

## Submission on the Review of the WARR Act

November 2020



### Status of this Submission

This Submission has been prepared through the Municipal Waste Advisory Council (MWAC) for the Western Australian Local Government Association (WALGA). MWAC is a standing committee of WALGA, with delegated authority to represent the Association in all matters relating to solid waste management. MWAC's membership includes the major Regional Councils (waste management) as well as a number of Local Government representatives. This makes MWAC a unique forum through which all the major Local Government waste management organisations cooperate.

This Submission therefore represents the consolidated view of Western Australia Local Government. However, individual Local Governments and Regional Councils may have views that differ from the positions taken here.

*This Submission was endorsed by the Municipal Waste Advisory Council via flying minute on Tuesday 24 November 2020.*

### Executive Summary

The Association appreciates the opportunity to provide input into the second review of the *Waste Avoidance and Resource Recovery Act 2007* (WARR Act). The review of the Act offers an opportunity to address some key issues with the Act and ensure the legislation is fit for purpose in the future.

**Independent Waste Agency** - In this Submission three options are presented for the future of the Waste Authority; a fully independent waste agency, the status quo and the removal of the Waste Authority from the Act. Feedback from Local Government, and WALGA's existing policy position, is that there should be an independent waste agency, tasked with policy development and program delivery and the Department of Water and Environmental Regulation should focus on regulatory functions.

**Clarity required on Local Government Waste Services** – there are different views within the sector regarding waste services and the degree of direction that State Government should be providing. Further discussion with Local Government is needed prior to any changes being made.

**Include Waste Education / Behaviour Change in definition of waste services** – Waste education and behaviour change are recognised as an essential component of effective waste service delivery. However the current definition of waste services does not include this.

**Strengthen Act to enable Extended Producer Responsibility** – Local Government strongly supports state based Extended Producer Responsibility in the absence of effective and timely national approaches. It is imperative the Act is strengthened to support this outcome.

**Consideration of a Circular Economy and Collaboration** – Further work is needed to determine what a circular economy would look like for WA and the waste sector cannot, alone, drive this work. The review of the WARR Act offers an opportunity to embed circular economy into legislation. There is also a need for increased collaboration across all waste streams, particularly in regional areas.

When the WARR Bill was developed the Association engaged actively with the Department and had a collaborative working relationship in relation to the development of the legislation. This process was very productive and the Association requests that in progressing any changes to the WARR Act that a collaborative approach be taken to ensure that Local Government input is included.

## 1. Introduction

The Association appreciates the opportunity to provide input into the second review of the *Waste Avoidance and Resource Recovery Act 2007* (WARR Act). The WARR Act includes a provision to require a review every 5 years. The first review commenced in December 2014 and was finalised in September 2015 – no changes to the Act were made following this review. The Second review is now occurring, with the release of a Discussion Paper by the Department of Water and Environmental Regulation (DWER). The key areas that the Department has identified in the Paper include:

- Role, responsibility and resourcing of the Waste Authority
- Waste Authority / Department interaction
- Clarification regarding how the WARR Act is administered
- Increase capacity in the WARR Act to “improve waste services”
- Modifications in relation to the Container Deposit Scheme
- Any other matters.

The Paper identifies the need, in reviewing the Act, to ensure the issues raised by the Office of the Auditor General review are addressed.

In developing this Submission, MWAC has drawn on a range of previous Submissions and other resources including the [WALGA Policy Statement on Waste Legislation](#) and the [Vision for Waste Management in the Metropolitan area](#).

This Submission has five sections:

- Role of the Waste Authority
- Local Government Waste Services
- Product Stewardship and Extended Producer Responsibility
- Other potential improvements
- Administrative amendments.

## 2. Role of the Waste Authority

### *Section of the Discussion Paper*

Section 4 Waste Policy Development

Section 6 Provision of Services to the Waste Authority

### *Questions from the Discussion Paper*

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?

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?

In the Discussion Paper the Department identify that the Waste Authority has a role in formulating waste policy or positions and advocating for their adoption. In the Act, the Waste Authority is specifically tasked with formulation of the Waste Strategy, consultation with stakeholders in doing so, and developing an annual business plan. However, all of these functions are subject to the approval of the Environment Minister and the work of developing these documents is undertaken by the Department. The Discussion Paper also states, “[i]mportantly the Waste Authority provides a mechanism for State Government to receive external advice on waste policy and program implementation”.

