Waste and recycling legislation and governance

Options Paper
Acknowledgment

We acknowledge and respect Victorian Traditional Owners as the original custodians of Victoria's land and waters, their unique ability to care for Country and deep spiritual connection to it. We honour Elders past and present whose knowledge and wisdom has ensured the continuation of culture and traditional practices.

We are committed to genuinely partner, and meaningfully engage, with Victoria’s Traditional Owners and Aboriginal communities to support the protection of Country, the maintenance of spiritual and cultural practices and their broader aspirations in the 21st century and beyond.

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Victoria is changing how it regulates waste and recycling services

The Victorian Government has – through Recycling Victoria: A new economy – committed to establish a new waste and recycling Act and a waste authority.

The waste and recycling Act (referred to in this paper as the Act) will establish the waste authority and enable it to:

• support Victoria in achieving its waste and resource recovery goals, in line with the waste hierarchy; and
• ensure waste and recycling services are reliable and meet community expectations.

This Options Paper contains a proposed model for the waste authority that includes a suite of powers and functions and proposed governance arrangements. The Victorian Government is seeking your feedback on the proposed model.

Why does Victoria need a new approach to regulating waste and recycling services?

Victoria’s waste and recycling system has experienced significant market shocks in recent years, highlighting the vulnerability of this critical system that Victorians rely on for an essential service.

Although there are several pieces of legislation regulating aspects of Victoria’s waste and recycling sector, there is currently no legislation that considers the waste and recycling sector as a whole, including setting objectives and standards for this sector and ensuring market stability. Roles and responsibilities are not always clear, waste and recycling services do not always meet expectations, there is little information or transparency in the performance of the sector and Victoria’s waste and recycling market lacks resilience to market shocks.

Victorians have a clear interest in the effectiveness of the state’s waste and recycling system, and at present there are few levers, and inadequate information, to intervene.

How will the new Act interact with other relevant legislation?

Victoria’s waste and recycling sector is governed by several pieces of legislation:

• Environment Protection Act 1970¹
• Local Government Act 2020
• Planning and Environment Act 1987
• Occupational Health and Safety Act 2004
• Dangerous Goods Act 1985
• Sustainability Victoria Act 2005

In designing the new Act, it is important to ensure that the scope and powers of the Act work in a complementary and seamless way with existing regulatory arrangements.

The purpose of this paper

The Victorian Government is seeking feedback on a proposed model for the new Act and waste authority.

Your thoughts are sought on the proposed model, particularly how effectively it will support Victoria to achieve its waste and resource recovery goals (set out in Recycling Victoria), including ensuring waste and recycling services are reliable and meet community expectations.

The proposed model outlined in this Options Paper is not a final policy position and may change in response to feedback. Establishing the new Act and waste authority is a complex task with many interrelated pieces – a decision on one component will affect others.

¹ the Environment Protection Amendment Act 2018 is planned to come into force in 2021. This will represent a significant overhaul of Victoria’s environment protection legislation including the introduction of a general environmental duty.
The proposed model incorporates feedback received throughout development of Recycling Victoria and through early discussions with many stakeholders including peak bodies, industry, and local government. Advice is also being sought from the Essential Services Commission on the waste authority model and relevant legislative framework.

Consultation on this options paper will close on Friday 9 October 2020.

This Options Paper focuses on the legislative framework – that is, only provisions that will be in the Act. Many details are likely to be included in regulations or other subordinate instruments. Consultation on regulatory instruments will follow once the Act becomes law.

Links to other reforms

Recycling Victoria features four high-level goals, under which there are 11 key commitments and 26 actions. Other actions with strong links to the reforms in this options paper are shown in Figure 1 and include:

- introducing a container deposit scheme (5.2)
- providing a kerbside reform package – including standardising bins and kerbside services across Victoria (5.1)
- building on existing waste and recycling infrastructure planning to include all waste streams and improving risk and contingency planning (7.2)
- reform of the landfill levy to bring it in line with other states, and to recognise the social, economic, and environmental value of reducing waste, reusing and recycling, and to support the shift to a circular economy (6.1)
- establishing robust and verifiable waste data systems for Victoria to help businesses and government better manage waste and make better investment decisions (11.1)
- develop an industry and infrastructure development package to accelerate and stimulate investment in infrastructure to increase recovery and the safe management of waste (8.3)
- introducing a cap of one million tonnes each year of residual waste that can be used in thermal waste to energy facilities (9.1).
Figure 1: Links between Act and waste authority and other reforms
The case for change

Victoria’s goals for waste and recycling are not being met

Victoria, like many other states and nations, has historically exported significant amounts of recyclable materials. Since 2018 global recycling market disruptions have continued to affect Victoria, because of this reliance on export markets to manage materials that could not be viably recycled in Australia.

Victorians overwhelmingly support recycling but are not getting the outcomes they want. These market disruptions, combined with the realisation that some materials were exported for recycling rather than being recycled domestically, affected community confidence in the recycling system.

Increasing the waste and recycling sector’s resilience to future disruptions is a key driver behind these reforms – but it is not the only driver.

Victoria’s waste generation is projected to exceed 20 million tonnes by 2045 – meaning that our waste and recycling industry will need to manage more than 40 per cent more materials than it does now. And, with bans on the export of certain waste materials being phased in over the next few years, there is a need to increase local processing and management of materials. This makes it even more important that the waste and recycling system is operating effectively.

