

# Submission on the DWER Controlled Waste Tracking Discussion Paper

April 2018



## 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 Australia Local Government. However, individual Local Governments and Regional Councils may have views that differ from the positions taken here.

This Submission was considered and endorsed by the Municipal Waste Advisory Council on Wednesday 18 April 2018.

## Executive Summary

The Association welcomes the opportunity to comment on the Controlled Waste Tracking System Discussion Paper. The Association acknowledges that the Discussion Paper proposes a number of high level concepts and that the Department intends to further develop and consult on specific options for reform. The review presents an opportunity to streamline the Regulations and implement improvements in a number of areas. The review also presents an opportunity for the Department to focus its attention on unscrupulous waste operators, and limit inappropriate disposal of controlled wastes such as asbestos on public land.

The Association supports the proposals to amend the regulative framework to incorporate NEPM requirements, standardise the licensing process for drivers and vehicles, and remove the distinction between “bulk” and “packaged” controlled waste. However, further, and more detailed consideration is required on the proposals to set tracking thresholds, classify, grant exemptions and manage controlled wastes according to risk. Further detail is also needed on the requirements that would form the basis of the proposed consignment authorisation process. If the New South Wales consignment authorisation process is to be adopted in Western Australia, the obligations that will be placed on waste holders, waste transporters and waste receivers must be clearly communicated and understood.

## 1. Introduction

Local Government welcomes the opportunity to comment on the *Review of the Environmental Protection (Controlled Waste) Regulations 2004*. From the breadth of the reforms proposed, it is clear that the Department is committed to a comprehensive review of the Controlled Waste Tracking System (CWTS).

Local Government currently interacts with the CWTS as a waste generator and, in some instances as an operator of prescribed premises accepting material tracked through the system. Local Government also responds to controlled wastes that are illegally dumped on public land or inappropriately disposed of through Municipal Solid Waste treatment systems.

This Submission provides feedback on the recommendations proposed in the Discussion Paper, and suggests alternative considerations where appropriate.

## 2. General Comments

The Association agrees with the Department's analysis of gaps and opportunities identified in the Discussion Paper. In recent years, the increase in the Waste Avoidance and Resource Recovery Levy has driven the diversion of significant volumes of waste to unknown and/or questionable end uses. While the majority of these issues relate to construction and demolition waste, there have been instances where the management of controlled waste has been less than desirable. Frequently, the regulatory response from the Department to these type of issues has been to increase the level of scrutiny applied to legitimate, licenced operators. In reforming the controlled waste tracking system, an opportunity exists for the Department to also focus its attention on problematic, un-licenced operators. To do so will require a rigorous approach to data collection and analysis.

The findings of the Office of the Auditor General's Information Systems Audit Report (2016) raised a number of questions on the ability of the CWTS to capture information that can be used to monitor the activities of this industry and inform decisions on where best to focus compliance efforts<sup>1</sup>. The Association requests information on the degree to which the Audit Findings and Recommendations have influenced the review of the CWTS. Of particular interest, are the system changes that have been implemented in response to Recommendation 2:

*"By June 2017, the Department of Environment Regulation should:*

- a. establish a process to regularly review and correct mismatched data*
- b. develop and implement supporting policies and procedures for the CWTS including: management and review of user accounts and access privileges; and management and review of system logs."*

## 3. Response to Recommendations

### Recommendation 1

*That a consignment authorisation process be established that requires the waste holder to adequately classify their waste by:*

- undertaking chemical analysis of the waste when necessary; and*
- entering into an agreement with the waste facility that may lawfully receive the waste.*

The proposed consignment authorisation process appears to be based on the regulatory approach used in New South Wales. From the DWER Discussion Paper it is not clear if this process would apply to all controlled wastes, or only those where a chemical analysis is required. The case made in the Discussion Paper for this recommendation, focuses only on the need for chemical analysis of material and does not identify why a consignment authorisation process would be needed for all types of waste.

In further developing this approach, further consultation will be required to develop guidance on what situations the Department considers chemical analysis will be "necessary" and what type of analysis will be required. The Association's experience with the testing regime developed for the Recycling Construction Products Program was that a risk averse approach was adopted, as opposed to a fit for purpose approach. Initially, this testing regime did not consider the source of the material (and therefore likely contaminants) or where the material was going to be used.

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<sup>1</sup> Office of the Auditor General (2016). Controlled Waste Tracking System – Department of Environment Regulation. Available online. <https://audit.wa.gov.au/reports-and-publications/reports/information-systems-audit-report-22-june-2016/controlled-waste-tracking-system-department-environment-regulation/>.

