

# A proposed National Resource Recovery Code Board

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Delivering an aligned, supportive and nationally harmonised regulatory framework for resource recovery and recycling

## The problem

Right now, there is a groundswell of support for resource recovery and recycling across Australia, with the commitment by all Australian Governments to achieve a circular economy by 2030. Many sectors are actively exploring how they can support progress towards this target, including (but not limited to) food and grocery, packaging, building and construction, fashion, electronic products and agriculture.

There is increasing interest in Australia in the procurement of domestically recycled material; however, reliable supply of such material, at scale, is significantly inhibited by the current regulatory regime for resource recovery and recycling. In particular:

- While the waste management hierarchy objectives are enshrined in legislation across Australian States and Territories to encourage resource recovery and recycling, the mechanisms to lawfully implement such opportunities are the regulatory exception rather than the rule.
- There is a misalignment between environmental protection objectives on the one hand, and circular economy objectives on the other, whereby many recoverable resources are regulated as industrial or regulated wastes that present a contamination risk, rather than prioritised as resource that, with appropriate de-contamination management, present an economic opportunity and a necessary part of the circular economy supply chain.
- There is a focus on regulation of materials at the 'end of use' to address resource recovery and recycling requirements, rather than working across the full supply chain.
- There are fragmented and uncertain policy priorities and settings for resource recovery and recycling across Australia, particularly across industry sectors.
- Industry is not consistently at the table in regulatory decision-making processes, undermining investment confidence and practical solutions.
- Voluntary and regulated product stewardship models are not progressing efficiently or effectively to meaningfully support circular economy objectives.
- Regulatory processes for resource recovery and recycling are not aligned and opportunities to address this via regulatory impact assessments are often not available where this process is not followed. In turn, this creates uncertainty in the regulatory settings which discourages large scale investment.
- The regulatory imbalance between raw/virgin materials and recovered/recycled materials has stifled circular economy outcomes for waste material. Exploring opportunities to facilitate broader circular economy outcomes would encourage greater investment in the resource recovery and recycling sector.
- The uncertainty and long timeframes associated with the development/redevelopment of resource recovery and recycling facilities has stifled innovation, increased costs and created significant barriers to entry.
- There are inconsistent waste levies imposed across different jurisdictions and between regions, often resulting in landfill being more economically attractive than resource recovery or recycling. There is an opportunity to reform waste levies to more effectively incentivise resource recovery and recycling.

Substantive and structural reform is required to achieve broadly shared circular economy objectives and also unlock the deep decarbonisation opportunities within a well functioning circular economy.

## The solution

The centrepiece of a reform proposal is the establishment of an Australian Resource Recovery Code Board (**ARRCB**), based on the model of the Australian Building Codes Board (**ABCB**), to deliver a nationally harmonised framework for resource recovery and recycling.

The proposed ARRCB's work would be underpinned by a nationally applied definition of 'end of waste' to provide certainty as to when a material is a resource versus a waste. The proposed ARRCB would oversee an aligned and consistent approach to product stewardship, including container deposit schemes, with the priority of advancing circular economy outcomes.

The existing ABCB provides a relevant governance model for the proposed ARRCB, as it incorporates several key elements that will be essential to delivering a nationally harmonised, sustainable, economically viable and whole-of-supply-chain approach to resource recovery and recycling. For example, this governance model will:

Provide a stable, nationally harmonised resource recovery and recycling framework to improve investment confidence and growth in the sector, while building community trust and ultimately supporting a balanced regulatory playing field between recovered and raw/virgin materials.

Enable the development of consistent definitions in respect of waste and resource recovery, and incentivise the creation of Australian Standards, which can be reflected into State and Territory legislation

Appoint industry representatives to the board to ensure that a broad range of perspectives are brought to the table, with a view to establishing practical, economically viable and sustainable measures

Ensure that regulatory processes for resource recovery and recycling are aligned with best practice regulation, to support policy stability and encourage innovation and scaled investment

Inform decision making relating to resource recovery and recycling infrastructure to address approval timeframes for development/redevelopment of facilities

Inform the application of waste levies across jurisdictions and between regions to incentivise resource recovery

Operate in parallel with other national bodies, including the ABCB and the National Environment Protection Council, to coordinate management and reuse of construction and demolition waste and waste impacted by contaminants

Work with industry, across supply chains, to address circular economy issues and inform product stewardship regulation, as well as strong markets for recycled content



