



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

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Western Australia.*

Consultation summary report

Issues paper – Waste not, want not: valuing waste as a resource

February 2020

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Department of Water and Environmental Regulation

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Executive summary

The McGowan Government has set targets to improve Western Australia's waste performance through [Our Priorities: Sharing Prosperity](#) and through the [Waste Avoidance and Resource Recovery Strategy 2030](#) (Waste Strategy).

The Waste Strategy includes objectives for Western Australians to recover more value and resources from waste (Objective 2: Recover), protect the environment by managing waste responsibly (Objective 3: Protect) and move Western Australia to becoming a circular economy.

The Waste Strategy also includes initiatives under these objectives to encourage the use of waste-derived materials, build confidence in recycled products, increase their demand and develop relevant markets while protecting the environment.

The [Issues paper – Waste not, want not: valuing waste as a resource](#) (issues paper), published by the Department of Water and Environmental Regulation (the department) in June 2019, acknowledged industry feedback that uncertainty around whether material is 'waste', and hence whether it will trigger licensing and waste levy requirements, is inhibiting the uptake of and market development for waste-derived materials.

The issues paper summarised legislative approaches in other Australian jurisdictions to show this issue has been addressed elsewhere, and invited comments on legislative options for waste-derived materials.

Twenty-eight submissions were received during the 12-week public comment period (12 June 2019 to 4 September 2019).

The majority of submissions supported the development of a legislative framework that provides certainty around when a range of waste-derived materials will cease to trigger licensing and levy requirements. Most submissions did not indicate a preference for a particular legislative framework, focusing instead on the desired outcomes and how these could be achieved.

Many submissions requested that the definition of 'waste' provide certainty as to what is and what is not 'waste' but be flexible enough to allow for a waste to become a product in future. Several submissions provided views on the current definition of 'waste'.

Stakeholders recommended a streamlined process for common waste-derived materials and a risk-based assessment and approval process for more bespoke waste-derived materials. Several stakeholders favoured an approach where users would not need to apply for approval if the material met certain criteria around its suitability for use. Stakeholders also recommended that the criteria for decision-making should be published to ensure consistent and transparent assessment and approvals of waste-derived materials.

Several submissions emphasised that the framework should make it cheaper and easier to use waste-derived materials, and should not create unnecessary regulatory burden, particularly in relation to low-risk materials, industry-to-industry transfer of by-

products and trials of new waste-derived materials.

Many submissions provided considerations for implementing the framework. While these do not form part of legislative change, they have been noted for consideration in the implementation planning phase.

The department thanks all respondents to this consultation process.

1 Legislative framework

1.1 Strategic objectives

Consistent with the Waste Strategy 2030's objective to encourage the use of waste-derived materials, stakeholders supported the development of product specifications, to build confidence in recycled products, increase demand and develop relevant markets for materials, while protecting the environment.

Stakeholders agreed that much of the state's waste should be valued as a resource that can be reused and recycled.

Many submissions noted that uses of and markets for waste-derived materials require further development and recommended that the legislative framework for waste-derived materials incentivise innovation, investment in and trialling of waste-derived materials.

1.2 Purpose of the legislative framework

Twenty-six of the submissions supported the development of a legislative framework that provides certainty around when waste-derived materials will cease to trigger licensing and waste levy provisions.

One submission noted that long term certainty is required to drive industry confidence in investing in infrastructure and market development, and requested that the framework be reviewed regularly to ensure it is meeting its objectives.

Two submissions did not support the development of a legislative framework on the basis that it would introduce unnecessary regulatory burden and cost. One submission recommended that financial incentives, together with ongoing research, development, demonstration and extension for reuse, be used to encourage material reuse.

Response:

The development of a legislative framework that provides certainty around when waste-derived materials will cease to trigger licensing and waste levy provisions is an important first step allowing for and encouraging the use of fit-for-purpose waste-derived materials.

The department acknowledges that research and development of materials, uses and markets is important in encouraging the use of fit-for-purpose waste-derived materials and Western Australia's move to a circular economy. The availability of financial incentives is outside the scope of this consultation.

Regulatory burden and research/trialling in the context of the legislative framework for waste-derived materials are discussed further below.

