

Response to submissions on the *Draft Environment Protection (Waste to Resources) Policy*



Environment Protection Authority

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**Response to submissions on the *Draft
Environment Protection
(Waste to Resources) Policy***

Response to submissions on the Draft Environment Protection (Waste to Resources) Policy

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TABLE OF CONTENTS

EXECUTIVE SUMMARY	1
RECOMMENDED CHANGES	3
GLOSSARY	6
RESPONSE	7
1 Introduction.....	7
2 The development of the EPP	7
3 Consultation on the draft EPP	8
4 Submissions received	8
5 Summary of key issues raised by consultation	9
6 Strategic issues raised through submissions	10
6.1 National waste policy directions.....	10
6.1.1 National waste policy.....	10
6.1.2 Product stewardship generally	10
6.1.3 Fluorescent lighting	12
6.1.4 Electronic wastes.....	13
6.2 Interaction with Federal Carbon Pollution Reduction Scheme	13
6.3 Integration of the development of the EPP with other state government policy development.....	14
6.3.1 Zero Waste SA, including ZWSA Strategy mid-term review.....	14
6.3.2 The Planning Strategy	14
6.3.3 Climate Change and Greenhouse Gas Emission Reduction Act 2007	15
6.3.4 Other Waste Reform Project initiatives.....	15
6.4 The role of government in regulation.....	16
7 Issues—Clause by Clause	17
7.1 Clause 1—Title	17
7.2 Clause 3—Definitions	17
7.3 Clause 4—Certain material declared to be waste	17
7.3.1 The definition of waste.....	17
7.3.2 The elements of clause 4	18
7.3.3 Are certain materials ‘waste’?.....	19
7.4 Clause 5—Amendments able to be made without following the normal procedure	20
7.5 Clause 6—Application of the EPP	20
7.6 Clause 7—Waste management objective	20
7.6.1 Regional areas	20
7.6.2 Energy and the waste management hierarchy.....	20
7.7 Clause 10—Unlawful disposal of waste	22
7.7.1 Dumping of waste on private land	22
7.7.2 Stockpiling	23
7.7.3 Penalties.....	23
7.8 Clauses 11 and 12—Landfill disposal certificates	24

7.9	Clause 11—Requirement for resource recovery prior to disposal to landfill/Schedule 3.....	24
7.9.1	Recovery processes and standards of recovery	24
7.9.2	Application of clause 11 to particular wastes.....	26
7.9.3	Recognition of market variability.....	28
7.10	Clause 12—Prohibited landfill wastes/Schedule 4	28
7.10.1	Practicality—contamination risks and liability	28
7.10.2	Recognition of market variability.....	29
7.10.3	Alternative disposal options.....	29
7.11	Clause 14—General transport of waste.....	31
7.12	Clause 15—Management of unlicensed activities involving listed wastes	32
7.13	Clause 17—Medical containers	32
7.14	Clause 18—Disposal of medical sharps	33
7.14.1	Regulation	33
7.14.2	Current services	33
7.14.3	Observations on potential options	33
7.14.4	Liability.....	34
7.14.5	Compliance.....	34
7.14.6	Scope of the clause	34
7.15	Clause 20—Waste management codes of practice.....	35
7.16	Part 6 (Clauses 21–24)—Design, construction and operational standards for depots.....	35
8	Implementation issues raised through submissions.....	35
8.1	Education	35
8.2	Funding of EPP implementation	36
APPENDIX 1 SECTION 28 PRESCRIBED BODIES		38
APPENDIX 2 SUBMISSIONS RECEIVED ON THE DRAFT EPP		39
APPENDIX 3 OBJECTS OF THE ENVIRONMENT PROTECTION ACT 1993.....		41
APPENDIX 4 THE WASTE MANAGEMENT HIERARCHY		43

List of Figures

Figure 1	Submissions on the draft EPP by category	9
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List of Tables

Table 1	Resource recovery options.....	25
Table 2	ZWSA Grants and Guidance Programs	36

EXECUTIVE SUMMARY

The Environment Protection Authority (EPA) prepared a draft *Environment Protection (Waste to Resources) Policy* (the draft EPP) under the *Environment Protection Act 1993*. The draft EPP was on public consultation from 7 November 2008 until 20 February 2009.

Sixty written submissions were received from local government, industry and others through this consultation process. Several government agencies also provided comment during the consultation period.

The views of submitters received during the consultation period raised a wide variety of issues and requests for clarification on issues of detail. Key observations were:

- Most submissions were supportive of the intent and objectives of the draft EPP.
- Recyclers were generally very supportive of the proposed bans and recovery, considering that it gives real opportunity for their businesses to grow.
- Most local government submissions and a range of recycling and community submissions expressed the view that waste regulation should also focus more strongly on reduced waste generation and promote product stewardship and extended producer responsibility.
- Although many of the local government submissions are supportive of the intent of bans, local government and a number of other submissions suggested that viable alternative collection and disposal options need to be clearly identified and established for all banned products. If such alternatives are not established there was concern that bans could potentially increase illegal dumping, either directly or by being mixed in with wastes that are able to be transported directly to landfill such as residual household rubbish where kerbside recycling systems are offered.
- Local government was concerned about the cost implications from the EPP. It strongly recommended that extended producer responsibility schemes and the waste levy should be used to support the operation of the EPP.
- Several large waste industry operators expressed the view that only market forces, not bans, will effectively influence whether recyclable materials are kept from landfill.
- The effective operation and the implications of the landfill disposal certificates were questioned by several large waste industry operator and some local government submissions.
- Greater certainty on what would constitute appropriate resource recovery under the EPP was considered desirable by various local government submitters and stakeholders engaged in waste transfer and landfill operations.
- A well-developed education program is considered by many to be essential to the effective implementation of the EPP.

The EPA greatly appreciates submitters sharing their views and is pleased to have received feedback from so many of its stakeholders that they are supportive of the state government promoting resource recovery. In summary, the responses to the key issues are:

- The EPA agrees that successful product stewardship will have an important role in avoiding or minimising waste generation and supporting appropriate resource recovery. However, it is beyond the scope of the *Environment Protection Act 1993* to currently regulate for these issues within the EPP. The EPA is strongly committed to participating in the development of the National Waste Policy and national product stewardship arrangements.
- While the EPA is pleased that recyclers consider that growth opportunities would arise from proposed landfill bans, it has also heard the concerns of local government and others about arrangements for the effective administration of the bans, and selected industry comments about the influence of markets. The final scope of proposed bans will be further explored through the regulatory impact assessment process.
- Following concerns expressed about the administration of landfill disposal certificates, the EPA has determined that as other mechanisms can be used to achieve the objectives, the proposed certificates will not be included in the final EPP.

- The EPA understands that more specific guidance on what constitutes 'appropriate resource recovery processes' is sought by stakeholders. It will further explore ways to provide guidance without unduly restricting innovation.
- The EPA agrees that effective education will be essential for the successful implementation of the EPP. The communications plan for the final EPP will be developed in consultation with relevant key stakeholders.

The range of issues raised through submissions is addressed in the main response.

RECOMMENDED CHANGES

Recommended changes to the draft EPP are as follows:

Clause	Recommendation
Clause 1—Short title	Change title to ‘Environment Protection (Waste Management and Recovery) Policy’.
Clause 2—Commencement	No changes recommended.
Clause 3—Interpretation	Seek drafting advice on amending the definition for ‘dispose’ to explicitly include stockpiling.
Clause 4—Certain material declared to be waste	<p>Amend the clause in a manner similar to the following (Author’s underlining):</p> <p><i>For the purposes of the definition of waste in section 3(1) of the Act, <u>waste or material resulting from the treatment of waste continues to be waste except insofar as it constitutes a product—</u></i></p> <p><i>(a) that meets specification or standards published or approved in writing by the Authority, or</i></p> <p><i>(b) <u>if no relevant specification or standard under (a) applies, that is ready and intended for imminent use without the need for further treatment to prevent any environmental harm that might result from such use.</u></i></p> <p>Seek drafting advice on whether clause 4 needs any amendment to put it beyond any doubt that the general environmental duty and offences of causing environmental harm under the Environment Protection Act continue to apply in circumstances where a ‘waste’ has become a ‘product’.</p>
Clause 5—Amendment of policy without following normal procedure	No changes recommended.
Clause 6—Application of policy	No changes recommended.
Clause 7—Waste management objective	No changes recommended.
Clause 8—Waste management objective and administration of policy	No changes recommended.
Clause 9—Waste management objective and determinations by Authority under Part 6 of Act	No changes recommended.
Clause 10—Unlawful disposal of waste	Amend the clause to change the lower tier from a Category C offence to a Category B offence to give parity with the <i>Local Government Act 1999</i> and seek drafting advice on whether it can be made more explicit that clause 10(1)(f) does not affect licensing or other requirements of the Environment Protection Act.

Clause	Recommendation
<p>Clause 11—Waste to be treated prior to disposal to landfill.</p>	<p>Amend the clause to remove references to landfill disposal certificates while maintaining its substantive purpose.</p> <p>Amend the definition of ‘appropriate resource recovery processes’ to mean the following or similar:</p> <p style="padding-left: 40px;"><i>...resource recovery processes conducted—</i></p> <p style="padding-left: 40px;"><i>(a) at an appropriate licensed material recovery facility or composting depot; or</i></p> <p style="padding-left: 40px;"><i>(b) at some other facility that has been authorised or approved by the Authority for this purpose.</i></p> <p>Insert that it will be a defence in proceedings under this clause if a defendant constituting an appropriate resource recovery facility proves that the costs of recovering the waste were greater than the reward it could obtain from its recovery.</p>
<p>Clause 12—Disposal of prohibited landfill waste</p>	<p>Amend the clause to remove references to landfill disposal certificates while maintaining its substantive purpose.</p> <p>Insert that no breach of the clause occurs if a person has complied with any guidelines approved by the EPA in writing regarding what constitutes reasonable and practicable steps in managing waste.</p>
<p>Clause 13—Exemptions under Part 6 of Act</p>	<p>No changes recommended.</p>
<p>Clause 14—General Waste Transport</p>	<p>Seek drafting advice on whether the content of clause 14(2) could appropriately be positioned immediately after clause 10 for improved clarity.</p>
<p>Clause 15—Management of unlicensed activities involving listed wastes</p>	<p>No changes recommended.</p>
<p>Clause 16—Collection and transport of medical waste</p>	<p>No changes recommended.</p>
<p>Clause 17—Duties of councils, hospitals and pharmacies in relation to medical waste</p>	<p>Amend clause 17(2)(b) to say ‘leak resistant’ rather than ‘leak proof’.</p> <p>Amend clause 17(2)(g) by inserting ‘or <i>British Standard 7320:1990 Specification for sharps containers</i>, as amended from time to time’ after ‘<i>AS 4939-2001 Non-reusable personal use containers for the collection and disposal of hypodermic needles and syringes</i>, as amended from time to time’.</p>
<p>Clause 18—Disposal of medical sharps</p>	<p>If the clause is retained in the EPP, amend it to ensure that it explicitly captures sharps used by individuals for medicinal purposes and cannot be interpreted to create any liability under the provision for councils or other waste management organisations.</p>

Clause	Recommendation
Clause 19—Matters to be taken into account by Authority under Part 6 of Act in relation to HCBs, OCPs and PCBs	No changes recommended.
Clause 20—Waste management codes of practice and general environmental duty	No changes recommended.
Clause 21—Matters to be taken into account by Authority under Part 6 of Act in relation to landfill depots	No changes recommended.
Clause 22—Matters to be taken into account by Authority under Part 6 of Act in relation to material recovery facilities	Seek drafting advice on whether the clause can be expanded to also reference applications for approval of collection depots under section 69 of the Act, noting that the EPA may have regard to the need for a 'sustainable waste management system for containers' when approving such CDL depots.
Clause 23—Matters to be taken into account by Authority under Part 6 of Act in relation to transfer stations	No changes recommended.
Matters to be taken into account by Authority under Part 6 of Act in relation to composting depots	No changes recommended.
Schedule 1—Waste to which the policy does not apply	No changes recommended.
Schedule 2—Specified areas for clause 11	No changes recommended.
Schedule —Waste excluded from application of clause 11.	Insert waste from street sweepings and public place bins. Further recommendations for additions to Schedule 3 may arise through regulatory impact assessment.
Schedule 4—Prohibited landfill waste	Amend prohibited landfill wastes that are dependent upon the waste having been aggregated for resource recovery to apply to appropriate resource recovery processes as well as the place at which the waste is generated. Further recommendations for restrictions or narrowing of the current proposed bans may arise through regulatory impact analysis.
Schedule 5—Waste management codes of practice and general environmental duty.	No changes recommended.
Schedule 6—Revocation of <i>Environment Protection (Waste Management) Policy 1994</i>	No changes recommended.

