



Mr Tony Chappel
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By email: resource.recovery@epa.nsw.gov.au

24 April 2025

Dear Mr Chappel

Re: Resource Recovery Order and Exemption Framework (Policy Guide and Application Guidelines)

Thank you for the opportunity to provide feedback on the *Resource Recovery Order and Exemption Framework*. The Waste Management and Resource Recovery Association of Australia (WMRR) is the national peak body representing Australia's \$17 billion waste and resource recovery (WARR) industry. With more than 2,300 members from over 410 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. Over a third of our membership is based in NSW, where our sector directly contributes more than \$4 billion per annum to the State's economy and directly employs more than 8,500 workers.

In 2022-23, the state's recycling rate was 66% - a figure calculated based on the diversion of 14.7 million tonnes of waste from landfill, out of a total of 22.4 million tonnes of waste generated during the year. The state faces a pending 'landfill crisis' and the NSW EPA's Strategic Plan 2024-29 articulates the strategic choice for the EPA to enable the transition to a safe and sustainable circular economy. It therefore is essential that the resource recovery industry has both the certainty and clarity it needs around regulatory settings that define what can be recovered and reinvested into the circular economy as a product.

The 2021 independent review of the existing NSW resource recovery framework undertaken by Dr Wilkinson ("Wilkinson Review") resulted in 22 recommendations being made to "improve the delivery of circular economy outcomes and potential for innovation, as well as ensure growth of the resource recovery industry without compromising human health and the environment". WMRR has been advocating for the NSW EPA to accelerate delivery of its response to the Wilkinson Review - the *Resource Recovery Delivery Plan: Towards a Circular Economy: enhancing the NSW resource recovery framework* ("Delivery Plan") - which was adopted in July 2023, and in particular to prioritise those actions which are directly limiting the state from transitioning to a safe circular economy.

WMRR wrote to Minister Sharpe in November 2024 seeking urgent progression, noting that we need "urgent clarity as to the application and content of resource recovery orders and exemptions in particular". Consequently, WMRR was pleased to see the release of both the *Resource Recovery Order and Exemption Framework* and *Resource Recovery Innovation Pathways* for consultation, given that the standard of materials that can be recovered and reinvested into the economy is the foundation stone for transitioning to a circular economy, and the Orders and Exemptions ("RRO/Es") and innovation pathways are crucial for determining the appropriate pathways for materials.

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This consultation on the RRO/E Framework

The EPA has sought to make the assessment and decision processes for RRO/Es clearer, improving transparency and enabling more efficient processing of applications through the drafting of two documents:

1. *Guide to the NSW Resource Recovery orders and exemptions policy framework ("Policy Guide")* which details the background, laws and policies that support orders and exemptions. It describes the process for applying for an order and exemption, and the assessment criteria that a proposed re-use needs to satisfy.
2. *Orders and exemptions application guideline - Applying waste to land ("Application Guideline")* which aims to provide specific guidance on how to prepare an application for a resource recovery order and exemption to apply waste to land – as either a fertiliser, soil amendment or for engineering/fill purposes.

These documents seek to make the assessment and decision processes clearer, improving transparency and enabling more efficient processing of applications. It is WMRR's view that whilst these documents assist applicants by articulating the complex application process, issuing guidance materials for the existing RRO/E Framework to improve administration, they do not assist in providing the regulatory clarity and certainty that industry needs in order to improve resource recovery outcomes and propel investment in the sector, rather they simply codify what is in existence and has done little to nothing to improve the process for industry, despite having almost two (2) years to do so.

Arguably, this is a criticism of the approach of the Delivery Plan in that action items have been segregated under specific outcomes, rather than undertaking a cohesive review of the RRO/E Framework that looks to achieve all four (4) intended outcomes of the Wilkinson Review- improved administration and transparency, a clearer definition of waste, production of high quality materials to facilitate circularity, and improving approaches to known and emerging contaminants. WMRR is disappointed that the review of the RRO/E Framework thus far has only resulted in drafting improved guidance for the existing system. The reasons for EPA decision-making regarding RRO/Es remains unclear, as the guidance materials do little to offer any real-life rationales for why an RRO/E may be declined on the grounds of not being 'fit-for-purpose' or 'beneficial'.

It is noted that the implementation of the 22 recommendations from the Wilkinson Review is expected to result in policy revisions – and in particular – a "clearer definition of waste" (Outcome 2). WMRR understands that there are different teams looking at the action items set by the Delivery Plan – and hence – this piece of work pertaining to the RRO/Es is independent of the other actions, and to date there appears to be very little internal coordination of these teams in EPA. As such, WMRR notes that the drafted application guidelines seek to offer immediate clarity but runs in advance of policy changes- which both makes no sense and is potentially resulting in wasted resources.

WMRR's Comments

Whilst WMRR appreciates that the Policy Guide and Application Guidelines will assist in making the procedural aspects of navigating the RRO/E system clearer for applicants, these documents do not provide much by way of regulatory certainty. High rates of resource recovery and a reduction in the use of virgin materials require a Resource Recovery Framework that is certain, secure and backed by robust scientific data so that the EPA can engage in transparent decision-making and evidence-based regulation. The Wilkinson Review reported that stakeholders thought that the definition of waste in NSW was too broad and that the orders and exemptions do not go far enough in ensuring that recovered materials are removed from the waste framework. To date, the work on the RRO/E Framework in issuing these guidance materials does not meet these key concerns.

