SUPPLEMENTARY 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)

Date: March 2026

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

[redacted]

A Statutory Safeguard Under Strain

SCF's primary submission sets out the concerns about the integrity of the cap-allocation process. It should be read first. This supplement addresses a different question: why those concerns matter at a system level. The cap is not an administrative detail. It is the principal brake on the scale of thermal waste-to-energy in Victoria. If the integrity of that mechanism is compromised at the point of allocation, the risk is not merely procedural. It is systemic. The consequences extend beyond one allocation decision and affect the trajectory of Victoria's entire waste infrastructure for decades.

1. The Gate and the Brake

Section 8(3) of the Circular Economy (Waste Reduction and Recycling) Act 2021 (Vic) (the CEA) already constrains thermal waste-to-energy before Part 5A enters the picture. It places energy recovery — the category into which thermal WtE falls — fifth in the hierarchy of waste management options, below avoidance, minimisation, reuse and recycling. The Act also defines permitted waste as waste that cannot reasonably be recycled any further. Only permitted waste may be thermally processed.

Given those constraints already in place, why did Parliament add Part 5A a year later, dedicating an entire new scheme specifically to capping and licensing thermal WtE?

The answer is that the hierarchy and the cap address different risks. The hierarchy subordinates thermal WtE to higher-order outcomes. It tells the system what thermal WtE may not displace. The cap limits the total volume of combustion capacity the State is willing to authorise across Victoria at all. The hierarchy sets priority. The cap sets a ceiling. Recycling Victoria's own policy document, *Recycling Victoria: A New Economy*, makes the underlying concern explicit: over-investment in WtE in the short term has the potential to undermine long-term waste reduction and recycling, and experience in other jurisdictions indicates that over-investment could disincentivise innovation in reuse and recycling. The Government's July 2025 regulatory notice states the same concern in different words: the cap is intended to limit the risk of WtE capacity exceeding available feedstock.

Parliament did not regard the hierarchy alone as an adequate safeguard against over-expansion. The hierarchy operates like a gate, constraining when thermal WtE should be used, while the cap operates like a brake, constraining how far it can spread, even when individual waste streams technically qualify. The point is that both are necessary and the cap is not redundant to the hierarchy. It is Parliament's recognition that a technology can remain within formal priority rules and still grow to a scale that distorts the wider system.

That distinction is the foundation of this supplement. If Parliament considered a dedicated cap necessary — on top of a hierarchy that already subordinates thermal WtE — the integrity of how that cap is administered is not secondary. It is central. A cap

applied without proper foundation is not a brake. It is the form of a brake without the function. When a sector is not self-limiting, that difference is not technical. It is the difference between a system that governs the technology and one the technology governs.

2. Part 5A: Permission and Restraint

To understand why, it helps to be precise about what Part 5A actually does. It operates on two levels simultaneously. It permits thermal WtE by establishing a licensing scheme, and it restrains thermal WtE by imposing a finite statewide cap and associated control powers — including the power to amend, decrease, suspend, revoke and immediately revoke licences. The licence allows thermal WtE to occur. The cap limits how far it can spread.

The restraint function is the one that matters most for this supplement. Public discussion tends to treat Part 5A as purely a mechanism for granting capacity to facilities. It is more than that. The cap determines how much thermal WtE Victoria is willing to embed structurally before project-level planning and EPA approvals even begin. It is the point at which a technology moves from being formally possible to being institutionally entrenched.

That is why the allocation decision is the decisive moment in the roll-out. Once capacity is distributed under a finite cap, the State has already answered the most consequential system-level question: *how large will this sector become?* Planning and EPA processes that follow assess individual projects, but they do so after the question of aggregate scale has already been settled. By 17 August 2025, when 94 per cent of the statewide cap was allocated in a single round, that question had been answered. The primary submission examines whether the law was followed. This supplement examines what is now at stake because the answer is unresolved.

