
REGULATORY IMPACT STATEMENT

ENVIRONMENT PROTECTION (DISTRIBUTION OF LANDFILL LEVY) REGULATIONS

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EPA Victoria
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Victoria 3006 Australia

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FOREWORD

One of the key environmental challenges we face as a society is to reduce the amount of waste we produce and use our resources more efficiently. To meet this challenge, we need partnerships between all levels of government, industry and the community. Victoria's waste management framework brings these groups together to work towards a more environmentally, socially and economically sustainable Victoria.

Since 1992, the landfill levy has provided funding to improve waste management in Victoria. In particular, funds have been distributed to EPA Victoria, EcoRecycle Victoria and the sixteen Regional Waste Management Groups across the state. These agencies work together to provide an integrated framework to assist local government, industry and the community capture the benefits of waste minimisation, recycling and resource recovery, and ensure residual waste is managed in a way that protects the environment and human health.

In June 2002 the Government introduced a suite of reforms to the *Environment Protection Act 1970*, strengthening and building on these arrangements. Landfill levies will increase progressively over the next five years to provide additional funding for those with key roles in the search for better ways to reduce waste and deliver sustainable outcomes.

This Regulatory Impact Statement outlines proposed arrangements for the future distribution of landfill levy funds. The draft regulations aim to strengthen Victoria's framework for waste management by ensuring sufficient funding flows to key agencies and to innovative projects and initiatives that will foster the environmentally sustainable use of resources and best practices in waste management. The community, local government and industry will be the major beneficiaries of the proposed arrangements.



MICK BOURKE
CHAIRMAN

HOW DO I MAKE A SUBMISSION ON THIS REGULATORY IMPACT STATEMENT?

EPA welcomes all comments on both the proposed Regulations and Regulatory Impact Statement.

Submissions can be directed to –

The Project Manager

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Alternatively, you may wish to make a submission by e-mail to –

levy.regulations@epa.vic.gov.au

Closing date for submissions is 29 November 2002.

EXECUTIVE SUMMARY

This Regulatory Impact Statement (RIS) assesses proposed Regulations to distribute landfill levy funds collected under the *Environment Protection Act 1970* (the Act).

The proposed Environment Protection (Distribution of Landfill Levy) Regulations establish a mechanism to distribute funds to the key agencies responsible for waste management in Victoria – regional waste management groups (RWMGs), EcoRecycle Victoria and EPA Victoria. Funds not distributed by Regulation will be allocated through a new sustainability fund established under the Act. The Treasurer and the Minister for Environment and Conservation will allocate these funds to priority projects and initiatives to foster environmentally sustainable use of resources and best practice in waste management.

The objectives of the proposed Regulations are to:

- Ensure the key agencies receive sufficient funding to perform their statutory functions and meet Government commitments to improve resource use efficiency and waste management;
- Provide certainty and transparency to enable confident planning; and
- Ensure an adequate flow of funds to the sustainability fund.

Three regulatory options are considered in this RIS – not developing regulations; maintaining present funding levels to key agencies; and introducing new funding arrangements. The costs and benefits of these options are examined in light of the objectives. The analysis shows that the preferred option is to introduce new funding arrangements, and that the key benefits of this option are the certainty, accountability and transparency in the allocation of public monies it provides.

Draft regulations have been prepared in accordance with the preferred option. These regulations propose that:

- \$2.78 million be distributed to RWMGs each year for core operating costs and directors' fees, and an additional \$1.2 million be made available to support regional education officer costs;
- A proportion of the remaining funds be allocated to EcoRecycle and EPA; and
- The residual funds be distributed to the sustainability fund.

Full details of the proposed funding arrangements are set out in the RIS, including projected funding levels for the key agencies and the sustainability fund.

All stakeholders are invited to make submissions on the proposed Regulations and RIS. The draft regulations will be revised in light of comments received and then submitted to Governor in Council to be made.

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ENVIRONMENT PROTECTION (DISTRIBUTION OF LANDFILL LEVY) REGULATIONS

1. BACKGROUND

1.1 Introduction

This Regulatory Impact Statement (RIS) assesses proposed Regulations to distribute landfill levy funds collected under the *Environment Protection Act 1970* (the Act).

The landfill levy is an integral component of the State's waste management system. Levies apply to municipal, industrial and prescribed (hazardous) wastes deposited to licensed landfills in Victoria. The funds generated are used solely for the purposes of environment protection and fostering environmentally sustainable use of resources and best practice in waste management.

Landfill levies act as an incentive to minimise the generation of waste and increase reuse and recycling. Levies help establish waste management infrastructure, industry waste reduction programs, education programs, regulatory controls and enforcement regimes.

Landfill levies for municipal and industrial waste are currently distributed according to a fixed formula set out in section 52B of the Act, which provides:

- 70% of the monies to EcoRecycle Victoria, which sets state-wide strategies and plans for solid waste. EcoRecycle allocates the majority of landfill levy funds received to local government, industry, the community and others to facilitate the adoption of best practice in waste management;
- 20 per cent of the monies to EPA Victoria, which is responsible for policy formation, licensing, regulation and enforcement; and

- 10 per cent of the monies to regional waste management groups (RWMGs), which in partnership with their member councils develop regional plans for municipal waste to give effect to state-wide policies, strategies and programs at a local level.

The levy was introduced in 1992 in urban and provincial centres and extended to the whole of Victoria in 1996. Levies are charged at a lower rate in rural and regional areas.

A higher levy on prescribed waste was introduced in 1999, and in June 2002 differential levy rates for industrial and municipal waste were established through amendments to the Act introduced by the *Environment Protection (Resource Efficiency) Act 2002*. As a result, higher levy rates now apply to industrial waste disposed to landfill. In addition, all levies will increase each year from 1 July 2003 for a period of five years.

In introducing the recent changes, the Government committed to:

- Providing sufficient funding to enable RWMGs, EcoRecycle and EPA to undertake their statutory functions; and
- Establishing a new sustainability fund for priority projects and initiatives to foster environmentally sustainable use of resources and best practice in waste management.

To give effect to these commitments, the Government committed to replacing the fixed distribution formula in the Act with regulations. Draft Regulations have now been developed and are the subject of this RIS.

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Funding from the landfill levy has helped to make major improvements to waste management infrastructure in Victoria over the past ten years.

For example, between 1997-8 and 2000-1, EcoRecycle Victoria used \$42.3 million of levy monies to fund a range of public and private sector projects. Two thirds of these funds were allocated to local councils and regional waste management groups (RWMGs). This funding helped establish infrastructure such as resource recovery and transfer stations, recycling facilities, landfill weighbridges and composting facilities.

EcoRecycle also provided significant support for industry and community programs, market development for recycled materials, and education and litter programs.

1.2 Purpose

The purpose of the proposed Regulations is to distribute funds arising from landfill levies on municipal and industrial waste between RWMGs, EcoRecycle and EPA.

The proposed Regulations specify the amount of funds proposed to be distributed to each of these agencies. They do not specify how those funds are to be applied. RWMGs, EcoRecycle and EPA develop annual business plans identifying their objectives and priorities, and setting out projects to fulfil their statutory functions under the Act. Landfill levy funds are applied in accordance with these business plans.

Funds not distributed by Regulation will be allocated through the sustainability fund in accordance with the Act.

It should be noted that the proposed Regulations do not relate to or affect the distribution of levies on prescribed waste. These funds are allocated in accordance with the Act for the purpose of environment protection. In particular, these funds are applied by EPA to develop policies and programs to avoid, reduce and better manage prescribed waste in Victoria. EPA's business sustainability program is also funded from prescribed waste levies.

1.3 Statement of Objectives

The objectives of the proposed Environment Protection (Distribution of Landfill Levy) Regulations are to:

- Ensure RWMGs, EcoRecycle and EPA receive sufficient funding to meet their statutory functions under the Act and Government commitments to improve resource use efficiency and waste management;
- Provide certainty and transparency to enable confident planning; and
- Ensure an adequate flow of funds to the sustainability fund for priority projects and initiatives.

EcoRecycle allocated \$40 000 to the Barwon Regional Waste Management Group in 1999-2000 to establish a regional education centre. The centre is located next to the North Geelong Recycling and Waste Transfer Facility. The region contributed \$40 000 to the project.

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1.4 Review of existing arrangements

The recent statutory reforms followed an extensive review of Victoria's waste management arrangements and substantial consultation with stakeholders.

1.4.1 Ministerial Panel review

In October 2000, the Minister for Environment and Conservation established a Panel to review and report on the adequacy of legislative and administrative arrangements of regional waste management groups. The Panel consulted widely in its review. Stakeholders made many valuable suggestions that the Panel incorporated into its report and recommendations.

The Panel found that the regional waste management structure has been an effective framework for managing waste, providing substantial benefits to the Victorian community. The Panel also identified increasing community expectations to reduce the volume of waste we produce and recover resources from the waste stream. The Panel made a number of recommendations to enhance Victoria's existing waste management arrangements, and to move beyond recycling and resource recovery to waste avoidance and environmental sustainability.

In particular, the Panel recommended the Government adopt a schedule of progressive landfill levy increases. The Panel found increased levies would:

- Act as an incentive to minimise waste, maximise resource recovery and encourage the introduction of new technologies to support these activities;

- Provide sufficient funds to cover the core operating costs of RWMGs, replacing funding from local government; and
- Provide funds to guarantee ongoing EPA, EcoRecycle, RWMG and local government programs to substantially reduce waste.

1.4.2 Consultation on Panel recommendations

Following receipt of the Panel's report, the Minister asked the Municipal Association of Victoria and EPA to consult further with stakeholders on key issues. One of the issues identified by the Minister for further consultation was the issue of funding and changes to the landfill levy.