In developing the requirements for chemical analysis, the source and end destination of the material should be considered. While it is appropriate to undertake chemical analysis on unknown, or potentially hazardous materials, it is not appropriate to require testing on loads of controlled waste where chemical parameters are known and understood. Additionally, the Discussion Paper is not clear if the allowances for unloading controlled waste at an unmanned waste facility will remain (r40 *Environmental Protection (Controlled Waste Tracking) Regulations 2004*).

If the NSW system was adopted in Western Australia, the Association anticipates that responsibility for completing distinct waste tracking tasks would be assigned to waste holders, waste transporters and waste receivers, as per the approach discussed in the response to Recommendation 2.

## Recommendation 2

*The regulations be amended to provide that the waste holder remains responsible for the waste until it has been unloaded at a waste facility that is lawfully allowed to accept it.*

The approach suggested in the Discussion Paper appears to be based on the NSW tracking system. If this is so, the Association questions how the concept of waste holder responsibilities has been interpreted. The DWER Discussion Paper states:

*“DWER considers that the waste holder, as the generator of the controlled waste and the person engaging the waste carrier, should retain responsibility for the controlled waste from the point of waste generation to the point of waste disposal. Requiring the waste holder to remain responsible for the waste provides an incentive for the holder to ensure the waste is properly disposed of by the carrier. (pg 3, 2018)”*

Part 4 of the NSW *Protection of the Environment Operations (Waste) Regulation 2014* places clear obligations on, and responsibility for completing various tasks to waste consignors (this term collectively refers to a waste producer and an authorised agent) (r43), waste transporters (r45) and waste receivers (r46). The responsibilities assigned to waste producers in the NSW system do not appear to extend to the physical waste that is transported. Responsibility is instead assigned for the completion of the following waste tracking tasks<sup>2</sup>:

### **“Responsibilities**

*A waste producer must*

- *ensure that waste is correctly characterised*
- *ensure that the facility the waste is being transported to can legally accept it*

**Search the [EPA public register online](#) for all facilities licensed to receive a particular type of waste.**

### **Waste producers not using authorised agents**

*If you are a producer and not using an authorised agent, you must*

- *obtain a consignment authorisation (CA) by contacting the waste facility that is receiving the waste*
- *ensure that a transport certificate (TC) is completed for each load of waste*
- *ensure the waste transporter is licensed or legally allowed to transport the waste*
- *give the transport certificate (TC) to the waste transporter*

**Search the [EPA public register online](#) for all transporters licensed to transport a particular type of waste.**

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<sup>2</sup> NSW EPA (2017). Waste producers' tracking responsibilities. Available online. <http://www.epa.nsw.gov.au/your-environment/waste/tracking-transporting-hazardous-waste/industry-responsibilities-tracking-waste/waste-producers-tracking-responsibilities>.

### **Waste producers using authorised agents**

*If you are a producer using an authorised agent to manage and track the transport of your waste, you must*

- *ask for documentation to show that the authorised agent is approved by NSW EPA*
- *have an agreement in writing with the authorised agent permitting them to consign waste on your behalf.*

**Search the public register** for a list of **approved authorised agents**.

*If someone other than an authorised agent is used to manage or track waste, the responsibility for waste tracking remains with the waste producer.”*

The Association supports an approach where responsibility for the delivery of certain tasks is assigned to parties in the Controlled Waste Tracking System. While waste holders should be required to complete due diligence checks as per the NSW system, it must be acknowledged that a waste holder will have limited control over a waste transporter after they have left the site of waste generation. In this instance, responsibility for the delivery of controlled waste to a site that can lawfully receive it - must remain with the transporter. For this approach to be successful, the Department must fulfil its regulatory role and ensure that waste holders, waste transporters and waste receivers are all operating in accordance with their legislative responsibilities. To progress this concept, a more detailed breakdown of what “responsibility” means for waste holders, transporters and receivers is required.

### **Recommendation 3**

*That regulation 3(6)(b) be removed from the Controlled Waste Regulations to prevent inappropriate disposal to landfill of liquid or solid controlled waste by mixing with other solid material. All commercial or industrial movements of liquid and solid controlled waste will be subject to the regulations.*

The Association agrees that the issues raised by the Department on the disposal of controlled waste are significant. As the only Class IV landfill currently operating in Western Australia, the EMRC’s Red Hill Waste Management Facility has previously provided quotes to dispose of material from contaminated sites, where the material has never been received. This raises questions on where this material was disposed.

One of the most problematic aspects of the current system, is that it relies on the waste producer to declare if contaminated waste is present in loads delivered to waste management facilities. Controlled wastes are regularly encountered at Material Recovery Facilities, Alternative Waste Treatment Facilities, transfer stations and landfills. Local Government’s response to this issue is dependent on licence conditions and operational procedures. For example, Local Governments are subject to requirements that any asbestos delivered to site is wrapped appropriately. However, if an unwrapped load is delivered to site, operators may opt to accept, wrap and dispose of the asbestos, to ensure it is not illegally dumped elsewhere. It is clear that further attention needs to be directed towards preventative measures such as education, enforcement and the establishment of an accessible network of facilities that can accept certain controlled wastes.