Outcomes for municipal solid waste (MSW – the waste collected by councils from households) in particular have scope for improvement. As seen in Figure 2, the current recovery rate for MSW (44 per cent) is significantly lower than Victoria’s overall recovery rate (69 per cent).

Through consultation to inform Recycling Victoria, Victorians said that they want to know the materials they separate for recycling in their households are actually recycled. Victorians need transparency on the performance of their recycling system and demonstrated results.

Figure 2: comparison of MSW and overall recovery rates for 2017/18

Victoria’s waste and recycling market lacks resilience to shocks

In 2018 and 2019, changes to global recycling markets and a large recycler going into liquidation had significant impacts on kerbside recycling services (and outcomes) in Victoria.

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The impact on the sector of one operator failing can be very high

“Victoria relies on a relatively small number of MRF [materials recovery facility] operators – a problem known as ‘thin markets’ – which makes the sector less resilient and created problems if one player exits the industry”5

The closure of a large Victorian recovery facility in mid-2019 left 33 councils without a kerbside recycling service. Some of these councils were able to secure alternative arrangements, but for many the only viable choice was to send recyclable material to landfill.

Where alternative arrangements were able to be put in place they led to increased costs, which prompted the Victorian Government to commit a total of $18.6 million in relief funding to reduce impacts on households and councils.

As well as the impact from one operator failing, a thin market is less able to adapt to other sudden changes or shocks.

There is a power imbalance between councils and service providers, which reduces councils’ negotiating power

Another result of a thin market for recycling services in Victoria is that in procuring services for their communities, councils face a limited degree of choice of alternative providers (and service offerings). This lack of choice creates a power imbalance and limits councils’ ability to negotiate for better outcomes, or to hold operators accountable to contractual obligations.

Procuring and managing recycling contracts also requires a different skill set to other types of council procurements, due to the need to manage risks associated with exposure to a global commodity market. It is difficult for each of Victoria’s 79 councils to maintain this very specific skill set in-house.

Roles, responsibilities and standards for waste and recycling services are unclear

In the absence of clear direction on state-wide priorities, councils and other actors are making decisions based only on local needs. This can result in a piecemeal system. For example, what can be recycled through the kerbside collection system often differs between council areas. This causes confusion among households, increasing contamination levels and reducing the amounts of material that are ultimately recycled6, as well as making it difficult to introduce consistent state-wide messaging7.

While local needs are important, these decisions should also consider how each community can contribute to state-wide goals for waste and recycling.

No entity, including local government, currently has a clear legislative or regulatory obligation or responsibility to provide waste and recycling services. Without clear roles and responsibilities, it is difficult to appropriately allocate risk across a system.

The market disruptions of the past two years have highlighted a lack of adequate risk and contingency planning across the sector to prepare for service disruptions.

Figure 3 shows the roles and responsibilities of governments, businesses and the broader community in managing waste and shifting to a circular economy.

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5 Infrastructure Victoria (2020) Advice on recycling and resource recovery infrastructure – April 2020 (p75)
6 Infrastructure Victoria (2020) – Advice on recycling and resource recovery infrastructure, p78.
7 VAGO (2019): Recovering and Reprocessing Resources from Waste, p82
Lack of quality data

Without better waste data, government cannot accurately target its interventions to improve outcomes

Without high quality and comprehensive data on the flow of materials through the system, the government is limited in its ability to develop policy settings and make decisions to address current and future needs.\(^8\)

In 2019, the Victorian Auditor-General found that a lack of reliable waste export data limited the ability of the Department of Environment, Land, Water and Planning (DELWP) to provide strong and timely advice to government on the risks of Victoria’s relatively high reliance on overseas markets for recycling, particularly in relation to China’s import restrictions.\(^9\) Improvements in data will lead to improved contingency planning, and increased preparedness to respond to future shifts in global recycling markets and other emerging challenges.

Limited data, particularly on where materials are ending up, also contributes to the government being unable to accurately report to the community and industry on outcomes.

**Insufficient data on the fate of recyclable materials is reducing confidence in the system**

For there to be confidence in the waste and recycling system, participants in that system need to demonstrate where the 69 per cent of materials currently recovered for recycling are ultimately ending up.

Victorians overwhelmingly support recycling, but they want to know that their efforts are worthwhile. Better data on material flows will provide this assurance and could also provide a feedback loop to households on their community’s performance, which may assist with reducing contamination.

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\(^8\) VAGO (2019) – Recovering and Reprocessing Resources from Waste, p51

\(^9\) VAGO (2019) – Recovering and Reprocessing Resources from Waste, p15
As well as assisting government in its oversight of the system, developing a more comprehensive understanding of the flow of materials will assist the private sector to plan for and invest in infrastructure\textsuperscript{10}. Greater private sector investment is important in creating a diverse market and in working towards a circular economy.

\textsuperscript{10} Infrastructure Victoria (2020) – Advice on recycling and resource recovery infrastructure, p83.
Proposed model

This section sets out a proposed model for the Act and waste authority. It proposes an overarching direction and purpose for the Act, and functions and powers of the waste authority.

The proposed model is for a waste authority underpinned by proportionate powers and regulations, and with the flexibility and capability to respond to market needs as they arise. The waste authority’s suite of functions and powers will stabilise the sector and support the development of functional, transparent and sustainable markets that are critical elements of a circular economy.

