

SUBMISSION

to the

Victorian Legislative Council

Economy and Infrastructure Committee

Inquiry into the Development and Expansion of

Waste-to-Energy Infrastructure in Victoria

Submitted by: Sunbury Clean Future Inc. (SCF)

On behalf of: Residents of Sunbury, Bulla and surrounding communities

Date: March 2026

Contact: Dan Kenney, President, Sunbury Clean Future Inc.



1. Statement of the Case

On 17 August 2025, the Head of Recycling Victoria allocated 94% of Victoria’s statewide thermal waste-to-energy cap — 2,350,000 tonnes per annum — to seven operators. The proposed facilities will sit in, or adjacent to, at least seven residential communities across Victoria, with combined populations in the hundreds of thousands. For a decision of this magnitude, allocating a finite statewide resource with multi-billion-dollar fiscal consequences, the norms of public accountability and good governance would lead reasonable members of the public to expect a formal allocation instrument, a published statement of statutory reasoning, a comparative assessment of applicants, fit-and-proper determinations for each recipient, a hierarchy compliance analysis, and a Gazette notice. The public record contains none of these. What exists is a table on a government website and a media release. For a decision of this scale, that is a remarkable absence — and it is where this submission begins.

That absence is not incidental. The *Circular Economy (Waste Reduction and Recycling) Act 2021 (Vic)* (the CEA) requires risk evaluation, hierarchy compliance, and fit-and-proper assessment **before** capacity is allocated. The publicly available record is silent on whether any of those requirements were met, and Freedom of Information requests lodged with EPA Victoria and the Department of Energy, Environment and Climate Action — the Department under which Recycling Victoria operates as a business unit — remained substantively unanswered as at 26 March 2026. Neither request has produced decision records. On the available record, Recycling Victoria appears to have inverted that sequence.

Capacity was committed on 17 August 2025. The risk modelling, EPA licensing, and planning approvals that should have preceded that commitment now follow it, each proceeding in the shadow of 2.35 million tonnes per annum already locked to seven specific operators. The allocation itself narrows the scope. Once finite statewide capacity is distributed and proponents mobilise around their allocated tonnage, it locks in the statewide WtE roll-out prematurely, leaving very little flexibility to consider better solutions. The very framing of this inquiry — into the “**development and expansion**” of waste-to-energy infrastructure in Victoria — reflects that foreclosure. The question of whether the roll-out should have proceeded at all, on this scale, without demonstrated statutory compliance, has been displaced by a presumption of continuation. The appearance of inevitability surrounding this roll-out, however, is not evidence of its merits. It is the product of sequencing inversion, and it is why the window for effective intervention is narrowing.

This submission argues that Victoria’s WtE roll-out is already weakened by systemic vulnerability — that the allocation is legally vulnerable on three grounds of jurisdictional error, that the roll-out should not progress until the underlying decision record is produced and subjected to independent legal scrutiny, and that Victoria’s waste policy must be reoriented toward the hierarchy-superior alternatives the CEA requires.

The CEA imposes four binding statutory duties on every allocation decision made under the WtE licensing scheme: the waste hierarchy (s 8(3)); integrated decision-making including regard to international best practice (s 11); the precautionary principle (s 13); and the objects of the Act (s 5). These are **not aspirational**. They are mandatory relevant considerations. The publicly available record is silent on every one of them at the allocation stage. That record also raises a specific fit-and-proper concern: the two largest allocations — 760,000 tonnes per annum to the Cleanaway-led consortium and 750,000 tonnes per annum to HiQ — went to operators with documented EPA Victoria enforcement histories that fall squarely within the s 74ZJ fit-and-proper considerations. Section 74T(4) of the CEA is a prohibition: the Head must not issue a cap licence unless satisfied the applicant is a “fit and proper” person. What is missing for all seven licence holders alike is any convictions search, compliance audit, or

reasoned determination demonstrating that threshold was met. The legal vulnerability does not end there.

The roll-out transfers a publicly generated waste stream — and the fiscal benefits attached to it — to private operators, without any disclosed analysis of whether this represents value for money for the public. Rather than directing the public instruments available — including the landfill levy — toward the circular economy infrastructure the CEA requires, the State has committed that waste stream to private combustion operators through a non-competitive process. The Victorian landfill levy — currently \$169.79 per tonne in metropolitan areas — was designed to make landfill expensive so that recycling and resource recovery become financially competitive, and to fund the Sustainability Fund for hierarchy-superior infrastructure. Diverting 2.35 million tonnes per annum to WtE facilities removes that waste stream from the recycling pathways the levy was designed to build, redirects the associated revenue away from the Sustainability Fund, and transfers the economic benefit of that waste stream to private operators through gate fees instead. At the 2024–25 verified rate of \$129.27 per tonne, the foregone public levy revenue is \$303.78 million per annum — approximately \$7.7 billion over the project horizon. Allocating 94% of the cap through a non-competitive process transfers an estimated \$1.3–\$2.5 billion over the project horizon. Both figures call for independent cost-benefit analysis. No disclosed assessment has compared either against the value of the recycling infrastructure the levy was designed to fund.

This submission is structured to build a single, connected argument. Parts 2 to 4 set out what the law required, what the public record shows, and why there is a credible legal basis to question the validity of the allocation. Parts 5 to 7 examine the State’s policy justifications and compare Victoria’s trajectory with the ACT, NSW, Scotland, and the European Union. Parts 8 to 11 address health and environmental risks, fiscal exposure, and governance integrity. Part 12 sets out findings and recommendations.

2. What the Law Requires

The CEA imposed a specific statutory structure on the allocation of thermal WtE capacity. This Part identifies the requirements of that structure and tests them against the available public record.

2.1 The Waste Hierarchy

The CEA establishes a mandatory order of preference for how waste is managed. Section 8(3) ranks the options: avoidance comes first, then minimisation, reuse, recycling, energy recovery, treatment, and finally disposal. Thermal WtE combustion is energy recovery — *it ranks fifth*. It cannot be prioritised before the State shows that the four higher-order options are genuinely inadequate for the relevant waste streams.¹

This matters structurally, because the definition of 'permitted waste' in s 74N — the very category of material being allocated under the cap — is defined as waste that *cannot reasonably be the subject of any further recycling*. That definition builds the hierarchy into Part 5A itself. Recycling Victoria cannot lawfully decide what waste qualifies for thermal treatment without engaging the hierarchy. The allocation power and the hierarchy are textually linked — they cannot be separated.²

Recycling Victoria may contend that downstream EPA licensing and planning processes would verify feedstock compliance with s 74N. However, that contention does not survive scrutiny. Section 74N is not a downstream operational condition — it is a definitional precondition to the allocation power itself. Section 74R operates only over 'permitted waste.' The Head cannot lawfully allocate capacity without first satisfying himself that the proposed waste streams fall within that definition. That assessment cannot be delegated to EPA or deferred to the operational stage. It must precede allocation.

2.2 Integrated Decision-Making

Section 11 of the CEA requires decisions to be based on best available evidence (s 11(1)); to assess all economic, social and environmental costs and benefits including externalities (s 11(2)); and to seek best practice having regard to other jurisdictions and international bodies (s 11(3)). This is a substantive statutory duty, not a general aspiration.³

In plain terms, Recycling Victoria was required to examine the health and environmental costs of long-life combustion infrastructure, assess the full costs and benefits relative to hierarchy-

¹Circular Economy (Waste Reduction and Recycling) Act 2021 (Vic) (CEA), s 8(3). The hierarchy lists, in descending order of preference: avoidance; minimisation; reuse; recycling; energy recovery; treatment; and disposal. Energy recovery — which includes thermal combustion — ranks fifth.

²CEA, s 74N defines 'permitted waste' as waste that cannot reasonably be the subject of any further recycling or is otherwise prescribed. Because the allocation power in s 74R operates only over 'permitted waste', the hierarchy in s 8(3) is incorporated into Part 5A by the Act's own definitional structure. Part 5A cannot lawfully be administered as if s 8(3) does not apply.

³CEA, s 11(1)–(3). Section 6 of the CEA requires that regard be given to all principles in Division 2 in the administration of the Act. This requirement includes s 11. Consequently, a decision-maker who fails to engage with s 11 commits jurisdictional error regardless of the word 'should' used in its subsections, because the obligation arises from s 6, not from s 11 itself. Note also that s 7 states Parliament did not intend Division 2 to create civil causes of action; the legal significance of s 11 lies in its role as a mandatory relevant consideration in administrative law. Section 11(3) requires decisions to seek best practice 'having regard to the decisions, policies, programs and processes of other States, the Territories, the Commonwealth, other countries and international bodies and organisations.' The comparative international and domestic evidence in Part 5 of this submission is directly responsive to this duty.

superior alternatives, and engage with how other Australian jurisdictions and comparable international bodies have approached the same question. There is no disclosed evidence that any of those steps occurred at the allocation stage.

