

## Environmental Protection (Powers and Penalties) and Other Legislation Amendment Bill 2024

**Submission No:** 19  
**Submitted by:** Australian Council of Recycling  
**Publication:**  
**Attachments:**  
**Submitter Comments:**

8 March 2024

Health, Environment and Agriculture Committee  
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To whom it may concern

***Inquiry into the Environmental Protection (Powers and Penalties)  
and Other Legislation Amendment Bill 2024***

The Australian Council of Recycling (ACOR) welcomes this opportunity to provide a submission to the Health, Environment and Agriculture's Committee's inquiry into the *Environmental Protection (Powers and Penalties) and Other Legislation Amendment Bill 2024*.

ACOR is the peak industry body for the resource recovery, recycling, and remanufacturing sector in Australia. Our membership is represented across the recycling value chain, and includes leading organisations in advanced chemical recycling processes, CDS operations, kerbside recycling, recovered metal, glass, plastics, paper, organics, textiles, tyres and e-product reprocessing and remanufacturing, road recycling and construction and demolition recovery. Our mission is to lead the transition to a circular economy through the recycling supply chain.

**The policy landscape and prioritising a circular economy**

ACOR supports the Queensland Government's priority to minimise pollution and waste, protect human health, and prevent degradation of the environment, while transitioning to a circular economy. In June 2023, Queensland passed the [Waste Reduction and Recycling and Other Legislation Amendment Act 2023](#), which, among other things, aimed to include the circular economy as a principle under the [Waste Reduction and Recycling Act 2011](#) and enable 'a thing to be prescribed by regulation to not be a waste'. This was an important step towards a circular economy and increased recycling rates, strongly welcomed by ACOR.

The Queensland Government's [Organics Strategy and Action Plan](#) also aligns with ACOR's priorities to divert waste from landfill and increase recycling rates. The Organics Strategy and Action Plan recognises that organic matter in landfill releases methane, a greenhouse gas that is at least 28 times more potent than carbon dioxide and that 'collecting and reprocessing this waste not only reduces greenhouse emissions and the amount of waste disposed to landfill, but also retains the organic material in circulation at its highest possible value'. The action plan calls for diverting 80 per cent of the organic material generated from landfill and achieve a minimum 70 per cent recycling rate for organics by 2030. In addition, one of the three strategic priorities of Queensland's incoming [Waste Management and Resource Recovery Strategy](#) is to transition to a circular economy for waste.

Finally, in October 2022, Australia's Environment Ministers committed Australia to achieving a circular economy by 2030, by designing out waste and pollution, keeping materials in use longer and fostering end markets for recycled material.

Nevertheless, recycling rates are heading in the wrong direction: Australia is currently falling short in progressing key targets in the [National Waste Action Plan](#). Australia generates some of the highest amounts

of waste per capita in the world, and rates are increasing. The [2022 National Waste Report](#) found recovery of household waste has stagnated while commercial and industrial waste recovery rates have declined.

Every available lever will be needed to achieve the transformation to a circular economy. A circular economy will enable resource efficiency, strategic access to critical minerals, jobs and economic growth, and aid in the transition to net zero, but none of that is inevitable: it must be enabled through a supportive regulatory framework, among other measures. Without that, investment and progress towards resource recovery and recycling targets will be hampered, leading to greater emissions. The lost opportunity to reduce emissions through organics recycling would be particularly damaging.

An aligned and consistent regulatory environment is essential to delivering better recycling rates and a circular economy. To this end, policies relating to resource recovery and recycling must be developed transparently and in collaboration with industry and broader stakeholders, supporting robust health and environmental outcomes, social license, and investment confidence. While further investment and technological progress in the resource recovery and recycling sector can support advancement towards these targets, the lack of alignment between environmental policies and circular economy principles hinders the sector's ability to maximise resource recovery.

In a holistic and system-wide analysis of dangers to human health and the environment, the transition to a circular economy and net zero is the highest priority.

### **Precautionary principle**

ACOR notes that the proposed amendments to the [Environmental Protection Act 1994](#) are intended to further embed the polluter pays principle, the precautionary principle, the principle of primacy of prevention, and the principle of proportionality. In assessing and managing environmental and human health risks of resource recovery, a much better balance must be struck between risk mitigation and delivery of ecologically sustainable development, particularly given the complementarity between climate change priorities and the benefits of a circular economy approach. Achieving circular outcomes by balancing the costs and benefits of economic, social, and environmental factors is challenging and requires a highly developed multi-disciplinary and technical skill in the practice of risk analysis.

The precautionary principle posits that it is better to avoid any new action that carries a hypothetical risk for human health or the environment, regardless of whether the hypothesis has been subjected to formal testing. [Research by the Organisation of Economic Co-operation and Development](#) suggests that by its very nature, the precautionary principle is subjective, and therefore to promote economic development it must be applied via robust and reliable risk assessment and risk management practices.

Taken to its extreme in the resource recovery context, the application of the precautionary principle could mean that the Queensland Government permits no recycled waste products to be recovered and reused in case unknown pollution risks to environment and human health manifest in the future. However, this would disincentivise industrial and economic innovation and work against the objectives of a circular economy.

Ideally, environmental regulation should support economic development by focussing on achieving the 'no harm principle' first and foremost. Within this context—and consistent with the United Nations Sustainable Development Goals—the precautionary principle should be used as a means to an end (avoiding harm), rather than as an end in itself (caution for caution's sake).