The waste authority will have new powers to set performance standards and increase the transparency and accountability of the system and its actors. It will be able to intervene in the market to ensure stability and the achievement of state-wide outcomes. It will be able to scale up the nature of its market intervention if required. As part of its core functions, the waste authority will provide guidance and strategic leadership on overall state-wide direction, including through state-wide infrastructure and contingency planning. The waste authority will have strong connections to regional and rural Victoria and to local government, including partnering with and providing expert advice to local council waste procurement officers.

It is proposed the waste authority will have powers to intervene directly in the waste and recycling market. This will include the ability to coordinate collaborative procurement of waste and recycling services by multiple local councils, mandate inclusion of contract clauses to ensure state-wide outcomes, compel provision of data and implement new schemes to address particularly problematic areas of the market.

These functions of the waste authority are grouped under three key areas:

- consistent recycling and waste practices
- strengthening councils’ contribution to improving performance of the system
- ensuring providers contribute to Victoria’s waste and recycling goals.

While the focus of the waste authority will initially be the kerbside system, the legislation will be designed broadly, allowing the authority to undertake functions in other areas of the waste and recycling market as may be needed, including commercial and industrial wastes (C&I), construction and demolition wastes (C&D), and hazardous wastes. Capturing these waste types in new reporting obligations will be particularly important in ensuring a comprehensive view of material flows throughout the state. It is also vital that these wastes are considered during development of the Victorian Recycling Infrastructure Plan – so that Victoria has the right infrastructure in place to manage all of its waste.

Establishment of the waste authority

It is proposed that the waste authority is established as a new entity that will take on some of the existing functions of state government entities, including all of the functions of the seven Waste and Resource Recovery Groups (WRRGs), and the infrastructure planning function currently being performed by Sustainability Victoria. The waste authority will also be responsible for the new regulatory and oversight functions set out in this paper.

Sustainability Victoria will retain its existing functions of industry development for the waste and recycling market in Victoria, as well as behaviour change programs across a broad range of sustainability issues.

DELWP will continue to have responsibility for state-wide waste and recycling policy, and EPA’s role in regulating the waste and recycling system to minimise risks to human health and the environment will remain unchanged.

As the governance model for the waste authority is finalised, consideration will be given to legislative and administrative measures needed to maximise co-ordination and alignment between entities.

It is intended that the authority will maintain a presence in regional Victoria in order to meet the needs of regional communities and businesses. It is also proposed to include legislative requirements for the authority to work closely with councils and to ensure it provides services to, and sufficiently prioritises the needs of, Victorian regional communities.
Table 1: Proposed Act model including powers and functions of the waste authority (WA) and Sustainability Victoria (SV)

<table>
<thead>
<tr>
<th>Outcomes</th>
<th>Proposed combination of tools to achieve the outcomes</th>
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| **Consistent recycling practices state-wide leading to positive outcomes such as lower contamination**                                                                 | Publish regular reports so that government, industry and the community have access to quality information about the state of the sector (WA)  
Deliver state-wide education and behaviour change campaigns to households (SV)  
Implement kerbside recycling reforms, with all households state-wide to have access to four core services (WA)  
State-wide infrastructure planning (WA)  
Service standards will mandate aspects of recycling services including items accepted and bin lid colours (WA)  
Businesses will be required to separate waste for recycling from 2025 (WA)  
The Victorian Government has power to establish regulatory "schemes" in certain scenarios where intervention is needed to protect market failure e.g. government manages and auctions municipal waste streams, or a product stewardship scheme, or recycling credit trading scheme to ensure recycling targets are met (WA) |
| **Councils are responsible for and have the tools to improve the performance of the system as a whole**                                                                 | Support councils to undertake best practice procurement, consistent with the state’s recycling objectives. (WA)  
Require councils to regularly report to ratepayers and the Victorian Government on outcomes. (WA)  
Legal and commercial capability assistance for local councils. (WA)  
Separate pricing of waste services from council rates for households. (WA)  
Specify procurement criteria (WA)  
Improve collaborative procurement by reducing scope for councils to ‘opt out’ (WA)  
Develop standard form council contracts to ensure minimum service standards and consider state-wide objectives (WA)  
Power to mediate, enforce and reject council contracts (WA)  
Power to mandate certain provisions in local council contracts. (WA)  
Make clear in legislation that councils are responsible for providing waste and recycling services.  
Facilitate collaborative procurement where the waste authority oversees council contracts. (WA) |
| **Providers contribute to Recycling Victoria goals and outcomes**                                                                  | Incentivise innovation through smart use of grants and subsidies (SV)  
Performance auditing of recycling providers. (WA)  
Power to request and gather information. (WA)  
Develop standard form council contracts to ensure minimum service standards and consider state-wide objectives (as above) (WA)  
Power to mediate, enforce and reject council contracts (as above) (WA)  
Mandate regular reporting for larger providers on waste processing performance such as disposal to landfill, sales to manufacturers. (WA)  
Power to compel information from smaller waste service providers (WA) |
Setting direction

Purpose
The purpose and principles of the new Act are shown in Figure 4 and described below.

It is proposed that the primary purpose of the Act will be to achieve two complementary outcomes, set out below.

To support Victoria to achieve its waste and resource recovery goals, in line with the waste hierarchy

- Materials are managed in accordance with the waste hierarchy (described below) and in a way that supports Victoria’s transition to a circular economy
- There is market demand for recovered materials – materials collected for recycling are recycled into new products and uses, and the proportion of materials collected for recycling grows
- Innovation in the recycling sector is encouraged, including adapting to accommodate changing composition of recycling streams.

