

Submission

Review of Resource recovery framework Issues Paper – March 2022

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Prepared by Northern Sydney Regional Organisation of Councils

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INTRODUCTION

Northern Sydney Regional Organisation of Councils (NSROC) appreciates the opportunity to make a submission to the Environmental Protection Authority on the Resource Recovery Framework (RRF) Issues Paper Review – March 2022. We commend the EPA on undertaking an independent review and for the quality of the issues paper that captures many of the concerns raised by local government and the waste industry. This submission has been prepared with the input and support of our member councils.

NSROC is a voluntary association of eight local government authorities in Sydney. The councils service an area extending from the Hawkesbury River in the north to Sydney Harbour in the south and then west to Meadowbank on the Parramatta River.

As local government authorities, our member councils have delivered waste services to our communities for many years and understand the complexity, challenges and opportunities of the sector. The diverse services and initiatives delivered to support appropriate waste management and resource recovery are targeted to the needs and expectations of the diverse communities within our region.

Councils in the NSROC region have been struggling with the lack of waste infrastructure for decades. Even more infrastructure is now required to efficiently manage waste and re-process resources as part of the circular economy and deliver the NSW Waste and Sustainable Materials Strategy 2041 (WaSM) targets. Appropriate planning and funding is required immediately. While the NSW Government released the NSW Waste and Sustainable Materials Strategy: A guide to future infrastructure needs in June 2021, there has been no further engagement with councils on this critical matter. It is important to note that waste and resource recovery services (including the associated infrastructure) are an essential service. They require the same level of importance and planning provisions as electricity and water, to ensure these services can be provided at a reasonable cost to residents. Greater investment in strategic infrastructure is required by the state government including transfer, recycling, storage and transport assets.

OVERVIEW

The Resource Recovery Framework (RRF) aims to divert waste from landfill and to minimise the risks to human health and the environment. The core components include:

- Definition of waste and the accompanying waste offences;
- NSW waste levy settings;
- Licensing framework and thresholds and
- Resource recovery orders and exemptions.

The RRF is a key driver for achieving the increased recovery targets outlined in the NSW Waste and Sustainable Materials Strategy 2041 (WaSM). Including an 80% recovery rate from all waste streams by 2030.

The NSW Government committed to reviewing the RRF as part of WaSM. The goal being to ensure regulatory settings support circular investment while maintaining protections for the environment and human health. NSROC commends this approach as the linear nature of the current framework poses barriers to resource recovery in NSW.

Initial consultation with our member councils on the issues paper highlighted that there is general confusion about what the RRF is and what it sets out to achieve. They do not agree that 'the framework provides suppliers and users of waste with a streamlined, low-cost pathway to lawfully recover and re-

use resources while protecting human health and the environment'. The terms 'streamlined' and 'low-cost' were the two most disputed and are areas in which this review should focus.

NSROC member councils generally felt the two main issues are that:

1. The EPA as a regulatory body, tend to provide more barriers rather than support the development of solutions.
2. The RRF is not transparent, is inflexible and does not support innovation or promote the circular economy, which ultimately discourages industry investment and therefore limits resource recovery options for local government.

Environment and human health protection

1. What other risk-based approaches, sustainability principles or criteria could be used to assess and manage the environmental and human health risks of resource recovery?

The RRF framework should be more holistic in its approach to waste management and consider the waste hierarchy, the risk of the waste resource to environment and human health and the most effective way of mitigating this risk. The environmental risks should consider reuse of the waste material, illegal dumping and the opportunity costs when it is sent to landfill. The risk rating of each waste material should be determined according to Risk Management Standards – AS/NZS-2004 and utilise a risk matrix that incorporates measures of the likelihood of the risk occurring and its consequence under different circumstances (e.g. quantities of the material, its form and the environment in which it is placed/used). The outcomes and treatments of the risk assessments should be utilised for developing orders, exemptions and other policies. The efficacy of current orders and exemptions should be regularly reviewed.

