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Essential Services Commission review of waste and recycling services in Victoria Stage 2

April 2020

1. Referral

- 1.1 Pursuant to section 10(g) of the Essential Services Commission Act 2001 (the ESC Act), as Minister responsible for administering that Act, and after consultation with the Minister for Energy, Environment and Climate Change, I refer to the Essential Services Commission (the commission) for further advice on how the Victorian Government can address issues of competition, system-level resilience, service quality and greater transparency in the waste and resource recovery sector.
- 1.2 I request that the commission have regard to the Victorian Government's objective to establish a resilient waste and resource recovery sector in Victoria that:
 - provides services to households and businesses that are cost-effective, safe and reliable
 - is informed by the government's environmental sustainability objectives
 - can adapt to and withstand market disruptions, as well as opportunities for improved efficiency and innovation, for long-term viability
 - maintains and builds on current resource recovery rates into the future
 - aligns long term supply of recycled materials with demand from downstream markets and uses
 - minimises waste generation and maximises resource recovery.
- 1.3 I request that the commission have regard to and further elaborate on the legislative and regulatory options identified in the commission's initial advice and how governance arrangements could be established to fulfil functions that are needed under a new statutory framework and to achieve the above stated objectives. This includes having regard to the objectives of the Victorian Government's circular economy strategy *Recycling Victoria*.

2. Scope of the advice

In scope

- 2.1 The advice should consider the full costs and benefits of options to make waste and resource recovery outcomes (including those of organic waste) more transparent and to ensure that councils provide waste and resource recovery services to meet expected standards. This includes the quantification of costs and benefits and establishment of performance measures for:
 - 2.1.1 data reporting obligations on local government and materials recovery facilities
 - 2.1.2 defining waste services that council provide and making these service provisions binding
 - 2.1.3 unbundling councils' waste and resource recovery services and associated charges from other council fees
 - 2.1.4 requiring councils to monitor and report on actual outcomes achieved to their communities and government.
- 2.2 The advice should consider how inadequacies in the system identified in the ESC's initial advice could be addressed through a new statutory framework (including a new act and authority to regulate and govern waste and recycling services) and how the Victorian Government should regulate and allocate roles, responsibilities, risks and coordinate governance arrangements to achieve the stated outcomes and better oversight of the market. This includes but is not limited to:
 - 2.2.1 defining the exact scope of industry, participants and services provided by the waste and resource recovery sector, including commercial and industrial waste that should be regulated
 - 2.2.2 consider options for the functions of the waste authority including, market participatory, infrastructure planning and program delivery functions and identify how these functions might complement, or be incompatible with, each other and other functions that are delivered under established government agencies.

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- 2.2.3 identify any overlap and interactions with the new legislative and regulatory framework under the Environment Protection Amendment Act 2018
 - 2.2.4 identify any overlap and interactions with new amendments proposed under the Local Government Bill 2019
 - 2.2.5 determining an appropriate pricing mechanism for waste and recycling services and how the pricing could be implemented. This includes consideration of how the design and implementation of the pricing mechanism can best meet the objectives of *Recycling Victoria* and other relevant considerations.
- 2.3 Further consideration should be given to:
- 2.3.1 opportunities to improve transparency of cost/price information to councils and communities including advice on potential performance measures and to whom these performance measures apply. This includes mapping out what data will be delivered through obligations under the new Environment Protection Amendment Act 2018 and associated regulations, Sustainability Victoria's waste data roadmap on fit for purpose data management systems and data repository, and how to appropriately fill any identified data gaps. Consideration should also be given to how government will manage data and what the data will be used for
 - 2.3.2 opportunities to improve transparency of cost/price information to councils and communities and council's service accountability, considering community and business expectations in relation to the quality, reliability of waste and resource recovery services, and the need for providers to comply with environmental and safety regulations
 - 2.3.3 the structure and contractual arrangements of the supply chain from collection, sorting, storage, processing through to disposal, including allocation of risk across the supply chain including consumers
 - 2.3.4 concentration of the recycling industry and any barriers to market-led investment at different points in the supply chain, incentives or dis-incentives for long-term investment, and the financial viability of the sector
 - 2.3.5 whether there are information asymmetries, market power or other sector attributes undermining the effective operation of a competitive market
 - 2.3.6 reviews that might consider the effectiveness of current regulatory/legislative frameworks and data transparency in the waste and resource recovery sector on waste (e.g. Infrastructure Victoria's review on waste and resource recovery infrastructure, the federal government's Inquiry into Australia's Waste Management and Recycling industries)
 - 2.3.7 the objectives of *Recycling Victoria*.
- 2.4 When providing your advice, I expect you to consider the costs and benefits of the options you have considered.
- 2.5 The commission should consider existing plans, policies, reports and work underway or in development, including the following:
- *Recycling Victoria* (2020)
 - *Recycling Industry Strategic Plan* (2018)
 - *Circular Economy Issues Paper* (2019)
 - *Statewide Waste and Resource Recovery Infrastructure Plan* (2018), including the *Victorian Organics Resource Recovery Strategy*, the *Victorian Market Development Strategy*, the *Victorian Education Strategy*
 - *The Environment Protection Amendment Act 2018*
 - *Waste Management Policies*, particularly *Combustible Recyclable and Waste Materials* (2018), *E-waste* (2019) and *Used Packaging Materials* (2012)
 - *Recovering and Reprocessing Resources from Waste, June 2019* (Victorian Auditor-General Office's report)
 - *The Local Government Bill 2019* and the Government's objectives for local government.
 - *Climate Change Act 2017*
 - *Local Jobs First Policy* (2018)
 - Victorian Government Aboriginal Inclusion Plans