In considering how to comment on the role and function of the Waste Authority, MWAC has identified three potential options:

- Independent Agency
- Status Quo
- Waste Authority removed from the WARR Act.

In the following discussion, there is commentary on the advantages and disadvantages of each approach. Acknowledging that in WA we do not have a direct experience of the Independent Agency model.

| <b>Model</b>   | <b>Advantages</b>   | <b>Disadvantages</b>   |
|--|---|--|
| <p><i>Independent Agency</i><br/>           Characteristics – this would be a fully independent Agency, with the ability to directly employ staff, with a skills based Board. Modelled on Green Industries South Australia. It is anticipated the agency would still be funded by the WARR Account, and develop and implement an annual Business Plan – approved by the Minister. The functions would be program and policy related. DWER would continue to provide regulatory functions.</p> <p>This is WALGA's preferred model based on the <a href="#">Waste Management Legislation Policy Statement</a>.</p> | <p>Removes any ambiguity and complexity in relation to the role of the agency and staff.<br/>           Provides the opportunity for approaches to be progressed without need for Ministerial approval for every action.<br/>           This type of structure, while likely to be subject to the same type of political forces as other Government agencies would at least be tasked with achieving outcomes and be held accountable for that. Currently accountability is shared between Minister, Department and Waste Authority.<br/>           Opportunity to have open discussion about how policy and regulation interact.<br/>           Potential for a much broader remit for the Agency (such as driving a circular economy approach).</p> | <p>Moving to separate agency would take time and could introduce delays to the implementation of the Strategy.<br/>           A separate agency model is not in line with the Machinery of Government review approach – which has removed/reduced the number of agencies.<br/>           It would require a high level of engagement between the new agency and DWER to ensure that the regulatory approaches align and support policy and programs.</p> |
| <p><i>Status Quo</i><br/>           Characteristics - the current approach with the Department providing services to the Waste Authority.</p>  | <p>The current structure and approach has evolved over time and there is currently a high degree of across Government cooperation in the delivery of the Waste Strategy. This is a significant achievement for those involved at the Ministerial, Departmental and Waste Authority level. However, it is not clear if the current situation is a product of the Waste Authority structure itself.</p>   | <p>There will continue to be a situation where staff at the Department are providing advice to the Waste Authority and the Minister. Decision making is complex, as the Waste Authority, Department and Minister are all involved in the process.</p>  |
| <p><i>Waste Authority removed from the Act</i><br/>           Characteristics – the Waste Authority would be removed from the Act and the responsibilities ascribed to the Environment Minister and Department of Water and Environmental Regulation.</p>  | <p>Reduces costs (no Waste Authority sitting fees), reduces administration associated with the Waste Authority and streamlines decision making process.</p>   | <p>No guaranteed stakeholder input into decision making process.</p>   |

### Discussion

Specifically on the question 3 regarding staffing for the Waste Authority, the Association does not support the Waste Authority directly employing staff. This has occurred in the past and created a situation where there was significant duplication of effort and structural complexity. It is outside the scope of the WARR Act Review, but the Association considers that all functions of the Department which relate to waste policy and programs should be brought together into one branch – so that staff working on solutions for plastics and the Container Deposit Scheme are working alongside those considering product stewardship policy and program development.

Prior to the WARR Act, there was an advisory Waste Board, appointed on a representative basis from Local Government and industry. This provided advice to Government. A waste strategy was developed but never fully implemented during this time.

The level of engagement with stakeholders, and the extent to which stakeholder views will be taken on board, is very much dependent on the culture of the organisation undertaking the engagement and the Governments view regarding the need and importance of these activities. If there is a high regard for stakeholder input at a Departmental and Ministerial level, then structures and approaches will be put in place to ensure that. If there is the opposite, then whatever structures are in place it is likely they will be ineffective.

The current Minister and Department have shown a high degree of willingness to engage with stakeholders, directly and through the formation of various working groups to provide input into legislation, regulation, policy and Strategy implementation. For example, the Waste Reform Advisory Group, Container Deposit Scheme Advisory Group and the FOGO Reference Group.

Feedback from Local Government supported a fully independent Waste Agency focused on policy development and program delivery.

