

Submission on the DWER Closing the Loop: Waste Reforms for a Circular Economy Consultation Paper

June 2020



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 24 June 2020.

1. Introduction

The Association appreciates the opportunity to comment on the Department of Water and Environmental Regulation (DWER) Consultation Paper (Paper) *Closing the Loop: Waste Reform for a Circular Economy*. This Paper brings together a suite of waste reform measures with different interventions explored for each of the issues raised. The Paper clearly defines the scope it covers and what is in and out of scope for the consultation, as well as, how these reforms intersect with the *Review of the Waste Levy* currently also out for consultation. The Association notes the title of the Paper, however would suggest that there are limited links between a Circular Economy and the various reforms included in the Paper. To progress towards a Circular Economy many more regulatory reforms will be needed, including the work the Department is currently undertaking to develop the End of Waste Regulatory Framework.

WALGA has representation on the Waste Reform Advisory Group and had the opportunity through this Group to provide initial feedback on the first draft of this Paper. Some comments were incorporated, however the Association still has a range of concerns regarding the reforms and these have been included in this Submission. In preparing this Submission, clarification was also requested from DWER on some elements of the Paper and where relevant these clarifications have been included.

2. General Comments and Clarification

The Paper is a Consultation Regulatory Impact Statement and the purpose of the document is to identify the cost/benefits relating to the various proposals. WALGA expressed concern to DWER that except for section 13.3.4 there was very limited economic information included in the document. The feedback from DWER was that through the consultation process they were aiming to understand what the cost impacts were. There are some costs which can potentially be provided by stakeholders, however costs relating to regulation have not been included and these would be best identified by DWER. As a Regulatory Impact Statement, WALGA sought clarification regarding the options listed. As is common practice in Regulatory Impact Statement documents, Option 1 is usually 'no change'. In the Paper, Option 1 was identified in various ways, sometimes as 'no change' and sometimes specifically by a title. DWER have clarified that in all proposals, Option 1 is the no change option.

In the Paper there are differentiations between Chapters, Chapters 7, 8, 14 and 15 versus Chapters 9, 10, 11, 12 and 13. The difference is the amount of consultation which has occurred on the various issues associated with the options. The first grouping of chapters has had some consultation, while the second has had less consultation undertaken. Where it is considered that further consultation is needed this is noted in the Table in Section 3.

3. Waste Reform Proposals

This table summarises the proposed reforms and provides brief comments on them. In commenting, WALGA is first identifying if there is a case for change, either presented clearly in the DWER Paper or that has been previously identified by Local Government. Then the particular option that is supported is identified, with a brief rationale. The key reforms considered necessary have been consolidated. Colour coding has been included to indicate **red** 'no support for change', **yellow** 'conditional support', **green** 'change is supported' and **pink** 'further extensive consultation and engagement is required'.

Waste Reform Issue	Options	WALGA Comment
Chapter 7 Align the Environmental Protection Act (EP Act) with Waste Avoidance and Resource Recovery Act (WARR Act) Objectives	1. No change 2. Amend the EP Act to incorporate WARR Objectives	<i>Case for change – Yes</i> Local Government has clearly identified that there is a need for the objects of the EP Act to align with the WARR Act. Instead of limiting the number of landfills to support the diversion targets in the <i>Waste Avoidance and Resource Recovery Strategy 2030</i> (Waste 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 leading 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 Waste Strategy are undermined. The issue is not limited to landfills however, as the Waste Strategy also has material recovery Targets. A proliferation of waste-to-energy facilities, for example, would also undermine the State Government's Waste Strategy material recovery Targets.

During the COVID-19 considerations, WALGA met with the Director General of DWER to discuss the process that would be undertaken if there was a need for exemptions to be issued under the EP Act, for example related to the noise regulations. As there was a State of Emergency in place, the Director General considered it would be through the Commissioner of Police (as the Lead agency) that any exemptions would be issued. However, the issue is then raised regarding what happens in smaller scale emergencies, where there is not a State Government entity in charge, but rather a localised response. Therefore there is a need for the EP Act to recognise these types of events and the potential for exemptions for particular requirements.

