



Waste Avoidance and Resource Recovery (e-waste) Regulations 2023

Consultation draft – information paper

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1. Introduction

The Department of Water and Environmental Regulation (the department) is leading the implementation and delivery of a ban on e-waste disposal to landfill in Western Australia.

E-waste generation is increasing towards a predicted national rate of 23 kg per capita by 2030. E-waste can contain materials of value and hazardous parts that require responsible waste management.

The ban supports the 'recover' and 'protect' objectives of the *Waste Avoidance and Resource Recovery Strategy 2030*: Western Australians recover more value and resources from waste and Western Australians protect the environment by managing waste responsibly. The ban also aims to support Western Australia to become a sustainable, low-waste, circular economy in which human health and the environment are protected from the impacts of waste.

The delivery of a ban in Western Australia aligns with actions taken by other jurisdictions including Victoria and South Australia, which have previously implemented legislated landfill disposal bans that include e-waste. Guidance for the disposal of e-waste has been introduced in the Australian Capital Territory, and Queensland has developed and recently consulted on a draft E-Products Action Plan.

Certain e-waste is included under national product stewardship schemes. National e-stewardship work is progressing, including the Australian Government's commitment to develop a regulatory scheme to reduce waste from small electrical products and solar photovoltaic systems.

2. Background

Consultation with the community and industry was held from January to March 2023. A preferred option for implementation of the ban was described in that consultation and is confirmed to be the preferred approach in the Decision Regulatory Impact Statement, expected to be released in late 2023.

An E-waste Technical Advisory Group (ETAG), formed in June 2023, has provided input towards the draft Regulations, particularly on operational and technical matters. The ETAG comprises representatives from industry, government and not-for-profits and peak bodies involved in e-waste generation and management in Western Australia.

Now, the consultation draft Waste Avoidance and Resource Recovery (E-waste) Regulations 2023 (draft Regulations) have been developed under the *Waste Avoidance and Resource Recovery Act 2007* (WARR Act) to underpin the implementation of a statewide ban on the disposal of e-waste to landfill by 2024 in Western Australia.

3. The consultation draft Regulations

The provisions in the draft Regulations consider the outcomes of consultation and learnings from other jurisdictions. They align with the guiding principles, objectives and intended outcomes of the ban, aiming to ensure increased material recovery from e-waste and responsible waste management of e-waste in Western Australia.

The draft Regulations align with the preferred option of implementation under Regulatory Impact Assessment work and focus on the commercial sector, the e-waste collection network, the recycling industry, local governments, regional councils, the waste management industry and government.

The draft Regulations include the following key focus areas:

- a Schedule of applicable e-waste items, ensuring sufficient detail for the scope of items included in the ban
- regulatory obligations that focus on responsible waste management for:
 - e-waste service providers (e.g. collection network, recyclers, waste management industry)
 - commercial e-waste generators (where they are a 'significant business')
 - landfill operators
- reporting and recordkeeping obligations
- defences under certain circumstances
- exceptions considered out of scope
- exemptions for extraordinary circumstances.

4. Provisions

4.1. Definitions and exceptions, r.3–7 (Pt 1)

In the draft Regulations:

- **designated entities** are the landfill operators, significant businesses and e-waste service providers.
- **significant businesses** are defined as entities with 200 or more employees at the beginning of the financial year or those that have created at least 5 tonnes of regulated e-waste during the immediately preceding financial year.
- an **e-waste service provider** is defined as a person who conducts a business or undertaking involving the collection or receipt of regulated e-waste for storage, management, aggregation, treatment, processing, sorting, recycling, transfer or disposal.
- **aggregated waste** is a reference to waste that is subjected to a process intended to provide for resource recovery by combining the same or similar materials, collected or obtained at any time, as part of a process associated with dealing with waste.

Exceptions are set out in r.6 and include regulated e-waste captured in household kerbside collections (unintended capture), e-waste which is not known to be present in mixed waste, and residual waste. To complement this provision, obligations to source separate have been drafted and are described in section 4.3 of this paper.

Regulation 7 accounts for other applicable laws, including hazardous wastes and the interaction between those laws and the draft Regulations.

4.2. E-waste is not to be disposed to landfill, r.8 (Pt 2)

Regulation 8 has been developed to prevent e-waste being taken to or left for disposal at landfill sites by e-waste service providers.

Similarly, entities involved in business, industry, trade or commerce that generate e-waste are prohibited from sending or taking e-waste for disposal into landfills. It follows that a landfill operator that accepts regulated e-waste to their site must not dispose of it to landfill.

For breaches of these provisions by any of the designated entities, the department's compliance and enforcement policy will apply to a maximum penalty of \$10,000.

Defences for e-waste service providers and significant businesses exist where it can be proven that:

- there was a reasonable expectation the e-waste would be aggregated for recovery at the site, or
- for a landfill operator:
 - they first obtained a written declaration from the party leaving the waste that they had no reason to believe it contained regulated e-waste, or
 - they could not reasonably have known (e.g. due to mixed waste loads obstructing vision) that the waste accepted contained regulated e-waste.

