

TASMANIA

WASTE AND RESOURCE RECOVERY BILL 2021

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Draft

WASTE AND RESOURCE RECOVERY BILL 2021

(Brought in by the Minister for Environment and Parks, the Honourable Roger Charles Jaensch)

A BILL FOR

An Act to encourage the diversion of waste from landfill, increase the recovery of resources from waste, introduce a waste levy system, provide for standards and guidelines to be made in relation to landfill and resource recovery facilities and establish the Tasmanian Waste and Resource Recovery Board

Be it enacted by Her Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Waste and Resource Recovery Act 2021*.

2. Commencement

- (1) Except as provided by this section, this Act commences on the day on which this Act receives the Royal Assent.
- (2) Part 3 commences on a day to be proclaimed.

3. Interpretation

(1) In this Act, unless the contrary intention appears

–

Account means the Waste and Resource Recovery Account established by section 24;

Appeal Tribunal means the Resource Management and Planning Appeal Tribunal established by the *Resource Management and Planning Appeal Tribunal Act 1993*;

approved means approved by the Director;

authorised officer means an authorised officer appointed under section 9;

Board means the Tasmanian Waste and Resource Recovery Board established by section 10;

landfill facility - see section 4;

Local Government Association means the Local Government Association of Tasmania, continued as a body corporate by section 326 of the *Local Government Act 1993*;

operational plan means an operational plan that takes effect under section 21(6);

operator means a person who –

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(a) holds a valid approval, permit or licence; or

(b) is subject to an order or notice that is in force –

that allows the person to operate a landfill facility;

payable levy amount – see section 32;

prescribed levy means the levy prescribed for the purposes of section 30;

regulations means regulations made under this Act;

resource recovery, in relation to waste, means the lawful –

(a) reuse of the waste; or

(b) recycling of the waste; or

(c) recovery of energy or other resources from the waste;

resource recovery facility – see section 5;

waste strategy means a waste strategy that takes effect under section 20(5).

- (2) Unless the contrary intention appears, a word or expression used in the *Environmental Management and Pollution Control Act 1994* has the same meaning in this Act as it has in that Act.

4. Meaning of landfill facility

(1) In this section –

land means an area of land that is not covered by water but does not include any buildings or other structures on the area of land;

lawfully disposed of means disposed of in accordance with –

- (a) a valid approval, permit or licence; or
- (b) an order or notice that is in force.

(2) In this Act, a landfill facility is a facility at which waste is lawfully disposed of into, or onto, land.

(3) Despite subsection (2), the regulations may prescribe that a specified facility, or class of facilities, is not a landfill facility for the purposes of this Act.

5. Meaning of resource recovery facility

(1) In this section –

lawfully prepared means sorted, or prepared, for resource recovery in accordance with –

- (a) a valid approval, permit or licence; or

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- (b) an order or notice that is in force.
- (2) In this Act, a resource recovery facility is a facility or other place –
- (a) at which –
 - (i) waste is lawfully prepared; or
 - (ii) resource recovery takes place; or
 - (b) that is prescribed as a resource recovery facility.

6. Ministerial order

- (1) The Minister may, by order, declare that certain matter, or a class of matter, is excluded from this Act, or certain provisions of this Act.
- (2) Before making an order under subsection (1), the Minister is to consult with the Board and the Director in respect of the proposed order.
- (3) The provisions of sections 47(3), (3A), (4), (5), (6) and (7) of the *Acts Interpretation Act 1931* apply to an order under subsection (1) as if the order were regulations within the meaning of that Act.

7. Application of Act

The provisions of this Act are in addition to, and do not derogate from, any other law of the State.

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8. Delegation

- (1) The Director may delegate any of the Director's powers or functions under this Act other than this power of delegation.
- (2) The Board may delegate any of the Board's powers or functions under this Act other than this power of delegation.
- (3) The Secretary of the Department may delegate any of the Secretary's powers or functions under this Act other than this power of delegation.

9. Authorised officers

- (1) The Director is an authorised officer for the purposes of this Act.
- (2) The Director may appoint a State Service officer, State Service employee, or class of State Service officers or State Service employees, appointed or employed in –
 - (a) the Department; or
 - (b) another Agency, with the consent of the Head of that Agency –

as an authorised officer for the purposes of this Act, and those persons may exercise the powers and perform the functions of an authorised officer in conjunction with State Service employment.

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- (3) The Director may, with the consent of any person, appoint that person or an employee of that person as an authorised officer.
- (4) A person appointed as an authorised officer is appointed on the terms and conditions that the Director determines.

Draft

PART 2 – ADMINISTRATION

Division 1 – Tasmanian Waste and Resource Recovery Board

10. Establishment of Tasmanian Waste and Resource Recovery Board

- (1) The Tasmanian Waste and Resource Recovery Board is established.
- (2) The Tasmanian Waste and Resource Recovery Board –
 - (a) is a body corporate with perpetual succession; and
 - (b) may sue and be sued in its corporate name.

11. Membership of Board

- (1) The Board consists of not less than 5, and not more than 7, members appointed by the Minister under subsection (2)(a).
- (2) The Minister may –
 - (a) appoint a person to be a member of the Board; and
 - (b) appoint a member of the Board, whom the Minister considers to have expertise or experience in public administration, to be the chairperson of the Board.

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-
- (3) One of the members appointed by the Minister under subsection (2)(a) is to be a representative of local government nominated by the Local Government Association.
- (4) In appointing the members of the Board under subsection (2)(a), the Minister is to ensure that the members –
- (a) have skill, experience and knowledge in one or more of the following matters:
 - (i) waste management;
 - (ii) resource recovery;
 - (iii) industry development;
 - (iv) regional development;
 - (v) finance;
 - (vi) public sector administration;
 - (vii) risk management;
 - (viii) corporate governance;
 - (ix) a particular function, or vocational interest, that is relevant to the functions of the Board; and
 - (b) are able to make a contribution to the functions of the Board.
- (5) Schedule 1 has effect in respect of the members of the Board.

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- (6) Schedule 2 has effect in respect of the meetings of the Board.

