

Draft Waste and Resource Recovery Regulations 2022 And Explanatory Paper

**Public Consultation - Summary and
Responses to Submissions**

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Executive summary

Draft Regulations were developed to support the *Waste Resource and Recovery Act 2022*, that was passed by Parliament in March 2022. These regulations along with an Explanatory Paper were released for public consultation for approximately four weeks over March and April 2022. The purpose of the Explanatory Paper was to outline the main objectives of these Regulations which set out the requirements that landfill and resource recovery facility operators must carry out to comply with the Act.

There were nine submissions received as part of the public consultation process for the Regulations. These encompassed the views of local government, regional groups, industry representatives, waste and recovery businesses, and commercial and not for profit organisations.

Five submissions expressed overall support for the Regulations; the remaining did not express an opinion either way. The concerns, recommendations and queries raised within submissions fall within the following themes:

- Operational matters
- Definitions and exemptions
- Fees and fund allocation
- Communications and timing
- Structural reform

NRE Tas responses to matters raised are included below, and any subsequent changes to the draft Regulations are noted.

Operational matters

Several points were raised about the operation of the Regulations. Feedback was specifically received regarding data capture and record requirements, weighbridges, and co-located facilities.

Data capture and record requirements

The draft Regulations do not apply to resource recovery facilities that receive less than 1000 tonnes of waste per year. City of Hobart Council/Resource Recovery Centre expressed concerns that 1000 tonnes/year or less threshold was too high and will result in an unreasonable loss of data.

This is an important point and was considered carefully. It was determined that this data would not have a significant impact on waste data trends however, the costs associated with requiring small Resource Recovery Facilities to collect and submit this data would represent a significant cost burden. The benefits of marginally increasing the captured waste data pool were not considered enough to outweigh the costs of data collection would impose on small facilities. There is capacity however, to amend the threshold(s) set in legislation if these assumptions prove inaccurate.



Recovery TAS Pty Ltd questioned how landfill deferral data would be collected given Tip Shops are located (and receive drop-offs) before the toll gate/weighbridge of a Landfill Facility.

It is not intended to require Tip Shops to record this data unless they exceed the thresholds of a Class B or Class A facility. If a threshold is triggered, the preferred collection method will be developed in consultation with NRE Tas and the Tip Shop operator.

Recovery TAS Pty Ltd also submitted that proposed data collection requirements omit performance outcomes. They suggested a more integrated data collection system is required that includes private sector performance and economic investment in reducing volume to landfill.

NRE Tas notes this feedback and can confirm this will be part of the ongoing development of the data collection system. However, the initial focus is on developing a functioning data collection system that is accessible for all operators.

City of Hobart Council/Resource Recovery Centre questioned how small donations to Resource Recovery Facilities will be recorded for data purposes. They noted that smaller Resource Recovery Facilities will need funds to develop capacity – especially those that salvage from large Landfill Facilities.

Class A and Class B resource recovery facilities are required under the regulations to record all (inward and outward) waste movements. However, NRE Tas acknowledges the submission's point and has included a two-year transition period into the Regulations for Class B Resource Recovery Facilities so that Class B RRF's will start reporting their aggregated data annually from 1 July 2024. NRE Tas will develop a policy concerning the recording of small donations in consultation with smaller facilities in due course once the magnitude of the issue is assessed.

City of Hobart Council/Resource Recovery Centre asked how waste transfer station data would be captured. This clarified that waste transfer stations carry out both the transferring of waste to landfills and resource recovery processing. Regulation 21(a) has been removed from the draft regulations to ensure that the resource recovery data at waste transfer stations will be captured. However, waste that is transferred through a waste transfer station will not be captured for levy purposes. A fact sheet has been prepared to explain how activities at a waste transfer station are affected under the legislation and is part of the information material available on the NRE Tas website [Fact Sheet - Defining Waste Transfer Stations and Resource Recovery Facilities .pdf \(nre.tas.gov.au\)](https://www.nre.tas.gov.au/fact-sheet-defining-waste-transfer-stations-and-resource-recovery-facilities)

City of Hobart Council/Resource Recovery Centre questioned why the annual requirement for volumetric surveys is not listed in the Regulations. This requirement is stated in the *Waste and Resource Recovery Act 2021* (section 36(2)); it is a general principle that something stated in an Act should not be restated in Regulations.