Within the precautionary principle, the capacity of Queensland's waste regulation to achieve the appropriate balance between resource recovery and doing no harm depends entirely on the robustness, objectivity, consistency, and transparency of internal government processes for managing 'precautionary' considerations.

The precautionary principle shifts the burden of proof: traditionally, the person claiming an activity could cause harm (e.g. the Department of Environment and Science and Innovation (the Department)) should produce proof to support that claim. However, the precautionary principle reverses the burden of proof, meaning that the person proposing the activity (e.g. an recycling license applicant) must prove the activity is not harmful.

Essentially, the *Waste Reduction and Recycling and Other Legislation Amendment Act 2023* and the recommendations proposed in the *Environmental Protection (Powers and Penalties) and Other Legislation Amendment Bill 2024* contradict each other. Implementing these recommendations will undo the progress made towards a circular economy through the 2023 Amendment Act.

### **Alternative model for assessing risk**

One alternative to the precautionary principle is the ALARP ('as low as reasonably possible') principle, which is applied in the regulation and management of safety-critical and safety-involved systems. The ALARP principle was first developed in United Kingdom and forms the basis of its occupational health and safety (OHS) laws. It has been adopted in OHS legislation in Australia and New Zealand.

The ALARP principle is based on the concept of reducing residual risk. It assumes that some risks are inevitable, and it is the role of policy to keep risks as low as possible, but not at zero. To keep a risk ALARP, it is necessary to undertake a cost benefit assessment to determine and compare the impacts of the residual risk to be avoided, the costs of taking measures to avoid that risk, and the improvement achieved by addressing the risk.

Factors that can be considered to assess and compare the extent to which it can be practically reduced include:

- Codes of practice
- Manufacturer's specifications and recommendations
- Industry practice
- International standards and laws
- Suggestions from advisory bodies
- Comparison with similar hazardous events in other industries.

As an example of how ALARP rather than the precautionary principle could be applied to the waste sector, the Department may believe that micro plastics represent a harm to the environment. If a precautionary principle is applied, the Department would seek to totally avoid micro plastics entering the environment, including via resources recovered from the waste stream.

By comparison, an ALARP approach would recognise that the risks associated with micro plastics already exist extensively in the environment because almost all new manufactured items, textiles and consumables contain them, regardless of the waste stream. Under ALARP, the base line would be that humans are exposed to micro plastics all the time every day in countless ways.

Therefore, when faced with the risks involved in resources recovered via the waste stream, the issues to be considered would include the extent to which recovered resources add to the risks associated with micro plastics, whether preventing the recovery of these resources would reduce the residual risk as far as practicable, the costs of measures to reduce the residual risk, and whether there were better options to prevent micro plastic pollution prior to their entry into the waste stream.

The ALARP principle can be a more sophisticated tool to assess the residual risk to human health and the environment posed by recovered resources within the context of overall existing risk. This is particularly because the risks of all items entering the waste stream exist before they are recovered from the waste stream. It is rare for recovered resources to create risks that didn't exist before. ALARP may be a more appropriate tool to support the practice of ESD when facilitating a circular economy.

### **Managing risk across the supply chain, rather than 'end of pipe'**

Environmental regulation traditionally seeks to place the entire burden of responsibility for risk management with the waste management and the recycling sectors, rather than ensuring it is more justly shared further up the supply chain where the most severe risks are generated, such as dangerous goods like lithium-ion batteries, and other forms of contamination that reach recycling streams through poor waste management practices. These forms of contamination already place an unjust and undue burden on the recycling sector.

Recyclers have limited-to-no control over the volume or timing of materials delivered to them, are often dealing with low- or negative-value materials, and operate on small margins in thin domestic markets and volatile international commodity markets—to which access is increasingly impeded by cumbersome export regulation.

Batteries, for example, are an overwhelming hazard across all waste and recycling streams. Fires caused by batteries are widespread across waste and recycling trucks, in depots, MRFs, and a broad range of recycling facilities—in short, at every point across collection, disposal and recovery streams. While our sector is extremely concerned about the increasing numbers of incidents in which lithium-ion batteries cause property damage, serious injury and death—resulting in skyrocketing insurance fees, financial assurance requirements and further constraining access to leases—this is not a problem of our making and not one we can address effectively at end-of-pipe.

Much more regulatory focus must be applied to minimising these risks before they reach waste and recycling streams, with mandatory extended producer responsibility for contaminated items, comprehensively accessible and safe disposal options, and community awareness and incentives to ‘recycle right’.

## **Conclusion**

We welcome this opportunity to comment on the inquiry into the *Environmental Protection (Powers and Penalties) and Other Legislation Amendment Bill 2024* and would like to play a constructive role in helping to inform how to maximise recycling in Queensland.

We must ensure that the objectives of the [Waste Reduction and Recycling and Other Legislation Amendment Act 2023](#) are not overridden. Regulation can enable recycling, or it can inhibit it, leading to missed opportunities for benefits to environmental and human health, jobs and economic growth, and the transition to a circular economy.

Our members bring considerable real-world resource recovery and recycling expertise, based on operating in every jurisdiction in Australia and internationally, and we would be very pleased to facilitate further dialogue and consultation.

Yours sincerely



Suzanne Toumbourou  
**Chief Executive Officer**