

Authorised Version

Circular Economy (Waste Reduction and Recycling) (Waste to Energy Scheme) Regulations 2023

S.R. No. 33/2023

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Authorised Version

STATUTORY RULES 2023

S.R. No. 33/2023

Circular Economy (Waste Reduction and Recycling) Act 2021

**Circular Economy (Waste Reduction and
Recycling) (Waste to Energy Scheme)
Regulations 2023**

The Governor in Council makes the following Regulations:

Dated: 23 May 2023

Responsible Minister:

INGRID STITT
Minister for Environment

SAMUAL WALLACE
Clerk of the Executive Council

Part 1—Preliminary

1 Objective

The objective of these Regulations is to prescribe matters in relation to the waste to energy scheme under Part 5A of the **Circular Economy (Waste Reduction and Recycling) Act 2021**.

2 Authorising provision

These Regulations are made under section 183 of the **Circular Economy (Waste Reduction and Recycling) Act 2021**.

3 Commencement

These Regulations come into operation on 1 June 2023.

4 Definitions

In these Regulations—

Authority has the same meaning as in the
Environment Protection Act 2017;

biochar means a stable type of charcoal produced from heating organic matter in a high temperature, low oxygen combustion process such as pyrolysis or gasification;

biosolids means solid organic residues from the wastewater treatment process and treated sewage sludge;

development licence has the same meaning as in the
Environment Protection Act 2017;

gasification process means technology where waste materials are heated to very high temperatures (generally between 1000 to 1500 degrees Celsius) with some oxygen or steam that breaks down the molecules into a syngas;

operating licence has the same meaning as in the
Environment Protection Act 2017;

permission has the same meaning as in the
Environment Protection Act 2017;

pilot project licence has the same meaning as in the
Environment Protection Act 2017;

pyrolysis process means the treatment of waste with heat (generally between 400 and 1000 degrees Celsius) in the absence of oxygen, with or without catalysts;

reportable priority waste has the same meaning as
in the **Environment Protection Act 2017**;

sequestering carbon means capturing and storing
atmospheric carbon dioxide (other than by
storing in landfill);

the Act means the **Circular Economy (Waste
Reduction and Recycling) Act 2021**;

waste biomass means wastes that are biological in
origin, animal or plant matter (such as food
and garden waste), wood waste, crop waste
and biosolids;

wood waste has the same meaning as in the
Renewable Energy (Electricity) Regulations
2001 of the Commonwealth.

Part 2—Advanced recycling process, exempt waste, thermal waste to energy processes and permitted waste

5 Advanced recycling process

For the purposes of the definition of *advanced recycling process* in section 74L of the Act, a prescribed advanced recycling process is the conversion of a material or substance to monomer or chemicals intended for the production of polymer materials (other than fuels) by changing the chemical structure of a material or substance through cracking, gasification, pyrolysis or depolymerisation.

Example

A facility processing post-consumer soft plastics back into industrial-quality soft plastics.

6 Exempt waste

For the purposes of the definition of *exempt waste* in section 74L of the Act, the following is prescribed to be exempt waste—

- (a) waste biomass of the following types—
 - (i) wood waste;
 - (ii) waste from any of the following primary production activities—
 - (A) straw, chaff and other waste from agricultural crops;
 - (B) nut hulls and shells;
 - (C) pips, pits and seeds from olives and other fruits;
 - (D) grape marc and other grape processing waste;

- (E) poultry litter;
- (F) paunch and abattoir wastes;
- (iii) waste from any of the following manufacturing activities—
 - (A) fruit and vegetable processing waste;
 - (B) residues from pulp and paper manufacturing and processing that cannot be recycled into new paper products;
- (iv) biosolids;
- (b) reportable priority waste.

7 Thermal waste to energy processes

For the purposes of section 74M(2)(f) of the Act, a thermal waste to energy process does not include the following—

- (a) a thermal waste to energy process in respect of which a pilot project licence has been issued and is in force;
- (b) a process that treats waste biomass through a pyrolysis process or gasification process to sequester carbon.

Example

A process that produces biochar that is applied to land.

8 Permitted waste

- (1) For the purposes of section 74N(1) of the Act, waste prescribed not to be permitted waste is waste biomass other than those specified in regulation 6(a) or processed in a manner specified in regulation 7(b).

