



Strategy Policy – Environmental Protection Act 1986 amendments
Department of Water and Environmental Regulation
Locked Bag 10
JOONDALUP DC WA 6919

Email: EPActamendments@dwer.wa.gov.au

28 January 2020

Dear Sir/Madam

Re: Proposed amendments to the *Environmental Protection Act 1986*

The Waste Management and Resource Recovery Association of Australia (WMRR) welcomes the opportunity to provide feedback on the Department of Water and Environmental Regulation's (DWER) proposed amendments to the *Environmental Protection (EP) Act 1986*.

WMRR is the national peak body for all stakeholders in the essential waste and resource recovery industry. Nationally, we have more than 2,000 members representing over 500 individual entities, operating in a broad range of organisations, the three (3) tiers of government, universities, and NGOs.

WMRR acknowledges the work that DWER has undertaken as part of ongoing legislative reform and looks forward to continued engagement with the Department as it drives these reforms to both meet the aims of the *Waste Avoidance and Resource Recovery Strategy 2030* and modernise the state's environmental protection legislation.

WMRR notes that reviews undertaken since 2006 have highlighted the need to reform the *EP Act* and we support the overarching objectives of this exercise, acknowledging that broadly, the amendments are aimed at creating a one-stop-shop for industry by streamlining and simplifying environmental regulations while promoting best practice environmental protection and sustainable development through effective regulation. A number of amendments appear to improve consistency in legislative settings, provide greater simplicity and flexibility, and improve accountability and efficiency, which WMRR believes would positively reduce the regulatory burden on industry and afford the sector greater certainty when operating in this space.

These reforms are also timely as Australia's waste and resource recovery sector prepares for the impending waste export bans. While there is still a substantial amount of work to be done to develop robust policy, regulatory, and funding frameworks to back the bans, and engagement continues between governments and stakeholders, if developed in a considered and timely fashion, the bans should drive the establishment of viable on-shore reprocessing, remanufacturing, as well as end-markets for post-consumer recyclate, all of which spell opportunities to boost local jobs and economies.

WA at this time however, does not have the appropriate infrastructure to process materials captured in the bans into higher order commodities, nor does it have sufficient end markets for remanufactured

WMRR NATIONAL OFFICE
SUITE 4.08
10 CENTURY CIRCUIT
BAULKHAM HILLS NSW 2153

(02) 8746 5000
INFO@WMRR.ASN.AU

WMRR.ASN.AU



products; transporting these materials interstate is both economically and environmentally unviable. As such, modernising the *EP Act* is potentially one step towards ensuring it is able respond to current challenges - notably, the *Act* reflects and accommodates technological developments - and importantly, drive the development of necessary infrastructure, processes, and capacity.

WMRR's full submission is attached. Please do not hesitate to contact the undersigned if you would like to discuss WMRR's feedback. Thank you.

Yours sincerely

Gayle Sloan

Chief Executive Officer

Waste Management and Resource Recovery Association of Australia

SUBMISSION

Proposed amendment/area for reform	WMRR's comments
General	<p>To assist with the changes and new requirements, WMRR recommends that DWER develops supporting documentation (e.g. guidelines) that offer simple, clear, concise, and comprehensive guidance to all stakeholders who will be subject to the amended <i>Act</i>.</p> <p>These documents must be accessible and must be released once the <i>Act</i> is adopted and DWER should allow for a transition period of at least six (6) months for stakeholders to comply with the changes.</p>
Definitions	<p>WMRR acknowledges that Part I amendments relate mainly to updating definitions for consistency with other parts of the <i>Act</i> and that at this time, no amendments have been made to the definition of “waste”.</p> <p>While at present, there is no adopted or singular definition of “waste”, WMRR questions if DWER should go one step further in considering how it defines “waste” by thinking about end-of-life materials as <i>resources</i>. Doing so will direct how WA manages materials. As such, a material that is deemed “useful”, as stated in the current definition, should no longer be defined as “waste” but as a “resource”; this is vital as Australia moves towards a circular economy.</p>
Environmental impact assessments (Part IV)	<p>There are a number of significant changes in Part IV aimed at streamlining and improving the regulatory efficiency of the environmental impact assessment process.</p> <p>WMRR supports the proposed amendments which would:</p> <ul style="list-style-type: none"> - Allow the Minister to direct the EPA to assess or further assess a proposal after the EPA has decided against the assessment.