One example is asbestos where the health and environmental risk can be managed with correct handling, storage, transport and disposal. However, the EPA and local government continue to be challenged by illegal dumping and improper handling of this material. The cost of illegal dumping of asbestos is significant not only financially, but also from a human health and environmental perspective. Asbestos can be dumped in remote areas where it is not discovered for years. Therefore, the risk of asbestos should also be considered in the illegal dumping context. In the Northern Sydney region, most asbestos dumping cases are home renovators disposing of comparatively small amounts, of approximately 10 kg or less. The greatest cost for councils in these situations, is contractor fees and not tipping fees. Ensuring asbestos disposal is free or significantly cheaper, will encourage community members to dispose of hazardous, legacy waste correctly and reduce the risk to human health and the environment.

2. How can the framework be structured to deal with new and emerging waste streams and mitigate the risk of cumulative impacts from legacy and emerging contaminants?

In order to increase resource recovery, waste needs to be viewed as a valuable commodity. Landfill should be seen as the last resort. Orders and exemptions are the path to deal with all waste streams including new and emerging under the RRF, but the process needs some refining in order to provide the flexibility and transparency industry and councils require to better invest in the circular economy.

Collaboration and information sharing between other states including South Australia, Victoria and Queensland on their treatment of historic, current and emerging waste streams would assist avoid duplication and lengthy time delays in assessing order and exemption applications.

An expert technical advisory committee should be established to provide independent advice. Representation should be from the following areas: science, industry, local government, NGOs and community members. The group could assist review individual applications for orders and exemptions in

a timely manner. They could also regularly review and update the orders and exemptions and conduct risk assessments and research on the most common waste materials and emerging waste streams, to increase organisational knowledge before applications are received from industry and potentially reduce the time it takes to review applications. As part of the RRF review, it would be timely to review what the existing contaminants are and rate them from most to least harmful. This committee would provide more confidence to stakeholders, that decisions are being made based on the best available science.

Robust data is required to accurately assess the success of any program or strategy, as well as detecting emerging contaminants in waste streams. The physical bin audits conducted by councils are helpful for measuring the quantity and composition of average household kerbside waste. Consistent methodology is critical for state-wide comparisons over time. The EPA should therefore fund these surveys on an annual basis.

Resource recovery and circular economy outcomes

3. What options exist to facilitate better circular economy outcomes and improve certainty for innovation, business, investment and participants within the resource recovery framework?

Private industry requires a consistent resource stream to be profitable and to have the confidence to invest in infrastructure and new technologies. Industry therefore requires greater certainty, flexibility and transparency from the RRF to advance the circular economy. Without this, councils only have access to limited service and contractor options to meet NSW Government targets. Over the past five years, there have been significant disruptions to NSW's waste and recycling sector. Sudden regulatory changes like the MWOO ban discourage industry to invest in innovative waste infrastructure. Particularly smaller-medium sized companies, which leads to decreased market competition.

Rebalancing EPA's Responsibilities

The EPA has regulatory, policy, education and funding functions. From a council perspective these functions appear to operate as silos and there is little information exchange or cooperation. It does however appear that the regulatory arm has a greater influence (irrespective of risk), which is having a detrimental impact on developing a circular economy.

One option would be the establishment of a new dedicated resource recovery and recycling entity driven to implement rapid changes in the sector. Another would be to identify a risk based approach with increased flexibility for stakeholders generally, but especially during extenuating circumstances (particularly for low risk materials). NSROC would also welcome improved communication between the different areas of the EPA and their stakeholders.

A recent example is the fire at the Cleanaway Liquid Waste Facility in St Marys on the 19th April. This has resulted in CRCs not being able to accept oils, paints, aerosols, household batteries, gas bottles and fluorescent tubes/globes for potentially 3 months. There has been little communication from the EPA to impacted councils, let alone the provision of alternate strategies including sites for temporary stockpiling or an alternate contractor. Increased illegal dumping of these waste materials is already being observed by our member councils and it is likely that these problem waste items will also end up in kerbside collections and go straight to landfill. This is simply not acceptable.

In the case of Chemical clean out events funded and organised by the EPA, the project arm was keen to deliver events that were scheduled for this month, while the regulatory arm was not able to confirm whether the materials could be collected. This caused great concern to the impacted council who had done extensive advertising and risked a community backlash if the event were to be cancelled at short notice. The EPA was also noticeably absent during the disruption to waste services due to damage to the main southern rail line in March. Part 9.1, section 284 of the *POEO Act 1997* enables the EPA to exempt

any person from any provision of this Act or the regulations, in the circumstances referred to in subsection (2) which includes emergencies or circumstances where it is not practical to comply with the relevant provision and the EPA is satisfied that non-compliance will not have a significant effect on public health, property or the environment and the Board of the EPA approves the granting of the exemption. It is not clear under the RRF how to apply for an exemption, particularly during an emergency. A streamlined process is required.