GLOSSARY

CPRS	Federal Carbon Pollution Reduction Scheme
Draft EPP	Draft <i>Environment Protection (Waste to Resources) Policy</i>
EPHC	Environment Protection and Heritage Council
EPA	Environment Protection Authority
EP Act	<i>Environment Protection Act 1993</i>
EPR	extended producer responsibility
ESD	ecologically sustainable development
LGA	Local Government Association
RDF	refuse derived fuel
WMAA SA	Waste Management Association of Australia (SA Branch)
ZWSA	Zero Waste SA

RESPONSE

1 Introduction

The Environment Protection Authority (EPA), working with Zero Waste SA (ZWSA), prepared a draft *Environment Protection (Waste to Resources) Policy* (the draft EPP) under the *Environment Protection Act 1993* (EP Act). The draft EPP was prepared to support the achievement of *South Australia's Strategic Plan 2007* target of reducing waste to landfill by 25% by 2014 through:

- promoting the implementation of the waste management hierarchy
- helping broaden the responsibility for waste management amongst stakeholders
- providing improved options for regulating illegal dumping and inappropriate stockpiling
- avoiding or minimising the risks of environmental harm from waste management
- promoting consistency and transparency for industry by requiring the EPA to take into account specified guidelines when assessing environmental authorisations and development applications for depots
- creating opportunities for industry sectors to work with the EPA to achieve certainty regarding expected behaviours and a more 'level playing field' within their industry

The draft EPP was released for public consultation from 7 November 2008 until 20 February 2009.

This document comprises the EPA's response to submissions received. It addresses matters raised by submitters on an issues basis rather than for each individual submission. This response:

- outlines the processes followed to date in developing the draft EPP and that are required for the finalisation of the EPP
- identifies the key issues
- discusses and responds to strategic issues
- outlines and responds to issues raised in relation to particular clauses of the draft EPP

2 The development of the EPP

The development of the concepts in the draft EPP involved early engagement with stakeholders. Following the determination of policy directions, the EPA, working with ZWSA, prepared the consultation draft EPP.

Following the release of this response, the steps required for the development of a final EPP under the EP Act are:

- the EPA reports to the Minister for Environment and Conservation on the draft EPP and outcomes of the consultation, together with any recommendations. The Minister may then decide to approve the draft EPP (with or without alterations) or decline to approve the EPP
- following the Minister's approval (if granted), the EPP will be referred to the Governor for authorisation and to set a date for its coming into operation
- the EPP will then be referred to the Environment, Resources and Development Committee and both Houses of Parliament for 14 sitting days. The Committee may suggest amendments to the EPP that may be approved by the Governor. Either House of Parliament may disallow the draft EPP.

Regulatory impact analysis of the EPP will be required as part of the approval and authorisation processes. This analysis has recently commenced. It will draw on existing information, and analyses for waste management and the handling of particular wastes wherever possible. The analysis will involve strategic engagement with key stakeholders including industry associations and the Local Government Association.

3 Consultation on the draft EPP

The Minister launched the draft EPP on 7 November 2008. It was available on the EPA's website from that date. Notice of consultation was then published in *The Advertiser* and the *Government Gazette*. The EPA sent copies to all licensees engaged in waste and resource recovery operations, prescribed bodies under section 28 of the EP Act (listed in Appendix 1), state government agencies and NRM Boards. The EPA directly notified all other licensees of the availability of the EPP and the consultation process.

Items on the draft EPP also appeared in various media and industry publications, including the *Advertiser*, the national *WME Environmental Management News*, an LGA Circular, and the Environment Defenders Office e-bulletin.

Submissions were due by 20 February 2009. The EPA granted numerous extensions.

During the consultation period, the following presentations, reaching over 300 attendees, were held:

- EPP public information session in Adelaide
- LGA Breakfast
- LGA Waste Management Committee
- LGA Regional Executive Officers
- Adelaide Hills Waste Management Board
- Murray and Mallee LGA Regional Waste Committee
- Eyre Peninsula LGA Region
- South East LGA Regional Waste Committee and selected others
- Fleurieu Regional Waste Committee
- Central LGA Region Waste workshop
- WMAA SA Breakfast
- Business SA Environment Committee

The EPA also held a stakeholders' meeting to discuss proposed landfill disposal certificates under the EPP. The EPA conducted various other briefing and discussion meetings with particular stakeholders on issues of concern during and subsequent to the submission period.

4 Submissions received

Sixty written submissions were received from Local Government, industry and others (see Appendix 2). The make-up of submitters is shown by category in Figure 1. Several government agencies also provided comment.

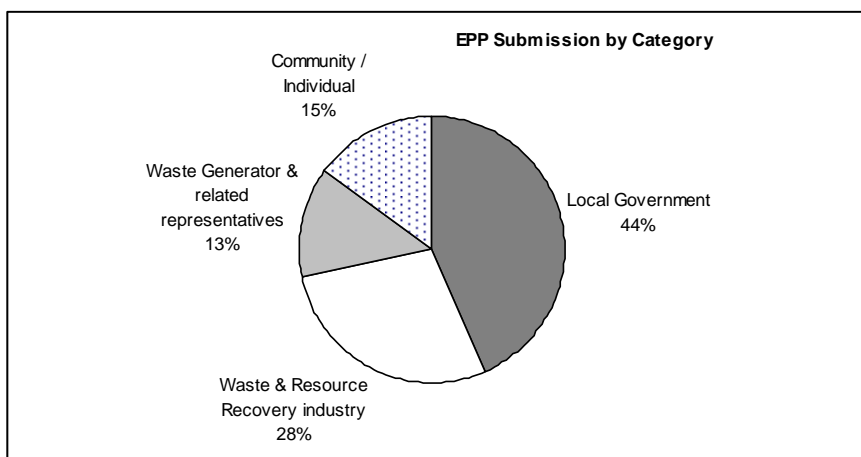


Figure 1 Submissions on the draft EPP by category

The views of submitters varied, with some very supportive of the EPP and seeking aspects of it to operate sooner than proposed, some having queries, concerns or suggestions about specific aspects, and a few expressing strong reservations about the EPP.

5 Summary of key issues raised by consultation

The submissions raised a wide variety of issues and requests for clarification on issues of detail. Key observations were:

- Most submissions were supportive of the intent and objectives of the draft EPP.
- Recyclers were generally very supportive of the proposed bans and recovery, considering that it gives real opportunity for their businesses to grow.
- Most local government submissions and a range of recycling and community submissions express the view that waste regulation should also focus more strongly on reduced waste generation, and promote product stewardship and extended producer responsibility.
- Although many of the local government submissions are supportive of the intent of bans, local government and a number of other submissions considered that viable alternative collection and disposal options need to be clearly identified and established for all banned products. If such alternatives are not established there was concern that bans could potentially increase illegal dumping, either directly or by being mixed in with wastes that are able to be transported directly to landfill such as residual household rubbish where kerbside recycling systems are offered.
- Local government was concerned about the cost implications from the EPP. It strongly recommended that extended producer responsibility schemes and the waste levy should be used to support the operation of the EPP.
- Several large waste industry operators expressed the view that only market forces, not bans, will effectively influence whether recyclable materials are kept from landfill.
- The effective operation and the implications of the landfill disposal certificates were questioned by several large waste industry operator and local government submissions.
- Greater certainty on what would constitute appropriate resource recovery under the EPP was considered desirable by various local government submitters and stakeholders engaged in waste transfer and landfill operations.
- A well-developed education program was considered by many to be essential to the effective implementation of the EPP.

6 Strategic issues raised through submissions

6.1 National waste policy directions

Several submissions supported the EPP's features, including bans. However, they observed that additional EPR/product stewardship schemes were needed for certain products at a national level and that further efficiencies in waste management will be achieved assuming other states and territories implement consistent environmental policy¹. Two national industry associations prefer that only national action be pursued².

Response: It is agreed that national consistency would be most desirable when dealing with problematic waste streams and the South Australian Government is actively participating in national action. South Australia also wishes to continue to pursue leadership in waste recovery in Australia and the proposals in the EPP relating to landfill bans have been drafted in a manner that will allow them to complement national product stewardship schemes that may develop³. The state's engagement on particular policy matters is set out below.

6.1.1 National waste policy

Environment Protection and Heritage Council (EPHC) committed to the development of a national waste policy and the completion of a comprehensive report on waste at its meeting on 7 November 2008. On 7 April 2009, the Department for Environment, Water, Heritage and the Arts released a consultation paper, *A National Waste Policy: Managing waste to 2010*, seeking input on the priority issues to be considered in the development of a national waste policy and how these issues might be addressed.⁴ Subsequently, a draft *National Waste Policy Framework* was released for public consultation in July 2009⁵. The draft framework incorporate themes that discuss product stewardship, valuing waste as a resource, dealing with organic waste and the need to address the different and sometimes unique needs of regional and remote communities. EPHC is seeking the development of the national policy by the end of 2009⁶.

No comments received on the draft EPP made specific reference to the development of this policy document but it is significant in working to achieve consistent policy across Australia.

Response: The strong preference is for a national approach to the management of wastes to be pursued. The EPA and ZWSA have been and continue to be actively engaged in contributing to work supporting the development of a national waste policy. As the national waste policy is developed, the EPP can be adapted if required to achieve consistency with the national framework.

6.1.2 Product stewardship generally

Product stewardship is an environmental policy approach in which the producer's responsibility for reducing environmental impact and managing the product is extended across the life cycle of the product, from selection of materials and design to its end-of-life recycling or disposal. Product stewardship recognises that

¹ For example, submissions C7 and WR1.

² Submissions G5 and G9.

³ After the ACT, South Australians are the best recyclers in the nation recycling more than 1,500 kg/person in 2006–07. Source: Zero Waste SA, 'Focus' (August 2008) in *WME Environment Business Magazine* (2008) Vol 19(6).

⁴ Referenced at <www.environment.gov.au/wastepolicy/index.html>.

⁵ Waste Policy Taskforce, Department for Environment, Water, Heritage and the Arts Consultation, *Draft National Waste Policy Framework: Less waste more resources. Discussion Paper* (2009). Available at <www.environment.gov.au/wastepolicy/index.html>.

⁶ EPHC Communiqué 22 May 2009 and Waste Policy Taskforce, Department for Environment, Water, Heritage and the Arts Consultation, *Draft National Waste Policy Framework: Less waste more resources. Discussion Paper* (2009).

manufacturers, importers, governments and consumers have a shared responsibility for the environmental impacts of a product throughout its full life cycle. Product stewardship schemes establish a means for relevant parties in the product chain to share responsibility for the products they make, handle, purchase, use and discard.

The terms 'product stewardship' and 'extended producer responsibility' (EPR) are often used interchangeably although they differ in scope. While both concepts move the onus of waste management for end-of-life products from state or local governments to manufacturers, product stewardship also incorporates extending responsibility to retailers, consumers and recyclers.

The vast majority of submissions by local government⁷ and a number of other submissions observed or expressed disappointment that regulations have not also been developed to help minimise the generation of waste or provide for product stewardship, particularly EPR requirements. One council observed that this circumstance means that, 'the amount of waste produced will continue to increase despite efforts to divert as much as possible at the end of the product life cycle'⁸.

Submission LG21 recommended that the EPA seek to have the powers within the EP Act amended to include the capacity for the introduction of EPR provisions and various other submissions suggested state-based EPR schemes. Others considered that national approaches would give the best result or were the only course that should be pursued.

Response: The EPA recognises that successful product stewardship will have a very important role in avoiding or minimising waste generation and supporting appropriate resource recovery.

The proposals in the EPP relating to landfill bans can be considered an important step towards driving better waste-management systems for problematic wastes using an end-based approach. The Minister is supportive of national product stewardship schemes to support management of these wastes. Exploration of the development of measures to support product stewardship in South Australia may occur within the framework of the Commonwealth's *Mutual Recognition Act 1992*, which is aimed at supporting a seamless national economy.

The EPA agrees that national product stewardship schemes would provide the most consistent policy outcomes. At its meeting on 22 May 2009, EPHC agreed on a Product Stewardship Framework that '... would be a key input into product stewardship deliberations as part of the National Waste Policy development process'⁹.

