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Ms Carolyn Jackson
Deputy Secretary
Environment, Climate Action and First Peoples
Department of Energy, Environment and Climate Action,
8 Nicholson St East MELBOURNE VIC 3002

25 July 2023

Dear Ms Jackson,

REGULATORY IMPACT ASSESSMENT FOR THE CIRCULAR ECONOMY (WASTE REDUCTION AND RECYCLING) (RISK, CONSEQUENCE AND CONTINGENCY) REGULATIONS 2023

I would like to thank your staff at the Department of Energy, Environment and Climate Action (the Department) for working with the team at Better Regulation Victoria to prepare a Regulatory Impact Statement (RIS) for the Circular Economy (Waste Reduction and Recycling) (Risk, Consequence and Contingency) Regulations 2023 (the Proposed Regulations).

As you know, the Commissioner for Better Regulation provides independent advice on the adequacy of the analysis provided in all RISs in Victoria. A RIS is deemed to be adequate when it contains analysis that is logical, draws on relevant evidence, is transparent about any assumptions made, and is proportionate to the proposal's expected effects. The RIS also needs to be written clearly so that it can be a suitable basis for public consultation.

I am pleased to advise that the final version of the RIS received by us on 25 July 2023 meets the adequacy requirements set out in the *Subordinate Legislation Act 1994*.

Background and Problems

The RIS explains that Victoria is generating increasing amounts of waste, which requires processing by the waste, recycling and resource recovery (WRRR) sector. The sector has experienced significant volatility, service disruptions and incidents in recent years, including:

- China severely restricted waste imports in 2018 at a point when it was receiving most of the recyclable materials collected in Victoria;



- the major fire in 2017 at one of SKM Recycling’s facilities and its closure in 2019, both leading to landfilling of a large volume of recyclable material; and
- the insolvency of REDcycle and suspension of its soft plastic recycling services in 2022 following significant changes to end markets for soft plastics.

The Department explains that these disruptions and challenges reflect several risk factors affecting the Victorian WRRR sector. These include:

- lack of market depth and single operator dependencies;
- variable demand and volatile prices for waste and recyclable commodities;
- limited capacity within Victoria and Australia to process waste;
- the lack of viable alternatives if a specific WRRR service becomes unavailable; and
- the dangers associated with stockpiling waste.

These risks have the potential to cause social, economic, environmental and human health harms. As an example, the Department highlights a 2017 fire at SKM Recycling’s Coolaroo facility, which cost about \$30 million for the emergency response and clean up, and is estimated to have caused up to \$100 million in health damage costs in present value terms. Government provided a further \$13 million in assistance to councils and industry to help manage the consequences of the firm’s subsequent closure.

In the RIS, the Department acknowledges that businesses have strong private incentives to mitigate risks. However, the Department explains that disruptions to one operator can result in consequences for the broader supply chain risking harm to the community and costs to the government, so service providers are not sufficiently incentivised to manage their own risk in a way that reduces system risk to an acceptable level. For these reasons, the Department suggests that additional risk management controls are required to adequately manage risk in the WRRR industry.

The *Circular Economy (Waste Reduction and Recycling) Act 2021* (the Act) introduces a legislated Risk, Consequence and Contingency (RCC) framework for the WRRR sector which shares risk management responsibilities between industry and government. The RCC framework imposes a duty on providers of essential WRRR services to minimise risks of serious failure, hinderance or disruption to service provision. This duty is intended to complement the General Environmental Duty under the *Environment Protection Act 2017*, which requires duty holders to minimise risks to human health and the environment as far as reasonably practicable.

The Act also established Recycling Victoria (RV) as a new regulator for the WRRR sector. The Act requires RV to prepare an annual Circular Economy Risk Consequence and Contingency Plan (CERCC Plan) detailing strategies for managing sector-wide risks. Defined responsible entities are additionally required to prepare an annual risk management plan, called a Responsible Entity Risk Consequence and Contingency Plan (RERCC Plan), and comply with the contents of both the CERCC and their RERCC Plan.

The Department explains that in the base case, where no regulations are made, RV would still prepare a CERCC Plan. However, the operation of the other elements of the RCC framework require regulations to define essential services and responsible entities, otherwise the duties and RERCC plan requirements would not apply.

Options and Impact Analysis

In the RIS, the Department explains the process that it undertook to define a list of 'essential WRRR services' and analyses options for defining 'responsible entities'.

DEECA undertook a risk assessment of different types of services based on the consequences of potential disruptions. Based on this assessment, DEECA proposes to prescribe 15 different types of WRRR services as essential services required to comply with the duty to manage and minimise risks. Examples include landfill, comingled recycling, hazardous waste, construction and demolition waste, and secure waste destruction.