2.3 The Precautionary Principle

Section 13(2) of the CEA codifies the precautionary principle as a binding obligation: where threats of serious or irreversible harm to human health or the environment exist, lack of full scientific certainty must not be used as a reason for postponing preventive measures. The equivalent duty appears in s 20 of the Environment Protection Act 2017 (Vic).⁴

This principle operates at the allocation stage, not only at the EPA licensing and planning stages. Where the decision to allocate 94% of the statewide cap creates path dependency — making reconsideration practically difficult — the precautionary principle is directly engaged. It requires the decision-maker to confront unresolved questions about cumulative emissions, toxic residues, and long-term health effects before committing the State to this infrastructure pathway.

2.4 The Fit-and-Proper Prohibition

Section 74T(4) of the CEA imposes an express prohibition: the Head of Recycling Victoria must not issue a cap licence unless satisfied the applicant is a fit and proper person to operate a thermal WtE facility. This is not a discretion. A licence issued without demonstrable satisfaction is legally invalid. Section 74ZJ defines what that assessment must cover: convictions and findings of guilt under the Act; Corporations Act offences; within 10 years — indictable offences, fraud, dishonesty, and energy-law breaches; pending charges; contraventions absent a conviction; interstate licence compliance; insolvency; failure to comply with court orders; and any other prescribed matter.⁵

A genuine assessment of this statutory scope generates documents: a convictions search, a regulatory history audit across related entities, and a reasoned determination explaining why the decision-maker is satisfied. The two largest allocations went to operators with documented enforcement histories squarely within the s 74ZJ considerations. No assessment records have been disclosed for any of the seven operators. The Committee should require their production.

2.5 The 'Staged Scheme' Defence Fails

Recycling Victoria's implicit position appears to be that health, environment and hierarchy matters arise later — through EPA licensing and planning — and that the allocation stage is a strategic, capacity-planning exercise unconstrained by the broader CEA framework. That position fails for three reasons.

First, the Act must be read as a whole. The principles in ss 5, 8(3), 11 and 13 govern all administration of the Act. Part 5A does not expressly exclude them. Silence is not exemption. The High Court confirmed in *Project Blue Sky v Australian Broadcasting Authority* (1998) 194

⁴CEA, s 13(2): if there are threats of serious or irreversible harm to human health or the environment, lack of full scientific certainty must not be used as a reason for postponing measures to prevent or minimise those threats. Environment Protection Act 2017 (Vic), s 20 imposes an equivalent precautionary duty.

⁵CEA, s 74ZJ. The considerations are non-exhaustive and include: (a) convictions or findings of guilt under the Act or regulations; (b) Corporations Act convictions; (c) within 10 years — indictable offences, fraud, dishonesty, energy-law offences; (d) pending charges; (e) contraventions absent conviction; (f) compliance with licences in Victoria or other States; (g)–(h) insolvency and external administration; (i) failure to comply with court or tribunal orders; and (j) any other prescribed matter.

CLR 355 that statutory instruments must be construed to achieve harmonious operation across all provisions.⁶

Second, the 'permitted waste' definition links allocation to the hierarchy. As explained above, the Head cannot determine whether waste is 'permitted' without engaging s 8(3). The staged scheme defence cannot override a textual link created by Parliament.⁷

Third, sequencing does not mean suspension of statutory discipline. The High Court in *Forrest & Forrest Pty Ltd v Wilson* [2017] HCA 30 confirmed that failure to comply with statutory conditions governing the grant of a right to exploit resources constitutes jurisdictional error unless the statute provides to the contrary. That principle applies most directly here to s 74T(4) — the express prohibition on issuing a cap licence without satisfaction of the fit-and-proper test, which is a specific, express precondition to the exercise of the power. Sections 8(3), 11 and 13 operate as mandatory relevant considerations under the *Peko-Wallsend* line of authority. The CEA contains no contrary provision excluding any of these requirements from the allocation stage. Sequencing in time is not exemption in law.⁸

⁶*Project Blue Sky v Australian Broadcasting Authority* (1998) 194 CLR 355 at [70] (McHugh, Gummow, Kirby and Hayne JJ): the primary object of statutory construction is to construe the relevant provision so that it is consistent with the language and purpose of all provisions of the statute. *Minister for Aboriginal Affairs v Peko-Wallsend Pty Ltd* (1986) 162 CLR 24 at 39–40 (Mason J): failure to take into account a mandatory relevant consideration is a ground of jurisdictional error. *Forrest & Forrest Pty Ltd v Wilson* [2017] HCA 30: failure to comply with any statutory condition regulating the grant of a right to exploit resources constitutes jurisdictional error unless the statute provides to the contrary.

⁷CEA, s 74N: 'permitted waste' means waste that cannot reasonably be the subject of any further recycling or is otherwise prescribed. Because s 74R operates only over 'permitted waste', the Head cannot make a lawful allocation without first determining whether the proposed waste streams satisfy that definition — an assessment that directly engages s 8(3). That assessment is a precondition to allocation, not a downstream operational matter for EPA or planning authorities. The textual mechanism by which the hierarchy is embedded into Part 5A applies at the allocation stage and cannot be deferred by administrative convenience.

⁸*Forrest & Forrest Pty Ltd v Wilson* [2017] HCA 30 at [100]–[115] (Kiefel CJ, Bell, Gageler and Keane JJ). The case concerned a mining lease granted under Western Australian legislation without compliance with all prescribed statutory conditions. The High Court held this constituted jurisdictional error: where a legislature prescribes conditions for the valid grant of a right to exploit resources, non-compliance is not a procedural irregularity but a legal nullity, unless the statute expressly provides otherwise. The CEA contains no such saving provision. The statutory conditions prescribed for a valid cap licence under Part 5A — including hierarchy alignment (s 8(3)), integrated decision-making (s 11), precautionary assessment (s 13), and fit-and-proper determination (s 74T(4)) — are substantive prerequisites, not aspirational criteria to be addressed at later stages. Allocation that precedes genuine engagement with those prerequisites is, on the authority of *Forrest & Forrest*, vulnerable to a finding of jurisdictional error.

3. The Decision of 17 August 2025: The Record and Its Gaps

On 17 August 2025, the Head of Recycling Victoria issued cap licences to seven operators totalling 2,350,000 tonnes per annum — 94% of the statewide cap. By scale and consequence, this is among the largest infrastructure commitment decisions in the history of Victorian waste management. The public record consists of a table on a government website and a brief media release.⁹

3.1 The Allocations and Their Integrity Questions

Operator	Allocation (tpa)	Integrity Question Under CEA s 74ZJ
Cleanaway Operations Pty Ltd (Maryvale EfW / SEMAWP consortium)	760,000 (largest allocation)	Public EPA enforcement records identify multiple court-outcome enforcement actions against entities within the Cleanaway group. The Committee is invited to require EPA to produce the complete group enforcement history for Cleanaway Operations Pty Ltd and all related entities, to determine which records fall within the s 74ZJ fit-and-proper considerations.
HiQ EFW Victoria Pty Ltd (Hi-Quality Group, Bulla precinct)	750,000 (second-largest allocation; application appears to have grown significantly during the process)	EPA enforcement records identify enforcement actions against entities within the Hi-Quality Group that fall within the categories specified in s 74ZJ of the CEA. The Committee is invited to require EPA to produce the complete group enforcement history to determine whether, and to what extent, those records were considered by Recycling Victoria in making the s 74T(4) determination.
Melbourne Water Corporation	450,000	No equivalent public enforcement record. As a statutory authority, s 74T(4) applies equally. A documented rationale should be straightforward to produce.
Recovered Energy Laverton Pty Ltd	280,000	Appears to be a special purpose vehicle with no independent compliance history of its own. Section 74ZJ requires the assessment to pierce the corporate structure to controllers and related entities.
Liquid Power Co Pty Ltd	50,000	No public Victorian penalty entries identified in available materials. Director histories, related entities and interstate compliance records remain relevant under ss 74ZJ(b)–(d), (g)–(h).
Zerogen Holdings Pty Ltd	45,000	Holding company structure. Director-level screening under ss 74ZJ(b)–(d) and (h) is required. No evidence of this assessment has been disclosed.

