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## **Submission: Cleaning Up Our Act: The Future for Waste and Resource Recovery in NSW (March 2020)**

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### **Introduction**

Thank you for the opportunity to provide feedback on this Discussion Paper.

The Boomerang Alliance, our 51 allied organisations, TEC and NCC are particularly concerned about the level of waste generated in NSW and the ongoing failure to meet recycling targets and gain the significant environmental benefits. In addition the need for a circular economy has become vital to a sustainable society and new job creation post COVID-19 restrictions.

The Discussion Paper sets out four directions the NSW Government aims to achieve and seeks our views on these:

1. Generate less waste
2. Improve collection and sorting
3. Plan for future infrastructure
4. Create end markets

Achieving substantial advances in all four directions will require clear intervention by government beyond the previous efforts which have come to the end of their capacity to make further meaningful progress. Prior regulatory actions that have been successful are – the waste levy, a few national product stewardship programs (eg, e-waste), and more recently, container deposits (which should achieve over 80% recycling in a couple of years). Reliance on relatively passive instruments such as limited grants and education cannot be

the main focus upon which to make the comprehensive advances needed in the 5 to 20 years.

We also highlight the need to stress the need for major concrete actions to take effect in the next 3 years. A major review should take place at this time, not in 5 years (a period which has not engendered progress). The notion of a '20 year' strategy can induce a leisurely pace, when the decisions made by government and the waste and recycling sector in the next three years will lay the basis for the outcomes over the next 20 years. The capital investments and long term supply contracts signed in the near future will be determining forces.

Further a whole of government approach is needed based on the UN Sustainable Development Goals. Victoria's Commissioner for Environmental Sustainability reports annually on Victoria's progress on achieving environmental sustainability and these reports expressly incorporate the SDGs. We recommend:

- The NSW EPA and DPIE, under the supervision of the EPA Board, should conduct a complete review of the 17 SDGs (and associated 169 targets) to identify all those relevant to all NSW government agencies with a view to identifying which agencies should lead on each goal and target.
- Responsibility should then be allocated accordingly but with waste and environment protection SDGs allocated to the EPA or the DPIE as appropriate.
- Agencies will then publicly report on actions taken to achieve their allocated SDGs on an annual basis.
- The POEO Act be amended to require all EPA licensees to prepare, submit and implement circular economy plans to reduce their energy and water consumption and minimise their waste generation. These plans must be reviewed and updated at the time of the licence review.
- These requirements can be legislated into the *Protection of the Environment Administration Act 1991* (NSW) (POEA Act).

We note that 'diversion from landfill' which has been a prominent metric, is a crude way to benchmark progress and we urge a more diverse range of benchmarks linked to the circular economy. In this regard we note the options proposed by the PWC report (2019)<sup>1</sup> :

- Embracing a circular economy approach;
- Extended product stewardship and producer responsibility schemes with a potential shift away from voluntary schemes (which some stakeholders believe have not been as effective as co-regulatory or mandatory schemes in reducing waste;

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<sup>1</sup> <https://s3.ap-southeast-2.amazonaws.com/hdp.au.prod.app.nswdpiе-yoursay.files/5515/8277/7055/Key-Findings.pdf> - pp9-10 - accessed 1 May 2020

- Stronger focus on high volume waste streams, such as reducing the volume, complexity and mix of packaging waste materials;
- Development of industries that can re-use or repurpose end of life products;
- Strategies that require generators to keep end of life options (for re-use or recycling) front of mind when designing products.
- Elimination of single use waste materials and the phased transition to a scheme that potentially attaches a levy to single use waste materials;
- Requirements to increase the use of recyclable materials in products which will support the end markets for recyclables;
- Increasing the procurement of recycled materials by industry and government through voluntary or mandated requirements;
- Targeted funding to support investments in R&D, product innovation, new waste processing technology and capacity to support greater levels of re-use and recycling; and
- Strategies to prevent waste being sent directly to landfill without being processed.

We acknowledge the NSW government’s desire for significant change and the potential impact of the national ban on waste exports as recent key developments. We urge similar strong state actions as an outcome of the current consultation process. The following addresses the options for reform in the Issues Paper.