To ensure waste and recycling services are reliable and meet community expectations

- Victorians can rely on regular, consistent waste and recycling collections that meet their needs
- The recycling sector adapts readily to changing market conditions.

Figure 4: Purpose and principles of the new Act
Principles

It is proposed the following principles are used to guide decision-making and achieve the high-level outcomes above.

**Principle 1: Waste hierarchy**
- Victoria’s waste management hierarchy sets out an order of preference for management of waste materials:
  - avoidance
  - reuse
  - recycling
  - recovery of energy
  - containment (e.g. of some hazardous wastes)
  - waste disposal
- This principle supports Victoria’s transition to a circular economy, of which the waste hierarchy is a key feature
- The waste hierarchy is also included as a principle in the *Environment Protection Amendment Act 2018*.

**Principle 2: Transparency**
- Transparency will help build community trust in the system, which in turn will improve disposal behaviour and reduce contamination
- If the Victorian Government has better information on how the market is operating, it will be able to make more effective decisions on infrastructure planning, better identify risks and undertake contingency planning and invest for the benefit of all who use the system
- Greater transparency of overall market performance and material flows will also enable industry participants to make more informed business decisions and lead to a more competitive sector.

**Principle 3: Accountability**
- Clear roles and responsibilities will help improve service provision and desired outcomes for recovered materials
- Combined with transparency, accountability builds community trust, which can improve outcomes.

**Principle 4: Shared responsibility**
- Improving waste management and transitioning towards a circular economy requires action from governments, households, businesses and the waste and recycling industry
- Councils and industry are encouraged to more equitably share the risk of commodity price fluctuations, and share the responsibility for contingency planning
- Producers and manufacturers have a shared responsibility for the end fate of the products they bring to market.

**Principle 5: Embed climate change considerations**
- In accordance with the *Climate Change Act 2017*, climate change risks will be clearly managed, supporting the transition to a climate resilient Victoria and net zero greenhouse gas emissions economy
- Decisions will consider the potential impacts of climate change and seek to minimise contribution to greenhouse gas emissions.
Principle 6: Support and complement the objectives of other relevant legislation and policy frameworks

- The Act will need to align with and complement Victorian legislation governing environment protection, climate change, land use planning and local government
- It will align with Recycling Victoria: A new economy, the Victorian Government’s circular economy policy and action plan, and support the delivery of the commitments included in it
- It will aim for alignment with national legislation and policy.

Consistent recycling practices
Reducing contamination at households is a good place to start in improving the value and stability of the waste and recycling market. This is best done through informative, educative and non-punitive measures. In particular, standardising services will go a long way to reducing confusion among householders about how to recycle correctly.

Set minimum standards for household waste and recycling services
The ability for the waste authority to set service standards will be important to ensure that all Victorian households receive services that are consistent state-wide and meet community expectations. This is in line with the Recycling Victoria commitment (action 5.1) to ensure all households have access to four core waste and recycling services (organics, glass, comingled recycling, and residual waste). These standards will support and complement the Victorian Government’s state-wide recycling education campaign (Recycling Victoria action 2.3), with both interventions vital to ensure households know which items go in which bin.

The standards will be enacted through subordinate legislation. It is likely they will cover aspects of household waste and recycling services, such as items that must be accepted, bin lid colours, and transparency on household waste charges. It is intended that standards will be reviewed regularly.

It is important to balance the need for state-wide consistency against the potential for standards to discourage innovation or improvement in the service. Options to overcome this include:

- requiring that services are consistent with the standard, but providing for exemptions for councils to test improvements, which could then potentially be incorporated into the next iteration of the standard
- requiring that councils, when communicating with households, clearly distinguish between core services (i.e. those set out in the standard) and additional services, so that state-wide education can focus on the consistent core services.

Questions:

- For all: a key challenge is to achieve consistent services without discouraging innovation. Can this balance be achieved with the options described above? What other options are there?
- For material recovery facility operators: contamination will be reduced if the same things go in the same bins across the state. What barriers do you see in implementing this? Is there a way to design the standardisation to address those barriers?

Businesses will be required to separate waste for recycling from 2025
In Recycling Victoria, the Victorian Government committed to introducing new rules to require businesses to sort commonly recyclable materials and organic waste from unrecoverable wastes. It is expected that these rules would apply to businesses that do not use the kerbside collection system.

While it is proposed that the Act will contain the necessary head of power, the Victorian Government will consult with businesses and other stakeholders in a separate process to develop these rules, which are to come into effect by 2025.
Strengthen councils’ contribution to improving the overall performance of the system

Improving performance in the waste and resource recovery system requires role clarity and boosting councils’ capability to effectively contract for services that are heavily influenced by a commodity market. This begins by formalising council responsibilities for providing waste and recycling services. The waste authority will support councils to contract waste and recycling services that contribute to state-wide outcomes, as well as meeting local needs. To be effective, the waste authority will need powers to mediate, enforce and reject council contracts with service providers.

Clear responsibility for delivering waste and recycling services

It is proposed to clarify in legislation that councils are responsible for providing households in their local government area with both waste and recycling services, and that Victoria’s alpine resort management boards are responsible for providing these services in resort areas. This would not necessarily be a collection service – the obligation may be fulfilled through providing reasonable access to drop-off points, or in some cases, to home composting equipment. There is potential to expand this obligation to include providing services to small businesses.