Consultations revealed broad agreement amongst local government, RWMGs, industry and the community that additional funds were required to continue and expand programs to reduce waste and use resources more efficiently. Many councils expressed concern about the lack of available funding to establish waste management infrastructure. They maintained that additional funding for infrastructure, education and enforcement programs was required.

While stakeholders expressed a range of views on the appropriate scale of levy increases, all agreed any change should be staged over a number of years. Many councils and RWMGs expressed support for the Panel recommendation to introduce a differential levy on commercial and industrial waste to stimulate waste reduction in that sector.

1.4.3 Legislative reforms

Following consideration of the Panel report and recommendations and the views expressed by

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stakeholders during the subsequent consultations directed by the Minister, the Government developed a package of reforms to reduce waste and to use resources more efficiently.

The reforms were introduced through the *Environment Protection (Resource Efficiency) Act 2002*, which amended the *Environment Protection Act 1970* by:

- Introducing sustainability covenants to enable industries and companies to identify resource efficiency gains and reduce their ecological impact;
- Clarifying the respective roles of the key statutory bodies involved in waste planning and management;
- Providing additional funding and increased incentives for Victoria's environmental priorities through changes to landfill levies; and
- Integrating and improving legislation to prevent litter.

The Government engaged in detailed discussions with peak representative bodies of local government, RWMGs, industry, environment groups and other stakeholders to develop and refine the reforms. In particular, the Government worked closely with the Association of Victorian Regional Waste Management Groups (AVRWMG), the Municipal Association of Victoria and the Victorian Local Governance Association on the landfill levy changes and on proposals for the use and distribution of levy funds.

In introducing the reforms to Parliament, the Government committed to:

- Use the levy money to fund the strengthened institutional arrangements;
- Expand programs to help industry apply innovative approaches to waste reduction; and
- Expand assistance to regional groups and councils to improve infrastructure and promote waste avoidance, reuse and recycling.

The Government stated that regulations would be developed to distribute municipal and industrial levies back to RWMGs, EcoRecycle and EPA to achieve these ends.

The sustainability fund will complement the work of these agencies by helping to build the capacity of businesses, local government and the broader community to pursue environmental improvement and resource efficiency. The Minister and the Treasurer will allocate monies from the fund. A statutory advisory panel will be established to provide advice on the use of these monies.

The Government is proposing regulations to give effect to these commitments in light of the funding needs identified through consultation. In particular, the Government proposes that:

- \$2.78 million be distributed to RWMGs each year for core operating costs and directors' fees. This amount would be indexed to the consumer price index to retain real value;
- \$1.2 million be made available to RWMGs to support regional education officer costs on an ongoing basis, replacing the current funding program managed by EcoRecycle;
- A proportion of the remaining funds be allocated to EcoRecycle and EPA; and

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- The residual funds be distributed to the sustainability fund.

Implementing these arrangements will strengthen the capacity of key agencies to plan for and reduce waste. It will also strengthen partnerships with industry, local government and the community to achieve a more environmentally, economically and socially sustainable Victoria.

1.5 The RIS Protocol

The development of the proposed Regulations is being conducted in accordance with EPA's *Protocol for the Development of Regulations and the Preparation of Regulatory Impact Statements* (the Protocol). EPA developed the Protocol in late 1995 in consultation with representatives from the environment movement, industry and academia.

The Protocol complements the requirements of the *Subordinate Legislation Act 1994* and associated guidelines. The Protocol sets out processes that EPA follows in preparing regulations and associated RISs. The Protocol also sets out a range of consultation and impact assessment techniques as well as criteria to guide decisions about which of these techniques should be used in any individual RIS.

In accordance with the Protocol, EPA prepared a draft Development Plan that outlined the proposed impact assessment method and consultation program. The draft Development Plan was released for comment in July 2002 to stakeholders including local government, regional waste management groups and industry.

Fifteen comments on the draft Development Plan were received. A final Development Plan was

prepared in light of these comments and sent to stakeholders in September 2002. EPA has used the Development Plan to guide development of the proposed Regulations, including preparation of this RIS.

EcoRecycle allocated over \$219 000 to Moorabool Shire Council in 2001-2 to help construct the Bacchus Marsh Recycle Centre and Transfer Station. This facility includes a resale and recycling centre, and its establishment supported closure of the Kerrs Road landfill. Moorabool Shire also contributed over \$219 000.

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2. A DESCRIPTION OF THE THREE OPTIONS

Three options were considered in developing the proposed Regulations. These were –

1. Do not develop regulations. Under this option, landfill levy funds would be distributed in accordance with the relevant provisions of the Act.
2. Develop regulations which maintain present funding levels to RWMGs, EcoRecycle and EPA. The remainder of the monies would flow to the sustainability fund.
3. Develop regulations which introduce new funding arrangements for RWMGs, EcoRecycle and EPA. The remainder of the monies would flow to the sustainability fund.

This chapter provides a summary of the three options. Chapter 5 examines the benefits and costs of the preferred option, and Chapter 6 assesses the benefits and costs of the alternative options against the preferred option.

To assist readers understand and evaluate these options, the relevant provisions of the Act as amended by the *Environment Protection (Resource Efficiency) Act 2002* are set out in Appendix 2.

The projected level of funding to be distributed to RWMGs, EcoRecycle and EPA under each option has been calculated. These projections are set out in tables and graphs in Appendix 3.

2.1 Do not develop regulations

Under the first option (Alternative 1), no regulations would be developed. Landfill levies would only be

distributed in accordance with the relevant provisions of the Act.

The Act provides that landfill levy monies can only be distributed by regulation or through the sustainability fund. If no regulations were developed, all landfill levy funds would be allocated through the sustainability fund with the consent of the Minister and the Treasurer. RWMGs, EcoRecycle and EPA would not receive any ‘as of right’ distributions of levy monies.

The projected distribution of funds under this scenario is set out in Table 1A and Graph 1A of Appendix 3.

To establish the sustainability fund the Minister must publish a notice in the Government Gazette under section 70(6C). This notice would remove the existing fixed distribution formula and establish the sustainability fund.

Until the notice in the Gazette is published, landfill levy funds would continue to be distributed in accordance with the current fixed formula. RWMGs would continue to receive 10% of the distribution with 70% being distributed to EcoRecycle and 20% to EPA. No monies would flow to the sustainability fund.

The projected distribution of funds under this scenario is set out in Table 1B and Graph 1B of Appendix 3.

While regulations are not required to distribute landfill levy funds, Alternative 1 would not meet Government commitments to strengthen key agencies responsible for waste planning and reduction.

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Alternative 1 would introduce substantial uncertainty regarding funding for RWMGs, EcoRecycle and EPA as, following publication of the notice, funding would be contingent on a periodic allocation to these agencies made by the Minister and the Treasurer. This would place undue pressure on business planning processes, making it difficult for these agencies to adequately plan and manage their activities. Since RWMGs are currently funded from a combination of local government and landfill levy contributions, this uncertainty may also result in increased demand for funding from local government.

Alternative 1 may appear to have benefits for the sustainability fund, as all monies would flow there by default. However the absence of a regulation may also create uncertainty for those seeking funding for community-based projects, as waste management bodies would be competing for funds. A dedicated pool of money for community projects would, therefore, not be available.

For these reasons this option is not preferred.

EcoRecycle allocated \$100 000 to East Gippsland Shire Council in 2000-2001 under the infrastructure investment program to help establish resource recovery facilities at the regional landfill in Bairnsdale. The Council contributed \$100 000.

2.2 Make regulations to maintain present funding levels

Under the second option (Alternative 2), regulations maintaining present funding levels to RWMGs, EcoRecycle and EPA would be developed.

These Regulations would replace the current arrangements, which allocate a fixed percentage of

the levy funds to RWMGs, EcoRecycle and EPA. Instead, the Regulations would allocate a fixed monetary amount to RWMGs, EcoRecycle and EPA. This amount would be based on the funding each agency received in the 2001-2002 financial year – the final year prior to introduction of the legislative reforms.

The remainder of the funds would flow to the sustainability fund for allocation by the Minister and Treasurer.

The projected distribution of funds under this option is set out in Table 2 and Graph 2 of Appendix 3.

Alternative 2 would make substantial funding available for priority projects and initiatives through the sustainability fund. It would not, however, meet Government commitments to strengthen the capacity of key agencies to plan for and reduce waste. As the Panel review found, current funding levels – particularly for RWMGs – are insufficient, so RWMGs currently rely on significant contributions from local government to perform their statutory role.

In addition, Alternative 2 would fail to meet the Panel's recommendation to accelerate programs to reduce industrial waste. While a higher levy for industrial waste has been introduced, EcoRecycle requires additional funding to perform its new statutory planning role. Without additional funds, it is unlikely EcoRecycle could develop programs to assist industry to apply innovative approaches to waste reduction.

Similarly, without adequate funding EPA would be unable to expand programs to help companies and communities reduce waste, develop new statutory policies, and strengthen enforcement programs

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dealing with illegal dumping, helping to ensure illegal activity does not increase as disposal costs increase.

For these reasons this option is not preferred.

Under the kerbside recycling program, EcoRecycle allocated over \$49 000 in 2001-2 to Mildura Bottle Exchange. This grant will help upgrade their bottle sorting and processing facility. The company will contribute over \$98 000.

2.3 Make regulations to establish new funding arrangements

Under the third option (the preferred option), regulations to establish new funding arrangements would be developed. These arrangements would implement Government commitments to meet the current and future needs of RWMGs, EcoRecycle and EPA, and ensure an adequate flow of monies to the sustainability fund.

These Regulations would replace the fixed distribution formula set out in section 52B of the Act.

Under this option, funds would be distributed to RWMGs each year for core operating costs and directors' fees. This amount would be indexed to the consumer price index to retain real value.