3. Thermal WtE Is Not Self-Limiting

The cap exists because thermal WtE is not self-limiting. Once large facilities are built, financed and connected to long-term waste supply arrangements, they exert pressure on the system around them. They require stable feedstock volumes over decades. They create commercial and contractual incentives for waste to continue flowing, even as policy objectives call for residual waste to shrink. A sector built at scale does not passively wait for policy direction. It generates momentum of its own.

The danger is not simply that more waste will be burned. The deeper danger is that a combustion sector built at sufficient scale begins to shape the surrounding waste system in its own image. Higher-order pathways — avoidance, recycling, organics diversion — remain formally preferred, but they must compete for investment, political attention and feedstock with infrastructure that is already capitalised, contracted and operating over a 25 to 30-year horizon. The submission documents this dynamic directly: minimum tonnage obligations in long-term waste supply agreements create a structural conflict with circular economy goals, because financial penalties can 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.

Comparative evidence confirms the pattern. The ACT prohibits new thermal WtE facilities under the Waste Management and Resource Recovery (Waste-to-Energy) Code of Practice 2023, with a narrow exception for medical and biological waste. Greater Sydney bans new large-scale thermal WtE incinerators. Scotland moved to a moratorium after an independent review found proposed capacity risked exceeding projected waste volumes and entrenching incineration lock-in. Denmark formally acknowledged that over-investment in incineration had structurally crowded out recycling. The mechanisms differ, but the dynamic is consistent: once thermal WtE grows beyond a carefully residual role, the cost of containing it rises steeply. Victoria's chosen instrument for preventing that outcome is the cap.

This is the context in which the cap's integrity matters. The cap was not designed merely to impose a number. It was designed to impose the ***right*** number — one that reflects genuine hierarchy compliance for the relevant waste streams, precautionary assessment of cumulative risk, integrated analysis of alternatives, and fit-and-proper screening of operators. The right number is the one that emerges after those disciplines have constrained it: a ceiling calibrated to a genuinely residual waste quantum, set low enough to leave room for avoidance, recycling and organics diversion to grow, and held by operators whose fitness to manage long-life combustion infrastructure has been demonstrated. That is the cap Parliament designed — one that keeps thermal WtE in a tightly residual role while the circular economy pathways above it mature.

If those disciplines were not applied at the point of allocation, the 2.35 million tonne figure distributed across seven operators is not the product of statutory reasoning — a number constrained by hierarchy compliance analysis, precautionary assessment and fit-and-proper screening applied to each applicant. It is a number whose derivation has never been disclosed. The Government has not explained how it arrived at each operator's allocated tonnage, declined to produce the decision record when formally ordered to by the Legislative Council, and allowed three agencies' FOI obligations to lapse without substantive response. In the absence of any publicly disclosed statutory reasoning, there is no basis on which to conclude that the allocation was calibrated against a verified residual waste quantum rather than the volumes applicants sought. A ceiling whose derivation cannot be verified is not a disciplined brake. It is an unverified number — and in a sector that is not self-limiting, an unverified number at the wrong level is not a safeguard. It is a ceiling without foundation.

4. A Cap Without Integrity Cannot Perform Its Function

It might be argued that even a flawed allocation leaves the cap intact as a numerical ceiling: the number 2.5 million tonnes remains in the regulations regardless of how the capacity beneath it was distributed. Seven licences totalling 2.35 million tpa were issued. The ceiling still stands. On that view, the cap continues to constrain despite the legal defects of the process.

That argument mistakes the form of the cap for its function. The cap is not merely a number. It is a rationing mechanism with a specific statutory purpose: to ensure that the scale of thermal WtE authorised represents the right scale, determined by the CEA's governing disciplines. The primary submission establishes that those disciplines — hierarchy compliance, integrated decision-making, precautionary assessment and the fit-and-proper prohibition — were preconditions to any valid allocation.

