



# Closing the loop - Waste reforms for a circular economy consultation paper frequently asked questions

## General

### **Why are we proposing changes to waste legislation in Western Australia?**

In Western Australia, waste is regulated under the *Environmental Protection Act 1986* (EP Act), the *Waste Avoidance and Resource Recovery Act 2007* (WARR Act) and the *Waste Avoidance and Resource Recovery Levy Act 2007* (WARR Levy Act) and their regulations.

Following the recent release of the [Waste Avoidance and Resource Recovery Strategy 2030](#) (Waste Strategy 2030) and the [National Waste Policy](#), improving waste management is an increasingly important area of focus in terms of promoting sustainable development and protecting the environment for future generations.

The Waste Strategy 2030 outlines objectives and strategies to shift Western Australia to a circular economy, and identifies strategies to be implemented by the State Government. In addition, the McGowan Government's [Our Priorities](#) has committed to ensuring at least 75 per cent of waste generated in Western Australia is re-used or recycled by 2030.

Implementing the Waste Strategy 2030 and the Our Priorities waste diversion target will require changes to the way waste is regulated in Western Australia to support greater re-use, reprocessing and recycling, and a shift to a circular economy.

Reducing illegal waste disposal and waste levy avoidance is also important to ensuring the environment is protected from the harmful impacts of waste.

The consultation paper outlines options for amending the EP Act, WARR Act and WARR Levy Act (and their subsidiary legislation) to improve environmental protection, waste management and the waste levy framework in Western Australia.

### **When will the proposed waste reforms be implemented in Western Australia?**

The consultation paper has been prepared as a consultation regulatory impact statement as required by the Better Regulation Unit at the Department of Treasury.

Following a 12-week consultation period, the Department of Water and Environmental Regulation (the department) will consider the submissions and prepare a decision regulatory impact statement in 2020. This document will

incorporate the feedback received and will outline the final legislative proposals for waste reform.

The decision regulatory impact statement will be publicly available and outline proposed timeframes for implementation of the proposals.

### **Which stakeholders will have an interest in the consultation paper?**

The proposed legislative options outlined in the consultation paper primarily relate to the following types of waste facilities:

- landfills (metropolitan and regional)
- waste storage depots and transfer stations
- waste reprocessing and recycling facilities (including material recovery facilities)
- used tyre storage premises
- facilities that crush building materials.

In terms of proposals for improving solid waste data reporting, other waste facilities that will have an interest include incinerators, compost manufacturers, fly ash disposal premises and scrap metal recyclers.

Of interest to the waste sector and community will be proposed compliance and enforcement measures to minimise illegal waste disposal in Western Australia (e.g. large-scale waste disposal at unlicensed premises).

### **How does this consultation paper relate to the proposed legislative framework for waste-derived materials in Western Australia?**

The department is currently progressing legislative reforms to support the use of waste-derived materials in Western Australia that have a beneficial re-use and do not pose a risk to the environment and human health. Although that project is not within the scope of the consultation paper, there are clear interactions between these two waste reform projects.

The waste-derived materials project will consider the definition of “waste” under the EP Act, WARR Act and WARR Levy Act. Any revisions to the definition of “waste” may have implications for what activities require licensing under the EP Act.

Activities which promote the beneficial re-use of waste, and are a low risk to the environment, may not require a licence under the EP Act and therefore will not be subject to the waste levy.

In terms of this consultation, the waste-derived materials framework is particularly relevant for licensees of licensed waste facilities who are currently, or who may become, liable to pay the waste levy under proposals in this paper.

The outcomes of work completed on the waste-derived materials framework will be considered during this consultation process to ensure legislative approaches for waste reform are aligned and fit for purpose.

## Scope of the *Environmental Protection Act 1986*

### **Why are we proposing the alignment of the EP Act with waste management objectives under the WARR Act and Waste Strategy 2030?**

In Western Australia, the primary environmental legislation instrument does not contain key waste management objectives. This is because of the separation of legislation for environmental protection (EP Act) and waste management and the levy (WARR Act, WARR Levy Act).

Although the EP Act contains the principle of waste minimisation in section 4A, there is no cross-reference to other key waste management objectives such as the waste hierarchy, or supporting a shift to a waste-free society.

Conversely, the WARR Act references the objectives under the EP Act, which ensure these objectives can be considered under that legislative framework.

Integrating key waste management objectives in the EP Act will ensure that all waste regulatory legislation in Western Australia is aligned in terms of its objectives. In addition, it will permit waste management objectives to be a consideration in the granting or setting of licence conditions under Part V Division 3 of the EP Act.

## Licensing of Landfills

### **Why are we proposing changes to the landfill licensing categories to encapsulate other waste disposal to land activities?**

Landfills are regulated under five landfill categories (63, 64, 65 66 and 89) in Schedule 1 of the Environmental Protection Regulations 1987 (EP Regulations). All of the landfill categories refer to premises where waste is “accepted for burial”.

