



Mr Mark Rodrigues
Executive Director
Climate Action and Circular Economy Division
Department of Energy, Environment & Climate Action
PO Box 500 East Melbourne VIC 8002

Email: wastetoenergy@delwp.vic.gov.au

2 February 2024

Dear Mr Rodrigues

**Re: Victoria's proposed waste to energy cap and cap licensing scheme
Regulatory Impact Statement and draft Regulation**

Thank you for the opportunity to provide further feedback on the waste to energy cap and cap licensing scheme. 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 400 entities nationwide, we represent the breadth and depth of the sector, including representation from business organisations, the three (3) tiers of government, universities, and Non-Government Organisations (NGOs), including research bodies.

WMRR notes that consultation on the cap commenced with the Victorian Government on both the proposed cap and the allocation method, as early as June 2020. The governments' *Victorian Waste to Energy Framework* published in November 2021, stated that the cap policy settings would in fact be reviewed in 2023. It is disappointing therefore that in 2024, industry still does not have an operational cap, and that even with the time taken to develop both the Regulatory Impact Statement (RIS) for the waste to energy cap and licensing, and the proposed Regulation, industry does not as yet have access to the detail of how the cap process will proceed, albeit we know that its will be managed by the Head of Recycling Victoria (RV), a new Unit with government that commenced operation in July 2022.

To meet Victoria's stated target of 80% diversion from landfill target, Victoria needs to recover an additional 664,000 tonnes of Municipal Solid Waste (MSW) and almost 2 million tonnes of Commercial and Industrial (C&I) material per annum based on the National Waste Report 2022 figures. WMRR also notes that according to this report over six (6) million tonnes annually is sent to landfill in Victoria. Whilst we appreciate that not all this material is suitable for energy recovery, it highlights that the proposed restriction of one (1) million tonnes is too low, given that there remains the potential for over five (5) million tonnes being disposed to landfill, which is lower on the waste management hierarchy than energy recovery. It is important to stress that energy from waste (EfW) is not a means of disposal. Rather, it sits above disposal on the hierarchy.

In WMRR's view, regulations and frameworks must recognize that landfill disposal and EfW are not equivalent, and they should not distort the hierarchy by placing limitations higher up. Disposal is the final and permanent step while EfW recovers embodied energy from materials which cannot be feasibly reused or recycled further, utilizing material in the economy at end of use. EfW also recovers and produces secondary raw materials (metals and bottom ash) and residual waste, flue gas, which is appropriately disposed of to landfill. WMRR reiterates in considering the case for developing EfW facilities much the same as landfill facilities, it is critical to consider higher order alternate pathways. If we do not create new opportunities to recover resources, then we will need to create new opportunities for disposal.

WMRR NATIONAL OFFICE
57 ST JOHNS ROAD
GLEBE NSW 2037
(02) 8746 5000
INFO@WMRR.ASN.AU

WMRR.ASN.AU

WMRR (and industry) do not support the creation of the cap for EFW facilities, given the artificial distortion of the hierarchy it creates. Further, given the establishment by the Victorian government of Recycling Victoria (RV) in 2022, which has the purpose of gaining value from material (removing it from landfill) and will *collect data to enable strategic planning* of waste and resource recovery industry and facilities to make it a *better and more reliable system*, as well as a *streamlined and integrated* approach with a strong focus on *statewide and regional market stability*¹, we believe that cap as a mechanism is redundant and unnecessary. It makes no sense, when there is a business Unit in government with a clear role to look strategically at the Victorian WARR industry to have such a blunt and immovable instrument as the cap, and definitely not at a volume of 1 million tonnes, given the total generation of over 19 million tonnes of waste annually in Victoria, with this volume increasing.

Industry notes that RV will have responsibility for administering the EFW scheme in Victoria, which makes good sense given the role that it has in understanding the Victorian market and strategic infrastructure requirements. RV is also in a position with the data it proposes to collect to understand the availability of feedstock for proposed facilities and timing. RV ideally will also understand the development (or at least be aware) of emerging technologies (such as Waste to X) which appears to be outside of the regime. The current regime appears to be concerned primarily with MSW, and therefore possibly fails to take into consideration the need for significant investment in C&I streams.

In WMRR's view, a potentially one-off cap allocation process commencing in Quarter 3 this year (the details of which remain unknown), fails to take into consideration not only the reality of availability of feedstock, but also has the real ability to inhibit future investment in Victoria- within and outside the WARR sector. EFW can and will play a role in the Victorian manufacturing sector (C&I) in particular, in reducing reliance on the energy grid. The co-location of these facilities with industrial facilities, such as evidenced by both VISY Industries and Australian Paper, will be prevented in future such developments by the introduction of the cap. At a time when business is looking to reduce costs of operation including utility costs, the Victorian government with the introduction of a cap is removing this option- limiting both Victorian investment and innovation.

