



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

Review of the *Waste Avoidance and Resource Recovery Act 2007*

Discussion paper

Department of Water and Environmental Regulation

September 2020

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Message from the Minister

The Waste Avoidance and Resource Recovery Act 2007 (WARR Act) is the principal legislation for waste management in Western Australia and is subject to a statutory review every five years.

The 2020 statutory review of the WARR Act will consider the efficacy of the legislation in meeting its objectives for reducing waste and encouraging resource recovery, and its alignment to the Waste Avoidance and Resource Recovery Strategy 2030 (Waste Strategy).

The review covers a number of key matters, including the findings and recommendations of the Auditor General's Report 23 of 2016, [Western Australian Waste Strategy: Rethinking Waste](#) and the 2018 Public Accounts Committee's Report 6: [No \(More\) Time to Waste](#), which raised areas where waste reduction and resource recovery outcomes could be improved by potential changes to the WARR Act and its operation.

Western Australia's Waste Strategy aims to move our state towards becoming a sustainable, low-waste, circular economy in which human health and the environment are protected from the impacts of waste.

Waste is everyone's business – individuals, households, neighbourhoods, community groups, schools, small and big businesses, local governments, waste managers and the State Government.

The COVID-19 pandemic has emphasised the importance of a well-functioning waste collection and processing capacity, and this review looks at what may be necessary to help achieve this.

I encourage you to provide feedback to help shape the proposed changes to the WARR Act and improve our management of waste.

Hon Stephen Dawson MLC

Minister for Environment

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1. Overview

Under section 99 of the *Waste Avoidance and Resource Recovery Act 2007* (WARR Act), the Minister for Environment, Hon Stephen Dawson MLC is required to review the operation and effectiveness of the WARR Act on a five-yearly basis. The first review of the WARR Act was completed in 2015.

On behalf of the Minister for Environment, the Department of Water and Environmental Regulation (the department) is currently undertaking the second review.

As part of the consultation process, the department is requesting written submissions on the proposals and questions in this discussion paper.

This paper provides the framework for considering specific proposals to amend the Act, to generate stakeholder discussion and input into the review.

The terms of reference of the review are:

To carry out a review of the operation and effectiveness of the *Waste Avoidance and Resource Recovery Act 2007* with particular regard to its:

- effectiveness in meeting its objectives for reducing waste and encouraging resource recovery
- alignment with State Government waste management policy (that is, the Waste Strategy).

The review will also consider the legislative framework to achieve a well-functioning waste collection and processing capacity – of particular importance in light of the impacts of the COVID-19 pandemic.

The consultation process is seeking stakeholder input about issues, concerns and opportunities, and information on any potential impacts on businesses, the community and government. Following consultation, the department will analyse the submissions and make recommendations to the Minister for Environment.

Please note that this is a statutory review of the WARR Act only, not of the *Waste Avoidance and Resource Recovery Regulations 2008* (WARR Regulations) or the *Waste Avoidance and Resource Recovery Levy Act 2007* (WARR Levy Act) and associated regulations.

By making a written submission you are consenting to the submission being treated as a public document. Your name will be published; however, your contact address will be withheld for privacy. If you do not consent to your submission being treated as a public document, you should either mark it as confidential, or specifically identify the parts that you consider confidential, and include an explanation.

The department may request that a non-confidential summary of the material is also given. It is important to note that, even if your submission is treated as confidential by the department, it may still be disclosed in accordance with the requirements of the *Freedom of Information Act 1992*, or any other applicable written law.

The department reserves the right before publishing a submission to delete any content that could be regarded as racially vilifying, derogatory or defamatory to an individual or an organisation.

How to make a submission

The consultation period will be 12 weeks. Written submissions must be received by 5pm (WST) on Wednesday, 25 November, 2020. No late submissions will be considered.

Feedback from this consultation process will inform the development of proposed amendments to the WARR Act.

Written submissions may be lodged (preferred) at consult.dwer.wa.gov.au/waste-policy/review-of-the-waste-avoidance-and-resource-recover/

Hard copies can be mailed to:

WARR Act Review
Department of Water and Environmental Regulation
Locked Bag 10
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For further information, please email warractreviewqueries@dwer.wa.gov.au or telephone (08) 6364 7000.

2. The WARR Act

2.1 Introduction to the WARR Act

The WARR Act is the principal legislation dealing with waste management in Western Australia (WA). The WARR Act consolidated waste management-related provisions from the *Health (Miscellaneous Provisions) Act 1911* (Health Act), *Environmental Protection Act 1986* (EP Act) and the *Environmental Protection (Landfill) Levy Act 1998*.

Part 1, section 5 lists the objectives of the WARR Act as follows:

- (1) *The primary objects of this Act are to contribute to sustainability, and the protection of human health and the environment, in Western Australia and the move towards a waste-free society by –*
 - (a) *promoting the most efficient use of resources, including resource recovery and waste avoidance; and*
 - (b) *reducing environmental harm, including pollution through waste; and*
 - (c) *the consideration of resource management options against the following hierarchy –*
 - (i) *avoidance of unnecessary resource consumption;*
 - (ii) *resource recovery (including reuse, reprocessing, recycling and energy recovery);*
 - (iii) *disposal.*
- (2) *The principles set out in the EP Act section 4A apply in relation to the objects of this Act.*

The direct environmental impacts of the waste sector, from both local government and private operators, are managed predominantly through the EP Act and related subsidiary legislation.

Waste Authority

The WARR Act establishes a statutory Waste Authority as an agent of the state with various advisory functions listed in Schedule 2 of the Act. These functions and relationship to the roles and responsibilities of the Minister for Environment and the department can be broadly grouped as follows:

- Advise and make recommendations to the Minister for Environment on matters relating to the WARR Act.
- Promotional and advocacy activities related to provisions of the WARR Act including raising community awareness.