The consultation paper, *A National Waste Policy: Managing waste to 2020*, outlines the limited application of national product stewardship schemes in Australia to date¹⁰, schemes that are before EPHC for examination, and key difficulties that have been faced in establishing national schemes¹¹. The paper observes that various product stewardship initiatives are being trialled in different states and territories¹². In its input to national directions, South Australia has been supportive of the development of national product stewardship schemes and the Australian Government's efforts to develop methodologies that can best support appropriate regulatory

⁷ 21 of the 26 submissions received from local government entities, including the LGA.

⁸ Submission LG25.

⁹ EPHC Communiqué 22 May 2009.

¹⁰ A circumstance that can be contrasted with various other parts of the world, eg Canada, New Zealand, Japan, parts of the USA and the European Union.

¹¹ Waste Policy Taskforce, Department for Environment, Water, Heritage and the Arts Consultation Paper, *A National Waste Policy: Managing waste to 2020* (2009) at pp 22ff.

¹² At pg 23.

impact analysis of such proposals¹³. On 22 May 2009, EPHC agreed to finalise product stewardship arrangements for tyres, computers and televisions at its next meeting in November 2009¹⁴.

At the state level, the EP Act, in its current form, has a focus on pollution and waste management. The EPP necessarily operates within the scope of the Act and has a limited ability to drive waste avoidance or reduced waste generation. The EPP will assist in helping to promote changes to waste generation through the requirement for the EPA to take account of the waste management objective in the administration of the Act and when determining any environmental authorisations and referred development applications¹⁵. For example, the EPA will be empowered to promote alternative production processes for licensed premises that may generate less waste or waste that can more readily be reused or recycled in accordance with the waste management hierarchy where other principles of ecologically sustainable development (ESD) are also met (eg, economic and social wellbeing, avoidance of adverse effects on the environment).

ZWSA is also pursuing actions that support voluntary product stewardship as well as resource recovery infrastructure. For example, it is holding discussions with relevant industry associations regarding drop-off points for used products at points of purchase for selected wastes (eg lighting at hardware stores). It is also engaging with Recyclers of SA regarding the potential for the extensive network of collection depots to play a role in forming a convenient and low-cost network of depots for the collection of various recoverable wastes.

Finally, it is recognised that local government is concerned about the potential costs of managing some banned wastes if product stewardship programs are not ready in time. The management of these wastes is discussed further in section 7.10.

6.1.3 Fluorescent lighting

Submission G5 reports on studies being undertaken and wants any action to be delayed until the national approach on product stewardship is developed. In contrast, submission WR3 strongly supports the proposed ban, and hopes that this 'excellent initiative' will be followed by other states and territories. Similarly, submission C1 welcomes the proposed ban after observing that there is variability in approaches by Australian jurisdictions to lighting containing mercury and that internationally there is significant action to remove mercury from the environment.

Response: The EPA agrees that nationally consistent product stewardship measures will deliver the most effective outcomes. At its meeting on 22 May 2009, EPHC supported a federally funded voluntary scheme to increase recycling of mercury containing lamps. The scheme will target the commercial and public lighting sectors and seek to recruit key generators of mercury containing lighting to the scheme and establish suitable recycling arrangements¹⁶. A related initiative is being developed for the domestic sector¹⁷. South Australia will participate in the development of the national measures for the management of these wastes. The proposed ban relating to fluorescent lighting will be explored further by the EPA in the regulatory impact analysis for the EPP.

¹³ Refer, for example, Jasudason, P, 'Problem wastes to get a run at EPHC meet', *Environment Management News*, 20 May 2009.

¹⁴ EPHC Communiqué 22 May 2009.

¹⁵ Refer clauses 7–9 of the draft EPP.

¹⁶ EPHC Communiqué 22 May 2009.

¹⁷ EPHC Communiqué 22 May 2009.

6.1.4 Electronic wastes

Submission G9 considers that a nationally collaborative approach should be pursued in dealing with major appliances and other electronic wastes. It suggests that national programs should be developed quickly to maintain parity with other major economies and to 'avoid becoming a dumping ground for products that are no longer accepted in other international markets'.

Response: The EPA agrees that nationally consistent programs would deliver the most effective outcomes, taking into account the policy development and product requirements in place internationally. At its meeting on 22 May 2009, EPHC supported the establishment of a national product stewardship approach for electronic waste¹⁸. A final proposal for product stewardship of computers and televisions is to be considered at EPHC meeting in November 2009, following preliminary findings that show the community is willing to pay for the recycling of electronic wastes,¹⁹ and the release of a consultation regulatory impact statement on 15 July 2009²⁰. The EPP is intended to support national measures that may be agreed upon. The staging of proposed bans for different electronic waste categories was designed to help reflect policy progress in this area and the nature of the bans relating to electronic wastes will be explored further in the regulatory impact analysis for the EPP.

6.2 Interaction with Federal Carbon Pollution Reduction Scheme

Several submissions raised the issue of interaction of the EPP with the Federal Carbon Pollution Reduction Scheme (CPRS) or the need for holistic policies on waste management, greenhouse gas controls and energy needs.

Response: The EPA agrees that the EPP should complement carbon pollution reduction initiatives. The South Australian Government's view is that the features of the draft EPP do not appear to conflict with the goals of the proposed scheme²¹. In particular, the following do not appear to create obligations contradictory to the goals of the CPRS:

- the proposed ban of vegetative waste from landfill under clause 12 of the draft EPP
- landfill gas monitoring and control efforts for risk management purposes that may be required by the EPA through licences or development approvals due to consideration of the *EPA Guidelines for Environmental Management of Landfill Facilities (Municipal Solid Waste and Commercial and Industrial General Waste)* 2007 under clause 21 of the draft EPP.

There will be a need to review this position once final CPRS legislation, including associated regulations, becomes available²².

ZWSA has identified that it is unclear whether composting may be viewed as an emission causing activity under the CPRS and is seeking to resolve this and related issues regarding methodology for the estimation of emissions with the Department of Climate Change²³.

¹⁸ EPHC Communiqué 22 May 2009.

¹⁹ EPHC Communiqué 22 May 2009.

²⁰ *Consultation Regulatory Impact Statement: Televisions and Computers (EPHC, July 2009)*. Available at <www.ephc.gov.au/taxonomy/term/51>.

²¹ Comment accurate as of 16 April 2009. Details of the scheme are available at <www.climatechange.gov.au/emissionstrading/index.html>.

²² The final form that the key legislation will take is still under consideration by the Commonwealth Parliament.

²³ Balance Carbon, *The carbon constrained future and organic waste: a review of Federal legislation and policy setting with respect to Zero Waste SA goals* (April 2009) for Zero Waste SA. Available at <www.zerowaste.sa.gov.au/Content/Uploaded/Assets/Carbon%20and%20organics.pdf>. Comment accurate as of 1 May 2009.

Landfill gas capture can support reductions in carbon pollution²⁴. The place of energy generation through the capture of landfill gases in the consideration of the waste management objective is discussed in section 7.6.

More generally, Mr Max Spedding, secretary of the Australian Landfill Owners' Association, has suggested in presentations that the introduction of the CPRS is likely to lead to a significant increase in landfill gate fees (without any changes being made to the waste levy)²⁵. This will provide an incentive for increased capture of waste to resource recovery facilities. The EPA could use clause 10 of the EPP and its other powers to regulate any subsequent inappropriate stockpiling of waste at such facilities.

6.3 Integration of the development of the EPP with other state government policy development

The Explanatory Paper outlined that the *South Australia's Strategic Plan 2007* and *South Australia's Waste Strategy 2005–2010* have been key drivers in the development of the draft EPP. Further discussion on integration with particular issues of interest in submissions is given below.

6.3.1 Zero Waste SA, including ZWSA Strategy mid-term review

Several submissions raised matters relating to ZWSA's engagement with the preparation of the draft EPP and whether it was being taken into account in the mid-term review of the State waste strategy.

Response: ZWSA has been integrally involved in the development of the draft EPP, including through representation on the EPP's Project Team, EPA Board Committee (ZWSA has majority membership), and through periodic opportunities for the ZWSA Board to comment on directions taken in the EPP.

The draft EPP was designed particularly to support certain elements in *South Australia's Waste Strategy 2005–2010* that were assessed as requiring regulatory underpinning, and to complement many non-regulatory elements of that strategy.

ZWSA's mid-term review of the waste strategy will take account of the progress of the EPP and provide advice on the strategic direction necessary to support relevant aspects of its implementation.

6.3.2 The Planning Strategy

Submission LG26 commented that resource recovery services can include heavy industry, and that such industry can often have difficulty obtaining planning approval. It suggested that the issue needs to be addressed in the process for developing the *Plan for Greater Adelaide* but that little regard appeared to have been given to the draft EPP and future waste management infrastructure in the 2008 report on the development of this plan²⁶.

Submission LG4 observed that the management of waste must be considered as an inherent part of the state's future planning through the review of the State Planning Strategy, including the Mid-North, Yorke and Far North Regional Land Use Frameworks and Plan for Greater Adelaide.

Response: The EPA agrees with the importance of appropriate recognition of waste management issues and infrastructure needs in planning strategy documents.

²⁴ Although it is noted that legacy emissions are no longer within the scope of the CPRS.

²⁵ Pers. comm. and Waste Management Association of Australia (SA Branch) breakfast presentation, March 2009.

²⁶ Planning SA, *Directions for creating a new plan for Greater Adelaide (2008)*.

The current Metropolitan Adelaide and Outer Metropolitan Adelaide Planning Strategies include components on waste management and resource recovery from waste²⁷. The intended new *Plan for Greater Adelaide* is to have a different and more spatially-focussed structure than the Planning Strategies that it will replace²⁸. A consultation draft of the plan has been released for comment until 30 September 2009.²⁹

The EPA and ZWSA are continuing to contribute to the development of the Plan for Greater Adelaide and also expect to participate in the development of related Strategic Implementation Plans. They will engage with future regional strategy reviews to ensure waste management issues continue to be taken into account.

6.3.3 Climate Change and Greenhouse Gas Emission Reduction Act 2007

Submissions G2 and WR12 mentioned industry's need for holistic policies on waste management, greenhouse gas controls and energy needs. Submission C9 suggested that there is merit in an explicit linkage between the EP Act and the *Climate Change and Greenhouse Gas Emission Reduction Act 2007*.

Response: The *Climate Change and Greenhouse Gas Emission Reduction Act 2007* seeks 'to assist in the achievement of ecologically sustainable development by addressing issues associated with climate change³⁰. It sets targets for reductions in greenhouse gas emissions from South Australia and the amount of renewable energy generated and consumed within the state.

The EPA does not consider it appropriate to explicitly link the EPP to the Climate Change and Greenhouse Gas Emission Reduction Act in the absence of any existing express link to that Act within the EP Act itself. However, when the EP Act is reviewed, the role of the EP Act in relation to carbon pollution issues and the appropriateness of any amendment to require the EPA to have specific regard to the objects of the Climate Change and Greenhouse Gas Emission Reduction Act in the administration of the Act can be considered. Any such amendment would need to be consistent with the CPRS, once finalised.

The place of energy generation from waste or landfill gas in the consideration of the waste management objective is discussed in section 7.6.

6.3.4 Other Waste Reform Project initiatives

Submission G2 stated that it was concerned that the draft EPP had been released before the finalisation of the four standards related to waste reuse and recycling, under the Waste Reform Project. It suggested that there is conflict between the EPP promoting diversion from landfill and the draft *Protocol for the production and use of refuse derived fuel* giving landfill as an appropriate management solution.

Response: The development of the EPP and the standards relating to waste reuse and recycling both come within the overarching scope of the EPA's Waste Reform Project. The EPP and standards are

²⁷ For example, Government of South Australia, *Planning Strategy for Metropolitan Adelaide (2007)* refer Chapter 2.3.2 Environment, Energy, Water and Waste p 18 and Chapter 3.6 Integrated Waste Management pp 47–48, Government of South Australia, *Planning Strategy for Outer Metropolitan Adelaide (2007)* refer Chapter refer Chapter 2.2.2 Environment, Energy, Water and Waste pg 15 and Chapter 3.7 Integrated Waste Management pp 55–57.

²⁸ Mr Scott Douglas, pers.comm, February 2009.

²⁹ Available at <www.dplg.sa.gov.au/plan4adelaide/index.cfm>.

