

Waste and Resource Recovery Bill 2021

Explanatory Paper



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Introduction

WHY DO WE NEED A WASTE LEVY IN TASMANIA?

The past few years have seen what could be called the perfect storm for waste management and resource recovery in Australia and Tasmania. In 2018 China changed its import regime for recycled materials and introduced a number of restrictions on what it would allow into the country. This led to a substantial decrease in the value of recycled materials exported from Australia, particularly those collected at the kerbside by councils.

The impact on the waste sector and on local government due to the downturn in global markets was soon apparent: stockpiles of materials grew, along with public concern, and the financial impacts filtered down to companies, councils and the wider community.

As part of responding to these changing markets, the Tasmanian Government worked with the Commonwealth, States and Territories, industry and the community to update the national waste policy. Through the Council of Australian Governments (COAG), the Government also supported introduction of export bans for unprocessed plastic, glass, paper, cardboard, and tyres.

As other Australian trading partners in Southeast Asia began to emulate China's import policies, it became even more apparent that we could no longer ship our unprocessed waste overseas. Instead, we need to have in place policies that recognise the value of this waste as a resource for creating more valuable materials, new products, and new jobs.

This aligns with a global trend that is seeing numerous countries pursue a circular economy, which avoids the traditional linear model of “take” (resources), “make” (products), and “dispose” (waste). Instead, it aims to maximise the value and the use of materials and resources at every stage of the life of a product or material. There is a growing body of evidence that a more circular economy supports increased innovation and a more creative, robust and productive economy.

A number of commitments to help respond to the rapidly changing markets and to promote a circular economy are outlined in the Government's draft *Waste Action Plan 2019*¹. This includes the planned introduction in 2022 of a Container Refund Scheme that will help achieve the Government's litter reduction targets and also help to generate cleaner streams of recyclable material with greater value. The *Waste Action Plan* was the result of discussions with local government, industry and the community about the best way to tackle our waste and recycling challenges.

One of the most effective ways to build markets for the recycling and reuse of materials is to have price signals or similar policy mechanisms that provide a disincentive to send waste to landfill. This has been achieved in many Australian and international jurisdictions through the introduction of a waste levy.

Typically, these levies involve a fee paid to the government by a landfill or other licensed waste facility operator for each tonne of waste received. This fee is on top of the current service fee which covers landfill management. As levies make it more expensive to dispose of waste to landfill, they stimulate the market to reduce waste generation and find more valuable uses for the waste. The Government has committed to introducing a waste levy in the *Waste Action Plan*.

¹ DPIPW, Draft Waste Action Plan - Consultation Draft (June 2019) <https://dpiuwe.tas.gov.au/environmental-management/waste-action-plan>

There are numerous examples of how waste levies have helped to achieve these outcomes. For example, in South Australia, Green Industries SA, which is funded through a waste levy, provides support for local government, businesses and the community to move to a circular economy, to build the infrastructure to process waste and make new products, and helps to fund the development of innovative new technologies and commercialisation of related research. This includes programs such as the Circular Economy Market Development Grants, Council Modernisation Grants, and the REAP (Resource Efficiency and Productivity Grants) program for businesses and non-profit organisations.²

HOW WILL THE LEVY WORK AND WHERE WILL THE MONEY GO?

The *Waste and Resource Recovery Bill 2021* (the Bill) will introduce a statewide waste levy in Tasmania to encourage the diversion of waste from landfill and increase the recovery of resources from waste. It will provide for standards and guidelines to be made in relation to landfills and resource recovery facilities.

It will also establish the Tasmanian Waste and Resource Recovery Board (the Board) to administer grants programs with the levy funds and to provide strategic review and planning for waste management practices in Tasmania.

To encourage maximum waste diversion, landfill operators will be entitled to claim a rebate for each tonne of waste that they remove from landfill and take to a resource recovery facility.

Levy monies will be collected by the Environment Protection Authority (EPA) Tasmania, which will be responsible for ensuring compliance with the waste levy scheme and enforcing the requirements of the Bill.

A dedicated waste and resource recovery reinvestment fund will be established through the Bill that will help grow Tasmania's circular economy and increase our resource recovery rate to the 80% target from both the Tasmanian *Waste Action Plan* and the national waste policy. All levy monies will be deposited into the Waste and Resource Recovery Account (the Account) The money in the Account must be used as legislated in the Bill.

Money deposited into the Account will be managed by the Board and can only be used:

1. By the Board for the application of its Waste Strategy; or
2. By the Board for costs associated with its functions; or
3. By the EPA for levy payment adjustments; or
4. For a purpose prescribed in the regulations.

Therefore, the levy will enable the Government to raise revenue that can be directly reinvested into waste and resource recovery activities. The regulations will set an allocation of levy funds for the EPA for its waste levy administration and enforcement costs, ensuring that collection of the waste levy and related compliance activities are self-funded.

A number of councils currently have a voluntary waste 'levy' that is applied at the landfill gate. This fee is diverted to help support resource recovery efforts in the regions (e.g. education, small grants). In some areas similar activities are supported through an equivalent regional contribution from councils. The levy will replace these voluntary fees. To ensure that the resource recovery efforts that have been supported by these levies and council contributions can continue, the Government has committed to a special disbursement of levy funds (referred to as a Regional Distribution in Figure 1).

