



Status of this Submission

This Submission has been prepared through the Municipal Waste Advisory Council (MWAC) for the Western Australian Local Government Association (WALGA). MWAC is a standing committee of WALGA, with delegated authority to represent the Association in all matters relating to solid waste management. MWAC's membership includes the major Regional Councils (waste management) as well as a number of Local Government representatives. This makes MWAC a unique forum through which all the major Local Government waste management organisations cooperate. This Submission therefore represents the consolidated view of Western Australian Local Governments. However, individual Local Governments and Regional Councils may have views that differ from the positions taken here.

Due to meeting schedules, this Submission has not yet been endorsed by MWAC, however it will be considered at the earliest opportunity (Wednesday, 13 December). The Department will be informed of any changes to this Submission following consideration by MWAC.

1. Introduction

The Association welcomes the opportunity to comment on the Waste Reform Project. This Project seeks to address key waste management issues and strengthening linkages between the Waste Avoidance and Resource Recovery Act (WARR Act), Waste Avoidance and Resource Recovery Levy Act (WARRL Act) and Environmental Protection Act (EP Act). This Submission has been developed based on, information provided at the Department's Consultation session (22 September), and feedback from Local Governments and the MWAC Officers Advisory Group. At the Consultation session, the Paper was described as a 'concept paper.' The inclusion of this information in the Paper would have established a context for reform, and a better platform for the Department to seek feedback on the issues raised. The Association considers that the paper is a combination of both concepts and very specific recommendations. For example, linking the definitions of the WARR Act and EP Act to ensure that the State Waste Strategy is supported is a high level concept. The suggestion that a 12 month stockpile limit is applied to premises is a specific recommendation.

This Submission addresses both the issues raised and recommendations made in the Waste Reform Paper. Given the complexity of many of the issues raised, and their interaction with other mechanisms, it is vital that further and more detailed consultation occurs with key stakeholders, such as Local Government and affected industries.

Recommendation 1: That the Department establishes a Working Group of key stakeholders to work through the issues raised in the Paper to ensure that the consequences of the proposed changes are fully understood.

2. Use of the Levy as an Economic Instrument

The Paper indicates that the Levy is an economic instrument to "support the financial viability of actions that divert waste from landfill and recover it as a resource". It should be recognized that the Levy can contribute to this outcome, but only if a number of other conditions are in place. For the Levy to function as intended, there needs to be:

- A viable market for the material diverted from landfill, otherwise stockpiling or potentially illegal disposal of the material occurs.
- Fit for purpose standards for products made from diverted material to facilitate market

acceptance of the products. Without such standards, there is not a clear delineation of when a waste becomes a product.

- Assistance for operators to transition to a new testing regime for waste material to become a product. If significant financial outlay is involved in diverting material from landfill, financial assistance could support a business case investment.
- Effective regulation of the waste industry, to ensure the Levy is paid on all eligible material.

The Department should not consider the Levy in isolation as a tool to divert material from landfill – all of these issues must be addressed. In industries where there is a history of market failure, there is no certainty that new markets will automatically develop in response to a price signal. Rather, higher costs may be passed to those generating the material.

Recommendation 2: That any changes to the scope or application of the Levy are made with the view of ensuring:

- **Viable markets for diverted materials are supported**
- **Fit for purpose standards for products from diverted materials are in place**
- **There is assistance to transition to new testing regimes**
- **There is effective regulation, to ensure that the Levy is being paid on all eligible material.**

3. Legislative Context

The Association has previously expressed concern that decisions to approve facilities are made on a site specific basis, potentially undermining the State Waste Strategy objectives and targets. The Department of Environment Regulation Background Paper on the 2014 review of the *Waste Avoidance and Resource Recovery Act (2007)* identified that the existing landfills had capacity for the waste being generated until around 2025, or until 2030 if the targets in the Waste Strategy were met. The Paper also identified that there was “increasing pressure for metropolitan waste to be disposed to landfill outside the metropolitan area”. The Paper stated “there is a strong case to reform the landfill policy and regulatory framework to include planning, siting and compliance considerations so that landfills can be managed consistent with government policy. Policy considerations should balance the need to ensure availability of sufficient landfill space to manage residual waste and unplanned events...with the need to limit supply to encourage maximum diversion from landfill”.¹

