

[Australian Council of Recycling, Total Green Recycling, Scipher](#)

[Australian Industry Group](#)

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[Charitable Recyclers Australia \(WA\)](#)

[City of Greater Geraldton](#)

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[Western Australian Local Government Association](#)

[Western Metropolitan Regional Council](#)

22 November 2023

Manager, Waste Policy
Department of Water and Environmental Regulation
JOONDALUP WA 6919

via: ewaste@dwer.wa.gov.au

To whom it may concern,

Waste Avoidance and Resource Recovery (e-waste) Regulations 2023 consultation

On behalf of the Australian Council of Recycling (ACOR), we commend the Western Australian Government's forthcoming ban on the disposal of e-waste to landfill, which will help Western Australians recover more value and resources from waste while protecting the environment. A ban on the disposal of e-waste to landfill is an important first step towards higher recovery rates for e-waste.

ACOR is the peak industry body for the resource recovery, recycling, and remanufacturing sector in Australia. Our membership is represented across the recycling value chain, and includes leading organisations in advanced chemical recycling processes, CDS operations, kerbside recycling, recovered metal, glass, plastics, paper, organics, textiles, battery and e-product reprocessing and remanufacturing, and construction and demolition recovery. Our mission is to lead the transition to a circular economy through the recycling supply chain. ACOR is pleased to be represented on the Waste Reform Advisory Group and the E-Waste to Landfill Ban – Technical Advisory Group (ETAG).

- **Product stewardships schemes with incomplete product scopes and misaligned incentives undermine high-order recycling outcomes.**
- **Loose and embedded batteries in conventional recycling streams, including e-waste recycling, pose an existential threat to the recycling sector.**
- **Gap analysis of disposal options by location, and clear information to consumers are essential for implementation of the ban.**

The NTCRS redesign is affecting e-waste recycling

While the *Waste Avoidance and Resource Recovery (e-waste) Regulations 2023* are comprehensive and well-considered, the underlying assumption seems to be that the National Television and Computer Recycling Scheme (NTCRS) is operating effectively, and will facilitate implementation of the ban for councils and businesses. Unfortunately, the NTCRS's misalignments and shortfalls, combined with uncertainty around the implementation of a yet-to-be confirmed new Federal e-stewardship scheme, has significantly undermined investment confidence for e-product recycling, just as this ban is poised to commence.

The operation of the NTCRS—where multiple co-regulators (co-regs) compete for liable parties (the original equipment manufacturers), in part by offering the lowest fees—has created a 'race to the bottom' for some liable parties at the expense of best-practice recycling and environmental outcomes. The drive towards low-cost outcomes has resulted in some co-regs reducing accessibility, limiting collected volumes or compromising on material recovery rates. With the Australian Government's announcement of a scheme

redesign, the level of uncertainty has across the e-waste industry and value chain has increased. This in turn may lead to decreased investment and further cost-cutting by co-regs, some of which is already beginning: recycling fees offered by co-regs for the 2024 financial year are around 30 cents per kilogram, down from \$1 per kilogram a few years ago. The impact on the recycling industry is negative and has increased the possibility of a degree of market failure.

A key proposal for the redesigned Federal e-stewardship scheme is that existing co-regs will be grandfathered into the new arrangement; many co-regs are already planning for this adjustment. Under the current NTCRS, original equipment manufacturers (OEMs) pay an annual recycling fee to a preferred NTCRS co-reg, who in turn is supposed to collect e-waste, assign physical products to recyclers and 'push-down' the recycling fee. However, in many instances the co-reg collects the fee from the OEM while recyclers collect the physical e-waste from the community, perform the recycling and convey recycling performance data to the co-reg for remittance. This is referred to within the industry as 'ad hoc' volume. Co-regs only buy 'ad-hoc' liability to the value of their annual recycling targets, but to keep the e-waste market fluid and ensure good recycling outcomes, there must be a balance between the ad hoc volumes collected and recycled by the recycling industry, and the NTCRS liability co-regs buy from recyclers.

However, as of November 2023, almost every co-reg has declined to provide any guidance on purchasing further ad-hoc volume beyond December 2023. Co-regs, uncertain about the scheme's future structure, will remain hesitant to invest in recycling volumes and conserve funds and balance sheets.

Furthermore, recycling industry consensus is that a significant amount of the data passed to co-regs from rogue recycling operators is unverifiable. This potentially inflated recycling data (some of which may remain on co-regs' balance sheets), represents a market inefficiency and an ongoing cost to the recycling industry.

This is all combining to restrict the ability of the e-waste processing industry—including councils, logistics providers and recyclers—to plan, budget and forecast. If this situation exacerbates, councils and recyclers face a funding risk, in that NTCRS funding may not be allocated, leaving councils and recyclers to bear the entire cost of e-waste recycling. Proactive transition support could mitigate this impact, especially for councils.

The Western Australian Government is encouraged to engage the Commonwealth on these issues in the design of the revised e-stewardship scheme.

Loose and embedded batteries

The disposal of loose and embedded batteries into conventional waste and recycling systems, including e-waste streams, is an overwhelming hazard across the waste and recycling sector. We note that the draft regulations are currently targeted at significant volumes of e-waste from commercial entities, and it is not intended that enforcement activities would target households. The education campaign to support the e-waste to landfill ban therefore represents a critical opportunity.

First and foremost, all batteries—loose and embedded—must be diverted from conventional waste and recycling streams and directed towards safe disposal locations, where they can be aggregated and directed to recycling operations as appropriate. Fires caused by batteries are widespread across waste and recycling trucks, in depots, MRFs, and a broad range of recycling facilities, including e-waste facilities—in short, at every point across collection, disposal and recovery streams. The incidence of fires caused by batteries in recycling facilities is likely to be severely undercounted. A lack of accurate data and information on e-waste fires can be traced to under-reporting—as colossal insurance premiums disincentivise operators to report—along with the fragmented regulatory landscape, with eight environmental regulators, eight fire and rescue organisations and almost 550 local councils nationwide.

It is mistakenly thought that all e-waste facilities can take batteries but these pose as much of a hazard in these facilities as other recycling streams. A priority must be safe disposal, where these items can be sorted and diverted either to recycling or destruction. There is also an impression that lithium-ion is the only

concern, however no batteries are appropriate for conventional waste and recycling streams—especially as consumers cannot distinguish between different types of batteries, and often aren't aware that they are embedded in various devices. And with the growing prevalence of the even-more combustible lithium primary batteries, there is an even more urgent need to ensure that these products do not fall into conventional waste and recycling streams.

Over an eighteenth-month period to February 2023, over 450 reported fires across Australia were linked to batteries, including the total loss of the ACT's MRF. In one e-waste recycling facility, for example, over six months there have been four fires and explosions: three from unknown causes and one from a lithium-ion battery in an electric toothbrush. Items containing embedded batteries are not conventional e-waste and can't be safely dismantled or recycled, yet at this particular facility half of all deliveries contain an item with an embedded battery, and one in five contain multiple embedded or loose batteries.

While our sector is extremely concerned about these increasing numbers of incidents in which batteries, particularly lithium-ion, cause property damage, serious injury and death—resulting in skyrocketing insurance fees, financial assurance requirements and further constraining access to leases—this is not a problem of our making and not one that can be effectively addressed at end-of-pipe. Effective, accountable, comprehensive and well-designed product stewardship schemes will be necessary to boost recovery and recycling rates and lower the incidences of battery fires in waste and recycling streams.

Many consumer goods that enter recycling streams contain embedded and sealed batteries which are unable to be safely removed, particularly single-use items such as vapes. In many cases, items are not labelled with advice that they contain a battery, let alone the battery type. Furthermore, there are no legitimate disposal options for many of these types of products. Recyclers are now finding batteries in increasingly obscure items, such as children's shoes, which makes fire risk harder and harder to address, exposing the industry to multiplying danger to people, equipment and property—and dumping the burden of risk at end-of-pipe, rather than attributing it to product manufacturers, distributors and waste generators, where it most properly belongs.

Greater responsibility must be placed on producers for the lifecycle of their goods, as well as on consumers for the appropriate disposal of products at end of use. With dozens of product stewardship schemes operating in Australia and many more in development, it is vital that these initiatives are better aligned, with stronger measures to ensure accountability. However, many products that become a hazard in waste and recycling streams have no apparent product stewards: vapes are an example that have devastating consequences for our sector, and for which there are no safe or legitimate disposal options, resulting in their illegal disposal into recycling material streams, or littering. A major Australian MRF operator has identified that there is close to one vape per two tonnes of material received—potentially amounting to hundreds of thousands of vapes across all waste and recycling streams.

Gap analysis of disposal options by location and clear information to consumers will be essential for implementation

A contributing factor to battery fires in the waste and recycling sectors is confusion around recycling messaging. It is important to help the community understand that while batteries can and should be recycled, batteries must be disposed of safely, first and foremost. There is a need for clear instructions on accessible drop-off options.

ACOR's Recycle Mate program is a free, community-driven, comprehensive national database of recycling locations. It began as an ACOR initiative to reduce contamination in kerbside recycling bins and maximise resource recovery. As a recycler-backed program, Recycle Mate thoroughly comprehends the recycling value chain, and provides verifiable, legitimate recycling information as opposed to greenwashing, which reduces community confidence in recycling.

In discovering the magnitude of the challenge of providing comprehensive recycling advice, Recycle Mate was initially funded by the NSW Government, and then supported in a national launch by the Australian

Government. After three years of amassing data, Recycle Mate now represents an unparalleled and unprecedented national database of recycling information.

The backbone of Recycle Mate is data. While council recycling guides typically list up to 250 consumer items, Recycle Mate lists 5,700 items, and growing—linked to mapped directions to more than 30,000 geolocated disposal options. Recycle Mate logs all community recycling questions and works to supply the best answers anywhere in Australia. The program has meticulously curated Australia's largest waste and recycling dataset, focusing on a granular level of data collection. This comprehensive dataset delivers precise and tailored responses to all community waste and recycling queries anywhere in Australia, specific to local circumstances. Recycle Mate has created a widget link to embed this massive database into council websites.

Recycling has significantly evolved from being predominantly a local government service to a wider community and industry response. Recycle Mate's data shows that nine out of 10 recycling options are now provided away-from-home by professional recyclers, product stewardship schemes, return-to-store programs, charities, social enterprises and more. Through granular search terms and gained understanding of the language used by the community in looking for recycling information, Recycle Mate can direct e-waste and batteries to the correct product stewardship scheme: mobile phones to a Mobile Muster location, computers to TechCollect etc, in order to support highest-order recycling outcomes—noting that these collection systems are not comprehensive across all e-waste items.

Through this process, Recycle Mate has found that in many areas people have no options for the safe dispose of some categories of e-waste, including items with embedded batteries. The next area of focus is therefore to support local councils and State governments to conduct focused disposal option gap analyses to better understand where safe disposal options are unavailable.

We are very pleased that the Queensland Government has engaged Recycle Mate to help deliver a robust state-wide review of gaps in local, safe disposal options for problematic items, including categories of e-waste, combustibles and chemicals, revealing areas underserved by e-waste and battery disposal options. Without appropriate disposal options, this material will either be illegally dumped, or enter into conventional recycling streams, including kerbside bins.

The program is being delivered in collaboration with Office of Circular Economy to support the state education and behaviour change initiative. A research and engagement program is being implemented with Queensland Councils, and other recycling stakeholders, to gather data and develop an interactive state map that will visualise community access to recovery options across Queensland, against population density. Project findings will be delivered in early 2024 and will support the Queensland Government in leading work across jurisdictions to help inform future regulatory actions for batteries.

We strongly recommend that the Western Government works with Recycle Mate to map disposal options and gaps, and supports the uptake of the program, which will help to increase compliance with the ban while reducing contamination and lifting recycling rates.

Draft regulations

Please see **Appendix 1**, outlining detailed feedback on the draft Regulations, relating to definitions and clarity, and providing guidance to support a practical and fit-for-purpose approach.

Conclusion

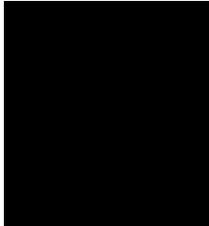
ACOR supports the shift towards a truly circular economy and strongly encourages the Western Australian Government to ensure that the recycling system is preserved by ensuring that hazardous products do not enter into conventional collection streams.

