



Government of **Western Australia**
Department of **Water and Environmental Regulation**

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Western Australia.*



Consultation summary report

A review of the discussion paper on the Environmental Protection
(Controlled Waste) Regulations 2004

August 2019

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Department of Water and Environmental Regulation

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1 Introduction

In Western Australia, the transport of controlled waste is regulated under the *Environmental Protection Act 1986* (EP Act) and the Environmental Protection (Controlled Waste) Regulations 2004 (Controlled Waste Regulations).

The Department of Water and Environmental Regulation administers the Controlled Waste Regulations.

The department is reviewing the Controlled Waste Regulations to ensure they are streamlined, effective and implement the National Environment Protection (Movement of Controlled Waste between States and Territories) Measure 1998 (Controlled Waste NEPM). The department is also considering a risk-based approach to the transportation of controlled wastes.

A preliminary discussion paper was released in March 2018 for a 13-week consultation period. The discussion paper sought stakeholder views on proposed changes to controlled waste management in Western Australia and identified 15 areas for reform. Two workshops were held during the consultation period and a total of 30 submissions were received.

This report summarises recommendations and stakeholder feedback on the discussion paper. Stakeholder submissions will inform the next stage of the review process. Recommendations taken forward into the next stage may require regulatory impact assessment and further consultation with stakeholders.

The department thanks all respondents taking part in this consultation process.

2 Submissions

Submissions were received from the following organisations and individuals:

Submitting party
Chamber of Minerals and Energy
Pilbara Ports Authority
Western Power
Energi Power
Aus Pork
Cristal Pigment Australia
Kwinana Industries Council
WALGA
Coogee Chemicals
Scolexia
GD Pork
WA Pork Producers
CD Dodd
Sykes Transport
PSI Systems
Suez
Instant Waste
Daniels
Alcoa
Eastern Metropolitan Regional Council
Paintback
Waste and Recycling Industry Association Australia
SG Enviro/Nutrarich Composting
C-Wise
Water Corporation
Tyrecycle
Wesfarmers Chemicals, Energy and Fertilisers
Department of Mining, Industry Regulation and Safety
Ascend Waste and Environment
Richgro

3 Submissions and responses

3.1 Waste holder responsibilities for the safe disposal of controlled waste

This section relates to recommendation 2 in the discussion paper which proposed that waste holders should be responsible for the safe disposal of controlled waste. The department received 19 responses to this recommendation: 58 per cent were in support of the idea that responsibility should lie with waste holders, 32 per cent were against it and 10 per cent were undecided.

Stakeholder comment	Department response
Waste holders should not be responsible for poor decisions made by the carrier.	Carriers and drivers will retain their responsibilities under the Controlled Waste Regulations. Making waste holders responsible for the safe disposal of waste is consistent with the 'polluter pays' principle in the EP Act which states that 'those who generate pollution and waste should bear the cost of containment, avoidance or abatement'.
This will result in confusion and duplication of responsibilities during transport. Responsibility should be with the carrier/driver who has direct control of the waste during transport.	
Waste holders should not be responsible if the carrier breaches the regulations.	
Both the consignor and transporter need to be held accountable in order to meet Chain of Responsibility and Australian Dangerous Goods responsibilities.	Noted. Although waste holders have a contract with a controlled waste carrier when they are engaged to dispose of a controlled waste, the carrier is not obligated to tell the waste holder where the waste is going or what will happen to it. Similarly, the waste holder is not obligated to acquire this information from the carrier.
Waste holders would also hold the carrier contractually responsible to meet all requirements of regulations.	
This should not be necessary if all elements of the chain of custody operate within the regulations. Also it is in addition to a contract that already exists between the waste holder and the carrier.	The proposed change does not remove responsibilities from the carrier for the safe transport of controlled waste but requires the waste holder to retain responsibility for their waste management decisions.
This is in line with product stewardship or extended producer responsibility principles.	

Stakeholder comment	Department response
Supported, but only if the waste holder responsibility is similar to the New South Wales (NSW) system where the added responsibility involves due diligence.	Noted. The proposed approach would require waste holders to seek a consignment authorisation from the waste facility. This is similar to the NSW approach.
Need more information about how this would work in practice, especially if the waste changes hands a couple of times.	Under the proposed change, the waste holder responsibility ends when the waste is unloaded at a waste facility lawfully allowed to accept it. If the waste facility transports the waste onwards, they become the waste holder and the same responsibilities will apply.
This puts the onus on the waste producer to ensure compliance. Coupled with the consignment authorisations, this would ensure compliance and stop transport companies having to struggle to get waste delivered at certain facilities.	Carriers and drivers would retain their responsibilities for the safe transport of waste under the regulations in addition to the waste holder obligations.
Avoids producers using carriers to absolve themselves of responsibility for waste.	
Need to put the responsibility on the waste holder and not the waste transporter. This responsibility should carry through until such time as the waste is disposed of at the right licensed facility.	
It is not clear how this will work in practice.	Noted. Further consultation will be required prior to regulatory amendments.
May result in undue accountability for waste disposal for the Water Corporation. Water Corporation will need to rethink contractual arrangements with contractors.	The department notes that increased waste holder accountability will increase administrative burden on organisations producing controlled waste, but notes also that the proposed change is consistent with the polluter pays principle in the EP Act.

