



New South Wales

Environmental Planning and Assessment Amendment (Prohibition of Waste to Energy Incinerators) Bill 2020

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to prohibit new development for the purposes of waste to energy incinerators.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.

Schedule 1 **Amendment of Environmental Planning and Assessment Act 1979 No 203**

Schedule 1[1] inserts proposed section 4.63A that—

- (a) prohibits new development for the purposes of waste to energy incinerators, and
- (b) does not apply to waste to energy incinerators that only treat clinical or related waste and certain other waste that has been declared to be exempt waste fuel by the proposed Act or by a later regulation, and
- (c) provides that pending applications for development consent or for certain planning approvals are to be dealt with in accordance with the proposed section, and
- (d) provides that development for which development consent or approval has been granted before the commencement of the proposed section is not prohibited if the development is

carried out in accordance with the development consent or approval as in force immediately before that commencement, and

- (e) operates despite any other provision of the *Environmental Planning and Assessment Act 1979* or any other Act or law.

Schedule 1[2] declares certain waste to be exempt waste fuel. The categories of waste declared are based on the Environment Protection Authority's *Eligible Waste Fuels Guidelines*.



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New South Wales

Environmental Planning and Assessment Amendment (Prohibition of Waste to Energy Incinerators) Bill 2020

No. _____, 2020

A Bill for

An Act to amend the *Environmental Planning and Assessment Act 1979* to prohibit certain waste to energy incinerators.

The Legislature of New South Wales enacts—

1

1 Name of Act

2

This Act is the *Environmental Planning and Assessment Amendment (Prohibition of Waste to Energy Incinerators) Act 2020*.

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4

2 Commencement

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This Act commences on the date of assent to this Act.

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Schedule 1 Amendment of Environmental Planning and Assessment Act 1979 No 203 1
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[1] Section 4.63A 3

Insert after section 4.63— 4

4.63A Prohibition of waste to energy incinerators 5

(1) Despite any other provision of this Act or any other Act or law, the carrying out of development for the purposes of a waste to energy incinerator is prohibited except as provided by this section. 6
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(2) This section does not prohibit development for the purposes of a waste to energy incinerator that only treats exempt waste fuel. 9
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Note. Despite this section, development for the purposes of a waste to energy incinerator that only treats exempt waste fuel— 11
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(a) may be prohibited or require development consent under an environmental planning instrument or require approval under this Act, and 13
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(b) may be subject to licensing requirements and other obligations under the *Protection of the Environment Operations Act 1997*, the *Waste Avoidance and Resource Recovery Act 2001* and any other relevant legislation. 15
16
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(3) This section does not prohibit the carrying out of the following— 18

(a) development for which development consent has been granted before the commencement of this section, but only if the development is carried out in accordance with the development consent as in force immediately before that commencement, 19
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21
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(b) development that is State significant infrastructure that was approved under Division 5.2 before the commencement of this section, but only if the development is carried out in accordance with the approval as in force immediately before that commencement. 23
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25
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(4) This section does not prohibit the carrying out of development if— 27

(a) the development is authorised by the modification of— 28

(i) a development consent for development of a kind referred to in subsection (3)(a), or 29
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(iii) the Minister's approval to carry out development of a kind referred to in subsection (3)(b), and 31
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(b) the consent authority or Minister who modifies the development consent or the approval is satisfied that the development authorised by the modification is of minimal environmental impact, and 33
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(c) the carrying out of the authorised development complies with any conditions of the modified development consent or of the modified approval. 36
37
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(5) A pending application is to be dealt with in accordance with this section. 39

(6) In this section— 40

exempt waste fuel means waste, or anything derived from waste, declared to be exempt waste fuel under Schedule 9 or by the regulations. 41
42

pending application means any of the following applications that was made, but not finally determined, before the commencement of this section— 43
44

(a) an application for development consent under Part 4, 45

(b) an application for approval within the meaning of Division 5.1, 46

- (c) an application for approval of State significant infrastructure made under Division 5.2, 1
2
- (d) an application for the modification of any development consent or approval referred to in paragraph (a), (b) or (c). 3
4
- thermal treatment** of waste means the processing of waste by burning, incineration, thermal oxidation, gasification, pyrolysis, plasma or other thermal process. 5
6
7
- waste** has the same meaning as in the *Protection of the Environment Operations Act 1997*. 8
9
- waste to energy incinerator** is a facility where energy is recovered from the thermal treatment of waste, or anything derived from waste, received from off-site. 10
11
12