Regular consultation with key organisations best supports the policy reform pathway towards this commitment. We are very well placed to facilitate this type of consultation with the resource recovery and recycling sector and would be very happy to do so. Please do not hesitate to contact ACOR's Policy Adviser, Aziza Kuypers (policy@acor.org.au).

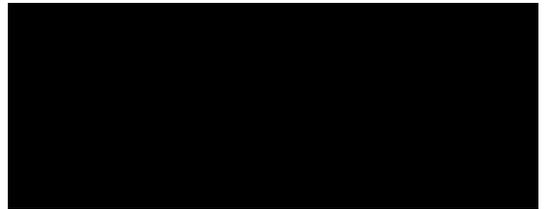
Yours sincerely



James Coghill
Founder
Total Green Recycling



Chris Sayers
Managing Director
Scipher



Suzanne Toumbourou
Chief Executive Officer
ACOR

Appendix 1 – draft Regulations feedback template

Provisions	Comment
<p>Part 1—Preliminary (terms used, exceptions)</p>	<p>A definition for ‘waste’ is needed, as a device that is in not in use is not technically waste and the definition of ‘regulated e-waste’ does not mention what waste means.</p> <p>It is suggested to adopt the ‘waste’ definition in AS/NZ 5377:</p> <p><i>1.4.23 Waste</i></p> <p><i>Any material or object which the holder discards or intends or is required to discard.</i></p> <p>To avoid any ambiguity, it is recommended to be explicit in communication/supplementary brochures etc about which organisations are captured as an ‘e-waste service provider’. The current definition is suitable; however, ensuring scrap metal merchants are aware they are captured under these regulations is critical.</p> <p>This definition would also capture transfer stations, other waste companies (processing and logistics), scrap metal merchants, e-waste processors, logistics companies and charities (Good Sammies, Vinnies etc).</p> <p>Charitable recyclers will be significantly impacted by these regs. Clarity is needed about whether the exception 6 (a) means that charitable recyclers are exempt and can landfill e-waste placed in a charitable recycler bin.</p>
<p>Part 2—Prohibition of disposal of e-waste to landfill</p>	<p>8.1: The majority of e-waste collected for recycling is aggregated at landfill sites. These sites are key parts of the e-waste recycling supply chain. 8.3 appears to allow this to continue; however, it could be clearer. To improve clarity it is recommended to include a definition of a ‘dedicated e-waste aggregation point’ and amend the regulation to make it an offence to leave e-waste at an landfill site outside of a ‘dedicated e-waste aggregation point’.</p> <p>An alternative could be to add: unless the landfill operator is an ‘e-waste service provider’.</p>
<p>Part 3—Specific responsibilities</p> <p>Division 1—E-waste service providers</p> <p>Storage, treatment, processing, recycling</p> <p>Source separation</p> <p>Recordkeeping</p> <p>Annual returns</p>	<p>9.2: Some regional councils can aggregate e-waste for 24 months prior to shipping the e-waste for recycling, due to minimum load sizes required to make logistics feasible. It is understood that this timeframe is imposed to stop indefinite stockpiling of e-waste, however, some collectors would be disadvantaged by this clause. Consideration could be given to including a lower limit on the storage of e-waste; for example, specifying that no more than 10 tonnes of e-waste can be stored for a period of 12 months.</p> <p>11.2 (d): The quantity of e-waste should be amended to be measured by weight.</p> <p>11.3: This clause also needs to include weight as opposed to quantity. Requirements for signage should be included stating what types of e-waste a service provider can accept and a statement about data storage responsibility.</p>

<p>Division 2—Significant businesses</p> <p>Storage and transfer requirements</p> <p>Records</p>	<p>12.1: Storage of more than 12 months needs a qualifier, as waste is not defined in the regs, and it may take more than 12 months to aggregate enough items to facilitate collection in a cost-effective manner. A qualifier of 1 tonne should be put on significant businesses, i.e., it is an offence to store more than 1 tonne of e-waste for more than 12 months.</p> <p>There is no mention about data security. Significant businesses should be responsible for ensuring data is sanitised prior to disposal. Points around data management should be reiterated in all supporting communication documents as part of the implementation of this ban.</p> <p>13: The timeframe for records differs from e-waste service providers deadlines to report. The time frame should be aligned with the e-waste service provider date.</p>
<p>Division 3—Landfill operators</p> <p>Separation of waste</p> <p>Record retention</p>	
<p>Part 4—Exemptions</p>	
<p>Schedule 1—Regulated e-waste</p>	<p>As medical devices are included in the regulations, there is a need to include a clause about providing a sanitisation certificate that relates to the medical device prior to disposal.</p>



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Manager, Waste Policy
Department of Water and Environmental Regulation

RE: Waste Avoidance and Resource Recovery (e-waste) Regulations 2023 Consultation Draft

The Australian Industry Group (Ai Group®) is a peak national employer organisation representing traditional, innovative and emerging industry sectors. We have been acting on behalf of businesses across Australia for 150 years.

Ai Group and partner organisations represent the interests of more than 60,000 businesses employing more than one million staff. Our membership includes businesses of all sizes, from large international companies operating in Australia and iconic Australian brands to family-run SMEs. Our members operate across a wide cross-section of the Australian economy and are linked to the broader economy through national and international supply chains.

General Comments

While Ai Group supports the Western Australian Government's efforts to move to more circular outcomes for electronic and electrical products, we would recommend harmonisation with existing regulation on e-waste in other jurisdictions. Businesses have raised concerns that a lack of harmonisation will create costs and inefficiencies incommensurate to the benefit being achieved.

Ai Group would like clarification on whether significant businesses such as retailers would be classified as service providers when participating in product takeback as part of a product stewardship scheme or initiative, and consequently need to meet greater obligations. Ai Group would also like to have a greater understanding of how this definition would be impacted by the development currently under way of a national mandatory product stewardship scheme for e-waste.

Concerns have been raised over the timeline for businesses to implement collection, storage, and record-keeping under the regulation in line with AS5377. Compliance with the standard will require time to train staff sufficiently and establish record keeping procedures.



If you have any further questions regarding this submission, please contact our Advisor, [REDACTED]

Sincerely yours,



Louise McGrath
Head - Industry Development and Policy
Australian Industry Group

ARA SUBMISSION

E-WASTE TO LANDFILL BAN REGULATIONS (WA)

NOVEMBER 2023

The Australian Retailers Association (ARA) welcomes the opportunity to provide comments to the Department of Water and Environmental Regulation (the Department) regarding the ban on disposal of electronic waste (or e-waste) to landfill in Western Australia.

The ARA is the oldest, largest and most diverse national retail body, representing a \$420 billion sector that employs 1.4 million Australians – making retail the largest private sector employer in the country. As Australia's peak retail body, representing more than 120,000 retail shop fronts and online stores, the ARA informs, advocates, educates, protects and unifies our independent, national and international retail community.

We represent the full spectrum of Australian retail, from our largest national and international retailers to our small and medium sized members, who make up 95% of our membership. Our members operate across the country and in all categories - from food to fashion, hairdressing to hardware, and everything in between.

Within our membership, we support a number of independent retailers in Western Australia in addition to our large, national members who have extensive store networks and supply chains across the state.

The ARA is committed to driving sustainability in the retail sector, particularly around recycling infrastructure, the transition to the circular economy and efficient management of product stewardship schemes.

We therefore support Western Australia in taking the initiative to address e-waste but note the critical importance of all jurisdictions working together to ensure a consistent and harmonised national framework.

The ARA makes the following observations and recommendations, based on our review of the regulations and discussion paper.

National harmonisation needs to remain an objective

Western Australia's ban on e-waste should align and be informed by initiatives in other states. Because retailers often operate nationally, different regulatory approaches in different jurisdictions can impose undue costs, create inefficiencies and potentially lead to unintended environmental impacts.

Accordingly, we note that the draft regulation extends requirements reserved for e-waste service providers in other states to larger businesses, which would capture multiple retailers. These requirements include storage and detailed record keeping requirements. Where a business is not providing e-waste services, we consider these requirements may not be necessary and may result in unintended consequences.

More time needed to prepare for regulation

A start date of 1 July 2024 provides insufficient time for retailers to organise e-waste collection service and ensure that they set up for collection, storage and record keeping requirements in line with AS 5377.

All affected companies will need to work through all relevant requirements of AS 5377 to ensure compliance across all stores. This will include time to ensure store teams are sufficiently trained, and record-keeping processes established.

We therefore recommend a 12-month transition period from the commencement date of the regulations, with a focus on driving compliance through education rather than enforcement through this grace period.

Clarity needed around the role of product stewardship

With numerous product stewardship schemes already in place and in the pipeline across Australia, including the Federal Government's announcement of a national e-waste product stewardship scheme, a holistic, national approach to product stewardship schemes is essential. This will minimise the risks and inefficiencies arising from multiple, piecemeal solutions across state borders.

Clarity is also needed on whether retailers involved in product stewardship programs are captured by the definition of "e-waste service providers" with the additional obligations for these providers.

Time needed to understand complexity and interdependencies

The ARA also recommended that adequate time be allocated to understand the following issues:

- Regulation should consider the logistical challenges faced by businesses operating in Western Australia and the lack of recycling partners, which may lead to unnecessary financial and environmental impacts for retailers transferring waste from stores to depots, or interstate as necessary.
- Data security is a key issue for businesses when dealing with e-waste, particularly in relation to the destruction of assets that hold commercially sensitive data and information. Additional logistics costs will be incurred by businesses where it may not be appropriate to recycle e-waste in Western Australia meaning that these materials could be sent to other states for secure destruction.
- Clarity should be provided to ensure that e-waste disposed of by customers in a retailers rubbish bin are captured by these regulations, or not.
- Additional information on relevant reporting requirements of the legislation is required to ensure that businesses are not adversely impacted by onerous data capture and reporting, which may outweigh the benefits of the scheme

Thank you for the opportunity to provide a submission to the Department. We look forward to further engagement as discussions progress on this important initiative.

Any queries in relation to this submission can be directed to our policy team at policy@retail.org.au.

November 2023



Draft Regulations for e-waste ban in WA Consultation Response

Who are we:

Charitable Recycling Australia represents the interests of the charitable goods retailers. There are 6 members in Western Australia including Alinea (Paraquad Industries), Good Sammy, Red Cross, Salvation Army, Save the Children and St Vincent De Paul. Collectively we have over 200 charitable retail stores in Western Australia.

We estimate that we sell over 500 tonnes per annum of second-hand electrical items. Additionally, we recycle over 150 tonnes of non-saleable electrical goods as metal and 200 tonnes of e-waste.

Current consultation response

We acknowledge that the focus of this consultation is on the draft legislation. Charitable Recycling Australia are broadly supportive of the proposed legislation however we still have concerns about the timing of the ban's implementation and the financial and operational impacts on our members.

Previous consultation considerations

Our March 2023 consultation response to the proposed ban highlighted a range of considerations. We are pleased to note some of these have been taken into account during the design of the ban and supporting initiatives. Outstanding considerations include:

- Funding appears to only be available for infrastructure. The main costs associated with repair and reuse are labour costs. To truly align with the waste hierarchy initiatives that support operational costs of repair and reuse should be considered.
- Reducing processing costs of e-waste recycling through a more comprehensive extended producer responsibility scheme. The Ban is likely to result in an increase in non-saleable material being handled by charities. The high processing costs for e-waste are cost prohibitive and may encourage more members to cease accepting electricals for sale. Until an EPR scheme is in place

that better offsets processing costs, Charitable Recycling Australia request that DWER/ the Waste Authority introduce a cost mechanism to encourage recycling of non-saleable e-waste.

Until alternative financial support mechanisms are in place, some of our members may need to apply for an exemption from recycling electronic goods, especially where received in our regional stores or the receipt of non-saleable electrical goods outstrips our ability to sell quality second hand goods.

The intent of the ban is to increase reuse and repair, increase recovery of precious metals through demanufacture and recycling as e-waste rather than metal and creation of employment. We believe there is an unmet demand for high quality reused bulky goods and household appliances. Our sector is able to support the delivery of increased reuse and recovery of electrical items, but only with the right support from the electrical manufacturing industry and the government.

