

15 July 2020



Environment Institute
of Australia and
New Zealand Inc.

Closing the Loop: Waste Reforms for a Circular Economy

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

Online Submission Via: consult.dwer.wa.gov.au/waste-policy/closing-the-loop

Dear Sir / Madam

RE: Submission on the Closing the Loop: Waste Reforms for a Circular Economy - Consultation Paper

The Environment Institute of Australia and New Zealand (EIANZ) (the Institute) Western Australia (WA) Division (the Division) is pleased to provide feedback on the consultation paper *Closing the Loop: Waste reforms for a circular economy*, released by the Department of Water and Environmental Regulation (DWER) in February 2020 for public consultation.

The Institute is the leading professional body in Australia and New Zealand for environmental practitioners and promotes independent and interdisciplinary discourse on environmental issues. On all issues and all projects, the Institute advocates good practice environmental management delivered by competent and ethical environmental practitioners.

We forward this submission on behalf of the WA EIANZ members. The WA Division currently has approximately 170 members with over 2000 members across Australia and New Zealand. Our members come from a range of technical disciplines including certified environmental practitioners (CEnVP), ecological consultants, environmental advocates and environmental impact specialists working in government, industry and the community.

We thank the Department of Water and Environmental Regulation for engaging in discussions on improving waste management in Western Australia and contributing to mechanisms and activities that will contribute to a circular economy.

Yours sincerely

A handwritten signature in black ink that reads "Bastow". The signature is written in a cursive style with a large initial 'B'.

Belinda Bastow
President
EIANZ – WA Division

1. INTRODUCTION

1.1. Background

The EIANZ WA Division is pleased to make comments on the *Closing the Loop: Waste reforms for a circular economy – Consultation Paper*. EIANZ-WA commends the Government on developing a comprehensive and integrated policy framework to improve waste management in Western Australia (WA).

The EIANZ-WA promotes well researched, scientifically robust and sound decision making in Government. The following points summarises EIANZ's feedback on the Consultation Paper:

- We have provided comment on several sections from the Consultation Paper that was communicated as being 'out of scope'. We have provided this feedback for completeness and where this was out of scope we have highlighted this in the detailed comments.
- Government should ensure the application of a suite of policy instruments that are appropriate to the problem it is attempting to solve.
- Government should ensure that it adequately and appropriately undertakes analysis of the reasons for policy failure and environmental issues it is wanting to address to ensure that appropriate policy responses can be determined. This information should be provided to the community to support the decisions of Government and provide transparency in decision-making.
- Of the options presented within the Consultation Paper the following are supported:
 - Chapter 7 Aligning EP Act with avoidance and recovery objectives: Option 1 is supported
 - Chapter 8 Clarifying the application of waste levy: Option1 is supported
 - Chapter 9 Modernising landfill licensing and levy liability: Option 1 is supported
 - Chapter 10 Simplifying solid waste licensing categories: Option 1 is preferred but Option 2 is also supported
 - Chapter 11 Minimising stockpiling of waste: Option 1 is supported
 - Chapter 12 Waste levy exemptions: Option 1 is supported
 - Chapter 13 Improving solid waste reporting: Option 1 is supported
 - Chapter 14 Compliance and enforcement: Option 1 is supported

1.2. Role of the EIANZ

The EIANZ, as the leading membership based professional organisation for environmental practitioners in Australia and New Zealand and is an advocate for good practice environmental management. The Institute supports environmental practitioners and promotes independent and interdisciplinary discussion on environmental issues. The Institute also advocates environmental knowledge and awareness, advancing ethical and competent good practice environmental management.

A Certified Environmental Practitioner Scheme (www.cenvp.org) is also in place to assess and certify competent experienced environmental practitioners working in government, industry and the community. This includes specialist competencies such as Impact Assessment, Ecology, Land Rehabilitation and Contaminated Lands.

The EIANZ is an advocate for environmental assessment, management and monitoring investigations and reports being certified by suitably qualified and experienced persons for the completeness and scientific rigor of the documents. One of the ways of recognising a suitably qualified practitioner is through their membership of, and certification by, an organisation that holds practitioners accountable to a code of ethics and professional conduct, such as the EIANZ.

The EIANZ is a not-for-profit, charitable organisation incorporated in Victoria, and a registerable Australian body under the Corporation Act 2001 (Cwth), allowing it to operate in all Australian jurisdictions.

