

Waste Contractors and Recyclers Association

Policy Paper – Resource Recovery Framework

September 2019

Introduction

This policy paper outlines the significant risks for WCRA members who rely on the resource recovery framework with respect to generating recovered material and applying it to a future use. It also makes recommendations to address those risks and as a result improve the integrity of the resource recovery system.

Summary

The fundamental weakness of the resource recovery framework is the ease by which Resource Recovery Orders and Exemptions can be revoked. In order to give certainty to members who generate and rely on recovered material streams, WCRA recommends that improvements be made. As a priority, the *Protection of the Environment (Waste) Regulation (Waste Regulation)* should be amended to create a formal consultation process that must be followed by the EPA in order to amend or revoke an Order or Exemption. The Regulation can specify the content of the consultation obligation and the requirements that must be satisfied in order for the EPA to amend or revoke an Order or Exemption.

Background

- The resource recovery framework under the Waste Regulation is critical to supporting the EPA's Waste and Resource Recovery Strategy 2014 – 2021 (**WARR Strategy**). The WARR Strategy aims to:
 - o increasing recycling rates to:
 - 70% for municipal solid waste
 - 70% for commercial and industrial waste
 - 80% for construction and demolition waste
 - o increasing waste diverted from landfill to 75%
- The resource recovery framework allows waste to be recovered for re-use in application to land (for example, as a soil amendment), re-use as a fuel or in the manufacturing process (for example, to make bricks). Ordinarily, the recovery and re-use of waste in this way would require an environment protection licence and be required to meet other regulatory requirements.
- The resource recovery framework allows the EPA to grant a person an exemption from some of these requirements if it can be demonstrated that a waste can be safely and effectively used for another purpose. The re-use of the waste must be genuine, fit-for-purpose, and cause no harm to the environment or human health.
- The key instruments are Resource Recovery Orders (**RROs**) which allow material to be recovered or generated from waste for re-use and Resource Recovery Exemptions (**RREs**) which allow for the recovered or generated material to be received and used by the

consumer. The EPA has power to issue both RROs and RREs under the POEO Act and Waste Regulation.

- The EPA itself, not the Minister for the Environment or NSW parliament, has the power to create and repeal orders. Orders can be created and repealed simply by publication in the NSW Government Gazette.

Discussion of issues

The key weaknesses and risks that have emerged in the system, from the perspective of members, are as follows:

- There is limited protection offered to consumers who comply with the terms of the Exemptions; and
- The EPA has the ability to unilaterally amend or revoke an Order or Exemption and the absence of any mandated process for doing so.

These issues are highlighted in the following case study:

- **Revocation of the Mixed Waste Organic Output (MWOO) Order and Exemptions**
 - o The MWOO Order and Exemptions were revoked at short notice by the EPA;
 - o The revocation was based on research kept confidential by the EPA;
 - o The generators of MWOO were not able to fully assess the claims in the confidential research;
 - o There was no detailed consultation by the EPA;
 - o The consumers of MWOO were not provided any detail of the claims and were concerned as the impact on property values
 - o There was no transitional package in place for industry prior to the revocation;
 - o Although a transitional package has been offered it has not been finalised.

Options

- The key options for improving the process of revocation include:
 - o **Publishing guidelines for consultation** – The EPA could publish guidelines it would follow in the event of proposed amendments or revocation of the exemptions and orders. The guidelines would:
 - contain steps for consultation;
 - outline the extent of the consultation required at each step;
 - set out a test in respect of environmental risk that an Order and Exemption must meet to avoid amendment or revocation
 - provide for a notice period and consideration of transition arrangements.

The issues would be that:

- any guidelines on their own would not be legally binding; and
 - the guidelines could be subject to change by the EPA without any formal consultation process with industry.
- o **Formalising guidelines in the Waste Regulation or the POEO Act** – The EPA could incorporate the steps contained in the guidelines in the Waste Regulation or the POEO Act. The advantages would be:

- the Waste Regulation or Act could incorporate the same best practice guidelines referred to above;
- industry would have more certainty when investing based on orders and exemptions because the EPA would be required to follow a formal process to amend or revoke them (and could not unilaterally change that process).
- It is likely the proposed changes to the Regulation or Act would be more widely consulted before the change to the Waste Regulation was made or the amendment to the Act passed Parliament;
- It may be give industry improved ability to seek to challenge decisions in the courts.

The key risk with this approach is that the process to create the Waste Regulation or amend the POEO Act is more formal and likely to take time. Attempting to pass legislation is also likely to be subject to competing political interests and priorities.

Recommendation

WCRA recommends that the EPA insert a formal process for amendment or revocation of an Order or Exemption in the Waste Regulation. WCRA members require certainty that Orders and Exemptions will not be revoked without clear consultation and a due process. It is essential that proper process be followed in order for WCRA members to invest in businesses that in turn assist the EPA to achieve its targets for resource recovery and diversion from landfill.