



Waste Reform Project – Discussion Paper
Department of Water and Environmental Regulation

Contact

Kane Moyle

k.moyle@cmewa.com

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About CME

The Chamber of Minerals and Energy of Western Australia (CME) is the peak resources sector representative body in Western Australia. CME is funded by its member companies who are responsible for most of the State's mineral and energy production and are major employers of the resources sector workforce in the State.

In 2016-17, the value of Western Australia's mineral and petroleum industry was \$105 billion. Iron ore is currently the State's most valuable commodity, and saw an increase in iron ore sales by almost 31 per cent on the previous financial year to value almost \$64 billion. Petroleum products (including LNG, crude oil and condensate) followed at \$19 billion, with gold third at \$11 billion, both commodities saw an increase in sales of 5 per cent 7 per cent respectively from the previous financial year.

The resources sector is a major contributor to the state and the Australian economy. The estimated value of royalties the state received from the resources sector composed of \$5.21 billion (Iron Ore - \$3.6 billion) which accounts for around 19 per cent of the State Government's revenue.

Recommendations

The Department of Water and Environment Regulation released the "Waste Reform Project: Proposed approaches for legislative reform" (July 2017) for public consultation via its website on 28 August 2017.

In response to the Discussion Paper, CME provides the following recommendations:

- The State Government must ensure there is co-ordination between the various waste reform initiatives and develop a holistic waste strategy for WA, underpinned by a sound economic assessment. Given the wide reach of waste across the WA economy and community, there must be stakeholder engagement for waste reform with all affected parties.
- DWER review the history of the EP Act (as it relates to waste), the *Environmental Protection (Landfill) Levy Act 1998*, the *Waste Avoidance and Resource Recovery Act 2007 (WARR)* and the WARR Levy Act including their inter-relationships and rational for approach (circa 1998 and 2007), prior to recommending or pursuing Act amendments.
- DWER clarify the geographic scope and wastes for the proposed levy reforms.
- DWER should conduct a review of barriers and enablers for waste avoidance, reuse, recycling and recovery to enable informed development of effective policy and legislation to achieve its objectives. This must include the existing legislative barriers to cost-effective reuse, recycling and re-processing of mineral resource by-products.
- DWER should clearly define the issue they are seeking to solve with category amalgamations, assess impacts (positive and negative) from category amalgamation, and review alternatives solutions.
- DWER should justify why it requires mandatory monthly reporting of waste data and how it intends to use this data to achieve its waste management objectives. Additionally, should DWER pursue mandatory monthly reporting, this must be supported by efficient, user friendly reporting systems. CME recommends DWER focus efforts on waste data collection and reporting on those priority wastes based on their risk, volume and potential for diversion.
- The State Government pursue the necessary amendments to the EP Regulations to encourage the reuse of clean and uncontaminated fill. Additionally, the DWER should review the criteria and regulatory burden associated with clean fill to ensure desired reuse outcomes are practically achievable.

CME does not support the following recommendations in the Discussion Paper:

- Amending section 4A, Part V Division 3, section 62 or section 62A of the EP Act based on the issues articulated in the Discussion Paper as the EP Act already appears to provide sufficient powers.
- The application of the levy to all waste disposed to land.
- The blanket application of the levy to all first party generated wastes.
- The mandatory installation of weighbridges at all facilities. The installation of weighbridges and the level of effort and cost required to measure waste volumes at facilities should be proportionate to the volume and risk of that facility's waste.

Context

The Department of Water and Environment Regulation (DWER) released the “Waste Reform Project: Proposed approaches for legislative reform” (dated July 2017) for public consultation via its website¹ on 28 August 2017. The Discussion Paper “...proposes legislative and regulatory amendment options for waste reform...” in the following areas:

- Clarifying the legislative relationship between the *Environmental Protection Act (EP Act) 1986* and *Waste Avoidance and Resource Recovery (WARR) Levy Act 2007*;
- Amending key terms in the WARR Regulations to “ensure the levy applies to all waste disposed to land”;
- Amending Schedule 1 of the Environmental Protection Regulations to encompass “a broader range of waste disposal methods”;
- Amending the WARR Levy Regulations and the WARR Regulations to improve measurement and recording of waste; and
- Improving the reporting of waste movement under the WARR Levy Regulations.