Stakeholder comment	Department response
The Waste Locate system would be the preferred service for tyres.	Waste Locate is the NSW tyre and asbestos tracking system. This system uses QR codes for transporters and waste facilities to track the transport of tyres and asbestos waste. Waste Locate operates as a separate system from the NSW equivalent of the CWTS.
Better compliance of the current regulations is required, not more regulation.	The department acknowledges that effective compliance and enforcement is essential to the successful implementation of any regulation and is exploring opportunities to improve compliance practices.

The department considers that responsibility for the safe and effective disposal of controlled waste should rest with the party creating the waste, i.e. the waste holder. This recommendation is consistent with the 'polluter pays' principle in the EP Act which states that 'those who generate pollution and waste should bear the cost of containment, avoidance or abatement'. This recommendation supports the improved classification of controlled wastes and helps ensure that waste is properly disposed of.

This recommendation requires waste holders to take all reasonable steps to ensure that controlled waste is transported to a facility that is authorised to receive that waste.

Controlled waste carriers and drivers will retain their obligations for the safe transport of waste under the Controlled Waste Regulations.

3.2 Obligations as a waste holder for the disposal and classification of controlled waste

This section relates to recommendation 1 in the discussion paper which proposed to extend the responsibility of waste holders through the establishment of a consignment authorisation process and the requirement to accurately classify controlled waste. The department received 21 responses to this recommendation: 52 per cent supported of the idea of a consignment system, 33 per cent were against it and 14 per cent were undecided. Comments from stakeholders were primarily concerned with the proposed obligation to undertake chemical analysis.

Stakeholder comment	Department response
We would like more information on circumstances that would require testing and the details around consignments.	Guidance for industry will be developed to outline the circumstances when chemical analysis will be necessary. A consignment authorisation system is proposed for the transport of controlled waste. Further consultation and guidance will be required in the lead up to regulation amendments.
Provide further clarification on these requirements and how they would apply to the types/risk level/categories of controlled wastes. Sampling and laboratory analysis can represent a significant cost to business.	
The approach needs further clarification about when testing will be required. Also, will the consignment process follow the NSW model?	
This will lead to significant additional administrative burden, cost and complexity on waste holders.	The department notes that increased waste holder accountability will increase administrative burden on organisations producing controlled waste, but notes also that the proposed change is consistent with the polluter pays principle in the EP Act.
Western Power concerned about more strenuous testing obligations on waste holders.	
A similar process for consignment authorisations operates in Queensland (QLD) and requires the waste facility to complete a bulk upload of data at the end of the month.	The department agrees that the proposed change is in line with best practice waste management.
This is consistent with the Australian hazardous waste data and reporting standard. This approach represents best	

Stakeholder comment	Department response
practice in responsibility for the waste's generation and its lawful management.	
One of the biggest concerns I have as a carrier is being provided with the waste categories, volumes and appropriate paperwork on pick up.	
This change avoids producers using carriers to absolve themselves of responsibility for waste.	
Adding complexity will not help bring people operating outside of the regulations into compliance. Only compliance action can do that.	The department acknowledges that effective compliance and enforcement is essential to the successful implementation of any regulation and is exploring opportunities to improve compliance.
Would like stronger compliance action to ensure only carriers are collecting batteries.	
Waste holders we service would not be capable of adequately classifying or testing their (wash waters) waste. Will add lots of unnecessary complication.	Noted. Further consultation and guidance will be required in the lead up to regulation amendments.
This will help landfill operators and address a significant gap in the regulations. The definition of 'when necessary' requires further guidance and detail.	Noted. Further consultation and guidance will be required in the lead up to regulation amendments including consultation on the appropriate parameters for testing.
Other analysis needs to be considered and included with the terminology. For example, biological risk should also be assessed.	
Not enough clarification of either point so cannot support.	
As collectors of large volumes of K110 and K210, we have a large number of small business owners and householders as clients. We also have multiple disposal sites we may use to	The department notes the complexity when dealing with distributed, domestic wastes.

Stakeholder comment	Department response
dispose of our waste. Would all of these clients need to have an agreement with each of the disposal facilities? There are situations that occur where we may intend to use one disposal facility on a particular day but have to divert to a different facility.	Consignment authorisations between waste holders and waste facilities will help to avoid the situation where waste facilities refuse to accept waste.
Please provide guidance on when chemical analysis would be required.	Further consultation and guidance will be required in the lead up to regulation amendments.
Chemical analysis not appropriate for tyre transport.	Noted. Wastes that are easily categorised will not require analysis.
Additional complexity will not encourage better compliance. Requiring chemical analysis for wastes that are easily categorised presents operational issues.	

The aim of this recommendation is to establish a consignment authorisation and waste classification system to make the waste holder responsible for the safe and effective disposal of their waste. The department acknowledges that changes to the Controlled Waste Tracking System (CWTS) will be required to facilitate this change.

If implemented, a consignment authorisation process will require the waste holder to seek authorisation for the disposal of controlled waste from the occupier of a waste facility lawfully allowed to accept it. Only when the occupier of the waste facility authorises the consignment, could a controlled waste tracking form be raised in the system. A controlled waste carrier will be obligated to transport waste in accordance with the consignment authorisation.

