



Ms Jacqueline Moore  
Acting CEO  
NSW EPA  
Locked Bag 5022  
PARRAMATTA NSW 2124

Email: [resource.recovery@epa.nsw.gov.au](mailto:resource.recovery@epa.nsw.gov.au)

18 May 2022

Dear Ms Moore

**Re: NSW resource recovery framework**

The Waste Management and Resource Recovery Association of Australia (WMRR) welcomes the opportunity to provide feedback on the NSW EPA's Issues paper: NSW resource recovery framework. Thank you for providing an extension to facilitate lodging our submission after the due date.

WMRR is the national peak body for all stakeholders in the essential waste and resource recovery (WARR) industry. We have more than 2,000 members across the nation, representing a broad range of business organisations, the three (3) tiers of government, universities, and NGOs. Our members are involved in the breadth and depth of WARR, including community engagement and education, infrastructure investment and operations, collection, manufacturing valuable products from resource recovered materials, energy recovery, and responsible management of residual materials.

In NSW, the WARR sector remains a key contributor to the state's economy and environment. The value of NSW's WARR sector is estimated to be about \$5.3 billion in 2017-18 across the collection, transport, processing, disposal and recovery (including energy) of MSW (\$1.65 billion), C&I (\$1.54 billion), and C&D (\$1.1 billion); the approximate value of recovered materials for that period was \$1 billion<sup>1</sup>.

WMRR continues to strongly advocate that Australia requires a systems-based approach to managing materials, which must be underpinned by the adopted waste management hierarchy, as we move towards a genuine circular economy that considers carbon mitigation, emphasises product design, extended producer responsibility, and sustainable natural material management, as well as having clear pathways for the use of secondary raw materials in order to keep these in circulation.

Thus, WMRR acknowledges the EPA's efforts in reviewing how NSW can improve its pathways for materials (waste) to be reused. This is a significant piece of work given the current resource recovery framework and the EPA's approach to regulating material management have had obvious detrimental impacts on the WARR industry, including concern about investing in the sector, particularly as the state's resource recovery orders and exemptions have proven to be overly onerous, are able to be revoked without a regulatory impact statement, and fail to have significant regard for the

---

<sup>1</sup> Inside Waste Industry Report 2017-18: Volumes and Values

**WMRR NATIONAL OFFICE**  
57 ST JOHNS ROAD  
GLEBE NSW 2037  
  
(02) 8746 5000  
[INFO@WMRR.ASN.AU](mailto:INFO@WMRR.ASN.AU)  
  
[WMRR.ASN.AU](http://WMRR.ASN.AU)

precautionary principle. Rather, the current regime often acts as a very blunt instrument that frustrates attempts to create secondary raw materials that would reduce reliance on virgin materials in NSW, serving often to simply erect barriers to moving materials through the supply chain.

While many of the problems related to the current framework are well documented in the issues paper, it does not analyse how the framework should and could underpin the creation of a circular economy in NSW; this may in part be due to the scope of the review, which scrutinises the existing model. It is unfortunate that the review does not adequately address the systemic shortcomings in the current NSW structure, which appear to come from a heavy-handed regulatory approach of preventing what the EPA has described previously as “opportunistic disposal of waste” by producers. This approach is vastly different to those undertaken by other Australian jurisdictions that have taken the opportunity in reviewing their legislative regimes to look at how to create frameworks that facilitate the creation of products that can compete with virgin materials. The review at present does not appear to stretch to this consideration and in the absence of this, NSW will continue to be challenged to reach 80% diversion by 2030.

Further, while the review does highlight the definition of waste (which is too broad in NSW, again impacting NSW’s ability to create a circular economy), it fails to adequately address the role that the generator has in material selection and disposal, as well as classifying materials correctly (not just for disposal to landfill). It is WMRR’s view that the NSW regime requires a significant paradigm shift supported with a systemic review of the current legislative framework to enable the movement of materials through the productive economy, keeping them at the highest and best use for as long as practicable.

