

CLAUSE NOTES

Waste and Resource Recovery Bill 2021

PART I PRELIMINARY

Clause 1 Short title

Clause 2 Commencement

This Act will commence on the day on which this Act receives Royal Assent, with the exception of Part 3 ('Waste Levy') and Part 4 ('Obligations and Offences') which commence on a day or days to be proclaimed.

The Part 3 exception allows for a period of industry adjustment between Act proclamation and introduction of the levy, to commence at \$20/tonne, on waste disposed to landfill.

The Part 4 exception allows for a period of industry adjustment between Act proclamation and the time when the Act's obligations and offences take effect.

Clause 3 Interpretation

Subclause 1 defines how particular terms and phrases in the Act are to be interpreted and applied. It includes the following definitions:

Account means the Waste and Resource Recovery Account established under clause 24.

The definition clarifies that a specific account is to be established to administer all collected waste levy funds are to be administered and distributed using this (Note that subclause 32(3) requires all collected levies to be paid into the Account.)

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. This definition is needed because the Secretary will approve the various forms and auditing requirements prescribed under the Act.

authorised officer means a person who is an authorised officer under clause 9.

This definition clarifies that authorised officers, being the Secretary or Secretary-appointed State Service officers or employees, may be appointed for the purposes of the Act.

Board means the Tasmanian Waste and Resource Recovery Board established under clause 10. This definition is necessary to clarify that

the Board will be a new body corporate established for the sole purpose of performing the functions prescribed under the Act.

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

- (a) is not employed by the operator, owner or occupier of the land; and
- (b) is not part of the land or landfill management; and
- (c) does not have a pecuniary interest in the land or landfill or owner, other than taking surveying or auditing fees for the purposes of the Act; and
- (d) Is not a relative of the landfill operator or land owner/occupier.

The definition explains the necessary constraints on persons undertaking volumetric surveys of landfilled material under clause 36, as well as any site audits required by the Secretary under clause 42.

The constraints benefit business owners, government and the public by helping to ensure there are no conflicts of interest when surveyors and auditors do onsite work for the purposes of landfill regulation.

landfill facility - see clause 4 for definition.

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

This definition provides a legal meaning for the term as used for the appointment of Board members in clause 11.

operational plan, means the Board's operational plan for a financial year, as prepared and approved by the Minister under clause 21.

This definition clarifies that the operational plan is a statutory plan. The required content and scope of an operational plan is given in clause 21.

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

payable levy amount means the total waste levy amount payable by a landfill facility each calendar month.

The definition is required for clause 31(2), which deals with waste levy returns and payments.

For a detailed explanation, see notes for subclause 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 for the purposes of clause 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 clause 5 for the definition of this term.

Secretary means Secretary of the Department.

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 or the Crown or another statutory authority.

waste levy return means a waste levy return given in accordance with clause 32.

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

Subclause 2 clarifies that 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. For instance, references to the **Director** means the Director of the Environment Protection Authority (EPA).

Clause 4

Meaning of landfill facility

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

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

This is a broad definition intended to capture as much waste disposal activity as possible while, out of practicality, limiting it to facilities that are or may be regulated under our current environment and planning laws.

If both waste disposal and resource recovery take place at a particular site (e.g. the McRobies Gully Waste Management Centre in South Hobart), the ‘landfill facility’ will be a defined area of land used for waste disposal within that site, and the ‘resource recovery facility’ at that site will also be a defined area of land set aside for the purposes of resource recovery.

‘Lawfully disposed’ means disposal under a required permit, authority, order, notice, approval or licence that may be issued under Tasmania’s Resource

Management and Planning System or the *Environmental Management and Pollution Control Act 1994*. This means that for the purposes of this Act, a landfill is a facility or place where waste disposal is regulated by local council or the EPA.

'Lawfully disposed' excludes waste disposed of in accordance with an 'approved management method' under regulation 19 of the *Environmental Management and Pollution Control (Waste Management) Regulations 2020*. An approved management method under those regulations is used to provide lawful applications for waste reuse (currently only approved for bio spreading of organic waste over land and for circumstances of waste tyre reuse). This activity is not intended to be captured by the waste levy legislation, so it has been excluded in this definition.

