



Government of **Western Australia**
Department of **Environment Regulation**

REPORT

Review of the *Waste Avoidance and Resource Recovery Act 2007*

Final

24 September 2015

DER2015/000112

Document control

Document version history

Date	Author	Version	Approved by
21/4/15	Melissa Bastow Principal Policy Officer	Working Draft	Sarah McEvoy Executive Director, Strategic Policy and Programs
24/9/15	As above	Final	Jason Banks, Director General

Corporate file information

File number and/or name	File owner or custodian	File location
DER2015/000112	Strategic Policy and Programs	Atrium

Produced and published by

Department of Environment Regulation
168 St Georges Terrace, Perth, Western Australia

September 2015

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Executive summary

The *Waste Avoidance and Resource Recovery Act 2007* (WARR Act) is the principal legislation for waste management in Western Australia and is subject to a statutory review within five years of its commencement.

This report was prepared by the Department of Environment Regulation (DER) on behalf of the Minister for Environment. It reflects the outcome of the statutory review into the operation and effectiveness of the WARR Act.

The report analyses the submissions received during the public consultation period. The key issues identified by the review relate to waste processing operations and planning. The concept of statutory waste groups as outlined in the discussion paper was not broadly supported.

Waste processing operations

Waste collection and processing arrangements vary considerably across the Perth metropolitan region. Municipal waste collection is individually undertaken and managed by each local government in the metropolitan area. There are opportunities to achieve economies of scale and to coordinate significant supplies of waste.

Experience in other jurisdictions highlights the benefits of aligning local waste planning with state plans and strategies, and providing coordination of the procurement of waste services on behalf of local governments.

Infrastructure planning

One of the Waste Strategy's initiatives is long-term planning for waste and recycling processing. The focus of the planning is on waste processing and recycling facilities that divert waste from landfill to promote the most efficient use of resources.

Improved alignment of local and State Government waste planning will benefit diversion from landfill and promote the most efficient use of resources.

Key Findings

Thirty-three submissions were received on a discussion paper for this review. After considering these submissions, the review found that the WARR Act meets its objectives and aligns with Government waste policy.

While no legislative amendments are proposed, the State Government will continue to implement mechanisms to support better alignment of waste management planning, waste services and waste contracts across local and State Government and industry. The recently announced Construction and Demolition Product Procurement Incentive Program, a funding incentive to support more use of recycled and construction and demolition material, is one example of this. Model contracts to facilitate consistent and aligned standards and targets across the municipal waste sector are another example.

1. Introduction

1.1 Context

The *Waste Avoidance and Resource Recovery Act 2007* (WARR Act) is the principal legislation dealing with waste management in Western Australia. The Department of Environment Regulation (DER) administers the WARR Act. The objects of the WARR Act are set out in section 5:

- (1) The primary objects of this Act are to contribute to sustainability, and the protection of human health and the environment in Western Australia and the move towards a waste-free society by –
 - (a) promoting the most efficient use of resources, including resource recovery and waste avoidance; and
 - (b) reducing environmental harm, including pollution through waste; and
 - (c) the consideration of resource management options against the following hierarchy –
 - (i) avoidance of unnecessary resource consumption;
 - (ii) resource recovery (including reuse, reprocessing, recycling and energy recovery);
 - (iii) disposal.
- (2) The principles set out in the EP Act section 4A apply in relation to the objects of this Act.

The WARR Act consolidated waste management related provisions from the *Health Act 1911* (Health Act), *Environmental Protection Act 1986* (EP Act) and the *Environmental Protection (Landfill) Levy Act 1998* (Landfill Levy Act).

The statutory review considered options in the waste and recycling sector to achieve better outcomes and reform opportunities. The waste and recycling sector is influenced by other legislation, government policy and market forces.

The review found that generally the WARR Act contains appropriate head powers to support its objects.

The review considers that mechanisms to support better alignment of waste management planning, waste services and waste contracts across local and State Government and industry should continue to be implemented.