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- *Inquiry into Recycling and Waste Management (2019)*

Out of scope

2.6 The commission's scope of review excludes advice in relation to changing the environmental and workplace regulatory frameworks applying to the waste and resource recovery sector.

3. Review process

I request that the commission undertake any consultation it considers necessary with relevant stakeholders during this review including:

- local government, Local Government Victoria and rate payers
- local government peak bodies, such as the Municipal Association of Victoria and Victorian Local Governance Association
- relevant government departments and agencies, including Sustainability Victoria (SV) and Environment Protection Authority Victoria (EPA), Metropolitan and Regional Waste and Resource Recovery Groups
- relevant businesses, industry groups and unions, such as the Waste Management and Resource Recovery Association of Australia, Victorian Waste and Management Association, Australian Council of Recycling, National Waste and Recycling Industry Council and the Australian Packaging Covenant Organisation.

4. Outputs

I am requesting that you provide the final advice by 31 August 2020. The final advice should cover:

- how inadequacies identified in the ESC's initial advice could be addressed through a new statutory framework including a designated authority and how the Victorian Government should regulate the waste and recycling sector as an essential service and allocate roles, responsibilities, risks and coordinate governance arrangements to achieve the stated outcomes.
- the full costs and benefits of options to make waste and resource recovery outcomes more transparent and to ensure that councils provide waste and resource recovery services to meet expected standards including performance measures.

The Commission will keep the Department of Treasury and Finance and the Department of Environment, Land, Water and Planning apprised of progress during the development of the advice.

I request that the Commission provide the final advice to me and the Minister for Energy, Environment and Climate Change.

Publication of the report will be at the discretion of the Government.

5. Background

In February 2020, the Victorian Government announced *Recycling Victoria*, the government's \$300 million circular economy strategy and 10-year action plan. The strategy commits to establish a new waste and recycling Act that regulates waste as an essential service and governs all aspects associated with waste and recycling services to ensure greater transparency and service standards across the state.

The waste and resource recovery sector provide services which are important for public health and environment protection, which are expected and relied upon by the community in Victoria. The kerbside waste and recycling system rely on private market dynamics, with facilities owned by private operators and local government.

Recent market disruptions have significantly impacted many waste services including Victoria's kerbside recycling system. The significant decline in the value of many recovered materials has reduced processors' revenue and impacted the viability of kerbside services under existing pricing arrangements. Limited

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availability of alternative recycling markets combined with limited capacity of the recycling industry to locally process or safely stockpile recyclables resulted in further disruptions to the sector. This included:

- sending recyclable materials into landfill;
- temporarily suspending kerbside collection in some councils;
- increased costs to households; and
- increased costs to Government to clean up stockpiles and contaminated sites.

While the significant regulatory reform being undertaken through permissioning and licensing changes for recycling facilities (under the new *Environment Protection Amendment Act 2018*) is a key step forward, it only covers part of the sector and is focused on improving safety and amenity of sites, not delivery of services to households and businesses.

In recognition of the ESC's initial advice, the proposed circular economy policy outlines the Victorian Government's commitment to regulate waste as an essential service and to develop a new, standalone act and authority for waste and recycling to govern the system and address the inadequacies identified.

Prior to the release of *Recycling Victoria*, the Victorian Government's \$300 million circular economy strategy, the Government has committed more than \$135 million over the last four years to support its waste and resource recovery objectives. This includes but is not limited to the:

- Development and release of the *Recycling Industry Strategic Plan* in July 2018, which sets out a \$37 million three-year program of work to develop markets for recovered resources, improve the quality and value of recovered materials, facilitate collaborative procurement and improve the safety of operations in the sector
- Recycling Industry Reform Package, announced through the 2019/20 State Budget, which includes further measures to support the recycling sector (including this review) and to help reduce plastic pollution
- Development and implementation of the *Statewide Waste and Resource Recovery Infrastructure Plan* which is supported by the *Victorian Organics Resource Recovery Strategy*, the *Victorian Market Development Strategy*, and the *Victorian Education Strategy*
- Ban on lightweight plastic shopping bags (effective from November 2019)
- Ban of e-waste from landfill (effective from July 2019)
- Preparation of the plastic pollution plan (to be released in 2020) to provide a suite of actions targeting the reduction of plastics use to minimise pollution
- Seeking advice from Infrastructure Victoria on future investment options in the waste and recycling sector
- Reforming the licensing of waste storage facilities within the EPA
- Commitment to review the landfill levy.