

TASMANIA

WASTE AND RESOURCE RECOVERY BILL 2021

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WASTE AND RESOURCE RECOVERY BILL 2021

*(Brought in by the Minister for Environment, 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, impose a levy on waste received at a landfill facility and provide for a rebate in relation to that levy in certain circumstances, provide for standards and guidelines to be made in relation to landfill and resource recovery facilities, establish the Tasmanian Waste and Resource Recovery Board, and for related purposes

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.

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- (2) Part 3 and Part 4 commence on a day, or days, 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 Secretary;

authorised officer means a person who is an authorised officer under section 9;

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

independent, in relation to a person in respect of a landfill facility, means that the person –

- (a) is not employed by the operator of the facility or an owner or occupier of the land on which the facility is situated; and

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-
- (b) is not part of the management of the operator of the facility or of an owner or occupier of the land on which the facility is situated; and
 - (c) does not have a pecuniary interest in relation to the landfill facility, an owner or occupier of the land on which the facility is situated or the land on which the facility is operated, other than a fee payable to the person for the taking of an action as a surveyor or auditor for the purposes of this Act; and
 - (d) is not a relative of the operator of the facility or an owner or occupier of the land on which the facility is situated;

information includes documents, records, recordings, registers, data and electronic communications;

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, for a financial year, means the operational plan approved for that year under section 21;

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operator, in relation to a landfill facility, means a person who is responsible for the operation of the landfill facility;

payable levy amount, in relation to a landfill facility, has the meaning it has in section 31(2);

person responsible, in relation to a resource recovery facility, means a person who is responsible for the operation of the resource recovery facility;

prescribed levy means the levy prescribed or calculated for the purposes of section 29;

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; or
- (d) sorting or preparation of the waste for the purposes of paragraph (a), (b) or (c);

resource recovery facility – see section 5;

Secretary means Secretary of the Department;

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statutory authority means an incorporated or unincorporated body which is established, constituted or continued by or under an Act or under the royal prerogative, being a body which, or of which the governing authority, wholly or partly comprises a person or persons appointed by the Governor, a Minister of the Crown or another statutory authority;

waste levy return means a waste levy return given in accordance with section 32;

waste strategy means a waste strategy approved under section 19(4)(a).

- (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 –

approved management method means a management method approved and in effect under regulation 19 of the *Environmental Management and Pollution Control (Waste Management) Regulations 2020*;

land means an area of land that is not covered by water but does not include any

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buildings or other structures on the area of land;

lawfully disposed of means disposed of in accordance with –

- (a) an approval, permit, licence, or other authorisation, in effect under an Act, other than an approved management method; or
 - (b) an order or notice that is in effect under an Act.
- (2) For the purposes of this Act, a landfill facility is a facility, or place, at which waste is lawfully disposed of into, or onto, land.
- (3) Despite subsection (2), a facility or place is not a landfill facility if –
- (a) it is prescribed not to be a landfill facility for the purposes of this Act; or
 - (b) it is a member of a class of facilities or places, the members of which are prescribed not to be landfill facilities for the purposes of this Act.

5. Meaning of resource recovery facility

- (1) In this Act, a resource recovery facility is a facility, or place, that is –
- (a) a facility or place at which resource recovery occurs; or

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- (b) prescribed as a resource recovery facility.
 - (2) Despite subsection (1), a facility, or place, is not a resource recovery facility if –
 - (a) it is prescribed not to be a resource recovery facility for the purposes of this Act; or
 - (b) it is a member of a class of facilities or places, the members of which are prescribed not to be resource recovery facilities for the purposes of this Act.

6. Ministerial order

- (1) The Minister may, by order, declare that certain matter, or a class of matter, is excluded from this Act or from the provisions of this Act that are specified in the order.
- (2) The Minister, if he or she considers it practicable to do so in the circumstances, is to consult with the Board and the Secretary before making an order under subsection (1).
- (3) If the Minister does not consult with the Board and the Secretary in accordance with subsection (2) in respect of an order, the Minister is to ensure that the Board and the Secretary are notified of the making of the order as soon as practicable after the order has been made.
- (4) The provisions of sections 47(3), (3A), (4), (5), (6) and (7) of the *Acts Interpretation Act 1931*

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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.

8. Delegation

- (1) The Secretary may delegate any of the Secretary'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.

9. Authorised officers

- (1) The Secretary is an authorised officer for the purposes of this Act.
- (2) The Secretary may appoint as authorised officers for the purposes of this Act –
 - (a) a State Service officer, or State Service employee, who is appointed or employed in the Department; or
 - (b) a class of State Service officers, or State Service employees, who are appointed or employed in the Department.