These funds would be distributed amongst the groups in accordance with the percentage specified for each region in the Regulations. The proposed proportions are based on a number of factors including the population and area of the region and the number of member councils.

In addition, it is proposed that further funds would be made available to RWMGs to support regional

education officer costs on an ongoing basis. This would replace previous EcoRecycle program funding and would be released to individual RWMGs following approval of their business plan by the Minister.

Under this option, it is proposed that a proportion of the remaining funds would be allocated to EcoRecycle and to EPA. The residual funds would be distributed through the sustainability fund with the consent of the Treasurer and Minister.

As the landfill levies increase, the total pool of levy funds will grow. The proportion allocated to EcoRecycle and EPA would decline over time, ensuring each receives an adequate level of funding while allowing an increasing proportion to be distributed through the sustainability fund.

The projected distribution of funds under this option is set out in Table 3 and Graph 3 of Appendix 3.

This option would strengthen the capacity of key State Government agencies to plan for and reduce waste. It would also provide a growing pool of funds for priority projects and initiatives to foster environmentally sustainable use of resources and best practice in waste management.

Preliminary consultations have indicated that an amount of \$2.78 million would be sufficient to meet the core costs of administering RWMGs and provide a small amount from which directors' sitting fees could be paid. In addition, an amount of \$1.2 million would enable RWMGs to independently meet regional education officer costs.

While it is proposed that the proportions to be allocated to EcoRecycle and EPA decrease over the life of the regulations, these proportions have been

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calculated to ensure that sufficient funding flows to these two agencies to fulfil their statutory duties under the *Environment Protection Act 1970*.

Under this option, the proportion of funds proposed to flow to the sustainability fund should provide a sufficient pool of monies to enable the purpose of the fund to be met.

For these reasons, this is the preferred option.

EcoRecycle allocated \$10 000 to Ararat Rural City Council under the infrastructure grants program in 2001-2. The grant helped establish a basic transfer station and resource recovery facility at Lake Bolac. This replaces an existing landfill and supports the diversion and recovery of materials including recyclables, organic materials and scrap metals. The Council contributed \$10 000.

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3. METHODOLOGY

The proposed Regulations have been developed on the basis of three criteria.

1. RWMGs, EcoRecycle and EPA require sufficient funding to perform their statutory functions under the Act and meet Government commitments to improve resource use efficiency and waste management.
2. Agencies require certainty and transparency to enable confident planning.
3. An adequate flow of funds to the sustainability fund for priority projects and initiatives is required.

EcoRecycle allocated \$45 000 to Colac Otway Shire in 1999-2000 under the infrastructure investment program, to help develop and install a transfer station in Apollo Bay. Facilities will include bins, containers for the separation and storage of tyres, oil, green organics, rubble, second-hand goods and material for resale. The Shire is contributing \$45 000.

3.1 Agency funding

As discussed in Chapter 1, a key element of Victoria's landfill levy regime is that the funds generated are used to foster environmentally sustainable use of resources and best practice in waste management. EPA, EcoRecycle and RWMGs play complementary roles in pursuing this agenda.

EPA develops, implements and enforces statutory waste management policy. EPA administers the levy system, conducts audits and takes enforcement action to maintain the system's integrity.

EPA also works with industry and communities to reduce waste and improve the environment. The recent statutory reforms introduced sustainability covenants – a new tool which enables EPA to work in partnership with all sectors of the community to identify resource efficiency gains and reduce ecological impact.

EcoRecycle develops state-wide strategies and programs for solid waste, and facilitates the adoption of best practice in waste management. EcoRecycle sets priorities for funding state-wide programs including infrastructure development, market development, and community and industry education. As a result of the recent reforms, EcoRecycle also has statutory responsibility for commercial and industrial waste planning.

RWMGs plan for and coordinate regional activities that give practical effect to state-wide policies, strategies and programs at a local level. The recent reforms confirmed RWMGs and their member councils are the key agencies for planning and managing municipal waste. RWMGs play a central role in advising and educating stakeholders on waste management issues.

In announcing the recent reforms, the Minister undertook to use levy monies to fund the strengthened institutional arrangements.

The Government committed to providing substantial additional funds to RWMGs to provide for their core operating costs. As a result, RWMGs would be more financially independent of their member councils, and local government should no longer have to provide core funding to RWMGs.

The Government conducted detailed discussions with the Association of Victorian Regional Waste

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Management Groups, the Municipal Association of Victoria and the Victorian Local Governance Association to determine the appropriate level of funding for the purpose of these draft regulations. Both historical spending and projected future needs were considered in developing the proposed funding arrangements. As a result the Government proposes that RWMGs require a total annual allocation of \$2.78 million to adequately fund core administrative activities. In addition, they require a further \$1.2 million for regional education officers on an ongoing basis through the RWMG business planning process.

The Government also committed to providing additional resources to EcoRecycle, to support its strengthened role in industrial waste planning and boost its capacity to support RWMGs and local government in their efforts to reduce municipal waste. This would enable expansion of programs to assist industry to apply innovative approaches to reduce waste. It would also enable expansion of assistance to regional groups and councils to improve infrastructure and promote waste avoidance, reuse and recycling.

Discussions with EcoRecycle indicate that an initial boost in funding to approximately \$9.6 million would help EcoRecycle fulfil its statutory obligations. Over time, the annual allocation would need to increase by at least an additional \$8 million to adequately expand funding assistance programs.

Finally, the Government undertook to provide sufficient funds to EPA to strengthen statutory programs on waste, including enforcement activities. This would guarantee EPA's capacity to work in partnership with industry and community

using a range of statutory tools to improve resource use efficiency, reduce waste and improve waste management. An increase of approximately \$600,000 over present funding levels would initially be required, growing to an annual allocation of around \$4.3 million by 2008.

EcoRecycle allocated \$90 000 to Darebin City Council in 2000-2001 to help develop community based recycling facilities for the Darebin Resource Recovery Centre in Preston. The Council matched this grant with a \$90 000 contribution.

3.2 Certainty and transparency

EPA, EcoRecycle and RWMGs all develop annual business plans. These plans are prepared on a rolling three-year basis, setting out the agency's proposed budget for the next year and proposed objectives, priorities and financial projections for the next three years. The planning process provides all stakeholders, including local government, industry and the community with a clear strategic framework for waste management in Victoria.

Agencies require certain and transparent funding arrangements to develop these plans. RWMGs have emphasised, both to the Ministerial Panel and in subsequent consultations, the need for guaranteed funding so they can confidently develop and implement regional waste management plans.

Certainty in funding arrangements is particularly important for EcoRecycle, which is wholly dependent on landfill levy funds for its operations. It is also important to EPA, particularly in its role as administrator of the Environment Protection Fund.

One of the key reasons for the general acceptance and support of the landfill levy in Victoria is that all

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levy funds are used for the purposes of environment protection and fostering environmentally sustainable use of resources and best practice in waste management. Transparency in the allocation of levy funds identifying exactly how the funds are distributed is critical to maintaining this support.

3.3 Sustainability fund

The sustainability fund will complement the work of EPA, EcoRecycle and RWMGs by increasing the capacity of businesses, local government and the broader community to pursue environmental improvement and resource use efficiency through the development and implementation of innovative environmental initiatives.

Principally, the fund will be targeted towards community and small business efforts to foster environmentally sustainable uses of resources and best practice environmental management.

The Minister and the Treasurer will allocate monies from the fund with assistance from a statutory advisory panel. The panel will make recommendations in relation to the application of the fund.

The Government is committed to ensuring the community is engaged in the distribution of fund monies, both through submissions on priorities and applications for funding.

The Act sets out the requirements the Minister and Treasurer must meet in applying monies from the sustainability fund. Therefore, the proposed Regulations do not determine how monies in the sustainability fund are allocated. The proposed Regulations only determine the proportion of landfill

levy funds that will flow through to the sustainability fund.

EcoRecycle allocated \$150 000 to Swan Hill Rural City Council in 2000-2001 under the infrastructure investment program. The grant helped upgrade the facilities at the Swan Hill Recycling Services to improve the level of service and meet the region's recycling needs. The Council matched the grant with a contribution of \$150 000.

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4. EXPLANATION OF THE PROPOSED REGULATIONS

This chapter provides an explanation of the proposed Regulations. The benefits and costs of the proposed Regulations are discussed in detail in Chapter 5, and the projected funding arrangements are set out in Table 3 and Graph 3 of Appendix 3.

The draft Regulations are set out in Appendix 1.

In summary, the proposed Regulations would make the following changes to the current arrangements for the distribution of landfill levy funds:

- Annual funding to RWMGs for their operating and administrative costs would be increased by over \$1.5 million;
- Funds would be distributed directly to RWMGs to cover regional education officer costs;
- The funds distributed to RWMGs would be divided amongst the sixteen regions in accordance with a new formula;
- A percentage of the remaining funds would be distributed to EcoRecycle and EPA, delivering increasing funding over time; and
- The percentage distributed to EcoRecycle and EPA would decline over time as the total pool of funds is projected to grow.

The funds not distributed through the proposed Regulations would be allocated by the Treasurer and the Minister through the sustainability fund.

4.1 Preliminary provisions

Regulations 1-5 of the draft Regulations set out the objectives, legislative basis, commencement date,

definitions and required administrative mechanisms.

The objective of the proposed Regulations is to set out how funds from landfill levies on municipal and industrial waste are to be distributed. As noted in Chapter 1, the proposed Regulations do not relate to or affect the distribution of landfill levies on prescribed industrial waste.

The proposed Regulations would be made by the Governor in Council on the recommendation of the Minister for Environment and Conservation. If the proposed Regulations were made, they would enter into force on 1 January 2003. From that date, all levies on municipal and industrial waste would be applied in accordance with the Regulations and by the Minister and Treasurer through the sustainability fund.

