



New South Wales

# Environmental Planning and Assessment Amendment (Waste Incinerator Facilities— Residential Exclusion Zones) Bill 2017

## 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 recovering energy from the thermal treatment of waste from being carried out on land within a residential zone or within 15 kilometres of a residential zone.

## 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 a section that:

- (a) prohibits new development for the purposes of energy recovery from the thermal treatment of waste from being carried out within a residential zone or within 15 kilometres of such a zone, and
- (b) does not apply to the thermal treatment of clinical or related waste and certain other waste that has been declared to be exempt waste fuel (either in the proposed Act or by a later regulation), and

- (c) operates despite any other provision of the *Environmental Planning and Assessment Act 1979* or any other Act, or of any environmental planning instrument.

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

**Schedule 1 [3]** provides that:

- (a) pending applications for development consent or for certain planning approvals are to be dealt with so as to give effect to the proposed prohibition, and
- (b) development that is subject to existing development consent or certain existing planning approval is not prohibited by the proposed prohibition.



New South Wales

# Environmental Planning and Assessment Amendment (Waste Incinerator Facilities— Residential Exclusion Zones) Bill 2017

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New South Wales

# **Environmental Planning and Assessment Amendment (Waste Incinerator Facilities— Residential Exclusion Zones) Bill 2017**

No. , 2017

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## **A Bill for**

An Act to amend the *Environmental Planning and Assessment Act 1979* to prohibit waste incinerator facilities within 15 kilometres of residential areas.

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**The Legislature of New South Wales enacts:**

1

**1 Name of Act**

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This Act is the *Environmental Planning and Assessment Amendment (Waste Incinerator Facilities—Residential Exclusion Zones) Act 2017*.

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**2 Commencement**

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

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<b>Schedule 1</b>	<b>Amendment of Environmental Planning and Assessment Act 1979 No 203</b>	1
		2
<b>[1] Section 146B</b>		3
Insert after section 146A:		4
<b>146B</b>	<b>Recovery of energy from thermal treatment of waste prohibited on certain land</b>	5
(1)	Despite any other provision of this or any other Act, or of any environmental planning instrument, the carrying out of development for the purposes of the recovery of energy from the thermal treatment of any waste, or anything derived from waste, received from off-site is prohibited on protected land.	6 7 8 9
(2)	This section does not prohibit development for the purposes of the recovery of energy from the thermal treatment of exempt waste fuel. <b>Note.</b> Although development for the purposes of the recovery of energy from the thermal treatment of exempt waste fuel is not prohibited by this section, such development:	10 11 12 13 14
	(a) may still be prohibited, or require development consent, under an environmental planning instrument, or require approval under this Act, and	15 16
	(b) may be subject to licensing requirements and other obligations under the <i>Protection of the Environment Operations Act 1997</i> , the <i>Waste Avoidance and Resource Recovery Act 2001</i> and any other relevant legislation.	17 18 19
(3)	In this section:	20
	<b>exempt waste fuel</b> means any waste, or anything derived from waste, that has been declared by Schedule 5C, or by the regulations, to be an exempt waste fuel.	21 22 23
	<b>protected land</b> means land that is:	24
	(a) within a residential zone, or	25
	(b) within 15 kilometres of land that is within a residential zone.	26
	<b>residential zone</b> means land that is in any of the following land use zones (or in the case of land that is zoned under an environmental planning instrument other than an instrument made in the form of a Standard Instrument, a land use zone that, having regard to the objectives of the zone and the uses permitted in the zone, has the substantial character of any of the following land use zones):	27 28 29 30 31
	(a) Zone R1 General Residential,	32
	(b) Zone R2 Low Density Residential,	33
	(c) Zone R3 Medium Density Residential,	34
	(d) Zone R4 High Density Residential,	35
	(e) Zone RU5 Village.	36
	<b>Standard Instrument</b> means the standard local environmental planning instrument prescribed by the <i>Standard Instrument (Local Environmental Plans) Order 2006</i> .	37 38 39
	<b>thermal treatment</b> , in relation to waste, means the processing of waste by burning, incineration, thermal oxidation, gasification, pyrolysis, plasma or other thermal process.	40 41 42
	<b>waste</b> has the same meaning as in the <i>Protection of the Environment Operations Act 1997</i> .	43 44

