUEENSLAND

CITATION:	*U Can Recycle Pty Ltd v Container Exchange (Qld) Limited* [2026] QSC 163
PARTIES:	**U CAN RECYCLE PTY LTD** ACN 626 760 332 (applicant) **v** **CONTAINER EXCHANGE (QLD) LIMITED** ACN 622 570 209 (respondent)
FILE NO/S:	BS No 2784 of 2026 BS No 2922 of 2026
DIVISION:	Trial Division
PROCEEDING:	Application
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED ON:	2 July 2026
DELIVERED AT:	Brisbane
HEARING DATE:	26 June 2026 and 2 July 2026
JUDGE:	Doyle JA
ORDER:	**I will hear the parties on the form of the orders.**
CATCHWORDS:	EQUITY – EQUITABLE REMEDIES – INJUNCTIONS – INTERLOCUTORY INJUNCTIONS – RELEVANT CONSIDERATIONS – where the parties entered two container collection agreements (CCAs) as part of the implementation of the beverage container refund scheme under the *Waste Reduction and Recycling Act 2011* (Qld) (the Act) – where the respondent is responsible for administering and governing the scheme – where the respondent issued a Show Cause Notice identifying breaches of the Main CCA arising out of the applicant's conduct of its business – where the applicant contended that the conduct complained of had been rectified and not repeated – where the respondent issued a notice to terminate the CCAs – where the applicant seeks to restrain the respondent from giving effect to that purported termination of the CCAs – whether the applicant has made out a prima facie case that the purported termination was ineffective – whether the balance of convenience favours the grant of the injunction *Waste Reduction and Recycling Act 2011* (Qld), s 99Z

COUNSEL:	P W Telford for the applicant R A Perry KC, with C G Curtis, for the respondent
SOLICITORS:	Everingham Wallace Lawyers for the applicant HWLE Lawyers for the respondent

[1] **DOYLE JA**: This is an application for an interlocutory injunction to restrain the respondent from, inter alia, acting to give effect to its purported termination of two agreements with the applicant.

[2] The agreements are container collection agreements: one for the Arana Hills region and the other for a number of areas. The latter has been referred to by the parties as the "Main CCA". It is the one to which the parties principally referred in submissions. The parties agreed that the Arana Hills CCA is materially to like effect.

[3] Under the *Waste Reduction and Recycling Act 2011* (Qld) (the Act) a scheme was established for the operation of a beverage container refund scheme. The respondent has as its function or one of its functions, the administration of and providing governance for the conduct of that scheme.

[4] The two CCAs were made as part of the implementation of that scheme.

[5] But for the events the subject of these proceedings, the CCAs run for some time into the future. The exact duration is perhaps unimportant, but I have been told that the agreement with respect to the first area to expire, will expire later this year with other areas continuing beyond that.

[6] In March 2025 the respondent gave the applicant a "Show Cause Notice" which identified a series of breaches of the Main CCA. The CCAs themselves do not make any provision for a show cause notice but the document took that form and identified areas of concern or alleged breaches arising from the applicant's conduct of its business.

[7] The correctness of the facts, in that Show Cause Notice, are not disputed for the purposes of this application.

[8] The applicant has delivered a Statement of Claim which, by paragraph 17, summarises the conduct referred to in that Show Cause Notice as follows:

> "(a) staff members sleeping on mattress is on the floor of the Urangan depot;
>
> (b) refunds being processed without completing a count of the containers returned;
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> (c) untied or unhygienic premises;
>
> (d) dogs roaming freely at a depot;
>
> (e) at a number of depots… there was no allocated site manager to supervise staff; and
>
> (f) staff were not being paid in accordance with their entitlements under the *Fair Work Act* and [were] working outside of the visa requirements."

[9] An extensive response was made to that Show Cause Notice on 15 August 2025. The applicant contends:

(a) the response showed that the conduct complained of had been corrected; and

(b) that there has been no further reoccurrence of the same breaches.

[10] On the material, these contentions are sufficiently arguable, if directly relevant, that they can be accepted for present purposes.