Two accounts will be established within the Environment Protection Fund to manage the levy monies. The general account will be used for landfill levy payments, refunds and distributions. The sustainability fund account will be used to hold the funds to be allocated by the Treasurer and the Minister.

4.2 Distribution to RWMGs

Regulations 6 and 7 of the draft Regulations set out arrangements for the distribution of funds to RWMGs.

Draft regulation 6 states that RWMGs would receive \$2.78 million each year, divided into four equal quarterly payments. This amount would be adjusted each year in line with the consumer price index (i.e. inflation), which is specified each year in the State Budget. These funds are intended to cover the core

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operating and administrative costs of RWMGs, and represent an increase from current funding levels by over \$1.5 million per year.

It is proposed that each quarterly payment would be divided amongst the sixteen regions in the proportions set out in Table 1 of the draft Regulations. These proportions have been determined in consultation with the Association of Victorian Regional Waste Management Groups (AVRWMG). The proportions are based on a complex formula developed by AVRWMG in consultation with the regions, which takes account of the minimum funding needs, population, area and number of member councils in each region.¹

This draft regulation also ensures that the annual payment to RWMGs is adjusted each year in line with the consumer price index.

Draft regulation 7 proposes that RWMGs would receive an additional \$1.2 million each year. These funds would be distributed to each region following Ministerial approval of its business plan. This amount would also be divided into four equal quarterly payments. It is also proposed that if a region's business plan has not been approved, the relevant funds for that region would be set aside until the Minister advises the business plan has been approved.

It is proposed that each quarterly payment would be divided amongst the sixteen regions in the proportions set out in Table 2 of the draft Regulations. These proportions reflect the number

of regional education officers employed in each region.

Analysis of past and projected spending and preliminary consultations with key stakeholders indicate that the funding arrangements set out in draft regulations 6 and 7 would be sufficient to meet the core operating costs of groups, and replace previous EcoRecycle education program funding.

4.3 Distribution to EcoRecycle and EPA

Regulation 8 of the draft regulations sets out the proposed arrangements for the distribution of funds to EcoRecycle and EPA.

It is proposed that once the payments for RWMGs have been deducted from the Fund, a proportion of the remainder would be distributed to EcoRecycle and EPA, and the rest would be transferred to the sustainability fund.

It is proposed the distribution of funds to EcoRecycle and EPA be based on a percentage rather than a fixed amount. The statutory role of EcoRecycle and EPA is to drive waste reduction and ensure the safe management of residual waste streams. Funding required for these purposes will depend on the volume of waste generated. As the total pool of funds available for distribution in the future is not precisely known, proportion-based distribution also provides flexibility to ensure that the proposed Regulations do not 'over-allocate' levy funds.

Under this draft regulation, EcoRecycle would receive approximately \$9.63 million in 2003. Allowing for the changes to regional education officer funding proposed under draft regulation 7, this represents an overall increase of about \$1.9 million from current funding levels. EPA would

¹ For additional information on the development of this formula, readers can contact the project manager or AVRWMG.

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receive an estimated \$3.12 million in 2003, representing an increase of \$0.6 million over present funding levels.

The proposed proportions to be allocated to each agency are set out in Table 3 of the draft Regulations. It is also proposed that the proportions allocated to EcoRecycle and EPA decline over time. This would leave an increasing proportion to be allocated by the Treasurer and Minister through the sustainability fund.

Note that while it is proposed that the proportion allocated to EcoRecycle and EPA decline, projections indicate the amount distributed to EcoRecycle and EPA will increase because landfill levies increase over this period (see Table 3 of Appendix 3).

4.4 Other provisions

Draft regulation 9 sets out the proposed timing of the distribution of funds to RWMGs, EcoRecycle and EPA.

Licensed landfill operators are required to pay landfill levies to EPA (as administrator of the Environment Protection Fund) on a quarterly basis. Levies are due to be paid by the end of the following quarter.² For example, levies for waste deposited to a licensed landfill from 1 July to 30 September 2002 are due to be paid to EPA by 31 December 2002.

Draft regulation 9 proposes that EPA must distribute the landfill levy funds by the fifteenth day of each financial quarter. Payments to RWMGs, EcoRecycle and EPA would therefore be made by 15 January, 15 April, 15 July and 15 October each year.

Draft regulation 10 sets out the proposed transitional arrangements. Under the proposed regulations, the first quarterly distribution of monies to RWMGs, EcoRecycle and EPA would take place by 15 January 2003.

EcoRecycle allocated \$31 700 to the Royal Botanic Gardens in Melbourne in 1999-2000, to help improve its green waste recycling arrangements. The project also helped raise public awareness of green waste recycling by developing a new green waste processing site in a central area of the gardens. The Gardens contributed \$31 700 to the project.

² *Environment Protection Act 1970* s50SB.

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5. BENEFITS AND COSTS OF THE PROPOSED REGULATIONS

This chapter provides an analysis of the benefits and costs of the proposed Regulations in relation to the key criteria set out in Chapter 3.

As discussed in the preceding Chapters, as a result of the recent statutory changes, upon publication of a notice in the Government Gazette municipal and industrial waste landfill levies will only be able to be distributed in accordance with regulations or allocated by the Minister and Treasurer through the sustainability fund. If no regulations are developed, levy funds will only be able to be allocated by the Minister and Treasurer.

Thus the key benefits and costs of the proposed Regulations relate to the certainty, accountability and transparency regulations can provide. All Victorians benefit from the transparent distribution of public monies, and the clear specification of the amount to be allocated to different government functions.

5.1 Agency funding

Under the proposed Regulations new funding arrangements would be established in a clear and accountable way. Funding to RWMGs, EcoRecycle and EPA would be increased and an increasing proportion would be distributed to the sustainability fund over time.

RWMGs would receive \$2.78 million per year in core funding. In addition, RWMGs would receive \$1.2 million per year to support regional education officer costs. By 2008, it is projected RWMGs would receive a total of \$4.31 million per year.

This compares with uncertain funding arrangements if regulations are not developed. As discussed in Chapter 2, if no regulations are developed RWMGs would initially receive 10% of the total landfill levies, however upon publication of the notice in the Government Gazette (the Gazette notice), RWMGs would receive no direct funding. From that time, RWMGs would be dependent on funds allocated by the Treasurer and Minister through the sustainability fund, and on contributions from their member councils.

As the proposed Regulations would make RWMGs more financially independent of their member councils, local government would benefit significantly from their development. Under the proposed Regulations, RWMGs would receive sufficient funding for their operating costs. Councils would therefore not be required to contribute to the operating costs of RWMGs.

Under the proposed Regulations, EcoRecycle would receive funding of about \$9.63 million in 2003. In accordance with these Regulations EcoRecycle's funding is projected to grow to \$17.8 million in 2008.

In contrast, if regulations were not developed EcoRecycle would initially receive 70% of the total landfill levies, however following publication of the Gazette notice, EcoRecycle would receive no direct funding, and would be dependent on monies allocated by the Minister and Treasurer from the sustainability fund.

EcoRecycle would therefore benefit from development of the proposed Regulations. This is because the proposed Regulations would provide EcoRecycle with sufficient funding to meet its

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existing statutory functions as well as its new statutory obligations to develop state-wide plans for solid industrial waste, in a certain and transparent way. Providing EcoRecycle with the certainty to adequately plan for its obligations in turn provides benefits to other sectors of the community. In particular, industry would benefit from expanded programs to support innovation to reduce waste. RWMGs and local government would also benefit from expanded assistance to improve infrastructure and promote waste avoidance, reuse and recycling.

Under the proposed Regulations EPA would receive an estimated \$3.12 million in 2003, projected to grow to \$4.28 million by 2008. If no regulations were developed EPA would initially receive 20% of the total levies, however upon publication of the Gazette notice EPA would only have access to landfill levy funds through the sustainability fund.

The proposed Regulations would strengthen EPA's capacity to develop, implement and enforce statutory waste management policy both by providing sufficient funding and the associated certainty provided by a regulation. Industry and the community would benefit from new programs and initiatives to reduce waste and improve the environment.

5.2 Certainty and transparency

Significant benefits would flow from the proposed Regulations in terms of certainty and transparency in the allocation of landfill levy funds. State Government agencies such as RWMGs, EcoRecycle and EPA as well as local government, industry and others in the community wishing to access the sustainability fund would all benefit from the certain

and transparent allocations of funds under the proposed Regulations.

The proposed Regulations also set clear rules to divide levy monies amongst the sixteen RWMGs. The certainty generated from these rules will benefit not only each regional group, but also their member councils and regional communities.

Each of the agencies funded under the proposed Regulations would be able to develop business plans on the basis of known funding levels. Programs are currently underway to improve data collected from landfills, which will enable more accurate projections of funding levels in the future.

Clear and accountable allocations of landfill levy monies also provide benefits to the general community (including those who directly or indirectly pay landfill levies) by providing a transparent and public vehicle for the allocation of monies amongst State Government agencies.

In contrast, if no regulations were developed then EPA, EcoRecycle and RWMGs would only receive a certain allocation of funds until the Gazette notice is published. After that time, these agencies would be dependent on annual allocations by the Treasurer and Minister from the sustainability fund. This would make it practically impossible for these agencies to meet their statutory obligations to develop business plans. The uncertainty would also result in increased administrative costs for RWMGs, EcoRecycle and EPA, as they would need to seek access to alternative sources of funding. It would also create uncertainty for local government, industry and the community by weakening the institutional framework for waste management in Victoria.

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5.3 Sustainability fund

Under the proposed Regulations, business, local government and the community would have access to an increasing proportion of levy monies through the sustainability fund. The fund would initially be relatively small – an estimated \$1.42 million in 2003 – but would grow rapidly over time to an estimated \$13.5 million by 2008.

