Legislative and Regulatory Reforms for Achieving a Circular Economy Position Statement

June 2021

Southern Sydney Regional Organisation of Councils (SSROC)

1 Introduction

SSROC supports the principles of the NSW Circular Economy Policy Statement, and the plan to transition to a circular economy. The principles are:

1. Sustainable management of all resources
2. Valuing resource productivity
3. Design out waste and pollution
4. Maintain the value of products and materials
5. Innovate new solutions for resource efficiency
6. Create new circular economy jobs
7. Foster behaviour change through education and engagement

Current waste-related legislation and regulation have developed over many years in response to a pattern of unsustainable linear consumption and disposal. While they have been necessary and effective, they have come to present major barriers to change, which are impeding economic growth in NSW through missed circular economy opportunities.

SSROC acknowledges the importance of appropriate legislation and regulation, particularly for public and environmental health. SSROC in no way challenges the necessity of the regulatory safeguards administered by the NSW EPA, but seeks to continuously improve the balance between precaution, change and innovation, while maintaining high standards of public and environmental health.

2 Position Statement

The following sections set out SSROC's position on legislative and regulatory reforms for the waste, resource recovery and reuse sector.

2.1 Flexible, fair, transparent and fit-for-purpose regulatory framework for resources

Resources are the building blocks of a functioning circular economy. Their productive use enables manufacturing, fuels jobs, attracts investment, and drives technological innovation. Wasted resources, the hallmark of a linear economy, lead to economic inefficiency and compromised welfare across society.

To ensure resources are distinguished from and prioritised over waste, and their productive use is supported and encouraged:

- **Ensure waste-derived resources are prioritised and not subject to the same restrictive regulatory framework as waste**, while ensuring appropriate controls for both, by updating the definition of "waste" in the POEO Act to clearly distinguish between "waste" and "resources". This will encourage the use of recycled materials and provide certainty for suppliers and consumers (including government procurers) of recovered product as an important commodity in a circular economy. Queensland's End of Waste Framework contains many such elements that achieve this.

2.1.1 Resource recovery is an essential service

- **Enable resource recovery services to continue without disruption in the event of epidemic or natural disasters** such as bush fires by amending the Essential Services Act 1988 to include waste processing, management, resource recovery and recycling services as essential services.

2.1.2 Resource recovery order/exemption regime

- **Ensure that only producers – not consumers (including government procurers) – are liable for compliance of recovered product** and that consumers can rely on certificates of compliance from producers, by appropriately amending the POEO Act. This will reduce regulatory risk to consumers and encourage circular material flows.

- **Improve the efficiency and transparency of the system and provide market participants with more certainty, flexibility and transparency** by inserting a new division in the POEO (Waste) Regulation 2014 introducing appeal rights, as is already permitted in section 291 of the POEO Act, and timeframes for order and exemption development, approval, review and revocation.

- **Ensure current orders and exemptions are simplified, updated and reflect market conditions** by introducing a periodic review mechanism, potentially through a dedicated technical advisory committee.

- **Encourage new or emerging technologies** by introducing a fast-track or streamlined approval process for pilot projects.

2.1.3 Asbestos waste

- **Avoid landfilling significant volumes of construction & demolition (C&D) and other recyclable material by** updating the definition of “asbestos waste” to ensure a consistent, risk-based approach.

2.2 Funding and affordability

A circular economy will demand changes to the way our economy functions. This will require the creation of new jobs and businesses and innovative new solutions for resource efficiency. This transformation will require funding for research and development, pilot projects, proving concepts, changing business practices to facilitate the circulation of resources, and developing new funding models.

2.2.1 Waste Levy

The waste levy is collected to disincentivise landfill and resource inefficiency. SSROC recommends that funding be directed back to the sector:

Mandate full hypothecation of revenue raised from the waste levy back into the waste and resource recovery sector by amending the Protection of the Environment Operations (POEO) Act 1997 or Waste Avoidance and Resource Recovery (WARR) Act 2001. This levy income is the most significant funding source for waste initiatives and critical for ensuring industry and councils have the resources they need to achieve NSW Government targets, yet Waste Less Recycle More funding has decreased by 43% over the last eight years while the metropolitan waste levy has increased by 148% over the last ten years. NSW reinvested only 11.5% of the waste levy collected in the 2018-2019 financial year into the sector compared to 66% in Victoria in 2017-18 and at least 50% in South Australia through Green Industries South Australia (GISA) every year.

Ensure the waste levy is operating as intended to incentivise waste minimisation and resource recovery by conducting a public and transparent independent review of the waste levy by the Independent Pricing and Regulatory Tribunal (IPART). The NSW

Auditor-General report, *Waste levy and grants for waste infrastructure*, tabled in NSW Parliament on 26 November 2020, found that modelling to test optimal waste levy settings is long overdue and that the levy should be regularly reviewed to ensure that it is optimally geared to encourage its policy objective of waste minimisation and resource recovery.

