



WASTE CONTRACTORS &
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OF N.S.W

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20th May 2022

The Hon. James Griffin
NSW Minister for the Environment & Heritage
GPO Box 5341
SYDNEY NSW 2001

By e mail as a PDF file to Bethany.West@minister.nsw.gov.au

Cc Mr Christian Dunk Christian.dunk@minister.nsw.gov.au

Dear Minister

Thank you for meeting with WCRA representatives on 11th May. Whilst it was disappointing that our meeting was cut short, we do appreciate the time that we had with you, and your engagement on the issues raised.

For your convenience, we have attached a copy of our speaking notes from this meeting.

Some of the issues that we started to discuss include -:

- NSW legislation has been interpreted by the courts to have a zero tolerance for asbestos. The legislation does not have any regard to appropriate levels of management and due diligence, with no provision for a due diligence defence. This presents an unworkable framework in a context where asbestos fibres are ubiquitous in the material that is processed and recycled by the construction and demolition sector. To ensure that construction and demolition waste can be recycled, with acceptable levels of risk, we request that relevant legislation is reviewed (including the POEO Act and the Waste Regulations) to reduce liability when appropriate due diligence is applied, and in the case that concentrations of asbestos contamination are trivial. WCRA would welcome any opportunity to work with your office on addressing these issues and concerns.

- It is clear that waste processing and disposal infrastructure has been underinvested in NSW over the last 20 years. This underinvestment was evident during the recent unprecedented rain events in early 2022. Despite the easing of weather conditions, waste transfer stations and landfills continue to experience operational problems and regular closures. This has resulted in waste transporters having great difficulty in delivering reliable and essential waste services to many parts of the community. It is evident to all stakeholders, including the government and regulators, that NSW has limited disposal options for Sydney's waste, and we are lacking an infrastructure network to safely address our essential waste management disposal needs. In light of these ongoing challenges, WCRA strongly urges you to call an urgent summit to define these problems and seek solutions for a way forward.
- In October 2019, Minister Kean requested the need for what he called a 'sandbox' to allow innovation in the resource recovery space without interference from the EPA on regulatory requirements. This 'innovation lab' would work with industry and the science community to fast-track circular outcomes and at the same time transform items (currently defined as waste in NSW) into feedstock for manufacturing and at the same time chaperone new technologies through the planning process. Victoria provides this type of assistance via Sustainability Victoria and Infrastructure Victoria. WCRA would welcome any opportunity to work with your office on developing this idea and the adoption of an 'end-of-waste' policy to align with the State's circular economy aspirations.
- WCRA requests that the NSW EPA establish a policy reference group comprising members of the waste sector (pre and post processing), members of the community, and relevant scientific expertise to engage in focused and meaningful consultation before draft policy is released for consultation. The recent policy proposal to revoke the Recovered Fines Order and Exemption was very difficult for all parties (industry, NSW EPA and the NSW Government). These difficulties could have been avoided with a policy reference group collaborating with the EPA to arrive at a workable solution that would deliver improved recycling rates whilst protecting the environment and human health.

We also take this opportunity to highlight the following-:

- We discussed the importance of meeting with you again to continue this direct engagement (with a date & time TBC by 31st May 2022).

- We invite you to address our Members at the next WCRA breakfast briefing Tuesday 8th November (7.30am, venue TBC in Lidcombe or Silverwater)
- It would also be a great pleasure to have you join us at the WCRA annual dinner Friday 9th Dec. 2022 (7pm Warwick Farm)
- We appreciate that you have a busy schedule, but with WCRA representing 210 Members, your attendance at our events will assist you and your Government in your waste management and resource recovery ambitions.

We look forward to your review and advice.

Yours faithfully

Tony Khoury
Executive Director

Attach.

How can EPA better connect with business? (the need for a commercial reference group; business representative on EPA Board; a more effective Waste Advisory Group; a waste management advisory group to Government with EPA as a Member). If we get this right, together we will achieve better resource recovery outcomes, create more jobs & promote more innovation

- ✓ EPA staff have repeatedly stated to WCRA that their focus is on protecting the environment and human health
- ✓ EPA staff also state that they do not consider or place any great weighting on the business or economic or social impacts of their decision making
- ✓ To achieve the diversion targets in the NSW waste strategy, NSW requires infrastructure & investment from the commercial sector.
- ✓ The commercial sector requires certainty as well as adequate time & rate of return, which all are key parts of the investment decision process. These considerations are significant as investment decisions require approval of financiers, banks, Board, etc.
- ✓ At present, infrastructure is significantly lacking in NSW, an issue that was both exacerbated and brought to the fore during the recent unprecedented rain events in early 2022. It was evident to all stakeholders, including the government and regulators, that NSW has limited disposal options for Sydney's waste, and we are lacking an infrastructure network to safely address our essential waste management disposal needs. In light of these ongoing challenges, it is critical that EPA and the NSW government support the NSW waste management and resource recovery sector by ensuring that the regulatory framework does not hinder legitimate and sustainable resource recovery operations.
- ✓ Organisations such as WCRA invest heavily (time, expertise, money, resources) in making submissions to EPA and we rarely are provided with detailed formal feedback to our submissions. It would be very much appreciated if we were to receive this formal feedback. And if it is a lack of resources that prevents the EPA from addressing this issue, then the EPA needs to be allocated additional resources.
- ✓ The Waste Advisory Group meeting process is ineffective, it is token consultation.

