



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

Waste not, want not: Valuing waste as a resource

Consultation summary report

Department of Water and Environmental Regulation

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Summary

This report summarises consultation on the discussion paper [Waste not, want not: valuing waste as a resource](#) (September 2020), which sought feedback on a proposed legislative framework for waste-derived materials (WDM).

Most respondents supported a legislative framework that provides certainty about when material ceases to be waste and supports investment and the move towards a circular economy.

Some respondents highlighted the need to address:

- unintended consequences of the use of the term 'waste' in WDM
- the point at which materials cease to be waste
- clarity on what is waste in the first instance.

Stakeholders requested further consideration of aspects of the WDM legislative framework. They highlighted that its development and implementation should minimise disruption to current industry operations and should encourage innovation, research and development, and market acceptance and uptake of WDM.

Stakeholders emphasised the framework should incentivise current and potential market participants to seek productive uses for WDM.

Consideration should be given to the cost and effort required to comply with the legislative framework compared with the cost of landfill or the use of raw materials. Ease of compliance and clear requirements will likely have a substantial impact on implementation and success.

The department thanks all respondents to this discussion paper for their input into developing a framework that will encourage the production and use of WDM while protecting the environment and human health.

1 Introduction

The [Waste Avoidance and Resource Recovery Strategy 2030](#) (Waste Strategy) sets targets and objectives to recover more value and resources from waste, protect the environment by managing waste responsibly and move Western Australia to a circular economy.

The Department of Water and Environmental Regulation (the department) is progressing a range of legislative reforms to meet the objectives of the Waste Strategy. This includes the objective to:

“Encourage the use of WDM, including by developing product specifications for them, to build confidence in recycled products, increase demand for them and develop relevant markets while protecting the environment.”

An important first step is to provide legal certainty about when, and under what circumstances, waste ceases to be waste and is considered a resource. This will give stakeholders confidence to apply WDM to land without triggering the requirement to hold a licence for waste storage or disposal under the *Environmental Protection Act 1986* (EP Act) or to pay the waste levy.

In June 2019, the department published an [issues paper](#)¹ summarising legislative approaches in other Australian jurisdictions and seeking views on the preferred legislative framework that would encourage the use of WDM in WA.

This feedback informed the legislative framework proposed in the discussion paper [Waste not, want not: valuing waste as a resource](#). The framework was presented in an online information session and stakeholder meetings.

The 12-week public consultation period generated 44 written submissions from government, industry, industry bodies and the community. This report summarises the feedback received.

Comments relating to matters that were out of the scope of the legislative amendments proposed in the discussion paper are summarised in Appendix A.

Although this report only summarises the major themes relating to the legislative amendments required to create the WDM framework, all comments were included in analysis and will be considered as the framework is developed and implemented.

¹ Department of Water and Environmental Regulation (2019) [Issues Paper: Waste not, want not – valuing waste as a resource](#). The department also published a [consultation summary report](#) for the issues paper.

2 Proposed framework

The legislative framework for WDM proposed in the discussion paper would be created through amendments to the EP Act, *Waste Avoidance and Resource Recovery Act 2007* (WARR Act) and *Waste Avoidance and Resource Recovery Levy Act 2007* (WARR Levy Act).

The proposed legislative framework for WDM has the guiding objectives of:

1. protecting human health and the environment from waste
2. supporting a circular economy.

Most stakeholders supported the proposed legislative framework to give industry certainty about when material ceases to be waste, support investment and move WA towards a circular economy.

2.1 Proportionality with risk

Stakeholders agreed regulation should be proportionate to the risk posed to human health and the environment. Seven stakeholders requested further information on the risk assessment framework, emphasising it should be clearly defined, robust and consistently applied.

Some stakeholders considered the proposed framework could become overly onerous and suggested alternative approaches such as:

- incorporating a 'general environmental duty' in the legislation to allow businesses with good management practices to demonstrate compliance and meet their obligations in a non-prescriptive manner
- using a referrals framework similar to impact assessments under the *Environment Protection and Biodiversity Conservation Act 1999* and Part IV of the EP Act, where the Chief Executive Officer (CEO) can decide whether to assess a WDM based on the level of risk to human health and the environment associated with its use.

