



Government of **Western Australia**  
Department of **Water and Environmental Regulation**

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# Closing the loop

Waste reforms for a circular economy

Consultation paper  
February 2020



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Consultation paper

Department of Water and Environmental Regulation

February 2020

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# 1 Consultation on legislative proposals for waste reform

This discussion paper seeks feedback on detailed legislative proposals to improve waste management and support a circular economy for Western Australia.

Waste reform options outlined in this paper will be of primary interest to waste industry stakeholders, including occupiers of landfill and waste storage premises.

Following the public consultation period, the Department of Water and Environmental Regulation (the department) will analyse submissions and make recommendations to the Minister for Environment.

Stakeholder consultation promotes transparency, improves legislative design and ensures risks are identified. It also allows innovative legislative options to be explored in a Western Australian context.

This consultation provides an opportunity for key waste stakeholders to raise issues, concerns and opportunities about the proposed legislative options, and provide information on potential impacts on businesses, the community and government.

By making a submission you are consenting to the submission being treated as a public document.

If you do not consent to your submission being treated as a public document, you should either mark it as confidential, or specifically identify the parts that you consider confidential, and include an explanation.

Submissions will be summarised in a report following the close of the consultation period.

The department may request that a non-confidential summary of the material is also given. It is important to note that, even if your submission is treated as confidential by the department, it may still be disclosed in accordance with the requirements of the *Freedom of Information Act 1992*, or any other applicable written law.

The department reserves the right before publishing a submission to delete any content that could be regarded as racially vilifying, derogatory or defamatory to an individual or an organisation.

## 1.1 How to make a submission

This consultation process follows public consultation on the discussion paper *Waste Reform Project: Proposed approaches for legislative reform*, which was published in 2017. Feedback from consultation will inform the development of final legislative approaches to support waste reform in Western Australia.

The consultation period will be 12 weeks. Written submissions must be received by 5pm (WST) on Friday, May 15, 2020. No late submissions will be considered.

Written submissions can be lodged (preferred) at  
[consult.dwer.wa.gov.au/waste-policy/closing-the-loop](https://consult.dwer.wa.gov.au/waste-policy/closing-the-loop)

Hard copies can be mailed to:

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## 2 Introduction

The Western Australian Government is committed to reducing waste, and increasing resource recovery across the State.

The [Waste Avoidance and Resource Recovery Strategy 2030](#) (Waste Strategy 2030) was released in February 2019 and outlines approaches to minimise the production of waste and promote waste material recovery, to support Western Australia transforming to a circular economy.

On 9 August 2019, at the Council of Australian Government's meeting, state and territory leaders agreed to establish a timetable to ban the export of waste plastic, paper, glass and tyres, to support increased recycling capacity in Australia and a transition to a national circular economy.

Transitioning to a sustainable, low-waste, circular economy in Western Australia will minimise risks to human health and the environment from the impacts of waste.

It will also create opportunities to improve local recycling activities and businesses, which can support local jobs, and minimise unnecessary transport of waste.

The waste reform process and the legislative options in this paper have been developed in direct alignment with the Waste Strategy 2030 to protect human health and the environment from waste, and support a shift to a circular economy in Western Australia.

## 3 Purpose of waste reform

### 3.1 Guiding objectives

#### 3.1.1 Protecting human health and the environment from waste

Minimising the production of waste and its disposal to the environment is key for reducing risks to human health and the environment from waste.

Unregulated waste disposal can pollute our lands and waterways, creating long-term contamination of local ecosystems. Waste disposed to landfill may also produce greenhouse gas emissions from methane because of decaying organic material. Persistent waste, such as plastics, can remain in the environment long-term, and are a serious threat to marine environments (further information is contained in the [Let's not draw the short straw - reduce single-use plastics](#) issues paper). Specific wastes can also pose a higher risk to human health and the environment (e.g. heavy metals, toxic chemicals, asbestos) and therefore need careful management.

#### 3.1.2 Supporting a circular economy

The Waste Strategy 2030 outlines a vision for Western Australia to become a sustainable, low-waste, circular economy. This intention reflects approaches in other Australian jurisdictions (e.g. New South Wales, Victoria and South Australia) where policies and action plans are in development to support a circular economy for waste.

Principles for establishing a circular economy are outlined in the [2018 National Waste Policy](#), which was agreed to by Environment Ministers on 7 December 2018. Australian jurisdictions are currently working together to develop a shared understanding and approach for a national circular economy.

A circular economy is a system where the re-use and recycling of materials is a key component for “closing the loop”, with final disposal to landfill to be avoided. Waste products and materials in a circular economy are valued, and used for as long as possible to minimise pollution and resource depletion, and reduce greenhouse gas emissions.

### 3.2 High-level outcomes for waste reform

The following high-level outcomes for waste reform reflect the guiding objectives.

#### 3.2.1 Implementation of the Waste Strategy 2030

This paper outlines detailed legislative proposals which are devised to support key objectives in the Waste Strategy 2030, and the [Waste Avoidance and Resource Recovery Strategy Action Plan 2030](#) (Waste Strategy Action Plan).

The Waste Strategy 2030 contains strategies which are to be actioned by the State Government to support its objectives, including the following:

- Strategy 33 – Detect, investigate and prosecute illegal dumping.

- Strategy 34 – Review and update the regulatory framework for waste to ensure it is appropriate and reduces the environmental impacts and risks from waste management.
- Strategy 37 – Review and update data collection and reporting systems to allow waste generation, recovery and disposal performance to be assessed in a timely manner.
- Strategy 46 – Review the scope and application of the [waste levy](#) to ensure it meets the objectives of the Waste Strategy 2030 and establish a schedule of future waste levy rates, with the initial schedule providing a minimum five-year horizon.
- Strategy 47 – Review and revise regulations and policies to achieve a level playing field for industry which ensures entities that are compliant and apply best practice are not disadvantaged.

Legislative options to address these key strategies are outlined in this paper.

### **3.2.2 Promoting the re-use and reprocessing of waste for beneficial secondary use**

A leading objective of the Waste Strategy 2030 is that “Western Australians recover more value and resources from waste” which supports the concept of a circular economy. Waste diversion targets are also included in the strategy, such as increasing material recovery to 75 per cent by 2030. This waste reduction target is also a key Western Australian Government priority to [protect the environment for future generations](#).

In Western Australia, there are opportunities to improve the recovery and recycling of materials to support waste diversion targets (e.g. construction and demolition waste, food organics/garden waste, metals, and paper and cardboard waste).

To progress a circular economy and local recycling, it is important that policies and legislative frameworks support activities relating to the re-use and reprocessing of wastes that will not pose a risk to human health and the environment.

Initial steps are already underway, with amendments to the Environmental Protection Regulations 1987 (EP Regulations) in April 2018 to allow for the use of clean fill and [uncontaminated fill](#) that meets environmental and health thresholds after testing, without the need for a landfill licence or payment of the waste levy<sup>1</sup>.

The August 2019 decision by the Council of Australian Governments to [establish a timetable for banning the export of waste plastic, paper glass and tyres](#), may also support local waste re-use and recycling activities in Western Australia.

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<sup>1</sup> The department recently completed a review of the thresholds in Table 6 of the *Landfill Waste Classification and Waste Definitions 1996 (amended 2018)* in consultation with industry stakeholders.

### 3.3 Supporting strategies for waste reform

The following supporting strategies have been identified as mechanisms to fulfil the above high-level outcomes.

#### 3.3.1 Eliminating illegal waste disposal activities

The department undertakes compliance and enforcement programs to monitor illegal waste disposal in Western Australia.

Illegal waste disposal activities include the dumping of waste (e.g. rubbish, organic material, asbestos) in public parks, waterways or private properties in Western Australia without approval.

These activities not only pose a risk to human health and the environment, but can be avenues for avoiding the payment of the waste levy.

Offences relating to illegal waste disposal are primarily contained in the *Environmental Protection Act 1986* (the EP Act) (e.g. section 49A Dumping of waste). Additional compliance and enforcement measures under the EP Act may be required to minimise a broader range of illegal waste activities.

Such changes would support an equitable market for local businesses who lawfully conduct their business (e.g. licensed landfills, waste transporters) and can be financially disadvantaged by illegal waste disposal activities.

#### 3.3.2 Minimising waste stockpiling

Since increases to the rate of the waste levy were implemented in 2015, reported landfilling of construction and demolition (C&D) waste has significantly declined.

For example, the 2016-17 landfill volume for C&D waste is only about 10 per cent of the 2013-14 reported volume. During this same period, the amount of C&D waste that is being recycled each year has remained constant.

One explanation for the reported reduction in landfilling of C&D waste in the Perth metropolitan region is excessive stockpiling of waste. Stockpiling of waste at landfills, or waste storage premises, can result where there is no perceived commercial market for the waste material, where waste is being stored for anticipated future beneficial use, or where there is an intent to avoid the payment of the waste levy through landfill disposal.

The long-term stockpiling of waste can undermine the establishment of a circular economy, by removing recoverable waste from future use as a product in Western Australia.

In addition, excessive waste stockpiling can create human health and environmental risks (e.g. fires, dust, odour, vermin) and a financial risk to the Government if waste stockpiles are abandoned and require removal.

### 3.3.3 Improve the implementation of the waste levy

The waste levy is an economic instrument to reduce the disposal of waste to landfill by establishing a cost for landfill disposal for waste generated in the Perth metropolitan area.

In accordance with the *Waste Avoidance and Resource Recovery Act 2007* (WARR Act), each year the Minister for Environment must allocate not less than 25 per cent of the forecast levy amount to the Waste Avoidance and Resource Recovery Account (WARR Account). The funds in the WARR Account are utilised to support a range of waste and environmental purposes in Western Australia, such as the [Community Grants Scheme](#) projects and [Community and Industry Engagement](#) projects to support recycling and other waste-related infrastructure improvements.

Ensuring the waste levy is effectively applied, and there are minimal opportunities for levy avoidance and evasion, will ensure the levy remains a relevant economic lever to reduce landfill disposal.

### 3.3.4 Strengthening and streamlining waste legislation in Western Australia

In Western Australia, waste is regulated under two separate legislative frameworks. Firstly, waste policy and the waste levy are primarily regulated under the WARR Act and the *Waste Avoidance and Resource Recovery Levy Act 2007* (WARR Levy Act).

Secondly, the environmental protection regime for waste management is established under the EP Act.

This legislative approach is different to other jurisdictions, where one legislative instrument is established for waste policy, the waste levy and environmental protection (e.g. NSW, Victoria). To ensure the two legislative frameworks in Western Australia function effectively requires careful consideration.

Strengthening and streamlining legislation relating to waste under the two legislative frameworks is required to ensure there is a consistent approach which reflects the objectives of the *Waste Strategy 2030*, and that waste is regulated to minimise risks to human health and the environment.

## 4 Scope of paper

This paper builds on the legislative proposals outlined in the discussion paper *Waste Reform Project: Proposed approaches for legislative reform* (Waste Reform Paper 2017) which was published in August 2017, and introduces new proposals to address the guiding objectives outlined in Chapter 3.

### 4.1 Waste Reform Paper 2017

The [Waste Reform Paper 2017](#) identified multiple proposals to improve waste management and environmental protection in Western Australia.

A total of 37 submissions on the discussion paper were received. A [consultation summary paper](#) was published in July 2018 outlining stakeholder feedback and supporting further consultation on the proposals.

This paper provides further detail on legislative proposals outlined in that paper, including:

- ensuring the EP Act aligns with objectives and strategies under the WARR Act, WARR Levy Act and Waste Strategy 2030
- improving terminology under the EP Act and WARR Levy Act (and their regulations) to enhance waste minimisation and curtail levy avoidance
- streamlining landfill licensing categories in the EP Regulations, and redefining their scope to clarify what constitutes waste disposal to land
- redefining solid waste storage licensing categories to clarify their purpose
- minimising the stockpiling of waste at waste storage premises
- improving waste tracking in Western Australia to ensure waste is being properly disposed of, and the waste supply chain can be monitored

### 4.2 New proposals for waste reform

To support waste reform objectives, new detailed legislative proposals are proposed, including:

- reviewing the waste levy exemptions under the Waste Avoidance and Resource Recovery Levy Regulations 2008 (WARR Levy Regulations)
- clarifying used tyre storage categories in the EP Regulations, and their role in relation to the waste levy
- simplifying solid waste licensing categories under the EP Regulations to form one licensing category for storage, sorting and reprocessing of solid waste
- new compliance and enforcement mechanisms to minimise unlawful waste disposal
- improving the administration of the waste levy return framework via a notice of assessment process.



## 4.3 Out of scope

The department is progressing a number of other waste reforms to support the objectives of the Waste Strategy 2030. These reforms have not been discussed in this paper as they will be (or have been) subject to separate consultation processes.

Concluded, current and upcoming waste reform consultations include:

- amendments to the Waste Avoidance and Resource Recovery Regulations 2008 (WARR Regulations) to require recordkeeping and reporting of waste and recycling data from local governments, waste recyclers and licensees of major regional landfills
- Western Australia's Container Deposit Scheme – Containers for Change
- review of the Environmental Protection (Controlled Waste) Regulations 2004
- review of the uncontaminated fill thresholds in Table 6 of the *Landfill Waste Classification and Waste Definitions 1996 (as amended 2018)*
- proposed amendments to the WARR Levy Regulations to require the use of weighbridges for Category 63, 64 and 65 landfill premises to calculate leviable waste
- *Waste not, want not – valuing waste as a resource* – Consultation to inform development of a legislative framework for waste-derived materials
- a review of the scope and application of the waste levy to ensure it meets the objectives of Waste Strategy 2030, which includes consideration of the schedule of waste levy rates, and the geographical scope of the levy

The Waste Authority is also consulting with local governments on a revised [Better Bins](#) program for food organics and garden organics (FOGO) for the introduction of the three-bin kerbside collection system across the Perth and Peel region by 2025.

Consultation has also commenced on amendments to [modernise the EP Act](#), to protect human health and the environment, and ensure sustainable development can occur for the benefit of all Western Australians.

Please note that the feedback received from the above consultation processes will be considered during this project, to ensure there is alignment and consistency between waste reform initiatives and other key legislative projects.

Further information on departmental projects (including links to previous and current consultation papers) is available at [dwer.wa.gov.au/consultation](https://dwer.wa.gov.au/consultation).

## 4.4 Regulatory Impact Assessment (RIA)

This paper is a Consultation Regulatory Impact Statement. Feedback on the legislative options in this paper will provide information for determining final legislative approaches for waste reform.

Please note that Chapters 7, 8, 14 and 15 outline a preferred legislative option to support improvements to waste management and the waste levy in Western

Australia. Consultation feedback on these preferred options will provide key information on the final legislative approach.

For Chapters 9, 10, 11, 12 and 13, consultation feedback on the proposed legislative options will guide the identification of a preferred and final legislative option.

## 5 Waste legislative framework in Western Australia

The waste levy supports the Waste Strategy 2030 and is the key economic lever to reduce the disposal of waste to landfill, and increase resource recovery. A proportion of the collected levy funds is reinvested in the community to support local waste reduction programs.

The terms “landfill levy” under the EP Act and WARR Regulations, and “waste levy” under the Waste Strategy 2030, both refer to the same levy on waste. For the purposes of this paper, the terms “levy” and “waste levy” are used interchangeably to refer to the “waste levy” contemplated by the Waste Strategy 2030.

The waste levy framework is established under section 5 of the WARR Levy Act which states the levy is imposed in respect of waste received at “disposal premises”.

“Disposal premises” under the WARR Levy Act are premises used for the purpose of receiving waste and in respect of which the occupier is required to hold a licence under the EP Act (whether or not such a licence is in force).

Section 6 of the WARR Levy Act makes either the holder of the licence in respect of disposal premises, or an occupier required to hold such a licence, liable to pay the levy amount imposed in respect of waste received at the disposal premises.

Under regulation 4 of the WARR Levy Regulations, the waste levy is payable for waste received at “landfill premises” in the Perth metropolitan region, and waste collected within the Perth metropolitan region that is received at “landfill premises” in regional areas, unless an exemption applies.

Landfill premises are licensed landfills or premises that would be a licensed landfill if the occupier held a licence required under the EP Act.

Licensed landfills are premises that have been issued a licence for Category 63 (inert landfills), 64 (putrescible landfills) or 65 (Class IV secure landfills) premises, as described in Schedule 1 of the EP Regulations, where waste is accepted for burial.

Licensed landfill premises are classified by reference to landfill design and waste criteria in the department’s policy guidance [Landfill Waste Classifications and Waste Definitions 1996](#) (as amended 2018) (the Waste Definitions).

Further information on the legislative framework for waste management in Western Australia (and in other jurisdictions) is detailed in the Waste Reform Paper 2017 available at [dwer.wa.gov.au/consultation](http://dwer.wa.gov.au/consultation).

## 6 Summary of waste reform proposals

The following table is a summary of the legislative proposals discussed in this paper to address key issues, and their relationship to the guiding objectives, outcomes and strategies for waste reform in Western Australia. Potential cost impacts resulting from the proposed reforms are also highlighted. Please note that further detailed information on the legislative options is contained in the chapters of this consultation paper.

