

Draft Submission on the *Consultation Regulatory Impact Statement – Phasing out certain waste exports*

February 2020

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Opening

Local Government NSW (LGNSW) is the peak body for local government in NSW, representing all NSW general purpose councils and related entities. LGNSW facilitates the development of an effective community based system of local government in the State.

LGNSW welcomes the opportunity to provide feedback on the *Consultation Regulatory Impact Statement – Phasing out certain waste exports* for the Australian Government’s Waste Export Ban to design and implement the best regulation based on a detailed cost-benefit analysis. As identified in the Discussion paper - Banning exports of waste plastic, paper, glass and tyres (November 2019), mixed waste sourced from kerbside and collected by local government is hardest hit by the waste export ban. This dominates the waste material subject to the ban with low grade mixed plastic types, largely from kerbside making up 80% of the waste plastic exported; and unsorted waste and scrap paper 34% of the paper and cardboard exported.

The waste export ban places many challenges on local government’s kerbside recycling system which relies heavily on export to ensure the viability of a system that is strongly supported by the community and diverts waste from landfill. These challenges are not reflected in the RIS and include:

- The impact of the ban on kerbside recycling collection and processing that is managed by local government including the environmental, social and financial costs on kerbside recycling should be considered in the RIS.
- Insufficient lead time for industry to source the technology and establish the domestic secondary processing capacity for low quality kerbside recycling feedstock and build domestic and export markets for this recycled content.
- The likely unintended outcome of increased landfilling as a result of the ban
- The increasing amount of products and packaging in kerbside recycling that is not matched to the recycling industry’s ability to recycle.
- The increasing cost of recycling borne by local government and ratepayers rather than manufacturers and consumers

Local government is subject to state government regulatory settings whilst bearing the brunt of impacts of changes to these settings as evidenced recently in NSW by the revocation of the Mixed Waste Organics Output exemption – and the NSW Government failure to provide support to councils for this change. This example illustrates that any changes to policy positions need to consider the price impacts on local government that cannot necessarily react quickly to price increases when fees or charges are set within yearly budget and operational plans.

This submission should be read in conjunction with LGNSW’s submission on the Waste Exports Ban Discussion Paper. LGNSW has also provided feedback on the development of the National Waste Policy Action Plan that should also be considered in the RIS.

This is a draft submission awaiting review by LGNSW’s Board. Any amendments will be forwarded in due course.

Summary of Recommendations

The waste export ban is already starting to impact on local government waste management and recycling services and the impact can be expected to become much higher at significant cost to ratepayers. LGNSW recommends that the RIS give consideration to the following so that the impact on local government, their communities and the broader domestic waste and resource recovery industry can be captured.

Policy Objectives

The policy objectives reflect the desired outcomes to be achieved. Suggested alternate policy objectives are:

- *Improve waste avoidance, recycling and resource recovery in Australia to better protect human health and the environment whilst sustainably using valuable resources*
- *Position Australia to produce less waste and compete in both the domestic and global circular economies to improve the resilience of Australia's waste and recycling sector*
- *Responsibly manage resources and reduce reliance on virgin materials that are adding to already constrained landfills and associated environmental impacts*

Impact of the waste export ban on local government and their communities

The following inclusions to be considered in the final RIS to assist in identifying and quantifying the impact of the waste export ban on local government and their communities:

- *The impact on kerbside recycling collection and processing that is managed by local government, including the environmental, social and financial costs and benefits*
- *The impact on regional social enterprise MRFs that employ supported workers*
- *The impact of insufficient lead time for industry to source the technology and establish the domestic secondary processing capacity for low quality kerbside recycling feedstock – namely mixed paper and plastic*
- *The impact of insufficient lead time to build domestic and export markets for this recycled content, and the impact of unavailable markets or markets at a price that is uneconomic to the ratepayer.*
- *The impact of domestic downcycling of recycling eg into civil construction materials through government procurement*
- *The impact of increased stockpiling and movement of waste due to EPL licence limits*
- *The impact of the unintended outcome of increased landfilling and associated emissions, including the impact on community expectations that recycling is recycled and not landfilled*
- *The impact of recent domestic commitments such as the actions in the National Waste Action Plan and other jurisdiction's activities*
- *The impact of kerbside recycling costs continuing to be borne by local government and ratepayers rather than manufacturers and consumers through product stewardship*
- *The impact of the increasing amount of products and packaging in kerbside recycling that is not matched to the recycling industry's ability to recycle.*
- *Strong policy and regulatory frameworks for a product stewardship scheme for packaging is required in parallel with, for example, national standards for packaging design for recycling, to bring consistency and quality to the kerbside recycling bin, with producers rather than ratepayers paying.*

The impact of major government intervention to plan for, incentivise and support necessary infrastructure and markets, including the revision of planning controls and environmental licensing requirements to ensure that innovation is not stifled.

The impact of reinvesting a significantly higher proportion of the waste levy back into carefully planned and strategically located regional recycling hubs to overcome transport costs and achieve economies of scale.

Policy options

The consideration of a new policy option/revised Option 2(b) –

The waste export ban be aligned in timing to the implementation of the remaining national targets in the National Waste Policy and its Action Plan, as well the implementation of more strongly enforced and amended APCO targets including that as well as being recyclable, reusable and compostable, products are also recycled, reused and composted.

Funding models for implementing this new option/revised Option 2(b) (for example the delivery of infrastructure necessary to manage banned waste export streams) be considered in the RIS.