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- (3) The Secretary may, with the consent of the Head of Agency of another Agency, appoint as authorised officers for the purposes of this Act –
- (a) a State Service officer, or State Service employee, who is appointed or employed in that Agency; or
 - (b) a class of State Service officers, or State Service employees, who are appointed or employed in that Agency.
- (4) A person appointed as an authorised officer may exercise the powers and perform the functions of an authorised officer in conjunction with State Service employment.
- (5) The Secretary may, with the consent of any person, appoint that person, or an employee of that person, as an authorised officer.
- (6) A person appointed as an authorised officer is appointed on the terms and conditions that the Secretary determines.
- (7) A person appointed as an authorised officer who is a State Service employee or State Service officer is not entitled to remuneration or allowances under this section except –
- (a) in accordance with terms and conditions determined by the Secretary under subsection (6); or
 - (b) with the approval of the Minister administering the *State Service Act 2000*.

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

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

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- (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.
- (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) remote area waste management;
 - (iii) resource recovery;
 - (iv) industry development;
 - (v) regional development;
 - (vi) finance;
 - (vii) public sector administration;
 - (viii) risk management;
 - (ix) corporate governance;
 - (x) a particular function, or vocational interest, that is

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

12. Functions of Board

- (1) In this section –

charitable recycler means an organisation that –

- (a) has satisfied the Board that it is established solely for charitable purposes and not for profit or gain; and
- (b) operates a program for the recycling of matter or that collects public donations for repurposing or reselling; 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*

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Tax Assessment Act 1997 of the
Commonwealth;

public authority means –

- (a) a council; or
- (b) a 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) 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 a waste
strategy that is in effect under
section 19(7);
- (c) to prepare, implement, review and assess
the effectiveness of an operational plan
that is in effect under section 21(6)(a);
- (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, and education in
relation to, waste reduction and resource
recovery;

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- (f) to promote and support State policies and programs relevant to the Act;
- (g) to promote and support access to waste services in remote areas;
- (h) to promote and support coordination and cooperation with statutory authorities, local authorities and industry to prevent waste and promote resource recovery;
- (i) to consult with, and promote and support coordination and cooperation between, organisations (whether or not in the State) with objectives relevant to the Act;
- (j) to administer, for the benefit of charitable recyclers and such other entities as specified by a Ministerial direction given and in effect under section 14 for the purposes of this paragraph, an assistance program to mitigate costs to those bodies resulting from this Act;
- (k) to administer, for the benefit of persons responsible for resource recovery facilities and such other entities as specified by a Ministerial direction given and in effect under section 14 for the purposes of this paragraph, an assistance program to mitigate costs to those bodies resulting from this Act in relation to the disposal of waste determined by the Board to be the necessary residue of the resource recovery activities of those bodies;

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- (l) to administer, in respect of public authorities and such other entities as specified by a Ministerial direction given and in effect under section 14 for the purposes of this paragraph, an assistance program to mitigate costs to those bodies resulting from this Act in relation to the collection and disposal of waste determined by the Board to have been unlawfully discarded;
 - (m) to promote market development and local infrastructure for resource recovery and recycling of materials;
 - (n) to perform any other functions that the Board has under this or any other Act;
 - (o) to perform any other functions that may be prescribed.
- (3) In the performance of its functions, the Board is to –
- (a) further the improvement of 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*.

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13. 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:

- (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) to enter into agreements, in respect of matters related to this Act, with statutory authorities, local authorities, industry and organisations;
- (d) to publish reports relating to any matter related to this Act;
- (e) to provide information to the public on any matter related to this Act.

14. 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.

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

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

15. Chief executive officer

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

16. 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

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

17. 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 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 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.

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Division 3 – Planning and reporting by Board

18. Waste strategy

- (1) A waste strategy is to identify long-term and short-term objectives to –
 - (a) divert waste from disposal at landfill facilities; and
 - (b) maximise resource recovery; and
 - (c) improve waste management practices.
- (2) A waste strategy is to –
 - (a) identify programs and projects to achieve the objectives identified in accordance with subsection (1); 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 period, of at least 3 years, specified in the waste strategy.
- (3) A waste strategy is to –
 - (a) be consistent with the objectives of the State’s resource management and

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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 14; and
- (c) be in such form as the Board thinks fit.