- In recognition of the important role of local government in waste management, the WARR Act provides for the Waste Authority to cooperate with local governments for coordination of efforts to prevent waste and to develop, promote and review the Waste Strategy and to coordinate its implementation.
- The Waste Authority may report to the Minister for Environment on the operation of the Waste Strategy, with particular reference to the adequacy of the strategy which includes policy and planning to support the diversion of waste from landfill in WA. The Waste Authority also has responsibility for implementation of policies, plans and programs to achieve increased waste diversion.
- The Waste Authority is empowered to receive representations on waste management issues from members of the public. However, it may only take action in response to such representations in a manner consistent with the objects of the WARR Act and the functions of the Waste Authority.
- The Waste Authority is obligated to ensure that appropriate investigations, audits and inspections are carried out in relation to the application of moneys under section 80(1)(a) of the WARR Act.
- Although the Waste Authority bears the obligation to ensure enforcement action is taken, it can only achieve this function through the cooperation of the Chief Executive Officer (CEO) of the department. It is the CEO who appoints inspectors and while the WARR Act does not limit who may be so appointed, inspectors would inevitably be departmental staff and therefore subject to the direction of the CEO.
- The administration of funds in the Waste Avoidance and Resource Recovery Account (WARR Account) for programs and priorities outlined in the Waste Strategy and the Waste Authority's [business plan](#).

The Waste Authority was established under the WARR Act on 6 May 2008 with the appointment of its five members.

Local government services

The WARR Act has a particular focus on local government functions and contains mechanisms relating to local government waste services, including waste local laws, waste plans and collection permits.

Waste local laws

The WARR Act provides local governments with the option of charging to collect municipal waste within their boundaries to protect the environment and public health. Provisions for waste local laws under the WARR Act, together with existing provisions under the *Local Government Act 1995*, give a local government the power to fix its own rates, fees and charges for waste management services.

Waste local laws were previously made under the Health Act. Waste local laws are now made under the WARR Act and continue to provide local governments with the ability to regulate the provision of waste services.

In the time since the WARR Act was introduced, 52 waste local laws have been made, comprising 35 local laws and 17 amendment local laws.

Waste plans

The [Waste Avoidance and Resource Recovery Strategy 2030](#) (Waste Strategy) was released on 10 February 2019, and sets ambitious targets for WA to become a sustainable, low-waste, circular economy in which human health and the environment are protected from the impacts of waste.

The Waste Strategy includes the following headline strategy to:

“Implement local government waste plans, which align local government waste planning processes with the Waste and Resource Recovery Strategy 2030.”

Local governments have an important contribution to make to the Waste Strategy vision for the state. Waste plans will provide a link between the Waste Strategy and local government waste management activities.

Aligning waste services through a waste plan consistent with the Waste Strategy provides a mechanism for local governments to contribute to and achieve the targets and objectives of the Waste Strategy and increase consistency in waste planning across local government.

Waste collection permits

The WARR Act establishes an accountability framework, allowing the State Government to monitor and evaluate the waste services provided by local governments to ensure that waste collection services protect human health and the environment, and are consistent with modern practice. The waste collection permit mechanism allows the State Government to award waste collection permits to third parties to collect local government waste under certain circumstances. To date, there has been no need to introduce waste collection permits to manage the collection of waste.

Waste levy

The WARR Act provides the statutory framework for the collection and application of the waste levy through the WARR Account, while the framework for the imposition of the levy is contained within the *Waste Avoidance and Resource Recovery Levy Act 2007* (WARR Levy Act). The levy provisions in the WARR Act and the WARR Levy Act enable the waste levy to be collected. Details relating to the administration and calculation of the levy are set out in regulations made under the WARR Act and WARR Levy Act.

The waste levy is an economic instrument to:

- reduce waste to landfill by increasing the cost to dispose of waste to landfill
- modify behaviour in the waste management sector
- support programs which aim to reduce waste going to landfill.

The State Budget 2019–20 details forecast levy revenue and the expenditure of the WARR Account.

Product stewardship and extended producer responsibility

The WARR Act establishes product stewardship and extended producer responsibility (EPR). Product stewardship provisions set out requirements for producers to develop product stewardship plans relating to the waste and recycling of certain products. EPR provisions provide for mandatory schemes relating to the waste and recycling of certain products.

EPR activities such as electronic waste and used oil collection programs are occurring in WA but were not established through provisions in the WARR Act.

In addition, the current provisions proved insufficient for the purpose of establishing the statutory requirements under the WARR Act for the container deposit scheme (CDS) (see section 8). This suggests these provisions are unlikely to be suitable to support EPRs generally.

There have been significant developments in recent years relating to product stewardship and EPRs through the former Council of Australian Governments (COAG) Standing Council on Environment and Water.

The Commonwealth *Product Stewardship Act 2011* (PS Act) was introduced to provide a regulatory framework to support national product stewardship schemes. The National Television and Computer Recycling Scheme was the first scheme introduced under the PS Act.

In January 2014, a voluntary national product stewardship scheme for end of life tyres was launched.

PaintBack is a voluntary EPR scheme, which has been implemented nationally for the recovery of waste paint, with a 15-cent levy per litre applied to decorative paint sales. Work has also commenced on EPRs for batteries and photovoltaic systems.

Container deposit scheme (CDS)

The WARR Act contains provisions to establish a CDS, which will commence operations in WA on 1 October 2020. The CDS is an EPR scheme which allows consumers to return empty beverage containers to a refund point and receive 10 cents for each eligible container returned.

The WARR Act requires the first responsible supplier of a beverage product to pay the scheme coordinator the cost of the refund paid to the consumer and other costs required to deliver a CDS in WA. The scheme coordinator is a not-for-profit company with a defined board structure, which is responsible for the operation of the CDS.

The WARR Act also provides for a collection network established by the scheme coordinator through contracts with refund point operators, transporters and processors.

The WARR Act gives primary responsibility to the scheme coordinator for ensuring that containers used for beverage products collected from refund points are recycled or reused and not disposed of to landfill.

Compliance and enforcement

The WARR Act contains the powers necessary to enable compliance and enforcement of the mechanisms within the Act. These head powers are generally considered sufficient to enable compliance and enforcement activities to be effective.

Consultation to implement a [Compliance and Enforcement Policy](#) closed on 20 September 2019 and links to one of the department's five strategic directions – to be a responsible and credible regulator by undertaking appropriate compliance and enforcement to ensure regulated stakeholders meet their commitments.

Under the WARR Act, the maximum penalty for an offence contained in regulations is currently limited to \$10,000, with or without a daily penalty of \$1,000. Under the WARR Act itself, there are more significant penalties for offences (for example, evasion of the levy).

