

13 November 2020



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WARR Act Review  
Department of Water and Environmental Regulation  
Locked Bag 10  
JOONDALUP DC, WA, 6919

Via Email: [warractreviewqueries@dwer.wa.gov.au](mailto:warractreviewqueries@dwer.wa.gov.au)

To whom it may concern,

**CITY OF KWINANA SUBMISSION ON THE REVIEW OF THE WASTE AVOIDANCE AND  
RESOURCE RECOVERY ACT 2007 DISCUSSION PAPER**

I refer to the Review of the *Waste Avoidance and Resource Recovery Act 2007* discussion paper, issued by the Department of Water and Environmental Regulation in September 2020.

The attached City of Kwinana Submission is hereby submitted for consideration in the review.

Yours sincerely,

A handwritten signature in black ink, appearing to read "T. Morley".

Troy Morley

**Manager Environment and Health Services**

Attachment: City of Kwinana Submission on the Review of the WARR Act 2007

# Review of the Waste Avoidance and Resource Recovery Act 2007 Discussion Paper

Submission closing date: 25 November 2020

## Background

*The Waste Avoidance and Resource Recovery Act 2007 (WARR Act)* is the principal legislation for waste management in Western Australia, and is subject to a statutory review every five years. The review is of the *WARR Act* only, not the *WARR Regulations 2008* or the *WARR Levy Act 2007*. It focuses on the operation and effectiveness of the *WARR Act* with particular regard to its:

- Effectiveness in meeting its objectives for reducing waste and encouraging resource recovery.
- Alignment with State Government waste management policy (the Waste Strategy).

Since the WARR Act was last reviewed in 2015, the Office of the Auditor General's 2016 report found that none of the Waste Strategy targets to divert waste from landfill were met in 2015, data to inform waste management progress was incomplete and unreliable, and the absence of effective cooperation between the Waste Authority and the then Department of Environment Regulation contributed to poor planning, reporting and delays in funding.

The City of Kwinana is fundamentally supportive of the review of the WARR Act, and is similarly supportive of any proposed changes that bring improvements to the function and efficiency of the Waste Authority and the Department of Water and Environmental Regulation (DWER) in managing waste related matters into the future. The City's position on the specific questions posed in the discussion paper are outlined below.

## Response to Consultation Questions

### *Chapter 4 – Waste policy development*

- 1. Please provide feedback on the roles and functions of the Waste Authority and the CEO and department under the WARR Act? What are the potential areas for improvement? What benefits or impacts may result from clarifying the department's role and responsibilities?*

The Auditor General's 2016 report identified waste policy development as a significant area of overlap between the Waste Authority and the former Department. It also identified that achieving improvements in waste reduction and greater resource recovery had been adversely affected by a lack of clarification in roles and functions. The City supports any proposed reforms to the WARR Act that seeks to achieve clearer separation of waste policy and program delivery of the Waste Authority from the regulatory, compliance and enforcement functions of the Department.

The State should be able to accurately monitor the progress and effectiveness of specific waste strategies and funded projects. However, the Auditor General's 2016 report found that monitoring of waste generation and recycling at the local, regional and state level, was affected by incomplete and unreliable data and inconsistent planning and progress reporting of projects. Poor quality and inaccurate waste and recycling data was also emphasised in



the most recent Auditor General's 2020 report on waste management service delivery, which should also be considered in this review. This is certainly an area for improvement that, if undertaken effectively, will bring substantial benefits to the Waste Authority, Department, waste management sector as a whole, and ultimately lead to improved waste outcomes. The City would be supportive of any proposed reforms that seek to improve outcomes in this area. Clarification of roles and responsibilities and mandated data and reporting standards that force consistency throughout the industry would enable more effective monitoring, reporting, benchmarking, industry analysis and strategic planning.

Removal of uncertainty and ambiguity in roles and functions will facilitate greater focus on key functions by responsible parties. This improved focus should result in increased efficiency and improvements to waste reduction and resource recovery outcomes that see environmental benefits to Western Australia.

## **Chapter 5 – Administering the WARR Account**

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

The Public Accounts Committee (PAC) 2018 report found that in 2016-17 the WARR Account had a large operating surplus of \$33.2 million, an increase of almost 10% on the previous year. The report detailed that the failure of agencies to settle on roles had hindered the efficient management of the account and that the large operating surplus was due to limited expenditure levels and resourcing issues within DWER and the Waste Authority. This ultimately meant that the intended benefits to be realised through the funding of strategic waste management activities from the WARR Account were not effectively occurring. Obviously for Local Governments, such as the City of Kwinana, who have paid millions of dollars of ratepayer funds towards the waste levy, this is very disappointing.