Although the *Environmental Management and Pollution Control (Waste Management) Regulations 2020* will expire after 10 years, and ideally the Act will be amended to reflect the new iteration of those regulations, section 13(5) of the *Acts Interpretation Act 1931* allows for references to an Act (or regulations) to include references to amendments or substitutions of that Act (or regulations). This means that the exception excluding approved management methods will continue provided that equivalent regulations are made.

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

Most major waste disposal sites in Tasmania are either run by local government or are commercial waste businesses that are obviously intended to be included in this Bill. However, in framing the definition of landfill broadly there is a possibility that the definition of landfill may capture facilities to which it is not intended that the levy should apply.

Subclause 3 therefore allows a specified facility or a class of facility to be made exempt from the waste levy and its obligations by prescribing it in the regulations

Clause 5

Meaning of resource recovery facility

Subclause 1 defines a resource recovery facility as a facility or place where resource recovery takes place. The subclause also allows the regulations to prescribe a particular facility or place to be a resource recovery facility.

Subclause 2 permits exemptions to this definition to be prescribed in the regulations.

As noted above, if both waste disposal and resource recovery take place at a particular site the 'resource recovery facility' at that site will be a defined area of land set aside for the purposes of resource recovery.

Clause 6

Ministerial order

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

Subclauses 2 and 3 require the Minister to consult with the Board and the Secretary about a proposed order.

A Ministerial order is necessary to deal with circumstances that may arise from time to time that require an exemption from the waste levy (such as where waste needs to be disposed of after a bushfire or other emergency) or to allow a temporary exemption for community activities.

Subclause 4 requires the order to be Gazetted and makes it a disallowable instrument to be Tabled in Parliament by adopting those provisions of the *Acts Interpretation Act 1931*.

Clause 7 Application of Act

Clause 7 clarifies that the provisions of this Act are in addition to, and do not curtail the application of any other State law.

Clause 8 Delegation

Clause 8 allows the Secretary and the Board to delegate any of their powers or functions under the Act, except this power of delegation.

Clause 9 Authorised officers

The general purpose and scope of clause 9 is to define the Secretary's powers to appoint authorised officers. The following subclauses are of particular note.

Subclause 1 states that the Secretary is an authorised officer for the purposes of this Act.

Subclauses 2 and 3 allow the Secretary to appoint State Service officers or employers from the Department or other Agencies as authorised officers.

Subclause 6 specifies a person appointed as an authorised officer is appointed on the terms and conditions that the Secretary determines.

Subclause 7 clarifies the scope, terms and conditions of an authorised officer's remuneration and allowances if they are also a State Service employee or officer.

PART 2 ADMINISTRATION

Division 1 Tasmanian Waste and Resource Recovery Board

Clause 10 Establishment of Tasmanian Waste and Resource Recovery Board

Clause 10 establishes the Board as a body corporate with perpetual succession that may sue or be sued in its corporate name.

Subclause 3 allows the Board to use and operate under a name that has been approved by the Minister using a notice in the *Gazette*.

Clause 11 Membership of Board

The purpose of Clause 11 is to provide the criteria for appointment of Board members.

Clause 11 establishes that the Board will be an incorporated body of between 5-7 members (including one who will be the chairman) as appointed by the Minister.

Members must have relevant skills, experience and knowledge as listed in the Bill. One of the members must be a local government representative.

Subclauses 5-6 state the Schedules 1-2 have effect in respect of the members and meetings of the Board.

Clause 12

Functions of Board

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

Subclause 2 specifies the functions of the Board. In summary these are to:

- provide advice and recommendations to the Minister;
- prepare, promote, implement, review and assess its waste strategy and operational plan;
- audit and report on the use of funds from the Waste and Resource Recovery Account;
- promote and support relevant State policies and programs;
- promote and support access to waste services in remote areas;
- promote and support coordination and cooperation between local authorities, industry and other organisations;
- administer a cost mitigation assistance program for charitable recyclers and other parties specified under a Ministerial direction;
- administer a cost mitigation assistance program for facilities dealing with the necessary residues of resource recovery;
- administer a cost mitigation assistance program for public authorities and others involved in the collection and disposal of unlawfully discarded waste;
- promote market development and local infrastructure for resource recovery and recycling; and
- any other functions necessary under the Act, or otherwise prescribed.