1.3 National consistency

Two submissions suggested that a national approach would provide certainty to national operators, encourage greater investment in technology and infrastructure, and help build a circular economy.

One of these stakeholders recommended Western Australia work with other jurisdictions to develop a streamlined and consistent national approach, while the other suggested this could be achieved by adopting the best features of each state's approach outlined in the issues paper.

Response:

At the Meeting of Environment Ministers on 8 November 2019, Ministers agreed to a new [National Waste Policy Action Plan](#) that will drive implementation of Australia's [National Waste Policy](#).

The Australian Government will work with state governments to establish nationally consistent definitions and specifications for waste and recycled commodities to define the scope of export bans by 2020.

Western Australia will continue to work collaboratively with other jurisdictions to share ideas and seek consistency.

1.4 Minimising regulatory burden

Several stakeholders emphasised that the framework should make it cheaper and easier to use waste-derived materials, and should not create unnecessary regulatory burden.

Many submissions suggested:

- a streamlined approach for commonly-used waste-derived materials where users can use waste-derived materials covered under an existing approval without having to submit an application
- a case-by-case approach where a user of a waste-derived material can apply to the department for an approval.

Stakeholders requested simple and cost-effective regulatory processes to incentivise investment and trialling of waste-derived materials and to allow for industry-to-industry transfers of waste-derived materials. Some stakeholders requested that the framework accommodate existing by-product, re-use, recycling or secondary materials synergies without additional regulatory burden.

Several stakeholders indicated a preference that an application not be required for low-risk materials to provide flexibility for low-risk waste-to-product transformations and reduce the time and resource costs of an overly prescriptive framework.

One submission recommended the framework include flexibility to allow for industry-wide solutions such as the establishment of centralised 'hubs' where materials can be stored and processed without triggering licensing and levy requirements.

Other submissions noted that the separation, sorting, screening and treatment of waste can itself give rise to public health impacts and recommended the operational oversight of such sites would require careful and robust management and regulation to ensure operations are effective and sustainable, and uncontrolled accumulations of waste are prevented.

Response:

The department supports a regulatory framework that provides for the beneficial use of fit-for purpose material without increasing the risk to human health or the environment where the Chief Executive Officer is able to assess and make a determination on the production and use of a waste-derived material on a case-by-case basis.

The scope of these approvals would include commonly used materials with established thresholds and allow for a case-by-case approval in other circumstances. The department's [risk-based approach](#) will ensure that there is not an unacceptable risk of harm to public health or the environment.

The department will undertake regulatory impact assessment to ensure that barriers and costs, including any regulatory duplication, are assessed and minimised.

1.5 Waste-derived material, licensing and waste levy

Some submissions requested a balanced approach that considers the broader environmental good, position in the waste hierarchy, localised environmental and health concerns, economic opportunities and the desirability of clear, risk-based regulatory schemes.

Some stakeholders requested guidance be provided on how applications for the use of waste-derived materials to cease to trigger licensing and levy requirements will be assessed to ensure consistent and transparent decision-making.

Several submissions provided views on the current definition of 'waste' for consideration in any changes to this definition. One stakeholder submitted that the primary test for determining whether material is 'waste' should be whether the materials were paid for.

Some submissions recommended that the determination of whether material is 'waste' should hinge on its usefulness from the perspective of any subsequent user rather than the source/producer of the material.

Two stakeholders recommended that the definition of 'waste' be consistent with its ordinary meaning. One submission recommended that Western Australia adopt an existing, tested definition of 'waste'.

Stakeholders recommended that the definition of 'waste' be consistent across Western Australia's legislation and regulations, and that approaches from wider geographies than Australia be assessed for potential use in Western Australia.

One submission suggested that the clarification provided in the *Factsheet: Assessing whether material is waste* be used as a guide in providing pathways for common and bespoke uses of waste-derived materials.

One submission recommended clarification be provided around the terms “reuse”, “recycle”, “substantial transformation” and “landfill” (noun) to assist understanding around both legislative reforms and commercial activities.

Stakeholders acknowledged that a robust risk assessment would be required to ensure protection of human health and the environment, and that the standards material is required to meet should be based on circumstances.

Some stakeholders noted that further information is required on how risks would be assessed and acceptable levels of risk once legislation is in place.