If implemented, a waste holder will be required to provide a chemical analysis of their waste whenever there is uncertainty surrounding the waste classification. For example, when disposing of contaminated soils or other solid wastes at a class I, II or III landfill. This places the onus on the waste holder to ensure that the waste will be appropriately classified, and transported to a waste facility lawfully allowed to accept it.

Further guidance will be developed by the department on the obligations of the waste holder prior to implementation of this recommendation.

3.3 Requiring correct disposal of controlled waste

Recommendation 3 in the discussion paper proposed that r.3(6)(b) of the Controlled Waste Regulations be rescinded. This regulation allows controlled waste which may be accepted at a Class I, Class II or Class III landfill to avoid the provisions of the Controlled Waste Regulations.

The department received 16 responses: 56 per cent were in support of the recommendation that r.3(6)(b) be rescinded, 19 per cent were against it and 25 percent remained undecided.

Stakeholder comment	Department response
Respondent concerned that this change will not fix the problem and may actually impede the appropriate treatment of wastes to make them safer to transport and dispose of.	Although mixing a liquid controlled waste with a solid may make the controlled waste safer to transport, it is not made safe for disposal at a landfill where contaminants may leach from the mix and impact the surrounding environment.
Support in conjunction with adoption of hazardous waste characteristics list.	The department notes that these comments indicate support for a risk based approach to controlled waste management. They imply that a risk based approach to controlled waste would lead to the deregulation of low-risk wastes which may then change the requirements for how these wastes are treated and disposed of.
Support, but only if taken together with adoption of hazardous waste characteristics list.	
This will significantly affect industry legitimately disposing of solid waste at class I, II and III landfills.	Not all waste disposal at class I, II and III landfill is legitimate. There are wastes being disposed of inappropriately at landfills.
Additional administrative burden.	However, the department accepts that removing r.3(6)(b) would make the disposal of soils from contaminated sites and other legitimate activities subject to additional regulatory burden.
Support but should apply across all sectors. Operations licensed to undertake this activity should be able to continue doing so.	
Would like further information on intentions of this change and how it would play out in practice	

Stakeholder comment	Department response
But need to consider the implications of removing landfill disposal for some kinds of wastes.	
Support for contaminated soil and asbestos. Needs more information for other solid material.	
Another consequence of r.3(6)(b) is that low risk waste is being classified as controlled waste as a result of being in liquid form rather than because it presents a risk to people's health or the environment.	There are no assigned environmental risk levels for wastes in Schedule 1 of the Controlled Waste Regulations. Regulating controlled wastes according to risk is addressed in later recommendations.
Support but cautions that adding liquid wastes to solid waste for the purpose of making compost should be taken into account. The situation should not arise where the transport of compost is included.	Noted. However, adding liquid waste to soils to make compost is likely to occur as an activity on a licensed premises and the process of making compost materially transforms the waste into a product. These activities should not be impacted by this change.
This will directly impact Water Corporation with additional admin and costs. Feels this additional burden is not commensurate with the risk posed by dewatered sludge.	
This recommendation makes sense in principle, as a means of discouraging 'shandying' through greater transparency in the tracking process, but whether it would achieve its aim is uncertain. It has the potential to make the decision of whether a waste is a controlled waste ambiguous.	Noted, see revised approach outlined below.
Agree this is a problem but not sure that this change will make a difference. Also concerned that sometimes this could be appropriate in remote areas in some cases.	

Stakeholder comment	Department response
I believe this change is necessary as we are not in the position to determine what needs tracking and what doesn't. This will remove the risk of us carrying untracked controlled waste.	The department has revised its approach to this section. However, updated definitions of solid waste (outlined below) and additional obligations for waste holders (sections 3.1 and 3.2 above) should help address these concerns.

The department has identified situations where controlled waste may be added to other solid materials and disposed of to landfill contrary to obligations under the Controlled Waste Regulations. This practice is particularly common at liquid waste facilities in WA. Liquid waste is transported in accordance with the Controlled Waste Regulations from the waste holder to the liquid waste facility, where the liquid waste facility operator mixes the liquid waste with solids such as sawdust, green waste or soils before transporting to a landfill for disposal. It was recommended that r.3(6)(b) be removed from the Controlled Waste Regulations to ensure these wastes are tracked as intended and disposed of appropriately.

However, given the proposed strengthening of waste holder responsibilities, and feedback from stakeholders concerning the legitimate disposal of solid wastes that meet the landfill acceptance criteria, the department considers that further evaluation of the regulatory options to address this problem is necessary. This may entail amendments to the Controlled Waste Regulations in concert with amendments to Part V prescribed premises licences and the Landfill Waste Classifications and Waste Definitions 1996 (as amended 2018).

The department proposes that r.3(6)(b) is not removed, but the terminology used within the regulation is defined to account for 'encapsulated, chemically fixed, solidified and polymerised wastes'. (These terms, which are used in r3(6)(b)(iv) to define one type of solid waste which is not included in the general exemption provided by r3(6)(b), are currently not defined, which could lead to confusion.) These wastes require tracking under the Controlled Waste Regulations. A liquid controlled waste mixed with a solid material will meet the definition of 'solidified' and will require controlled waste transport and tracking from the place where the mixing takes place to the location of final disposal.