## **1. Generate less waste**

### **1.1 State-wide targets**

As noted above NSW needs to go beyond ‘waste diverted from landfill’. Consequently a range of more important targets needs to be embedded in the strategy, policies and programs. Also as noted above it is the near to medium term targets that are most crucial as these determine the future in 2040.

Ambitious targets for avoidance, reuse and recycling of different materials should be adopted, for example as proposed for recycling by the 2018 EU Circular Economy Package; and the recent national Australian targets for plastic and packaging. A further evolution could be the ‘carbon metric’ adopted by Scotland which measures whole-life carbon impacts of Scotland’s waste from resource extraction, manufacturing through to end-of-life management.<sup>2</sup> The carbon metric involves using the tonnage diversion levels, and then weighting them by applying carbon factors to the materials collected. This carbon factor takes into account the environmental benefits of recycling over landfill.

Further, especially in relation to metal, concrete, food waste, textiles, e-waste, solar panels, ICE vehicles, tyres and fossil fuelled domestic power tools - carefully signalled

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<sup>2</sup> <https://s3.ap-southeast-2.amazonaws.com/hdp.au.prod.app.nswdpipe-yoursay.files/4415/8277/6679/Benchmarking-Review.pdf>, accessed 1 May 2020, p45

and timed landfill bans must be introduced over the medium to long term to drive the recovery of the materials in these resources and protect limited landfill space. This will allow for the necessary recycling infrastructure to be built in the interim.

This should also be accompanied by bans on waste that should not otherwise be sent to landfill, like mattresses or liquid wastes.

### **1.2 Designing out waste**

The key measure here is mandatory product stewardship schemes (PS). The most obvious initial target is packaging and while APCO has some detailed concepts, implementation is voluntary which is a repeat of the past failed approach. We are also aware that environment ministers are investigating PS for batteries, solar photovoltaic (PV) panels, hazardous containers/packaging (including oil containers), waste electrical and electronic equipment (other than televisions and computers) – all should include redesign requirements to facilitate recycling.

From a relevant date set in legislation (eg, 2025), all structures that are being removed, repaired or replaced must be deconstructed with a view to maximising the recycling of the material contained in the structure.

### **1.3 Awareness and behaviour change**

While well designed public awareness campaigns can be useful add-ons if applied over the long term, they are useless if solely relied upon. This is not a matter of messaging and how long it lasts – but it is patently obvious that an individual consumer cannot change industrial processing and marketing settings. Awareness campaigns have been embedded in the belief that the market will deliver the right products, when inevitably there are many free riders and ‘consumer choice’ is a dominant credo of producers.

Active behaviour change programs are more effective when combined with incentives applied across a product range (as noted in the case of container deposits, in the Issues Paper). In this case the messaging is far more potent. Nevertheless, some products such as single use plastic items cannot be effectively and economically linked to a return and recycle program and need to be banned as proposed in the plastics issues paper. In both cases (refund and ban) it is essential to have a well-designed public awareness and industry preparedness campaign.

An additional and important consideration is to extend the Planet Ark recycling label to include a recycled content and compostable metric and enforce the claim a material is ‘recyclable’ by it being actually recycled, or ‘compostable’ by actually being composted - otherwise it will, over time, lose credibility and impact.

It is disappointing that effort was taken to revise the recycling label, whilst nothing was drafted for a compostable label or indeed a potential reusable label on products. This perhaps reflects the priorities of an industry, rather than the priorities of government or the consumer. As outlined, any such label should only be allowed if a producer can also demonstrate the product will be reused, composted or recycled, in practice.

#### **1.4 Targets for government agencies**

These are important as if the government doesn't implement waste reduction and recycling – it simply degrades the veracity of the Plan to other stakeholders.

Government agencies should lead the way and show best practise waste reduction behaviour. Reporting is one element, but to then just 'encourage' waste reduction is of minimal value. We endorse the suggestion there should be mandatory waste reduction and reporting targets.