### Chapter 7: Aligning the EP Act with waste avoidance and resource recovery objectives

Detailed legislative options	Guiding objectives	Waste reform outcomes	Supporting strategies for waste reform				Potential cost impacts
	<b>1. Protecting human health and the environment from the impacts of waste</b> <b>2. Supporting a circular economy</b>	<b>1. Implementation of the Waste Strategy 2030</b> <b>2. Promoting the re-use and reprocessing of waste for beneficial secondary use</b>	Eliminating illegal waste disposal activities	Minimising waste stockpiling	Improving the implementation of the waste levy	Strengthening and streamlining waste regulation in Western Australia	
Option 1: No Changes to the EP Act	No benefit – may be difficult to issue licence conditions relating to the Waste Strategy 2030 purposes and circular economy (e.g. implementing the levy)	No benefit	No benefit	No benefit – may be difficult to issue licence conditions for waste stockpiling related to levy avoidance	No benefit	No benefit	No change
<b>Preferred Option</b> Option 2: Amend the EP Act to incorporate waste avoidance and resource recovery objectives	Likely benefit – primarily supports guiding objective 2	Likely benefit – Waste Strategy 2030 can be a key consideration for the licensing of premises, and setting of conditions	Likely benefit – licensing conditions or enforcement measures may be developed to address illegal waste operations	Likely benefit – licence conditions may be attached to licences to minimise waste stockpiling related to levy avoidance	Likely benefit	Likely benefit – aligns with other jurisdictions; environmental and waste policy objectives are considered together	Potential cost impacts for industry (e.g. new licence conditions to address waste management objectives)

## Chapter 8: Clarifying the application of the waste levy

Detailed legislative options	Guiding objectives	Waste reform outcomes	Supporting strategies for waste reform				Potential cost impacts
	1. Protecting human health and the environment from the impacts of waste 2. Supporting a circular economy in Western Australia	1. Implementation of the Waste Strategy 2030 2. Promoting the re-use and reprocessing of waste for beneficial secondary use	Eliminating illegal waste disposal activities	Minimising waste stockpiling	Improving the implementation of the waste levy	Strengthening and streamlining waste regulation in Western Australia	
Option 1: Maintain existing terminology in waste legislation	No benefit – existing terminology may support large-scale waste stockpiling. This does not support guiding objectives 1 or 2	No benefit – existing terminology may undermine the effective implementation of Waste Strategy 2030	No benefit	No benefit – long-term stockpiling may be considered inappropriate waste disposal	No benefit – current terminology can support levy avoidance	No benefit – current terminology can undermine effective waste management	No change
<b>Preferred option</b> Option 2: Amend the WARR Levy Regulations and WARR Levy Act – relevant waste premises are to pay the levy for waste they “receive” (third party waste)	Likely benefit – primarily supports guiding objective 2	Likely benefit – may reduce waste stockpiling which will support waste re-use and the Waste Strategy 2030 objectives	No benefit – proposed changes relate to the lawful application of the levy	Likely benefit – changes may reduce waste stockpiling at waste disposal premises	Likely benefit – may reduce waste stockpiling; levy will not be restricted to waste premises which are used <b>for the purpose</b> of receiving waste; waste “received” will only apply to third party waste	Likely benefit – changes to WARR Levy Act and WARR Levy Regulations will clarify where the levy applies, and align with other jurisdictions	Potential cost impacts for waste industry – levy payable on waste received at defined waste premises, not when it is received and disposed of
Option 3: Amend the WARR Levy Regulations and WARR Levy Act – levy to apply to all waste deposited at relevant waste premises	Likely benefit – as with Option 2	Likely benefit – as with Option 2	No benefit – as with Option 2	Likely benefit – creates incentive to reduce waste stockpiling at waste premises, including on-site generated waste	Likely benefit – as with Option 2 – in addition, all waste deposited at waste premises (e.g. landfills) will be subject to the levy, including waste generated on-site	Likely benefit – a consistent approach where waste deposited to land is regulated, and subject to the levy, including waste generated on-site	Potential cost impacts for waste industry – levy payable on waste deposited at waste premises – waste generated on-site may become subject to the levy

## Chapter 9: Modernising landfill licensing and levy liability for waste disposal (no preferred option identified)

Detailed legislative options	Guiding objectives	Waste reform outcomes	Supporting strategies for waste reform				Potential cost impacts
	1. Protecting human health and the environment from the impacts of waste 2. Supporting a circular economy in WA	1. Implementation of the Waste Strategy 2030 2. Promoting the re-use and reprocessing of waste for beneficial secondary use	Eliminating illegal waste disposal activities	Minimising waste stockpiling	Improving the implementation of the waste levy	Strengthening and streamlining waste regulation in WA	
Option 1: Maintain existing five landfill licensing Categories (63, 64, 65, 66, 89) and descriptions – waste is accepted for burial	No benefit – existing licensing arrangements are maintained	No benefit	No benefit	No benefit – may support excessive stockpiling at landfills, or waste storage premises; depositing of waste to land is not appropriately licensed as a landfill	No benefit – the waste levy will only apply to landfills where waste is “accepted for burial”. The levy may not apply to other waste disposal to land activities	No benefit – Western Australia has five landfill licensing categories, when other jurisdictions have one. Creates a potentially complex regime	No change
Option 2: Three landfill Categories (63, 66 and combined category for 64, 65 and 89) – expansion of licensing categories to include other waste disposal activities	Likely benefit – all putrescible landfills (e.g. Category 89 sites) are licensed to protect human health and the environment (primarily supports guiding objective 1)	Likely benefit – supports outcome 1 – strengthens the legislative framework to protect human health and the environment from waste	No benefit	Likely benefit – depositing of waste to land is no longer restricted to burial in the ground. May apply to forms of stockpiling where waste is spread or deposited on land	Likely benefit – the waste levy will apply where waste is deposited to land via other methods, and not just burial e.g. disposing, spreading, and ploughing	Likely benefit – streamlines landfill licensing categories, simplifies the landfill licensing system, clarifies waste disposal to land is not just burial at landfill	Potential cost impacts for industry – Category 89 landfills may require a licence (not a registration); waste premises may require a licence for depositing waste to land for disposal (not just landfilling)
Option 3: Single category – Merge five landfill categories (63, 64, 65, 66, 89) – applies to other waste disposal to land activities	Likely benefit – as with Option 2	Likely benefit – as with Option 2	No benefit	Likely benefit – as with Option 2	Likely benefit – as with Option 2	Likely benefit – in addition to Option 2, aligns Western Australia with licensing in other jurisdictions with only one landfill category; streamlining of Schedule 1 licensing categories	Potential cost impacts – as with Option 2

## Chapter 10: Simplifying the solid waste licensing categories (no preferred option identified)

Detailed legislative options	Guiding objectives	Waste reform outcomes	Supporting strategies for waste reform				Potential cost impacts
	3. Protecting human health and the environment from the impacts of waste 4. Supporting a circular economy in WA	1. Implementation of the Waste Strategy 2030 2. Promoting the re-use and reprocessing of waste for beneficial secondary use	Eliminating illegal waste disposal activities	Minimising waste stockpiling	Improving the implementation of the waste levy	Strengthening and streamlining waste regulation in WA	
Option 1: Maintain existing category descriptions	No benefit – potential ongoing confusion regarding the regulatory purpose of Categories 61A and 62 (e.g. storage of waste, discharge to land)	No benefit	No benefit	No benefit – the current category descriptions have overlapping activities – both can store waste, which may result in stockpiling	No benefit – Category 61A facilities (solid waste recycling premises) are not subject to the levy, and can apply waste to land	No benefit – existing category descriptions overlap, creating regulatory complexity	No change
Option 2: Revisions to categories (61A and 62); remove discharge of waste to land under 61A – storage of waste restricted to 62	Likely benefit – changes to solid waste recycling and reprocessing facilities (61A) to support less waste storage, more re-use activities, which would assist a circular economy	Likely benefit – supports outcomes 1 and 2	No benefit	Likely benefit – the revised licensing categories clarify that storage of waste can only occur at category 62	Likely benefit – minimising storage of waste at Category 61A and discharge onto land may support the waste levy	Likely benefit – Categories 61A and 62 are redefined to clarify their purpose and remove overlapping activities	Potential cost impacts for industry and government – licence amendments will be required
Option 3: Merging solid waste categories (13, 61A and 62) and used tyre storage categories (56, 57)	Likely benefit – as with Option 2 – additional focus on improving used tyre storage licensing to protect human health and the environment	Likely benefit – streamlines solid waste categories, and removes duplication – greater focus on used tyre storage to improve re-use and recycling for a beneficial use	Likely benefit – improving the regulation of solid waste and used tyres may reduce illegal waste disposal (e.g. dumping)	Likely benefit – potential for increased regulation of tyre storage premises and stockpiling	Likely benefit – as with Option 2	Likely benefit – Categories 13, 61A and 62 are merged, which streamlines solid waste licensing; the revised used tyre storage category aligns with other jurisdictional approaches	Potential cost impacts for industry and government – licence amendments will be required; expanding the regulation of tyres may result in new legal requirements and costs

## Chapter 11: Minimising stockpiling at waste storage premises (no preferred option identified)

Detailed legislative options	Guiding objectives	Waste reform outcomes	Supporting strategies for waste reform				Potential cost impacts
	1. Protecting human health and the environment from the impacts of waste 2. Supporting a circular economy in WA	1. Implementation of the Waste Strategy 2030 2. Promoting the re-use and reprocessing of waste for beneficial secondary use	Eliminating illegal waste disposal activities	Minimising waste stockpiling	Improving the implementation of the waste levy	Strengthening and streamlining waste regulation in WA	
Option 1: No levy for stockpiling at waste storage premises	No benefit – waste stockpiling at waste storage premises does not support a transition to a low-waste, circular economy Long-term, large-scale waste stockpiles are a potential health and environmental risk	No benefit – there is no financial incentive for waste storage premises to remove their waste for re-use and recycling purposes	No benefit	No benefit – long-term waste stockpiling can be an environmental health risk (e.g. fires, contamination of land)	No benefit – waste stockpiling at waste storage premises is a potential mechanism for levy avoidance	No benefit – current legislative approach is not aligned with waste regulation in other jurisdictions	Potential negative cost impacts for government – undermine the collection of the waste levy
Option 2: Levy liability for solid waste facilities, depots and used tyre premises (Categories 56, 57, 61A, 62) that store waste for over 12 months, unless the processing of the waste has commenced, and it will be sold or used	Likely benefit – supports waste being recovered and re-used for a circular economy	Likely benefit – supports Waste Strategy 2030 objectives, primarily the re-use and reprocessing of waste	No benefit – expanding the scope of the levy may even increase illegal waste operations	Likely benefit – a levy for long-term stockpiling may minimise stockpiles at waste storage premises	Likely benefit – minimises waste stockpiling as a method to circumvent the levy	Likely benefit – strengthening waste legislation to align with other jurisdictions (e.g. NSW)	Potentially significant cost impacts for waste storage premises who may be subject to the levy; expected government cost impacts from monitoring new requirements; potential positive impacts for local recycling industry if they can access more waste



Option 3: Upfront levy payment for waste facilities outlined in Option 2; applying for levy exemptions limited to 12 months from when the waste is received or deposited at site	Likely benefit – as with Option 2	Likely benefit – as with Option 2	No benefit – as with Option 2	Likely benefit – as with Option 2	Likely benefit – as with Option 2	Positive effect – as with Option 2; upfront levy payment may be simpler to administer, and to determine levy exemptions	Potentially significant cost impacts – as with Option 2
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## Chapter 12: Waste Levy Exemptions (no preferred option identified)

Detailed legislative options	Guiding objectives	Waste reform outcomes	Supporting strategies for waste reform				Potential cost impacts
	1. Protecting human health and the environment from the impacts of waste 2. Supporting a circular economy in WA	1. Implementation of the Waste Strategy 2030 2. Promoting the re-use and reprocessing of waste for beneficial secondary use	Eliminating illegal waste disposal activities	Minimising waste stockpiling	Improving the implementation of the waste levy	Strengthening and streamlining waste regulation in WA	
Option 1: Maintain existing exemptions	No benefit – the levy exemptions may not adequately address health and environmental risks	No benefit – current levy exemptions may not support greater re-use, reprocessing and recycling of waste	No benefit	No benefit	No benefit – select levy exemptions are unclear and impractical, creating difficulties with levy calculations	No benefit – exemptions can be vague, and can create confusion for waste industry	No change
Option 2: Key changes to existing exemptions for waste disposal; retrospective time limit for exemptions (24 months); no exemptions if CEO calculates the leviable waste	Likely benefit – key changes support objectives 1 and 2	Likely benefit – key changes will improve the exemptions, and may support greater re-use and recycling of waste	No benefit	Likely benefit – encourages timely application for waste exemptions relating to waste stockpiles	Likely benefit – financial incentive for licensees to calculate or estimate their own levy liability, and in a timely manner for exemptions	Likely benefit – exemptions are amended to be clearer for industry, and provide more certainty	Potential cost impacts for industry – may increase and/or decrease the waste that is levy exempt for select activities
Option 3: Revised exemptions (Option 2), and new transport levy exemptions (limited to 12 months)	Likely benefit – proposed levy exemptions will create an incentive to shift waste for re-use and reprocessing for a circular economy	Likely benefit – proposed levy exemptions may encourage the transportation of waste from landfills for re-use and reprocessing in a timely manner	No benefit	Likely benefit – transport levy exemptions may support the timely removal of waste stockpiles at landfill premises for re-use and reprocessing	Likely benefit – as with Option 2; improving the levy exemptions under regulation 5(1)(b) of the WARR Levy Regulations to ensure the levy is a financial incentive for waste re-use	Likely benefit – as with Option 2; aligns with other jurisdictional approaches for levy exemptions	Potential cost impacts for industry – as with Option 2; 5(1)(b) levy exemptions to be limited to 12 months from when the waste is received or deposited at site

## Chapter 13: Improving solid waste reporting from waste facilities (no preferred option identified)

Detailed legislative options	Guiding objectives	Waste reform outcomes	Supporting strategies for waste reform				Potential cost impacts
	1. Protecting human health and the environment from the impacts of waste 2. Supporting a circular economy in WA	1. Implementation of the Waste Strategy 2030 2. Promoting the re-use and reprocessing of waste for beneficial secondary use	Eliminating illegal waste disposal activities	Minimising waste stockpiling	Improving the implementation of the waste levy	Strengthening and streamlining waste regulation in WA	
Option 1: Maintain existing waste reporting approach	No benefit – there is limited waste data reported to determine if waste is being re-used and reprocessed to support a circular economy in WA; limited waste data means waste could be disposed of inappropriately, creating risks to human health and the environment	No benefit – there is currently limited waste data to measure the effectiveness of the Waste Strategy 2030, and its targets	No benefit – limited waste reporting at waste facilities can hinder efforts to identify illegal waste operations (illegal dumping) and stockpiling	No benefit – limited waste reporting at waste facilities makes it difficult to determine where waste is being stockpiled	No benefit – without effective waste reporting, there are potential opportunities for levy avoidance (stockpiling or disposal at rural sites)	No benefit – any expansion of the levy to stockpiling activities (Chapter 11) would require comprehensive waste tracking and reporting	No change
Option 2: Mass Balance Reporting at waste premises – within 800 km of Perth metropolitan region	Likely benefit – will greatly improve the understanding of waste movement in WA.	Likely benefit – can report on Waste Strategy 2030 targets in further detail; addresses a headline strategy in Waste Strategy 2030 (review and update data collection and reporting systems)	Likely benefit – may reduce the disposal of Perth metropolitan waste in rural areas, or via illegal disposal	Likely benefit – will increase monitoring of waste premises that stockpile large volumes of waste	Likely benefit – waste reporting within 800 km of Perth will improve oversight of the levy; monthly reporting for waste facilities subject to the levy	Likely benefit – introducing mass balance reporting will provide information on the effectiveness of the waste legislative framework in WA	Potentially significant cost impacts for specific industry and government – establishing new online reporting protocol for waste data
Option 3: Mass Balance Reporting at waste premises – statewide approach	Likely benefit – as with Option 2 – statewide waste information will provide information on the state of the “circular economy” in WA	Likely benefit – as with Option 2 – greater understanding of Waste Strategy 2030 objectives and targets – reflects a “whole of state” approach for waste management	Likely benefit – as with Option 2	Likely benefit – as with Option 2	Likely benefit – waste reporting across WA from key waste facilities will improve oversight of the entire levy	Likely benefit – as with Option 2	Potentially significant cost impacts – as with Option 2

## Chapter 14: Compliance and enforcement measures for waste

Detailed legislative options	Guiding objectives	Waste reform outcomes	Supporting strategies for waste reform				Potential cost impacts
	1. Protecting human health and the environment from the impacts of waste 1. Supporting a circular economy in WA	1. Implementation of the Waste Strategy 2030 2. Promoting the re-use and reprocessing of waste for beneficial secondary use	Eliminating illegal waste disposal activities	Minimising waste stockpiling	Improving the implementation of the waste levy	Strengthening and streamlining waste regulation in WA	
Option 1: No changes to the EP Act	No benefit – existing EP Act offences and compliance measures may not be sufficient to protect human health and environment from waste	No benefit – existing EP Act offences and compliance measures may not support strategies in the Waste Strategy 2030	No benefit – existing EP Act offences and compliance measures may not be sufficient to deter illegal waste activities	No benefit	No benefit – existing EP Act offences and compliance measures may not deter a range of levy avoidance activities	No benefit – current EP Act offences may not be appropriate for emerging illegal waste disposal activities; offences not aligned with other jurisdictions	Potential negative cost impacts for waste industry that comply with their legal requirements; undermines the collection of the waste levy by government
<b>Preferred option</b> Option 2: New offence for unlawful waste disposal; Waste Restriction Notices; GPS tracking of waste transport vehicles; new penalties for repeat offenders; new penalties for excessive waste stockpiles; CEO notices for waste transport record-keeping and video monitoring at waste facilities; new powers to identify persons in charge of vehicles; new infringement reviews and more	Likely benefit – minimise unlawful disposal of waste; greater protections for human health and the environment from waste impacts	Likely benefit – support objectives and strategies in Waste Strategy 2030 (Strategies 33 and 47)	Likely benefit – may provide greater deterrence for illegal levy avoidance activities; CEO notices for GPS tracking, record keeping, and video monitoring will assist enforcement activities relating to illegal waste disposal	Likely benefit	Likely benefit – reducing illegal waste disposal may improve the implementation of the waste levy	Likely benefit – legislation will further align with waste disposal compliance measures and offences in other jurisdictions	Potential positive impacts for waste industry operating lawfully – financially undermined by illegal waste disposal activities

## Chapter 15: Improving the administration and collection of the waste levy

Detailed legislative options	Guiding objectives	Waste reform outcomes	Supporting strategies for waste reform				Potential cost impacts
	2. Protecting human health and the environment from the impacts of waste 2. Supporting a circular economy in WA	1. Implementation of the Waste Strategy 2030 2. Promoting the re-use and reprocessing of waste for beneficial secondary use	Eliminating illegal waste disposal activities	Minimising waste stockpiling	Improving the implementation of the waste levy	Strengthening and streamlining waste regulation in WA	
Option 1: Maintain existing levy return system	No benefit	No benefit	No benefit	No benefit	No benefit – no current legislative mechanism for the CEO to issue a formal notice in response to a levy return	No benefit	No change
<b>Preferred option</b> Option 2: Reforming the waste levy return framework	Likely benefit – may improve the regulation of waste (and the implementation of the waste levy) which supports a circular economy	Likely benefit – supports the implementation of the Waste Strategy 2030	Likely benefit – improves the formal audit step for waste levy returns, to monitor compliance	No benefit	Likely benefit – improving the levy administration and collection process should benefit the implementation of the waste levy	Likely benefit – new requirements may strengthen the administrative process for levy returns	Potential cost impacts for government – additional administrative steps to process levy collection

## 7 Aligning the EP Act with waste avoidance and resource recovery objectives

### 7.1 Key issues to address

#### 7.1.1 Objectives under section 4A of the EP Act

Section 4A of the EP Act outlines the object and principles of the Act. Principle 5 (waste minimisation) states that “All reasonable and practicable measures should be taken to minimise the generation of waste and its discharge into the environment”.