Thank you for the opportunity to participate in the consultation process and the E-waste Technical Advisory Group. We look forward to being part of ongoing discussions to develop a sustainable electrical reuse and repair service in WA.

Appendix 1 – draft Regulations feedback template

Comments for City of Greater Geraldton – Local Government
<p>Note: The City employs over of 200 employees</p> <p>Note: The City owns a DWER licenced Waste Disposal Facility in Geraldton</p> <p>Note: The City owns a DWER licenced Waste Transfer Station in Mullewa which receives waste, for waste transfer to the Waste Disposal Facility in Geraldton (100kms away)</p>

Provisions	Comment
Part 1 — Preliminary (terms used, exceptions)	<p>r.3 Clarification is required whether eg the Meru Waste Disposal Facility as a designated entity will be defined as a landfill operator or as an e-waste service provider, or both.</p> <p>r.3 Are transfer stations considered a landfill site? If so are they also considered and e-waste service provider?</p> <p>r.6 How do the exceptions relate to r.14(3)?</p>
Part 2 — Prohibition of disposal of e-waste to landfill	
Part 3 — Specific responsibilities Division 1 — E-waste service providers Storage, treatment, processing, recycling Source separation Recordkeeping Annual returns	<p>r.9(3) What does <i>prevent anything occurring</i> mean? This an extremely broad and ambiguous statement.</p> <p>r.11. If a landfill operator is also considered as an e-waste service provider, given that landfill operators already report on e-Waste it appears that recordkeeping and annual returns are duplicated. Clarification required</p>

<p>Division 2 — Significant businesses Storage and transfer requirements Records</p>	<p>r.13. Should the first paragraph should be preceded with (1)? r.13(a) What is expected to be described? Is it not just Column 2 I the table in Schedule 1 r.13(c). How would e-Waste transferred by the City as a significant business to the City's <i>transfer station</i> in Mullewa which is then transferred to the City's landfill site in Geraldton need to be recorded? There is a concern of onerous and duplicated reporting.</p>
<p>Division 3 — Landfill operators Separation of waste</p>	<p>r.14(3). What does <i>reasonable steps</i> and <i>not reasonably have known</i> mean? Clarification required.</p>
<p>Division 4 Record retention</p>	
<p>Part 4 — Exemptions</p>	
<p>Schedule 1 — Regulated e-waste</p>	
<p>Miscellaneous</p>	<p>How do the regulations apply to the disposal (sale) of e-Waste assets?</p>

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Page	Section/Part	Clause	Finance Comments
2	Part 1 – Preliminary	Terms used	<p>‘Significant business’ should be given a more specific definition, or replaced with a more commonly understood term. The concept of ‘business, industry, trade or commerce’ is not clear, and has been given different interpretations in the context of other legislation that uses that terminology.</p> <p>It is not clear if the definition of ‘significant business’ includes government entities (e.g. hospitals, schools, local government, public sector bodies – federal or state, GTEs). It would be helpful to specifically state whether State agencies are included or excluded entities.</p> <p>If State agencies are included, does DWER have any expectations with regards to procurement of an e-waste service provider to support agencies meeting their Division 2 responsibilities?</p>
2 and 8	Part 1 – Preliminary	Terms used	<p>There is reference on page 8 to ‘treated, processed and recycled’. However, the terms do not define ‘treated’, processed is defined and recycled is self-explanatory.</p>
6	Part 3 – Specific responsibilities	Division 1 – E-waste service providers	<p>Records (11) There is a requirement to record quantity however weight has been omitted, is there capacity from e-waste service or landfill providers to also report on tonnage? Significant businesses may not have capacity in this regard.</p>
8	Part 3 – Specific responsibilities	Division 2 – Significant businesses	<p>Storage and Transfer requirements (3) There may be a conflict here with the Records Act and agencies internal asset policies e.g. destruction of a device due to storage of sensitive / highly confidential data rendering the device unable to be recycled or repurposed. Albeit current software on the market has possibly advanced to remove sensitive data without the need for destruction.</p>
8	Part 3	13. Records	<p>For the purposes of regs. 13(b) and (d), Finance assumes the “quantity of regulated e-waste” can be something like 3 x computer screens, rather than</p>

Page	Section/Part	Clause	Finance Comments
			businesses being expected to know their tonnage of e-waste? Or do most businesses know how much e-waste they have?
16	<i>Schedule 1</i>	Medical devices	It is not clear why medical devices that fit inside a container measuring 50cm x 50cm x 50cm are excluded as this would rule out most of the ward equipment that makes up a high proportion of hospital eWaste such as defibrillators, oximeters, infusion pumps, syringe pumps, ECG machines, thermometers, ultrasound, etc. Consider capturing all eWaste from hospitals.
15	<i>Schedule 1</i>	Vapes/ e-cigarettes	Vapes and e-cigarettes are excluded from Schedule 1 and are becoming a significant concern for both hospitals and schools. Can they be effectively processed/ recycled and included in regulated e-waste?
16	<i>Schedule 1</i>	Large Appliances	Are microwaves, toasters, kettles, sandwich makers etc. (smaller electrical appliances) within scope of regulated e-waste, if not, is there anything preventing their inclusion? In addition, it should be dryer, not drier.
Throughout			The legislation makes references throughout to the EP Act – it may be useful to have the full name of the Act somewhere in the document.

From: [REDACTED]
Sent: Tuesday, 21 November 2023 5:03 PM
To: E-waste Landfill Ban
Subject: Re : reclassification of vapes as hazardous waste and not e-waste

Dear Sir/Madam,

As it doesn't seem to be covered in the categories thus far proposed for e-waste disposal, and as I believe that it isn't solely e-waste, I would like to suggest that disposable vapes be immediately included in with the Household Hazardous Waste Program (HHWP)

Disposable vapes cannot be considered solely as e-waste just because they're an electronic device that contains a non removable Lithium battery. They also can contain residual toxic chemicals which need to be handled correctly for safe disposal.

When the Dept. Of Environment WA was contacted regarding the problem of their safe disposal, their response was that *"the most common advice available is that they can be disposed of in household waste bins, but the batteries should be removed and disposed of separately at designated battery recycling points. The e-liquid should be emptied, and the container rinsed before disposal"*.

They also said that *"Contractors that wish to manage vape waste in WA need a Dangerous Goods license (necessary for the battery component of vapes) and a license to accept a Schedule 7 poison-controlled substance necessary for handling potential nicotine waste in vapes"*.

Their advice seemed a bit contradictory. Contractors need to have the knowledge and licenses to handle the safe disposal of a vape yet the general public are advised to pull the vape apart themselves without even any safety guidelines and no mention of how to dispose of the poisonous e-liquid!

The vapes should be collected through the HHWP and the Government should do a deal with the contractor who has the licenses to dispose of them. So long as such a dangerous item is being sold - legally or illegally - there needs to be a safe disposal route available for *all* vapes. (Not just single use vapes.).

As an aside, during my daily walks in my local area, over the last 2 months I have collected 7 disposable vapes that were found discarded in public areas i.e. roadside verges, public access walkways and parks. I'm still wondering how to safely dispose of them. There needs to be a better solution provided soon for their safe disposal and the public need to be made aware of it.

Regards,
H Vangiessen

22 November 2023

E-waste
Department of Water and Environmental Regulation
Locked Bag 10, Joondalup DC, WA, 6919

By email: e-waste@dwer.wa.gov.au

Dear E-waste consultation team

NELA SUBMISSIONS – E-WASTE REGULATIONS

Below are the comments made on behalf of the National Environmental Law Association (**NELA**) regarding the Department of Water and Environmental Regulation's (**DWER**) explanatory paper regarding the *Waste Avoidance and Resources Recovery (e-waste) Regulations 2023 (Consultation Draft)*. These comments have been prepared by the WA division of NELA and endorsed by the NELA National Board.

ABOUT NELA

NELA is a peak body for environmental lawyers in Australia. We are Australia's only national, multidisciplinary, member-based association focused on environmental law and sustainability. NELA serves the needs of practitioners in law, planning, natural resources, and environmental science and management. NELA obtains and exchanges information on issues relevant to environmental law and policy.

One of NELA's objectives is to provide a forum for, and otherwise assist in the discussion, consideration, and advancement of, environmental law among the legal profession and the wider community.

EXECUTIVE SUMMARY

- 1 NELA is generally supportive of the introduction of the e-waste regulations as expressed in the Consultation Draft and regards action as clearly required due to the high volume of e-waste produced by Australia and its status as one of the world's top producers of e-waste. Banning e-waste to landfill is the first step to achieving more efficient management of e-waste.
- 2 The Consultation Draft will not be sufficient on its own. The WA Government should include, alongside this Consultation Draft, a clear policy about how it will design and introduce other, complementary measures, including measures to reduce the flow of electronic products into the waste stream, and to better manage e-waste more broadly.
- 3 NELA also notes the national scale of this problem. While commending the WA Government for taking this important step forwards, we urge the WA Government to advocate for stronger, clearer, national support, at a Commonwealth level, for better e-waste management and a

comprehensive, long-term, national plan for reducing, managing and disposing safely of Australian e-waste.

Part 1 – Preliminary issues

- 4 NELA recommends clarifying the exemptions contained in regulation 6, in particular in relation to 'residual waste'. This phrase is defined too broadly in the Consultation Draft. To address this issue, NELA recommends introducing a duty to use all reasonable endeavours to reduce residual e-waste, or introducing an obligation or incentive (or a program that includes both obligations and incentives) to reduce e-waste to a certain threshold or ratio.

Part 2 – Prohibition of disposal of e-waste to landfill

- 5 NELA submits that:
- (a) there should be a general prohibition on disposal of e-waste to landfill which applies to any person;
 - (b) the WA Government should incentivise the use of other, better-managed and less environmentally harmful disposal methods;
 - (c) the penalties are too low to incentivise disposal of e-waste to landfill, and a tiered penalty system should be adopted, similar to that operating in South Australia; and
 - (d) the enforcement provisions proposed in the Consultation Draft should be strengthened.

Part 3 – E-waste Service Providers

6 Division 1 – E-waste service providers

- 7 NELA supports the obligations placed on e-waste service providers in reg 9(1)-(3) as they ensure best-practice standards are maintained, consistent with AS 5377:2022.

Division 2 – Significant businesses

- 8 NELA agrees with the requirement for a landfill operator to separate e-waste from other waste, and the defence provided for. However, the penalty for non-compliance should be increased to reflect the penalties set out in the *Environmental Protection Act 1986 (WA)*.
- 9 NELA supports the record retention requirements for a minimum of 5 years. However, greater clarity is required to determine what is (or will be) considered an 'extraordinary' circumstance.

Division 3 – Landfill operators

- 10 NELA agrees with the requirement under regulation 14(2) for a landfill operator to separate regulated e-waste from other waste, and the defence provided for in regulation 14(3). However, as suggested above, NELA recommends that the penalty be increased.

NELA'S COMMENTS

General comments

- 11 NELA is generally supportive of the introduction of e-waste regulations and is of the view that it is essential to support the 'recover' and 'protect' objectives of the *Waste Avoidance and Resources Recovery Strategy 2030 (WARR Strategy)* and to assist in enhancing the protection of the environment by managing waste more responsibly.

- 12 It is clear that action on e-waste is required. In 2019, Australia generated 511,000 tonnes of e-waste, with the average Australian producing 20kg of e-waste, far higher than the global average of 7kg. By 2030, the national total of e-waste generated per year is project to rise by nearly 30%, to 657,000 tonnes.¹ According to the UN, Australia is one of the world's top producers of e-waste, ranking fifth in 2019. Banning the disposal of e-waste to landfill is a necessary first step to better managing this problem and protecting Australian communities and environments from the harms caused by e-waste. However, consistent with the WARR Strategy, other complementary measures must also be introduced, including community education, and support for reuse and recycling schemes within the state.
- 13 NELA supports the implementation of a state-wide ban on the disposal of e-waste to landfill by 2024 in Western Australia, as this will align Australia with best practices in other Australian jurisdictions, and globally. E-waste is already banned from disposal to landfill in South Australia (since 2011)² and Victoria (since 1 July 2019).³
- 14 The ban on disposing of e-waste to landfill should be implemented in a way that is consistent with, and that complements, other Western Australian policies, such as the WARR Strategy; and Commonwealth initiatives, including the Australian Government's proposed mandatory product stewardship scheme⁴ to reduce waste from small electrical products and solar photovoltaic systems. Aligning action in WA with these other arrangements will help to ensure that there is co-ordination with other Western Australian laws and policies and with laws, policies and incentives put in place at the Commonwealth scale.
- 15 We have set out the submissions that follow in tabular format, as instructed on the consultation hub page for submissions on the Consultation Draft.