This change is unlikely to halt the mixing and disposal of these controlled wastes in landfill, but this measure should ensure that information of the location of these activities is recorded.

3.4 Managing controlled waste according to risk

In recommendation 14, the discussion paper asked whether it would be advantageous to incorporate a list of controlled waste's hazardous characteristics into the Controlled Waste Regulations. The department received 17 responses: 94 per cent were in support of the idea, 6 per cent were undecided.

Stakeholder comment	Department response
This will align with the Basel convention and the Controlled Waste NEPM but should be considered together with other risk-based regulatory approaches to support deregulation of low-risk waste.	Managing controlled waste according to risk requires an understanding of a controlled waste's hazardous characteristics. Incorporating the hazardous characteristics in the Controlled Waste Regulations would better reflect the intent and scope of the regulations and provide a framework for determining the risk of different types of controlled wastes. The department is also considering incorporating the hazardous characteristics list into the definition of controlled waste. The incorporation of a hazardous characteristics list will increase consistency between the Controlled Waste Regulations, the Basel Convention, the Controlled Waste NEPM and equivalent regulation in other Australian states.
Supports further alignment between states and internationally as well as a risk-based approach.	
This will provide the consignor and receiving facility with clarity on what waste they can hold.	
Respondent notes that the hazardous characteristics listed in Appendix A are general in description and should include an at-risk threshold level of contaminants in the waste.	
Support consistency with other states.	
Support consistency with Basel and the Controlled Waste NEPM.	
Agree and further believe there should be a sub category register of hazardous controlled waste. The need for a closer relationship between dangerous goods and controlled waste is long overdue.	
Not clear what a list of hazardous characteristics adds to the Controlled Waste Regulations given that all of the controlled waste listed in Schedule 1	

Stakeholder comment	Department response
would be hazardous according to this list.	
Support but request clarification, will this be consistent with the Basel list?	A hazardous characteristics list is likely to be consistent with the Basel Convention. Further guidance will be provided with regulatory amendments.
Support but needs clarification.	
WorkSafe supports risk-based approach but this needs to be well defined and applied.	

Managing controlled waste according to risk requires an understanding of a controlled waste's hazardous characteristics. Incorporating the hazardous characteristics in the Controlled Waste Regulations would better reflect the intent and scope of the Regulations. The department is considering options to incorporate the hazardous characteristics list into the Controlled Waste Regulations and into the definition of controlled waste.

3.5 Better regulation of asbestos waste transport

This section relates to recommendation 4 in the discussion paper which proposed that all commercial transport of asbestos should be subject to the licensing and tracking requirements of the Controlled Waste Regulations. The department received 14 responses to this recommendation: 78 per cent supported of the idea of asbestos tracking and 22 per cent were against it.

Stakeholder comment	Department response
<p>Additional financial and administrative burden will work against the safe management of asbestos disposal. Further, respondent requests exemptions for naturally occurring asbestos from tracking requirements.</p>	<p>Comments against the proposed changes are based on the assumption that increased regulation of asbestos will increase illegal dumping.</p> <p>However, the lack of data on asbestos waste transport and disposal prevents the department from assessing the scale of the problem.</p>
<p>Additional administration and cost will work against the desired outcome. Landfills should have greater capacity to accept higher volumes of asbestos to encourage good practice.</p>	<p>Separated and wrapped asbestos does not attract the landfill levy to encourage responsible asbestos disposal, but landfills must be lawfully allowed to accept this waste.</p>
<p>Support if the tracking threshold is set at 10 m² and consistent with WorkSafe guidance. Concerned that additional regulation will result in more dumping on Water Corporation-managed land.</p>	<p>Tracking thresholds are likely to be set at the same rate as other controlled wastes, i.e. 200 kg. This equates to about 20 m² of asbestos sheeting. The benefit of the 200 kg thresholds is that only licensed asbestos contractors transporting commercial loads of asbestos will be impacted by the change.</p>
<p>Some unmanned landfills will receive asbestos. How will they be dealt with?</p>	<p>Controlled waste is sometimes tracked to un-staffed waste facilities. There are current mechanisms to support this.</p>
<p>Additional regulation will not improve compliance. Better compliance and enforcement will improve compliance.</p>	<p>The department acknowledges that effective compliance and enforcement is essential to the successful implementation of any regulation and is exploring opportunities to improve compliance.</p>

Stakeholder comment	Department response
WorkSafe is supportive of the change.	WorkSafe regulates licensed asbestos removal contractors. Their support for increased regulation of asbestos waste transport is appreciated.
WA's absence of tracking data (or other reliable data sources) for asbestos waste stands out as a data gap compared to other jurisdictions.	Tracking of asbestos will enable Western Australia to meet national and international reporting requirements.

The department considers that there is a strong case for increased regulation of commercial transport of asbestos in view of the public health risks, its presence in the environment and the history of illegal dumping.

Although the Department of Mines, Industry Regulation and Safety (responsible for WorkSafe legislation and the licensing of asbestos contractors) expressed support for increased asbestos waste regulation and tracking, the Department of Water and Environmental Regulation did not receive submissions from asbestos contractors. Further consultation with this stakeholder group will be necessary before changes to the regulation of asbestos waste transport are developed.