Clarification is requested on the potential for the repeal of regulation 3(6)(b) to reduce the number of local disposal options available in regional and remote areas for certain controlled wastes. While there is agreement in Local Government that the activities of questionable operators should be restricted, provisions must be made so that locally generated wastes can be disposed of locally. The transportation of material from remote areas to a limited number of higher specification facilities would be cost prohibitive. Further information is also requested on the CWTS implications of the proposal to combine landfill categories, outlined in the *DWER Discussion paper – Waste levy and waste management: Proposed approaches for legislative reform* (2017).

As highlighted in the response to Recommendation 4, the Department must assess and communicate to the sector what outcomes it wishes to achieve across its entire licencing and regulatory system.

## Recommendation 4

*All commercial movements of asbestos be subject to the licensing and tracking requirements of the Controlled Waste Regulations. This would be achieved by repealing regulation 3(5).*

The repeal of Regulation 3(5) is supported, as a way to reduce the volumes of asbestos that are illegally dumped on public land. If the current structure of the Controlled Waste Regulations is retained, this would result in the application of tracking requirements to commercial businesses transporting greater than 200kg of asbestos material. While the Association supports the application of the controlled waste tracking requirements to commercial operators, further consideration is required on the implications of adopting other recommendations in the Discussion Paper.

In developing this Submission, the Association has considered the different regulatory approaches to asbestos transport in other jurisdictions. The Australian Capital Territory, Northern Territory and Tasmania do not track the activities of commercial asbestos removalists or householders. Queensland tracks the transport of all asbestos by commercial businesses, with householders permitted to transport asbestos up to a weight of 250kg before tracking requirements apply. South Australia and Victoria track the transport of all asbestos by commercial operators, with no tracking requirements on householders.

In 2015, New South Wales introduced tracking requirements on the transport of all asbestos greater than 100kg in weight or 10m<sup>2</sup> in size. Material is tracked through an online system called WasteLocate. This system places a unique consignment code on each load of asbestos, monitoring transport from the point of generation to the point of disposal. The waste consignor, transporter and receiving facility are all subject to requirements to ensure material is tracked. Transporters must record information on the site of generation, the load to be transported and the receiving disposal facility. On arrival at a disposal facility, transporters scan a fixed plate with a QR code, to report that the material has been delivered to the facility that was initially nominated.

The Association recommends that the Department adopts the threshold used in New South Wales, as a means of:

1. Reinforcing the requirement in the *Occupational Safety and Health Regulations 1996* that greater than 10m<sup>2</sup> of asbestos removal at a workplace is undertaken by a licenced contractor
2. Facilitating alignment with similar, potential, requirements under the *Public Health Act 2016* framework on asbestos removal from residential properties – with due regard to the limitations in regional and remote areas.

A community wide discussion is required on the true cost of managing problematic wastes such as asbestos. The approach recommended by the Association would potentially increase costs and administration requirements for households and businesses. However, the benefits that increased scrutiny on this industry would bring - significantly outweigh this inconvenience. The Department could consider waiving the Controlled Waste Tracking Fee for asbestos to facilitate appropriate disposal. This would maintain consistency with the approach taken to the WARR Levy, where a rebate is available for asbestos disposal.

In progressing the repeal of this regulation, the Department must consult with WorkSafeWA licenced asbestos removalists to determine how quickly such a change could be accommodated. Some commercial asbestos removalists are already collecting information on the final point of disposal and providing this back to clients, to establish a point of difference in their business approach. There is an opportunity for the Department to work with WorkSafeWA, to establish formal linkages between the licencing process for removalists, and controlled waste carriers. Applicants to each licencing system

could be required to demonstrate they have an arrangement in place with licenced removalists, licenced carriers, and suitable disposal sites.

To underpin this approach, the Department would need to nominate the disposal facilities that it considers able to accept asbestos (in terms of licence conditions and onsite operational approaches). Varying regulation of, and on site operational approaches to asbestos acceptance and disposal will make it difficult for the Controlled Waste Tracking branch of the Department to implement a consistent approach without direct engagement with sites. While larger landfills have well established operational procedures on the acceptance of asbestos (including capturing information on the origin of asbestos delivered to site), there are also situations where asbestos is accepted at unmanned, registered landfills in the non-metropolitan area. As the regulator of asbestos disposal, the Department must consider what outcomes it wishes to achieve in asbestos management and disposal across the entire licencing and regulatory system.