#### **1.5 Regulatory safeguards**

An upgraded waste strategy will have implications for the waste transport, collection, processing and reuse sectors. Any work to improve regulations should occur in parallel with the introduction of new programs and policies, as occurred with Return and Earn. This will require allocation of sufficient resources. See also Section 5 below.

### **2 Improve collection and sorting**

The waste levy has been instrumental in growing recycling where the material is heavy (eg, construction and demolition waste) and the financial impact is focussed on relatively few generators and collectors. However in the case of municipal waste the impact is very thinly spread across every ratepayer and barely visible. Consequently recycling in the sector has flatlined at an inadequate 42%. Additionally kerbside separation is inadequate with two thirds of material in the red bin, able to be recycled.

Clearly there is a need for significant action.

#### **2.1 Recovering food and garden organics**

Food waste is arguably Australia's largest market and regulatory failure. The Australian Government estimates this costs \$20 billion each year, although this is likely to be a significant underestimate.

Unfortunately, food is wasted in large amounts throughout the food system in NSW, from farm to plate. It still makes up a large amount of waste from households, contributing to a waste of organic material that should otherwise be returned to productive agricultural businesses and support NSW's often nutrient poor soils. This also contributes to significant greenhouse gas emissions when the organic waste undergoes decomposition in anaerobic conditions in landfill.

Fixing the problem of wasted food in all sectors, including in primary production, food manufacturers, transport, wholesaling, retailing (supermarkets), food hospitality and service businesses, institutions (such as public and private schools, hospitals, prisons, TAFEs, aged care facilities and universities) and households, is vital and brings multiple benefits. This will necessarily require linkages with the waste and resource recovery industry as well as the sewage treatment industry as both of these receive food waste or human excrement arising from food consumption. This will be challenging but lessons can be learnt from overseas experience, the Fight Food Waste CRC and through leadership in the current national co-operative approaches on this issue. Fortunately,

the benefits of taking action on food waste for businesses are well established, with the returns on investment varying between 5:1 and 14:1.

The proven success of new tools used in Scotland, Wales and elsewhere where the mandated source separation of food waste in households and businesses generating more than a specified amount of food waste per week (say initially 25 kilograms) for collection and treatment rather than landfill must be introduced.

Further, each sector must review its operations and report on its actions annually with a view to meeting the national and NSW target of halving food waste by 2030.

As stated in the discussion paper, only 32 (mostly regional) of the 128 councils in NSW have a FOGO service, and many councils are still dragging the chain.

Over 50% of municipal solid waste to landfill is organics. The impact of diverting source separated organics to recycling on overall landfill rates and subsequent greenhouse gas emissions is significant. It is a 'no-brainer'.

Good examples from countries including Scotland and Ireland can be found in the MRA submission to the EPA in May 2019. The learnings are summarised:

*“Source separation and collection of organics can drive expansion in composting and anaerobic digestion, and beneficial recovery of both organic and nutrient values from the wastes. Where the mandate has both commercial and residential coverage, greater recovery and acceptance has been achieved. Implementation needs to be well-staged and heralded with a long lead time. Investments in infrastructure and industry development during the lead in time is required to ensure adequate collection and processing infrastructure is established when the compulsory separation commences. With effective lead times and additional supporting policies and infrastructure, mandatory source separation of organics at a commercial and residential level are effective in increasing recovery of organic wastes.” (emphasis added)<sup>3</sup>*

We call on the NSW government to set an ambitious target of zero food and other organics to landfill by 2030. We commend the examples given by MRA of a staged introduction eg with commercial premises with organic waste in excess of 50kg/ week (over 2.5 tonnes/year) initially, being required to source separate and sign up for FOGO. This would include most schools and all hospitals. The existing EPA Bin Trim program could assist with Bin Audits to help identify the mandatory early adopters.

The WA Waste Authority's Position Statement includes the key strategy of all local councils in Perth and Peel having a FOGO system for households by 2025. We agree with their affirmation that, “High-performing FOGO systems can make the single biggest contribution to achieving the waste strategy material recovery targets for MSW.”