12. Name of Board

The Board may use and operate under a name approved, by notice in the *Gazette*, by the Minister.

13. Functions of Board

- (1) In this section –

charitable recycler means an organisation that –

- (a) operates a program for the recycling of matter or that collects public donations for repurposing or reselling; and
- (b) in the opinion of the Board, is established solely for charitable purposes and not for profit or gain; and
- (c) is authorised or approved under section 5 of the *Collections for Charities Act 2001* by the Commissioner within the meaning of that Act; and
- (d) is a deductible gift recipient within the meaning of the *Income Tax Assessment Act 1997* of the Commonwealth.

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- (2) The Board has the following functions:
- (a) to provide advice and recommendations to the Minister on matters relevant to the Act, both on request of the Minister and of its own volition;
 - (b) to prepare, promote, implement, review and assess the effectiveness of the waste strategy;
 - (c) to prepare, implement, review and assess the effectiveness of the operational plan;
 - (d) to audit and report on the use of funds from the Waste and Resource Recovery Account;
 - (e) to promote community, business and industry awareness of waste reduction and resource recovery;
 - (f) to promote and support State policies and programs relevant to the Act;
 - (g) to promote and support coordination and cooperation with local authorities and industry to prevent waste and promote resource recovery;
 - (h) to consult with, and promote and support coordination and cooperation between, organisations (whether or not in the State) with objectives relevant to the Act;
 - (i) to administer, for the benefit of charitable recyclers and such other entities as may

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- be the subject of a Ministerial direction given and in effect under section 15 for the purposes of this paragraph, an assistance program to mitigate costs to those entities resulting from this Act;
- (j) to promote market development and local infrastructure for resource recovery and recycling of materials;
 - (k) to perform any other functions that the Board has under this or any other Act;
 - (l) to perform any other functions that may be prescribed.
- (3) In the performance of its functions, the Board is to –
- (a) act in a way that advances improvements in waste management and resource recovery; and
 - (b) further the objectives of the State's resource management and planning system set out in Part 1 of Schedule 1 to the *Environmental Management and Pollution Control Act 1994*.

14. Powers of Board

The Board has the power to do all things necessary or convenient to be done for, in connection with, or incidental to, the performance of its functions, including but not limited to the following:

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- (a) to obtain the advice of any person or organisation in regard to any matter related to this Act;
- (b) to request that the Minister seek information on behalf of the Board on matters related to this Act from any other Minister;
- (c) enter into agreements, in respect of matters related to this Act, with local authorities, industry and organisations;
- (d) publish reports relating to any matter related to this Act;
- (e) provide information to the public on any matter related to this Act.

15. Ministerial direction

- (1) The Minister may give the Board a direction (a *Ministerial direction*) at any time regarding the discharge of the Board's responsibilities under this Act.
- (2) In preparing a Ministerial direction, the Minister is to have regard to the Board's functions and powers.
- (3) A Ministerial direction is to be –
 - (a) in writing and signed by the Minister; and
 - (b) laid before each House of Parliament within 10 sitting-days after it is given.

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- (4) The Board is to comply with a Ministerial direction.

***Division 2 – Staff of Tasmanian Waste and Resource
Recovery Board***

16. Chief executive officer

- (1) Subject to, and in accordance with, the *State Service Act 2000*, a person may, at the request of the Board, be appointed as chief executive officer of the Board.
- (2) The chief executive officer is responsible to the Board for the general administration and management of the Board.

17. Responsibilities of a chief executive officer

- (1) The chief executive officer is to –
- (a) perform or exercise any functions or powers delegated to the chief executive officer by the Board; and
 - (b) perform or exercise any other functions or powers that the chief executive officer has under this or any other Act.
- (2) The chief executive officer must inform the Board, in writing, of any direct or indirect pecuniary interest that he or she has in any business, or body corporate that carries on a business, related to waste services, waste reduction or resource recovery, as soon as

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practicable after he or she acquires, or becomes aware of, that interest.

18. Staff

- (1) Subject to and in accordance with the *State Service Act 2000*, persons may be appointed or employed for the purposes of this Act.
- (2) The Board may make arrangements with the Secretary of the Department for State Service officers and State Service employees employed in the Department to be made available to perform functions and exercise powers under this Act.
- (3) The Secretary of the Department may make arrangements with the Head of a State Service Agency for State Service officers and State Service employees employed in that Agency to be made available to perform functions and exercise powers under this Act.

Division 3 – Planning and reporting by Board

19. Waste strategy

- (1) Within 6 months after the commencement of this section, and before the expiry of every third year after that date, the Board is to prepare a waste strategy.
- (2) A waste strategy is to identify long-term and short-term objectives to –
 - (a) maximise resource recovery; and

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- (b) improve waste management practices.
- (3) A waste strategy is to –
- (a) identify programs and projects to achieve objectives identified in accordance with subsection (2); and
 - (b) include an analysis of waste disposal, resource recovery from waste and current waste management practices in Tasmania; and
 - (c) establish criteria and methods for assessing the adequacy of the strategy and its implementation, having regard to the requirements of this Act –

in respect of the following 3 years (the *period of the strategy*).

- (4) A waste strategy is to –
- (a) be consistent with the objectives of the State’s resource management and planning system set out in Part 1 of Schedule 1 to the *Environmental Management and Pollution Control Act 1994*; and
 - (b) be consistent with any applicable Ministerial direction given and in effect under section 15; and
 - (c) be in such form as the Board thinks fit.