WARR Account expenditure authority and transparency is currently inconsistent. The Waste Authority may only apply funds from the account with an approved business plan or when specifically approved by the Minister for Environment. Business cases are developed based on Waste Strategy priorities, resource requirements and the operating budget for that financial year. However, the PAC 2018 report found that DWER is not required to produce business cases when it uses money from the account to fund internal projects related to the Strategy. Similarly, the Auditor General's 2016 report noted that details of internal expenditure for Department projects was notably absent, as the Department receives approximately \$7 million annually, which the Waste Authority has sought, but not received, a detailed breakdown to show that the moneys have been expended on Waste Authority functions.

The City agrees with the PAC 2018 report recommendation that the review of the WARR Act should remove all ambiguity between the Department and the Waste Authority regarding their roles and responsibilities concerning the implementation of the Waste Strategy and expenditure from the WARR Account. The City also supports the Auditor General's 2016 report recommendation to improve accountability and transparency of WARR Account expenditure. The City is of the position that improved clarification of responsibilities and increased transparency should result in improved efficiencies, and a greater focus on the progression of key initiatives and outcomes.

The City does not foresee any issues with the position outlined in the discussion paper that the responsibility for the WARR Account appropriately rest with the CEO, and that this be confirmed through an amendment to the legislation.



## **Chapter 6 – Provision of services to the Waste Authority**

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 is not party to the internal intricacies of the benefits and challenges presented by the current staffing arrangements between the Waste Authority and Department. The assertion that a different staffing arrangement will support the work of the Waste Authority and Department is, therefore, unable to be supported or rejected by the City. Of course, the City would be supportive of any proposed changes to legislation regarding staffing arrangements, if supported with an appropriate business case that demonstrates the benefits for doing so.

Furthermore, the City supports the PAC 2018 report recommendation that negotiations between the Minister for Environment and the Waste Authority should be made to determine the appropriate number of staff to assist the Waste Authority perform its functions and services. The review should clarify that staff working for the Waste Authority, to support waste management programs and initiatives, should be subject to the direction of the Waste Authority, and funded by the WARR Account.

## **Chapter 7 – Waste services**

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?*

The City agrees that further clarity in the WARR Act appears necessary to ensure powers provide for improved broader sustainability and waste sector resilience outcomes.

Through previous consultations undertaken by DWER, the City, like many other Local Governments, has requested increased activity by the Waste Authority and State Government towards improving resilience and sustainability in the domestic waste industry. To date, the use of WARR Account funding for this purpose has been inadequate. WARR Account funding has made negligible, if any, tangible difference to alleviating the challenges currently faced by the waste industry. The fact that the WARR Account maintains such a large unspent surplus, makes this particularly disappointing and frustrating for industry.

Improved strategic utilisation of existing WARR Account funds presents great opportunity to improve the current waste service industry deficiencies in Western Australia. The City strongly supports amendments to the WARR Act that would contribute to improving the current poor resilience and sustainability of the domestic waste services industry; albeit with any such proposed changes to be thoroughly and transparently consulted.

Issues may arise from such changes if the roles and responsibilities between the Waste Authority, Department(s), Local Government and private sector are not clear, or not appropriately consulted in their development. Additionally, the funding required to resolve, or at least meaningfully progress, the more costly challenges facing the waste service industry (processing infrastructure, recycled material market development and product development) is an ever-present barrier against effective progress. These barriers will not be overcome without adequate financial support from Commonwealth and/or State Governments and/or Waste Authority/WARR Account.

As previously argued by the Local Government industry, if a greater proportion of the waste levy being collected were allocated to the WARR Account and directed to such strategic activities, then the progression of Western Australia to a sustainable circular economy would



be possible, and progress far more rapidly than otherwise possible. The City reiterates its position from its previous consultation submissions, that if the State Government is actually committed to the State's strategic waste outcomes, then it must appropriately support the realisation of these outcomes, both strategically and financially.

The waste levy is an appropriate tool to facilitate financial support of waste industry progress, however the current 25% of levy collection apportioned to the WARR Account, and the current utilisation of existing funds, is inadequate to improve the current waste service industry situation. Strategically, as recommended to the Waste Authority and Department, on multiple occasions, over several years, by multiple agencies, a state waste infrastructure plan is fundamental, yet still ceases to exist. With the impending material export bans, the necessity for this infrastructure plan has never been greater, nor has the need for strategic market development for recycled materials and products.

