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Committee Secretary  
Parliament of Victoria  
Legislative Council, Environment and Planning Committee  
Parliament House, Spring Street  
East Melbourne VIC 3002

By email: [recyclinginquiry@parliament.vic.gov.au](mailto:recyclinginquiry@parliament.vic.gov.au)

Dear Committee Secretary

### **Inquiry into Recycling and Waste Management**

The Law Institute of Victoria (LIV) welcomes the opportunity to provide a submission to the Legislative Council Environment and Planning Committee's inquiry into recycling and waste management ("**the Inquiry**").

The LIV acknowledges that the sustainable management of waste and recycling in Victoria is an issue of significant importance to the Victorian community. The LIV makes the following submissions to the Inquiry:

#### *The Victorian Government's Responsibility to Manage Solid Waste Across the State*

1. The LIV recognises that the Victorian Government has a crucial role to play in the responsible management of solid waste across the state through legislation, regulation, and the steering of a clear policy agenda.
2. The LIV commends the Victorian Government for its commitment to ensuring an efficient and resilient recycling system through the *Recycling Industry Strategic Plan*.<sup>1</sup> However, although supporting these efforts, the LIV believes the Victorian Government can and should increase its levels of direct responsibility to ensure and assist the sustainable management of waste across the state.
3. The LIV urges the Victorian Government to exercise leadership in this crucial matter with attention given to eliminating waste at the source as a primary method for reducing solid waste. The ongoing and unchanging status quo, despite the anticipated difficulties when implementing policies to eliminate waste, is no longer a coherent, efficient or environmentally responsible approach.

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<sup>1</sup> Victorian Government, 'Recycling Industry Strategy Plan' (July 2018) available: [https://www.environment.vic.gov.au/data/assets/pdf\\_file/0013/326110/Recycling-Industry-Strategic-Plan.pdf](https://www.environment.vic.gov.au/data/assets/pdf_file/0013/326110/Recycling-Industry-Strategic-Plan.pdf).

The LIV strongly supports a complete recycling and waste avoidance ecosystem as well as consistency across jurisdictions – Local, State and Federal.

4. The LIV also urges strong action to ensure that Victoria’s strategic and regulatory approach seamlessly aligns with Commonwealth initiatives and legislation.

This includes support for circular economy from the creation of, to the disposal of waste, through the lifecycle of recycling and waste management and product stewardship responsibilities, increases to the volume of waste produced and stockpiling of waste is a significant national issue. With the interstate transport of waste increasing in response to scarce landfill sites, a national approach in relation to the regulation of waste and recycling industries is essential and urgent.

The LIV recommends the Victorian Governments approach align seamlessly with both the Commonwealth and United Nation Initiatives ‘Goal 12: Ensure sustainable consumption and production patterns’<sup>2</sup>.

5. The LIV notes that strong strategic State Government input is urgently required to address issues surrounding the funding of waste management.

Currently, rate caps limit recovery via local government and attempts to recoup waste management costs using other municipal power face legal challenges. The Victorian Government should consider incentives and co-investment opportunities with the private sector to prioritise recovery, re-use and recycling innovation and technology. These opportunities must include the use of waste to energy facilities in appropriate locations, as well as the support of programs and legislative responses which support the re-use of wastes generated by those facilities.<sup>3</sup>

6. The LIV notes that China’s restriction on the importation of recyclable materials has caused major operational challenges to the management of Victoria’s recycling and waste system. Nonetheless, China’s National Sword Policy should not be perceived as an isolated event, but rather part of a broader global disruption to the exportation of waste.
7. The LIV emphasises that bans on Australia’s exportation of waste have shed light on the failure of households to appropriately separate garbage from recyclable materials.

Our exportation of co-mingled waste suggests that the Victorian Government should focus on educating the community on how to properly segregate recycling and waste materials. Other possible ways to reduce the co-mingling of waste include requiring consistency across local councils with respect to the labelling of bins used for various waste streams and providing increased opportunities for households to manage food waste.<sup>4</sup>

The LIV’s experience is that recycling rules are so onerous and the materials that are recycle in Australia are so few.