2.2 Parliamentary intent of the WARR Act

In considering the review of the WARR Act and its roles and responsibilities, it is appropriate to consider the context within which the Waste Avoidance and Resource Recovery Bill 2007 (WARR Bill) was introduced and any changes to these circumstances since the WARR Act came into operation on 1 July 2008.

Parliament's intent regarding the policy formulation role of the Waste Authority is outlined in the explanatory notes for the WARR Bill which state that the main feature of the legislation is the establishment of the Waste Authority with non-regulatory functions and powers including: "Strategic policy and planning for the transition toward zero waste to landfill in Western Australia" and "the implementation of policies, plans and programs to achieve that transition".

Moreover, the explanatory notes provide that the Waste Authority is "to progress waste policy and program delivery" and indicate that the WARR Act will seek to achieve a clear separation of waste policy and program delivery from the functions which will be undertaken by the department – that is, waste regulation and related compliance and enforcement.

The explanatory notes also provide that "the Authority will be responsible for developing policies and implementing programs for progressing waste avoidance and resource recovery in Western Australia".

In the course of State Parliamentary debate, following the introduction of the WARR Bill, the then Minister for the Environment, stated "the Authority will play a key role in providing long-term strategic advice and planning" and that "some of the key medium

and long-term planning issues will be at the forefront of the strategic work of the Authority”.

2.3 Context for the WARR Act review

The WARR Act was developed over a period of about 10 years prior to its enactment in 2007. Before the introduction of the WARR Act, the State Government had a limited role managing waste, with its primary focus being the protection of human health and the environment. Legislation relating to the management of waste was contained in many Acts.

The WARR Act provided a greater focus on waste management and an increased role for the State Government by bringing together existing and new waste legislation under a single Act. New provisions included the establishment of the Waste Authority and a requirement for the Authority to draft a Waste Strategy to provide strategic direction on waste consistent with the objectives of the WARR Act. The first Waste Strategy was released in 2012, and a new strategy was released in February 2019.

The first review of the WARR Act, which was completed in September 2015, did not propose any legislative amendments. The State Government committed to continuing to implement mechanisms to support better alignment of waste management planning, waste services and waste contracts across State Government, local government and industry. These include actions outlined in the [Waste Avoidance and Resource Recovery Action Plan](#) to develop local government waste plans, and rollout better practice collection and processing systems in the Perth and Peel regions.

In 2016, the WA Auditor General undertook a performance audit to assess whether strategies to reduce the state’s reliance on landfill for dealing with household, construction, demolition, commercial and industrial waste had been successful. The audit focused on implementation of the Western Australian Waste Strategy: Creating the Right Environment (2012) by the Waste Authority, and the then Department of Environment Regulation (now Department of Water and Environmental Regulation).

The Auditor General’s Report No 23 2016, [Western Australian Waste Strategy: Rethinking Waste](#), found that the management of waste in WA had improved since the publication of the Waste Strategy in 2012, and that there had been increased resource recovery and reduced reliance on landfill. Notwithstanding the improvements in waste management, the audit concluded that none of the Waste Strategy targets to divert waste from landfill were met in 2015; data to inform the progress with waste management was incomplete and unreliable; and that the absence of effective cooperation between the Waste Authority and the then Department of Environment Regulation, contributed to delays in funding approved projects that aimed to increase recycling or reduce waste.

The report considered that unclear roles of the Waste Authority and former department led to poor planning and reporting, and delays in funding. The WA Parliament’s Public Accounts Committee conducts follow-ups with audited agencies to ascertain actions taken in response to audit recommendations. On 11 October

2018, the Committee tabled [Report 6: No \(More\) Time to Waste](#) on the implementation of WA's last Waste Strategy. The Committee made seven recommendations to further improve implementation of the Waste Strategy. Directly relevant to the WARR Act review is recommendation 2:

“The Department of Water and Environmental Regulation ensure that the impending review of the Waste Avoidance and Resource Recovery Act 2007 (WA) removes all remaining ambiguity between the department and the Waste Authority regarding their respective roles and responsibilities around the implementation of the Waste Strategy and expenditure from the Waste Avoidance and Resource Recovery Account.”

The State Government provided a response to the Public Accounts Committee's report as well as actions proposed to be taken with respect to its recommendations. In relation to recommendation 2, the State Government response indicated that the statutory review of the WARR Act had commenced and would focus on addressing the roles and responsibilities of the Minister for Environment, CEO and Waste Authority, in view of previous findings from the Public Sector Commission that these were overlapping and unclear.

2.4 Waste legislative reform

In 2017, the department released a discussion paper titled [Waste reform project: Proposed approaches for legislative reform](#) which contained multiple proposals to improve waste management and the environmental protection regime as they apply to waste generation, storage and disposal. A [Consultation summary report](#) was published in July 2018, outlining stakeholder feedback and supporting further consultation on the proposals.

In February 2020, the department released a consultation paper containing detailed legislative proposals to support waste reform entitled [Closing the loop: Waste reforms for a circular economy](#). The legislative proposals have been devised to support the vision of the Waste Strategy and shifting the state to a low-waste, circular economy.

The paper includes legislative proposals from the 2017 discussion paper and new proposals to address emerging legal and policy issues relating to waste, including:

- ensuring key waste objectives under the WARR Act and the Waste Strategy are relevant considerations for granting licences and imposing conditions under Part V Division 3 of the EP Act
- clarifying waste terminology under the WARR Levy Act and its regulations to improve the implementation of the waste levy
- Streamlining landfill licensing categories under the Environmental Protection Regulations 1987 and redefining their scope to clarify what constitutes waste disposal to land

- Reviewing the waste levy exemptions under the Waste Avoidance and Resource Recovery Levy Regulations 2008 (WARR Levy Regulations) to provide industry with greater certainty, and to align with other jurisdictional approaches
- New compliance and enforcement measures under the EP Act to minimise unlawful waste disposal, which will support local waste operators who comply with waste levy requirements.

Also in February 2020, the department released the consultation paper [Review of the Waste Levy](#). The action plan for the Waste Strategy includes a State Government commitment to review the scope and application of the levy to ensure that it meets the objectives of the strategy, and to establish a schedule of future levy rates. The issues canvassed by this waste reform project include:

- waste levy rates, including a future schedule of rates
- the geographical area of the waste levy
- applying the waste levy to other waste management methods, such as energy recovery from waste.

