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19 September 2023

Dear Mr Rodrigues

**Re: Circular Economy (Waste Reduction and Recycling) (Risk, Consequence and Contingency) Regulations 2023**

Thank you for the opportunity to provide feedback on the *Circular Economy (Waste Reduction and Recycling) (Risk, Consequence and Contingency) (CERCC) Regulations 2023*. The Waste Management and Resource Recovery Association of Australia (WMRR) is the national peak body representing Australia's \$15.8 billion waste and resource recovery (WARR) industry. With more than 2,200 members from over 500 entities nationwide, we represent the breadth and depth of the sector, within business organisations, the three (3) tiers of government, universities, and NGOs.

The WARR industry is highly regulated, with industry supporting strong, risk-based regulation centred on the precautionary principle informed by the latest available science, which incorporates the protection of both human and environmental health. WMRR acknowledges the department's intent to ensure that there is organised industry and/ or sector-wide risk, consequence and contingency planning to mitigate the harms caused by disruptions and for Recycling Victoria (RV) to have sufficient information for oversight of the industry. As noted in the Regulatory Impact Statement private incentives already exist for operators to mitigate risk and avoid failure. The gap lies in inter-sector wide planning and preventative government intervention.

The Victorian EPA has oversight of operators and end-of-pipe issues while RV with a circular economy focus should take a systems-based approach and track the fetes and flows of material/ products through the Victorian economy to identify risks and prioritise early market interventions with industry. Regrettably, the regulations as they currently stand are reliant on end-of-pipe solutions for upstream problems and fail to recognise the WARR sector as a connected system or progress the transition to a circular economy.

The services, activities and waste types in the regulations do not reflect a joined-up system and focus on end-of-life material flows and a recycling economy. If material and product end-of-life considerations were required of all sectors in Victoria, WARR volatility, disruptions and incidents would be greatly reduced. There must be an understanding and an acknowledgement that WARR facilities are recipients of materials, not generators; yet again however, we see that it is only the WARR industry that carries the contingent liability of receiving and processing these, with severe potential

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penalties. To truly address gaps in transitioning to a Circular Economy the government must intervene at the producer stage, not continue to penalise at the WARR end of the supply chain. As solar panels for example, have demonstrated intervention is required 30 plus years in advance or the WARR sector is required to solve a problem not of their own making, that should have been solved at the design stage when 80% of decisions about a product's lifecycle are made.

With a systems-based approach the CERCC Plans will aim higher up the waste management hierarchy and influence behaviours and producers to, if not prevent the eventuality of the identified risk scenarios, at least mitigate them. The reliance on further WARR operator regulation and punitive measures misses the very real control and influence the government has on the Victorian economy and the economic levers at their disposal to influence the demand for Australian recycled content, relative to the cost of virgin materials.

WMRR's responses to the consultation questions can be found at **Annexure A**. Please contact the undersigned if you wish to further discuss WMRR's submission.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Gayle Sloan'.

Gayle Sloan

**Chief Executive Officer**

Waste Management and Resource Recovery Association of Australia

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**Submission:**

<p>4 Definitions</p>	<p>The lists provided for prescribed essential services and components firstly focus solely on end-of-life and recycling without recognising higher waste management hierarchy activities (avoidance, reuse and repair) which directly affect end-of-life and recycling as mitigation activities.</p> <p>As a minimum the lists overlap and duplicate activities and material making it difficult to distinguish a beginning or an end. WMRR encourages the Department to restructure these lists so that <i>essential services</i> reflect the actual service provided and <i>components</i> reflect the material streams (as a whole not as a subset) used in the National Waste Report. The list would also lose the distinction between waste and resource recovery and include reuse and repair services before the existing collection, transport etc. services. This clarification will flow into defining market share and responsible entities in clear and simple terms as it recognises differences in material stream, clients and up/downstream flows.</p> <p>The revised service and material list better reflects the waste, recycling or resource recovery service and municipal food organics and garden organics service definitions in the Act, however as mentioned they still lack the circular economy bigger picture.</p>
<p>6 Responsible Entity</p> <p>(a) the entity holds 20 per cent or more of the Victorian market share for—</p> <ul style="list-style-type: none"> <li>(i) that service; or</li> <li>(ii) a component of that service; or</li> <li>(iii) that service for a type of waste; or</li> </ul> <p>(b) the entity holds government contracts related to that service worth over \$50 million; or</p> <p>(c) the entity provides services under ongoing arrangements or at regular intervals in three or more declared regions.</p>	<p>The unclear parameters around service, component and waste type make it difficult if not impossible to determine if, when and how an organisation is a responsible entity. The above proposed definitions go some way to recognising the wider sector and will simplify the 20 percent rule to two (2) options; service or material stream.</p> <p>As the total material type figures are supplied by industry and published in the National Waste Report this removes the current level of ambiguity and determining 20 percent pass through will not be as onerous as the current method.</p>