Dulverton Waste Management/Cradle Coast Waste Services suggested that the estimated weights per vehicle type could be misused for different density loads to reduce levy collection from operations without weighbridge infrastructure, leading to poor environmental outcomes. They proposed the development of a load calculator for different load density/types to enable more consistent application of the levy at different facilities.

This point was noted and has been considered in the development of guidelines. NRE Tas are also reviewing and amending the draft vehicle waste estimates to ensure they are comparable with weighbridge results.

Weighbridges

City of Hobart Council/Resource Recovery Centre requested that trade standard weighing options be made available to smaller landfill facility operators rather than solely weighbridges. This flexibility is already provided for in the Regulations where the option exists to use an "approved measurement method" if there is no reasonable access to a weighbridge.

Derwent Valley Council similarly expressed concern over levy calculation and meeting reporting requirements for sites without a weighbridge. This concern is acknowledged and guidelines that outline "approved weight estimation methods" will be developed.

On the contrary, the Waste Management and Resource Recovery Association of Australia submitted that weighbridge use should be a pre-requisite for a landfill facility. The association recommended levy funds be utilised to install weighbridges where absent and train staff in their operation to ensure consistent data collection. NRE Tas shares this longer-term goal but does not believe it is feasible in the short-to-medium term due to the cost burden on small-to-medium sized operators.

Dulverton Waste Management/Cradle Coast Waste Services submitted that the requirement for a waste transfer station to use a weighbridge (Regulation 20) should be removed since there is no corresponding requirement to report the data captured (Regulation 21(a)).

This is noted. However, the position of NRE Tas is that if there is resource recovery processing occurring at a waste transfer station, then a weighbridge or an approved measurement method should be used. Regulation 21(a) has been removed from the draft regulations – meaning *Division 2 – Records and reporting* will apply to a waste transfer station that carries out any resource recovery processing activities.

City of Hobart Council/Resource Recovery Centre flagged that the weighbridge guideline document referenced may be out of date. Amendments to this document are accounted for in regulation 4, to ensure the current version can be considered at any time.

Co-located facilities

Dulverton Waste Management/Cradle Coast Waste Services questioned why re-use deferral operations have been omitted from landfill movement record requirements when these operations are located at a waste management centre.

Regulation 12 sets out the requirement for landfill operators to complete landfill movement records and the core pieces of information to be provided. The form itself is separate to the Regulations and will be available to landfill operators prior to the first reporting period. Substantial stockpiles will be captured in annual volumetric surveys.

Similarly, Recovery TAS Pty Ltd queried how existing resource recovery operations co-located at waste management centres would benefit from the suite of reforms. Overall consideration of this will be part of the functions of the Tasmanian Waste and Resource Recovery Board. Many yet unclarified operational matters will be determined on-site with site operators and incorporated into Compliance Management Plans.

Definitions and exemptions

Several submissions raised issues and questions regarding definitions and exemptions in the draft Regulations.

Definitions

The Waste Management and Resource Recovery Association of Australia recommended release of a classification scheme and supporting guidelines (like NSW's consolidated comprehensive waste classification guidance document). This is supported by NRE Tas, and a classification system for Tasmania has been released by NRE Tas. The system for the State was developed to be consistent with the *Australian standard for waste and resource recovery data recording and reporting* requirements, and to allow for additional resolution on matters of priority for Tasmania.