These waste legislative reform projects are being progressed separately to the WARR Act review, in consultation with the Waste Reform Advisory Group.

Public consultation for both papers closed on 15 July 2020, with further information available [here](#).

2.4 Cross-jurisdictional review

To further support this review of the WARR Act, a review of waste legislation and policy frameworks operating in New South Wales, Victoria and South Australia is contained in Appendix 1. This review has provided further background information for this review of the WARR Act and provides a comparison of arrangements in other Australian jurisdictions.

3. Key issues to address during this review

The review of the WARR Act seeks to consider the effectiveness of the legislation in meeting its objectives for reducing waste and encouraging resource recovery, as well as its alignment to the Waste Strategy.

As identified in the findings and recommendations of the Auditor General Report No. 23 2016 and Public Accounts Committee Reports 6 2018, achieving improvements in waste reduction and greater resource recovery has been adversely affected by a lack of clarification of the role and functions of the Waste Authority and the former department.

The Public Accounts Committee reported that notwithstanding department and Waste Authority expectations for a governance framework addressing legislative shortcomings and a service level agreement (SLA) to be finalised by the end of 2018 (section 3.11), at the time of providing submissions to the Committee both the department and Waste Authority acknowledged some confusion remained around roles and responsibilities in the current wording of the WARR Act (section 3.12).

The State Government's response to the Public Accounts Committee report, tabled on 12 February 2019, stated that a governance framework based on the functions, roles and responsibilities established in the WARR Act had been prepared by Ernst and Young. The governance framework was supported by a review of the roles and responsibilities of the Waste Authority and the department's CEO under the WARR Act by the Public Sector Commission. An SLA that reflects the current service arrangements has also been signed.

Taking into account the governance framework and SLAs signed in December 2018, May 2019 and May 2020 respectively, the Public Accounts Committee and Auditor General reports and recommendations (2018 and 2016 respectively), and the analysis of the WARR legislative framework, the following matters have been identified as requiring detailed examination and possible reform to clarify the roles and functions of the Waste Authority and CEO:

- responsibility for developing waste policy advice to the Minister for Environment
- the Waste Authority's responsibility to administer the WARR Account in relation to the CEO's responsibility as the accountable authority for the purposes of the *Financial Management Act 2006*
- arrangements for provision of services to the Waste Authority, in particular the Authority's capacity to direct support staff (currently provided by department) to facilitate fulfilment of its functions and deliver its priorities.

Legislative issues under the WARR Act have also been identified for consideration during this review. To address the commencement of the CDS, Containers for Change, this review also considers if further changes may be required to the WARR Act to support this scheme and future extended producer responsibility schemes.

The review also considers the effectiveness of legislative powers to make subsidiary legislation under the WARR Act, and if it supports effective waste management and compliance and enforcement.

4 Waste policy development

4.1 Matters identified as requiring clarification

The Auditor General's report identified waste policy development as a significant area of overlap between the Waste Authority and the then Department of Environment Regulation (now the Department of Water and Environmental Regulation).

The functions and obligations imposed upon the Waste Authority by the WARR Act confer responsibility (subject to Ministerial approval through the Minister for Environment) for the formulation and implementation of policy with respect to matters relating to waste.

This responsibility or head of power is not exclusive, as the EP Act expressly confers upon the department a responsibility for policy formulation with respect to environmental matters of which waste is an acknowledged component. In addition, the department assists the Minister for Environment in the administration of the WARR Act and therefore has a responsibility for providing advice on its effectiveness. Also relevant is section 29 of the *Public Sector Management Act 1994*, which provides that the functions of a CEO include the provision of policy advice to the relevant Minister.

This shared responsibility necessitates close cooperation between the Waste Authority and the department.

4.2 WARR Act provisions

As outlined in Schedule 2 of the WARR Act, the Waste Authority function of advising the Minister for Environment and providing recommendations on "matters relating to this Act" enables the Authority to formulate a position or policy and to advocate for its implementation. Part 4 of the WARR Act confers obligations upon the Waste Authority through which it is implicitly required to formulate policy or a position and to seek Ministerial endorsement for its adoption.

Sections 24 and 25 of the WARR Act requires the Waste Authority to formulate a Waste Strategy for the whole of the state, and section 26 requires the Authority to consult stakeholders in the formulation of the strategy. Such consultation is an acknowledged feature of effective policy formulation. Section 33 implies that the Waste Strategy is to remain in place for up to five years before being reviewed by the Waste Authority.

Section 35 requires the Waste Authority to develop an annual business plan, consistent with its Waste Strategy, for Ministerial approval. The business plan requires the Waste Authority to outline its objectives and priorities for the next five years as well as what the Authority intends to do over the next financial year. Section

39 of the WARR Act also requires the Waste Authority to have regard to the business plan in carrying out its functions.

4.3 Service level agreement

The service level agreement (SLA) specifies the services that are to be provided to the Waste Authority by the department under section 16 of the WARR Act.

The SLA outlines the corporate services to be provided, which includes financial services, human resources, information technology, corporate communications, legal services, accommodation services and Ministerial support.

Under section 16, the estimated cost of services to be provided by the department to the Waste Authority, is prepared on an annual basis. This process also considers the content of the Waste Authority's annual business plan.

Under the SLA, the department will then seek a recoup on a quarterly basis to recover its actual costs incurred for the provision of services and functions to the Waste Authority.

4.4 Proposed reform options

The introduction of the WARR Act provided for an increased role for the State Government in waste policy as well as the establishment of the Waste Authority, with one of its key roles being the preparation of a draft state Waste Strategy that is submitted to the Minister for Environment for approval by the State Government. The Waste Strategy provides a policy framework that guides decision-making across State Government and the provision of Waste Authority advice to the Minister for Environment.

The State Government's role and involvement in waste management has evolved over the 10 years since the WARR Act came into operation. The roles of the State Government and Waste Authority on matters of waste policy development and implementation are articulated in the 2019 Waste Strategy as follows:

State Government can influence outcomes through its policies and programs, but also generates waste through its operations. As the "system steward" State Government will provide waste management leadership. It will influence waste behaviours through legislation, regulation, policies and programs that align with national approaches. Through engagement and collaboration, the government will create an environment that encourages the community to adopt positive behaviour change and businesses to invest and innovate in the waste and recycling sector to move WA towards becoming a circular economy. Agencies will also lead by example by committing to actions and targets in this strategy and reporting on their performance to contribute to its delivery.