19. Preparation, approval and amendment to waste strategy

- (1) The Board is to prepare a draft waste strategy, in accordance with section 18, and provide it to the Minister under subsection (3) –
 - (a) within 6 months after the day on which this section commences; and
 - (b) at least 3 months before the expiry of a waste strategy that is in effect under section 19(7)(a).
- (2) In preparing a draft waste strategy under this section, the Board –
 - (a) is to consult –
 - (i) the Minister; and
 - (ii) the Director; and
 - (iii) the Local Government Association; and

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- (iv) relevant industry stakeholders as determined by the Board; and
 - (b) is to provide a copy of the draft waste strategy for public comment before it is submitted to the Minister under subsection (3); and
 - (c) may consult such other persons as it thinks fit.
- (3) After preparing a draft waste strategy, the Board is to submit it to the Minister for approval under this section.
- (4) The Minister may –
 - (a) approve the draft waste strategy as submitted under subsection (3); or
 - (b) require the Board to amend the draft waste strategy submitted under subsection (3).
- (5) The Board, as soon as practicable after being required to amend a draft waste strategy under subsection (4)(b), is to submit to the Minister under subsection (3) the draft waste strategy as amended in accordance with the requirement.
- (6) For the avoidance of doubt, the Minister’s power under subsection (4)(b) may be exercised more than once in respect of a draft waste strategy.
- (7) If a draft waste strategy has been approved by the Minister under subsection (4)(a) –

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- (a) it is in effect as the waste strategy of the Board for the period specified in the waste strategy; and
 - (b) the Board is to act in accordance with the waste strategy during that period.
- (8) The Board, having regard to changes of circumstance or for other reasonable cause, may at any time prepare an amendment to the waste strategy that is in effect under subsection (7)(a).
- (9) Subsections (2), (3), (4), (5) and (6) apply, in relation to an amendment to a waste strategy that is in effect, as if a reference in those subsections to a draft waste strategy were a reference to a waste strategy that is in effect.
- (10) An amendment to a draft waste strategy that is approved under subsection (4)(a) takes effect on the day on which the amendment is approved by the Minister under that subsection.
- (11) The Board is to ensure that a waste strategy that is in effect under subsection (7)(a) is available for public inspection on a website maintained by or on behalf of the Board while it remains in effect.

20. Operational plan

- (1) An operational plan for the Board in relation to a financial year is to –
 - (a) include a statement of the manner in which the Board, during the financial

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year, is to meet the business and financial objectives of the Board; and

- (b) set out the budget of the Board for the financial year (including estimates of its income and expenditure for that period); and
- (c) be consistent with –
 - (i) a waste strategy that is in effect under section 19(7)(a); and
 - (ii) any applicable Ministerial direction given and in effect under section 14.

(2) For the purposes of subsection (1)(a), the business and financial objectives of the Board are objectives that give effect to the following:

- (a) the waste strategy;
- (b) the purposes of the Act.

21. Preparation, approval and amendment of operational plan

- (1) The Board, on or before 31 May in each financial year, is to prepare a draft operational plan, in accordance with section 20, in relation to the next financial year.
- (2) After preparing a draft operational plan, the Board is to submit the plan to the Minister for approval.

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- (3) The Minister may –
 - (a) approve the draft operational plan as submitted under subsection (2); or
 - (b) require the Board to amend the draft operational plan submitted under subsection (2).
- (4) The Board, as soon as practicable after being required to do so under subsection (3)(b), is to submit to the Minister under subsection (2) a draft operational plan as amended in accordance with the requirement.
- (5) For the avoidance of doubt, the Minister’s power under subsection (3)(b) may be exercised more than once in respect of a draft operational plan.
- (6) If an operational plan in relation to a financial year has been approved by the Minister under subsection (3)(a) –
 - (a) it is in effect as the operational plan of the Board for that financial year; and
 - (b) the Board is to act during that financial year in accordance with the operational plan.
- (7) The Board, having regard to changes to a waste strategy that is in effect under section 19(7)(a), or to any circumstances related to the purposes of the Act, or for other reasonable cause, may prepare at any time an amendment to an operational plan that is in effect under subsection (6)(a).

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- (8) Subsections (2), (3), (4) and (5) apply in relation to an amendment to an operational plan that is in effect as if a reference in those subsections to a draft operational plan were a reference to an operational plan that is in effect.
 - (9) An amendment to a draft operational plan that is approved under subsection (3)(a) takes effect on the day on which it is approved by the Minister under that subsection.
 - (10) The Board is to ensure that an operational plan that is in effect under subsection (6)(a) is available for public inspection on a website maintained by or on behalf of the Board while it remains in effect.