2.2.2 Alternative funding

- **Provide state land tax and/or stamp duty exemptions** to facilitate land acquisitions related to waste, recycling and resource recovery.

- **Provide funding to assist early-stage development** of key waste and resource recovery infrastructure linked with an evidence-based waste infrastructure strategy. The November 2020 NSW Auditor-General report, *Waste levy and grants for waste infrastructure*, highlights this as a key recommendation.

2.3 Strategic planning and controls

The infrastructure to efficiently manage waste and re-process resources to be re-manufactured into products for local circulation is critical to a circular economy, especially as the COAG bans take effect. However, the data needed to identify infrastructure needs has been unreliable, unavailable, or confidential; land zoned for waste often must compete with other developments; and evidence-based planning often does not consider linkages to circular economy outcomes until it is too late. SSROC has identified a number of opportunities to plan future strategic resource management.

2.3.1 Evidence-based waste and resource recovery plans

- **Fund and provide evidence-based waste and resource recovery specific plans for greater Sydney** based on material flows, regional infrastructure and end market opportunities to reflect gaps and opportunities based on local conditions, as is currently being undertaken by DPIE. The November 2020 NSW Auditor-General report, *Waste levy and grants for waste infrastructure*, emphasises that the absence of a formal strategy to guide infrastructure investment in NSW limits the ability of the NSW Government to develop a shared understanding between planners, councils and the waste industry about waste infrastructure requirements and priorities.

2.3.2 Future-proof the industry

- **Future-proof waste, recycling, and resource recovery infrastructure planning needs** by protecting and zoning key industrial hubs so land that is needed for essential infrastructure is not lost to other future developments.

- **Plan for optimum waste management systems with access to major transportation links**, including rail, by amending State Environmental Planning Policy particularly for precinct development areas such as special activation precincts.

2.4 Waste minimisation, reuse and circular design

NSW currently reuses and recycles only a small proportion of its plastic packaging. National recycled content targets, while important, are voluntary. Resource inefficiencies due to low recyclability and high contamination from plastic are increasing the cost of recycling and leading to significant wastage of usable materials. Industry and all other states and territories have introduced phase-outs of problematic plastics. SSROC recommends the following for minimising waste, reducing contamination, and increasing resource efficiency:

2.4.1 Phase out single-use plastics

- **Increase resource recovery, reduce marine debris, reduce contamination of recycled material streams, and increase the value of recovered material streams by introducing legislation to phase out single-use plastics**, including plastic bags, straws, cutlery, plates, cups, and polystyrene food packaging (with exemptions for essential medical and accessibility-related items), and difficult-to-recycle materials and formats such as PVC and polystyrene.

2.4.2 Promote reuse and repair

- **Promote reuse and repair, improve packaging recyclability, and strengthen producer stewardship** by setting a state standard and supporting a national standard for design and manufacturing, including acceptable materials, combinations and ratios.

2.4.3 Grow the circular economy

- **Increase local resource resilience and drive economic growth and jobs in the resource recovery sector** by financially incentivising or mandating minimum recycled content.

2.4.4 Mandate the Australasian Recycling Label, regulate all other claims

- **Provide clear guidance to consumers, decrease contamination, and increase the value of recyclable material streams** by mandating the Australasian Recycling Label (ARL) for all product packaging and regulating claims of recyclability, biodegradability and compostability and associated logos based on Australian standards. The ARL has been endorsed by all Australian governments. A 2020 national audit commissioned by the Australian Council of Recyclers highlighted inconsistent labelling is creating confusion and recommended a mandatory uniform label on all products and packaging.

2.4.5 Illegal dumping

- **Increase local deterrence and enforcement mechanisms for illegal dumping** by amending the POEO Act to authorise councils to issue the same level of fines for illegal dumping as the NSW EPA.

2.5 Residual waste

Non-putrescible landfills servicing the metro levy area will be full by 2028, while putrescible landfills will be full by 2034. SSROC's 20-year longitudinal kerbside waste audits, considered to be the best such data set in Australia, indicate that metro Sydney councils can only achieve 66% diversion of kerbside waste from landfill even with full recovery of recyclables and food and garden organics. With Advanced Waste Treatment (AWT) that produced compost-like output from general waste no longer feasible, NSW will fall well short of its 80% diversion target without urgent state support for appropriate technologies to process and maximise resource recovery from residual waste.

To achieve this, SSROC recommends that **policy statements related to appropriate technologies for processing and maximising resource recovery from residual waste be updated to encourage community confidence** in the safety of such technology, including:

- Acknowledging the critical role of the NSW Government and early stakeholder consultation in establishing social licence to operate.
- Supporting proven technologies, best practice emissions standards and feedstock requirements, and reflect the emergence of new technologies.
- Referring to the outcome of any future infrastructure planning indicating the areas where such facilities could be located.