Waste Authority can influence outcomes through its programs. Established under the Waste Avoidance and Resource Recovery Act 2007, the authority will provide waste management advice to Government and waste management leadership to the community. It will lead the delivery of this strategy by coordinating stakeholder commitment and collaboration on strategies, administering the Waste Avoidance and Resource Recovery Account (fund), publishing position statements, and preparing annual business plan objectives, priorities and programs that align with this Waste Strategy.

There is merit in having a statutory board such as the Waste Authority to lead the preparation of a draft Waste Strategy and implementation of communication and behavioural change programs subject to State Government approval. Importantly, the Waste Authority provides a mechanism for State Government to receive external advice on waste policy and program implementation that takes account of the shared responsibilities and seeks the input of the Commonwealth Government, local government and regional councils, business and industry, waste industry and the community.

In addition to its role in the formulation of the Waste Strategy, the Minister for Environment may request the Waste Authority provide policy advice on specific issues that emerge from time to time.

Notwithstanding the benefits for State Government to receive policy advice from the Waste Authority – including through the Waste Strategy and on priorities as identified in the approved strategy or on the request of the Minister for Environment – it is also appropriate for the department to provide waste policy advice. This would be undertaken under the provisions of the EP Act, the department's responsibility for administering the WARR Act and the CEO's functions under the *Public Sector Management Act 1994*.

The department's roles and responsibilities in waste management are broader than its regulatory functions established under the WARR Act and include policy functions as identified in the Waste Strategy and SLA.

Consistent with advice provided by the former Auditor General in the 2016 report, reform is therefore required to remove uncertainty and ambiguity in the roles and functions set out in the WARR Act.

- 1. Please provide feedback on the roles and functions of the Waste Authority and the CEO and department under the WARR Act? What are the potential areas for improvement? What benefits or impacts may result from clarifying the department's role and responsibilities?*

5 Administering the WARR Account

5.1 Matters identified as requiring clarification

In the context of the continued long outstanding critical governance arrangements, the Public Accounts Committee recommended that the review of the WARR Act remove all ambiguity between the department and the Waste Authority regarding their respective roles and responsibilities around implementation of the Waste Strategy and expenditure from the WARR Account.

5.2 WARR Account provisions

The WARR Account is established under section 79 of the WARR Act and is declared to be a special-purpose account under section 16 of the *Financial Management Act 2006* (Financial Management Act). Section 52 of the Financial Management Act provides that the CEO is responsible to the Minister for Environment for the financial management of that account. Section 61 of the Financial Management Act imposes upon the CEO annual reporting obligations, such that financial statements in relation to the WARR Account are to be prepared in accordance with accounting standards.

Section 79 of the WARR Act states that the WARR Account is to be “administered” by the Waste Authority; however, that term is not defined under the WARR Act, or by the Financial Management Act. The latter Act requires the CEO of the department, as the accountable authority, to maintain records to account separately for each special-purpose account. Section 81 of the WARR Act provides that the provisions of the Financial Management Act apply in relation to the WARR Account.

Section 73 of the WARR Act enables regulations to impose a levy which is payable to the Minister for Environment. The levy is to be credited to an operating account of the department. Section 79 provides that the Minister for Environment is to direct, in each financial year, that there is to be credited to the WARR Account not less than 25 per cent of the levy collected.

Section 80 of the WARR Act limits the circumstances in which the Waste Authority may disperse or apply funds from the account. The effect of section 80 of the WARR Act is that the Authority may only apply funds from the account with an approved business plan or where it has been separately approved by the Minister for Environment for the limited purposes specified in section 80 of the WARR Act.

With regard to contractual matters, the WARR Act was not drafted to give the Waste Authority contractual capacity by establishing it as a separate body corporate. Where a contract is to be let in connection with the performance of the Waste Authority’s statutory functions, the relevant legal entity which must be named in the contract as the contracting party is the state of WA. The contract must be executed by a person with authority to contractually bind the state.

5.3 Proposed reform options

The lack of definition about the Waste Authority's responsibilities under section 79 of the WARR Act to "administer" the WARR Account raises potentially significant legal uncertainties about roles and responsibilities.

Under the terms of the SLA and the Financial Management Act, the CEO is responsible to the Minister for Environment for the financial management of the WARR Account.

Careful consideration needs to be given to the assignment of responsibilities in applying the moneys in the WARR Account given that:

- there are both legal and policy reasons for ensuring that the WARR Account is subject to the financial administration, audit and reporting requirements in the Financial Management Act which relate to both the collection and application of moneys
- responsibility for collecting the levies payable to the Minister for Environment and credited to the WARR Account is allocated to the CEO under the WARR Regulations
- there may be policy and legal imperatives for the WARR Account to be regarded as under the control of only one agency (the department) for the purposes of the Financial Management Act, as it presently is pursuant to section 81 of the WARR Act.

Responsibility appropriately rests with the CEO and this needs to be confirmed through an amendment to the legislation.

2. Are there any potential issues arising from the proposed reforms to improve the administration of the WARR Account?

6 Provision of services to the Waste Authority

6.1 Matters identified as requiring clarification

In the context of uncertainty or a difference of view about the respective roles and responsibilities of the Waste Authority and department, the Auditor General noted that the Waste Authority effectively has no decision-making powers (as these rest with the Minister for Environment) and no staff, instead relying on the then Department of Environment Regulation (now the Department of Water and Environmental Regulation) to provide services and facilities to fulfil its role. The former Auditor General noted that the staff are also subject to the department's direction.

In addition, the Public Accounts Committee recommended: *“The Minister for Environment and the Waste Authority negotiate further to determine the appropriate number of staff that should work exclusively on helping the Waste Authority perform its functions and deliver its services”* (recommendation 3).

6.2 WARR Act provisions

Section 16 of the WARR Act requires that the Minister for Environment ensures the Waste Authority is provided with such services and facilities as are reasonably necessary to enable it to fulfil its functions. The section goes on to provide that the Minister for Environment may, by agreement with the department, allow the Waste Authority to make use of departmental staff and the services and facilities of the department. The Waste Authority may, with the agreement of the department, make use of departmental staff in carrying out, for example, the Authority's promotional functions.

