



Consultation summary report

Discussion paper – Waste levy and waste management:
proposed approaches for legislative reform

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Department of Water and Environmental Regulation
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1 Executive summary

The waste strategy, developed under the *Waste Avoidance and Resource Recovery Act 2007* (WARR Act), identifies that the waste levy is the key economic policy lever available to make Western Australia a sustainable low-waste society in which human health and the environment are valued and protected.

The waste levy regime is implemented under the WARR Act, *Waste Avoidance and Resource Recovery Levy Act 2007* (WARR Levy Act) and the *Environmental Protection Act 1986* (EP Act) and their regulations. This regime creates complex legislative relationships. In addition, there are legal issues with key terms and definitions under the WARR Levy Act and EP Act.

The *Discussion paper – Waste levy and waste management: Proposed approaches for legislative reform* identified approaches for improving the waste levy framework and the environmental protection regime to support improvements in Western Australia's waste performance.

The discussion paper was released on 25 August 2017 on the Department of Water and Environmental Regulation's (DWER) website for 12 weeks closing on 16 November 2017.

Thirty seven submissions were received during the consultation period. The list of respondents is at Appendix A.

This report summarises feedback including on the key issues raised in the discussion paper, including the proposal to:

- make waste policy objectives relevant considerations in the granting of licences and the attachment of conditions;
- ensure the waste levy applies to all waste disposed of to land;
- streamline and reform landfill and other waste categories to encompass a broader range of waste disposal methods; and
- improve the measurement and recording of waste, and the reporting of movement of waste.

In general, stakeholders considered that further consultation is required on the detail and rationale for proposed approaches. Stakeholders sought more clarity between these waste reforms and other waste initiatives being progressed, and suggested that more public information needs to be provided on the scope and timing of the broader waste reform. It is intended that detailed legislative proposals addressing both the issues outlined in the discussion paper and to implement an end-of-waste approval would be developed in consultation with stakeholders.

Some submissions raised issues that were outside the scope of this paper, including on the Government's broader waste reform agenda, details on the use of the waste levy income, the review of the waste levy rates and its geographic scope and the scope of the waste strategy. These matters are not considered further in this report.

The Department thanks all respondents to this consultation process.

2 Summary of submissions

2.1 Amend the EP Act to include waste avoidance and resource recovery objectives

Submissions

Submissions were generally supportive of the proposal to 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. However, some sought further information on how it would work in practice.

One respondent sought clarification on whether the Department's role would include planning, siting and compliance considerations to balance sufficient landfill space against maximum diversion from landfill.

Respondents that did not support the proposed amendments considered that the EP Act already provides sufficient powers relating to waste and there was potential for unintended (unspecified) consequences given the extensive reach of the EP Act. These respondents suggested that the Department review the history of the EP Act as it relates to waste.

Response

Waste avoidance and resource recovery objectives would apply to all activities regulated under the EP Act, including assessment under Part IV. Planning matters are primarily dealt with under the *Planning and Development Act 2005* rather than the EP Act other than the EPA's role in scheme assessments.

The EP Act currently does not reference the waste hierarchy, which is key in reducing waste generation and increasing resource recovery. Other jurisdictions have a more direct relationship between their waste and environmental protection legislation.

The discussion paper outlines the problems with the current framework, including that while the WARR Act references the objects of the EP Act, the converse is not true. Legal advice has confirmed that the current relationship is insufficient to achieve the waste strategy's objectives.

The paper was prepared with legal input, and legal advice will be sought when considering any legislative amendments.

2.2 CEO regard for the objects of the WARR Act and waste strategy

Submissions

Respondents generally supported amending 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 in granting or refusing licences and in setting conditions. Some respondents considered this would need to be done carefully to ensure that there are no unintended consequences for the environmental protection provisions of the EP Act.

Response

Legal advice will be sought when considering any legislative amendments to ensure that objectives of the reforms are achieved without any adverse impact on EP Act regulatory and environmental protection objectives.

2.3 Attachment of conditions to licences for WARR Act and waste strategy related purposes

Submissions

Respondents were generally supportive of amending 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.

Some sought clarity on how this proposal would be implemented in a consistent and transparent manner.

Respondents also highlighted that some of the example conditions provided in section 6.1.3 of the discussion paper could be addressed through other means such as the existing licensing system or guidance documents.

Response

Any condition on a licence must be necessary or convenient for the purpose for which it was imposed.

The principles of administrative law and natural justice are relevant to all of the Department's licence conditions and decisions.

The conditions provided in the discussion paper are examples only and would not be suitable in all situations.

The Department will provide training to all new licensing officers to ensure that conditions to be applied are recommended consistently and appropriately.

2.4 Amendments to terms in the WARR and WARR levy legislation

Submissions

In responding to the proposal to 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, submissions indicated that potential impacts of the proposed changes include offshoring of certain processes, industry closure, reduced treatment and beneficial re-use of wastes, reduced expenditure on research and development and increased illegal dumping.