This legislative clarity is an important prerequisite for establishing state-wide consistency and standards for these services. It provides local councils a clearer starting point to determine how much risk they bear and where this risk should be borne by other parties.

This responsibility will also include a requirement for councils to report back to households on the performance of the waste and recycling services they provide. This information should include waste volumes, contamination rates, and other information to enable households to assess their council’s performance against service standards and contributions to state-wide goals, as well as incentivising better recycling practices by households.

Questions:

- For all: As part of this obligation, should councils be required to provide waste and recycling services to small businesses as well as households?
- For all: Are there other entities in addition to local councils and alpine resort management boards who ought to be responsible for these services?

Ensuring contractual arrangements for councils’ waste and recycling services are robust and contribute to state-wide outcomes

There is a significant unrealised opportunity to improve recycling outcomes through more effective procurement and contract management of recycling services by councils.

There are two key opportunities for improvement:

1. Sending a clear, consistent signal to the market about what outcomes are expected, and the priorities of those outcomes (including making it clear that lowest price does not necessarily equal best value).
2. Supporting councils to procure and contract manage recycling services to a high standard.

Proposed measures to deliver on these opportunities are set out below.

The waste authority will provide specialist support to help councils procure and manage recycling contracts

Recycling is often seen as an extension of councils’ longstanding waste collection and disposal services. However it is more complex and adds new risk elements, including exposure to commodity markets, and the need to ensure households properly separate recyclables from residual waste.

These complexities mean that specialist expertise is required to procure and contract-manage these services to a high standard. It may not be efficient for all councils to retain this expertise in-house. Therefore, the waste authority will offer comprehensive support to councils to procure and contract-manage these services.
This will include:

- providing education, advice and assistance in framing contracts and negotiating contract terms with providers;
- providing standard form contracts for council use;
- specifying criteria against which councils should assess tenders;
- reviewing procurement plans, tenders and contracts; and
- providing contract management assistance, including expert advice and support on enforcing contractual conditions with providers (e.g. reporting provisions).

Questions:

- For councils: What support do you most need when procuring and contract managing recycling services?

The waste authority will support councils to collaborate in procuring waste and recycling services

Victoria's seven Waste and Resource Recovery Groups already support collaborative procurement of waste and recycling services by councils and negotiating and managing collective contracts. It is proposed that this function transfer to the waste authority, and be subject to some improvements:

1. **Clearly articulating strategic objectives for procurements**: these could include supporting a diverse market and avoiding the risks presented by market concentration, encouraging innovation or meeting Victoria's waste and recycling goals, and, alongside price, they would be weighted and used to select a preferred tenderer.

2. **Support voluntary proposals for collaborative procurement**: the waste authority could publish guidance for best practice collaborative procurement, endorse voluntary proposals by councils and provide support for implementation as required.

3. **Linking procurement to planning approvals and land releases**: where possible, councils participating in the procurement could offer suitably zoned and located land (e.g. in locations identified as priorities in the Victorian Recycling Infrastructure Plan) to establish new infrastructure, or commit to preserving buffers around infrastructure, as part of the procurement. This would remove a barrier to entry and help ensure that infrastructure is strategically located.

4. **Strategically grouping councils into procurements**: councils could be strategically grouped to maximise attractiveness to potential bidders, achieve state-wide outcomes, improve regional access to services, and minimise overall costs (e.g. smaller councils with access to available land for infrastructure establishment may be grouped with larger councils that have the benefit of scale). The waste authority could also strategically cluster councils to optimise the scale of the tender.

5. **Stabilise tender process by binding councils once commenced**: the risk of councils withdrawing from a collaborative procurement has discouraged some recyclers from tendering. The waste authority will support councils to determine the costs and benefits of participating in a collaborative procurement at an early stage. Once a decision is made by a council to engage in this process, it would be bound by contractual measures to remain in the process. This may be reinforced by legislative powers of the waste authority (see below).

Questions:

- For councils and/or recyclers: would any of these options make you more likely to collaborate in procuring waste and recycling services? If so, why? Which options would make you less likely – why?

- In what other ways could collaborative procurement be improved?

**Legislative powers will underpin this support**

To complement the above measures, the waste authority will have powers to intervene, where required, in councils’ procurement of waste and recycling services.
These powers are proposed to include abilities to:

- mandate use of standard form contracts (in full or in part), with the ability for councils to liaise with the waste authority to tailor provisions to their specific requirements
- mandate that councils provide procurement and contractual documents (e.g. procurement plans, requests for tender, tenders, and contracts) to the waste authority for review and approval
- prevent councils from withdrawing from a collaborative procurement once they have agreed to participate
- publish a contract register, if the waste authority deems it is required to increase transparency and competition (e.g. through providing clear signals to recycling sector participants about commodity prices, quality, and availability).

**Providers contribute to Victoria’s waste and recycling goals**

Achieving state-wide goals, including recycling targets, will require service providers to contribute to these outcomes. Improving information available throughout the supply chain is a clear starting point, as it will enable all involved to make better decisions. Importantly, this information will improve the effectiveness of government investment in incentives to industry, including research and development, innovation, infrastructure and market development grants. This information will also be critical for infrastructure planning, which will provide certainty to industry and include increased emphasis on contingency planning. At times, the waste authority may need to step in to solve specific problems (e.g. for a particular waste stream and/or market issue) through some form of scheme. It is proposed the Act include powers to enable this.