Response

To support implementation of the WDM regulatory framework the department will develop guidance on assessing the risks of a material's use and the requirement for conditions in a WDM declaration. The WDM risk assessment framework will align with the Part V [Guidance Statement: Risk Assessments](#) and the various [contaminated sites guidelines](#).

The CEO would assess WDM determinations in line with the department's [regulatory best practice principles](#) and could impose risk-proportionate conditions to:

- prevent, control, abate or mitigate pollution or environmental harm (EP Act), or contamination (*Contaminated Sites Act 2003* (CS Act))
- provide for waste avoidance and resource recovery (WARR Act)
- impose a levy on certain waste (WARR Levy Act)

- keep products, components and materials at their highest utility and value for as long as possible (circular economy).

In circumstances where the use of the material is of low risk for the environment, there are likely to be fewer conditions in the WDM product specification and WDM declaration than for higher-risk material. In very low-risk circumstances, there may be no conditions. This would ensure WDM determinations minimise regulatory burden.

Part V Division I of the EP Act provides for offences for pollution, unreasonable emissions and serious or material environmental harm. The EP Act is designed to protect human health and the environment from emissions and discharges, including waste which could be harmful if discharged in the environment.

A referrals approach to WDM would require the department to consider a greater number of individual WDM uses, resulting in unnecessary regulatory processes.

The proposed legislative framework provides an objective approach, with clear standards for the production and use of WDM deposited to land in quantities above prescribed thresholds². It is intended general WDM determinations would apply to many proposals for WDM and would provide a streamlined approach for producers and users of WDM.

2.2 Minimising unintended consequences

Terminology

Stakeholders noted there were negative connotations for the term 'waste' in WDM and the term 'statement of compliance'. Stakeholders felt these terms could adversely affect market perception and thus the price point, saleability and uptake of some products. Stakeholders suggested several alternative terms.

The point at which material ceases to be waste

Fourteen stakeholders recommended materials cease to be waste at the point of production (when the WDM product specification is met). If the WDM were used in a way that was not consistent with the WDM determination, the WDM would then revert to being a waste.

These stakeholders noted if materials cease to be waste at the point of use, the licensing requirements for storage and processing would be an unnecessary regulatory burden and a disincentive to wholesalers, retailers and users of WDM (particularly compared with raw materials).

Clarity on what is waste

Several stakeholders recommended including specific considerations in the definition of waste (as outlined in the [Factsheet: Assessing whether material is waste](#)), such as whether material has value (i.e. is a saleable product), is useful, or where there is

² Prescribed thresholds refer to the production or design capacity in Schedule 1 to the Environmental Protection Regulations 1987.

evidence of a financial transaction and the waste material has undergone a fundamental and valuable change.

Two industry associations recommended materials produced and managed under the *Mining Act 1978*, *Petroleum and Geothermal Energy Resources Act 1967*, *State Agreement Acts*, and other industrial by-products be excluded from the definition of waste or be exempt from waste licensing and levy obligations.

Five stakeholders did not support the example definition of waste in the discussion paper. They believed clarity was needed about what is waste in the first instance and, given the broadened scope of the definition, it is critical any uncertainty around whether material is waste or not is first resolved.

Response

The department has noted the feedback on terminology defining waste and will consider this in legislative amendments and drafting to avoid unintended consequences. To avoid unnecessary regulatory burden, the department will also consider the point at which material ceases to be waste.

To create an effective and fair framework, the definition of waste should include materials made wholly or partly from waste and exclude those that are beneficial, fit for purpose and do not pose an adverse risk to human health and the environment.

Enabling the CEO to make this determination will ensure consistent assessment against these criteria. This will address the subjectivity and uncertainty associated with the current approach of individuals making a determination.