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 14 in or in respect of the financial year and any actions taken by the Board in respect of those directions;

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- (c) a summary of each waste strategy that was in effect under section 19(7) for all or part of the financial year;
 - (d) a summary of the operational plan that is in effect under section 20(6) in relation to the financial year;
 - (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 –
- (a) on or before that day, provide copies of the annual report to the Clerk of that House; and

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- (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.
- (3) The funds contained in the Account may be applied by the following persons for the following purposes:
 - (a) by the Board, for the purposes of –
 - (i) implementing the waste strategy that is in effect under section 19(7)(a); and

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- (ii) enabling the Board to perform its functions; and
 - (iii) meeting all costs and expenses associated with the operation of the Board;
 - (b) by the Secretary for the purposes of making adjustments in relation to payable levy amounts that have been paid;
 - (c) by the Secretary in an amount, and for a purpose, as prescribed.
- (4) For the purposes of subsection (3)(a)(iii), the costs and expenses associated with the operation of the Board are as follows:
- (a) remuneration –
 - (i) of the members of the Board; and
 - (ii) of the chief executive officer (if appointed) of the Board; and
 - (iii) as agreed by the Board, of staff appointed, employed or made available under section 17;
 - (b) expenses relating to investments made by the Board;
 - (c) legal, accounting, advisory and taxation expenses;
 - (d) consultancy costs;

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- (e) a cost or expense reasonably incurred by the Board in the exercise of powers or 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

- (1) 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.
- (2) Subject to section 16 of the *Tasmanian Public Finance Corporation Act 1985*, the Board may invest any funds of the Board 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 14.

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27. 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

28. Application of Part

In this Part, a reference to waste excludes the following matter:

- (a) matter declared to be excluded from this Part in an order made under section 6;
- (b) matter prescribed to be excluded from this Part.

29. Prescribed levy

For the purposes of this Act, the prescribed levy is the amount, of a levy in respect of a tonne of waste in a calendar month, that is prescribed by, or calculated in accordance with, regulations for the purposes of this section.

30. Resource recovery rebate

- (1) An operator of a landfill facility is entitled, in relation to a calendar month, to a rebate in respect of each tonne of waste that –
 - (a) is removed from the landfill facility within the calendar month; and
 - (b) is received by a resource recovery facility.
- (2) An operator is only entitled to a rebate under subsection (1) in respect of a tonne of waste if the operator provides evidence, to the

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satisfaction of the Secretary, that the tonne of waste was –

- (a) removed from the landfill facility within the calendar month; and
 - (b) received by a resource recovery facility.
- (3) The amount of the rebate in respect of a tonne of waste is the amount of the prescribed levy in respect of the tonne of waste at the time at which the waste was removed from the landfill facility.

31. Payable levy amount for landfill facility

- (1) The payable levy amount in respect of a landfill facility for a calendar month is the amount obtained by multiplying the prescribed levy by each tonne of waste received by that facility in that month, and deducting from that amount the total of the amounts of each rebate, for each tonne of waste, to which the operator is entitled under section 30 for that month in relation to that landfill facility.
- (2) If the amount, calculated under subsection (1), in respect of a landfill facility for a calendar month is greater than zero, that amount is the payable levy amount for that landfill facility for that calendar month.
- (3) If the total of the amounts of each rebate for a calendar month (the *rebate total*), calculated under subsection (1), is greater than the amount obtained by multiplying the prescribed levy by

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each tonne of waste received by that facility in that month (the ***total levy amount***) –

- (a) the amount by which the rebate total is greater than the total levy amount is to be deducted from the next payable levy amount for that landfill facility; and
 - (b) if the amount to be deducted under paragraph (a) is more than the next payable levy amount for the landfill facility, 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.
- (4) An operator in relation to a landfill facility must pay to the Secretary, within 30 working days after the end of each calendar month, the payable levy amount in relation to the landfill facility for the calendar month.

32. Waste levy return and payments of payable levy amount

- (1) An operator in relation to a landfill facility must give to the Secretary, within 30 working days after the end of each calendar month, a waste levy return in relation to the landfill facility.

Penalty: Fine not exceeding 200 penalty units.

- (2) A waste levy return –

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- (a) is to be in an approved form; and
 - (b) is to include the prescribed information, if any; and
 - (c) must be accompanied by the payable levy amount under section 31, if any, in respect of the calendar month to which the waste levy return applies.
- (3) The payable levy amount given to the Secretary under subsection (2)(c) is to be paid into the Account.