The distribution of funds – based on indicative expectations of revenue - in year two (first full financial year) and year five of the levy are shown at Figure 1. The Waste Fund segments of the charts are directly

² <https://www.greenindustries.sa.gov.au/about-us>

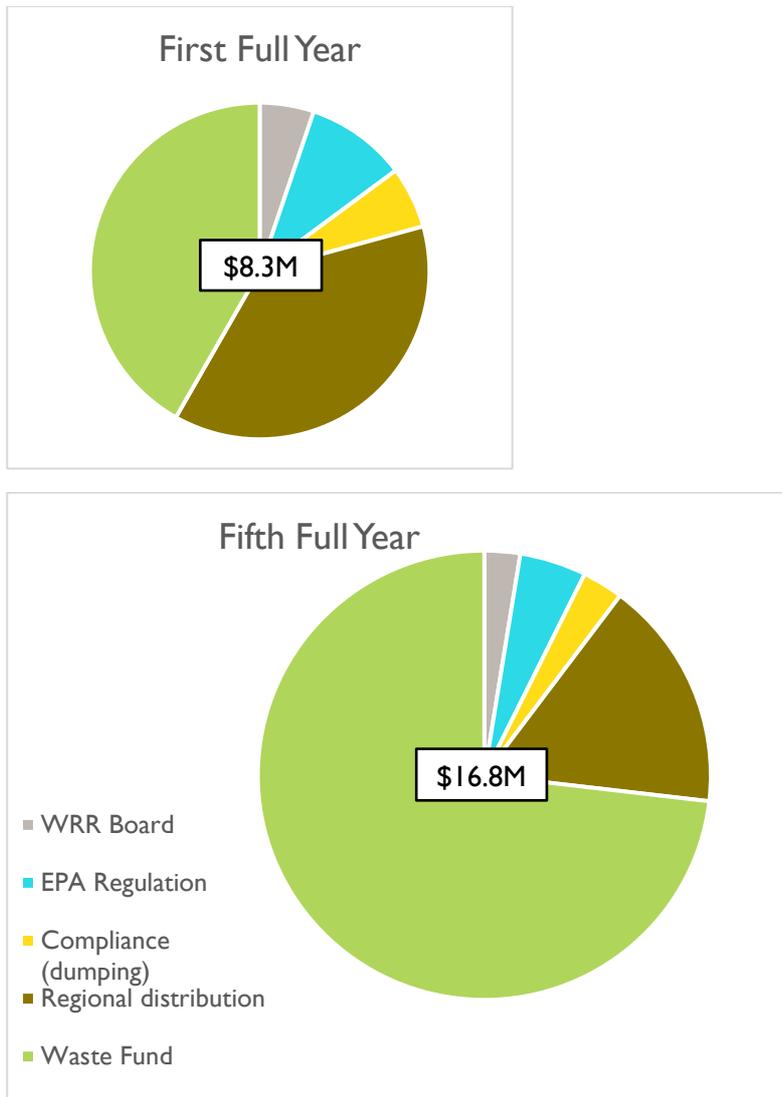
related to implementation of the Board’s Waste Strategy. The WRR Board segments relate to costs associated with the Board’s administration. The remaining segments: EPA Regulation, Compliance, and Regional Distribution (payments to local government regional waste groups to replace existing voluntary levies) relate to purposes that will be prescribed in the regulations.

The levy payment adjustments are not separately identified in the charts, but they are not expected to be significant. The provision for payment adjustments is required so funds can be repaid in the case of an overpayment to the EPA.

The residual amount that the Board will have for its Waste Strategy will proportionally increase over time with each staged increase of the waste levy rate (The Waste Fund – see Figure 1).

The rates or percentages of disbursement will be set in the regulations.

Figure 1. Indicative distribution of levy funds in the first and fifth full years



Revenue is based on estimates of solid waste generation and disposal from Urban EP, 2020, *Tasmanian Waste Levy Impact Study Final Report*.

Have your say

Written submissions are now invited on the *Waste and Resource Recovery Bill 2021*.

Appendix I to this paper provides a summary of the Bill and some additional notes to assist with understanding the intent of each clause.

Additional information is available at www.dpipwe.tas.gov.au/environmental-management

Consultation closes on Friday 12 March 2021.

Email: wis.enquiries@dpipwe.tas.gov.au

Mail: Policy and Business Branch, Department of Primary Industries, Parks, Water and Environment, GPO Box 1550, HOBART TAS 7001.

Key Parts of the Bill

THE TASMANIAN WASTE AND RESOURCE RECOVERY BOARD

The Tasmanian Waste and Resource Recovery Board (the Board) is expected to drive improvement in resource recovery and waste management practices in Tasmania and to show leadership on waste issues. The Board must promote waste related state policy and can provide advice and recommendations to the Minister on waste issues.

The Board will not be managing projects or initiatives itself, rather it will encourage innovation and investment in better waste management practices by strategic application of waste levy funds. This may include grants programs, industry loan schemes, community or infrastructure funds or other programs that promote the purposes of this Bill.

The Board will be established as an incorporated body of between 5-7 members who are appointed by the Minister. Members must have relevant skill, experience and knowledge as listed in the Bill. One of the members must be a representative from local government.

The functions of the Board are to provide advice to the Minister; to prepare, review and assess an effective Waste Strategy and Operational Plan; to audit and report on the use of levy funds; to promote waste reduction and resource recovery; to support State waste policies; to coordinate with local authorities and industries; to promote market development and local infrastructure for resource recovery; and to administer an assistance program for charitable recyclers to mitigate the costs arising from the Bill.