	<ul style="list-style-type: none"> - Allow the Minister to amend conditions without triggering an EPA inquiry and approve changes to conditions without the need for these to be referred to the EPA. - Allow for strategic assessments of proposals by the EPA instead of case-by-case assessments. WMRR believes this will lead to more efficient planning and it is a step towards modernising the approval process. <p>WMRR recommends that DWER provides clear definitions and pre-requisites to ensure proponents understand what constitutes a strategic proposal.</p> <ul style="list-style-type: none"> - Enable the Minister to determine, with the consent of the proponent, that implementation obligations of the proponent and DWER imposed by an implementation statement no longer apply. Doing so would allow for the withdrawal of ministerial statements for proposals if the proponent has decided not to proceed and will remove obligations applied under that ministerial statement. It also allows the Minister to reverse the withdrawal decision in the event that the proponent decides later down the track that it would like to implement a proposal which was previously the subject of the withdrawn ministerial statement. <p>WMRR believes these changes offer greater certainty to proponents as to what their obligations are under ministerial statements and could also simplify the process.</p> <p>The Exposure draft Bill allows regulatory agencies, which are not necessarily decision-</p>
--	---

	<p>making authorities for a proposal but have regulatory expertise in a particular environmental matter, to monitor and enforce compliance with proposal implementation conditions. WMRR queries how this will be conducted in an efficient manner and is concerned that such action would result in unnecessary over-regulation and delays, which may increase the regulatory burden on legitimate proponents, hindering investment and subsequently, development of much-needed infrastructure in the state as there may be increased costs that would risk a project's long-term commercial viability from the proposal stage.</p>
Clearing of native vegetation (Part V Division 2)	<p>WMRR recognises that the proposed amendments, which will implement a new referral system for clearing permits to allow DWER to determine if a permit is required, will ensure that resources and assessments focus on significant clearing. WMRR also supports an outcomes-based provision as opposed to one that is process-based.</p> <p>On the declaration of Environmentally Sensitive Areas (ESAs), WMRR agrees that these need to remain current and relevant and that consultation requirements can be tailored to the nature of changes (instead of adhering to a prescriptive approach). WMRR recommends that clarity is offered on what would constitute ESAs in light of these amendments.</p>
Environmental protection covenants (Part V Division 2)	<p>The requirements as part of the new Environmental Protection Covenants (EPCs) are not clearly defined. Details are required pertaining to:</p> <ul style="list-style-type: none"> - The circumstances in which a stakeholder will be required to enter into an EPC, which is enforceable under the Act. While the draft Bill lists when the CEO may enter into an EPC with the owner of the land, the conditions that lead to this outcome are not clearly defined.

WMRR NATIONAL OFFICE
SUITE 4.08
10 CENTURY CIRCUIT
BAULKHAM HILLS NSW 2153

(02) 8746 5000
INFO@WMRR.ASN.AU

WMRR.ASN.AU

	<ul style="list-style-type: none"> - The conditions and requirements that will determine if an EPC is enforceable in perpetuity or for a specified period. - The “positive and negative obligations” and what these might be as well as the instances in which they may be amended.
Environmental monitoring programs	<p>On the proposed amendments related to cost recovery for environmental monitoring programs, WMRR acknowledges that DWER will consult with stakeholders on proposed regulations but also recommends that when the Department undertakes cost modelling of the cumulative impacts of these programs on human health and the environment, that this modelling be done independently and should be made available to industry for feedback ahead of the development of draft regulations. These costs should also be subject to five-yearly reviews.</p> <p>DWER also states that the funds will be paid into a special purpose account and will only be used for the purposes of an environmental monitoring program. WMRR recommends that DWER reports annually on the collection and use of these funds.</p>
Environmental regulation (Part V Division 3)	<p>Broadly, WMRR supports the amendments that will replace the existing Part V Division 3 of the <i>EP Act</i> as these will provide both flexibility and certainty in regulating activities and offer greater clarity around what is regulated and the scope of defences.</p> <p>WMRR believes the significant shift towards licensing of prescribed activities rather than prescribed premises, as well as the power to license mobile plant and equipment will also have long-term benefits.</p>
New compliance and enforcement powers (Part V)	<p>Part V of the draft Bill affords inspectors with significant powers, including to enter premises using “reasonable force where there are reasonable grounds to suspect non-</p>

	<p>compliance”. This section requires much greater clarity. WMRR’s concern is that individual inspectors may have varying views and perceptions of what is reasonable, leading to unjustified outcomes and an abuse of power. How DWER intends to manage this and what controls will be put in place to prevent perverse outcomes remains to be seen.</p>
--	---