Whilst having to gain another approval in Victoria (in addition to the Department of Planning and the EPA) is not ideal, it would be a far better outcome to assess against genuine market need and have greater investment certainty than the current proposal of the cap and 1 million tonnes restriction. Victoria is uniquely placed with the creation of RV to look strategically at the need for EFW across Victoria, to determine the location and suitability of EFW facilities, without placing a hard cap on the amount that will be allocated via this mechanism. The reality is that given the size and scale of these facilities, and the investment required, it is very likely that via the EOI process we will see only 3-4 metro-based facilities, excluding regional opportunities.

The alternative, that is, if there was no cap, RV would be able to consider and assess applications as they arise in accord with the (as yet to be completed) State Infrastructure Plan (VRIP). The success of this approach is clearly evidenced by the South East Melbourne project being deemed to be Critical Waste Infrastructure, given the importance of its role in managing material in that precinct. As the current approach to the cap stands, there is a real possibility that future Critical Infrastructure may not be declared as cap volumes are exhausted for example.

¹ These are quotes from the Recycling Victoria website.

The fact that there are four (4) existing operator facilities in Victoria, and there is no mention of these facilities in the RIS, also demonstrates the lack of necessity for the cap given their existence supports the assertion that both the market and the WARR industry will correctly determine the viability and necessity of these facilities in Victoria. The creation of the cap intervenes significantly in the market and places a large disadvantage on those that as yet do not have cap allocation and are uncertain of when or if they will gain ones. In a practical sense, this ongoing uncertainty of the cap, as to allocation and timing has had a real impact on current tender responses and awarding in Victoria for residual materials, adding to cost and time burdens.

Please note that if government elects to progress the cap (noting the Regulation states that it will come into operation of 17 April 2024), it is vital that the government's stated planned review of the cap have a clear mechanism to enable this to occur. There is currently no review mechanism. Further, there are several practical matters that remain unclear to industry in relation to the actual operation of the cap mechanism and approval process that we would urge government to provide clarity on prior to the issuing of the EOI later this year, in particular-

- *Clarity as to what documentation and conditions precedent* will be required for submitting the EOI, e.g. will it be necessary for all planning and EPA approvals and permits to have been received? Gaining these are a significant time and cost investment, however in the absence of these how will there be sufficient certainty of viability of the proposed facility?
- How long will approvals be granted for and what milestones will be required to be met? Will there be consequences for not meeting the milestones?
- What will the assessment process for applications involve? Can there please be statutory timeframes be put in place for RVs consideration and approval (akin to Planning and EPA);
- How will a non-allocation be appealed/ reviewed?
- As the government achieves its targets there will be a need for flexibility of volumes, as the calorific value (CV) of the input changes- there would appear to not be a mechanism for managing this flexibility, for example there appears to be no mechanism to increase allocation, only decrease.

Due to the lack of guidance around cap allocation WMRR is concerned that this will lead to reduced market competition, contrary to the view of the RIS. The level of proof required to prove tonnages and the uncertainty around the calorific value of feedstocks could result in inflated cap allocations to the detriment of other proponents and further reduce market competition.

WMRR does not support the proposed fee amount of \$33,000 it is significant and comes on top of the EPA and planning fees. WMRR is concerned that the size of the fees implies that RV will be conducting an in-depth assessment of already approved facilities that have been extensively tested (at great expense) by both the Victorian planning and environmental regimes, including extensive community consultation, and may in fact result in RV's their own contradictory conclusions on environmental and planning outcomes.

Further, there should not be a fee for reducing cap allocation- the goal should be to incentivise return of unnecessary allocation as quickly and easily as possible, rather this should be encouraged and does not require onerous regulatory assessment. WMRR notes that there should be a clear ability for an increased allocation, it would appear at present that government is treating this as a new allocation. WMRR also notes that these fees are in addition to the periodic licence fee introduced in 2023 to support monitoring, compliance and enforcement activities. WMRR is also concerned that as these are not specified and there may be future differentiated fees for monitoring until financial close/commissioning versus operational monitoring.



WMRR notes that both industry and the community both remain confused with the remit and overlap of RV and the EPA. This could lead to a further eroding in community confidence in EfW technology when bureaucratic issues are to blame. While the fees are an additional burden on industry and further drag out the already lengthy approvals timeframes, industry wants to reduce duplication of effort for themselves and the regulator. WMRR requests government provide certainty as to the roles and responsibilities of each Department and approval process, to avoid duplication and possible contradiction. We note that RV states that it will provide a *streamlined and integrated approach with a strong focus on statewide and regional stability*, we think this agency clarity is fundamental to achieving RV's objective.

