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Waste Reform Project
Department of Water and Environmental Regulation
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Environment Institute
of Australia and
New Zealand Inc.

Via email: warr_reform@dwer.wa.gov.au

Dear Sir / Madam

Feedback from EIANZ on WA Waste Reform Project: proposed approaches to regulatory reform.

The Environment Institute of Australia and New Zealand (EIANZ) (the Institute) Western Australia (WA) Division (the Division) is pleased to have this opportunity to provide comments on environmental considerations related to the proposed regulatory reform outlined in the Waste Reform Project Consultation Document.

The EIANZ is the leading professional body in Australia and New Zealand for environmental practitioners, and promotes independent and interdisciplinary discourse on environmental issues. On all issues and all projects, the Institute advocates good practice environmental management delivered by competent and ethical environmental practitioners.

We forward this submission on behalf of the WA EIANZ members. The Division currently has approximately 140 members while the Institute has over 1400 members across Australia in a range of technical disciplines including certified environmental practitioners (CEnVP), ecological consultants, environmental advocates and environmental impact specialists working in government, industry and the community.

Again, we thank the Department of Water and Environmental Regulation (DWER) for the opportunity to be engaged in its review of environmental considerations related to the proposed regulatory reform outlined in the Waste Reform Project.

Yours sincerely

A handwritten signature in black ink that reads "BBastow".

Belinda Bastow
President
EIANZ – WA Division

1 INTRODUCTION

1.1 Background

The EIANZ WA Division is pleased to make comments on the environmental considerations related to the Waste Reform Project: proposed approaches for legislative reform.

EIANZ considers that the maintenance and enhancement of environmental values is important to achieve a resilient and sustainable community. In addition, the EIANZ is supportive of the use of a broad suite of policy instruments to achieve the objective of environmental sustainability. However, it is also an important factor to ensure that the design and implementation of policy instruments, including legislative reform, has been well considered and addresses the element the Government is attempting to influence.

EIANZ have engaged practitioners and technical experts to provide valuable feedback on the reform of environmental considerations for the regulatory framework for waste management in Western Australia.

1.2 Role of the EIANZ

The EIANZ, as the leading membership based professional organisation for environmental practitioners in Australia and New Zealand, is an advocate for good practice environmental management. The Institute supports environmental practitioners and promotes independent and interdisciplinary discussion on environmental issues. The Institute also advocates environmental knowledge and awareness, advancing ethical and competent good practice environmental management.

A Certified Environmental Practitioner Scheme (www.cenvp.org) is also in place to assess and certify competent experienced environmental practitioners working in government, industry and the community. This includes specialist competencies such as Impact Assessment, Ecology and Contaminated Lands.

The EIANZ is an advocate for environmental assessment, management and monitoring investigations and reports being certified by suitably qualified and experienced persons for the completeness and scientific rigor of the documents. One of the ways of recognising a suitably qualified practitioner is through their membership of, and certification by, an organisation that holds practitioners accountable to a code of ethics and professional conduct, such as the EIANZ.

The EIANZ is a not-for-profit, charitable organisation incorporated in Victoria, and a registerable Australian body under the Corporation Act 2001 (Cwlth), allowing it to operate in all Australian jurisdictions.

2 General Observations

Observation 1: Supportive of initiatives to encourage recycling, reuse and resource recovery, but currently WA has a confusing policy framework

In principle, the EIANZ is supportive of the need to have consistent approaches to Waste Avoidance and Resource Recovery across Australia, but also acknowledges that due to the size and remoteness of many parts of Western Australia (WA), there needs to be some degree of differentiation in policy approaches where demographics and remoteness are factors.

The remoteness of WA communities and paucity of effective resource recovery available locally, the ability to link into these opportunities on the east coast of Australia can be cost prohibitive and in a lifecycle assessment of resource use of greater impact to the environment.

The objectives of the Waste Reform Project are poorly articulated within the consultation document, there was poor agency engagement during the consultation phase to explain its objectives and provide greater certainty and understanding regarding what the Government is looking to achieve. During discussion with other industry groups and individuals it appeared there was confusion regarding the intent of the reform program.