Both the Association and Derwent Valley Council recommended a definition and guidelines be provided for stockpiling. This is also supported by NRE Tas and guidelines on stockpiling are currently being developed. Derwent Valley Council were concerned about the classification of materials to be disposed of on-site; for example, green waste that is mulched and used for daily cover enters their premises but is stockpiled before mulching. Additionally, the same premise is used for concrete and clean fill materials.

In response, the material used for daily cover is considered part of the 10 per cent of waste material that is not required to be reported for levy purposes. NRE Tas will work with operators to assist them to meet their compliance obligations in this regard.

City of Hobart Council/Resource Recovery Centre submitted that the definition of a combined waste facility (regulation 3) needs refining. They questioned if the regulatory requirements and timelines of a combined waste facility will be the same as a Class A facility.

NRE Tas intends, in the first instance, for a landfill operator at a combined waste facility to complete reporting on behalf of a resource recovery facility on the same site. However, if the two facilities (landfill and resource recovery) are separate businesses and wish to report separately, NRE Tas will adjust reporting arrangements on a site-by-site basis.

The same submission requested provision of a definition of “reasonable distance” for the purpose of regulation 12 (Methods of measurement of waste movement in respect of landfill facility). This term is not formally defined as what is reasonable differs depending on circumstance. This is best assessed on a case-by-case basis.

Recovery TAS Pty Ltd submitted that the definition of resource recovery should be amended to include the verbs ‘avoid’, ‘redesign’, ‘repair’ or ‘remanufacture’, which reflect top order higher wealth generation activities key to circular economic development.

This definition is found in the *Waste and Resource Recovery Act 2022* which has already passed through Parliament. That said, the definition may be reconsidered as part of any future amendments to the Act if required.

Exemptions

Both the City of Launceston Council and the Waste Management and Resource Recovery Association of Australia were concerned that exempting facilities under 100 tonnes per year from the landfill levy may encourage unwanted levy avoidance activities. The Association recommended this exemption instead be determined on a case-by-case basis.

NRE Tas note this concern, however consider a practical minimum threshold necessary. The rationale is that the impact on data trends would be too minor to warrant the resulting data collection burden on small landfills.

The Association also objected to the 10 per cent levy exemption of operational material for not encouraging best practice. Again, they recommended this exemption be considered on a case-by-case basis.

NRE Tas prefer the clear 10 per cent figure as it reduces administrative burden on operators. It is also consistent with approaches adopted by other Australian jurisdictions for addressing materials used for operational purposes at a landfill.

City of Launceston Council and Derwent Valley Council both questioned whether clean fill for daily cover can be included in the 10 per cent levy exemption. This is the case and is being clarified in operational advice being prepared by NRE Tas.

Recovery TAS Pty Ltd submitted that tip shops should receive an exemption from landfill disposal fees. This was requested due to:

- illegal dumping outside operating hours
- unsolicited drop-offs of items that cannot be sold due to condition or legal requirements (e.g., baby car seats)
- the unknown nature of salvaged products and materials (e.g. post-demolition).

NRE Tas note that the Tasmanian Waste and Resource Recovery Board will be required to assist resource recovery facilities. The board may also consider tip shops, given their highly visible role in the industry. This is outlined in the functions of the board – found in section 12 of the Act, notably sub-section (k).

The Tasmanian Minerals, Manufacturing and Energy Council submitted that minerals processing should be excluded from the levy. They noted that reuse of mineral processing by-products and waste is generally subject to global industry research and on-site storage is included in the site's legacy and rehabilitation plans.

It is understood by NRE Tas that some industrial sites have large existing stockpiles of processing by-product which may or may not be waste, depending on whether there is a realistic prospect of it being re-used at some time. If sites are maintaining approved stockpiles for future off-site processing or re-use, the stockpiled material may be considered for resource recovery purposes and not be subject to the landfill levy.

The Local Government Association of Tasmania sought clarification on the exemption for rock from mining activities, as rock also results from non-mining activities.

In response, natural materials including rock from mining activities was further clarified in the final version of the regulations. In addition, NRE Tas has been developing guidelines to provide further clarification about what is considered stockpiling for future resource recovery activities, what constitutes landfill activities and what may be considered landfill levy avoidance through opportunistic waste disposal.