As DWER is specifically seeking “feedback on the recommendations outlined in the discussion paper...”, CME’s submission is structured around the recommendations in Section 7.

Where relevant, this submission also refers to information provided by DWER personnel as part of the stakeholder briefing session held in Perth on 22 September 2017.

While the overarching policy intent for the Discussion Paper is not clearly stated, it appears the key drivers for the proposed reform are to:

- Increase the capture of the WARR Levy by:
 - Removing potential loopholes for levy avoidance via waste stockpiling;
 - Expanding the geographic scope of the levy;
 - Applying the levy to first party generated wastes disposed on premise; and
 - Expanding the type of disposal method and facilities captured by the levy.
- Improve the quality of waste data collected and reported in Western Australia (WA).

In principle, CME supports a policy framework for WA that promotes practical diversion of materials from landfill to reuse or recycling.

However, in the absence of a wider strategy and economic assessment, CME considers the reforms as presented in the Discussion Paper will drive perverse (worse) environmental outcomes, unduly increase business costs and fail to improve the diversion of waste from landfill to reuse or recycling. Consequently, CME considers a more thorough review is required by the State Government.

CME notes the Waste Authority of WA has now released a Waste Avoidance and Resource Recovery Strategy Consultation Paper², which is open for consultation until March 2018. DWER’s current Discussion Paper appears to have been developed separately to the Waste Authority’s Consultation Paper. **The State Government must ensure there is co-ordination between the various waste reform initiatives and develop a holistic waste strategy for WA, underpinned by a sound economic assessment. Given the wide reach of waste across the WA economy and community, there must be stakeholder engagement for waste reform with all affected parties.**

¹ DWER Consultation Website page available at: <https://www.der.wa.gov.au/our-work/consultation/452-waste-reform-project>

² Available at <http://www.wasteauthority.wa.gov.au/about/waste-strategy/review-of-waste-strategy>

Longer-term Recommendations (Section 7.1)

Strengthening Relationship between EP Act and WARR Act

The Discussion Paper recommends amending Acts and/or Regulations in five specific ways to strengthen the relationship between the EP Act and WARR Act:

1. Amend 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.
2. Amend 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.
3. Amend 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;
4. Amend 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
5. Amend 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.

CME notes the following:

- The EP Act is “An Act ...for the conservation, preservation, protection, enhancement and management of the environment and for matters incidental to or connected with the foregoing.”
- The EP Act objectives as stated in section 4A already specifically include intergenerational equity, pricing and incentive mechanisms, the polluter pays principle, pricing based on full life cycle costs, use of market mechanisms and waste minimisation.
- The EP Act section 62 already gives authority for a works approval or licence to be granted “subject to such condition as the CEO considers to be necessary or convenient for the purposes of this Act relating to the prevention, control, abatement or mitigation of pollution or environmental harm” and that “...nothing in that section or the regulations prevents other conditions from being attached”.
- The EP Act section 62A already states that a works approval or licence can include conditions that require (amongst other things):
 - Monitoring
 - Conducting analysis of monitoring data
 - Provide information on the nature and quantity of wastes and on materials leading to the generation of those waste
 - Dispose of waste in a specified manner
 - Reuse of waste wholly or in part; or make waste available for reuse by another person
 - Provide reports on monitoring data and analysis
 - Provide reports on audits and studies
 - Supplying the CEO with information relating to the characteristics and volume of any waste held or stored

CME considers the EP Act already provides extensive powers related to waste. It is unclear from the Discussion Paper how these powers have failed to achieve an intended outcome or even if the CEO (Director General) has ever previously sought to use these extensive powers

and found them to be lacking. Consequently, the Discussion Paper appears to recommend amendments to the EP Act to provide powers already conveyed.