2. GENERAL OBSERVATIONS

The following section of this submission provides general observations from the consultation document.

Many environmental issues arise out of market failures to adequately value environmental features or services (Sterner, 2003). The function of policy instruments is therefore to redress the balance of market failures in the pricing of natural resources and these have not always been successful in achieving their stated outcomes (UNEP 2004). In addition, they should be part of a suite of policy instruments that are directed toward achieving the policy objectives (Gunningham & Grabosky 1998).

The Government needs to undertake further examination of what wastes should be prioritised (i.e. which waste(s) presents the most pressing environmental need to the community to be addressed) and an analysis as to what policy instrument or mix of instruments is the most effective to address the problem. Without this analysis, the activity appears to be purely a revenue raising exercise rather than a well-designed policy program to address a priority environmental issue.

In addition, EIANZ-WA is concerned that the discussion paper specifically identifies the scope and application of the waste levy to be 'out of scope' for the 'closing the loop' consultation paper but then proceeds to discuss the levy as a supporting strategy to the options considered within the regulatory impact assessment.

Guiding objectives of waste reform

EIANZ-WA is supportive of the principle of a circular economy and the importance of minimising the generation of waste and its poor disposal that can contribute to significant environmental impacts. The circular economy is a framework concept that supports sustainable economic development, not just a narrow interpretation of diverting waste from landfilling to recycling activities. The circular economy is the 'closed flow of materials and the use of raw materials and energy through multiple phases' (Sanguino et al, 2020 p1). As such, a policy of circular economy, and how to implement it, must look beyond just waste to other elements that may prohibit its implementation such as regulatory barriers to the transfer of materials from one business and location to another.

The consultation paper identifies four supporting strategies as mechanisms to fulfil the two high-level outcomes of the waste reform program. These are:

- Eliminating illegal waste disposal activities
- Minimising waste stockpiling
- Improve the implementation of the waste levy
- Strengthening and streamlining waste legislation in WA

EIANZ-WA is supportive of investigating the adequacy of the WA legislative framework for waste management but reinforces our earlier comments that legislation is one of a suite of policy instruments available to achieve a policy outcome. Policy failure occurs when incomplete or incompatible policy instruments are brought to bear on the problem. There is a temptation to select an instrument before fully analysing the nature of the issue; the 'instrument is a solution in search of a problem' (Bridgman & Davis 2000, p67). The continual focus on the waste levy as the appropriate policy instrument to achieve the objectives of the WA waste strategy appears to reflect this statement.

3. OBSERVATIONS ON SUMMARY OF REFORM PROPOSALS

The following section of this submission provides some responses to the key options considered within the Consultation Paper.

3.1. Aligning EP Act with Waste Avoidance and Resource Recovery Objectives

The *Waste Avoidance and Resource Recovery Act 2007* (WARR Act) during the second reading speech to Parliament (October 2007) stated that the Act was to consolidate legislation in Western Australia relating to waste under a single piece of legislation and to strengthen these elements. However, the intervening years have demonstrated that there are still a number of instances where there are multiple legislative instruments relating to waste management.

As raised during previous consultations on this topic, the *Environmental Protection Act 1986* (WA) (EP Act) has extensive powers relating to the control and management of waste. It remains unclear how the existing powers failed to achieve an intended outcome and therefore prompted a need to consolidate under the WARR Act. For example, instances where the Director General of DWER has sought to use these extensive powers and found them to be insufficient. The Consultation Paper states it may be difficult to issue licence conditions to address important waste management issues but does not articulate what particular aspect of the activity creates difficulties.

In that context, we also note that several of the recommended amendments to the EP Act seek to provide powers that already exist. For example, s4A already requires consideration of waste minimisation as a primary principle of the EP Act and therefore is capable of being a discretionary consideration under Part IV of the EP Act. Furthermore, in dot point three, the CEO is already able (i.e. is not restricted) to have regard to the WARR Act and Waste Strategy when considering the granting of licences or setting licence conditions. Similarly, in relation to dot point four, s62 and 62A of the EP Act allow the CEO to create conditions to meet the items listed. EIANZ-WA strongly supports the position that no further changes are made to the EP Act until the full range of existing powers are demonstrated to be insufficient to meet waste management objectives (i.e. Option 1).

A regulatory review of the WARR Act should be undertaken to assess the effectiveness of it achieving its objectives. Where there is an overlap with elements of the EP Act, the primacy of the EP Act (ie s5 EP Act) should be respected and supported, with repeal of sections from the WARR Act to reduce confusion.