¹ [E-Stewardship in Australia - DCCEEW](#)

² . [Waste disposal | EPA](#)

³ [E-waste in Victoria \(environment.vic.gov.au\)](#)

⁴ See [E-Stewardship in Australia - DCCEEW](#) and see also the [Discussion Paper](#) and [submissions received](#)

Provisions	Comment
PART 1 – PRELIMINARY	
(terms used, exceptions)	<p>Terms used</p> <p>1 NELA has no specific comments on the terms used.</p> <p>Exceptions</p> <p>2 Regulation 6 states that these regulations will not apply to the disposal of:</p> <p>(a) regulated e-waste that has been unintentionally captured after it has been placed in a kerbside or other similar bins;</p> <p>(b) regulated e-waste that has been mixed with other waste and is not known to be present with that other waste at the time of disposal; or</p> <p>(c) residual waste.</p> <p>3 NELA suggests that these exceptions could be further clarified, particularly in relation to the phrase ‘residual waste’, which the Consultation Draft defines as ‘waste that remains after e-waste has been separated and recycled in accordance with the waste strategy to create processed materials and materials suitable to be used in energy recovery’. This definition casts the net for what constitutes residual waste too broadly, as it may not account for all potential reuse, recycling, or resource recovery initiatives that could be used to limit the extent to which any residual waste is disposed of to landfill. There is a danger in leaving this so broad that the majority of e-waste may still end up in landfill due to a lack of availability of technology and systems to create processed materials or to use e-waste in energy recovery.</p> <p>4 One suggestion for resolving this would be to introduce a duty to use reasonable endeavours to minimise residual e-waste. Alternatively, or, ideally, <i>in addition</i>, incentives could be introduced to encourage a reduction in the amount of residual e-waste, to encourage innovative and waste-reducing practices by businesses and landfill operators for reducing residual e-waste. Such an incentive may take the form of a levy or charge for exceeding a certain percentage of e-waste to residual e-waste ratios.</p>
PART 2 – PROHIBITION OF DISPOSAL OF E-WASTE TO LANDFILL	
	<p>5 Regulation 8 of the Consultation Draft contains a prohibition of disposal of e-waste to landfill. The Information Paper states that regulation 8 has been developed to prevent e-waste from being taken to or left for disposal at landfill sites by e-waste service providers.⁵</p> <p>General comments</p> <p>6 NELA is generally supportive introducing a prohibition of disposal of e-waste to landfill, and the proposition that penalties should be imposed on those who dispose of e-waste to landfill.</p>

⁵ [Key document template - Paper \(dwer.wa.gov.au\)](http://dwer.wa.gov.au)

General prohibition of disposal of e-waste to landfill

7 In NELA's view, there should be a general prohibition of disposal of e-waste to landfill, rather than only applying to 'e-waste service providers', 'significant businesses' and 'landfill operators'. This could be achieved by inserting a new subsection that provides:

A person must not send regulated e-waste to, or leave regulated e-waste at, a landfill site.

8 A general prohibition could be used as an alternative offence where a business or landfill operator argues that they do not fit the definition in the E-Waste Regulations of that particular category that the prohibition applies, and therefore, avoid liability for the penalty. The opportunity to make that argument risks subverting the purpose of these regulations, limiting their potential application, and having the regulations fall short of what is required to address the scale and urgency of problem of e-waste in WA.

9 A general prohibition would also be appropriate, as Australia has the highest per-capita of e-waste generation in the world.⁶ For example, a study from 2014 found that, in that year, on average, per person, Australians purchased 35 kg of electrical and electronic equipment and disposes of 25 kg of e-waste.⁷ All Australians contribute to the problem of e-waste, and so all Australians should be brought into a scheme that seeks to better manage that problem – creating a broader, community-wide incentive to find alternative uses and re-uses for electronic materials.

10 This would also be appropriate given that landfill is the most commonly used and informal e-waste disposal methodology and is harmful to the soil and the atmosphere, leading to pollution of the soil and groundwater.⁸ Furthermore, DWER reported that only a quarter of the 68,663 tonnes of e-waste generated in WA in 2019-20 was estimated to have been recycled, the rest ending up in landfill.⁹ This means that the problem is likely to be bigger than e-waste service providers, significant businesses and landfill operators, and the proposed solution – as set out in the Consultation Draft – should likewise be focused more broadly than those actors.

11 Setting a general prohibition would be consistent with the approach in South Australia, where all of the community, including households, have been banned from direct landfill disposal of e-waste since 2011, under the *Environment Protection (Waste to Resources) Policy 2010 (SA)*.¹⁰

12 The reason why the Consultation Draft did not include a general prohibition is likely because the E-waste to Landfill Ban in WA Consultation Paper (E-Waste Consultation Paper), which presented three options – Option 1 (voluntary), Option 2 (regulatory with voluntary elements) and Option 3 (regulatory with extensive obligations),¹¹ Option 2 of the E-Waste Consultation Paper proposed not to impose any legislative/regulatory obligations on households, while Option 3 proposed to impose these on households. Despite the fact that the E-waste to Landfill Ban in WA Consultation Paper, found that households are a key e-waste generator,¹² the preferred option was found to be Option 2, based on the *Cost benefit analysis of options for an e-waste landfill ban to Western Australia*¹³, which was a report completed by Synergies Economic Consulting for DWER. That report, and the Consultation Paper, considered to be the option that best meets the qualitative factors (objectives, guiding principles and positive and limits perverse outcomes) and is the most suitable for the quantitative factors (objectives and net economic benefit). While NELA appreciates that the assessment that was undertaken found that Option 2 was preferred, it suggests that Option 2 lacks legislative/regulatory obligations of financial incentives to lead to a substantial reduction in e-waste generation by households, as it relies solely on community education as a mechanism to target household e-waste generation.¹⁴ NELA urges the Government to reconsider the decision not to include a general prohibition, submitting that option 2 (as set out at [12]) is not only preferable but clearly justified, based on the matters set out in [8]-[12].

Incentivising the use of other, less harmful disposal methods

13 As well as a general prohibition of disposal of e-waste to landfill, NELA submits that the Consultation Draft should include rewards and/or incentives for e-waste to be dealt with in a way that accords more closely to the waste mitigation hierarchy (that is, encouraging e-waste to be reduced, reused or recycled). It is all very well to prohibit the disposal of e-waste to landfill; however, steps also need to be taken to limit the flow of electronic materials into waste streams, and to ensure the rapid development of alternative uses for e-waste so that e-waste ends up – far more consistently – in locations where it can be better managed.

14 This submission would involve the WA Government adopting a waste mitigation policy that utilises both the stick (creating a prohibition, through regulation 8 of the E-waste Regulations) and a carrot (incentivising reuse, recycling and less environmentally harmful disposal methods). The Consultation Draft and resulting E-waste Regulations may not be the best forum for introducing a 'carrot' instrument but, if that is the case, we urge the WA Government to consider and begin to develop a policy for incentivising better practices, so that this regulation proceeds in the context of a more holistic plan. Whatever the case for the incentives recommended here, NELA urges the WA Government to consider a general prohibition within the context of a clear plan for incentivising less-harmful disposal method alternatives to landfill are encouraged by Western Australia's e-waste management policy and other national schemes, such as the National Television and Computer Recycling Scheme.

15 NELA also urges the WA Government to increase its commitment to supporting industry product stewardship schemes, for example, Mobile Muster, established by the Australian Mobile Telecommunications Association to increase mobile phone recycling rates and reduce the number of mobile phone products going to landfill;¹⁵ and WorkVentures Group Connect IT program, which refurbished used computers, and other IT equipment and resells them at affordable prices to low-income households, community groups and schools across Australia.¹⁶

⁶ <https://doi.org/10.1016/B978-0-12-817030-4.00015-2>

⁷ [Where next on e-waste in Australia? - ScienceDirect](#)

	<p>16 NELA notes that other methods of e-waste disposal do already exist, including incineration (the thermal process which includes the combustion of e-waste), metallurgical processing for metal recovery, electrolytic processes (which utilises the electric current to induce a chemical reaction for the extraction of metals), vacuum recycling process to extract metals, and extraction of non-metals from e-waste.¹⁷</p> <p>17 Recycling of e-waste, including batteries and photovoltaic systems, should be improved. The role for the WA Government in encouraging and supporting recycling includes continuing to support national initiatives such as the introduction of a national battery stewardship scheme to manage battery recycling more effectively and an introduction national scheme to manage photovoltaic recycling systems effectively, and the WA Government expressed support for both in its submission regarding the <i>Stewardship for Consumer and other electric and electronic products</i> that it is supportive of.¹⁸ Alternatives to disposal of e-waste in landfills should also be explored, and where it is demonstrated that they lead to less environmental harm, should be incentivised over disposal to landfill, whether this is in the E-waste regulations or part of the broader Western Australian government policy in regarding e-waste.</p> <p>Penalties should be increased, and a tiered penalty system should be adopted</p> <p>18 NELA is of the view that the penalties provided for in regulations 8(1), (2) and (4) should be increased, as \$10,000 is unlikely to be a high enough penalty to disincentivise disposal of e-waste to landfill completely (or perhaps, at all).</p> <p>19 Additionally, NELA submits that the penalties provided for in regulation 8 should be tiered, similar to the environmental harm and material environmental harm offences in the <i>Environmental Protection Act 1986 (WA)</i>, allowing for the penalty to reflect and be proportional to the scale of e-waste that was disposed of in the landfill.</p> <p>20 For example, the South Australian <i>Environmental Protection (Waste to Resources) Policy 2010 (WR Policy)</i> made under the <i>Environment Protection Act 1993 (SA)</i> contains an unlawful disposal of waste offence in section 10 and distinguishes between Category A and Category B offences, with mandatory provisions.</p> <p>21 Under section 10(1)(a) of the WR Policy, a Category A offence applies if the waste:</p> <ul style="list-style-type: none"> (a) is listed waste; or (b) is disposed of to land where the total costs and expense that would reasonably be incurred to clean up the waste of transport it to and dispose of it at an appropriate licenced or approved depot would exceed 20 kilograms; or (c) is disposed of in a quantity, or total quantity exceeding 20 kilograms; or (d) is disposed of in a manner referred to in subclause (3), which relevantly includes in a manner that results in: <ul style="list-style-type: none"> i. environmental harm affecting water occurring naturally above or under the ground or water introduced; ii. in a manner that results in site contamination or an environmental nuisance; or iii. in a manner that is or may be a potential fire hazard. <p>22 Section 10(5) of the WR Policy provides that the result of disposing of waste in contravention of this clause is declared to be environmental harm for the purpose of section 5(1)(b) of the <i>Environment Protection Act 1993 (SA)</i>.</p> <p>23 NELA suggests that Category A and Category B offences could be introduced into the E-Waste Regulation and include a threshold similar to that in South Australia's WR Policy, where there is a higher penalty for committing an offence if the e-waste is disposed of in a quantity or total quantity exceeding a specified threshold or is disposed of in a manner that results in environmental harm affected ground or water, site contamination or a fire hazard. NELA also supports a declaration that, similar to section</p>
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⁸ [Electronic waste: A critical assessment on the unimaginable growing pollutant, legislations and environmental impacts \(sciencedirectassets.com\)](#)

⁹ [WA recyclers gear up for e-waste landfill ban as councils warn ratepayers will wear costs - ABC News](#)

¹⁰ [Waste disposal | EPA](#)

¹¹ [E-waste to landfill ban in Western Australia - Consultation Paper \(www.wa.gov.au\)](#)

¹² [E-waste to landfill ban in Western Australia - Consultation Paper \(www.wa.gov.au\)](#)

¹³ [Cost benefit analysis of options for an e-waste landfill ban in WA \(www.wa.gov.au\)](#)

¹⁴ [E-waste to landfill ban in Western Australia - Consultation Paper \(www.wa.gov.au\)](#), see table 5 (page 26).

