



Civil Contractors Federation Western Australia Ltd

70 Verde Drive
JANDAKOT WA 6164
Phone: (08) 9414 1486
Email: ccfwa@ccfwa.com.au
Web: www.ccfwa.com.au

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

By email: EPActamendments@dwer.wa.gov.au

January 28, 2020

Environmental Protection Act 1986 amendments consultation

Introduction

Thank you for the opportunity to comment. As the Discussion Paper notes, the last major amendments to the EP Act were made in 2003. CCF welcomes this review and broadly supports modernisation of the Act. We welcome the initiatives to modernise and streamline processes for environmental impact assessment, clearing permits, works approvals and licences.

This submission mainly addresses two subjects – cost recovery and waste/recycling – followed by some comment addressing subjects raised in the Discussion Paper.

Cost recovery

We note however that a number of amendments are focused on cost savings to Government and cost recovery. The discussion paper notes that this is “consistent with the principle of ‘polluter pays’ under section 4A of the EP Act” (p8) and will assist budget repair (p3). CCF notes that budget repair has now been largely achieved, with the Government recording a \$1.3 billion surplus for 2018-19, and accordingly cautions against cost-recovery measures that will place an undue and unnecessary burden on WA businesses, particularly local SMEs. CCF is concerned that some proposed changes will put a substantial additional financial burden on industry for little apparent benefit.

We are concerned that a move to greater cost recovery will place an unfair burden on the State’s Basic Raw Materials (BRM) suppliers. The environmental impact of clearing for the extraction of BRM is negligible compared to the impact of other major causes of land clearing such as agriculture, land development, infrastructure development (e.g. roads) and mining. Clearing for BRM extraction accounts for less than 0.5% of all land cleared in WA annually, yet because BRM extraction is more highly regulated, any move to increased cost recovery will have a disproportionate effect on BRM suppliers. Compounding this, BRM are relatively low value compared to other mined resources, so ‘one size fits all’ cost recovery measures and offsets regimes are especially onerous on BRM

suppliers. Furthermore, cost recovery processes are also cumulative where multiple approvals are required, placing a higher burden on BRM suppliers who tend to operate from multiple locations.

CCF notes DWER has already introduced cost recovery for most environmental approvals processes. No statistics have been published but the experience of members is there has been no tangible improvement in the quality of service or improvement in assessment timeframes.

Waste and recycling

CCF is disappointed that the proposed amendments do nothing to address the current issues and uncertainty around waste and recycling, nor resolve the unintended consequences from the Eclipse case. With major revisions to the EP Act only taking place every 10-20 years, we believe it is imperative that this opportunity to fix the issue should not be missed. As the Eclipse case demonstrated, the definition of "waste" in the EP Act is not fit for purpose and needs amendment.

We are also disappointed that no amendments are proposed that would facilitate the case-by-case approval of reuse of recycled construction materials. This change is fundamental for market acceptance of recycled construction materials and the viability of the recycling industry. The EP Act is currently causing a perverse environmental outcome whereby it is preventing the recycling and reuse of potentially millions of tonnes of construction materials annually.

This is a major issue for the lithium refineries and waste-to-energy plants currently under construction. There appears to be no plan or strategic direction from Government for recycling of the bottom ash from the W2E plants. Both W2E plant proponents state that the bottom ash will be recycled for use as a construction aggregate, yet to date there has been no approval or endorsement by the State for the recycling of bottom ash for road base and construction materials, and no indication from Main Roads that it will change its specifications and/or accept this material. Clear direction from the EP Act would help remove the current hesitancy and uncertainty. Main Roads and other departments have openly acknowledged there are significant issues with the current legislative framework around waste and recycling, that is currently preventing the use of recycled construction materials. At the same time the availability of naturally occurring construction materials (BRM) is rapidly diminishing due to increasing environmental regulation and sterilisation for conservation. This is a fundamental issue for future development that industry and the community cannot afford to wait another 15 years until the next amendment to be resolved.

Following are some comments addressing subjects raised in the Discussion Paper.

Environmental monitoring programs and associated levy

CCF is concerned that these programs will target 'low hanging fruit' in the form of BRM extraction operations which are typically smaller and have lower environmental impact than larger mining operations. If the intention is to focus on key polluters, then BRM extraction should not be targeted.

Our concern is that if the EP Act grants DWER the unlimited right to require environmental monitoring programs, then risk-averse officers may take the view that an environmental monitoring program is a prudent measure in almost every instance where is the potential for "pollution or environmental harm" (draft Bill p292).

Accordingly, the proposed levy could be a significant burden, not only financially but also from the additional reporting and compliance burden on industry.

Cost recovery for EPA Part IV referrals and assessments.

It is difficult to judge the impact of this without seeing the detail of the cost recovery model. However, using the Commonwealth EPBC Act cost recovery as a guide, it could easily exceed \$50,000, which would affect the economic viability of some BRM extraction operations.

Regulation of prescribed activities

This is a welcome change in principle and could provide added flexibility for users and regulators. CCF looks forward to further consultation on the detail.

Controlled works regulated within licence

A welcome change that will streamline current processes.

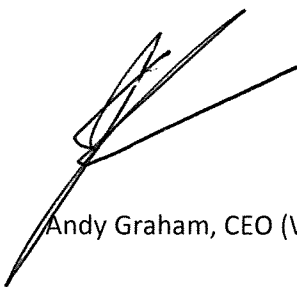
Offsets

As we have noted, the current offsets regime disproportionately affects low-value operations such as BRM. An offset of \$20,000 - \$30,000 per hectare will be negligible to a land developer looking to yield high profits from subdividing the land but may be financially devastating to an SME in the BRM industry.

The financial impact on SMEs is worsened as the business must pay the offset upfront, whereas the business's financial return may be over many years or even decades. A mechanism to allow offsets to be paid in instalments is urgently needed.

The offsets regime should also recognise the benefits of sequential land use. BRM extractors who can rehabilitate the cleared land, returning it to its native state or similar, should qualify for far lower offsets than uses such as subdivision development that transform the land forever.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Andy Graham', written over a horizontal line.

Andy Graham, CEO (WA)