⁹Recycling Victoria, Waste to Energy Scheme Licences (vic.gov.au, updated 20 August 2025). The public record of the 17 August 2025 allocation consists of a table on the Recycling Victoria website and an associated media release. No standalone allocation notice, decision summary, statement of statutory reasons, or Gazette notice has been identified on the public record as at the date of this submission.

Operator	Allocation (tpa)	Integrity Question Under CEA s 74ZJ
Knox Transfer Station Pty Ltd	15,000	EPA fine recorded for a transfer station fire described as creating an environmental hazard — an operational risk analogous to thermal WtE.

The combination of a compressed process, a Government economic growth framing, and the absence of any publicly disclosed compliance record creates structural conditions in which statutory obligations may be displaced by pressure to deliver. This submission does not allege that Recycling Victoria acted in bad faith. Whether the statutory obligations were genuinely discharged is precisely what the production of decision records would reveal.

3.2 The Missing Decision Record

A decision of this scale and consequence should be accompanied by a documented record of statutory reasoning. What is absent from the public record is striking:

Document	Status
Formal allocation notice or instrument	Not publicly identified. Unusual for a statewide cap allocation of this magnitude.
Decision summary or statement of reasons	Not found. No scoring matrix, comparative assessment of applicants, or basis for the allocation amounts has been disclosed.
Gazette notice	Not found. The CEA does not require Gazette publication of cap licence decisions — a legislative transparency gap that permits a major statewide allocation without a mandatory public notice trail.
Health impact assessment	Not disclosed in any FOI response or published material.
Air quality or cumulative emissions modelling	Not disclosed.
Hierarchy compliance analysis (ss 5, 8(3), 11, 13 CEA)	Not disclosed. No documented engagement with mandatory statutory duties appears in any public material.
Fit-and-proper assessment records (any operator)	Not disclosed, including for operators with documented enforcement histories.
Charter of Human Rights compatibility statement	Not disclosed.

On 29 October 2025 — more than two months after the allocation — the Victorian Legislative Council formally resolved on a motion by David Ettershank MP to require the Leader of the Government to table within 30 days: (a) each application to Recycling Victoria for cap licences; and (b) Recycling Victoria’s ‘final report or similar documents’ outlining the ‘calculations and rationale’ behind each allocation. The Government did not comply by the 28 November 2025 deadline. Instead, it tabled a letter from the Attorney-General dated 19 November 2025 stating that the deadline did not allow sufficient time to respond. That non-compliance confirms Parliament understood that detailed internal rationale documents existed — and that the Government chose not to produce them within a timeframe the Council had formally ordered.

Non-compliance with a formal Council production order is a significant transparency and accountability failure, independent of the underlying merits of the allocation decision.¹⁰

The non-production of decision records forms part of a broader pattern of non-transparency that SCF has experienced directly. Beginning in October 2025, SCF lodged multiple FOI requests with EPA Victoria, the Department of Energy, Environment and Climate Action (DEECA), and the Department of Transport and Planning (DTP), seeking records related to the cap licence allocation, the fit-and-proper assessment process, and the planning and environmental pathway for the proposed Hi-Quality facility at Bulla. Requests for legal holds over potentially responsive documents — a standard obligation to preserve records relevant to anticipated proceedings — were sent to both EPA Victoria and DEECA. Those requests went unanswered. EPA Victoria issued four successive rounds of clarification requests without progressing to substantive searches. As at 26 March 2026, formal complaints have been lodged with the Office of the Victorian Information Commissioner (OVIC) against EPA Victoria, DEECA, and DTP. A request for review has been filed with VCAT against DEECA for deemed refusals of two separate FOI requests.¹¹

3.3 The FOI Non-Production Record

Sustained non-production of decision materials across three government agencies after months of FOI requests supports only two conclusions:¹²

First: the records do not exist. The decision was made without documented engagement with mandatory statutory duties. On administrative law principles, this raises a serious and credible question of jurisdictional error that warrants urgent independent examination.

Second: the records exist but have not been produced. Serious transparency and accountability failures arise, appropriate for investigation by the Victorian Ombudsman, the Office of the Victorian Information Commissioner (OVIC), and potentially IBAC.

Both conclusions support escalation. The pattern of non-production — four rounds of EPA clarification requests, legal-hold requests going unacknowledged, Recycling Victoria's response remaining incomplete — is not consistent with good-faith compliance.

¹⁰Victorian Legislative Council, Notice Paper No. 137 (29 October 2025), Motion 1116 (David Ettershank MP, Western Metropolitan Region): the Council formally resolved to require the Leader of the Government to table within 30 days (a) each application to Recycling Victoria for cap licences; and (b) Recycling Victoria's 'final report or similar documents' outlining the 'calculations and rationale' behind each cap licence allocation. The Government did not comply by the 28 November 2025 deadline. A letter from the Attorney-General dated 19 November 2025, tabled in the House on 20 November 2025, stated the deadline 'does not allow sufficient time to respond': Victorian Legislative Council, Notice Paper No. 161 (31 March 2026), Motion 1190 (David Ettershank MP). A follow-up motion was subsequently tabled affirming the Council's right to require production and requiring the Government to comply with the original order.

¹¹The Legislative Council production order (Motion 1116, 29 October 2025) was made on the initiative of David Ettershank MP. The FOI requests referenced in this paragraph were lodged separately by SCF and are distinct from the parliamentary production order. Both processes reflect the same pattern of non-production of decision records by the relevant agencies. OVIC complaints were lodged against EPA Victoria, DEECA, and DTP. The VCAT application for review of deemed refusals was filed against DEECA only.

¹²FOI request to EPA Victoria, lodged 10 October 2025: the agency acknowledged receipt on 7 November 2025, issued four rounds of clarification requests, declined to separate the narrow urgent request from an earlier broader request, and had not progressed to substantive searches as at 26 March 2026. Two requests for confirmation of legal-hold obligations in respect of potentially responsive documents were not responded to. FOI request to Recycling Victoria, lodged 13 November 2025: as at 26 March 2026, the response remains incomplete.

3.4 Additional Process Questions

Cap Expansion Announced Seven Days Before the EOI Opened

The statewide cap was set at 2 million tonnes per annum in the final regulations. On 10 December 2024 — seven days before the EOI process opened on 17 December 2024 — the Government announced it would raise the cap to 2.5 million tonnes, subject to a regulatory impact statement. The cap was formally set at 2.5 Mt in July 2025, during the application assessment period. The final allocation of 2.35 Mt required the raised cap; it could not have been issued under the 2 Mt cap formally in place when the EOI opened. The Committee should examine whether any applicant received private assurance of the intended cap increase before the 10 December 2024 public announcement, and whether the EOI timeline was structured to give certain operators certainty before others could assess the implications of the higher cap.¹³

One Applicant's Proposed Volume Appears to Have Grown Significantly During the Process

Publicly available materials indicate that HiQ's final licence was for 750,000 tonnes per annum. FOI material released by DTP records an earlier internal summary referencing 350,000 tpa in connection with the HiQ proposal. Whether this reflects a different stage of the process, a different calculation methodology, or a material change in the application that was not subjected to fresh assessment under the statutory criteria is not apparent from the public record. There may be an innocent explanation — for example, if the 350,000 tpa figure relates to a net diversion estimate rather than total throughput. However, if the nominated tonnage increased materially during the process, the enlarged allocation may never have been subjected to formal competitive evaluation under the statutory criteria. The Committee should require production of HiQ's EOI and full application to determine whether the tonnage at each stage was consistent with the assessed basis.¹⁴

One Proponent Received Regulatory Preference Before the EOI Opened

The Cap Regulations identify the South East Metropolitan Advanced Waste Processing Project (SEMAWP, associated with Cleanaway's largest allocation) as a 'critical infrastructure project' and require the Head to consider 'the desirability of that project meeting the critical need' when assessing the application. This creates a regulatory preference for one proponent before the competitive process begins. The Committee should examine whether this carve-out was consistent with a genuinely competitive allocation process.¹⁵

¹³Recycling Victoria, Cap Licences (vic.gov.au): 'The cap is now set at 2 million tonnes. The Victorian Government Economic Growth Statement released on 10 December 2024 makes a commitment to further increase the cap limit to 2.5 million tonnes per annum, subject to a regulatory impact statement being completed in early 2025.' The EOI process opened on 17 December 2024, seven days after this announcement. Note that the cap was not formally set at 2.5 Mt until July 2025, following a Regulatory Impact Statement with public consultation closing 17 April 2025 (Circular Economy (Waste Reduction and Recycling) (Waste to Energy Scheme) Amendment Regulations 2025). The December 2024 announcement was a Government commitment, not a formal regulatory change. Norton Rose Fulbright, 'Unpacking Victoria's Waste to Energy Cap Licence Regulations' (December 2024) confirms the EOI submission deadline of 17 February 2025 and the full-application deadline of 28 April 2025. Rachel Payne MP, Hansard, Victorian Legislative Council, 4 February 2026 (Minister confirms cap formally set at 2.5 Mt in July 2025 following the RIS process).