<b>[2] Schedule 5C</b>	1
Insert after Schedule 5B:	2
<b>Schedule 5C Exempt waste fuels</b>	3
(Section 146B)	4
<b>1 Biomass from agriculture</b>	5
(1) Biomass from agriculture is declared to be exempt waste fuel if it is free of any physical contaminants.	6 7
(2) However, the following biomass from agriculture is not declared to be exempt waste fuel:	8 9
(a) waste from the processing of dairy products or beverages,	10
(b) waste from the production of food,	11
(c) dead animals, animal parts or pelts,	12
(d) manure,	13
(e) animal bedding such as cage litter or barn poultry litter.	14
(3) In this clause:	15
<i>agriculture</i> means:	16
(a) farming, including the cultivation of soil for the growing of crops, and	17
(b) the rearing of animals to provide food, wool or other products.	18
<i>biomass from agriculture</i> 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.	19 20 21
<i>crop residue</i> includes:	22
(a) fibres, roots, stalks, stubble, leaves, seed pods and nut shells, and	23
(b) other waste from agricultural processing, such as cotton and cane trash.	24
<b>2 Clinical and related waste</b>	25
(1) Each of the following are declared to be exempt waste fuel:	26
(a) clinical waste,	27
(b) cytotoxic waste,	28
(c) pharmaceutical, drug or medicine waste,	29
(d) sharps waste.	30
(2) In this clause:	31
<i>clinical waste</i> means any 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:	32 33 34 35
(a) human tissue (other than hair, teeth and nails),	36
(b) bulk body fluids or blood,	37
(c) visibly blood-stained body fluids, materials or equipment,	38
(d) laboratory specimens or cultures,	39

- (e) animal tissue, carcasses or other waste from animals used for medical research, 1  
2  
but does not include any such waste that has been treated by a method 3  
approved in writing by the Secretary of the Ministry of Health. 4  
**cytotoxic waste** means any substance contaminated with any residues or 5  
preparations that contain materials that are toxic to cells principally through 6  
their action on cell reproduction. 7  
**pharmaceutical, drug or medicine waste** means waste: 8  
(a) that has been generated by activities carried out for business or 9  
commercial purposes, and 10  
(b) that consists of pharmaceutical or other chemical substances specified 11  
in the Poisons List made under section 8 of the *Poisons and Therapeutic 12  
Goods Act 1966*. 13  
**sharps** means those things: 14  
(a) that have sharp points or edges capable of cutting, piercing or 15  
penetrating the skin (such as needles, syringes with needles or surgical 16  
instruments), and 17  
(b) that are designed for the purpose of cutting, piercing or penetrating the 18  
skin, and 19  
(c) that have the potential to cause injury or infection. 20  
**sharps waste** means any waste collected from designated sharps waste 21  
containers used in the course of business, commercial or community service 22  
activities, being waste resulting from the use of sharps for any of the following 23  
purposes: 24  
(a) human health care by health professionals and other health care 25  
providers, 26  
(b) medical research or work on cadavers, 27  
(c) veterinary care or veterinary research, 28  
(d) skin penetration or the injection of drugs or other substances for medical 29  
or non-medical reasons, 30  
but does not include waste that has been treated on the site where it was 31  
generated (and to a standard specified in an EPA Gazettal notice made under 32  
the *Protection of the Environment Operations Act 1997*) or waste that has been 33  
treated by a method approved in writing by the Secretary of the Ministry of 34  
Health. 35

- 3 Forestry and sawmilling residue** 36  
(1) Forestry and sawmilling residue is declared to be exempt waste fuel if it does 37  
not contain any treated, preserved, lacquered, glued, laminated or coated 38  
timber or wood product. 39  
(2) However, forestry and sawmilling residue that is native forest bio-material is 40  
not declared to be exempt waste fuel. 41  
(3) In this clause: 42  
**forestry and sawmilling residue** means uncontaminated, organic fibrous 43  
wood residue and natural wood waste that results from forestry and sawmilling 44  
operations such as heads, tree thinnings, sawmill sawdust, shavings, chips, 45  
bark and other offcuts. 46



***native forest bio-material*** means the bio-material comprised in Australian native trees, other than: 1  
2

(a) bio-material obtained from: 3

(i) an authorised plantation within the meaning of the *Plantations and Reafforestation Act 1999*, or 4  
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(ii) an existing plantation within the meaning of section 9 of that Act, or 6  
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(iii) land on which exempt farm forestry (within the meaning of that Act) is being carried out, or 8  
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(iv) land on which ancillary plantation operations (within the meaning of section 9 of that Act) are being carried out, or 10  
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(b) bio-material obtained from: 12

