

Submission on the DWER Consultation Paper - Mandatory Use of Weighbridges by Landfill Premises to Calculate Leviable Waste



June 2019

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 26 June.

1. Introduction

The Association appreciates the opportunity to comment on the DWER Consultation Paper - *Mandatory Use of Weighbridges by Landfill Premises to Calculate Leviable Waste* (Consultation Paper). The Department initially proposed the mandated use of weighbridges for leviable waste in a Paper titled *Waste Reform Project: proposed approaches for legislative reform*, released in August 2017. As outlined in the *WALGA Submission on the Waste Reform Project* (November 2017), there is support for the consistent use of weighbridges for landfills in the metropolitan area or those landfills receiving metropolitan waste.

The financial and environmental consequences arising from the current approach to regulation of the WARR Levy presents a clear case for change. While the requirement to use weighbridges will assist in addressing these consequences, an integrated approach to policy, regulation and enforcement must be taken. The adequacy of the legislative framework that underpins the regulatory efforts of the Department must be examined, along with the level of resources allocated to deliver the Department's compliance and enforcement functions.

WALGA supports the adoption of Option 2 – subject to the cost and transitional arrangements outlined in Section 5 of this Submission being addressed. The business as usual approach outlined in Option 1 will not address the issues arising from WARR Levy avoidance. The adoption of Option 3 is not supported, as it has a limited scope that may be difficult for the Department to enforce and operators to implement. As the adoption of Option 2 relates to the regulation of leviable waste, there is a clear case for funds from the WARR Account to be allocated to the delivery of this initiative. Other jurisdictions including NSW and QLD have provided funding for this type of infrastructure.

This Submission provides feedback on the current approach to the regulation of the WARR Levy and the importance of adopting an integrated approach to policy, regulation and enforcement. The Submission also comments on the costs and transitional arrangements associated with the implementation of Option 2, and questions what changes will be made to the *CEO Approved Manner*.

2. Current Approach to Regulation of the WARR Levy

A significant amount of C&I and C&D waste has been diverted from landfill as a result of the WARR Levy increase in the 2015/16 Financial Year. Unfortunately, it is not clear where this material was diverted to. There appears to be significant underreporting of waste through the WARR Levy reporting regime and the Recycling Activity Report (Figure 1).

