



NSW Environment Protection Authority

# Response to the Independent Review of the NSW Resource Recovery Framework



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# Foreword

The EPA welcomes the recommendations of the independent review of the NSW resource recovery framework. In 2021, the EPA commissioned Dr Cathy Wilkinson, former head of the Victorian EPA, to undertake an independent review of the resource recovery framework. The review was commissioned to ensure that the best possible protections are in place for the health of communities and the environment and to ensure the framework supports our transition to a circular economy.

The resource recovery framework facilitates beneficial resource recovery and diverts material from landfill, while minimising the risks to the community and preventing harm to the environment. The framework sets the regulatory requirements that apply, or don't apply, when waste is recovered and reused in the circular economy. In 2020–21, more than 22 million tonnes of waste was generated in NSW and approximately two-thirds of it was recovered or recycled within the state.

This response represents the EPA's commitment to improve the resource recovery framework in NSW, building on a range of work already underway. The EPA also commits to continue the meaningful stakeholder engagement and consultation undertaken by both the EPA and Dr Wilkinson throughout the review, and prior to releasing this response.

The EPA will implement a work program to complement existing initiatives identified in the Waste and Sustainable Materials Strategy 2041 (WaSM). The EPA commits to implementing the recommendations of the Independent Review and has provided a response to each of the review recommendations, as outlined below.

## **Outcome 1: Improved administration and decision making**

- 1. EPA to clearly articulate its decision-making considerations for orders and exemptions, in order to:**
  - a) better document and explain how the EPA makes decisions on orders and exemptions**
  - b) ensure that the sector and broader community is aware of the EPA's considerations to provide confidence that the rationale is credible and sound.**

### **Support**

The EPA will publish updated guidance materials for order and exemption decisions, including clearer communication of the EPA's considerations.

The WaSM commits to review the resource recovery framework to provide clear information requirements. The EPA has already started preparing a new series of documents that will help to address this recommendation.

- 2. The EPA should consider changes to the drafting of orders and exemptions to make them easier to understand while maintaining their enforceability.**

### **Support**

The EPA will improve the form, structure and content of resource recovery orders and exemptions.

Early in 2022, the EPA undertook public consultation on a review of draft recovered soil and recovered fines orders and exemptions, which used new templates. The EPA will build on this work to satisfy this recommendation.

- 3. The EPA should consider how further transparency could be provided around orders and exemptions. This should include working with stakeholders to investigate how specific orders and exemptions could be made publicly available.**

### **Support in principle**

The EPA is committed to implementing improvements to resource recovery orders and exemptions to enhance transparency.

The EPA will engage with key stakeholders to determine how to further increase accessibility and availability of certain specific orders and exemptions. The EPA will also consider how existing public registers for other legislative instruments (such as environment protection licences and notices) on the EPA's website could be used to support publication of specific orders and exemptions.

**4. The EPA should publish clear and comprehensive guidance materials for the application and assessment of orders and exemptions.**

**Support**

The EPA will consider current documentation relating to the application and assessment of orders and exemptions and publish new and improved guidance materials.

**5. The EPA should publish information regarding how sampling requirements and contaminant limits are generally determined for resource recovery orders and exemptions.**

**Support**

The EPA will publish updated guidance materials that will include information about the determination of sampling requirements and contaminant limits for resource recovery orders and exemptions.

**6. The EPA should continue to advocate for nationally aligned standards with the Heads of EPA Australia and New Zealand (HEPA). This should include issues such as contaminant limits and sampling requirements for recovered resources.**

**Support in principle**

The NSW EPA is a principal member of HEPA, which is an important forum for strategic interventions that deliver good environmental outcomes for Australia and New Zealand. The EPA will continue to actively advocate for consistency in approaches to recovered resources where evidence suggests it is appropriate. This may include issues of contaminant limits and sampling requirements for recovered resources. The EPA will also advocate for consistency across HEPA jurisdictions in relation to any relevant results or recommendations of the scientific review in Recommendation 20.

**7. The EPA should improve clarity of process by establishing and publishing a clear process for the issuing and revocation of general orders and exemptions. This should include investigating options for revocations, including thorough stakeholder engagement.**

**Support**

The EPA is committed to ensuring that the process for issuing and revoking general orders and exemptions is clear. The EPA will develop and publish a clear process for issuing and revoking orders and exemptions.

**8. The EPA should seek the advice of independent technical experts through establishing an expert panel/s and publishing a clear protocol for constituting such group/s.**

**Support**

The EPA is committed to transparent decision-making and evidence-based regulation.

The EPA's Regulatory Strategy 2021–24 outlines the principles that guide our work, including evidence-based decisions and actions. The EPA regularly engages the advice of independent experts to deliver on this principle.

The EPA will establish and publish a clear protocol for constituting and using technical experts and/or panel/s to inform decision-making for resource recovery orders and exemptions. When developing the protocol, the EPA will consider past use of technical experts, and how lessons learnt could inform the process.