Other than Principle 5, the EP Act does not reference the waste hierarchy, the circular economy or key waste resource and recovery objectives in section 4A.

In contrast, the WARR Act references objectives under the EP Act, which ensures environmental protection principles are considered under that legislative framework.

The approach is inconsistent with legislative approaches in NSW, Victoria and SA, where key waste objectives have been integrated into environmental protection legislation.

#### 7.1.2 Licensing under Part V Division 3 of the EP Act

Currently, the EP Act does not expressly state that the CEO can have regard to the WARR Act objectives or the Waste Strategy 2030 when considering the granting or refusing of licences, or setting licence conditions under Part V Division 3 of the EP Act.

### 7.2 Consultation feedback

Key points raised during the 2017 consultation include:

- General support for amendments to the EP Act to incorporate waste avoidance and resource recovery objectives.
- General support for waste avoidance and resource recovery objectives to be a relevant consideration for licensing under Part V Division 3 EP Act, and licence conditions reflecting the purposes of the WARR Act and the Waste Strategy 2030.
- If licence conditions are linked to the WARR Act objectives, further information is requested on how they will be implemented in a consistent and transparent manner.
- Some respondents did not support the EP Act changes, as they consider that the legislation already provides sufficient powers relating to waste management, and there is potential for unintended consequences.

## 7.3 Proposed legislative options

### 7.3.1 Option 1: No changes to the EP Act

Under Option 1, the EP Act will not be amended to incorporate waste avoidance and resource recovery objectives (waste objectives).

The lack of alignment between objectives in the WARR legislative framework, Waste Strategy 2030 and the EP Act will remain. This may undermine efforts to improve waste management and disposal under the EP Act through the licensing framework, and other related activities (such as Part IV assessments). It may be difficult to issue licence conditions to address important waste management issues, such as stockpiling and diverting waste from landfill for re-use and recycling.

No changes to the EP Act will not support the implementation of the Waste Strategy 2030, and its targets.

### 7.3.2 Option 2: Amend the EP Act to incorporate waste avoidance resource recovery objectives.

Option 2 is the preferred legislative approach to support waste reform in Western Australia to address the key issues identified.

Under Option 2, the following amendments will be progressed to strengthen the relationship between the EP Act, WARR Act and Waste Strategy 2030<sup>2</sup>:

- Amend section 4A of the EP Act to include waste objectives that are relevant to the WARR Act and the Waste Strategy 2030.
- Ensure waste objectives are discretionary considerations in assessments and the setting of implementation conditions under Part IV of the EP Act.
- Amend Part V Division 3 of the EP Act to permit the CEO to have regard to the objects of the WARR Act and Waste Strategy when considering the granting of licences, or setting licence conditions.
- Amend sections 62 and 62A of the EP Act to permit licence conditions to be imposed for the purposes of achieving the objectives of the WARR Act and the Waste Strategy 2030.

The amendments will clarify that licence conditions can be developed to require the management of waste in accordance with the waste hierarchy. Licence conditions may also be developed to (for example) establish waste stockpiling limits; support the separation, re-use and recycling of waste; ban landfills from accepting specific wastes or require the transport of waste to specified waste facilities.

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<sup>2</sup> Although the current Waste Strategy 2030 is included in this paper, any proposed amendments to progress Option 2 would refer to the current Waste Strategy, as updated from time to time, as developed under the WARR Act.

Licence conditions may also be developed to require periodic waste data reporting, to assess material flows between waste facilities, or to regularly report on stockpile levels.

Improving the relationship between the WARR framework and the environmental protection regime in the EP Act will confirm that premises licensed under the EP Act are regulated for the protection of human health and the environment, including waste management. Including waste management considerations in licensing conditions also supports the implementation of the Waste Strategy 2030.

The department intends to implement licence conditions relating to waste management consistently and appropriately, which will be supported by new regulatory guidance and the department's conditions library.

Licence conditions for waste-related purposes would be considered for existing and new licences under Part V Division 3 following the passing of the amendments.

### **Chapter 7 - Consultation questions**

1. If you are the operator of a licensed waste facility under the EP Act, please provide feedback on Options 1 and 2. Please describe potential benefits or costs from these changes, and any unintended consequences which may occur.
2. If Option 2 is progressed, what support, guidance or infrastructure will be required by waste stakeholders to implement new licence conditions?
3. Are there any other policy approaches which will support better alignment between the EP Act, WARR legislation and the Waste Strategy 2030?



## 8 Clarifying the application of the waste levy

### 8.1 Key issues to address

#### 8.1.1 Disposal premises

Under section 5 of the WARR Levy Act, a levy is imposed on waste received at “disposal premises”. The definition of “disposal premises” in the WARR Levy Act is restricted to premises which are used **for the purpose** of receiving waste and in respect of which the occupier is required to hold a licence under the EP Act. This definition may result in ambiguity as to whether the premises is used “for the purpose” of receiving waste (e.g. development sites, marinas).

#### 8.1.2 Receiving waste at disposal premises

Under section 5 of the WARR Levy Act, the levy is imposed in respect of waste “received at disposal premises”. The term “received” implies waste must be delivered, bestowed or given by a third party to be subject to the levy.

The levy does not currently apply to waste generated on-site by a licensee which is stored or disposed to landfill at the same premises.

#### 8.1.3 Waste received for disposal to landfill

Under the WARR Levy Regulations, the licensee or occupier of a landfill licensed under Category 63, 64 or 65 of the EP Act is liable to pay the levy for waste that is received for disposal to landfill<sup>3</sup>, or for waste received at the landfill **and** disposed of to landfill<sup>4</sup>. Waste that is stored on-site, or is not disposed to landfill, will generally not create levy liability. This creates opportunities for levy avoidance through waste stockpiling.

### 8.2 Consultation feedback

Key points raised during the 2017 consultation process include:

- Proposed amendments to definition of terms used in the WARR Levy Act (for example “disposal premises”, “receive”) may lead to offshoring of certain

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<sup>3</sup> Under the WARR Levy Regulations, this applies to Category 64 and 65 licensed landfills with a weighbridge, if no exemption from using the weighbridge applies.

<sup>4</sup> Under the WARR Levy Regulations, this applies to (a) Category 63 landfills, (b) Category 64 and 65 licensed landfills without a weighbridge and (c) Category 64 and 65 landfills with a weighbridge, when an exemption from using the weighbridge applies.

processes, industry closure, reduced beneficial re-use of waste, reduced expenditure on research and development, and increased illegal dumping.

- Comments indicating the waste levy should target diversion of wastes that can be technically and economically re-used, recycled or recovered.
- Select respondents suggested waste levy exemptions should be considered in response to proposed legislative changes – for example, exemptions for low-risk inert materials, internal waste movement between company sites and onsite generation and disposal of waste by a company.
- Select respondents suggested amendments may be required to the definitions of “waste facility”, “waste service” and “licensed landfill” under WARR legislation to implement the changes.
- Concerns that if the definition of the term “received” is amended to “accepted, deposited, received or delivered” the levy may be payable twice.

## 8.3 Proposed legislative options

### 8.3.1 Option 1: Maintain terminology in WARR Levy Act and WARR Levy Regulations

Under Option 1, existing waste levy terminology is maintained, which may allow landfills to avoid the levy by storing waste on-site and not disposing of it appropriately. In addition, where waste is generated on-site and disposed to a private landfill (Category 63, 64 and 65 premises), there may be no levy liability.

Premises who are landfilling as an incidental part of their activities at a site may also not be required to pay the levy (e.g. marinas, development sites).

This approach does not support a move to a low waste society in Western Australia, and may undermine targets outlined in the Waste Strategy 2030.

### 8.3.2 Option 2: Amend WARR Levy Act and WARR Levy Regulations - Waste “received” at relevant waste premises

Option 2 is the preferred legislative approach to support waste reform in Western Australia to address the key issues identified.

Under Option 2, the licensee of a relevant waste premises<sup>5</sup> that “receives” leviable waste will be required to pay the levy. The waste will not need to be disposed of to landfill to attract the levy. This will address issues with landfills accepting waste at

<sup>5</sup> For the purposes of this consultation paper, the term “relevant waste premises” has been included, because of the potential changes to the descriptions of the categories of licensed premises to which the levy will apply in Chapters 9 and 10.

their premises, and not paying the levy for waste that is being stored indefinitely on-site.

In addition, it is proposed the definition of “disposal premises” be amended under the WARR Levy Act to reduce ambiguity regarding the sites it applies to.

Disposal premises will be defined to mean premises at which waste is received, and in respect of which the occupier is required to hold a licence, whether or not such a license is in force.

Licensing categories under the EP Regulations that amount to relevant waste premises will be defined in legislation. These are currently landfills licensed under Category 63, 64 and 65; however, those categories may change (see Chapters 9 and 10).

This proposal is based on the approach under NSW legislation for waste disposal premises subject to the waste levy.

### **8.3.3 Option 3: Amend WARR Levy Act and WARR Levy Regulations - Waste “deposited” at relevant waste premises**

Option 3 expands on the proposals in Option 2 by allowing the levy to be applied to waste that is generated on-site at a relevant waste premises, as well as waste received at the premises.

Under Option 3, the following amendments are proposed to the WARR Levy Act and its regulations:

- The definition of “disposal premises” in the WARR Levy Act will be defined to mean premises at which waste is deposited to land, and in respect of which the occupier is required to hold a licence, whether or not such a licence is in force.
- The waste levy will apply to each tonne/cubic metre of waste deposited to land at the relevant waste premises. Licensing categories under the EP Regulations that amount to relevant waste premises will be defined in legislation (e.g. licensed landfills).
- “Deposited”, in relation to the deposit of waste to land at relevant waste premises, can include waste deposited by the party responsible for generating the waste, as well as waste received from third parties. Therefore the levy will apply to waste generated off-site and on-site of the waste disposal premises.
- The “deposit of waste” at waste disposal premises can include the following activities – leaving the waste at, in or on the relevant waste premises; or dropping, putting or setting down the waste at, in, or on the relevant waste premises. In summary, depositing includes placing waste on land and not just burial of waste in the ground (e.g. traditional landfill).

The shift to the “depositing of waste” reflects the Victorian approach, where under the *Environmental Protection Act 1970*, a licensed landfill occupier will pay the levy for

waste deposited onto land at the licensed premises.

These proposed amendments will ensure that depositing at any relevant waste premises (including via stockpiling or landfill) will trigger the requirement to pay the levy, unless there is a legislative exclusion. This will create an equal approach for waste management and the levy in Western Australia, where on-site generation of waste is also subject to the levy. It is noted this legislative option differs from NSW and Victoria where on-site generation of waste generally does not trigger the levy (e.g. under section 50T of the *Environmental Protection Act 1970* (Vic)).

#### **8.3.4 Consequential changes to terminology in waste legislation**

Consequential changes resulting from Options 2 and 3 may include replacing references to old terminology (e.g. “disposed of to landfill”, “licensed landfill”) with new terminology (e.g. “waste deposited”, “receive”) in the WARR Act, WARR Levy Act and their regulations. Key terms in waste legislation would be amended to ensure consistent use of terminology.

#### **8.3.5 Application of the levy**

As raised in the 2017 stakeholder feedback, proposed legislative changes will not require licensees of relevant waste premises to pay the levy twice, for waste received and deposited. Further information on levy liability and exemptions is discussed in Chapters 12.

### **Chapter 8 - Consultation questions**

1. If you are the licensee of a waste facility, please provide feedback on your preferred option for modernising key terms in waste legislation, and when the waste levy will apply. Please provide supporting information where possible.
2. What are the potential benefits or cost impacts that may result from the proposed legislative options? Please provide supporting information where possible.
3. Please provide any further suggestions to improve terminology under WARR legislation and the application of the waste levy in Western Australia.

## 9 Modernising landfill licensing and levy liability for waste disposal

### 9.1 Key issues to address

#### 9.1.1 Schedule 1 Landfill Categories

Under Schedule 1 of the EP Regulations, there are five landfill Categories (63, 64, 65, 66 and 89), which are differentiated by the type of material that can be accepted at each premises.

The number of landfill categories can create regulatory complexity during the licensing process, and is inconsistent with the approach in other jurisdictions which have a single landfill licensing category.

The Waste Reform Paper 2017 canvassed the option of combining the five landfill licensing categories to form one landfill category for licensing purposes.

Premises licensed as Category 63, 64 and 65 landfills can be subject to levy requirements under the WARR Levy Regulations.

#### 9.1.2 “Accepted for Burial”

Landfill categories in Schedule 1 all refer to premises where waste is “accepted for burial”. This includes the licensed landfill categories which are subject to waste levy requirements (Categories 63, 64 and 65).

If premises are stockpiling waste or applying waste to land other than by way of burial, then they may not be classified as a landfill under Schedule 1, or liable to pay the waste levy.

These alternative methods of waste disposal can undermine the operation of the waste levy, and disincentivise materials recovery.

#### 9.1.3 Regulating waste disposal to land in other jurisdictions

Other Australian jurisdictions have identified that waste disposal can extend beyond burial in landfill, as they can license premises where waste is applied to land via spraying, spreading, ploughing, or filling and reclaiming land (e.g. NSW).

Where these activities result in waste disposal to land, it is proposed they are regulated as a licensed premises, and subject to the waste levy.

#### 9.1.4 *Landfill Waste Classification and Waste Definitions 1996 (as amended 2018) (Waste Definitions)*

The landfill category descriptions in Schedule 1 refer to the Waste Definitions, which is a policy document administered by the department. Under the Waste Definitions, a Category 63 landfill is defined as a Class I landfill, while a Category 64 landfill is

considered a Class II or Class III landfill. Category 65 and Category 66 landfills are considered to be Class IV and Class V landfills respectively. The Class allocation determines the waste type that can be accepted at the licensed landfill premises.

The duplicative classification approach, under Schedule 1 and the Waste Definitions, creates a complex regulatory framework which could be streamlined.

#### **9.1.5 Category 53 - Fly ash disposal**

Fly ash is a fine grey powder produced as a by-product of coal-fired power generation. Premises used for fly ash disposal are currently licensed under Category 53 if more than 1000 tonnes or more per year of fly ash is disposed of. Part 2 fees in Schedule 4 of the EP Regulations are charged on the disposal of fly ash.

Fly ash is a waste that has the potential to be used in construction materials, and its disposal may not support the re-use of this waste for a beneficial use.

There has been consideration as to whether fly ash disposal under Category 53 should be incorporated within the definition of a licensed landfill (and potentially subject to the waste levy).

As fly ash is primarily managed at the disposal site in a similar manner to tailings from mining operations, and the imposition of existing Part 2 waste fees can provide a financial incentive for re-use and recovery, it is proposed fly ash disposal premises should not be incorporated into the landfill licensing category.

## **9.2 Consultation feedback**

Key points raised during the 2017 consultation process include:

- Further details were requested on the proposed approach, and the potential impact on existing landfill licences and conditions.
- Comments indicated the regulation of landfills should continue to be risk based.
- Select respondents highlighted the importance of policy and guidance to support the proposals.
- Comments supported the segregation of waste streams, and the separation of contaminants.
- Select respondents requested clarification on the impacts on licence fees, particularly for small facilities (e.g. Category 89 premises) if landfill categories are merged.
- Comments indicated there may be impacts for mineral reprocessors, industry with onsite waste storage and landfills, and the remediation of contaminated sites where disposal on-site is the environmentally appropriate option.

## 9.3 Proposed legislative options

### 9.3.1 Option 1: Maintain five landfill categories

The five landfill categories would be maintained, and the reference to Categories 63, 64 and 65 as “a licensed landfill” under the WARR Levy Regulations would remain.

The current licensing descriptions potentially undermine waste management, and the effective implementation of the levy by the use of the term “accepted for burial”. In addition, they do not capture other waste disposal approaches to land, such as disposing of waste onto land or indefinite stockpiling.