In summary, WMRR does not support the cap concept or allocation, we believe that with the creation of an agency such as RV to look at the WARR market by government, the cap is completely unnecessary and simply adds cost and confusion to what is already a challenging industry, at a time when Victoria should be working with industry to both attract investment and support managing utility costs. 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

Gayle Sloan

Chief Executive Officer

Waste Management and Resource Recovery Association of Australia

WMRR NATIONAL OFFICE
57 ST JOHNS ROAD
GLEBE NSW 2037
(02) 8746 5000
INFO@WMRR.ASN.AU

WMRR.ASN.AU

Submission:

Undermining long-term improvements in waste avoidance and recycling	It is important that EfW policy restricts the residual waste materials which can be processed through an energy recovery system, effectively mandating that recovery of recyclable resources be undertaken prior to recovery of energy from the residual materials. WMRR recognises that Food and Garden Organics collection at kerbside are being rolled out across the MSW stream, with appropriate processing of that material, while opportunities to improve still exist in the C&I stream. Restricting the EfW feedstock in this manner can ensure recycling is unaffected by energy recovery, so that the integrity of the waste management hierarchy is maintained. Other jurisdictions (such as Western Australia) have approached this issue by requiring that any EfW facility must only process <i>residual</i> waste. This effectively provides a landfill ban for all non-treated waste or waste with biological potential, and any plastics. We reiterate again, EfW is a form of resource recovery and not a disposal pathway. It is also worth noting that the countries with the highest penetration of EfW facilities have the highest recycling rates.
Infrastructure	The role of RV is discussed extensively above, and in fact in WMRR's view the existence of this agency, makes the cap an unnecessary piece of regulation that will simply inhibit investment in Victoria.
Feedstock	Cap licence proponents will likely apply for either a maximum operating volume or higher to ensure a buffer. Due to the calorific variance of feedstock 200,000 tonnes of high-calorie material equates to 300,000 tonnes of low-calorie feedstock. The cap could lead to a prioritisation of specific contracts/ feedstock or technology. These variances will lead to a gap in cap allocation and actual feedstock tonnages, restricting the access to the cap for operators. Once again, an unintended market distortion that does not support Victoria's recovery goals.
Timeframes: - Projects - Regulation development - Application process	Financial close for projects are at least two (2) years away with an additional 2-3 years required for construction. In a perfect world, facilities could be five (5) years away from being operational. These assumptions underpinning the RIS are wildly off. As stated above without further guidance on the information required and steps involved in EOIs, and licence applications industry cannot predict how onerous or time consuming this process will be. Based on the dates provided in the RIS industry are not confident that all players will be ready to be involved in EOIs nor that the process will be a level playing field that results in the facilities required by Victoria as opposed to simply those that meet an artificial process.
Cap review	The regulations do not include a mechanism to review the cap. The RIS briefly mentions that future governments could review the cap however there is no legislated ability to do this. The only way to review or revise the cap will be through new regulations. There is also no end date for the cap, nor clarity on how long operating licences will exist for. The framework implies that licences will be in effect for the lifetime of facilities however the lifetime of the cap is not explained.

Fees	WMRR does not support the size or the existence of the fees, as already stated, these imply duplication rather than demonstrating well sound regulation.
Market development	While WMRR recognises RV's role in assessing applications the important role the Victorian government plays in enabling WARR activities cannot be overlooked. There are a number of barriers to private investment in EfW in Victoria at present and they include: • The uncertainties and delays in securing planning and environmental approvals - there are a limited number of organisations with the scale and resources required to develop these facilities in Victoria. • The need to secure a commercial return from a EfW project. • The high capital cost of EfW necessitates a high landfill levy if these facilities are to be able to compete with landfill which is currently a low-cost alternative. • To be viable, EfW must secure sufficient waste volumes to achieve the economy of scale. This would necessitate long term contracts for waste processing and the consolidation of waste streams from multiple Councils as a minimum. • There is limited up-to-date comprehensive data available on the composition of the feedstock stream. This results in a degree of uncertainty in the design of plants and capital cost. • Unclear federal policy settings regarding energy and in particular renewable energy. • A lack of policy setting regarding the reuse of the bottom ash, and. • There are limited markets for the ash residuals from EfW facilities therefore appropriate secure landfills would be required for their safe disposal.
Market intervention	This has been discussed extensively above, the cap distorts not only the waste management hierarchy but also the Victoria market. The discussion around EFW fails to recognise how capital intensive these facilities are and the net positive effect that they have on Greenhouse gas. Unlike landfill that exist in perpetuity and continue to emit, these facilities at the end of life are decommissioned with no ongoing emissions. Rather than looking at limiting volumes to EfW, Victoria should undertake a comprehensive review of the entire WARR system and be looking to increase significantly landfill levies (there is almost a \$50 per tonne differential with SA and NSW), to drive greater investment further up the hierarchy. The lack of wholistic systems thinking has our view led to the current challenges of understanding and delivering the current cap mechanism and doing little to drive resource recovery as the levy in Victoria remains too low.