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Part 2—Advanced recycling process, exempt waste, thermal waste to energy processes and permitted waste

- (2) For the purposes of section 74N(2)(c) of the Act, municipal solid waste that is municipal residual waste (other than municipal food organics and garden organics and municipal recycling material) that has undergone source separation is prescribed to be permitted waste.
- (3) For the purposes of section 74N(3)(b) of the Act, the operator of a thermal waste to energy facility must show that it is not technically, environmentally or economically practicable to further reuse or recycle, or to extract further resources or material, from the industrial waste by—
 - (a) demonstrating that a technology or process does not exist that could sort or recycle the waste; or
 - (b) demonstrating that the reuse or recycling of the waste is prohibited by this Act or any other Act; or
 - (c) performing an assessment that compares the environmental impacts of reusing or recycling the industrial waste with the environmental costs of recovering thermal energy from that waste; or
 - (d) performing an economic analysis that demonstrates that the financial costs of available options to reuse or recycle the waste (including transportation costs) are disproportionate to the environmental, social and economic benefits of reusing or recycling the waste.

Part 3—Existing operator licences

9 Existing operator may apply for existing operator licence

- (1) For the purposes of section 74X(3)(b) of the Act, an application under section 74X(1) of the Act must be in writing.
- (2) For the purposes of section 74X(3)(c) of the Act, the prescribed information to be contained in an application under section 74X(1) of the Act is—

- (a) the applicant's name, address and photographic proof of identity; and

Example

Examples of photographic proof of identity include a valid driver's licence or passport.

- (b) if the applicant is not a natural person, a written statement that specifies—
 - (i) any Australian Company Number or Australian Business Number; and
 - (ii) the address of the business, company or entity; and
 - (iii) the name and number of any directors, chief executive officer, chief financial officer, secretary or other officer who has control or substantial control over the management of the business, company or entity; and
- (c) any information that establishes that—
 - (i) the applicant is an existing operator; and
 - (ii) some or all of the waste authorised to be processed by the existing operator is permitted waste; and

- (d) any information that goes to whether the applicant, and if the applicant is not a natural person, the person or persons identified in paragraph (b)(iii), is a fit and proper person; and

Example

A National Police Certificate.

- (e) whether the applicant, and if the applicant is not a natural person, the person or persons identified in paragraph (b)(iii), has been found guilty of an offence against the Act, any regulations under the Act or the Corporations Act; and
- (f) whether the applicant, and if the applicant is not a natural person, the person or persons identified in paragraph (b)(iii), has, within the preceding 10 years, been found guilty of—
- (i) an indictable offence; or
 - (ii) an offence that, if committed in Victoria, would constitute an indictable offence; or
 - (iii) an offence involving fraud or dishonesty; or
 - (iv) an offence that, if committed in Victoria, would constitute an offence referred to in subparagraph (iii); or
 - (v) an offence against a law of Victoria, another State or a Territory, or the Commonwealth that regulates the supply of energy; and

Part 3—Existing operator licences

- (g) whether the applicant, and if the applicant is not a natural person, the person or persons identified in paragraph (b)(iii), is charged with an offence described in paragraph (f) and the charge has not been finally dealt with; and
- (h) whether the applicant—
 - (i) is an insolvent under administration; or
 - (ii) is an externally-administered company under the Corporations Act; or
 - (iii) has failed to comply with an order of any court or tribunal; and
- (i) if the applicant is a natural person, whether the applicant has ever previously had a waste to energy licence, or a licence, permit or permission (however described) suspended, revoked or disqualified under the Act, the **Environment Protection Act 2017** or any other law in or outside Victoria in relation to waste to energy, or waste and recycling, and, if so, details of the suspension, revocation or disqualification; and
- (j) if the applicant is not a natural person, whether the applicant and any officer of the applicant or of another body corporate that has or had one or more officers in common with the applicant has ever previously had a waste to energy licence, or a licence, permit or permission (however described) suspended, revoked or disqualified under the Act, the **Environment Protection Act 2017** or any other law in or outside Victoria in relation to waste to energy, or waste and recycling, and, if so, details of the suspension, revocation or disqualification; and

- (k) any information on the following—
- (i) the applicant's greenhouse gas emissions associated with the existing facility, and any likely climate change impact;
 - (ii) the existing facility's proposed greenhouse gas mitigation measures;
 - (iii) an assessment of the impacts and risks climate change poses to the existing facility and measures to be implemented to manage any such risks;
 - (iv) the applicant's technology and thermal waste to energy process to be, or being, used in the existing facility;
 - (v) the applicant's waste to be, or being, processed at the waste to energy facility, energy output and utilisation;
 - (vi) the applicant's approach to community engagement; and
- (l) a copy of any existing waste processing authority held by the applicant with respect to the existing facility, including any modifications or variations to the existing waste processing authority; and
- (m) details of any application for any other permit or licence under the Act, the **Environment Protection Act 2017**, the **Planning and Environment Act 1987** or any other law in or outside Victoria in relation to waste to energy, or waste and recycling with respect to the existing facility and, if the application was determined, the details of the determination; and

- (n) a declaration in writing signed by the applicant confirming that the information contained in the application is, to the best of the applicant's knowledge, true and correct.
- (3) For the purposes of section 74X(3)(d) of the Act, the prescribed fee is 780 fee units.