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20. Preparation, approval and amendment of waste strategy

- (1) In preparing a waste strategy, the Board –
 - (a) is to consult –
 - (i) the Minister; and
 - (ii) the Local Government Association; and
 - (iii) relevant industry stakeholders as determined by the Board; and
 - (b) may consult such other persons as it thinks fit.
- (2) After preparing a waste strategy, the Board is to submit a draft of the strategy to the Minister for approval.
- (3) The Minister may –
 - (a) approve the draft waste strategy as submitted; or
 - (b) require the Board to amend the draft waste strategy and resubmit it for approval.
- (4) To avoid doubt, the Minister’s power under subsection (3)(b) may be exercised more than once.
- (5) Once a draft waste strategy has been approved by the Minister for the period of the strategy –

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- (a) it takes effect as the waste strategy of the Board for that period; and
 - (b) the Board is to act in accordance with the waste strategy during that period.
- (6) The Board, having regard to changes of circumstance or for other reasonable cause, may prepare an amendment to its waste strategy at any time.
- (7) Subsections (1), (2), (3) and (4) have the same application to an amendment as they have to the strategy itself, and the amendment takes effect once it has been approved by the Minister.
- (8) The Board is to ensure that the current waste strategy is available for public inspection on a website and at its principal place of business during normal office hours.

21. Operational plan

- (1) The Board, on or before 31 May in each financial year, is to prepare an operational plan in relation to the next financial year.
- (2) An operational plan is to –
 - (a) include –
 - (i) a statement of the manner in which the Board is to meet the business and financial goals of the current waste strategy or, for the final year of the period of the

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strategy under section 19, its next waste strategy; and

- (ii) set out the Board’s budget for the next financial year (including estimates of its income and expenditure for that period); and
- (b) be consistent with the current waste strategy and any applicable Ministerial direction given and in effect under section 15.
- (3) After preparing an operational plan, the Board is to submit a draft of it to the Minister for approval.
- (4) The Minister may –
 - (a) approve the draft operational plan as submitted; or
 - (b) require the Board to amend the draft operational plan and resubmit it for approval.
- (5) To avoid doubt, the Minister’s power under subsection (3)(b) may be exercised more than once.
- (6) Once a draft operational plan has been approved by the Minister for the period of the strategy –
 - (a) it takes effect as the operational plan of the Board for that financial year; and

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- (b) the Board is to act during that financial year in accordance with the operational plan.
- (7) The Board, having regard to changes of circumstance or for other reasonable cause, may prepare an amendment to its operational plan at any time.
- (8) Subsections (3), (4) and (5) have the same application to an amendment as they have to the plan itself, and the amendment takes effect once it has been approved by the Minister.
- (9) The Board is to ensure that the current operational plan is available for public inspection on a website and at its principal place of business during normal office hours.

22. Annual report

- (1) The Board is to prepare an annual report for each financial year.
- (2) The annual report is to contain at least the following information and documents:
 - (a) a report on the Board's activities and performance for the financial year, with particular reference to the Board's objectives, functions and powers;
 - (b) particulars of any Ministerial directions given and in effect under section 15 in or in respect of the financial year and any

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actions taken by the Board in respect of those directions;

- (c) a summary of the waste strategy that took effect under section 20(5) for the period encompassing the financial year;
 - (d) a summary of the operational plan that took effect under section 21(6);
 - (e) the financial statements of the Board for the financial year;
 - (f) a copy of the Auditor-General's report on those financial statements, as prepared and provided under section 19 of the *Audit Act 2008*;
 - (g) any information that the Minister has, by notice to the Board, required to be put in the report.
- (3) The Board is to provide a copy of the annual report to the Minister so as to enable it to be tabled in accordance with subsection (4).
- (4) On or before 31 October in each year, the Minister is to cause a copy of the annual report to be laid on the table of each House of Parliament.
- (5) If the Minister is unable to comply with subsection (4) because a House of Parliament is not sitting on 31 October in any year, the Minister is to –

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- (a) on or before that day, provide copies of the annual report to the Clerk of that House; and
- (b) on or before that day, make copies of the annual report available to the public; and
- (c) within the first 7 sitting-days after that day, cause copies of the annual report to be laid before that House.

23. Minister may request information

The Minister may request that the Board provide to the Minister, within the period specified in the request, any information in the possession of the Board relating to the performance of functions or the exercise of powers by the Board under this Act.

Division 4 – Finance

24. Waste and Resource Recovery Account

- (1) For the purposes of this Act, an account called the Waste and Resource Recovery Account is established.
- (2) The Account is to be administered by the Secretary of the Department.
- (3) The funds contained in the Account may be applied by the following persons for the following purposes:
 - (a) by the Board –

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- (i) for the purposes of implementing the strategic plan; and
 - (ii) for the purposes of meeting all costs and expenses associated with the operation of the Board;
 - (b) by the Director for the purposes of making adjustments in relation to the collection of the payable levy amount;
 - (c) by the Secretary of the Department in an amount, and for a purpose, as prescribed.
- (4) For the purposes of subsection (3)(a)(ii), the costs and expenses associated with the operation of the Board are as follows:
- (a) remuneration of –
 - (i) the members of the Board; and
 - (ii) the chief executive officer (if appointed) of the Board; and
 - (iii) staff appointed or employed under section 18(1) by the Board;
 - (b) expenses relating to investments made by the Board;
 - (c) legal, accounting, advisory and taxation expenses;
 - (d) consultancy costs;
 - (e) a cost or expense reasonably incurred by the Board in the exercise of powers or

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the performance of functions under this Act.

25. Accounts

The Board may open and maintain such authorised deposit-taking institution accounts as it considers necessary.

26. Funds

The funds of the Board are –

- (a) any money provided to the Board by the State; and
- (b) any money applied by the Board from the Account in accordance with section 24(3)(a); and
- (c) any money received from any other source.

27. Investment

Subject to section 16 of the *Tasmanian Public Finance Corporation Act 1985*, the Board may invest any funds held by it of the kind referred to in section 26(b) and (c), and any interest accumulated in respect of those funds, in any manner that is consistent with –

- (a) sound commercial practice; and
- (b) a Ministerial direction given and in effect under section 15.

28. Accounting records

(1) In this section –

Australian Accounting Standards has the same meaning as in the *Financial Management Act 2016*.

(2) The Board is to –

(a) keep accounting records that correctly record and explain its transactions (including any transactions as trustee) and financial position; and

(b) keep those records in a manner that –

(i) allows true and fair accounts of the Board to be prepared from time to time; and

(ii) allows the accounts of the Board to be conveniently and properly audited or reviewed; and

(iii) subject to any contrary written direction of the Treasurer, complies with Australian Accounting Standards; and

(iv) complies with any written directions of the Minister or Treasurer; and

(c) retain those records for a period of not less than 7 years after the completion of the transaction to which they relate or for

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such longer period as the Treasurer may determine and notify to the Board.