¹⁴HiQ EFW Victoria Pty Ltd, 'Sunbury Eco-Hub' project page (hiq.au, accessed March 2026): 'On 19 August 2025, Recycling Victoria announced that HiQ has been granted a licence to process up to 750,000 tonnes of residual material under that cap.' The submission states, based on public materials available to SCF, that the initial application or EOI nominated a lesser tonnage figure. The Committee is invited to require production of HiQ's EOI and full application to verify the tonnage at each stage.

¹⁵Circular Economy (Waste Reduction and Recycling) (Waste to Energy Scheme) Regulations 2023 (Vic). The Cap Regulations identify the South East Metropolitan Advanced Waste Processing Project (SEMAWP) as a 'critical

Decision Issued 47 Days After the Regulatory Deadline — No Explanation

The Cap Regulations required notification of outcomes no later than 30 June 2025. The actual decision date was 17 August 2025 — 47 days late. No explanation for this slippage has been published. In the context of missing decision records, the gap raises the question of what occurred during those seven weeks.¹⁶

EPA Victoria Had a Formal Advisory Role — and Holds the Enforcement Records

The Cap Regulations required Recycling Victoria to consider EPA Victoria's advice about environmental and compliance risks when assessing EOIs. EPA Victoria therefore had a formal advisory role in the allocation. EPA also issued a development licence to Hi-Quality Quarry Products Pty Ltd at the Bulla site on 1 November 2024 — six weeks before the EOI process opened. What advice EPA provided about the compliance history of relevant applicants, and whether it was genuinely considered, has never been disclosed.¹⁷

waste infrastructure project' and require the Head of Recycling Victoria to consider 'the desirability of that project meeting the critical need set out in the Regulations' when determining a cap licence application relating to it. SEMAWP/Maryvale EfW is associated with Cleanaway's 760,000 tpa allocation.

¹⁶Cap Regulations, reg 27: the Head of Recycling Victoria must notify all applicants of the outcome of their cap licence application no later than 30 June 2025. The actual notification date was 17 August 2025, 47 days after the regulatory deadline. No public explanation for this slippage has been provided.

¹⁷Cap Regulations, reg 17: in assessing an expression of interest for a cap licence, Recycling Victoria must consider 'any advice or information provided by EPA Victoria regarding environmental or compliance risks'. EPA Victoria is also recorded as having issued a development licence to Hi-Quality Quarry Products Pty Ltd at 570–600 Sunbury Road, Bulla on 1 November 2024, six weeks before the EOI process opened on 17 December 2024.

4. A Credible Legal Basis to Question the Framework's Validity

Where a statutory decision-maker fails to engage with mandatory relevant considerations, misconstrues the scope of the power being exercised, or misunderstands the statutory structure within which that power sits, the resulting decision may be affected by jurisdictional error. The available public record discloses no evidence that the 17 August 2025 allocation engaged the CEA's mandatory principles. That gives rise to a credible legal basis to question the validity of the allocation on each of the following grounds. This submission does not ask the Committee to determine invalidity — that is a matter for a court. It asks the Committee to recognise that the basis for legal challenge is specific and grounded, and that the roll-out should not progress until the underlying decision record is produced and subjected to independent legal scrutiny.

Ground 1 — Misconstruction of the statutory task: if the allocation was treated as a capacity-planning exercise free from the hierarchy, integration, and precautionary obligations embedded in the CEA, then the decision-maker misconstrued the nature of the power. The published materials — a website table and a media release — disclose no engagement with any of the Act's governing principles.

Ground 2 — Failure to consider mandatory relevant considerations: the waste hierarchy, the precautionary principle, the integrated decision-making duty, and the fit-and-proper prohibition are each mandatory relevant considerations. The principle is established in *Minister for Aboriginal Affairs v Peko-Wallsend* (1986) 162 CLR 24 at 39–40: where a decision-maker fails to take into account a consideration the statute requires to be considered, the decision is legally invalid regardless of what other factors were weighed. Applied here, if the allocation failed to engage with any one of these mandatory duties, that failure is itself a basis on which it may be set aside.

Ground 3 — Misunderstanding the statutory structure of Part 5A: as explained in Part 2, the 'permitted waste' definition in s 74N ties the allocation power to the hierarchy by the Act's own text. A decision-maker who allocated capacity without engaging s 8(3) misunderstood the structure of the scheme. The evidentiary burden falls on the State, not the submitter: it is for the Government to demonstrate, through production of decision records, that each mandatory obligation was satisfied. Where a decision-maker has produced no record of engagement with mandatory statutory obligations — despite a formal Legislative Council production order, ongoing FOI requests, and months of public scrutiny — the presumption of regularity is strained. The absence of records, in these circumstances, warrants independent examination rather than continued assumption of compliance.

The practical stakes are significant. Every EPA works approval, planning permit, and commercial contract that proponents build around their allocated capacity depends on the allocation standing. If a legal challenge later succeeds, unwinding those downstream commitments would be costly and disruptive. That is a foreseeable consequence of leaving the legal question unresolved — and a reason to resolve it before further commitment occurs.

5. The State's Policy Case Does Not Withstand Scrutiny

The Victorian Government advances three public justifications for the WtE roll-out: that it produces clear net benefits; that it plays a transitional role; and that the cap ensures it remains complementary to the circular economy hierarchy. Each is weaker than it appears.

5.1 The Net Benefits Comparison Is Constructed Against a Weak Baseline

Net benefits are claimed by comparing thermal WtE to landfill. On that comparison, benefits in landfill diversion, some energy generation, and reduced methane can be identified. But s 11(2) of the CEA requires assessment of costs and benefits against all relevant alternatives — not just the worst available option. The mandatory comparison is thermal WtE against the full suite of hierarchy-superior alternatives: avoidance, minimisation, reuse, recycling, organics diversion, and advanced materials recovery. That comparison has not been publicly conducted or disclosed.

When that comparison is made — and it is the comparison the CEA requires — the claimed net benefit case becomes substantially weaker. On a full accounting of externalities, including long-term health costs, ash disposal liability, greenhouse gas emissions, foregone recycling investment, and contractual lock-in, the net benefit case is unlikely to withstand independent scrutiny. The Committee should not accept the framing that thermal WtE produces clear net benefits until the Government has conducted and published the hierarchy-wide comparison that s 11(2) demands. On the available evidence, that comparison has never been done.

5.2 The 'Transitional Tool' Framing Is Inconsistent With What Is Being Built

A genuine transitional tool is narrow, temporary, and designed to shrink as higher-order pathways mature. Victoria has issued seven cap licences, corresponding to six proposed new facilities — more than all other Australian jurisdictions combined — with 20 to 30-year project lives, funded by long-term waste supply agreements that require minimum volumes. Long-life combustion capacity with contractual feedstock obligations is not a transitional tool. It is a permanent structural commitment to combustion that requires a sustained waste stream to remain economically viable.

5.3 The Cap Proves Tension, Not Harmony

The State argues the 2.5 million tonne annual cap ensures WtE remains complementary to the hierarchy. That argument undermines itself. The cap was imposed precisely because unconstrained thermal capacity would risk displacing higher-order recovery — a structural tension the cap was designed to contain, not resolve. At 94% allocated, the cap has been nearly consumed before the State has demonstrably shown the hierarchy has been satisfied for the relevant waste streams.

5.4 The Feedstock Paradox

The most fundamental policy contradiction is commercial: a circular economy targets the progressive reduction of residual waste. A large-scale WtE plant requires a sustained and reliable waste stream over decades to remain financially viable.¹⁸ Long-term waste supply

¹⁸FOI material released by the Department of Transport and Planning records that HiQ's proposed facility at Sunbury/Bulla would employ moving grate thermal incineration, processing municipal solid waste, commercial and industrial waste, and construction and demolition waste. Moving grate technology is a bulk-burn system engineered for heterogeneous, minimally sorted municipal waste streams that does not require deep pre-sorting. Section 74N of the CEA restricts thermal WtE feedstock to waste that cannot reasonably be the subject of any further recycling ('permitted waste'). This creates a structural tension: the technology is optimised for mixed streams, but the Act confines feedstock to tightly defined residual fractions. The tension is not automatically fatal — it depends entirely on whether rigorous, enforceable upstream sorting and verification controls exist. No feedstock acceptance criteria, sorting thresholds, independent auditing regime, or compatibility assessment under s 74N has been publicly disclosed for any of the seven licensed facilities. Subsequent FOI requests to DTP seeking confirmation of the incineration technology proposed at all seven facilities received no substantive response.

agreements typically carry minimum tonnage obligations and financial penalties if councils reduce their waste. The system becomes structurally dependent on the continued existence of the waste stream it is nominally intended to manage as a last resort. This dynamic has been documented in Denmark, Scotland, and the United Kingdom — where over-investment in incineration has been acknowledged as structurally crowding out investment in recycling.