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<sup>2</sup> UN SDG 12 ‘Ensure sustainable consumption and production patterns’  
<https://www.un.org/sustainabledevelopment/sustainable-consumption-production/>

<sup>3</sup> For example, the use of ash in engineered fill and as road base without potentially resulting in reuse sites unintentionally becoming landfills which trigger the landfill levy.

<sup>4</sup> For example, worm farms and Council food waste collection programs.

### *Solutions to the Recycling and Waste Management Crisis*

1. The LIV maintains that a national approach to the regulation of waste and recycling industries would assist industry by promoting uniformity, particularly for waste and recycling operators whose activities are undertaken across multiple States and Territories.<sup>5</sup> A national approach would also improve environmental outcomes and increased clarity and efficiency for regulators.

The LIV also maintains that a national market for waste and recycled materials may offer significant potential for innovation and new venture opportunities, as well as solutions to issues associated with the increase in waste volumes following the implementation of China's National Sword Policy.

2. The LIV urges the Victorian Government to ensure that sufficient funding is allocated to the development and upgrading of waste management facilities.

The LIV strongly suggests and notes it is imperative that such facilities have both the capacity and capability to process more complex levels of waste in addition to the general municipal waste streams already required.

For example, the generation of e-waste is growing three times faster than general municipal waste in Australia, placing significant pressure on waste management infrastructure and the environment. The LIV suggests improving children's education on computer science operating systems, not limited to Microsoft, so that machines that would otherwise go to landfill, because they do not meet Microsoft operating system requirements, would not be considered e-waste as those machines would continue work perfectly with other operating systems such as Linux.

Additionally, the LIV stresses that agreements between regional waste groups and recyclers must be appropriately drafted to ensure they are reasonable and practical. This is necessary to avoid environmental issues arising from cost-cutting, including inappropriate and dangerous waste stockpiling practices.

3. The LIV supports the implementation of a 'polluter pays' principle.

This principle, which is a generally accepted practice of environmental management, provides that any costs resulting from pollution should be borne by the person who caused the pollution.<sup>6</sup> This principle aims to ensure that the real cost of environmental harm is recognised and met by the party causing the contamination, while avoiding injustice to innocent parties resulting from the actions of others.

4. The LIV notes that a recent independent review of the *Environment Protection Act 1970* (Vic) (EP Act) recommended the need to include among the EPA's decision-making principles '... recognition of the polluter pays principle'.<sup>7</sup> The LIV supports this

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<sup>5</sup> Please see the LIV's submission to the Senate Standing Committees on Environment and Communications' 2017 inquiry into the waste and recycling industry in Australia.

<sup>6</sup> See generally the Hon Justice Brian Preston, 'Sustainable Development Law in the Courts: The Polluter Pays Principle' (Paper presented at the 16th Commonwealth Law Conference, Hong Kong, 7 April 2009).

<sup>7</sup> Penny Armytage, Jane Brockington and Janice van Reyk, 'Independent Inquiry into the Environment Protection Authority' (June 2016) (Recommendation 5.4)

recommendation and stresses that a 'polluter pays' principle should also be embedded into any future national approach to recycling and waste management.

The LIV also notes that the same independent review highlighted the importance of integrating land use planning mechanisms with EPA requirements.<sup>8</sup> The LIV supports this position and urges the Victorian Government ensure sufficient integration between planning and environmental regimes.

### *Strategies for Reducing Waste Generation*

1. As noted earlier, the LIV strongly suggests the establishment of a circular economy in which materials are used, collected, recovered and re-used. Particularly the recovery and re-use of parts to go towards reducing poverty by providing jobs and potential niches for industry an infrastructure.

The LIV notes that the Senate Standing Committee on Environment and Communications has recommended that the Australian Government prioritise the establishment of a circular economy across the country.<sup>9</sup>

The LIV acknowledges and commends the Victorian Government's commitment to steering the state towards a circular economy.<sup>10</sup> However, the LIV expresses concern that Victoria has been slow to implement a number of strategies to reduce waste generation and management, including product stewardship.