In July 2018, the department's Director General established a Waste Avoidance and Resource Recovery Division within the Strategic Policy directorate in the department.

On 27 August 2019, the Minister for Environment issued a Ministerial Statement of Expectation to the Waste Authority. The statement outlines the Minister's expectations and established his priorities for the Waste Authority. Part of this expectation is that the Waste Authority will enter into an SLA with the department, responsible for the administration of the WARR Act. On 8 November 2019, the Waste Authority responded to the Minister for Environment with a Statement of Intent detailing how the Waste Authority aims to implement the Minister's expectations.

The Waste Authority Chairman and the CEO have annually signed SLAs for the provision of department services to the Waste Authority. The current SLA was finalised in May 2020 and is applicable for the period 1 July 2020 – 30 June 2021.

6.3 Proposed reform options

Beyond administrative and procedural requirements, departmental staff referred to in section 16 of the WARR Act, act on behalf of the Waste Authority and are subject to its direction in respect of substantive tasks allocated to them by the Waste Authority in the performance of its functions. For example, in the performance of its function of advising the Minister for Environment on matters relating to the WARR Act under clause 1(a) of Schedule 2, the Waste Authority could use a departmental officer in accordance with arrangements made under section 16 of the WARR Act to assist in the preparation of the advice. Department staff would be subject to the direction of the Waste Authority with respect to the preparation of the advice and the advice would not be subject to review by the CEO. The situation would be similar for any other State Government employee who assisted the Waste Authority in accordance with arrangements under section 17 of the WARR Act.

Legislative amendment would be required to enable the Waste Authority to directly employ its own staff, or to enable the Minister for Environment or some other person to employ or appoint persons to work directly for the Authority.

Any consideration for the Waste Authority to be able to employ staff or appoint staff to work directly with the Authority would need to be cognisant of the likely complexity of necessary legislative amendments to establish the mechanism for funding the staff (most likely from the WARR Account); clear definition of responsibilities for financial administration; and accountability and reporting arrangements.

3. Please provide feedback on the proposal to allow the Waste Authority to directly employ its own staff, or to enable the Minister for Environment or some other person to employ or appoint persons to work directly for the Waste Authority. Will this support the work of the Waste Authority and the department?

7 Waste services

7.1 Matters identified as requiring clarification

The WARR Act includes provisions for waste services provided by a local government, including a regional local government, in specified circumstances. It has been identified that the powers under the WARR Act requiring a local government to provide waste services are not clear, and there are limitations on the powers under waste plans and waste collection permits. Further clarity appears necessary to ensure powers provide for broader sustainability outcomes.

Recent market disruptions including the tightening of international markets through waste bans and lower tolerance for contamination, have led to reduced value for recovered materials. This has in turn impacted on the viability of services. A forthcoming Australian waste export ban for glass (from January 2021), mixed plastics (phase one from July 2021), tyres (from December 2021) and paper and cardboard (from July 2024) will further require improved local processing and recycling activity. The impacts of these circumstances have resulted in recyclables disposed of to landfill; temporary suspensions of kerbside services by some local governments; increased costs to households; and increased costs to State Government to clean up stockpiles and contaminated sites.

7.2 WARR Act provisions

Waste services are defined in section 3 of the WARR Act to mean (a) the collection, transport, storage, treatment, processing, sorting, recycling or disposal of waste; or (b) the provision of receptacles for the temporary deposit of waste; or (c) the provision and management of waste facilities, machinery for the disposal of waste and processes for dealing with waste.

This definition is considered sufficiently broad to encompass necessary waste management and recycling services for local government waste. However, further definition of the head powers and mechanisms that would apply to these services, such as waste plans, or fees and charges, is considered important to drive better practice waste management outcomes and actions that meet the Waste Strategy targets for material recovery.

7.3 Proposed reform options

There is benefit in ensuring the WARR Act includes the capacity for improved efficiency and innovation for long-term viability of onshore processing, including market development for the sustainable demand for locally produced recycled products – such as compost from large scale food organics and garden organics (FOGO) processing – as well as the ability to ensure a management framework that supports a resilient waste and resource recovery sector with services to households that:

- are cost-effective, safe and reliable
- are informed by the State Government's environmental sustainability objectives
- can adapt to and withstand market disruptions.

4. *What are your views about the proposal to enhance the capacity of the WARR Act to improve waste services? Do you see any potential issues?*

8 Waste legislative issues

8.1 Matters identified as requiring clarification

Container deposit scheme (CDS)

The previous provisions of the WARR Act were insufficient for the purpose of establishing the statutory requirements for a CDS in WA. Accordingly, the Waste Avoidance Resource Recovery Amendment (Container Deposit) Bill 2018 was prepared. On the granting of Royal Assent on 16 April 2019, a new Part 5A was inserted into the WARR Act, establishing the regulatory framework for the CDS.

To ensure the CDS can operate effectively within WA, minor amendments to the WARR Act may be required to rectify potential issues which may hinder the operational effectiveness of the scheme.

The proposed amendments relate to:

- a) the prohibited disposal of containers by material recovery facility (MRF) operators (section 47M)
- b) the constitution of the Board of the Coordinator (section 47V).

Consideration of the provisions of the WARR Act relating to extended producer responsibility schemes is also required, as they are considered insufficient to support the CDS and may not support modern recycling opportunities.

Regulation-making powers under the WARR Act

As part of the review, there are potential opportunities to improve WARR Act provisions and powers to support a flexible and adaptive waste management legislative framework, and the regulations made under this legislation.

One area for consideration is improving the adoption of documents in regulations made under the WARR Act. The current head powers are not aligned with the approach under section 123(3) of the EP Act, which allows for a range of documents to be adopted by reference including instructions and administrative procedures.

In addition, to further support compliance and enforcement activities for waste management under the WARR Act, there is an opportunity to consider if the current penalties in subsidiary legislation are appropriate and work as an effective deterrent.

8.2 WARR Act provisions

Part 5 of the WARR Act provides the powers for establishing product stewardship plans (s45), and for extended producer responsibility schemes (s46). No product stewardship plans have been developed or proposed under section 45. Part 5A of the WARR Act provides the legislative framework for the CDS in WA.