¹⁵ [National mobile recycling scheme launched \(2006\) 21\(2\) Australian Environment Review 38](#)

¹⁶ [New life for old stock \(2005\) 20\(3\) Australian Environment Review 65](#) See also [Australia's Leading IT Social Enterprise | WorkVentures](#)

¹⁷ [Electronic waste: A critical assessment on the unimaginable growing pollutant, legislations and environmental impacts \(sciencedirectassets.com\)](#)

¹⁸ Submissions of the Western Australian Government, *Stewardship for Consumer and Other Electrical and Electronic Products* (16 August 2022)

<https://webarchive.nla.gov.au/awa/20220816112226/https://haveyoursay.agriculture.gov.au/74338/widgets/376048/documents/236041>

	<p>10(5) of the WR Act, disposal of e-waste in contravention of the offence provisions is declared to be environmental harm for the purposes of the <i>Environmental Protection Act 1986</i> (WA).</p> <p>24 In South Australia, penalties for Category A and Category B offences are calculated in accordance with the South Australian <i>EPA policy for calculation of civil penalties under the Environment Protection Act 1993</i> (May 2019) (Civil Penalty Policy).¹⁹</p> <p>25 The SA EPA's Civil Penalty Policy provides that the maximum penalty for a person who contravenes mandatory provisions of the policy (which is an offence under section 43(2) of the <i>Environment Protection Act 1993</i> (SA)), will be liable for a civil penalty, of the following maximum amounts:</p> <ul style="list-style-type: none"> (a) for a Category A offence, if the offender is a body corporate - \$150,000; (b) for a Category A offence, if the offender is a body corporate - \$60,000; and (c) for a Category B offence, \$4,000. <p>26 Along with the introduction of Category A and Category B offences, NELA submits that the maximum penalties for a Category A offence (however that is defined), should be higher than they are currently in the Consultation Draft and should more closely match the maximum penalties in the SA EPA's Civil Penalty Policy applicable to the disposal of e-waste.</p> <p>Enforcement provisions should be strengthened</p> <p>27 The prohibition, or creation of an offence of disposal of e-waste in landfill, does not necessarily equate with the prosecution and punishment of environmental offenders. These regulations will only be effective if they can be effectively enforced. The enforcement chain in environmental law has several independent links, including the probability of detection, the probability of arrest, the probability of prosecution, and the probability of conviction. Shortfalls on any of those links will hinder environmental law enforcement and it is in the grounded activities of enforcement agencies (and the judiciary) that law, in theory, becomes law in practice²⁰</p> <p>28 NELA suggests that not only should penalties be on a sliding scale, increasing according to the scale or severity of the offence and/or culpability of the offender, and that a tiered penalty system should be adopted, but also that specific enforcement provisions should be inserted, to ensure the enforcement of the duties and prohibition against disposal of e-waste to landfill.</p>
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PART 3 – SPECIFIC RESPONSIBILITIES

Division 1 – E-waste service providers

Storage, treatment, processing, recycling	<p>29 NELA supports the obligations placed on e-waste service providers in regulations 9(1)-(3) that they ensure best-practice standards are maintained, consistent with AS 5377:2022.</p> <p>30 NELA is particularly supportive of sub-regulation (4). This provision is a key mechanism to maximise the efficacy of this e-waste recovery strategy. It encourages recovery facilities to utilise the most effective and advanced recycling technology and procedures available to them, and places the onus on facilities to maintain high-quality recycling, separation, and recovery practices. NELA also strongly supports Sub-reg (5), which incentivises recyclers to take active steps to improve processes and mitigate the reduced, materials recovery that arises from ineffective practices.</p>
Record keeping	<p>31 NELA supports the proposed record-keeping requirements as they will ensure transparency and accountability of e-waste service providers.</p>

¹⁹ [EPA policy for calculation of civil penalties under the Environment Protection Act 1993, May 2019](#)

²⁰ [Eco-crime and the enforcement of environmental laws \(2013\) 28\(5\) Australian Environmental Law 587](#)

Division 2 – Significant businesses

- 32 Overall, NELA supports these provisions intended to deter significant businesses from failing to dispose of regulated e-waste properly. NELA acknowledges that the emphasis on significant businesses is crucial as the scale of businesses that are the focus of the regulations mean that they are better-resourced and equipped to evolve their operations rapidly, and remain financially viable as Australia transitions to a circular economy.
- 33 However, prioritising significant businesses should not make legislators lose sight of the substantial cumulative e-waste from small businesses. NELA submits that it is important to consider increasing penalties for smaller-medium businesses in the future to ensure that the “recover” waste strategy objective remains met in response to the substantial e-waste created in small-medium businesses.
- 34 However, in NELA’s view, the penalty of \$10,000 for failing to adhere to regulations is, so low that it makes the regulations adverse to the “avoid” objective of the waste recovery strategy. Although this objective is not expressly an objective of this e-waste reform, NELA deems it unsatisfactory that the proposed penalties may disproportionately advantage some businesses more than others. For example, Regulation 3 defines a ‘significant business’ as any business with over 200 staff members, or one that creates over 5 tonnes of regulated e-waste. This is a relatively high threshold. Businesses that qualify as ‘significant’ due to either substantial e-waste disposal or substantial staffing, will likely possess considerable funds. This means that the \$10,000 penalty is unlikely to sufficiently deter such large businesses. It may be an appropriate penalty for smaller operations – and those operations should also be subject to the regulations (as submitted above). NELA strongly recommends that higher penalties be imposed on ‘significant businesses’ to reflect their larger size and resources, and their likely disproportionate contribution to the e-waste problem.

Storage and transfer requirements

- 35 Regulation 12(1) provides that a significant business must not store regulated e-waste resulting from its activities for more than 12 months after the month in which it becomes waste (the penalty for this sub-regulation is a fine of \$10,000) . NELA considers this provision essential as it ensures that significant companies properly dispose of e-waste in a timely manner. However, the penalty associated with this provision relies upon having certainty of the time at which an item “becomes waste”. Breaching businesses could take advantage of uncertainty as to when this point in time passes, arguing that an item was not waste at a particular time, thereby extending the time for which they may refrain from adequately dealing with the material. This risks undermining the purpose of the provision. A statement should follow this sub-regulation to ensure that it serves the purpose for which it is designed, for example:

For clarity, material becomes “waste” at the time that:

- (i) it becomes either inoperable and the owner concludes never to repair it; or*
- (ii) its owner replaces it with a new item of the same nature or which fulfils the same role, and the owner decides to never use the item again’.*

- 36 The time at which something becomes waste will arguably be a difficult temporal element to prove as it is intangible. Nevertheless, NELA encourages the WA Government to embrace that challenge, and clarify this provision in a way that facilitates the regulatory purpose.

Separation

Source separation

- 37 .Regulation 12(2) provides that a significant business must keep regulated e-waste resulting from its activities, prevent anything occurring that would reduce the ability of the regulated e-waste to be treated processed or recycled. NELA supports this provision and appreciates that it provides for materials separation, a vital requirement for effective recycling. However, the provision should clarify the causative threshold required for e-waste to result from a business’ activities. For example, will e-waste only “result” from a business’ activities when the business manufactures and creates it, or should the definition include materials that the company procures in the course of its own business, but did not necessarily create e.g. a tablet for note-taking at a law firm. NELA recommends that materials be considered as “resulting” from a business’ activities if the business “manufactures, creates, purchases or otherwise acquires them for the purposes of its business”. This would be consistent with the polluter pays principle, as defined in section 4A of the *Environmental Protection Act 1986 (WA)*, which is that the party that generates pollution should bear the costs of containment, avoidance, or abatement, mitigating any potential consequences flowing from their purpose for using the waste.

Storage and transfer requirements

Proper storage

- 38 Regulation 12(3) provides that a significant business must, during the storage or transportation of regulated e-waste resulting from its activities, prevent anything from occurring that would reduce the ability of the regulated e-waste to be treated, processes or recycled. NELA supports sub-regulation (3). The provision enforces effective recycling practices by ensuring that parties take steps to ensure products are fit for recycling after storage and transportation.

	Reasonable steps defence
Records	<p>39 Regulation 12(5) provides that it is a defence for a charge of an offence under subregulation (1), (2) or (3) to prove that the significant business took reasonable steps to avoid the commission of the offence, and regulation 12(6) provides that in determining what constitutes reasonable steps, it is relevant to take into account Australian Standard A 5377:2022 <i>Management of electrical and electronic equipment for re-use or recycling</i> (as in force from time to time). NELA submits that this provision provides clarification on the standard of care expected of parties in the preceding provisions. It will financially incentivise taking reasonable steps towards environmentally-beneficial outcomes. The use of a standardised procedure (AS 5377:2022) is a useful baseline standard. Given that the procedure is available to the community at large, this provision is likely to support and encourage responsible e-waste management.</p> <p>40 NELA supports the record-keeping procedure articulated in regulation 13 of the Consultation Draft. It will result in a paper trail about the types, generators, holders, and storage conditions of e-waste across WA. NELA submits that some of the substantive information regarding waste quantities should be made publicly available. This would provide shareholders, consumers and communities with insight into the waste generated by businesses and promote informed decision-making. Currently, audits can be performed on the persons in charge of waste storage or controlled premises.²¹ NELA submits that the record-keeping obligations placed on individual businesses should set the same level of independent oversight. This may require legislative reform, but it would be consistent with preventing waste earlier in the life cycle of electronic products, encouraging businesses to “reuse” and “reduce” waste, rather than merely fulfilling their disposal obligations by providing e-waste to designated recycling entities. Moreover, this would allow the new reforms to fulfil the “avoid” objective of the Waste Avoidance and Resource Recovery Strategy 2030, as well as the existing two objectives that it aims to fulfil.</p>
Division 3 – Landfill operators	
Separation of waste	41 NELA agrees with the requirement under regulation 14(2) for a landfill operator to separate regulated e-waste from other waste, and the defence provided for in regulation 14(3). However, NELA is of the view that the penalty for non-compliance with regulation 14 should be increased to reflect the penalties set out in the <i>Environmental Protection Act 1986</i> (WA) and should be tiered, to reflect varying severity and scale of and culpability for offences (as submitted in Part 2 above).
Division 4 – Record retention	
Record retention	42 NELA agrees with the record retention requirement for a minimum of 5 years as set out in regulation 15.
PART 4 – EXEMPTIONS	
	<p>43 NELA broadly agrees with the exemption set out in regulation 16 of the Consultation Draft. However, more clarity is required to determine what is (or will be) considered an ‘extraordinary circumstance’, and how the Department CEO will decide that such a circumstance exists. NELA submits that the scope of what will be an ‘extraordinary circumstance’ should be extremely limited to only those circumstances that are unavoidable and not the responsibility or fault of landfill operators or significant businesses.</p> <p>44 Two critical factors in the State’s WARR Strategy are ‘recover’ and ‘protect’, in particular, to increase material recovery to 70% by 2025 (in two years-time).²² Whatever is or will be considered an ‘extraordinary circumstance’ should reflect the factors and targets set out by the State, in particular by reducing the number of circumstances that may give rise to an ‘extraordinary circumstance’ and therefore an exemption from compliance.</p> <p>45 The E-Waste Regulations Consultation Draft – Information Paper (Information Paper) states that an exemption ‘may apply in rare instances (such as flooding or fire) where the aggregated e-waste may be rendered unusable, or (due to geographical remoteness affecting the availability of facilities/ resources) compliance with the Regulations is not feasible’.²³ This provides some context around what may be an ‘extraordinary circumstance’, but further information from DWER is required so landfill operators and significant businesses know that exemptions will not, or should not, be readily granted.</p> <p>46 NELA submits that the DWER must draft and publish an appropriate and informative policy or other guidelines to clarify what may be considered an ‘extraordinary circumstance’, and the principles that the CEO will rely on to make a determination. NELA further submits that the DWER should ensure that regulation 16 is only used in a few, specific circumstances to promote broad compliance with the E-Waste Regulations.</p>

²¹ *Waste avoidance and Recovery Act 2007* (WA) s 85.