**Reporting obligations**

New reporting obligations will be established to provide necessary data about the performance of the sector including reporting by industry, councils, and the waste authority. This will provide the community with confidence in the sector, enable industry to make informed investment decisions and ensure that the regulatory framework is achieving its objectives.

Under the amendments to the *Environment Protection Act 2017* and associated subordinate legislation, which will come into effect in 2021, waste and recycling facilities that require licences (approximately 15-20 of the larger facilities) and permits (approximately 50 medium facilities) will be required to report monthly on waste type and volumes going into and being processed by their facilities.

However, the reporting requirements for these new EPA permissions will exclude reporting on recovered materials leaving facilities when they are no longer considered to be waste. Also, an estimated 2,500 smaller waste and recycling operators will only need to be registered with the EPA, and so will not be subject to EPA’s mandatory reporting requirements. As a result, EPA’s modernised permissions system will not on its own provide a comprehensive picture of how materials flow through the economy.

To address the data gaps, it is proposed that:

- Regular reporting of additional data on the material flows out of waste and recycling facilities (e.g. weight/volume/value) is sought from those facilities requiring EPA permits or licences. Consideration will be given to how provision of this information can be aligned with EPA’s reporting requirements to ease administrative burden for industry.
- For those facilities not subject to an EPA licence or permit (including some secondary re-processors) market information be sought by survey, sampling and extrapolation of other data collected.
- In addition, the authority will have a power to mandate provision of certain data by facilities where a need is established (e.g. a critical gap in information obtained through surveys and sampling).
- It will be important for any additional data collection to align as much as possible with existing requirements to avoid duplication.
To improve the management of data, it is proposed that:

- Data on waste infrastructure, landfill capacity and mass balance reporting is able to be shared across government agencies and, in aggregated, de-identified form, with the public and industry.
- There will be a legislative obligation on the waste authority to regularly publish summary reports so that government, industry and the community have access to quality information about the state of the sector.

Details of what data will be required to be provided is subject to further consideration as part of the development of regulations under the new Act. However, it could include:

- mass balance reporting on quantities (weight and volume) of materials received, stored, processed at site, source, destination and type of processed and unprocessed material (including tonnes of materials recovered, quality and value of processed material per material type)
- infrastructure processing capacity – and for landfills, information of remaining airspace in cubic metres of cells that are operational, with planning/works approval, under construction and/or under design
- landfill composition data, including quantity received at site per waste type and source (e.g. kerbside MSW collections, other MSW, transfer station waste, C&I, C&D).

Questions:

- For businesses likely to require an EPA licence or permit under the new environment protection legislation: how can any new data requirements be designed to minimise additional burden?
- What will be the most efficient way to collect data from smaller waste and recycling businesses? (those not requiring a licence or permit)
- Besides the methods described here, are there other efficient ways we could obtain data on material flows and relevant market information from across the waste and recycling industry?
- Are there any issues or barriers that you see to this proposed approach?

Introduce the legislative underpinning for Victoria’s container deposit scheme

In Recycling Victoria, the Victorian Government committed to introduce a container deposit scheme (CDS) by 2022/23, to complement our new household waste collection system by making recycling easier outside the home.

A CDS operates by providing a refund for empty drink containers that are returned to an approved collection point, providing an incentive for people to recycle their beverage containers. There has been overwhelming strong public support for Victoria’s scheme, with over 3,000 letters received.

The Act will contain the necessary head of power to establish a CDS. Consultation on the objectives, preferred governance framework and consideration of design elements for Victoria’s CDS will be undertaken separately to this consultation process.

Power to establish recycling market schemes

Different waste streams may experience opportunities and challenges at different times due to changing market conditions. It is proposed that the waste authority be given a power to respond to these key opportunities and challenges as they arise.

The new Act will provide the Minister with the power to establish schemes to respond to specific challenges and opportunities, as a contingency measure for the purposes of facilitating market development and improving recycling outcomes.

Such a power would be comparable to:

- the Protection of the Environment Operations Act 1977 (NSW), which includes a power to develop specific schemes for economic measures where the “EPA may develop and implement schemes
involving economic measures as a means of achieving cost-effective environmental regulation or environment protection" 11

- the Waste Avoidance and Resource Recovery Act 2001 (NSW), includes a power to develop “Extended producer responsibility schemes” 12 through regulations.

Under the proposed Act, such schemes could include:

- mandating targets for specific parts of the sector, which may be accompanied by requirements to report against the targets – or use of recycling credit trading schemes where recycling targets need to be met and credits generated by those who exceed targets can be sold to those who are unable to meet them.
- a scheme designed to allow the waste authority to manage particular waste streams (e.g. mixed plastics) by bundling them and auctioning them in tranches – thereby ensuring service providers meet clear state-wide standards and providing a more level playing field to open the market to new participants.

Any schemes enacted through these powers will be developed under subordinate legislation and will be subject to consultation and cost-benefit assessments.

Questions:

- Do you think this power would be useful in responding to market issues?
- What other schemes could be used to improve how the recycling market is working?
- What conditions should be placed on the use of this power?

**Provision for state-based product stewardship schemes**

Product stewardship schemes require producers to be responsible for the end of life disposal or recovery of a product. An example of this is a CDS where beverage companies cover costs associated with people obtaining refunds for recycling their beverage containers.