**9. The EPA should investigate options for an internal review process for certain decisions on resource recovery orders and exemptions.**

**Support in principle**

The EPA is committed to strengthening the resource recovery framework. The EPA will investigate options for an internal review process for certain decisions on resource recovery orders and exemptions.

## Outcome 2: Considering the definition of waste and improving the regulatory framework

- 10. The EPA should investigate a pathway to enable an “end-of-waste” outcome for suitable common, low risk recovered materials to better enable reuse, particularly for remanufacturing while ensuring the EPA can still address environmentally problematic and undesirable uses and dumping of those materials.**

### Support

The EPA has committed, through the WaSM, to incentivise high-quality resource recovery. This includes investigating options to support innovation and to monitor the effectiveness of changes to the resource recovery framework. In implementing the WaSM, the EPA will consider options to support the use of the resource recovery framework to facilitate innovative circular economy approaches that manage waste and materials more efficiently and reduce emissions. This could include using low carbon recycled materials in the construction and manufacturing sectors.

The EPA will investigate possible reform opportunities that will facilitate the transition to a safe and sustainable circular economy in NSW, including a pathway to enable an end-of-waste outcome for suitable materials. Building on the engagement undertaken as part of Dr Wilkinson's independent review, the EPA will undertake further consultation with key stakeholders to better understand stakeholder perspectives of current limitations of the waste regulatory framework (including definitions). The first phase of this work will be undertaken as part of the review of the Protection of the Environment Operations (Waste) Regulation 2014.

- 11. If the EPA implements an “end-of-waste” outcome, the EPA should review relevant elements of the resource recovery framework and associated guidance materials to ensure language appropriately reflects the transition of waste to resources.**

### Support

If the EPA implements an end-of-waste outcome, it will update any existing guidance materials to ensure language appropriately reflects the transition of waste to resources. Where changes are made through the remake of the Protection of the Environment Operations (Waste) Regulation 2014, the EPA will publish communication materials explaining those changes, the outcomes of stakeholder consultation and any potential implications of an end-of-waste framework.

- 12. The EPA should investigate whether some activities that use, process and/or store recovered materials should be excluded from certain aspects of the waste regulatory framework to reduce administrative and regulatory burdens and enhance circular outcomes.**

### Support

As part of the review and remake of the Protection of the Environment Operations (Waste) Regulation 2014, the EPA will investigate opportunities to streamline the application of the waste regulatory framework to ensure that it is delivering on its objectives to protect human health and the environment while also supporting the transition to a circular economy.

**13. The EPA should seek to work with relevant agencies across government to develop a resource recovery innovation pathway to support the development, demonstration and assessment of new and innovative technology and processes. This could include consideration of approaches across the environment protection and environmental planning legislation.**

**Support in principle**

The EPA gives in-principle support to the development of an innovation pathway for resource recovery while maintaining protections for the environment and human health. The EPA will seek to work with other government agencies to develop a resource recovery innovation pathway, subject to Government approvals.

The EPA has already made a number of commitments to investigate and develop innovation pathways:

- Under the WaSM, the EPA has committed to review existing regulatory tools and frameworks, to ensure regulatory settings support circular investment and innovation while maintaining protections for the environment and human health. This includes reviewing the resource recovery framework to provide clear information requirements and to facilitate feasibility and viability testing of innovative business models, technologies or processes.
- Under the WaSM, the EPA will publish research analysing the lifecycle costs and benefits of the materials consumed in NSW and emerging resource recovery markets and priority materials to signal opportunities for investment and innovation.
- Under New Action 10 of the Climate Change Action Plan 2022–25 the EPA has committed to encourage and support the regulated community to innovate. This includes exploring new ways to provide a regulatory environment that fosters and stimulates innovation.

The NSW Government, in its Response to the Energy from Waste report from the NSW Chief Scientist and Engineer, has committed to deliver a recommendation to establish and communicate a pathway to enable asset and process innovations to be tested and trialled.

The EPA will consult with key stakeholders in the design of the innovation pathway to ensure it is targeted appropriately.



## **Outcome 3: Enabling high quality materials to facilitate circularity**

**14. The EPA should periodically develop and publish regulatory plans targeting specific waste and resource recovery industry sectors. The plans should make better use of the full range of elements in the EPA's regulatory approach, outlined in the Regulatory Strategy 2021–2024, by identifying the specific elements that the EPA intends to use. Plans should also include more opportunities to engage with stakeholders.**

### **Support**

The EPA will develop and publish regulatory plans to target specific waste and resource recovery industry sectors. The EPA's Regulatory Strategy 2021–24 outlines the eight elements of its regulatory approach – influence, listen, educate, enable, act, enforce, monitor and require. Regulatory plans will ensure that actions are clearly linked to specific regulatory elements, including more opportunities to engage with stakeholders.

Regulatory plans will build on the EPA's existing compliance audit program, which audits resource recovery orders and exemptions on a priority basis and could be published to better inform industry participants of the EPA's current compliance priorities. The EPA has also begun an education and compliance program for the Recovered Fines Resource Recovery Order.