Some submissions requested that consideration be given to providing flexibility to reuse, recycle and repurpose low-risk waste and industry-to-industry by-product without burdensome regulation.

One submission noted that appropriate regulatory standards for quality control at both receipt and end production is critical in managing risks.

One submission recommended that the specific requirements that waste-derived materials must meet should be developed in consultation with industry in a timely manner and that these requirements should be clearly articulated in the supporting documentation.

One submission recommended that the framework be drafted in a way that ensures that the material will revert to being waste if disposed of at a waste disposal site or deposited at a place, or in a way, that would constitute a contravention of general littering or illegal dumping waste provisions.

One stakeholder recommended that the definition of ‘waste’ should not capture unintended materials, including clean fill, uncontaminated fill or waste already covered under existing legislation such as the *Mining Act 1978*, *Petroleum and Geothermal Energy Resources Act 1967*, and State Agreement Acts.

Response:

The department will carefully consider the feedback received on the definition of waste and other key terms before drafting instructions for further consultation.

The department agrees that the basis for assessment and decision making should be transparent and publicly available. Consistent with its approach to consultation on regulatory guidelines, the department will develop guidelines in consultation with stakeholders.

1.6 Legal mechanisms for enacting the framework

Most stakeholders did not indicate a preference for any particular legislative framework outlined in the issues paper or elsewhere, and suggested that Western Australia’s framework draw on their best elements.

Several submissions suggested the terminology be changed to better distinguish 'waste-derived materials' as a resource rather than 'waste'.

Some stakeholders specifically indicated a preference for a model which excludes waste-derived material from being classified as waste when it meets certain requirements.

Two stakeholders specifically indicated a preference for the model whereby waste-derived materials may be exempt from specific legislative provisions.

One submission recommended the responsibility for ensuring material is fit-for-purpose be on the user of the material rather than the supplier. Some submissions considered that the requirement for users to obtain an exemption could be a disincentive to use waste-derived materials, particularly in building and infrastructure projects, and may stifle innovation and flexibility in the market.

Some submissions supported the inclusion of a provision (similar to that in place in South Australia) whereby, if the department has not published requirements that a waste-derived material must meet, the waste-derived material may be used without attracting licensing and waste levy requirements if the user can demonstrate that its use is consistent with particular conditions (i.e. guiding principles for determining whether a waste-derived material should be subject to 'waste' provisions).

One submission suggested that a self-determinative option for by-products be considered where by-products which meet certain conditions would not be regarded as 'waste'.

Response:

The department considers a regulatory framework will provide certainty through a risk-based assessment and approval process for waste-derived materials. Under this framework, approved waste derived materials will not be considered waste for the purposes of licensing requirements and the waste levy. The department also supports the framework providing clarity on when a waste-derived material becomes waste again.

2 Out of scope

Some submissions noted that further research and development is required to establish markets for waste-derived materials in Western Australia.

Many respondents noted matters for consideration in implementing the framework. While these do not form part of legislative change, they have been noted for consideration in preparing to implement the framework.

Appendices

Appendix A – Submissions received

Twenty-eight submissions were received during the consultation period:

No.	Organisation
1	Alcoa of Australia
2	Australasian Pozzolan Association APOZA
3	Avertas Energy
4	Cement Concrete & Aggregates Australia CCAA
5	ChemCentre
6	City of Canning
7	Department of Finance
8	Department of Health
9	Department of Local Government, Sport and Cultural Industries DLGSCI
10	Department of Transport
11	Earthcare Recycling
12	Eclipse Soils
13	Enviroclean Victoria Pty Ltd
14	Fremantle Ports
15	Kwinana Industries Council KIC
16	Optamax
17	Peel-Harvey Catchment Council
18	Shire of Serpentine Jarrahdale
19	Site Environmental and Remediation Services SERS
20	South Coast Sustainable Alliance
21	The Chamber of Minerals and Energy of Western Australia CME WA
22	Tronox Management Pty Ltd
23	WA Farmers Dairy Council and Western Dairy
24	Waste Management & Resource Recovery Association of Australia WMRR
25	Water Corporation
26	Water West Pty Ltd
27	Western Australian Local Government Association WALGA
28	Westmore Corporation Pty Ltd

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