The Victorian Government continues to advocate for expanded and strengthened national product stewardship arrangements. However, there is a case for introducing a broad product stewardship power into the Act to:

- align with equivalent legislation in other jurisdictions (WA, QLD, NSW, SA)
- reinforce Recycling Victoria’s focus on the need for shared responsibility in a circular economy
- allow for state-based leadership on product stewardship in the absence of national initiatives.

The introduction of such a provision would require clear definitions of the type of schemes that could be introduced. Before any such scheme could be established, a clear need for the scheme would need to be demonstrated, and there would need to be no conflict with national schemes or effective voluntary schemes already in place.

Questions:

- What opportunities or risks do you see in this proposal?

**Infrastructure planning**

It is proposed to shift provisions related to Victoria’s waste and resource recovery infrastructure planning framework from environment protection legislation to the new Act as it strongly aligns with the objectives and functions of the new waste authority.

This also presents an opportunity to reform and improve the framework. As noted in Recycling Victoria, the new infrastructure planning framework will:

- include hazardous waste infrastructure

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11 See s.293 Protection of the Environment Operations Act 1977 (NSW), link.
12 See s.15 Waste Avoidance and Resource Recovery Act 2001 (NSW), link.
• plan for waste to energy facilities
• improve state-wide risk and contingency planning for waste and resource recovery infrastructure
• ensure land use planning systems align with infrastructure planning.

Importantly, consolidation of the current state-wide infrastructure plan and seven regional implementation plans into a single plan – the Victorian Recycling Infrastructure Plan (VRIP) – is proposed. The new VRIP would consider both state-wide and regional priorities and include the detailed infrastructure schedules that are currently part of regional plans. These infrastructure schedules are an important mechanism for reducing reliance on landfills and – because landfills are responsible for 66 per cent of greenhouse gas emissions from Victoria’s waste sector – reducing Victoria’s greenhouse gas emissions13. This supports Victoria’s transition to a net zero greenhouse gas emissions economy by 2050, in accordance with the Climate Change Act 2017.

Infrastructure plans guide a range of government interventions including investment facilitation, grants, land use planning and regulatory approvals. The benefits of one plan include increased system-wide oversight, better integration and reduced duplication of effort. However, consideration needs to be given to how regional issues are sufficiently emphasised and considered in a single plan. Feedback is sought on preferred legislative or other measures to ensure this.

More detailed information on the content and specific objectives of the new VRIP, the data required to inform it, and the process for developing it (including opportunities for stakeholder engagement) and implementing it will be included in subordinate legislation.

To ensure the effective transfer of these provisions to the new Act and to meet Recycling Victoria’s commitments, it is proposed to expand the current objectives of the planning framework to include:

• effective risk management, including integration of contingency planning with emergency contingency planning provisions under the Emergency Management Act 2013
• effective integration with other relevant government policy, planning, and approval and decision-making processes (e.g. environment protection and land use planning decisions)
• application of the waste hierarchy (with a possible cross reference to the new EP Act).

This will enable appropriate emphasis on risk management and contingency planning as well as clarify that the waste hierarchy will guide the plan’s development.

Questions:
• What are the most important features of the current framework that should be retained in a single statewide plan?
• What do you see as the key challenges in consolidating the existing eight plans into a single plan?
• What are the best means of ensuring that regional issues are appropriately accommodated in a single plan?
• Is the current resource recovery infrastructure schedule the best way to plan for future resource recovery infrastructure? Would some other way work better?

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Alternative models considered

Regulation through licensing
Consideration was given to the waste authority requiring industry participants in the waste and recycling sector to be subject to additional licencing requirements or further leveraging off current EPA licensing arrangements (in addition to the proposal to consider EPA licenses and permits as a means of introducing new reporting obligations). Under such a model, requirements for best practice recycling practices, reporting and risk management could be mandated to drive system-wide outcomes. However, the additional regulatory burden on industry, potential for regulatory duplication and likely impacts on innovation means this is not the preferred model.

Declaration as an essential service
Formal declaration of the waste and recycling industry as a ‘regulated industry’ under the Essential Services Commission Act 2001 was also considered. Such a declaration would provide the Essential Services Commission with formal powers to regulate the sector. However, initial analysis indicates that the waste and recycling market does not meet the requirements for this type of regulation, specifically the existence of significant and non-transitory market power (such as a monopoly) in the industry.

Market participant
The waste authority could participate in the waste and recycling market to help stabilise it. It could do this by owning, and potentially leasing, recycling infrastructure. This would assist in removing the significant barrier to entry for new market participants with the significant capital investment involved in building recycling infrastructure. It would also help control how materials are managed. An alternative to this would be the waste authority taking ownership or control of municipal waste and recycling streams and deciding how these streams are managed and encouraging more diverse involvement in the waste and recycling market.

These more direct interventions in the market are not warranted at this point in time. The emphasis of the proposed model is on targeted and proportionate interventions to support the waste and recycling market to perform better, rather than government actively participating in the market itself. Such an active role for government could perpetuate market reliance on ongoing government support.

The proposed power outlined above (‘Power to establish recycling market schemes’) equips the authority with the necessary powers to intervene in the market when required.
Introduction of a new waste authority provides an opportunity to clarify and streamline the role of state government agencies and improve Victoria’s system-wide leadership and oversight of the waste and recycling sector. This will address the findings of several reviews that have noted these weaknesses in the current Victorian system. The current arrangements were last modified in 2014, when seven WRRGs were established to co-ordinate and facilitate the delivery of waste and recycling across their regions. Each WRRG has its own board, its own staff and its own approach to working with local councils and businesses in its region. Many waste and recycling businesses and local councils have struggled to understand the different roles and responsibilities of the WRRGs and Sustainability Victoria. In addition, the global and multi-faceted nature of the current challenges facing the waste and recycling sector require a streamlined and integrated approach, with a strong focus on market stabilisation and the achievement of state-wide policy goals, including the transition to a circular economy.