The Department also needs to consider how it will record and track asbestos contaminated soil and/or Construction and Demolition material. Some jurisdictions classify this material as 'asbestos' (N220), while others 'contaminated soil' (N120 or N121). This could potentially skew the reporting data on the volumes of asbestos managed and disposed by reputable operators.

## Recommendation 5

*The NEPM requirements be incorporated as a new part under the Controlled Waste Regulations. This will enable enforcement of NEPM obligations.*

Supported.

## Recommendation 6

*The Controlled Waste Regulations be amended to support classification and de-classification of controlled wastes.*

There is in principle support for this approach, but the proposal to classify and declassify controlled waste must be accompanied by a rigorous, transparent framework that guides the decision making process.

Currently, waste types listed in Schedule 1 of the *Environmental Protection (Controlled Waste) Regulations 2004* reflect those of the NEPM. To fulfil the NEPM requirements, the WA regulatory framework should use a similar approach to that of other jurisdictions. In South Australia, New South Wales and Queensland, the administering authority is provided with the ability to grant exemptions. Victoria has a similar system, where the Authority can classify any industrial waste as prescribed industrial waste or non-prescribed industrial waste.

While the Association supports the Departments' intent to adopt a risk based approach to regulation, there have been instances where different operational areas of the Department have had a different interpretation of, and approach to, the concept of risk based regulation and decision making. Consequently the Association considers that transparency must be imbedded in the decision making process, with a clear framework guiding this process.

## Recommendation 7

*That the driver licensing requirements in the Controlled Waste Regulations be standardised for all controlled waste drivers.*

Supported. All controlled waste drivers should be required to demonstrate competence.

## Recommendation 8

*The regulations be amended by removing the requirement for individual vehicle licensing, and requiring all vehicles associated with the transport of controlled waste to be listed on the controlled waste carrier licence and in the controlled waste tracking system.*

Supported.

## Recommendations 9 - 11

*The tracking threshold for high risk wastes be removed so these wastes will be tracked in small volumes.*

*Wastes classified as moderate risk should retain the tracking threshold of 200 kg or 200 L.*

*Wastes classified as low risk should not be tracked or could be de-classified as a controlled waste.*

There is in principle support for this proposal, but any alterations to the tracking thresholds for controlled waste must be subject to a rigorous, transparent framework that guides the decision making process.

The Association agrees that small amounts of commercial, hazardous waste should be tracked. However, similar to comments provided in response to Recommendation 6, further information is required on what the Department considers to be high, moderate or low risk controlled waste and how these risks will be consistently determined.

## Recommendation 12

*The Controlled Waste Regulations be amended to remove the terms “bulk” and “packaged” controlled waste.*

Supported.

## Recommendation 13

*The Controlled Waste Regulations be amended to allow the exemption of classes of waste from parts of the regulations. The exemptions would be subject to conditions.*

There is in principle support for this proposal, but any exemptions for classes of waste from parts of the regulations must be subject to a rigorous, transparent framework that guides the decision making process.

The Association is highly supportive of amendments to the regulatory framework that facilitate better engagement with Product Stewardship Schemes – particularly those currently operating outside of the accreditation process for the National Product Schemes such as Paintback. Local Government has direct experience with the difficulties associated with implementing Paintback in Western Australia. The current exemption that is in place only permits the disposal of paint from commercial operators at permanent, licenced, collection sites. The majority of these sites are operated by Local Government, with the cost of managing these facilities borne by the local community. The cost of collection and treatment of Household Hazardous Waste, outside of the Paintback Program, is covered by the Waste Authority Program. Under this exemption, Paintback is not able to host temporary collection events in Western Australia. The Association supports the use of temporary collection events to facilitate greater diversion of paint from landfill and savings for the Household

Hazardous Waste Program.

## Recommendation 14

*DWER should include a list of hazardous characteristics in the Controlled Waste Regulations as set out in Appendix A.*

The Association supports the inclusion of the list of hazardous characteristics as a way to maintain consistency with other jurisdictions such as NSW, Queensland, and South Australia. However, the Discussion Paper does not clearly communicate why the Department is seeking to include this list in the Regulations and most importantly - what it will be used for. Further information is required to adequately assess this proposal, particularly if the purpose of this recommendation to establish a linkage with the testing requirements identified in Recommendation 1.

## Recommendation 15

*Consideration be given to amending the Controlled Waste Regulations to deregulate low risk waste.*

There is in principle support for this proposal, but any proposal to deregulate low risk waste must be accompanied by a rigorous, transparent framework that guides this decision making process. While the Association understands the overall objective that the Department is seeking to achieve, further information is required to adequately assess this proposal. Including how the Department will classify high, medium and low risk wastes. Further advice is also required on the type of information that could be used to prove that a certain material has a history of effective environmental management – and should no longer be subject to controlled waste tracking requirements.