As noted in the Discussion Paper, changes to the EP Act and Regulations will affect several hundred licences across WA. This will create a significant impost on DWER's internal resources as well as to affected licensees.

The extensive reach of the EP Act also heightens the potential for unintended consequences from changes to the Act. Changing the object and principles in Section 4A in effect alters the interpretation and application of the entire Act. CME considers any change to the foundation of the Act should not be taken lightly.

Consequently, **CME does not support amending section 4A, Part V Division 3, section 62 or section 62A of the EP Act based on the issues articulated in the Discussion Paper as the EP Act already appears to provide sufficient powers.**

CME also notes the EP Act was amended in 1998 to insert Part VIIA – Landfill levy, and the *Environmental Protection (Landfill) Levy Act 1998* was introduced, with the intent of forming an integrated EP Act incorporating a levy scheme (in line with the EP Act's objective relating to valuation, pricing and incentive mechanisms).

This integrated approach was subsequently changed and two new Acts (the WARR Act and the WARR Levy Act) introduced.

The Discussion Paper has not addressed the history of these changes, the original rationale for integration nor the subsequent rationale for separation. Instead, the Discussion Paper merely states "it could be conjectured that the substantial time between the original development... and standalone legislation in 2007-2008 may be the reason why the relationship is not fully developed". Conjecture is an insufficient level of assessment to justify amending the EP Act.

CME recommends DWER review the history of the EP Act (as it relates to waste), the *Environmental Protection (Landfill) Levy Act 1998*, the WARR Act and the WARR Levy Act including their inter-relationships and rational for approach (circa 1998 and 2007), prior to recommending or pursuing Act amendments.

The Discussion Paper also fails to provide clarity on the specific amendments for the terms "disposal premises" and "receive" other than to state the intention for the levy to apply to "all waste disposed to land". A lack of detail makes it difficult to assess the full implications of this proposal, however the stated intent to capture all wastes is of significant concern. **CME does not support the application of the levy to all waste disposed to land.**

In the absence of viable treatment options, reuse and/or recycling markets, appropriate facilities and cost-effective transport across the State, such a move is merely a revenue-raising measure. It can not meet the objective of providing an economic lever to divert waste from landfill to re-use, recycling and recovery options and hence it is inconsistent with the objectives of the EP Act and the WARR Act.

Application of the levy should instead be targeted at maximising diversion of those wastes that can be technically and economically re-used, recycled or recovered where there are existing facilities and markets that enable this diversion, or where the application of the levy in the short-term will credibly enable this diversion. If applied prematurely or inappropriately to certain materials, the probable outcome will instead be undesirable including offshoring of certain industrial processes³, industry closure, reduced treatment and beneficial re-use of "wastes"⁴, reduced expenditure in R&D and illegal dumping.

³ For example, refining and down-stream processing will present diminished value-add in WA whilst offshoring these activities will reduce costs as the waste will be disposed in a different jurisdiction.

⁴ If the levy is expanded to all waste disposed to land, treatment of some mineral (eg: sands) and organic material (eg: biosolids), will generate by-product materials deemed "wastes" that will incur a levy. If the value of beneficial use product does not adequately offset the cost of the levy, this discourages beneficial re-use.

The waste levy system as currently enacted is already applied to wastes where it does not act as an economic lever to divert waste from landfill. As noted by the Waste Authority of WA, the diversion of municipal waste from landfill within the waste levy region has been in decline since 2012-13 decreasing from 45 per cent to 36 per cent⁵. The State’s reuse and recycling levels are the second worst in Australia despite the extensive period over which the levy system has operated and the significant revenue already raised by the system (\$245 million during 2014 – 2017 Financial Years⁶).