The Waste Management and Resource Recovery Association of Australia were supportive of the exemption for asbestos, but suggested detail should be provided on how undeclared asbestos contaminated waste would be dealt with. They also recommended waste from charities be excluded, as well as clean earth, fill, and low contaminated soil. City of Launceston Council also submitted that clean fill material should be excluded.

In response to the above, the guidelines being prepared by NRE Tas will clarify the approach to asbestos. Relief for charities is one of the functions of the Waste and Resource Recovery Board and further detail is anticipated from the Board in due course. Regarding the exclusion of clean earth, fill, and low contaminated soil, 10 percent of all waste tonnage is already excluded from the levy in lieu of operational materials. However, these materials may also be considered for resource recovery activities depending on the intended purpose.

In any instance where an operator feels that there are systemic or other reasons why they would be unreasonably disadvantaged under this arrangement, they may apply for a Ministerial exemption from paying levy for additional tonnages of operational material, remembering that non-waste materials (e.g. purpose-derived construction materials such as prepared aggregates or civil fittings) would not be subject to the levy in the first place.

Operators who think they have a case for a Ministerial exemption should contact NRE Tas to discuss prior to making an application.

Fees and fund allocation

Concerns were expressed about the use of fee units in the regulations and the Act to establish the value of the waste levy as the value of a fee unit from 1 July 2022 will mean that the levy will in the 2022/23 financial year be set at \$20.40 as opposed to \$20 as previously communicated.

It is a requirement in Tasmania for fees, charges and levies to be expressed in fee units as set out in the *Fee Units Act 1997* to account for changes in the Consumer Price Index. However, given the apparent community and industry understanding that the levy would start at \$20/tonne, the Tasmanian Government has determined a program will be run to provide support such that, in effect, the levy will be charged at the rate of \$20/tonne from 1 July 2022 for a one-year period. Thereafter, it will increase according to the value of the fee unit at the start of each financial year.

City of Hobart Council/Resource Recovery Centre expressed concern that levy funds will only reach larger operators. Similarly, the Local Government Association of Tasmania and Derwent Valley Council both flagged uncertainty regarding fund applications by regional waste authorities. They also questioned how remote councils would be supported.

Funding arrangements and policy decisions such as these are expected to be detailed in the State-wide waste strategy to be developed by the Tasmanian Waste and Resource Recovery Board.

City of Hobart Council/Resource Recovery Centre submitted that – since EPA and NRE Tas funding is set out in the regulations – information on programs to be funded should be available.

This feedback is noted. Details of funded programs will be shared via Tasmanian Waste and Resource Recovery Board annual reports (which are submitted to Parliament and can be examined during the Budget Estimate process).

The Tasmanian Minerals, Manufacturing and Energy Council submitted that escalating waste fees may disincentivise businesses to appropriately deal with non-recyclable waste.

Contrastingly, the Waste Management and Resource Recovery Association of Australia submitted that the proposed levy rate(s) are too low to drive resource recovery and landfill diversion and should be increased to \$100/tonne to drive change and encourage resource recovery. The higher levy rates in other Australian jurisdictions were cited as an example.

NRE Tas note that monitoring and enforcement of illegal dumping will be strengthened as part of this transition. Regarding the best rates for the Tasmanian context, a Tasmanian Waste Levy Impact Study was completed by consultants' Urban EP that identified the proposed model to be the most effective. The report is available on the NRE Tas website: www.nre.tas.gov.au/environmental-management/waste-and-resource-recovery-act.

City of Hobart Council/Resource Recovery Centre questioned whether concession card holders should be exempt from paying the levy as this could reduce littering rates.

This is noted however, it will be up to each landfill operator to decide if they do not wish to charge the levy to concession card holders. Payment of the levy on all the waste deposited in the landfill will still be required unless excluded under these regulations or by Ministerial exemption under regulation 28.