The Board must prepare a 3-yearly Waste Strategy which will require the Board to identify long and short-term objectives to maximise resource recovery and improve waste management practices, identify programs and projects to achieve those objectives, and establish criteria for reviewing the effectiveness of the Waste Strategy.

The Board must consult with industry stakeholders and local government and obtain an analysis on waste disposal, resource recovery and waste management practices in Tasmania which will ensure that it has the most current information in the development of its Waste Strategy.

The Board will also prepare a yearly Operational Plan to meet its business and financial goals under the current Waste Strategy. Both the Waste Strategy and Operational Plan must be approved by the Minister and comply with any Ministerial directions given.

The Board will prepare an annual report for each financial year on its activities and performance. The annual report will incorporate the financial statements of the Board, and it will be provided to the Minister to be Tabled in Parliament.

THE WASTE LEVY

The Bill intentionally makes it more expensive to dispose of waste to landfill. This sends a strong signal to the market to find other solutions for waste disposal: such as reducing the amount of waste produced, re-using or repurposing waste, or diverting waste for recycling, organic composting or bio-energy production.

The waste levy will apply statewide at all landfill facilities at a single fixed rate per tonne of waste received. It applies to all waste unless that waste is specifically exempted.

The operator of a landfill facility is responsible for paying the levy. It is assumed that the operator will pass on the costs of the levy in their gate fees to the waste disposer.

A landfill facility is a facility where waste is lawfully disposed of into or onto land pursuant to a required permit, authority, order, notice, approval or licence that may be issued under Tasmania's Resource Management and Planning System or the *Environmental Management and Pollution Control Act 1994*.

This is a broad definition of landfill, intended to capture as much waste disposal activity as possible while, out of practicality, limiting it to facilities that are or may be regulated under our current environment and planning laws. If you do not require any permit, licence or similar, to dispose of waste then the levy does not apply to your activity.

What facilities are exempted from the levy?

Most major waste disposal sites in Tasmania are either run by local government or are commercial waste businesses that are obviously intended to be included in this Bill. However, the definition of landfill may capture facilities that we do not intend to apply the levy and its obligations to. To address this, the Bill allows a specified facility or a class of facility to be made exempt from the waste levy and its obligations by prescribing it in the regulations.

The list of facilities or activities to be exempted is still being developed, but types that are being looked at are those that are too small to warrant the levy being applied, or where the waste disposal is incidental to the primary business of the facility, or where the waste disposal provides a benefit. For example, the mining and extractive industries often involve the movement of large amounts of overburden and it is not intended to include this kind of activity in the regulations.

What wastes are exempted from the levy?

The Bill specifies some wastes as exempt from the levy on the basis that it is in the public interest to dispose of those wastes correctly and the levy would be an inhibition or unfair burden on the person responsible for it.

The waste types included in the Bill as exemptions are asbestos and illegally discarded waste that has been collected by a public authority (i.e. the clean-up of litter or illegal dumping). Further exempted waste types may be prescribed in the regulations if needed.

A type of waste that will need to be included as an exemption in the regulations is waste brought into landfill sites for use in the operation of the landfill. Waste such as gravel for roads, construction materials and any material required to meet licencing requirements (such as day or intermediate cover) should not be charged the levy because they are being used for a purpose, not being disposed of.

The Bill also has provision for the Minister to exempt waste from the levy by order published in the Gazette. This order is a disallowable instrument that must be Tabled in Parliament. It is intended to cover urgent or emergency situations, such as clean-up from a flood or bushfire.

THE WASTE LEVY RATE

The rate itself is not contained in the Bill. The Bill allows for the levy rate to be prescribed in regulations, which will be passed once the Bill is enacted.

The waste levy will be introduced in a staged manner, with the intention to start in November 2021.

The broad objective is to work towards a levy rate comparable to the average of regional waste levy rates across mainland Australia. At present that is about \$60 per tonne. However, jumping straight to that rate could be a price shock that would be difficult for Tasmanians coming on the back of the business constriction caused by COVID-19.

The proposal is that the Government will introduce the levy in three steps over four years.

The levy is intended to:

- a) Commence on 1 November 2021 at \$20 per tonne of waste received at landfill;
- b) Increase to \$40 per tonne in November 2023; and
- c) Increase to \$60 per tonne in November 2025.

Taking a staged approach will allow time for businesses and local government to plan and budget for the changes and provide certainty to businesses to invest in waste reduction, and resource recovery activities.

The rates in the regulations will be expressed in terms of Fee Units so that there is an ongoing mechanism for indexation. The fee units used will be calculated to set the rate as close as possible to the dollar expressed above.

We welcome feedback on ways to transition the start of the levy to assist councils.

Impact of the waste levy

A detailed analysis of the waste levy rate is contained in the *Tasmanian Waste Levy Impact Study* produced by consultants Urban EP³. This thorough analysis considered key parts of the Tasmanian economy, and the impacts on communities across the State (including small and remote communities) to evaluate the best option in setting a levy rate.

A Cost Benefit Analysis (CBA) was conducted to work out a preferred option for the levy rate, including consideration of competition impacts, public benefits, effects on different sectors and achievement of policy outcomes (i.e. achieving 80% resource recovery for all waste streams in Tasmania by 2030).