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<sup>3</sup> [https://www.wasteauthority.wa.gov.au/images/resources/files/2019/10/Publication\\_-\\_Position\\_Statement\\_-\\_FOGO\\_May\\_2019.pdf](https://www.wasteauthority.wa.gov.au/images/resources/files/2019/10/Publication_-_Position_Statement_-_FOGO_May_2019.pdf)

The case studies and examples given by the WA Waste Authority indicate that local governments will make savings over time when they introduce a FOGO system. NSW Government may need to offer financial support to local governments in the transition period. We acknowledge that NSW EPA already offers the Organics Infrastructure Fund and encourage investigation into why some councils seem reluctant to take up the offer of funding.

We would like to echo the WA Waste Authority in their support of, *“FOGO collection services as a demonstrated method of applying better practice source separation to increase material recovery, support the State’s material recovery targets, and give effect to the waste hierarchy and a circular economy.”*

Trainee chefs or cooks can be made aware of the costs of food waste and the steps that can be taken to minimise it.

## **2.2 Standardise collection systems for households and business**

Boomerang supports standardising the bin lid colours/classifications across the state by 2025, across domestic, schools and public place services – both fixed and temporary eg events. Companies making and supplying bins must be fully informed of changes. Grants may be needed to assist a transition. All bin lids replaced should be recycled. It would be appropriate to impose penalties for non-compliance after a set date.

However, this issue is often discussed but to suggest it will make a “great” difference to community confusion is to overstate its importance. It’s not the major panacea. Yes it would be constructive and may impact those who move residences between states and council areas sometimes, but for those who stay in one place or for long periods – it won’t end the confusion.

Even more importantly though is to address the confusing array of packaging materials and lack of effective messaging and incentives. Additionally, the supply of disposal containers for very specific items which are collected periodically can help, for example, special bags for batteries and small electronic items.

In the case of business, there is often a lack of space for material separation (ie, more bins) and a focus on reducing waste disposal costs as opposed to time spent on separating out compostables, different recyclables and non-recyclables. Cost efficient sorting infrastructure needs to be advanced.

## **2.3 Network-based waste drop-off centres**

Certainly drop off centres can play a useful role but again what is the incentive for the householder to invest time and effort in dropping-off? The container refund scheme illustrates the virtue of a financial incentive. In comparison mobile-muster with no incentives has had low return rates over many years.

Giving consumers the opportunity to discard used items and have them collected in economically-viable amounts would form an important part of a new resource recovery

agenda. It would provide the opportunity for the resource recovery sector and local charities to access used items and build business around their recovery.

#### **2.4 Waste benchmarks for the commercial sector**

We support the enforcement of benchmarks for the commercial sector, including government leadership where its businesses are commercial in nature. The handling of waste and supply of collection bins is often the role of external contractors/cleaners. Consequently their clients need a strong incentive to require better performance.

#### **2.5 Innovation and waste tech**

These two activities are important but the embedding of an improved circular economy approach to waste should not wait until the 'perfect' technological solution is achieved. We need to create a new system asap, but one that has the capacity to integrate future innovation, where possible.

#### **2.6 Joint local council procurement**

Local councils can play an important role in developing markets for recycled material. The example of SSROC shows they can do it themselves at a regional level. However a special unit of assistance from state government would assist, as would financial incentives to use for example, recycled material in road base. Also the issue of technical specifications for their use needs to be overcome as a matter of urgency.

#### **2.7 Combining commercial and industrial waste collection services**

We support a system where waste service providers tender for collection services and where they meet minimum circular economy criteria. Too often the only meaningful matter is cost.

#### **2.8 Economic incentives and the waste levy**

The waste levy has been a potent tool. But as noted above it has had limited impact on municipal waste. We do not support its removal on disposal of any type of waste, nor for so-called waste to energy activities (which also produce significant waste). The concept of up-front fees for major generators is worth investigating.

The only exception to the waste levy is where recyclers produce a small minority of residual waste (post best practice) whose weight imposes excessive cost on the operation.

### **3. Plan for future infrastructure**

A circular economy approach is dependent upon manufacturers designing for the post-consumer fate of their products, collection systems that can deliver discarded products economically and end markets that can receive these and return to manufacturers as recycled materials. This is an inter-dependent system, where each component must be active and working.

