



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

# Waste not, want not: Valuing waste as a resource

Discussion paper

Proposed legislative framework for waste-derived materials

Department of Water and Environmental Regulation

September 2020

Department of Water and Environmental Regulation  
Prime House, 8 Davidson Terrace  
Joondalup Western Australia 6027  
Locked Bag 10 Joondalup DC WA 6919

Phone: 08 6364 7000

Fax: 08 6364 7001

National Relay Service 13 36 77

[dwer.wa.gov.au](http://dwer.wa.gov.au)

© Government of Western Australia

September 2020

FIRST 115880

This work is copyright. You may download, display, print and reproduce this material in unaltered form only (retaining this notice) for your personal, non-commercial use or use within your organisation. Apart from any use as permitted under the *Copyright Act 1968*, all other rights are reserved. Requests and inquiries concerning reproduction and rights should be addressed to the Department of Water and Environmental Regulation.

#### **Disclaimer**

This document has been published by the Department of Water and Environmental Regulation. Any representation, statement, opinion or advice expressed or implied in this publication is made in good faith and on the basis that the Department of Water and Environmental Regulation and its employees are not liable for any damage or loss whatsoever which may occur as a result of action taken or not taken, as the case may be in respect of any representation, statement, opinion or advice referred to herein. Professional advice should be obtained before applying the information contained in this document to particular circumstances.

This publication is available at our website [www.dwer.wa.gov.au](http://www.dwer.wa.gov.au) or for those with special needs it can be made available in alternative formats such as audio, large print, or Braille.

# Contents

Executive summary .....	v
1 Background .....	1
1.1 Issues paper .....	1
2 Proposed legislative framework.....	2
2.1 Overview.....	4
2.2 Amending the definition of ‘waste’ .....	5
2.3 Making a WDM determination .....	6
2.4 Types of waste-derived materials determinations.....	8
2.5 Prioritisation of WDM determinations .....	10
2.6 Trials of waste-derived materials.....	11
2.7 Content of WDM product specifications (general or case-by-case).....	11
2.8 Content of WDM declarations (general or case-by-case) .....	12
2.9 Contaminated sites legislation.....	13
2.10 Storage of waste-derived materials.....	13
2.11 Disposal to landfill.....	13
2.12 Review of WDM determinations .....	14
2.13 Publication and rights to appeal .....	14
2.14 Compliance and enforcement .....	15
3 ‘Closing the loop’ reform proposals .....	17
4 Implementation of the framework .....	18
5 How to make a submission.....	21
6 Stakeholder information sessions.....	22
Appendices.....	23



# Executive summary

The Government of Western Australia is committed to waste avoidance, recovering more value and resources from waste, and protecting the environment by managing waste responsibly, consistent with the objectives of the *Waste Avoidance and Resource Recovery Strategy 2030* ([Waste Strategy 2030](#)).

The Department of Water and Environmental Regulation (the department) is progressing a range of legislative reforms to meet the objectives of the Waste Strategy 2030, including improvements to the waste management and waste levy legislative frameworks.

This discussion paper seeks feedback on a proposed legislative framework for waste-derived materials. It will be of primary interest to producers and users of waste-derived materials deposited to land, and waste industry stakeholders.

## Aim

The legislative amendments proposed in this paper are aimed at providing certainty around when waste-derived materials are no longer waste and depositing them to land would not be considered 'waste disposal', meaning licensing<sup>1</sup> and waste levy requirements would not be triggered.

The legislative framework would provide certainty about when, and under what circumstances, a waste ceases to be waste and is considered a resource.

To create the legislative framework for waste-derived materials, amendments would be required to the *Environmental Protection Act 1986* (EP Act), *Waste Avoidance and Resource Recovery Act 2007* (WARR Act) and *Waste Avoidance and Resource Recovery Levy Act 2007* (WARR Levy Act).

Implementation of the legislative framework for waste-derived materials will also support the objectives of the Waste Strategy 2030 by encouraging the use of waste-derived materials to build confidence in recycled products, increase demand for them and develop relevant markets while protecting the environment.

While there are many uses of waste-derived materials, this discussion paper specifically relates to the production for, and depositing of, waste-derived materials to land in quantities above the licensing thresholds.