As such, Option 1 is supported.

EIANZ-WA is supportive of a comprehensive review of all Western Australian environmental legislation to allow out-dated, duplicative and somewhat contradictory regulations and legislation to be repealed and a contemporary environmental protection legislative framework be developed.

3.2. Clarifying the application of the waste levy

As stated above, elements related to the levy were communicated within the Consultation Paper as being outside the scope of the consultation and therefore EIANZ-WA is concerned that they have been reviewed within the document.

As such, Option 1 is supported.

The Consultation Paper does not provide sufficient and scientifically robust information to support statements regarding amendments to the operation of the levy, including an appropriate assessment of the performance of the WARR Levy Act since commencement in 2007. EIANZ-WA raised a number of concerns regarding the 2017 Waste Reform Project

Consultation Document and would be quite rightly apprehensive if the Government was using this document as suitable consultation in relation to amendments to the waste levy.

While waste stockpiling can be an issue, and, in particular present a risk to the environment from inappropriate storage and management, the benefit is that these materials may still be utilised at a later date. The Government should invest in understanding what wastes are stockpiled and for what reasons and look to address the barriers to the reuse, recycling or reprocessing of the material.

EIANZ is concerned by Option 2 where the WARR Levy Act is amended to allow the levy to be applied to any waste received. Has the Government considered that this may also act as a deterrent to achieving the waste objectives because the levy is still significantly less than identifying recycling activities? Until a review of behavioural aspects regarding storage and an economic assessment of altering the levy is completed, there is insufficient information to allow a decision that is alternate to the status quo to be made responsibly.

3.3. Modernising landfill licensing and levy liability for waste disposal

As stated above, elements related to the levy were communicated within the Consultation Paper as being outside the scope of the consultation and therefore EIANZ-WA is concerned that they have been reviewed within the document.

Furthermore, EIANZ-WA wishes to see a comprehensive review of all Western Australian environmental legislation to allow out-dated or duplicative regulations and legislation to be repealed and a contemporary environmental protection legislative framework to be developed. We do not consider that the Consultation Paper adequately undertakes the task of a strategic regulatory reform program that will allow WA to continue to operate under best practice regulatory instruments.

The EIANZ-WA would support a reduction in licensing categories from five to three as outlined in the consultation paper but it sees this as clearly needing to be undertaken as part of a wholesale review of the function of environmental legislation in Western Australia.

EIANZ-WA is concerned that the simplification to one landfill category would not allow for differentiation of licensing based upon risk and would therefore be counter to the DWER's risk-based regulation policy. The application of the levy to stockpiled recyclable, reusable and recoverable materials would act contrary to the intent of the levy and undermine the circular economy.

As such, Option 1 is supported.

3.4. Simplifying the solid waste licensing categories

As previously stated, EIANZ-WA wishes to see well designed, scientifically supported environmental policy and its effective implementation. The primary purpose of industry licensing under Part V is to regulate activities that have the potential to pollute and cause impacts to the environment. It does this primarily through the regulatory control of facilities.

The proposed revision of solid waste licensing categories does not address the root cause of the inconsistent regulation of solid waste facilities by DWER assessing officers. Appropriate training, clear guidance and effective internal quality control measures are fundamental to the consistent implementation of any regulatory framework.

EIANZ-WA is concerned that some aspects of Option 2 outlined in the section relies upon the waste-derived material framework that has still be to finalised by the Government. Furthermore, the question of regulating scrap metal recycling and other facilities that are currently not regulated yet present risks to the environment from pollution (including wastes,

noise and other factors) should be considered as part of a fundamental review of the EP Act. We do not consider the Consultation Document adequately undertakes the task of a strategic regulatory reform program that will allow WA to continue to operate under best practice regulatory instruments.

However, in this instance EIANZ-WA is supportive of Option 1 (preference) and Option 2.

3.5. Minimising stockpiling at waste storage premises

As stated above, elements related to the levy were communicated within the Consultation Paper as being outside the scope of the consultation and therefore EIANZ-WA is concerned that they have been reviewed within the document. In addition, the Consultation Paper does not provide sufficient robust scientific analysis of the reasons behind waste stockpiling and why an increase and/or application of the levy will assist in reducing this behaviour.