This report is structured as follows:

- Part 1 introduces the context, terms of reference and process under which the review took place.
- Part 2 details the WARR Act mechanisms important to the review.
- Part 3 discusses the potential reform proposals to the WARR Act and the analysis of submissions received.
- Part 4 outlines other matters raised during the submissions which are related to the WARR Act but are not within scope of the review.

1.2 Terms of reference

Section 99 of the WARR Act requires that the Minister carry out a review of the WARR Act after the fifth anniversary of its commencement and table a report on the review in both houses of Parliament within 12 months of the fifth anniversary. The WARR Act came into operation on 1 July 2008. The terms of reference of the review of the WARR Act are:

To carry out a review of the operation and effectiveness of the Waste Avoidance and Resource Recovery Act 2007 with particular regard to its:

- *effectiveness in meeting its objects; and*
- *alignment with Government waste management policy (i.e. the Waste Strategy).*

The review did not include the *Waste Avoidance and Resource Recovery Levy Act 2007* (WARR Levy Act), *Waste Avoidance and Resource Recovery Regulations 2008* (WARR Regulations) or *Waste Avoidance and Resource Recovery Levy Regulations 2008* (Levy Regulations) as these are outside of the scope of the statutory review.

1.3 Review procedure

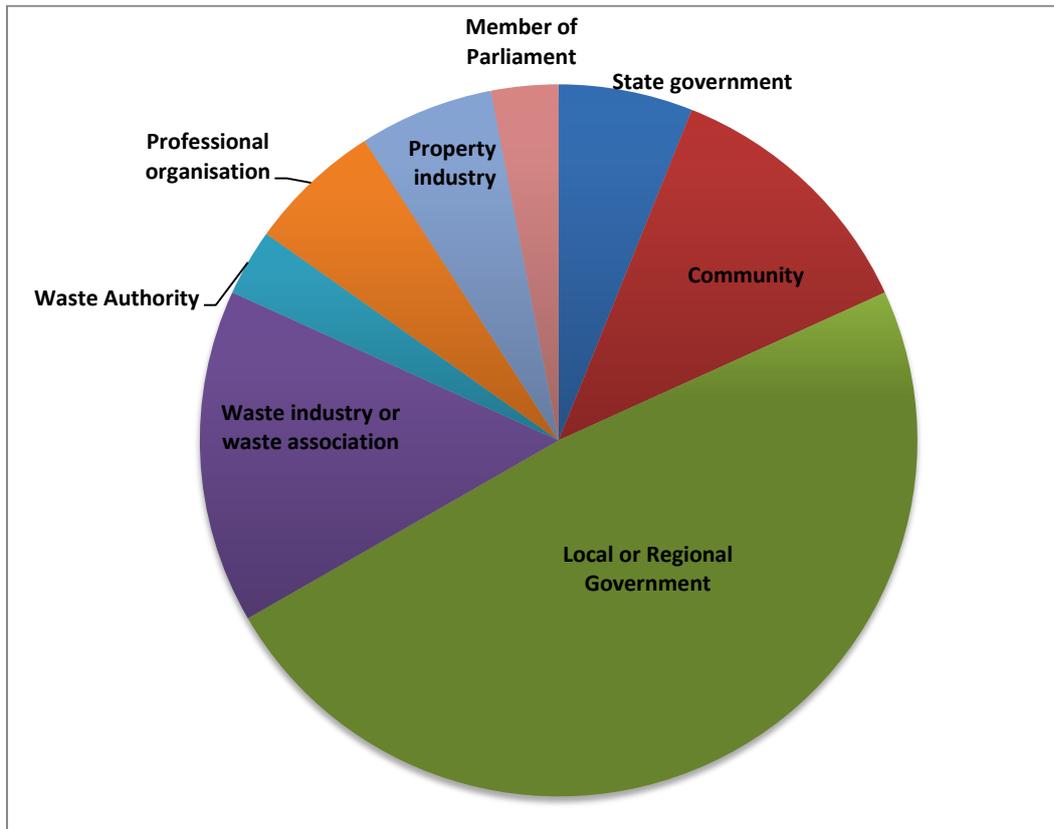
DER has carried out this review on behalf of the Minister for Environment.