2.3 Making a WDM determination

Stakeholders requested the process for making a WDM determination be efficient and time-bound so WDM can compete in markets against raw materials. Thirteen stakeholders emphasised the importance of defined processes, guidance and terms that are based on robust scientific evidence to promote good decision-making.

Stakeholders considered users would want a determination in place before they commit to using the material, making it difficult for new WDM to have a determination made where a market is absent or emerging.

Three stakeholders requested the CEO be required to consider, and be able to adopt, national or regional industry standards and/or application specifications.

Six stakeholders supported the consideration of site-specific matters associated with the material's use in determining appropriate receiving environments.

Stakeholders questioned the availability of resourcing within the department, including skills and technical and legal expertise, to implement the framework.

Response

The department will ensure the guidance and processes to support efficient and effective implementation of the framework are developed in consultation with stakeholders before the legislation is proclaimed.

The matters the CEO must consider are not exclusive, and the CEO would have regard to these to the extent that they are relevant. These may include national agreements in relation to waste, standards on the reuse of waste and standards and specifications published by the CEO or the department.

An established market is not a requirement for a WDM determination to be made; it is a matter the CEO would consider in making a determination and setting appropriate conditions.

2.4 Types of WDM determinations

Stakeholders expressed support for the development of general and case-by-case WDM determinations. They also supported industry-led collaboration for WDM determinations to streamline the process and outcomes.

Several stakeholders supported clear accountabilities for producers and users, with transfer of liability at the point of sale rather than on delivery to the user. This is because producers do not always have control over the material after it leaves their premises. Stakeholders suggested the statement of compliance could provide assurance that, at the time of production, all the conditions had been met.

Response

The department acknowledges this feedback and will consider it in implementation. The information provided by stakeholders will help to inform the approach taken, including implementation planning, stakeholder engagement and the date of proclamation of the legislative framework.

2.5 Prioritisation of WDM determinations

In addition to those listed in the discussion paper, stakeholders suggested several matters for consideration when prioritising WDM for assessment. For example:

- economic and financial contribution and viability
- natural resource conservation and ability to replace raw materials
- contribution to achieving environmental outcomes that address matters of national environmental significance
- the volume of material diverted from landfill
- level of risk to human health and the environment
- potential/opportunity to develop a local 'manufacturing'/supply capacity
- the tonnage of material generated
- the number of processors affected.

Response

The department acknowledges this information and will consider it in implementation.

2.6 Trials of WDM

Stakeholders believed the framework should encourage investment in, and the trialling of, materials for their suitability as WDM.

Several stakeholders requested more information on the evidence required to be established through trials of WDM.

To avoid prolonged approvals, stakeholders requested the ability to provide evidence from other domestic and overseas markets to substantiate the validity of a WDM application.

Response

The department will publish guidance on the information needed to substantiate an application for a WDM determination. The information required will depend on existing available knowledge about the waste input/s and the risks associated with the WDM and receiving environment.

Evidence from other markets is relevant to the development of general approvals. The proponent will likely need to demonstrate the WDM is equivalent to those in other markets. Depending on the application of the WDM, and the specific human health and environmental risks posed by the WDM, additional laboratory and field studies may be needed to demonstrate the WDM's suitability in a Western Australian context.

2.7 Content of WDM product specifications

Four stakeholders expressed support for the proposed content of WDM product specifications.

Seven stakeholders requested the conditions placed on the producer should not duplicate or be inconsistent with conditions imposed through other regulatory instruments. Stakeholders also requested conditions do not impose unnecessary regulatory burden or costs of compliance.

Response

The department will ensure conditions placed on producers of WDM are appropriate, proportionate and do not duplicate or contradict other regulatory instruments.

In making a WDM determination, the department will consider whether industry practice and the level of risk associated with the material warrants a statement of compliance.

2.8 Content of WDM declarations

Five stakeholders acknowledged the importance of ensuring WDM are used appropriately. They also raised concern that WDM uptake could be impacted by the perception they are more risky, complex and expensive than raw materials.