³⁰ Climate Change and Greenhouse Gas Emission Reduction Act 2007 s3.

being developed by the EPA using coordinating processes that will achieve consistency and awareness between the different final elements³¹.

The *EPA Guideline: Refuse Derived Fuel – Standard for the production and use of refuse derived fuel* (RDF Standard, referred to during consultation as a protocol)³² will be linked to the EPP specifically under clause 4 and more generally.

6.4 The role of government in regulation

Submission WR12 asserted that market forces will underpin the key benefits expected from the EPP and that market direction is not a legitimate sphere for government intervention. Submission G2 made a similar statement and observes that 'the market itself will determine the most economically viable use of waste, thus ensuring a robust marketplace and recycling program'.

Submission G2 also referred to Business SA's challenge to the state government to reduce the regulatory burden on business and continually review all regulations. It suggested that clauses 11, 12 and 18 of the EPP may increase the burden of conducting business unnecessarily.

Response: The South Australian Government is strongly committed to developing legislation that is supportive of its aims to make South Australia the most competitive place to invest or operate a business in Australasia. In April 2009, Premier Rann announced the government's continued commitment to competitiveness through a new target of a further \$150 million reduction in red tape over three years³³. As part of this there will be a rolling five-year review of all business regulation³⁴.

Accordingly, the South Australian Government requires regulatory impact analysis of each new legislative proposal before any such proposal is implemented. Clauses 11, 12 and 18 of the EPP are discussed in sections 7.8, 7.9, 7.10 and 7.12 of this response and will be further explored during the regulatory impact analysis for the EPP.

This analysis has recently commenced. It will draw on existing information and analyses for waste management and the handling of particular wastes wherever possible. The analysis will involve strategic engagement with key stakeholders including industry associations and the Local Government Association.

Resource recovery is a developing and innovative area and current regulation requires further development to cater for the industry. The EPP has been designed to support elements of *South Australia's Waste Strategy 2005–2010* which have been identified as requiring regulatory underpinning. It will also complement many non-regulatory elements of the Waste Strategy.

³¹ Refer to the EPA Board Waste to Resources Subcommittee Report (October 2007) for details on the Waste Reform Project. Available at <www.epa.sa.gov.au/pdfs/CommitteeReport.pdf>.

³² Environment Protection Authority, *EPA Standard: Refuse Derived Fuel – Protocol for the production and use of refuse derived fuel* (2009). Available at <www.epa.sa.gov.au/waste_reform.html>.

³³ Ministerial Statement 28 April 2009 titled 'Response to EDB's Economic Statement', available at <www.southaustralia.biz/library/Premiers_response_to_EDB_Economic_Statement.pdf> pg 3. This follows on from substantial savings already made in recent years, refer 'Reducing Red Tape for Business in SA 2006–2008' on this issue.

³⁴ Ministerial Statement 28 April 2009 titled 'Response to EDB's Economic Statement', available at <www.southaustralia.biz/library/Premiers_response_to_EDB_Economic_Statement.pdf> at pg 3.

7 Issues—Clause by Clause

7.1 Clause 1—Title

Submission C4 observed that the draft EPP seeks to improve resource recovery from waste but that many other substantive clauses of the draft EPP focus on general waste management obligations. It considers that operators of various commercial and industrial sites might not readily identify the EPP as of potential relevance to their operations due to the character of the title, 'Waste to Resources'.

Response: The EPA will recommend a change to the title of the final EPP.

Clause 1 recommendation: Title to be changed to *Environment Protection (Waste Management and Recovery) Policy*.

7.2 Clause 3—Definitions

Two submitters suggested that stockpiling should be explicitly referred to as a concept within the term 'disposal'. Submission C4 has suggested that there is the potential for industrial and commercial operators to fail to realise their obligations under clause 10 of the EPP in relation to stockpiling of wastes such as treated timber posts.

Submissions WR8 and C9 queried whether the terms 'resource recovery', 'reuse', 'recycle' and 'recover' ought to be defined to support the generation of energy from landfill gas as a form of resource recovery.

Response: The term 'dispose' has been defined to include the 'deposit' of waste within the EPP. The EPA considers that 'deposit' effectively includes stockpiling within its meaning. However, to avoid any doubt, the EPA will recommend that drafting advice be sought on amending the definition for 'dispose' as necessary to explicitly include stockpiling.

'Resource recovery' is defined in the EPP to capture reuse, recycling and the recovery of energy or other resources from waste. Given their ordinary meaning, the EPA does not consider that any definition of the other terms is required. The important issue of whether the generation of energy from landfill gas should be considered a form of resource recovery and its placement in the waste management hierarchy is discussed in sections 7.6 and 7.8.

Clause 3 recommendation: Seek drafting advice on amending the definition for 'dispose' to explicitly include stockpiling.

7.3 Clause 4—Certain material declared to be waste

7.3.1 *The definition of waste*

Several submitters commended clause 4 as improving certainty in determining what constitutes waste. Submission C4 supported its inclusion as this appropriately reflects the decision of the Environment, Resources and Development Court in the matter of *Resourceco Pty Ltd v the Environment Protection Authority* [2007] SAERDC 31.

Submission WR12 submits that 'waste' should be defined as 'material for which no use or reuse is intended'. Similarly, Submission G2 states it understood clause 4 conflicts with this form of definition, and suggested that it is 'one commonly used by industry'.

Response: Section 3 of the EP Act has contained the current definition of waste that clearly captures recoverable materials since July 2005³⁵. This definition derives closely from the meaning given in the *National Environment Protection (Movement of Controlled Waste between States and Territories) Measure* (as varied December 2004) and which continues to be used in national discussion³⁶.

In administering the EP Act, the EPA seeks to further the objects of the Act, such that in regulating waste management and resource recovery, there is a balance in sustaining the potential of resources to meet people's needs and avoiding environmental harm from the recovery and use of such resources³⁷. The EPA considers that proposed clause 4 will assist in this task by helping clarify for the EPA and industry the point at which recovered material no longer constitutes 'waste'.

7.3.2 The elements of clause 4

Submission C9 has discussed its understanding of the implications of the various elements comprising proposed clause 4 and questioned aspects of these, as follows:

- a) The submission suggested that the terms 'product' and 'treatment' would benefit from definition.
- b) The requirement for a material to have an 'imminent use' as part of avoiding continued categorisation as a 'waste' is questioned. It believes that 'material flow and mass balance issues are better managed by site by site regulation rather than classifying material as either a waste or a product by reference to the time it takes for the product to be consumed in the relevant market'.
- c) Submission C9 suggests that 'ingredients' for a blended product that of themselves pose no environmental risk should not be 'waste'. It also suggests that '[i]f environmental harm is to be assessed, it should be confined to an assessment of the product prior to its end use. Either there is a risk with the material or there is no risk'.
- d) Submission C9 also suggests that 'it is unwise for the definition of whether a material is a product to be left to a regulator' and submitted that this approach raises questions about considerations on which specifications may be based. It suggested that specifications relating to risk would be uncertain and will not assist clarification in implementing the EPP.

Response: The EPA is appreciative of the detailed form of consideration given, and its response to each point in turn is as follows:

- a) The term 'product' has its ordinary meaning and is given its context by the clause. The nature of 'treatment' is explained and inclusively defined for the purposes of the EPP in clause 3(2). This is considered to provide appropriate context for clause 4. 'Treatment' has a broader, undefined meaning for the purposes of clause 3 of Schedule 1 of the EP Act.
- b) The availability of markets is an important issue for recovered materials given associated inappropriate stockpiling and waste levy avoidance. The power of the EPA to license various activities, and hence offer proactive site-by-site regulation, is dependent upon whether the material involved still constitutes 'waste'. The EPA therefore recommends that the link to the availability of an 'imminent use' in determining whether material remains a 'waste' be retained in the EPP. This clause would be

³⁵ It is also noted that the definition previously in place from the EP Act's authorisation in 1993 did not preclude such materials that were to be subject to processing from being 'waste'.

³⁶ Waste Policy Taskforce, Department of the Environment, Water, Heritage and the Arts, *A National Waste Policy: Managing Waste to 2020 Consultation Paper* (2009) pg 58.

³⁷ Refer s10 (set out in Appendix 4). Note also the considerations described in section 3.2 of the EPA Board Waste to Resources Subcommittee Report (October 2007) pg 4.

administered having regard to the Guideline For Stockpile Management—Waste and Waste Derived Products for recycling and reuse (2009)³⁸.

- c) Risks can be posed by materials in different ways. A recovered material may pose no real risk of environmental harm when properly stored. However, that same material may pose a risk of causing environmental harm if subsequently used, for example, in application to particular land or as a fuel. The risks may vary depending upon the character of the land involved and the manner in which the material is used. To best support the EPA's objectives in dealing with recovered materials, the EPA considers it appropriate to consider the end use.
- d) Ingredients that may be used for a blended product only, but that on their own do not pose a site contamination or similar risk, would cease being a waste only at the time that they are ready and intended for imminent use. If such ingredients were apart and without an identified imminent use, the EPA will continue to regulate the ingredients as 'waste' due to the amenity, safety and abandonment risks that can arise from the inappropriate stockpiling of such materials in the absence of a market.
- e) Resource recovery is an area of much innovation and the EPA is regularly required to make decisions on whether or not the use of various materials is appropriate in individual cases through guidance, licence conditions, or limited purpose declarations. This clause and the specifications and standards being developed under it are designed to achieve improved certainty and transparency for the EPA, industry and the community. Some specifications and standards will be risk-based, but such specifications and standards will transparently detail the processes and characteristics required for the handling of the material and it possibly ceasing to be a waste. Monitoring of the EPA's exercise of its powers will continue to be available under the EP Act. Any risks that may possibly eventuate in respect of materials that are no longer waste can still be regulated using the general environmental duty and offences of causing environmental harm under the Act. The EPA will recommend that clause 4 be amended if necessary to put this beyond any doubt.

The EPA also considers it desirable to put it beyond doubt that a material will only fall within the scope of the general exclusion if it is outside of the scope of an EPA standard or specification and to enable the clause to apply to wastes that may form products without treatment (eg waste soils).

7.3.3 Are certain materials 'waste'?

Submission G4 considered that under the definition of 'waste', distillation residues arising from 'GreenEarth' and hydrocarbon cleaning will be wastes, and sought clarification on this issue.

Response: The EPA agrees that these materials are wastes under section 3 of the Act, unless they can be managed to fall within scope of clause 4 of the EPP.

³⁸ Refer particularly pp 10–11. Available at <www.epa.sa.gov.au/pdfs/guidelines_stockpile.pdf>.

Clause 4 recommendation: The clause to be amended in a manner similar to the following (author's underlining):

For the purposes of the definition of waste in section 3(1) of the Act, waste or material resulting from the treatment of waste continues to be waste except insofar as it constitutes a product—

(a) that meets specification or standards published or approved in writing by the Authority, or

(b) if no relevant specification or standard under (a) applies, that is ready and intended for imminent use without the need for further treatment to prevent any environmental harm that might result from such use.

Drafting advice be sought on whether clause 4 needs amendment to put it beyond any doubt that the general environmental duty and offences of causing environmental harm under the EP Act continue to apply in circumstances where a 'waste' has become a 'product'.

7.4 Clause 5—Amendments able to be made without following the normal procedure

Clause 5 provides for a streamlined process to incorporate specified policy amendments. Three regional local government submissions commented on this clause, observing that amendments should not be made without consultation and consideration of regional impacts.

Response: Clause 5(3) provides that changes can only be recommended under this clause after consultation with relevant stakeholders and consideration of likely economic, business, social and environmental impacts. Clause 5(4) lists further particular considerations before any amendment can be recommended to Schedule 4. The EPA considers the clause appropriate.

7.5 Clause 6—Application of the EPP

One submission suggested that clause 6 means the EPP applies only to specified wastes.

Response: Clause 6 provides that the policy applies to all wastes within the meaning of the Act other than waste of a kind specified in Schedule 1—ie particular radioactive wastes—and is therefore as broad as this submitter would wish.

7.6 Clause 7—Waste management objective

7.6.1 Regional areas

Submissions LG22 and C6 suggest that the general policy of 'landfill is bad, recycling is good' needs to be questioned for rural areas and that in areas north of Goyder's Line, simple trench landfilling should be acceptable on land that does not have a known water table in place of transporting recyclables and waste to engineered landfills.

Response: The scope of potential landfill bans into remote areas will be reviewed through the regulatory impact analysis for the EPP. The EPA and ZWSA will continue to work with regional areas to develop appropriate regional waste management solutions.