Other matters for the RIS to consider

The final RIS outlines:

- *How the ban will be enforced and by what agencies;*
- *How it will be implemented and funded, including providing an outline of funding packages, economic incentives and penalties for all affected sectors to make these substantial changes;*
- *Legislative and economic incentives to increase the use of recycled materials in products to create end markets and stimulate investment in reprocessing capacity;*
- *A review of the definition of waste to facilitate beneficial reuse and incorporation of recycled materials into products; and*

If the above items can not all be included in the RIS then the next steps section of the RIS should include an implementation plan and a timeframe for this.

Background

At the August 2019 meeting of the Council of Australian Governments (COAG), Australia's First Ministers considered waste and recycling issues and agreed Australia should establish a timetable to ban the export of waste plastic, paper, glass and tyres, while building Australia's capacity to generate high value recycled commodities and associated demand.

As required by COAG Regulation Impact Guidelines, a consultation RIS has been developed by the Australian Government Department of the Environment and Energy in consultation with state and territory governments and the Australian Local Government Association.

The purpose of a consultation RIS is to canvass the regulatory options under consideration to determine the relative costs and benefits of those options. This RIS:

- establishes the problem that governments are seeking to address
- identifies policy options to address the problem

- outlines the costs and benefits of these options in addressing the problem and poses
- questions to support their assessment

The Department is seeking input from stakeholders on the options outlined in the consultation RIS and have also requested input to develop accurate estimates and more accurate assumptions. The closing date for submissions is 12 February 2020.

Response to questions

1. Do you agree with the problems that have been identified?

The problems identified in the RIS are limited to those faced by receiving countries and recent international agreements relating to marine plastic debris and the movement of hazardous waste. The environmental and health impacts of imported waste on receiving countries in traditional export markets are acknowledged as vital to address, however these are not the only problems the RIS should address.

The problems should be framed not only by recent international commitments on waste, but also recent domestic commitments such as the National Waste Policy and Action Plan, in which the waste export ban is only the first action. The policy and action plan provide a framework for collective, national action on waste management, recycling and resource recovery to 2030 and should be coupled with the introduction of a mandatory product stewardship scheme for packaging and complemented by separate policies committed to by each state and territory jurisdiction.

The vast majority of waste impacted by the ban is kerbside recycling managed by local government, that is, mixed paper and cardboard and mixed plastics. The problems should be framed to reflect the impact on local government and households in meeting community expectations and delivering public good regarding kerbside recycling services. The unintended problem of increased landfilling and associated emissions should also not be overlooked.

The RIS as it stands does not consider the problem articulated in the Problem section, namely, “*whether a more cost-effective adjustment to global restrictions on waste exports can be facilitated by increasing domestic handling of waste material that is currently exported*”. The over-reliance on export markets for minimally sorted and baled recycling has led to the underdevelopment of the domestic resource recovery sector for kerbside recycling. This has made Australia less resilient to export market shocks. The RIS needs to address the underlying problem that the packaging and products in kerbside recycling are largely uneconomic to recycle domestically, and increasingly costly to export for recycling.

2. What effect do you think the problems could have on the waste and recycling sector, consumers and environmental regulators?

The cost of kerbside recycling for households is highly likely to increase as a result of:

- processing contractors increasing gate fees under Change of Law clauses, with some councils already seeing increases of up to 1000% since 2017 in recycling contract prices
- costs associated with changes to kerbside recycling collection and bin contracts to achieve further separation, eg new dedicated paper or glass bins where feasible
- costs associated with educating the community to reduce contamination

- legal and staffing resources to undertake extensive, lengthy costly contract negotiations
- landfilling of recycling where there are no viable markets or the contractor refuses to collect recycling affected by the ban under Change of Law
- increased cost of landfilling due to more competition and space constraints
- councils being heavily penalised by the contractor for large increases in contamination under Change of Law
- increased processing contract prices as MRFs and processors pass on the capital investment in new or upgraded facilities

There is likely to be less competition as smaller dirty MRFs are forced to close and larger vertically integrated businesses further increase market share and set prices. Regional social enterprise MRFs are likely to become less viable as advanced technologies are often incompatible with their operations leading to regional job losses of supported workers. Stockpiling is likely as material awaits secondary processing and bulking up for remanufacturing and storage costs are likely to increase.

The proposed ban is already impacting on councils entering or in the market to procure processing services, reducing competition and increasing costs. Recent tenders for recycling processing services have been very challenging and offer very limited solutions for the short term to the long term. Without a mandated product stewardship scheme for packaging, increasing disposal costs will be borne by the ratepayer, rather than the producer.

Recycling is not an essential service as energy and water are. Local government in NSW is not required under legislation to collect recycling for processing. The community's willingness to pay for kerbside recycling is unknown, however is likely to be starting to be reached given the increase in domestic waste charges resulting from existing import restrictions and the current lack of processing capacity and competition in the system. The collapse of the kerbside recycling system in Australia as we know it is a real possibility if we proceed with the current ban and timeframes.

The opportunity for further source separation at the kerb to improve quality is limited. For example, there is little bin space in metropolitan areas (particularly in multi-unit dwellings) for additional paper or glass recycling bins; a lack of transfer stations; transport logistic challenges of additional truck movements and associated congestion; and major costs of providing additional bin collections. Other novel source separation systems are likely to be required eg precinct level collection points for glass and cardboard and take back and reuse schemes, such as extended container deposit schemes. Further source separation comes with financial and environmental costs that should be borne by the producer, not by ratepayers.