Stakeholders noted that administrative burden could discourage the use of WDM and they requested the conditions around use be simple and straightforward. Some stakeholders also recommended requirements to maintain records be time-bound, and the requirement to produce records be restricted to where there is a reason.

Some stakeholders requested further information on the circumstances or level of risk that would require a user to register with the department.

Response

In making a WDM determination, the department will ensure conditions placed on users of WDM are reasonable, legally clear, appropriate, proportionate and do not duplicate or contradict other regulatory instruments.

It is proposed records be required to be kept for five years consistent with other requirements in WA's waste legislation. Recordkeeping requirements for WDM declarations would include the quantity of WDM received, where it is used and the name and address of the supplier of the WDM received.

To ensure users are aware of their requirements when purchasing a WDM, the producer would be required to provide to each person to whom they supply the WDM:

- a written statement certifying that all the conditions set out in the specification have been met
- a copy of, or link to, the user declaration
- a copy of, or link to, the producer specification.

2.9 Contaminated sites legislation

Some stakeholders recommended WDM determinations clarify that if a WDM is used in accordance with the approved determination, it would not be considered a potentially contaminating activity.

Another stakeholder noted the use of materials by the remediation sector is not covered under WDM determinations but is addressed in the CS Act. They considered it important for the principles of beneficial reuse to be addressed consistently across all state legislation and frameworks.

Stakeholders questioned the implications for future land-use changes on land where a WDM was used in accordance with a WDM determination made on the basis that the material would only be used on land zoned for a particular use.

Response

In making a WDM determination, the CEO would have regard to the principles of risk assessment used in the assessment and management of site contamination. The determination would specify conditions relating to the nature of the WDM and its use to ensure the use of the material would not pose an unacceptable risk of harm to human health or the environment.

Some WDM may be suitable for use in specific applications and receiving environments but not in others. This is particularly important when land is rezoned.

For example, a WDM may be suitable for deep structural fill on commercial/industrial land, but not suitable for use as shallow fill on residential land. In this scenario, the use of the WDM would be considered a potentially contaminating activity and receiving locations may need to be recorded or registered to ensure potential risks posed by the material are managed into the future. The CS Act provisions relating to the identification and recording of site contamination may apply.

The department acknowledges that the management and remediation of site contamination routinely involves the beneficial reuse of materials on-site. These activities are addressed through the risk-based provisions of the CS Act and the department's [contaminated sites guidelines](#). Typically, these activities do not trigger licensing and waste levy requirements.

Where a contaminated site's remediation program has the potential to trigger the licensing and waste levy requirements, such as the off-site reuse of large quantities of contaminated soil, the WDM framework may provide a mechanism for material to be beneficially reused without triggering the licensing and waste levy requirements.

2.10 Controlled waste legislation

Some stakeholders requested further consideration of how controlled waste legislation applies to WDM, particularly where a WDM is manufactured with a controlled waste input. Stakeholders were concerned such a WDM would be subject to controlled waste requirements and that the site receiving the WDM would be required to be a licensed waste facility.

Response

The *Environmental Protection (Controlled Waste) Regulations 2004* (CW Regulations) only apply to a controlled waste as defined by the [National Environment Protection \(Movement of Controlled Waste between States and Territories\) Measure 1998](#) and listed in Schedule 1 of the CW Regulations, which is transported on a road in WA.

A 'finished' WDM that contains a controlled waste would no longer be considered a controlled waste and, therefore, the CW Regulations would not apply. 'Finished' means it is ready for market, meets all the conditions of the product specification and does not require further processing to become a WDM.

For example, used tyres are a controlled waste. While being transported from one site to another as a used tyre (before processing of the tyre occurs), the CW Regulations apply. This means the receiving site/facility must meet the definition of a waste facility and be able to lawfully accept that waste type.

Once the tyre goes through a process of being crumbed for application to land and complies with a WDM product specification, the processed material would be

considered a WDM. At this point, the material would cease to be a controlled waste and the CW Regulations would no longer apply.

If a controlled waste undergoes some processing at the source site but needs further processing at another site to become a 'finished' WDM, it is still a controlled waste and must be transported to the second site under the CW Regulations.