---

<sup>1</sup> Unless stated otherwise, the term 'licensing' in this paper refers to the licensing framework in Part V, Division 3 of the *Environmental Protection Act 1986*.

For the purposes of this discussion paper, ‘waste-derived materials’:

- refer to materials wholly or partly comprised of waste, or wholly or partly derived, recovered or produced from waste and which would be deposited<sup>2</sup> to land in quantities above the licensing thresholds prescribed in Schedule 1 of the Environmental Protection Regulations 1987 (EP Regulations)
- include solid and liquid materials deposited to land, such as construction and demolition waste, compost and treated sewage.

The proposals in this paper are directly relevant to:

- producers of waste-derived materials likely to be deposited to land in quantities above the licensing thresholds prescribed in Schedule 1 to the EP Regulations
- users depositing waste-derived materials to land in quantities above the ‘production or design capacity’ (licensing thresholds) prescribed in Schedule 1 to the EP Regulations
- producers and users of waste-derived materials in quantities below the licensing thresholds who wish to opt-in to the waste-derived materials framework. For example, producers may wish to market their waste-derived material as being produced in accordance with a waste-derived material determination (WDM determination).

Sitting outside of the scope of the proposed legislative framework are:

- licensing of production premises – producers of waste-derived materials would still be required to licence their production premises as a waste processing facility and/or waste storage facility
- controlled waste – the regulatory requirements for transport of controlled waste would not be altered by the proposals in this paper
- implementation matters, including supporting regulations and policy documents, which will be subject to separate consultation following passage of the legislative amendments outlined in this paper through Parliament.

## Features of the framework

The proposed legislative framework would empower the Chief Executive Officer (CEO) of the department to assess an application for, and grant or refuse to grant, a WDM determination. These WDM determinations would outline the circumstances under which a waste-derived material would cease to be waste for the purposes of the environmental protection and waste levy regimes.

---

<sup>2</sup> In reading this paper, and considering the concept of ‘deposited to land’, please review the landfill licensing proposals in Chapter 9 in the *Closing the loop: Waste reforms for a circular economy* consultation paper, which may have implications for the definition depending on the outcomes from that consultation process.

Depending on the nature and extent of use of the material, the WDM determination could be a general WDM determination (for commonly used waste-derived materials with known contaminant thresholds) or a case-by-case WDM determination issued to specific persons on a case-by-case basis (for bespoke circumstances).

The WDM determinations would be issued as one document, consisting of:

1. the waste-derived material product specification (WDM product specification) – applies to the producer and outlines the conditions to be met by the producer of the waste-derived material in order to supply it for use in ways that would otherwise require a licence.
2. the waste-derived materials declaration (WDM declaration) – applies to the user(s) of the waste-derived material and outlines the conditions the user of the waste-derived material must meet in order for the material to cease to be waste and therefore not have to licence the land on which they use the materials nor pay the waste levy (where applicable).

In making a WDM determination, the CEO would consider a set of matters, including the potential risks and whether the use would be fit-for-purpose.

The conditions in the producer's WDM product specification and the user's WDM declaration would be commensurate with risk. In circumstances where the use of the material is low risk, there may be fewer conditions.

## Rationale

To ensure waste-derived materials deposited to land are fit-for-purpose and do not create an unacceptable risk to the environment or human health, material would cease to be waste only when used in accordance with all the conditions of the relevant WDM declaration.

This would provide confidence to the community that appropriate controls are in place to ensure that waste-derived materials are being used appropriately, including that their use would not cause harm to human health and the environment.

It also acknowledges that some waste-derived materials could pose harm to human health or the environment if the controls required by the CEO in the WDM declaration have not been implemented. In these circumstances, the material would still be considered waste, triggering licensing and potentially waste levy requirements.

Some waste-derived materials may be suitable for use in specific applications and receiving environments but not in others. The ability to place conditions on how the waste-derived material is used enables consideration of site-specific matters in the risk assessment of the material's use. Without this ability, the risk assessment would need to be conservative and only consider the most sensitive receiving environment.

## Requirements and liabilities

The proposed legislative amendments would impose penalties on producers of waste-derived materials who do not comply with all of the conditions of the relevant WDM product specification or provide a false statement of compliance with the

requirements of the WDM product specification. This puts responsibility on producers to ensure material meets the specifications and provides users with confidence that, if used according to the WDM declaration, the material is not waste and would not trigger licensing and potentially waste levy obligations.