The products available to buy and use today in Australia are increasingly more complex and made from different composite materials or contain electronic or electrical components. A high proportion of consumer products are also not designed to be reused, recycled or repaired and most packaging items are discarded after a short period of use. The changes to products and packaging is not currently matched by the Australian recycling industry's ability to accept and manage these new materials. As an example, aseptic packaging is often used to store ultra-high treated (UHT) food, resulting in products suitable for shelf storage for more than six months. This method of packaging food is widely used across Australia and despite the recycling technology existing on almost every continent¹ to recycle this type of packaging there is no such facility in Australia. Other waste types are likely to stop being recycled under the

¹ <https://www.tetrapak.com/au/sustainability/recycling>

ban, such as polycarbonate polymers, as there are insufficient tonnages to support a processing facility solely for domestic use.

Compostable packaging that is becoming more prevalent in the market will increasingly place huge demands on contamination management as people tend to recycle this in their kerbside recycling bins due to lack of alternatives and difficulties with differentiation eg identifying a compostable PLA bottle compared to oil-based plastic.

Even if viable markets are established for kerbside recycling in time, increased stockpiling is likely until logistics chains and bulking up centres etc are approved and built. Stockpile limit conditions on Environment Protection Licences in NSW could lead to the unintended consequence of waste being transported to other states for stockpiling whilst awaiting reprocessing.

As a net importer of most plastics, paper, cardboard and glass containers in kerbside recycling, and with Australia's lack of manufacturing due to high labour, energy and water and infrastructure costs, most processed waste will need to be exported, with some material downcycled into civil construction materials procured by governments. Processed kerbside recycling is unlikely to compete in domestic markets with higher quality container deposit and commercial and industrial sourced material for remanufacturing.

3. Do you have any information, analysis or data that supports characterising the impact of the problems identified?

At this stage characterising the impact of the problems identified is difficult as the final definition of waste material types and definitions of 'value adding' are still being negotiated - for example paper and cardboard can only be exported as pulp, however revised definitions propose to exclude clean paper and cardboard from the ban.

Each local government contract is unique and the amount of variables impacting any characterisation of kerbside recycling across NSW is high. There is also a lack of transparency in downstream supply chains of costs and material flows.

LGNSW is of the view there is insufficient secondary processing capacity in Australia and very limited pull through from domestic markets for this resource. Viable domestic solutions for 'processing' lower quality kerbside recycling are yet to be established (eg pulping, chemical processing or energy from waste). Against this backdrop it is not possible to provide information, analysis or data that supports characterising the impact of the problems.

A recent waste composition audit from the South Sydney Regional Organisation of Councils², representing up to 1.7 million residents in NSW, indicates that the overall recycling rate of this region is 37%, of which approximately 20% is from mixed recycling. Should this service be further impacted by a reduction in eligible materials for recycling then the overall cost to deliver this service may outweigh the benefits and exceed the costs of sending the material to landfill. This outcome would have detrimental impacts on the NSW Government's ability to deliver meaningful recycling and circular economy outcomes as stated in its Circular Economy Policy Statement³ and to meet the targets of the NSW Waste and Resource Recovery Strategy's target.

² <https://ssroc.nsw.gov.au/ssroc-2019-waste-audit/>

³ <https://www.epa.nsw.gov.au/-/media/epa/corporate-site/resources/recycling/19p1379-circular-economy-policy-final.pdf?la=en&hash=F80151EA9C2C3E27BA889D15D18041CDF7A4D25A>

4 Are there any other problems that you think should be considered as part of the RIS? If so, please set out what they are, what effect you think these problems could have and how the problems should be addressed.

Impact on domestic recycling industry

In defining the problem the RIS requires information on impacts not just from overseas, but within Australia. In particular, information on the impact on kerbside recycling collection and processing managed by local government. The export ban affects almost 80% of materials collected in kerbside recycling.⁴ The environmental and financial costs of the export ban on kerbside collections should be included in the RIS.

The future ban is already impacting on local government through recycling contracts. A major processor has already advised it is closing its Sydney metro MRF due to the impact of the China Sword policy, low commodity prices and the impending waste export ban that is already impacting access to export markets that are anticipating the future ban, for example on mixed plastics in under 18 months. Councils sourcing alternatives have been quoted up to 2.5 times the gate fee due to increased transport, lack of processing capacity, commodity prices and competition in the current market.

The RIS should consider the impact of the lack of viable domestic processing options (eg chemical processing, energy from waste or pulping) and markets for low quality mixed paper and plastic sourced from the kerb that is currently exported unprocessed. Without the necessary infrastructure and capacity to process these materials onshore there is a considerable risk that recycling facility operators, facing no commercially viable markets for their output, could use Change of Law clauses to deem materials in kerbside recycling as 'contamination'. This 'contaminated' recyclable material could be landfilled by the MRF until such time that there is an alternative solution.

As domestic end markets for recycled materials are still extremely limited, the definition of waste and when waste ceases to be waste as defined in the NSW *Protection of the Environment Operations Act 1997* will restrict the ability of industry to store larger quantities of recyclable or recycled materials during the likely transition period between when the export ban comes into effect and when viable domestic end markets for these materials develop. The restrictions also impose a costly and onerous burden on industry to store materials under cover even when such cover may not be necessary. The regulatory uncertainty around the waste and waste-derived products also creates risk for buyers of such materials. For example, many councils now prioritise the procurement of recycled materials but face the risk that such materials may need to be removed (i.e. recycled crushed glass from road materials) if it is classified as waste. There is currently no standard in NSW for when waste becomes a product. The RIS should also consider assurance mechanisms that kerbside recycling is actually being recycled/re-processed – whether exported or used domestically.