33. Payment of overdue levy

- (1) If an operator of a landfill facility fails to pay a payable levy amount, or part of a payable levy amount, as required under section 32, the Secretary may issue a notice in writing requiring the operator to pay the amount or part amount.
- (2) In considering whether the operator of a landfill facility has failed to pay all or part of an amount referred to in subsection (1), the Secretary 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;
 - (b) the date on which waste was received by the landfill facility;

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(c) the amount of waste removed from the landfill facility for the purposes of resource recovery.

(3) An operator of a landfill facility to whom a notice is given under subsection (1) must pay the amount specified in the notice within 10 working days.

Penalty: Fine not exceeding 50 penalty units and, in the case of a continuing offence, a further fine not exceeding 10 penalty units for each day during which the offence continues.

34. Evasion of levy

An operator of a landfill facility 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.

PART 4 – OBLIGATIONS AND OFFENCES

35. Landfill facility requirements

- (1) An operator of a landfill facility must ensure that the landfill facility, and the operation of the landfill facility, comply with each requirement prescribed for such a facility.

Penalty: Fine not exceeding 200 penalty units.

- (2) An operator of a landfill facility must ensure that the landfill facility is operated in accordance with any Ministerial standards issued and in force under section 56.

Penalty: Fine not exceeding 200 penalty units.

- (3) An operator of a landfill facility is to ensure that the guidelines issued and in force under section 57 are complied with in relation to the landfill facility.

36. 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 an independent person in respect of the landfill facility.

- (2) An operator of a landfill facility must –
- (a) within 28 days after –

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(i) the commencement of this section, if the landfill facility was active on and before that day; or

(ii) the landfill facility commences operation; and

(b) within one year after the day on which a volumetric survey in relation to waste deposited at the landfill facility is carried out under paragraph (a), and annually after that day –

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) The Secretary may at any time, by notice in writing to an operator of a landfill facility, require the operator to cause a further volumetric survey to be carried out in relation to waste deposited at the landfill facility.

(4) An operator of a landfill facility must comply with a notice given to the operator under subsection (3).

Penalty: Fine not exceeding 200 penalty units.

(5) A volumetric survey, in relation to waste deposited at a landfill facility, 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; and

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(c) in the prescribed manner, if any.

- (6) An operator of a landfill facility must ensure that the results of a volumetric survey, in relation to waste deposited at the landfill facility, that is carried out under this section are given to the Secretary in an approved form within 30 working days after the completion of the survey.

Penalty: Fine not exceeding 200 penalty units.

- (7) The Secretary may, by notice in writing to an operator of a landfill facility, waive the requirement for the operator to cause to be carried out under subsection (2) one or more volumetric surveys in relation to waste deposited at the landfill facility.

37. Records of landfill facility

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

- (a) a copy of each waste levy return given to the Secretary under section 32;
- (b) volumetric survey results given to the Secretary under section 36;
- (c) a report, containing the results of an audit, given to the Secretary under section 42;
- (d) copies of all correspondence between the operator and the Secretary;

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(e) a prescribed document.

Penalty: Fine not exceeding 200 penalty units.

38. Resource recovery facility requirements

- (1) A person responsible in relation to a resource recovery facility must ensure that the resource recovery facility, and the operation of the resource recovery facility, comply with each requirement prescribed for such a facility.

Penalty: Fine not exceeding 200 penalty units.

- (2) A person responsible in relation to a resource recovery facility must ensure that the resource recovery facility is operated in compliance with any Ministerial standards issued and in force under section 56.

Penalty: Fine not exceeding 200 penalty units.

- (3) A person responsible in relation to a resource recovery facility is to ensure that any guidelines issued and in force under section 57 are complied with in relation to the facility.

39. Records of resource recovery facility

A person responsible in relation to a resource recovery facility must record and keep, for 5 years after it comes into existence, information prescribed for the purposes of this section.

Penalty: Fine not exceeding 200 penalty units.

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40. False or misleading information in general

A person must not, in a record, return, report, result, document or information given to another person 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 to the other person any correct information –
 - (i) of which the first-mentioned person has possession or can reasonably obtain; and
 - (ii) that is required to be given to the other person in order to correct the false or misleading statement or is required to be read by the other person together with that statement in order for the statement not to be false or misleading.

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

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41. Information provided to landfill operators and persons responsible

A person must not make a statement, to an operator of a landfill facility or a person responsible in relation to a resource recovery facility, that is false or misleading in respect of a type of waste that the person causes to enter into or onto the landfill facility, or resource recovery facility, respectively.

Penalty: Fine not exceeding 200 penalty units.