### 9.3.2 Option 2: Three landfill categories - Waste Disposal to Land

Under Option 2, the landfill categories are streamlined from five to three under Schedule 1 of the EP Regulations. Categories 63 (Class I – inert) and 66 (Class V – intractable) remain as separate categories. Categories 64, 65 and 89 are consolidated to create one putrescible landfill category. The three categories have been devised to reflect similar potential risks to human health and the environment.

Under this option, all Category 89 premises (rural, putrescible landfills) will be subject to formal licensing requirements. The Environmental Protection (Rural Landfill) Regulations 2002 will no longer be required, and can be repealed.

All three licensing categories will apply to solid waste disposal activities that include the disposal of waste to land, in addition to burying waste in landfill.

References to “accepted for burial” and the Waste Definitions will be removed from the category descriptions in Schedule 1.

The Category 66 description will also be amended, to convey this type of landfill is designed for “hazardous solid wastes” – the reference to “intractable” will be removed, as it does not reflect modern terminology applied in other jurisdictions.

The department’s [environmental risk assessment framework](#) for waste premises and landfills will continue to operate under the new landfill licensing categories to minimise health and environmental risks from waste. This framework provides for an assessment of which wastes are suitable for disposal at each type of landfill, and conditions to enforce this.

For example, a small rural landfill may not be required to comply with the same licence conditions as a large metropolitan landfill to address risks from the site.

Regulatory policies and guidance on the department's risk-assessment approach, landfill categorisation, landfill design and permitted waste types will be published to support assessments under the EP Act<sup>6</sup>.

Table 1 outlines the existing landfill categories, and their descriptions. Table 2 outlines the proposed approach for Option 2, and the three proposed categories.

Category Number	Existing landfill category descriptions	Production or design capacity
63	Class I inert landfill site: premises (other than clean fill premises) on which waste of a type permitted for disposal for this category of prescribed premises, in accordance with the Landfill Waste Classification and Waste Definitions 1996, is accepted for burial.	500 tonnes or more per year
64	Class II or III putrescible landfill site: premises (other than clean fill premises) on which waste of a type permitted for disposal for this category of prescribed premises, in accordance with the Landfill Waste Classification and Waste Definitions 1996, is accepted for burial.	20 tonnes or more per year
65	Class IV secure landfill site: premises (other than clean fill premises) on which waste of a type permitted for disposal for this category of prescribed premises, in accordance with the Landfill Waste Classification and Waste Definitions 1996, is accepted for burial.	Not applicable
66	Class V intractable landfill site: premises (other than clean fill premises) on which waste of a type permitted for disposal for this category of prescribed premises, in accordance with the Landfill Waste Classification and Waste Definitions 1996, is accepted for burial.	Not applicable
89	Putrescible landfill site: premises (other than clean fill premises) on which waste of a type permitted for disposal for this category of prescribed premises, in accordance with the Landfill Waste Classification and Waste Definitions 1996, is accepted for burial.	More than 20 but less than 5,000 tonnes per year

Table 1 - Existing landfill categories in Schedule 1

Non-landfill premises captured by the new licensing category will need to seek a licence to carry out this activity, or seek a licence amendment (if they already have a licence under the EP Act). Transitional arrangements will also be considered to support any proposed amendments.

<sup>6</sup> See Victoria EPA and NSW EPA examples at: <https://www.epa.vic.gov.au/about-epa/publications/1323-3> and [www.epa.nsw.gov.au/-/media/epa/corporate-site/resources/waste/solid-waste-landfill-guidelines-160259.pdf](http://www.epa.nsw.gov.au/-/media/epa/corporate-site/resources/waste/solid-waste-landfill-guidelines-160259.pdf)



Category Number	New landfill category descriptions	Production or design capacity
63	<p>Inert Waste Disposal to Land: premises on which <b>inert solid wastes</b> are deposited into or onto land, including (but not limited to) depositing by any of the following methods:</p> <ul style="list-style-type: none"> <li>a) disposing or spreading on the land</li> <li>b) ploughing, injecting or mixing into the land</li> <li>c) filling, raising, reclaiming or contouring the land</li> <li>d) burial in or on the land</li> </ul> <p>but does not include clean fill premises, or premises on which waste is stored where such storage is captured by Categories X, Y Z<sup>7</sup> (see section 9.3.2)</p>	500 tonnes or more per year
New category (formerly 64, 65 & 89)	<p>Putrescible Waste Disposal to Land: Premises on which <b>putrescible solid wastes</b> are deposited into or onto land including (but not limited to) depositing by any of the following methods:</p> <ul style="list-style-type: none"> <li>a) disposing or spreading on the land</li> <li>b) ploughing, injecting or mixing into the land</li> <li>c) filling, raising, reclaiming or contouring the land</li> <li>d) burial in or on the land</li> </ul> <p>but does not include clean fill premises, or premises on which waste is stored where such storage is captured by Categories X, Y, Z</p>	20 tonnes or more per year
66	<p>Hazardous Waste Disposal to Land: Premises on which <b>hazardous solid wastes</b>, are deposited into or onto the land, including (but not limited to) depositing by any of the following methods:</p> <ul style="list-style-type: none"> <li>a) disposing or spreading on the land</li> <li>b) ploughing, injecting or mixing into the land</li> <li>c) filling, raising, reclaiming or contouring the land</li> <li>d) burial in or on the land</li> </ul> <p>but does not include clean fill premises, or premises on which waste is stored where such storage is captured by Categories X, Y, Z</p>	Not applicable

Table 2 – New licensing categories under Option 2

Inert solid waste, putrescible solid waste, hazardous solid waste and other key terms will be defined in the EP Regulations or published regulatory instruments to support the implementation of the new categories.

<sup>7</sup> See the discussion on proposed licensing exclusions in section 9.3.2

### *Proposed licensing exclusions*

Licensing exclusions can be considered for specific premises and activities if they pose a lower environmental risk, or are regulated through other approaches. For example, premises that have only ever accepted clean fill or uncontaminated fill that meets the department's thresholds in the Waste Definitions, and that have only ever accepted such fill, are already excluded from licensing requirements. This exclusion is proposed to remain in effect.

The following exclusions could also be considered for Option 2:

- Waste storage activities which are captured by other licensing categories (see Chapter 10 proposals).
- Mining wastes (e.g. tailings, metallic, non-metallic ore residue) and their discharge into a containment cell or dam, and fly ash disposal, which is already licensed and regulated under other licensing categories.
- Remediation and rehabilitation of a contaminated site, where the waste was already present at the location, and where the remediation or rehabilitation is in accordance with an approved plan under the *Contaminated Sites Act 2003*.
- Older landfills owned by local governments that do not receive leviable waste (see section 9.3.4 below).

If a facility is not required to hold a Part V licence under the EP Act, they will not be liable to pay the waste levy.

### **9.3.3 Option 3 - Single landfill category - Waste Disposal to Land**

Option 3 expands on Option 2 by consolidating all five landfill licensing categories under Schedule 1 of the EP Regulations.

As with Option 2, Category 89 will be abolished as a separate "registration category". It will be included (along with Categories 63 to 66) in the prescribed premises "waste disposal to land" licensing category under Schedule 1. These premises will be subject to licence fees and reporting requirements under Part V of the EP Act.

Generally, Option 3 reflects the single landfill category approach in other jurisdictions. The assessment of the waste disposal facility including its design and the waste streams that can be accepted, will be provided in supporting regulatory guidance.

Example: New landfill category – Waste disposal to land <sup>8</sup>	Proposed production or design capacity (Threshold)
<p>Premises on which solid wastes are deposited into or onto the land, including (but not limited to) depositing by any of the following methods:</p> <ul style="list-style-type: none"> <li>a) disposing or spreading on the land</li> <li>b) ploughing, injecting or mixing into the land</li> <li>c) filling, raising, reclaiming or contouring the land</li> <li>d) burial in or on the land</li> </ul> <p>but does not include clean fill premises, or premises on which waste is stored where such storage is captured by Categories X, Y, Z<sup>9</sup></p>	No threshold (see proposed licensing exemptions)

Table 3 – New proposed licensing category – waste disposal to land – Option 3

### Proposed licensing exclusions

As with Option 2, licensing exclusions can be considered for specific premises and activities if they pose a lower environmental risk, or are regulated through other approaches:

The following exclusions are being considered for Option 3:

- Premises where less than 500 tonnes per year of only inert (non-putrescible) waste is deposited.
- Premises where less than 20 tonnes per year of inert and putrescible waste is deposited, or putrescible waste only is deposited.
- Waste storage activities that are captured by other licensing categories (please see Chapter 10 proposals).
- Mining wastes (e.g. tailings, metallic, non-metallic ore residue) and their discharge into a containment cell or dam, or fly ash disposal, which is already licensed and regulated under other licensing categories (e.g. Category 5).
- Remediation and rehabilitation of a contaminated site, where the waste was already present at the location, and where the remediation and rehabilitation are in accordance with an approved plan under the *Contaminated Sites Act 2003*.
- Older landfills owned by local governments that do not receive leviable waste (see section 9.3.4 below).

<sup>8</sup> All proposals in this paper will be subject to legislative drafting if progressed. Proposed licensing category descriptions outlined in this paper may be amended during this process to reflect the policy intent.

<sup>9</sup> See the discussion on proposed licensing exclusions in section 9.3.3

The introduction of the new licensing category – *Waste disposal to land* – will be supported through transitional provisions that ensure existing landfill licences have legal effect until they are amended to reflect the new category.

### 9.3.4 Category 89 landfills - local governments

Under Options 2 and 3, it is proposed Category 89 rural landfills will require a licence under the proposed “waste disposal to land” categories, and will no longer be registerable under regulation 5B of the EP Regulations.

There are currently 140 registered Category 89 landfills in Western Australia under regulation 5B. There are also 53 Category 89 landfills that already have a licence (either standalone, or as part of a licence containing other regulated activities).

If a Category 89 landfill required a licence, the licensee would need to comply with requirements under Part V Division 3 of the EP Act, including reporting requirements.

In other Australian jurisdictions, there are licensing exclusions for older, local government landfills servicing a small rural population, or where local government landfills are outside the levy area (e.g. Victoria, NSW)<sup>10</sup>.

If such exclusions were provided for in the EP Act, certain Category 89 landfills would not require a licence. Supporting guidelines or regulations could be formulated to ensure these landfills are correctly sited and constructed, to minimise potential environmental or health risks.

Feedback is sought from Category 89 occupiers to determine which rural landfills should be licensed under the proposed new licensing categories in this chapter based on their risk to the environment and human health.

### 9.3.5 Licensing fees

Under the EP Regulations, there are different annual licensing fees applied for landfill categories in Schedule 1:

- Category 63 licence fees ranging from 8–160 fee units.
- Category 64 fees range from 24–640 fee units.
- Category 65 and 66 fees are set at 655 fee units.
- Category 89 registration fees are 24 fee units.

Further information on current licensing fees is available at [www.der.wa.gov.au/our-work/licences-and-works-approvals/fees](http://www.der.wa.gov.au/our-work/licences-and-works-approvals/fees).

The current value of a fee unit is \$40.60 for licensing fees under regulation 4(6) of the EP Regulations.

<sup>10</sup> In Victoria, a works approval must be obtained before a landfill can be constructed, except for municipal landfills (occupied by a municipal council) which are serving a population of fewer than 500 people. A licence under the *Environment Protection Act 1970* is required for all landfills, apart from municipal landfills occupied by a municipal council, which are serving a population of fewer than 5000 people.

Licensing fees for prescribed premises categories are not within the scope of this consultation. Under Options 2 and 3, it is anticipated that licensing fees under the EP Regulations would be amended to accommodate new licensing categories.

### **9.3.6 Legislative framework to support waste-derived materials**

The department is investigating legislative options to support the use of waste-derived materials in Western Australia.

The current legislative framework does not prescribe when waste-derived materials will cease to trigger the licensing and waste levy regimes under the EP Act, WARR Act, WARR Levy Act and their respective regulations.

Industry has reported that uncertainty around whether material is waste (and hence, whether its use will attract licensing and waste levy requirements) is inhibiting the uptake of and market development for waste-derived materials. Feedback from industry indicates support for developing a legislative framework that provides for a case-by-case, risk-based assessment and approval process for the use of waste-derived materials.

The department has reviewed approaches in other jurisdictions, and has undertaken public consultation to determine a preferred legislative approach for Western Australia.

The department will consider integration of potential legislative amendments with the waste reforms proposed in this paper to ensure a cohesive approach.

### **9.3.7 Waste levy**

Under Option 2, it is anticipated the waste levy will be linked to the new licensing categories under the WARR Levy Regulations, and the waste that is accepted at the premises – inert (Category 63) and putrescible (Category 64, 65 and 89).

Under Option 3, it is proposed the WARR Levy Regulations are amended to provide that the waste levy applies with reference to the type of waste “received” or “deposited” (see Chapter 8) at the licensed landfill category – i.e. inert or putrescible. Further information would be provided in the next consultation stage.

Please note that there will be an ongoing review of the scope and application of the waste levy in Western Australia, which may lead to future changes relating to levy rates and/or the geographical scope of the levy. This consultation is out of scope for this project, but will be considered during the preparation of final legislative approaches.

#### ***Category 66 – Class V intractable landfill site***

Stakeholder input is requested on whether premises that receive hazardous waste (currently Category 66 landfill premises) should be subject to the levy under Options 2 and 3.

It is acknowledged that these waste disposal premises accept hazardous wastes which may have limited viable re-use or recycling options within the state or other jurisdictions. However, in other Australian jurisdictions, the waste levy is applied to hazardous wastes to reflect the level of risk associated with this waste, and to encourage waste avoidance.

If Western Australia does not apply the levy to facilities that receive hazardous waste, there may be increased transportation of hazardous wastes to Western Australia for disposal.

### **Chapter 9 - Consultation questions**

1. If you are a waste stakeholder, what is your preferred option for the landfill licensing categories under the EP Act? Please provide supporting information where possible to support your response.
2. Should Category 89 landfills be required to be licensed under the EP Act to improve the management of environmental and health risks, or for the effective implementation of the waste levy? Please provide evidence where possible to support your response.
3. If you are a local government with a Category 89 landfill, please provide information on the benefits or costs associated with the licensing of Category 89 landfills under Options 2 and 3.
4. If a licensing exclusion is available for Category 89 landfills, please comment on a proposed scope of the exclusion, and a justification for the approach.
5. Should operators of Category 66 landfill premises that accept hazardous wastes be liable to pay the waste levy as “waste disposal premises”?
6. Please provide feedback on the proposed approach for Category 53 (fly ash disposal) outlined in section 9.1.5 – Should fly ash disposal be regulated as a separate process, or should it be regulated as a licensed landfill? Please provide information where possible to support your response.

## 10 Simplifying the solid waste licensing categories

### 10.1 Key issues to address

#### 10.1.1 Streamlining the solid waste licensing categories

There are over 10 licensing categories in Schedule 1 of the EP Regulations relating to waste storage, processing and management (excluding the landfill categories). Other jurisdictions have introduced one general licensing category for waste storage, processing and disposal (e.g. Victoria, South Australia).

#### 10.1.2 Solid waste licensing categories are regulating the same activities

Categories 61A (solid waste facility) and 62 (solid waste depot) both permit waste storage as part of their licensed activity. In Western Australia, there are currently 91 premises that are licensed under Category 61A, whilst 169 premises are licensed under Category 62.

Category 61A permits discharge of waste to land, which potentially overlaps with the landfill licensing categories (Categories 63, 64, 65, 66 and 89).

Category 13 permits the crushing or cleaning of building or demolition materials (e.g. bricks, stone, concrete). The majority of Category 13 premises licensed under the EP Act are co-located on the same sites as Category 61A and/or 62 premises, as the activities being regulated are closely linked (e.g. reprocessing, sorting and storing construction and demolition waste).

#### 10.1.3 Used tyre storage

Categories 56 and 57 both permit the storage of used tyres, which are a solid waste product with potential to be reprocessed and recycled. Large stockpiles of poorly stored tyres are also a fire risk.

The term “used tyres” in the category descriptions for Categories 56 and 57 also may not encapsulate other tyre waste, such as shredded tyres.

#### 10.1.4 Material recovery facilities

Material Recovery Facilities (MRFs) are facilities that store, receive, process and separate recyclable materials, before they are shipped or supplied to reprocessors and manufacturers to create new products. Stockpiling of waste at MRFs in Australia has been under scrutiny, following recent fires at large recycling facilities.

In Western Australia, the regulation of MRFs has been inconsistent, with only some MRFs seeking a Category 61A or 62 licence for their activities. As stockpiling of waste at MRFs can be a potential fire and environmental risk, it is important that all

large MRFs are effectively regulated under the EP Act.

### **10.1.5 Scrap metal recycling (metal scrapyards)**

Premises that process scrap metal and depollute end-of-life vehicles are not consistently regulated under the EP Act for health and environmental risks. Some metal scrapyard premises are regulated under Category 47 (scrap metal recovery) and/or Category 62 (solid waste depot).

Without further regulatory oversight, the stockpiling of waste, and emissions from these facilities, may pose a health and environmental risk (including a potential fire risk). In addition, the stockpiling of metal and non-metal waste at these facilities may not support timely re-use and reprocessing of recoverable materials.

## **10.2 Consultation feedback**

Key points from the 2017 consultation process include:

- Respondents sought clarification of which licensed categories are applicable for the storage and stockpiling of wastes, to minimise industry confusion.
- Further information was requested on the potential application of the waste levy to waste storage, re-use and reprocessing premises.

## **10.3 Proposed legislative options**

### **10.3.1 Option 1: Maintain existing category descriptions**

The existing descriptions for Categories 61A and 62 are retained, along with two licensing categories for used tyre storage.