To make this happen requires a strategic, lifecycle approach that examines the whole product supply chain. Any infrastructure needs should be designed as part of an

integrated resource recovery system. This means planning infrastructure as one component of a system, but dependent upon other aspects to make things work. Planning and building new infrastructure is essential. How fast it can be done and in a way that reflects the upper echelons of the waste hierarchy is the crucial question. The policy should direct the outcomes, not the market per se. An example of how directive policy can lead to new infrastructure is the roll out of over 600 collection points for Return and Earn.

There are emerging waste streams that need attention. These include e-waste, clinical waste, solar panels, ICE vehicles as well as millions of fuel driven household items like lawnmowers, whipper snippers, leafblowers, generators and hedge trimmers that will be rapidly replaced by electrical items. As far as possible, these need to be recycled but the infrastructure is not in place in NSW to allow this to happen.

The landfilling of clothing and other textiles has also reached unacceptable levels. These materials should be returned to the productive economy for re-use in clothing or other textile manufacture or use in disposable cleaning cloth.

Special mention must be made of the ongoing problem of asbestos. Its illegal disposal causes wide-spread community concern, impacts on the environment and can sterilise dump sites from further productive use in the economy. One serious issue that has not received enough attention is ensuring there are a sufficient number of sites to allow for the easy, local and lawful collection and/or disposal of asbestos waste in all its forms (friable, asbestos cement and where it has contaminated other waste such as soil). This is no longer acceptable.

### ***3.1 Long-term waste and resource recovery infrastructure needs***

All of the points outlined in this section of the Paper deserve investigation, although the ability to undertake the last point (utility corridors) in any meaningful way prior to urgent needs and in a practical manner, is doubted.

### ***3.2 Place-based developments***

We have the same view of the possible actions outlined in 3.1. A package of 3.1 and 3.2 actions would have a significant positive impact.

### ***3.3 Making it easier to do business***

Again these are generally good actions. We suggest a new SEPP accompanied by a ministerial direction could integrate the first four suggestions.

### ***3.4 Innovative financing models***

Joint national, state and business funding as proposed by the Commonwealth government (1:1:1) would assist, including as part of an economic stimulus model. Green bonds are also in tune with the circular economy model.

#### **4. Create end markets**

This policy is of fundamental importance and consequently should be subject to regulatory action. The debate is somewhat advanced with packaging and plastics. However, previous voluntary efforts have failed and we should not repeat the mistakes of the past.

We note with concern the apparent opening up for discussion that waste to energy (WtE) is likely. While we do not disagree with the need for clarity and certainty, the policy settings should unambiguously discourage waste to energy particularly for mixed waste and plastics. As noted in the Victorian and South Australian WtE policies, there is a serious risk of WtE plants monopolising in long-term contracts, material streams that could be used for higher value recycling. Additionally it is a distraction from the push for genuine renewable energy.

##### **4.1 Recycled content in government procurement**

A critical leadership role is for government to signal its procurement preferences, both to set the bar high and create confidence for investment. We are concerned that the National Waste Policy settings only encourage consideration of the use of recycled material and we urge the NSW government to go further by setting binding targets and incentives. NSW is a prime site for new industry.

##### **4.2 Standards for recycled content and materials**

We strongly endorse the suggestion that NSW mandate product standards for priority items using recycled content and that packaging is a key, initial target. To quote from our submission on plastic, *“Mandate 30% minimum recycled content in all plastic packaging in NSW by 2025: APCO has recently set a target of 50% minimum recycled content in packaging by 2025. NSW should aim higher than 30% minimum recycled content [in plastics] - to at least 50%.”*

Similarly the APCO and NWP target that 100% of packaging is recyclable, reusable or compostable by 2025 should be mandated. (*Note the Issues Paper typo says 10%*). In regard to compostable the only acceptable measures are the Australian standards, AS 4736/AS 5810.

##### **4.3 Match suppliers with markets**

Good idea. How will it be implemented? It would be a mistake to simply rely on addressing information barriers – rather the government should take a more interventionist approach in bring the various parties together.

