

The City's Review of the Waste Avoidance and Resource Recovery Act 2007 (WARR Act) Discussion Paper – Department of Water and Environment Regulation 2020

City of Joondalup Comments

Introduction

The Department of Water and Environment Regulation (DWER) has released a discussion paper and is seeking feedback on the review of the *Waste Avoidance and Resource Recovery Act 2007* (WARR Act) which is the principal legislation for waste management in Western Australia. The Act requires that the legislation be reviewed every five years. The last Review took place in December 2014 and finalised in September 2015 – the result was that no changes were made to this Act from this review.

The City will consider the effectiveness of the WARR Act and make a submission to DWER by 25 November 2020. The City's feedback will help inform the review of the legislation and the proposals for reform. This review is the City's preliminary comments and the City reserves the right to formally comment at that time when legislative changes to the WARR Act are proposed and will provide comment through council at that time.

The City reserves the right to

The review seeks to consider the effectiveness of the legislation in meeting its objectives for reducing waste, encouraging resource recovery and its alignment to the Waste Avoidance and Resource Recovery Strategy 2030. The review will also consider the legislative framework to achieve a well-functioning waste collection and processing capacity.

The key issues that the review is trying to address are as follows:

- The lack of clarification of the roles, responsibilities and functions of the Waste Authority and the former department (the Department of Environment and Regulation) in the current wording of the WARR Act.
- Clarification about the administration of the WARR Account.
- Resourcing of the Waste Authority, in particular the Authority's capacity to direct support staff (currently provided by DWER) to facilitate fulfilment of its functions and deliver its priorities.
- This review also considers if further changes may be required to the WARR Act to support the Container Deposit Scheme (CDS) and future Extended Producer Responsibility Schemes (EPRS).
- The review also considers the effectiveness of legislative powers to make subsidiary legislation under the WARR Act, and if it supports effective waste management, compliance and enforcement.

Local government services

The WARR Act has a particular focus on local government functions and contains mechanisms relating to local government waste services, including waste local laws, waste plans and collection permits.

Waste local laws

The WARR Act provides local governments with the option of charging to collect municipal waste within their boundaries to protect the environment and public health. Provisions for waste local laws under the WARR Act, together with existing provisions under the *Local Government Act 1995*, give a local government the power to fix its own rates, fees and charges for waste management services.

The following questions are asked in the review and is the officers' comments from the Review of the WARR Act.

Chapter 4 Waste policy development

The Auditor General's report identified waste policy development as a significant area of overlap between the Waste Authority and the then Department of Environment Regulation (now DWER).

1.a Please provide feedback on the roles and functions of the Waste Authority and the CEO and department under the WARR Act?

The City supports the action to remove uncertainty and ambiguity around the functions of the Waste Authority (the Authority) and DWER as set out in the WARR Act.

The roles and functions of the Authority under the WARR Act is clear however there is overlap with DWER. The Authority may be called upon by the Minister for Environment to provide Waste Policy advice on specific waste issues. In this there is an overlap as the role of DWER is also to provide Waste Policy advice to the Minister for Environment under the provisions of the *Environmental Protection Act 1986* (EP Act).

DWER is also responsible for administering the WARR Account which is the Chief Executive Officers (CEO) (of DWERs) functions under the Public Sector Management Act 1994. This makes DWERs roles and responsibilities in waste management broader than its regulatory functions established under the WARR Act and include policy functions as identified in the Waste Strategy and Service Level Agreement.

The City also agrees with the advice provided by the former Auditor General in the 2016 report, reform is required to remove uncertainty and ambiguity in the roles and functions set out in the WARR Act.

b. What are the potential areas for improvement?

Clarifying the roles should enhance confidence of the Authority in delivering its programs and DWER will be able to set projects to support the Authority's programs rather than overlap in both areas due to confusion or requirements that suggest DWER should offer advice to the Minister. Clarifying the roles would assist in their implementation of business and remove any duplication. It would also give the Authority clarification on resourcing capacity to direct support staff to facilitate fulfilment of its functions and deliver its priorities.

c. What benefits or impacts may result from clarifying the department's role and responsibilities?

Reduced requirement for approvals from the Minister and the Departments CEO could also lead to more action and greater achievement of projects. Clarifying the role could help determine which department is required to make the decisions reducing the complexity of the current process.

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| WALGAs review comments |
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| Western Australia's Local Government Associations (WALGA) review of DWER discussion paper on the WARR Act review |
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| WALGA has considered three options for the role and functions of the Waste Authority – As an Independent agency, maintaining status quo and removing the Waste Authority from the WARR Act. |
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WALGAs review considers the advantages and disadvantages but does not show clear support for any clear way forward.