A paper entitled *Review of Waste Avoidance and Resource Recovery Act 2007 Discussion Paper* (discussion paper) was released on 1 December 2014 for a public consultation period, closing on 23 February 2015. The discussion paper outlined potential ideas for reforms to the WARR Act. Following the release of the paper, briefings were held with key groups.

Thirty-three submissions were received on the discussion paper. The groups and individuals that made submissions are listed in Appendix A. Almost half (49 per cent) of the submissions received were from local government, regional councils or regional council organisations (Figure 1). Submissions received were collated and analysed and contributed to this report.

All non-confidential submissions and the discussion paper were published on the [DER website](#).

Figure 1: Breakdown of respondents who submitted comments



2. Scheme of the WARR Act

2.1 Waste Authority

Section 8 of the WARR Act provides for the establishment of the Waste Authority and the appointment of its five members. The Waste Authority is an agent of the State with various functions including:

- advising on strategic policy and planning to support the diversion of waste from landfill in Western Australia;
- implementation of policies, plans and programs to achieve increased waste diversion;
- administration of funds in the Waste Avoidance and Resource Recovery Account (WARR Account) for programs and priorities outlined in the Waste Strategy and business plan; and
- providing advice to the Minister for Environment.

2.2 Local governments

The WARR Act provides powers with respect to local government waste services, including waste local laws, waste plans and collection permits.

The WARR Act provides local governments with the option of charging to collect municipal waste within their boundaries to protect the environment and public health. Waste local laws made under the WARR Act provide local governments with the ability to regulate the provisions of waste services.

The Waste Strategy sets objectives and targets for local governments to improve the efficiency and effectiveness of waste services and achieve high waste diversion rates. The coordination and management of increasing volumes of waste, contribute to challenges for meeting Waste Strategy targets.

The majority of submissions referred to proposed local government boundary reforms as an opportunity for improved waste services. In February 2015, during the consultation period, the State Government announced that planned local government boundary reforms were on hold. The outcome of the WARR Act review has regard to this.

2.3 Waste Strategy

Part 4 Division 1 of the WARR Act provides for a waste strategy that sets out a long-term strategy for continuous improvement of waste services, waste avoidance and resource recovery, benchmarked against best practice; and targets for waste reduction, resource recovery and the diversion of waste from landfill disposal.

The State Government's Waste Strategy: *Creating the right environment* was released in March 2012.

A five-year business plan prepared annually by the Waste Authority and approved by the Minister for Environment establishes priorities for each year to implement the Waste Strategy.

2.4 Waste streams

Municipal solid waste

The WARR Act primarily deals with municipal solid waste (MSW), which is the waste generated from domestic premises and local government activities. It includes food scraps, green waste and other general household waste. Management of this waste stream is generally coordinated by local government, in some cases through regional councils established under the *Local Government Act 1995*.

Construction and demolition

Construction and demolition waste (C&D waste) is solid waste material in the waste stream which arises from residential, civil and commercial construction and demolition activities. The types of material can include bricks, concrete, metal and timber.

Commercial and industry

Commercial and industry waste (C&I waste) types vary considerably and may be mixed and comparable in composition to MSW; or homogenous, comprising a single material such as plastic off-cuts, carpet remnants, and food industry residues or hazardous by-products of industrial processes.

2.5 Product Stewardship and Extended Producer Responsibility

The WARR Act establishes product stewardship and extended producer responsibility (EPR). Product stewardship provisions set out requirements for producers to develop product stewardship plans relating to the waste and recycling of certain products. EPR provisions provide for mandatory schemes relating to the waste and recycling of certain products.

EPR activities such as electronic waste and used oil collection programs are occurring in WA outside of provisions in the WARR Act through the Commonwealth *Product Stewardship Act 2011*.

The product stewardship and EPR provisions in the WARR Act have not been applied to date.

2.6 Compliance and enforcement

The WARR Act includes powers to enable compliance and enforcement under the Act.