WMRR’s full submission, which notes additional challenges as well as articulates potential solutions, can be found below. WMRR would however, highlight the following key recommendations that we believe would enable NSW to improve and enhance its recovery and management of secondary raw materials:

- Moving to a **General Environmental Duty** framework to ensure that resources can move through the supply chain and continue to be reused, repaired, and re-manufactured, coupled with a **Declaration of Use** regime.
- **Clarifying clearly material inputs** to ensure that they meet the regulations imposed on WARR outputs; an example of this being a clear statement of the packaging allowed in the current compost order given the lack of alignment with council specifications for inputs.
- Developing and adhering to nationally consistent and adopted **testing and sampling** approaches such as NATA and Australian Standards testing regimes (as opposed to bespoke sampling and testing as was proposed in the draft Recovered Fines Order and Exemptions exhibited in February 2022), while ensuring that the NSW EPA’s approach to contaminants is in line with all other jurisdictions in Australia, including, for example, asbestos.
- Creating **end of waste pathways** and revising the state’s **definition of waste** to ensure that circular pathways such as re-use can occur.
- Developing a **separate statutory body** with a ring-fenced fund, similar to Sustainability Victoria and Green Industries SA, that will drive market development for secondary raw materials (as well as other strategic policies), built from a positive approach of creating

**WMRR NATIONAL OFFICE**  
57 ST JOHNS ROAD  
GLEBE NSW 2037

(02) 8746 5000  
INFO@WMRR.ASN.AU

**WMRR.ASN.AU**



products from these materials. Meanwhile, the EPA should continue its role in regulation, compliance, and enforcement.

Please do not hesitate to contact the undersigned if you would like to further discuss WMRR's submission. Thank you.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'G Sloan', positioned below the 'Yours sincerely' text.

Gayle Sloan  
**Chief Executive Officer**  
Waste Management and Resource Recovery Association of Australia

**Submission**



Section	Question	WMRR's response
<p>Protecting the environment and human health</p>	<p>What other risk-based approaches, sustainability principles or criteria could be used to assess and manage the environmental and human risks of resource recovery?</p>	<p>As noted in the issues paper, there are several challenges associated with NSW's current resource recovery framework and the overarching theme is that the EPA's resource recovery orders and exemptions have proven to be overly onerous, subjective, and lacking in transparency, with the process also being both time consuming and costly. Further, some orders tend to be overly prescriptive or suitably vague, causing uncertainty for industry.</p> <p>The regime as it stands does not look to create secondary raw materials for use in a circular economy; rather, it regulates "waste disposal" and in many ways, manages this closely to avoid what is perceived in part as opportunistic waste disposal and levy avoidance. The regime neither pays appropriate regard to the precautionary principle, nor where this material has been generated.</p> <p>As detailed further in the next section, the framework, despite being a "resource recovery" framework, does not enable an end of waste process whereby the material transitions to a "resource" and out of the "waste system". The continued emphasis and language around waste management as opposed to resource or material management once the material's productive use as a secondary raw material has been demonstrated and has met all the requisite testing/specifications, is problematic particularly as the objective of this framework is to enable the re-use of materials. These complexities create barriers when marketing products and given no such requirements exist for virgin material, result in the latter being preferred, at times causing greater environmental harm.</p> <p>This review, which WMRR welcomes, presents a significant opportunity for the EPA to build a forward-thinking, future-proof framework that importantly, promotes and supports the development of products made from secondary raw material and lends itself to national harmonisation. WMRR continues to advocate for a consistent national approach to material management, including managing waste as a resource, and if the NSW government is genuinely committed to driving greater circularity in the supply chain and reducing carbon emissions, then WMRR strongly recommends that the EPA considers South Australia's</p>



		<p>General Environmental Duty (GED) framework, which has also been rolled out in Victoria, supported by Declarations of Use.</p> <p>A GED model creates a practical framework that enables the recovery of materials that can be used safely through the supply chain. Importantly it imposes a positive obligation on a person who is engaging in an activity to proactively eliminate or otherwise reduce risks of harm to human health or the environment from pollution or waste ‘as reasonably as practicable’, it also requires that the material is ‘fit for purpose’, creating the ability to compete with virgin material in a far more realistic, time managed process for approval.</p> <p>While WMRR acknowledges the EPA’s efforts in reviewing how NSW can improve its pathways for materials to be recycled and reused, the regulator should go one step further in considering how waste material is classified at first instance, as well as ensuring that it puts in place risk-based approaches based on where material is derived from as well as material end use. Doing so will allow businesses that are currently managing their environmental risks and following good management practices to continue to ensure compliance and meet their obligations in a less prescriptive and time-consuming manner, without requiring a highly prescriptive and specific NSW RRO to be in place. A national GED framework could also facilitate this with the added benefit of allowing for a genuine national common market for secondary raw materials, greater coordination and collaboration with regulators and other industry stakeholders to improve practices and environmental performance, and reducing unnecessary regulatory and financial burdens that have the perverse effect of restricting the creation and demand for these materials.</p> <p>As such, WMRR urges the EPA to consider how it can move to a GED model and in doing so, collaborate with Victoria and South Australia to drive a nationally consistent regulatory framework.</p>
	<p>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?</p>	<p>Implementing a GED framework in NSW would achieve this by requiring the processor of materials to comply with the framework objectives of developing safe products. If the NSW EPA provided clear and unambiguous guidance documentation on the testing and requirements to be satisfied, allowing private operators to conduct these rather than having to wait on the EPA to have sufficient resources or prioritise this work, then lengthy delays in developing specific RROs could be avoided. Placing this obligation on the processor with the</p>