The Association agrees with the Department’s assessment of this gap in policy, which has not been addressed in the years since the Background Paper was released. Non-metropolitan Local Governments continue to raise this important issue with the Association. The recent announcement regarding the proposed landfill in the Shire of York is one such example. Instead of limiting the number of landfills to support the diversion targets in the Strategy, the State’s regulatory framework allows landfills to be assessed on a case by case basis, only considering whether the environmental impacts at each site are acceptable. This lack of a strategic approach is likely to lead to more landfills in the areas surrounding Perth, greater competition between sites, lower landfill prices and ultimately, a situation where the landfill diversion targets in the State Waste Strategy are undermined.

The Association acknowledges there is a need for appropriately planned landfills in the future, but would highlight that there is sufficient landfill space to accommodate the general waste disposal needs of the Perth metropolitan area for the foreseeable future. Policy relating to landfills must change to ensure the need for a site is demonstrated before it is approved. There is support for an improvement in the linkages between Legislation. However, more detailed consideration will be required as to how the linkage will work in practice and to ensure that the CEO has the power to refuse a license application if a facility would undermine the objectives and targets of the State Waste

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Department of Environment Regulation (2015). *Review of Waste Avoidance and Resource Recovery Act 2007 Discussion paper*. Available online <https://www.der.wa.gov.au/component/k2/item/6474-review-of-the-waste-avoidance-and-resource-recovery-act-2007>

Strategy. The Association seeks confirmation that this outcome is also what the Department intends through this linkage of the two Acts.

Recommendation 3: That the Environmental Protection Act be amended to ensure the CEO can refuse a license application if the facility will undermine the State Waste Strategy outcomes and targets.

4. Landfill Licensing

The Discussion Paper contains a proposal to consolidate the various Landfill license categories. In WA, there are a number of landfills receiving inert only waste. This has likely resulted from a historic situation where differential Levies were applied to putrescible and inert waste and the supporting licensing regime in the Environmental Protection Act. There is no longer a difference in the Levy amount paid on these material types. This, coupled with a strong push towards diversion of inert material from landfill, has lent weight to the argument that separate types of landfill categories are no longer required. Landfill development and location has, in many instances, been a controversial issue and providing clear information on the scale of landfill, waste types and environmental controls that will be put in place can only assist communication with the community on this issue. Therefore, further information is required, as to what replacement system / approach will be used to regulate different types of landfill.

The Association supports a risk based approach to landfill regulation, however for this to be applied in a transparent and consistent manner. Environmental Standards for different scales of landfill need to be in place. Without this documentation there is likely to be considerable concern from Local Government that a one size fits all approach to regulation will be used.

WALGA has been working with the Department for over two years on the development of an Environmental Standard for small regional landfills. The regulation of, and lack of guidance for, small scale regional landfills has consistently been raised with WALGA and the Department. Working with the Department the need to address the issue of Licensed versus Registered landfill was raised, however this issue was never fully explored. The Discussion Paper contains a statement in Section 6.4 on licensing Category 89 facilities but does not work through the associated implications. For example, Local Governments with limited resources could be burdened with a higher level of regulation and license fees. Licencing these facilities would also considerably increase the Department's regulatory workload, with limited environmental benefit. There is also suggestion in the Paper of application of the Levy to all landfill facilities, this would not be appropriate for a large number of small Local Government landfills.

Recommendation 4: That prior to any change or reduction in the number of landfill license categories:

- **Guidance documents or Environmental Standards are developed for different scales of landfill**
- **The system and approach to licensing versus regulation of small landfill sites be further discussed with WALGA and Local Government.**

5. Waste Disposed of to Landfill

The Association supports the consistent application of the Levy to all types of landfill located in, or receiving waste from, the metropolitan area. In this situation, the Levy would then be payable on all waste received at the premises, rather than the current system where there is a different approach for inert landfills, with the Levy only payable when material is disposed of to landfill. Given the different environmental impacts of inert versus putrescible waste, and the differential Levy, it is understandable that different terminology existed in the past. However with the much higher Levy being applied, the change to consistent terminology is supported. This will help to ensure that stockpiling at inert landfill sites to avoid paying the Levy is minimized, as it appears that this activity is likely to undermine the recycled construction and demolition waste industry.

