

18 December 2020



Environment Institute
of Australia and
New Zealand Inc.

Waste not, want not: Valuing waste as a resource
Proposed legislative framework for waste-derived materials

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

Online Submission Via: wastereform@dwer.wa.gov.au

Dear Sir / Madam

RE: Submission on the proposed legislative framework for waste-derived materials

The Environment Institute of Australia and New Zealand (EIANZ) (the Institute) Western Australia (WA) Division (the Division) is pleased to provide feedback on the discussion paper on the proposed legislative framework for waste-derived materials, released by the Department of Water and Environmental Regulation (DWER) in September 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 175 members with over 2,135 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 DWER for engaging in discussions on improving waste management in Western Australia.

Yours sincerely

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

Belinda Bastow
President
EIANZ – WA Division

1 Introduction

1.1 Summary

The EIANZ WA Division (EIANZ-WA) is pleased to make comments on the *Waste not, want not: valuing waste as a resource - Discussion Paper: Proposed legislative framework for waste-derived materials* (the **Discussion Paper**). EIANZ-WA commends the Government on its activities to develop a comprehensive and integrated policy and regulatory framework to improve waste management in Western Australia (WA).

EIANZ-WA has provided feedback on many of the discussion papers that have been released regarding waste and given the inter-relationship of the issues, would encourage reading those submissions in conjunction with the feedback provided below. The following points summarise EIANZ-WA's feedback on the Discussion Paper:

- The proposed amendment to the definition of waste described within the Discussion Paper is not supported by EIANZ-WA.
- A waste derived material (WDM) framework should be focused on enabling materials (wastes and emissions) to stay within the circular economy, rather than addressing levy concerns.
- Formalise the Factsheet – Assessing whether material is waste to address the ongoing concern regarding the definition of waste and application of the landfill levy.
- Utilise existing categories, such as Category 61 and 61A of Schedule 1 of the Environmental Protection Regulations 1987 for licensing WDM processing facilities.
- Develop and consult on a regulatory impact statement outlining the proposed costs associated with the introduction of this framework.

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

EIANZ-WA is supportive of the Government's commitment to waste avoidance, recovering more value and resources from waste and protecting the environment by managing waste

responsibly and consistent with the objectives of the Waste Avoidance and Resource Recovery Strategy 2030.

In our previous submission on the Closing the Loop Consultation Paper we highlighted our support of the principle of a circular economy and its importance in minimising the generation of waste. The circular economy is a framework concept that supports sustainable economic development through the 'closed flow of materials and the use of raw materials and energy through multiple phases' (Sanguino et al, 2020 p1). The development of a robust waste derived material (WDM) framework is integral to support a strong circular economy.