WALGAs review suggests that all functions of DWER which relate to waste policy and programs should be brought together into one branch – so that the work on the solutions for plastics as well as the Container Deposit Scheme are working alongside those considering product stewardship policy and program development.

Chapter 5 Administering the WARR Account

This chapter recommends that the review of the WARR Act remove all ambiguity between DWER and the Waste Authority regarding their respective roles and responsibilities around implementation of the Waste Strategy and expenditure from the WARR Account.

2. Are there any potential issues arising from the proposed reforms to improve the administration of the WARR Account?

DWERs CEO under the Financial Management Act is responsible for the financial management of the WARR account and the Authority administers the WARR account. The proposed reforms are to have the responsibility appropriately rest with the CEO and this should be confirmed through an amendment to the legislation. The City supports this change.

The City also suggests that it should be considered to have not less than 50 per cent, as opposed to 25%, of the Waste Levy collected available in the WARR account for the Waste Authority to administer. This would enable the Waste Authority to provide more support for the waste industry.

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| WALGAs review comments |
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| WALGA suggests there is a case for change – suggesting that effectively this is already occurring so the legislation should be amended to reflect this. |
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Chapter 6 Provision of services to the Waste Authority

This chapter details the difference of view of the respective roles and responsibilities of the Authority and DWER as requiring clarification in the WARR Act and provisions for staff and services to the Authority creating proposed reform.

The Auditor General noted that the Waste Authority effectively has no decision-making powers (as these rest with the Minister for Environment) and no staff, instead relying on DWER to provide services and facilities to fulfil its role. The former Auditor General noted that the staff are also subject to the department's direction.

3. Please provide feedback on the proposal to allow the Waste Authority to directly employ its own staff, or to enable the Minister for Environment or some other person to employ or appoint

persons to work directly for the Waste Authority. Will this support the work of the Waste Authority and the department?

The City does not support allowing the Waste Authority to directly employ its own staff. The Authority currently has access to the use of DWERs staff as required. Employing its own staff would require further funding and so legislative amendments to establish a mechanism to fund the staff. There could be further issues with duplication of works on projects given DWER staff are also required to work on the waste projects and programs.

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| WALGAs review comments |
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| WALGA show a clear view on not supporting the Waste Authority to directly employ staff. |
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Chapter 7 Waste services

The chapter details waste services as a matter identified as requiring clarification under the WARR Act provisions and the proposed reform options.

Currently the WARR Act includes provisions for waste services provided by a local government, including a regional local government, in specified circumstances. It has been identified that the powers under the WARR Act requiring a local government to provide waste services are not clear, and there are limitations on the powers under waste plans and waste collection permits. Further clarity appears necessary to ensure powers provide for broader sustainability outcomes.

4. What are your views about the proposal to enhance the capacity of the WARR Act to improve waste services? Do you see any potential issues?

This is not supported by the City as the “improvement” to waste services is not clear. The review is suggesting that the WARR Act be reformed to include the capacity for improved efficiency and innovation for long-term viability of onshore processing, including market development for the sustainable demand for locally produced recycled products – such as compost from large scale food organics and garden organics (FOGO) processing. This is what State Government should be doing anyway under the Strategy and so no reform is needed.

The City also supports the Auditor General’s report recommendations (2016) for DWER and the Authority to prepare a State waste infrastructure plan and comprehensive better practice guidance.

DWER and the Authority have ability to ensure a management framework that supports a resilient waste and resource recovery sector. The Local government supplies services to households that:

- are cost-effective, safe and reliable
- are informed by the State Government’s environmental sustainability objectives
- can adapt to and withstand market disruptions.

Therefore, there is no need for any change to the WARR Act if the intention is to give State Government more say over how each local government collects waste. Guidance is already supplied by DWER through the requirement for local governments to have waste plans that are aligned with the Strategy and through the annual reporting on the Plans.

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| WALGAs review comments |
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WALGA points out that it is difficult to answer the question posed in the Discussion Paper as a clear proposal about exactly what would change, what new powers would be inserted, and their implications is not included. They also point out that it is implied that the reform is to insert power into the WARR Act for the State Government to more specifically direct how local government provides waste services. –

Feedback suggests that it is essential that waste services are tailored to the local Government area and that the Government should not specifically direct how a service be undertaken.