Subclause 3 requires the Board to perform its functions in ways that advance improvements in waste and resource recovery and are consistent with the objectives of the State's Resource Management and Planning System (RMPS).

Clause 13

Powers of Board

Clause 13 empowers the Board to act on matters connected to the performance of its functions.

These include requesting and publishing information and reports, seeking advice, and entering into agreements with local authorities, industry and organisations.

Clause 14 Ministerial direction

Clause 14 allows the Minister to give directions to the Board regarding the discharge of its responsibilities under this Act. Directions must be in writing and must be Tabled in Parliament.

Subclause 4 specifies that the Board must comply with a Ministerial Direction.

Division 2 Staff of Tasmanian Waste and Resource Recovery Board

Clause 15 Chief executive officer

Subclause 1 allows a person to be appointed as CEO by the Board.

Subclause 2 confirms that the CEO is responsible to the Board for its administration, management, and business.

Clause 16 Responsibilities of a chief executive officer

Clause 16 requires the CEO is to perform any functions delegated by the Board or required under this or any other Act.

The CEO must also declare any conflict of interest.

Clause 17 Staff

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

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

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

Division 3 Planning and reporting by Board

Clause 18 Waste strategy

The purpose of clause 18 is to ensure that the Board has a comprehensive strategy to direct and assess the State's waste and resource recovery activities.

Subclause 1 requires the strategy to identify long and short-term objectives for diverting waste from landfill, maximising resource recovery and improving waste management practices.

Subclause 2 requires the strategy to include an analysis of current waste and resource recovery practices in Tasmania.

Subclause 3 requires the strategy to be consistent with the objectives of the RMPS and any applicable Ministerial direction.

Clause 19

Preparation, approval and amendment to waste strategy

Subclause 1 establishes that the Board has to provide the Minister with a draft waste strategy within 6 months of this section of the Act taking effect, and at least 3 months before any existing strategy expires.

Subclause 2 lists the persons and organisations the Board is to consult with in preparing the waste strategy. These include the Minister, Director, Local Government Association and relevant industry stakeholders.

Subclauses 3-7 set the requirements for approval of the waste strategy by the Minister.

Subclauses 8-10 allow the Board to amend the waste strategy with the same consultation and approval process.

Subclause 11 requires the Board to make the waste strategy available for public inspection.

Clause 20

Operational plan

Clause 20 requires the Board to prepare an operational plan for each financial year.

The clause specifies requirements of the plan, including how the Board is to meet the business and financial goals of the Board.

The plan must also be consistent with the current waste strategy and any applicable Ministerial direction.

Clause 21

Preparation, approval and amendment to operational plan

Subclause 1 requires the Board to prepare a draft operational plan before 31 May, for the next financial year.

Subclause 2 requires the Board to submit the plan to the Minister for approval.

Subclause 3 allows the Minister to approve the plan or require the Board to amend it.

Subclause 4 requires the Board to submit the amended plan as soon as possible, and under subclause 5 the Minister may require further amendments.

Subclause 6 requires the Board to act in accordance with the approved operational plan for that financial year.

Subclause 7 allows the Board to prepare an amendment to an operational plan to make sure it is consistent with any changes to its Waste Strategy made part way through a financial year.

Subclause 10 requires the Board to ensure that an operational plan in effect is made available on a website maintained by the Board.

Clause 22

Annual report

Subclause 1 requires the Board to prepare an annual report on its activities and performance for each financial year.

Subclause 2 specifies the minimum requirements for the annual report, which include:

- any Ministerial directions and actions taken as a result;
- a summary of any waste strategy and operational plan in effect during that financial year;
- financial statements; and
- any information required by the Minister.

Subclause 3 requires the Board to provide the Minister with a copy of its report for tabling in Parliament.

Subclauses 4-5 specify the Minister's procedural responsibilities for tabling the report.