Substantial benefits would be generated through providing sufficient funding for the development and implementation of innovative environmental initiatives to foster the environmentally sustainable use of resources and best practice in waste management. The community would benefit from the distribution of significant monies to the sustainability fund, as this would expand opportunities for community-based projects and small businesses to access levy monies.

By virtue of the certainty and transparency provided by the proposed Regulations, allocations of monies to sustainability fund projects would take place within a strong institutional framework of policies, strategies and plans established by EPA, EcoRecycle and RWMGs.

In contrast, if no regulations were developed, businesses, local government and the community would initially have no access to landfill levy monies through the sustainability fund. Following publication of the Gazette notice, however, all landfill levy funds would be allocated through the sustainability fund. This would generate benefits for businesses, local government and the community, as all monies collected from municipal and industrial waste landfill levies would be subject to allocation by the Minister and Treasurer. This

amount is estimated to grow to \$39.9 million by 2008.

However, without the certainty and transparency of a regulation the amount actually available for projects would be unclear. Without direct funding, RWMGs, EcoRecycle and EPA would make competing claims for sustainability fund monies. In addition, without the certainty provided by regulations, sustainability fund monies would be allocated within a weakened institutional framework. The benefits the community may see from individual project allocations from the fund would be offset by a decrease in services and programs provided by key agencies - in particular by EcoRecycle, which is completely dependent on funding from landfill levies.

EcoRecycle allocated over \$96 000 to the South Eastern Regional Waste Management Group in 2000-2001 under the Green Waste Action Plan. The grant helped expand the region's green organics collection scheme to meet community demand. The region matched the grant with a contribution of over \$96 000.

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6. BENEFITS AND COSTS OF THE PROPOSED REGULATIONS VERSUS ALTERNATIVES

This chapter provides an analysis of the costs and benefits of the proposed regulations against the two alternatives outlined in Chapter 2. As with the previous chapter, these alternatives are assessed in relation to the key criteria set out in Chapter 3.

6.1 Alternative 1 – Do not develop regulations

Under Alternative 1, no regulations would be developed.

As discussed in Chapter 2, under the new statutory arrangements landfill levy monies can only be distributed by regulation or through the sustainability fund. If no regulations were developed, RWMGs, EcoRecycle and EPA would not be guaranteed funding. They would only receive landfill levy funds with the consent of the Treasurer and the Minister through an allocation from the sustainability fund.

These arrangements would commence when the Minister publishes a notice in the Government Gazette. Until the notice was published, landfill levy funds would continue to be distributed in accordance with the fixed formula - 10% to RWMGs, 70% to EcoRecycle and 20% to EPA.

Under Alternative 1, prior to publication of the Gazette notice, RWMGs would receive approximately \$1.81 million in 2003 to perform their statutory functions. This would be insufficient to cover their core operating costs and regional education officer costs. Costs may, therefore, be borne by local

government, as it is likely that RWMGs would seek financial contributions from their member councils.

EcoRecycle would receive approximately \$12.7 million in 2003 and EPA would receive about \$3.63 million. This would provide sufficient funding to enable EcoRecycle and EPA to develop new and expanded policies and programs, generating benefits for Victoria as a whole.

However upon publication of the Gazette notice, none of these agencies would be guaranteed funding. Therefore, while EcoRecycle and EPA could initially receive sufficient monies to meet their obligations, the certain allocation of these monies would cease upon publication of the Gazette notice. In addition, RWMGs would go from being under-funded to receiving no certain allocation of monies, leading to the likelihood of costs to local government continuing to grow as RWMGs turn to member councils for monetary support.

Under Alternative 1, all agencies would face uncertainty in the allocation of levy monies. This would place undue pressure on business planning processes, making it practically impossible for these agencies to meet their statutory obligations to plan for and manage their activities. The lack of certainty would also result in increased administrative costs, as these agencies would need to seek alternative funding sources.

This would weaken the strategic framework for waste management in Victoria, creating uncertainty for local government, industry and community waste management programs and activities. This uncertainty could undermine efforts to improve resource use efficiency and reduce waste.

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Alternative 1 would initially distribute no money to the sustainability fund, limiting the opportunity for broader community access to and involvement in the distribution of fund monies. Following publication of the Gazette notice, all monies would be allocated through the sustainability fund.

The significant pool of monies available could benefit an increased number of businesses and community members applying for monies from the sustainability fund. In addition, greater funding for innovative projects designed to foster the environmentally sustainable use of resources and best practices in waste management could generate significant benefits for Victoria. However the competing funding claims of RWMGs, EcoRecycle and EPA would generate uncertainty as to the actual amount of money available for community based projects.

In addition, allocation of all levy monies through the sustainability fund could weaken the institutional arrangements for waste management in Victoria. For example, as the sustainability fund is focused on projects designed to foster innovation in resource efficiency and waste management, EPA may be unable to obtain funding to undertake enforcement action. Levy funds may not therefore be available to strengthen enforcement programs such as those for illegal dumping.

6.2 Alternative 2 – Maintain present funding levels

Under Alternative 2, Regulations maintaining present funding levels to RWMGs, EcoRecycle and EPA would be developed to replace the current arrangements in the Act. The remainder of the funds

would flow to the sustainability fund for allocation by the Minister and Treasurer.

Under Alternative 2, RWMGs would receive about \$1.25 million each year. As with Alternative 1, this amount would be insufficient to cover their core operating costs, and leave them dependent on EcoRecycle for regional education officer funding. Local government would be likely to bear the additional costs of the RWMGs' operation.

EcoRecycle would receive approximately \$8.75 million each year. This amount would be insufficient to support EcoRecycle's expanded role in planning for solid industrial waste. This would also have cost impacts on industry, RWMGs and local government, as EcoRecycle would not have funds to expand programs to assist industry innovation to reduce waste, nor expand assistance to RWMGs and councils to improve infrastructure and promote waste avoidance, reuse and recycling.

EPA would receive about \$2.5 million each year under Alternative 2. This amount would limit EPA's capacity to develop and expand programs to help companies and communities reduce waste. The potential benefits of new statutory tools such as sustainability covenants may not be fully realised. Similarly, enforcement programs including those dealing with illegal dumping could not be expanded. Inadequate enforcement could result in increased pollution and clean up costs.

Under Alternative 2, all agencies would benefit from receiving certain fixed funding levels. With continued contributions from their member councils, RWMGs could develop business and waste management plans as required. EcoRecycle and

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EPA could also meet their obligations to develop business plans.

Industry and community members would have access to a significant proportion of the landfill levy funds under Alternative 2. The sustainability fund would grow from an estimated \$5.6 million in 2003 to \$27.4 million in 2008.

This would facilitate substantial business, local government and community activity towards sustainable waste management and resource use, with the potential to generate benefits for Victoria. These funds would, however, be allocated within a weakened institutional framework. There is a risk the funds would not be used to greatest effect, as the policies, strategies and plans to coordinate these activities could be inadequate due to insufficient funding flowing to key agencies.

EcoRecycle allocated \$200 000 to the Alex Fraser Group in 2000-2001 under the infrastructure investment program. The grant helped establish a new mobile asphalt recycling plant. The company contributed \$400 000 to the project.

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7. SUMMARY OF BENEFITS AND COSTS

This Chapter provides a concise summary of the benefits and costs of the proposed regulations and the two alternatives. This summarises the detailed assessments provided in Chapters 5 and 6.

7.1 Proposed Regulations

| BENEFITS | COSTS |
|---|---|
| <p>Transparent, certain and accountable allocation of landfill levy funds.</p> <p>RWMGs, EPA and EcoRecycle receive adequate funding to perform their statutory functions.</p> <p>RWMGs receive direct funding for regional education officer costs.</p> <p>Local government relieved of the obligation to provide core funding to RMWGs.</p> <p>EcoRecycle has greater capacity to support industry, RWMGs and local government actions to reduce waste.</p> <p>RWMGs, EcoRecycle and EPA have certain funding basis, enabling confident business planning.</p> <p>Institutional framework for waste management in Victoria strengthened.</p> <p>Businesses, local government and the community can access a growing pool of funds for innovative initiatives fostering sustainable resource use and best practice waste management.</p> | <p>EcoRecycle and EPA initially receive less funding than if no regulations were developed.</p> <p>Businesses, local government and the community have access to fewer funds to foster sustainable resource use and best practice waste management than if no regulations were developed.</p> |

ENVIRONMENT PROTECTION (DISTRIBUTION OF LANDFILL LEVY) REGULATIONS

7.2 Alternative 1 – Do not develop regulations

| BENEFITS | COSTS |
|---|---|
| <p>EPA and EcoRecycle initially receive greater funding to perform their statutory roles and assist local government, industry and the community reduce waste.</p> <p>Businesses, local government and the community subsequently access a greater pool of funds to foster sustainable resource use and best practice waste management.</p> | <p>RWMGs initially do not receive adequate funds to perform their statutory functions.</p> <p>RWMGs, EcoRecycle and EPA all subsequently receive inadequate funds to perform their statutory functions.</p> <p>Significant uncertainty in the funding for RWMGs, EcoRecycle and EPA, undermining their ability to develop business plans.</p> <p>Increased administrative costs for RWMGs, EcoRecycle and EPA to seek alternative funding sources.</p> <p>Institutional framework for waste management in Victoria weakened.</p> <p>EcoRecycle’s capacity to support industry, RWMGs and local government actions to reduce waste is reduced.</p> <p>Local government incurs increased costs for the operation and administration of RWMGs.</p> |

7.3 Alternative 2 – Make Regulations to maintain present funding levels

| BENEFITS | COSTS |
|---|---|
| <p>Transparent, certain and accountable allocation of landfill levy funds.</p> <p>RWMGs, EcoRecycle and EPA have certain funding basis, enabling confident business planning.</p> <p>Businesses, local government and the community can access a significant pool of funds to foster sustainable resource use and best practice waste management.</p> | <p>RWMGs, EcoRecycle and EPA do not receive adequate funds to perform their statutory functions.</p> <p>EcoRecycle has limited capacity to support industry, RWMGs and local government actions to reduce waste.</p> <p>EPA has limited capacity to strengthen policies, programs and enforcement activities.</p> <p>Institutional framework for waste management in Victoria weakened.</p> <p>Local government continues to incur costs for the operation and administration of RWMGs.</p> |

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APPENDIX 1 DRAFT REGULATIONS

STATUTORY RULES 2002 S.R. NO.