If the WARR Act is proposed to be amended with an intent to improve waste services, it must be undertaken in conjunction with supporting State Government/Waste Authority strategic planning. If such amendments to the Act are made in isolation, great opportunity will be lost, with any resulting industry changes being haphazard and lacking the real potential of a strategically coordinated and collaborative approach to industry improvement.

### **Chapter 8 – Waste legislative issues**

5. *Are there any potential issues that may result from these proposals to improve operational and administration aspects of the CDS?*
6. *Please provide comments on product stewardship plans or extended producer responsibility schemes, and if the WARR Act requires amendments to support their introduction.*
7. *Please provide feedback on these proposed changes to support regulations that implement the waste management framework. Will increasing penalties under the regulations be effective in deterring illegal waste activities?*

The City agrees with the position that continuation of section 47M in its current form may jeopardise the continued viability of MRF operators. The City therefore supports an amendment that seeks to prevent 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 proposed amendment should be developed consultatively with industry so as to ensure there are no unintended operational issues that result. For future product stewardship plans to be further supported the WARR Act should be strengthened to ensure that State based approaches can be taken, should a national approach be insufficient.

The City is also supportive of the proposed amendment to section 47V to provide 40 business days that allows the scheme coordinator to deal with unexpected resignations of board members. Similarly, the City supports proposed amendments to Part 5 of the WARR Act that support future extended producer responsibility schemes, which again should be developed consultatively with industry. The City does not foresee any major potential issues resulting from such amendments.

The City is supportive of amendments to the Act and/or Regulations that support the waste management framework, including increasing penalties to deter illegal activities. Not only does the City support the proposed maximum penalty under Regulations being increased from \$10,000 to \$20,000, with or without a daily penalty of not more than \$2,000, but would support even higher increases. The City would also be highly supportive of amendments to



legislation that would enable the proceeds from these penalties to be directed to the WARR Account in order to further contribute to waste related outcomes.

The City is of the position that having substantial penalties in place deters illegal waste activities in two fundamental ways. Firstly, those who may unintentionally perform illegal activities are more likely to confirm their compliance. Secondly, those who intentionally undertake illegal activities for financial gain are forced to reconsider their risk appetite, and are impacted to a greater degree when caught, which one would expect to adjust future viability/behaviours of these operators.

Whilst the City has zero sympathy for any intentional illegal waste activity that results in financial penalties, it is important that any genuinely unintentional activity is proactively prevented and managed appropriately upon occurrence. The intent should be to make the regulations, and supportive information and resources, as clear as possible so as to avoid any misinterpretation of requirements, and ideally, legislation that allows the Minister some level of discretion with regard to situations with unique unintentional circumstances. With such measures in place, financial penalties for illegal activity should be harsh, with the intent to be an unashamed deterrent.

It should be noted that, as expressed in the City's previous consultation responses to DWER, waste compliance resourcing of the Department should be increased to more effectively manage illegal activities. Furthermore, the City has also previously contended that any proposed increase to the rate or scope of the waste levy in the future is highly likely to result in increased illegal activity, which becomes particularly pertinent should penalties and compliance resourcing not be adequately increased.

## **Chapter 9 – Other**

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

As outlined in the City's response to the DWER consultation paper on the Review of the Waste Levy, there are aspects of the current waste levy system that should be considered as part of the review of the WARR Act and subsidiary legislation. Fundamentally, the proportion of levy funds directed to the WARR Account and the prioritisation of expenditure towards strategic waste sector outcomes should feature heavily in the review.

The waste levy should, theoretically, aim to make itself obsolete by eliminating landfill of recoverable materials, yet by design, 75% of the levy collected is funding general operations of the State Government. Whilst this remains the case, there exists an unsustainable contradiction in the State Government's use of the waste levy as an instrument to achieve the State's objectives. It is essential that the rationale for the levy be made clear and that the application of the levy and use of funds generated be designed to be solely, or at the very least primarily, focused on improving strategic waste management outcomes, including the critical development and implementation of the State's inaugural waste infrastructure plan.

Any such improvements made under the review of the WARR Act would see substantial improvements to the support of innovation, adaptation, resilience and sustainability in waste and recycling infrastructure and services in Western Australia. This would ultimately result in a more rapid transition towards a circular economy and improved environmental outcomes with regard to the State's waste management.