PART 5 – ENFORCEMENT

Division 1 – Powers and procedures

42. Audit

- (1) In this section –

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

- (2) The Secretary may issue a notice, in writing, to an operator of a landfill facility requiring the operator to cause an audit of the landfill facility to be carried out by an approved auditor.
- (3) A notice issued to an operator of a landfill facility 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 engaged by the operator to undertake the audit;
 - (d) the date by which a report containing the results of the audit is to be given to the Secretary.
- (4) An operator of a landfill facility must comply with a notice issued under subsection (2) to the operator.

Penalty: Fine not exceeding 200 penalty units.

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- (5) An audit of a landfill facility in accordance with this section is to be carried out at the expense of the operator of the landfill facility to whom the audit relates.
- (6) The Secretary may approve an auditor for the purposes of this section in relation to a landfill facility if the Secretary is satisfied of each of the following:
 - (a) that the auditor has qualifications and experience that are appropriate to the audit;
 - (b) that the auditor is an independent person in respect of the landfill facility;
 - (c) that the auditor is able to conduct the audit and prepare a report in accordance with the notice issued in respect of the audit.
- (7) The Secretary may vary or revoke a notice issued under subsection (2) to the operator of a landfill facility by giving to the operator notice, in writing, of that variation or revocation.
- (8) A variation or revocation made under subsection (7) takes effect upon notice being given in accordance with that subsection.

43. Powers of authorised officers

- (1) In this section –

relevant premises means –

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- (a) a landfill facility; and
 - (b) a resource recovery facility; and
 - (c) any business premises related to a landfill facility or resource recovery facility.
 - (2) 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 relevant premises, at any time during the normal business hours of the premises, with such assistants (including a suitable surveyor as defined in section 36, an auditor approved in accordance with section 42(6) or a police officer) and equipment as the authorised officer considers necessary;
 - (b) enter relevant premises at any time in the company of a police officer pursuant to a warrant;
 - (c) inspect or test, or require to be inspected or tested, any plant, equipment, machinery, vehicle or other thing at relevant premises for the purpose of determining whether a provision of this Act or regulations under this Act is being, or has been, complied with, or seize such a thing or require its production for such inspection or testing;

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- (d) require an operator of a landfill facility, or a person responsible in relation to a resource recovery facility, to take such steps as the authorised officer directs to facilitate the inspection or testing of any plant, equipment, machinery, vehicle or other thing at the landfill facility or resource recovery facility;
 - (e) require an operator of a landfill facility, or a person responsible in relation to a resource recovery facility, to provide any records, returns, reports, results, documents or information relating to the landfill facility or resource recovery facility;
 - (f) make copies of, take extracts from, or remove any records, returns, reports, results, documents or information referred to in paragraph (e).
- (3) 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, relevant premises, 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, relevant premises as he or she considers necessary; and

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- (c) use, or operate, such plant, equipment, machinery, vehicle or other thing at relevant premises as is necessary to exercise those powers.
 - (4) A person must not, without reasonable excuse –
 - (a) refuse to permit an authorised officer or the assistant of an authorised officer to enter, in accordance with this section, relevant premises; or
 - (b) hinder or obstruct an authorised officer in the exercise of his or her powers under subsection (2); 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.

44. Suspension of operations

- (1) If the Secretary believes, on reasonable grounds, that an operator of a landfill facility has committed an offence against this Act, the Secretary may issue a notice in writing to the operator requiring that some or all of the operations of the landfill facility be suspended.
- (2) Before issuing a notice under subsection (1), the Secretary is to consult with the Director in respect of operations of the landfill facility the suspension of which may cause environmental harm or environmental nuisance to occur.

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- (3) A notice issued under subsection (1) in relation to a landfill facility is to –
- (a) specify the landfill facility to which the notice relates and the operator of the landfill facility; and
 - (b) specify the offence, referred to in subsection (1), to which the notice relates; and
 - (c) specify the operations to be suspended in accordance with the notice; and
 - (d) specify the date on which the suspension takes effect; and
 - (e) state that the suspension will continue in effect until a revocation in accordance with this section is issued; and
 - (f) specify the conditions that must be met in order for a revocation in accordance with this section to be issued; and
 - (g) state that the operator may appeal in accordance with subsection (6) or (7).
- (4) An operator of a landfill facility must comply with a notice issued under subsection (1) to the operator.

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

- (5) If an operator of a landfill facility to whom a notice has been issued under subsection (1)

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provides evidence that the conditions required to be met, specified in accordance with subsection (3)(f), have been met as far as is reasonably practical, the Secretary, if satisfied with that evidence, must issue, in writing to the operator, a revocation of the suspension.