3.6 Setting more appropriate tracking thresholds for controlled waste

This section relates to recommendations 9, 10 and 11 of the discussion paper. Recommendation 9 proposed that the tracking thresholds for high-risk wastes (200 kg or 200 L) should be removed to allow for small volumes of these wastes to also be tracked.

Recommendation 10 proposed that wastes classified as moderate risk should retain the tracking threshold of 200 kg or 200 L.

Recommendation 11 proposed that wastes classified as low risk should not be tracked or could be declassified as a controlled waste.

Across the three recommendations, 62 percent of respondents were in favour of them, 28 percent did not support them and 9 percent were undecided. (Note that responses were averaged across the responses to all three recommendations.)

Stakeholder comment	Department response
Four respondents think a risk-based approach to setting tracking thresholds will make the Controlled Waste Regulations too complex. The Controlled Waste Regulations should be simplified to assist with compliance.	The department notes that regulatory complexity could make compliance more difficult.
This will lead to confusion around classification of waste which could impact carriers. For example, a waste producer could disguise a controlled waste as a lower-risk waste to avoid controlled waste obligations.	Regulations 25 (1), (2), and (3) of the Controlled Waste Regulations contain waste holder obligations in relation to classifying and packaging of controlled waste. The review proposes to increase the waste classification obligations of waste holders. The risk identified by the respondent should be mitigated by the new waste holder obligations outlined in section 3.1 and 3.2.
Highly sensitive material in small doses can be more dangerous than large quantities of less volatile substances.	The department notes that these responses indicate support for a risk-based approach that effectively regulates high-risk activities and deregulates low-risk activities.
A risk-based approach is good but should also lead to deregulating low risk wastes and link back to the intent of the regulations.	

Stakeholder comment	Department response
Support deregulation of animal residues (K100).	
Support recommendation to classify wastes on the basis of risk to the public health or the environment. Low risk wastes should not need to be tracked by regulator.	
Impacts on small business will be too high. If they need to be tracked then there should not be a cost associated.	Impacts on businesses will be assessed with a cost benefit analysis during the regulatory impact assessment stage.
A minimum tracking threshold is still required.	The respondent has not indicated why a minimum threshold is required for high-risk waste.
Need further guidance.	The department will undertake further consultation as the risk-based approach to controlled waste management is developed. Guidance for industry will be developed as the review progresses.
WorkSafe supports risk-based approach but this needs to be well defined and applied.	
This seems to be the same process in South Australia (SA) and in QLD.	
Support with provisions around transparent processes	
Lower tracking fees for controlled wastes are preferable to having some untracked waste.	This approach is not risk-based.
Risk-based approach is good but concerned about national data reporting requirements for un-tracked waste.	The department notes that deregulation of some controlled wastes may make it difficult to meet National and International reporting obligations. These concerns require further consideration as the review progresses.

The department supports a risk-based approach to controlled waste tracking but is mindful of industry concerns around increased complexity. Further research and analysis will be conducted on options for achieving this outcome and the development of a risk-based model.

3.7 Aligning with WA’s commitment to waste reduction and a circular economy

Recommendation 13 of the discussion paper proposed that the Controlled Waste Regulations be amended to allow the exemption of classes of waste from parts of the regulations to support participation in approved product stewardship schemes. The exemptions would be subject to conditions. The department received 15 responses: 67 per cent supported waste class exemptions, 13 per cent did not and 20 per cent were undecided.

Stakeholder comment	Department response
Support further deregulation of low-risk waste.	The department agrees that exemption decisions should be based on the environmental and human health risk of the controlled waste and the risk of non-compliance with exemption provisions.
Support extending exemptions to class-of-person, e.g. company-based, exemptions.	Legal advice received by the department indicates that although the Controlled Waste Regulations could be amended to allow for the Chief Executive Officer (CEO) of the department to approve the exemption of a class of waste with conditions, exempting a class of person under the Regulations is not within the power of the CEO.
Support class-of-person exemptions if an industry practice is licensed and the risks are well understood.	
Support class-of-waste as well as class-of-person exemptions. Provided examples of waste that could be exempt are provided; e.g. industrial wash waters (L150) and container residue (N100).	
Supports exemptions for classes of waste.	
This proposal would better support product stewardship schemes.	CEO-approved exemptions are likely to prioritise waste that is transported and disposed of under a product stewardship scheme. Transport and reporting conditions are likely to apply.
Respondent notes that a national battery stewardship scheme is being developed.	
Paintback endorses this recommendation and the reduction of regulatory burden for low-risk waste.	

Stakeholder comment	Department response
Respondent requests clarification of proposed exemptions.	
Support on a case-by-case basis only.	Exemptions on a case-by-case basis are already possible under r.49 of the Controlled Waste Regulations.
Supports fee restructure rather than exemptions.	This approach is not aligned with the department's proposed risk-based approach to controlled waste management. Fee restructure would be considered separately from exemptions and would need to take into account the department's cost recovery obligations.
Any exemptions would need to consider the risk of inappropriate disposal.	Any exemption granted for a class of waste would take into account the risk of non-compliance.
WorkSafe supports risk-based approach but this needs to be well defined and applied.	Noted. Further guidance on exemptions will be developed.
Support in principle but concerned about data provisions. There have been large gaps in data where exemptions are in effect in other States.	Noted. Reporting conditions are likely to be applied to class-of-waste exemptions.