7.6.2 Energy and the waste management hierarchy

Submission C9 proposes that the most sustainable hierarchy for one waste stream might be different from that for another. It suggested that although avoidance and minimisation of waste are likely to remain the highest order options for all waste streams, it is possible that the best use may vary for how a waste may then be put. It suggests that the terms 'reuse', 'recycle' and 'recovery' should be treated as being of equal merit and grouped as 'resource recovery' in the hierarchy. Its submission was made on the basis that the EPA must apply the hierarchy and that the wording of clause 7 does not merely allow the EPA to have regard to the hierarchy.

Submission WR12 contended that rigid application of the waste management hierarchy may block projects that have net benefits to the environment.

Submission WR8 contended that landfills with grid connected energy generation are facilities that are actively undertaking resource recovery and should be appropriately positioned within the waste management hierarchy. It suggested that there should be a life cycle analysis (LCA) of carbon within resource recovery options and not simple adherence to the waste management hierarchy.

Response: The objective of the EPP as set out in clause 7 is ‘to achieve sustainable waste management by applying the waste management hierarchy consistently with the principles of ecologically sustainable development set out in section 10 of the Act’. The objective must be taken into account by the Authority when administering the policy and in considering referred development applications and environmental authorisations³⁹. The EPA is of the view that the requirement for it to apply the hierarchy consistently with the principles of ecologically sustainable development (ESD principles) achieves the required level of flexibility for sustainable waste management in changing circumstances over time⁴⁰. The EPA must take into account whether any given tier of the hierarchy is reasonably practicable⁴¹ and whether the ESD principles will influence what forms an appropriate outcome. For example, upon analysis of project proposals in particular circumstances:

- the recycling of a waste material may not be reasonably practicable or supportive of the economic and social wellbeing of an area due to prohibitive cost and lack of infrastructure, meaning that other lower-order options in the hierarchy need to be applied,
- recovering material or energy from waste may be inappropriate due to the risk of adverse effects on the environment in its use, necessitating the disposal to landfill, or
- the recovery of energy from a material may better sustain our resources and protect the life-supporting capacity of the environment through reduced reliance on fossil fuel and the impacts of non-renewable electricity generation than the recycling of a material where that recycling involves high energy and water inputs.

No change to wording is required to give the necessary flexibility for the EPA to respond to local circumstances.

The generation of electricity from landfill gas involves the recovery of energy from disposed organic waste. It contributes to the capture and use of carbon, and is preferable in the context of the hierarchy to disposal of waste that allows the escape of landfill gases or fails to recover energy from these gases. However, it is still a form of disposal. Composting of organic waste (a form of recycling) occurs higher on the hierarchy. The EPA considers this hierarchy suitable on the basis of its use internationally and the analyses of which the EPA is aware. In *Solid Waste Management and Greenhouse Gases: A Life-Cycle Assessment of Emissions and Sinks*⁴², the US EPA on the basis of modelling and expert advice found that composting is an appropriate management option for food discards and yard trimmings (ie green waste), stating:

... net greenhouse gas emissions from composting are lower than landfilling for food discards (composting avoids CH₄ emissions, and higher than landfilling for yard trimmings (landfilling is credited with the carbon storage that results from incomplete decomposition of yard trimmings).

³⁹ Clauses 8 and 9.

⁴⁰ Section 10 of the Act is set out in Appendix 3 of the response for ease of reference.

⁴¹ The waste management hierarchy is set out in Appendix 4 for ease of reference.

⁴² US EPA, *Solid Waste Management and Greenhouse Gases: A Life-Cycle Assessment of Emissions and Sinks* (2006, 3rd edition).

Overall, given the uncertainty in the analysis, the emissions factors for composting or combusting these materials are similar⁴³.

In addition, the analysis undertaken did not consider the benefits arising from increased soil water retention (which as well as other environmental benefits and irrigation cost reductions can reduce the energy used to pump water), increased productivity, or the possible greenhouse gas emission reductions achievable by applying compost instead of chemical fertilisers, fungicides and pesticides (all of which require energy for manufacture and transport)⁴⁴. Compost may also lead to additional energy and cost savings from reduced transport and waste disposal costs through local use of feedstocks such as manures and agricultural wastes. Cost-benefit analysis of compost application for a range of South Australian crops has shown that economic benefits in the horticultural industry can be significant.⁴⁵

The EPA and ZWSA will continue to monitor the broad sustainability of different organic waste options over time. For example, ZWSA has been carefully monitoring the implications of the proposed CPRS and a recently commissioned report on the matter, *The carbon constrained future and organic waste: a review of Federal legislation and policy setting with respect to Zero Waste SA goals*⁴⁶, contained the following recommendation:

It is also recommended to undertake a lifecycle assessment of waste more broadly using directly acquired primary data rather than coarse estimates to examine the emissions cost-benefit implications of all existing business models for organic waste treatment, including compost, landfill, renewable energy production at the landfill, and renewable energy production from anaerobic biodigester technology where the residual stream is composted aerobically and effectively utilised to promote agricultural productivity.

7.7 Clause 10—Unlawful disposal of waste

Various submissions, including Submission LG21, have expressed their support for this clause, understanding that it will assist in addressing issues of concern to both local government and industry. Several submissions have also reflected that the effective policing of this clause will be a significant issue in continuing to support investments made by the waste and resource recovery industry. Submission G6 observed that the options for the lawful disposal of waste need to remain accessible to businesses or the risk of illegal dumping would increase.

One submission questioned the use of the term 'incineration' in the clause as somewhat alarmist and was unsure of its scope.

Response: Illegal dumping is a significant issue and the EPA is pleased that the clause is supported.

The term 'incineration' relates to the activities covered by that term under clause 3(1) of Schedule 1 of the EP Act.

7.7.1 Dumping of waste on private land

One submission implied that clause 10 opened the way for the dumping of waste on land with the owner's consent.

⁴³ At ES-13. Only these limited compostable wastes were considered in the analysis – noted at pg 49.

⁴⁴ At pg 62ff.

⁴⁵ South Australian Centre for Economic Studies, Adelaide & Flinders Universities, Benefit Cost Analysis of Composted Organic Mulch in Horticultural Industries, Final Report (1999).

⁴⁶ Balance Carbon, *The carbon constrained future and organic waste: a review of federal legislation and policy setting with respect to Zero Waste SA goals* (2009).

Submission C3 suggests that the circumstances in which waste could be applied to private land should be the same as the defence under section 84(1)(c) of the EP Act and the EPP should refer directly to this provision of the Act.

Response: Nothing in this clause affects the need for compliance with other provisions of the EP Act. Therefore, if a person disposes of waste in a manner that currently requires a licence under the Act, that will remain the case under clause 10.

The broad scope of the defence under 84(1)(c) applies to the offences of causing serious environmental harm, material environmental harm or an environmental nuisance only. Sub-clauses 10(1)(f) and 10(2) operate to set out the circumstances in which it can be lawful for waste to be disposed of on private land. The sub-clauses operate together to prevent inappropriate dumping or stockpiling of wastes and need the narrower scope than section 84(1)(c) to regulate these activities appropriately.

7.7.2 Stockpiling

Submission G4 sought clarification around the implications of the clause for the stockpiling of dry-cleaning wastes prior to its regular collection for processing. It suggests that its revised code of conduct will better define appropriate management.

Submission WR12 asked whether the clause made it unlawful to stockpile CCA timber posts on a farm.

Response: The stockpiling of these materials (ie both dry-cleaning wastes and CCA timber) by the land owner or occupier would fall within the scope of proposed clause 10(1)(f) and therefore would be lawful unless it resulted in the conditions listed in clause 10(2), for example, resulting in environmental harm affecting water. Adherence to a code or other requirements approved by the EPA would also bring it within the scope of clause 10(1)(e).

7.7.3 Penalties

One council observed that the level of penalty provided for within clause 10 is less than is currently provided under the *Local Government Act 1999* and should be amended to ensure that the minimum penalty and expiation fees are comparable. Another local government submission recommended that strong consideration be given to returning fine monies acquired through successful prosecution to the local council.

Response: Clause 10 proposes a two-tier offence for unlawful disposal of waste. The EPA agrees that it would be desirable for the penalties for the EPP's simple strict liability offence and expiation to be of similar scale to the related offence under the *Local Government Act*, that has a maximum fine \$5,000 and expiation fee \$315⁴⁷. The closest relevant category penalty available within an EPP is a Category B offence—maximum penalty \$4,000, expiation fee \$300⁴⁸.

The EPP does not influence to whom fines are required to be paid. The EPA notes that section 135 of the EP Act empowers the Authority and administering authorities to recover administrative and technical costs associated with contraventions.

Clause 10 recommendation: Amend the clause to change the lower tier from a Category C offence to a Category B offence to give parity with the *Local Government Act 1999* and seek drafting advice on whether it can be made more explicit that clause 10(1)(f) does not affect licensing or other requirements of the Act.

⁴⁷ s235 *Local Government Act 1999*.

⁴⁸ s34 EP Act.

7.8 Clauses 11 and 12—Landfill disposal certificates

The draft EPP envisaged that resource recovery operations would issue landfill disposal certificates (LDCs) to enable lawful disposal of wastes regulated under clauses 11 and 12 at landfill. LDCs would offer certainty for landfill operators and support some rigour in undertaking resource recovery due to it being an offence to provide false and misleading information under the EP Act⁴⁹.

The discussion meeting held with various key stakeholders in February 2009 indicated that industry operators had concerns with the functionality of this proposed mechanism. A range of submissions commented on uncertainty around the administration of the LDCs. Also, several landfill operators verbally advised that the protection LDCs offered was unnecessary for them.

Response: The EPA will recommend that clauses 11 and 12 be amended to retain their substantive features but remove references to LDCs.

It has been determined that questionable wastes disposed of at landfill can be investigated without creating an additional workload by using existing powers under the EP Act to inspect records or documents indicating sources of waste to the landfill. Officers can ask to look at waste records at sites to identify the origin of the suspect waste.

An appropriate level of rigour in undertaking resource recovery (including through potential tracking of waste) can be promoted using other means, most significantly, licence conditions.

Clauses 11 and 12 recommendation: Amend the clauses to remove references to landfill disposal certificates while maintaining their substantive purpose.

7.9 Clause 11—Requirement for resource recovery prior to disposal to landfill/Schedule 3

The purpose of clause 11 is to stop most metropolitan waste from being taken directly to landfill or simply aggregated for bulk transport at a transfer station and then landfilled. The clause has had to be designed to cater for the wide range of existing resource recovery operations and ongoing innovations in this area.

Various comments have been received on different aspects of this clause. They are discussed below by topic:

7.9.1 Recovery processes and standards of recovery

A number of local government and industry submissions have commented on the uncertainty in the broad language of the clause (ie 'reasonably available resource recovery processes'). Several queries were also received on whether particular activities would constitute appropriate resource recovery processes.

Response: The clause was drafted to cater for the wide range of existing resource recovery operations and ongoing innovations in this area. Table 1 summarises key categories of resource recovery⁵⁰.

Because of the diversity of activity, broad recovery percentages to be achieved by facility or category types are not currently realistic. Each facility may receive different waste streams from different sources, and which may also already have been segregated to differing extents, such that the ability to recover a certain percentage of recyclable material will vary markedly. Recovery levels may also vary within a facility across time as waste clients change.

⁴⁹ s119.

⁵⁰ Please note that this table is indicative only of types of resource recovery. It is not intended that the examples represent all activities that will be considered potentially acceptable by the EPA.

The EPA has determined that improved certainty and the ability to adapt to innovations over time will be best enabled by amending the clause in relation to what constitutes appropriate resource recovery processes to relate to activities authorised or approved by the EPA. Proposed landfill bans (clause 12), licence conditions, and guidelines for depots (Part 6) can all be used to support recovery standards at such facilities.

The three major resource recovery and waste transfer stations that service the northern metropolitan area, acting as consolidation points for residual waste prior to its transfer to landfill, will be classed as appropriate resource recovery processes. As waste streams are monitored over time, improved diversion may be required using licensing provisions.

The Town of Gawler’s waste and recycling transfer station provides areas for recyclables to be separated by individuals attending at the station. It will be an appropriate resource recovery process, provided that the station is operated so as to monitor individuals’ behaviour.

The EPA does not consider the generation of electricity from mixed waste at landfill to be an appropriate resource recovery process as resources are not being kept from landfill—it is still a form of disposal—though preferable to disposal that fails to capture the energy from landfill gas and supported by the EPA in landfill management. Dedicated anaerobic digestion of organic material with electricity generation would be an appropriate resource recovery process.