Clause 23

Minister may request information

Clause 23 allows the Minister to request information from the Board relating to its powers and functions under this Act.

Division 4

Finance

Clause 24

Waste and Resource Recovery Account

The purpose of clause 24 is to create an account, called the 'Waste and Resource Recovery Account', which is to be used solely for the purposes of administering funds related to the Act,

Subclauses 1 and 2 create the Account and specify that it is to be administered by the Secretary of the Department.

Subclause 3 specifies that funds in the Account may be used for the Board's implementation strategy, functions and operational costs, and for the Secretary to make adjustments to payable levy amounts.

Under subclause 3(c) funds in the Account may also be used by the Secretary of the Department to disburse funds as prescribed in the regulations. It is intended to prescribe in regulations a regional levy disbursement that will replace the voluntary waste levy currently applied in some regions.

Subclause 4 provides details on permissible Board costs and expenses, including expenses relating to remuneration, investment, legal, accounting, advice, taxation and other reasonable costs related to the exercise of the Board's functions and powers.

Clause 25

Accounts

Clause 25 allows the Board to open bank accounts if necessary.

Clause 26

Funds

Subclause 1 allows the Board to receive funds from other sources, including as allocated by the State.

Subclause 2 allows the Board to invest any funds held by it, subject to the *Tasmanian Public Finance Corporation Act 1985*, sound commercial practice and any Ministerial direction.

Clause 27

Accounting records

Clause 27 requires the Board to keep accounting records that correctly record and explain its transactions and financial position. It also requires that records be kept for at least 7 years, or longer if required by the Treasurer.

PART 3

WASTE LEVY

Clause 28

Application of Part

The purpose of clause 28 is to enable certain types of waste to be excluded from application of the waste levy by means of:

- a Ministerial order under section 6; or
- by prescription in the regulations that will support the Bill.

Clause 29

Prescribed levy

Clause 29 explains that the amount of the levy will be the amount prescribed in the regulations.

The levy is intended to:

- commence on 1 July 2022 at \$20 per tonne of waste received at landfill;
- increase to \$40 per tonne on 1 July 2024; and
- increase to \$60 per tonne on 1 July 2026.

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

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

Clause 30

Resource recovery rebate

Clause 30 entitles an operator to a full rebate of the levy for each tonne of waste removed from a landfill facility and received by a resource recovery facility in a calendar month.

The operator must provide proof to the Secretary that:

- the waste was removed from the landfill facility, and
- that the waste was received at a resource recovery facility.

This means that an operator must, for both waste removal and receipt, provide proof of waste tonnages measured at a weighbridge, or of tonnages obtained by using an approved method of weight estimation.

Clause 31

Payable levy amount for landfill facility

Subclause 1 means that the 'payable levy amount' is calculated by subtracting tonnes of waste sent to a resource recovery facility from tonnes of waste received at the landfill, and multiplying that amount by the prescribed levy rate (\$20/tonne from 1 July 2022.)

Subclause 2 specifies that if the calculated amount for any month is greater than zero, that is the payable levy amount for that month.

Worked example:

A landfill facility receives 1,000 tonnes of waste in January. The operator recovers 200 tonnes of reusable material and sends it to a resource recovery facility during that month, while the remaining 800 tonnes of waste stays in the landfill.

The operator's 'payable levy amount' for January = (1000 – 200) tonnes x \$20/tonne = \$16,000

Subclause 3 specifies that if the calculated amount for any month is less than zero, then that figure is to be deducted from the payable levy amount in the subsequent month, and, if necessary, in the following months until the negative balance is fully discharged.

Worked example:

A landfill facility receives 700 tonnes of waste in June. The operator recovers 100 tonnes of reusable material and sends that plus a further 900 tonnes of stockpiled reusable material to a resource recovery facility.

The operator's 'payable levy amount' for June = (700 – 100 – 900) tonnes x \$20/tonne = -\$6,000

This negative amount will be deducted from the payable levy amount for July.

Subclause 4 requires payment to be made to the Secretary within 30 days after the end of each calendar month, where it is paid into the Waste and Resource Recovery Account under clause 32(3).