Increased landfilling of waste and associated emissions

The likely landfilling of recycling is a very poor environmental outcome and undermines consumer confidence in the recycling system. It also has considerable financial implications, as under the commercial arrangements of many local government recycling processing

⁴ Southern Sydney Regional Organisation of Councils Kerbside Waste Audit 2019 identified that 41.6% of the yellow bin is recyclable paper and 37.8% is recyclable containers.

contracts, a cost penalty is incurred for contamination above a specified limit. More detail on this problem and how it could be mitigated by government interventions should be considered in the RIS. NSW has limited landfill capacity having not invested in new landfills, particularly in metropolitan Sydney.

Even if the processing capacity is available in time, the investment in infrastructure and additional operational expenses of the processing facilities will be passed through in contract gate fees.

Australian secondary processed materials will find it difficult to compete in export markets due to high labour, energy, water and financial and infrastructure costs. This material will also find it difficult to compete in domestic markets for remanufacturers, given the cheaper cost of imported virgin material (such as resin) and packaging (eg glass bottles from Mexico and imported composite packaging), as well as higher quality materials available through the commercial sector and container deposit schemes.

Insufficient producer responsibility for non hazardous wastes

The RIS should consider the impact of stronger product stewardship to encompass all the materials considered under the proposed export ban. There are many examples of other jurisdictions that have stimulated better product design by levying financial contributions paid by companies on the basis of the end-of-life costs of their products. Manufacturers and retailers need to take more responsibility for the waste their products generate:

- Mandate the removal of unnecessary packaging and single use items.
- Require removal of unnecessary packaging on products e.g. single layer only or sell items singularly.
- Introduce levies on industries (or products) that do not have circular economy practices to send a 'price signal' to the market and thus incentivise new green industries and technology advancement.

Other problems the RIS should consider have been clearly articulated in the National Waste Policy and Action Plan documentation, such as lack of infrastructure, government procurement and lack of standards and specification for infrastructure and recycled content.

Policy objectives

5. Do you agree with the policy objective as outlined?

As well as minimising the stated environmental and social externalities, all levels of government should seek to minimise the economic externalities associated with waste management. The policy objectives should reflect the desired outcomes to be achieved. Suggested alternate policy objectives are:

- Improve waste avoidance, recycling and resource recovery in Australia to better protect human health and the environment whilst sustainably using valuable resources, and
- Position Australia to produce less waste and compete in both the domestic and global circular economies to improve the resilience of Australia's waste and recycling sector.
- Responsibly manage resources and reduce reliance on virgin materials that are adding to already constrained landfills and associated environmental impacts

6. Are there any other objectives that you think the Commonwealth, state and territory governments should be pursuing in addressing the problems? If so, please set out what they are.

As well as the revised objectives presented above, the RIS should consider objectives that assign costs associated with implementing the waste export ban to waste generators rather than ratepayers.

Australia can pioneer circular economy by introducing appropriate regulatory and financial mechanisms to ensure changes to product design that increases a product's lifecycle. The Australian Government should consider the development of an Australian Standard or fund the development of a certification standard that confirms that the design and components of a product adhere to circular economy principles.

Policy options and impact analysis

Option 1 – Status quo, with consumer education and work on standards

7. What is your role in the waste stream (producer of waste, collection, recycler, exporter)?

LGNSW is the peak body for local government in NSW, representing 126 NSW general purpose councils and related entities. Local government provides waste avoidance, reuse and recycling education and communication campaigns to the community to reduce the amount of waste produced.

Kerbside recycling services that collect and process recycling affected by the ban are integral to the waste management and resource recovery services that are provided to communities. Significant investment in waste management infrastructure has been supported by local government paying for services for waste management and recycling.

In 2017/18 NSW local government managed over 4 million tonnes of waste generated by residents and collected over 1.8 million tonnes of this waste for recycling. In 2014/15 of the 3.69 million tonnes of waste managed by councils, 0.81 million tonnes were dry recyclables including paper, plastic and glass that provided feedstock to MRFs.

Local government in regional NSW provides the majority of the waste and recycling infrastructure including landfills, recycling and reuse centres, transfer stations, and in conjunction with social enterprise provides MRFs and processing plants.

Sydney metropolitan councils face some alternate challenges when compared with regional areas. Since the sale of the state-owned corporation WSN Environmental Solutions in 2010, the majority of waste infrastructure in the Sydney metropolitan area is now owned and operated by the private sector. Challenges for the waste and recycling industry in the Sydney region include competition for space, the need for transfer stations and the proximity to sensitive receivers. This is also compounded by the market being dominated by two or three waste and recycling service providers that are only in a position to expand infrastructure and services where strong financial businesses cases can be presented.

Local government is also a procurer of recycled content and are leading innovative trials of recycled content in civil construction, particularly in the use of recycled crushed glass in civil construction.

