

9 March 2023

Committee Secretary
Health and Environment Committee
PARLIAMENT HOUSE QLD 4000

By email hec@parliament.qld.gov.au

Dear Committee Secretary,



Environment
Institute of
Australia and
New Zealand
SOUTH EAST QLD DIVISION

Submission: Waste Reduction and Recycling and Other Legislation Amendment Bill 2023

Thank you for the opportunity for the Environment Institute of Australia and New Zealand (EIANZ) to make a submission on the Waste Reduction and Recycling and Other Legislation Amendment Bill 2022 (the Bill). This submission has been prepared by our south-east Queensland (SEQ) divisional committee and members.

The EIANZ is a non-profit, multi-disciplinary association of environmental practitioners. Its membership is represented by a diverse range of technical disciplines including scientists, policy makers, engineers, lawyers and economists. We advocate for environmental knowledge and awareness and advancing ethical and competent environmental practice. The EIANZ SEQ Division comprises over 600 professionals working across industry and government with diverse environmental qualifications, experience and expertise.

The EIANZ SEQ Division recognises the important role of waste and resource policy and regulation to shape the strategy, practices and performance to underpin the Queensland Government's stated commitment to transition to a zero-waste society.

We note that whilst consultation and engagement is a key focus area of the Department of Environment and Science's (the Department) Regulatory Strategy 2022-2027, there has been limited consultation, that we are aware of and as noted in the Explanatory Notes, in relation to the policy objectives of the Bill.

Given the nature of the amendments and new provisions proposed by the Bill, a consultation period of less than two weeks is insufficient to provide a detailed response to the Bill and its accompanying Explanatory Notes.

We provide the following feedback in this context and the EIANZ SEQ Division welcomes the opportunity to contribute to future consultation.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Hamish Manzi', is written over a large, faint blue gear graphic in the background.

Hamish Manzi
Policy and Practice Chair
SEQ Division of the Environment Institute of Australia and New Zealand

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Amendments to the Environmental Protection Act 1994 (EP Act) and the Waste Reduction and Recycling Act 2011 (WRR Act)

The EIANZ supports the amendment and inclusions proposed for Sections 3 and 4 of the *Waste Reduction and Recycling Act 2011 (WRR Act)* as a mechanism to promote resource recovery and the inclusion of Circular Economy principles into the WRR Act.

Clean Earth Waste Levy Exemption

The Bill provides the mechanism for the removal of the Clean Earth Waste Levy exemption on the 1st July 2023 and we acknowledge this removal has been communicated for some time.

Members from our SEQ Division recently attended a briefing session and subsequent detailed workshop with the Department on the proposed removal of the levy exemption for clean earth commencing 1 July 2023. Those members were actively involved in the engagement process in a collaborative approach with industry associations and were preparing to provide further feedback to the Department when the Bill was tabled.

As a continuation of that engagement and feedback, we make the following observations.

Pathways for Clean Earth

With regards to the amendments to section 8 of the WRR Act, we note the resulting conflicting description of what is currently "Clean Earth" with respect to:

- That material now being declared a Waste, unless it is a Resource through an end of waste code or end of waste approval; and
- In the case that "Clean Earth" is a Resource, it will then revert back to being classified a Waste if it is disposed of at a waste disposal site, and presumably a waste levy would then apply.

Clean Earth does not currently have an end of waste code and this Bill would be an opportunity for the creation of such a code to classify Clean Earth as a resource.

The other pathway available to "Clean Earth" is to seek an exempt waste application (as per s28 of the WRR Act) via an Operational Purposes Exemption however this pathway is only available to a levyable waste disposal site.

It appears that the amendments to the WRR Act have created a situation where Clean Earth is now either a waste or an exempt waste and this is a missed opportunity to investigate and develop a pathway for clean earth to be considered a resource under the WRR Act.

Our recommendation is that the Government consider Clean Earth within a circular economy framework and recognise this is a valuable resource and include additional regulatory pathways for the generation and use of this resource at locations other than levyable waste disposal sites. This could be achieved through amendments to s28 of the WRR or the development of an end of waste code in conjunction with industry.

Resource Definition

We recommend that a resource definition is generated for this material. Without a clear definition of quality or thresholds, both in relation to specific contaminants such as PFAS, but also across the broader range of potential contaminants, there is a compliance risk associated with inconsistent interpretation.

This is a learning from current industry practitioners as a result of clean earth, waste and hazardous contaminant definitions across regulations. With such a determination, developments could redirect potentially contaminated soils, albeit at low levels, towards other developments despite these soils not being suitable for their proposed re-use. This could lead to uncontrolled contamination of land.

EIANZ members are well placed with regards to expertise and experience to provide specialist input to the development of a resource definition for this material and, of course, in its implementation.