3. WARR Act reform feedback

3.1 Waste Authority

Feedback

Several submissions, including from regional councils, local governments, community and industry, the Waste Authority and WALGA, proposed that funding the Waste Authority from consolidated revenue would improve transparency and governance of the Authority and the WARR Account.

Some submissions advocated the establishment of an independent agency to provide for a separation of waste management policy and program activities from DER's regulatory functions.

Summary

The Waste Authority is principally an advisory body which develops the Waste Strategy, provides advice to the Minister and Government, and administers the WARR Account, and does not have an operational role. DER regulates waste facilities that are prescribed premises under the EP Act. Neither the creation of a new agency nor significant changes to the roles of either the Waste Authority or DER is considered necessary to progress the waste reforms arising from this review.

3.2 Local government waste operations

3.2.1 Performance and coordination of waste flows

Feedback

Submissions generally favoured a coordinated approach to waste service delivery and in particular waste collection and planning. The submissions identified economic advantages and disadvantages of local government or regional council operated waste facilities compared to industry and private sector facilities, which is discussed under section 3.3 (Infrastructure planning).

Summary

Better alignment of waste management planning, waste services and waste contracts benefits the economic performance of the sector. The review supports this outcome.

3.2.2 Waste groups

Feedback

Thirty one submissions provided comment on the proposed establishment of waste group/s, compulsory membership by local governments or the procurement role of waste groups.

Waste Groups

The majority of submissions agree that establishing waste group/s would be beneficial to local governments and regional councils. Waste groups were seen as a means to achieving economies of scale by increasing competition with the private sector in the available technologies and contractors tendering, which would lead to more competitive prices. It also provides for a comprehensive approach to waste management and transparent, accountable and common standards in the waste sector.

Many submissions, while supportive of the concept of waste group/s, sought further information on its proposed structure, boundary, role and membership and suggested additional consultation.

The submissions in support of waste group/s also expressed a view that it could provide another level of administration and duplicate the services of regional councils. Pending further information, submissions supported the retention of regional councils as a mechanism to establish the waste group/s. There was a view that metropolitan regional councils could be consolidated from five to three to facilitate the provision of regional waste strategies, services and outcomes and to achieve economies of scale. It was also suggested that a future review may be required to determine if further consolidation could achieve the same outcomes within the Peel, Greater Bunbury and Geraldton regions.

Over half of the local government and regional council submissions which supported regional councils as waste groups additionally proposed the establishment of a single Perth and Peel waste management group to oversee the waste group/s. The overarching waste management group was proposed to ensure connection between all of the waste sectors, facilitate implementation of the Waste Strategy, provide a more certain link with the Waste Authority and address and resolve broadscale waste issues.

Submissions proposed that the waste group be governed by a board comprising representatives of State Government, local government or regional councils, industry groups and professional experts. If the waste group facilitates procurement for all waste streams, submissions advocated that membership should extend to the C&D and C&I waste sectors.

Those opposed to statutory waste group/s were concerned with the ongoing role of regional councils if waste group/s were established, and the potential financial and legal implications of membership of waste group/s. Transitional arrangements for regional council assets were also raised. It was proposed that the environmental and economic performance of the regional councils in waste management be reviewed in progressing reforms.

Compulsory membership

The majority of the submissions supporting regional councils as waste group/s agreed with compulsory membership of local governments as a way of providing the stability necessary for effective waste management planning and investment.

Submissions not supportive of waste groups consider compulsory membership will remove the market force that drives competition and efficient service delivery.

Procurement

Industry and industry associations were supportive of coordinated procurement waste processing services. Submissions considered that local governments should be required to participate in aggregated procurement of waste supplies for tendering of waste processing services to realise benefits and achieve the best economies of scale. The submissions also expressed the view that local governments and regional councils should be excluded from directly operating waste collection¹, transport, recovery, processing and disposal facilities. The submissions were of the view that this would enable a competitive market of private investments and avoid the potential for a conflict of interest where some regional councils are both a buyer and seller.

Other submissions considered that the role of waste groups should not be restricted to procurement alone and suggested they be involved in the development and implementation of waste plans and strategic planning. The submissions queried the future of regional council operated landfills, alternative waste treatment facilities and other waste processing services.