8. How have waste import restrictions imposed by other countries impacted your activities?

Local Government and their ratepayers have been significantly impacted by contract changes and price increases resulting from China's National Sword Policy and flow on restrictions in other receiving countries such as Malaysia. The NSW EPA provided short term recycling relief funds to regional councils affected by China's National Sword Policy. These councils were the hardest hit with price increases of up to \$200 per tonne for kerbside recyclable material. A lack of transparency in the supply chain meant that councils were unable to substantiate their contractors price increase. Long term contracts and lack of competition and capacity in the processing market meant councils had little choice but to accept the price increase and pass these on to ratepayers through the domestic waste charge set for the following financial year.

Traditionally MRFs had not stringently imposed contamination thresholds. Import restrictions resulted in contamination rates being enforced by MRFs adding to costs. However even if visible kerbside recycling contamination could be reduced to zero, the labels and composite materials in packaging design resulted in the cleanest kerbside recycling not meeting the contamination rate of 0.5 percent under the National Sword Policy.

The impact of the National Sword Policy was concentrated by simultaneous introduction of the NSW Container Deposit Scheme that resulted in high value recycling being removed from kerbside bins for direct deposit redemption by residents. The weight of contamination remained the same, however the weight of the higher value material reduced, making recycling processing more expensive.

9. What would be the longer-term implications if similar import restrictions are imposed in other export markets?

If similar import restrictions are imposed in other export markets, uncertainty and change for local government will continue. Cost increases may reach a point of being unsustainable as at this stage, the only alternative to traditional 'recycling processing' is to landfill the material. Council would then need to consider whether to cease collecting the material separately. This will have significant implications. Such a response would also undo over a decade of educating the local community and would undermine any attempts to re-introduce such systems.

Householder contamination management requires improving, however under the NSW *Local Government Act 1993*, local government does not have legal powers to enforce good recycling behaviour, making compliance difficult. Local government has no mandate to collect recycling. Contamination education programs are costly, and in isolation of compliance initiatives, have limited reach.

Smaller scale MRFs that use more physical labour produce better quality (and less contaminated) outputs. The super MRFs are not always designed or operated to undertake this 'decontamination' step. Requirements to ensure 'standards' for MRF output products that relate directly to the percentage of residual material from a MRF would assist with this. There would also be pressure to standardise what is accepted in the kerbside recycling bin.

The above measures are costly and do not address the cause of the problem. Manufacturers of the packaging and products that enter kerbside recycling should be required to design for waste avoidance, reuse, repair and recyclability (secondary processing and remanufacture) or contribute to the increased cost of recycling their packaging and products. Ratepayers cannot

continue to bear the cost of poor design and material choice by packaging manufacturers. Local government is experiencing diminishing funding, rate capping, and a need to balance a large range of vital community services, as well as deliver responsible fiscal management.

If there are no supply chains and viable end markets for mixed plastics and unsorted paper once the ban is introduced, or it is uneconomical for MRFs/processors to invest in the infrastructure required, or the infrastructure is not built in time, councils are highly likely to be penalised heavily under lengthy current contracts for large increases in contamination that the MRF/processor will landfill. This is regardless of improvements the councils may achieve in contamination management of traditional contaminants (e.g. food waste, nappies, batteries etc).

Alternatively councils could ask ratepayers to only recycle high quality materials that have stable markets and place low quality recycling in their residual bins for landfilling. This would be very expensive and require extensive re-education, changes to bin sizes, collection schedules and processing, dramatically affecting current bin, collection and processing contracts and requiring massive behaviour change in the community, all of which would be extremely expensive and lengthy to implement with some current contracts having 15 years to run. It would also rely on transitioning producers to make products from higher quality materials that could easily be recycled, however currently there is no control over this. The APCO targets require 70% of all products to be recyclable, but just because something is technically recyclable does not mean that all recycling facilities will accept them.

10. Are there other existing or future government or industry-led initiatives that are relevant to addressing the problem?

A range of government and industry-led initiatives have been outlined in LGNSW's and other stakeholders' feedback to the development of the National Waste Plan and Action Plan as well as in the Plan itself. Whilst many of the actions within the plan need to be scoped further, such as Target 5 – Significantly increase the use of recycled content by governments and industry, their implementation will have a major impact in addressing the problem.

The reinvestment of a significantly higher proportion of the waste levy back into carefully planned and strategically located regional recycling hubs should be considered to overcome transport costs and achieve economies of scale.

Australian Government programs are needed to catch criminals who consistently export waste illegally and not to the standard of the receiving country, rather than introducing a waste export ban. The Australian Government should assist developing countries that receive clean recycling from Australia to sort and secondary process responsibly, as well as assist in creating better collection infrastructure to address their plastic pollution problems.

Major government intervention is required to plan for, incentivise and support the necessary infrastructure. Planning controls and environmental licensing requirements should be reviewed to ensure that innovation is not stifled.

Incentives to pull through recycled content in domestic markets is needed to drive the local circular economy with government procurement key. Quality and performance standards and specifications for recycled content are also needed to encourage the pull through by procurement.

The delay in direction from the NSW Government's 20 Year Waste Strategy is hampering future planning and the NSW Energy from Waste Policy does not provide regulatory settings to rely on.

11. Does the status quo achieve the policy objectives?

LGNSW is generally not supportive of the status quo as presented in the consultation paper where councils continually face significant changes and challenges managing waste and recycling, the generation of which they have little control over.

However the impact of the actions in the National Waste Policy and Action Plan that have already been agreed to by all governments should be considered are part of the status quo.

12. Are current laws and government policies sufficient to address the problem?

The National Waste Plan and Action Plan (excluding the waste export ban), whilst needing further scoping, when implemented would have a major impact in addressing the problem. The timeframes for initiatives within the plan, whilst very ambitious, are still more realistic than the timeframes for the waste export ban.