Of the six options analysed the \$20-\$40-\$60 stepped approach was determined to be the preferred policy option. This option not only avoided price impacts in the introductory years, but delivered significant positive public benefits such as stimulating new and expanded business activity, lowering environmental impacts, fostering innovation, and helping Tasmania shift to a circular economy.

The CBA found that the levy would only have a modest cost impact on businesses and households (Figure 2).

The CBA also found that the Government could implement the levy at no net cost and also deliver on its commitment to use levy funds to support councils, regional waste bodies, the waste and resource sector and the community to achieve priority waste objectives.

³ Urban EP, 2020, *Tasmanian Waste Levy Impact Study Final Report*. https://dpiwwe.tas.gov.au/Documents/Waste_Levy_Impact_Study_-_UrbanEP.pdf

Figure 2. Costs and benefits of six levy rate options

Waste levy rate per tonne	NPV result	Mean annual cost per capita	Cost per \$1,000 GSP	2030 recovery rate
\$10	\$20,798,496	\$1.40	\$0.06	47.7%
\$20	\$28,753,129	\$3.47	\$0.14	50.7%
\$40	\$77,017,830	\$7.60	\$0.27	59.3%
\$60	\$144,487,316	\$10.14	\$0.37	68.9%
\$120	\$146,963,337	\$18.59	\$0.68	70.0%
\$20-\$40-\$60	\$122,889,177	\$7.67	\$0.29	68.9%

NPV: A higher NPV indicates that those options deliver greater benefits to society. *Mean annual cost per capita*: represents the change in municipal waste management costs averaged over 10 years across the Tasmanian population. Cost per \$1,000 GSP reflects the cost for commercial and industrial waste management to Tasmanian industry, in terms of overall economic activity across the state (Urban EP, 2020, p. vi).

RESOURCE RECOVERY REBATE

By diverting waste prior to landfill the disposer saves the cost of the levy and landfill gate fees. The landfill operator may also set up their facility to divert waste before it gets to the landfill to reduce their levy liability. However, there will still be some recoverable waste that is sent to landfill.

The Resource Recovery Rebate allows landfill operators to claim back the levy on waste that they remove from landfill. It creates a financial incentive for operators to maximise the waste that is recovered.

The Resource Recovery Rebate can be claimed upon providing proof to the EPA Director that the waste was removed from the landfill and taken to a resource recovery facility. The rebate amount is set at the current levy rate, meaning the levy can be claimed back dollar-for-dollar.

The Resource Recovery Rebate is paid as an offset to the landfill operator's levy liability. In this way, operators can reduce their levy liability by both diverting waste prior to landfill and recovering waste from the landfill.

OBLIGATIONS OF LANDFILL OPERATORS

The main obligations for landfill operators under the Bill will be keeping records for calculating the levy amount and payment of the levy.

Within 10 days of the end of each calendar month landfill operators must provide a waste levy return to the EPA. The waste levy return will show the volume of waste that has been deposited at the landfill and any Resource Recovery Rebate claimed to calculate the amount of waste levy that the operator is required to pay.

The waste levy return must be submitted in a form approved by the EPA Director and contain any information prescribed in the regulations. For example, landfill operators may be required to supply information about the volume of exempt waste received for auditing purposes.



When submitting the waste levy return the landfill operator must also pay any levy that is owing.

Landfill operators will be required to conduct yearly volumetric surveys of the landfill. Volumetric surveys are a common feature of levy schemes across Australia and are a useful tool to investigate the quantity of waste that has been disposed of compared with the quantity of waste that has been reported in the waste levy return. There are no offences under the Bill for a discrepancy between the return and the survey, however if there were a significant variance the EPA would investigate whether there has been sufficient levies paid or if some other offence has occurred.

Obligations to be prescribed in the regulations:

The Bill has provision for prescribing further requirements for landfill facilities in the regulations. These regulations will be aimed at ensuring that the data reported is accurate, allowing the waste levy to be equitably enforced across all liable facilities.

The regulations will prescribe that facilities should have a weighbridge to quantify the waste that enters or is removed from the landfill facility. This requirement will be phased in over time to allow smaller facilities that don't already have a weighbridge to obtain this infrastructure. The EPA will work with operators to find the best solution.

Until the weighbridge regulations can be fully implemented, guidelines for converting volume to weight will be issued so that waste levy returns for all landfills can still be submitted. Volume to weight conversion guidelines can provide a good estimate of waste received, but they are only a temporary measure as weighbridges are far more accurate.

The regulations will include requirements for the operation and maintenance of weighbridges.