- [2] **Schedule 9** 13
- Insert after Schedule 8— 14

Schedule 9 Exempt waste fuels 15

(Section 4.63A) 16

1 Biomass from agriculture 17

- (1) Biomass from agriculture is declared to be exempt waste fuel if it is free of any physical contaminants. 18
19
- (2) However, the following biomass from agriculture is not declared to be exempt waste fuel— 20
21
- (a) waste from the processing of dairy products or beverages, 22
- (b) waste from the production of food, 23
- (c) dead animals, animal parts or pelts, 24
- (d) manure, 25
- (e) animal bedding such as cage litter or barn poultry litter. 26
- (3) In this clause— 27
- agriculture** means— 28
- (a) farming, including the cultivation of soil for the growing of crops, or 29
- (b) the rearing of animals to provide food, wool or other products. 30
- biomass from agriculture** means any weed, plant or crop residue that is produced directly from agricultural practices and includes non-putrescible natural organic fibrous materials and organic residues from harvest activities. 31
32
33
- crop residue** includes fibres, roots, stalks, stubble, leaves, seed pods, nut shells and other waste from agricultural processing, such as cotton and cane trash. 34
35

2 Clinical and related waste 36

- (1) The following are declared to be exempt waste fuel— 37
- (a) clinical waste, 38
- (b) cytotoxic waste, 39
- (c) pharmaceutical, drug or medicine waste, 40
- (d) sharps waste. 41
- (2) In this clause— 42

clinical waste means waste resulting from medical, nursing, dental, pharmaceutical, skin penetration or other related clinical activity, being waste that has the potential to cause injury, infection or offence, and includes waste containing any of the following—

- (a) human tissue (other than hair, teeth and nails),
- (b) bulk body fluids or blood,
- (c) visibly blood-stained body fluids, materials or equipment,
- (d) laboratory specimens or cultures,
- (e) animal tissue, carcasses or other waste from animals used for medical research,

but does not include waste that has been treated by a method approved in writing by the Secretary of the Ministry of Health.

cytotoxic waste means a substance contaminated with any residues or preparations that contain materials that are toxic to cells principally through their action on cell reproduction.

pharmaceutical, drug or medicine waste means waste—

- (a) that has been generated by activities carried out for business or commercial purposes, and
- (b) that consists of pharmaceutical or other chemical substances specified in the Poisons List made under section 8 of the *Poisons and Therapeutic Goods Act 1966*.

sharps means objects that—

- (a) have sharp points or edges capable of cutting, piercing or penetrating the skin (such as needles, syringes with needles or surgical instruments), and
- (b) are designed for the purpose of cutting, piercing or penetrating the skin, and
- (c) have the potential to cause injury or infection.

sharps waste means waste collected from designated sharps waste containers used in the course of business, commercial or community service activities, being waste resulting from the use of sharps for any of the following purposes—

- (a) human health care by health professionals and other health care providers,
- (b) medical research or work on cadavers,
- (c) veterinary care or veterinary research,
- (d) skin penetration or the injection of drugs or other substances for medical or non-medical reasons,

but does not include waste that has been treated on the site where it was generated (and to a standard specified in an EPA Gazettal notice made under the *Protection of the Environment Operations Act 1997*) or waste that has been treated by a method approved in writing by the Secretary of the Ministry of Health.

3 Forestry and sawmilling residue

- (1) Forestry and sawmilling residue is declared to be exempt waste fuel if it does not contain any treated, preserved, lacquered, glued, laminated or coated timber or wood product.

(2)	However, forestry and sawmilling residue that is native forest bio-material is not declared to be exempt waste fuel.	1 2
(3)	In this clause—	3
	forestry and sawmilling residue means uncontaminated, organic fibrous wood residue and natural wood waste that results from forestry and sawmilling operations such as heads, tree thinnings, sawmill sawdust, shavings, chips, bark and other offcuts.	4 5 6 7
	native forest bio-material means the bio-material comprised in Australian native trees, other than—	8 9
(a)	bio-material obtained from—	10
(i)	an authorised plantation within the meaning of the <i>Plantations and Reafforestation Act 1999</i> , or	11 12
(ii)	an existing plantation within the meaning of clause 6 of Schedule 3 to the <i>Plantations and Reafforestation Act 1999</i> , or	13 14
(iii)	land on which exempt farm forestry, within the meaning of section 6 of the <i>Plantations and Reafforestation Act 1999</i> , is being carried out, or	15 16 17
(iv)	land on which ancillary plantation operations, within the meaning of section 9 of the <i>Plantations and Reafforestation Act 1999</i> , are being carried out, or	18 19 20
(v)	trees cleared in accordance with a property vegetation plan that was approved under Part 4 of the former <i>Native Vegetation Act 2003</i> , or	21 22 23
(vi)	trees cleared in accordance with an order, and any conditions to the order, under clause 38 of the former <i>Native Vegetation Regulation 2013</i> , or	24 25 26
(vii)	trees cleared in accordance with a private native forestry plan under Part 5B of the <i>Local Land Services Act 2013</i> , or	27 28
(viii)	trees cleared in accordance with an integrated forestry operations approval under Part 5B of the <i>Forestry Act 2012</i> , or	29 30
(b)	sawdust or other sawmill waste, or	31
(c)	waste arising from wood processing or the manufacture of wooden products, other than waste arising from activities (such as woodchipping or the manufacture of railway sleepers) carried out at the location from which the Australian native trees are harvested.	32 33 34 35
	sawmilling operations means the primary processing of round wood into non-round wood products such as planks, boards, beams and other cut and processed wood products.	36 37 38
4	Landfill gas and biogas	39
(1)	Landfill gas and biogas are declared to be exempt waste fuel.	40
(2)	In this clause—	41
	anaerobic digestion means the biological process that occurs when organic matter is decomposed by bacteria in the absence of oxygen.	42 43
	landfill gas and biogas means gas generated during anaerobic digestion, either naturally in the decomposition of organic waste materials contained in landfills or in an anaerobic digester, and includes organic waste streams for an anaerobic digester including municipal wastewater treatment, industrial wastewater treatment, food waste digestion and agricultural waste such as manure.	44 45 46 47 48 49