		<p>supporting declaration of use could ensure that new products are developed from emerging streams in a timely manner.</p> <p>Clear guidelines of emerging contaminants and acceptable levels of use could be developed by national regulators, for example by way of a National Environment Protection Measure (NEPM) based on product use, that could be adhered to by processors. This represents a clear and certain way of managing materials, as well as ensures national consistency - as opposed to the current approach on asbestos which is out of step with other states - which would assist in keeping NSW competitive.</p> <p>Importantly, in being the regulator and therefore the 'custodian' of the environment, the EPA should also place the same emphasis on material inputs to reflect the proposed outputs and chemical levels sought. WMRR proposes that the EPA first addresses municipal FOGO as it is a priority action within the Waste and Sustainable Materials Strategy (WASM). In this area, the EPA must consider and develop clear and definitive statements as to what can go into the FOGO stream, particularly given the presence of PFAS in packaging, and then ensuring that these inputs are reflected in local government specifications within these contracts.</p>
<p>Resource recovery and circular economy outcomes</p>	<p>What options exist to facilitate better circular economy outcomes and improve certainty for innovation, business, investment and participants within the resource recovery framework?</p>	<p>Although the term "circular economy" has been used widely by the NSW government in its WASM and by the regulator, including in this issues paper, there still appears to be a lack of understanding of what a circular economy entails as seen in the EPA's continued reference to "waste", which is designed out (along with pollution) in the first instance in a true circular economy. As the EPA's remit is to regulate "waste" materials, there may be limitations on how much the EPA can influence design and the circular economy in NSW without a shift (as we have seen in Victoria) towards placing the obligation on the generator of waste materials, which would lead to greater consideration of material management (e.g., increased reuse and repair) and value.</p> <p>The question that is still not adequately considered by governments is how generators of products could be required to design waste out in the first instance and if they fail to do so, how they could fund the management of materials to enable re-use and repair. If these do</p>

not succeed, then we must consider how generators could contribute to the costs associated with managing their materials at end-of-life.

To move towards a true circular economy, there must be real shift in focus from the end-of-pipe (i.e., what can we “make” from this “waste”, what “bin does it go in?) to material design and generator accountability. While this may arguably not be in the EPA’s remit (hence the need for a separate agency as discussed later in this submission), it is absolutely in the EPA’s remit to apply the same regulatory focus on material inputs into the economy and therefore the environment, as well as the WARR process. There must be an understanding and an acknowledgement that WARR facilities are recipients of materials, not generators; yet, it is only the WARR industry that carries the contingent liability or products receipted and processed, with severe potential penalties.

Further, as noted in the paper, the definition of “waste” requires a review to ensure it does not inhibit circularity within NSW. For example, surplus donated food to a food rescue service could technically fall within the definition, and therefore would attract the need for a license to receive such ‘waste’ and all the other obligations that goes with this. If NSW wants to genuinely create a circular economy, it must commence a review based on first principles to consider what materials and waste are, and how these should be managed within the regulatory framework.

WMRR reiterates the following improvements to the framework:

- A move to the GED approach, supported by Declarations of Use as highlighted above, where risk-based assessments and determinations are at the centre of application processes, and are funded and driven by processor. Products are to be used only for the purpose(s) declared.
- Guidelines for applicable levels of contaminants and inclusions clearly stated and publicised, depending on intended use of the secondary raw materials.
- A clear ability to trial product development with supporting regulatory pathways, including timely temporary licenses and approvals.
- A balanced and equal regulatory approach towards managing the inputs, i.e., the materials that the WARR industry receipts.