Strong policy and regulatory frameworks for a product stewardship scheme for packaging is required in parallel with, for example, national standards for packaging design for recycling, to bring consistency and quality to the kerbside recycling bin, with producers rather than ratepayers paying. The *Product Stewardship Act 2011*, that has been under review for about two years, could address this problem if it was utilised.

Market interventions will be needed to develop the pull through for secondary processed materials such as:

- An emergency resin tax or levy on virgin resins
- Recycled content GST tax incentive, for example 5% of GST

13. How effective are industry-led initiatives for addressing the problem?

Underpinned by the right government policy and regulatory framework, industry-led initiatives such as standards for MRFs and design standards for items placed in the kerbside recycling bin would assist in addressing the problem, but currently their costs are likely to be passed on to local government. However limited industry participants results in reduced choices and impacts effectiveness of industry-led initiatives.

Stronger government policy and regulatory frameworks for a product stewardship scheme for imported and domestic packaging are required in parallel with national standards for packaging design for waste avoidance and recycling. This would reduce the amount of packaging in kerbside recycling as well improve the recyclability of material that is presented.

In British Columbia, Canada, the *Environmental Management Act Recycling Regulation*⁵ requires all producers to submit an approved plan demonstrating compliance with the Act (including demonstrating avoidance and reuse) before they can sell or distribute a product within the state of British Columbia. In Europe, the European Commission is proposing to encourage better product design by differentiating the financial contribution paid by producers

⁵ http://www.bclaws.ca/civix/document/id/crbc/crbc/449_2004

under its extended producer responsibility schemes on the basis of the end-of-life costs of their products⁶.

14. Are there any other benefits or costs associated with the status quo?

No benefits or costs have been outlined in the RIS for the status quo.

**15. Do you have any suggestions that could help a future education campaign?
What kind of information should be provided as part of an education campaign?**

Education is vital to increase awareness of services and reduce confusion among residents and the community however recycling is not mandated in NSW so there is no requirement for people to recycle should they choose not to.

State and national recycling education campaigns to address waste avoidance, reuse as well as over-consumerism would reduce the volume of material in kerbside recycling and allow generic messaging across all households in Australia.

Education campaigns on contamination issues and to de-myth recycling are also required regardless of which policy option is pursued. However standardising education initiatives needs to be carefully considered as some local councils supply their material to MRFs that operate within a particular composition of material. Standard community education may need to be phased in, in line with the progress of other policy proposals.

From a community engagement perspective there is a need for increased transparency across the industry to give confidence to the community and stakeholders that materials collected are actually being recycled.

Education campaigns should also target waste avoidance, reuse and repair as well as over-consumerism.

Options 2(a) and 2(b) – Prohibit or restrict exports of waste, plastic, paper, tyres and glass

16. Are there any other benefits or costs or unintended consequences associated with Options 2(a) or 2(b)?

Options 2(a) and 2(b) require an analysis of the risk and consequences that the domestic secondary processing capacity and domestic and export markets are not developed within the timeframe for the ban, which for mixed plastics is less than 18 months. The likely consequences are major disruptions to kerbside recycling markets resulting in:

- Cessation or reduction of kerbside recycling services/landfilling of recycling where there are no viable markets/secondary processing capacity or contract prices are higher than the community is willing to pay.

⁶ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52015DC0614>

- Illegal stockpiling of recycling whilst secondary processing capacity comes on line or markets are developed, and the associated risks to human and ecological health.
- Landfilling or illegal stockpiling of secondary processed materials (in NSW this material is still classed as waste with associated stockpile limits) due to lack of domestic and export markets.
- Downcycling the bulk of the secondary processing materials (eg into civil works) due to lack of domestic remanufacturing markets and low commodity prices in export markets for processed material and where the environmental impact is still unclear.
- Impact on council owned and/or social enterprise MRFs of banning material with established export markets that have import licenses and meet receiving countries specifications. Advanced technologies often do not fit well with supported worker activities.
- Communities distrusting local government for landfilling potentially recyclable material as there is already distrust about whether collected recyclables are recycled. Any further negative impact on cost and/or perception will have consequences on local governments ability to effectively engage and educate their communities.

Domestic processing of sorted kerbside recycling should provide greater transparency to local government of end markets, making assurances that kerbside recycling is being 'recycled' easier. This is likely to contribute to improvements in recycling processing contracts that need to allow for price flexibility due to 'market condition flexibility' as there should be increased transparency of what happens to recycling that has been domestically processed.

Options 2 (b) and (c) are likely to result in increased compliance costs that are not experienced when baled recycling is received by unlicensed or poorly managed recycling facilities. These options are also likely to help avoid a repeat of the National Sword policy market shock if there is increased local capacity and capability to deal with our recycling. However there will be no capacity to manage domestic shocks such as facility fires, natural disasters etc.

Option 2(b) is a more realistic policy option than Option 2(a) because government interventions are critical to help build infrastructure and the markets required to enable this export ban. The draft RIS is too high level and needs to provide more detail of what government interventions are being considered (including investment or funding packages) and a timeframe for these interventions. Considerable investment by government and the private sector is needed to build Australia's capacity to process recyclable materials onshore and to create a market for these materials.

17. Under a prohibition or restriction on waste exports, how should the ban be designed to achieve the policy objectives while minimising costs and adverse impacts?