##### **4.4 Best-practice regulatory environment for energy from waste projects**

As stated above we are sceptical of waste to energy. We also reject the argument emanating from some in industry that only larger projects are viable in Sydney and note there are at least two in the development approval system.

There are WtE technologies that meet circular economy principles and technologies that don't. Technologies such as anaerobic digestion and landfill gas capture should be considered as acceptable whilst mixed waste WtE (essentially incineration under a

different name) are unacceptable. The government needs to establish its position on this or face continued community opposition to all forms of WtE.

Any waste to energy process presents serious inherent risks to human health and the environment. There is no thermal process to capture the embodied energy value of mixed waste that will not create significant pollution and toxic releases. Australia's export of unprocessed waste to developing nations for supposed WtE operations is also unacceptable and continues to cause significant health and pollution events across South East Asia.

Additionally there is the serious risk that long term WtE contracts will cannibalise resources that should be recycled. We oppose the creation of fuels and/or incineration or pyrolysis of: municipal solid waste, hazardous, medical and any other mixed waste stream in particular in response to the China import ban. We note communities in the USA and Europe are seeking closure of such WtE plants and it is not regarded part of the circular economy.

Best practice is the future in waste management - not the past, which is where WtE lies.

## **5. Improving Compliance and Enforcement**

It is now broadly agreed by both practitioners and scholars that a regulatory system or policy is only as good as its implementation. A well-designed system or tool may often fail in its implementation, undermining confidence in the agency using the system or tool, so weakening the agency and the government's social licence to regulate. Clearly, these outcomes must be avoided. Enforcement is critical to implementation and, for the reasons set out below, this is especially so in relation to promoting a circular economy and ensuring the viability and safety of the waste and resource recovery industry in NSW. Set out here are a number of crucial steps that can be taken to significantly improve the EPA and DPIE's ability to enforce waste regulation.

### ***5.1 Cooperation with other peak NSW enforcement agencies***

Given the acknowledged involvement of organised crime in the waste industry in NSW, who participate for money laundering and illegal waste disposal purposes, a structured co-operation with other peak crime fighting organisations in NSW must be implemented.

This will allow for better intelligence-led targeting of businesses and significant individuals involved in this industry, leading to a reduction in illegal waste dumping and waste levy fraud. This will also allow for prosecution of those individuals in associated industries, such as property development, real estate, accounting, environmental consulting and the legal profession, so remove those supporting and funded by organised crime. This will have clear, multiple benefits such as removing their revenue streams, removing individuals from EPA licensed sites, allowing for a wider range of charges to be brought and so providing stronger specific and general deterrence.

The other agencies that could strongly contribute to success in this area include:

1. NSW Crime Commission
2. NSW Police Force's Criminal Groups, Organised Crime and Financial Crimes Squads;
3. Roads and Maritime Services heavy vehicles team
4. Parts of the Department of Customer Service (formerly Fair Trading) that regulates the scrap metal and vehicle recycling facilities
5. Safework NSW.

This may initially be resisted in the name of control, confidentiality and turf-protection, but should be pursued.

The Minister should make arrangements with the other relevant Ministers to create a standing structure to allow for appropriately co-ordinated investigations across multiple agencies to target those businesses, individuals and associated operators involved in organised waste crime.

Appropriate amendments must be made to the POEO Act to allow for lawful sharing of intelligence and evidence, whether obtained using statutory powers or not, with other relevant NSW enforcement agencies.

## ***5.2 Reinstatement of the EPA'S Waste and Resource Recovery Branch***

The recent disbanding of the EPA's Waste and Resource Recovery Branch is unwise, weakening capacity and potentially ongoing focus at this critical time. It will create unacceptable risks to the environment, the community, waste and resource recovery businesses, the safety of workers at those facilities and jobs in the waste and resource recovery industry across NSW.

### **Waste is not like other environment protection issues**

Existing senior EPA managers and officers who now have new responsibility for waste and resource recovery matters are not experienced in addressing the risks set out below. Further, given the larger range of issues competing for their attention and resources, lower priority may well be given to waste and resource recovery matters. This can lead to poor regulatory decisions and lower levels of regulation.

It is a fallacy to think that waste and resource recovery matters are like other EPA matters. They are not. There are two simple reasons for this: Money and Mobility.