Of the levy money collected under the current scheme, only 25 per cent is credited to the WARR Account for waste-related initiatives, demonstrating the scheme largely operates as a revenue-raising mechanism whilst failing to improve reuse, recycling, recovery and waste avoidance. Additionally, funds credited to the WARR are not all spent, leading to the WARR Account balance rising year on year (See Figure 1). This situation suggests there are other barriers driving waste performance in WA and other enablers (beyond the levy) needed to alter this performance.

CME recommends the State conduct a review of barriers and enablers for waste avoidance, reuse, recycling and recovery to enable informed development of effective policy and legislation to achieve its objectives. This must include the existing legislative barriers to cost-effective reuse, recycling and re-processing of mineral resource by-products.

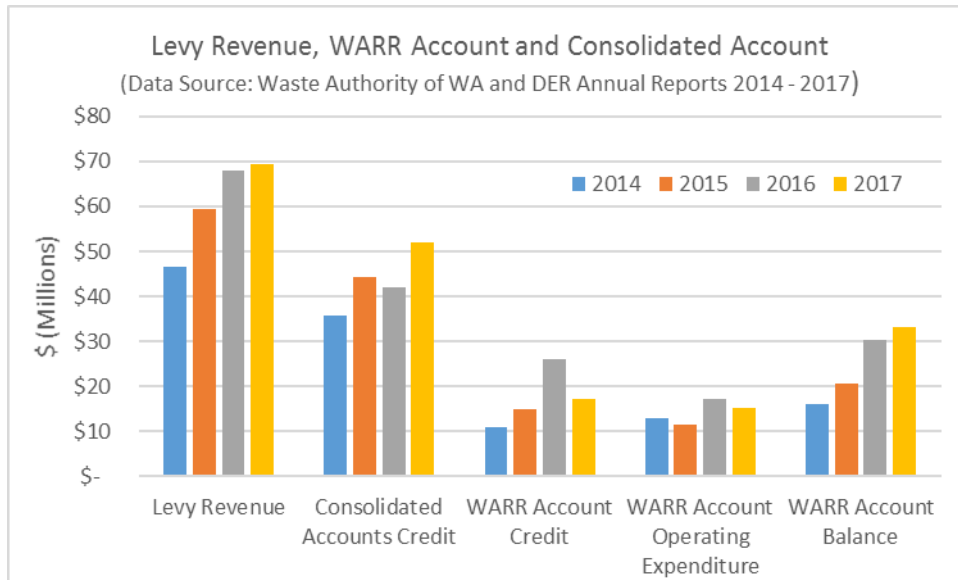


Figure 1: Annual Levy Revenue, Credit Distributions, Expenditure and WARR Account Balance

Due to the nature of mineral resources, their extraction involves the movement of waste rock, overburden or other materials (additional to ore) with refining, smelting and other processing activities also resulting in materials such as slimes, ash, sand, scale, muds and tailings. This material is typically contained on premise and in many cases is a critical material for site rehabilitation. In other instances, it is stored in specifically engineered structures to ensure environmental impacts are minimised and appropriately managed.

The volumes produced of these materials is directly linked to the characteristics of the orebody and refining, processing and other treatment technologies. CME notes DWER advised verbally during the waste reform briefing held on 22 September 2017, contrary to the stated intent in the Discussion Paper, their intent is not to capture these wastes by the levy scheme. However, if

⁵ Waste Authority of WA, Recycling Activity in Western Australia 2015-2016 Annual Review, available at: https://www.wasteauthority.wa.gov.au/media/files/documents/WA_Recycling_Activity_15_16.pdf

⁶ Revenue data from DWER (DER) Annual Reports, Statement of Comprehensive Income, Landfill Levy line item, for Financial Years ended: 30 June 2014, 30 June 2015, 30 June 2016, 30 June 2017.

first party generated waste are captured by the levy within the metropolitan region, this will be the outcome, as some of these wastes are disposed on-site (first party) at licensed premises. **CME does not support the blanket application of the levy to all first party generated wastes.** Capture of these materials by the levy system (whether intentional or not) would also promote the direct export of primary products rather than downstream processing or treatment within WA.