Table 1 Resource recovery options

POTENTIAL RESOURCE RECOVERY OPERATIONS
Recovery or recycling processing facility for goods to sell for use, eg: <ul style="list-style-type: none"> • manufacture of waste-derived soil enhancers (eg soil conditioners, fertilisers, etc) • manufacture of recycled plastic posts, benches, etc • manufacture of recycled paper, glass, etc • manufacture of compost • manufacture of waste-derived fills such as road base, etc • manufacture of refuse derived fuels (also called alternative fuels).
Direct onsite reuse, recycling or recovery
Direct offsite reuse, recycling or recovery including, eg: <ul style="list-style-type: none"> • burning of wastes (eg sawdust, tyres) for energy • use of fly-ash in cement making.
Direct beneficial application to land, eg: <ul style="list-style-type: none"> • waste derived soil enhancers for soil conditioning • waste derived fills for land reclamation.

7.9.2 Application of clause 11 to particular wastes

The requirement for certain wastes to be subjected to resource recovery prior to disposal was questioned in various submissions.

Response: Each of the wastes is considered below:

i) Hard waste and illegally dumped waste retrieved by councils

A number of local government submissions queried whether hard waste collections and illegally dumped waste retrieved by councils should be subjected to resource recovery prior to disposal.

The services provided by councils are important and need to remain affordable. ZWSA and the EPA would prefer to see such wastes subjected to resource recovery processes. The final form of the EPP provisions for hard and illegally dumped waste will be guided by the outcomes of the regulatory impact assessment. The assessment will take into account factors including the variability of collection and recovery processes applied by councils and the potential cost implications in this area.

ii) Street sweepings

One council observed that if its street sweepings are required to be subject to resource recovery processes that would have significant budget implications for councils.

Street sweepings can pose a range of contamination risks and can be unsuitable for composting. The EPA will recommend that such sweepings are not required to be sent for resource recovery prior to disposal to landfill. Councils will continue to have the discretion to pursue recovery of street sweepings.

iii) Public waste bins (streets, parks, etc)

Each council has hundreds of public waste bins on streets, parks and reserves⁵¹. Collection rounds could be significantly affected if the contents of these bins were required to be subject to resource recovery.

Response: The EPA is of the view that relatively small diversion from landfill is likely to be achieved from subjecting this material to resource recovery due to:

- the effectiveness of South Australia's container deposit legislation in directing a high percentage of cans and bottles to collection depots rather than disposal in such bins
- the likely character of rubbish in such bins.

The EPA considers that the additional costs to councils for small rates of additional recovery do not warrant mandatory recovery. The EPA will recommend that wastes from public waste bins not be obliged to be subject to resource recovery prior to disposal to landfill. Councils will continue to have the discretion to pursue recovery of such waste.

iv) Commercial and industrial (C&I) and construction and demolition (C&D) waste with source separation of wastes

Clause 11 and Schedule 3 of the draft EPP operate to provide that for council kerbside-collected waste, the rubbish may go to landfill without being subject to resource recovery where councils also provide separate recycling and green waste collection systems. In contrast, for commercial and industrial (C&I) and construction and demolition (C&D) wastes, no such exclusion is currently proposed to apply. Whether a waste generator (eg a building site) separates its waste into categories (eg bricks, timbers, metal and

⁵¹ For example, the City of Holdfast Bay reports that it has in excess of 600 bins and the City of West Torrens over 480 bins.

residuals) or not, the residual waste bin will still need to be subject to resource recovery under the provisions of the draft EPP.

Representatives at a discussion meeting with the WMAA SA queried whether this will appropriately support ZWSA and EPA's promotion of source separation of wastes (as did submission WR16). Discussion around the nature of these systems has highlighted that an exclusion for a well-developed system is not simply identifiable.

Source separation of wastes is the strongly preferred option of the EPA and ZWSA and both promote and encourage this in a range of ways. However, they are not aware of clearly identifiable standards or systems in place to ensure the consistently appropriate use of separated systems at this time. Therefore, at least for the time being, to ensure maximum recovery of resources, the residual waste should also still be directed to resource recovery.

The EPA does not view this as undermining the drive for source separation as there would still be real incentives for C&I and C&D premises to undertake source separation of wastes with the other provisions of the EPP.

For example:

<p>Building site – source separation</p> <p>Metals Bricks Timber Cardboard Concrete</p>	<p>Materials collected for recycling at either no cost, low cost or with payment to builder for valuables</p>
<p>Residual</p>	<p>Material collected for a fee that incorporates need for resource recovery and potential disposal to landfill (with applicable waste levy)</p>
<p>Building site – no source separation</p> <p>All wastes</p>	<p>Materials collected for a fee that incorporates the requirement for resource recovery and needing to make allowance for a relatively high percentage of potential disposal to landfill (with applicable waste levy) due to mixing and contamination of materials. Under the EPP, the resource recovery operator would need to certify that only material not suitable for recovery was being disposed of—ie it would not be possible for minimal sorting to occur and then waste simply to be aggregated and landfilled.</p>

At commercial sites with well-managed source separation, recovery rates of well over 85% for total site waste have been achieved⁵², such that the residual component for effectively managed sites is low. Given the weight and value of much of this waste, this suggests that benefits for generators from source separation of wastes should be likely, and be able to be promoted to consumers.

⁵² KESAB presentation to Master Builders' Association, March 2009.

7.9.3 Recognition of market variability

Submissions by some waste industry operators and discussion with the WMAA SA showed a concern that recovery not be required to be undertaken when materials cannot be profitably handled.

Response: Schedule 3 can be simply amended under clause 5 and industry may work with the EPA to develop temporary exclusions if required. Beyond this mechanism, the EPA also recommends that a defence on the basis of costs be included.

Clause 11 recommendation: Amend the definition of 'appropriate resource recovery processes' to mean the following or similar:

... resource recovery processes conducted—

(a) at an appropriate licensed material recovery facility or composting depot; or

(b) at some other facility that has been authorised or approved by the Authority for this purpose.

Insert that it will be a defence in proceedings under this clause if a defendant constituting an appropriate resource recovery facility proves that the costs of recovering the waste were greater than the reward it could obtain from its recovery.

Schedule 3 recommendation: Amend Schedule 3 to explicitly include waste from street sweepings and public waste bins.

Note that further recommendations for additions to Schedule 3 may arise through regulatory impact assessment.

7.10 Clause 12—Prohibited landfill wastes/Schedule 4

Clause 12 of the draft EPP makes it an offence for a person to dispose of banned wastes (prohibited landfill wastes) to landfill. Schedule 4 sets out the wastes to be banned from landfill.

The proposed bans provide an incentive for industry investment where inadequate resource recovery services exist and have been supported by recyclers. Secure sources of supply can support better market development for products. The bans also seek to share the obligation for the management of problematic wastes between generators, transporters and landfills rather than relying on exclusions from landfill by way of landfill condition only.

7.10.1 Practicality—contamination risks and liability

Various submissions by local government and the waste industry have expressed concerns about contamination and liability issues where banned wastes may be placed in their waste streams by individuals. At a meeting between EPA and WMAA SA representatives in April 2009, landfill and transfer station operators expressed serious concerns about the inclusion of non-aggregated lighting and non-aggregated electronic wastes as materials banned from landfill. They considered there is not a practical way that these materials can be managed once they have entered the waste stream.

Response: The EPA recognises that it is possible that individuals may place some banned wastes in their council rubbish bins (eg fluorescent lighting and electronic wastes) or commercial rubbish bins and that management facilities or landfills are likely to be either unaware of these materials or unable to readily remove them. It is a general defence under the EP Act in any criminal proceedings, if it is proved that the alleged contravention did not result from any failure on the defendant's part to take all reasonable and practicable measures to prevent the contravention or contraventions of the same or similar nature. The EPA recognises that

a direct protection relating to reasonable and practicable management steps having been undertaken would be desirable for improved certainty in local government and commercial waste and resource recovery operations, and the EPA will recommend an appropriate amendment.

7.10.2 Recognition of market variability

Some waste and resource recovery industry submissions expressed concern about implications of what will happen with banned recyclables when markets collapse.

Response: Bans to landfill would continue to apply in varying market circumstances unless exemptions were granted. However, exemptions to landfill bans may be efficiently granted by the EPA without going through public consultation under clause 13. This enables responsiveness to a range of circumstances, including the collapse of a particular market.

7.10.3 Alternative disposal options

Councils are typically supportive of the concept of landfill bans. However, they are very concerned that the management of banned wastes outside of existing recycling systems does not become an extra financial burden for them, rather than forming part of a product stewardship/EPR scheme or being funded through distribution of the waste levy. They consider it essential that appropriate alternative disposal options exist prior to bans coming into force. The availability and feasibility of collection and disposal options will vary for regional South Australia relative to inner regional and Metropolitan Adelaide.

Response: The final character, extent and timing of all proposed bans will be determined having regard to the regulatory impact assessment for the EPP to ensure that inappropriate cost obligations do not arise in supporting the recovery of these materials. The EPA makes the following observations on the proposed bans and alternative disposal options:

- A range of materials are already banned from landfills by landfill licence conditions, ie hazardous wastes, lead acid batteries, liquid wastes, medical wastes, oil, and whole tyres (with exceptions). These wastes are subject to existing council and/or private services. Further comments are included later on hazardous wastes and earth mover tyres.
- Various other materials are only proposed to be banned when they have been aggregated for resource recovery, ie cardboard and paper waste, glass packaging, metals, PET or HDPE plastic packaging, PP or LDPE plastic packaging, PVC or PS plastic packaging, and vegetative matter collected by a council kerbside collection system. The purpose of these bans is to assist in ensuring that where effort has been expended aggregating materials for resource recovery, they are actually recovered rather than disposed of to landfill. These bans relate to materials understood to be subject to existing services by councils. The EPA will recommend that these bans be amended to apply to appropriate resource recovery processes as well as the place at which the waste is generated to avoid a potentially perverse outcome.
- The proposed bans for fluorescent lighting and electronic wastes (in stages) may require enhanced collection services. Further comments on these wastes are included later.

Hazardous wastes

Although the ban will not bring a change from current circumstances, increased awareness of the ban amongst council residents may increase demand for limited services.

ZWSA currently helps fund local household hazardous waste and farm chemicals collection in local areas, working in conjunction with councils. This program operates on a rolling basis between councils every few years. Households from any council area may bring waste to any hazardous waste collection event and councils neighbouring the council that is hosting an event are being encouraged to let their residents know of the event.

ZWSA has previously commissioned a report to evaluate the best value options for metropolitan and rural collections⁵³. ZWSA will continue to consider the most appropriate means for handling this waste into the future having regard to existing infrastructure.

Whole earth mover tyres

Submission G7 observed that unless there is a steep change in the market for earth moving tyre resources or recovery equipment availability, then it is unlikely that it will be reasonable or practical to either shred tyres onsite or transport large tyres to a shredder within two years. It recommends that the ban should contain an exemption to continue to allow mining operations to bury earthmoving tyres under 25 metres of waste rock within mine sites on which the tyres were used if practical recycling or reuse options are not reasonably available. This will be considered as the national tyre product stewardship scheme advances and through the regulatory impact analysis.

Fluorescent lighting and any other lighting that contains mercury

Subsequent to the submissions being made on the EPP, the Commonwealth Government announced on 22 May 2009, a federally funded voluntary scheme to increase recycling of mercury containing lamps. The scheme will target the commercial and public lighting sectors and seek to recruit key generators of mercury containing lighting to the scheme and establish suitable recycling arrangements⁵⁴. A related initiative is being developed for the domestic sector⁵⁵. These factors will be considered during the regulatory impact assessment.

In South Australia, there are currently four contractors that provide fee-for-service collection and/or processing of end-of-life mercury containing lamps. Outside of the range of councils that currently offer free drop-offs for residents, householders have several free drop-off options, including the Household Hazardous Waste Depot at Dry Creek, ZWSA-funded Household Hazardous Waste Collections, DeLights and IKEA. Other businesses, such as E-Cycle Recovery, will accept lighting for a fee. ZWSA has had preliminary discussions with other industry associations about drop-offs at points of purchase (ie new for old) with collected fluorescent lamps then taken for recycling. Discussions are also occurring between ZWSA and Recyclers of SA regarding the potential for the extensive network of container recycling depots throughout the metropolitan and rural South Australia to be used to assist in forming a convenient and low-cost network of depots to collect lighting and electronic wastes.