This was compounded by the fact that during the consultation on this proposed reform program, the Department of Water and Environmental Regulation (DWER) released two other consultation documents on waste:

- Consultation Paper: Introduction of a Container Deposit Scheme
- Consultation Paper: Amendments proposed following the decision on *Eclipse Resources Pty Ltd v The State of Western Australia* [No. 4] (2016) WASC 62

And the Waste Authority also released:

- Western Australian Waste Avoidance and Resource Recovery Strategy, Consultation Paper.

The EIANZ recommends that the DWER along with the Waste Authority consider developing a holistic waste strategy for Western Australia that is underpinned by sound economic assessment. This needs to be supported by clear policy objectives and robust assessment of suitable policy instruments to efficiently and effectively implement the objectives. Given the wide reach of waste across the WA Economy and community there must be better stakeholder engagement for waste reform with all affected parties.

Observation 2: Confusing intent of the proposed changes and their potential benefit against objectives

The Waste Reform Project – Discussion Paper (the Discussion Paper) recommends amending Acts and/or Regulations in five specific ways to strengthen the relationship between the *Environmental Protection Act 1986 (EP Act)* and the *Waste Avoidance and Resource Recovery Act 2008 (WARR Act)*:

- a) Amend the objectives in section 4A of the *EP Act* to incorporate waste avoidance and resource recovery objectives relevant to the *WARR Act* and the Waste Strategy.
- b) Amend Part V Division 3 of the *EP Act* to ensure that the objects of the *WARR Act* and objectives in implementing the Waste Strategy are relevant considerations for the CEO to have regard too when granting licences and setting conditions.
- c) Amend section 62 of the *EP Act* to include an additional purpose relating to the objectives of the *WARR Act* and Waste Strategy for which conditions may be attached to a licence.

- d) Amend section 62A of the *EP Act* to include the kinds of waste-related conditions that can be attached to a licence to achieve implementation of the *WARR Act* and Waste Strategy, particularly in relation to strategic objective 4 and the waste levy.
- e) Amend terms in the *WARR Levy Act* (“disposal premises” and “receive”) to ensure the effective implementation of the levy and its application to all waste disposed to land.

The EIANZ notes the following:

- The *EP Act* is ‘an Act...for the conservation, preservation, protection, enhancement and management of the environment and for matters incidental to or connected with the foregoing’.
- The *EP Act* objectives as stated in section 4A already specifically include intergenerational equity, pricing and incentive mechanisms, the polluter pays principle pricing based on full life cycle costs, use of market mechanisms and waste minimisation.
- The *EP Act* section 62 gives authority for a works approval or licence to be granted ‘subject to such condition as the CEO considers to be necessary or convenient for the purposes of this Act relating to the prevention, control, abatement or mitigation of pollution or environmental harm’ and that ‘...nothing in that section or the regulations prevents other conditions from being attached’.
- The *EP Act* section 62A states that a works approval or licence can include conditions that require (amongst other things):
 - Monitoring
 - Conducting analysis of monitoring data
 - Provide information on the nature and quantity of wastes and on materials leading to the generation of those wastes
 - Dispose of waste in a specified manner
 - Reuse of waste wholly or in part; or make waste available for reuse by another person
 - Provide reports on monitoring data and analysis
 - Provide reports on audits and studies
 - Supplying the CEO with information relating to the characteristics and volume of any waste held or stored

It is the view of the EIANZ that the *EP Act* already provides extensive powers related to waste. It is unclear from the Discussion Paper how these powers have failed to achieve an intended outcome or even if the CEO (Director General) has ever previously sought to use these extensive powers and found them to be lacking. Consequently, the Discussion Paper appears to recommend amendments to the *EP Act* to provide powers already conveyed.

As noted in the Discussion Paper, changes to the *EP Act* and Regulations will affect several hundred licences across WA. This will create a significant impost on DWER’s internal resources as well as to affected licensees with no perceived environmental benefit.

The extensive reach of the *EP Act* also heightens the potential for unintended consequences from changes to the Act. Changing the object and principles of the Act in Section 4A in effect alters the interpretation and application of the entire Act and changes to the foundation of the Act should not be taken lightly.

Consequently, the EIANZ does not support amending section 4A, Part V Division 3, section 62 or section 62A of the *EP Act* based on the issues articulated in the Discussion Paper as the *EP Act* already appears to provide sufficient powers.