Waste streams

The majority of submissions considered that the review should also address C&D and C&I waste streams, which make up more than 70 per cent of waste. It was proposed that strategic planning for C&D and C&I waste be undertaken and private industry further engaged.

Summary

It is noted that there are existing mechanisms for coordinating local government involvement for procurement of waste (primarily under the *Local Government Act 1995*).

The most effective way to improve management of MSW, C&D and C&I waste is through better coordinated procurement services for these waste streams to provide the necessary investment security for service providers. Programs to improve management of waste are implemented through Waste Avoidance and Resource Recovery account funding incentives such as the recently announced Construction and Demolition Product Procurement Incentive Program.

¹ The WARR Act provides powers for local government waste services, including waste collection.

3.2.3 Alignment of waste planning across Government

Feedback

There was general agreement in submissions that aligning waste management is key to ensuring a coordinated approach to waste management within the metropolitan area. Specifically, aligning local waste planning with State planning including the Waste Strategy and operating in a manner consistent with this approach was supported. Submissions proposed aligning waste management plans to create greater efficiencies, promote consistent services and processes, reduce costs by taking advantage of economies of scale, and provide for clearer direction and integrated policy.

Local governments and regional councils advised that they are currently undertaking strategic and long term waste management planning including attempting to align their planning with the Waste Strategy. Some regional councils suggested that waste plans be adopted at a regional scale to balance the geographic spread of facilities, avoid duplication of resources and utilise economies of scale in procurement services.

Industry groups suggested that State Government and waste group/s consult with industry in the development of plans and policy frameworks to ensure changing demands for waste services can be met and resourced appropriately. They also suggested that strategic waste plans be developed for the management of all waste streams.

Industry noted that the Waste Strategy includes ambitious targets for the diversion of waste from landfill and suggested that these be removed from the Waste Strategy and that the State Government seeks to address market failures directly, enabling market mechanisms to determine the efficient level of waste recovery.

Summary

Aligning waste planning across local and State Government provides long term benefits for waste management in the Perth and Peel region in particular.

3.3 Infrastructure planning

3.3.1 Governance

Feedback

Submissions from some regional councils considered that they already provide economies of scale for effective waste management, and that widescale social, environmental and economic benefits have been realised.

Some local governments were not convinced that economies of scale would be achieved by waste planning at a regional rather than local scale and noted that it may not be possible to align all contracts or provide consistent collection and infrastructure arrangements throughout the metropolitan area. These submissions were of the view that it is essential that State Government, the Waste Authority, a waste group or similar should own the waste facilities to prevent the private sector moving a facility

out of the state. They were concerned that the private sector is primarily driven by profit rather than providing a cost-effective, comprehensive, sustainable service.

Submissions from industry considered there was a need to ensure independence between the process of planning infrastructure to provide landfill capacity and the management of procurement processes for waste processing services. Public sector ownership of waste facilities may inhibit competition by favouring government owned facilities. Governance arrangements which enhance competition and the role of the private sector in the provision of waste services would likely result in improved efficiency and lower costs. These submissions were supportive of a government role in building facilities and contracting their operation to the private sector.

Summary

Submissions on the ownership of and governance arrangements for solid waste were divided. The facilitation of a more competitive waste market will improve the efficiency of governance and management of waste infrastructure. Programs funded through the Waste Avoidance and Resource Recovery account already support this outcome.

3.3.2 Infrastructure planning

Feedback

The majority of submissions supported the development of a statutory waste infrastructure plan to provide clarity and direction to guide waste industry decision-making and investment.

Some regional councils noted that they have commenced on infrastructure options and planning for metropolitan-wide infrastructure requirements based on combined waste streams and proposed this work be managed by waste group/s or a similar body into the future.

Submissions proposed that the development of the plan identify appropriate facilities and infrastructure required as well as appropriate locations.