If they were not applied, the number chosen was not the product of statutory reasoning. It was a number arrived at without any publicly disclosed hierarchy compliance analysis, precautionary assessment, integrated decision-making framework, or fit-and-proper determination — the four disciplines the CEA required to precede it. Parliament designed the cap to emerge from those constraints. Without them, the allocation reflects an unverified judgment about scale, made inside a transparency vacuum the law itself permitted. Its form is intact. Its function is not.

The hierarchy compliance failure illustrates why this matters in practice. The CEA restricts thermal WtE feedstock to permitted waste — waste that cannot reasonably be recycled any further. Allocating 2.35 million tonnes of combustion capacity without a publicly disclosed hierarchy compliance analysis means no one has established that 2.35 million tonnes of Victoria's waste stream genuinely qualifies as permitted waste. The submission notes that the technology proposed for the largest facilities is moving-grate incineration, a bulk-burn system optimised for mixed, minimally-sorted municipal waste streams that includes recyclables and organics. Without a verified hierarchy analysis establishing the genuine residual quantum, the cap allocates throughput capacity for a waste stream whose legal character has not been confirmed. The ceiling is set. The waste it was supposed to be calibrated against has not been verified. The cap therefore cannot distinguish between capacity that serves the hierarchy and capacity that subverts it.

The fit-and-proper failure has a different but equally serious consequence for the cap's ongoing function. The assessment required by s 74T(4) of the CEA is not merely a gateway threshold. It is the mechanism by which the State satisfies itself that the operators who will collectively hold 94 per cent of Victoria's finite combustion capacity — with no meaningful competition from new entrants — can be trusted to operate within that cap over a 25 to 30-year horizon. Two of the largest allocations went to operators with documented EPA enforcement histories squarely within the s 74ZJ criteria. No assessment records have been disclosed for any of the seven. A cap held by operators whose fitness was never adequately assessed is a cap whose long-term enforceability is weakened from the outset. The formal powers of suspension and revocation exist in Part 5A. But those powers become harder to exercise as the facilities are built, financed, employed and integrated into waste supply chains. An inadequate gateway assessment does not merely reflect a past failure. It reduces the State's practical capacity to discipline the sector in the future, at exactly the point when the sector's expansion tendency is most dangerous.

The fiscal dimension compounds both failures. The primary submission documents that allocating 94 per cent of the cap through a non-competitive process confers an estimated $1.3 to $2.5 billion in scarcity rent on seven private operators — the premium

that flows from holding a scarce, state-conferred entitlement that no competitor can obtain — and removes approximately $7.7 billion in landfill levy revenue from the public base over the project horizon, revenue that was designed to fund the hierarchy-superior infrastructure the CEA requires. In comparable resource allocations — spectrum licences, water rights, broadcast licences — the State captures that scarcity value through auction, tender or royalty. No such mechanism was applied here. The entitlement was granted without competitive pricing, without independent valuation and without published cost-benefit analysis. The result is a transfer of scarcity value to private operators that was never tested against public interest. Once facilities approach financial close, that transfer deepens with every commercial commitment made on the basis of allocated capacity. The cap's integrity failures are therefore not confined to their legal dimension. They carry a fiscal consequence that accumulates over the life of the sector.

Taken together, these failures do not leave a functioning cap with a legal defect attached. They hollow out the cap's substance while leaving its form intact. The ceiling remains as a number in the regulations. But the number was set without hierarchy calibration, held by operators never adequately screened, and protecting a waste stream whose legal character was never verified. That is not Parliament's cap. It is the appearance of Parliament's cap. And in a sector that is not self-limiting — that will expand to fill whatever space the regulatory framework allows — the appearance of a brake is functionally equivalent to the absence of one.

5. The Larger Risk

Victoria has a genuine waste-management problem. Landfill capacity is finite and shrinking. The *Recycling Resources from Waste: Victorian Auditor-General's Report 2024–25* confirms the State is not on track to meet its 2030 diversion target. In those conditions, thermal WtE presents itself as a large-scale, fast answer: commit the infrastructure, absorb the residual waste, hit the diversion numbers. That logic has real force. It is also the logic the cap was designed to keep in check. Parliament imposed the cap so that political and commercial pressure to build at scale could not substitute for the statutory disciplines — hierarchy compliance, precautionary assessment, integrated decision-making, fit-and-proper screening — that were supposed to determine what scale is lawful in the first place.