- (6) An operator of a landfill facility 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 (3)(f), are unduly onerous.
- (7) An operator of a landfill facility to whom a notice has been issued under subsection (1) may appeal to the Appeal Tribunal on the grounds that evidence provided to the Secretary under subsection (5) ought to have been sufficient to satisfy the Secretary.
- (8) On receiving an appeal under subsection (6) or (7) in relation to a notice under subsection (1), the Appeal Tribunal may –
 - (a) confirm the notice or the decision of the Secretary not to revoke the notice; or
 - (b) amend the conditions specified in the notice; or
 - (c) revoke the notice.
- (9) If a requirement of a notice under subsection (1) that some or all operations of a landfill facility under this section are suspended is inconsistent

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with a requirement of any other permit or authorisation in force in relation to the landfill facility, the requirement of the notice under subsection (1) prevails to the extent of the inconsistency.

Division 2 – Penalties and proceedings

45. 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.

46. Recovery of debt in court

- (1) The Secretary may recover any amount payable to the Secretary 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.
- (3) In addition to any other orders that may be made in relation to proceedings for an offence under this Act, the Court determining the proceedings for the offence may make a compensation order for any amount payable to the Secretary under this Act, as a debt due and payable, in respect of the matter to which the proceedings relate.
- (4) For the purposes of subsection (3), compensation order has the same meaning as in the *Sentencing Act 1997*.

47. 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.

48. Liability of multiple operators

- (1) If there is more than one operator of a landfill facility, or more than one person responsible in relation to a resource recovery facility, each of the operators, or persons responsible, respectively, is jointly and severally responsible

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and liable for, and in relation to, a contravention of this Act alleged to have occurred in relation to the landfill facility or resource recovery facility.

- (2) Proceedings for a contravention of this Act alleged to have occurred in relation to a landfill facility, or a resource recovery facility, may be taken against all or any of the persons liable in relation to that facility under subsection (1).
- (3) Proceedings for a contravention of this Act 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.

49. 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.

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- (2) It is a defence in proceedings in respect of a contravention referred to in subsection (1) for a person to prove that –
- (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.

50. Presumption in relation to rebate entitlements

In any proceedings brought under this Act in relation to a liability of an operator of a landfill facility to pay a payable levy amount, the operator bears the onus of proving, on the balance of probabilities, that the operator is

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entitled to a resource recovery rebate in accordance with section 30.

51. Evidence

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

- (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.

52. Protection from liability

- (1) The Minister, the Secretary, an authorised officer or any other person does not incur any personal

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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, do not incur any personal liability for any act done or 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.

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Part 6 – Miscellaneous

PART 6 – MISCELLANEOUS

53. Information sharing

(1) In this section –

functions, of a waste information holder,
includes powers and duties;

waste information holder means –

- (a) the Board; and
 - (b) the Secretary; and
 - (c) the Director.
- (2) A waste information holder is to provide, if requested by another waste information holder, information held or collected by the first-mentioned waste information holder under an Act that is relevant to the functions of the waste information holder making the request.
- (3) Nothing in this section allows information to be provided in a manner that –
- (a) breaches any code of professional etiquette or ethics; or
 - (b) departs from any accepted standards of professional conduct; or
 - (c) contravenes any Act.

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

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

- (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*.

55. 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 prescribed levy, which may include specifying a mechanism, or an amount, by which the amount of the prescribed levy is to increase over a period of time;
 - (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 or resource recovery facility;

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- (d) any requirements for the provision or collection of information relating to waste;
 - (e) the payment from the Account of specified amounts for specified purposes, including a periodical payment;
 - (f) infringement offences and the penalties payable in relation to those offences;
 - (g) 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 200 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.

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- (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, 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, a provision requiring the payment of a payable levy amount under this Act.
- (7) The regulations may specify –
- (a) that a person may seek an exemption in accordance with subsection (6) by application; and
 - (b) the form of that application; and
 - (c) the fee payable in relation to such an application.

56. Ministerial standards

- (1) The Minister may, by notice published in the *Gazette*, issue standards in relation to the operation of landfill facilities and resource

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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 issued under subsection (1); or
 - (b) revoke the standards issued under subsection (1) and substitute new standards in accordance with that subsection.
- (3) Before taking action under this section, the Minister –
 - (a) is to consult with the Secretary and the Director in respect of the proposed standards; and
 - (b) may consult with any person he or she considers appropriate.
- (4) The standards, or an amendment to 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

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standards, rules, codes, guidelines or other documents.