Additionally, DWER advised verbally during the same briefing that their intent is not to expand the levy to all geographic regions of WA as the State's size and the remoteness of most regions inhibits the economic viability of re-use and recycling options. CME supports this view and **recommends DWER clarify the geographic scope and wastes for the proposed levy reforms.**

Shorter-term Recommendations (Section 7.2)

Amend Schedule 1 of the Environmental Protection Regulations

The Discussion Paper proposes several changes to Schedule 1:

- Amalgamation of the five landfill categories (63, 64, 65, 66, 89) in to one category and expanding the scope of landfilling to capture depositing, spreading and ploughing waste to land.
- Removing references to “accept for burial” and the *Landfill waste classification and waste definitions 1996*; and
- Revising categories 61A and 62.

In principle, CME supports simplification where this still achieves desired outcomes. However, reducing the number of landfill categories affects other aspects of the regulatory regime, which have not been fully assessed in the Discussion Paper.

The move towards a single landfill category regardless of waste type appears to be counter to DWER's focus on risk-based regulation. The environmental risks of a landfill in part depend on the type of waste for which the landfill is licensed.

A single category would not allow for differentiation of licensing fees and would remove DWER's ability to risk assess and prioritise based on category. DWER would need to adopt new (additional) measures to control the type of waste licensed for each landfill in the absence of separate categories as not all wastes will be appropriate for disposal at all landfills. This approach also appears inconsistent with the approach for other categories within Schedule 1 where activities that are similar (at a high-level) but different in terms of level of environmental risk and controls still have different categories.

It is unclear from the Discussion Paper what specific problem the amalgamation it is attempting to solve nor what other options have been assessed.

For example, if a key issue with the current application of the waste levy is “accepted for burial”, this terminology could be changed in relevant categories within Schedule 1 without requiring categories to be amalgamated. Alternatively, if a key issue is the Levy only applies to categories 63, 64 and 65 (but should apply to other categories), the WARR Levy Act could be amended to include these other categories instead.

It is worth noting, if EP Act Schedule 1 categories are amalgamated, an amendment would be requirement to the WARR Levy Act anyway.

Additionally, the Discussion Paper does not assess the implications for category 89 landfills and the related application of the *Environmental Protection (Rural Landfill) Regulations 2002*.

As noted in the Discussion Paper, this recommendation would require licence amendments to greater than 500 existing licences and would likely affect (increase) licence fees for some existing licensees.

CME recommends DWER clearly define the issue they are seeking to solve with category amalgamations, assess impacts (positive and negative) from category amalgamation, and review alternatives solutions.

Amend Regulations for Levy Application to Waste Stored greater than 12 Months

Recycling markets for some wastes are linked to commodity cycles and prices (for example copper). Consequently, the economic viability of recycling certain materials can change significantly over time and it may take longer than 12 months for certain recycling markets to experience an upswing. If waste storage is to be captured by the levy, there must be a process for exemptions, so those materials that can be safely stored in an easily recoverable manner are not required or incentivised to be landfilled. Proposed amendments will need to carefully consider the balance between reducing levy avoidance through “storage” and sterilising resources with potential future value.

Regulation Amendments for Waste Measurement, Records and Reporting

In principle, CME supports the collection of useful and consistent data, however, the effort required to obtain that data must be proportionate to the value obtained (by the State and / or the Licensee) from that data. **CME does not support the mandatory installation of weighbridges at all facilities. The installation of weighbridges and the level of effort and cost required to measure waste volumes at facilities should be proportionate to the volume and risk of that facility’s waste.**

For example, the Discussion Paper proposes applying the levy to first party on site disposal. This would capture smaller operators at great costs but which have no material impact on the State’s total waste volumes. Installation of a weighbridge would likely cost upwards of \$250,000; an unreasonable cost for most first-party waste generators. Additionally, some wastes (eg: liquid) are more appropriately or accurately measured by other techniques.