WaSM plans to address the need to 'identify and map waste facilities at high risk from severe weather events, including consideration of waste transportation, storage, processing and disposal'. NSROC looks forward to engaging with the EPA on this issue in mid-2022 and requests that the RRF review considers mandating appropriate contingency planning by industry to be eligible for orders/exemptions/licencing.

Waste levy

Transitioning to a circular economy will require funding for research and development, pilot projects, proving concepts, changing business practices to facilitate the circulation of resources and developing new funding models and infrastructure.

The waste levy is collected to disincentivise landfill and promote recycling and waste recovery. NSROC recommends that a greater proportion (at a minimum in line with Victoria and South Australia) of the revenue raised from the waste levy should be returned to waste and resource recovery to invest in the circular economy. The Circular Economy in NSW Report states that in less than 5 years, the circular economy could add over \$7.6 billion to NSW's GSP and provide 50 000 jobs (NSW Circular, 2020) However, the NSW Government has only committed approximately \$60 million in funding a year to deliver the Waste and Materials Strategy (WaSM), from over \$750 million dollars generated through the waste levy annually. Investment in the circular economy would provide a better return than directing the majority of the waste levy to general revenue.

Councils in the Sydney Metro area in particular, have been struggling with the staggering cost increases of providing waste delivery services to their communities over the past decade. This is predominantly due to a lack of infrastructure and competition. It would be useful if the RRF could ensure additional services and financial assistance were made available to small-medium sized businesses to provide a more level playing field. Particularly in the innovation space.

The waste levy should permanently fund the full cost of establishing and operating Community Recycling Centres (CRCs), drop off events and mobile options, e-waste support, litter and dumping projects and annual council waste audits.

Infrastructure

Appropriate infrastructure is required to manage waste and re-process resources into new products, as well as keep costs down for local communities. Greater investment in strategic infrastructure is required by the state government including transfer, recycling, storage and transport assets. Strategic planning should ensure the availability and protection of zoning of lands to cater for the required waste and resource recovery infrastructure to meet the needs of DPIE's 'NSW Waste and Sustainable Materials Strategy: A guide to future infrastructure needs'. Planning for best practice waste management systems requires access to major transport links including rail.

Waste and resource recovery services (including the associated infrastructure) require the same level of importance and planning provisions as electricity and water, to ensure these services can be provided at a reasonable cost to residents. The provision of garbage (waste services) is listed under the *Essential Services Act 1988* along with energy supply, public transportation, public health services and water supply. The current system does not treat waste and resource recovery as an essential service, which is leading to poor waste recovery, let alone a circular economy. Alignment of the planning and resource

recovery frameworks to deliver consistent outcomes will improve local government's ability to recover resources.

Pilot studies

Pilot studies are critical to determining the feasibility of further developing and scaling new technologies and processes. They are not specifically provided for under the RRF. A fast-track licence or other mechanism should be developed for pilot projects. This has proven very successful in Victoria. The pilots could be subject to more frequent and rigorous testing, based on the risk of the initial material, output material or technology. Once the EPA is satisfied with the risk level that the technology or process poses to human health and the environment, industry can go through the order/exemption application process, if they believe it is feasible to scale.

Community Recycling Centres (CRCs)

CRCs play a critical role in diverting problem waste from landfill and reducing illegal dumping. Providing permanent and full funding for increased material types including (but not limited to) all e-waste, polystyrene, soft plastics and textiles. Furthermore, the EPA should expand its collection contract at CRCs to these waste streams.

Managing the volume of waste that comes into CRCs can be challenging. Particularly for hazardous items. CRCs are licenced to hold particular volumes, but they may get spikes in drop-offs or collections may be delayed. A more flexible system is required which enables short-term increases or a % buffer.

Product stewardship

Product stewardship schemes should be encouraged to ensure uptake and oversight across relevant industries. These schemes should be flexible enough to facilitate stakeholder input and buy in from industry and local council who will be required to assist with collections either through CRCs or kerbside collection services.