There are three sets of regulations under the WARR Act:

- [Waste Avoidance and Resource Recovery Regulations 2008](#)
- [Waste Avoidance and Resource Recovery Levy Regulations 2008](#)
- [Waste Avoidance and Resource Recovery \(Container Deposit Scheme\) Regulations 2019](#).

Under Schedule 3 Division 1 of the WARR Act, regulation penalties are limited to a maximum of \$10,000.

8.3 Proposed reform options

Container Deposit Scheme

To improve the implementation of the upcoming CDS framework, two minor amendments are proposed for Part 5A of the WARR Act. These concern the prohibited disposal of containers by material recovery facility (MRF) operators (section 47M) and the constitution of the Board of the Coordinator (section 47V).

Section 47M of the WARR Act

A minor amendment is required to section 47M of the WARR Act in order to:

- ensure operational feasibility of the CDS
- achieve the section 47A(f) object of complementing existing collection and recycling activities for recyclable waste
- align the control to the equivalent controls in other Australian jurisdictions.

Section 47M of the WARR Act:

- prohibits MRF operators from disposing of containers that have been collected or received by an MRF, in a prohibited manner (section 47M (4))
- prohibits the coordinator from allowing MRF operators to dispose of collected or received containers in a prohibited manner (section 47M (3)).

The WA CDS framework differs from other Australian jurisdictions which only prohibit MRF operator disposal in a prohibited manner (or equivalent) if the MRF operator has claimed or received a recovery amount in respect of the container. Specifically, see:

- Section 99ZJ *Waste Reduction and Recycling Amendment Act 2017* (Qld)
- Section 28(7) (c) & (d) *Waste Avoidance and Resource Recovery Act 2001* (NSW); Regulation 20 of the *Waste Avoidance and Resource Recovery (Container Deposit Scheme) Regulation 2017* (NSW)
- Section 64L (6) *Waste Management and Resource Recovery Act 2016* (ACT).

The initial motivation for capturing containers collected by MRF operators within the CDS was to prevent any adverse impact on kerbside recycling programs that might otherwise result from the CDS taking away a significant revenue stream of kerbside

collections. A corresponding motivation for including an offence for MRF operators to dispose of containers in respect of which a recovery amount has been claimed or received, was to prevent fraud (that is receiving payments but not recycling).

The drafting of section 47M extends further than the equivalent provision in other jurisdictions and will mean that once the CDS commences, it will be an offence for MRF operators to continue to carry out their current practices and will require recycling of particular types of waste where no recovery amount has been claimed or received by the MRF.

Achievement of 100 per cent recycling of all MRF operator collected and returned containers is not possible. The Western Australian wider community relies on MRF operators to process waste. Continuation of section 47M in its current form may jeopardise the continued viability of MRF operators. On this basis, it is proposed that section 47M is amended to prevent MRF operators from disposing of containers in a prohibited manner if the MRF has claimed or received a recovery amount in respect of the container.

Section 47V of the WARR Act

Section 47V currently provides that the company appointed to the role of coordinator must have a constitution which requires a specific composition of board members at all times. The rationale for inclusion of the provision is to ensure a balanced board, where the board's Chair is independent of industry associations; the interests of the beverage industry, waste industry and the community are fairly represented; and a minimum of two board members have legal or financial expertise.

However, section 47V does not contemplate a circumstance where there has been an unexpected resignation of a board member. As currently drafted, if a board member unexpectedly resigns or is unable to continue in the role, the company appointed as coordinator will immediately cease to be an eligible company under the WARR Act. The company will be required to report on this in its published annual report and could be exposed to revocation of its appointment as coordinator, the appointment of an administrator, or amendment of conditions of appointment pursuant to section 47ZQ(2) of the Act.

It is therefore proposed that section 47V be amended to provide a short timeframe of 40 business days in order to allow the coordinator to deal with unexpected resignations of board members.

Extended producer responsibility schemes under Part 5 of the WARR Act

CDS can be characterised as an extended producer responsibility scheme, but it was not suitable for implementation under Part 5 of the WARR Act, which was specifically intended for the introduction of such schemes.

Part 5 of the WARR Act is limited by the regulation-making powers in Schedule 3 Division 3 for extended producer responsibility schemes, which were not suitable for CDS.

Consequently, the new Part 5A was introduced into the WARR Act to establish head powers and taxation provisions to support CDS.

As Part 5 may have limitations, amendments to the WARR Act may be required to ensure the provisions can support future extended producer responsibility schemes.

5. *Are there any potential issues that may result from these proposals to improve operational and administration aspects of the CDS?*
6. *Please provide comments on product stewardship plans or extended producer responsibility schemes, and if the WARR Act requires amendments to support their introduction.*

Regulation-making powers under the WARR Act

Referencing key documents in regulations made under the WARR Act

Section 98 of the WARR Act outlines that regulations, local laws and Waste Strategy may adopt codes or legislation and other references. It is proposed that this section is amended to align with wording under the EP Act section 123(3), which will allow for greater flexibility in terms of adopting key documents in subsidiary legislation made under the WARR Act. This would also support the development of a robust policy framework for the implementation of the WARR Act.

Section 123(3) of the EP Act allows for the Governor to make regulations that may:

“adopt, either wholly or in part or with modifications and either specifically or by reference, any rules, standards, regulations, local laws, by-laws, codes, instructions, specifications or administrative procedures prescribed or published by any person or public authority”.

This is broader than the current scope of the WARR Act section 98(2), which allows for regulations, local laws and the Waste Strategy to adopt, by reference, codes and subsidiary legislation, where code is *“a code, standard, rule, specification or other document made in or outside Australia, that does not by itself have legislative effect in this State”.*

Penalties for offences

Under item 5 of Schedule 3, general prescribing offences under WARR Act regulations and penalties for the commission of those offences must not exceed \$10,000, with or without a daily penalty of not more than \$1,000.

Unlawful waste disposal can be financially lucrative and can undermine legitimate waste operators who are complying with legal requirements.

For example, waste levy evasion can undermine the objectives of the WARR Act and the implementation of the Waste Strategy. Regulations made under the WARR Act have a key role in ensuring the waste management framework is effectively implemented.

It is important that offences and penalties included in regulations under the WARR Act can effectively deter illegal waste activities.

To further support compliance and enforcement measures relating to waste management, it is proposed the maximum penalty under regulations is increased from \$10,000 to \$20,000, with or without a daily penalty of not more than \$2,000.