5 Organic residue from virgin paper pulp activities	1
(1) Organic residue from virgin paper pulp activities is declared to be exempt waste fuel.	2 3
(2) However, the following organic residue from virgin paper pulp activities is not declared to be exempt waste fuel—	4 5
(a) organic residue from processes using waste cardboard or paper (including recycled paper),	6 7
(b) organic residue that contains any trace of organic residues from processes using waste cardboard or paper (including recycled paper),	8 9
(c) organic residue derived from any processes involving chlorine, whether elemental chlorine, total chlorine or both.	10 11
(3) In this clause—	12
<i>organic residue from virgin paper pulp activities</i> means any solid organic waste, such as cellulose fibres, fibre bundles and minor quantities of sand, mud and fine grit, from pulping and screening operations.	13 14 15
6 Recovered waste oil	16
(1) Recovered waste oil is declared to be exempt waste fuel.	17
(2) In this clause—	18
<i>oil</i> includes vegetable oil and mineral oils.	19
<i>recovered waste oil</i> means oil that has been recycled back into lower grade oils for combustion as a start-up fuel.	20 21
7 Source-separated green waste	22
(1) Source-separated green waste is declared to be exempt waste fuel if it is—	23
(a) used in a thermal process to produce char (such as pyrolysis) for land application, and	24 25
(b) free of any physical contaminants such as plastics and treated, painted or coated timbers.	26 27
(2) However, the following source-separated green waste is not declared to be exempt waste fuel—	28 29
(a) green waste extracted from mixed waste streams, such as construction and demolition waste,	30 31
(b) waste that is recovered as part of cleaning up waste that was dumped in contravention of this Act or the <i>Protection of the Environment Operations Act 1997</i> ,	32 33 34
(c) source-separated green waste that is also biomass from agriculture (within the meaning of clause 1) or wood waste (within the meaning of clause 8).	35 36 37
(3) In this clause—	38
<i>source-separated green waste</i> means garden vegetation and plant materials (such as branches, grass, leaves, plant trimmings, tree stumps and bark) that are segregated at the point of generation and collected as a separate material stream for processing (such as garden organics from arborist operations, commercial gardening operations, council garden waste kerbside collections and public drop-off collections).	39 40 41 42 43 44

8	Uncontaminated wood waste	1
(1)	Wood waste that is not contaminated is declared to be exempt waste fuel.	2
(2)	However, the following wood waste is not declared to be exempt waste fuel—	3
(a)	post-consumer waste,	4
(b)	treated timber,	5
(c)	wood waste that is also source-separated green waste (within the meaning of clause 7),	6 7
(d)	painted or coated timber,	8
(e)	wood waste extracted from mixed waste streams, such as construction and demolition waste,	9 10
(f)	wood waste recovered from a highly variable stream, such as mixed municipal solid waste or construction and demolition waste.	11 12
(3)	In this clause—	13
	<i>treated timber</i> means wood treated with water, solvent and/or oil-borne preservatives, including, but not limited to, copper chromium arsenic (CCA), light organic solvent preservative (LOSP), creosote and envelope treatments for preservation, insecticides and fungal treatments.	14 15 16 17
	<i>wood waste</i> means waste derived from wood that is generated in primary and secondary manufacturing processes, and includes pre-consumer manufacturing and processing waste materials such as offcuts, sawdust, wood shavings, untreated packaging crates, untreated pallets and engineered timbers made with urea formaldehyde or phenol formaldehyde resins only.	18 19 20 21 22
9	Waste tyres	23
(1)	Waste tyres are declared to be exempt waste fuel, but only in respect of use as fuel in a cement kiln.	24 25
(2)	In this clause—	26
	<i>waste tyres</i> means used, rejected or unwanted tyres, including shredded tyres, tyre pieces, or tyre crumb containing at least 98% tyre material.	27 28