Clause 32

Waste levy return and payments of payable levy amount

The purpose of this clause is to establish a formal process for landfill operators to submit their 'payable levy amount' each month, together with records of how that amount was calculated (see notes for clause 31).

Subclause 1 specifies that a 'waste levy return' is due within 30 days of the end of each calendar month and must be submitted to the Secretary.

Subclause 2 requires the return to be in an approved form, together with the payable levy amount. The regulations will prescribe any other information to be provided with the return.

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

Clause 33

Payment of overdue levy

Clause 33 defines a process for dealing with overdue levy payments.

Subclause 1 allows the Secretary to issue a notice requiring a landfill operator to pay an overdue amount.

Subclause 2 allows the Secretary to presume that the operator has received and diverted certain amounts of waste for the period in question, unless the operator provides evidence to the contrary.

In the absence of such evidence, the Secretary would consider the landfill's previous operational records and any other evidence that has been collected for the period in question.

Subclause 3 requires the operator to pay the overdue amount within 10 working days of the Secretary's notice.

Clause 34

Evasion of levy

Clause 34 creates an offence for knowingly evading or attempting to evade payment of the levy.

PART 4

OBLIGATIONS AND OFFENCES

Clause 35

Landfill facility requirements

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

Subclause 2 makes it an offence for an operator to fail to comply with any Ministerial Standards in force under clause 56.

Subclause 3 requires the operator to comply with any guidelines issued by the Secretary under clause 57.

Clause 36

Volumetric survey

The purpose of this clause is to specify the requirements for a 'volumetric survey' of a landfill facility.

Volumetric surveys will be used to estimate the volume of waste disposed to landfill. This is an investigatory tool to measure the accuracy of the submitted waste levy returns and will be used to check compliance with the legislation.

Subsection 1 explains that a 'suitable surveyor' for this purpose is an independent person that is registered under the *Surveyors Act 2002*.

Subclause 2 requires a survey to be done every year. The first survey is to be undertaken within 28 days of this clause taking effect, or of the facility commencing operation.

Subclause 3 enables the Secretary to require that the operator carry out an additional volumetric survey.

Subclause 5 requires that the survey be done at the expense of the operator.

Subclause 6 requires the operator to provide the survey results to the Secretary within 30 days.

Subclause 7 allows the Secretary to waive the requirement for one or more surveys to be undertaken. This could apply, for example, if the quantities of waste disposed in a particular period are very low and do not warrant a formal survey.

Clause 37

Records of landfill facility

Clause 37 requires operators to retain records for 5 years, including copies of waste returns, survey results, audit reports and any relevant correspondence.

The clause also allows the regulations to specify other documents that must be kept.

Clause 38

Resource recovery facility requirements

Subclause 1 requires the person responsible for a resource recovery facility to ensure compliance with the required site infrastructure and the operational requirements.

Subclauses 2 and 3 require the person responsible for a resource recovery facility to comply with any Ministerial standards or Secretary's guidelines issued under clauses 56 and 57.

Clause 39

Records of resource recovery facility

Clause 39 requires operators to retain prescribed information for 5 years.

Any such information will be prescribed in the regulations.

Clause 40

Communication or provision of information generally

Clause 40 makes it an offence for a person to provide false or misleading information in relation to matters under the Act.

Clause 41

Information provided to landfill operators and persons responsible

Clause 41 makes it an offence for a person to make a false or misleading statement to a landfill operator or person responsible for a resource recovery facility, about the nature of the waste they are taking into these facilities.

Practical example: where a person delivering waste to a landfill falsely states that they are delivering a load of garden waste (which can be recovered as organic waste and thereby may attract a reduced gate fee) when in fact there is general household waste hidden underneath that cannot be diverted from landfill and the operator would be required to pay the levy.

PART 5

ENFORCEMENT

Division 1

Powers and procedures

Clause 42

Audit

Subclause 2 allows the Secretary to issue a written notice to a landfill operator requiring an audit by an approved auditor.

Subclause 3 sets out the requirements for the notice.

Subclauses 4 and 5 require the operator to comply with any audit notice, and for the audit to be carried out at the operator's expense.

