



Amendments to the Waste Avoidance and Resource Recovery Regulations 2008 to require record-keeping and annual reporting of waste and recycling data

Analysis of stakeholder submissions and recommendations for proposed amendments

Document Control

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1. Introduction

1.1 Context

The *Waste Avoidance and Resource Recovery Act 2007* (WARR Act) provides the power for regulations to be made for a number of purposes (for example, prescribing offences, regulating waste facilities, assessing the implementation and operation of product stewardship plans) including the keeping, inspection and production of reports, records, returns, registers and other information.

The *Western Australian Waste Strategy: Creating the Right Environment* (Waste Strategy), released in March 2012, sets out strategic directions and priorities for the waste management in Western Australia and establishes targets for diversion of waste from landfill.

In order to assess the State's performance against the landfill diversion targets outlined in the Waste Strategy and to report against budget key performance indicators, waste and recycling data are collected annually from local government and industry in Western Australia. Through its administration of the waste levy, DER collects data on metropolitan waste disposed to landfill. Data are also provided voluntarily through:

- the annual Local Government Waste and Recycling Census; and
- the Recycling Activity Review (RAR), an annual survey of businesses that recycle materials.

The provision of waste and recycling data on a voluntary basis has resulted in an incomplete dataset due to variable response rates. It is estimated that less than 70 per cent of organics reprocessors respond annually to the data request for the RAR. In addition, while over 90 per cent of Western Australian local governments have participated in the census since 2011–2012, participation has previously been as low as 25 per cent (during the 2008–2009 reporting year). Voluntary reporting means that reporting entities have a reduced incentive to provide accurate data, and significant government resources are required to ensure adequate reporting rates and data quality.

Incomplete and inaccurate data have reduced the effectiveness of assessment of government progress against the Waste Strategy targets and State Budget key performance indicators, including:

- the percentage of municipal solid waste diverted from landfill through recycling compared to the Waste Strategy target in the Perth metropolitan region and major regional centres; and
- the percentage of commercial and industrial waste and construction and demolition waste diverted from landfill through recycling compared to the statewide Waste Strategy target.

Waste stream data for landfills required to be licensed under the *Environmental Protection Act 1986* (EP Act) can be collected via the WARR Levy Act through waste levy record-keeping and reporting requirements. Consistent with the scope of the levy, these reporting requirements are applied to waste received at Perth metropolitan landfills and metropolitan waste received at landfills outside the metropolitan area.

As a result, most regional landfill operators are not required to report waste stream data to DER. This represents a data gap as landfills outside of the Perth region may receive significant quantities of waste.

More generally, incomplete data prevents accurate benchmarking of waste processing and recycling in Western Australia against other Australian jurisdictions, and impacts on information for national reporting requirements (for example, reporting requirements under the *National Environmental Protection (Used Packaging Materials) Measure 2011* (NEPM-UPM)).

Improving waste and recycling data will promote well informed and targeted policy and programs, and enhance the effectiveness of Western Australia's Waste Strategy.

1.2 Proposed amendments

Amendments to the WARR Regulations are proposed to require liable entities to report waste and recycling data to the Waste Authority. Liable entities will be required to keep records to enable DER to both ascertain whether the reporting entity has complied with its reporting obligations and, if required, to audit the information reported. Reporting will be required on a financial year basis. All reporting entities will be required to report data to the Waste Authority for the previous financial year by 1 October each year.

The three entity types required to report their waste and recycling data to the Waste Authority under the proposed amendments are:

1. Local governments and regional local governments as defined under the Local Government Act 1995 that provide waste services;
2. Licensees¹ or occupiers² of premises that sort, treat or process solid waste for the purposes of recycling and/or resource recovery and produce 1,000 or more tonnes of recycled or reprocessed product(s) annually that requires no further processing prior to final use or is exported from Western Australia.
3. Licensees or occupiers of landfill premises³ that receive 20,000 tonnes of solid waste or more in a financial year and are not required to pay the landfill levy under the WARR Levy Regulations.

Stakeholder submissions on the consultation paper will inform the regulatory amendments required to give effect to the data reporting requirements. DER intends to develop methods for measurement and calculation, as well as guidance on direct waste measurement techniques and other estimation methodologies. Draft methods will be developed in consultation with stakeholders. The requirement to report data will not commence until the relevant method has been approved.

¹ A licensee is the holder of a licence under the EP Act and the *Environmental Protection Regulations 1987*.

² A person who is in occupation or control of premises, whether or not that person is the owner.

³ A licensed landfill is defined as a premises specified in category 63, 64 or 65 of the *Environmental Protection Regulations 1987* Schedule 1 in respect of which a licence is held.

2. Stakeholder feedback

Twelve submissions were received over the eight week consultation period. A breakdown of stakeholder submissions is presented in Figure 1.

Five submissions were received from individual local governments, one from a regional local government, and one submission from the Western Australian Local Government Association (WALGA). Appendix 1 provides a list of submitters.