This approach will provide producers with certainty about the requirements they must meet in order to supply the waste-derived material and not be held liable under the environmental protection legislation for how the material is used.

Where a user does not comply with a WDM declaration, penalties could be imposed because the material would continue to be waste and the licensing and waste levy frameworks may apply.

The CEO would be able to review, amend, suspend or revoke WDM determinations. Rights of appeal would apply for some of the CEO's decisions.

## Summary of benefits

The proposed legislative framework will benefit industry, the community and government by:

- encouraging the use of waste-derived materials, reducing the amount of materials going to landfill and reducing the cost of disposal
- creating a single approval for commonly used waste-derived materials so producers and users can use a general WDM determination without having to submit a new application
- providing for the approval of bespoke use of waste-derived materials through case-by-case WDM determinations
- minimising stockpiling by encouraging the use of fit-for-purpose waste-derived material
- promoting community confidence that the use of waste-derived materials minimises risks to the environment and human health.

## Further information

Chapter 5: How to make a submission

Appendix 1: Summary of the Act amendments, regulations, policies and guidance required to create the legislative framework

Appendix 2: Listing of relevant prescribed premises categories

Appendix 3: Examples of how the legislative framework for waste-derived materials would work in practice

# 1 Background

The establishment of a legislative framework for waste-derived materials is a priority in the State Government's agenda.

Current Western Australian legislation does not expressly allow waste-derived materials to be deposited to land without triggering licensing and waste levy requirements under the EP Act, WARR Act, WARR Levy Act and regulations.

The background to the legal arrangements for waste is discussed in the department's previous issues paper [Waste not, want not: Valuing waste as a resource](#) and so is not repeated here.

## 1.1 Issues paper

In June 2019, the department released the issues paper *Waste not, want not: Valuing waste as a resource* for a 12-week public comment period. This sought views on legislative frameworks in other jurisdictions (New South Wales, South Australia and Queensland) to inform development of a legislative framework for waste-derived materials in Western Australia.

The majority of the submissions made in response to the issues paper supported the development of a legislative framework that provides certainty around when a range of waste-derived materials will cease to trigger licensing and levy requirements. Most submissions did not indicate a preference for a particular legislative framework, focusing on the desired outcomes and how these could be achieved. The department's response to comments on the issues paper is provided in the [Consultation summary report](#).

This discussion paper builds on the issues paper and is the next step in developing a legislative framework for waste-derived materials in Western Australia.

Implementation of the framework will ensure Western Australia aligns with other Australian jurisdictions with comprehensive frameworks for waste-derived materials.

In responding to the feedback on the issues paper and developing the best option for Western Australia, the design of the proposed framework:

- is modelled primarily on the New South Wales [resource recovery framework](#), bringing in elements from the frameworks in [Queensland](#) and [South Australia](#)
- improves the current legislation, as it currently does not allow the department to approve the use of waste-derived materials, even if this is beneficial and has very low risk to the environment and human health
- considers broader waste reforms being progressed by the department, as outlined in the consultation paper [Closing the loop: Waste reforms for a circular economy in Western Australia](#).

## 2 Proposed legislative framework

The purpose of the legislative framework for waste-derived materials is to provide certainty around when a waste-derived material is no longer waste and, therefore, when deposited to land in quantities above licensing thresholds, it would no longer trigger the requirement for a licence and, where applicable, liability for the waste levy.

This will be achieved by:

1. amending the definition of waste to clarify that waste-derived materials are waste for the purposes of the legislation
2. providing for WDM determinations, which specify the circumstances under which a waste-derived material would cease to be waste.

Figure 1 (below) illustrates how the proposed legislative framework for waste-derived materials would interact with the current licence and levy regimes.

Introduction of the legislative framework will be an important first step in allowing for and encouraging the use of fit-for-purpose waste-derived materials and would encourage innovation and market development for waste-derived materials.

To meet the objectives of the Waste Strategy 2030 and support the circular economy, the legislative framework would help to minimise stockpiling by encouraging the re-entry of fit-for-purpose waste-derived materials into the economy, presenting significant opportunities to reduce the amount of materials going to landfill.