**15. The EPA should consider the regulatory elements available under the Regulatory Strategy 2021–2024 and determine how they could be better applied to achieve higher quality materials from waste generators.**

### **Support**

The EPA will consider how regulatory elements could be better applied to achieve higher quality materials from waste generators. This will build on work already undertaken by the EPA to identify priority themes and address them using a range of the eight regulatory elements, applying a risk-based approach to address the highest risks to human health and the environment.

**16. The EPA should seek to liaise with relevant planning authorities to investigate embedding requirements for improved waste management practices by waste generators, including through planning instruments and development consents.**

### **Support in principle**

The EPA will seek to liaise with relevant planning authorities to investigate embedding requirements for improved waste management practices by waste generators in the planning framework.

The EPA recognises its role as a leader in improving waste management and environmental outcomes across NSW and government. The EPA is well-placed to influence improved waste management practices by waste generators in the planning framework through its centralised planning team. The team provides a single point of contact for planning matters and regularly liaises with planning authorities to advocate for environmental improvements.

**17. The EPA should review the role and application of the NSW waste classification system to the resource recovery sector.**

**Support**

The EPA will review the role and application of the NSW waste classification system to the resource recovery sector. This commitment will build on work already underway by the EPA:

- As part of the review and remake of the Protection of the Environment Operations (Waste) Regulation 2014, the EPA will investigate the issues and opportunities for reforms to the NSW waste classification system.
- In an effort to combat waste fraud and illegal dumping, the EPA also intends to work closely with industry to shape and progress proposals to establish an accreditation scheme for waste classifiers and expand licensing requirements for waste transporters.

**18. As part of a regulatory plan for the waste and resource recovery sector, the EPA should investigate ways to enhance protections for consumers of recovered resources and place greater responsibilities on waste generators and processors. This could include through compliance campaigns targeting resource recovery orders and exemptions and other safeguards.**

**Support**

The EPA is committed to improving protections for consumers of recovered resources and ensuring that waste generators and processors take responsibility for the waste they produce.

As part of a regulatory plan for the resource recovery sector, the EPA will investigate ways to enhance protections for consumers of recovered resources and place greater responsibilities on waste generators and processors. This will build on existing programs, including the EPA's environmental audit program for resource recovery orders and exemptions and existing risk-based regulatory program and activities, which is currently focused on the compost industry sector and education about the Recovered Fines Resource Recovery Orders and Exemptions.

**19. The EPA should investigate opportunities for the increased collection and publication of resource recovery data that could assist in the transition to a circular economy, including collection and publication of the generators and processors operating under a resource recovery order.**

**Support**

The EPA will investigate opportunities for increased collection and publication of resource recovery data to assist in the circular economy transformation. This links to the EPA's Strategic Plan 2021–24, where the EPA has committed to build a data and digital strategy that will invest in scientific analysis and data.

To track progress against the EPA's targets for resource recovery, we will improve how we collect, manage and use data. We will seek opportunities to create more accessible and collaborative approaches to data collection and reporting, including through the EPA's Data and Analytics Strategy 2021–24.

We will also report annually on our progress under the WaSM.

The EPA will separately contribute to creating a nationally consistent hazardous waste tracking and data system under the WaSM, including access to higher quality data and end-to-end regulatory oversight between jurisdictions.

## **Outcome 4: Improving approaches to known and emerging contaminants**

- 20. A scientific expert external to the EPA should review and provide advice on the NSW approach to management of asbestos contaminants in waste and recovered materials. The review should include, but not necessarily be limited to protection of human health and the environment and consideration of opportunities and constraints of beneficial reuse.**

### **Support**

The EPA supports engagement of an external scientific expert to review and provide advice on the NSW approach to management of asbestos contaminants in waste and recovered materials. The review should include, but not necessarily be limited to, protection of human health and the environment and consideration of opportunities and constraints of beneficial reuse.

The EPA has led the coordination of asbestos safety initiatives via the NSW Asbestos Coordination Committee (NACC) since 2018, to outline priority issues and objectives and to reduce exposure to asbestos in NSW. The EPA will identify synergies and utilise NACC expertise when providing any input into any terms of reference for the review.

- 21. Taking into account the advice of the external scientific expert, the EPA should consider how existing approaches to management of asbestos contaminants in waste and recovered materials could be improved.**

### **Support in principle**

The EPA will consider advice from the external scientific expert on the NSW approach to management of asbestos contaminants in waste and recovered materials and will determine how existing approaches to management of asbestos contaminants in waste and recovered materials could be improved.

- 22. The EPA should implement a program to proactively investigate emerging contaminants and better engage with stakeholders regarding emerging contaminants.**

### **Support**

The EPA will implement a program to proactively investigate emerging contaminants. The program will include a stakeholder engagement plan. This work supports the EPA's Strategic Plan 2021–24, which sets one of five focus areas for the EPA as 'legacy and emerging contaminants'. The EPA has been working on this focus area and considering strategic opportunities for the future.