Computer monitors and televisions, including components

South Australia has Australia's first television glass recycling plant, CRT Recycling, with the capacity to process 1.5 million televisions or 30,000 tonnes of television and computer monitor glass per annum. In addition there are 11 other processing facilities in South Australia and an additional 11 collection services supported by interstate processing.

At its meeting on 22 May 2009, EPHC supported the establishment of a national product stewardship approach for electronic waste⁵⁶. A final proposal for product stewardship of computers and televisions is to be considered at EPHC meeting in November 2009, following preliminary findings that show the community is willing to pay for the recycling of electronic wastes⁵⁷. A consultation regulatory impact statement for televisions and computers

⁵³ Asterisk One, *Evaluation of Future Options for the ZWSA Household and Farm Chemical Collection Program and for the Household Hazardous Waste Collection Depot at Dry Creek. Final report for Zero Waste South Australia (2007)*. Available from <www.zerowaste.sa.gov.au>.

⁵⁴ EPHC Communiqué 22 May 2009.

⁵⁵ EPHC Communiqué 22 May 2009.

⁵⁶ EPHC Communiqué 22 May 2009.

⁵⁷ EPHC Communiqué 22 May 2009.

was released on 15 July 2009⁵⁸. The final Regulatory Impact Statement for EPHC will identify a preferred option for decision at the November meeting. These factors will be considered in undertaking the regulatory impact assessment for the EPP.

Low-cost disposal (subsidised by councils and ZWSA) for householders is currently provided through selected ZWSA/local council sponsored Household Hazardous Waste Collections at temporary metropolitan and regional collection points, and selected council depots.

Electrical and electronic equipment not referenced above

There are some specific programs for particular equipment, eg MobileMuster. Companies such as E-Cycle Recovery will recycle 'anything with a cord or battery'. Also, EPHC, at its meeting on 22 May 2009, supported the establishment of a national product stewardship approach for electronic waste, having regard to the choice modelling work done for televisions and computers⁵⁹. To support this, a consultation regulatory impact statement for televisions and computers was released on 15 July 2009⁶⁰.

Clause 12 recommendation: Insert that no breach of the clause occurs if a person has complied with any guidelines approved by the EPA in writing regarding what constitutes reasonable and practicable steps in managing waste.

Schedule 4 recommendation: Amend prohibited landfill wastes that are dependent upon the waste having been aggregated for resource recovery to apply to appropriate resource recovery processes as well as the place at which the waste is generated.

Note that further recommendations for restrictions or narrowing of the current proposed bans may be made following the regulatory impact assessment.

7.11 Clause 14—General transport of waste

A few submissions raised issues with the meaning of clause 14, whether transporters needed to be licensed or not or the outcomes of where waste could lawfully be taken.

Response: Section 36 of the EP Act and clauses 3(5) and (6) of Schedule 1 of the Act set out when a transporter of waste will require a licence for transporting waste in the following circumstances. Clause 14 does not influence whether or not a person requires a licence to transport waste or otherwise require waste to be transported by a licensed waste transporter⁶¹.

Clause 14(1) requires that any person transporting waste take simple precautions to avoid causing environmental harm or safety risks. The clause applies to licensed transporters, unlicensed commercial transporters, and any other person transporting wastes. For example, a rural dry cleaner may continue to responsibly transport his or her waste to another dry cleaner or depot.

⁵⁸ *Consultation Regulatory Impact Statement: Televisions and Computers (EPHC, July 2009)*. Available at <www.ephc.gov.au/taxonomy/term/51>.

⁵⁹ EPHC Communiqué 22 May 2009.

⁶⁰ *Consultation Regulatory Impact Statement: Televisions and Computers (EPHC, July 2009)*. Available at <www.ephc.gov.au/taxonomy/term/51>.

⁶¹ Schedule 1 is under review. When it undergoes public consultation, submissions may be made on the appropriateness or otherwise of the circumstances in which waste transporters are required to be licenced.

Response to submissions on the Draft Environment Protection (Waste to Resources) Policy

Clause 14(2) requires that if waste is being disposed of to a depot it must be taken to a depot that is licensed to accept the relevant type of waste (because some landfills, transfer stations, etc are not licensed to receive certain types of waste while others are). The clause does not require that waste be taken to a licensed depot versus other lawful options that may be available. It operates in conjunction with clause 10 to ensure that waste is disposed of appropriately. Given the uncertainty the sub-clause has generated, the EPA will recommend that consideration be given to whether it could be positioned in Part 3 Division 1—Unlawful disposal of waste to help clarify that it relates to a particular circumstance of what is required for the lawful disposal of waste.

Clause 14 recommendation: Seek drafting advice on whether the content of clause 14(2) could appropriately be positioned immediately after clause 10 for improved clarity.

7.12 Clause 15—Management of unlicensed activities involving listed wastes

One submission suggested that this clause does not provide any reasonable alternative to the use of licensed transporters and hence creates inappropriate price demands.

Response: Clause 15 does not influence who is responsible for the disposal of waste. Subject to clause 15(2), it creates an obligation on a person engaged in an unlicensed activity involving listed wastes:

- to ensure that if a waste transporter⁶² removes the waste, the transporter is licensed to transport the relevant listed waste
- in disposing of the listed waste, to take reasonable steps to ensure that the waste is transported to an appropriate licensed or approved depot.

Any person transporting listed wastes for fee or reward is required to have a licence already⁶³. This clause is designed to ensure that if a commercial transporter is used they hold an appropriate licence for the relevant waste. Any other person may still transport listed wastes without a licence. This clause creates an obligation to ensure that they dispose of the listed waste responsibly, ie at an appropriate licensed or approved depot.

7.13 Clause 17—Medical containers

A confidential submission made suggestions on matters of detail in relation to this clause as follows:

- a) it is appropriate for sharps containers under proposed clause 17(2)(b) to be 'leak resistant' rather than needing to be 'leak proof' as sharps containers are housed and transported in an additional container (eg wheelie bin) and manage sharps waste rather than liquid wastes.
- b) clause 17(2)(g) specifies the relevant Australian Standards for sharps containers. There a wide range of Australian Standard and International Standard Sharps containers available which have been used successfully by healthcare workers around Australia and globally. A limitation to using only Australian Standard containers would be to the detriment of clinicians and manufacturers as it would unnecessarily limit the range of collectors available. Given the British Standard is very similar, it is suggested that this should also be accepted. It also suggests mandating the use of the US Department of Health and Human Services, *Selecting, Evaluating and Using Sharps Disposal Containers* (1998).
- c) clause 17(2)(i)(ii) enables medical waste to be disposed of by methods that may be approved by the EPA other than incineration. This option would require a cultural change, comprehensive education and segregation of waste containers that are for incineration only.

⁶² A person who collects or transports waste for fee or reward, clause 3.

⁶³ Under s36 and Schedule 1 cl 3(5) of the EP Act.

Response: The suggestion made in relation to clauses 17(2)(b) is considered appropriate for the reasons above⁶⁴. The suggestion that the British Standard also be considered an appropriate option is also accepted. The use of the US guidelines will not be mandated however as they are not entirely relevant to Australian circumstances. Clause 17(2)(i)(ii) will be retained as though the comment made is valid, the clause gives the EPA and industry the flexibility to use alternative disposal methods that are commonplace elsewhere in Australia.

Clause 17 recommendations:

Amend clause 17(2)(b) to say 'leak resistant' rather than 'leak proof'.

Amend clause 17(2)(g) by inserting 'or *British Standard 7320:1990 Specification for sharps containers, as amended from time to time*' after '*AS 4939-2001 Non-reusable personal use containers for the collection and disposal of hypodermic needles and syringes, as amended from time to time*'.

7.14 Clause 18—Disposal of medical sharps

Clause 18 provides that, from two years after the EPP commences operation, it will be an offence to dispose of medical sharps through a general kerbside waste collection system provided by a council.

The risks associated with the disposal of medical sharps in household bins for waste industry workers have been highlighted in two submissions. Issues raised by submitters regarding clause 18 are outlined below:

7.14.1 Regulation

Submissions G2 and WR12 have suggested that this issue is not something that needs to be regulated as part of an EPP.

Response: Occupational, health and safety legislation is not able to prevent medical sharps from being placed in council waste streams. The EPA is working with the Department of Health to consider whether this issue should best be dealt with by the EPA or, potentially through the review of other legislation, to cater for the significance of risk involved and potential implications of changed requirements. At this time, responses to other issues raised are given on the basis that the provision will occur in the EPP.

7.14.2 Current services

Four submissions effectively expressed concern that, since there are currently no comprehensive and established community based systems to manage the disposal of medical sharps, care needs to be taken to avoid the provision becoming operative prior to appropriate alternative systems being in place.

Response: The EPA and Department of Health are working to more fully identify the scale of the issue and existing services to assist in identifying suitable options.

7.14.3 Observations on potential options

Submissions LG1 and LG2 considered that a solution to the problem will involve education and working with the medical fraternity to ensure disposal containers are made more widely available and are cost effective for the community. They view that it would be unreasonable to place the onus on local government to perform this service without support from the related medical specialists.

⁶⁴ 'Leak proof' is not a requirement of the comparable provision in the Environment Protection (Waste Management) Policy 1994, clause 5(2)(b).

An individual submitter considered that councils should provide containers and manage their collection⁶⁵.

Submission G8 asked that the needs of the housebound community be carefully considered and plans to continue working with the Department of Health to explore how this issue might be better addressed.

Response: The EPA agrees that individuals must be able to dispose of their sharps lawfully and easily. The potential options need to be accessible and affordable for all, including the housebound. The EPA is continuing to work with the Department of Health and will engage its stakeholders on this issue. Given the risks involved, it is not viewed as appropriate for this clause to be removed from the EPP. The proposed delay in the operation of this clause is to ensure that comprehensive, alternative disposal options are in place prior to the offence commencing. Regulatory impact assessment will assist with determining appropriate outcomes. Clause 5 can be used to defer the operation of this clause if it becomes necessary.

7.14.4 Liability

If needlesticks remain in the waste stream, submissions LG1 and LG2 contend that it is not reasonable for the operators of landfills to be held accountable or that councils solely be held accountable.

Response: The proposed offence is for a person to dispose of medical sharps through a general kerbside waste collection system provided by a Council. Neither a landfill operator nor a Council is to be guilty of this offence if a medical sharp remained in the waste stream. The EPA will recommend that the wording of this provision be altered to make this more obvious.

7.14.5 Compliance

Submission WR12 has asked who will regulate this clause – the EPA, the LGA or industry which manages the contract on behalf of the LGA.

Response: No provision in the EPP alters compliance and enforcement responsibilities, and hence the EPA will be primarily responsible for the regulation of this clause.

7.14.6 Scope of the clause

A verbal query also sought clarification on whether the definition of medical sharps is clearly broad enough to capture sharps used by individuals for medicinal purposes.

Response: The EPA considers that this issue is not beyond question and is significant given the intended purpose of this clause. It will be recommended that clause 18 be amended as necessary to put this question beyond any doubt.

Clause 18 recommendation: That if the clause is retained in the EPP, it be amended to ensure that it explicitly captures sharps used by individuals for medicinal purposes and cannot be interpreted to create any liability under the provision for councils or other waste management organisations.

⁶⁵ Submission C2.

7.15 Clause 20—Waste management codes of practice

The value of this clause has been recognised in some submissions.

Submissions G2 and WR12 considered the clause should be used by the EPA to provide certainty to industry in a number of areas, for example, the handling of asbestos and CCA timbers.

Response: The EPA provides direction on asbestos and CCA timbers through existing guidance materials. Given the context in which these materials are found and handled, the EPA does not consider prescribed codes on these issues necessary at this time.

7.16 Part 6 (Clauses 21–24)—Design, construction and operational standards for depots

Submission C7 observes in its submission that South Australia is in the unique position of having a strong collection depot network. It suggests that consideration may be given within the EPP to specifically referring to depots to support improved performance into the future through design and operations, drawing on consultation between the EPA and stakeholders.