[11] On 16 June 2026 the respondent gave the applicant a notice to terminate the CCAs expressed to have effect on 24 June 2026. It is this notice which has prompted the application for an injunction.

[12] On an interlocutory basis McLeod J made interim orders restricting the respondent from acting on that purported termination, and other notices.

[13] The principles to be applied in relation to applications for interlocutory injunctions have been addressed by both parties in their written outlines and are not substantially in dispute. There may be some small difference between the parties as to the approach of the Court to be adopted if the interlocutory injunction is or includes mandatory orders. In my view, there is no difference in principle in such circumstances, in respect of mandatory injunctions. However, the weighing and balance of all the relevant factors is affected, in some instances, by the intrusive nature or other effect of mandatory relief.

Prima Facie Case

[14] The first issue is whether the applicant has made out a prima facie case that the purported termination was ineffective. This means a case that has sufficient likelihood of success to justify preserving the status quo.

[15] The applicant advanced its case on a number of bases which turn largely on the meaning and operation of clause 20 and in particular, subclauses 20.1, 20.4 and 20.7 of the Main CCA. They refer to the respondent as the PRO and the applicant as the Operator, and provide:

> “**20.1 Event of Default**
>
> (a) The PRO may give a Default Notice to the Operator in relation to an Event of Default by the Operator.
>
> (b) The Operator may give a Default Notice to the PRO in relation to a PRO Default.
>
> …
>
> **20.4. Termination by PRO**
>
> (a) The PRO may terminate this Agreement by giving at least 5 Business Days’ written notice to the Operator if:
>
> (i) the Operator fails to remedy an Event of Default specified in a Default Notice given by the PRO to the Operator, in the manner and within the

timeframe specified in the Default Notice (which period must be reasonable taking into account the nature of the Event of Default);

(ii) the State has advised the PRO that, in its reasonable opinion, the Operator is not (or is no longer) a fit and proper person for the purposes of providing the Services under this Agreement;

(iii) the PRO is of the reasonable opinion that the Operator is not (or is no longer) a fit and proper person for the purposes of providing the Services under this Agreement. In determining whether the Operator is not (or is no longer) a fit and proper person, the PRO may have regard to:

(A) any public or private reports of Inappropriate Conduct, fraud or alleged criminal conduct;

(B) poor governance of or by the Operator or its Associates (whether or not in relation to the Scheme);

(C) the Operator or any of its Associates having been convicted of a serious offence or ordered to pay pecuniary penalties or engaging in any other unlawful conduct;

(D) any conduct of the Operator or its Associates which may bring the PRO or the Scheme into disrepute or impact on, or be inconsistent with, the achievement of the Scheme Objectives;

(E) any Event of Default or other breach of this Agreement, and

(F) any other matters that the PRO reasonably considers appropriate in the circumstances.

For the avoidance of doubt, the PRO may form a reasonable opinion that the Operator is not a fit and proper person for the purposes of providing the Services under this Agreement notwithstanding that the PRO has not suffered any Loss or damage by reason of the Operator’s conduct;

(iv) the State directs that this Agreement be terminated;

(v) an agreement between the Operator and a Scheme Participant is terminated, which would prevent the Operator from being able to provide the Services;

(vi) the Operator commits a criminal act or engages in Wilful Misconduct;

(vii) there is a change to a Statutory Requirement or an Approval that makes or will make either party's performance of this Agreement non-compliant or contrary to law or policy;

(viii) the Operator is the subject of an investigation or decision by a Regulatory Authority that is or may be adverse to the Operator's capacity to perform the Services or harmful to the reputation of the PRO; or

(ix) a Force Majeure Event prevents the Operator from performing the Services or any part of the Services for a continuous period exceeding three months.

(b) For the purposes of clause 20.4(a)(iii), the 'reasonable opinion' may be formed by the Chief Executive Officer of the PRO or their delegate.

…

20.7 Transition out by Operator

(a) Following the issue of a notice by the Operator under clause 20.6(a), the Operator must, during the relevant notice period, continue to perform the services in accordance with the terms of this Agreement, provided that where the Operator has provided notice of its intention to terminate in accordance with clause 20.6(a)(ii), the Operator shall not be required to comply with any amendments to this Agreement which are the subject of the Dissatisfaction Notice (as applicable).