## Background on the ABCB

- The ABCB was established in 1994 under the ABCB Intergovernmental Agreement (**ABCB IGA**) by the former Council of Australian Governments to improve building outcomes and increase confidence in the building and construction industry in Australia.<sup>1</sup>
- The primary role of the ABCB is to update and maintain the National Construction Code (**NCC**), along with the WaterMark and CodeMark certification schemes.
- The intention of the ABCB IGA is to facilitate:
  - improved building outcomes;
  - increased confidence in the building and construction industry;
  - public trust in the safety of the industry; and
  - a more efficient, internationally competitive industry through reforms to regulation nationally.
- The ABCB IGA recognises that the States and Territories have primary responsibility for regulating building and construction. To strengthen reforms to regulation nationally, the ABCB IGA commits Australian Governments to:
  - continuing in existence the ABCB;
  - the NCC setting the minimum necessary performance-based requirements for building and construction throughout Australia;
  - the adoption of the NCC by reference on a national basis through relevant legislation;
  - the consistent application of the NCC across and within each jurisdiction;
  - encouraging increased harmonisation in the administration of the NCC across Australia;
  - encouraging increased compliance and enforcement cooperation and information sharing between the States and Territories and where appropriate the Australian Government;
  - identifying options, as far as practicable, to further limit local government interventions;
  - implementing a ‘gateway’ model which discourages the setting of prescriptive standards for building and construction that override the performance requirements in the NCC;
  - providing a free electronic version of the NCC to industry and continuing to improve its usability; and
  - contribute towards the costs of the ABCB’s operations.
- The respective Ministers of the parties responsible for building and construction policy, known as the Building Ministers’ Forum (**BMF**), are collectively responsible for the policies, decisions and actions to ensure the building and construction requirements meet the expectations of the community.

- The ABCB consists of 18 members, including:
  - an independent Chair;
  - the head of each Australian Government, State and Territory Administration or a person, with the authority and seniority to make decisions on behalf of their administration, nominated by the head to be a member;
  - a representative of the Australian Local Government Association; and
  - up to seven industry representatives.

## ABCB as a model

The ABCB provides a comprehensive model for the development of the ARRCB. In particular, the objectives of the ABCB provide a clear structure for the operation and powers of the ARRCB, including the development of subcommittees and the appointment of industry representatives.

The objectives of the ABCB are to:

- through the NCC, develop and maintain codes and standards that:
  - accord with strategic priorities established by the BMF;
  - address issues relating to the design, construction, performance and liveability of building and construction; and
  - are the minimum necessary to efficiently achieve safety and health, amenity and accessibility, and sustainability.
- ensure that, in determining any change to the NCC and the level of the requirements:
  - there is a rigorously tested rationale;
  - the proposals are effective and proportional to the issues being addressed such that the code will generate benefits to society greater than the costs (that is, net benefits);
  - there is no regulatory or non-regulatory alternative that would generate higher net benefits; and
  - the competitive effects of the code have been considered; and the code is no more restrictive than necessary in the public interest.
- ensure that NCC requirements are performance-based; verifiable; based on appropriate international standards; and expressed in plain English.
- provide a forum to explore alternative mechanisms for delivering building and construction outcomes;
- assist in the education, raising awareness of, and providing information to industry and relevant stakeholders on, the development and implementation of the NCC; and
- manage or oversee the management of product certification schemes relating to building and construction that are consistent with the strategic priorities set by the BMF and assist the ABCB with achieving its objectives.

<sup>1</sup> An Agreement between the Governments of Commonwealth of Australia, the States and the Territories to continue in existence and provide for the operation of the Australian Building Codes Board, available at: <https://www.abcb.gov.au/sites/default/files/resources/2022/ABCB-IGA-2020.pdf>.

## Why is an IGA an appropriate solution?

Similar to the regulation of building and construction, the State and Territory Governments have primary responsibility for regulating resource recovery and recycling. Accordingly, the creation of an IGA represents an appropriate mechanism of achieving uniformity and certainty in the resource recovery and recycling regime throughout Australia as it:

Avoids the complexity of identifying an applicable head of power under the Constitution necessary to the operation of a single national law

Provides State and Territory Governments sufficient flexibility as to the extent and manner in which they adopt the nationally harmonised framework

Achieves consistency in core areas of resource recovery and recycling laws, including the definition of 'end of waste', product stewardship and circular economy outcomes

Enables the implementation of a dynamic code that is responsive to changes in regulatory practice, industry research, public feedback and policy directions

## Key contacts



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