

Waste Reduction and Recycling (Waste Levy) Amendment Regulation 2019

Explanatory notes for SL 2019 No. 33

made under the

Waste Reduction and Recycling Act 2011

General Outline

Short title

Waste Reduction and Recycling (Waste Levy) Amendment Regulation 2019

Authorising law

Sections 8A, 26, 30, 37, 43, 44, 46, 47, 73D, 271 and schedule (Dictionary) of the *Waste Reduction and Recycling Act 2011*.

Policy objectives and the reasons for them

In Queensland, the *Waste Reduction and Recycling Act 2011* (the Act) and its subordinate legislation, the *Waste Reduction and Recycling Regulation 2011* (the Regulation) provide a framework for promoting waste avoidance and reduction, and resource recovery and efficiency actions.

The *Waste Reduction and Recycling (Waste Levy) Amendment Act 2019* (the Amendment Act) was passed by the Legislative Assembly on 14 February 2019 and received royal assent on 21 February 2019. The Amendment Act amends primary legislation to provide a head of power for the re-introduction of a waste levy to commence in Queensland on 1 July 2019.

The waste levy underpins the new waste management strategy being developed for Queensland. The levy will act as a price signal that encourages waste avoidance and resource recovery behaviours and discourages disposal to landfill as the first option. As an avoidable charge, the waste levy will be instrumental in changing waste management behaviour and practices in Queensland, making landfill a less attractive option compared to more productive and job creating uses of waste.

The policy objective of the *Waste Reduction and Recycling Amendment Regulation 2019* (the Amendment Regulation) is to implement provisions of the Amendment Act to provide important details of key aspects of the waste levy framework.

Achievement of policy objectives

The Amendment Regulation is proposed to commence on 1 July 2019 and forms the final stage of amendments that are required to facilitate implementation of the legislative framework for a waste levy in Queensland. The Amendment Regulation will achieve the policy objectives by:

1. stipulating which local government areas fall within the Queensland waste levy zone;
2. providing the levy rates for each waste type and a method for calculating the waste levy;
3. establishing the formula for calculating the annual payment to local government;
4. prescribing the circumstances for refusal of an exempt waste application;
5. identifying certain exempt wastes for the definition of a *waste disposal site*;
6. identifying other types of exempt wastes;
7. prescribing the recycling activities for which a residue waste discounting application may be made, recycling efficiency thresholds for these activities, and the discounted levy rate;
8. providing additional requirements for deciding and refusing a residue waste discounting application, and conditions on approvals;
9. providing weight measurement criteria for measuring waste or other material other than by a weighbridge; and
10. establishing the application and amendment fees payable for exempt waste and residue waste discounting applications and approvals.

These amendments do not change the policy intent of the Act, nor introduce any additional burdens.

Local governments in the levy zone

The Amendment Regulation provides that 39 out of 77 of Queensland's Local Government Areas will be located in the levy zone. This zone encapsulates approximately 90 per cent of Queensland's population, where the majority of the State's waste is generated and disposed. The Act provides that waste generated interstate or in the levy zone will attract the levy, unless exempt, regardless of where it is disposed. Whereas waste generated in the non-levy zone will only attract the levy if disposed of in the levy zone.

The levy zone as articulated in the Amendment Regulation will also provide a disincentive to the practice of long-distance transport of waste for disposal in Queensland.

Waste levy rates

The levy rates for different waste types are prescribed in the Amendment Regulation. The levy will commence at \$75 per tonne for all general waste streams with higher rates for regulated waste. The levy aims to drive the diversion of waste from landfill and facilitate resource recovery, without stifling business and economic growth.

Category 1 and 2 regulated wastes pose an increased risk to the environment due to their hazardous properties. Alternatives to disposal, which may attract a higher resource recovery value, are available for some types of regulated waste. A higher levy rate on these wastes will help address some of the cost imbalance between disposal and higher order recovery options.

Treated timber sawdust and shavings, a regulated waste, will attract the same levy rate as whole treated timber, which is not a regulated waste. This is necessary to avoid creating a disincentive to the recycling of treated timber.

Earth contaminated with a hazardous contaminant from land recorded on the environmental management register or contaminated land register will attract the levy rate for general waste streams, rather than regulated wastes. This approach is necessary to ensure potentially contaminated earth is appropriately identified and managed.

The initial levy rate has been set at a level that is going to drive the diversion of waste from landfill and resource recovery. Waste levies in other states have annual increments that increase the levy rate over time. Without measures to remain on par with other states, Queensland will continue to be a target for disposal of interstate waste and lag behind other states in resource recovery and recycling. The Queensland levy rate for each type of waste will increase by \$5 each financial year up to and including the 2021-22 financial year. This increment is also necessary to continue to incentivise change in material recovery, recycling and waste disposal behaviours and practices.