Amendments would be necessary to implement any proposed increases to existing penalties in regulations made under the WARR Act, which would be addressed as part of a separate review of the regulations themselves.

7. Please provide feedback on these proposed changes to support regulations that implement the waste management framework. Will increasing penalties under the regulations be effective in deterring illegal waste activities?

9 Other

While this discussion paper has canvassed a number of important issues in relation to the operation of the WARR Act, there are likely to be other issues of concern about the legislation that have not been raised.

8. *Are there any other matters which should be considered as part of this review of the WARR Act?*
9. *How do you think the WARR Act could better support an innovative and thriving waste sector, and ensure that waste and recycling services are effective?*

Appendix 1 - Cross-jurisdictional review

New South Wales

Waste legislation and policy requirements

In New South Wales (NSW), the primary waste avoidance legislative requirements are established under the *Waste Avoidance and Resource Recovery Act 2001* (WARR Act NSW) and *Protection of the Environment Operations Act 1997* (POEO Act).

The WARR Act NSW requires the Environment Protection Authority (NSW EPA) to develop a waste avoidance and resource recovery strategy (WARR strategy) for the state, and for the strategy to be reviewed and replaced every five years. Section 12 of the WARR Act NSW specifies that the strategy must include targets that address waste reduction, resource recovery and diversion of waste from landfill; be benchmarked against international best practice; and undergo a public consultation process. Section 12 also requires that targets for waste reduction, resource recovery and diversion of waste from landfill disposal are developed by an expert reference group. The WARR strategy takes effect when adopted by the EPA (section 12(3)). Progress in recycling and diversion across all waste sectors is reported every two years in the WARR strategy progress report.

The POEO Act establishes the waste levy (section 88), as well as licensing requirements for waste facilities and activities; offences for illegal dumping and littering; and a pathway for recovered resources to be used on land and for fuel.

Victoria

Waste legislation and policy requirements

Division 2AB of the *Environmental Protection Act 1970* (EP Act Victoria) establishes the Victorian Waste and Resource Recovery Infrastructure Planning Framework. The framework aims to achieve long-term, integrated planning for waste and resource recovery infrastructure at state and regional levels, integrated with land use and transport planning systems. The framework consists of the Statewide Waste and Resource Recovery Infrastructure Plan, regional waste and resource recovery implementation plans and relevant ministerial guidelines. The EP Act Victoria requires Sustainability Victoria to develop the Statewide Waste and Resource Recovery Infrastructure Plan and seven waste and resource recovery groups to each develop a regional waste and resource recovery implementation plan.

One of the main goals of the Statewide Waste and Resource Recovery Infrastructure Plan is to reduce reliance on landfills and it provides data, information and guidance to inform decisions being made related to waste and resource recovery infrastructure. Sustainability Victoria works with supporting organisations to deliver

the plan, including the Department of Environment, Land, Water and Planning; Environment Protection Authority

Victoria (EPA Victoria); and waste and resource recovery groups which work with local governments to implement regional implementation plans. Sustainability Victoria supports local government and private enterprise to establish infrastructure which improves the collection and processing of recycled materials through the resource recovery infrastructure fund.

In addition to its function to prepare the Statewide Waste and Resource Recovery Infrastructure Plan, the *Sustainability Victoria Act 2005* (SV Act 2005) establishes that Sustainability Victoria has a range of functions relating to resources including to:

- plan on a statewide basis and facilitate managing waste in accordance with Victorian legislation and government policies
- promote throughout Victoria waste avoidance, waste reduction and recovery, reuse and recycling of resources and best practices in waste management
- facilitate the uptake of fledgling technologies, industries, markets and practices in environmental sustainability, including demonstration projects.

South Australia

Waste legislation and policy requirements

In South Australia (SA), waste avoidance and resource recovery requirements are established under the *Green Industries South Australia Act 2004* (Green Industries Act) and the *Environment Protection Act 1993* (EP Act South Australia). Green Industries SA helps develop the green economy and promotes the circular economy, resource efficiency and the conservation and recovery of scarce resources, while the Environment Protection Authority (EPA South Australia) regulates the management of solid and liquid waste. Section 15(2)(c) of the Green Industries Act requires the annual report to include details of the coordination of activities by Green Industries SA and EPA South Australia.

Section 18 of the Green Industries Act establishes the requirements for Green Industries SA to develop a Waste Strategy for the state which is to identify targets or goals for:

- waste reduction
- diversion of waste from landfill
- waste collection, transport and disposal
- resource recovery development
- green industry development.

The SA Waste Strategy takes effect when adopted by Green Industries SA and must be replaced by a new SA Waste Strategy at least once every five years, or at a time directed by the SA Environment Minister. Section 14 establishes the requirements for Green Industries SA to prepare an annual business plan to be submitted to the Environment Minister for approval.

Glossary

Chief Executive Officer (CEO)	The CEO is the Director General of the Department of Water and Environmental Regulation – the department principally assisting with the administration of the WARR Act (see section 3(1) of the WARR Act).
Circular economy	An alternative to a traditional linear economy (make, use, dispose) in which we keep resources in use for as long as possible – extracting the maximum value from them while in use, then recovering and reusing products and materials. Three core principles underpin a circular economy: design out waste and pollution; keep products and materials in use; and regenerate natural systems.
Product stewardship	Product stewardship is an approach to managing the impacts of different products and materials. It acknowledges that those involved in producing, selling, using and disposing of products have a shared responsibility to ensure those products or materials are managed in a way that reduces their impact throughout their life cycle on the environment, and on public health and safety.
Resource recovery	The process of extracting materials or energy from a waste stream through re-use, reprocessing, recycling, or recovering energy from waste.
Waste avoidance	Refers to the prevention or reduction of waste generation, or the prevention or reduction of the environmental impacts (for example toxicity) of waste generation.
Waste Avoidance and Resource Recovery (WARR) Account	In accordance with the <i>Waste Avoidance and Resource Recovery Act 2007</i> (WARR Act), each year the Minister for Environment must allocate not less than 25 per cent of the forecast levy amount to the WARR Account. Funds in the WARR Account are applied to programs for the management, reduction, reuse, recycling, monitoring or measurement of waste and to support implementation of the Waste Strategy.
Waste diversion	The act of diverting waste away from landfill for another purpose such as re-use or recycling.

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