ENVIRONMENT PROTECTION ACT 1970

Environment Protection (Distribution of Landfill Levy) Regulations 2002

The Governor in Council makes the following Regulations:

Dated:

Responsible Minister:

SHERRYL GARBUTT
Minister for Environment and Conservation

Clerk of the Executive Council

PART 1 – PRELIMINARY

1. *Objective*

The objective of these Regulations is to specify how landfill levies are to be distributed for the purposes of section 70(6B) of the **Environment Protection Act 1970**.

2. *Authorising provisions*

These Regulations are made under sections 70(6B) and 71 of the **Environment Protection Act 1970**.

3. *Commencement*

These Regulations come into operation on 1 January 2003.

4. *Interpretation*

- (1) In these Regulations “**the Act**” means the **Environment Protection Act 1970**.
- (2) A reference in these Regulations to a quarter is a reference to the period of 3 months ending on 31 March, 30 June, 30 September or 31 December.

5. *Landfill levy accounts to be created*

- (1) Within the Environment Protection Fund, the Authority must create the following 2 accounts –
 - (a) a general landfill levy account; and
 - (b) a sustainability fund account.

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- (2) The Authority must credit to the general landfill levy account all amounts paid into the Environment Protection Fund under section 70(3)(aba) of the Act on or after 15 October 2002.
- (3) The Authority must pay out of the general landfill levy account any refund the Authority is required to pay under Division 3 of Part IX of the Act (other than a refund attributable to any levy paid under section 50S(2)).

Note: Section 70(7) of the Act actually provides the authorisation of these refund payments from the Environment Protection Fund, so sub-regulation (3) is simply intended to ensure that those refunds come out of the general landfill levy account rather than the sustainability fund account.

- (4) A requirement in these Regulations to pay an amount out of the general landfill levy account is to be read as requiring and authorising the payment of that amount out of the Environment Protection Fund.

6. *Distribution of landfill levies to regional waste management groups*

- (1) The Authority must pay \$2.78 million out of the general landfill levy account to regional waste management groups in 2003.
- (2) In respect of each subsequent calendar year, the Authority must pay out of the general landfill levy account to regional waste management groups the amount derived from the following calculation –
 $PA \times SBI$
 where –
 PA is the amount paid in the previous year under this regulation;
 SBI is the annual rate approved by the Treasurer in relation to the State Budget delivered in that previous year for the purposes of section 8 of the **Subordinate Legislation Act 1994**.¹
- (3) The Authority must distribute the annual amount it is required to pay under this regulation in accordance with Table 1.
- (4) The Authority must divide the amount it is required to pay a regional waste management group into quarterly instalments.

TABLE 1

| <i>Regional waste management group</i> | <i>Percentage of annual amount payable (%)</i> |
|--|--|
| Barwon | 6.1 |
| Calder | 5.3 |
| Central Murray | 4.9 |
| Wimmera Mallee | 3.5 |
| Eastern Metropolitan | 9.4 |
| Greater Gippsland | 6.8 |
| Goulburn Valley | 5.9 |
| Grampians | 4.9 |
| Highlands | 5.6 |
| Mildura | 3.5 |
| Mornington Peninsula | 3.5 |
| North Eastern | 5.5 |

¹ Act No. 104/1994

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| | |
|----------------------------|-----|
| Northern Metropolitan | 9.8 |
| South Eastern Metropolitan | 10 |
| South Western | 5.3 |
| Western Metropolitan | 10 |

7. *Further amount to be paid to regional waste management groups*

- (1) Each calendar year, the Authority must pay, out of the general landfill levy account, to a regional waste management group listed in column 1 of Table 2 the amount shown in column 2 of that Table opposite the name of that group.

TABLE 2

| <i>Regional waste management group</i> | <i>Amount to be paid</i> |
|---|--------------------------|
| Barwon, Calder, Central Murray, Wimmera Mallee, Goulburn Valley, Grampians, Highlands, Mildura, Mornington Peninsula, North Eastern, Northern Metropolitan, South Western | \$60 000 |
| Eastern Metropolitan, South Eastern Metropolitan, Western Metropolitan, Greater Gippsland | \$120 000 |

Note: Sub-regulation (1) requires the Authority to pay a total amount of \$1.2 million each year ((12 x \$60 000 = \$720 000) + (4 x \$120 000 = \$480 000)) to regional waste management groups.

- (2) The Authority must not make a payment under sub-regulation (1) to a regional waste management group unless the Minister has notified the Authority that she or he is satisfied that the group has complied with the requirements of section 50LA of the Act.
- (3) The Authority must divide the amount it is required to pay a regional waste management group into quarterly instalments.

8. *Payments to EcoRecycle Victoria and the Authority*

- (1) In this regulation, "**money available for distribution**" means the amount of money standing to the credit of the general landfill levy account at the end of a quarter, less—
- (a) the amount of the quarterly instalment distributions that the Authority will be required to make in respect of the next quarter under regulations 6 and 7; and
 - (b) any amount that the Authority is withholding in compliance with regulation 7(2).
- (2) The Authority must distribute any money available for distribution in the following way –
- (a) it must pay out of the general landfill levy account to EcoRecycle Victoria the relevant percentage of that money specified in column 2 of Table 3; and
 - (b) it must draw out of the general landfill levy account for its own purposes the relevant percentage of that money specified in column 3 of Table 3; and
 - (c) it must transfer any remaining amount of that money into the sustainability fund account.

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Note: As these Regulations do not authorise the making of any payments out of the sustainability fund account, the money in that account can only be withdrawn under section 70(6B)(b) of the Act after the processes required by section 70A of the Act have occurred.

TABLE 3

| <i>Time period</i> | <i>Percentage of the money available for distribution (%)</i> | |
|----------------------------|---|------------------|
| | <i>EcoRecycle Victoria</i> | <i>Authority</i> |
| On or after 1 January 2003 | 68 | 22 |
| On or after 1 January 2004 | 63 | 19 |
| On or after 1 January 2005 | 58 | 17 |
| On or after 1 January 2006 | 53 | 15 |
| On or after 1 January 2007 | 50 | 13 |
| On or after 1 January 2008 | 50 | 12 |

9. *Period of payment*

The Authority must make all distributions required –

- (a) under regulations 6 and 7, by the 15th day of the quarter; and
- (b) under regulation 8, by the 15th day after the end of each quarter.

10. *Transitional arrangements*

- (1) Despite anything to the contrary in these Regulations, the Authority must make the first quarterly distribution of money under regulation 8 by 15 January 2003.
- (2) For the purposes of sub-regulation (1) –
 - (a) a reference in regulation 8(1) to the end of a quarter is to be read as a reference to 31 December 2002; and
 - (b) a reference in regulation 8(1)(a) to "the next quarter" is to be read as a reference to the quarter ending on 31 March 2003.

ENVIRONMENT PROTECTION (DISTRIBUTION OF LANDFILL LEVY) REGULATIONS

APPENDIX 2 RELEVANT PROVISIONS OF THE ENVIRONMENT PROTECTION ACT 1970

App 2.1 Current Provisions (entered into force on 15 October 2002)

Part IX Division 3

50S. Landfill levy – amount payable

(1) The holder of a licence in respect of a schedule two premises must pay to the Authority a landfill levy for each tonne of waste that is deposited on to land at the premises.

(2A) The amount of the levy is the amount specified in Schedule D for the relevant premises, period and type of waste.

(3) The levy must be paid in accordance with section 50SB.

Part IX Division 7

[ie sections 52A and 52B]

Repealed.¹

Part X Division 6

70. Environment Protection Fund

(1) There shall be kept in the Treasury in the Public Account as part of the Trust Fund an account to be called the "Environment Protection Fund".

¹ Part IX Division 7 repealed by *Environment Protection (Resource Efficiency) Act 2002* section 35(1)(a).

(2) Any moneys standing to the credit of the said fund may be invested in such securities as are approved by the Treasurer.

(3) Into the Environment Protection Fund there shall be paid—

(aba) any other money collected as a levy under Division 3 of Part IX;...²

(6B) Money paid into the Environment Protection Fund under sub-section (3)(aba) may only be applied in one or more of the following ways--

(a) in accordance with regulations specifying who the money is to be paid to, and how the amounts to be paid are to be calculated;

(b) with the consent of both the Minister and the Treasurer, for the purposes of fostering environmentally sustainable uses of resources and best practices in waste management to advance the social and economic development of Victoria.

(6C) Despite sub-section (6B), until the Minister publishes a notice in the Government Gazette stating that this sub-section ceases to apply, all money paid into the Environment Protection Fund under sub-section (3)(aba) is to be applied as if--

(a) sections 52A(3) and 52B³ were still in force; and

² Section 70(3)(aba) inserted by *Environment Protection (Resource Efficiency) Act 2002* section 35(1)(b).

³ The previous sections 52A(3) and 52B are reproduced in Appendix 2.2 below.