The *EP Act* was amended in 1998 to insert Part VIIA – Landfill Levy, and the *Environmental Protection (Landfill) Levy Act 1998* was introduced, with the intent of forming an integrated *EP Act* incorporating a levy scheme (in line with the *EP Act*'s objective relating to valuation, pricing and incentive mechanisms). This integrated approach was subsequently changed and two new Acts (the *WARR Act* and the *WARR Levy Act*) were introduced.

The Discussion Paper has not addressed the history of these changes, the original rationale for integration nor the subsequent rationale for separation. The Discussion Paper fails to articulate any reason behind the blending of these different Acts nor establish if the *WARR Act* and the *WARR Levy Act* has failed to achieve their objectives and therefore warrant any amendments.

EIANZ recommends DWER review the history of the *EP Act* (as it relates to waste), the *Environmental Protection (Landfill) Levy Act 1998*, the *WARR Act* and the *WARR Levy Act* including their inter-relationships and rationale for approach (circa 1998 and 2007), prior to recommending or pursuing Act amendments.

The Discussion Paper also fails to provide clarity on the specific amendments for the terms 'disposal premises' and 'receive' other than to state the intention for the levy to apply to "all waste disposed to land". A lack of detail makes it difficult to assess the full implications of this proposal, however the stated intent to capture all wastes is of significant concern. This also appears at face value to drive a disincentive for a range of reuse opportunities based upon the ambiguous and broad nature of the comment.

In the absence of viable treatment options, reuse and/or recycling markets, appropriate facilities and cost-effective transport across the State, such a move is merely a revenue-raising measure. It cannot meet the objective of providing an economic lever to divert waste from landfill to re-use, recycling and recovery options and hence it is inconsistent with the objectives of the *EP Act* and the *WARR Act*.

EIANZ recommends the State conduct a review of barriers and enablers for waste avoidance, reuse, recycling and recovery to enable informed development of effective policy and legislation to achieve its objectives. This must include the existing legislative barriers to cost-effective reuse, recycling and re-processing of by-products from a range of industrial processes.

The Discussion Paper also did not articulate the intent of DWER to explore expanding the levy beyond the metropolitan region of Perth. Given the size of WA, the remoteness of many communities it would appear to hamper the viability of any program to these areas.

EIANZ does not support the extension of the levy outside the metropolitan area without a comprehensive review of the benefits and extensive consultation with affected communities to determine whether it would contribute to achieving the *WARR Act* objectives. EIANZ does not consider that all waste disposed to land should be subject to the levy. Only wastes where there is a reasonable prospect of improving waste reduction within the short to medium timeframe through this mechanism should be subject to the levy thereby performing as the economic incentive to promote recycling as it is meant to do.

Observation 3: Changes suggested do not reflect improving environmental outcomes

The Discussion Paper proposed several changes to Schedule 1:

- Amalgamation of the five landfill categories (63, 64, 65, 66, 89) in to one category and expanding the scope of landfilling to capture depositing, spreading and ploughing waste to land;
- Removing references to “accept for burial” ad the Landfill Waste Classification and Waste Definitions 1996; and
- Revising categories 61A and 62.

In principle, EIANZ supports simplification where this still achieves desired outcomes. However, reducing the number of landfill categories affects other aspects of the regulatory regime which have not been fully assessed in the Discussion Paper.

The move towards a single landfill category regardless of waste type appears to be counter to DWER’s focus on risk-based regulation, as the environmental risks of a landfill in part depend on the type of waste for which the landfill is licensed. A single category would not allow for differentiation of licensing fees and would remove DWER’s ability to risk assess and prioritise based on category.

DWER would also need to adopt new (additional) measures to control the type of waste licensed for each landfill in the absence of separate categories as not all wastes will be appropriate for disposal at all landfills. This approach also appears inconsistent with the approach for other categories within Schedule 1 where activities that are similar (at a high-level) but different in terms of level of environmental risk and controls still have different categories.

The Discussion Paper is also unclear what specific problem the amalgamation is attempting to solve nor what other options have been assessed. For example, if a key issue is the Levy only applies to categories 63, 64 and 65 (but should apply to other categories although the Discussion Paper fails to explain as why it would be necessary), the WARR Levy Act could be amended to include these other categories instead.

EIANZ recommends DWER clearly define the issue they are seeking to solve with category amalgamations, assess impacts (positive and negative) from category amalgamation, review alternative solutions, consult with relevant stakeholders and provide a comprehensive demonstration of the environmental objectives being achieved by this proposed change.