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PART 3 – WASTE LEVY

29. Application of Part

(1) In this section –

public authority means –

- (a) a council; or
- (b) another body corporate established by, or under, an enactment having jurisdiction limited to a district, locality or part of the State; or
- (c) a statutory authority.

(2) In this Part, a reference to waste excludes the following:

- (a) matter that contains asbestos;
- (b) illegally discarded matter collected and disposed of by a public authority which has responsibility for such collection and disposal;
- (c) matter declared to be excluded from this Part in an order made under section 6;
- (d) matter prescribed to be excluded from this Part.

30. Prescribed levy

The levy payable in respect of a tonne of waste in any calendar month is the prescribed amount that applies in respect of that calendar month.

31. Resource recovery rebate

- (1) An operator of a landfill facility is entitled to a rebate in respect of the facility in a calendar month if –
 - (a) at least one tonne of waste is removed from the landfill facility within that calendar month; and
 - (b) that waste was received by a resource recovery facility.
- (2) An operator is only entitled to a rebate under subsection (1) in respect of waste if the operator provides evidence, to the satisfaction of the Director, that that waste was received by a resource recovery facility.
- (3) The amount of a rebate under this section in respect of a tonne of waste is the amount of the prescribed levy that is payable in respect of the tonne of waste at the time at which the waste was removed from the landfill facility.

32. Payable levy amount for landfill facility

- (1) In a calendar month, the amount of the levy payable in respect of a landfill facility for that calendar month is the prescribed levy payable

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for the waste received by that facility in that month less the rebate to which the operator is entitled under section 31 for that month in relation to that landfill facility.

- (2) If the amount payable under subsection (1) in respect of the landfill facility is greater than zero, that amount is the payable levy amount for that landfill facility for that calendar month.
- (3) If the amount payable under subsection (1) in respect of the landfill facility is zero or less –
 - (a) that amount is to be deducted from the first payable levy amount for that landfill facility that is greater than zero; and
 - (b) if the deduction under paragraph (a) results in a payable levy amount for that landfill facility that is less than zero, the remainder of that amount, after the deduction, is to be deducted from payable levy amounts for subsequent calendar months in accordance with this subsection until fully discharged.

33. Waste levy return

- (1) An operator must give to the Director, within 10 working days after the end of each calendar month, a waste levy return.

Penalty: Fine not exceeding 200 penalty units.

- (2) A waste levy return –
 - (a) is to be in an approved form; and

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- (b) is to include the prescribed information, if any; and
 - (c) must be accompanied by the payable levy amount under section 32, if any, in respect of the calendar month to which the waste levy return applies.
- (3) The payable levy amount given to the Director under subsection (2)(c) is to be paid into the Account.

Draft

PART 4 – OBLIGATIONS OF OPERATOR

34. Landfill facility requirements

- (1) An operator must ensure that the landfill facility operated by the operator complies with the prescribed requirements.

Penalty: Fine not exceeding 200 penalty units.

- (2) An operator must ensure that the landfill facility operated by the operator complies with any Ministerial standards issued and in force under section 52.

Penalty: Fine not exceeding 200 penalty units.

- (3) An operator is to ensure that the landfill facility operated by the operator complies with any guidelines issued and in force under section 53.

35. Volumetric survey

- (1) In this section –

suitable surveyor, in relation to a landfill facility, means a person, registered as a surveyor under the *Surveyors Act 2002*, who is independent of the management or business of that landfill facility.

- (2) An operator must –

(a) within 28 days after –

- (i) the commencement of this section, if the landfill facility

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Part 4 – Obligations of Operator

operated by the operator was active on and before that day; or

(ii) the landfill facility operated by the operator commences operation; and

(b) within one year after a volumetric survey is carried out under paragraph (a) –

cause a volumetric survey to be carried out in relation to waste deposited at the landfill facility.

Penalty: Fine not exceeding 200 penalty units.

(3) An authorised officer may at any time require, by notice in writing to an operator, the operator to cause a further volumetric survey to be carried out.

(4) An operator must comply with a notice given under subsection (3).

Penalty: Fine not exceeding 200 penalty units.

(5) A volumetric survey carried out under this section is to be carried out –

(a) by a suitable surveyor; and

(b) at the expense of the operator of the landfill facility to which it relates.

(6) The results of a volumetric survey carried out under this section must be given to the Director in an approved form within 10 working days after the completion of the survey.

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Penalty: Fine not exceeding 200 penalty units.

36. Records

An operator must keep, for 5 years after they come into existence, the following documents in relation to the landfill facility operated by the operator:

- (a) a copy of each waste levy return given to the Director under section 33;
- (b) volumetric survey results given to the Director under section 35;
- (c) a report, containing the results of an audit, given to the Director under section 39;
- (d) copies of all correspondence between the operator and the Director;
- (e) a prescribed document.

Penalty: Fine not exceeding 200 penalty units.

37. Offences

- (1) An operator must not knowingly evade, or knowingly attempt to evade, payment of a payable levy amount.

Penalty: Fine not exceeding 400 penalty units or imprisonment for a term not exceeding 24 months, or both.

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Part 4 – Obligations of Operator

- (2) A person must not, in a record, return, report, result, document or information given in accordance with this Act, make a statement that is false or misleading in a material particular without –
- (a) indicating that the statement is false or misleading and the manner in which it is false or misleading; and
 - (b) giving any correct information that is in the person's control if the person has, or can reasonably obtain, the correct information.

Penalty: Fine not exceeding 200 penalty units or imprisonment for a term not exceeding 12 months, or both.