There are other methods of disposing of waste to land apart from burial. Currently, these activities are not captured as a form of waste disposal under landfill licensing. In addition, these alternative methods of disposing of waste to land can be a health and environmental risk which requires regulatory oversight.

To modernise landfill licensing under Schedule 1, the consultation paper proposes options to ensure that waste being deposited into or onto land by a variety of methods (e.g. burial, filling, mixing, spreading) will require licensing under Part V Division 3 of the EP Act. This aligns further with legislative approaches in other Australian jurisdictions for landfill licensing.

It is important to note that if a site requires a licence for waste disposal to land activities under the proposed reforms, then the licensee may need to pay the levy under proposed waste reforms.

A variety of licensing exclusions will be considered if the activity is already regulated through other approaches, or where waste disposal to land poses a low risk to the environment (e.g. clean fill, uncontaminated fill). Please refer to the ongoing consultation on the development of a waste-derived materials framework in Western Australia at [www.dwer.wa.gov.au/consultation](http://www.dwer.wa.gov.au/consultation).

## **What are the potential implications for unlicensed Category 89 landfills in regional areas?**

The consultation paper contains legislative options which may require Category 89 regional landfills to be licensed, and no longer registered under regulation 5B of the EP Regulations. There are currently 140 registered Category 89 regional landfills in Western Australia, mostly owned by local governments.

Category 89 landfills can receive moderate volumes of putrescible waste (up to 5,000 tonnes per annual period) which can be a risk to health and the environment. Further regulatory oversight through licensing will ensure there are sufficient controls to manage these risks. Currently, regional landfills are regulated under the Environmental Protection (Rural Landfill) Regulations 2002.

If a Category 89 landfill requires a licence, it will be required to comply with requirements under Part V Division 3 of the EP Act (e.g. reporting, record keeping).

In addition, if a Category 89 landfill requires a licence, and receives or deposits leviable waste at its site, the licensee may be liable to pay the levy under proposed waste reforms. It would also need to comply with levy related requirements under the WARR Act and WARR Levy Act.

To inform the direction of these proposals, the consultation paper seeks stakeholder feedback on potential licensing exclusions for small Category 89 landfills and potential cost impacts which may result from licensing.

## **Licensing of Solid Waste Facilities**

### **Why are we proposing changes to solid waste storage, reprocessing and recycling licensing categories?**

Several solid waste licensing categories under Schedule 1 of the EP Regulations overlap in the activities they regulate. This can create unintended complexity in waste licensing.

The consultation paper outlines legislative proposals which will clarify the purpose of key solid waste licensing categories, primarily for waste storage, the recycling and reprocessing of waste, and waste disposal to land.

The proposals also contain options for streamlining the solid waste licensing categories to simplify the licensing regime.

Legislative proposals for the licensing of solid waste facilities primarily relate to premises licensed under Categories 13, 47, 56, 57, 61A and 62 in Schedule 1 of the EP Regulations.

## Minimising long-term waste stockpiling

### **Why is long-term solid waste storage an issue, and why does it need to be addressed?**

Since increases to the waste levy were implemented in 2015, reported landfilling of construction and demolition (C&D) waste has declined significantly. The 2016-17 landfill volume for C&D waste is only about 10 per cent of the 2013-14 reported volume. During the same period, the amount of C&D waste being recycled each year has remained constant. One explanation for the reduction in landfilling is long-term stockpiling of waste at waste facilities or unlicensed sites.

Short-term waste stockpiling can be a necessary activity at licensed waste facilities before the sorting, reprocessing and recycling of the waste commences.

In contrast, long-term waste storage can undermine key environmental protection and waste management objectives in Western Australia.

Indefinite waste stockpiling can be a significant environmental and fire risk if the waste is not properly managed and large stockpiles are kept on-site. It can also undermine the application of the waste levy and the potential future use of the waste for re-use and recycling activities.

To address the above, the consultation paper outlines legislative options to apply the waste levy to long-term solid waste storage at landfills and other specific waste facilities (e.g. waste depots, used tyre storage) to support the implementation of the Waste Strategy 2030 and a shift to a circular economy.

Short-term waste storage will continue to be supported as an essential activity and not subject to the levy. Also, a CEO exemption will be investigated for exceptional circumstances or emergency situations relating to the removal of the stockpiles.

To address excessive or long-term waste stockpiling at unlicensed sites, please refer to the question below: Why are we proposing a new offence for unlawful waste disposal?

## Waste Levy Exemptions

### **Why are we proposing changes to the waste levy exemptions?**

Under the Waste Avoidance and Resource Recovery Levy Regulations 2008, select waste levy exemptions for landfills have become outdated or contain ambiguous wording.

There is also no time limit for seeking waste levy exemptions from the department, which can lead to requests for exemptions many years after the waste has been received at the landfill.