The solid waste licensing categories regulate similar activities, whilst Category 61A permits waste disposal to land. Without changes there is potential ongoing confusion regarding the actual regulatory purpose of Categories 61A and 62.

The two licensing categories for tyre storage are outdated, and do not align with waste tyre regulatory approaches in other jurisdictions (e.g. NSW).

### **10.3.2 Option 2: Clarifying solid waste licensing Categories 61A and 62**

It is suggested that Categories 61A and 62 are revised to clarify their purpose, and the specific activity they apply to.

#### ***Solid Waste Recycling and Reprocessing (revised Category 61A)***

- This category will be the only Schedule 1 Category for sorting, recycling and reprocessing of solid waste, with the exception of compost manufacturing and blending (Category 67A) and crushing of building material (Category 13).
- The link to “stored” waste will be removed from the category description – storing



of waste will now be captured by the “Solid Waste Depot” category (Category 62) if over 500 tonnes of waste per year is to be stored.

- Sorting of waste will now be regulated under this category, and not Category 62.
- Waste “discharged onto land” will be removed from the category description. Discharging of waste to land will require a landfill, or waste disposal to land licence (see Chapter 9 for discussion of possible changes to landfill licensing categories).
- For example, the depositing of biosolids to land may trigger a requirement for a landfill, or waste disposal to land licence; however, licensing and levy exclusions may be considered via a waste-derived materials legislative framework (see section 9.3.6).
- This category will apply to MRFs to minimise potential human health and environmental risks.

Current Category 61A description	Current Category 61A threshold	Proposed new category description	Proposed new category threshold
Solid Waste Facility: Premises (other than premises within Category 67A) on which solid waste produced on other premises is stored, reprocessed, treated or discharged onto land.	Threshold: 1,000 tonnes or more per year	Solid waste recycling and treatment: premises (other than premises within Category 67A and Category 13) on which solid waste produced on other premises, is sorted, recycled, reprocessed, mixed or treated.	Threshold: 1,000 tonnes or more of waste per year

Table 4 – Revised Category 61A – Option 2

#### *Solid Waste Depots (revised Category 62)*

- This category will apply to the storing of waste for disposal, re-use, mixing or treatment, and not the sorting of waste.
- The link to “final disposal” of waste after it leaves the premises is to be removed from the category description, and replaced with “removal for disposal”.
- The current licensing threshold is maintained.

Current Category 62 description	Current Category 62 threshold	Proposed new category description	Proposed new category threshold
Solid Waste Depot Premises on which waste is stored, or sorted, pending final disposal or re-use	Threshold: 500 tonnes or more per year	Solid Waste Depot Premises on which waste is stored, including storage of waste pending removal for disposal, re-use, mixing or treatment	Threshold: 500 tonnes or more of waste per year

Table 5 – Revised Category 62 – Option 2

### 10.3.3 Option 3: Merging solid waste categories and used tyre storage categories

Under Option 3, it is proposed that Categories 13, 61A and 62 are merged because of the similar activities they regulate, and to address industry confusion regarding their application.

In Victoria, solid waste storage, recycling, treatment and re-use are regulated under one licensing category. Streamlining solid waste categories in Schedule 1 of the EP Regulations will ensure there is one licensing category for the regulation of solid waste storage, sorting and reprocessing.

The new licensing threshold for this merged category will be 1,000 tonnes or more of waste per year.

In addition, it is proposed that used tyre storage categories (Categories 56 and 67) are merged to clarify their scope, and to align with other jurisdictions.

As with Option 2, this new category will also apply to MRFs to minimise potential health and environmental risks.

In addition, the link to “discharged onto land” in Category 61A would be removed from the new merged category.

Current category description	Current threshold	Proposed new category	Proposed new threshold
Category 13 – Crushing of building material: premises on which waste building or demolition material (for example bricks, stones or concrete) is crushed or cleaned.	1,000 tonnes or more per year	Premises (other than premises within Category 67A) on which solid waste is stored, sorted, crushed, cleaned, treated, reprocessed or contained.	Threshold: 1,000 tonnes or more of waste per year
Category 61A – Solid Waste Facility: Premises (other than premises within Category 67A) on which solid waste produced on other premises is stored, reprocessed, treated or discharged onto land.	1,000 tonnes or more per year		
Category 62 – Solid Waste Depot Premises on which waste is stored, or sorted, pending final disposal or re-use.	500 tonnes or more per year		

Table 6 – Merging of Categories 13, 61A, 62 – one licensing category – Option 3

### Used Tyre Storage – Categories 56 and 57

This proposal was not included in the Waste Reform Paper 2017; however, it is noted that tyres are a form of solid waste which can be recycled and reprocessed, and their role in supporting a circular economy should be considered.

Schedule 1 contains two licensing categories for used tyre storage. This option proposes that these two categories be merged, with a new licensing threshold of more than 500 tyres or more than five tonnes of tyres. This approach will update the licensing categories for tyres to align further with other jurisdictions (e.g. Victoria, NSW).

Under NSW legislation, “waste tyres” is defined to mean “used, rejected or unwanted tyres, including casings, seconds, shredded tyres or tyre pieces”. It is proposed that the term “used tyres” is included alongside the term “waste tyres” under the proposed category, to address other types of tyre waste as defined in NSW.

The licensing of tyre storage will no longer focus on used tyres, but also include other types of tyre waste (e.g. shredded tyres etc).

Current category description	Current threshold	Proposed new category	Proposed new threshold
Category 56 – Used tyre storage (tyre fitting business): premises on which used tyres are stored in connection with a tyre fitting business.	500 tyres or more	Waste tyre storage: premises on which used or waste tyres, including casings, seconds, shredded tyres or tyre pieces, are stored.	Threshold: a) 5 tonnes or more of tyres, or b) 500 tyres or more are stored at the premises at any time.
Category 57 – Used tyre storage (general): premises (other than premises within Category 56) on which used tyres are stored.	100 tyres or more		

Table 7 – Merging of tyre storage categories – one waste tyre category – Option 3

Under Category 57, there are currently 69 active licences issued under the EP Act, and one active Category 56 licence. If Option 3 is supported, it is proposed that premises storing between 100–500 used or waste tyres, and less than five tonnes of such tyres, will not require a Part V licence, but may be subject to new regulations under the EP Act (e.g. Part 6 of the EP Regulations).

These regulations will specify requirements as to how used or waste tyres are to be stored to minimise health, environmental and fire risk (e.g. separation distances). Premises that are licensed under the new used or waste tyre category will also need to comply.

Regulatory policy will outline how “used or waste tyre” volumes are to be calculated for the purposes of the new combined licensing category, such as a volumetric protocol or the use of Equivalent Passenger Units (EPU)<sup>11</sup>.

Any new regulations relating to used or waste tyre storage would be subject to separate consultation processes.

### **Chapter 10 – Consultation questions:**

1. Please identify a preferred option for regulating solid waste storage premises outlined in Options 1, 2 and 3. Please provide information where available.
2. Will the proposed changes to the solid waste categories (Categories 56, 57, 61A, 62) support further re-use and reprocessing of solid waste and used/waste tyres? Please provide evidence or further information.
3. Under Option 3, the proposed licensing threshold for the new category which merges Categories 13, 61A and 62 will be 1000 tonnes or more per year. Please provide feedback on the impacts of this proposed threshold.
4. Please provide feedback on the proposal to regulate large MRFs under Options 2 and 3. Please provide evidence or further information where available.
5. If you are the occupier of a used tyre storage facility, what will be the potential benefits or costs impacts if Option 3 is implemented? Should tyre storage premises which store more than 100 used or waste tyres (but less than 500 used or waste tyres) and less than five tonnes of tyres, be subject to licensing? Please provide evidence or further information.
6. Please provide feedback on whether metal scrap yards in Western Australia should be licensed under Category 47 because of potential risks to human health and the environment. Please provide evidence or further information.

<sup>11</sup> A standardised system for reporting volumes of tyres across Australia has been developed which converts all tyres to Equivalent Transporting Passenger Units (EPU) or standard car tyres based upon average weights of different tyre types. In general, 200kg would represent 25 used car tyres. This is currently utilised for waste tyre tracking under the Environmental Protection (Controlled Waste) Regulations 2004.

# 11 Minimising stockpiling at waste storage premises

## 11.1 Key issues to address

### 11.1.1 Waste stockpiling and levy avoidance

There are currently no thresholds or triggers for making the levy payable in circumstances where waste is stored or stockpiled at waste facilities (which are not landfills) on a long-term basis or indefinitely.

For example, prescribed premises Categories 61A (solid waste facility) and 62 (solid waste depot) are not liable for the waste levy, but they permit storage of waste. The category descriptions do not contain restrictions for this activity, such as stockpiling limits.

Long-term waste stockpiling can hinder timely and appropriate waste disposal, and prevent waste materials from being recycled or reprocessed for future use. This can undermine government policy and the Waste Strategy 2030 targets to divert waste from landfill and recover it as a resource.

As outlined in section 3.3.2, since the rate of the waste levy increased in 2015, reported landfilling of C&D waste in Western Australia has significantly declined, which may be the result of C&D stockpiling at licensed waste facilities or illegal stockpiling at unlicensed premises.

Waste stockpiling can also have environmental and health impacts, including the leaching of contaminants, fire, litter, dust, odour, biogas and vermin.

### 11.1.2 Waste tyre stockpiling

Stockpiling large volumes of tyres can be a significant fire risk, and hinder the effective reprocessing and recycling of waste tyres. Burning tyres are a direct threat to human safety and property and emit a range of toxins, including particles, dioxins, polycyclic aromatic hydrocarbons and volatile organic compounds. Burning tyres can cause a range of health effects, such as eye, nose and throat irritation, asthma attacks and other respiratory problems. In NSW, long-term waste tyre storage is subject to waste levy requirements.

### 11.1.3 Government financial risk

The abandonment of waste stockpiles because of company failure or insolvency, or site abandonment, presents a significant financial risk to the Government. If the costs for removing the stockpiles cannot be recovered from the former operator of the site, the broader community bears the costs for government remediation.

For example, the Victorian EPA spent \$4.5 million removing about one million tyres from an abandoned stockpile in Stawell in August 2017, as it was considered a fire and environmental hazard (further information is available on the Victorian EPA's [website](#)).

The application of the waste levy to waste stockpiling may help dis-incentivise long-term stockpiling by reducing the cost differential between stockpiling and disposal to landfill.

## 11.2 Consultation feedback

Key points from the 2017 consultation include:

- Select respondents noted that stockpiling is already addressed through licensing conditions, and imposing the levy for this activity is not needed.
- Comments indicated a lack of support for the levy applying to recoverable materials, or premises where the sole purpose is resource recovery.
- Select respondents commented that upfront payment of the levy will result in negative cashflow impacts for stakeholders.
- Concerns were raised that short timeframes for removing stockpiles would result in waste being sent to landfill for disposal, rather than being recycled.
- Select respondents supported the application of the levy to future stockpiles (and not existing stockpiles) and longer timeframes for waste removal.
- Concerns were raised that the levy might be applied more than once if the levy is paid for waste stockpiles, which are then disposed to landfill.

## 11.3 Proposed legislative options

### 11.3.1 Option 1 - No levy for stockpiling at solid waste storage premises

Under existing legislative requirements, there is a risk that waste stockpiling can occur at large waste premises, with minimal incentive to transport the waste for re-use or recycling, or for appropriate waste disposal.

It is noted that waste stockpile limits can be implemented through licence conditions under Part V Division 3 of the EP Act if such a condition is needed to prevent or mitigate pollution or environmental harm. Previous stakeholder feedback has indicated that some stakeholders consider licence conditions may be sufficient for regulating stockpiles, and the levy is not required.

### 11.3.2 Option 2 - Levy liability for solid waste facilities, depots, and used tyre storage premises that stockpile waste for over 12 months

Under Option 2, it is proposed the WARR Levy Act is amended so that a levy may be prescribed for waste storage facilities (which are not waste disposal premises, such as landfills) that are licensed or required to be licensed, to minimise stockpiling.

Option 2 partially reflects the approach in NSW<sup>12</sup>, where levy liability can be triggered in specific circumstances to prevent stockpiling and levy avoidance.

Under Option 2, it is proposed waste storage facilities that can be the subject of levy liability would include premises licensed under the following current categories:

- Category 56 – used tyre storage (tyre fitting business)
- Category 57 – used tyre storage (general)
- Category 61A – solid waste recycling and reprocessing
- Category 62 – solid waste depot.

Please note the proposed description changes in Chapter 10 relating to Categories 13, 56, 57, 61A and 62, which are to be considered when reviewing this proposal, depending on the preferred option.

The liability will become payable when:

- waste is stored<sup>13</sup> at the facility for more than 12 months, unless
  - 1) processing of that waste to become a re-usable material or product has commenced and
  - 2) there is supporting evidence that the processed waste will be sold or used shortly after the 12-month time limit (e.g. supply contracts).

Guidance will be developed by the department to clarify “commencement”, “processing” and “supporting evidence” requirements

- waste is transported from the facility for unlawful disposal (e.g. illegal dumping)
- waste is transferred to another waste facility for further storage beyond the 12 months, to avoid payment of the levy for long-term stockpiling at the first waste facility
- waste is disposed of at the facility in a manner that is not lawfully authorised under their Part V licence (e.g. landfilling, incineration).

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<sup>12</sup> Under r.10B of the Protection of the Environment Operations (Waste) Regulation 2014 (NSW)

<sup>13</sup> Information on the NSW approach for stockpile management and identification is available at: [www.epa.nsw.gov.au/-/media/epa/corporate-site/resources/wasteregulation/181272-waste-levy-guidelines.pdf](http://www.epa.nsw.gov.au/-/media/epa/corporate-site/resources/wasteregulation/181272-waste-levy-guidelines.pdf)

If the waste is re-used or recycled within 12 months on the site, or is transported from the facility for lawful landfilling, or re-use or recycling within 12 months, there will be no levy liability for that waste.

If a licensee has processed the waste, but does not have supporting evidence that indicates the waste will be sold or used shortly after the 12 months, then the levy liability will arise 12 months after the waste was received or deposited (see Chapter 8). If the waste is later lawfully sold or used, the licensee can seek a refund for this component of the levy within the following 12 months, if they provide supporting evidence (e.g. supply contracts).

Under this proposal, the waste storage facilities will be liable to pay the levy where waste is accepted on site, for facilities which are in the Perth metropolitan area or where waste originating from the Perth metropolitan area is accepted by facilities outside the regulated area. Please note the ongoing review of the scope and application of the waste levy (including the geographical area of the levy) which is not within the scope of this [consultation](#).

To address stakeholder feedback, it is not intended that the waste levy will apply for stockpiling at mineral processing facilities, or waste storage occurring under other licensing categories in Schedule 1.

It is proposed the waste levy will not apply more than once in the waste disposal chain. If the levy has been paid for long-term stockpiled waste, and it is disposed of to landfill at a later date, it is intended that the levy won't be payable for that disposal (see Chapter 12).

### **11.3.3 Option 3: Upfront levy payment for waste storage premises, with levy exemptions.**

Option 3 reflects the approach in Victoria, where there is upfront levy liability and payment for waste disposal premises. The “waste storage facilities” identified in Option 2 (i.e. current Categories 56, 57, 61A and 62) are also applicable for Option 3.

The waste levy will be triggered when waste is received or deposited (see Chapter 8) at the waste storage facility, with payment due on a quarterly basis.

Where relevant to waste storage facilities, waste levy exemptions will be available under regulation 5 of the WARR Levy Regulations.

Waste levy exemptions will also be applicable for waste storage facilities if the waste is removed or supporting evidence is provided to establish that the waste will be removed from the site by:

- transporting the waste from a licensed waste storage facility for a lawful activity after being processed, recovered or recycled on site
- transporting the waste from a licensed waste storage facility to another licensed waste facility for lawful processing, recovery or recycling, or



- transporting the waste to a licensed waste disposal facility for lawful disposal, where this licensed facility will pay the levy for the waste received or deposited (e.g. landfill premises).

The timeframe for applying for an exemption under Option 3 will be limited to 12 months from when the waste is received or deposited. This aligns with the proposed waste levy exemption for re-use, recycling and reprocessing of waste at licensed landfill facilities in Western Australia under Option 3 in Chapter 12.

These levy exemptions are partially based on the NSW approach in their legislation for landfill levy deductions, and are discussed in further detail in Chapter 12.

#### **11.3.4 Existing waste stockpiles**

For Options 2 and 3, it is intended the new levy approach will only apply to waste that is received or deposited (see Chapter 8) at waste storage facilities (as defined under the WARR Levy Act and its regulations) from a specified implementation date in legislation.

Options to manage existing stockpiles of waste before this date will be investigated. This may include stricter licensing conditions to encourage the removal of the waste for appropriate disposal, or an extended timeframe for triggering levy liability for this waste (e.g. 24-36 months instead of 12 months).

Where there is an immediate environmental or health risk, compliance measures such as Environmental Protection Notices or Prevention Notices may be utilised under Part V Division 4 of the EP Act to address stockpiling (see Chapter 14 for information on compliance measures).

#### **11.3.5 Waste levy rates**

This paper assumes that existing levy rates for landfill disposal will apply to waste that is stored for more than 12 months at waste storage facilities, where the levy liability is triggered. Waste levy rates will be subject to review as part of a separate consultation process.

#### **11.3.6 Application of the levy for waste stockpiling**

##### *Waste-derived materials*

The 2017 consultation indicated some stakeholders had concerns regarding the levy applying to re-use activities and products. The department has recently consulted on legislative options to support the use of waste-derived materials in Western Australia, to determine a preferred legislative approach. Please see section 9.3.6 for more information.