PART 5 – ENFORCEMENT

Division 1 – Powers and procedures

38. Payment of overdue levy

- (1) If an operator fails to pay a payable levy amount, or part of a payable levy amount, as required under section 33, the Director may issue a notice in writing requiring the operator to pay the amount or part amount.
- (2) In considering whether the operator has failed to pay all or part of an amount referred to in subsection (1), the Director is entitled to make presumptions regarding the following matters (subject to the operator establishing the contrary):
 - (a) the amount of waste received by the landfill facility operated by the operator;
 - (b) the date on which waste was received by the landfill facility operated by the operator;
 - (c) the amount of waste removed from the landfill facility operated by the operator for the purposes of resource recovery.
- (3) An operator to whom a notice has been issued under subsection (1) must comply with the requirements specified in the notice within 10 working days after receiving the notice.

Penalty: Fine not exceeding 50 penalty units and, in the case of a continuing

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offence, a further fine not exceeding 10 penalty units for each day during which the offence continues.

- (4) The amount of a penalty in accordance with subsection (3) is to be given to the Director and to be paid by the Director into the Account.

39. Audit

- (1) In this section –

approved auditor means an auditor approved in accordance with subsection (6).

- (2) The Director may issue a notice, in writing, to an operator requiring the operator to cause an audit of a landfill facility operated by the operator to be carried out by an approved auditor.

- (3) A notice issued under subsection (2) is to specify the following matters:

- (a) the reasons for, and objectives of, the audit;
- (b) the matters to be audited;
- (c) the approved auditor to be employed to undertake the audit;
- (d) the date by which a report containing the results of the audit is to be given to the Director.

- (4) An operator must comply with a notice issued under subsection (1).

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Penalty: Fine not exceeding 200 penalty units.

- (5) An audit carried out in accordance with this section is to be carried out at the expense of the operator of the landfill facility to which it relates.
- (6) An authorised officer may approve an auditor for the purposes of this section if the authorised officer is satisfied of the following:
 - (a) that the auditor has qualifications and experience that are appropriate to the audit;
 - (b) that the auditor is independent of the facility where the audit is to be conducted and of any business conducted there;
 - (c) that the auditor is able to conduct the audit and to prepare a report in accordance with the notice issued in respect of the audit.
- (7) The Director may vary or revoke a notice issued under subsection (1) by giving notice, in writing, of that variation or revocation to the operator to whom the original notice relates.
- (8) A variation or revocation made under subsection (7) takes effect upon notice being given in accordance with that subsection.

40. Powers of authorised officers

- (1) For any reasonable purpose connected with the enforcement of this Act, an authorised officer may undertake any one or more of the following actions:
- (a) enter a landfill facility, or any business premises related to the landfill facility, at any time during the normal business hours of that facility, with such assistants (including a suitable surveyor as defined in section 35, an auditor approved in accordance with section 39(6) or a police officer) and equipment as the authorised officer considers necessary;
 - (b) enter a landfill facility, or any business premises related to the landfill facility, at any time in the company of a police officer pursuant to a warrant;
 - (c) inspect or test any plant, equipment, machinery, vehicle or other thing at the landfill facility for the purpose of determining whether a provision of this Act or regulations is being, or has been, complied with, or cause or require it to be so inspected or tested, or seize it or require its production for such inspection or testing;
 - (d) require an operator to take such steps as the authorised officer directs to facilitate the examination or testing of any

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- machinery or equipment of a landfill facility operated by the operator;
- (e) require an operator to provide any records, returns, reports, results, documents or information relating to the landfill facility operated by the operator;
 - (f) make copies of, take extracts from, or remove any records, returns, reports, results, documents or information referred to in paragraph (e).
- (2) In the course of the exercise of his or her powers under this Act, an authorised officer may –
- (a) use such force as is reasonably necessary, including the use of reasonable force to break into or open any part of, or anything at, a landfill facility or any business premises related to the landfill facility, other than a structure or a part of a structure being used as a dwelling; and
 - (b) take such photographs, films or audio, video or other recordings on, or in the vicinity of, a landfill facility or any business premises related to the landfill facility as he or she considers necessary; and
 - (c) use, or operate, such plant, equipment, machinery, vehicle or other thing at a landfill facility or any business premises related to the landfill facility as is necessary to exercise those powers.

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- (3) A person must not, without reasonable excuse –
- (a) refuse to permit an authorised officer or the assistant of an authorised officer to enter a landfill facility or any business premises related to the landfill facility in accordance with this section; or
 - (b) hinder or obstruct an authorised officer in the exercise of his or her powers under subsection (1); or
 - (c) refuse or fail to comply with a requirement made by an authorised officer in the exercise of those powers.

Penalty: Fine not exceeding 200 penalty units.

41. Suspension of operations

- (1) If the operator fails to comply with a requirement of this Act that is punishable as an offence, the Director may issue a notice in writing to the operator requiring that some or all of the operations of a landfill facility operated by the operator be suspended.
- (2) A notice issued under subsection (1) is to –
- (a) specify the date on which the suspension takes effect; and
 - (b) specify the conditions that must be met in order for the suspension to be lifted; and

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- (c) state that the suspension will continue in effect until a revocation in accordance with this section is issued; and
- (d) state that the operator may appeal in accordance with subsection (5) or (6).
- (3) An operator must comply with a notice issued under subsection (1).
- Penalty: Fine not exceeding 400 penalty units or imprisonment for a term not exceeding 24 months, or both.
- (4) If an operator to whom a notice issued under subsection (1) provides evidence, to the satisfaction of the Director, that the conditions required to be met, specified in accordance with subsection (2)(b), have been met as far as is reasonably practical, the Director must issue a revocation of the suspension, in writing, to the operator.
- (5) An operator to whom a notice has been issued under subsection (1) may, within 14 days after the day on which the notice was issued, appeal to the Appeal Tribunal on the grounds that the conditions required to be met, specified in accordance with subsection (2)(b), are unduly onerous.
- (6) An operator to whom a notice has been issued under subsection (1) may appeal to the Appeal Tribunal on the grounds that evidence referred to in subsection (4) has been supplied to the Director and that the evidence supplied ought to have satisfied the Director.