### 3. Local Government Waste Services

*Section of the Discussion Paper*  
Section 7 Waste Services

*Question from the Discussion Paper*

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 Discussion Paper identifies a number of matters requiring clarification:

*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.*

Definitions from the Act

*“local government waste” means —*

*(a) waste from residential sources; and*

*(b) any other waste of a kind prescribed by the regulations for the purposes of this paragraph, but does not include sewage or waste of a kind prescribed by the regulations as excluded for the purposes of this definition;*

*“waste service” means —*

*(a) the collection, transport, storage, treatment, processing, sorting, recycling or disposal of waste; or*

*(b) the provision of receptacles for the temporary deposit of waste; or*

*(c) the provision and management of waste facilities, machinery for the disposal of waste and processes for dealing with waste;*

Provision of waste services

Under the WARR Act, there is no requirement that Local Governments have to provide waste services, the Act S.50 (1) Subject to this Act and the EP Act, a local government **may** provide, or enter into a contract for the provision on its behalf of, waste services. [Emphasis added]

The Act was drafted in this matter because there are clearly circumstance where Local Governments cannot provide waste service for Local Government waste, or may choose not to provide them for a range of economic, social and environmental reasons. For example, remote cattle stations or in a mixed commercial or residential development. The Council of the Local Government ultimately makes the decision regarding the scope of the Waste Services provided.

However, the Act does provide the CEO of DWER with the power to require a Local Government to provide a waste service to protect human health or the environment. There is an appeal provision in the Act. To the Associations' knowledge this power has not been used to date.

Feedback from Local Government identified several issues in relation to the current provisions:

- For smaller non-metropolitan Local Governments extreme concerns were expressed about the potential to be forced to provide services by the State Government that were not financially sustainable. Concerns were also expressed about the capacity of some smaller Local Governments to meet the ever increasing expectations in relation to waste management, with what started as a basic provision to protect human health and the environment now expanding in scope. These Local Governments identified that where the Local Government could not provide these services, the State Government would potentially need to step in and fund/provide services. This is a vital consideration for remote aboriginal communities.
- Some metropolitan Local Governments indicated that a higher level of direction from the State Government about services was necessary. As the WARR Act says 'may' not 'must/will' provide services, this is open to interpretation.
- It was highlighted that the definition of waste services does not include waste education/behaviour change. As this is an essential element of effective waste management, it needs to be included in the definition to give the head of power to charge for waste education/behaviour change as part of the waste services charge.

The Association recommends:

- Further discussion with Local Government to determine if any amendments to the WARR Act can address issues with provision of service, or if other mechanisms would be appropriate.
- That waste education/behaviour change are included in the definition of waste services.

#### Limitations on the powers under waste plans

The current powers under the WARR Act in relation to waste plans are:

- The CEO (Director General) of DWER may require a Local Government to have a waste plan
- The CEO can require the Local Government to modify the plan – but must consult with the Local Government prior to doing so and have regard to the Local Government views
- The CEO can modify the plan and charge any costs onto the Local Government
- Local Government must perform waste management activities in accordance with their waste plan
- The CEO may require Local Government to report on the waste plan
- There are appeal provision to the State Administrative Tribunal.

Local Governments are currently developing the second round of Waste Plans, since the WARR Acts inception. The current suite of powers for the CEO allows the modification of a plan (and recovery of any costs) it also requires Local Government to implement and report on the Plan. These powers are quite significant in relation to directing Local Governments activities. There is not a penalty if the Local Government does not comply with its Waste Plan. The Association is not aware of any instance where the CEO has required the modification of a Local Governments' plan using the power in the Act.

Feedback from Local Government identified that the existing Waste Plan requirements already give the Department substantial influence over how Local Governments provide services – as the Plans need to align with the Strategy – therefore expansion of the powers was not supported.

The Association does not support a change to the current Act and appeal provisions in relation to Waste Plans.

#### Limitations on the powers waste collection permits

Issuing a waste collection permit allows the CEO to effectively contract out Local Government waste services, if the "waste management techniques employed [by the Local Government] are not consistent with modern practice". How "modern practice" is defined is that the Waste Authority has a

relevant 'code of practice' in place or if no relevant code of practice have regard to the advice of the Waste Authority. This section of the Act has not been used, so it is difficult to identify to what extent there are limitations. However, as its focus is on collection and does not include infrastructure provision, education or charging mechanisms, it could be difficult to implement a service consistent with 'modern practice' using this approach.