The following principles have been used to assess an appropriate governance model:

a) **Efficiency and effectiveness**: ensure the best use of resources in establishment and ongoing operation, including making best use of expertise/capabilities in existing entities

b) **Transparency and accountability**: have clearly defined roles and responsibilities and clear procedures for sharing information between entities and with the public

c) **Integrity**: allow for an appropriate degree of autonomy and minimise potential conflicts of interest or duty

d) **System-wide stewardship, planning and leadership**: bring functions together in one entity to deliver public value and consistency where appropriate, across the system as a whole

e) **Tailoring solutions to meet local needs**: use a coordinated approach to partner with and support local councils, communities and industry, and a commitment to regional, place-based service delivery.

**Proposed governance model for the waste authority**

Figure 5 shows the proposed new governance arrangements, including the functions of the new waste authority and how they will sit alongside functions of other government departments and agencies. It is proposed that the authority is established as a separate entity, consolidating the functions currently being performed by the seven WRRGs, the statewide infrastructure planning function currently performed by Sustainability Victoria, and the additional regulatory and oversight functions outlined in this paper.

Sustainability Victoria would retain all its existing functions (with the exception of statewide infrastructure planning). This ensures that Sustainability Victoria can continue its established role in working with Victorian communities and businesses on a broad range of sustainability issues.

There are no changes proposed to the functions of the EPA in regulating the waste and recycling sector to minimise risks to human health and the environment, including the regulation of litter and illegal dumping. Similarly, DELWP’s role in providing statewide policy on waste and recycling remains unchanged in this model.

As the governance model for the waste authority is finalised, further consideration will also be given to the legislative and administrative measures needed to ensure effective coordination and alignment between agencies.

In recognition of the impacts on existing government entities, appropriate transition arrangements will be developed. The internal governance and administrative arrangements for the waste authority will continue to be considered as part of transition planning.

**Consolidation of functions enables leadership, transparency and accountability**

Under this model, the waste authority will be well-positioned to provide the leadership required to achieve a stable and reliable waste and recycling market.

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Combining regulatory, procurement and sector planning functions into a single waste authority provides an opportunity to coordinate functions to achieve state-wide waste and recycling goals.

**Questions:**
- What do you see as the advantages or disadvantages of combining these functions in a single authority? What other options should be considered?
- What is the most appropriate way to manage potential tensions from having these types of functions in the same authority?

**A state-wide entity with a regional focus**

Given the new authority will combine the functions currently undertaken by the WRRGs, it will be essential that it has a strong regional presence and a focus on regional needs embedded in its governance structure.

While establishing a state-wide entity ensures system-wide leadership, role clarity and efficiency, there will need to be a focus on how local connections and partnerships with councils – currently facilitated by the WRRGs – are maintained. This is particularly important for waste and recycling, as issues differ significantly between metropolitan and regional areas given the issues of scale and distance that arise in rural areas.

It is proposed that the legislative framework establishing the authority embeds rural and regional considerations through clear legislative objectives and the establishment of representative advisory committees that guide the waste authority on its strategic decisions. This will elevate the importance of regional issues within the new authority, ensuring it appropriately prioritises issues affecting regional businesses and communities.

**Legislated objectives**

The following objectives are proposed to ensure a strong regional focus is a priority of the authority (based on similar objectives used by Regional Development Victoria). The authority will:

- facilitate the coordinated delivery of government waste and recycling programs, services and resources in rural and regional Victoria
- facilitate consultation between the public and private sectors and communities about waste and recycling services in rural and regional Victoria

**A requirement to establish advisory committees**

It is proposed the Act includes a requirement for the waste authority to formally draw on regional expertise through the establishment of advisory committees. These would include:

- a local government advisory committee or committees - with representation across Victoria, these committees would ensure local government and alpine resort expertise is used in decisions made by the authority
- a regional advisory committee – a single committee with representation from each region, or a committee per region, the regional advisory committee) would bring together regional expertise, including from businesses and community leaders, to advise the waste authority on the opportunities and challenges in regional Victoria.

Establishment of committees could include clear guidelines set by the Minister to ensure regular meetings (with appropriate use of technology to facilitate participation) and transparent consideration of their advice.

**Additional options**

The following options are also being considered for inclusion in the legislative framework to further embed this strong regional focus:

1. **Engagement policy:** include a specific legislative requirement for the waste authority to adopt a community engagement policy that outlines how it will consider local/regional views and priorities and undertake appropriate consultation in performing its functions (similar to obligations for local councils under the *Local Government Act 2020*)
2. **Powers to define regions or clusters for service delivery**: as with the *Emergency Management Act 2013*, include powers for defining regions within a Schedule, regulations or statutory guideline for the purpose of regional service delivery. This could align with a need to consider regions under the infrastructure planning framework.

**Questions:**

- Which of these additional options would be effective in enshrining a strong regional focus for the waste authority?
- Can you suggest other ways to do this?
Figure 5: Current Victorian Government waste portfolio structure (simplified) and proposed new structure