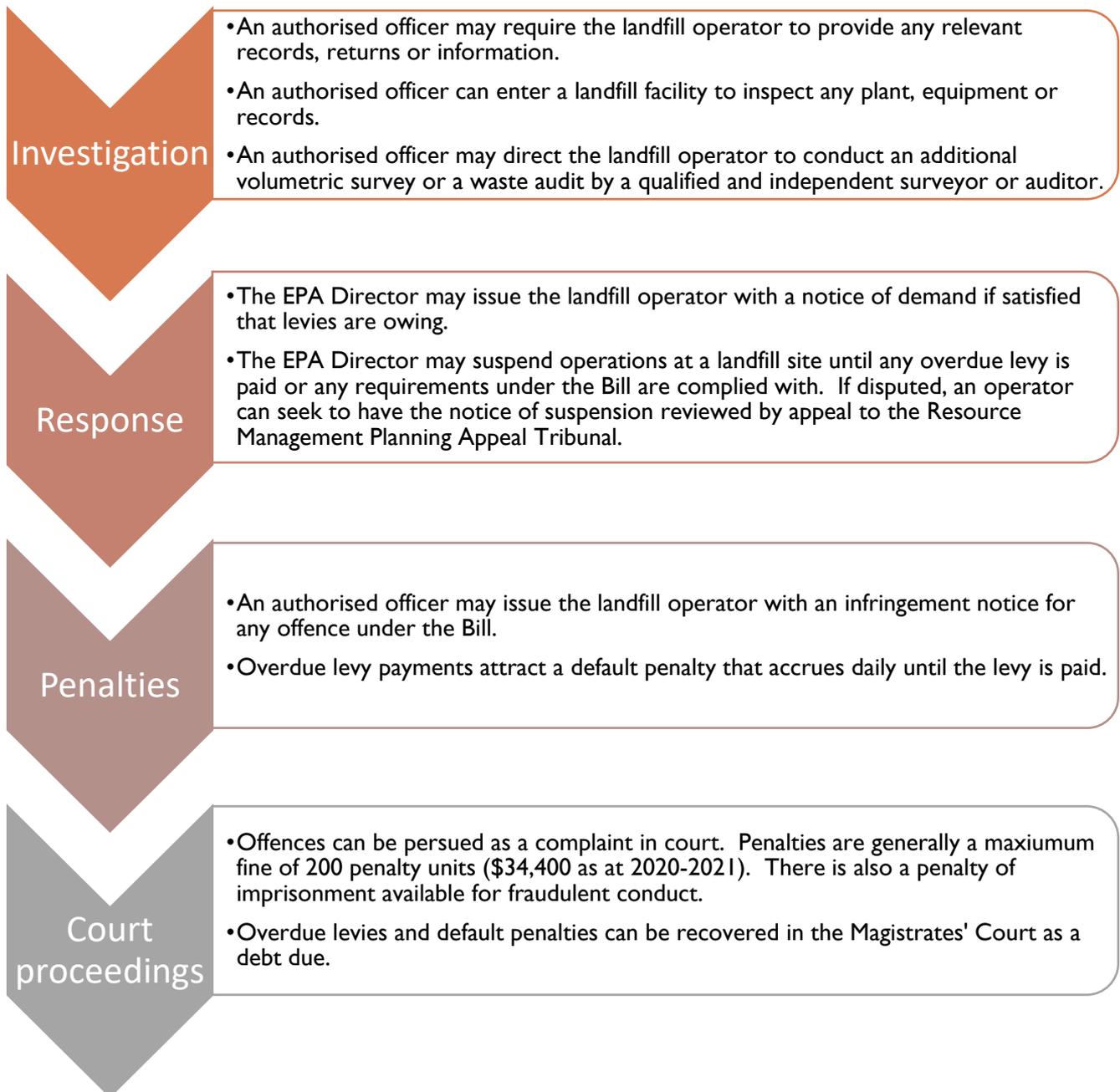
The regulations will also cover requirements for separating landfill operations from any resource recovery works that might occur at the same premises. This is to ensure there is a clear distinction between leviable waste and any waste where a rebate may be claimed.

ENFORCEMENT OF THE WASTE LEVY

This Bill will be enforced by the EPA; who have powers under the Bill to collect the levy, assess the accuracy of the waste levy return, issue default notices if insufficient levies have been paid, conduct inspections of landfill facilities and require an additional volumetric survey or a waste audit be conducted to ensure compliance with the legislation.

As well as court proceedings and infringement notices, the EPA Director has the power to suspend operations at a landfill facility if the landfill operator does not meet their requirements under this Bill. Figure 3 outlines the enforcement powers and steps that may be taken.

Figure 3: Waste Levy Enforcement Action



REBATES FOR CHARITABLE ORGANISATIONS

It is acknowledged that the charitable recycling sector will be disproportionately impacted by the imposition of the waste levy due to the nature of their work. Organisations that accept donations from the public already face considerable waste disposal costs due to the high rate of unusable donations and dumping of rubbish at collection sites. Increasing the cost of waste disposal will mean these organisations will have less money to put towards their charity services.

To address this the Bill makes it a function of the Board to administer an assistance program to ameliorate the costs of the levy for charitable recyclers.

Included organisations are ones that:

1. Operate a recycling program or collect public donations for repurposing or reselling; and
2. Are established solely for charitable purposes and are not for profit; and
3. Are approved under section 5 of the *Collections for Charities Act 2001*; and
4. Are a deductible gift recipient under the *Income Tax Assessment Act 1997 (Cth)*.

Charities will still be encouraged and assisted to reduce their waste and to divert as much as possible from landfill.

The Board may also include other entities within their assistance program as directed by the Minister.

OTHER MATTERS

The Bill does not contain all the requirements for an effective waste levy. In some regards the Bill provides only a framework with further legislative development required. Some important parts will need to be prescribed in the regulations once the Bill has been enacted.

These include the waste levy rate, exemptions for certain wastes and facilities where appropriate, reporting requirements for the waste levy return and further obligations for landfill operators.