Subclause 6 explains the criteria the Secretary may use to approve an auditor, including appropriate qualifications and experience, independence, and ability to undertake the audit and prepare a report.

Subclause 7 allows the Secretary to vary or revoke an audit notice by means of written notice to the operator.

Clause 43

Powers of authorised officers

Clause 43 lists the actions that authorised officers may undertake in the enforcement of this Act; including powers to enter facilities, inspect and test plant and equipment, and require the production of records.

The clause also creates an offence to refuse an authorised officer entry or to hinder or obstruct them in the exercise of their powers.

Clause 44

Suspension of operations

Subclause 1 gives the Secretary the power to suspend some or all of the operations at a landfill should they reasonably believe that the operator has committed an offence against the Act. Notice of suspension is to be given to the operator in writing.

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

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

Subclause 4 requires the Secretary to lift the suspension once the conditions of the suspension are met, and to advise the operator in writing.

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

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

Division 2

Penalties and proceedings

Clause 45

Infringement notices

Clause 45 allows for infringement notices to be issued for offences prescribed in the regulations.

The main purpose of the clause is to enable lower penalties to be issued administratively for simple offences that do not need to be referred to a court.

Subclause 2 allows authorised officers to issue an infringement notice if they reasonably believe a person has committed an offence.

Subclause 3 specifies the requirements for a penalty notice

Subclause 4 allows for the regulations to prescribe different penalties for bodies corporate and individuals.

Note that the infringement notice monetary penalties in the regulations are likely to be set at 10% of the maximum court fines specified in the Act.

Clause 46

Recovery of debt in court

Clause 46 allows the Secretary to recover any debt under this Act in the Magistrates' Court.

Subclause 3 establishes that the Secretary does not have to bring separate proceedings in the civil jurisdiction to reclaim the debt for matters dealt with in the criminal court; e.g. for levy evasion.

Clause 47

Limitation period for prosecution

Clause 47 specifies that an offence under this Act must be brought within 3 years.

Clause 48

Liability of multiple operators

Clause 48 has been included so that if there is more than one operator of a facility or more than one person responsible for a facility, then each of those operators or persons is jointly or severally responsible and liable for any contravention of the Act.

The clause relates to operators and persons responsible for both landfill facilities and resource recovery facilities.

Clause 49

Liability of body corporate

Subclause 1 specifies that if a body corporate contravenes this Act, then any person concerned with the management of that body corporate is taken to have contravened that provision.

Subclause 2 includes the following personal defences:

- That the body corporate acted without their knowledge; or
- That the person was not in a position of influence; or
- That if the person was in a position of influence, they attempted to prevent the contravention.

Subclause 3 allows for a person to be convicted even if the body corporate has not been convicted.

Clause 50

Presumption in relation to rebate entitlements

Clause 50 establishes that in any proceeding brought under this Act the operator bears the onus of proving any rebate entitlement.

Clause 51

Evidence

Clause 51 allows statements by a person involved in management of a body corporate to be admissible evidence in proceedings against the body corporate.

Clause 51 also allows records required to be kept by this Act to be tendered as prima facie evidence of the facts stated in the record.

Clause 52

Protection from liability

Clause 52 provides protection against personal liability for the Minister, Secretary, authorised officers, and members of the Board for acts done in good faith in the exercise of their powers under this Act.

PART 6

MISCELLANEOUS

Clause 53

Information sharing

Clause 53 allows for information relevant to the functions of the Secretary, the Board, and the Director, to be shared between them as necessary. This provision acknowledges the cross-over in the work of these entities in dealing with waste management.

Subclause 2 requires the information to be provided as requested.

Subclause 3 limits the operation of this clause to information that can lawfully be provided.

Clause 54

Orders, notice, &c., not statutory rules

Clause 54 specifies that any order, notice or declaration under this Act is not a statutory rule for the purpose of the *Rules Publications Act 1953* or *Subordinate Legislation Act 1992*.

This clause applies to:

- Ministerial orders under clause 6; and
- Ministerial standards issued under clause 56; and
- Guidelines issued by the Secretary under clause 57.