### Scope

The proposals in this paper are directly relevant to:

- producers of waste-derived materials likely to be deposited to land in quantities above the licensing thresholds prescribed in Schedule 1 to the EP Regulations
- users depositing waste-derived materials to land in quantities above the 'production or design capacity' (licensing thresholds) prescribed in Schedule 1 to the EP Regulations
- producers and users of waste-derived materials in quantities below the licensing thresholds who wish to opt-in to the waste-derived materials framework.

'Waste-derived materials' refers to:

- materials wholly or partly comprised of waste, or wholly or partly derived, recovered or produced from waste and which will be deposited to land in quantities above the licensing thresholds prescribed in Schedule 1 to the EP Regulations
- solid and liquid materials applied to land, such as construction and demolition waste, compost, treated wastewater and treated sewage.

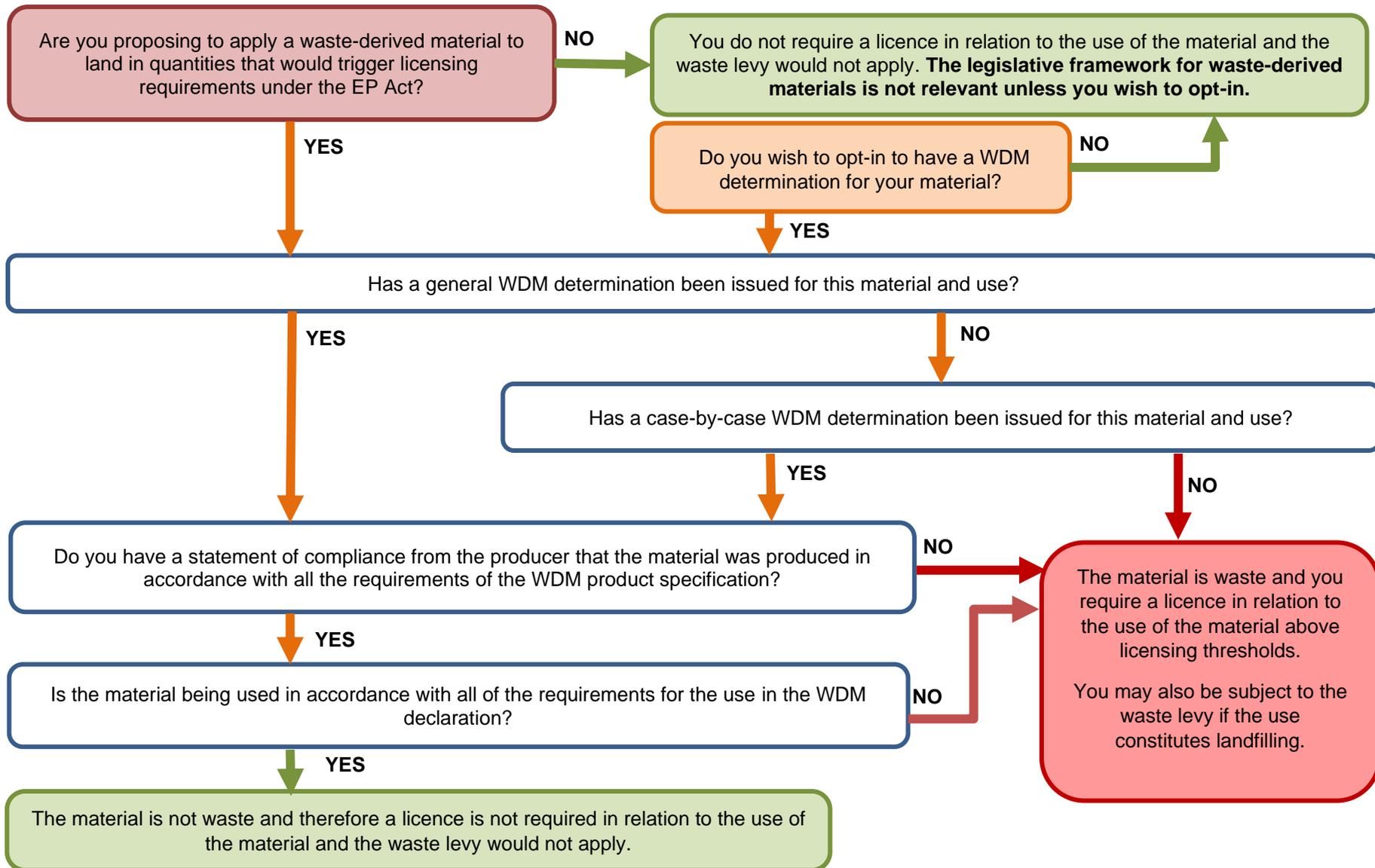


Figure 1 Interactions with the licensing and waste levy regimes

The proposed legislative framework is designed to:

- provide producers with clear requirements on the specifications their material must meet for the materials to not be considered waste when used
- provide users with a clear understanding of appropriate ways to use waste-derived materials, as well as certainty around their regulatory requirements.

### Out of scope

Matters outside of the scope of the proposed legislative framework are:

- licensing of production premises – under the proposed legislative framework, producers of waste-derived materials would still be required to licence their production premises as a waste processing facility and/or waste storage facility
- controlled waste – the regulatory requirements for transport of controlled waste under the Environmental Protection (Controlled Waste) Regulations 2004 would not be altered
- implementation matters including development of regulations, and policy documents including guidelines will be subject to separate consultation following passage of the amendments outlined in this discussion paper.

## 2.1 Overview

The proposed legislative framework would empower the CEO to assess an application for, and grant or refuse to grant, a WDM determination, which would outline the circumstances under which a waste-derived material would cease to be waste for the purposes of the licensing and waste levy regimes.

Depending on the nature and extent of use of the material, the WDM determination could be a general WDM determination (for commonly used waste-derived materials with known contaminant thresholds) or a case-by-case WDM determination issued to specific persons on a case-by-case basis.

The WDM determinations would consist of:

1. the WDM product specification – applies to the producer. This would provide the conditions that must be met by the producer of the waste-derived material in order to supply it for use in ways that would otherwise require a licence
2. the WDM declaration – applies to the user(s) of the waste-derived material. This would provide the conditions the user of the waste-derived material must meet in order for the material to cease to be waste and therefore not to be subject to a licence or the waste levy (if relevant).

The framework proposes that material does not cease to be waste until used in accordance with all the conditions of the relevant WDM declaration. This is because material that has been subject to some degree of processing may still be used

inappropriately, resulting in harm to human health and the environment, or used in a way that constitutes disposal.

## 2.2 Amending the definition of ‘waste’

For the legislative framework for waste-derived materials to be effective, it needs to be clear that the user of a waste-derived material would be subject to licensing and potentially waste levy requirements in the absence of a WDM determination.

As mentioned above, the current definition of waste in the EP Act and the WARR Act does not expressly state when the use of waste-derived materials (deposited to land, in quantities above the licensing thresholds) will no longer trigger licensing and levy obligations.

To address this, the definition of waste in the EP Act and the WARR Act would be amended to clarify that waste-derived materials are waste unless used in accordance with a relevant WDM declaration made by the CEO. The same definition would also be inserted into the WARR Levy Act.

In particular, the term ‘waste’ in the EP Act (s.3) and the WARR Act (s.3) would be amended to include an additional clause (in bold text below) that explicitly references waste-derived materials, ie:

*waste includes matter:*

- a) *whether liquid, solid, gaseous or radioactive and whether useful or useless, which is discharged into the environment; or*
- b) *prescribed by regulations to be waste.*
- c) ***wholly or partly comprised of waste, or wholly or partly derived, recovered or produced from waste, unless used in accordance with all of the conditions of either a relevant:***
  - (i) ***general WDM declaration made by the CEO; or***
  - (ii) ***case-by-case WDM declaration made by the CEO.***

**Note:** *the wording for the new clause (c) is provided to describe the policy intent behind the amendment and may be subject to refinement and/or amendment in the drafting of legislative amendments.*

Amending the definition of waste through the addition of clause (c) may result in materials typically considered to be a product now being waste unless used in accordance with a relevant WDM declaration. To address this, the department would ensure high-priority general WDM determinations are in place soon after the framework is enacted.

To help the department understand the potential impacts of the framework and ensure a smooth transition through the implementation phase, please identify any materials which meet all three of the following requirements:

1. They are currently considered to be products (not waste).
2. They are deposited to land in quantities above the licensing thresholds, for example, drainage aggregate.
3. Under the proposed amended definition of waste they would be considered waste.