The Department analyses three options for the definition of responsible entities, which would determine which providers are required to comply with RERCC and CERCC Plan requirements:

1. Option 1 – define a small number of the most significant essential service providers as responsible entities.
2. Option 2 – define all essential service providers as responsible entities.
3. Option 3 – define all essential service providers as responsible entities with three tiered classes, each with different requirements.

The Act requires that responsible entities must also be essential WRRR service providers. So, to assess the options for responsible entity definitions, the Department adopts a reference case which includes the proposed definition of essential WRRR services. This means that the reference case operationalises the duty to minimise risks of serious failure, hinderance or disruption to service provision, but not requirements to prepare and comply with RERCC Plans or to comply with the CERCC Plan.

The options for defining responsible entities are assessed using a multi-criteria analysis (MCA). The criteria and weightings in the MCA are:

- reducing waste industry risk (40 per cent);
- improving regulatory oversight and planning (10 per cent);
- minimising cost to industry (40 per cent); and
- minimising cost to government (10 per cent).

The Department acknowledges that the data available regarding aspects of the sector is limited. Therefore, the cost analysis in the RIS relies on assumptions about the number, size and composition of waste industry participants. The Department notes that it will develop data regulations, requiring entities to provide data to RV, so data will improve over time.

Costs to the industry of the administrative burden of preparing RERCC Plans is estimated based on time taken. Costs to industry to change business practices to reduce risks are estimated using the proxy of estimated disruption and interruption insurance costs. These reflect the level of risk of disruption and insurance and are a conservative estimate of the cost to reduce those risks.

The expected benefits are assessed qualitatively based on the Department's assessment of the level of risk and contingency planning likely to occur under each option, as well as the level of regulatory oversight that is likely to result from it.

The Department explains that Option 1 is the preferred option because it would best balance reducing industry risks and improve regulatory oversight of the sector while minimising costs, especially for lower risk industry participants. The Department assesses the options against four criteria:

1. Option 1 is expected to achieve slightly lower risk reductions than Options 2 and 3, as providers representing about 75 per cent of essential service provider revenue would be covered, rather than 100 per cent.
2. For the same reason, Option 1 also improves regulatory oversight marginally less than Option 3. Options 1 and 2 score the same for this criterion because although Option 2 provides more information than Option 1, it is less targeted and consumes RV's resources on lower value administrative tasks.
3. Option 1 has significantly lower costs to industry than Option 3, as fewer entities are covered, and much lower costs to industry than Option 2, because Option 2 imposes the same requirements on all entities.
4. Option 1 is somewhat less costly to Government than Options 2 and 3 due to a lower burden of administration, as about 45 entities are defined to be responsible entities, rather than about 1,000 entities.

The Department estimates that the cost to industry of the preferred option is expected to be around \$29.1 million (PV) over the 10 year life of the proposed Regulations, comprising costs to responsible entities of:

- \$21.9 million to change business practices to mitigate risks;
- \$6.6 million to prepare RERCC plans; and
- \$600,000 to keep required records.

The Department estimates that the preferred option would cost the Government \$4.1 million (PV) over the 10 year life of the proposed Regulations, comprising:

- \$1.4 million to prepare the annual CERCC plan;
- \$600,000 to administer RERCC plan requirements; and
- \$2.1 million to monitor and enforcement compliance.

Implementation and Evaluation

In the RIS, the Department explains that RV will implement the RCC framework, including the proposed Regulations. As part of its implementation plan, RV will proactively communicate with the WRRR sector and other stakeholders as the Regulations are implemented to promote understanding of and compliance with the proposed Regulations. The Department explains that the Regulations are intended to be implemented in conjunction with the preparation of the first CERCC plan by RV, which will be completed by 31 December 2023. The Department explains that RV will initially use a support-focussed approach, transitioning gradually over time to a compliance and enforcement-focussed approach.

The Department notes that its evaluation plan for the proposed Regulations will include both ongoing monitoring and assessment, as well as a formal mid-term evaluation in 2028. Ongoing monitoring and assessment will be supported by:

- a requirement for RV to cover matters related to the RCC framework in its annual report; and
- gathering regular feedback on how the WRRR sector is implementing the RCC framework via annual consultation with responsible entities in the course of RV's preparation of the CERCC Plan and through RV's compliance and enforcement activities.

A formal mid-term evaluation of the Regulations is scheduled for 2028 after the Regulations have been in place for five years and will evaluate the effectiveness of the proposed Regulations in achieving their objectives. The Department explains that, amongst other activities, it will examine whether the actual costs and benefits are similar to the expected costs and benefits, whether there are any unintended consequences arising from the Regulations, as well as whether any disruptions or failures that do occur could have been avoided with changes to the Regulations.

Should you wish to discuss any issues raised in this letter, please do not hesitate to contact my office on (03) 7005 9772.

Yours sincerely



Rebecca Billings

Interim Commissioner for Better Regulation