2.11 Storage of WDM

Some stakeholders acknowledged that stockpiles need effective management to avoid environmental risks and promote material circulation.

Many stakeholders expressed concern that the storage of WDM may require a 'waste depot' licence if WDM only ceases to be waste once used in accordance with the relevant WDM declaration. This would be an unnecessary regulatory burden and a disincentive to wholesalers, retailers and users of WDM (particularly compared with raw materials).

Ten stakeholders supported the proposal to limit the amount of time WDM could be stored without requiring a licence, with one stakeholder suggesting limits should be placed on the amount of WDM stored, rather than the time. However, several stakeholders opposed storage time limits on the basis it may discourage the purchase of WDM. Further, the availability of markets, seasonality and project timelines affect the need for WDM stockpiles.

Response

To avoid unnecessary regulatory burden, the department will further consider the point at which material ceases to be waste and the appropriate place to include conditions on storage if it is necessary to manage environmental or human health risks, or properly manage the waste (see also section 1.2).

Any time restrictions on stockpiles will consider waste reforms underway to address long-term waste stockpiling at waste facilities, which can undermine the shift to a circular economy (see the waste reform paper [Closing the Loop](#)).

2.12 Disposal of WDM to landfill

Two stakeholders noted the use of materials by landfills (e.g. as alternative daily cover) is not covered under WDM determinations; rather it is addressed in the *Waste Avoidance and Resource Recovery Levy Regulations 2008*. These stakeholders emphasised the importance of the principles of beneficial reuse being consistent across all state legislation and frameworks.

Response

In implementing the framework, the department will ensure consistent application of the principles of beneficial reuse across the WDM and waste levy exemptions frameworks, and proposals being progressed in other waste reform projects.

2.13 Review of WDM determinations

Stakeholders requested clarity on the processes and timeframes for the review and amendment of WDM determinations.

Three stakeholders recommended the CEO be empowered to approve amendments to a WDM determination, so minor amendments can be made without having to resubmit an application.

Two stakeholders requested amendments to WDM determinations not be retrospective and transitional arrangements be considered in some cases.

Stakeholders expressed strong support for a full transparent inquiry, in consultation with relevant industry and technical experts, before making any significant amendments or suspending or revoking a WDM determination. This would provide certainty to industry, enable investment and manage impacts on industry.

Response

The department supports an efficient and fair process for developing and amending WDM determinations and will consider stakeholder suggestions when drafting legislation. Draft regulatory amendments will be subject to separate consultation.

2.14 Publication and rights to appeal

Stakeholders supported a transparent process of publishing WDM determinations, noting commercial-in-confidence information may need to be redacted. One stakeholder recommended allowing public comment on WDM determinations before they are finalised.

While stakeholders supported the ability to appeal the CEO's decision in relation to a WDM determination, many were concerned the appeals system could become overwhelmed with unsubstantiated appeals, resulting in unnecessary delays, costs and impacts on investment. Some stakeholders considered appellants should provide evidence to support their appeal and bear the costs of the appeals process.

Several stakeholders recommended appeals be handled by the State Administrative Tribunal (rather than the Appeals Convenor). This would increase transparency and public confidence, result in more consistent and better decisions, and remove the multiplicity of roles played by the Minister for Environment in determining appeals.

Response

An appeals process is important to allow due consideration and to facilitate an open and transparent process. The department will consider the above suggestions on how best to ensure appeals are well-founded.

As the WDM legislative framework sits under the EP Act, the Appeals Convenor is the appellate body for dealing with appeals.

2.15 Compliance and enforcement

Stakeholders emphasised a robust, appropriately resourced compliance and enforcement process is essential to underpin confidence and participation in the legislative framework for WDM.

Some stakeholders requested further information on how compliance with the WDM product specification will be monitored and noted it would not be reasonable or practicable to rely on users of WDM to identify and report producer non-compliance.

Some stakeholders requested more information on how the department would approach a situation where the use of WDM resulted in pollution or environmental harm, even though both the producer and user followed the relevant WDM determination.