4. What specific benefits would an 'end of waste' provision deliver that aren't already provided by the current framework?

There is a lack of clarity about when 'waste' transitions into a 'resource' in NSW. This results in industries wishing to engage in the resource recovery space undergoing stringent licencing requirements and other reporting measures unless specifically exempted. In many cases hindering organics processing, Alternative Waste Treatment (AWT) and Materials Recovery Facility (MRF) outputs. 'End of waste' describes when waste ceases to be waste and becomes a secondary raw material, and how to distinguish between waste and by-products. Queensland and South Australia have adopted this distinction and NSROC recommends comparing and contrasting their frameworks to develop a suitable 'end of waste provision' for NSW's RRF.

5. Are there resources being recovered or re-used outside the current exemption framework that would benefit from greater regulatory clarity?

Non general orders and exemptions should be reviewed as part of the RFF process, based on the risk principles discussed in question 1. Materials of low risk for different uses should be made general resource recovery orders and exemptions. The general orders and exemptions should be reviewed on a regular basis to reflect new technologies, processes, uses and testing regimes.

There is merit in publishing the specific orders and exemptions (removing confidential information) as a resource for other waste generators and processors and signalling that the EPA has prior experience with the material in question and building industry confidence.

Mixed Waste Organic Material (MWOO) is one of the best known examples in the waste industry, where innovation has led to negative consequences for industry and local government. General orders and exemptions were revoked at short notice, resulting in there being no legal use for MWOO, other than landfill. This had significant implications for councils' collecting and processing contracts and resulted in a loss of sellable product for industry. This experience also damaged the confidence and willingness of industry, financial institutions, local government and end-users to invest in innovation.

NSROC recommends that general orders and exemptions should be reconsidered for the use of Waste Organic Material WOO for mine site rehabilitation. Other potential uses should also be explored

With Food Organics and Garden Organics (FOGO) being mandated by 2030, there are grave concerns that it may face similar obstacles as MWOO. The waste sector is specifically concerned about the presence of per- and poly-fluoroalkyl substances (PFAS) and Phthalates in FOGO output material. What research work is the EPA doing to ensure this doesn't become an emerging issue? What guarantees do councils have over service and contractual risks given most Sydney councils will lock into long term contracts?

FOGO's general resource recovery order and exemption needs to be reviewed in line with the FOGO mandate to ensure a smooth transition and successful implementation. Currently under the Compost Order 2016, whether compostable caddy liners, food soiled cardboard and paper packaging and animal waste are considered compost contaminants is inconsistent between the FOGO use instructions and the compost order.

6. Does the current waste definition facilitate circular economy outcomes while ensuring the protection of the environment and human health? If not, what changes do you suggest?

The current definition of waste under the *POEO Act 1997* is broad and includes (but is not limited to) any discarded, rejected, unwanted, surplus or abandoned substance. A substance is not precluded from being waste merely because it is or may be processed, including substances that are applied to land or used as fuel (but only in the circumstances prescribed in the regulations). If we wish to transition to a circular economy, a distinction between the definition of waste and resource is critical in the *POEO Act 1997*. This will shift attitudes and actions from the community to industry and assist increase diversion and reuse rates. Community members are more likely to engage in resource recovery (especially recycling) if they are confident their efforts do not end up in landfill and industry will be provided with more confidence and less restrictions around licencing, orders and exemptions.

The administration of the resource recovery framework

7. How could the overall transparency and clarity of the resource recovery framework be improved?

The RRF can be clarified by providing more information on the EPA website about it. Even those working in the industry are unclear about what it entails and what its purpose is. *The Resource Recovery Framework Review Issues Paper* provides a good explanation of how the different legislation and policy tools fit together to form the framework (page 11) and what its objectives are. This should be incorporated into the EPA website.

The resource recovery order and exemption process would benefit from more clarity of the process involved, including the path to approval (as a flow chart), which departments are involved and how the risk is assessed. As well as timelines. The Issues paper notes the timeframe for assessing applications can be lengthy, averaging around 4 weeks for simple applications. LGNSW reports that the timeframe taken to assess applications is too long, which is not good for industry. This information should also be displayed on the website.

Written, detailed instructions for applying for orders and exemptions are available on the website. To improve clarity and efficiency, NSROC recommends that a template be produced, to avoid the number of incorrect applications that the EPA is receiving.