First, and foremost, is money. The waste and resource recovery industry is driven by money. In short, waste only moves or is recycled because of money. As a result, EPA officers and managers who are experienced in dealing with waste matters will be keenly aware of the financial drivers of waste and resource recovery activities and so more likely to be able to spot and take action on issues of waste levy fraud. This creates obvious risks to NSW government revenue arising from the waste levy and undermines the viability of other law-abiding waste and resource recovery businesses, so destroying jobs in those businesses, creating a vicious cycle of a race to the bottom. It is not sufficient to rely on the existing EPA officers in the Waste Crime Taskforce or the Waste

Audit team as they are already under-resourced and best used when focused on high-risk or large-scale matters.

The second aspect of waste is its mobility. For waste to be legally regulated in NSW it must leave its site of generation and move to another site (the so called “off-site” requirement set out in Schedule 1 of the POEO Act). This means that unlike most static EPA licensed facilities, waste is highly mobile and so officers who are skilled in tracing waste back to its source as well as following waste trucks are necessary for proper enforcement in this area. These are skills that can be taught but for other officers who face other strong competing priorities in an under-resourced agency, widespread training of this kind takes time and may not be prioritised.

### **What are the risks?**

Hence, the disbanding of the EPA’s Waste and Resource Recovery Branch will have two large, clear consequences.

The first risk creates an increased likelihood of used tyre dumps being located in the bush and catching fire. These release toxic gases and firewater and are notoriously hard to extinguish. This is not to say this has not occurred in the past, rather, the weakening of the EPA’s enforcement ability in this area will be noticed and taken advantage of by those whose business model relies on illegality, increasing the risks of the catastrophic events mentioned above.

The second is significant risk to the waste levy revenue, which amounts to hundreds of millions of dollars each year. This revenue underpins the N SW Government’s critical *Waste Less, Recycle More* program. Creating this unnecessary risk also undermines legitimate waste and resource recovery businesses and jobs across NSW.

### **Re-creating the waste and resource recovery branch and returning staff to the EPA**

Re-creating the EPA’s Waste and Resource Recovery Branch, using officers with strong waste experience in leadership roles will help re-establish the success of the pre-existing strong connection between the policy, programs and enforcement parts of the branch which had success with the largest transformation of the waste and resource recovery industry in Australian history. This multi-year *Waste Less, Recycle More* program worth more than \$700 million was developed because of the close connections between those officers who worked in the three areas of policy, programs and enforcement. This is clearly weakened when those officers are separated into different, sometimes competing, agencies.

### **5.3 Protection and Safety of EPA and Environment staff**

Ensuring the safety of their officers is the single most important priority of the EPA Board and the EPA’s senior management team. The murder of environment officer Mr Glen Turner by a NSW farmer in 2014 was a tragedy with important lessons for the NSW Government and its enforcement agencies: those seeking to uphold and enforce the laws of NSW have been and are targeted for reprisal. Simple enquiries of experienced EPA officers will confirm this truth. As a result, all environment officers need strong

levels of legal and policy protection to ensure their safety at work. There are some simple additional steps outlined below that can be taken to increase this protection.

### **Providing protection using appropriate criminal sanctions**

It is now common for some of those in the regulated community to target those officers who are going about their normal work of administering and enforcing the environment protection laws of NSW. This targeting can take many forms:

1. Issuing express or veiled threats.
2. Repeatedly critically attacking each officer involved in regulating a facility or dump site by name in writing to EPA senior staff over a sustained period of time, sometimes years.
3. Making unsubstantiated allegations of corruption or incompetence as a tactic to have the officer removed from any role in regulating the business, site or during an investigation.
4. Detaining the officer in the execution of their duty ie, by locking doors or gates.

Clearly, this is not acceptable.