		<p>We also advocate that NSW urgently requires a separate statutory body with a ring-fenced fund similar to Sustainability Victoria and Green Industries SA. This agency's mandate is to progress NSW's transition to a circular economy, including developing policies that focus on material design, sustainable procurement and market demand, and developing a comprehensive infrastructure plan. This work is important and complementary to the EPA's regulatory role, providing the necessary (and currently lacking) strategic support to the regulatory piece; compliance and enforcement of the regulatory framework should remain and be the sole responsibility of the EPA.</p>
	<p>What specific benefits would an 'end of waste' provision deliver that are aren't already provided by the current framework?</p> <p>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?</p>	<p>One of the major issues of the NSW resource recovery regulatory landscape is that the language used makes everything effectively a <i>waste</i>, and therefore, does not recognise the true value and benefits of secondary materials, including job creation, new industries, economic growth, environmental protection, carbon reduction, and more. This in part may return to the view that the framework is inhibiting landfill levy avoidance and "opportunistic disposal of waste". The fact that "resource recovery waste" is an actual term in this paper highlights the existing conflict and confusion.</p> <p>Despite the state government's mandate to increase resource recovery, NSW continues to rely on a problematic definition of waste that defines waste as "<u>any</u> substance that is discharged, emitted, or deposited in the environment... as to cause an alteration in the environment", meaning there are no clear parameters of what constitutes waste; virtually anything could be "waste" and regulated by the EPA. The definition also does not allow for a transition from waste to resource; in fact, it states that "a substance is not precluded from being waste for the purposes of this [POEO] Act merely because it is or may be processed, recycled, re-used or recovered."</p> <p>The introduction of an 'end of waste' provision may at least provide some clarity that a material is no longer a waste; however, it must be noted that this regime and approach has proven to be problematic and time consuming. For example in Queensland where this regime exists, approvals can be extremely lengthy and could also lead to unintended outcomes, including that once a provision is in place for a material stream, it can only be used for that approved purpose. As such, the approach taken in Victoria and SA, which is less interventionist and reliant on government action for individual request, is preferred.</p>



		<p>As mentioned above, language should not be understated as it can drive positive (or negative) connotations and encourage actions that would meet the state government’s objectives. WMRR proposes that the definition of waste in NSW does require urgent review in order to be simplified (it cannot and should not be a catch-all for the EPA and have no boundaries). WMRR proposes a similar definition to the EU, which simply states that “waste means any substance or object which the holder discards or intends or is required to discard”. The revised definition must also include a line stating that when a material receives a resource recovery order and exemption, the material is deemed a resource and is no longer waste.</p>
	<p>Are there resources being recovered or re-used outside of the current exemption framework that would benefit from greater regulatory clarity?</p>	<p>As mentioned above, regulatory clarity is required when translating existing EPA orders into reality. This is an urgent requirement for FOGO as there is a significant disconnect between the current RRO and contract specifications.</p>
<p>The administration of the resource recovery framework</p>	<p>How could the overall transparency and clarity of the resource recovery framework be improved?</p>	<p>WMRR proposes the following framework improvements (in addition to those already mentioned above) that drive much-needed transparency and clarity of the model:</p> <ul style="list-style-type: none"> <li>• A review of the current application process to enable improvements including streamlining of processes, clarity around timeframes and expectations, guidance to assist stakeholders with their applications (e.g., templates), and greater engagement between the EPA and stakeholders during the application process. Additionally, given the ongoing delays in approvals (industry) and claims of inadequacy (EPA), an adequacy review of documents lodged could be implemented (similar to a pre-DA process).</li> <li>• Any regulatory decisions made by the EPA must be subject to regulatory impact assessments and decisions must be based on robust scientific evidence. A right to appeal mechanism must also be put in place.</li> <li>• Improved and timely pathways for evolving licenses, taking into consideration the need for businesses to address materials collected; for example, having to stockpile volumes of recovered glass sand as the users of this material require large volumes at one time and not the daily inputs that are received from households as well as the lack of markets.</li> </ul>