This clause does not apply to the regulations that are being developed to support the Act.

Clause 55

Regulations

The purpose of this clause to empower the Governor to make regulations to support the Act, and to specify the potential scope of the Regulations.

Subclause 1 allows the Governor to make regulations for the purposes of the Act.

Subclause 2 allows the regulations to specify;

- the levy amount;
- the mechanism or amount by which the levy is to increase over time;
- waste classification;
- infrastructure and operational requirements for landfill and resource recovery facilities;
- requirements for collection or providing information;
- infringement notices and penalties; and
- all other matters required, permitted or necessary to be made by regulation.

Subclause 4 allows the regulations to apply, adopt or include any or all provisions in a relevant code or guideline published by any organisation or body.

Subclause 6 allows exemptions from any specified provision of the Act or regulations, including the payment of a payable levy amount.

Subclause 7 allows a person to seek an exemption under subclause 6 and may specify the form of that application and the fee payable.

Clause 56

Ministerial standards

Clause 55 allows the Minister to make standards for the operation of landfill facilities and resource recovery facilities for the purpose of this Act, including stockpiling of waste.

Any standards will be issued by means of a notice published in the *Gazette*.

Subclause 3 requires the Minister to consult with the Board, Director, and other persons he or she considers appropriate before issuing any standard.

Subclause 4 allows a Ministerial standard to adopt or refer to any element of other standards, rules codes, guidelines or other documents.

Subclause 6 requires the Minister to publish standards on the Department's website or make them publicly available in any other manner the Minister considers appropriate.

Subclause 7 makes a Ministerial standard a disallowable instrument to be Tabled in Parliament, by adopting those provisions of the *Acts Interpretation Act 1931*.

Clause 57 Secretary may issue guidelines

Clause 57 allows the Secretary to issue, vary or revoke guidelines for the purpose of this Act.

Any guidelines will be issued by means of a notice published in the *Gazette*.

Clause 58 Administration of Act

The administration of the Act is assigned to the Minister for Environment and Parks, and the Department responsible is the Department of Primary Industries, Parks, Water and Environment (DPIPWE).

Clause 59 Consequential amendments

This clause allows the legislation listed in Schedule 3 to be amended as specified.

SCHEDULE I MEMBERSHIP OF TASMANIAN WASTE AND RESOURCE RECOVERY BOARD

Clause 1 Term of office

An appointment is not to exceed 4 years and a member may not serve more than 2 consecutive terms.

Clause 2 Holding other office

The holder of another office is not disqualified from also being a member of the Board or from accepting any remuneration payable to a Board member.

Clause 3 State service appointment

A state service employee may be a member of the Board.

Clause 4 Remuneration and conditions of employment

Remuneration and allowances of members is as determined by the Minister. The conditions of appointment, other than those specified in this Act, are as per the instrument of appointment

Clause 5

Vacation of office

Clause 5 specifies the circumstances for vacation of office and the powers of the Minister to remove a member from office.

Subclause 2 allows the Minister to remove a Board member who;

- is absent from 3 consecutive meetings without permission; or
- becomes bankrupt or insolvent; or
- is convicted of a crime; or
- fails to disclose a relevant pecuniary interest; or
- has benefited from or claimed to be entitled to benefit from a contract made by or on behalf of the Board.

Subclause 3 also allows the Minister to remove a Board member if they are satisfied that the Board member is unable to perform their duties.

Clause 6

Filling of vacancies

The Minister may appoint a member if an office becomes vacant.

Clause 7

Validation of proceedings, &c.

Acts or proceedings of the Board are not invalidated because the office of a member is vacant or because a defect in appointment is subsequently discovered.

Clause 8

Presumptions

In any proceeding, proof is not required (unless there is evidence to the contrary) of the constitution or the Board or appointment of any member.

SCHEDULE 2

MEETINGS OF TASMANIAN WASTE AND RESOURCE RECOVERY BOARD

Clause 1

Convening of meetings

Specifies how meetings are to be convened by the chairperson or the process in the chairperson's absence.

Clause 2

Presiding at meetings

Specifies that the chairperson is to preside over meetings, or a member elected by the members present if the chairperson is absent.