The Association does not support changes to the current Act, without a far greater understanding of what exactly is proposed and how that would impact on the sector.

#### Power for broader sustainability outcomes

The current Objects of the Act identify that "The primary objects of this Act are to contribute to **sustainability**, and the protection of human health and the environment, in Western Australia and the move towards a waste-free society" [Emphasis added].

The Objects of the Act set the context for the legislation and offer a reference point as to its intent. In relation to Local Government activities, sustainability considerations are already imbedded in the Local Government Act 1995 section 1.3 (3) which captures this intent:

*In carrying out its functions a local government is to use its best endeavours to meet the needs of current and future generations through an integration of environmental protection, social advancement and economic prosperity.*

Although the definition is perhaps somewhat dated, this could be addressed through the ongoing review of the Local Government Act, rather than a very specific definition of environmental sustainability only applying to one aspect of the Local Government operations.

#### Proposed Reforms

In the Discussion Paper the proposed reforms are stated as:

*There is benefit in ensuring the WARR Act includes 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 organic (FOGO) processing – as well as the ability to ensure a management framework that supports a resilient waste and resource recovery sector with 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.*

The Paper also notes that the current definitions in the Act are considered sufficient:

*However, further definition of the head powers and mechanisms that would apply to these services, such as waste plans, or fees and charges, is considered important to drive better practice waste management outcomes and actions that meet the Waste Strategy targets for material recovery.*

In relation to Waste Services the outcomes that the Paper identifies include:

- Support onshore processing
- Market development for recovered materials – such as FOGO
- Contingency planning
- Ensuring Local Government services meet the material recovery targets in the Strategy.

The Association considers that while there may be legislative support needed for some of these outcomes, they do not necessarily relate only to Local Government waste services, as the private sector is essential in providing for onshore processing, market development and contingency planning and Local Government alone cannot drive these outcomes.

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.

Following the issues raised however, the implied reform is to insert the power into the WARR Act for

the State Government to more specifically direct how Local Government provides waste services. Feedback from the sector has identified that it is essential that waste services are tailored to the Local Government area, for example the approach used in the metropolitan area will not necessarily work in regional areas.

#### 4. Product Stewardship and Extended Producer Responsibility

*Section of the Discussion Paper*  
Section 8 Waste legislative issues

*Question from the Discussion Paper*

4. Please provide comments on product stewardship plans or extended producer responsibility schemes, and if the WARR Act require amendments to support their introduction.

The current Act was developed with the intent that State based product stewardship/extended producer responsibility would be enabled. The implementation of the Container Deposit Scheme showed that the Act was not sufficient for this purpose, as amendments were required.

Although a national approach is preferred for Product Stewardship, as most products are sold into the national market, there are instances where this approach has not worked or the approach has been less than timely. The Container Deposit Scheme stalled at a national level, so States and Territories have instead progressed (all slightly different) Schemes. The national TV and Computer Scheme was developed and implemented, however the outcomes while useful are not currently equitable for WA and some other jurisdictions, as there is only a national target, not individual jurisdiction targets. The Scheme covers TVs, Computers and peripherals, which only make up about 70% of the ewaste Local Governments in WA are collecting.

There is a clear case for taking a State based approach to product stewardship, should a national approach be insufficient or not occur in a timely manner.

The Association recommends that the WARR Act be strengthened to ensure that State based approaches to Extended Producer Responsibility can be taken.

#### 5. Additional Amendments

*Section of the Discussion Paper*  
Section 9 Other

*Question from the Discussion Paper*

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?

*How does WA transition to a circular economy?*

Since the Act was introduced in 2007, there has been a significant shift in thinking in relation to waste management, particularly with the advent of the Circular Economy approach as a model for addressing not only waste management issues but broader social, economic and environmental outcomes. If WA is going to progress a Circular Economy, it cannot 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 a new economic approach.

If it is the intent, as stated in the Waste Avoidance and Resource Recovery 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 and initial step would be to model what a circular economy would look like for WA.