The technical advisory group (described in question 2), or any other technical group should be displayed on the website, as is the EPA board.

Introduce appeal rights and timeframes for decision-making with respect to resource recovery order/exemption applications and introduce decision making procedures with respect to important decisions made by the EPA including decisions to revoke an exemption order. The only current right of appeal is through the Land and Environment Court. This only discourages smaller players from contesting decisions. A more equitable option is required.

8. What tools, systems, data or methods could be used by the EPA to better understand the waste being utilised under the framework?

Robust data is critical to determine the success of any program. There would be great benefit in the EPA collecting state-wide data and making it publicly available. As part of the RRF review, a database should be designed and developed that incorporates NSW Local Government Waste and Resource Recovery (WARR) data, council bin audit (discussed in question 2) data and data contributed from waste recovery and reprocessing, presumably as part of licences/orders/exemptions. The EPA is in the unique position where it can access industry data that is normally considered commercial in confidence. Refinement of the data collected would be required to ensure the categories of waste materials for example are consistent between the data sources. The data would enable the EPA to determine whether its targets have been met as well as determine areas where more investment is required in new infrastructure or technologies. Councils would be able to access waste and resource recovery data of their own LGA, which they currently do not have access to because industry is reluctant to share this information. Even if they have contracts with council. Members of the public would be able to access some of the data, allowing them to participate in its analysis and increasing their trust in resource recovery in NSW. Experience has demonstrated that open access to data leads to previously unimagined innovation opportunities.

9. What processes could the EPA put in place when determining whether existing orders and exemptions should be amended or revoked due to environmental or human health risks?

The independent technical advisory group (discussed in question 2) should be involved in assessing the need for amending or revoking orders and exemptions. There should be transparency and communication with the relevant stakeholders through the entire process. The EPA should undertake and publish a regulatory impact study to inform the decision, based on (but not limited to) environmental and health impacts of BAU, as well as the economic and resource recovery risks associated with the proposed amendment or revocation. The speed at which these changes take place should be commensurate with risk to human health and the environment. Where possible, alternate options should be supplied.

Local government and industry should also be able to appeal order and exemption revocations, through avenues other than the Land and Environment Court.

Enforcement of the resource recovery framework

10. How could the framework be strengthened to ensure responsibility along the whole supply chain – waste generator, transporter, processor, transporter and consumer?

Under the *POEO Act 1997*, councils have powers and responsibilities for investigating and prosecuting certain breaches of the waste and pollution offences. Councils are a regulatory authority for activities in their local government areas which are classified as 'non-scheduled activities'. That is, for all waste and pollution-related matters which are not regulated by the EPA, councils are the 'regulatory authority'. Councils have broad power to issue clean-up notices in relation to pollution incidents (but not waste offences). To tackle illegal dumping incidents, the framework should increase local deterrence and enforcement mechanisms for illegal dumping by amending the *POEO Act* to authorise councils to issue the same level of fines for illegal dumping as the NSW EPA.

There are concerns that compliance is more likely to be directed at consumers of recovered waste than by other stakeholders in the resource recovery supply chain. Consumers should be able to rely on certificates of compliance from producers and have certainty around the use of a product. This could be achieved by amending the *POEO Act 1997*. If this cannot be achieved, then the resource recovery sector and the development of end markets are threatened.

11. What are the strengths, weaknesses and challenges of using the waste classification guidelines and definitions in the context of operating within the resource recovery framework?

The waste classification system was developed primarily to group wastes to manage their risk to human health and environment. The six waste categories are:

1. Special waste
2. Liquid waste
3. Hazardous waste
4. Restricted solid waste
5. General solid waste (putrescible)
6. General solid waste (non-putrescible)

The waste classification system should be reviewed to see if it can better support the circular economy.

Overall NSROC is firmly of the belief that changes are required to the RRF if its goal is to divert waste from landfill and support circular investment while maintaining protections for the environment and human health. These include (but are not limited to):

1. Proper consideration of waste and resource recovery as an essential service
2. Improving planning and increasing investment in strategic infrastructure
3. Reviewing and increasing the proportion of the waste levy that is returned to resource recovery and the circular economy
4. A more flexible EPA that operates as a partner with its stakeholders to provide solutions