1. Clear legal protections need to be in place to ensure that it is a criminal offence to harm, abuse, threaten, harass or detain a public servant, especially EPA and environment officers. These offences need to be located in an appropriate act (the POEO Act) and attract both a financial and custodial sanctions (say up to 2 years on summary conviction in the local court or perhaps higher in the Land and Environment Court). This is necessary ensure there is sufficient deterrence as many offences under the POEO Act contain large financial and custodial sanctions.
2. This step needs to be supported with strong policy that allows for a robust complaint management procedures to protect citizens and businesses but also protects, and does not allow for the abuse or derailing of, officers in the execution of their duties.

### **Increased protection from civil liability**

Similarly, EPA and environment officers should not face the threat of civil liability for the good faith execution of all of their work, including the exercise of statutory powers or duties. This level of protection should be broader than that afforded under Part 5 of the *Civil Liability Act 2002* (NSW) to ensure that actions such as authorising or issuing a media release are protected because it remains unclear whether or not these are part of an officers official functions.

This would be consistent with the operation of section 213 of the *Police Act 1990* (NSW).

### **5.4 Wider and stronger use of financial assurances**

We strongly encourage the EPA to take all necessary action to require larger financial assurances, being only unconditional, irrevocable guarantees from an Australian

financial institution, to ensure compliance by licensed waste and resource recovery facilities with licence conditions as well as clean-up and prevention notices.

One example will suffice: the illegal stockpiling of waste and subsequent stockpile fires at the EPA licensed waste recycling facility at Chester Hill in 2014, which burnt for more than 40 days and resulted in widespread smoke impacts on the local community and toxic firewater releases into stormwater systems, cost the EPA more than \$2 million to clean-up. The EPA held a financial assurance of \$100,000 from the bankrupt licensee. Unfortunately, when the matter was heard before the Land and Environment Court before the fire, the Court only allowed for an assurance of \$300,000. This was never provided.

In this respect, we welcome the release of the Draft Financial Assurance Policy and encourage the Minister for the Environment and the EPA Board to provide a strong authorising environment for the more widespread and stronger use of these existing tools.

The EPA should take all necessary action to require larger financial assurances, being only unconditional, irrevocable guarantees from an Australian financial institution, to ensure compliance with licence conditions as well as clean-up and prevention notices. This should be given strong support by the Minister and the EPA Board.

#### ***5.5 Registering of levy debts and notices on land title***

It is no longer acceptable that polluters externalise the costs of waste crime onto the environment and taxpayers of NSW. In keeping with the “polluter pays” principle of ESD that is built into the EPA’s DNA in the POEA Act, the ability to internalise the costs of waste levy avoidance and the clean-up of pollution should be returned to the polluter through this power.

The process for registering of levy and clean-up debts as well as clean-up notices under the POEO Act on land titles and s10.7(2) certificates (formerly s149 certificates) under the E P & A Act must be expanded and simplified. These must be able to be held or notified against the land of licensees or directors or managers directly involved in the relevant waste crime.

The POEO Act be amended to allow for the swift and simple registration of waste levy and clean up debts as well as clean-up notices on land titles and planning certificates where a licensee, or their directors or managers directly participated, are involved in waste crime or failures to comply with clean-up notices.

#### ***5.6 Banning cash transactions at waste and resource recovery facilities***

Finally, the use of cash as legal tender at waste and resource recovery facilities is well known to be associated with money laundering for organised crime. Hence, proven regulatory steps to interdict this misuse of the waste industry can and must be taken. In the UK, England, Scotland and Wales introduced a ban on the use of cash at car recycling and scrap metal facilities between 2012 and 2016. This resulted in the exit of significant numbers of traders from those industries.

A similar ban is now required at other waste and resource recovery facilities, whether or not licensed by the EPA. Not only will this clean up the industry, it reduces risks of corruption - well known in the waste industry after two ICAC inquiries – by making cash transactions at weighbridges and elsewhere illegal.

This change must also be associated with a legal requirement that all EPA licensed waste and resource recovery facilities to operate an account at an Australian financial institution in the name of the licensee and that account must be used receive all gate fees as well as to meet any waste levy obligations or receive any waste levy rebates.

These changes could be introduced in the *Protection of the Environment Operations (Waste) Regulation 2014* (NSW).

Signed:

A handwritten signature in black ink, appearing to read 'JA Angel', written in a cursive style.

Jeff Angel  
Director, BA & TEC