WMRR would have liked to have seen the draft guidance materials go further in providing some "goal posts" for industry to work towards when considering an RRO/E. The inclusion of the Application Checklist (Appendix B)

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and Characterisation Limits (Appendix C) in the Application Guidelines will certainly help applicants with the administrative application process. However, without having clearer parameters set for what resources can and cannot be recovered, the Framework will inevitably fall over. The current system is onerous for applicants, who are essentially asked to fund research, reports, trials and evidence to be provided for an assessment to meet a threshold which is loosely worded as “beneficial” or “fit for purpose”. Whilst innovation is to be encouraged and there is need for flexibility in assessments, there would be much to gain by providing some levels of clarity and certainty. This could be done by providing access to high level information as to why previous applications under the Framework have been declined, and by providing direct access to a technical EPA resource for RRO/Es.

i. Guidance is needed on why RRO/Es have or have not been granted

Whilst procedural guidance is welcome and explains ‘how’ to navigate the administrative process, industry is particularly seeking ‘guidance’ on why an application may not meet the assessment criteria in real life. WMRR appreciates that currently, General Orders are gazetted and published on the EPA website, and Specific Orders are given effect by notice to the applicant in writing and may be revoked in writing direct to the applicant. It would be useful for industry to have high level transparency over the reasoning behind Specific Orders being declined and revoked. This would also promote the EPA receiving more relevant and adequate applications.

The application process places the onus on the applicant to demonstrate that the products are fit for purpose for use as fill or engineering purposes, or beneficial for use as a soil amendment or fertiliser. The Application Guidelines provide numerous examples of the types of evidence that can be provided. In the Policy Guide, examples for declining an application are broad and somewhat subjective ie: “a contaminant level may be excessive, or its re-use will not be fit-for-purpose or deliver a benefit. In some cases, the frequency of sampling and testing required to mitigate the risk associated with a highly heterogeneous waste may be too onerous for the re-use to be practicable.” Industry’s trust in the RRO/E Framework was damaged by the overnight revocation of the mixed waste organic outputs order in 2018 and the attempt to revoke recovered fines order in 2021. Practical examples, explaining more specific rationale for declining an RRO/E - would be helpful herein providing industry with some level of comfort.

Such an approach would also help clarify the EPA’s rationale for what is deemed a “benefit”. For example, a product that has an offtake partner and acts as a safe and effective bulking agent arguably does have an environmental benefit, in that it enables displacement of virgin materials as bulking agents. However, some may argue that bulking agents only make an end product fit-for-purpose, if they don’t also consider the broader impacts on the environment. WMRR appreciates much of this area may evolve with broader review of the Resource Recovery Framework as a whole. It would be prudent for examples to be included in the application guidance and updated to reflect the rationales.

In the interest of streamlining the process so that applicants don’t waste time with unnecessary reports and testing, it would be useful to see the high-level details of applications that have been approved and declined. Given that RRO/Es are legally enforceable documents (similar to Development Consents and Environment Protection Licences which are publicly available instruments), it would make sense for these to also be published on the EPA’s public register (apart from commercially sensitive information).

ii. Provide access to a dedicated EPA Technical resource

The Application Guidelines are peppered with statements such as “*pre-application discussion is encouraged*”, “*If you are considering the re-use of a waste material to be used as an alternative raw material, please contact the EPA to discuss the proposed re-use...*”, and “*The EPA will be able to advise on the type of assessments that may be required*”. Consequently, despite providing a good overview of the administrative procedures involved, it does not do much to provide certainty as to what level of detail is actually needed in an application.

It is noted that enquiries in the application guidelines are directed to the EPA’s generic Environment Line and email. Given that applicants spend considerable time, money and effort in lodging these applications and are

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encouraged to discuss their plans with the EPA before beginning work on their application with likelihood they will need to vary an Environment Protection Licence and/or a Development Consent before submitting an application, it would be prudent for the EPA to provide direct access to a specialised technical resource/s (knowledgeable of resource recovery and strategic planning) that is available to address these enquiries, expediate the process and direct to other consent authorities where relevant.

Whilst these comments on the draft guidance materials should help expedite the RRO/E process and reduce the administrative load for the EPA, WMRR urges the EPA to consider the RRO/E Framework against all four (4) outcomes from the Wilkinson Review, rather than focusing actions on the RRO/E Framework to be related to improved administration and decision-making.

WMRR's responses to the survey questions can be found at [Annexure A](#) (below). 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

Annexure A

Survey Questions

Survey Question	WMRR Response
Does the Policy Guide help you understand how decisions relating to the reuse of materials are made by the NSW EPA?	To some extent but only from an administrative or procedural perspective.
Do the documents provide sufficient guidance on how to apply for an order and exemption?	To some extent. The documents do clarify what needs to be done, and what needs to be considered when making an application. However, more specific guidance would be useful via transparency over previous Specific RRO/Es (subject to commercial sensitivities), inclusion of example application rationales and access to a dedicated technical EPA resource (rather than direction to the Environment Hotline).
Does the guidance adequately describe how the EPA reviews applications?	No. The guidance outlines what subjects are considered, but does not go far enough in enabling applicants to understand rationales for why a proposal may not be deemed 'beneficial' or 'fit for purpose'. These are somewhat subjective tests – hence examples and some transparency over applications in this regard would help better guide industry.
Please tell us if there is anything you think needs clarification in the Policy Guide.	Please refer to previous comments.
Please tell us if there is anything you think needs clarification in the Application Guide	Please refer to previous comments.
Lastly, is there anything missing that you would like to see added?	Please see cover letter detailing need for examples, transparency over specific RRO/Es and access to a technical resource for advice.

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