²² [Waste Avoidance and Resource Recovery Strategy 2030](#), p12.

²³ [Waste Avoidance and Resource Recovery \(e-waste\) Regulations 2023 Consultation Draft- Information Paper](#), p7.

SCHEDULE 1 – REGULATED E-WASTE

47 NELA has no particular comments in regard to Schedule 1 of the Consultation Draft,



If you have any questions about the above, please do not hesitate to contact us at:



WESTERN AUSTRALIAN DIVISION OF THE NATIONAL ENVIRONMENTAL LAW ASSOCIATION

22 November 2023

Waste Avoidance and Resource Recovery (e-waste) Regulations 2023 feedback

Perth Airport, Australia's Western Hub, is pivotal in connecting Western Australia to the world. Operating 24/7, it is a key infrastructure asset in the state. As the fourth-largest airport in Australia by passenger volume, we accommodate 30 international, domestic and regional airline partners, facilitating connections to more than 50 destinations globally from our 4 terminals. In addition, we have over 150 airline, retail and industrial tenants on estate.

Our commitment to sustainability is integral to our business strategy, guiding our approach to responsible growth and ensuring positive outcomes for our stakeholders and community. Managing and minimising environmental impact across the 2100 hectares estate is a primary focus. We have set targets to improve waste management, aiming for a 75% resource recovery rate of operational waste and an 80% recovery of construction and demolition waste by 2030.

This dedication to sustainability and responsible operation reinforces our support for the e-waste ban to landfill, aligning with the 'recover' and 'protect' objectives of the Waste Avoidance and Resource Recovery Strategy 2030. However, the proposed e-waste reporting regime in the draft regulations presents significant challenges for Perth Airport and other businesses across Western Australia. These are detailed in the feedback template below.

Perth Airport is committed to the objectives of the Waste Avoidance and Resource Recovery Strategy 2030. We appreciate the opportunity to provide feedback on the draft regulations and are eager to engage in further discussions and collaborate on refining these regulations to benefit all stakeholders.

Provisions	Comment
Division 2 — Significant businesses Storage and transfer requirements Records	<p>Operational Challenges</p> <p>Varied Tenants and Single Collection Points: Our airport's operations include single collection points for waste, used by a variety of tenants and airlines. The diversity of users and their unique e-waste profiles add complexity to categorisation and management efforts, making compliance with the draft regulations challenging. This is a challenge that will most likely be shared by many landlords across Western Australia.</p> <p>Engagement with Contractors on Large Projects: We regularly undertake large projects involving contractors responsible for e-waste management. The lack of clear reporting guidelines in the draft regulations creates uncertainty and potential discrepancies in e-waste reporting. This is an issue that will most likely be encountered by other property development and mining companies.</p> <p>Challenges in Current Proposed Reporting Regime</p> <p>Practical Limitations in Regulation 11: The proposed regulations, especially the potential itemisation requirements in clause 11, could significantly increase operational costs for e-waste service providers. This may result in higher service charges for consumers or necessitate new technological investments for efficient processing.</p> <p>Practical Limitations in Regulation 13: The draft regulations, particularly Section 13, appear to require detailed e-waste reporting and if this is the intent, will pose significant challenges for large operations like ours. If detailed categorisation is required by the regulations, it will be resource-intensive and not feasible with our current operations and service provider capabilities. Adapting to this level of reporting would demand significant resource investment, potentially diverting resources from other sustainability initiatives. We believe this is the type of “perverse outcome” Option 2 is seeking to avoid.</p> <p>Cost Concerns: If detailed waste reporting is intended, the estimated \$4.3 million industry-wide reporting cost appears to be grossly underestimated.</p> <p>Recommendations for Improvement</p> <p>Streamlined Reporting: We recommend that the draft regulations be revised to require organisations to submit only a general statement detailing the types of e-waste being disposed of and the total aggregated weight of e-waste. This approach eliminates the need for detailed itemisation per category, making the reporting process more manageable and operationally feasible while still maintaining the necessary oversight. This simplification would greatly reduce the administrative burden on businesses and service providers, aligning the reporting requirements with practical capabilities.</p> <p>Preventing Double Counting: The regulations should allow for measures to prevent double counting of e-waste from both tenants and contractors. This ensures accurate reporting and aligns with real-world waste management practices.</p> <p>Regulatory Flexibility for Diverse Operations: We advocate for the regulations to be adaptable, accommodating the unique operational models of entities like Perth Airport, with tailored compliance methods for different business environments.</p>

From: [REDACTED]
To: [E-waste Landfill Ban](#)
Subject: Public consultation submission on draft Waste Avoidance and Resource Recovery (e-waste) Regulations 2023
Date: Tuesday, 24 October 2023 11:14:50 AM

Hi there,

Please find below my feedback on the draft Waste Avoidance and Resource Recovery (e-waste) Regulations 2023.

Can you please advise if the format of this submission is acceptable? It's ironic that DWER still uses a print/paper form/written method of public consultation - please modernise your processes to be digital!

Provisions	Comment
Part 1 — Preliminary (terms used, exceptions)	
Part 2 — Prohibition of disposal of e-waste to landfill	These regulations need to extend to small to medium sized businesses to be fully effective. There are so many businesses with less than 200 employees that would produce large ongoing quantities of e-waste, even if it is under 5 tonnes. Why make a business with 200 employes have to comply with the regulations but not a business with 199 employees? Ideally, the regulations also need to extend to households in time.
Part 3 — Specific responsibilities Division 1 — E-waste service providers Storage, treatment, processing, recycling Source separation Recordkeeping Annual return	
Division 2 — Significant businesses Storage and transfer requirements Records	
Division 3 — Landfill operators Separation of waste Record retention	
Part 4 — Exemptions	
Schedule 1 — Regulated e-waste	There is no mention of vaping devices, and they must be included in this scheme. Vapes, particularly the disposable ones, are a large and growing source of e-waste in Australia and particularly in cities. Each one contains a battery and electrical components so their omission from these regulations is odd. Even if DWER don't make it an offence to dispose of vapes to landfill, government at least needs to establish a recycling pathway and drop-off points for them.

Kind regards,
Ryan Oostrick

From:
Sent: Tuesday, 14 November 2023 4:47 PM
To: E-waste Landfill Ban
Cc:
Subject: Consultation on e-waste ban to landfill regulations

Dear Sir/Madam.

On behalf of the Shire of Carnamah, please accept the following as a submission in relation to e-waste ban to landfill regulations.

Observation

Proposed regulation 8. *E-waste not to be disposed of to landfill*, states:

(4) A landfill operator must not dispose of regulated e-waste that has been accepted at a landfill site to landfill.

Penalty for this subregulation: a fine of \$10 000.

As an operator of a landfill, a local government is not permitted to knowingly dispose of any listed e-waste it has accepted onto the landfill site. Such waste has to be separated and sent to or collected by a recycler.

With regard to exemptions from this requirement, the proposed regulations stated at 6. *Exemptions:*

These regulations do not apply to the disposal of —

(a) regulated e-waste that has been unintentionally captured after it has been placed in a kerbside or other similar bin; or

(b) regulated e-waste that has been mixed with other waste and is not known to be present with that other waste at the time of disposal; or

(c) residual waste.

A flood or cyclone or other such event where damaged e-waste beyond recovery may need to be disposed should be grounds for an exemption for that damaged material. However, no such exemption exists.

Therefore, the expectation is that once the ban is invoked, a local government landfills accepting e-Waste will be obliged to keep it out of landfill and organise for its removal to a recycler (at the local government's expense). For the Shire of Carnamah where the total gate tonnages is less than 500 tonnes per annum and no gate fee is charged, this will be a significant impost.

An example of where a similar impost occurred is in the implementation of waste oil collections and recycling - which resulted in operational cost to local governments for the removal of the collected waste oils. This situation has occurred because of a lack of recyclers in the State and the significant cost of regional and remote retrieval of the waste oil.

DWER's engagement efforts need to be focused on ensuring effective product stewardship schemes are in place prior to implementation of the bans. Sustained alternative funding schemes must be in place to cover additional costs (rather than these costs being borne by local governments and their communities). It is considered that the presence of a robust and fully effective product stewardship

scheme is required to prevent a cost legacy on local governments. The exemptions do not consider the financial impost of a small rural local government meeting these additional obligations which include:

- education of their communities;
- ensuring sites are appropriately licenced to collect e-waste for recycling;
- potentially installing collection infrastructure;
- ongoing maintenance and resourcing of the collection site;
- transport costs to an approved recycler; and
- recycling costs).

Objection

The Shire of Carnamah objects to the regulations as currently presented because they fail to:

- **Establish any clear direction to address or recognise the disproportionate costs between metropolitan and rural/remote collection points.**
- **Consider the financial impost of a small rural local government meeting the statutory obligations.**
- **Acknowledge a flood or cyclone other such event where damaged e-waste beyond recovery may need to be disposed.**
- **Acknowledge that rural local governments such as the Shire of Carnamah will not be able to reasonably resource the statutory requirements.**
- **Ensure that the ban should only apply where the annual total gate tonnages of a landfill is greater than 500 tonnes per annum (i.e. representing many rural landfills).**

Should you have any queries, please do not hesitate to contact me further.

Cheers

Rob

Robert Paull

**Chief Executive Officer
Shire of Carnamah**

33-37 Macpherson Street, Carnamah WA 6517

T: +61 8 9951 7000 / [REDACTED] / Web: www.carnamah.wa.gov.au

The Shire of Carnamah acknowledges the Traditional Owners of Country throughout Australia and their continuing connection to land, waters and community; and pays respect to Elders past, present and emerging.





Ms Michelle Andrews
Director General
Department of Water and Environmental Regulation
Locked Bag 10
Joondalup DC WA 6919

Email: ewaste@dwer.wa.gov.au

22 November 2023

Dear Ms Andrews

Re: Draft Waste Avoidance and Resource Recovery (e-waste) Regulations 2023

Thank you for the opportunity to provide feedback on the Draft *Waste Avoidance and Resource Recovery (e-waste) Regulations 2023*. The Waste Management and Resource Recovery Association of Australia (WMRR) is the national peak body representing Australia's \$15.8 billion waste and resource recovery (WARR) industry. With more than 2,200 members from over 400 entities nationwide, we represent the breadth and depth of the sector, within business organisations, the three (3) tiers of government, universities, and Non-Government Organisations (NGOs), including research bodies.

WMRR recognises that the WA government is pursuing this ban and the tight timeframes in line with ministerial directives to support its objectives under the Waste Avoidance and Resource Recovery Strategy 2030. However, WMRR reiterates our 31 March 2023 submission; we do not support a landfill ban in the absence of an integrated WARR system that has the processes, infrastructure, and pathways to collect and recycle/reprocess banned materials, and importantly, the end markets demand for these recycled materials. In WMRR's opinion, bans in and of themselves are not effective in the absence of a full supply chain system response as problematic materials will continue to be produced, and there is a real likelihood of stockpiling and dumping which present real risks to both the community and the environment.

In order for the WARR system to be effective, it must be a shared responsibility across the entire supply chain not simply those that collect material at the end of life. As such, in order to effectively address e-waste, WA policy must foster a circular economy transition to ensure that products are appropriately designed, as well as having appropriate repair, share and recycling opportunities and systems in place to enable true alternatives to disposal, rather than assuming by focusing simply on end-of-life (bans) that these solutions will simply appear. There is significant evidence in Australia to date that the 'collect and they will come' approach is not successful in creating market demand and investment, and due to WA's isolation, and low landfill levy, investment and markets can be even more challenging than for Eastern seaboard states.

In 2023 we have overwhelming economic and regulatory reasons to recognise the true value of resources. Mandated extended producer responsibility (EPR) schemes are not only logical and proven globally and locally, that they provide moral, legal, and financial imperatives for product manufacturers to take responsibility for the products they create. If WA were to take this policy

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approach, it has the potential to drive a paradigm shift in the creation of products at first instance, with greater thought and emphasis given to material selection and product design to minimise the costs associated with total lifecycle management.