The proposed amendments will clarify the circumstances where the levy will not apply for waste at a landfill where an exemption is granted.

For example, exemptions are proposed to clarify that waste used for construction of landfill cells and roads, and other construction works at a landfill, will not be subject to the levy. Revised waste levy exemptions for waste that is stockpiled and then transported off-site for lawful re-use, recycling or disposal within 12 months are also proposed.

In addition, a time limit for retrospective waste levy exemption applications is proposed to encourage the timely submission of applications. Applications are to be submitted within 24 months of the waste entering the site.

## Solid waste data reporting

### **Why is the expansion of solid waste data reporting proposed?**

Improvements to solid waste data reporting are proposed to ensure the generation and movement of solid waste is monitored. This data can be used to measure targets under the Waste Strategy 2030 and assist in identifying future risks relating to waste.

The consultation paper proposes compulsory waste data reporting from 14 specific waste licensing categories under Schedule 1 of the Environmental Protection Regulations 1987. This would include reporting on the waste arriving at the site, waste being stockpiled or processed, waste-derived materials on-site, and waste being disposed of.

The consultation also seeks feedback on the potential geographical scope of the proposed waste data reporting framework. One option is to limit reporting to the specific licensed facilities within 800 km of the Perth metropolitan region. Another option is a statewide approach, which may assist in fully tracking solid waste movement across the state.

This is intended as a long-term project, to be supported by guidance on estimating and calculating waste, and an online waste data reporting portal.

## Compliance and Enforcement

### **Why are we proposing a new offence for unlawful waste disposal?**

There have been recent incidents in the Perth metropolitan area where the occupiers or owners of unlicensed, private premises have accepted waste (e.g. construction and demolition waste) for disposal at their property.

Unlawful waste disposal at unlicensed premises can financially undermine legitimate waste industries who are lawfully complying with their regulatory obligations, and destabilise the establishment of a circular economy. It is also a mechanism for avoiding the payment of the waste levy.

Large-scale waste stockpiles at unlicensed sites can also result in long-term contamination of the land and be a significant fire risk if stored in large volumes.

The proposed new offence aligns with offences in other Australian jurisdictions and will target individuals and companies who are responsible for waste disposal at

unlicensed sites and who can profit from the activity - specifically the waste generator, the waste transporter and the waste receiver (occupier of the unlicensed site).

This new offence will be supported by a short-term Waste Restriction Notice, which can be issued by inspectors to immediately cease waste disposal at an unlicensed site.

### **Why are we bolstering government powers and penalties for waste regulation under the EP Act?**

New legislative measures are proposed to support the effective investigation and prosecution of illegal waste disposal.

Illegal waste disposal can be financially lucrative, which creates a large incentive for undertaking these activities. To address this, new offences and infringements have been devised with significant financial penalties and consequences (e.g. imprisonment for repeat offenders).

A number of legislative powers are also proposed to ensure government can effectively track the movement of waste and monitor its delivery to waste facilities (e.g. GPS tracking of waste trucks, video monitoring at waste premises).

### **Why is there an additional penalty for breaching license conditions for waste stockpiling?**

This new penalty has been included for consideration because of the potential environmental and fire risks associated with excessive stockpiling of waste.

Stockpiling of waste above license limits can also undermine effective waste management and potentially be a mechanism for avoiding the payment of the levy.

To deter this activity, the consultation paper proposes an additional penalty for licensed waste facilities storing leviable waste (or waste which may become leviable) if their waste stockpiles exceed limits specified in a licence condition.

The additional penalty would only apply to the waste exceeding the stockpile limit and reflect the amount of levy that would be payable for the long-term stockpiling of that specific waste.

It is not intended that this proposal will impact licensees who store waste at their premises lawfully and comply with their licensing requirements.

### **How will these proposed compliance and enforcement measures affect me?**

The proposed legislative reforms are targeting illegal waste disposal in Western Australia and will primarily impact those individuals or companies who are participating in illegal waste disposal for financial gain. It is not intended that individuals who are lawfully managing and disposing of waste will be captured by the new offences and penalties.

## Administration and collection of the waste levy

### **I'm a licensee of a landfill that receives leviable waste. How will the proposed changes to the collection of the waste levy impact me?**

The proposed changes are administrative, and will have minimal impact for licensees who lodge levy returns and pay the levy in a timely manner.

Currently a licensee must, in respect of each return period, prepare and lodge a waste levy return in the approved form to the department, together with the amount of the levy payable in respect of the waste to which the return relates. This is a self-assessment process, with the licensee required to pay the levy no later than 28 days after the end of the return period.

This administrative process has been sufficient but there are opportunities to improve the levy collection process.

The consultation paper proposes that following the lodgment of the waste levy return by the licensee, the CEO will issue a notice of assessment which would be based on the information in the levy return and would set a date for payment.

The consequences for late payment of the levy would also be specified and may include provisions similar to those in the *Taxation Administration Act 2003 (WA)*.