As such, Option 1 is supported until further work is conducted to demonstrate that an economic incentive such as increasing the levy will be an effective deterrent to this issue.

EIANZ-WA would prefer to see further work progress in finalising a waste-derived material framework and a comprehensive and detailed understanding of the behavioural and structural (geographical, industrial, regulatory, community) reasons behind stockpiling. In the absence of viable waste treatment options, reuse and/or recycling markets, appropriate facilities and cost-effective transport across WA, application of the waste levy to waste storage, recycling, reuse or recovery facilities is merely a revenue-raising measure.

Application of the waste levy should be targeted at maximising diversion of those wastes that can be technically and economically reused, recycled or recovered and where there are existing facilities and markets that enable this diversion or credible short-term possibilities if the levy was applied.

3.6. Waste levy exemptions

As stated above, elements related to the levy were communicated within the Consultation Paper as being outside the scope of the consultation and therefore EIANZ-WA is concerned that they have been reviewed within the document.

The Consultation Paper does not identify how often the exemptions are used and/or provide any detail regarding if they have been effective in achieving their objective. It is therefore difficult to determine the appropriateness of amending these. Experience has shown that even when exemptions are offered, DWER has been unwilling to allow these to be used. EIANZ-WA is supportive of legislation that protects the environment but provides flexibility in implementation. The principle failure of prescriptive regulation is that the Department does not have the knowledge to achieve the most cost-effective solution. As such, it is the preference of EIANZ-WA that the Government focus on articulating the environmental outcome it is seeking and allow industry and others to make business decisions to achieve this.

As this stage, Option 1 is supported.

3.7. Improving solid waste reporting from waste facilities

EIANZ-WA is supportive of quality data to support policy and management decisions. While the recent changes to the WARR Regulations will begin to improve the data holdings, a reasonable period is required to give that data statistical integrity for it to be useful as a policy guide. In this context, contemplating further increases in the waste levy before a range of data is available is premature and risks exacerbating a problem that is not well understood.

Given the recent data reporting changes to the WARR Regulations, EIANZ-WA questions whether the mass balance data reporting proposals outlined in the Closing the Loop paper

are also premature. The recent changes should be allowed to mature and then a separate consultation on mass balance reporting be undertaken if it is still considered imperative to meeting the objectives of the Waste Strategy 2030.

As such, we support Option 1.

3.8. Compliance and enforcement measures

EIANZ-WA is supportive of a robust environmental regulatory framework that is supported by clear policies, appropriate selection of instruments to implement and a robust compliance and monitoring program to support feedback regarding achieving the policy objective and selection of instruments.

EIANZ-WA notes that the Consultation Paper articulates the need to introduce a new offence to target waste disposal at unlicensed facilities, however it does not identify how the operation of the EP Act will be improved by the new offence considering the existence of s52 where it is an offence to change a premises to a prescribed premises without a works approval. As such, the Department has powers under the Act to inspect premises where it has a reasonable belief that large-scale disposal of waste is occurring which would trigger the requirement to licence the premise under Part V.

EIANZ-WA would like to see further development of the Department's compliance and enforcement functions generally, including the release of the updated Compliance and Enforcement Policy for DWER and additional resources added to the Department to undertake the necessary audits and inspections of facilities.

As such, Option 1 is supported.

3.9. Improving the administration and collection of the waste levy

As stated above, elements related to the levy were communicated within the Consultation Paper as being outside the scope of the consultation and therefore EIANZ-WA is concerned that they have been reviewed within the document.

The Consultation Paper does not explain how the current arrangement regarding the administration and collection of the levy is failing. In fact, the Paper states "the current legislative provisions have been sufficient" (Closing the Loop Consultation Paper, p72), yet it is suggested that arrangements be modified. EIANZ-WA is not supportive of management actions being taken that are not supported by robust analysis of data on performance.

As such, Option 1 is supported.

References:

Bridgman, P. and Davis, G. 2000. *The Australian Policy Handbook, 2nd Edition*. Allen & Unwin, St Leonards NSW.

Gunningham, N. and Grabosky, P. 1998. *Smart Regulation: designing environmental policy*. Clarendon Press, Oxford.

Templeman, D. 2007. *Waste Avoidance and Resource Recovery Bill 2007. Second Reading Speech, Legislative Assembly*. Downloaded from https://www.wastenet.net.au/Assets/Documents/Content/Information/WARR_Bill_2nd_reading_speech.pdf on 6 July 2020.