Regrettably the draft legislation that has been presented is simply a ban and limited collection scheme and will do nothing to drive the systems shift required. It also fails to recognise existing product stewardship scheme for products that are already in existence such as NTCRS, Mobile Muster and B-cycle. It is unclear how the bans will operate with these, and further it fails to capitalise on the need to require producers/ suppliers of these regulated materials to join an accredited product stewardship scheme.

At present the proposed bans are simply a collection scheme that bear no resemblance to EPR and instead place additional responsibility on WARR operators rather than producers. The regulations also lack recognition of work currently underway nationally, and worse they could inhibit the effective implementation of a national e-waste scheme. WA has an opportunity to lead the nation, and practically implement the outcomes of 9 June 2023 Environment Ministers Meeting to create a national scheme. The WA government should utilise the powers under the *Waste Avoidance and Resource Recovery Act* and build on existing product stewardship schemes whilst requiring all electronic goods placed on markets to be part of an accredited e-waste scheme, at the same time as implementing the proposed bans.

WMRR recognises that the WA government has been providing grant funding to support greater e-waste collection and recycling in WA however, as stated above without mandated EPR schemes these are only temporary measures. The community and business education and behavioural change campaign to support EPR and bans must also address the consumption and avoidance piece in general before dealing with the specific items and their pathways to ensure that the environmental and economic objectives of the policy are achieved. The resources and additional costs posed by incorrect disposal and contamination must also be factored in and financially supported by the government. If community and business education is not adequate this policy may have the adverse reaction of forcing service providers and landfill operators to reduce or limit their offerings to protect themselves from the regulatory and safety burden posed by e-waste.

WMRR's responses to the consultation questions can be found at Annexure A. Please contact the undersigned if you wish to further discuss WMRR's submission.

Yours sincerely



Gayle Sloan
Chief Executive Officer
Waste Management and Resource Recovery Association of Australia

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Submission:

<p>Part 1 — Preliminary (terms used, exceptions)</p>	<p>The three (3) categories for designated entities (e-waste service provider, landfill operator and significant business) as they currently stand do not make clear if an entity must meet all the requirements or how these respective responsibilities intersect.</p> <p>Of concern however is that these are all end-of-pipe and do nothing to capture producers and manufacturers.</p> <p>The definition of ‘landfill operator’ precludes potentially operators located at landfill sites that recover e-waste (eg tip shops). Intensification of activities at these approved facilities is key to driving resource recovery.</p>
<p>Part 2 — Prohibition of disposal of e-waste to landfill</p>	<p>As above and below e-waste service providers and landfill operators should not be held accountable for the veracity of claims made to them regarding waste.</p>
<p>Part 3 — Specific responsibilities Division 1 — E-waste service providers Storage, treatment, processing, recycling Source separation Recordkeeping Annual returns</p>	<p>While WMRR supports the intent of 9(4) “An e-waste service provider must, to the extent that the provider undertakes the separation or recycling of regulated e-waste, maximise recovery of processed materials and minimise the amount of residual waste from the regulated e-waste.” We query how this will be determined without an understanding of how electronic products are designed and what materials are in fact recoverable. This section is too vague and uncertain to be enforceable</p> <p>The definition of quantity for e-waste reporting requirements is not clear and the systems to track weight or unit counts vary greatly. Clarification is needed to ensure operators and enforcement officers have the same guidance.</p>

<p>Division 2 — Significant businesses Storage and transfer requirements Records</p>	<p>WMRR seeks clarification on both the intent of this inclusion in the Regulations, and the significant business definition (a) “an entity involved in business, industry, trade or commerce ... 200 or more employees” capturing interstate and international organisations as the 200 employees minimum is not defined as residing in WA. If this is the case WMRR queries the resources required to convey these new requirements to end-of-life users and subsequent investigations when producers and manufacturers of e-products through an EPR scheme would be held to account at the start of a products’ lifecycle.</p> <p>Significant business definition (b) “created more than 5 tonnes of regulated e-waste the previous financial year” for an end-of-life product user is very narrow in comparison to (a). Is this definition trying to refer to producers, the product generators? As they currently stand the regulations require clarification on who is being capture and if enforcement will differ between the groups.</p> <p>How the EPA will be able to determine and enforce that definition (a) businesses abide by these regulations (not store e-waste beyond 13 months, store separately and carefully transport) is not made clear. Definition (b) businesses, due to their size will be easier to track and enforce, however WMRR wonders how many businesses will meet this criteria.</p>
<p>Division 3 — Landfill operators Separation of waste Record retention</p>	<p>The community and business education campaign must highlight community/consumer responsibility along with EPR to position the bans in the waste management hierarchy.</p> <p>WMRR is not suggesting councils/MRFs/transfer stations should be held responsible for e-waste in MSW disposal however behaviours must support the higher order intentions of the landfill ban.</p>

<p>Part 4 — Exemptions</p>	<p>Regional and remote areas should explicitly be exempt and clear guidance on what constitutes extraordinary circumstances must be provided along with support to applicants in navigating this process.</p> <p>Timeframes for approval of exemptions are needed to provide clear guidance to industry.</p> <p>Geographical remoteness effects e-waste collection feasibility for local facilities and recovery capabilities however for businesses that have demonstrated their ability to bring regulated e-waste into remote areas, there should be a requirement to hold them responsible for removing and sending these items to recyclers. Eg mining operations or renewable energy ventures should be required to responsibly dispose of these items rather than avoiding the ban and shifting the cost burden for safe disposal onto regional/remote communities. This is only required if WA does not mandate e-waste EPR schemes.</p>
<p>Schedule 1 — Regulated e-waste</p>	<p>The education and behavioural change campaign must ensure the list of regulated items and their collection pathways is clear and simple to both ensure only regulated e-waste is collected and existing collection pathways for other materials are not cross-contaminated. This should align with the nationally operating schemes (NCRS, Mobile Muster and B-cycle) and link community and producer responsibilities.</p> <p>WMRR has raised the definition/parameters or lack thereof for batteries as a material or product group with the federal government, B-cycle and the Battery Stewardship Council. Lead acid and various removeable lithium-ion batteries are covered under the Household Hazardous Waste program and B-cycle. However, embedded batteries are altogether different and continue to grow in market share. WMRR encourages WA to stagger batteries in</p>

	<p>the ban to align with the existing and hopeful expansion of B-cycle.</p> <p>The education campaign must pay particular attention to battery safety and if the regulations relate to only removeable batteries this must also be made abundantly clear to ensure that the community do not try to remove embedded batteries. Messaging must also be consistent with B-cycle to ensure that collection streams are not contaminated.</p>
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Submission on the Waste Avoidance and Resource Recovery (E-waste) Regulations 2023 Consultation Draft

November 2023

About WALGA

The Western Australian Local Government Association (WALGA) is the united voice of Local Government in Western Australia. The Association is an independent, membership-based organisation representing and supporting the work and interests of 139 Local Governments in Western Australia, comprising 1,215 Elected Members and approximately 22,600 Local Government employees, as well as over 2.5 million constituents of Local Governments in Western Australia.

Western Australian Local Governments vary greatly in:

- size, ranging from less than 1.5 to over 370,000 square kilometres,
- population, just over 100 to more than 224, 000 people,
- the number of staff employed, from less than 10 to over 1000,
- in revenue received, which in 2019-20 ranged from just over \$2 million to just over \$226 million.

Acknowledgement of Country

WALGA acknowledges the continuing connection of Aboriginal people to Country, culture and community. We embrace the vast Aboriginal cultural diversity throughout Western Australia, including Boorloo (Perth) on the land of the Whadjuk Noongar People where WALGA is located, and we acknowledge and pay respect to Elders past and present.

WALGA is committed to supporting the efforts of WA Local Governments to foster respectful partnerships and strengthen relationships with local Aboriginal communities.

Introduction

WALGA appreciates the opportunity to comment on the [Consultation Draft of the Waste Avoidance and Resource Recovery \(E-Waste\) Regulations 2023](#) (the Draft Regulations).

The Western Australian Government has committed to deliver a statewide ban on e-waste disposal to landfill by 2024, with the aim of improving management and recycling of e-waste produced by households and businesses across the State.

WALGA acknowledges the objectives of the ban and its alignment to global, national and local environmental and recovery targets, in particular the [Waste Avoidance and Resource Recovery Strategy 2030](#). However, as stated in previous [submissions](#), the implementation of an e-waste to landfill ban by 2024, in its proposed form, will have significant financial implications for Local Governments, and the communities they service.

WALGA's Advocacy Position on landfill bans is clear - *Landfill bans are only supported in the presence of effective product stewardship schemes, or other funding mechanisms, for products which would be subject to the ban.*

WALGA reiterates its position that comprehensive and effective product stewardship must be implemented for products subject to the e-waste landfill ban prior to the ban taking effect.

WALGA acknowledges the provision of grant funding to assist in increasing the capacity of recyclers in WA to accept increasing amounts of e-waste and to assist with collection and reuse. However, this does not address the key concern of Local Government regarding ongoing funding to cover all costs associated with e-waste recycling.

While the Draft Regulations outline the responsibilities of designated entities within the e-waste collection and recycling process. However, clarification of the roles and responsibilities of Local Governments, in collecting and managing e-waste, is needed in order for the Regulations to be effective and practicable.

Definitions and responsibilities

The Draft Regulations outline responsibilities for designated entities under the ban, which have been classified into three categories:

- An e-waste service provider: a person who conducts a business or undertaking that involves or includes the collection or receipt of regulated e-waste for storage, management, aggregation, treatment, processing, sorting, recycling, transfer or disposal.
- A landfill operator: a person who occupies premises which constitute or include a landfill site.
- A significant business: an entity involved in business, industry, trade or commerce that, together with any related entity (if the entity is a body corporate), in relation to any financial year —
 - a) has 200 or more employees at the beginning of the financial year; or
 - b) created, during the immediately preceding financial year, 5 or more tonnes of regulated e-waste.

A number of WA Local Governments will fit into all three categories; as they would be considered an e-waste service provider (for example by collecting e-waste at a transfer station), could operate a landfill and may also be a significant business.

To relieve administrative burden on Local Governments, it is recommended the Department streamline reporting requirements. The Department of Water and Environmental Regulation (DWER) has acknowledged Local Government has existing mandatory reporting requirements for waste and recycling data, including e-waste, under Regulation 18C of the *Waste Avoidance and Resource Recovery Regulations 2008* (WARR Regulations), and is investigating how additional requirements may be integrated into the reporting system.

Recommendation: That Local Governments are not subject to the Reporting requirements in the Draft Regulations, and instead continue to report through the existing mandatory reporting requirements under the *Waste Avoidance and Resource Recovery Regulations 2008*.

The ability of Local Governments to establish e-waste collections for recycling is dependent on the licence condition of the site under the *Environmental Protection Act 1986* (EP Act), which may require licence application or amendment to the Department for Local Governments which are not currently aggregating e-waste for recycling.

In particular, the collection and storage of lithium-ion batteries as part of an e-waste collection presents a fire risk to Local Government sites and may require upgrades to on-site systems to meet safety requirements.

DWER has confirmed that:

- the requirement for a licence, or licence amendment, under the EP Act is dependent on the annual amount of waste accepted at a site, and smaller sites aggregating e-waste may not be required to apply for a licence if the received amounts are below the threshold; and
- designated entities and licence holders will be directly contacted regarding their responsibilities under the regulations, however the responsibility to identify if a change of licence conditions is required will be on the licence holder.

DWER recommended Local Governments refer to the [Guideline: Industry Regulation Guide to Licensing](#) or contacting its Waste Industries Licensing section for guidance on works approvals and licensing or registration of prescribed premises.

The definition of 'landfill site' in the Draft Regulations is as follows:

landfill site means premises —

- which are used for the purpose of receiving waste; and
- in respect of which the occupier is required to hold a licence within the meaning of the EP Act, whether or not such a licence is in force.

Recommendation: Clarification is required on whether the description of landfill site in the Draft Regulations applies to those landfills which are registered rather than licenced, including the 109 landfills managed under the Remote Essential and Municipal Services (REMS) program.

Prohibition of disposal to landfill and operator requirements

Recommendation: The wording on prohibition of e-waste to landfill, in Section 14, requires further clarification in relation to the responsibility of landfill operators.