### *CEO discretion – extended timeframes for removing waste stockpiles*

As raised in the consultation feedback, a CEO discretionary power could be developed which allows specific waste facilities an extended timeframe for removing a stockpile under specific circumstances, which would be defined in legislation (e.g. emergency, unforeseen circumstances).

#### **11.3.7 Financial assurances**

In relation to Options 2 and 3, it is proposed the CEO can require a financial assurance for payment of the levy under WARR Regulations where there is stockpiling at waste storage facilities, and a risk of non-payment of the levy<sup>14</sup>.

This will ensure that the CEO can use the financial assurance for payment of the levy to the WARR Account where the waste storage facility has not removed their stockpiled waste for lawful disposal.

To manage the risk of waste stockpiles being abandoned (and requiring removal), a financial assurance may also be imposed under Part VA of the EP Act. Amendments may be required to ensure financial assurances reflect new waste management objectives, if they are included under the EP Act (see Chapter 7).

#### **Chapter 11 - Consultation questions:**

1. Please provide feedback on the proposal in Option 2, which will impose the waste levy if waste is not removed from specified waste storage facilities within 12 months if it is not processed, and it is not going to be sold or used. If you are the operator of a waste facility, what are the potential consequences or impacts of this proposal? Please provide evidence or further information.
2. Please provide feedback on the proposal in Option 3, which will impose upfront levy liability and payment, with transport related levy exemptions. If you are the operator of a waste facility, what are the potential consequences or impacts of this proposal? Please provide evidence or further information.
3. The proposals in Options 2 and 3 are intended to address long-term waste stockpiling at waste storage facilities. Will the proposals in Options 2 and 3 provide a sufficient financial incentive to remove waste stockpiles at waste storage facilities? Please provide evidence or further information.
4. If you are a local business specialising in the re-use, reprocessing or recycling of waste materials, will the proposals in Options 2 and 3 support your business, or contribute to new business opportunities in waste? Please provide evidence or further information.

<sup>14</sup> See s.74 of the WARR Act

## 12 Waste levy exemptions

### 12.1 Key issues to address

#### 12.1.1 Waste used for construction and maintenance works

Under regulation 5(1)(g) of the WARR Levy Regulations, licensees can apply for a levy exemption for waste used for construction or maintenance work carried out on the licensed landfill, if the amount of waste is specified in advance in a plan prepared by a registered builder or engineer, and there is no charge by the licensee for accepting the waste.

There is some uncertainty among industry concerning the scope of this exemption.

In NSW and Victoria, exemptions may be granted for waste used for roads and certain other construction works at the landfill site. In NSW, there are also levy deductions for construction works that are linked to foundational support (e.g. hardstands, building foundations and infrastructure support). Waste materials that are used for roads or construction works must meet a prescribed specification to be covered by an exemption (further information is on the NSW EPA's [website](#)).

It is also not clearly specified if the exemption in regulation 5(1)(g) applies to cell construction, such as building a containment cell or the infrastructure that is required for the landfill (e.g. gas collection, leachate management, tyres).

Further to this, this exemption has historically been utilised for waste applied as final cover at landfill premises, alongside the exemption under regulation 5(1)(a). The WARR Levy Regulations have been recently amended to clarify the [levy exemption](#) for waste used as final cover at landfill premises.

#### 12.1.2 Waste collected or stored for re-use, reprocessing, recycling or energy recovery

Under regulation 5(1)(b) of the WARR Levy Regulations, licensees can apply for a levy exemption for waste that is not disposed of to landfill but is collected and stored at a licensed landfill for re-use, reprocessing, recycling or use in energy recovery.

The levy is currently only payable on waste received and disposed of to landfill<sup>15</sup> or waste received for disposal to landfill.<sup>16</sup> Therefore, when waste is received at a landfill but not disposed of, it generally does not attract the levy.

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<sup>15</sup> Category 63 licensed landfills; and Category 64 and 65 licensed landfills that do not have a weighbridge or are subject to an exemption from the requirement to use a weighbridge.

<sup>16</sup> Category 64 and 65 licensed landfills that have a weighbridge and are not subject to an exemption from the requirement to use a weighbridge.

As a result, regulation 5(1)(b) is currently redundant. However, the provision would cease to be redundant if the WARR Levy Regulations were amended to make the levy payable for all waste received or deposited at the landfill (see legislative options in Chapter 8).

As flagged in section 4.3, a separate review of the scope and application of the waste levy is underway. That review process will consider whether the levy should apply to other waste management methods to support the Waste Strategy 2030, including waste used for energy recovery.

Any proposed legislative changes relating to the waste levy and energy recovery will be considered through that review process.

### **12.1.3 Collecting and storing waste at disposal premises**

Under regulation 5(5) of the WARR Levy Regulations, if an exemption is granted under regulation 5(1) the exemption notice needs to specify the period for which the exemption applies.

Exemptions under regulation 5(1)(b) are no longer being granted (because that provision is currently redundant – see section 12.1.2 above). Previously, exemptions under regulation 5(1)(b) were generally issued for a period of 12 months. If waste which is the subject of a regulation 5(1)(b) exemption is not recycled or removed within the exemption period, the licensee must pay the levy for that waste (regulation 5(7)).

Under regulation 5(8), the CEO can refund or rebate levy money paid for this waste, if the waste is recycled or removed within 12 months after the exemption has expired. This discretion could lead to stockpiling of waste over more than 24 months, depending on the time period specified in the exemption.

### **12.1.4 No retrospective time limit for waste levy exemptions**

Applications for an exemption under the WARR Levy Regulations can be made retrospectively (that is, after the levy is paid or becomes due for payment). The WARR Levy Regulations currently do not specify a time limit for making a retrospective exemption application. In the absence of a time limit, licensees can potentially apply for an exemption many years after the waste is accepted by that landfill. This undermines timely consideration of exemptions by the CEO, and the collection of waste data.

### **12.1.5 Licensee fails to estimate the weight or volume of exempt waste**

Under regulation 18(2) of the WARR Regulations, a licensee for a licensed landfill must lodge a return in the approved form in respect of each return period setting out details of waste received, including exempt waste. The form must be completed on the basis of the details entered in the records referred to in regulation 17.

Under the WARR Levy Regulations, if a licensee fails to calculate or estimate the volume or weight of waste received at their landfill premises, the CEO can estimate the amount of that waste for the purposes of calculating the levy.

While this is a rare occurrence, it can be a highly complex and time-consuming process for the department.

The CEO's costs for estimating the levy can be included as part of the amount of levy payable, or can be claimed from a licensee's financial assurance under regulations 12C and 12 of the WARR Levy Regulations. However, further financial disincentives may be needed to curtail this option.

## 12.2 Consultation feedback

Changes to the waste levy exemptions were not directly discussed in the Waste Reform Paper 2017.

Select feedback that is relevant to waste levy exemptions from the 2017 paper include the following:

- Concerns that if the levy applies to broader waste disposal to land (Chapter 9), the levy will apply to the re-use of waste materials (e.g. fertiliser, treated wastewater, biosolids, mineral processing, rehabilitation of quarries).
- Consider exempting inert materials which are a low risk to the environment.
- Consider exemptions for internal movement between company sites, and onsite generation, and disposal of organisation's own waste.

## 12.3 Proposed legislative options

### 12.3.1 Option 1: Maintain existing exemptions

Under Option 1, the existing levy exemptions under regulation 5(1) of the WARR Levy Regulations are maintained. There is an ongoing risk that specific levy exemptions in the WARR Levy Regulations may be redundant or impractical.

There are concerns that the existing exemptions may not adequately support timely re-use and recycling of waste, and its transport off-site. In addition, activities that are intended to minimise health and environmental risks may be captured by the levy.

### 12.3.2 Option 2: Key amendments to the waste levy exemptions

The below changes are proposed to clarify existing exemptions, encourage licensees to calculate or estimate their own levy liability, and support timely applications for levy exemptions.

### *Cell Construction*

Regulation 5(1) of the WARR Levy Regulations will be amended to clarify that exemptions may be granted for waste used for cell construction and maintenance (e.g. cell liners, bund walls, leachate management system). This may require a new exemption.

As part of this exemption, the cell construction and maintenance materials to be used **will be** assessed by the department as part of works approval and licensing requirements under the EP Act. Records of all materials used in cell construction are to be kept for verification and auditing, and available on request. The proposed exemptions reflect a landfill levy exemption operating in Victoria.

### *Roads and Construction Works*

Regulation 5(1)(g) will be amended to focus on waste used for roads and construction works at the waste disposal premises, and align with an exemption approach in NSW. The reference to “maintenance work” in the exemption will be removed, as its intention and scope is not clear.

It is intended that “construction works” would include the construction of foundational support for infrastructure at the premises (e.g. hardstands, building foundations, roads).

The department may prepare supporting guidance to define what materials can be utilised for roads and construction works under this exemption, to protect human health and the environment.

### *Time limit for retrospective exemption applications – 24 months*

The time limit for applying for any exemption under the WARR Levy Regulations will be 24 months after the levy becomes payable for the waste. After this time, an exemption cannot be claimed from the CEO. This will encourage licensees to apply for their levy exemptions in a timely manner.

### *Removing CEO obligation to estimate the quantity of exempt waste*

If a licensee of a waste disposal premise has failed to calculate or estimate the weight or volume of waste received or deposited (including the exempt waste) it is proposed the licensee will not be able to claim an exemption for any leviable waste.

The CEO will be required to estimate the amount of waste received or deposited, but not the amount of exempt waste.

This proposal is intended to provide a financial incentive for the licensee to conduct their own calculations and estimates for exempt waste, and to provide this information as part of their returns. It will also minimise a financial and regulatory burden for government, where CEO estimates are required.

### **12.3.3 Option 3: Changes to regulation 5(1)(b) - waste levy exemptions**

Option 3 builds on proposals contained in Option 2, with additional amendments to regulations 5(1)(b), 5(7) and 5(8) of the WARR Levy Regulations to simplify levy liability for specific stockpiled waste.

Under Option 3, it is assumed the WARR Levy Regulations will be amended so that the levy is payable either on all waste “received” or all waste “deposited” at a landfill premises (See Chapter 8). If that change is not made, regulation 5(1)(b) (and therefore regulations 5(7) and 5(8) will remain redundant and will be repealed (see section 12.1.2 above).

The levy liability will be triggered for the waste when it is received/deposited at the landfill facility. If the waste can be re-used, reprocessed or recycled, the licensee will be able to seek a levy exemption for the waste if the licensee provides sufficient evidence that:

- the waste will be transported from the licensed landfill for a lawful activity after being processed, recovered or recycled on site
- the waste will be transported from the licensed landfill to another facility for lawful processing, recovery and recycling, or
- the waste will be transferred to another licensed landfill for lawful disposal, where that landfill will pay the levy for the waste disposal.

As stated in section 12.1.2, the current exemption under regulation 5(1)(b) also applies to waste that is not disposed of to landfill, but is used in energy recovery. This exemption will be considered through separate consultation on the scope and application of the waste levy.

The levy exemptions under Option 3 are closely based on the NSW approach under their waste levy legislation. It is noted that in NSW, the legislative framework is framed around exemptions for waste that can be re-used or reprocessed under a legislative approach for waste derived materials.

It is intended that the waste levy will not apply to waste received at the landfill for disposal, if the waste levy has already been paid for that specific waste because of long-term waste stockpiling at another waste facility (e.g. solid waste depot). A new waste levy exemption under the WARR Levy Regulations may be developed to support this policy approach. This will address stakeholder concerns regarding the prospect of paying the levy twice under proposed waste reforms (see Chapter 8).

It is also proposed that levy exemptions will not be granted under the amended version of regulation 5(1)(b) for the following types of waste at landfill premises:

- waste received/deposited more than 12 months before the date the exemption is claimed
- landfill gas or anything derived from landfill gas

- landfill leachate or other waste derived from landfill leachate.

The above approach would replace the current waste levy exemption under regulation 5(1)(b), 5(7) and 5(8) of the WARR Levy Regulations.

This proposal will align with the approach under Option 3 for minimising stockpiling at waste storage premises (see Chapter 11).

Applications under other exemptions in regulation 5(1) will be permissible up to 24 months after the waste becomes leviable (see section 12.3.2).

#### 12.3.4 Waste-derived materials

The 2017 consultation process indicated stakeholders had concerns regarding the levy applying to activities for the re-use of waste (e.g. biosolids). The department is investigating options to implement a legislative framework for waste-derived materials to inform the preferred approach for Western Australia. That process will be considered as part of this project to ensure legislative approaches are aligned.

Further amendments to waste legislation may be proposed, depending on the outcomes of that consultation process.

#### Chapter 12 - Consultation questions:

1. Please provide feedback on Option 2, which intends to clarify and strengthen existing waste levy exemptions. If you are the licensee of a waste facility, what are the expected impacts or benefits of these proposed changes? Please provide evidence or further information.
2. Please provide feedback on the proposed time limit for retrospective applications for an exemption under Option 2, including potential impacts.
3. Please provide feedback on the proposed levy exemptions relating to regulation 5(1)(b) in Option 3. Are the proposed exemptions and timeframes for removing the waste suitable? Please provide evidence or further information.
4. Please provide general feedback on the proposed waste exemptions, and if other waste levy exemptions need to be considered to support the Waste Strategy 2030. Please provide evidence or further information.



## 13 Improving solid waste reporting from waste facilities

### 13.1 Key issues to address

#### 13.1.1 Waste disposal and recycling data is limited in Western Australia

There is currently a lack of data on solid waste volumes being transported between facilities in the Perth metropolitan region and regional areas of the state. This makes it difficult to ascertain if re-use and recycling rates for waste are improving in Western Australia, and if landfill disposal is decreasing.

Outside of waste levy reporting by metropolitan landfill premises, there is a lack of accurate information about waste disposal and recycling in Western Australia. The lack of waste data means there is incomplete information relating to:

- where the waste arises (or is being generated)
- the type and volume of waste being received at waste facilities
- where waste is being transported to
- the volumes of waste being disposed of, or recycled.

Without accurate waste data it is difficult to monitor and make informed decisions on future waste initiatives for Western Australia.

Incomplete waste data also undermines compliance and enforcement work by the Government, which can lead to opportunities for waste levy avoidance.

Jurisdictions such as NSW have already introduced [comprehensive waste data reporting](#) to ensure waste is appropriately monitored in their jurisdictions. South Australia is also [considering a mass balance reporting framework](#) for its waste sector.

#### 13.1.2 Stockpiling or illegal diversion of waste

There are concerns that the waste levy may be driving inappropriate or illegal diversion of waste from landfill through large-scale stockpiling (e.g. construction and demolition waste, timber, green waste), illegal dumping, or disposal of waste at inappropriate or unlicensed facilities (e.g. non-metropolitan landfills).

Large-scale waste stockpiling can create health and environmental risks, including the leaching of organic and hazardous substances and fire hazards. Where there is company insolvency, or site abandonment, the large waste stockpiles may need to be removed by government, which is a cost borne by the community.

#### 13.1.3 Waste Strategy 2030

Improving data collection and reporting systems to allow waste generation, recovery and disposal performance to be assessed in a timely manner is a key implementation

measure under the Waste Strategy 2030. Improving waste data reporting will provide key data for monitoring the effectiveness of the Waste Strategy 2030, and assist in shifting Western Australia to a circular economy.

## 13.2 Consultation feedback

From the Waste Reform Paper 2017, the following comments were received in relation to waste reporting and tracking:

- Select respondents recommended a universal, user-friendly and efficient record-keeping system which is publicly available (e.g. mass balance accounting).
- Further information was requested on the rationale for monthly reporting, and how waste can be tracked at storage and sorting facilities.
- Waste data collection and reporting should be focused on priority wastes based on their risk, volume and potential for diversion.

## 13.3 Proposed legislative options

### 13.3.1 Option 1 - Maintain existing waste reporting approach

In Western Australia, the existing approaches for solid waste reporting include:

- mandatory tracking for specific controlled and hazardous wastes under the Environmental Protection (Controlled Waste) Regulations 2004
- mandatory waste levy reporting – Licensees of all Category 63, 64 and 65 landfills in the metropolitan area and Category 63, 64, and 65 landfills outside the metropolitan area that receive leviable waste must provide information on the weight and volume of wastes received on an annual basis (31 facilities)
- from 1 July 2019, the amended WARR Regulations introduced mandatory annual reporting of waste and recycling data from local governments, premises that sort, treat or process more than 1,000 tonnes of recycled or reprocessed product per year, and regional landfill premises that receive more than 20,000 tonnes of solid waste per year
- ad hoc reporting of waste disposal volumes via licensing under Part V Division 3 of the EP Act.

Consultation is also underway on proposed amendments to the WARR Levy Regulations to require the use of weighbridges at Category 63, 64 and 65 landfill premises to calculate leviable waste, which would be reported.

The above schemes provide key information on waste data in Western Australia. However, data gaps still remain which can undermine effective waste management,

particularly waste data from smaller regional waste facilities, and waste facilities not subject to the waste levy.

### **13.3.2 Option 2: Mass Balance Reporting - within 800 km of Perth metropolitan region**

Under Option 2, mass balance reporting will require the licensee or occupier of specific waste facilities that are subject to the waste levy, to keep records and **report monthly** on the weight or volume of waste and other materials that a site received, disposed of, stockpiled, used on-site, or transferred from the site for sale or disposal. Further information on the detailed approach is contained in Appendix 1.

The licensee or occupier of specific waste facilities who are not subject to the waste levy will be required to keep records and **report annually** on the weight or volume of waste and other materials received, disposed of, stockpiled, used on-site, or transferred from the site for sale or disposal.

This approach is intended to align with mass balance reporting in New South Wales, and the approach being considered by [South Australia](#) as part of recent public consultation. In [New South Wales](#), the scheme was introduced to improve the reliability of data on waste facilities, and strengthen the EPA's regulatory oversight across the waste industry.