(b) Where:

(i) an Expiry Notice has been issued by the PRO or an Extension Notice has been rejected by the Operator;

(ii) a notice under clause 20.4 has been given by the PRO; or

(iii) a notice under clause 20.6 has been given by the Operator,

the Operator must comply with any direction issued by the PRO (acting reasonably) in relation to transitioning the Services provided under this Agreement to another Refund Point Operator.

(c) The Operator will not be entitled to any additional payment with respect to its obligations under clause 20.7(b)."

[16] The expression "Event of Default" is defined in clause 1.1 as follows:

"***Event of Default*** means any of the following events:

(a) the Operator breaches a material obligation or requirement or covenant under this Agreement or the Act or the Regulation or a Statutory Requirement or Approval or a Manual or a Policy or a reasonable direction of the PRO;

(b) the Operator engages in Inappropriate Conduct;

(c) the Operator, an Associate, or any Personnel, performs obligations under this Agreement or otherwise acts in a manner in undertaking its obligations, that:

(i) is unsafe;

(ii) endangers or may endanger public health or safety;

(iii) undermines or may undermine the integrity of the Scheme;

(iv) adversely affects or may adversely affect the PRO or its brand, goodwill or reputation; or

(v) places the PRO or may place the PRO in breach of any Statutory Requirement or other obligation of the PRO;

(d) the Operator identifies or ought reasonably to have identified, Modern Slavery practices in its supply chains or operations of the Operator and fails to take all reasonable steps to address or remove the practices;

(e) where the Operator is a company, the company becomes deregistered by the Australian Securities and Investment Commission;

(f) the Operator or a Related Entity of the Operator is in breach of a material obligation under a Related Agreement;

(g) the Operator abandons an Operator Refund Point or repudiates this Agreement."

[17] Because of the interlocutory nature of this hearing, I will deal, but only very briefly, with the contentions that have been advanced.

[18] First, I do not accept (as sufficiently arguable) the construction urged by the applicant that the rights conferred by clause 20.4 are to be read down so as to be limited to breaches which comprise "Events of Default" or, if there be any, limited to some other specific matter set out in the subparagraphs of clause 20.4(a)(iii). The clause allows for termination upon forming the reasonable opinion that the applicant is not a fit and proper person for the purposes of providing the services under the agreement. The factors to be taken into account in forming that view are or at least include those set out in the subparagraphs of clause 20.4(a)(iii) which in turn include "any other matters that the PRO reasonably considers appropriate in the circumstances." The construction urged by the applicant is difficult to accept having regard to that last mentioned provision.

[19] Second, it was urged that clause 20.4 is to be read coherently with clause 20.1 such that, it is urged, clause 20.4 will not apply to events that have been or perhaps could be the subject of a default notice. This too is not an immediately attractive construction and does some considerable violence to the language employed. I do not believe it is sufficiently arguable for the purposes of this application.

[20] The third contention is that the conditions required to engage clause 20.4 have not been met. This is said to be in a number of respects.

[21] *First*, the clause requires at least five business days' notice to be given of termination. The Notice of Termination itself did so. However, it was served at the same time as a "Demobilisation and Transition Out Arrangement Notice." This notice is given pursuant to clause 20.7(b)(ii) of the Main CCA. In part it directs the applicant to "immediately, suspend all Container Collection Services and Customer Services of the Operational Services" save as to a number of respects which are then enumerated. The notice goes on to provide later dates for other steps to be taken. The applicant contends that reading the two documents together, the Notice of Termination is to be understood as if it amounts to an attempt by the respondent to immediately terminate the Main CCA, rather than to give five business days' notice of doing so. In my view the language of both notices is plain and does not have that effect.

[22] *Second*, it was accepted by the applicant that the delegate of the respondent formed the opinion referred to in clause 20.4 (though its reasonableness is in issue). However, it was suggested that the appointment of the particular delegate was in breach of an implied term of the Main CCA. The delegate is an employee of the respondent. The respondent and the applicant are in a dispute concerning whether a concluded CCA had been reached in respect of another area (Beenleigh). It is said that the Main CCA (and also the Albany Hills CCA) has implied into it a term that the only proper delegate who can be appointed is an independent person where, as is the case here, the respondent and the applicant are otherwise in dispute in litigation.