City of Hobart Council/Resource Recovery Centre and the Local Government Association of Tasmania objected to the requirement for the levy to be displayed on invoices and receipts.

NRE Tas believe display of the levy amount is required for reasons of audit, transparency and accountability. In addition, as the levy only applies at landfills, not resource recovery facilities, the impact is quite restricted in the number of businesses affected. It will also publicly demonstrate the increase in landfill fees as a result of the levy.

Communications and timing

Several submissions, particularly from local government and waste and resource recovery businesses, were concerned about the need for strong messaging to support the requirements of the Regulations. Similarly, that key supporting documents were still in development and not yet available for review.

Public messaging

Concern was raised that without proactive communication the levy will increase illegal dumping and abuse of council staff. Derwent Valley Council highlighted a requirement for Tasmanian Government-supported messaging and communication on the additional cost burden applied to their landfill operations. City of Launceston Council requested the provision of targeted communications to the general public and impacted commercial entities, so that councils are not expected to explain the levy and deal with related complaints alone.

Likewise, the Waste Management and Resource Recovery Association of Australia suggested that a State-wide communications campaign is required by the Tasmanian Government, with industry support.

LGAT specifically asked for the Tasmanian Government to publicly explain the use of fee units and the implications on the levy rates over time, so that councils are not blamed for the slight increases. The amounts need to be expressed in fee units to ensure the rates continue to be adjusted in real terms over time (linked to the Consumer Price Index).

The importance of this feedback is acknowledged by NRE Tas, and a communication strategy and information packages are being implemented.

Availability of supporting documents

Multiple submissions objected to the unavailability of documents directly related to the regulations.

City of Hobart Council/Resource Recovery Centre and Local Government Association of Tasmania were concerned facility operators and local government will not have the required time to properly review and update systems before the Regulations commence. The absence of approved forms, data reporting guidelines and compliance plan template(s) was specifically identified.

NRE Tas acknowledges that these documents are a priority for operational planning and are being released for comment as soon as possible.

These respondents also believed that having a finalised infringement notice schedule – but no approved forms – sent a negative message about the Tasmanian Government's focus.

This is noted. Infringement notice schedule sets out the penalty for offences committed under the Act and therefore was required to be set out in the regulations as is standard legislative practice.

Detailed information requirements and forms are best dealt with administratively to allow flexible updates and amendments as required. If located in regulations, amending a form for example, would require a full legislative amendment process as set out in the *Subordinate Legislation Act 1992*. This is not a cost effective or productive use of public resources. These types of administrative materials are better placed in guidelines and other supporting, non-statutory documentation that can be adjusted as and when required at minimal cost.

As noted above, such documentation will be finalised for consultation shortly.

Structural reform

Recovery TAS Pty Ltd submitted that the Tasmanian Government needs to lobby the Commonwealth Government to create taxation incentives for businesses, so Tasmania can lead the transition to a circular economy nationally and create new export markets. They stated that the draft regulations provide no incentive for businesses that already deliver economic public good benefit generated by privately owned resource recovery facilities that reduce landfill volume.

The position of NRE Tas is that within the Tasmanian context, the levy will create an economic incentive to find alternative uses for waste otherwise going to landfill. Likewise, funds administered by the Tasmanian Waste and Resource Recovery Board may be applied to some of measures outlined in the submission.

Recovery TAS Pty Ltd also questioned the viability of reverse logistic services in Tasmania without improvement of the Freight Equalisation Scheme.

This is also a wider policy issue than can be covered by the Waste and Resource Recovery Act and regulations. It is noted that a function of the Waste and Resource Recovery Board is to advise the Minister on matters relevant to the Act. Should issues become clear that they are affecting matters such as the viability of transportation of recyclable material from the remote islands (King and Flinders) to Tasmania, and from Tasmania to the mainland, then the Board would have the capability of advising the Minister on such issues.





Tasmanian
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