Option 2 – Conditional Support

In a range of Submissions on the EP Act Review, Waste Strategy and original DWER Waste Reform Paper, WALGA supported this approach. 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 Waste Strategy. The Association would also suggest that the amendments to the legislation focus on strengthening the link between the EP Act and any future waste strategy (developed as a requirement of the WARR Act), rather than just the current Waste Strategy.

The Association seeks confirmation on the exact intent of the amendments, as in the DWER Paper a range of matters are mentioned, including waste stockpile limits, reuse or recycling of waste, landfill bans and requirements to transport waste to specific facilities. It also indicates that licence conditions may also be developed to require period waste data reporting or reporting on stockpiles. It is the Association's understanding that these matters are already part of licence requirements. Also they have been addressed through other mechanisms, such as Waste Data Reporting under the WARR Act. Similarly there are already mechanisms for landfill bans to be put in place. A key outcome for the Association from the linkage of the Acts would be that licences can be refused if they undermine the achievement of the targets in the Waste Strategy.

Recommendation:

The Association:

- **Conditionally supports option 2 that the amendment of the Environmental Protection Act to link to the Objectives and Targets in Waste Strategies (developed as a requirement of the Waste Avoidance and Resource Recovery Act 2007).**
- **Seeks further confirmation on the scope and extent of how these new powers would be used.**

<p>Chapter 8 Clarifying the application of the WARR Levy</p>	<ol style="list-style-type: none"> 1. No change 2. Amend WARR Levy Act and WARR Levy Regulations – Waste “received” at relevant waste premises 3. Amend WARR Levy Act and WARR Levy Regulations – Waste “deposited” at relevant waste premises 	<p><i>Case for change – Yes</i> The Association supports the consistent application of the Levy to all types of landfills 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 minimised, as it appears that this activity is likely to undermine the recycled construction and demolition waste industry. Feedback from Local Government noted that some stockpiling prior to reuse of material may be necessary for economies of scale in relation to processing material for reuse/recycling.</p> <p>Option 2 – Support There is support for option 2 as it would address the inconsistency between landfills accepting inert versus putrescible waste.</p> <p><i>Option 3</i> In the Paper a clear case for change is not presented to identify if there is significant waste being generated at disposal sites which is being landfilled without paying the Levy. If the Department can identify that this is a significant problem, then the Association would consider supporting the amendment.</p> <p>Recommendation: The Association supports Option 2 to amend the <i>Waste Avoidance and Resource Recovery Act</i> so that the Levy is paid on waste ‘received’ at landfill sites.</p>
<p>Chapter 9 Modernising landfill licencing and levy liability for waste disposal</p>	<ol style="list-style-type: none"> 1. No change 2. Three landfill categories – waste disposal to land 3. Single landfill category – waste disposal to land 	<p><i>Case for change – Yes</i> There are a number of issues with landfill licencing – limited guidance for applicants and assessors, limited regulation, slow timeframe for approvals, challenges to finding new locations for regional landfills, rogue operators – however the proposed regulatory reforms do not necessarily address these issues. The issue of waste ‘accepted for burial’ identified in the Paper would be resolved if Chapter 8, Option 2 was adopted. For Registered Landfills (140 sites) there are potentially very significant financial impacts of requiring licences and additional administrative burden for Local Government. There would also be a substantial increase in resourcing needed by the Department in order to actively regulate these additional facilities. Further consultation and consideration of this proposal is needed.</p>