Response: Noting definitions in clause 3, depots fall within the scope of a material recovery facility for the purposes of the EPP. Clause 22 of the EPP and, specifically, the requirement for the EPA to take into account 'the Environmental Guidelines for Collection Depots 2000 prepared by the EPA, as amended from time to time', is currently applicable when determining relevant environmental authorisations or referred development applications. However, applications for approval for collection depots under section 69 of the Act are not currently referenced. The EPA considers that it could be appropriate to refer to such depots and will seek expansion of the clause if drafting advice supports this. The EPA will welcome working with KESAB, Recyclers of SA and other stakeholders to update the guidelines in the future, particularly to recognise the valuable support that these centres may give to supporting the effective recovery of additional materials⁶⁶.

Clause 22 recommendation: Seek drafting advice on whether the clause can be expanded to also reference applications for approval of collection depots under section 69 of the Act noting that the EPA may have regard to the need for a 'sustainable waste management system for containers' when approving depots.

8 Implementation issues raised through submissions

8.1 Education

A number of local government submissions and submission C8 commented on the need for education to support the effective implementation of the EPP. The need to educate individuals about proposed landfill bans, alternative disposal options, and the implications for the environment, society and councils of illegal dumping were highlighted. Submission G6 advised of the Master Builders' Association of South Australia continued commitment to educate its members on the EPP through its Green Living, White Card and Occupational, Health, Safety and Welfare training.

Response: The EPA agrees that public education will be an important aspect in the effective implementation of the EPP. A draft communications plan has been prepared and liaison will occur with key organisations in its finalisation. Core elements to the plan involve launching the final EPP through the media, advertisements, and working with stakeholders (eg local government, waste industry operators, KESAB and professional industry associations) to share information

⁶⁶ Noting that submission WR11 (representing 110 CDL depots) observes that it is 'willing to work with the EPA, industry and other stakeholders to provide a convenient, low-cost network of depots across the whole state for the public to return and recycle compatible used products and suitable low-grade hazardous waste' and that licensing implications would need consideration.

Response to submissions on the Draft Environment Protection (Waste to Resources) Policy

about the implications of the EPP with their members through their publications. The EPA will give presentations on the EPP to key stakeholders. ZWSA's ongoing education about waste avoidance, waste reduction and options available for the recovery of wastes will also have an important role. The EPA is very appreciative of the Master Builders' Association of South Australia's expressed support for educating its members.

8.2 Funding of EPP implementation

Many local government submissions have expressed concern that the implementation of the EPP may involve extra cost implications, particularly to support review of hard waste collection systems, compaction rates in kerbside collection trucks, and infrastructure such as transfer stations and collection points for some banned wastes. Submission LG21 requests that 'the EPA and ZWSA work collaboratively with local government to develop and implement strategies to achieve the objectives of the EPP' and that '[these] strategies and associated activities be funded by the Waste to Resources Fund'.

Response: The EPA and ZWSA will endeavour to work collaboratively with Local Government on strategies to implement the EPP as authorised. ZWSA's mid term review of South Australia's Waste Strategy 2005–2010 will take account of the progress of the EPP and provide advice on the strategic direction necessary to support relevant aspects of its implementation. The waste strategy is used to inform ZWSA's annual business planning. The EPA also has regard to the waste strategy in its administration of the EP Act⁶⁷.

ZWSA will continue to apply the Waste to Resources Fund in accordance with its business plans. Local government and industry will continue to be able to seek support to enhance resource recovery using ZWSA's existing grants and guidance programs (as set out in Table 2).

ZWSA will also, having close regard to developing national schemes, continue to build relationships and gauge the best arrangements for supporting resource recovery, including through:

- Continuing to improve access to, and the quality of information on, recycling and waste management.
- Continuing to engage with Recyclers of SA regarding the potential for the extensive network of depots throughout the metropolitan area and rural South Australia to play a role in forming a convenient and low-cost network of depots for the collection of various problematic wastes;
- Continuing to hold discussions with relevant industry associations regarding drop-off points for used products at points of purchase for selected wastes (eg lighting at hardware stores);
- Investigating the best ways to increase the size and diversity of markets for locally processed recycled materials; and
- Supporting research on waste reduction.

Table 2 ZWSA Grants and Guidance Programs

Regional and metropolitan reuse and recycling grants	Increase the capacity for local reprocessing of recyclable material to high value end use products and invest in infrastructure that enables greater reuse or recycling of waste materials. Projects funded between \$95,000 and \$300,000.
Household Hazardous Waste and Farm Chemical Collection	Help fund free household hazardous waste collections to help dispose household hazardous waste in an environmentally responsible way.

⁶⁷ In accordance with s47 and s57 of the EP Act.

Response to submissions on the Draft Environment Protection (Waste to Resources) Policy

Market Development Grants	Seek to expand markets for recycled materials by stimulating investment in a broad range of market development activities such as product development and reprocessing, market research and trials. Grants range between \$18,000 and \$150,000.
Social Enterprise Grants	Assist charities and not-for-profit organisations who are involved in resource recovery projects.
Resource Efficiency Assistance Program (REAP)	Assist businesses to understand, develop and implement cost saving resource efficiency measures by providing a management tool to benchmark current practices, training and provision of technical support. Program provided in combination with programs offered through the cross-Government Business Sustainability Alliance.
Waste Management and Reduction Guide for the Retail Industry	Suggests methods for shopping centre management, commercial property owners and managers to minimise waste and increase recycling.

Queries regarding this response may be directed to:

Project Manager, Waste to Resources Policy

Environment Protection Authority

GPO Box 2607

ADELAIDE SA 5001

Telephone: (08) 8204 2096

Email: <epainfo@epa.sa.gov.au> (mark subject as 'Waste to Resources EPP')

APPENDIX 1 SECTION 28 PRESCRIBED BODIES

(From Reg 4AA of the Environment Protection (General) Regulations 1994)

Australian Conservation Foundation

Australian Institute of Environmental Health

Beverage Industry Environment Council (BIEC)

Conservation Council of South Australia

Engineering Employers Association, South Australia

Environmental Defenders Office (SA)

Environment Management Industry Association of Australia (trading as Environment Business Australia)

Local Government Association of South Australia

National Environmental Law Association Limited

Nature Conservation Society of South Australia

Royal Australian Chemical Institute Inc

SA Unions

Security and Emergency Management SA

South Australian Chamber of Mines and Energy

South Australian Employers' Chamber of Commerce and Industry Incorporated (trading as Business SA)

South Australian Farmers Federation

Waste Management Association of Australia

APPENDIX 2 SUBMISSIONS RECEIVED ON THE DRAFT EPP

Local government
LG1. Adelaide Hills Council
LG2. Adelaide Hills Region WMA
LG3. Barossa Council
LG4. Central LGA
LG5. City of Burnside
LG6. City of Campbelltown
LG7. City of Charles Sturt
LG8. City of Holdfast Bay
LG9. City of Marion
LG10. City of Mitcham
LG11. City of Mt Gambier
LG12. City of Norwood, Payneham & St Peters
LG13. City of Onkaparinga
LG14. City of Playford
LG15. City of Port Adelaide Enfield
LG16. City of Prospect
LG17. City of Tea Tree Gully
LG18. City of West Torrens
LG19. District Council of Grant
LG20. Eyre Peninsula LGA
Eyre Peninsula LGA (supplementary comments)
LG21. Local Government Association of South Australia (LGA)
LG22. Mid Murray Council
LG23. South East LGA
LG24. Southern Region Waste Resource Authority

LG26. Waste Care SA
Waste & resource recovery industry
WR1. Australian Council of Recyclers (ACOR)
WR2. Australian Landfill Owners' Association (ALOA)
WR3. CMA Eco Cycle
WR4. CRT Recycling Australia Pty Ltd
WR5. E-Cycle Recovery Pty Ltd
Joint - E-Cycle Recovery Pty Ltd and CRT Recycling Australia Pty Ltd
WR6. Food Waste Recyclers Pty Ltd
WR7. Integrated Waste Services
WR8. LMS Generation Pty Ltd
WR9. Lucas Waste Management Pty Ltd
WR10. Plastic Recyclers International Pty Ltd
WR11. Recyclers of SA
WR12. Resourceco Pty Ltd
WR13. SA Waste Management Pty Ltd
WR14. Transpacific Waste Management Pty Ltd
WR15. Treenet
WR16. Veolia Environmental Services

Generators & related representatives
G1. Ash Development Association of Australia Inc
G2. Business SA
G3. Confidential submission
G4. Drycleaning Institute of Australia
G5. Lighting Council Australia

Response to submissions on the Draft Environment Protection (Waste to Resources) Policy

G6. Master Builders Association of SA Inc
G7. OneSteel Whyalla
G8. Royal District Nursing Association
G9. The Australian Industry Group

Community/individual
C1. Cleaner Production Australia
C2. Darryl Parslow
C3. Environment Defenders Office
C4. Finlaysons
C5. Hon Dr Bob Such MP
C6. Jon Fry
C7. KESAB
C8. SA Waste Educator's Working Group
C9. Thomson Playford Cutlers

APPENDIX 3 OBJECTS OF THE ENVIRONMENT PROTECTION ACT 1993

10—Objects of Act

- (1) The objects of this Act are—
- (a) to promote the following principles (principles of ecologically sustainable development):
 - (i) that the use, development and protection of the environment should be managed in a way, and at a rate, that will enable people and communities to provide for their economic, social and physical wellbeing and for their health and safety while—
 - (A) sustaining the potential of natural and physical resources to meet the reasonably foreseeable needs of future generations; and
 - (B) safeguarding the life-supporting capacity of air, water, land and ecosystems; and
 - (C) avoiding, remedying or mitigating any adverse effects of activities on the environment;
 - (ii) that proper weight should be given to both long and short term economic, environmental, social and equity considerations in deciding all matters relating to environmental protection, restoration and enhancement; and
 - (b) to ensure that all reasonable and practicable measures are taken to protect, restore and enhance the quality of the environment having regard to the principles of ecologically sustainable development, and—
 - (i) to prevent, reduce, minimise and, where practicable, eliminate harm to the environment—
 - (A) by programmes to encourage and assist action by industry, public authorities and the community aimed at pollution prevention, clean production and technologies, reduction, reuse and recycling of material and natural resources, and waste minimisation; and
 - (B) by regulating, in an integrated, systematic and cost-effective manner—
 - activities, products, substances and services that, through pollution or production of waste, cause environmental harm; and
 - the generation, storage, transportation, treatment and disposal of waste; and
 - (ii) to co-ordinate activities, policies and programmes necessary to prevent, reduce, minimise or eliminate environmental harm and ensure effective environmental protection, restoration and enhancement; and
 - (iii) to facilitate the adoption and implementation of environment protection measures agreed on by the State under intergovernmental arrangements for greater uniformity and effectiveness in environment protection; and
 - (iv) to apply a precautionary approach to the assessment of risk of environmental harm and ensure that all aspects of environmental quality affected by pollution and waste (including ecosystem

Response to submissions on the Draft Environment Protection (Waste to Resources) Policy

- sustainability and valued environmental attributes) are considered in decisions relating to the environment; and
- (v) to require persons engaged in polluting activities to progressively make environmental improvements (including reduction of pollution and waste at source) as such improvements become practicable through technological and economic developments; and
 - (vi) to allocate the costs of environment protection and restoration equitably and in a manner that encourages responsible use of, and reduced harm to, the environment with polluters bearing an appropriate share of the costs that arise from their activities, products, substances and services; and
 - (vii) to provide for monitoring and reporting on environmental quality on a regular basis to ensure compliance with statutory requirements and the maintenance of a record of trends in environmental quality; and
 - (viii) to provide for reporting on the state of the environment on a periodic basis; and
 - (ix) to promote—
 - (A) industry and community education and involvement in decisions about the protection, restoration and enhancement of the environment; and
 - (B) disclosure of, and public access to, information about significant environmental incidents and hazards.
- (2) The Minister, the Authority and all other administering agencies and persons involved in the administration of this Act must have regard to, and seek to further, the objects of this Act.

APPENDIX 4 THE WASTE MANAGEMENT HIERARCHY

As contained in s3(2) of the *Zero Waste Act 2004*

In this Act, a reference to the **waste management hierarchy** is a reference to an order of priority for the management of waste in which—

- (a) avoidance of the production of waste; and
- (b) minimisation of the production of waste; and
- (c) reuse of waste; and
- (d) recycling of waste; and
- (e) recovery of energy and other resources from waste; and
- (f) treatment of waste to reduce potentially degrading impacts; and
- (g) disposal of waste in an environmentally sound manner,

are pursued in order with, first, avoidance of the production of waste, and second, to the extent that avoidance is not reasonably practicable, minimisation of the production of waste, and third, to the extent that minimisation is not reasonably practicable, reuse of waste, and so on.