[23] I do not find that contention enjoys any substantial success. It would lead to the apparently uncommercial outcome that the respondent could authorise one of its employees to form the requisite opinion for it as PRO but could not delegate that same task to the same person as a delegate.

[24] *Third*, it is contended that it is sufficiently arguable that the delegate's opinion was not one reasonably formed. The delegate provided reasons for her opinion. They appear as part of or attached to the Notice of Termination. The reasons explain that the delegate considered the various acts or omissions which had been identified in the Show Cause Notice and further identified the nature of the applicant's response. The delegate then attributed weight to those aspects which she described as low, medium or high with some short narrative as to why each such designation was selected.

[25] Having done that, she then stated:

> "Through the various responses, it is acknowledged that [the applicant] sought to address the alleged conduct, including through investment in additional information, systems, and process improvements. However, while some progress is noted, the seriousness of the underlying issues, particularly those relating to safe work practices, public protection, the treatment of vulnerable workers,

governance oversight, and the preservation of Scheme credibility, must not be understated.

The remedial actions taken are predominantly reactive and implemented only after issues were identified and evidenced, rather than demonstrating a proactive and embedded system of governance and compliance. Further, the nature, scale, and recurrence of the conduct indicate that these measures do not provide reasonable assurance of a capacity or capability for sustained compliance going forward.

Accordingly, it is not sufficient that steps were taken to remedy individual instances of non-compliance. The central question is whether [the applicant] had both the responsibility and the capability to recognise, anticipate, and proactively discharge its accountability to prevent and effectively manage such risks. On the evidence, the remedial efforts fall short of demonstrating that capability across the range of matters raised.

With this said, the decision has taken into consideration all matters at hand, both their individual weight and their connectivity. It is the events in their totality; the repetitive nature and accumulation of events that **indicate a concerning pattern and culture to governance and compliance** that is of a minimum standard, does not give appropriate regard to public of staff safety or management accountabilities, and is motivated by self-preservation and is reactive in nature." (emphasis added).

[26] It can be seen that the delegate's opinion is based on the fact of the earlier acts or omissions and that they were remedied, along with some other matters, so as to conclude that the applicant was not a fit and proper entity to carry on or provide the services under the Main CCA. It is not dependant on the nature or severity of individual breaches as set out in the Show Cause Notice, or that individually they had not been remedied, but rather the inference to be drawn from them that the applicant did not have the required compliance culture to be a fit and proper entity to carry out the services.

[27] The Statement of Claim as filed perhaps does not distinctly deal with this aspect of the delegate's opinion. It is alleged:

"**Unreasonable Opinion**

39. In the alternative, in breach of cl 20.4(iii) of the 2023 agreement, the termination was based on an unreasonable opinion that [the applicant] was not a fit and proper person.

40. The decision that [the applicant] was not a fit and proper person was unreasonable as it failed to take into account or give proper weight to:

(a) the time that has elapsed since the show cause notice was issued;

(b) the fact that the conduct the subject of the show cause notice was not serious enough to immediately suspend the operation of the agreements or immediately terminate the agreements and that [the applicant] had been permitted to continue to trade since the show cause notice was issued;

(c) the nature of the conduct the subject of the show cause notice which was minor including that:

(i) many of the alleged breaches concerned the conduct of a single individual, Mr Lee Doyle, a person of aboriginal descent who was homeless before he gained employment with [the applicant] and whose employment as a caretaker was terminated as a direct result of the issue of the show cause notice;

(ii) some of the conduct, such as smoking a cigarette and driving a forklift without a current licence, involved alleged breaches that occurred outside of business hours when depots were not open to the public;

(iii) the conduct that was identified during an unannounced audit that occurred in March 20025 occurred immediately following the occurrence of cyclone Alfred;

(d) the fact that the conduct the subject of the show cause notice was remedied by [the applicant];

(e) the fact that the conduct the subject of the show cause notice had not been repeated and was not continuing conduct;

(f) the fact that the nature of the conduct the subject of the show cause notice was not in breach of the Scheme's objects;

(g) the facts pleaded in paragraph 25 herein;

(h) the fact that there was no conduct the subject of complaint regarding the Arana Hills depot and consequently there had been no breach of the 2021 Agreement.