Many waste generators produce small volumes of waste and make no material difference to the State’s overall waste volumes. **DWER should justify why it requires mandatory monthly reporting of waste data and how it intends to use this data to achieve its waste management objectives. Additionally, should DWER pursue mandatory monthly reporting, this must be supported by efficient, user friendly reporting systems and be focused on** those priority wastes based on their risk, volume and potential for diversion.

Other Matters

CME provides the following additional comments and recommendations related to waste policy:

- A holistic approach to waste for WA is needed. There must be a clear policy objective supported by efficient and effective regulation and reform. Given the wide reach of waste across the WA economy and community, there must be stakeholder engagement for waste reform with all affected parties. The State has several different initiatives currently underway, announced or pending related to waste (including the container deposit scheme, plastic bag ban, waste avoidance and resource recovery strategy, licensing reform, various programmes funded from the WARR Account and others, response to Eclipse case) however consultation to date has been separate for each initiative, *ad hoc* and poorly targeted.
- The outcome of the Eclipse case⁷ demonstrates the current regulatory regime is driving perverse outcomes resulting in greater (and avoidable) environmental impacts. Penalising reuse of clean and uncontaminated fill material creates additional unnecessary costs for business and increases waste volumes and resource consumption. The outcome also potentially limits the capacity of some operations to

⁷ Eclipse Resources Pty Ltd v Minister for Environment (No 2) [2017] WASCA 90.


reuse waste rock material to achieve desired rehabilitation outcomes, implement offsets and improve post-mining land use. The Discussion Paper has not addressed this urgent issue. **CME recommends the State pursue the necessary amendments to the EP Regulations to encourage the reuse of clean and uncontaminated fill. Additionally, the DWER should review the criteria and regulatory burden associated with clean fill to ensure desired reuse outcomes are practically achievable.**

- Additionally, any levy or wider waste reform should ensure there are no disincentives or barriers to future reuse or recycling of materials not captured by the levy. This would include materials such as waste rock, overburden, slimes, ash, sand, muds, tailings and the like. Treatment and processing technologies have improved over time and are likely to continue to do so. It is important that there are incentives (rather than barriers) to pursue technological advances in material reprocessing industrial materials
- The current controlled waste tracking system is cumbersome and costly to business. Other jurisdictions in Australia have more efficient, user-friendly systems with lower administrative costs to business. DWER should implement improvements to the controlled waste tracking system as part of its waste reform. This could be amalgamated with improvement to waste data collection and reporting more broadly.
- WA currently has only one Class IV licensed facility and this facility is inactive. In the absence of appropriate facilities in WA, industry is forced to stockpile waste it can not dispose. This results in numerous, temporary storage locations across the State increasing the risk of environmental impacts over the longer-term and diminishing the likelihood of treatment. The availability and capacity (life) of WA’s waste facility assets should be reviewed as part of a holistic approach to waste for WA to ensure they are sufficient for WA’s needs.
- As previously mentioned, despite only 25 per cent of levies being credited to the WARR Account, this account is accruing more funds than it expends and had a balance of \$33.2 million as at 30 June 2017. The operation of the WARR Account should be reviewed to determine whether its expenditure to date has been effective in improving waste outcomes for WA and to determine how to maximise benefits from future expenditure from the Account.

Conclusion

CME welcomes the opportunity to provide comments on the Discussion Paper and we look forward to ongoing engagement on waste reform to ensure there is a holistic approach to waste for Western Australia.

If you have any further queries regarding the above matters, please contact Kane Moyle, Manager – Natural Resources, on (08) 9220 8511 or k.moyle@cmewa.com.

Authorised by	Position	Date	Signed
Nicole Roocke	Deputy Chief Executive	13 November 2017	
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