If the cap-allocation process lacks integrity, the State authorised the sector at a scale that was never tested against the law's requirements.. Scale was settled before justification was demonstrated. The sector then proceeds under commercial and institutional momentum that progressively narrows the options available to future decision-makers. Proponents advance planning and EPA applications on the basis of allocated entitlements. Councils begin negotiating waste supply arrangements. State agencies plan infrastructure around the assumption that these facilities will be operational. Each of those steps raises the cost of reconsideration. The corridor for correction narrows.

At the same time, the seven allocated operators hold a structurally stronger position than they would in a competitive market. The cap prevents new entrants. The State needs the facilities to meet its diversion targets. Once that dependence deepens, the State's practical ability to regulate the sector — even using the formal intervention powers that exist in Part 5A — is constrained by the very reliance it has created. Formal power to revoke or suspend a licence does not easily translate into practical capacity to do so once a facility is operational, financed and supplying a service the State cannot readily replace.

The risk that results is self-reinforcing. Landfill pressure creates demand for combustion. Committed combustion capacity creates institutional and commercial dependence. Dependence weakens the practical force of both the hierarchy and the cap. The circular economy goals the CEA was built around become progressively harder to pursue because the system has already committed itself to the infrastructure of a lower-order pathway. By the time that trajectory is unmistakable, it is very expensive to reverse.

That is the trap. It is preventable at the point of scale restraint. A cap that functions with integrity — set against a verified residual waste quantum, held by properly screened operators, calibrated by genuine statutory analysis — keeps the trajectory open. A cap hollowed out at the allocation stage closes it, progressively and expensively, over the years that follow.

Conclusion

Part 5A operates as a scheme of permission and restraint. The licence permits thermal WtE. The cap restrains it. That restraint matters because thermal WtE is not self-limiting — once built at scale, it creates pressure for continued throughput, long-term dependence and commercial entrenchment that can reshape the waste system around the needs of combustion infrastructure rather than the hierarchy Parliament enacted.

The cap's value as a restraint depends entirely on it being administered with the integrity the Act requires. A cap set without hierarchy calibration, held by operators never adequately screened, protecting a waste stream whose legal character was never verified, and transferred at a price that captured no public value, retains the form of Parliament's brake but not its substance. In a sector with a documented tendency to expand and entrench itself, that distinction is not technical. It is the difference between a system that remains governable and one that does not.

SCF's primary submission raises specific, grounded concerns about whether the allocation of 94 per cent of the statewide cap in a single round on 17 August 2025 was made with the statutory foundation the Act requires. Those concerns are supported by the absence of any publicly disclosed decision record, the Government's non-compliance with a formal Legislative Council production order, the unresolved FOI requests across three agencies, and the parliamentary inquiry this Committee is now conducting.

If those concerns are well-founded, the problem is structural. The risks that follow — a combustion sector expanding into a space that was never properly calibrated against the hierarchy, held by operators whose fitness was never adequately tested, generating fiscal transfers — foregone levy revenue and scarcity-value entitlements — that were never subject to independent valuation or competitive pricing discipline, and progressively crowding out the hierarchy-superior alternatives the CEA requires — do not arrive all at once. They accumulate. They become clearer as capacity is committed, contracts are signed and the system adapts to infrastructure already in place. By the time they are beyond dispute, the State may already be locked into a combustion pathway that is politically, financially and operationally very difficult to unwind.

This Committee faces a choice that will not return. It can require production of the decision record, test the legal foundation of the cap license allocation, and recommend non-progression while that foundation remains unestablished. Or it can allow the roll-out to continue, in the knowledge that each further step narrows the corridor for reconsideration and deepens the State's dependence on a combustion pathway whose legal basis has never been transparently demonstrated. The first option is proportionate and reversible. The second is neither.