10 Issue of existing operator licences

- (1) For the purposes of section 74Y(3)(a) of the Act, the following are prescribed matters—
 - (a) information provided in an application for an existing operator licence;

Note

See regulation 9 for prescribed form and manner requirements of an application for an existing operator licence.

- (b) any advice or information provided to the Head, Recycling Victoria by the Authority in relation to the applicant regarding—
 - (i) any non-compliance with any development licence in relation to the existing facility; and
 - (ii) any non-compliance with any operating licence in relation to the existing facility; and
 - (iii) whether any activity that is the subject of the application or licence poses an unacceptable risk of harm to human health or the environment;
- (c) any conditions the applicant is subject to in accordance with a permission in relation to the existing facility;

- (d) any permit, licence or authorisation (however described) issued or granted in relation to the existing facility under the **Planning and Environment Act 1987**.
- (2) For the purposes of section 74Y(3)(c) of the Act, the Head, Recycling Victoria, by written notice, may request any further information in relation to the matters specified in regulation 9(2) and subregulation (1) if the Head, Recycling Victoria considers that the information is necessary to enable the Head, Recycling Victoria to determine whether to issue or refuse to issue an existing operator licence.
- (3) A notice under subregulation (2) must specify—
 - (a) the information required to be provided; and
 - (b) the date by which the information must be provided to the Head, Recycling Victoria.

Part 4—Amendment, suspension, revocation and transfer of waste to energy licences

11 Amendment of waste to energy licences

(1) For the purposes of section 74ZB(2)(a) of the Act, an application under section 74ZB(1)(b) of the Act must be in writing.

(2) For the purposes of section 74ZB(2)(b) of the Act, the prescribed information to be contained in an application under section 74ZB(1)(b) of the Act is—

(a) the applicant's name, address and photographic proof of identity; and

Example

Examples of photographic proof of identity include a valid driver's licence or passport.

(b) if the applicant is not a natural person—

(i) any Australian Company Number or Australian Business Number; and

(ii) the address of the business, company or entity; and

(c) a statement setting out the proposed amendment to the licence or conditions and why it is being sought; and

(d) in the case of an application to amend an existing operator licence, a copy of any modifications or variations to the existing waste processing authority for the existing facility; and

(e) details of any application for any other permit or licence under the Act, the **Environment Protection Act 2017**, the **Planning and Environment Act 1987** or any other law in or outside Victoria in

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- relation to waste to energy, or waste and recycling with respect to the existing facility and, if the application was determined, the details of the determination; and
- (f) a declaration in writing signed by the applicant confirming that the information contained in the application is, to the best of the applicant's knowledge, true and correct.
- (3) For the purposes of section 74ZB(2)(c) of the Act, the prescribed fee is 780 fee units.
- (4) For the purposes of section 74ZB(5)(b) of the Act, the prescribed criteria are—
- (a) information provided in the application to amend a waste to energy licence under subregulation (2); and
- (b) whether the applicant has made a previous application to amend the waste to energy licence and, if the application was determined, the details of the determination and amendment made, if any.
- (5) For the purposes of section 74ZB(7)(b) of the Act, the prescribed matters to be contained in a notice under section 74ZB(1) of the Act are—
- (a) if the maximum amount of permitted waste to be processed during a financial year has been reduced, that reduced amount; and
- (b) if the day on which the waste to energy licence ceases to be in force has changed, that day; and
- (c) details of any change to conditions on the waste to energy licence.