Chapter 8 Waste legislative issues

This chapter includes discussions around CDS and EPRS with some matters arising from the CDS implementation and the changes in regulations required around this and the future of EPRS in WA and the proposed reform options.

Container Deposit Scheme

5. Are there any potential issues that may result from these proposals to improve operational and administration aspects of the CDS?

The City supports the change where it is proposed that section 47M is amended to prevent Material Recovery Facility (MRF) operators from disposing of containers in a prohibited manner if the MRF has claimed or received a recovery amount in respect of the container. The right balance needs to be achieved whereby the MRF operators can still process the waste but claim a certain portion of what is received given some containers after the processing are not able to be recovered (in particular glass).

The City also supports the proposal under section 47V be amended to provide a short timeframe of 40 business days in order to allow the coordinator to deal with unexpected resignations of board members.

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| WALGAs review comments |
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| WALGA supports the amendment relating to the MRF facilities operations and the Scheme Coordinator Board member replacement |
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6. Please provide comments on product stewardship plans or extended producer responsibility schemes, and if the WARR Act requires amendments to support their introduction.

Whilst there currently are provisions within the WARR Act to support EPRS introductions its clear through the CDS introduction that changes were required under the Act for its introduction. In most cases a national approach to product stewardship is the best example except for the case where the Commonwealth Government is lagging such as for CDS. However, if the WARR Act needs amendments to further support state based EPRS introductions this would be supported by the City.

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| WALGA recommends that the WARR Act be strengthened to ensure that State based approaches to the product stewardship can be taken. |
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Regulation-making powers under the WARR Act

7. Please provide feedback on these proposed changes to support regulations that implement the waste management framework.

The City supports the changes to the WARR Act to bring it into alignment with wording under the EP Act section 123(3) to allow for greater flexibility in terms of adopting key documents in subsidiary legislation made under the WARR Act.

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| WALGA states the case for change is not evident in the discussion paper and this is more for a case of consistency rather than any particular problem being solved. They pose no substantive objection to the amendment; however evidence of the problem has not been presented. |
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Will increasing penalties under the regulations be effective in deterring illegal waste activities?

Increasing penalties should prove effective in deterring illegal activities and should be a greater amount for repeat offenders. However, there is no case laid out in the review to support what the increased penalties will achieve or that there is any evidence that current penalties are set too low to deter illegal waste activities. In this the City does not object to the increase in charges if further consultation with the waste industry is sought to clarify what charges may deter illegal dumping activities.

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| WALGA states the case for change is not evident in the discussion paper. |
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| They pose no substantive objection to the amendment; however, evidence as to why the increase is likely to be more affective has not been presented. |
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Chapter 9 Other

This discussion paper has canvassed a number of important issues in relation to the operation of the WARR Act. This chapter is to bring up if there are other issues of concern about the legislation that have not been raised.

8. Are there any other matters which should be considered as part of this review of the WARR Act?

The WARR Act has been a great tool in creating a shift in waste and diversion from landfill and as the driver for a better environmental outcome from waste disposal. To avoid landfill the future of waste is supposed to lie in FOGO and Waste to Energy (WtE). There is no mention in the Act about regulations around these disposal methods even though it is mentioned in the current Strategy. FOGO for councils is only viable where there are processing facilities that can manage the waste generated. Also there is no point in making the FOGO product if there is no end market for the product. Whilst diversion of waste to landfill in the past has been the greatest issue, it seems as though WtE is the alternative to landfill and not seen as being

supported by the Authority or DWER, even though as the Strategy states it's a higher level on the recovery section of the waste hierarchy.

9. How do you think the WARR Act could better support an innovative and thriving waste sector, and ensure that waste and recycling services are effective?

If there is to be a circular economy in the future, there are more things that are required than an effective waste and recycling service. The local government is essentially the haulage part of the circle and relies on the State and Commonwealth Government to regulate business to supply quality product into the country that can and is worth recycling and that will be funded by the business or consumer. Innovation in manufacturing is also limited due to the quality of the product that can be recovered from the waste and recycling sector. The WARR Act could place bans on problematic waste items and create or push for EPRS for high quality recyclable items.

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| WALGAs review comments |
| If it is the intent as stated in the Strategy, for WA to transition to a circular economy it is likely that a structure which works across Government will be needed. As WALGA suggested in its submission on the draft Strategy an initial step would be to model what a circular economy would look like for WA. |
| For WA to progress to a Circular Economy, it cannot be only be waste management which drives this change – waste may be the symptom of what we need to change – but the solutions lie in product design, innovative procurement, market and industry development, disruptive technologies and approaches, social change and new economic approach. |