This mass balance reporting proposal is a long-term project, which would build on new mandatory reporting requirements that were introduced on 1 July 2019, for local governments, large recycling and reprocessing premises, and large regional landfill premises (see section 13.3.1 above).

Outcomes from consultation on the mandatory use of weighbridges to weigh waste at specific licensed landfills may also be incorporated in this process.

A mass balance reporting system creates an auditable framework to monitor waste and other materials when they enter and travel through the waste management process. Reporting continues until the waste and materials leave the system (e.g. disposal, recycling or re-use).

To improve the monitoring of Perth metropolitan waste, it is proposed that mass balance waste reporting is implemented within an 800 km radius of the Perth metropolitan region, with the area defined in legislation. This will ensure many waste facilities close to the Perth metropolitan region (that receive metropolitan waste) are captured.

This 800 km radius is intended to capture information on solid waste movement within the Perth metropolitan area, and where waste disposal may be occurring in major nearby regions, including Kalgoorlie and Esperance.

Option 2 proposes that mass balance reporting requirements would apply to facilities which are permitted to accept solid waste under their Part V licence. The following

specific waste facilities that are licensed under the below categories in Schedule 1 of the EP Regulations<sup>17</sup> would be subject to the requirements:

- Category 13 – Crushing of building material
- Category 47 – Scrap metal recovery
- Category 53 – Fly ash disposal
- Category 56 – Used tyre storage (tyre fitting business)
- Category 57 – Used tyre storage (general)
- Category 58 – Biomedical waste incineration
- Category 60 – Incineration
- Category 61A – Solid waste facility
- Category 62 – Solid waste depot
- Category 63 – Class 1 inert landfill site
- Category 64 – Class II or III putrescible landfill site
- Category 65 – Class IV secure landfill site
- Category 66 – Class V intractable landfill site
- Category 67A – Compost manufacturing and soil blending.

Under the Option 2 proposal, the licensee or occupier of a landfill that is subject to the levy (currently Category 63, 64 and 65 landfills) will be required to submit monthly reports. The licensee or occupier of all other licensed facilities listed above (which are not subject to the levy) would submit an annual report on their data.<sup>18</sup>

For a number of legislative proposals outlined in this paper, mass balance reporting will be important for supporting proposals requiring the monitoring of stockpiled waste.

The proposed data that would need to be recorded and reported by the specific waste premises as part of a mass balance reporting system includes the following:

1. Waste by type arriving at a site, including weight/volume, waste streams, and where it was generated/delivered from.
2. Waste stockpiled or stored in any manner at a site.
3. Waste that is used on-site at the facility (e.g. landfill cover).
4. Waste processed at a site.

<sup>17</sup> It is noted that this paper proposed options to amend several waste categories for landfills, solid waste storage and used tyres. Any changes to those categories would be integrated with this proposal.

<sup>18</sup> Note, however, the proposal to amend the landfill categories in Chapter 9.

5. Waste-derived products and residual waste produced at a site.
6. Waste-derived products stockpiled at a site.
7. Waste-derived products leaving a site.
8. Waste leaving the site (including type and quantity).
9. Waste that is being transported interstate or exported overseas.
10. Waste disposed of at a site.

Additional guidance will be prepared to support the specific waste premises with waste measurement, record keeping and reporting obligations.

Reporting is likely to be supported by a modern online waste reporting portal, which would be administered by the department. It is intended that the development of this online waste reporting portal will ensure there is a streamlined, one stop shop for all waste reporting requirements to minimise reporting duplication and administrative burden, which will align with waste data reporting proposals in section 13.3.1.

Non-compliance with reporting requirements or providing incorrect information will be an offence, with financial penalties.

### **13.3.3 Option 3: Mass balance reporting - statewide approach**

Option 3 expands the geographical scope of Option 2, and extends obligations to record and report waste data at specific waste premises across Western Australia. The proposed licensing categories subject to mass balance reporting requirements would be the same as in Option 2.

Option 3 also proposed an alternative timeframe for reporting, to ensure all specific waste facilities as outlined in Option 2 **report quarterly** on their waste data. It is anticipated this will improve the reviewing and auditing process for waste data, and assist waste compliance activities by the department. This will also align reporting obligations with waste levy return periods under the WARR Levy Regulations.

Extending mass balance reporting of waste across Western Australia acknowledges that a significant proportion of the state's construction and industrial infrastructure is in regional areas. Failing to record the waste generated by large infrastructure projects, or nearby regional centres (e.g. Karratha, Geraldton, Bunbury, Albany, and Esperance) means a large component of the waste economy in Western Australia is unaccounted for.

Establishing effective mass balance reporting of waste and other materials between licensed waste premises in Western Australia may not be achievable if only one portion of the state is regulated.

### **13.3.4 Cost impacts for waste industry and government**

Potential cost impacts for waste stakeholders resulting from proposals in Options 2 and 3 include (but may not be limited to):

- government and industry costs to establish new record-keeping procedures, and computer software, to address mass balance reporting requirements
- government costs to develop and implement the mass balance reporting scheme, and deliver ongoing training and guidance
- industry costs associated with using a weighbridge, or implementing a survey methodology at a waste premises to calculate waste volumes (please note the [recent departmental consultation](#) for the mandatory use of weighbridges at specific landfills to calculate leviable waste)
- industry costs for additional staffing to support new mass balance obligations – e.g. unmanned landfills may require staff on-site for reporting purposes.

Costs associated with implementing a mass balance reporting framework may be significant for government and non-government stakeholders.

### **Chapter 13 - Consultation questions:**

1. If you are a licensee or occupier of a licensed waste facility, please provide feedback (with supporting information) on your preferred option in relation to solid waste data reporting. Please provide evidence or further information.
2. Are there any other waste data reporting approaches which should be considered as an alternative for Options 1, 2 and 3? Please provide evidence or further information.
3. If you are a licensee or occupier of a licensed waste facility, do you collect information on the weight or volume of waste, and the type of waste, received by your facility? If yes, do you store this data electronically? Please provide evidence or further information.
4. What would be the expected cost impacts for licensed waste facilities to implement new reporting requirements under Options 2 and 3 (e.g. data collection, electronic record keeping, and monthly reporting)? Please provide evidence or further information.
5. Please provide feedback on the proposed timeframes and data requirements under Options 2 and 3, and if they support the collection of accurate solid waste data across the State. Please provide evidence or further information.
6. Introducing mass balance reporting will support other proposals outlined in this paper (e.g. Chapter 11 – waste stockpiling). Will Options 2 and 3 (and Appendix 1) align with other legislative proposals in this paper? Please provide evidence or further information.
7. What other factors need to be considered to establish mass balance reporting in Western Australia for solid waste, and if progressed, what should be the timeframe for its introduction? Please provide evidence or further information.

## 14 Compliance and enforcement measures for waste

### 14.1 Key issues to address

#### 14.1.1 Unlicensed premises accepting waste subject to the levy

There have been recent incidents in the Perth metropolitan region where the occupiers of unlicensed, private premises have accepted waste (e.g. construction and demolition waste) for disposal on their property for financial gain. The receipt of waste at unlicensed premises can be a potential risk to human health and the environment because of land contamination, and it can be a potential mechanism to avoid payment of the waste levy.

#### 14.1.2 Limited offences for large-scale waste disposal operations

The waste offences under the EP Act currently do not align with approaches in other jurisdictions for disposal at unlicensed waste facilities.

Under section 49A of the EP Act, it is an offence to discharge or abandon solid or liquid waste on or in any place, including in water to which the public has access, unless the act was done with the consent of the person who controls and manages that place. This offence is effective for targeting isolated dumping incidents but may not deter large-scale waste disposal operations at unlicensed premises.

In Victoria, under section 27A (2) of the *Environmental Protection Act 1970*, it is an offence for any person (including a waste generator, transporter or receiver) to dump, deposit, discard or abandon “industrial waste” at a place that is not a site licensed to accept the waste, or a site that is licensed to accept the waste, but without the knowledge or consent of the license holder.

In Victorian legislation, “industrial waste” means waste arising from commercial, industrial or trade activities or from laboratories; or any waste containing substances or materials which are potentially harmful to human beings or equipment.

The Victorian EPA can also require the waste generator, transporter and receiver of the waste to clean up and pay for the waste to be taken to a place where it can be lawfully disposed of.

Under section 143 of the *Protection of the Environment Operations Act 1997* (NSW) (POEO Act) if a person transports waste to a place that cannot lawfully be used as a waste facility for that waste, the person and the owner of the waste commits an offence. A waste facility is defined as “any premises used for the storage, treatment, processing, sorting or disposal of waste (except as provided by the regulations)”.

Under section 144, the owner or occupier of a place who allows their place to be used as a waste facility without lawful authority also commits an offence.



These offences have been devised to target large-scale commercial disposal of waste at unlicensed premises, with significant penalties.

### **14.1.3 Stockpiling leviable waste above limits set in licence conditions**

Long-term waste stockpiling at waste facilities can hinder timely and appropriate waste disposal, and prevent waste materials from being recycled or reprocessed (see Chapter 11).

Although a rare occurrence, if a licensee of a waste facility manages their waste volumes poorly, they could develop large waste stockpiles which exceed the limits contained in conditions of their Part V Division 3 licence. Contravening licence conditions is an offence under section 58 of the EP Act, with a penalty of \$62,500 for an individual and \$125,000 for a body corporate.

Although this penalty is significant, it may be less than the potential levy liability that may be attached to the excess waste which is stockpiled at the premises. Large waste stockpiles can also be a significant environmental and fire risk.

If a licensed premises is stockpiling large volumes of waste in contravention of its licence, this activity needs to be deterred to support effective waste management, and to minimise associated risks.

## **14.2 Consultation feedback**

Although not directly addressed in the Waste Reform Paper 2017, the following feedback was received from stakeholders in relation to levy avoidance:

- Select respondents generally supported waste tracking to ensure material is going to a legitimate end use.
- Select respondents requested further information on how the Government intends to regulate unlicensed waste sites.
- One respondent supported GPS tracking systems for waste trucks to identify companies engaging in levy-avoidance activities.

## **14.3 Proposed legislative options**

### **14.3.1 Option 1: No changes to the EP Act**

Under this option, the existing waste disposal offences under the EP Act are maintained (e.g. section 49A). The disposal of waste at unlicensed premises for waste disposal may be subject to existing penalties under the EP Act.

Existing offences may not be sufficient to address large-scale waste disposal at unlicensed premises, which may create environmental and health risks at these sites.

### 14.3.2 Option 2: Options to minimise unlawful disposal of waste

Option 2 is the preferred legislative approach to support waste reform in Western Australia and address the key issues identified.

#### *New Offence – waste disposal at unlicensed waste facilities*

Under Option 2, it is proposed there is a **new offence** to address waste disposal at unlicensed waste facilities, to target large-scale illegal waste operations.

It will be an offence for any person (including a waste generator, transporter or receiver) to dump, deposit, discard or abandon waste, or permit the dumping, depositing, discarding or abandonment of **waste**:

- (a) at a place that is not licensed under Part V Division 3 to accept the waste, or
- (b) at a site that is licensed under Part V Division 3 to accept the waste, but without the knowledge or consent of the occupier or owner of the site.

A “waste receiver” is the owner or occupier of a place (e.g. a tenant at a rural property) who allows (or causes or permits) the dumping, depositing, discarding or abandonment of waste at a site that is not licensed under Part V Division 3 for that activity.

For the waste generator (owner of the waste), it will be a defence if they can establish the offence occurred without their knowledge, and they exercised due diligence, and took reasonable measures, to ensure the waste was transported to a lawful destination.

For example, the waste generator may be able to rely on the above defence if the waste transporter supplied credible documentation indicating the waste was to be lawfully disposed of at a licensed landfill, but instead it was taken to an unlicensed site.

Under the proposed offence, waste generators and transporters will bear the onus of proving the place where the waste is being transported is licensed to accept that waste, **and** they have consent from the occupier to dispose of the waste at the site. Similarly, for the waste receiver, under this offence they will bear the onus of proving they are licensed to accept the waste under Part V Division 3 of the EP Act<sup>19</sup>.

To support the proposed changes under Option 2, it is proposed that enforcement powers in Part V Division 4 are also strengthened to address inappropriate waste disposal operations.

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<sup>19</sup> Please see s.143(2) and 144(2) of the Protection of the Environment Operations Act 1997 (NSW)

## Waste Restriction Notice

There are currently limited powers under the EP Act to compel the immediate cessation of activities where there is large-scale waste disposal occurring at an unlawful place (e.g. rural property). A prevention notice may be issued under section 73A – however, in some instances, this cannot be prepared and issued immediately, which can permit large-scale waste disposal to continue.

To support a fast response to unlawful waste disposal, it is proposed a new power is introduced into the EP Act to allow authorised officers to temporarily prohibit access to, and the importation of waste at, a place that is not licensed under Part V Division 3 to accept that waste **for a period of up to 21 days**.

Under the new provision, an inspector will be able to issue a Waste Restriction Notice to immediately cease the receipt of all waste at the site if the inspector considers the new Option 2 offence has occurred, or is currently occurring, and the notice is necessary to immediately stop the activity.

The Waste Restriction Notice may be given to the owner and/or occupier of the site or another person if the inspector considers it is practicable for that person to comply with, and give effect to the notice<sup>20</sup>.

The Waste Restriction Notice will not prohibit access to the site, or a specified part of the site, by the owner or occupier.

Failure to comply with the Waste Restriction Notice will be an offence, with daily penalties for non-compliance.

In addition, where there is non-compliance with the Waste Restriction Notice, inspectors under the EP Act will have powers to take reasonable measures to enforce the terms of the notice (e.g. secure the site). The CEO will be entitled to recover any expenditure incurred by the department if the inspector has to take reasonable measures to enforce the notice.

Following the issuing of a Waste Restriction Notice, the department may consider issuing a Prevention Notice under section 73A to the owner or occupier to prevent further waste importation at the site, and require actions to reduce waste stockpiles.

To further align with the proposed new notice, it is also proposed that section 73A(1) is amended to clarify that an inspector or authorised person may issue a Prevention Notice if they reasonably suspect that waste is being unlawfully deposited or discharged at a place which is not licensed for that activity under Part V Division 3 of the EP Act.

The proposed Waste Restriction Notice is partially based on a short-term restriction notice to target illegal waste disposal in England and Wales under the [Waste](#)

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<sup>20</sup> This proposal is based on the legislative approach for a vegetation conservation notice under the EP Act under s.70(3).

[Enforcement \(England and Wales\) Regulations 2018](#), which has been adapted for the Western Australian context.

*CEO notice – Waste tracking through Global Position System (GPS).*

Consultation feedback flagged the importance of waste tracking, and that the use of GPS devices for waste trucks may assist in identifying companies that are avoiding paying the levy. Illegal dumping and levy avoidance can financially undermine waste companies who transport waste to premises that can lawfully accept it.

Under section 144AC of the NSW POEO Act, the NSW EPA can issue a person with a notice that requires the person to install GPS tracking systems on their waste transportation vehicles. The Act imposes penalties for removing or tampering with the devices, or not complying with the notice.

To deter unlawful waste operations in WA, it is proposed that the EP Act be amended to give the CEO the power to issue a notice requiring the installation of GPS tracking systems, subject to defined criteria. For example, the CEO notice may be issued to specific persons who own waste transport vehicles, or it can apply to a defined vehicle or waste type (e.g. waste transportation vehicles carrying over 10 tonnes of waste). It will be the responsibility of the person subject to the notice to ensure the GPS device is operating at all times.

The GPS data is to be supplied to the CEO on request, so the movement of waste can be monitored.

*CEO notice – Waste tracking – Record-keeping requirements*

To further improve waste tracking, it is also proposed the CEO is provided with a power to issue a notice to a specific person (or company) to maintain records of their waste volumes movements, such as through the use of logbooks. It is intended this CEO notice would apply to waste transportation companies.

Non-compliance with these record-keeping requirements (or a failure to produce a logbook for a waste transport vehicle) will be an offence.

*CEO notice – Video monitoring at waste premises*

To complement waste tracking and record-keeping requirements, it is proposed the CEO is provided with the power to give written notice to an occupier of a licensed waste facility requiring them to install, operate and maintain a video-monitoring system. This will provide greater certainty and transparency regarding activities that occur on-site, and also the vehicles attending the premises.

The occupier will have to comply with requirements in the notice, including when the video must be operating, and how recordings should be stored. The video recordings are to be made available for inspection and copying by inspectors and authorised officers under the EP Act.

Video monitoring records are to be kept by the occupier for two years after being made.

This proposal is based on similar requirements contained in regulation 39 of the *Protection of the Environment Operations (Waste) Regulation 2014* in NSW.

#### *New penalties for repeat waste offenders*

Where a person has been convicted of a serious waste offence under the EP Act in the past five years, it is proposed that the penalty for any subsequent waste offence be the maximum monetary penalty for the commission of the subsequent offence, or imprisonment for the offence for two years, or both. This proposal will provide an additional deterrent for illegal waste disposal in Western Australia, and will target serial offenders.

These penalties are based on section 144AB under the *Protection of the Environment Operations Act 1997* (NSW).

It is intended this provision will only apply to serious waste offences specified in the EP Act, including pollution or environmental harm resulting from waste. Other serious waste offences will include section 49A (Dumping of waste) and the proposed new offence relating to unlawful waste disposal under Option 2.

#### *New penalties for contravening licence conditions for waste stockpiles*

New penalties are proposed to deter excessive and unlawful waste storage at licensed premises under the EP Act, which can undermine waste management, and be an environmental and fire risk.