Summary

Submissions generally supported infrastructure planning as a part of an effective waste framework. Considerable work has already been undertaken by regional councils and others on waste infrastructure planning. Requirements for aligned local and State infrastructure planning should be determined and any specific actions implemented.

3.4 Product stewardship and extended producer responsibility

Feedback

A number of submissions noted that the product stewardship and extended producer responsibility provisions in the WARR Act may appropriately deal with more difficult waste types and suggested consideration of their use.

Summary

The State Government has been working with other jurisdictions to investigate national approaches to product stewardship to better manage the environmental impacts of used packaging.

The State Government's focus is on continuing to drive recycling and reductions in landfill through proven economic mechanisms such as the landfill levy, and through direct action with industry and local government to provide funding and programs to support households in their recycling efforts.

The State Government considers that product stewardship initiatives are best developed at a national level. The Australian Packaging Covenant plays an ongoing role in contributing to improved recycling outcomes and reducing litter. Ministers agreed in February 2015 to an extension of the existing Australian Packaging Covenant for 12 months to allow jurisdictions to engage with the packaging industry on the approach to be taken from 1 July 2016.

3.5 Compliance and enforcement

Feedback

A small number of submissions raised the importance of effective enforcement to ensure adherence to requirements under the WARR Act. Industry associations and community submissions proposed options for enhanced enforcement, including infringements to ensure appropriate waste disposal, additional policing of illegal dumping², levy application and payments³, and licensing⁴.

Some submissions proposed penalties where waste group/s do not submit or implement a waste plan.

Summary

The review considers that the WARR Act contains the necessary powers to enable compliance with any requirements relevant to that Act and therefore legislative amendments are not required. It is the responsibility of local governments to determine their waste collection requirements.

² Dumping of waste is an offence under the EP Act and is outside the scope of this review.

³ The levy regime is implemented through the *Waste Avoidance and Resource Recovery Levy Act 2007* and *Waste Avoidance and Resource Recovery Levy Regulations 2008* and is outside of the scope of this review.

⁴ Licensing is undertaken under the EP Act and is outside the scope of this review.

While noting that these matters are outside the scope of the WARR Act review, DER enforces the payment of levy, illegal dumping and licensing and will consider any requirements for enhanced enforcement effort.

4. Out of scope issues

Submissions raised a number of issues outside of the scope of the WARR Act review. These are identified below.

4.1 Landfill levy

Feedback

Submissions from local government and regional councils made a number of suggestions relating to the landfill levy, including changes to the hypothecation of funds, and allocation of the levy to an infrastructure fund and research into waste technologies.

Submissions also raised the enforceability of levy collection and considered that there is an incentive for waste to be transported and illegally disposed of in landfills located outside of the metropolitan area.

Industry associations suggested that landfill levies should be reduced or removed to address market failures and ensure that environmental regulation reduces externalities from landfill to acceptable levels.

4.2 Landfill siting

Feedback

There were a number of submissions from local governments and regional councils, and community groups on appropriate siting of landfills, including policy considerations.

Appendix A – list of submissions

Table 1: Submissions received on the discussion paper

No.	Name
1	Mr D. Sheedy
2	Mr D. Terrence
3	City of Bayswater
4	City of Belmont
5	Shire of Mundaring
6	Mindarie Regional Council
7	Forum of Regional Councils
8	Avon Valley Environmental Society
9	Outer Metropolitan Growth Council
10	City of Nedlands
11	Waste Management Community Reference Group
12	Southern Metropolitan Regional Council
13	Eastern Metropolitan Regional Council
14	Waste Authority
15	Waste Industry Alliance
16	Instant Waste Management
17	Environmental Health Australia (WA) Inc
18	SITA Australia
19	Rivers Regional Council
20	Property Council of Australia
21	Waste Management Association of Australia (WA)
22	City of Busselton
23	Mrs Glenys Godfrey MLA
24	Urban Development Institute of Australia (WA)
25	City of South Perth
26	City of Fremantle
27	Department of Health
28	LandCorp
29	City of Rockingham
30	Department of Local Government and Communities
31	Western Australian Local Government Association
32	South West Group
33	Chamber of Commerce and Industry