*Framework for Collaboration*

At the time of the first WARR Act Review, the Association developed a [Waste Vision Paper](#) for the sector identifying a new structure and approach to coordinating waste services across the metropolitan area. A key part of this suggested approach was Regional Council consolidation:

- Reduce the number of Regional Councils from five to three
- Compulsory Local Government membership
- Ability to operate on a commercial basis
- Geographically based boundaries
- Ability to appoint skills based member of the Regional Council
- Provide mandatory and discretionary services.

Feedback from some Local Governments indicated that there was still interest in this approach and reforms to the Local Government Act may facilitate other governance models to support this.

The WARR Act focuses strongly on Local Government activities, however Local Government waste is only a proportion of the waste stream. The commercial and industrial and construction and demolition waste streams, cumulatively, produce far greater amounts of material. Local Government, particularly in the non-metropolitan area, may take a significant role in managing / or coordinating the management of these waste streams. The current system where they are all considered separately limits potential collaboration. Regional collaboration – across all waste streams – will assist in developing economies of scale and may happen independently without Government intervention. However, a framework for collaboration which has some Government impetus or organisation will greatly assist.

**6. Administrative matters**

This section focuses on the administrative changes the Department is proposing in relation to the WARR Act.

| <b>Section of the Discussion Paper, Proposed Change and consultation question</b>  | <b>Comments</b>  |
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| <p><i>Section 5 Administering the WARR Account</i><br/>Clarifying what it means to ‘administer’ the WARR Act, so that the Director General of DWER has responsibility for financial matters.</p> <p><i>2. Are there any potential issues arising from the proposed reforms to improve the administration of the WARR Account?</i></p>  | <p>Case for change – yes, effectively it is already occurring, so the legislation should be amended to reflect this.</p> <p>Comment<br/>If other changes to the Waste Authority structure that WALGA are suggesting do not eventuate this is a useful amendment to clarify matters. However, WALGA would recommend far greater levels of detail are provided in the Waste Authority annual Report to Parliament on the level of expenditure against the business plan.</p> <p><b>Support amendment</b></p>         |
| <p><i>Section 8 Waste legislative issues</i><br/>Amendments in relation to the CDS portion of the legislation in relation to a prohibition on MRF operators disposing of containers in a prohibited manner AND including a provision to allow for transitional arrangements for the Scheme Coordinator Board.</p> <p><i>5. Are there any potential issues that may result from these proposals to improve operational and administration aspects of the CDS?</i></p> | <p>Case for change – yes.</p> <p>Comment<br/>In relation to the Material Recovery Facilities (MRF) operations it is not practical for these sites to capture 100% of all containers brought onto site, as some will be so contaminated or damaged (e.g. glass fines) that they cannot be recovered. In relation to the Scheme Coordinator Board, it is reasonable to have transitional provisions (of the proposed 40 business days) for when a Board member resigns suddenly.</p> <p><b>Support amendment</b></p> |

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| <p><i>Section 8 Waste legislative issues</i><br/>Alignment of definitions between the WARR Act and EP Act on what the Governor can put in regulation.</p> <p><i>7. Please provide feedback on these proposed changes to support regulations that implement the waste management framework.</i></p> | <p>Case for change – not evident in the Department Discussion Paper.</p> <p>Comment<br/>This seems to be more a case of aiming for consistency than any particular problem having occurred. The case is put forward is that the definition in the WARR Act is not as broad as the EP Act.</p> <p><b>No substantive objection to the amendment, however evidence of the problem has not been presented.</b></p>   |
| <p><i>Section 8 Waste legislative issues</i><br/>Proposal to increase the fines associated with contravening the Act.</p> <p><i>7. Will increasing penalties under the regulations be effective in deterring illegal waste activities?</i></p>   | <p>Case for change – not evident in the Department Discussion Paper.</p> <p>Comment<br/>The Department identifies the current fines of max \$10,000 with a \$1,000 per day max are not likely to deter unlawful waste disposal. The proposal is to increase the penalty to max \$20,000.</p> <p>Those industries more directly impacted by this issue may be able to provide information as to what level of penalty would be appropriate. Feedback from Local Government indicated it was imperative that the penalty was sufficient to deter the offence. There are a range of other provisions in the various waste reform documents and the Environmental Protection Act changes which may address some of these issues.</p> <p><b>No substantive objection to the amendment, however evidence as to why the increase is likely to be more effective has not been presented.</b></p> |