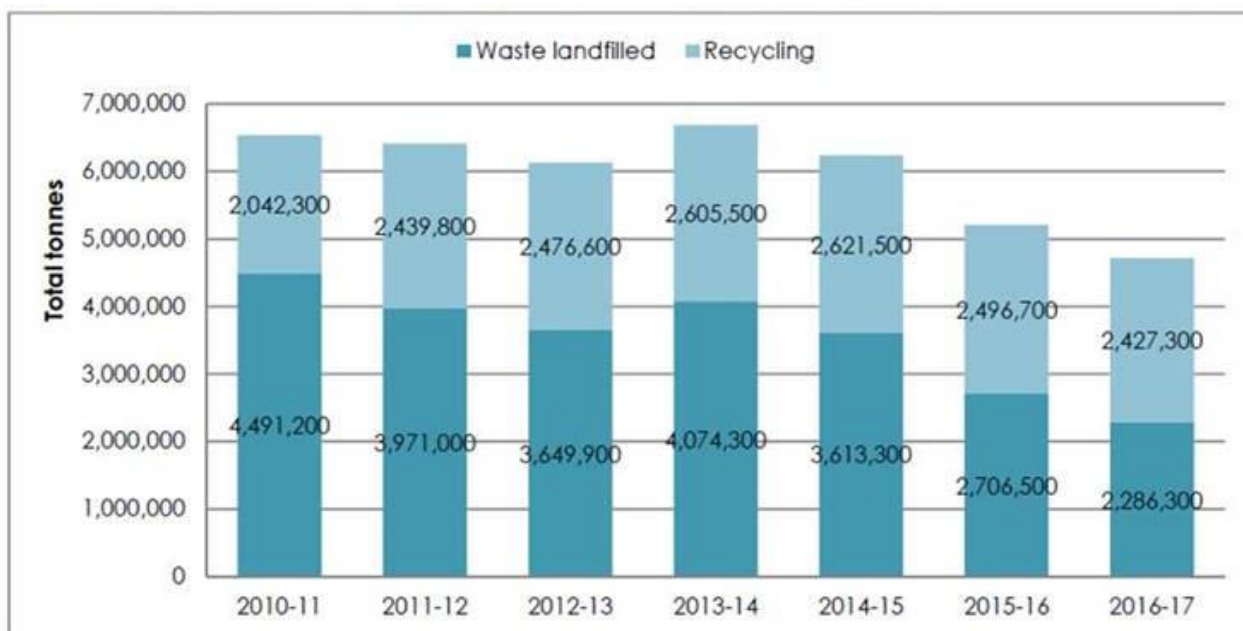


Figure 1: Reported total recycling activity and waste disposal for WA (Figure 1.1, Recycling Activity in Western Australia 2016-17).

The diversion of leviable material away from landfill has had a direct financial impact on a number of parties. There has been a direct negative financial impact for the State Government through lower income from the WARR Levy. Legitimate operators paying the Levy are being negatively impacted by lower cost operations not paying the Levy. Landowners on the fringes of the Perth metropolitan area, including Local Government, have experienced an increase in the amount of material that is illegally dumped, illegally stored or illegally landfilled. Some Local Governments on the fringes of the Perth metropolitan area have reported spending in excess of \$1 million annually to collect and dispose of illegally dumped material. Due to deficiencies with existing data capture systems, the full impact of the diversion of leviable material away from landfill is not clear.

3. Integrated Approach to Policy, Regulation and Enforcement

The consequences listed in Section 2 of this Submission present a clear case for requiring the use of weighbridges for leviable waste. To be effective, this initiative must form part of an integrated approach to policy, regulation and enforcement. Otherwise, only compliant, licensed premises will incur the cost of installing weighbridges and paying the WARR Levy. The Association is aware that the Department is progressing a number of reforms including, but not limited to:

- Mandatory reporting of waste management data by liable entities (landfills, Local Government, recyclers) under the WARR Regulations 2008
- Establishing a Legislative Framework for waste-derived materials and fit for purpose standards
- Reviewing the scope and application of the WARR Levy
- Reviewing the *Landfill Waste Classification and Waste Definitions 1996 (as amended)*
- Reviewing key terminology in the WARR Act, WARR Levy Act and associated regulations
- Reviewing the categories of prescribed premises listed in Schedule 1 of the *Environmental Protection Regulations 1987*.

These reforms must be considered collectively and implemented sequentially. Reforms that are implemented in isolation can deliver unintended consequences. The implementation of previous increases to the WARR Levy is one such example, with material simply diverted to other locations or stockpiled.

In addition to these reforms, the Department must examine the adequacy of the legislative framework that underpins its compliance and enforcement activities. The current structure of the legislative framework may have contributed to the limited number of successful prosecutions and financial penalties secured for unlawful activity such as illegal dumping, illegal storage and illegal landfilling¹.

There is also a need for improved investment in the compliance and enforcement functions of the Department. WALGA understands that the Government allocated \$19.4 million in the 2018-19 State Budget to the Department (over 4 years) to employ additional staff in environmental regulation and compliance². However, it is not clear if these funds have translated into additional resources for compliance and enforcement, resources for environmental approvals or on ground outcomes.

Recommendation: The Department adopts an integrated approach to policy, regulation and enforcement.

Recommendation: The Department implements these reforms collectively and sequentially.

Recommendation: The Department reviews the adequacy of the legislative framework for compliance and enforcement.

Recommendation: The Department adequately resources the delivery of its compliance and enforcement functions.