Concerned about inappropriate reuse of WDM, particularly in relation to liquid waste, some stakeholders recommended implementing significant and robust monitoring and compliance procedures.

Stakeholders had differing views on whether the proposed penalties were appropriate: some believed they were too severe and could discourage the production and use of WDM, while others felt they were too low to discourage breaches of the framework.

Response

The department agrees an effective compliance and enforcement process is essential to the success of the legislative framework.

In setting conditions in a WDM determination, the department will consider how they should be monitored and enforced. The department's risk-based [Compliance and Enforcement Policy \(2021\)](#) outlines how the department undertakes action, including in proportion to the severity of an offence.

In instances where contamination results from an act that was done with lawful authority, for example compliance with a WDM determination, there are defences under the EP Act and options to address impacts.

2.16 Implementation of the framework

Stakeholders requested the date of proclamation allows sufficient time for implementation of the framework (including the development of guidance and determinations) before the legislative amendments take effect.

A transition period would allow industry to adapt systems and processes to the new framework. Stakeholders requested transitional arrangements be developed in consultation with all affected producers and purchasers.

Stakeholders expressed concern about implementation costs to both industry and government. Although support for cost recovery was mixed, there was consensus

any cost recovery must be accompanied by efficient, streamlined and inexpensive processes, with clear timeframes.

Stakeholders recommended aligning reviews of the WDM framework with those for the EP Act and WARR Act.

Response

The department will consider stakeholder comments in implementation planning, including timeframes for the development of guidance and determinations and legislative reviews. Costs for WDM determinations would be subject to further consultation.

3. Next steps

The department will prepare drafting instructions for the legislative changes needed to establish the proposed WDM framework. The proposed WDM reforms will be progressed together with the department's other waste reform projects:

- [Closing the loop: Waste reforms for a circular economy](#)
- [Review of the waste levy](#)
- [Review of the *Waste Avoidance and Resource Recovery Act 2007*](#)
- [Mandatory use of weighbridges by landfill premises to calculate leviable waste](#)

The department thanks all respondents to this discussion paper for their input into developing a framework that will encourage the production and use of WDM while protecting the environment.

Appendices

Appendix A - Out-of-scope comments received

This report focuses on stakeholder feedback received on the legislative amendments proposed in the discussion paper. Several additional matters were raised that were beyond this scope and will be considered in other reviews or processes, including:

Issue	Summary of comments
Implementation	Concerns and suggestions related to detailed implementation matters rather than the legislative amendments required to establish the regulatory framework for WDM.
Complementary government interventions	<p>Stakeholders suggested complementary government interventions to support the success of the framework, such as:</p> <ul style="list-style-type: none"> • increasing levies in the short term • education and/or levy exemptions for residual waste from recyclers • landfill bans • recycled content targets for government procurement • development of markets for WDM, particularly in WA • grants for research and development into the creation of WDM • incentives or policy requirements to use waste-derived materials in preference to raw materials • environmental tax/economic drivers to make it more expensive to use raw materials.
Premises producing WDM	One stakeholder noted the process of converting waste into WDM often poses environmental issues such as noise and risk to human health and the environment, and expressed concern about rural sites processing a variety of wastes that have not been characterised.
Licensing thresholds	One stakeholder recommended the licensing threshold for the application of compost to land consider the nutrient value of the compost rather than simply its weight, because the risk to human health and the environment is correlated to nutrient application rates rather than the weight of the compost.
Changes to regulatory guidance	One stakeholder recommended the total petroleum hydrocarbons ranges in the Landfill Waste Classification and Waste Definitions 1996 (as amended 2019) be aligned to the total recoverable hydrocarbons range in the National Environment Protection (assessment of Site Contamination) Amendment Measure 2013 .
Capture of by-products in the definition of waste	Stakeholders recommended the definition of waste exclude by-products, co-products, intermediate products, recovered resources, uncontaminated fill, clean fill, agglomerated products comprising or derived from waste, and waste already regulated under other legislation.