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- (7) On receiving an appeal under subsection (5) or (6), the Appeal Tribunal may –
 - (a) confirm the notice or the decision of the Director not to revoke the notice; or
 - (b) amend the conditions specified in the notice; or
 - (c) revoke the notice.
- (8) For the avoidance of doubt, a requirement to suspend some or all operations of a landfill facility under this section takes precedence over any other permit or authorisation in force in relation to the landfill facility.

Division 2 – Penalties and proceedings

42. Infringement notices

- (1) In this section –

infringement offence means an offence under this Act or the regulations that is prescribed to be an infringement offence.

- (2) An authorised officer may issue and serve an infringement notice on a person if the authorised officer reasonably believes that the person has committed an infringement offence.
- (3) An infringement notice is to be in accordance with section 14 of the *Monetary Penalties Enforcement Act 2005*.
- (4) The regulations –

- (a) may prescribe, for infringement offences, the penalties payable under infringement notices; and
- (b) may prescribe different penalties for bodies corporate and individuals.

43. Recovery of debt in court

- (1) The Director may recover any amount payable to the Director under this Act in the Magistrates Court as a debt due and payable.
- (2) The Magistrates Court may make an order for payment under this section even though the amount of the order exceeds the upper monetary limit of the Court's civil jurisdiction.

44. Limitation period for prosecution

Proceedings for an offence against this Act may be brought within 3 years after the date on which the offence is alleged to have occurred.

45. Liability of multiple operators

- (1) If there is more than one operator of a landfill facility, each of the operators is jointly and severally responsible and liable for, and in relation to, a contravention of this Act alleged to have occurred in relation to the landfill facility.
- (2) Proceedings for a contravention alleged to have occurred in relation to a landfill facility may be

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taken against all or any of the persons liable subsection (1).

- (3) Proceedings for a contravention may be taken against any of the persons liable for the offence –
- (a) regardless of whether or not proceedings have been commenced against any of the other persons liable for the contravention; and
 - (b) if proceedings have been commenced against any of the other persons liable for the contravention, regardless of whether or not the proceedings have been concluded; and
 - (c) if proceedings have been concluded against any of the other persons liable for the contravention, regardless of the outcome of the proceedings.

46. Liability of body corporate

- (1) If a body corporate contravenes a provision of this Act, a person who is concerned in, or takes part in, the management of the body corporate is taken to have contravened that provision.
- (2) It is a defence in proceedings in respect of a contravention referred to in subsection (1) for a person to prove that –

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- (a) the body corporate contravened the provision without the person's knowledge; or
 - (b) the person was not in a position to influence the conduct of the body corporate in relation to the contravention; or
 - (c) the person, if in a position to influence the conduct of the body corporate in relation to the contravention, attempted to prevent the contravention by the body corporate.
- (3) A person referred to in subsection (1) may be convicted of a contravention of a provision of this Act whether or not the body corporate has been convicted of the contravention.
- (4) Nothing in this section affects the liability of a body corporate for a contravention of a provision of this Act.

47. Presumption in relation to rebate entitlements

In any proceedings brought under this Act, an operator bears the onus of proving, on the balance of probabilities, that the operator is entitled to a resource recovery rebate in accordance with section 31.

48. Evidence

In any proceedings for an offence against a provision of this Act –

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- (a) a statement made by a person who is concerned in, or takes part in, the management of a body corporate is admissible as evidence against the body corporate; and
- (b) any record kept in pursuance of this Act is admissible as *prima facie* evidence of the facts stated in the record; and
- (c) a copy of an entry in such a record, being a copy certified by the person by whom the record is required to be kept to be a true copy of the entry, is admissible as *prima facie* evidence of the facts stated in the entry; and
- (d) a document purporting to be a record kept in pursuance of this Act, or purporting to be a certified copy referred to in paragraph (c), is, unless the contrary is proved, to be taken to be such a record or certified copy, as the case may be.

49. Protection from liability

- (1) The Minister, the Director, an authorised officer or any other person does not incur any personal liability for any act done or purported or omitted to be done in good faith in the performance or exercise or purported performance or exercise of any functions or powers under this Act.
- (2) A member of the Board, and the chief executive officer of the Board (if appointed), does not incur any personal liability for any act done or

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purported or omitted to be done by the member or chief executive officer in good faith in the performance or exercise or purported performance or exercise of any functions or powers relating to or arising from his or her role as a member or chief executive officer.

- (3) Subsections (1) and (2) do not preclude the Crown or the Board from incurring a liability that a person would, but for either of those subsections, incur.

Draft

PART 6 – MISCELLANEOUS

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

Unless otherwise specified, an order, notice, declaration or other instrument under this Act –

- (a) is not a statutory rule for the purposes of the *Rules Publication Act 1953*; and
- (b) is not subordinate legislation for the purposes of the *Subordinate Legislation Act 1992*.

51. Regulations

- (1) The Governor may make regulations for the purposes of this Act.
- (2) Without limiting the generality of subsection (1), the Governor may make regulations for, or in respect of, the following:
 - (a) the amount of the waste levy and scheduled increases to that amount;
 - (b) any matter relating to the classification of classes or types of waste;
 - (c) any requirements for the infrastructure and operation of a landfill facility;
 - (d) the payment from the Account of specified amounts for specified purposes, including a periodical payment;

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- (e) infringement offences and the penalties payable in relation to those offences;
 - (f) all other matters that are required, permitted or necessary, to be prescribed or made by regulation under this Act.
- (3) The regulations may –
- (a) provide that a contravention of, or a failure to comply with, any of the regulations is an offence; and
 - (b) in respect of such an offence, provide for the imposition of a fine not exceeding 250 penalty units and, in the case of a continuing offence, a further fine not exceeding 20 penalty units for each day during which the offence continues.
- (4) The regulations may apply, adopt or incorporate all or any of the provisions of a code or guidelines published by any organisation or body for the regulation of any matter to which this Act applies and the provisions may be applied, adopted or incorporated as they currently exist, as amended by the regulations, or as amended from time to time.
- (5) The regulations may –
- (a) be of limited or general application; and
 - (b) be made so as to apply differently according to matters, limitations or restrictions, whether as to time,

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circumstance, location or otherwise, specified in the regulations; and

- (c) authorise any matter to be determined, applied or regulated by any specified person or entity.
- (6) The regulations may exempt a person, class of persons, matter or other thing from the operation of this Act or any specified provision of this Act or the regulations including, but not limited to, an exemption from any fee, charge or levy payable under this Act.