This includes instances where manufacturers use waste in their processes (e.g. treated wastewater).

### **Consequential amendments**

Consequential amendments to some provisions in the EP Act, WARR Act and WARR Levy Act may be required to ensure the intent of the legislation is upheld. These consequential amendments would be identified in the drafting of the amendment legislation.

## **2.3 Making a WDM determination**

The EP Act would be amended to empower the CEO to consider the facts and circumstances surrounding the use of the waste-derived material and make a WDM determination. This WDM determination would provide the conditions that must be met in order for a waste-derived material to cease to be waste for the purposes of the licensing and waste levy regimes.

### **Matters the CEO would have regard to in assessing and making a WDM determination**

To maintain the integrity of the environmental protection and waste management legislative regimes, the legislative amendments would require that the CEO must have regard to the following matters when making a WDM determination (general or case-by-case):

1. whether a waste-derived materials declaration is the most appropriate legislative instrument for the circumstances
2. the objects and principles of the EP Act (s.4)
3. the objects of the WARR Act (s.5) and the waste strategy approved and in force under Part 4 Division 1 of the WARR Act
4. 'principles for the use of a waste-derived materials', being that it must be considered whether:
  - the use of the material would pose an unacceptable risk of harm to human health or the environment

- there is an established (genuine) market or use (or there is evidence supporting creation of a market or use) for the material and its diversion from landfill is not speculative
  - where this is relevant to the proposal, the material will be used as a substitute for a recognised raw material or product and, when compared with the material it replaces, has no greater potential risk of causing harm to public health and the environment or is otherwise assessed to have acceptable and manageable risks (beneficial)
  - the material is suitable for the activity for which it is being used (fit-for-purpose). This may require verification by relevant industry experts during assessment.
5. whether there is adequate available information for an assessment to be made for the material. For example, it may not be possible to make a determination where the applicant has not provided sufficient information to inform an assessment or where there is an emerging contaminant of concern
  6. any other matter the CEO believes is relevant, such as government priorities, national agreements in relation to waste, standards on the reuse of waste, and standards and specifications published by the CEO or the department

In implementing the framework, the department would publish guidance on how the CEO would consider these matters, including further detail on the evidence applicants should provide in their application for a WDM determination.

### Setting conditions in WDM determinations

The sections in WDM determination would work together as follows:

1. The WDM product specification would:
  - impose conditions that must be met by the producer of the waste-derived material in order to supply it for use in quantities above the licensing thresholds
2. The WDM declaration would:
  - impose conditions around the use of a waste-derived material
  - declare the waste-derived material ceases to be waste if all the conditions in the document are met.

Some waste-derived materials may be suitable for use in specific applications and receiving environments but not in others. The ability to set conditions on the use of a waste-derived material enables consideration of site-specific matters in the risk assessment of the material's use. Without this ability, the risk assessment would need to be conservative and only consider the most sensitive receiving environment.

In undertaking a risk assessment of the material's use, the department would apply the risk framework outlined in its [Guidance statement: Regulatory principles](#). The CEO would impose conditions proportionate to the risk that the waste-derived material poses to the objectives:

- to prevent, control, abate or mitigate pollution or environmental harm (EP Act)
- to provide for waste avoidance and resource recovery (WARR Act)
- to impose a levy in respect of certain waste (WARR Levy Act)
- to keep products, components and materials at their highest utility and value for as long as possible (circular economy).

In circumstances where the use of the material is low risk, there may be fewer conditions in the WDM product specification and WDM declaration than for higher-risk material. This would ensure that WDM determinations do not create unnecessary regulatory burden.

## 2.4 Types of waste-derived materials determinations

Depending on the nature of the material or use, the CEO of the department would issue a:

1. general WDM determination for commonly used materials with known contaminant thresholds, or
2. a case-by-case WDM determination for bespoke uses of waste-derived materials.

Both types of WDM determinations would include a WDM product specification and a WDM declaration

### 1. General WDM determinations

General WDM determinations would provide a streamlined process whereby users would not need to apply to the department for a licence or for a WDM determination if a current, relevant general WDM determination has been published by the CEO and:

- all the conditions in the WDM product specification have been met
- the waste-derived material will be used in accordance with all the conditions in the WDM declaration.