12 Suspension of waste to energy licences

- (1) For the purposes of section 74ZD(1)(h) of the Act, the prescribed matters are any relevant advice or information provided to the Head, Recycling Victoria by the Authority in relation to any of the following—
 - (a) any non-compliance by the holder of the waste to energy licence with any development licence in relation to the thermal waste to energy facility;
 - (b) any non-compliance by the holder of the waste to energy licence with any operating licence in relation to the thermal waste to energy facility;
 - (c) any unacceptable risk of harm to human health or the environment posed by the thermal waste to energy facility if the waste to energy licence is not suspended.
- (2) For the purposes of section 74ZD(2)(a) of the Act, the Head, Recycling Victoria must—
 - (a) date the notice; and
 - (b) cause the notice to be sent by post or electronically; and
 - (c) specify in the notice how and where any response in respect of the notice may be sent to the Head, Recycling Victoria.

13 Immediate suspension

- (1) For the purposes of section 74ZE(1)(b) of the Act, the prescribed matters are any relevant advice or information provided to the Head, Recycling Victoria by the Authority in relation to any of the following—

- (a) any non-compliance by the holder of the waste to energy licence with any development licence in relation to the thermal waste to energy facility;
 - (b) any non-compliance by the holder of the waste to energy licence with any operating licence in relation to the thermal waste to energy facility;
 - (c) any unacceptable risk of harm to human health or the environment posed by the thermal waste to energy facility if the waste to energy licence is not immediately suspended.
- (2) For the purposes of section 74ZE(2)(a) of the Act, the Head, Recycling Victoria must ensure written notice of the suspension—
- (a) is given within 7 days after the Head, Recycling Victoria's decision is made to immediately suspend the waste to energy licence; and
 - (b) is dated; and
 - (c) is sent by post or electronically; and
 - (d) specifies how and where any response in respect of the notice may be sent to the Head, Recycling Victoria.

14 Revocation of waste to energy licences

- (1) For the purposes of section 74ZF(1)(b)(viii) of the Act, the prescribed matters are any relevant advice or information provided to the Head, Recycling Victoria by the Authority in relation to any of the following—

- (a) any non-compliance by the holder of the waste to energy licence with any development licence in relation to the thermal waste to energy facility;
 - (b) any non-compliance by the holder of the waste to energy licence with any operating licence in relation to the thermal waste to energy facility;
 - (c) any unacceptable risk of harm to human health or the environment posed by the thermal waste to energy facility if the waste to energy licence is not revoked.
- (2) For the purposes of section 74ZF(3)(a) of the Act, the Head, Recycling Victoria must—
- (a) date the notice; and
 - (b) cause the notice to be sent by post or electronically; and
 - (c) specify in the notice how and where any response in respect of the notice may be sent to the Head, Recycling Victoria.

15 Immediate revocation

- (1) For the purposes of section 74ZG(1)(b) of the Act, the prescribed matters are any relevant advice or information provided to the Head, Recycling Victoria by the Authority in relation to any of the following—
- (a) any non-compliance by the holder of the waste to energy licence with any development licence in relation to the thermal waste to energy facility;
 - (b) any non-compliance by the holder of the waste to energy licence with any operating licence in relation to the thermal waste to energy facility;

- (c) any unacceptable risk of harm to human health or the environment posed by the thermal waste to energy facility if the waste to energy licence is not immediately revoked.
- (2) For the purposes of section 74ZG(2)(a) of the Act, the Head, Recycling Victoria must ensure that written notice of the revocation—
- (a) is given within 7 days after the Head, Recycling Victoria's decision is made to immediately revoke the waste to energy licence; and
 - (b) is dated; and
 - (c) is sent by post or electronically; and
 - (d) specifies how and where any response in respect of the notice may be sent to the Head, Recycling Victoria.

16 Disqualification of person from applying for waste to energy licences

For the purposes of section 74ZH(2)(a) of the Act, the notification must—

- (a) be dated; and
- (b) be sent by post or electronically; and
- (c) specify how and where any response in respect of the notice may be sent to the Head, Recycling Victoria.

17 Transfer of waste to energy licences

- (1) For the purposes of section 74ZI(2)(a) of the Act, an application under section 74ZI(1) of the Act is made in the prescribed form and manner if it contains—
- (a) written consent from the holder of the waste to energy licence in relation to the making of the application; and

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- (b) the applicant's name, address and photographic proof of identity; and

Example

Examples of photographic proof of identity include a valid driver's licence or passport.

- (c) if the applicant is not a natural person, a written statement that specifies—
- (i) any Australian Company Number or Australian Business Number; and
 - (ii) the address of the business, company or entity; and
 - (iii) the name and number of any directors, chief executive officer, chief financial officer, secretary or other officer who has control or substantial control over the management of the business, company or entity; and
- (d) any information that goes to whether the applicant, and if the applicant is not a natural person, the person or persons identified in paragraph (c)(iii), is a fit and proper person; and

Example

A National Police Certificate.