The LIV highlights the need to address the direct link on putrescible food waste and the public health sector, which may also in part help solve Australia's obesity difficulties. For example, by enhancing the reduction of food waste through an administrative control of teaching and educating the public, this allows us to reduce public health effects of obesity and, alleviate hunger for those that haven't learned skills that curb wastefulness. By better educating the public on food and food handling, we can reduce the amount of putrescible (and non-recyclable waste), whilst reducing the health burden of the general public and reducing food waste which helps to decrease the number of those going hungry.

2. The LIV urges the Victorian Government to generate leadership on this matter. Other Australian and international jurisdictions provide examples of policy development in this area:

#### Container Deposit Scheme (CDS)

CDS has long been used as a means of encouraging consumers to recycle.

CDS operates through the addition of a small deposit to the price of a product which is refunded to a customer once the container is recycled.

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<sup>8</sup> Ibid, (Recommendations 10.3 and 10.4).

<sup>9</sup> *Never Waste a Crisis: the Waste and Recycling Industry in Australia*, Australian Senate Environment and Communications References Committee (2018) (Recommendation 1). Similar Inquiries include: *Energy from Waste Technology*, NSW Legislative Council Portfolio Committee No.6 – Planning and Environment (2018); and *National Waste Report*, Blue Environment Pty Ltd, report on commission to the Department of the Environment and Energy, (2018).

<sup>10</sup> *Recycling Industry Strategic Plan*, Department of Environment, Land, Water and Planning, (2018) (Action 4.2 and 4.3).

The most successful example of CDS in Australia is the South Australian scheme. Beginning in 1977, the scheme produces a 76.9% return rate of containers and additional positive flow-on effects.<sup>11</sup> For example, in 2017, \$60 million was raised by charities and community groups through clean-up projects.

The Northern Territory, New South Wales and Queensland now have a CDS and Western Australia has committed to implement a scheme in 2020.

### Banning Single-Use Plastics

Single-use plastics include lightweight plastic bags, cutlery, balloon sticks, food and beverage containers of expanded polystyrene and all oxo-degradable plastic products.

The World-Wide Fund for Nature (WWF) stated in its recent report '*Solving Plastic Pollution Through Accountability*' that the rate of plastic pollution will double by 2030.<sup>12</sup> Banning single-use plastics is crucial to effectively manage a waste situation, given that 40% of plastics is single-use.

Although the LIV supports the Victorian Government's commitment to ban single-use plastic bags,<sup>13</sup> it contends that much more can be done to reduce the rate of plastic pollution in Victoria. For example, the European Union recently voted to ban ten categories of single-use items by 2021 including straws and cutlery.

Therefore efficiently managing the hierarchy of controls, by managing environmental controls which must be considered at the design phase, they are most efficient in eliminating the source of pollutant first and foremost.

3. The LIV suggests that new sources of waste require the Victorian Government's immediate attention.

Product elements from hybrid cars and e-waste serve as an example of potential future waste problems. The LIV urges the Victorian Government to be proactive in responding to these concerns, including the engineering of products that target end-source waste issues.

4. The LIV urges the Victorian Government to develop and support improving a complete 'cycle' for the circular economy. Such an approach should emphasise the need to dramatically reduce waste at source and ensure the lifecycle of waste management and product stewardship along with the creation of incentives in the supply and value chain ensure zero input and output.

If you would like to discuss any of the matters raised in this letter, please contact me on [REDACTED] or Paul Snow, Senior Lawyer for the LIV Property and Environmental Law Section, at [REDACTED] on (03) 9607 9311.

<sup>11</sup> See: [https://www.epa.sa.gov.au/environmental\\_info/container\\_deposit](https://www.epa.sa.gov.au/environmental_info/container_deposit).

<sup>12</sup> WWF, '*Solving Plastic Pollution Through Accountability*' (5 March 2019) available:

<https://www.worldwildlife.org/publications/solving-plastic-pollution-through-accountability>

<sup>13</sup> *Recycling Industry Strategic Plan*, Department of Environment, Land, Water and Planning, (2018) (page 5).

Yours sincerely



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