6. Victoria Is Moving in the Opposite Direction to Comparable Jurisdictions

Section 11(3) of the CEA requires Recycling Victoria to seek best practice having regard to the policies of other jurisdictions and international bodies. This is a legally operative duty, not a suggestion. The following table documents the direction of comparable jurisdictions.¹⁹

Jurisdiction	Policy Direction	Verified Detail
Australian Capital Territory	Indefinite prohibition on thermal WtE (confirmed May 2025)	ACT Waste Management and Resource Recovery (Waste-to-Energy) Code of Practice 2023 (No 1) prohibits new thermal treatment facilities, with a narrow exception for medical and biological waste. The ACT Government confirmed in May 2025 the Code remains in force with no expiry date.
New South Wales	Ban on new large-scale EfW incinerators in Greater Sydney	The State Environmental Planning Policy (Transport and Infrastructure) Amendment (Thermal Energy from Waste) 2022 bans thermal WtE development across Greater Sydney. New facilities are restricted to four designated precincts outside the metropolitan area, identified in the NSW Energy from Waste Infrastructure Plan.
Scotland	Moratorium on new incineration capacity (June 2022)	Following an independent government-commissioned review (Dr Colin Church, May 2022), the Scottish Government announced it does not support further municipal incineration capacity. The review found proposed capacity risked exceeding Scotland's projected waste volumes by 2026–27 and that incineration lock-in posed risks to recycling targets.
European Union	Taxonomy exclusion; circular economy incompatibility	Thermal waste incineration is not classified as a sustainable economic activity under the EU Taxonomy Regulation. The European Commission's 2030 Circular Economy Action Plan examines the incompatibility of high incineration capacity with circular economy targets.
Denmark	Over-investment formally recognised as crowding out recycling	Danish authorities have formally acknowledged that over-investment in WtE incineration has structurally crowded out recycling investment. This finding is frequently cited in comparative governance literature.

¹⁹ACT Waste Management and Resource Recovery (Waste-to-Energy) Code of Practice 2023 (No 1) (ACT), Requirement 1: new facilities proposing thermal treatment of waste by incineration, gasification, pyrolysis or variations are not permitted, with a limited exception for medical and biological waste. The ACT Government confirmed in May 2025 that the Code, which contains no expiry clause, remains in force: Region Canberra, 'Waste-to-Energy Incinerators Banned Indefinitely in the ACT' (18 January 2026). CEA, s 11(3) requires Victorian decision-makers to seek best practice having regard to the policies of other Australian jurisdictions. Victoria's acceleration into large-scale thermal WtE, while the ACT maintains a prohibition and NSW imposes a Greater Sydney ban, is a direct tension with this statutory duty that has not been publicly addressed.

Jurisdiction	Policy Direction	Verified Detail
Victoria	Acceleration: 94% of statewide cap allocated in one round	Six thermal WtE facilities are proposed — more than all other Australian jurisdictions combined. 2,350,000 tpa was allocated in August 2025 without any publicly disclosed hierarchy compliance analysis or comparative jurisdictional review.

Victoria cannot lawfully assert compliance with s 11(3) of the CEA while moving in the opposite direction to every comparable domestic and international jurisdiction. The comparative evidence is not peripheral — it is legally required input to the integrated decision-making process. No engagement with it has been disclosed.²⁰

²⁰NSW: State Environmental Planning Policy (Transport and Infrastructure) Amendment (Thermal Energy from Waste) 2022, giving effect to the NSW Energy from Waste Infrastructure Plan: thermal WtE development is prohibited across Greater Sydney (being the Greater Capital City Statistical Area including the Central Coast), with new facilities restricted to four designated precincts outside the metropolitan area. Scotland: Scottish Government, 'Putting Limits on Incineration Capacity' (20 June 2022), responding to the independent review by Dr Colin Church ('Stop, Sort, Burn, Bury?' May 2022). The review found that proposed incineration capacity in the pipeline risked exceeding Scotland's projected residual waste volumes by 2026–27. Ministers announced restrictions on new incineration capacity in Scotland. EU Taxonomy Regulation (EU) 2020/852 and delegated acts: thermal waste incineration is not classified as a sustainable economic activity under the taxonomy. CEA, s 11(3) requires decisions to seek best practice having regard to these international and jurisdictional positions.

7. Sequencing Inversion

The legal and policy failures documented in this submission share a common cause: the order in which key decisions were made. The risks compound over time for a structural reason.

Lawful Statutory Sequence	What Appears to Have Occurred
1. Comprehensive risk evaluation and hierarchy compliance analysis	1. Cap licences issued (17 August 2025)
2. Demonstrable engagement with ss 5, 8(3), 11 and 13 of the CEA	2. Risk modelling deferred to later EPA licensing and planning stages
3. Fit-and-proper assessment for each applicant	3. Statutory compliance assumed rather than demonstrated
4. Capacity allocated only once justification is established	4. EPA licensing and planning now proceed in the shadow of committed allocation

When capacity is allocated first, structural forces take hold that progressively reduce the realistic prospect of reconsideration: proponents mobilise investment capital; waste supply contracts begin to crystallise; political and institutional momentum builds around delivery; and the decision architecture narrows the options available to later decision-makers. Hierarchy-superior alternatives face higher economic and political barriers not because they are inferior, but because the infrastructure path has already been chosen.

The sense of inevitability that surrounds the WtE rollout is not evidence of its merit. It is a product of front-loaded commitment that pre-empted the statutory analysis the CEA required to precede it. A rollout whose apparent momentum derives from sequencing inversion rather than transparent statutory justification is more legally and politically exposed than its momentum suggests.

Non-progression now — before projects reach financial close — is a proportionate and reversible step. It preserves the State’s options while the legal and evidentiary questions are tested. Once financial close occurs, that reversal becomes materially harder: break fees, stranded-debt recovery, minimum-tonnage obligations, and deepening political commitment each raise the cost of correction. The further the roll-out progresses without a demonstrated statutory basis, the more of that risk is transferred to future decision-makers and the public.

8. Health, Environmental and Community Risks of the Roll-Out

The concerns set out in this section are categories of risk the CEA requires to be assessed before capacity is allocated. They are not established facts about specific facilities. Section 11 requires Recycling Victoria to assess all economic, social and environmental costs and benefits, including externalities. Section 13 requires precautionary treatment of unresolved risks of serious or irreversible harm. Neither assessment appears to have been disclosed.

Where useful for concreteness, reference is made to the proposed Hi-Quality facility at 570 Sunbury Road, Bulla — the facility whose potential impacts are most directly known to SCF. The concerns are, however, systemic: they apply to every large-scale thermal WtE facility in Victoria, and they were relevant to the entire allocation, not only to any single project.

8.1 Fine and Ultrafine Particulate Emissions — No Safe Threshold

WtE incinerators emit fine (PM_{2.5}) and ultrafine (PM_{0.1}) particles that penetrate the lungs and enter the bloodstream. The World Health Organisation's updated Air Quality Guidelines (2021) set an annual mean guideline value of 5 µg/m³ for PM_{2.5} and confirm no safe threshold has been identified. Victorian EPA currently has no regulatory standard for PM_{0.1}, despite growing international evidence linking ultrafine particle exposure to stroke, dementia and childhood respiratory and neurodevelopmental conditions. Section 13 of the CEA requires that absence of full scientific certainty on PM_{0.1} risks does not delay preventive measures.²¹

8.2 Persistent Organic Pollutants and Heavy Metals

Combustion of mixed waste generates dioxins, furans, mercury, lead, cadmium, and per- and polyfluoroalkyl substances (PFAS). WHO and UNEP identify dioxins as highly toxic, with no safe threshold for exposure. PFAS are bioaccumulative and practically impossible to remediate from groundwater once contamination occurs. These pollutants settle on soil, vegetation, rooftops and water tanks, entering the food chain through garden produce, eggs and meat from animals on affected land. Several EU member states now prohibit PFAS-containing waste from entering thermal WtE streams. Victoria currently does not.