The department is exploring reforms that align with Western Australia's waste objectives and the move towards a circular economy. In line with objective 2 ('recover more value and resources from waste') of the Waste Avoidance and Resource Recovery Strategy 2030, controlled wastes that can be reused or recycled would be a high priority for reform followed by product stewardship schemes that facilitate better waste outcomes. However, in line with objective 3 of the strategy ('protect the environment by managing wastes responsibly') the human health and environmental risks associated with the transport of these wastes must be taken into consideration, together with Western Australia's national and international reporting obligations.

A framework for amendments to exempt waste transported under specified product stewardship schemes or as part of approved recycling schemes will be developed and included in the next round of consultation.

3.8 Removing the categories for bulk and packaged controlled waste

Recommendation 12 of the discussion paper proposed to streamline the provisions of the Controlled Waste Regulations by removing the distinction between bulk and packaged controlled wastes. This would mean that all controlled wastes would be subject to the same provisions within the regulations. To effectively reduce regulatory burden on controlled waste carriers and drivers, this recommendation would need to be adopted in addition to recommendations 7 and 8 (described in the subsequent two sections). The department received 12 responses to recommendation 12: 75 per cent supported the recommendation, 8 per cent were against it and 17 per cent were undecided.

Stakeholder comment	Department response
This proposal should be implemented in line with proposed removal of driver licensing.	Bulk and packaged waste provisions align with driver and vehicle licensing requirements in the Controlled Waste Regulations. Amendments to the regulations will happen concurrently.
Bulk/package waste provisions must flow through to driver/vehicle licensing changes.	
This aligns with processes in QLD, SA & NSW and meets the Australian Dangerous Goods and Chain of Responsibility requirements.	The controlled waste review has identified areas where the regulations can be updated to be more consistent with hazardous waste regulation in other Australian jurisdictions.
No impact on our business but concerned that large quantities of liquid pose a risk.	An internal review of controlled waste spill incidents found no increase in incidents for bulk (liquid waste). The risk profiles of the liquid wastes indicate that higher-risk wastes are likely to be transported as lower-volume packaged wastes.
Not supported. There is a clear difference in the way these two wastes are transported and different administrative controls.	
'Bulk' and 'packaged' controlled waste definitions should streamline with other waste standards and guidelines (i.e. Landfill Waste Classification and Waste Definitions 1996).	Appropriate classification of wastes is a requirement of r.25(3) of the Controlled Waste Regulations. The Landfill Waste Classifications and Waste Definitions 1996 (as amended 2018) aid with the classification of solid waste acceptable at landfills in WA.
If this recommendation proceeds, consideration will need to be given to	

Stakeholder comment	Department response
redefining labelling requirements, some of which are currently specific to packaged waste, and requirements such as documenting and ensuring pH is within required limits (which is specific to bulk loads, for example).	They have limited application for controlled wastes other than special wastes (asbestos, clinical wastes, tyres) and contaminated soils.

The department considers that the differentiated vehicle and driver requirements for bulk and packaged wastes are not justified by the risk characteristics of these waste types. The recommendation to remove the terms 'bulk' and 'packaged' will standardise the transport of all controlled wastes. The controlled waste tracking threshold of 200 L and 200 kg will apply to all controlled wastes pending the implementation of a risk framework.

3.9 Streamlining accreditation of drivers of controlled waste vehicles

Recommendation 7 of the discussion paper proposed standardising the driver licensing requirements in the Controlled Waste Regulations. Only drivers of bulk controlled wastes require a specialised driver's licence under the current regulations. Drivers of packaged controlled waste do not require a licence. The department received 14 responses to recommendation 7: 93 per cent supported the recommendation, 7 percent disagreed.

Stakeholder comment	Department response
Support aligning driver requirements but do not support responsibility shifting to the waste holder as suggested in section 3.1.	<p>Most comments received about driver competency indicated support for all drivers to be licensed for the department to manage this requirement. However, the department prefers to remove the licensing requirement for drivers of bulk controlled waste.</p> <p>Drivers of heavy vehicles are already regulated by the Department of Transport and Main Roads WA. Further, drivers of packaged controlled waste are not currently required to hold a controlled waste carrier licence. To align these groups by requiring all drivers to hold a licence would increase regulation for hundreds of additional drivers.</p>
This process is similar in QLD, SA and NSW and meets the Australian Dangerous Goods and Chain of Responsibility requirements.	
All drivers should be required to demonstrate the same level of competence.	
Prefer responsibility for driver competency to sit with the carrier.	
Support all drivers having training and compliance requirements and a tiered payment system for licences.	
Driver competencies should be standardised across the bulk and packaged controlled waste categories to reflect the similar environmental risks posed by these two types of controlled waste transport.	
Support option 1 (removal of driver licensing requirements) - this is similar to Main Roads' Heavy Vehicle Services and the WA Heavy Vehicle Accreditation scheme.	