		<p>Recommendation: That the Department undertake further investigation, analysis and consultation regarding landfill licensing reforms.</p>
<p>Chapter 10 Simplifying the solid waste licencing categories</p>	<ol style="list-style-type: none"> 1. No change 2. Clarify solid waste licensing Categories 61A and 62 3. Merge solid waste categories and used tyre storage categories 	<p><i>Case for change – Yes</i></p> <p>However there are a number of necessary conditions that would be required for Local Government to support other options. It is also considered that Schedule 1 overall needs to be revised and there is an opportunity to modernise the terminology to reflect common industry terminology (for example Transfer Station and Material Recovery Facility rather than solid waste depot). Or to align terminology with existing definitions in the Planning system. In discussion, DWER have clarified that very specific requirements (for example for C&D Recycling facilities relating to asbestos) would continue even with a single category.</p> <p>The Consultation Paper contains a proposal to consolidate the various Landfill licence 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 EP 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 leant 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.</p> <p>The Association supports a risk based approach to landfill regulation, however for this to be applied in a transparent and consistent manner. Better Practice Guidelines 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.</p> <p>WALGA worked 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 Consultation 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</p>

		<p>resources could be burdened with a higher level of regulation and licence fees. Licensing these facilities would also considerably increase the Department’s regulatory workload, with limited environmental benefit.</p> <p>Further consultation and consideration of this proposal is needed. DWER needs to identify regulatory capacity in relation to licensing new sites.</p> <p>Recommendation: That prior to any change or reduction in the number of landfill licence categories:</p> <ul style="list-style-type: none"> • 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 • The Department investigate the terminology used in Planning to identify if it can be aligned with the Schedule 1.
<p>Chapter 11 Minimising stockpiling at waste storage premises</p>	<ol style="list-style-type: none"> 1. No change 2. Levy liability for solid waste facilities, depots and used tyre storage premises that stockpile waste for over 12 months 3. Upfront levy payment for waste storage premises, with levy exemptions 	<p><i>Case for change – Yes</i></p> <p>Option 1 – Support WALGA’s preferred approach is to address this issue via licence conditions and the change in definitions relating to landfill acceptance (Chapter 8).</p>
<p>Chapter 12 Waste Levy exemptions</p>	<ol style="list-style-type: none"> 1. No change 2. Key amendments to the waste levy exemptions 3. Changes to regulations 5 (1) (b) – waste levy exemptions 	<p><i>Case for change – potentially</i> Local Governments have expressed concerns about how the Levy exemptions process worked previously. The current, and proposed, amendments to improve the exemptions process is highly complex, not certain or timely and do not take into account the operational realities of many landfill sites. Specific feedback from Local Governments has been provided to the Department and Environment Minister on this matter.</p> <p><i>Option 2</i> Option 2 suggests exemptions could apply to cell construction and maintenance, but this would need to be included in the works approval and licence and roads and construction works.</p>