Respondents requested that consideration be given to exempting inert materials which pose low risks to the environment. It was also suggested that exemptions be considered for the internal movement of materials between a company's sites, the onsite generation and disposal of an organisation's own waste, and where it is safer to contain soil from remediation of a contaminated site onsite.

It was proposed that redrafting of the terms 'disposal premises' and 'received' would require corresponding amendments to 'waste facility' and 'waste service', and potentially 'landfill' in the WARR Act.

Some respondents indicated that the waste levy should target the diversion of wastes that can be technically and economically re-used, recycled or recovered, where there are existing markets that enable this diversion, and where the levy will enable diversion.

It was suggested that should the term 'received' be amended to read 'accepted, deposited, received or delivered', the waste levy would be payable both when waste is accepted and when it is deposited.

Response

The waste levy has two main functions: as an economic instrument for influencing waste management practices, including reducing waste disposed of to landfill by increasing the price of landfill disposal; and generating income to fund waste-related programs and purposes.

To promote the beneficial reuse of waste-derived materials, the Department is considering legislative amendments which will be the subject of separate consultation.

The amendments are intended to address shortcomings in the current levy regime. Legislative drafting will ensure that the levy is only imposed once in the supply chain.

The waste levy currently applies to wastes that are disposed of to 63, 64 and 65 landfill premises, regardless of whether the waste is industrial, agricultural or mining.

Any changes to the description of the categories in the *Landfill and Waste Classification Definitions* will be subject to consultation.

It is not proposed that the waste levy would apply to on-site generation and storage of industrial by-products.

2.5 Amendments to the Waste Definitions

Submissions

In responding to the proposal to combine landfill categories and remove the reference to 'accepted for burial' from the *Landfill waste classification and waste definitions 1996*, submissions sought further detail on the system and approach for licensing of landfill premises and the impact of the proposed changes on existing landfill licences and conditions.

Respondents recommended that guidance documents be made available prior to any change, noting that guidance on waste types is essential for industry and should be maintained.

Respondents requested close consultation with industry and a high level of transparency to ensure the landfill category includes all waste streams, that segregation of waste streams and separation of contaminants is not discouraged, and that regulation remains risk based.

For example, it was noted that smaller facilities, especially category 89, should not be subject to a higher level of regulation and licence fees as a result of the grouping.

Response

The detail of all changes will be the subject of further consultation.

In addition, amendments to category descriptions in the *Environmental Protection Regulations 1987* (EP Regulations), and the impact of this on licensing practice and guidance, will be the subject of further consultation.

2.6 Inclusion of other activities in waste disposal to land

Submissions

Respondents expressed concern that the proposal to broaden the range of waste-related categories subject to the levy could be a disincentive for re-use including for fertiliser, treated waste water and biosolids applied to land, mineral processing and the backfilling or rehabilitation of quarries.

Respondents sought clarification or a process to promote reuse of waste for beneficial uses.

Response

The Department is progressing legislative and regulatory amendments to promote the reuse of waste-derived materials. It has already introduced amendments to categories 63, 64 and 65 to ensure that the use of clean fill and uncontaminated fill that meets environmental and health thresholds can occur without the requirement for a landfill premises licence or payment of the levy.

Further detailed legislative proposals would be developed in consultation with stakeholders.

2.7 Revisions to the categories 61A and 62 licensing descriptions

Submissions

Few respondents commented on the proposal to revise the licensing descriptions for categories 61A and 62 to clarify their purpose and the specific activity to which they apply.

Support was expressed for strengthening policies and legislative provisions in relation to premises licensed for the storage or stockpiling of wastes to prevent confusion about how waste can be managed at each specific licensed facility.

One respondent proposed that sub-categories be introduced for the storage and sorting of recoverable materials that do not attract the levy. Another recommended that the levy should not be applied to premises where the primary purpose is resource recovery.

Respondents requested that the proposed amendments be developed in consultation with industry.

Response

Any changes would have the objective of encouraging recycling and reuse, and ensuring that waste storage does not prevent this. The detail of all proposed changes will be the subject of further consultation.

2.8 Application of the levy to categories 61A and 62

Submissions

In responding to the proposal to amend the *Waste Avoidance and Resource Recovery Levy Regulations 2008* (WARR Levy Regulations) to apply the levy to categories 61A and 62 if waste is not lawfully removed from the premises within 12 months, some respondents sought clarification on whether imposing the waste levy was necessary to change stockpiling behaviour given stockpiling is addressed in licensing conditions.

Respondents generally agreed that the waste levy should be applied consistently. Some submissions raised concerns about the implications for certain industries, particularly mineral processors, those with onsite waste storage and landfills, and in the remediation of contaminated sites where disposal onsite is the only environmentally appropriate option.

Most respondents advocated against upfront payment of the levy citing potential cash flow implications. Respondents highlighted that too short a timeframe may result in material that could have been recycled being disposed of to landfill.

Respondents noted that appropriate timeframes vary by industry, from two to ten years and, along with jurisdictional market differences, suggested a process be put in place to allow for exemptions or deferred timeframes.