The Amendment Regulation provides a process for determining the levy rate for a type of waste for the financial year if a specific rate is not prescribed in the schedule. In this situation the levy rate for the type of waste is the rate for the previous financial year multiplied by the indexation figure, notified on the Department of Environment and Science's (the department) website, and rounded down to the nearest whole dollar. The indexation figure will be determined in line with Queensland Treasury Principles for Fees and Charges and the Queensland Government Indexation Policy for the relevant financial year.

The Amendment Act requires that the efficacy of the waste levy be reviewed within three years of commencement. This provides opportunities to review the levy rate and increments going forward.

Annual advance payment to local governments

The Queensland Government has committed that measures will be put in place to avoid direct cost impacts to households as a result of the levy. The Amendment Act provides for an annual advance payment to be made to local governments that dispose of household municipal solid waste at levyable waste disposal sites in the levy zone.

The Amendment Regulation provides the formula for the calculation of the advance annual payments to local governments. This includes identification of the types of waste to which the annual payment applies.

Exempt waste by application

The Amendment Regulation prescribes the circumstances in which an exempt waste application for earth contaminated with a hazardous contaminant from land recorded on the

environmental management register or contaminated land register must be refused. In practice, this includes identifying a number of circumstances in which an application does not have to be refused.

One such example relates to earth removed from a landfill to which waste was disposed before 1 January 1992, whether or not disposal continued after that time (also known as a 'legacy landfill'). To ensure the community is benefited by a levy exemption, eligibility is limited to earth being moved from the land by or for a local government for the purpose of conducting or operating a resource recovery or transfer facility. Private operators may still apply for an exemption for earth contaminated with a hazardous contaminant from land recorded on the environmental management register or contaminated land register, if the earth contains waste being removed from a landfill cell that is to be delivered to a levyable waste disposal site as part of a significant community project.

Exempt wastes for the definition of a waste disposal site

The Amendment Regulation prescribes the types of exempt waste for the purpose of defining a waste disposal site under the Act.

The majority of these wastes are exempt for a limited time in recognition of the potential for beneficial re-use options and to allow for the development of end of waste codes. At the end of the time period, if the wastes do not meet an end of waste code, a waste disposal site that only receives these types of waste may become a levyable waste disposal site.

The exemption for ash applies specifically to fly ash from power stations, as distinct from bottom ash from incinerators.

Other exempt wastes

The Amendment Regulation identifies several wastes that are exempt from the waste levy. With the exception of waste water the exemptions are for a limited time period in recognition of the potential for the development of beneficial re-use options. The time limits enable environmental risks to be assessed and for end of waste codes to be developed where relevant. It also allows time for consideration to be given to whether the levy should apply to these types of waste should they not meet a prescribed end of waste code.

Road planings generated by eligible local governments will be exempt waste for a period of three years. Road planings are suitable for a number of alternative uses. The intent of the limited exemption is to provide regional local governments time to adjust their practices and divert road planings from landfill before they become subject to the levy.

Recycling residue discounts

Downstream recyclers can make Queensland more self-sufficient when it comes to waste management, playing a key role in Queensland's transformation to a 'circular economy', as well as generating jobs and economic growth. The Amendment Act provides for a levy discount for recycling residue waste to assist in attracting and maintaining these downstream recycling activities. The approach builds on the Government's \$100 million Resource Recovery Industry Development Program.

The Amendment Regulation prescribes recycling activities which have been evaluated as being consistent with the criteria set out in the Amendment Act.

The Amendment Act provides for the Minister to recommend to the Governor in Council that additional recycling activities be prescribed at any time, if satisfied that a proposed activity meets the relevant criteria. Guidelines on the various aspects of the recycling residue discounts regulatory framework, including relevant considerations and procedural requirements associated with identifying eligible recycling activities, will be developed in consultation with stakeholders.

Approval of a discount is conditional, amongst other considerations, on achievement of reasonable recycling efficiencies. A recycling efficiency threshold is necessary to ensure recycling activities capable of achieving higher efficiencies continue to do so, whilst driving innovation and improvement in activities with lower efficiencies. Measures to ensure recyclers maintain appropriate efficiency levels are also necessary to avoid token recycling and manage the risk of levy avoidance.

However, flexibility is required to allow for adjustment to variables outside the control of operators and avoid discriminating against the establishment of plants in regional areas where efficiency may be lower due to feedstock quality and distance to markets. Hence, the Amendment Regulation does not prescribe specific thresholds for each individual recycling activity.