Clause 3

Quorum and voting at meetings

To conduct business the Board must have a quorum (a majority of members appointed and not excluded from considering a matter due to a conflict). Votes are determined by a majority of members present.

Clause 4	Conduct of meetings The Board may regulate the conduct of business at its meetings.
Clause 5	Absences A member must take reasonable steps to inform the chairperson if they will be absent from a meeting, and must not be absent from more than 3 consecutive meetings without permission from the chairperson (or they may be removed from office by the Minister – see Schedule 1 Clause 5).
Clause 6	Minutes Requires accurate minutes of meetings to be kept.
Clause 7	Disclosure of interests Makes it an offence for a member to fail to disclose that they have a direct or indirect pecuniary interest in a matter being discussed. Unless the Board otherwise determines, a member with such a pecuniary interest must not be present during the deliberation or take part in a determination of that matter.
Clause 8	General procedure The Board may regulate its own proceedings.
Clause 9	Presumptions In any proceedings, proof is not required (unless there is evidence to the contrary) of any resolution of the Board or the presence of a quorum at any meeting of the Board.

SCHEDULE 3 CONSEQUENTIAL AMENDMENTS

<i>Environmental Management and Pollution Control (Waste Management) Regulations 2020</i>	<p>Amends regulation 18(2) by omitting paragraph (a).</p> <p>This clause deletes ‘clean fill’ as an exception to the requirement for an authority or approval to dispose of to land.</p> <p>The amendment is necessary because clean fill is a resource and should not be disposed of to landfill unless there is a permit or authority to do so. If it is deposited in a landfill it will be subject to the waste levy.</p>
<i>Environmental Management and Pollution Control Act 1994</i>	<p>The Environmental Management and Pollution Control Act 1994 is amended to support relate clauses in the Bill that relate to waste definitions and management of landfills and related activities at these sites.</p> <p>I. Subsection 3(1) is amended as follows:</p> <p>(a) The definition of ‘clean fill’ is amended to include two new definitions of ‘clean fill type 1’ and ‘clean fill type 2’.</p>

The purpose of this amendment is to provide a more workable definition of clean fill to help improve waste management and regulation.

- Clean fill type 1 will mean natural materials.
 - Clean fill type 2 will consist of common demolition materials. Provision will be made for the Director to specify maximum levels of chemical contaminants or maximum proportions of other inert materials such as wood, plastics and metals.
 - Provision will also be made for the Director to specify maximum dimensions for pieces of material within clean fill.
- (b) The definition of 'EL activity' is amended to clarify that this term also applies to any development for the purposes of carrying out a Level 2 activity.
2. Subsection 3(3) is added to allow the Director to declare the levels and proportions of pollutants as described above.
 3. Subsection 3(4) is added to require the Director to publish any such declarations on a website of the Department.
 4. Section 44 is amended to allow the Director to issue an environment protection notice for level 2 activities operating under a level 1 permit, acting at the behest of the Board under section 27(6)(a).
 5. A section is inserted after section 51B in Division 4, making it an offence to operate a level 2 activity without a level 2 permit or environment protection notice.

The section 44 and 51 amendments are necessary to improve regulation of level 1 landfills that could expand into the level 2 category.

6. **Section 107B is inserted after section 107A in Division 2.**

Section 107B is a transitional provision consequent on the Waste and Resource Recovery Act. Its purpose is to ensure that the new clean fill definitions take effect in various notices, approvals and environment protection notices when the Act commences.

7. **Clause 3 of Schedule 2 is amended by:**

- a. **replacing the words 'clean fill' with 'clean fill type 1 or clean fill type 2'** This amendment is necessary because of the changes to the 'clean fill' definition in subsection 3(1).
- b. **By omitting subparagraph (ii) from paragraph (d).** This removes biosolids spreading from Schedule 2, meaning it is no longer a level 2 activity. This has been done to ensure that lawful biosolids spreading for agricultural purposes is not captured by the waste levy obligations. Biosolids spreading is regulated under an Approved Management Method under the *Environmental Management and Pollution Control (Waste Management) Regulations 2000*.