4. Options for Reform

As outlined in Section 3 of this Submission, the proposed use of weighbridges is only one element of a potential solution to the issue of WARR Levy avoidance. In commenting specifically on the options put forward by the Department, the Association supports the adoption of Option 2 – subject to the cost and transitional arrangements outlined in Section 5 of this Submission being addressed.

Option 1 does not address any of the environmental and financial consequences arising from WARR Levy avoidance. It can only be assumed that this Option was included to fulfil the requirements of the Regulatory Impact Assessment process. As identified in the Consultation Paper, Option 3 could be difficult to regulate and prone to rorting. The limited scope set by the Department on the type of situations where the use of a third party weighbridge is considered appropriate, could prove to be difficult for operators to accommodate.

The Consultation Paper outlines a number of concerns with the use of volumetric surveys. In considering this issue, the Association would like to highlight that the use of new technology, such as drones, can deliver a high degree of certainty on topographic changes at waste management facilities. This technology may be available at a lesser rate than that of surveys currently completed by qualified surveyors.

¹ Department of Water and Environmental Regulation (accessed May 2019). Summary of Prosecutions. Available online. <https://www.der.wa.gov.au/our-work/enforcement/summary-of-prosecutions>.

² Government of Western Australia (10 May 2018). Improved cost recovery model to help speed up environmental approvals and support economic growth. Available online. <https://www.mediastatements.wa.gov.au/Pages/McGowan/2018/05/Improved-cost-recovery-model-to-help-speed-up-environmental-approvals-and-support-economic-growth.aspx>.

5. Cost and Transitional Arrangements

The Consultation Paper states that “the proposed weighbridge requirements would currently impact around 12 landfill premises in Western Australia.” The Department has confirmed that this number relates to licenced facilities under the current WARR Levy regime. The Association notes there is a possibility that additional facilities will be subject to these requirements in the future, as a result of the reforms listed in Section 3 of this Submission. These reforms include reviews of the scope and application of the WARR Levy, prescribed premises categories, and key terms used in the existing legislative framework. As noted in the *DWER Consultation Summary Report for the Discussion Paper – Waste levy and waste management: proposed approaches for legislative reform* (July 2018), these reforms are subject to further consultation.

Changes to the scope and application of the WARR Levy could result in a situation where Local Government managed landfills that do not currently have a weighbridge, and only accept small volumes of municipal waste from their community - would be subject to the WARR levy requirements. If the use of weighbridges is mandated for leviable waste, additional infrastructure would be required at these Local Governments managed facilities. The financial impost of complying with the new requirements, would undermine the viability of these small scale operations. The Department must consider what mechanism will be applied in this type of situation, as the amount of tonnes received (e.g. <5,000 tonnes annually) is not likely to influence the wider waste generation dataset.

As the proposal for weighbridges relates to the regulation of leviable waste, there is a clear case for WARR Account funds to be used for this initiative. There is in excess of \$40 million in the WARR Account, collected from those managing waste. The approach taken to the re-introduction of a Levy in QLD establishes a precedent for the use of Government funds to install weighbridges³. NSW also provides funding for the installation of weighbridges, through the *Waste Less Recycle More* initiative⁴. The views of the industry and Local Government is consistent, as noted in the *DWER Consultation Summary Report for the Discussion Paper – Waste levy and waste management: proposed approaches for legislative reform* (July 2018) that “all respondents supported the provision of funding from the WARR Account to install weighbridges.”

The Consultation Paper states that the State Government incurs direct costs for quarterly volumetric surveys for category 63 landfills in the metropolitan area, from the rebate of survey costs (\$2,000 per quarter) and administrative costs. While the proposal to use weighbridges would reduce the costs experienced by the State Government – whole of life costs associated with design, procurement, transport, installation, the adjustment of infrastructure, systems and site practices along with ongoing operations and maintenance would be borne by those Local Governments and industry operators that are subject to the new requirements. Costs of installing a weighbridge will differ between sites, dependant on factors such as staffing arrangements, access to electricity and the internet, and the existing operational plan, site layout and infrastructure.