The Bill also allows for the development of Standards and Guidelines for landfills and resource recovery facilities, including around stockpiling of wastes, to avoid potential adverse outcomes from the imposition of the levy.

This Bill will commence on the day it receives Royal Assent, except for the levy liability provisions (Part 3) which will commence on Proclamation. This is to allow key parts of the Bill (such as the Board and levy guidelines) to be developed and operational prior to the levy commencing.

Appendix I Description of Bill Clauses

The descriptions below should be read in conjunction with the Bill itself.

PART I - PRELIMINARY

Clause 1 Short title

This clause sets out how the Act may be cited.

Clause 2 Commencement

The Act will commence on Royal Assent, except for Part 3 (levy liability) which will commence on a day to be Proclaimed.

Clause 3 Interpretation

Subclause 1 defines how particular terms and phrases used in the Act are to be interpreted and applied.

Subclause 2 specifies that the definitions used in the *Environmental Management and Pollution Control Act 1994* apply in this Act.

Clause 4 Meaning of landfill facility

Subclause 1 defines the meaning of “land” and “lawfully disposed of” for the purpose of this section.

Subclause 2 defines a landfill facility as a facility where waste is lawfully disposed of into or onto land.

Subclause 3 permits exemptions to this definition to be prescribed in the regulations.

Clause 5 Meaning of resource recovery facility

Defines the meaning of “resource recovery facility”.

Clause 6 Ministerial order

Subclause 1 allows the Minister to declare that certain matter will be excluded from the operation of this Act.

Subclause 2 requires the Minister to consult with the Board about a proposed order.

Subclause 3 requires the order to be Gazetted and makes it a disallowable instrument to be Tabled in Parliament by adopting those provisions of the *Acts Interpretation Act 1931*.

Clause 7 Application of Act

Clarifies that the provisions of this Act are in addition to any other law of the State.

Clause 8 Delegation

Allows the Director, the Board or the Secretary of the Department to delegate any of their powers or functions under this Act.

Clause 9 Authorised officers

Declares the Director an authorised officer under this Act; and allows the Director to appoint authorised officers.

PART 2 ADMINISTRATION

Division I Tasmanian Waste and Resource Recovery Board

Clause 10 Establishment of the Tasmanian Waste and Resource Recovery Board

The Board is established as a body corporate with perpetual succession that may sue or be sued in its corporate name.

Clause 11 Membership of the Board

Subclause 1 allows the Board to have 5-7 members.

Subclause 2 specifies that appointments will be by the Minister who must also appoint one of the members as the chairman of the Board.

Subclause 3 requires that one of the members must be a representative of local government nominated by the Local Government Association of Tasmania.

Subclause 4 sets the requirements to be a member of the Board.

Subclauses 5 and 6 enacts Schedules 1 and 2 of the Act with their respective rules regarding Board membership and meetings.

Clause 12 Name of Board

Allows the Board to be renamed as approved by the Minister.

Clause 13 Functions of the Board

Subclause 1 defines the meaning of “charitable recycler” for the purpose of this section.

Subclause 2 specifies the functions of the Board.

Subclause 3 requires the Board to perform its functions in a way that advances improvements in waste and resource recovery and is consistent with the objectives of the State’s resource management and planning system (RMPS).

Clause 14 Powers of the Board

Gives the Board the power to do all the things necessary and convenient to be done in connection with the performance of its functions; including requesting information, entering agreements and publishing information.

Clause 15 Ministerial directions

Allows the Minister to give directions to the Board regarding the discharge of its responsibilities under this Act. Directions must be in writing and must be Tabled in Parliament.

Division 2 Staff of the Tasmanian Waste and Resource Recovery Board

Clause 16 Chief executive officer

Allows a person to be appointed CEO if requested by the Board.

Clause 17 Responsibilities of chief executive officer

The CEO is to perform any functions delegated by the Board or required under this or any other Act.

Subclause 2 requires the CEO to declare any conflict of interest.

Clause 18 Staff

Subclause 1 allows persons to be appointed under the *State Service Act 2000* for the purposes of this Act.

Subclause 2 allows the Board to enter into arrangements with the Secretary of the Department for state service employees to be made available to perform functions under this Act.

Subclause 3 allows the Secretary of the Department to enter into arrangements with the Head of a State Service Agency for state service employees in other Agencies to be made available to perform functions under this Act.

Division 3 Planning and reporting by Board

Clause 19 Waste strategy

Requires the Board to prepare a 3-yearly waste strategy. Requirements of the strategy are specified, including an analysis of current waste management practices. The strategy is to be consistent with the objectives of the RMPS and any applicable Ministerial direction.

Clause 20 Preparation, approval and amendment of waste strategy

Subclause 1 lists the persons the Board is to consult with in preparing the waste strategy.

Subclauses 2-5 sets the requirements for approval of the waste strategy by the Minister.

Subclauses 6-7 allows the Board to amend the waste strategy with the same consultation and approval process.

Subclause 8 requires the Board to make the waste strategy available for public inspection.

Clause 21 **Operational Plan**

Requires the Board to prepare a yearly operational plan. Requirements of the plan are specified, including how the Board is to meet the business and financial goals of the current waste strategy. The plan is to be approved by the Minister and available for public inspection.

Clause 22 **Annual Report**

Requires the Board to prepare an annual report and specifies the requirements of that report which is to be Tabled in Parliament.

Clause 23 **Minister may request information**

Allows the Minister to request information from the Board relating to its powers and functions under this Act.