The Amendment Regulation establishes a minimum recycling efficiency threshold of 60 per cent for all recycling activities eligible to apply for a levy discount. The exception is if the industry standard recycling efficiency, as reasonably believed to be so by the chief executive, is greater than 60 per cent. In such instances, the recycling efficiency threshold is the industry standard recycling efficiency.

The chief executive may publish the industry standard recycling efficiency for a recycling activity on the department's website. The resource recovery and recycling sector will be consulted on the industry standard recycling efficiency for each recycling activity. Guidelines will be developed to support this process.

The criteria established in the Amendment Regulation for deciding and refusing a residue waste discounting application provide flexibility to accommodate specific circumstances and variables of individual operations, including providing for those who cannot immediately meet the recycling efficiency threshold, but have the capacity to improve with changed practices.

The policy intent is also achieved through other criteria to be considered in deciding an application, including the extent to which the applicant's operation is, or is likely to be, optimising the market and material value that can be derived from the waste used as feedstock, and the extent to which giving a discount on the levy for residual waste will contribute to the Queensland economy and to establishing and sustaining the resource recovery and recycling sector in Queensland.

Guidelines will be developed for the department and industry to ensure transparency and consistency and provide guidance on application and assessment requirements.

A discount on the levy rate for residue waste can only be approved until 30 June 2022, when the discounting regulatory framework, including eligible recycling activities and recycling efficiency thresholds will be reviewed in light of prevailing market conditions.

Consistency with policy objectives of authorising law

The Amendment Regulation is consistent with the main policy objectives of the Amendment Act, which are to:

- (a) act as a price signal that encourages waste avoidance and resource recovery behaviours, and discourages disposal to landfill as the first option;
- (b) provide a source of funding for programs to assist local government, business and industry to establish better resource recovery practices, improve overall waste management performance and sustain Queensland's natural environment;
- (c) provide certainty and security of feedstock for advanced resource recovery and recycling technologies and processing; and
- (d) facilitate industry investment in resource recovery infrastructure.

The Amendment Regulation is also consistent with the objectives of the Act, which are to:

- (a) promote waste avoidance and reduction, and resource recovery and efficiency actions;
- (b) reduce the consumption of natural resources and minimise the disposal of waste by encouraging waste avoidance and recovery, re-use and recycling of waste;
- (c) minimise the overall impact of waste generation and disposal;
- (d) ensure a shared responsibility between government, business and industry and the community in waste management and resource recovery; and
- (e) support and implement national frameworks, objectives and priorities for waste management and resource recovery.

Inconsistency with policy objectives of other legislation

The Amendment Regulation is not inconsistent with the policy objectives of other legislation.

Alternative ways of achieving policy objectives

There are no alternative ways of achieving the policy objectives that would provide stakeholders with clarity and certainty.

Benefits and costs of implementation

Between 2019-20 and 2021-22, it is expected that over 70 per cent of revenue generated through the waste levy will be allocated to advance payments to councils, scheme start-up and operational costs, industry programs and other environmental priorities.

Several programs that will benefit from the levy revenue and contribute to improvements in waste management and resource recovery, community sustainability and positive environmental outcomes have already been announced.

In addition, various programs and funding have already been released in preparation for levy commencement. One such program is the Local Government Levy Ready Grants Program,

which provides \$5 million in funding in 2018-19 to assist local councils to upgrade their waste disposal site infrastructure prior to levy commencement.

The Government has also allocated \$100 million over three years to support Queensland's resource recovery and recycling industry through a Resource Recovery Industry Development Program. The program will facilitate private sector and local government projects delivering innovative solutions to the problem of waste going to landfill and create jobs in emerging industries.

Surplus revenue from the levy will benefit the entire Queensland community by providing funding for schools, hospitals, transport infrastructure and frontline services.

The Amendment Act provides that the efficacy of the waste levy must be reviewed within three years of commencement of the levy.

Consistency with fundamental legislative principles

The Amendment Regulation has been drafted with regard to fundamental legislative principles as defined in section 4 of the *Legislative Standards Act 1992*. While the Amendment Regulation is generally consistent with fundamental legislative principles, three potential issues were identified and are addressed below.

Legislation allows the delegation of legislative power only in appropriate cases and to appropriate persons—Legislative Standards Act 1992, section 4(4)(a)

The Amendment Act provides that dredge spoil and clean earth that are acid sulfate soil are exempt waste if the dredge spoil or clean earth has been treated in accordance with best practice environmental management for the treatment and management of acid sulfate soils as stated in a guideline prescribed by regulation.

The guideline is prescribed in the Amendment Regulation, clause 4 proposed section 9 as the 'Queensland Acid Sulfate Soil Technical Manual - Soil Management Guidelines v 4.0' that was published by the Department of Science, Information Technology, Innovation and the Arts, as amended from time to time.