Stakeholder comment	Department response
Supports standardisation but would like the department to manage competency.	
Not supported. This is an important check to ensure carriers are meeting their responsibilities to train drivers.	As outlined above, only a small proportion of controlled waste drivers (bulk controlled waste drivers) are licensed. Carriers should be training all drivers to meet their obligations under the Controlled Waste Regulations.

The department considers that driver competencies should be standardised to reflect the similar environmental risks posed by packaged and bulk controlled waste transport, and that controlled waste carriers should be responsible for ensuring that drivers are capable of meeting their obligations under the Controlled Waste Regulations. If the department was to remove the distinction between bulk and packaged controlled waste and retain the obligation for drivers to be licensed, this would mean increased regulatory burden for hundreds of previously unlicensed drivers of packaged controlled waste, and the issue of hundreds of new licenses.

The department considers that removing the need for a drivers licence is appropriate. All controlled waste drivers will retain their obligations for the safe transport of waste in the Controlled Waste Regulations.

3.10 Removing unnecessary licensing of controlled waste vehicles

This section relates to recommendation 8 in the discussion paper, which proposed removing the obligation to licence vehicles and tanks that transport bulk controlled waste. The department received 13 responses to this recommendation: 85 per cent were in support of the idea and 15 per cent were against the removal of vehicle licensing obligations.

Stakeholder comment	Department response
Support removing unnecessary administrative burden but do not support responsibility shifting to the waste holder as suggested in section 3.1.	The department notes that only vehicles transporting bulk controlled waste require licensing under the Controlled Waste Regulations.
Agree with removal of vehicle licensing but suggest retaining controlled waste carrier licence number labelling on vehicle. Suggest removing obligation to list vehicle in tracking system.	Controlled waste carriers and drivers will retain their obligations to safely transport controlled wastes.
Carrier should be responsible for maintaining fleet but should also be able to add or remove vehicles from tracking system directly.	The department notes comments from respondents about increased useability of the CWTS including the ability to list and change vehicle details.
Proposal provides greater flexibility for business.	
Vehicles should be licensed by the Environmental Protection Authority for controlled wastes and dangerous goods, and listed in the CWTS.	The department notes that controlled waste and dangerous goods licensing are both managed by the EPA in NSW. In WA, dangerous good legislation is administered by the department of Mines, Industry Regulation and Safety.
The regulator should have the ability to carry out on-the-spot checks of vehicle licensing.	The department will retain the ability to enforce compliance with r.30(1) of the Controlled Waste Regulations which requires controlled waste carriers to transport controlled waste 'in such a way as to prevent the waste spilling, discharging or falling from the vehicle or tank'. Controlled waste carriers will also

Stakeholder comment	Department response
	retain their obligations under the <i>Environmental Protection Act 1986</i> .

The department considers that the responsibility for maintaining vehicles for the purpose of transporting controlled wastes should rest with the carrier. Removing a requirement to have vehicles individually licensed will reduce regulatory burden for controlled waste carriers and align vehicle registration requirements between bulk and packaged vehicles.

The department will continue to provide guidance for industry on the requirements for controlled waste vehicles and continue to explore options to reduce regulatory burden.

3.11 Regulating interstate transport of controlled waste

Recommendation 5 concerned the implementation of the Controlled Waste NEPM, suggesting that its provisions should be incorporated into a new part of the Controlled Waste Regulations. The department received 14 responses, 100 per cent of which were in support of the recommendation.

Stakeholder comment	Department response
Support proposal if the change will help prevent the inappropriate movement of interstate waste.	Incorporating the Controlled Waste NEPM into the Controlled Waste Regulations will provide the department with greater oversight of interstate movements of controlled waste, and the ability to approve, reject and track interstate waste movements.
Respondent expressed concern that too much controlled waste is transported out of WA when there are suitable treatment facilities here.	
The proposal may give greater accountability and enforces compliance.	
Provides more clarity around interstate movements.	
Respondent acknowledges the reasoning behind proposal but points out that some wastes, e.g. batteries, must be exported from WA either to eastern states or Korea.	Incorporating the Controlled Waste NEPM will not restrict the legal export of wastes when there are no suitable waste facilities in WA.
Support incorporating Controlled Waste NEPM but remove sewage and septage from Schedule 1 of the Controlled Waste Regulations. These wastes are not listed in the NEPM.	Addition or removal of wastes from Schedule 1 will be subject to the development of a risk framework, not the implementation of the Controlled Waste NEPM.
Support national consistency.	Implementation of the Controlled Waste NEPM should improve national consistency and reporting.
Interstate movement of controlled wastes is inconsistently recorded between jurisdictions, resulting in a poor understanding of cross-border movements at the national level.	

The Controlled Waste NEPM is a national framework for managing the movement of controlled wastes between states and territories to ensure environmentally sound practices are applied to cross border movements of controlled wastes. Western Australia is required to implement the NEPM and is considering legal options to this into effect through the Controlled Waste Regulations.

3.12 Updating Schedule 1 of controlled wastes

Recommendation 6 of the discussion paper proposed amending the Controlled Waste Regulations to support the classification or declassification of controlled wastes. The department received 21 responses: 66 per cent were in support of the proposal, 9 per cent were against it and 24 per cent were undecided.