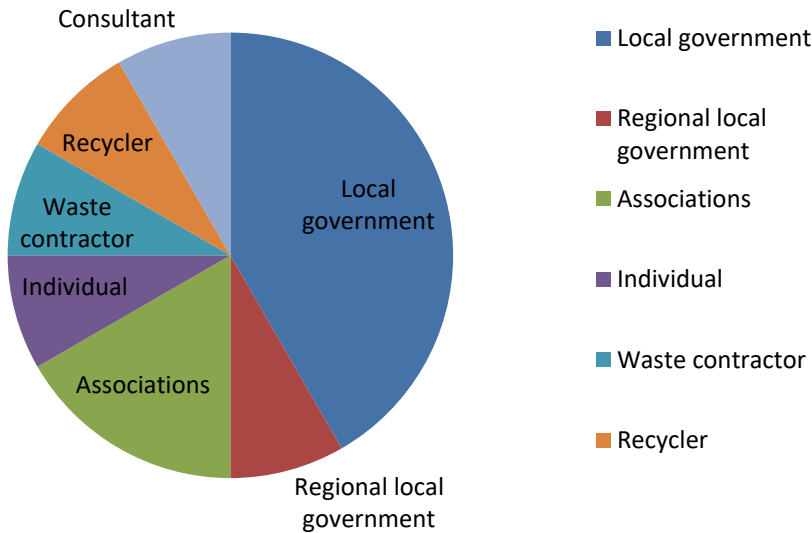


Figure 1. Breakdown of stakeholder submissions

Submissions were also received from the waste industry (organics recycler, consultant, waste contractor and the Waste Management Association of Australia (WMAA)).

Resource implications

Feedback

WALGA's submission supported the value of accurate waste and recycling data as 'central to informed decision making on policy and programs'. WALGA emphasised the importance of reducing reporting burdens for local government associated with the proposed amendments. Individual local governments and WALGA raised the following matters:

- possible burdens associated with measurement and estimation methods; and
- inefficiencies associated with multiple requests for waste management data, arguing that where local governments are also licensed premises, similar data is reported under licence conditions.

WALGA also emphasised the need for sufficient lead-time in introducing the regulatory amendments, such that accurate reporting and record-keeping measures can be put in place and local governments can make necessary contractual arrangements for their waste services.

WMAA noted that updating existing weighbridge software data to capture the information requirements outlined in the consultation paper would be likely to result in some costs to the operator.

Analysis

The approach set out in the consultation paper addresses the resource constraints of smaller local governments with a residential population of fewer than 5,000 people, and notes direct measurement or volume estimation methods may be problematic in such circumstances. DER proposes that easy-to-use alternative measurement and estimation methods will be developed for these entities. Non-metropolitan local governments with an estimated residential population of fewer than 1,500 may be able to apply for approval to report a description of waste services in lieu of the weight of waste associated with each service.

Although WALGA suggested that local government is subject to multiple requests for waste management data, analysis suggests that there is little overlap between waste data reporting requirements and those for licensed premises. Furthermore, data acquired for the purposes of determining compliance with licence conditions and data required under the proposed amendments are sought to fulfill different purposes under separate legislation.

Licence conditions relate to the prevention, control, abatement or mitigation of pollution or environmental harm (specifically emissions and discharges to the environment) and to monitoring and reporting, and do not aim to replicate other statutory requirements.

To the extent that this may occur, DER will undertake to streamline reporting requirements by minimising duplicate reporting requirements from licence conditions.

DER recognises the need to allow sufficient time for local governments and waste industry participants to prepare to meet the new reporting requirements.

Liable entities

Feedback

WALGA, WMAA and other waste industry stakeholders indicated the need for further clarification of liability, particularly in respect of waste reprocessing premises. Liability for these premises is proposed for those that 'sort, treat or process solid waste for the purposes of recycling and/or resource recovery and produce 1,000 or more tonnes of recycled or reprocessed product(s) in a financial year that requires no further processing prior to final use or is exported from Western Australia'.

The Western Metropolitan Regional Council has sought clarification on the status of transfer stations under the proposed amendments, specifically whether these premises are considered a type 3 (large landfill) premises.

To clarify liability, some stakeholders called for the publication of a list of liable entities; others proposed that reporting should be limited to licensed facilities or that liability should be established by reference to a licence category, where applicable.

Analysis

Liability under the proposed amendments will be determined by the nature of the business/operation and the scale of the operation, which may change over time. As a result, a published list of liable entities is impractical.

A reference to prescribed premises categories alone is unlikely to clarify liability. Analyses indicate that there are many more prescribed premises than recyclers targeted under the proposed amendments, and not all targeted recyclers are licensed.

Although licence categories could be used to indicate possible reporting liabilities, other filters would still be required to determine final liability.

DER will clarify liability for the proposed amendments, including the status of transfer stations, and provide additional guidance to assist waste processing entities identify their liabilities.

Double counting

Feedback

Two submissions suggested that the proposed amendments may result in double counting of waste and/or recycling data. WALGA proposed that local governments which also operate prescribed landfill premises under the EP Act should not be required to report as a requirement of licence conditions.