The guideline is technical in nature and not otherwise suitable for incorporation in legislation. This sub-delegation is considered appropriate as it allows for practices relevant for treating and managing the types of waste mentioned to remain contemporary and appropriate.

The Amendment Regulation, clause 4, proposed sections 7 and 8 provide for waste water to be exempt waste if it meets the water quality requirements for livestock drinking water or irrigation and general water use in the 'Australian and New Zealand Guidelines for Fresh and Marine Water Quality, Volume 1, The Guidelines' as published by the Australian and New Zealand Environment and Conservation Council, as amended from time to time.

The guideline is technical in nature and not otherwise suitable for incorporation in legislation. This sub-delegation is considered appropriate as it allows for requirements relevant to water quality for particular uses to remain contemporary and appropriate.

The Amendment Act, section 271(2)(f) provides that a recycling efficiency threshold for recycling activities can be prescribed by regulation. The Amendment Regulation, clause 4, proposed section 11E provides for a recycling efficiency threshold for a recycling activity to be 60 per cent or the recycling efficiency the chief executive reasonably believes is the industry standard for the recycling activity, having regard to the type of feedstock used, whichever is the greater.

Prescribing specific recycling efficiency thresholds for each recycling activity in the regulation poses the risk of discriminating against the establishment of operations in regional areas where efficiency may be lower due to feedstock quality and distance to markets and failing to adequately account for variables outside the control of operators.

The approach proposed in the Amendment Regulation is considered necessary to balance the need to maintain efficiencies and drive improvement, whilst also encouraging and supporting industry flexibility and innovation as the resource recovery and recycling sector and associated markets evolve and adapt to operating under the new waste levy framework.

Clause 4 proposed section 11E also provides that the chief executive may publish the industry standard recycling efficiency for a recycling activity on its website. The resource recovery and recycling sector will be consulted on the industry standard recycling efficiency for each recycling activity.

The Amendment Act also provides for the residue waste discounting system and recycling efficiency thresholds to be reviewed by a date prescribed by regulation. This date, established by clause 4, proposed section 11M of the Amendment Regulation is 30 June 2022, three years from commencement of the levy.

Consultation

Extensive community and industry specific consultation was undertaken on the development and design of the waste levy framework. This included specific input and consideration of key elements and parameters by the Recycling and Waste Management Stakeholder Advisory Group (RWMSAG) and Legislative Technical Working Group (LTWG).

The RWMSAG includes representatives from the Local Government Association of Queensland (LGAQ), Australian Council of Recycling (ACOR), Waste Recycling Industry Queensland (WRIQ), Waste Management and Resource Recovery Association of Australia (WMRRAA) (formerly Waste Management Association of Australia), Australian Industry Group, CCIQ, Sustainable Business Australia, Master Builders Queensland (MBQ) and Housing Industry Association (HIA). The LTWG consisted predominantly of nominees from the waste and recycling industries as well as representatives of LGAQ, CCIQ, HIA and MBQ.

In accordance with *The Queensland Government Guide to Better Regulation*, the waste levy framework was exempted from requiring a Regulatory Impact Statement, noting that public consultation was to occur through the *Transforming Queensland's Recycling and Waste Industry Directions Paper* (the Directions Paper) and regular meetings of the RWMSAG and the LTWG.

A consultation draft of the Amendment Regulation was tabled in Parliament and released for public consultation on 6 September 2018. The tabling of both the draft Regulation and *Waste Reduction and Recycling (Waste Levy) and Other Legislation Amendment Bill 2018* (the Bill) at the same time enabled stakeholders to consider the proposed legislative scheme for the implementation of the levy as a whole.

Submissions on the draft Regulation were invited by the department until 15 October 2018. In total, 27 submissions (including late submissions) were received. Many submissions to the Innovation, Tourism Development and Environment Committee's inquiry into the Bill also commented on issues covered by the draft Regulation. Consultation on the key details within the Amendment Regulation continued until late February 2019, with the department proactively engaging with peak bodies, industry and local governments.

Potential amendments to the consultation draft of the Amendment Regulation were considered by the LTWG and RWMSAG.

An independent consultant was engaged to review the discount on recycling residue waste, eligible recycling activities and recycling efficiency thresholds and undertake targeted consultation with the recycling industry. The results of the review were taken into account in amendments to the Amendment Regulation.

The three peak bodies for the waste and recycling industry, WRIQ, WMRRAA, and ACOR provided ongoing input and were involved in discussions on details of the proposed regulation, including discounts on recycling residue waste.

Changes made to the consultation draft of the Amendment Regulation were in response to stakeholder feedback during consultation on both the Amendment Act and the Amendment Regulation.