EPA's dual responsibility (regulatory compliance along with resource recovery)

- ✓ **Separation of responsibility for compliance and strategic direction/assessment** - the EPA to date has proven that its desire to regulate and prosecute is far greater than its interest to achieve high resource recovery rates. The current C&D recovered fines issue is an example of this. Recycling operators need a department whose sole role is to ensure high rates of resource recovery and who can have direct access to the Minister for Environment and be able to communicate and argue for better resource recovery issues. WCRA considers that this separation of the responsibilities of strategic planning for resource recovery, planning assessment and regulation would facilitate better circular economy outcomes. Currently, the EPA both sets the strategic direction and rules under the resource recovery regime and enforces it. WCRA considers that the mindset required for regulation and enforcement leads to a resource recovery regime with an undue focus on worst case outcomes at the cost of the compliant majority. Better separation would allow better alignment with strategic planning outcomes and development assessment that facilitates outcomes rather than focusses unduly on compliance risk. For example, an independent body could be created to make decisions on resource recovery orders or their replacement equivalent. The EPA could retain its focus on compliance.
- ✓ **On 10/5/22 EPA advised us they will not revoke the RRO/Es for recovered fines** – EPA have listened to the feedback from the commercial waste sector, including recovery facilities and small businesses. In essence this means that there will be no change to the existing recovered fines orders and exemptions for recovered fines. WCRA is of the view that this is a sensible decision and in the best interests of better resource recovery outcomes. However, the EPA and the NSW Government need to invest additional resources into compliance and monitoring. On behalf of our Members, we look forward to working with all stakeholders for better and more sustainable C&D recycling outcomes.

NSW resource recovery framework (how it can be improved?), as stated by WCRA in our submission to Dr Cathy Wilkinson

- ✓ **Need to rebalance risk** – in WCRA’s view, the balance in the EPA’s consideration of sustainable development has been too heavily weighted towards individual site specific environmental and human health risk over broader resource recovery targets for NSW and the needs of the emerging circular economy. It is not necessarily the considerations that must change, but the weight to be given to each matter. This could be addressed by amendments to the objects of the Protection of the Environment Operations Act, the objectives of Resource Recovery Orders under the Protection of the Environment (Waste) Regulation or the objectives of the NSW EPA.
- ✓ The impacts of the failure to facilitate new and emerging waste is found in **the example of Licella Holdings**, a plastic recycler. The owners shifted their development from NSW to an interstate location due to regulatory burden. This was caused by substantial delays in the NSW regulatory framework, combined with an inability by the NSW EPA to make a prompt decision on this application. As a result, Licella formed the view that it would be far easier to obtain the required approvals in Victoria.
- ✓ **Revision of definition of waste** – an end of waste policy for processed materials would enable a manufacturer to take material currently defined as waste and create a new product.
- ✓ **Need for allowable asbestos limit in RROs and RREs** – the zero-tolerance requirement for asbestos is unworkable.
- ✓ **Due diligence defence if small quantities of asbestos are detected** – the current strict liability provisions are a major deterrent to investors and operators of NSW C&D recycling facilities.
- ✓ **NSW Government** needs to undertake to address these issues by making the required legislative changes

Why our industry should be regarded as an essential, critical service provider?

- ✓ Our Members have raised significant issues with WCRA regarding their ability to provide continuous service to the community, of the standard that is expected, during the pandemic & disasters. The service provided by our members is essential to public health, sanitation and the preservation of the urban and natural environment. Every household, business and community member will generate waste every day. The generation of waste doesn't stop or slow down as an emergency or crisis unfolds (for example, waste workers collect bins on Xmas Day, Good Friday and all other public holidays, because waste generators have collection services scheduled for those days).

Required action

- ✓ WCRA respectfully requests that the NSW Government take steps to ensure that waste industry workers are deemed critical workers for the purpose of all public health orders generally so that essential waste and recycling services can be maintained.
- ✓ To ensure we are better prepared for the next pandemic or emergency or crisis, we request that these changes be permanently embedded in decision making around future pandemics, emergencies and/or disasters. This may require further amendment of the Essential Services Act amongst other changes.

Waste levy review (why the levy should be reviewed now, as opposed to waiting until 2026)

- ✓ **Illegal dumping** – high waste levy rates stimulate illegal dumping behaviour, which is detrimental to the natural environment, the amenity of our urban areas & a significant clean-up cost to local government.
- ✓ **Long distance transport** – collectors take advantage of the high pricing in the NSW market and dispose of the waste in markets where the costs are lower. This has resulted in the transport to SE QLD of many millions of tonnes of waste & recyclables.
- ✓ **Stifles investment in EfW** – there is a concern that the waste levy will be applied to the inputs at EfW facilities and if so, it will make these facilities uncompetitive with lower cost landfill pricing,
- ✓ **High waste levy impacts on bad debt write-offs** – when customers don't pay their invoices, waste operators are faced with the write-off of the debt plus the payment of the waste levy to the NSW government.
- ✓ **AWT was the justification for a high waste levy** – in 2008 the then NSW Premier Morris Iemma was convinced by the AWT sector to increase the waste levy by \$10 pa plus CPI over a 7-year period. We no longer have AWTs, therefore there is a strong case for the waste levy rates to be reviewed (it is a compelling ~\$70/tonne argument)
- ✓ **Residues from recycling** – if we are to encourage more recycling, then the landfill disposal of residues from lawful, bona fide recycling facilities should be waste levy free. Example, flock waste from scrap metal recycling, pit waste from paper/cardboard recycling, etc.
- ✓ **Industrial Liquid Waste Levy** – what happens to these funds? Industry would like a portion allocated for better liquid waste outcomes
- ✓ **Hypothecation of the waste levy** – the percentage is low compared to other jurisdictions & decreasing compared to the Waste Less Recycle More commitment.