(i) trees cleared in accordance with a PVP that has been approved under Part 4 of the *Native Vegetation Act 2003* after an assessment under Chapter 7 of the Assessment Methodology (within the meaning of Part 4 of the *Native Vegetation Regulation 2013*), or 13  
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(ii) trees cleared in accordance with a declaration by an order under clause 38 of the *Native Vegetation Regulation 2013* (and, if the order is subject to any conditions, in accordance with those conditions), or 18  
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(iii) pulp wood logs and heads and off-cuts resulting from clearing carried out in accordance with a private native forestry PVP or forestry operations carried out in accordance with an integrated forestry operations approval under Part 5B of the *Forestry Act 2012*, or 22  
23  
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26

(iv) trees cleared as a result of thinning carried out in accordance with a private native forestry PVP or in accordance with an integrated forestry operations approval under Part 5B of the *Forestry Act 2012*, or 27  
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(c) sawdust or other sawmill waste, or 31

(d) 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  
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***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  
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**4 Landfill gas and biogas** 39

(1) Landfill gas and biogas is 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  
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***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  
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<b>5 Organic residue from virgin paper pulp activities</b>	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
<b>6 Recovered waste oil</b>	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
<b>7 Source-separated green waste</b>	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 any 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

<b>8</b>	<b>Uncontaminated wood waste</b>	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 wood,	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 off-cuts, 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
<b>9</b>	<b>Waste tyres</b>	23
(1)	Waste tyres are declared to be exempt waste fuel, but only in respect of use 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
<b>[3]</b>	<b>Schedule 6 Savings, transitional and other provisions</b>	29
	Insert at the end of the Schedule, with appropriate Part and clause numbering:	30
<b>Part</b>	<b>Environmental Planning and Assessment Amendment (Waste Incinerator Facilities—Residential Exclusion Zones) Act 2017</b>	31 32 33
	<b>Definition</b>	34
	In this Part:	35
	<i>amending Act</i> means the <i>Environmental Planning and Assessment Amendment (Waste Incinerator Facilities—Residential Exclusion Zones) Act 2017</i> .	36 37 38

<b>Pending applications to be dealt with in accordance with section 146B</b>	1
(1) Any pending application is to be dealt with in accordance with the amending Act.	2 3
(2) In this clause:	4
<i>pending application</i> means any of the following applications that was made, but not finally determined, before the commencement of the amending Act:	5 6
(a) an application for development consent under Part 4 (including consent for State significant development),	7 8
(b) an application for an approval within the meaning of Part 5,	9
(c) an application for approval of State significant infrastructure made under Part 5.1,	10 11
(d) an application for the modification of an approval given under Part 3A to carry out a project,	12 13
(e) an application for the modification of any development consent or approval referred to in paragraph (a), (b) or (c).	14 15
<b>Saving of certain existing consents and approvals</b>	16
(1) Section 146B does not prohibit the carrying out of any the following development:	17 18
(a) development for which development consent has been granted before the commencement of the amending Act, but only if the carrying out of the development complies with the conditions of the development consent (as in force on the commencement of that Act),	19 20 21 22
(b) development that is a transitional Part 3A project (within the meaning of Schedule 6A), but only if:	23 24
(i) the project was approved (whether before or after the repeal of Part 3A) or is the subject of an approved concept plan (whether approved before or after the repeal of Part 3A) before the commencement of the amending Act, and	25 26 27 28
(ii) the carrying out of the development complies with the conditions of the approval of the approved project or the approved concept plan (as in force on the commencement of the amending Act),	29 30 31
(c) development that is State significant infrastructure for which approval has been granted under Part 5.1 before the commencement of the amending Act, but only if the carrying out of the development complies with the conditions of the approval (as in force on the commencement of that Act).	32 33 34 35 36
(2) Section 146B does not prohibit the carrying out of development if:	37
(a) the development is authorised by any of the following:	38
(i) a modification of a development consent for development of a kind referred to in subclause (1) (a),	39 40
(ii) an approval to modify a transitional Part 3A project of a kind referred to in subclause (1) (b),	41 42
(iii) an approval to modify the Minister’s approval to carry out development of a kind referred to in subclause (1) (c), and	43 44
(b) the Minister or consent authority who modifies the project or development consent, or the approval, is satisfied that the development authorised by the modification is of minimal environmental impact, and	45 46 47

- (c) the carrying out of the development so authorised complies with the conditions of the modified approval or the conditions of the modified development consent. 1  
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