The ban should be introduced to complement the timing of other initiatives of the National Waste Action Plan and the introduction of a mandatory Product Stewardship Scheme for packaging and, to a lesser extent alignment of jurisdiction's CDS schemes, with a levy imposed on problematic and unnecessary packaging, including imported packaging. Producers and consumers should bear the cost, rather than all residents through the domestic waste charge at the end of the pipe. In this way consumers can be incentivised, through their purchasing decisions, to avoid problematic and unnecessary packaging.

18. Under a prohibition or restriction on waste exports, do you consider there are waste materials that should continue to be eligible for export? Please provide details.

Waste material streams that have viable export markets/and or the material meets internationally recognised export standards and specifications should not be banned. For example one large regional social enterprise MRF sorts, with very minimal contamination, plastic bottles by colour for export to the EU for a good price. This would be banned jeopardising the jobs of many regional supported workers.

Waste material streams that have insufficient volumes to justify domestic secondary processing should be exempt from the ban if they can prove responsible export otherwise this material will be landfilled if not phased out.

19. What sort of penalties should apply to businesses that fail to comply with an export prohibition or restriction?

Penalties should be set at a level that deters illegal behaviour and penalises those that make the decision. The RIS should also examine the impact of how the ban will be enforced and the cost of enforcing the ban to stop an uneven playing field developing between those operators that do the right thing and those that don't.

20. What kind of costs (including compliance costs) or loss of income will businesses face to comply with export prohibitions or restrictions? Will these costs be passed on and if so to who? Please provide data where possible.

Any additional costs that the industry incurs as a result of the waste export ban in relation to kerbside recycling will be passed onto local government via recycling collection and processing contracts. The costs that are passed on will be higher if no support is given through government interventions. However if the ban is accompanied by mandatory product stewardship these costs should pass to waste generators who can enact change.

21. How do recycling service providers manage changes of law in their contracts? What costs could introducing a prohibition or restriction on waste exports trigger under these contracts? How would service providers seek to manage these costs? Please provide details.

Local government recycling collection and processing contracts provide certainty, access to volume and the ability to justify investments. Any decisions to vary what materials can or cannot be exported will have significant implications on the many hundreds of existing diverse local government contracts.

Without the necessary infrastructure or market capacity to process (and remanufacture) these materials onshore there is a considerable risk that recycling facility operators, facing no commercially viable Australian market for their output, could use change-of-law clauses to deem the materials affected by the ban as contamination. This feedstock could be landfilled by the MRF until such time that there is an alternative solution - a very poor environmental outcome that undermines consumer confidence in the recycling system and an outcome that provides more money to governments through waste levy collection. It also has considerable financial implications, as under the commercial arrangements of many local government

recycling processing contracts, a cost penalty is incurred for contamination above a specified limit. Councils are likely to be forced to accept much higher gate fees or send kerbside recycling to landfill with state and territory governments benefiting from increased waste levies.

More detail on this problem and how it could be mitigated by government interventions to increase the capacity of facilities and market demand is needed in the final RIS.

If MRFs are unable to sort, bale and sell domestically; or sort, secondary process and sell domestically or overseas, contractors will not receive recyclables as feedstock from kerbside recycling under recycling processing contracts with local government. The MRFs are likely to activate change of law clauses in their contracts resulting in claims for contracts to be adjusted. These adjustments could remove contractual requirements to collect those materials subject to the ban via changes to contamination clauses or a refusal to pick up/process bins that contain banned material.

For MRFs to continue to collect these materials that are not able to be recycled in Australia or overseas would simply lead to ongoing disputes over the cost of landfilling and contractual requirement to recycle. Any Change of Law negotiation is likely not to be favourable to councils given the diminishing competition and capacity in the marketplace.

This may also create higher storage costs for recyclers keen to recycle materials with end markets still in development, who prefer to store materials rather than send them to landfill.

There are significant legal costs and staffing resources needed to undertake contract negotiations between councils and waste service providers in preparation for the export ban. Councils will require legal and negotiation support through these contractual negotiations. The timeline for the ban also needs to account for extensive contract re-negotiations on an intensively busy and disrupted sector.

It is likely that there will be short to medium term impact (up to 5 years) where materials are sent to landfill whilst processing capacity and markets are developed. There are significant barriers for investment in new processing infrastructure including high labour costs, high electricity costs, water availability, and access to finance. The costs of building this processing capacity is likely to be passed on to councils via processing contracts.

Uncoordinated processing infrastructure build could result in too many facilities being built nationally to process high value materials leading to a shortage in feedstock. Alternatively oversupply of feedstock for less valuable materials and increased demand for domestic processing will result in the value of the feedstock plummeting and the cost of processing increasing. Either way the costs would be transferred to local government.

Given the very limited number of vertically integrated recycling processing providers, any regulations that ban the export of recycled paper and cardboard in particular will potentially impact on the level of competition in the Australian market. Potential negative effects of the ban on competition should be analysed by the ACCC.

Regulatory impacts are often supported by funding to industry, with little reference to the financial commitments already in place via local council service contracts. Grants and other funding which is directed to industry ought to be considered in light of existing contractual obligations and also; be conditional on reduced costs flowing through to the local councils.

22. What impacts will Options 2(a) or 2(b) have for relevant markets, including impacts on prices and competition?

A regulation impact assessment should by its very nature consider the impacts on relevant markets including price and competition. Information on impacts has been supplied above.