Recommendation 5: That the Levy be paid on all waste generated or landfill in the metropolitan area when it is received at the landfill.

6. Waste Facilities and Landfill

Landfill Waste Classifications and Waste Definitions 1996

There is support for the review of the waste classifications to align with a risk based approach to licensing. Facility operators can minimise their risk, and the consequent environmental controls required, by restricting the types of materials they accept. However, this needs to be clearly regulated. The current guidance on waste types is essential for the industry and should be retained.

Schedule 1 Categories

Category 61, 61A and 62 allow for storage of waste on premises but may not have limits on stockpiling as part of their license. The Discussion Paper makes linkages between this practice and environmental impacts. It is worth noting that impacts will be site specific and could be addressed in a risk based way, by including stockpile limits in the license conditions for the facility. This is an existing mechanism to address the issue.

Recommendation 6: That stockpile limits for facilities be put in place through the license process based on a risk assessment.

7. Discussion of Direction for reform

Licence Conditions

The suggestion that the 'provision of information' is included in a facility licence would enable robust data to be collected on the material accepted and processed through the site, reducing the number of times that operators are reporting to the Department. The suggestion in the Discussion Paper that reforms are pursued that limit what classes or quantities of waste sites can take is unnecessary, as conditions used in the existing licencing system already enables this approach. Requiring incentives for separation of waste in licence conditions may not be necessary if clear guidance documents are made available to the sector – for example Environmental Standards or Better Practice Guidelines. The Association understands that the Waste Authority Services Unit are developing guidance on better practice approaches for drop off sites. Unless waste is particularly hazardous, requiring waste to be transported along particular routes or to specified facilities is likely to be viewed by the sector as unnecessary involvement in commercial operations.

The Association is interested in the suggestion that facilities:

“implement re-use, recovery, recycling or take-back and utilization scheme in respect of any product or item manufactured or sold by the holder that creates waste”

This would be essentially a physical product stewardship requirement for each facility on a site by site basis. This approach would require further investigation and comparison to a broader product stewardship approach – for example through the WARR Act.

Waste Measurement

To ensure a consistent approach, the use of weighbridges by all facilities accepting material liable for the Levy is supported. The Association has identified previously that there could be a mechanism for the Levy to fund the purchase of weighbridges to support the application of the Levy. There are a number of costs associated with weighbridges including the capital cost of the weighbridge, installation costs, electricity, ongoing maintenance, data management systems and the resources associated with managing all aspects of the weighbridge operation. Given these costs, for Category 61, 61A and 62 a threshold based approach should be considered regarding the requirement for a weighbridge. Below a certain tonnage, the purchase of a weighbridge is potentially a very significant cost that provides limited benefit. Particularly as the threshold for one of the current Categories is 500 tonnes per annum. Through the existing licence process these sites nominate approximate throughput. In WALGA's work with the Department on regional landfills, a

threshold of 5,000 per annum was nominated to identify that these were small sites, with potentially lower levels of environmental impact. In the Department's previous consultation on data collection (July 2016), a similar threshold based approach was proposed as well as other ways to collect information (not only via a weighbridge).

Recommendation 7: If weighbridges are required for waste facilities:

- **A threshold must be established to ensure the costs are commensurate with the risk of the facility**
- **Funding for the equipment should be available.**

Waste Levy Framework – Record Keeping

There is support for the concept of waste tracking to ensure that material is going to a legitimate end use. At the facility level this would be reporting the destination of the material leaving the site which would allow waste streams to be mapped and assist in minimising illegal operations – particular for construction and demolition materials. To ensure this type of reporting does not become onerous or resource intensive for the operators, and for the Department to monitor, automated online systems should be explored.

Schedule 1 Category

Further clarification is required on the proposal to expand category definitions to include the application of waste to land, particularly when considering organic material. Considerable time and resources is being spent on source separation and use of recycled organics. There needs to be a process to clarify at what stage of processing this material is viewed by the Department as a product that does not require a licence to use/dispose of to land. Without this clarification a significant impediment exists to the use, and consequent diversion, of these products from landfill.

Recommendation 8: That clarification be provided on when materials cease to be considered a waste, requiring a landfill licence for disposal, and are considered a fit for purpose product.