Division 4 **Finance**

Clause 24 **Waste and Resource Recovery Account**

Creates an account, to be administered by the Secretary of the Department, and specifies the purposes that the funds in the account can be used for.

Clause 25 **Accounts**

Allows the Board to open bank accounts if necessary.

Clause 26 **Funds**

Allows the Board to receive funds from other sources, including as allocated by the State.

Clause 27 **Investment**

The Board may invest any funds held by it, subject to the *Tasmanian Public Finance Corporation Act 1985*.

Clause 28 **Accounting Records**

Requires the Board to keep accounting records that correctly record and explain its transactions and financial position; and specifies the requirements for keeping and retaining those records.

PART 3 **WASTE LEVY**

Clause 29 **Application of Part**

Creates a number of exemptions by defining the meaning of “waste” when used in this Part of the Act to exclude:

- a) Asbestos
- b) Illegally discarded waste collected by a public authority
- c) Matter declared excluded by Ministerial order (clause 6)
- d) Any prescribed matter in the regulations

Clause 30 Prescribed Levy

The amount of the levy is the amount prescribed in the regulations.

Clause 31 Resource recovery rebate

Entitles an operator to a rebate of the levy per tonne of waste that is removed from landfill in a calendar month, provided the operator provides proof to the Director that the waste was received at a resource recovery facility.

Clause 32 Payable levy amount for landfill facility

The amount of levy payable in a calendar month is the prescribed levy less any entitled resource recovery rebate.

If this results in a negative amount, then that amount is deducted from the levy payable in the next calendar month.

Clause 33 Waste levy return

A waste levy return is due within 10 days of the end of each calendar month and must be submitted to the Director in an approved form, include any prescribed information, and is to be accompanied by the payable levy amount.

Subclause 3 requires the payable levy amount to be deposited into the Waste and Resource Recovery Account.

PART 4 OBLIGATIONS OF OPERATOR

Clause 34 Landfill facility requirements

Subclause 1 makes it an offence for an operator to fail to comply with any requirements prescribed in the regulations.

Subclause 2 makes it an offence for an operator to fail to comply with any Ministerial Standards in force (under clause 51)

Subclause 3 requires the operator to comply with any guidelines issued by the Director (under clause 52).

Clause 35 Volumetric surveys

Requires an operator to conduct a volumetric survey of their landfill within 28 days of the Act commencing and then yearly thereafter. Creates an offence for failing to do so. Allows an authorised officer to require that an additional volumetric survey be carried out. Sets requirements for surveys.

Clause 36 Records

Requires operators to retain records relating to the Act for 5 years.

Clause 37 Offences

Creates an offence for knowingly evading or attempting to evade payment of the levy, and for giving false or misleading statements in a record or return required under this Act.

PART 5 ENFORCEMENT

Division 1 Powers and procedures

Clause 38 Payment of overdue levy

Allows the Director to issue a notice requiring payment for any unpaid levy amount. In considering whether any levy is owing the Director is entitled to make presumptions (subject to the operator establishing to the contrary) about the amount of waste received at the landfill.

An operator failing to pay in compliance with the notice is subject to a fine and a continuing penalty.

Clause 39 Audit

Allows the Director to issue a notice requiring a waste audit of the landfill facility and sets out the requirements for the notice and audit.

Clause 40 Powers of authorised officers

Lists the actions that authorised officers may undertake in the enforcement of this Act; including powers to enter facilities, inspect and test plant and equipment, and require the production of records. Creates an offence to refuse an authorised officer entry or to hinder or obstruct them in the exercise of their powers.

Clause 41 Suspension of operations

Subclause 1 gives the Director the power to suspend some or all of the operations at a landfill should the operator fail to comply with a requirement of this Act that is punishable as an offence.

Subclause 2 sets out the requirements for the notice of suspension – including specifying the conditions that need to be met for the suspension to be lifted.

Subclauses 3 creates an offence for failure to comply with the notice of suspension.

Subclause 4 requires the Director to lift the suspension once the conditions of the suspension are met.

Subclauses 5-7 set out a right of appeal to the Resource Management and Planning Appeal Tribunal and the powers of the Tribunal to determine the matter.

Subclause 8 clarifies that the suspension takes precedence over any authority to carry out landfill activity.

Division 2 Penalties and proceedings

Clause 42 Infringement notices

Allows authorised officers to issue infringement notices for any offence under this Act as prescribed in the regulations.

Clause 43 Recovery of debt in court

Allows the Director to recover any debt under this Act in the Magistrates' Court.

Clause 44 **Limitation period for prosecution**

An offence under this Act must be brought within 3 years.

Clause 45 **Liability of multiple operators**

If there is more than one operator of a facility, then each is jointly or severally responsible and liable for any contravention of this Act.

Clause 46 **Liability of body corporate**

If a body corporate contravenes this Act, then any person concerned with the management of that body corporate is taken to have contravened that provision. Includes limited personal defences such as proof that the body corporate acted without their knowledge.

Clause 47 **Presumptions in relation to rebate entitlements**

In any proceeding brought under this Act the operator bears the onus of proving any rebate entitlement.

Clause 48 **Evidence**

Allows records required to be kept by this Act to be tendered as prima facie evidence of the facts stated in the record.