There are options for the funding of weighbridges, including a direct grants program similar to other States. Another potential option which would require further exploration is a reimbursement process for reasonable costs associated with the installation and operation of a weighbridge using the mechanism provided by s4(2)(d) of the WARRL Act.

In progressing this initiative and determining a timeframe for implementation, it is suggested that the Department has due regard to the budgetary process used by Local Governments. Budgets are set well in advance of a Financial Year, with budgets being developed for consideration by Elected Members in line with the Corporate Business Plan in March/April. The Annual Budget is usually endorsed between July/August. It is anticipated that procurement, installation and adjustments to systems and practices (e.g. record keeping, onsite operational plans) would take at least 6 months to complete - following Council approval of the Annual Budget. As such, it is recommended that the

³ Government of Queensland (December 2018). More than \$5 million in grants to get councils waste levy-ready. Available online. <http://statements.qld.gov.au/Statement/2018/12/14/more-than-5-million-in-grants-to-get-councils-waste-levyready>.

⁴ NSW EPA (July 2017). Waste Less Recycle More Initiative: Weighbridge Fund. Available online. <https://www.epa.nsw.gov.au/publications/waste/150127weighbridge-fund-information-for-applicant>.

Department provides a transitional period of at least 18-24 months, from the date that this requirement is enacted. This transitional period would also need to apply to those Local Governments that are affected by the reforms listed in Section 3 of this Submission – for example an expansion of the geographic area covered by the WARR Levy. It is worth noting that this transitional period does not include the time taken to obtain approvals through the DWER licencing system for prescribed premises, as the Consultation Paper is not clear if a works approval or licence amendment would be required to install a weighbridge and/or amend an existing operational plan.

Recommendation: The Department considers what mechanism will be applied to landfill facilities that only accept small volumes of municipal waste from their community, should there be changes to the scope and application of the WARR Levy.

Recommendation: That a funding mechanism is established that acknowledges the whole of life costs associated with the delivery of this initiative.

Recommendation: In addition to the time taken to obtain relevant approvals, a transitional period of at least 18-24 months must be provided to comply with the proposed weighbridge requirements, from the date of enactment and/or implementation of future reforms.

6. CEO Approved Manner

The Consultation Paper identifies that *“Material issues have been identified with estimation methods set out in the CEO approved manner. These relate to the assumptions made under the ‘vehicle type method’ about waste loads (e.g. all loads are assumed to be full loads) and the relative density of exempt waste, which cannot be accurately or consistently accounted for.”*

The Association agrees that there are substantive issues with the existing methods for estimating waste disposed to landfill. However, it is not clear from the options listed in the Consultation Paper, what changes will be made to the *CEO Approved Manner*. Any change to the *CEO Approved Manner* will affect data collection practices at landfills. WALGA notes that the proposed amendments to the WARR Regulations for mandatory reporting of waste management data are based in part on the existing *CEO Approved Manner*. As such, any changes could render the data collected through this initiative to be inaccurate, and not comparable against information collected as part of the WARR Levy reporting requirements.

Recommendation: The Department clearly articulates what changes will be made to the CEO Approved Manner.

7. Conclusion

Local Government appreciates the opportunity to comment on the Consultation Paper. There have been a number of changes in how waste is managed and its final destination since the Department initially consulted on the *Waste Reform Project: proposed approaches for legislative reform* (August 2017). As such, there is a case for an alternative approach to that of business as usual.

WALGA supports the adoption of Option 2 – subject to the cost and transitional arrangements outlined in Section 5 of this Submission being addressed. As this initiative relates to the regulation of the WARR Levy, there is a case for funding to be provided from the WARR Account to waste management operators. To ensure there are no unintended consequences arising from the requirement to use a weighbridge, the Department will need to adopt an integrated approach to policy, regulation and enforcement.

WALGA looks forward to a continued dialogue with the Department on the proposed reforms for waste management.