The illustrative example: the proposed Bulla facility, if operated, would sit within a few kilometres of residential areas, schools, vineyards, and equestrian properties in the Sunbury district. The allocation made no disclosed assessment of the contamination pathways that these land uses create.

8.3 Toxic Ash and Groundwater Risk

Each tonne of waste burned in a modern thermal WtE facility produces substantial quantities of bottom ash and fly ash containing concentrated heavy metals, dioxins, and PFAS. In Denmark and the Netherlands, incinerator ash is classified as hazardous waste requiring sealed disposal and long-term monitoring. Victorian regulations do not currently impose equivalent standards. Victoria has no publicly disclosed financial assurance framework for the long-term management of WtE ash residues. If ash is improperly stored, transported, or reused as road-base material, contamination liability could persist for decades — and on the current record, no one has publicly quantified who would bear that cost.²²

8.4 Cumulative Impacts and Environmental Justice

Large-scale thermal WtE facilities are typically proposed for industrial precincts that already host multiple waste and resource-recovery operations. The cumulative exposure of surrounding communities to emissions, noise, odour, dust, and heavy vehicle traffic from co-

²¹WHO Global Air Quality Guidelines (2021 update): annual mean guideline value for PM_{2.5} is 5 µg/m³; the guidelines confirm no safe threshold for PM_{2.5} exposure has been identified. WHO identifies children, older adults, and persons with pre-existing conditions as populations of elevated concern. EU Industrial Emissions Directive 2010/75/EU, Annex VI: dioxin and furan emission limit of 0.1 ng TEQ/Nm³ with mandatory continuous monitoring.

²²Environment Protection Act 2017 (Vic), s 49: a permission holder must not conduct a regulated activity unless financial assurance has been provided as required by the EPA. For a large-scale thermal WtE facility generating substantial volumes of hazardous ash residues over a 25 to 30-year operating life, a credible financial assurance framework must account for plausible worst-case contamination and remediation scenarios. No such framework has been publicly disclosed for the Victorian WtE rollout at the cap-licence allocation stage or in any other publicly available regulatory assessment. The Victorian Auditor-General's report 'Managing Contaminated Sites' (VAGO, 2020) found that financial assurance mechanisms in Victoria had historically been insufficient to cover actual remediation costs — a concern that applies with particular force to facilities generating persistent hazardous residues over multi-decade operating lives.

located facilities must be assessed holistically. Project-by-project assessment does not substitute for cumulative assessment.

The roll-out also raises environmental justice questions. A statewide thermal WtE network receives waste generated across metropolitan Melbourne but concentrates health and amenity impacts in specific peri-urban communities. Where those communities are already hosting significant waste infrastructure, the distributional fairness of further concentration warrants scrutiny. The United Nations recognises this pattern — high-impact industrial facilities concentrated in communities with less political leverage — as environmental injustice.

8.5 Climate Alignment

Thermal WtE combustion generates greenhouse gases including carbon dioxide and nitrous oxide. The calorific value of mixed residual waste derives substantially from plastics — fossil fuel derivatives. A facility designed for a 25 to 30-year operating life represents a long-term carbon commitment in a jurisdiction that has legislated net-zero targets. The ACT prohibited thermal WtE partly on climate grounds. A full life-cycle greenhouse gas comparison between the WtE rollout and hierarchy-superior alternatives has not been publicly disclosed for the Victorian roll-out.

8.6 Inadequacy of Community Consultation

Community consultation under the allocation process attracted very low participation relative to the size of the affected population. Low submission numbers in consultation processes for high-impact, long-life infrastructure are not evidence of community acceptance — they typically reflect structural barriers: inadequate notice, inaccessible materials, short timeframes, and processes framed around decisions already effectively made.

Genuine consultation for infrastructure of this consequence requires active engagement with affected communities before the allocation stage — not after 94% of the cap has been committed. The communities most directly affected by each proposed facility have no formal standing to object to the cap licence because the licence does not specify a location. They are told to wait for EPA and planning processes — by which point the most consequential gateway decision has already passed.

9. Fiscal Exposure: The Public Cost That Has Not Been Disclosed

9.1 Foregone Landfill Levy Revenue

The roll-out is fiscally unjustified. Diverting 2.35 million tonnes per annum from landfill removes the metropolitan industrial and municipal waste levy from the public revenue base. The verified 2024–25 metropolitan levy rate was \$129.27 per tonne (rising to \$169.79 per tonne from 1 July 2025). Using the 2024–25 rate: $2,350,000 \times \$129.27 = \303.78 million per annum. Over a 27-year project horizon, this represents approximately \$8.20 billion nominal, or approximately \$5.3 billion at a 4% real discount rate. Using a blended conservative midpoint to account for mixed metropolitan and non-metropolitan streams: approximately \$7.7 billion in foregone public revenue over the project horizon. This has never been the subject of publicly disclosed independent cost-benefit analysis.²³

9.2 Scarcity Rent Transferred to Private Operators

Allocating 94% of the cap through a non-competitive process does not merely confer a commercial advantage on the seven recipients — it risks entrenching private monopoly power over Victoria’s residual waste disposal market. That risk flows directly from how the cap operates.

Victoria’s thermal WtE capacity is legally finite: once the 2.5 million tonne annual cap is fully allocated, no new operators can enter the market. A cap licence is not just a permission — it is a position of statutory exclusivity. With 94% of that exclusivity now held by seven private operators, those operators face no meaningful competition from other thermal WtE providers in their respective catchments. They can charge gate fees — the price councils and waste generators pay to have waste accepted at their facilities — without the downward pressure that a competitive market would ordinarily impose.

The economic term for this premium — the additional return that flows simply from holding a scarce, state-conferred right rather than from productive effort or investment efficiency — is scarcity rent. In competitive markets, scarcity rent is typically captured through auctions or tender processes that return value to the public. Victoria’s allocation captured none of it.

The real-world consequences are significant. Gate fees for WtE facilities are already substantially higher than alternative disposal costs. A 2022 Glen Eira Council report cited a projected SEMAWP gate fee of up to \$235 per tonne, compared to that council’s then-current alternative disposal cost of \$110 per tonne — a differential of \$125 per tonne. Even if most of that differential reflects genuine operating costs, the portion attributable to statutory exclusivity represents a transfer of public value to private operators that was never competitively priced or publicly justified.

²³Levy revenue calculation: the 2024–25 Victorian metropolitan industrial and municipal waste levy rate was \$129.27 per tonne, per the EPA Victoria levy schedule (confirmed by multiple public sources, including Cleanaway’s public levy advisory and the City of Boroondara 2024–25 budget documentation). Calculation: $2,350,000 \text{ tonnes} \times \$129.27 = \$303.78$ million per annum. Over a 27-year project horizon (a standard WtE project life): $\$303.78\text{M} \times 27 =$ approximately \$8.20 billion nominal. At a 4% real discount rate: approximately \$5.3 billion NPV. This submission uses a conservative midpoint figure of approximately \$7.7 billion to reflect the blending of metropolitan and non-metropolitan streams and the likelihood that levy rates will continue to rise (the rate rose to \$169.79 per tonne from 1 July 2025). Note: the figure of \$141/tonne cited in earlier versions of this submission was incorrect and has been replaced with the verified 2024–25 rate.

At a rough indicative processing margin advantage of \$20–\$40 per tonne attributable to cap exclusivity: approximately \$1.3–\$2.5 billion over the project horizon. This estimate is illustrative rather than verified. The absence of any competitive pricing mechanism, independent valuation, or public cost-benefit analysis means the value of the transfer to private operators — whatever that value turns out to be — was never subject to public scrutiny. In any comparable major resource allocation — spectrum, water rights, broadcast licences — public value would ordinarily be captured through auction, tender, or royalty. No equivalent mechanism was applied here. The Committee should require Treasury or VAGO to produce an independent quantification.²⁴

9.3 Minimum Tonnage Lock-In

Large-scale thermal WtE facilities require 20 to 30-year waste supply agreements with minimum tonnage commitments to underpin project finance. These agreements create a structural conflict with circular economy goals: as councils and government seek to reduce residual waste through avoidance, reuse, and recycling, financial penalties may apply if waste volumes fall below contracted minimums. The system becomes commercially dependent on the continued existence of the waste stream the hierarchy requires to be reduced. This perverse incentive has been formally documented in Denmark and the United Kingdom.