There is support for the rationalization and modernization of some of the categories used in Schedule 1, for example including a Transfer Station Category rather than 'waste depot'. The Paper identifies that the definition of Category 62 could be amended to become the category for recycling and reprocessing of solid waste. Further clarification is requested on the impact this would have on other facility categories where recycling and reprocessing of solid waste occurs – for example Construction & Demolition Recyclers and Organic Waste processing facilities. If it is intended that these facilities all fall under the same category, guidance will be needed by the industry to ensure that consistent approaches to risk and licences are taken by the sector and the Department in its licencing and regulatory roles.

Application of the Levy to waste storage premises

The Paper raises the issue of liability for the Government, if material stockpiled at licenced waste facilities are 'abandoned'. This is a legitimate concern and seems to be the driving force behind some of the recommendations in the Discussion Paper. Whilst applying the Levy to all waste received at any premise receiving waste might address this issue, it will generate a significant amount of compliance and enforcement work for the Department and have a considerable cash flow implications for every Local Government or private sector entity that accepts what is considered to be a waste. It is also unnecessary, as through existing licences, there is an ability to put in place stockpile limits. This is a preferred approach to addressing this issue, as well as supporting market development and effective regulation.

Recommendation 9: The Levy should not be applied to premises where the primary purpose is resource recovery, for example Transfer Stations, Resource Recovery Parks and Material Recovery Facilities.

Regulatory Gatekeeping requirements

The inclusion of information on the Regulatory Impact Assessment process demonstrates that the Department is aware these reforms will have some impact on the industry. However, the Association is concerned that the term 'conceptual' used by the Department to communicate the intent of this Discussion Paper, does not align with the type of recommendations made.

8. Comments on the Paper Recommendations

Longer-term recommendations

Recommendation	Comment
Strengthen the relationship between the EP Act and the WARR Act to improve the effectiveness of the Waste Strategy and waste levy by amending:	
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;	Support Recommendation.
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 to when granting licences and setting conditions;	Support Recommendation. However need to ensure that the CEO has sufficient power to reject applications if they would undermine the achievement of the State Waste Strategy.
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;	Support Recommendation. Primarily to ensure that data can be collected from these facilities and waste can be tracked.
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; and	See comments in Section 7, other suggestions regarding licence conditions require further discussion.
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.	Support consistent terminology to ensure equitable application of the Levy to putrescible and inert landfill sites. Need to clarify when materials cease to be a waste and become a product to ensure that the market for and use of organic material is not undermined.

Shorter-term Recommendations

Recommendation	Comment
Amend Schedule 1 of the EP Regulations to reform landfill and other waste categories by:	
combining five landfill categories to one, and removing the reference to “accept for burial” and the <i>Landfill waste classification and waste definitions 1996</i> ;	Do not support the consolidation of landfill categories, until additional guidance is developed for all types of landfill and the implications of any changes to the licensing process for currently registered sites is addressed. Support removal of reference to “accepted for burial” to promote consistency in how the Levy is applied at Putrescible and Inert landfill sites.
specifying within the new landfill category that waste disposal to land includes other activities (depositing, spreading, ploughing waste to land); and	Do not support until clarification / a process is put in place to identify how waste material can be considered a fit for purpose product and the associated regulatory regime.

<p>revising licensing descriptions for categories 61A (solid waste facility) and 62 (solid waste depot) to clarify their purpose, and the specific activity to which they apply.</p>	<p>Support industry and the Department working together to update these descriptions.</p>
<p>Amend the WARR Levy Regulations to apply the levy to categories 61A and 62 if waste is not lawfully removed from the premises within 12 months.</p>	<p>Do not support.</p>
<p>Amend the WARR Levy Regulations and WARR Regulations to require licensed waste premises to follow consistent waste measurement procedures, (including the mandatory use of weighbridges) and introduce additional record and reporting requirements.</p>	<p>Support the consistent use of weighbridges for landfills in the metropolitan area or receiving metropolitan waste.</p>
<p>Remove and replace references to “receive” and “disposed of to landfill” from the WARR Regulations and WARR Levy Regulations.</p>	<p>Support this approach to promote consistency in how the Levy is applied at Putrescible and Inert landfill sites.</p>