23. Do you consider there is existing Australian markets and infrastructure have capacity to respond to a prohibition or restriction on waste exports? If not, please provide details such as:

a. What is the infrastructure capacity gap that will need to be filled?

b. How long will it take to commission the infrastructure?

c. What is the cost of building the infrastructure and who will bear this cost?

Local government in metropolitan Sydney is currently finding little spare capacity in the market for recycling processing contracts. The National Waste Policy and National Waste Action Plan acknowledged that existing Australian markets and infrastructure have inadequate capacity currently. The introduction of the waste export ban will only exacerbate this shortfall. The NSW EPA is undertaking infrastructure planning as part of its work on the NSW 20-year waste strategy and is well placed to provide this information.

In NSW there is a lack of transparent and available waste and recycling data at a metropolitan scale that can be used to design future services and infrastructure planning. There is also an identified need for coordinated long term planning of waste and recycling infrastructure in Australia. The recently released Australian Infrastructure Audit highlighted key challenges for waste being; a lack of a mature market for private investment and reliance on waste export, residential developments encroaching on existing waste facilities and inconsistencies across state government regulation⁷.

Essential secondary infrastructure such as transfer stations and bulking up facilities that reduce truck movements and traffic congestion in densely populated areas of metropolitan Sydney are being lost due to high land prices and lack of protection mechanisms. Residential encroachment on industrial lands are threatening others. National and state governments have a role in protecting and allocating land for waste management and resource recovery at appropriate scale.

Whilst secure supply of waste through contracts with local government are essential to infrastructure investment, it goes beyond the role of councils and even regional groupings of councils to plan for and procure infrastructure to service the needs of the region. In cases where this is pursued for community benefit, councils must be prudent in ensuring their probity and principles of sound financial management under relevant legislation (for example in NSW, the *Local Government Act 1993*) are met. This primary duty often necessitates a risk-averse approach or contracting framework, which can be in direct contrast to the calls of private industry for higher-risk sharing in local government contracts.

Strategic policy and planning are needed at state and national level for resource recovery infrastructure and investment to build processing, bulking up and market capacity where it is

⁷ <https://www.infrastructureaustralia.gov.au/sites/default/files/2019-08/Australian%20Infrastructure%20Audit%202019%20-%205.%20Transport.pdf>

most appropriate and to overcome cross border issues. For example, recycling from northern NSW is no longer being accepted in Queensland MRFs as there is no mechanism for those MRFs to claim the NSW container refund. It is likely that some of the packaging in kerbside recycling will require only one facility to service the whole of Australia.

The cost of building processing infrastructure for processing kerbside recycling will be passed to local government through long term recycling collection and processing contracts. However investment by industry is only likely if there is certainty, stability and leadership by governments. Without product stewardship, once more it is the householder that will bear the cost of infrastructure to process packaging, rather than the waste generator.

Regardless of the additional processing infrastructure required, the timelines for the waste export ban are too short, with infrastructure taking at least 3-5 years at best to be operational once an appropriate site has been purchased.

24. Do you believe that the combination of costs and benefits under Option 2(a) are superior to other options?

The detail provided on costs and benefits in the consultation document is not sufficient to answer this question.

25. Do you believe that the combination of costs and benefits under Option 2(b) are -superior to other options?

The detail provided on costs and benefits in the consultation document is not sufficient to answer this question.

LGNSW is of the view that a new option/revised Option 2(b) should be considered in the RIS. The new option/revised Option 2(b) is –

The waste export ban should be aligned in timing to the implementation of the remaining national targets in the National Waste Policy and its Action Plan, as well the implementation of more strongly enforced and amended APCO targets to include that as well as being recyclable, reusable and compostable, products are also recycled, reused and composted.

This is likely to achieve the policy objectives whilst limiting unintended consequences with the waste export ban acting as a major deterrent to lack of implementation of initiatives.

Funding models for implementing this new option/revised Option 2(b) (for example the delivery of infrastructure necessary to manage banned waste export streams) should also be considered in the RIS.

Conclusion

To avoid the unintended consequence of increased landfilling and demise of kerbside recycling, it is imperative that the timeline for a waste ban on plastics and paper builds in sufficient lead time to establish the business environment for success. This will require necessary financial investment in domestic secondary processing (whether for export or domestic use), and domestic manufacturing/remanufacturing, coupled with the essential pull through from domestic markets for recycled content. For some materials this may require market interventions to make domestic value-added input costs competitive with imported and virgin input materials.

It is imperative that coupled with these requirements is a mandatory product stewardship scheme for packaging. The Australian community should not be expected to fund the increasing cost of recycling or landfilling poorly designed packaging and products unsuited to the domestic or global circular economy. Waste generators through product stewardship, not local communities through kerbside recycling, should bear the cost of managing end of life materials.

The Consultation RIS refers to a “final or decision-making RIS” as the next step; this final RIS should outline:

- How the ban will be enforced and by what agencies;
- How it will be implemented and funded, including providing an outline of funding packages, economic incentives and penalties for all affected sectors to make these substantial changes;
- Legislative and economic incentives to increase the use of recycled materials in products to create end markets and stimulate investment in reprocessing capacity;
- A review of the definition of waste to facilitate beneficial reuse and incorporation of recycled materials into products; and
- The timetable for the implementation of the ban that is realistic for the establishment of new infrastructure.

If the above items can not all be included in the RIS then the next steps section of the RIS should include an implementation plan and a timeframe for this.

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