Where a waste facility is storing leviable waste (or waste which may become leviable) and the stockpiles of this waste exceed limits specified under a condition of a Part V Division 3 licence, it is proposed an additional penalty is attached to a breach of this licence condition under section 58 of the EP Act.

The penalty would be only applicable to the waste which exceeds the stockpile limit under the licence, and it will reflect the amount of levy which would have to be paid for long-term stockpiling of this waste (see Chapter 11). This penalty would be additional to any levy that may become payable for this waste under the WARR legislative framework.

#### *New infringement notices for unlawful waste disposal*

To enable a quick response to illegal waste disposal activities, it is proposed the EP Act is amended to permit inspectors to issue on-the-spot infringement notices for offences that have been committed under the new Option 2 offence or section 49A.

An inspector can issue an infringement notice to the alleged offender if they have a reason to believe that a person has committed the relevant waste offence (e.g. waste transporters illegally dumping waste)<sup>21</sup>.

#### *New powers to identify persons in charge of vehicles*

To support investigations into waste-related offences, it is proposed authorised persons under the EP Act are provided with additional powers to identify the person(s) in charge of a vehicle that is involved in illegal activity.

A vehicle owner, or person in charge of a vehicle, shall if required by an authorised officer, provide any information within their power which may lead to the identification of the person in control of the vehicle at the time of an offence relating to waste (e.g. new Option 2 offence, section 49A). Non-compliance with this request for information will be an offence.

In addition, where an offence under the EP Act has occurred because of waste disposed or deposited from a vehicle, and the authorised officer is unable to establish who committed the offence, it is proposed the person in charge or responsible for the vehicle at the relevant time, will be deemed to have committed the waste offence.

This person will be provided with an opportunity via written statement on oath, or by statutory declaration, to explain if they are not responsible for the offence, and to identify the driver or person responsible for the waste offence.

These new powers will be modelled on existing powers for litter offences under sections 27(1a) and 27A of the *Litter Act 1979* (WA).

#### *Signage where there is unlawful waste disposal at a site*

To improve public awareness regarding unlawful waste disposal, it is proposed the CEO be able to require the installation of a sign at the front of a property which states the site is subject to a Prevention Notice under section 73A, or a new CEO Waste Restriction Notice for a waste-related offence. The sign is to be installed by authorised persons under the EP Act.

The sign will ensure that waste transporters visiting the site will be aware that the continual disposal of their waste at that premises is not permitted.

Under the Prevention Notice or Waste Restriction Notice, the occupier or owner of the site must ensure the sign is maintained, and not removed or defaced, or they will commit an offence.

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<sup>21</sup> Please see s.99J of the EP Act on infringement notices.

## **Chapter 14 - Consultation questions**

1. Please provide feedback on the compliance measures to address unlawful waste disposal under Option 2. What are the potential benefits and impacts for waste stakeholders? Please provide evidence or supporting information.
2. Please provide feedback on the proposed GPS and record-keeping requirements for vehicles carrying leviable waste in the Perth metropolitan region under Option 2. What types of trucks, and which waste streams, should be tracked by GPS to minimise unlawful waste disposal in Western Australia? Do all waste transportation vehicles require tracking? Please provide evidence or further information.
3. Please provide feedback on the proposed imprisonment option for serial waste offenders committing multiple breaches of the EP Act under Option 2, and whether this penalty be a suitable deterrent for illegal waste activity.
4. Please provide information on any other compliance and enforcement proposals which could be considered to address illegal waste disposal in Western Australia.

## 15 Improving the administration and collection of the waste levy

### 15.1 Key issues to address

#### 15.1.1 Improving the administration and collection of the levy

Under regulation 18(1) of the WARR Regulations, a levy is to be paid by the holder of a licence in respect of a licensed landfill.

A licensee must also keep the records set out in regulation 17 of the WARR Regulations. From the details entered in those records the licensee must in respect of each return period, prepare and lodge a return in the approved form, together with the amount of the levy payable in respect of the waste to which the return relates. The licensee is to pay the levy no later than 28 days after the end of a return period. This is a self-assessment process.

A person who is not a licensee may also be required to pay the levy if the CEO issues a written notice to that person specifying the amount of levy payable by that person. Payment of the levy is required no later than 28 days after the date of the written notice.

Under regulation 15 of the WARR Regulations, payment of the levy is to be secured by way of a financial assurance provided by a licensee to the CEO in an approved manner and form. The financial assurance secures or guarantees payment of an amount determined by the CEO as equivalent to the average levy to be paid in a return period.

Where the levy is due and payable, the amount is recoverable by the Minister for Environment in a court of competent jurisdiction as a debt due to the Minister. A penalty may also be imposed for non-payment of the levy.

Although the current legislative provisions have been sufficient there is an opportunity to make improvements to ensure the collection of the levy is efficient and effective which will be of benefit to both government and licensees.

### 15.2 Consultation feedback

This is a new proposal which was not included in the 2017 consultation process.

### 15.3 Proposed legislative options

#### 15.3.1 Option 1: Maintain existing levy return system

Under this option, the current levy return process (as outlined in section 15.1.1) will be retained.



Although the CEO will review the information provided in levy returns submitted by licensees, there is no formal mechanism for the CEO to issue a notice outlining the levy to be paid by licensees.

### 15.3.2 Option 2: Reforming the waste levy return framework

Option 2 is the preferred legislative approach to support waste reform in Western Australia, and to address the key issue identified.

It is proposed that the current process for lodgement of returns and payment of the levy be amended to provide an appropriate means to more efficiently administer and collect the levy.

The obligation on a licensee to prepare and lodge a levy return would continue. The CEO would be able to request further information to enable verification of information contained in returns.

It is proposed that a notice of assessment would be issued by the CEO based on information provided by a licensee and setting out a date for payment of the levy. In the event of a failure to provide a return, the CEO would be able to issue a notice of assessment based on an estimate. The CEO would be able to amend assessments of the levy and determine under and overpayments of levy.

Under this proposal, there would be a process to allow a review of a notice of assessment. The consequences of late payment of the levy would also be specified. These may include provisions similar to that found in the *Taxation Administration Act 2003* (WA).

The proposal partially reflects the approach taken in Victoria where the Victorian EPA has a discretion to issue a notice where a levy estimate is considered to be inaccurate.<sup>22</sup>

It is noted that the majority of licensees prepare and lodge levy returns and pay levy owed in a timely manner.

### Chapter 15 - Consultation questions

1. If you are the licensee of a landfill that submits levy returns, please provide feedback on Option 2, including the proposal to issue a notice of assessment. Please provide evidence or further information.
2. What other changes should be considered to improve the administration and collection of the levy? Please provide evidence or further information.

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<sup>22</sup> Section 50X of the *Environmental Protection Act 1970* (Vic)

## 16 How to make a submission

### Written submissions

Submissions can be lodged (preferred) at  
[consult.dwer.wa.gov.au/waste-policy/closing-the-loop](https://consult.dwer.wa.gov.au/waste-policy/closing-the-loop)

Hard copies can be mailed to:

Closing the Loop Review  
Department of Water and Environmental Regulation  
Locked Bag 10, Joondalup DC, WA 6919  
Closing date: **May 15, 2020, 5pm (WST)**

For further information:

Telephone: (08) 6364 7000

Email: [closingtheloop.queries@dwer.wa.gov.au](mailto:closingtheloop.queries@dwer.wa.gov.au)

## 17 Glossary

**CEO:** means chief executive officer of the department of the public service principally assisting in the administration of this Act.

**Diversion:** waste diversion or landfill diversion is the process of diverting waste from landfills to other purposes (for example, re-use, recycling or recovery).

**Landfill premises:** means —

- (a) a licensed landfill, or
- (b) premises that would, if the occupier of the premises held a licence in respect of the premises as required under the EP Act, be a licensed landfill.

**Levy:** means a levy imposed under the *Waste Avoidance and Resource Recovery Levy Act 2007* on the disposal of waste.

**Licensed landfill:** means premises specified in Category 63, 64 or 65 of the Environmental Protection Regulations 1987 Schedule 1 in respect of which a licence is held.

**Licensee:** means the holder of a licence in respect of a licensed landfill.

**Occupier:** an occupier of a premises is a person who is in occupation or control of those premises, whether or not that person is the owner of those premises.

**Recovery:** recovery refers to mechanical, thermal, biological, or chemical actions that recover all or some of the materials that may otherwise be disposed to landfill.

**Recycling:** recycling refers to using recovered waste materials substituted for raw materials.

**WARR Account:** means the Waste Avoidance and Resource Recovery Account established by section 79 of the *Waste Avoidance and Resource Recovery Act 2007*.

**Waste:** waste as defined under the *Waste Avoidance and Resource Recovery Act 2007* includes matter whether liquid, solid, gaseous or radioactive and whether useful or useless, which is discharged into the environment or prescribed by the Waste Avoidance and Resource Recovery Regulations 2008 to be waste.

**Waste Strategy:** means the Western Australian Waste Strategy approved and in force under Part 4, Division 1 of the *Waste Avoidance and Resource Recovery Act 2007*.

## Appendix 1 - Details of mass balance reporting approach

The Western Australian proposal for mass balance reporting is primarily based on the proposed South Australian approach outlined in their consultation paper – [Explanatory paper: mass balance reporting](#), published in 2017.

For the purposes of Appendix 1, “specific waste premises” refers to premises that are licensed under specific licensing categories in Schedule 1 of the EP Regulations, which are listed in Chapter 13.

### Waste reporting requirements

The licensee or occupier of specific waste premises must provide the CEO with:

- the total weight or mass of waste received at the premises each month in accordance with current requirements
- the waste streams received at the premises each month, including information on where it was generated/delivered from
- the total weight or mass of material transferred from the premises each month (and whether transferred elsewhere in Western Australia, interstate or overseas)
- the total weight or mass of material remaining stockpiled on-site each month
- the total weight or mass of material used on-site each month
- the total weight or mass of material disposed on-site each month
- the waste types transferred from, stockpiled, used or disposed by the premises each month.

### Periodic volumetric surveys

The licensee or occupier of specific waste premises who are required to pay the waste levy may be subject to additional requirements for volumetric surveys, carried out by a qualified surveyor, with the results provided to the CEO.

The occupier must keep a copy of the results of each survey for a period of at least six years after the date on which the survey is carried out, and make those results available for inspection and copying by an authorised officer on request.

If required and specified in writing at any other time by the CEO, the occupier of a specific waste premises must also have a volumetric survey of the premises carried out by a qualified surveyor and provide the results to the CEO as specified.

## **Topographical surveys**

If required and specified in writing by the CEO, the occupier of a specific waste premises must have a topographical survey of the facility carried out by a qualified surveyor and provide the results to the CEO as specified.

The occupier must keep a copy of the results of each survey for a period of at least six years after the date on which the survey is carried out, and make those results available for inspection and copying by an authorised officer on request.

## **Record keeping**

### *Waste types and waste streams*

The waste type is to be determined in accordance with published regulatory guidance by the department.

### *Waste and other material received at specific waste premises*

The licensee or occupier must record the following information in relation to each delivery of waste or other material received at the premises:

1. The weight or amount of any waste delivered, its waste type and its waste stream, and where it has been generated/delivered from.
2. The weight or amount of any other material delivered and a description of the nature of that other material.
3. The weight or amount of any waste delivered, or has been collected, that is subject to an approved waste levy exemption under the WARR Levy Regulations.
4. The date and time the delivery is made.
5. The registration number of the vehicle used to make the delivery.
6. Where the waste has been transported from another specific waste facility:
  - a) the name and address of the other premises
  - b) the code or number of any licence for the other premises.
7. Particulars of where any waste or other material delivered is placed at the premises.

### *Waste and other materials transported for use, recovery, recycling, processing or disposal*

The occupier of a specific waste premises must record the following information in relation to each load of waste or other material transported from the premises for use, recovery, recycling, processing or disposal at another place:

1. The weight or amount of any waste contained in the load, its waste type and its waste stream.
2. The weight or amount of any other material contained in the load and a description of the nature of that other material.
3. The weight or amount of any waste delivered that has been subject to an approved waste levy exemption under the WARR Levy Regulations.
4. The date and time the load is transported from the premises.
5. The registration number of the vehicle used to transport the load.
6. The name and address of the place to which the load is transported and the code or number of any licence for that place.
7. In the case of waste or other material in the load that is removed from a stockpile required to have a unique identification number — the unique identification number (see below for discussion on unique identification numbers).
8. Details of any recycling, mixing, blending or processing of any waste in the load, including the composition as a proportion of waste and other material in any waste-derived material in the load.

#### *Other records relating to vehicles*

The occupier of a specific waste premises must record the following particulars in relation to vehicles that enter the premises for a purpose related to the operation of that premise (whether or not the vehicle is being, or is intended to be, used to deliver or transport waste):

1. The date and time on which the vehicle enters the waste premises.
2. The date and time on which the vehicle leaves the waste premises.
3. The registration number of the vehicle.
4. The purpose of entry (for disposal or on-site use).
5. The weight of the vehicle upon entry and departure

#### *Material used for operational purpose at specific waste premises*

The occupier of a specific waste premises must record the following information in relation to any material used for prescribed operational purposes:

1. The weight or amount of waste and its waste type.
2. The nature of the purpose.
3. The date the waste is used.
4. Particulars of any EP Act or WARR legislation approvals relating to the use of waste for the purpose.

### *Waste and other material stockpiled at specific waste premises*

The occupier of a specific waste premise must record the following information in relation to any waste and any other material stockpiled at the site:

1. A unique identification number for each stockpile.
2. The weight or quantity of any waste (and its waste type) or other material held in each stockpile at the end of each month.

### *Keeping, retention and availability of records*

The occupier of a specific waste premises who is required to record information under these proposals must record the information in accordance with requirements, and ensure the records are retained for at least six years.

Any of the records are to be available for inspection and copying by an inspector or authorised officer on request.

### **Measurement of waste**

To support any proposal for new mass balance reporting requirements, legislation and departmental guidance on measuring and reporting waste would be prepared.

Information will need to be submitted in a CEO approved form. Unless otherwise specified, it is intended the weight or mass will be required to be reported in tonnes and reflect how the measurement was undertaken (e.g. weighbridge or conversion).

## Online resources

Waste Strategy 2030:

[www.wasteauthority.wa.gov.au/images/resources/files/2019/10/Strategic\\_Direction\\_-\\_Waste\\_Avoidance\\_and\\_Resource\\_Recovery\\_Strategy\\_2030.pdf](http://www.wasteauthority.wa.gov.au/images/resources/files/2019/10/Strategic_Direction_-_Waste_Avoidance_and_Resource_Recovery_Strategy_2030.pdf)

Waste Reform Project:

[www.der.wa.gov.au/images/documents/our-work/consultation/warr-act-review/Waste-Project-Reform-consultation-paper.pdf](http://www.der.wa.gov.au/images/documents/our-work/consultation/warr-act-review/Waste-Project-Reform-consultation-paper.pdf)

Waste Strategy Action Plan:

<https://www.wasteauthority.wa.gov.au/publications/view/strategy/waste-avoidance-and-resource-recovery-strategy-2030-action-plan>

2018 National Waste Strategy:

[www.environment.gov.au/system/files/resources/d523f4e9-d958-466b-9fd1-3b7d6283f006/files/national-waste-policy-2018.pdf](http://www.environment.gov.au/system/files/resources/d523f4e9-d958-466b-9fd1-3b7d6283f006/files/national-waste-policy-2018.pdf)

*Let's not draw the short straw - reduce single-use plastics* issues paper:

[www.dwer.wa.gov.au/single-use-plastic-issues-paper](http://www.dwer.wa.gov.au/single-use-plastic-issues-paper)

Our priorities: sharing prosperity:

[www.wa.gov.au/government/our-priorities-sharing-prosperity](http://www.wa.gov.au/government/our-priorities-sharing-prosperity)

Australian Government waste export ban timetable:

[www.environment.gov.au/protection/waste-resource-recovery/waste-export-ban](http://www.environment.gov.au/protection/waste-resource-recovery/waste-export-ban)

Waste levy review: [www.dwer.wa.gov.au/consultation](http://www.dwer.wa.gov.au/consultation)

Community Grants Scheme:

[www.wasteauthority.wa.gov.au/programs/view/community-grants-scheme-cgs](http://www.wasteauthority.wa.gov.au/programs/view/community-grants-scheme-cgs)

Community and Industry Engagement:

[www.wasteauthority.wa.gov.au/programs/view/cie](http://www.wasteauthority.wa.gov.au/programs/view/cie)

Consultation summary report - Waste level and waste management:

[www.der.wa.gov.au/images/documents/our-work/consultation/Waste\\_levy\\_and\\_waste\\_management\\_proposed\\_approaches\\_for](http://www.der.wa.gov.au/images/documents/our-work/consultation/Waste_levy_and_waste_management_proposed_approaches_for)



[legislative reform/Final Consultation summary report -  
Waste levy and management.pdf](#)

Food Organics and Garden Organics (FOGO) – position statement:

[www.wasteauthority.wa.gov.au/publications/view/position-statement/food-organics-and-garden-organics](http://www.wasteauthority.wa.gov.au/publications/view/position-statement/food-organics-and-garden-organics)

Environmental Protection Act 1986 amendments consultation:

[consult.dwer.wa.gov.au/strategic-policy/enviro-protect-act-amendments-consultation/](http://consult.dwer.wa.gov.au/strategic-policy/enviro-protect-act-amendments-consultation/)

DWER consultation on the mandatory use of weighbridge to calculate leviable waste:

[www.der.wa.gov.au/our-work/consultation/69-closed-consultations/525-open-consultation-mandatory-use-of-weighbridges-to-calculate-leviable-waste](http://www.der.wa.gov.au/our-work/consultation/69-closed-consultations/525-open-consultation-mandatory-use-of-weighbridges-to-calculate-leviable-waste)