Clause 49 **Protection from liability**

Provides protection against personal liability for the Minister, Director, authorised officers, and members of the Board for acts done in good faith in the exercise of their powers under this Act.

PART 6 **MISCELLANEOUS**

Clause 50 **Orders, notices &c., not statutory rules**

Any order, notice or declaration under this Act is not a statutory rule for the purpose of the *Rules Publications Act 1953* or *Subordinate Legislation Act 1992*.

Clause 51 **Regulations**

Allows the Governor to make regulations for the purposes of this Act.

Clause 52 **Ministerial standards**

Allows the Minister to make standards for the operation of landfill facilities and resource recovery facilities for the purpose of this Act, including in relation to stockpiling of waste.

Subclause 8 requires the standard to be Gazetted and makes it a disallowable instrument to be Tabled in Parliament by adopting those provisions of the *Acts Interpretation Act 1931*.

Clause 53 **Director may issue guidelines**

Allows the Director to make guidelines for the purpose of this Act by publishing them in the Gazette.

- Clause 54 Administration of the Act**
- The administration of the Act is assigned to the Minister for Environment and Parks, and the Department responsible is the Department of Primary Industries, Parks, Water and Environment (DPIPWE).
- Clause 55 Consequential Amendments**
- Allows the legislation listed in Schedule 3 to be amended as specified.
- Schedule 1 MEMBERSHIP OF THE TASMANIAN WASTE AND RESOURCE RECOVERY BOARD**
- Clause 1 Term of office**
- An appointment is not to exceed 4 years and a member may not serve more than 2 consecutive terms.
- Clause 2 Holding other office**
- Unless the contrary intention appears, the holder of an office is not disqualified from being a member of the Board or from accepting any remuneration payable.
- Clause 3 State service employment**
- A state service employee may be a member of the Board.
- Clause 4 Remuneration and conditions of appointment**
- Remuneration and allowances of members is as determined by the Minister.
- The conditions of appointment, other than those specified in this Act, are as per the instrument of appointment.
- Clause 5 Vacation of office**
- Specifies the circumstances for vacation of office and the powers of the Minister to remove a member from office.
- Clause 6 Filling of vacancies**
- The Minister may appoint a member if an office becomes vacant.
- Clause 7 Validation of proceedings, &c.**
- Acts or proceedings of the Board are not invalidated because the office of a member is vacant or because a defect in appointment is subsequently discovered.
- Clause 8 Presumptions**
- In any proceeding, proof is not required (unless there is evidence to the contrary) of the constitution or the Board or appointment of any member.
- Schedule 2 MEETINGS OF THE TASMANIAN WASTE AND RESOURCE RECOVERY BOARD**

Clause 1	<p>Convening of meetings</p> <p>Specifies how meetings are to be convened by the chairperson or the process in the chairperson’s absence.</p>
Clause 2	<p>Presiding at meetings</p> <p>Specifies that the chairperson is to preside over meetings, or a member elected by the members present if the chairperson is absent.</p>
Clause 3	<p>Quorum and voting at meetings</p> <p>To conduct business the Board must have a quorum (a majority of members appointed and not excluded from considering a matter due to a conflict). Votes are determined by a majority of members present.</p>
Clause 4	<p>Conduct of meetings</p> <p>The Board may regulate the conduct of business at its meetings.</p>
Clause 5	<p>Absences</p> <p>A member must take reasonable steps to inform the chairperson if they will be absent from a meeting, and must not be absent from more than 3 consecutive meetings without permission from the chairperson (or they may be removed from office by the Minister – see Schedule 1 Clause 5).</p>
Clause 6	<p>Minutes</p> <p>Requires accurate minutes of meetings to be kept.</p>
Clause 7	<p>Disclosure of interests</p> <p>Makes it an offence for a member to fail to disclose that they have a direct or indirect pecuniary interest in a matter being discussed.</p> <p>Unless the Board otherwise determines, a member with such a pecuniary interest must not be present during the deliberation or take part in a determination of that matter.</p>
Clause 8	<p>General procedure</p> <p>The Board may regulate its own proceedings.</p>
Clause 9	<p>Presumptions</p> <p>In any proceedings, proof is not required (unless there is evidence to the contrary) of any resolution of the Board or the presence of a quorum at any meeting of the Board.</p>
Schedule 3	<p>CONSEQUENTIAL AMENDMENTS</p>
<i>Environmental Management and Pollution Control (Waste Management)</i>	<p>Amends regulation 18(2) by omitting paragraph (a).</p> <p>This clause deletes clean fill as an exception to the requirement for an authority or approval to dispose of to land.</p>

**Regulations)
2020**

The rationale for this is that clean fill is a resource and should not be disposed of at all. If you are discarding it, then you must have a permit or authority to do so and it will attract the waste levy.

**Environmental
Management
and Pollution
Control Act
1994**

Section 3 is amended to substitute a new definition for clean fill – defined as type 1 or type 2 material.

The meaning of clean fill is clarified in two new definitions, “clean fill type 1” and “clean fill type 2”. Clean fill type 1 will mean natural materials. Clean fill type 2 will consist of common demolition materials. Provision will be made for the Director to specify maximum levels of chemical contaminants or maximum proportions of other inert materials such as wood, plastics and metals. Provision will also be made for the Director to specify maximum dimensions for pieces of material within clean fill.

The rationale for this amendment is to provide a more workable definition of clean fill for regulating how this waste material is recovered.



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