The amendments also do not consider the use of Clean Earth in a development context where the destination of this material is not a waste disposal site. This could lead to potential waste licensing issues and the unlawful use of this material. The development of clear guidelines and definition for this material would assist development projects to ensure the objectives of the WRR Act are met and prevent adverse impacts to the communities and the environment.

Waste Data Supporting Regulatory Changes

It is understood that information about waste recovery, recycling and disposal in Queensland is collected through an annual waste data survey (survey) and monthly waste levy returns from landfill operators.

EIANZ carried out a brief review of the publicly available Department reference guide for Completing a Summary Return in the Queensland Waste Data System (QWDS). It appears that the reporting metrics on incoming waste types and whether their final resting place was at the levyable part of the site do not differentiate whether a waste with a general levy exemption was beneficially re-used at the levyable part of the site or not.

If this assessment is correct this would explain why clean earth received at a landfill and subsequently re-used as cover material within the landfill may be seen as being disposed of as opposed to being diverted for a higher order use.

Whilst it appears that the Regulatory position is that clean earth is a waste, the broader base of industry recognise clean earth as a product or a resource. The definition of waste under s13 of the EP Act, which is now proposed to be removed, may have contributed to this discrepancy.

EIANZ therefore recommends that a review of the reporting metrics be carried out to ascertain whether modifications are required to support the Government in carrying out an accurate analysis of how earth, clean or otherwise is used and managed at a landfill and how this material is classified.

We also note that the regulatory amendments with regards to Clean Earth are incomplete. Whilst the Bill removes "Clean Earth" from the WRR Act, Clean Earth is still a defined term under the *Environmental Protection Regulation 2019 (EP Reg)* at Schedule 2 (ERA 54 and ERA 60) and Schedule 19.

Summary

EIANZ recommends that a clear guideline and pathway for the continued beneficial use of clean earth is developed in consultation and collaboration with industry prior to the removal of the clean earth waste levy exemption in order to ensure industry practices can be established and implemented and to ensure such a framework underpins the environmental and sustainability goals set out by the Queensland Government across those industries that are generators and/or users of clean earth material.

Circular Economy Provisions – Clause 9A

EIANZ supports the inclusion of Circular Economy objectives within legislation, but note that the following critical aspects of strategy and implementation of Circular Economy principles are not currently included in the proposed amendment:

- Environmental impacts of production and consumption must be assessed, minimised and managed.
- Environmental, social and economic benefits should be encouraged with benefits being equitably accessible.
- Renewable resources should be encouraged, greenhouse gas emissions minimised and climate change impacts managed.
- Change to be supported by meaningful community and industry engagement processes.

Waste Strategy Timing and Alignment with the Regulatory Strategy 2022-2027

The EIANZ recognises the important role that effective regulation has in the delivery and execution of the Department's core functions and acknowledges the policy objectives that underpin the Bill.

The amendment to the review period for the State's waste management strategy from 3 to 5 years brings this into the same frequency of review as the Department's broader regulatory strategy, the recently published "Regulatory Strategy 2022-2027".

The current waste strategy is undated so there is an opportunity for the Department to align the timing to that of the regulatory strategy.

It is also noted that the Explanatory Notes to the Bill make no reference to or assessment against, the "Regulatory Strategy 2022-2027" which provides a clear framework with respect to the Department's and Queensland Government's regulator model approach:

- Regulation is proportionate to risk and minimises unnecessary burden
- Consult and engage meaningfully with stakeholders
- Provide appropriate information and support to assist compliance
- Commit to continuous improvement
- Be transparent and accountable in actions.

As the scope of the Strategy covers the two Acts associated with the Bill, it is a missed opportunity for the Bill to not have been presented and consulted within the framework of the Strategy.

Regulatory Impact Statement

The Explanatory Notes do not state whether the regulatory impact of the Bill has been undertaken. It would be useful for stakeholders to understand whether a regulatory impact statement has been prepared and to have access to this in order to assist in the review and practical consideration of the proposed amendments.

Consultation

Whilst the SEQ Division of the EIANZ has participated in a number of recent consultation processes of some relevance to the Bill and has actively maintained a profile and presence in this regard, we note that the consultation has been limited to two of the Bill objectives – the Clean Earth Levy and the outdoor release of balloons.

In our opinion, consultation on the Bill would have benefited from and been enhanced by the involvement of a multi-disciplinary individual member-based organisation for environmental professionals such as the EIANZ.

As stated above, these general comments are provided in the context of the short timeframe afforded to stakeholders to prepare a submission against the amendments proposed in the Bill. That curtailed period has restricted the ability of the EIANZ, and likely many others, from providing considered feedback across the policy objectives.