52. Ministerial standards

- (1) The Minister may, by notice published in the *Gazette*, issue standards in relation to the operation of landfill facilities and resource recovery facilities for the purposes of this Act, including standards in relation to the stockpiling of waste at such facilities.
- (2) The Minister may –
 - (a) amend the standards; or
 - (b) revoke the standards and substitute new standards.
- (3) In issuing standards, amending standards or revoking and substituting standards, the Minister may consult with any person he or she considers appropriate.
- (4) Before issuing standards, amending standards or revoking and substituting standards, the Minister

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is to consult with the Board and the Director in respect of the proposed standards.

- (5) The standards, or an amendment of the standards –
- (a) must specify the day on which the standards are, or the amendment is, to take effect; and
 - (b) may be made so as to apply differently according to such factors as are specified in the standards; and
 - (c) may adopt, either wholly or in part and with or without modification, either specifically or by reference, any standards, rules, codes, guidelines or other documents (whether published or issued before or after the commencement of this section).
- (6) A reference in subsection (5)(c) to standards, rules, codes, guidelines or other documents includes a reference to an amendment of those standards, rules, codes, guidelines or other documents, whether the amendment is published or issued before or after the commencement of this section.
- (7) The Minister is to ensure that the standards, as in force, are published on the website of the Department and made available to the public in any other manner that the Minister considers appropriate.

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- (8) The provisions of sections 47(3), (3A), (4), (5), (6) and (7) of the *Acts Interpretation Act 1931* apply to a notice under subsection (1) as if the notice were regulations within the meaning of that Act.

53. Director may issue guidelines

- (1) The Director may, by notice published in the *Gazette*, issue guidelines for the purposes of this Act.
- (2) The Director may, by notice published in the *Gazette*, vary or revoke guidelines issued under subsection (1).

54. Administration of Act

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of this Act is assigned to the Minister for Environment and Parks; and
- (b) the department responsible to that Minister in relation to the administration of this Act is the Department of Primary Industries, Parks, Water and Environment.

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55. Consequential Amendments

The legislation specified in Schedule 3 is amended as specified in that Schedule.

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**SCHEDULE 1 – MEMBERSHIP OF TASMANIAN
WASTE AND RESOURCE RECOVERY BOARD**

Section 11(5)

1. Term of office

- (1) A member is appointed for the period, not exceeding 4 years, as is specified in the member's instrument of appointment and, if eligible, may be reappointed.
- (2) A member may serve any number of terms but not more than 2 terms, of whatever duration, in succession.

2. Holding other office

Unless the contrary intention appears, the holder of an office who is required by the terms of his or her employment to devote the whole of his or her time to the duties of that office is not disqualified from –

- (a) holding that office and also the office of a member; or
- (b) accepting any remuneration payable to a member.

3. State Service employment

A person may hold the office of member in conjunction with State Service employment.

4. Remuneration and conditions of appointment

- (1) A member is entitled to be paid such remuneration and allowances as the Minister determines.
- (2) A member who is a State Service employee or State Service officer is not entitled to remuneration or allowances under this clause except with the approval of the Minister administering the *State Service Act 2000*.
- (3) A member holds office on such conditions in respect of matters not provided for by this Act as are specified in the member's instrument of appointment.

5. Vacation of office

- (1) A member vacates office if he or she –
 - (a) dies; or
 - (b) resigns by notice given in writing to the Minister; or
 - (c) is removed from office under subclause (2) or (3).
- (2) The Minister may remove a member from office if the member –
 - (a) is absent from 3 consecutive meetings of the Board without the permission of the chairperson; or

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- (b) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with the member's creditors or makes an assignment of the member's remuneration or estate for their benefit; or
 - (c) is convicted, in Tasmania or elsewhere, of a crime or an indictable offence; or
 - (d) fails to disclose a pecuniary interest as required under clause 7 of Schedule 2; or
 - (e) has benefited from, or claimed to be entitled to benefit from, a contract made by or on behalf of the Board, other than a contract for a good or service ordinarily supplied by the Board and supplied on the same terms as that good or service is ordinarily supplied to other persons in the same situation.
- (3) The Minister may remove a member from office if the Minister is satisfied that the member is unable to perform adequately or competently the duties of office.
- (4) A member is not to be removed otherwise than in accordance with this clause.

6. Filling of vacancies

If the office of a member becomes vacant, the Minister may appoint a person to the vacant office.

7. Validation of proceedings, &c.

- (1) An act or proceeding of the Board or of a person acting under any direction of the Board is not invalidated by reason only that at the time when the act or proceeding was done, taken or commenced there was a vacancy in the office of a member.
- (2) All acts and proceedings of the Board or of a person acting under a direction of the Board are, despite the subsequent discovery of a defect in the appointment of a member or that any other person was disqualified from acting as, or incapable of being, a member, as valid as if the member had been duly appointed and was qualified to act as, or capable of being, a member, and as if the Board had been fully constituted.

8. Presumptions

In any proceeding by or against the Board, unless evidence is given to the contrary, proof is not required of –

- (a) the constitution of the Board; or
- (b) the appointment of any member.

**SCHEDULE 2 – MEETINGS OF TASMANIAN WASTE
AND RESOURCE RECOVERY BOARD**

Section 11(6)

1. Convening of meetings

- (1) The chairperson of the Board, after giving each member of the Board reasonable notice of a meeting –
 - (a) may convene a meeting of the Board at any time; and
 - (b) must convene a meeting when requested to do so by 3 or more other members.
- (2) If the chairperson is absent from duty or otherwise unable to perform the duties of the office, a meeting of the Board may be convened, after reasonable notice of the meeting has been given, by –
 - (a) 3 or more other members; or
 - (b) a person authorised by the Board to do so.
- (3) For the purposes of subclauses (1) and (2), what constitutes reasonable notice is to be determined by the Board.