9.4 Stranded Asset and Reversal Risk

If the allocation is subsequently found to be legally invalid, or if the roll-out proves environmentally or politically unsustainable, the cost of reversal is very large: stranded infrastructure, contract termination costs, and the cost of building the higher-order capacity that should have been built first. No stranded-asset risk assessment or reversibility analysis has been publicly disclosed. Parliament and the public have not been given the information needed to evaluate the long-term fiscal commitment being made on their behalf.

²⁴Scarcity rent estimate: the cap creates a constrained and regulated market for thermal WtE processing capacity. Allocating 94% of that cap through a non-competitive process confers a commercial advantage on recipients whose value derives from the statutory exclusivity the cap creates. At a processing margin advantage of \$20–\$40/tonne (a conservative range, given regulated landfill levy avoidance, gate fee structures, and energy revenue streams): \$47M–\$94M per annum; approximately \$1.3B–\$2.5B over the 27-year project horizon. This estimate is presented for indicative purposes; the Committee should require Treasury or VAGO to produce an independent quantification.

10. Governance Integrity

The following matters are not allegations of corrupt conduct. They are questions of process integrity that the Committee is well placed to examine, and that the relevant oversight bodies are positioned to investigate with compulsory production powers.

One structural point deserves emphasis before turning to the specific integrity questions. The absence of a formal allocation instrument, a statement of reasons, and a Gazette notice is not, in itself, necessarily unlawful under the CEA as currently structured. The Act does not expressly require any of these things. There is no mandatory public transparency trail. The only statutory check available is VCAT review, and that is confined to refused applicants — not the public, not affected communities, and not Parliament. The public record is a table on a government webpage with no legal status as an instrument.

This structural design, however, is significant in its own right. A legislative framework that permits a multi-billion-dollar statewide allocation to proceed without any mandatory documentation, public notice, or third-party scrutiny creates the conditions in which sequencing inversion can occur undetected. Whether or not that was the intent of the framework's architects, the practical consequence is clear: the absence of mandatory transparency requirements provided the administrative conditions under which the allocation could be made without any publicly verifiable engagement with the CEA's mandatory statutory obligations. The public record does not establish that those obligations were considered. It does not establish that they were not. What the structure of the Act made possible — and what the conduct of Recycling Victoria has resulted in — is a decision of statewide consequence made entirely within a transparency vacuum the law itself created. That is the structural vulnerability this Committee should examine.

10.1 Was the Process Genuinely Competitive?

The regulatory carve-out for SEMAWP, the mid-process cap increase announced days before the EOI opened, and the absence of any published comparative scoring or applicant assessment each raise questions about transparency and value for money that the Committee and VAGO are well-placed to examine. The Victorian Auditor-General's Office should examine whether value for money was achieved and whether proper processes were followed.²⁵

10.2 Conflicts of Interest

The Public Administration Act 2004 (Vic), ss 61–70 requires public officers to disclose and manage conflicts of interest. The Committee should require disclosure of the conflict-of-interest declarations made by all senior officers of Recycling Victoria, DEECA, and EPA Victoria involved in the allocation process. If those declarations were not made, or if undisclosed relationships existed between decision-makers and applicants or their advisers, that is material to the integrity of the allocation.²⁶

²⁵Victorian Auditor-General's Office Act 1994 (Vic), s 15: VAGO has jurisdiction to examine whether value for money was achieved and whether proper processes were followed in government decisions and procurement. IBAC Act 2011 (Vic), s 60: IBAC has jurisdiction over corrupt conduct by public officers in connection with the exercise of official functions. Public Administration Act 2004 (Vic), ss 61–70: conflict-of-interest obligations on public officers; s 64: 12-month post-separation employment cooling-off period.

²⁶Public Administration Act 2004 (Vic), ss 61–70: public officers must disclose actual or perceived conflicts of interest and, where a material conflict exists, stand aside from the relevant decision. The obligation applies to all officers involved in assessment of EOIs and cap licence applications. The Committee should require Recycling

10.3 Lobbying, Donations and Post-Separation Employment

Long-term WtE capacity allocations are among the highest-value regulatory decisions in the Victorian waste sector. As standard practice for decisions of this value and consequence, the Committee should require Recycling Victoria to confirm whether the Lobbyist Register was checked against applicant lists during the assessment process, and whether any registered lobbyist had access to Ministers or senior officials in connection with the allocation. Where such access occurred, that is relevant to an assessment of process integrity.

The Committee should also examine whether any officer with a decision-making role in the allocation has since taken up employment with a cap licence holder, their parent company, or advisers, within the 12-month post-separation cooling-off period under the *Public Administration Act 2004* (Vic), s 64.²⁷

10.4 Charter of Human Rights

As a supplementary matter, the Charter of Human Rights and Responsibilities Act 2006 (Vic) requires public authorities to act compatibly with human rights, including the right to life (s 9). The allocation of long-life combustion infrastructure in residential airsheds, without any publicly disclosed statutory compliance basis, is at least arguable engagement with these provisions. Whether a Statement of Compatibility should have been prepared is a question the Committee may wish to put to the Government.²⁸

Victoria, DEECA, and EPA Victoria to confirm that conflict-of-interest declarations were collected from all officers involved in the allocation process and that no material undisclosed conflict has been identified.

²⁷Public Administration Act 2004 (Vic), s 64: a former public officer who, during their employment, had a direct and substantial involvement in a matter must not, for 12 months after separation, engage in activities directly related to that matter on behalf of a person with a direct interest in it. The Victorian Public Sector Commission's post-employment obligations guidance requires agencies to advise departing officers of these restrictions. The Committee should require each agency involved in the allocation to confirm that post-separation obligations were communicated and that no cooling-off breach has occurred in respect of any officer who held a decision-making role in the WtE cap-licence process.

²⁸Charter of Human Rights and Responsibilities Act 2006 (Vic), ss 9 (right to life), 10 (protection from cruel and inhuman treatment), 38 (obligation on public authorities to act compatibly with human rights). Section 32 requires all statutory provisions to be interpreted compatibly with Charter rights. A Statement of Compatibility is required under s 28 for Bills; the analogous obligation for significant executive decisions is grounded in s 38. No Statement of Compatibility in relation to the WtE allocation has been publicly disclosed.

11. Better Alternatives Already Exist

The relevant policy question is not 'incinerator or landfill'. It is 'incinerator versus the hierarchy-superior alternatives the CEA requires to be preferred'. Those alternatives exist, are deployable, and do not create the structural feedstock dependency of large-scale, long-life combustion infrastructure:

Alternative	Why It Is Hierarchy-Superior
Food organics and garden organics (FOGO) separation and composting	Diverts the largest single component of residual waste to beneficial reuse. Widely deployed across Victorian councils. Generates compost rather than toxic ash.
Advanced sorting and mechanical-biological treatment	Separates valuable materials from mixed waste streams for recycling, composting and targeted residual treatment. Preserves material value and produces no persistent pollutants.
Product stewardship and extended producer responsibility	Reduces residual waste at source by making manufacturers responsible for end-of-life management. Directly aligned with the CEA's preference for avoidance and minimisation.
Repair, reuse and sharing economies	Extends the useful life of products, reduces goods entering the waste stream, and supports distributed local employment.
Anaerobic digestion of organics	Converts food waste and organics to biogas and nutrient-rich digestate without the emissions and hazardous residue profile of thermal combustion.
Urban mining and circular industrial design	Recovers metals, plastics and other materials for re-entry into manufacturing, reducing both residual waste and the extraction of virgin resources.

Each of these alternatives preserves the flexibility to adapt as circular economy capacity grows — something a large-scale incinerator does not. Victoria should be building this infrastructure — not committing scarce statewide capacity to combustion before the hierarchy has been demonstrably satisfied.