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(b) a reference in those sections to the Fund was a reference to the Environment Protection Fund.⁴

(7) There may be paid out of the Environment Protection Fund—

(a) any amount the Authority is required to pay to a person as a refund of any levy paid under Division 3 of Part IX⁵; and

(b) any amount needed to refund any money paid into the Fund under sub-section (3)(ab) or (3)(aba)⁶ as a result of a miscalculation or other error.

70A. Restrictions concerning the distribution of money derived from the general landfill levy

Despite section 70(6B)(b), the Minister and the Treasurer must not apply any money under that section unless--

(a) there is in existence a statement produced and published in accordance with section 70B setting out, in order of priority, the matters in respect of which they intend to apply money under that section in the relevant period; and

(b) there are in force guidelines as to how they will exercise their powers under that section and those guidelines have been publicly published; and

(c) there exists an advisory panel appointed by them under section 70D to make recommendations to them in relation to the application of money under that section.

70B. Priority statement

(1) The statement required by section 70A(a) is produced and published in accordance with this section if the following steps are taken--

(a) a draft statement is produced; and

(b) notice of the production of the draft statement is advertised in a newspaper circulating generally throughout Victoria; and

(c) the advertisement includes--

(i) an outline of the draft statement; and

(ii) advice as to where a copy of the draft statement can be obtained or examined; and

(iii) a statement inviting anyone with an interest in the matter to make comments to the Minister or the Treasurer within 21 days after the date of publication of the advertisement; and

(d) there is published on the Authority's Internet site a copy of the draft statement and a copy of the statement required by paragraph (c)(iii); and (e) the Minister and the Treasurer consider any comments that are made in response to the invitations made under paragraphs (c)(iii) and (d)

⁴ Section 70(6B) and 70(6C) inserted by *Environment Protection (Resource Efficiency) Act 2002* section 35(3).

⁵ Section 70(7)(a) amended by *Environment Protection (Resource Efficiency) Act 2002* section 35(1)(c).

⁶ Section 70(7)(b) amended by *Environment Protection (Resource Efficiency) Act 2002* section 35(1)(d).

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before signing and publishing the statement; and

(f) notice of the signing of the statement is published in the Government Gazette.

(2) It is not necessary to comply with this section in the case of a statement--

(a) that only revokes an existing statement; or

(b) that only amends an existing statement if the amendment is of a machinery or administrative nature.

70C. Restrictions concerning section 70A(b) guidelines

(1) A guideline made for the purposes of section 70A(b) has no effect until notice of its making is published in the Government Gazette.

(2) On or before the 6th sitting day after notice of the making of a guideline is published in the Government Gazette, the Minister must ensure that a copy of the guideline is laid before each House of the Parliament.

(3) A failure to comply with sub-section (2) does not affect the operation or effect of the guideline but the Scrutiny of Acts and Regulations Committee of the Parliament may report the failure to each House of the Parliament.

(4) A guideline may be disallowed in whole or in part by either House of Parliament.

(5) Part 5 of the *Subordinate Legislation Act 1994* applies to a guideline as if--

(a) a reference in that Part to a "statutory rule" was a reference to the guideline; and

(b) a reference in section 23(1)(c) of that Part to "section 15(1)" was a reference to sub-section (2).

70D. Advisory panel in relation to section 70A(c)

(1) For the purposes of section 70A(c), the Minister and the Treasurer may appoint up to 8 people to form the advisory panel at any one time.

(2) In appointing advisory panel members, the Minister and the Treasurer must attempt to ensure that the members of the panel collectively have skills, expertise or knowledge relating to--

(a) environment protection and conservation;

(b) issues relating to industry;

(c) economics and business management;

(d) local government;

(e) rural and regional affairs.

(3) The Minister and the Treasurer are to determine the terms of appointment (including the remuneration (if any) and the allowances (if any)) of the members of the advisory panel.

(4) The advisory panel must give the Authority a copy of all the recommendations it makes to the Minister and the Treasurer.

(5) The Authority must include a copy of the recommendations in its annual report for the financial year in which the recommendations were made together with a list of all the grants that were made under section 70(6B)(b) in that financial year.

(6) The Authority must also publish a copy of the recommendations and the list of grants on its

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Internet site within 3 days after the annual report is tabled before a House of the Parliament.⁷

Part X Division 6

71. Regulations

(1) The Governor in Council on the recommendation of the Authority may make regulations for or with respect to -

(p) any matter or thing which by this Act is authorized or required or permitted to be prescribed or which is necessary or expedient to be prescribed for carrying this Act into effect.

⁷ Sections 70A-70D inserted by *Environment Protection (Resource Efficiency) Act 2002* section 36.

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SCHEDULE D

AMOUNT PAYABLE AS LANDFILL LEVY

| Date when waste is deposited | Amount payable for each tonne deposited (in dollars) | | | | |
|--|--|------------------|-------------------------|------------------|---|
| | Schedule C Premises | | Non-Schedule C Premises | | Premises Licensed for the Discharge or Deposit to Land of Prescribed Industrial Waste |
| | Municipal waste | Industrial waste | Municipal waste | Industrial waste | |
| on or after 1 July 2002 and before 1 July 2003 | 4 | 5 | 2 | 3 | 10 |
| on or after 1 July 2003 and before 1 July 2004 | 5 | 7 | 3 | 5 | 14 |
| on or after 1 July 2004 and before 1 July 2005 | 6 | 9 | 4 | 7 | 18 |
| on or after 1 July 2005 and before 1 July 2006 | 7 | 11 | 5 | 9 | 22 |
| on or after 1 July 2006 and before 1 July 2007 | 8 | 13 | 6 | 11 | 26 |
| on or after 1 July 2007 | 9 | 15 | 7 | 13 | 30 |

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App 2.2 Previous Provisions

Part IX Division 7

52A. Resource Recovery Fund

....

(3) The Authority may pay out of the Fund--

(a) any amount the Authority is required to pay to a person under this Part other than refunds of any levy paid under section 50S(2A); and

(b) any amount needed to refund any money paid into the Fund as a result of a miscalculation or other error.

52B. How landfill levy to be distributed

(1) In this section "net payment into the Fund" means the total amount of landfill levy paid into the Fund in a particular period less any amount paid out under section 52A(3) in that period in respect of the landfill levy.

(2) The Authority must--

(a) draw out of the Fund 20% of each net payment into the Fund to cover the costs incurred by it under this Part and to further its waste avoidance, waste management and waste reduction objectives; and

(b) pay out of the Fund 10% of each net payment into the Fund to regional waste management groups; and

(c) pay out of the Fund 70% of each net payment into the Fund to EcoRecycle Victoria.

(3) The Authority must comply with sub-section (2) not more than 90 days after any money under section 50SB is paid into the Fund.

(4) The Authority must ensure that the payment to regional waste management groups under sub-section (2)(b) is distributed as follows—

(a) 50% of the payment must be distributed equally among the regional waste management groups; and

(b) 50% of the payment must be distributed in accordance with the following formula—

$$P = \frac{A}{M} \times N$$

where--

"P" is the amount a particular regional waste management group is to be paid under this paragraph;

"A" is the total amount available for distribution under this paragraph;

"M" is the number of municipal districts in Victoria;

"N" is the number of municipal districts that are within the group's waste management region.

(5) The Governor in Council may make regulations varying the percentages set out in this section.

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APPENDIX 3 PROJECTED FUNDING UNDER THE THREE OPTIONS

This appendix sets out the projected funding scenarios referred to in Chapter 2. The tables and graphs below show the projected funds which would flow to RWMGs, EcoRecycle and EPA, and the funds remaining to be allocated by the Treasurer and Minister through the sustainability fund, for each of the three identified management options. The projections are set out in tables and graphs for each of the three options. In analysing the projections, readers should note that:

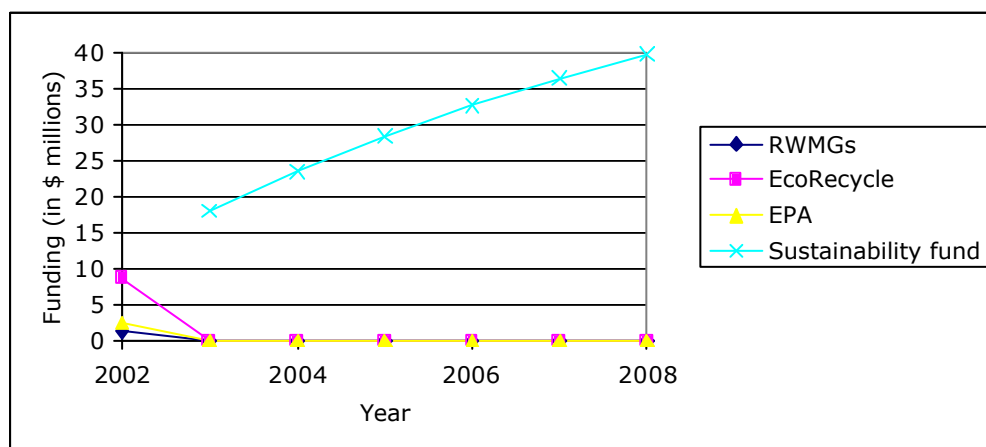
1. All amounts are shown in \$ millions.
2. Projections are based on an average of 1997-2000 waste data and assume waste will decline by 5% per year from 2002-3.
3. Actual revenue will depend on a number of factors, including the amount and type (industrial and municipal) of waste generated, location of landfills, recycling activities of landfill operators and use of weighbridges.
4. These projections assume an annual inflation rate of 2.25% (Department of Treasury and Finance estimate, 2002 Budget).