2. Presiding at meetings

- (1) The chairperson is to preside at all meetings of the Board at which he or she is present.

- (2) If the chairperson is not present at a meeting of the Board, a member elected by the members present at the meeting is to preside.

3. Quorum and voting at meetings

- (1) At a meeting of the Board, a quorum is constituted by a majority of the total number of members appointed.
- (2) A meeting of the Board at which a quorum is present is competent to transact any business of the Board.
- (3) At a meeting of the Board –
- (a) the member presiding has a deliberative vote only; and
 - (b) a question is decided –
 - (i) by a majority of votes of the members present and voting; or
 - (ii) in the negative if there is an equality of votes of the members present and voting.
- (4) At a meeting of the Board where a member is excluded from being present and taking part in the consideration and decision of the Board in respect of a matter, a quorum for the purposes of considering and making a decision in respect of that matter is constituted by the number of members specified as constituting a quorum in subclause (1) less the number of members so excluded.

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4. Conduct of meetings

- (1) Except as provided by this Act, the Board may regulate the calling of, and the conduct of business at, its meetings as it considers appropriate.
- (2) The Board may permit members to participate in a particular meeting or all meetings by –
 - (a) telephone; or
 - (b) video conference; or
 - (c) any other means of communication approved by the Board.
- (3) A member who participates in a meeting under a permission granted under subclause (2) is taken to be present at the meeting.
- (4) Without limiting subclause (1), the Board may allow a person to attend a meeting for the purpose of advising or informing it on any matter.

5. Absences

- (1) A member is to take reasonable steps to inform the chairperson if he or she will, or is likely to, be unable to attend a meeting.
- (2) The chairperson may permit a member to be absent from more than 3 consecutive meetings but such permission is not to be granted retrospectively.

- (3) To avoid doubt, a permission under subclause (2) is taken not to be retrospective if it is granted at any time before the third consecutive meeting that the member does not attend.

6. Minutes

The Board is to keep accurate minutes of its meetings.

7. Disclosure of interests

- (1) If a member has a direct or indirect pecuniary interest in a matter being considered, or about to be considered, by the Board, the member must, as soon as practicable after the relevant facts come to the member's knowledge, disclose the nature of the interest to the Board.

Penalty: Fine not exceeding 500 penalty units or imprisonment for a term not exceeding one month, or both.

- (2) Unless the Board otherwise determines, a member who has made a disclosure under subclause (1) in respect of a matter must not –
- (a) be present during any deliberation of the Board in respect of the matter; or
 - (b) take part in any decision of the Board in respect of the matter.

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- (3) For the purpose of the making of a determination by the Board under subclause (2), the member to whom the determination is to relate must not –
- (a) be present during any deliberation of the Board for the purpose of making the determination; or
 - (b) take part in making the determination.
- (4) Subclause (1) does not apply –
- (a) in respect of a contract for goods or services supplied by the Board if those goods or services are ordinarily supplied by the Board and are supplied on the same terms as they are ordinarily supplied to other persons in the same situation; or
 - (b) in respect of an interest that arises only because the member is also a State Service officer or State Service employee.

8. General procedure

Except as provided by this Act, the Board may regulate its own proceedings.

9. Presumptions

In any proceeding by or against the Board, unless evidence is given to the contrary, proof is not required of –

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- (a) any resolution of the Board; or
- (b) the presence of a quorum at any meeting of the Board.

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SCHEDULE 3 – CONSEQUENTIAL AMENDMENTS

Section 55

Environmental Management and Pollution Control (Waste Management) Regulations 2020

1. Regulation 18(2) is amended by omitting paragraph (a).

Environmental Management and Pollution Control Act 1994

1. Section 3 is amended as follows:
 - (a) by omitting the definition of *clean fill* from subsection (1) and substituting the following definitions:

clean fill type 1 means a mixture –

- (a) containing natural materials, such as soil, rock, crushed rock, gravel, clay or sand, that are in a raw, unaltered form and that have been excavated from an area of land; and
- (b) that does not contain –
 - (i) an amount, of a pollutant, or pollutants, that is above a level, of the pollutant or pollutants,

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declared under
subsection (3)(a);
and

(ii) a proportion, of a
substance, or
substances, that
are not within
paragraph (a), that
is greater than the
proportion of the
substance, or
substances,
declared under
subsection (3)(b);
and

(iii) pieces of material
that are of
dimensions greater
than the
dimensions
declared under
subsection (3)(c);

clean fill type 2 means a mixture –

(c) containing any one or
more of the following:

(i) bricks, masonry or
paving blocks;

(ii) concrete or
mortar;

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(iii) bituminised or rubble pavement; and

(d) that does not contain –

(i) an amount, of a pollutant, or pollutants, that is above a level, of the pollutant, or pollutants, declared under subsection (3)(a); and

(ii) a proportion, of a substance, or substances, that are not within paragraph (c), that is greater than the proportion of the substance, or substances, declared under subsection (3)(b); and

(iii) pieces of material that are of dimensions greater than the dimensions declared under subsection (3)(c);

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(b) by inserting the following subsections after subsection (2):

(3) The Director may declare –

- (a) a level of a pollutant, or pollutants, for the purposes of paragraph (b)(i) of the definition of *clean fill type 1* in subsection (1) or paragraph (d)(i) of the definition of *clean fill type 2* in subsection (1), or both; and
- (b) a proportion, of a substance, or substances, for the purposes of paragraph (b)(ii) of the definition of *clean fill type 1* in subsection (1) or paragraph (d)(ii) of the definition of *clean fill type 2* in subsection (1), or both; and
- (c) the dimensions of pieces of material for the purposes of paragraph (b)(iii) of the definition of *clean fill type 1* in subsection (1) or paragraph (d)(iii) of the definition of *clean fill*

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type 2 in subsection (1),
or both.

(4) The Director is to ensure that a copy of a declaration under subsection (3) that is in force is published on a website of the Department.

2. Clause 3(b)(ia) of Schedule 2 is amended by omitting “clean fill” and substituting “clean fill type 1 or clean fill type 2”.