Stakeholder comment	Department response
Support and request removal of MIEX (salty water) transported for the Water Corporation.	<p>Six respondents supported the deregulation of a waste they produce that they consider to be low risk, particularly organic wastes (K100 and K200) and non-toxic salts (D300).</p> <p>Used lead acid batteries are not specifically listed in Schedule 1 of the Controlled Waste Regulations but are considered a lead waste (D221). ULABS are not tracked as controlled waste in WA.</p>
Respondent would particularly like to see the removal of grease trap, non-toxic salts and inert waste from titanium dioxide pigments.	
Support if it applies to the transport and reuse of animal residues K100 and digestate K200.	
K100 wastes should be declassified as controlled waste.	
Support if used lead acid batteries (ULABs) are included as low risk. Respondent advises that ULABs are designed to withstand high-speed impacts (in vehicles) and are therefore safe to transport.	
Support if digestate K200 is considered low risk and can be marketed as fertiliser.	
Strongly support amending the Controlled Waste Regulations to remove low-risk waste which present no harm to public health or environment.	<p>Adding or removing wastes from Schedule 1 of the Controlled Waste Regulations will be subject to the regulatory amendment process and the risk framework proposed in section 3.6 above.</p> <p>It may be possible to exempt a waste, particularly low-risk wastes, from some</p>
Supports a reduction in complexity.	
Support with provisions around transparent process etc.	

Stakeholder comment	Department response
There is a need to identify what wastes are low risk and should be removed from the regulations.	provisions of the Controlled Waste Regulations (see section 3.7) without removing the waste from Schedule 1. Options for deregulating wastes will be subject to further consultation with industry.
This aligns with the proposal to regulate controlled wastes according to risk, and we would like to see materials destined for reuse or recycling considered for removal from Schedule 1.	
Reduces unnecessary complexity in the regulations.	
Flexibility in adding and removing wastes as necessary is good.	
WorkSafe supports risk-based approach but this needs to be well defined and applied.	
Disagree with the regulation of waste according to risk.	
Not supported, the change will lead to confusion.	
Would like to see suggested wastes before deciding.	
Would like to know more about how regulation of declassified wastes would work in practice.	
It is unclear how existing controlled waste streams could be determined as low risk and how this determination would be made.	
A detailed framework for making risk classifications is needed.	
Care should be taken when declassifying controlled waste. In instances where materials are being considered for declassification,	

Stakeholder comment	Department response
consultation should be undertaken by the department with the industry prior to a decision being made.	

The department supports a risk-based approach to controlled waste and considers that controlled wastes could be regarded as low risk if they meet both of the following criteria:

- the environmental and human health risk of the waste is low
- there is a history of effective environmental management of the waste.

Integration of the list of hazardous characteristics and a transparent risk assessment framework is required prior to any amendments to Schedule 1 of the Controlled Waste Regulations.

The department considers it would be beneficial to allow the list of controlled wastes to be reviewed and updated as necessary. This recommendation will be considered in the light of stakeholder submissions and legal advice on reform options.

4 Other matters

While not directly relevant to the recommendations in the discussion paper, a number of respondents raised issues relevant to the management of controlled waste in Western Australia and impacts on industry. The department has taken note of these responses and will continue to consider feedback from stakeholders during the controlled waste review process. Some key issues are outlined below:

1. Functionality of the CWTS and the need for improvement in technology.

- 1.1. A number of respondents suggested that the CWTS needs improvement and some questioned the continued requirement for both paper and electronic tracking forms. At least one respondent noted that controlled waste tracking in New South Wales has made the transition to an entirely electronic system. Some respondents want improved functionality to enable them to input and update their own information including vehicle and driver details and others requested mobile functionality.

The department is progressing improvements to business systems to stay up to date with rapidly changing technology. Changes to the CWTS will be required in the event that extended waste holder responsibility recommendations are adopted and will provide an opportunity to consider other improvements in parallel. However, mobile connectivity remains an issue across much of Western Australia and any improvements to the CWTS must ensure that recording and tracking of controlled wastes remains possible for businesses without mobile coverage.

2. Regulatory complexity and compliance.

- 2.1. A number of responses made the point that increasing regulation does not make up for a lack of compliance with and enforcement of existing regulations. This was raised particularly in relation to extending waste holder responsibilities, preventing the practice of disguising liquid controlled waste and inappropriately disposing of it, and increasing regulation for asbestos transport. In all cases the respondents point out that increasing regulation for people already meeting their obligations will not address non-compliance.

The department acknowledges that effective compliance and enforcement is essential to the successful implementation of any regulation and is exploring opportunities to improve compliance practices. Further rounds of consultation with stakeholders are planned for the controlled waste review and the department will be seeking feedback from stakeholders on how to make controlled waste management in Western Australia streamlined and effective.

5 Next steps

The department will consider stakeholder submissions, assess the implementation requirements of the proposed changes to the Controlled Waste Regulations and make recommendations to the Minister for Environment.

Recommendations endorsed by the Minister will go forward to a second consultation round which may include regulatory impact assessment. This second round will specify how the department intends to implement the changes and will outline the costs and benefits of the department's approach.

Details of further consultation will be made available on the department's website www.dwer.wa.gov.au/consultation .

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