12. Findings and Recommendations

12.1 Findings

The Committee is invited to make the following findings:

1. The 17 August 2025 cap allocation decision allocated 94% of the statewide annual cap. The available public record contains no evidence demonstrating compliance with mandatory statutory duties under ss 5, 8(3), 11 and 13 of the CEA, or the fit-and-proper prohibition in s 74T(4). This absence constitutes an unresolved legal question that warrants non-progression of the roll-out until the decision record is produced and its lawfulness independently assessed.
2. There is a credible and specific legal basis to question the validity of the allocation decision on three grounds: misconstruction of the statutory task; failure to consider mandatory relevant considerations; and misunderstanding the integrated statutory structure of Part 5A. These grounds are sufficient to warrant independent legal assessment and should preclude further progression until the record is tested.
3. No fit-and-proper assessment records have been disclosed for any of the seven cap licence holders, including those with documented EPA Victoria enforcement histories. The statutory prohibition in s 74T(4) may not have been satisfied.
4. The process raises unresolved questions about competitive integrity: the SEMAWP regulatory preference, the timing of the cap increase relative to the EOI opening, the unexplained 47-day delay in notification, and the apparent growth in one applicant's licensed tonnage during the assessment process.
5. The fiscal consequences — approximately \$7.7 billion in foregone levy revenue and \$1.3–\$2.5 billion in estimated scarcity rent transfer — have not been the subject of transparent public cost-benefit analysis.
6. Victoria's roll-out is moving in the opposite direction to the ACT, NSW, Scotland, and the European Union. The s 11(3) obligation to have regard to international and domestic comparative practice has not been demonstrably discharged.
7. The health, environmental and cumulative risk questions raised by large-scale thermal WtE infrastructure engage mandatory statutory duties under ss 11 and 13. None has been the subject of publicly disclosed independent assessment at the statewide roll-out level.
8. The roll-out exhibits the structural characteristics of sequencing inversion: capacity committed before statutory compliance demonstrated. This inquiry is taking place within a narrowed corridor created by that early commitment.
9. The integrity of Victoria's environmental governance requires that decisions of this scale be made lawfully, transparently, and with documented engagement with all mandatory statutory obligations. The Government's non-compliance with the Victorian Legislative Council's formal production order of 29 October 2025 — tabling only a letter citing insufficient time rather than the ordered documents — compounds the transparency concern independently of the allocation's merits. This matter raises questions appropriate for VAGO, the Victorian Ombudsman, OVIC, and conditionally IBAC.

12.2 Recommendations

The primary recommendation flows directly from the findings above. No further thermal WtE capacity should be allocated, and no unfinanced project should progress toward financial close, until the State produces publicly verifiable evidence that the 17 August 2025 allocation decisions complied with ss 5, 8(3), 11 and 13 of the CEA and the s 74T(4) prohibition. This is not a conditional pause pending further review. It is a suspension grounded in the absence of demonstrated statutory compliance at the foundational stage of the roll-out.

Recommendation 1 — Immediate Non-Progression

No further expansion of the thermal WtE roll-out — including additional capacity allocation or progression toward financial close for projects not yet financially closed — should occur unless and until the State produces decision records demonstrating that each allocation decision complied with all mandatory CEA duties.

Recommendation 2 — Full Production of Decision Records

The Government must produce all briefing materials, decision records, health and risk assessments, hierarchy compliance analyses, fit-and-proper assessment records for each operator, inter-agency communications, legal advice, conflict-of-interest declarations, and ministerial communications underpinning the 17 August 2025 decisions. Redaction on confidentiality grounds should be subject to independent review by OVIC.

Recommendation 3 — VAGO Performance Audit

The Committee should recommend a formal referral to the Victorian Auditor-General's Office to examine: the existence, adequacy and quality of decision records; whether mandatory statutory duties were addressed; whether value for money was achieved in the allocation process; and whether proper procurement processes were followed.²⁹

Recommendation 4 — Integrity Referrals

The Victorian Ombudsman should investigate potential maladministration in the making of the allocation without documented statutory consideration, and in the FOI handling by all three agencies including unexplained delays and failure to acknowledge legal-hold obligations. OVIC should review both FOI processes and determine whether decision records exist and whether searches were adequate. If the Committee's examination of decision records, conflict-of-interest declarations, lobbying register cross-references, and post-separation employment records reveals evidence of corrupt conduct, improper influence, or unjustified value transfer to private operators, the matter should be referred to IBAC, whose compulsory production powers can reach materials FOI cannot.

Recommendation 5 — PAEC Fiscal Inquiry

The Public Accounts and Estimates Committee should conduct an inquiry into the fiscal consequences of the roll-out, including foregone levy revenue, the scarcity rent transfer, ash disposal liability, and the stranded-asset and reversal risk profile.

²⁹Victorian Auditor-General's Office Act 1994 (Vic), s 15(1): the Auditor-General may conduct a performance audit of a public body to determine whether it is carrying out its activities effectively and doing so economically and efficiently and in compliance with all relevant Acts. The 17 August 2025 allocation squarely engages each of these criteria: the existence and adequacy of decision records goes to compliance; the non-competitive allocation of a commercially valuable statutory entitlement goes to economy and efficiency; and the absence of any publicly disclosed cost-benefit analysis goes to effectiveness. A VAGO performance audit is the appropriate mechanism to examine whether Recycling Victoria's administration of Part 5A of the CEA met these standards.

Recommendation 6 — Gateway Conditions Before Any Future Allocation

If the roll-out is not suspended pending legal and evidentiary scrutiny, no project should proceed to financial close without:

- Verified, independently audited evidence that the proposed waste streams are genuinely residual after hierarchy-superior alternatives have been assessed and found inadequate;
- Published hierarchy compliance analysis demonstrating satisfaction of ss 5, 8(3) and 11 of the CEA;
- Cumulative emissions assessment for all allocated sites in the same airshed, benchmarked against WHO 2021 Air Quality Guidelines and EU Industrial Emissions Directive standards;
- EPBC Act referral decision, publicly disclosed;
- Fit-and-proper assessment records for each operator, including related entities and director compliance histories, publicly disclosed;
- Conflict-of-interest declarations for all decision-makers, publicly disclosed;
- A Charter of Human Rights compatibility statement;
- Enforceable contractual provisions preventing minimum-tonnage structures from creating perverse incentives against waste reduction;
- An integrated statewide environment effects assessment under the Environment Effects Act 1978 (Vic); and
- An independent, publicly disclosed cost-benefit analysis comparing the proposed project with hierarchy-superior alternatives.

Recommendation 7 — Statutory Moratorium

The Committee should recommend an amendment to the CEA imposing a moratorium on new thermal WtE capacity above 50,000 tonnes per annum until the conditions in Recommendation 6 are satisfied, with any non-compliant allocation of no effect. Pre-commencement allocations not yet at financial close should be subject to the same conditions before further progression.

Recommendation 8 — Reorientation Toward Hierarchy-Superior Alternatives

The State should redirect public investment and regulatory effort toward avoidance, minimisation, reuse, repair, advanced resource recovery, and organics diversion. Victoria should set binding, enforceable reduction targets for residual waste and condition infrastructure investment approvals on demonstrated progress against those targets.

14. Conclusion

The CEA creates binding statutory obligations that govern every decision to allocate thermal WtE capacity. Those obligations — the waste hierarchy, the integrated decision-making duty, the precautionary principle, and the fit-and-proper prohibition — are not aspirational principles. They are the conditions Parliament imposed before the State may commit scarce statewide infrastructure capacity to combustion.

The 17 August 2025 allocation of 94% of that capacity, communicated by a website table with no disclosed statutory reasoning, no hierarchy compliance record, no health assessment, and no fit-and-proper documentation for seven operators, is not consistent with a roll-out that honours those obligations. Months of substantive non-response across three government agencies — with no explanation — has produced nothing to address that concern.

Victoria has issued seven cap licences, corresponding to six proposed new facilities³⁰ — more than all other Australian jurisdictions combined — while the ACT bans the technology outright, New South Wales bans it across Greater Sydney, Scotland has restricted it following an independent review, and the European Union examines its incompatibility with circular economy targets. The CEA expressly requires Victorian decision-makers to have regard to this comparative body of evidence. There is no public record that they have.

The practical consequence of leaving the roll-out unaddressed is lock-in. Every project that reaches financial close adds another layer of contractual, financial, and political commitment. The cost of reconsideration rises. The practical space for hierarchy-superior alternatives narrows.

The statutory tools are available. The evidence base is sufficient to justify scrutiny. The findings and recommendations in Part 12 set out the specific steps this Committee can take. The time to act is before further financial close commits the State to a pathway whose legal and fiscal foundations have not been transparently established.

About the Submitter

Sunbury Clean Future Inc. (SCF) is a community organisation representing residents, families, and workers in the Sunbury-Bulla district. Its members live within the airshed of the proposed Hi-Quality facility and have closely followed the cap licence process. They are not opposed to sound waste management. They are asking that the decisions shaping the environmental character of their community for the next thirty years be made lawfully, transparently, and with the documented engagement with statutory obligations that Parliament required. They ask that this Committee hold the Government to that standard.

³⁰One licence holder, Recovered Energy Laverton Pty Ltd, holds both a cap licence and an existing operator licence for a facility with pre-existing approvals. It is therefore counted once across both licence categories, meaning seven cap licences correspond to six proposed new facilities.