		<p>Cell construction - Applicants will identify in the works approval and licence the amount of material they are intending on using in cell construction and maintenance, the Department would then have to assess this. It is assumed part of this assessment would concern whether the amount provided is reasonable for a Levy exemption. This has the potential to be highly subjective, as there is no common standard for how much material is being used. For this requirement to be adhered to there would need to be an assurance mechanism such as identifying that the Department would accept the view of the engineer putting the design forward.</p> <p>Road and Construction Works – it is identified that the Department “may prepare supporting guidance to define what materials can be utilised for roads and construction works under this exemption, to protect human health and the environment.” Although this would give more certainty, there is also the potential that this then becomes another guideline to comply with which adds additional regulatory burden for any construction. There are clear engineering standards for the construction of these types of infrastructure and the work being undertaken on the end of waste frameworks should address the issue of which types of material are being used.</p> <p>Time limit for retrospective exemptions – In the Paper DWER does not indicate to what extent this is a current issue.</p> <p>Removal of the obligation for the CEO to estimate the quantity of exempt waste – this is identified as a rare occurrence.</p> <p>Waste that is generated from emergency events (such as natural disasters) is a further consideration and an area where the exemption process should be retained. This has been used previously and identifies that some waste generated from these events can only be disposed of to landfill and to minimise the economic burden of these events on the community it is appropriate for the Levy not to be applied. Local Governments considered it essential that materials which cannot be recovered, and for which landfill is the only safe management option, such as asbestos, receive a carefully managed Levy exemption.</p> <p><i>Option 3</i> Includes the reforms in Option 2 and additional considerations regarding exemptions. However a clear case for change is not presented as to why this is necessary. It is the Associations understanding that exemptions from the Levy can already be claimed for material which is taken off site for recycling or recovery. Option 3 mentions that the approach</p>
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		<p>refers to the NSW legislation, however the NSW end of waste framework is very specific and the WA approach has yet to be finalised.</p> <p>Recommendation: The Association recommends:</p> <ul style="list-style-type: none"> • The Department take a simplified approach to the exemption process, where Levy is not paid on construction, cover and capping material required for the efficient and effective operation of the landfill is not included in Levy calculations. • An exemptions process be retained for material generated from emergency events.
<p>Chapter 13 Improving solid waste reporting from waste facilities</p>	<ol style="list-style-type: none"> 1. No change 2. Mass Balance Reporting – within 800km of Perth metropolitan region 3. Mass balance reporting – statewide approach 	<p><i>Case for change – No</i></p> <p>Option 1 – Support The new mandatory reporting for Local Governments and waste companies will capture this information. What is proposed is not mass balance reporting, it only focuses on where the waste is disposed of, not where it is generated. For mass balance reporting to occur, measurement of where the waste is generated is needed. If this reform proposal was to be progressed, further work would need to go into considering how to measure waste generation.</p>
<p>Chapter 14 Compliance and enforcement measures for waste</p>	<ol style="list-style-type: none"> 1. No change 2. Options to minimise unlawful disposal of waste 	<p><i>Case for change – Yes</i> The issue of unlicensed sites accepting waste has been raised by a number of Local Governments. Illegal dumping is a significant issue for the majority of Local Governments.</p> <p>Option 2 – Strongly support majority of the options The inability of DWER to act quickly regarding landfilling activities has been an issue for Local Government. Also there are companies which repeatedly offend (illegal disposal of material) but there is only limited action which can be taken. There are a range of reforms included in Option 2, including:</p> <ul style="list-style-type: none"> • New offence & penalty – waste disposal at unlicensed waste facility • New power & penalty – waste restriction notice (to prohibit access to and importation of waste at an unlicensed waste facility) • New power– CEO notice – waste tracking through GPS (requiring installation of GPS tracking device and supply of data to DWER) • New power - CEO notice – waste tracking – record keeping requirements • New power – CEO notice – video monitoring at waste premises (install and supply recordings for inspection)

		<ul style="list-style-type: none"> • New penalties for repeat waste offenders • New penalties for contravening licence conditions for waste stockpiles* • New infringement notices for unlawful waste disposal (ability to issue on the spot infringements can be issued) • New powers - to identify persons in charge of vehicles • New power – install signage identifying unlawful waste disposal site <p>*Not necessary as contravening stockpile licence conditions is already an offence</p>
<p>Chapter 15 Improving the administration and collection of the waste Levy</p>	<ol style="list-style-type: none"> 1. No change 2. Reforming the waste levy return framework 	<p><i>Case for change – Yes</i> Feedback from DWER indicated that this was a tidying up of administrative processes and it would only apply to those organisations not paying the Levy in a timely manner. It is noted in the Paper that the majority of licensees pay the levy in a timely manner.</p> <p>Option 2 – Conditionally Support The Paper indicates that the “CEO would be able to request further information to enable verification of information”, further clarification is necessary on what type of information would be required and the basis for the requesting of information. From the information provided it seems that this option would only be pursued if the Department was concerned that the Levy amount declared was not accurate, or if the Levy was not paid when due.</p>