Throughout the consultation process on the landfill ban to date, it has been made clear that unintentionally captured regulated e-waste, for example which has been placed in a kerbside bin, is not subject to the regulations. This is confirmed in the Draft Regulations, Section 6 – Exceptions.

Section 14 refers to 'regulated e-waste received by a landfill operator which is mixed with other waste' and specifies the landfill operator 'must separate the regulated e-waste from other waste'.

DWER has confirmed the intent of Section 14 is to identify and separate significant amounts of e-waste, for example, if a commercial truck arrived at a landfill with mixed waste containing multiple TVs or whitegoods which could be easily separated, then the regulation would apply.

It is not intended to apply to small amounts mixed with putrescible or other general waste, as this is covered by the exceptions in Section 6, which would be considered incidental capture.

Recommendation: That the wording of Section 14 on what constitutes 'regulated e-waste which is mixed with other waste' be revised and clarified if this is not intended

to refer to e-waste incidentally captured through the kerbside or other collection systems.

Defences to a breach under Section 14 are as follows:

- *It is a defence to a charge for an offence under subregulation (2) to prove that the landfill operator —*
 - (a) took reasonable steps to avoid the commission of the offence; or*
 - (b) did not know, and could not reasonably have known, that regulated e-waste was mixed with other waste.*

Further guidance will be required to ensure that the “reasonable steps” identified in the regulation are clearly defined, otherwise it is likely that this will generate significant administrative burden for landfill sites, for example if requiring a signed declaration from each individual depositing waste. This is further complicated for small regional landfills which may not be staffed.

Recommendation: That the Department develop guidance on what the ‘reasonable steps’ identified in the Regulations would include.

Regional considerations

Consultation with regional Local Governments has shown costs to establish and maintain e-waste recycling activities are significantly higher due to transport distances and limited economies of scale. Consumers, Local Governments and retailers operating in regional and remote areas of WA are subject to higher than average costs of living and operation, which places added pressure on meeting any additional costs outside of scheme operations.

Several regional Local Governments have expressed concern over their ability to resource additional requirements in the management and recording of e-waste, particularly in areas with unstaffed landfills where monitoring of the loads will require significant resourcing changes.

DWER has acknowledged the concerns of regional Local Governments about the additional resourcing that would be required to monitor e-waste at landfills and confirmed that staff at small regional landfills would not be expected to separate waste, noting that where there are clearly significant amounts that are able to be separated and it is not unintended capture, the intent of the regulations supports that those amounts are separated and sent to recovery.

WALGA notes the draft Regulations provide for exemptions in extraordinary circumstances where compliance with the regulations may not be feasible, such as geographical remoteness affecting the availability of facilities or resources.

As a number of regional Local Governments are not currently collecting e-waste for recycling due to feasibility, clarification is required on what would be considered eligible for an exemption under the criteria.

In all circumstances where an exemption is applied for, ensuring the appropriate level of resourcing within DWER to assess and grant the exemption in a timely manner is essential, to mitigate the risks of stockpiling regulated e-waste or potentially breaching further sections of the regulations.

Recommendation: DWER develop guidelines for exemptions, similar to the [Waste Levy Exemption guidelines](#) and ensure sufficient resourcing to assess and grant exemptions in a timely manner.

Schedule 1 - Regulated e-waste

Schedule 1 of the Draft Regulations sets out the materials to be covered by the initial stage of the ban. Feedback from Local Governments highlighted that the implementation of an e-waste to landfill ban will require the development of a comprehensive communications and education campaign to ensure effective community participation and minimise administrative and resourcing burden on Local Governments. Local Government feedback shows community confusion currently exists around the definition of e-waste, and Local Governments are primarily the point of contact for residents with queries on disposal options.

A key concern of Local Governments is that unclear definitions of e-waste and lack of awareness around which materials are subject to the ban will lead to community members bringing unregulated e-waste to drop off sites expecting it to be recycled. E-waste not covered by a product stewardship scheme (known as 'by-catch') currently costs Local Governments \$650 per tonne to recycle, along with increased transport, resourcing and administrative costs.

Existing e-waste recycling messaging needs to be further developed and expanded to clarify which items are accepted under product stewardship schemes such as the NTCRS, as well as how the ban will affect disposal options for different items. Table 1 provides commentary on several of the materials.

Recommendation: That the Department actively engage with Local Government in the development and delivery of e-waste landfill ban messaging.

Table 1: Materials Subject to the Ban

Material	Comments
TVs and Computers	<p>As stated in WALGA's submission on the e-waste to landfill ban consultation, while it is acknowledged that there are Product Stewardship Schemes in place for some of the products subject to the ban, such as the National TV and Computer Recycling Scheme (NTCRS) and Flurocycle, a new National Product Stewardship Scheme, anticipated to cover a wider scope of e-waste, is not scheduled for introduction until mid-2025, with on ground implementation timeframes still to be determined.</p> <p>Local Governments are currently and will continue to incur significant costs for e-waste recycling, as the Product Stewardship Schemes in place cover only a percentage of the total cost of recycling. This is a significant barrier for Local Governments in establishing and maintaining e-waste collections for their communities, particularly in regional WA.</p> <p>A 2021 survey of 29 Local Governments offering e-waste collection services to the community showed that each Local Government provides staffing, infrastructure and sites which contribute to the in-kind costs of recycling</p>

	<p>e-waste. The amount of financial in-kind costs varied from \$1,000 - \$150,000 per year per Local Government, for both in and out-of-scope NTCRS products. WALGA understands that recycling of NTCRS material is a direct cost of \$350 per tonne to Local Government, and e-waste not included in the NTCRS \$650 per tonne.</p>
<p>Fluorescent lights</p>	<p>Flurocycle, the voluntary national product stewardship scheme, does not provide any funding for recycling of fluorescent lighting. 22,403kg of fluorescent lighting materials were collected through the Household Hazardous Waste (HHW) Program in 2021-22 and cost \$70,568 to recycle, excluding transport. This material comprised 5 per cent of the overall material collected through the HHW Program.</p>
<p>Batteries</p>	<p>The inclusion of batteries as a blanket category in the regulations requires further review, as there are a range of battery types not covered by an existing product stewardship scheme or large-scale recycling programs.</p> <p>The national battery product stewardship scheme, Bcycle, accepts household batteries of all sizes, button batteries, rechargeable batteries up to 5kg, and batteries that can be easily removed from devices such as power tools and cameras.</p> <p>Mobile phone and portable device batteries are covered under Mobile Muster and the NTCRS scheme, while lead acid batteries are accepted for recycling through a range of retailers.</p> <p>There are currently no product stewardship schemes or viable recycling options available for larger batteries such as those used to power electric vehicles, e-scooters and bikes, or residential energy storage.</p> <p>Recommendation: A staged approach be taken to including batteries in the ban:</p> <ul style="list-style-type: none"> • Phase 1: Batteries covered by the BCycle scheme and automotive batteries (with an existing recycling option and end market) • Phase 2: Batteries not included in the BCycle Scheme, once a Product Stewardship Scheme or other funding mechanism is in place.

WMRC submission on the Waste Avoidance and Resource Recovery (E-Waste) Regulations 2023 Consultation

About the WMRC

The WMRC's primary role is to manage, provide facilities for, and promote responsible management of all types of household waste for its Member Councils and their residents. It also provides waste services including a pre-booked bulk and greenwaste verge collection service (Verge Valet™) for its catchment area. The WMRC's membership includes the following Local Governments:

Member Councils: City of Subiaco, Towns of Claremont, Cottesloe and Mosman Park and Shire of Peppermint Grove

Participating Councils: Town of Cambridge and City of Nedlands

Verge Valet™ Host Councils: Cities of Fremantle, Vincent and Subiaco, Towns of Cambridge, Cottesloe and Mosman Park and Shire of Peppermint Grove

Status of this submission

This submission will be presented to the Council of the WMRC at its OCM of 30 November 2023. The WMRC will send any further comment arising from that meeting to DWER as soon as possible.

The Western Metropolitan Regional Council (WMRC) collects e-waste and other source separated materials from Perth west central metropolitan residents at its West Metro Recycling Centre. E-waste is also collected vergeside in all Verge Valet™ host councils.

In 2022-23 WMRC collected 44 tonnes of e-waste material at the West Metro Recycling Centre classified under NTCRS as well as substantial quantities of the other items included in the proposed regulations.

WMRC thanks DWER for this opportunity to comment on the Draft Waste Avoidance and Resource Recovery (E-Waste) Regulations 2023.

Summary

WMRC strongly supports minimising the quantity of e-waste and their constituent materials disposed of in landfill. However, we are concerned that the regulations as they stand will have significant administrative and financial implications for the WMRC and the Local Governments with which it works. Under the regulations, the WMRC is classified as an e-waste service provider through both of its e-waste collection activities. The WMRC reiterates the point made in its previous submission (March 2023) to the proposed ban of E-waste to landfill that in the absence of effective product stewardship schemes, the impact of this ban would be to further impose high costs on Local Governments.

The WMRC holds a licence for 100 tonnes of e-waste (as defined under the NTCRS) at the West Metro Recycling Centre; it is not clear whether this licence would continue to apply to the existing definition of e-waste stream or to the broader list of products, including white goods, proposed to be subject to the new regulations.

The WMRC currently faces high costs associated with e-waste recycling. Current estimates are that these are up to \$1,000 per tonne including our own labour costs. These costs are borne by the community in the form of higher waste charges on our five Member Councils.

WMRC is also concerned that communicating to the public which items are included under the heading of e-waste in these regulations will present difficulty as the definition in the regulations is much broader than that in common parlance. The issue here is that these regulations will tend to increase the quantity of items collected which are not included in the ban nor in any existing Product Stewardship Scheme (by-catch)/. These have high disposal costs as noted above. The WMRC recommends that an effective and tested communications campaign to maximise consistency and minimise both community confusion and the burden on Local Governments.

The following feedback is presented in the format requested in the information paper.

Provisions	Comment
Part 1 — Preliminary (terms used, exceptions)	No comment
Part 2 — Prohibition of disposal of e-waste to landfill	No comment
Part 3 — Specific responsibilities Division 1 — E-waste service providers Storage, treatment, processing, recycling Source separation Recordkeeping Annual returns	<p>10. In the instance of waste, including e-waste, being collected from verges, it is not clear what would be defined as “reasonable steps” to separate e-waste from other waste: likely it would include a procedure including visual inspection prior to collection, but it is not clear whether e-waste uncovered during collection in a pile of other waste would also be included.</p> <p>11 (2). There is a high administrative burden on recording dates, types, and quantities of e-waste receipts from individual residents at the West Metro Recycling Centre. It will imply higher staffing levels than are currently employed with an associated community cost impact.</p> <p>11 (4). It is not clear whether the reporting requirements are part of the existing annual waste data reporting or an additional report. We would recommend that it be covered under existing reporting methods.</p>
Division 2 — Significant businesses Storage and transfer requirements Records	No comment
Division 3 — Landfill operators Separation of waste Record retention	No comment
Part 4 — Exemptions	No comment

Schedule 1 — Regulated e-waste	Material	Comments
	Screens IT and telecommunications	As only some of these products are covered by the NTCRS and the new Federal Product Stewardship Scheme is not due for introduction until mid-2025, these products will require Local Governments to continue to provide significant resources, both financial and human, for both in-scope and out-of-scope NTCRS materials.
	Lighting and Lamps	Fluorescent lights only are included the HHW scheme and while WMRC welcomes the inclusion of many other lighting types in this category we are concerned that there is no recycling or reprocessing option for many of them nor their constituent materials. There will be a significant impost on service providers in locating processors
	Large appliances	These currently only have value as scrap metal. In addition, although examples are provided, it is not clear whether the definition of large is solely on dimension or also on function of the appliance.
	Batteries	This is a very wide category with variably effective product stewardship schemes and recycling options. We would concur with WALGA that a staged approach to their inclusion would be more effective. This would imply including lead acid batteries and batteries covered by the B-Cycle scheme only in initial stages.
	Temperature exchange equipment	The WMRC welcomes the inclusion of these products as these regulations would add to legislation around the safe capture of CFC gases.
	Medical devices	This is defined by size, however it is not clear what this includes – for example is an exercise bike included or does this category only include devices solely used by the medical profession?