		<p>Ensuring a transparent and independent decision-making process with resource recovery orders and exemptions determination conditions to commensurate with risk, as well as fit-for-purpose standards developed in consultation with industry. Additionally, these determinations must be decided on by an appropriately skilled team that has a clear understanding of – technical, operational, etc. – WARR operations.</p> <ul style="list-style-type: none"> <li>• The costs of sampling and testing present a barrier for recycle to compete with virgin materials. While we acknowledge that these requirements are necessary, we would urge the NSW government to consider what incentives and subsidies it can offer the WARR industry to improve market demand for secondary materials by being market competitive; these can be at least partly funded by monies collected through the landfill levy.</li> </ul>
	<p>What tools, systems, data or methods could be used by the EPA to better understand the waste being utilised under the framework?</p>	<p>There is an opportunity and need to link materials used and land developed within the planning system so that we can accurately capture material flows in NSW.</p> <p>NSW would also benefit from a precautionary approach to material use based on the intended purpose. At present, the approach appears to reduce risk by simply continuing to reduce the level of contaminant applicable.</p> <p>Greater engagement with technical and academics to understand materials and uses is required in NSW. SA creates panels of cross sector experts to assess and understand intended use and NSW should undertake a similar approach to ensure that the EPA has contemporary scientific and industry knowledge.</p> <p>There are in existence, a number of standards and specifications for the use of secondary materials, many of which are national. In the first instance, the EPA should establish a database of these specifications and commit to transitioning a material from waste to resource if it meets these specifications. Standards and specifications are critical as they provide the market with confidence about alternative recycled materials that could be used and also address the perception of quality of these materials.</p>
	<p>What processes could the EPA put in place when determining whether existing orders and exemptions</p>	<p>Consistent monitoring of these approvals when they are in place is necessary. Proposals to revoke an approval should never come as a surprise to operators when there should have been ongoing monitoring and engagement.</p>

	<p>should be amended or revoked due to environmental or human health risks?</p>	<p>A panel, similar to the model in SA, should be engaged in the consideration or amendments or revocations as these must take into account contemporary expert information on the impacts and final decisions based on robust scientific evidence, all of which must be made publicly available.</p> <p>As highlighted above, any regulatory decisions made by the EPA in relation to existing orders and exemptions must be subject to regulatory impact assessments, with a clear appeal mechanism put in place.</p>
<p>Enforcement of the resource recovery framework</p>	<p>How could the framework be strengthened to ensure responsibility along the whole supply chain – waste generator, transporter, processor, transporter and consumer?</p>	<p>There are a number of proposals, some of which have been discussed in varying degrees over the years between the EPA and industry, that could strengthen the framework and ensure shared responsibility throughout the supply chain. WMRR highlights the following:</p> <ul style="list-style-type: none"> <li>• Waste tracking: in relation to C&amp;D waste, there needs to be stronger linkages between the state planning system and the EPA’s WARR model. Waste should be tracked from the DA stage till its final destination and the EPA should make linking the waste plan with a DA mandatory. This will assist in ensuring companies collect and provide accurate information in relation to volumes and contamination and assist the EPA with tracking contaminated material flows. The EPA could then expand its existing online waste tracking system, which is currently used to track hazardous waste, to also capture all material flows (C&amp;D and beyond).</li> <li>• Progressing the unexpected asbestos finds protocol to enable reasonable and workable pathways in the event of an unexpected find. These types of guidelines should be replicated across different types of known contaminants.</li> <li>• As a matter of urgency, WMRR is calling on the EPA to activate its rejected loads register and to determine (and mandate the use of) authorised transporters.</li> <li>• Following in Victoria’s footsteps, NSW should require generators to provide a certificate indicating that they have classified their materials accurately.</li> <li>• Incorporating generators within the regulatory framework and amplifying recent work in NSW related to plastics where there are now powers to influence product design. In the absence of sustainable design requirements that are enforceable, as well as other policy initiatives such as genuine extended producer responsibility (building on NSW’s successful container deposit scheme), we will continue with</li> </ul>



		<p>approaches that solve poor design with no progress on product development that incorporates secondary raw materials.</p> <ul style="list-style-type: none"> <li>As highlighted throughout this submission, NSW should develop and roll out a declaration of use process, as is in place in Victoria, that enables a producer and receiver to meet their lawful place duties. The duty to deposit waste at a lawful place should apply to all industrial wastes, including those intended for reuse or recovery, with the declaration of use being a self-assessed declaration that supports the safe reuse and recovery of materials.</li> </ul>
	<p>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?</p>	<p>There are a number of issues with the current waste classification guidelines and definitions. Most importantly, these were designed to categorise for disposal; however, we are seeking a complete paradigm shift that emphasises recovery of materials and creation of secondary raw materials that can compete with virgin materials. Appropriate and accurate classification is key to successful recovery and product development.</p> <p>There is also no obligation to classify correctly as there are no penalties in the event of failing to do so. However, incorrect classification cannot be understated or ignored. It is a significant shortcoming which leads to issues throughout the supply chain, for example, asbestos receipted at facilities.</p> <p>At present, the orders and exemptions are largely about chemical thresholds. WMRR recommends that the EPA considers end-use specifications instead. Should the secondary material meet these specifications, there should no longer be a requirement to report and/or apply for further exemptions as the material would no longer be classified as waste.</p> <p>WMRR also believes that asbestos, which is now classified under “special”, should be given its own classification.</p>