4.3. Specific responsibilities of e-waste service providers, r.9–11 (Pt 3, Division 1)

Regulation 9 sets out the penalties which will apply to e-waste service providers for offences relating to the storage, treatment, processing and recycling of e-waste. These penalties have been developed to limit stockpiling, prevent spoilage and maximise material recovery from e-waste.

The defence available to e-waste service providers under r.9 sub-regulations 2, 3 and 4 is to prove that they took 'reasonable steps' to avoid committing an offence. Guidance on what constitutes 'reasonable' is found in Australian Standard AS 5377:2022 (Management of electrical and electronic equipment for re-use or recycling).

Regulation 10 sets out the penalty for failure to separate e-waste from other waste. The defence available to e-waste service providers under r.10 is to demonstrate they took reasonable steps to avoid the waste not being separated or that it could not be known that the waste contained regulated e-waste.

Recordkeeping requirements and offences are set out under r.11 and align with related data collection methodologies for waste types. Records are to be kept per financial year and lodged with the department's Chief Executive Officer (CEO) by e-waste service providers required to hold a licence (whether in force or not) under the provisions of the *Environmental Protection Act 1986* Pt V Division 3. This may be in respect of premises used for the purpose of storing, treating or processing regulated e-waste.

For breaches of these provisions by the e-waste service provider, the department's compliance and enforcement policy will apply, with graduated penalties to a maximum of \$10,000 per breach for non-compliance.

4.4. Specific responsibilities of significant businesses, r.12–13 (Pt 3, Division 2)

Regulation 12 sets out the penalties applicable to significant businesses that generate e-waste. These penalties have been developed to limit stockpiling, prevent spoilage and maximise material recovery from e-waste.

The defence available to e-waste service providers under r.12 sub-regulations 1, 2 and 3 is to prove that they took reasonable steps to avoid committing an offence. Guidance on what constitutes 'reasonable' can be found in Australian Standard AS 5377:2022 (Management of electrical and electronic equipment for re-use or recycling).

The recordkeeping requirements of significant businesses are set out under r.13.

For breaches of these provisions by the significant businesses, the department's compliance and enforcement policy will apply, with graduated penalties to a maximum of \$10,000 per breach for non-compliance.

4.5. Specific responsibilities of landfill operators, r.14 (Pt 3, Division 3)

Division 3 (r.14) sets out the obligation for landfill operators to separate e-waste from other waste. Defences will apply where reasonable steps were taken to avoid the waste not being separated or where it could not be known that the waste contained regulated e-waste.

For breaches of this provision by the landfill operator, the department's compliance and enforcement policy will apply, with graduated penalties to a maximum of \$10,000 per breach for non-compliance.

4.6. Specific responsibilities of record retention, r.15 (Pt 3, Division 4)

Regulation 15 sets out the penalty provisions for record retention and production upon request by the department's CEO.

For breaches of these provisions by the e-waste service provider or significant business, the department's compliance and enforcement policy will apply, with graduated penalties to a maximum of \$10,000 per breach for non-compliance.

4.7. Exemptions and review, r.16–17 (Pt 4)

The draft Regulations allow for exemptions in 'extraordinary circumstances'. The department's CEO may grant an exemption from a requirement of the Regulations. This may apply in rare instances (such as flooding or fire) where the aggregated e-waste may be rendered unusable, or (due to geographical remoteness affecting the availability of facilities/ resources) compliance with the Regulations is not feasible. In these limited circumstances, a business, landfill operator or e-waste service provider may apply to the department's CEO for an exemption to be granted. Decisions made by the department's CEO may be appealed to the State Administrative Tribunal for review.

4.8. Items included in the ban (Schedule 1)

A Schedule has been developed and inserted into the Regulations to clearly set out the e-waste categories and items in scope for the initial focus of the ban.

Broadly, the groups of categorised e-waste are:

- screens, IT, and telecommunications
- lighting and lamps
- large household appliances
- batteries
- temperature exchange equipment
- medical devices.

All items under these categories are listed in the Schedule. More items are anticipated to be added to the Schedule in future phases.

5. Consultation purpose

The department is seeking feedback on the draft Regulations. The department will analyse submissions and make recommendations to the Minister for Environment on the final regulations.

You can provide feedback by completing the template at Appendix 1 and submitting it to the department.

By making a written submission, you are consenting to the submission being treated as a public document. Your name may be published; however, your contact address will be withheld for privacy. 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.

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.

5.1. How to make a submission

Written submissions must be received by 5pm (WST) on 22 November 2023. No late submissions will be considered. Written submissions can be lodged by email (preferred) to ewaste@dwer.wa.gov.au or hard copies can be mailed to:

Manager, Waste Policy
Department of Water and Environmental Regulation

Locked Bag 10
Joondalup DC

JOONDALUP WA 6919

For more information, email: ewaste@dwer.wa.gov.au.

Appendix 1 – draft Regulations feedback template

Provisions	Comment
Part 1 — Preliminary (terms used, exceptions)	
Part 2 — Prohibition of disposal of e-waste to landfill	
Part 3 — Specific responsibilities Division 1 — E-waste service providers Storage, treatment, processing, recycling Source separation Recordkeeping Annual returns	
Division 2 — Significant businesses Storage and transfer requirements Records	
Division 3 — Landfill operators Separation of waste Record retention	
Part 4 — Exemptions	
Schedule 1 — Regulated e-waste	