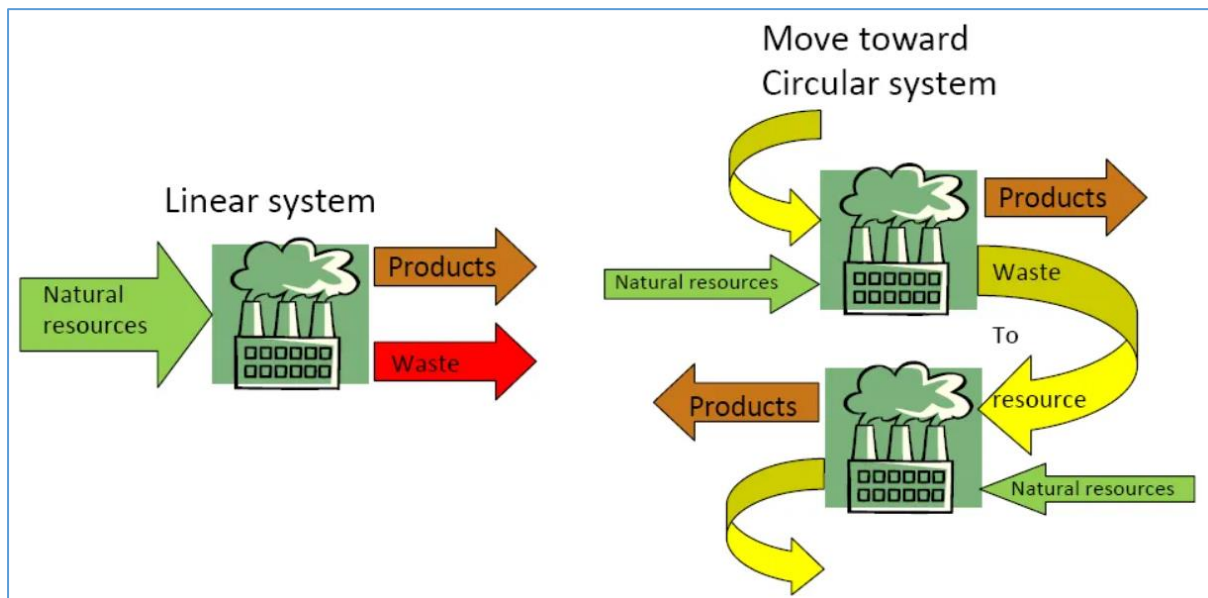


Figure 1: Conceptual Circular System

As illustrated in Figure 1, while a material is still in circulation within the system it is a 'resource' and should be treated as such. The definition of waste within the WA environmental and waste legislation is the source of many of the issues that the Government is attempting to resolve. The preference would be to address the root cause of the problem rather than continuing to address the symptoms through additional regulatory frameworks and duplicating or further complicated licensing activities.

Similar to our previous concerns, we note in this discussion paper that the scope of the WDM framework focuses on material applied to land and as such narrows its focus on issues associated with landfill licensing and levy application. We encourage the Government to approach its policy design around 'first principles' rather than the narrow-focused approach to levy implementation facilitation that appears to pervade much of the policy activities to date. As such, we recommend that a WDM framework should look at ways of keeping all waste streams within the economy for as long as possible.

3 Observations on the proposed legislative framework

Amending the definition of waste

The Discussion Paper proposes to amend the definition of waste to "clarify that waste-derived materials are waste for the purposes of the legislation". EIANZ-WA is not supportive of this definition and approach and sees 'waste-derived material' as a resource with an ongoing usefulness to society. In addition, this approach would appear to be in direct contradiction with the DWER factsheet regarding assessing whether a material is a waste and thereby contributing to further confusion. Under the existing factsheet, saleable material and waste that has been transformed or converted into a product or goods are not classified as waste.

EIANZ-WA is aware that the DWER is proposing to remove the factsheet; EIANZ is not supportive of this approach.

Rather, EIANZ-WA recommends that the approach outlined in the DWER *Factsheet – Assessing whether material is waste*, be formalised to provide certainty to industries and individuals working to develop a circular economy through the utilisation of 'wastes' from other parties or industries. This would be conducive to encouraging approaches to secondary resource markets and products and not provide the overlap in the regulatory framework promoted by the discussion paper.

Making a WDM determination

EIANZ-WA sees some merit in providing powers under the *Environmental Protection Act 1986* to exempt some activities, on an individual basis, from the requirements of licensing or other regulatory requirements where they have an environmental and community benefit. This would provide for a level of flexibility for new or trial activities that may in some circumstances become bogged down in licensing requirements or that may prevent new environmental beneficial activities from occurring. Protection of the environment would still be managed through sections 49, 49A, 50, 50A and 50B. This could be undertaken in a similar manner to impact assessment processes under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act) and Part IV of the EP Act where a referral is made and a decision to assess is made dependent upon significance of impact to the environmental or community health. Adopting an exemption approach may negate the need for the complicated and duplicative WDM proposal that has been presented within the Discussion Paper.

As stated above, Sections 49 to 50B make it an offence to pollute the environment. EIANZ-WA would prefer to see further DWER effort in compliance and monitoring activities rather than controls on use of WDM in individual situations. In addition, without a robust auditing and enforcement program, the introduction of conditions to licences and other instruments has little value.

In the Discussion Paper, it states that WDM determinations would require significant resourcing. Given this acknowledgement, a detailed regulatory impact statement that outlines how the Government proposes to fund the program should be developed and consulted on, prior to implementation. While EIANZ-WA supports a user pays system, it is unclear what costs the Government's detailed and duplicative system will present to industry and may ultimately act as a deterrent to the adoption of a circular economy. Ultimately, if the proposed framework is unworkable, duplicative, expensive and generally not supported, its costs should not be expected to be borne by participants.

Implementation of the framework

Given the limited level of support that EIANZ-WA has for the proposed WMD legislative framework, any discussion of a proposal for its implementation appears premature. The EIANZ-WA is supportive of waste reform activities and would encourage the Government to look at opportunities to facilitate the circular economy through collaborative and forward-thinking policies.

Similarly, the framework proposed by the Government outlines a number of supporting regulations, policies, guidelines and other documents that still need to be developed to support the program. The EIANZ-WA would rather see the Government focus on formalising the Factsheet as a simple approach to WDM and licence WDM facilities through Category 61 and 61A. Over regulation does not assist in meeting environmental outcomes or objectives.