The Shire of Chapman Valley noted that as its kerbside waste is transferred to and weighed at the regional waste site, data from that premises should be used in lieu of data from the local government.

Analysis

The liable entity types defined in the consultation paper reflect the different functions within the waste sector: local governments provide waste services; operators of prescribed landfill premises accept waste for landfill; and recyclers accept waste for processing. Reporting requirements for a particular entity are specific to the characteristics of its type of operation.

Data proposed to be reported by local governments are different to that for operators of landfill premises, reflecting the different characteristics of these separate types of operation. The capture of different types of data at different times therefore does not represent double counting.

Removing reporting requirements for non-metropolitan landfill premises operated by local governments will impede the collection of high quality data for large regional landfills, and does not align with the objectives of the proposed amendments.

Local governments reporting on kerbside waste delivered to regional waste sites is important. Unless reported by local government, these data would not otherwise be captured, as only the largest regional landfills (i.e. receiving 20,000 tonnes or more in a financial year) will be required to report.

Thresholds

Feedback

A few submissions suggested that the reporting threshold for reprocessing premises be lowered from 1,000 tonnes to nil and/or that the threshold for large non-metropolitan landfill premises be lowered from the proposed 20,000 tonne threshold to 5,000 tonnes.

Talis Consultants noted that a number of regional centres in the State receive less than 20,000 tonnes of waste annually and would be excluded under the proposed reporting arrangements.

Analysis

The proposed thresholds aim to achieve a balance between sectoral coverage and the costs for industry associated with reporting requirements.

A 1,000 tonne threshold is proposed for waste recyclers and reprocessors to exclude smaller operators which generally pass their recovered or recycled resources through to larger aggregators. The predominance of larger reprocessors in the industry means that the benefits associated with a lower threshold (and the implied increase in sector coverage) are small relative to the costs for industry and government. As a result, DER considers that a threshold of 1,000 tonnes for waste processors will minimise both reporting burden for smaller operators and the issue of double counting which would otherwise erode the utility of these data.

For large non-metropolitan landfills, a 20,000 tonne threshold is intended to filter out smaller regional landfills that may be under-resourced and unduly impacted by the reporting requirements. Most smaller regional landfills do not have access to a weighbridge and therefore unlikely to provide high quality data on waste streams. As these data will be extrapolated to the remainder of the non-metropolitan area, the quality of the data is a key consideration.

Major regional centres defined in the Waste Authority's Local Government Waste and Recycling Census 2014-15, published in September 2016, are Albany, Bunbury, Busselton, Greater Geraldton, Kalgoorlie-Boulder and Mandurah. It is anticipated that the 20,000 tonne threshold for non-metropolitan landfills will target the landfills used by these major regional centres and thus the scope of landfill data collected from non-metropolitan areas will be consistent with the scope of the Waste Strategy's targets.

Stockpiles

Feedback

One submission raised the issue of stockpiled waste, noting that 'recyclers may determine that it is not economical to continue stockpiling recovered materials and these can be directly disposed of' and if stockpiling practices are not accurately captured by the reporting provisions, recycling rates may be overstated.

Analysis

It is acknowledged that some flows of waste may not be accurately captured.

Additional guidance will be provided on the reporting of stockpiled waste as part of the consultation on reporting methods. Consistent with the existing approach, stockpiled waste will only be considered recycled if it has been processed and is ready to be used and/or sold. Any stockpiled waste (processed or unprocessed) that is directed to landfill will be captured under the requirement to report on total weight of waste disposed to landfill.

Penalties

Feedback

One submission suggested that the proposed penalties are excessive, while WALGA has argued that local governments should not be subject to penalties for non-compliance.

Analysis

Enforcement is an essential element of regulating activities and gaining compliance with statutory requirements.

The proposed penalties outlined in the consultation paper are consistent with penalties for a range of other offences under the WARR Regulations. In relation to non-compliance with reporting requirements, the penalties outlined are the maximum that can be applied by the courts. In determining whether an offence has been committed, DER would have regard to proportionality, accountability, consistency, transparency, due process and natural justice.

Other matters

Other matters identified by submissions included the need for further guidance on:

- estimating volumes for loads which are not weighed;
- distinguishing between commercial and domestic waste at drop-off stations;
- dealing with minor diversions from landfill that are not weighed; and
- defining production losses.

These issues will be further considered in the development of measurement and estimation methods. Further input will be sought before these methods are finalised.

3. Out of scope feedback

One submission suggested that the landfill levy should be applied to all landfilled waste. The regulatory regime the landfill levy is outside the scope of the proposed amendments to the WARR Regulations.

Appendix 1 – List of stakeholder submissions received

Number	Submission
1	Shire of Dumbleyung
2	Shire of Chapman Valley
3	Shires of Leonora, Laverton Menzies and Wiluna
4	Shire of Boddington
5	James Voss, University College London (Australia)
6	City of Cockburn
7	Western Metropolitan Regional Council (WMRC)
8	Western Australian Local Government Association (WALGA)
9	Suez
10	Waste Management Association of Australia (WMAA)
11	C-Wise
12	Talis Consultants