The delegate

41. At a time unknown to [the applicant] but prior to June 2026 an employee of [the respondent] (Ms Lauren Christian) was appointed by the Chief Executive of PRO as his or her delegate to consider whether a reasonable opinion exists that [the applicant] is not a fit and proper person under the 2023 Agreement.

42. By letters dated 15 August 2025 and 27 April 2026 [the applicant] complained to [the respondent] that any delegate

> appointed to consider whether a reasonable opinion exists that [the applicant] is not a fit and proper person should not be an employee of [the respondent] in light of the existence of the Beenleigh Action (defined below)."

[28] Counsel for the applicant submitted that there was a prima facie case that the opinion formed by the delegate was not reasonable.

[29] This, it is submitted, arises in the following context:

(a) The applicant was presented with a Show Cause Notice in March 2025 listing various contraventions.

(b) It dealt with them and responded explaining how it had dealt with them in August 2025.

(c) There had been no further like identified breaches.

(d) Even if its original lack of appreciation of its governance obligations was established, it had proved itself to be fit by remedying those shortcomings with no further default occurring of a like-kind, for some 10 or more months.

[30] The material, including a letter from Everingham Wallace dated 27 April 2026 establishes that the applicant asserted it had remedied the events identified in the Show Cause Notice, and that there had been no repetition of those breaches. It went on to explain at some length one additional matter which had arisen subsequently, concerning Enviro Loop. This is a matter referred to in the delegate's decision but in a way which suggests she considered it to be of low weight. In any event, no real attempt has been made by the respondent to rely upon some particular aspect of the events concerning Enviro Loop, to show that it rendered the applicant not fit.

[31] I am satisfied that, having regard to those matters, there is a prima facie case that the opinion formed was not a reasonable one. It follows I am satisfied that there is a prima facie case that the termination was ineffective.

Balance of Convenience

[32] I am also satisfied that the balance of convenience favours the maintenance of the status quo. If the respondent is free to act to in effect remove the applicant from the performance of its collection services, it will lose its business. It has sought and plainly there should be an order for a speedy trial. But a trial is unlikely to take place for some months. In the meantime, the applicant will lose contact with its customers, is likely to have to surrender the leases to the premises from which it conducts its collection services, will lose employees and will also suffer the dilution or wasting of some part of the residual term it claims under the two CCAs.

[33] The applicant has offered the usual undertakings as to damages. It was accepted by the respondent that the applicant was able to provide a worthwhile undertaking as to damages, at least as to such damages as the respondent itself may be likely to suffer.

[34] The applicant had also undertaken as follows:

> "2. Pending the final hearing or further order of the Court, the Applicant shall, at its own expense, arrange monthly

> independent audits to be undertaken by SafeAssure, with the results of each audit to be provided to both parties within 5 days of completion."

[35] This undertaking did not identify the focus of the audit and after further submissions the applicant accepted that an undertaking to permit audit by the respondent pursuant to clause 12 of the CCAs (as if they were on foot) would be offered.

[36] The respondent will not itself suffer substantial damages if an injunction is granted. Its role is to act in the public interest. That of course may make calling on the undertaking as to damages problematic. On the other hand, it has suggested that there are administrative and statute imposed difficulties which arise if it is required to perform the CCAs, pending further order. In their written submissions the respondent dealt with this in paragraph 89, identifying those difficulties as follows:

> "89. The injunction sought is highly intrusive and mandatory in nature. The manner in which the Scheme functions and refund points operate is that:
>
> (a) [the respondent] has the statutory duties and functions that require it to exercise governance of the Scheme. The Act specifically requires [the respondent] to *'receive and deal with complaints relating to the scheme from members of the public and entities participating in the scheme'*. As such [the respondent] will have ongoing statutory duties requiring it to continue to supervise the Applicant's conduct;
>
> (b) the operator of a refund point deals with the public, representing the Scheme, and processes claims made by customers utilising [the respondent's] electronic system;
>
> (c) the claim process involves [the respondent] being required to pay significant amounts on an ongoing basis where a CCA is on foot, as this requires [the respondent] to:
>
> (i) pay the operator a handling fee on a per container basis, based on claim data provided by the operator;
>
> (ii) pay the operator a reimbursement for cash amounts that the operator has paid out to customers (i.e., of 10c per container); and
>
> (iii) pay by bank deposit the amounts determined by the Applicant to pay claims made by customers." (citations omitted).

[37] The first of these concerns does not seem to me to be such as to be given great weight. The respondent can continue to receive and deal with complaints. Its statutory right to do so is not affected by this injunction.

[38] The concerns as to the utilisation of the respondent's electronic systems and the obligation to pay money, are significant. On the resumed hearing of this application the respondent relied on two further affidavits (one by Dylan King and the other by Brodie Dwyer, both filed 1 July 2026). They are directed to a number of issues.

[39] *Privacy*: One is compliance with the respondent's privacy policy. If the applicant uses the respondent's POS system to verify a member's ID the operator will be able to view the member's personal information. The customers will have given their consent to the use of their personal information by a form. It limits the use to be made of the information. It is perhaps arguable that disclosure to the applicant after the termination of the CCAs is not a permitted use, though the language of the form suggests otherwise if it is to facilitate the collection from and payment to the customer. In any event the form permits disclosure to anyone permitted by law. This seems to be something which the terms of any order I make could accommodate, and the respondent has provided a draft which I shall adopt for these purposes.

[40] *Home Collections*: The next is that the respondent operates a Container Collection service by which the respondent allocates an operator to collect from a person's home address. It seems possible to overcome any issue about this by the respondent being free to make an allocation away from the applicant on an interlocutory basis. The form of order proposed by the respondent provides that it need not make available to the applicant the residential address of any person and that would seem to accommodate this present concern.

[41] *Compliance*: Another is the ability of the respondent to investigate the applicant's activities or respond to concerns about them. The right to conduct these is both contractual under the CCA and statutory under the Act. The orders I propose to make do not affect the operation of the Act. The applicant has now proposed an undertaking that permits the respondent to do whatever it might otherwise have done in effect as if the CCAs were on foot.

[42] *Payments*: The final issue arose from the circumstance that there have existed under the CCAs processes by which the respondent, in certain circumstances, up to the date of termination made payments to customers who deposited containers with the applicant. The parties have now broadly agreed a regime to be included in the orders I make to accommodate the respondent's concerns in this regard so that I do not need to further deal with the matter in these reasons.

[43] There is one final matter that should be mentioned. Section 99Z of the Act provides:

> "A person must not operate a container refund point unless a container collection agreement is in force for the container refund point.
>
> Maximum penalty—500 penalty units."

[44] Two things arise from this. First, I would be hesitant to make an order if it had the effect of compelling the respondent in some way to participate in a contravention by the applicant of s 99Z. It is that concern which has been the focus of the parties' attempts to formulate conditions to be imposed upon any restraint. However, I would give liberty to apply to the respondent to seek to vary the conditions or indeed to seek a discharge of the injunction, if in the conduct of the applicant's business and after the making of this order some circumstance arises or becomes apparent in which the

respondent might be at peril of participating in a contravention of s 99Z of the Act by provision of assistance or services to the applicant.

[45] The second matter to emphasise is that this Court is not conferring any authority on the applicant to operate a container refund point. If the Main CCA has not been validly terminated, then s 99Z of the Act is not contravened by the applicant's conduct of the business under it. If on the other hand the Main CCA has been validly terminated, then the operation of s 99Z will fall to be determined according to its terms. The applicant must assess for itself the strength of its contentions that the Main CCA or the Arana Hills CCA have not been validly terminated if it chooses to continue to operate a container refund point, purportedly pursuant to them.

[46] In the circumstances it is appropriate, in my view, that some form of restraint be issued and I will hear the parties as to its form.