<p>7 Meaning of Victorian market share</p>	<p>As stated above to determine market share the type of waste needs to be defined and as the regulations currently stand this is not articulated.</p>
<p>10 Preparation of the CERCC Plan</p> <p>(b) make a draft CERCC Plan available for a consultation period of at least 14 calendar days to—</p> <ul style="list-style-type: none"> <li>(i) the responsible entities; and</li> <li>(ii) any public sector body that may be affected by the CERCC Plan; and</li> <li>(iii) any other person or entity that the Head, Recycling Victoria considers appropriate;</li> </ul>	<p>It is WMRR’s understanding reading these regulations that the Responsible Entity Risk, Consequence and Contingency (RERCC) Plans are prepared before and inform the CERCC Plan. However, the Act makes it clear that RERCC Plans follow the CERCC Plan and are informed by it.</p> <p>The time frame suggested does not allow sufficient time to build industry strategic coordination nor sector-wide risk planning. Even if there is consultation prior to identify issues and collaboratively build measures to address these 14 calendar days does not constitute meaningful engagement. WMRR does not wish to see overly prescriptive regulations, however specifying minimum requirements for consultation and collaboration (including eventual public consultation) will bring industry into the planning tent rather than being dictated too.</p>
<p>11 Content of the CERCC Plan</p> <p>(a) any information available to the Head, Recycling Victoria regarding the total volume of waste managed in Victoria for each—</p> <ul style="list-style-type: none"> <li>i. essential waste, recycling and resource recovery service; and</li> <li>ii. component of the essential waste, recycling or resource recovery service; and</li> <li>iii. type of waste relating to the essential waste, recycling or resource recovery service;</li> </ul>	<p>As already stated, the focus is on end-of-life activities without recognising that upstream design issues need to be recognised early. WMRR recognises that this piece of regulation cannot solve this issue however encourages the Department to investigate how the CERCC Plan can influence and link in with other sectors and prevent issues from occurring in the first place. For example, design standards that require batteries to be removal will reduce the instances of fires in the WARR sector.</p> <p>As noted in the Act the CERCC Plan must identify financial risks to transitioning to a circular economy. WMRR argues that a systems approach must be taken in order to identify higher order roadblocks and lift the focus from end-of-life activities.</p> <p>The Plan should also connect with issues in other jurisdictions, nationally and internationally as the Regulatory Impact Statement rightly notes that the Victorian WARR sector is connected to all three (3) of these.</p>

	<p>There are multiple market failures and barriers to an optimised system and government intervention is often required to mediate these. A one size fits all approach cannot be applied and WMRR encourages the Department to use the information gathered from the RERCC Plans to guide which economic instruments would be suitable. WMRR has been proposing a tax on virgin material, producer responsibility and Australia recycled content requirements.</p> <p>If the suggested material stream recommendations are adopted data regarding their fates and flows is already being captured for the National Waste Report and can be built upon rather than doubled up.</p> <p>It goes without saying that any commercial in confidence information supplied in the RERCC Plans will not be included in the CERCC Plan.</p>
<p>12 Content of RERCC Plans</p> <p>(e) which of the criteria in regulation 6(1) the entity meets and a description of how the entity meets that criteria, including—</p> <ul style="list-style-type: none"> <li>i. ...6(1)(a), the percentage of the Victorian market share that applies to the entity and the service and, if applicable, the component of the service or type of waste to which that Victorian market share relates; and</li> <li>ii. ...6(1)(b), the value of the relevant government contracts and the services to which they relate; and</li> <li>iii. ...6(1)(c), the services provided by the entity that meet the criteria, the declared regions in which the entity provides those services and the intervals at which the services are provided;</li> </ul> <p>(j) details of the identified risks of serious failure, disruption or hindrance to the provision of the essential waste, recycling or</p>	<p>WMRR supports the intent behind the plans, bringing the Victorian sector together to prepare and plan and understands that the RERCC Plans are an attempt to rectify imperfect information and asymmetry. However, the Plans double up existing internal risk management and EPA reporting requirements, on top of onerous requirements to determine whether an operator is a responsible entity for a specific service/component/waste and then their market share for the service/component/waste. Operators are already provided significant information to the Government and the focus should instead be on streamlining information sharing capabilities between agencies and teams to support one source of truth.</p> <p>The value of federal and state government contracts are publicly available however local government contracts are not necessarily publicly available. WMRR believes that the publicly available data is sufficient for the RERCC Plans.</p> <p>The Department will be required to develop extensive, clear and detailed guidance to support industry to identify risks including likelihood, consequences and gravity and develop contingency</p>

<p>resource recovery service, including for each identified risk—</p> <ul style="list-style-type: none"> <li>(i) an assessment of the likelihood and consequences of it occurring; and</li> <li>(ii) an assessment of the gravity of the risk based on its likelihood and consequences;</li> </ul> <p>(k) details of when and how the actions and contingency measures will be taken;</p> <p>(l) steps for the monitoring and management of any inherent and residual risks remaining, or proposes to take, to prevent or minimise identified risks;</p>	<p>measures (qualitative versus quantitative) to ensure operators can draft these in a uniform manner. Even so this would still be burdensome and overly prescriptive for the Department as there appears to be no guidance on what constitutes acceptable measures and no enforcement for setting these. Rather compliance is only required with the self-prepared mitigation actions.</p> <p>By holding operators liable for meeting their own mitigation and contingency actions the Department may inadvertently encourage the lowest common denominator. It is in operator’s best interest to set achievable targets as there is no incentive to develop stretch goals. In fact the risk of penalization works as a disincentive in this situation. Actions opening with ‘working towards’ or ‘monitoring the situation’ will inadvertently be achievable for the organisation and ensure that they are able to manoeuvre with changes in the market.</p> <p>It is unclear how a single operator can coordinate risk mitigation efficiently on behalf of the sector without these actions in turn being doubled up by other operators or lead to collusion, monopolisation and other avoidable, unfavourable market inefficiencies.</p> <p>The Department must also recognise that it takes significant time for capital investments and infrastructure upgrades to be sourced, installed and operational and these activities will continue to lag behind policy decisions if not recognised.</p>
<p>14 Application for exemptions</p>	<p>WMRR queries what criteria is being set for reviewing and approval of exemptions as the fee structure is described in more detail than the requirements for an exemption.</p>