- (5) A standard, rule, code, guideline or other document, adopted under subsection (4)(c) may be adopted –
 - (a) as in force at the time of the adoption; or
 - (b) as amended from time to time after it is adopted.
- (6) 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.
- (7) 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.

57. Secretary may issue guidelines

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

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Part 6 – Miscellaneous

58. 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
- (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.

59. Consequential amendments

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

**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 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

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.

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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 goods or services ordinarily supplied by the Board and supplied on the same terms as those goods or services are 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

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office for the remainder of that member's term of 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.

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- (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.

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.

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- (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.

- (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.

SCHEDULE 3 – CONSEQUENTIAL AMENDMENTS

Section 59

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 “and any development for the purposes of enabling such an activity to be carried out” after “Schedule 2” in the definition of *EL activity* in subsection (1);
- (c) by inserting “and any development for the purposes of enabling such an activity to be carried out” after “Schedule 2” in the definition of *level 2 activity* in subsection (1);
- (d) by inserting “and any development for the purposes of enabling such an activity to be carried out” after “*State Policies and Projects Act 1993*” in the definition of *level 3 activity* in subsection (1);
- (e) 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

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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 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. Section 44 is amended as follows:

(a) by inserting the following subsections after subsection (1):

(1A) The Board may, for the purposes of section 27(6)(a), cause an environment protection notice to be issued and served on a person who is responsible for an environmentally relevant activity

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that is a level 2 activity, if the Board is satisfied that it is desirable to issue an environment protection notice under this subsection, in order to –

- (a) effectively manage, reduce or mitigate any environmental harm that the activity may cause; or
 - (b) regulate the conduct of the activity, so as to assist in the effective management, reduction or mitigation of any environmental harm that the activity may cause.
- (1B) The Director may cause an environment protection notice to be issued and served on a person who is responsible for an environmentally relevant activity that is a level 2 activity, if the activity is not an EL activity and the Director –
 - (a) is of the opinion that –
 - (i) immediately before the activity was specified in or under this Act to be a level 2 activity, the

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activity was a
level 1 activity
and the person
was lawfully
conducting the
activity in
accordance with
this Act; and

(ii) there is a permit in
force in relation to
the activity; and

(iii) it is desirable to
vary the
conditions or
restrictions of the
permit; or

(b) is of the opinion that –

(i) immediately
before the activity
was specified in or
under this Act to
be a level 2
activity, the
activity was not a
level 1 or level 3
activity and the
person is lawfully
conducting the
activity in
accordance with
this Act; and

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- (ii) it is desirable to issue an environment protection notice under this subsection in order to effectively manage, reduce or mitigate any environmental harm that the activity may cause or to regulate the conduct of the activity so as to assist in the effective management, reduction or mitigation of any environmental harm that the activity may cause.
- (b) by inserting the following paragraph after paragraph (c) in subsection (3):
 - (ca) may vary the conditions or restrictions of a permit; and
- (c) by inserting in subsection (8) “or under subsection (1A) or (1B),” after “subsection (2)(d),”.

3. After section 51B, the following section is inserted in Division 4:

51C. Offence to conduct certain level 2 activities other than under permit or EPN

A person must not conduct a level 2 activity, other than an EL activity, unless –

- (a) there is in force a permit under the *Land Use Planning and Approvals Act 1993*, or an environment protection notice, authorising the conduct of the activity; or
- (b) the activity is also a level 3 activity; or
- (c) the Board has determined under section 27(4) that an assessment of the activity is not required.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 1 000 penalty units; and
- (b) a natural person, a fine not exceeding 500 penalty units or imprisonment for a term not exceeding 12 months, or both.

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- 4.** After section 107B, the following section is inserted in Division 2:

107C. Transitional provision consequent on *Waste and Resource Recovery Act 2021*

A reference to clean fill in the following instruments as in force immediately before the day on which Schedule 3 of the *Waste and Resource Recovery Act 2021* commences is taken, on and from that day, to be a reference to both clean fill type 1 and clean fill type 2:

- (a) an environment protection notice issued under section 44;
- (b) a notice issued under section 74C;
- (c) a permit granted under the *Land Use Planning and Approvals Act 1993* that required an assessment under section 24, 25 or 26;
- (d) an environmental approval issued under regulation 21 of the *Environmental Management and Pollution Control (Waste Management) Regulations 2020*.

- 5.** Clause 3 of Schedule 2 is amended as follows:

- (a) by omitting from paragraph (b)(ia) “clean fill” and substituting “clean fill type 1 or clean fill type 2”;

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- (b) by omitting subparagraph (ii) from paragraph (d).