Respondents suggested that smaller facilities may limit their capacity in order to avoid licensing their premises and incurring the administrative costs of surveying and reporting.

Some respondents were concerned that the levy might be applied retrospectively; or more than once if a stockpile is ultimately disposed to landfill. Respondents recommended that the levy only be applied to stockpiles accumulated subsequent to the amendments.

One respondent questioned whether these amendments would impact the skip bin industry and local government.

Response

The amendments are intended to discourage the long-term storage of waste, encourage recycling and reduce associated risks of harmful environmental impacts (for example, through the leaching of contaminants, fire, litter, dust, odour and vermin). It is proposed that there would be discretion for the CEO to vary the period that stockpiles may be stored before being subject to the levy.

The changes relate to categories 61A and 62 and would apply to premises that meet the category descriptions and production or design capacities provided in Schedule 1 of the EP Regulations, for example it would not apply to on-site remediation of contaminated sites.

The detail of all changes will be the subject of further consultation, advice and legislative amendments will be subject to regulatory gatekeeping requirements.

It is not intended to impose a levy liability other than once in the supply chain and drafting will ensure that this intent is achieved.

2.9 Waste measurement

Weighbridges

Submissions

Submissions generally supported the proposal to amend the WARR Levy Regulations and *Waste Avoidance and Resource Recovery Regulations 2008* to require licensed waste premises to follow consistent waste measurement procedures, (including the mandatory use of weighbridges) and introduce additional record and reporting requirements.

Some respondents advocated against mandatory installation of weighbridges given the high capital cost and ongoing maintenance and operational costs.

Respondents suggested a threshold trigger as the requirement for a weighbridge and recommended the weightometer approach or current approved estimation methodology where weighbridges are not appropriate.

All respondents supported the provision of funding from the WARR Account to install weighbridges. One stakeholder questioned whether grant funds would also be made available to private owners or for facilities that have already installed weighbridges.

Respondents expressed concern that only compliant, licensed premises will have to incur the cost of installing weighbridges.

One respondent requested clarification regarding the types of facilities that would be required to install a weighbridge.

Response

The detail of all proposed changes will be the subject of further consultation and economic analysis.

Thresholds for the use of weighbridges and alternate methodology where a weighbridge is not available or operational will be part of further consultation, noting that these would only be applicable for prescribed premises when the category threshold is exceeded.

Tracking and reporting

Submissions

Respondents generally supported waste tracking to ensure material is going to a legitimate end use and to inform investment decision making and performance monitoring. Respondents recommended a universal, user-friendly and efficient record keeping system that is publicly available.

One respondent questioned how a storage and sorting facility would track the movements of waste after different deposits received from different customers are processed together and moved around the facility to different internal stockpiles.

Another respondent supported mass balance accounting and waste tracking similar to Controlled Waste to ensure the veracity of reporting for the entire waste supply chain.

The rationale for requiring monthly reporting was also raised. It was also recommended that waste data collection and reporting be focused on priority wastes based on their risk, volume and potential for diversion.

Respondents requested further information on how the Department will regulate unlicensed sites and recommended introducing GPS tracking systems that can be audited and linked to all bin trucks and tipper trucks (expand the contaminated waste system in an App format rather than paper carbon copies) so as to better identify companies that are avoiding the levy.

Response

Under the proposed amendments, waste will be tracked from its source site to its end destination. Information on stockpiles containing waste from different sources should provide relevant information from all sources.

The Department is continuing to develop a waste data strategy to guide enhancements to existing waste data collection and reporting mechanisms, as well as waste data storage and reporting frameworks.

The Department will continue to undertake its compliance and enforcement functions in accordance with its [Compliance and Enforcement Policy](#).

Appendix A: Respondents

Table 1: Submissions

	Respondents
1	Activa Developments
2	Alcoa
3	Andrew Gulliver
4	Bernie Masters
5	BGC (Australia) Pty Ltd
6	BP Refinery (Kwinana)
7	Cement Concrete and Aggregates Australia
8	Chamber of Minerals and Energy of Western Australia
9	Civil Contractors Federation Western Australia
10	C-Wise
11	Dial-A-Bin
12	Environment Institute of Australia and New Zealand Inc.
13	Forrestdale Recycling
14	Fremantle Ports
15	Greg Warburton
16	Holcim
17	Housing Industry Association Limited
18	Instant Waste Management
19	Kwinana Industries Council
20	Salini Impreglio – NRW JV
21	Shire of Denmark
22	Shire of Toodyay
23	Sims Metal Management
24	Southern Metropolitan Regional Council
25	Solomon Brothers Lawyers for Eco Resources Pty Ltd and Waroona Resources Pty Ltd
26	Trench Busters
27	Tronox Management Pty Ltd
28	Urban Development Industry of Australia (WA)
29	WA Recycling
30	Western Australian Local Government Association
31	Waste and Recycling Industry Association of WA
32	Waste Authority
33	Waste Management Association of Australia
34	Waste Stream Management
35	Water Corporation
36	Wesfarmers Chemicals, Energy and Fertilisers Limited
37	Western Metropolitan Regional Council

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