App 3.1 Projected distribution under Alternative 1 – Do not develop regulations

Table 1A – Distribution following Gazette notice

| Year | Total | RWMGs | EcoRecycle | EPA | Sustainability fund |
|------|-------|-------|------------|------|---------------------|
| 2002 | 12.5 | 1.25 | 8.75 | 2.50 | |
| 2003 | 18.1 | 0 | 0 | 0 | 18.1 |
| 2004 | 23.6 | 0 | 0 | 0 | 23.6 |
| 2005 | 28.5 | 0 | 0 | 0 | 28.5 |
| 2006 | 32.8 | 0 | 0 | 0 | 32.8 |
| 2007 | 36.6 | 0 | 0 | 0 | 36.6 |
| 2008 | 39.9 | 0 | 0 | 0 | 39.9 |

Graph 1A – Distribution following Gazette notice

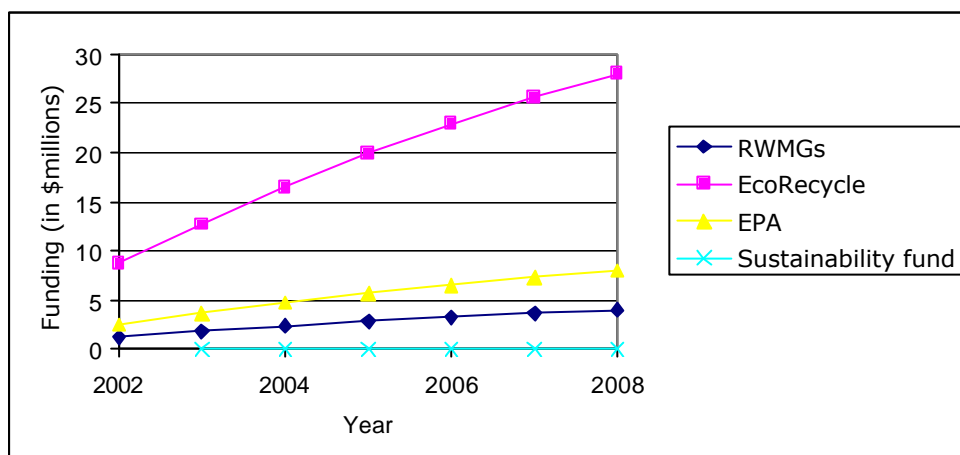


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Table 1B – Distribution prior to Gazette notice

| Year | Total | RWMGs | EcoRecycle | EPA | Sustainability fund |
|------|-------|-------|------------|------|---------------------|
| 2002 | 12.5 | 1.25 | 8.75 | 2.50 | |
| 2003 | 18.1 | 1.81 | 12.70 | 3.63 | 0 |
| 2004 | 23.6 | 2.36 | 16.5 | 4.72 | 0 |
| 2005 | 28.5 | 2.85 | 19.9 | 5.69 | 0 |
| 2006 | 32.8 | 3.28 | 22.9 | 6.55 | 0 |
| 2007 | 36.6 | 3.66 | 25.6 | 7.32 | 0 |
| 2008 | 39.9 | 3.99 | 28.0 | 7.99 | 0 |

Graph 1B – Distribution prior to Gazette notice



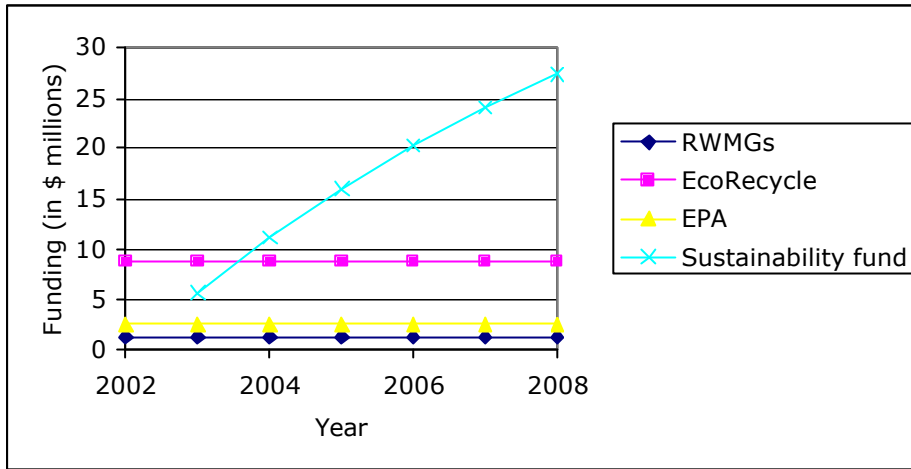
App 3.2 Projected distribution under Alternative 2 – Make regulations to maintain present funding levels

Table 2

| Year | Total | RWMGs | EcoRecycle | EPA | Sustainability fund |
|------|-------|-------|------------|------|---------------------|
| 2002 | 12.5 | 1.25 | 8.75 | 2.50 | |
| 2003 | 18.1 | 1.25 | 8.75 | 2.50 | 5.6 |
| 2004 | 23.6 | 1.25 | 8.75 | 2.50 | 11.1 |
| 2005 | 28.5 | 1.25 | 8.75 | 2.50 | 16.0 |
| 2006 | 32.8 | 1.25 | 8.75 | 2.50 | 20.3 |
| 2007 | 36.6 | 1.25 | 8.75 | 2.50 | 24.1 |
| 2008 | 39.9 | 1.25 | 8.75 | 2.50 | 27.4 |

ENVIRONMENT PROTECTION (DISTRIBUTION OF LANDFILL LEVY) REGULATIONS

Graph 2

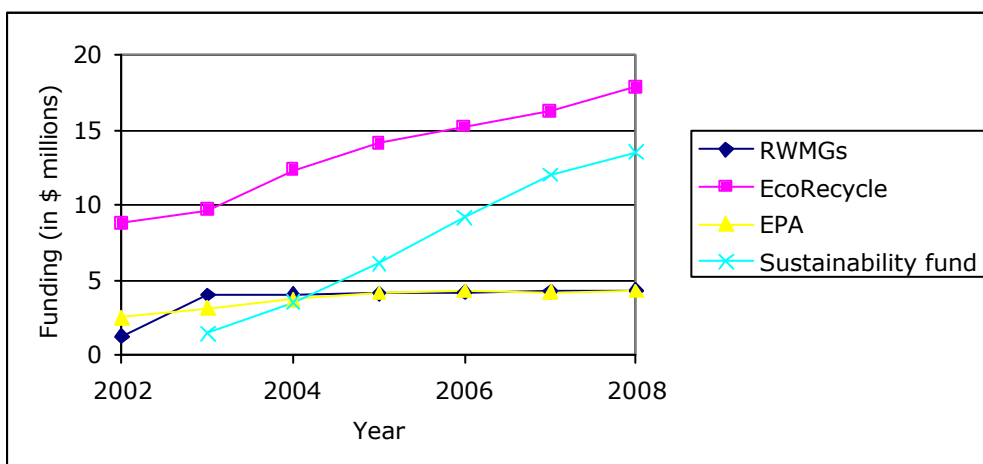


App 3.3 Projected distribution under the preferred option

Table 3

| Year | Total | RWMGs | EcoRecycle | EPA | Sustainability fund |
|------|-------|-------|------------|------|---------------------|
| 2002 | 12.5 | 1.25 | 8.75 | 2.50 | |
| 2003 | 18.1 | 3.98 | 9.63 | 3.12 | 1.42 |
| 2004 | 23.6 | 4.04 | 12.3 | 3.71 | 3.52 |
| 2005 | 28.5 | 4.11 | 14.1 | 4.14 | 6.09 |
| 2006 | 32.8 | 4.17 | 15.2 | 4.29 | 9.15 |
| 2007 | 36.6 | 4.24 | 16.2 | 4.21 | 12.0 |
| 2008 | 39.9 | 4.31 | 17.8 | 4.28 | 13.5 |

Graph 3



ENVIRONMENT PROTECTION (DISTRIBUTION OF LANDFILL LEVY) REGULATIONS

APPENDIX 4 COMPETITION TEST FOR THE PROPOSED REGULATIONS

The Environment Protection (Distribution of Landfill Levy) Regulations (the proposed Regulations) distribute municipal and industrial waste landfill levy funds collected under the *Environment Protection Act 1970*.

The proposed Regulations have undergone a competition policy review and it was concluded that the proposed Regulations do not result in any deemed restrictions on competition as they would not:

- allow only one company or person to supply a good or service,
- require producers to sell to a single company or person,
- limit the number of producers of goods and services to less than four,
- limit the output of an industry or individual producers, or
- limit the number of people engaged in an occupation.

The National Competition Policy Review of the *Environment Protection Act 1970* concluded that “objectives of waste reduction and polluter pays principle justify the imposition of the landfill levy” and furthermore, “competing players in the waste market, particularly those in the recycling industry, may argue that in the absence of a levy, environmental externalities associated with landfill (such as the opportunity cost of using of land for landfill and the loss of potentially reusable materials, visual amenity etc.) would not be borne

by users of landfill.”. In addition, the Review found that the levy was not raised as a competition issue by industry stakeholders.

Changes to landfill levies were introduced through the *Environment Protection (Resource Efficiency) Act 2002*. As a result a differential levy for industrial waste has been introduced from 1 July 2002 and all landfill levies will progressively increase over a five year period commencing on 1 July 2003. The legislative arrangements for distributing landfill levies back to State agencies charged with responsibility to put in place programs to reduce waste were also changed with it envisaged that a distribution formula in the Act would be replaced with regulations. The competition implications of these changes were assessed during the development and passage of the legislation.

The proposed Regulations have been developed with a view to provide certainty about the allocation of landfill levies. As the proposed Regulations merely establish a regulatory framework for the distribution of funds obtained from landfill levies, the proposed Regulations themselves do not impose any barriers to market entry and do not restrict competition.