- (e) whether the applicant, and if the applicant is not a natural person, the person or persons identified in paragraph (c)(iii), has been found guilty of an offence against the Act, any regulations under the Act, or the Corporations Act; and
- (f) whether the applicant, and if the applicant is not a natural person, the person or persons identified in paragraph (c)(iii), has, within the preceding 10 years, been found guilty of—

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- (i) an indictable offence; or
 - (ii) an offence that, if committed in Victoria, would constitute an indictable offence; or
 - (iii) an offence involving fraud or dishonesty; or
 - (iv) an offence that, if committed in Victoria, would constitute an offence referred to in subparagraph (iii); or
 - (v) an offence against a law of Victoria, another State or a Territory, or the Commonwealth that regulates the supply of energy; and
- (g) whether the applicant, and if the applicant is not a natural person, the person or persons identified in paragraph (c)(iii), is charged with an offence described in paragraph (f) and the charge has not been finally dealt with; and
- (h) whether the applicant—
- (i) is an insolvent under administration; or
 - (ii) is an externally-administered company under the Corporations Act; or
 - (iii) has failed to comply with an order of any court or tribunal; and
- (i) if the applicant is a natural person, whether the applicant has ever previously had a waste to energy licence, or a licence, permit or permission (however described) suspended, revoked or disqualified under the Act, the **Environment Protection Act 2017** or any other law in or outside Victoria in relation to waste to energy, or waste and recycling, and,

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- if so, details of the suspension, revocation or disqualification; and
- (j) if the applicant is not a natural person, whether the applicant and any officer of the applicant or of another body corporate that has or had one or more officers in common with the applicant has ever previously had a waste to energy licence, or a licence, permit or permission (however described) suspended, revoked or disqualified under the Act, the **Environment Protection Act 2017** or any other law in or outside Victoria in relation to waste to energy, or waste and recycling, and, if so, details of the suspension, revocation or disqualification; and
 - (k) a copy of any existing waste processing authority held by the applicant with respect to the existing facility, including any modifications or variations to the existing waste processing authority; and
 - (l) details of any application for any other permit or licence under the Act, the **Environment Protection Act 2017**, the **Planning and Environment Act 1987** or any other law in or outside Victoria in relation to waste to energy, or waste and recycling with respect to the existing facility and, if the application was determined, the details of the determination; and
 - (m) a declaration in writing signed by the applicant confirming that the information contained in the application is, to the best of the applicant's knowledge, true and correct.
- (2) For the purposes of section 74ZI(2)(b) of the Act, the prescribed fee is 780 fee units.

- (3) For the purposes of section 74ZI(4)(a) of the Act, the prescribed matters are the following—
- (a) information provided in the application to transfer a waste to energy licence to the applicant under subregulation (1);
 - (b) whether the applicant has made a previous application to transfer a waste to energy licence, and if that application was determined, the details of the determination;
 - (c) any relevant advice or information provided to the Head, Recycling Victoria by the Authority in relation to the applicant regarding—
 - (i) any non-compliance by the applicant with any development licence in relation to the thermal waste to energy facility; or
 - (ii) any non-compliance by the applicant with any operating licence in relation to the thermal waste to energy facility.

18 Extension of submission period

- (1) For the purposes of section 74ZK(2)(c) of the Act, the following is prescribed information—
- (a) the applicant's name, address and photographic proof of identity;
Example
Examples of photographic proof of identity include a valid driver's licence or passport.
 - (b) a statement setting out why an extension is being sought;
 - (c) a declaration in writing signed by the applicant that states that the information contained in the application is, to the best of the applicant's knowledge, true and correct.

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licences

(2) For the purposes of section 74ZK(2)(b) of the Act,
the prescribed fee is 390 fee units.

Endnotes

Fee Units

These Regulations provide for fees by reference to fee units within the meaning of the **Monetary Units Act 2004**.

The amount of the fee is to be calculated, in accordance with section 7 of that Act, by multiplying the number of fee units applicable by the value of a fee unit.

The value of a fee unit for the financial year commencing 1 July 2022 is \$15.29. The amount of the calculated fee may be rounded to the nearest 10 cents.

The value of a fee unit for future financial years is to be fixed by the Treasurer under section 5 of the **Monetary Units Act 2004**. The value of a fee unit for a financial year must be published in the Government Gazette and a Victorian newspaper before 1 June in the preceding financial year.