General WDM determinations could be made on the department's initiative or on application from industry. The department would publish guidance on the information to be provided in applications.

A collaborative approach to developing general WDM determinations would be undertaken with industry, particularly where they relate to waste-derived materials produced by multiple producers.

Legislative amendments would require the CEO to consult with relevant stakeholders on proposed general WDM determinations.

#### *Examples of commonly used waste-derived materials*

Some examples of commonly used waste-derived materials that could be considered for general WDM determinations are provided below to prompt discussion around materials and uses that may require consideration under this framework.

<b>Waste</b>	<b>Use</b>
Food organics and garden organics	Compost
Construction and demolition waste	Road base and drainage rock
Fly ash or bottom ash from waste to energy or electricity production	Engineering materials
Treated acid sulfate soils	Fill
Biosolids from wastewater treatment	Soil amendment
Red sand and alkaloam	Soil amendments
Gypsum and other calcium sulfate minerals produced from manufacturing	Soil amendments
Mixed gypsum, iron and manganese oxides from the refining of titanium ores	Soil amendments
Alumino silicate from lithium production	Concrete and cement products
Reclaimed asphalt from public roads	Road base and construction products
Used tyres and conveyor belts	Crumbed rubber modified bitumen (CRMB) used for road sealant spray applications
Recycled/reprocessed granular plastic	Polymer modified bitumen (PMB)
Treated wastewater	Irrigation

*Table 1 Examples of materials that could be considered for general WDM determinations*

Which waste-derived materials and/or uses of such materials would you want to be addressed in general WDM determinations under the proposed legislative framework?

## 2. Case-by-case WDM determinations

In the absence of an applicable general WDM determination, a person would be able to apply for a case-by-case WDM determination based on their unique circumstances.

The CEO would be able to refuse to consider an application for a case-by-case WDM determination on the grounds that a general WDM determination would be more appropriate and that action would be taken to develop a relevant WDM determination in accordance with the priority allocated by the department.

Depending on the number and complexity of applications for case-by-case WDM determinations, the department may prioritise assessments in a similar manner to that proposed for general WDM determinations.

The process for applying for, assessing and making a case-by-case WDM determination would be provided for in the new regulations made under the EP Act and supported by guidance published by the department.

Which material(s) would you wish to seek a case-by-case WDM determination for under the proposed legislative framework?

## 2.5 Prioritisation of WDM determinations

The department acknowledges the assessment of waste-derived materials for WDM determinations would require significant resourcing. To maximise effectiveness of the framework and alignment with government objectives, the department would consider a number of factors in determining the order in which materials should be addressed, such as:

- the Council of Australian Governments' [waste export ban](#)
- State Government priorities, including WA's economic recovery post COVID-19 and the targets in the Waste Strategy 2030
- the tonnage of the waste produced and potential for being diverted from landfill
- markets for the material
- complexities in assessing the material, such as the availability of sufficient scientific evidence
- the tonnage of the waste-derived material already being used.

**Is there anything else that the department should consider in determining the priority of materials for developing general WDM determinations?**

**Which materials do you think should be prioritised to be addressed in general WDM determinations issued upon enactment of the legislative framework for waste-derived materials?**

## 2.6 Trials of waste-derived materials

In implementing the framework, the department would publish guidance on the evidence required to demonstrate that a proposed trial of waste-derived material addresses the matters the CEO must have regard to in making a determination. This would enable researchers to ensure their trials address the matters required for a WDM determination to be made before submitting an application.

## 2.7 Content of WDM product specifications (general or case-by-case)

The WDM product specification would provide the conditions that producers of waste-derived materials must meet in order to supply a waste-derived material for use in a manner that would ordinarily trigger licensing thresholds.

The WDM product specification would clearly articulate:

1. the waste-derived material(s) to which the WDM product specification applies
2. the producer(s) to whom a WDM product specification applies (if not for general application)
3. the duration of the WDM product specification (generally valid until revoked)
4. conditions to be met in order for the WDM product specification to apply. These might include:
  - the source(s) of the waste input
  - time limit for storage of the waste-derived material
  - sampling and testing requirements commensurate with the risks and uses and taking into account the sources of the waste input
  - chemical and contaminant thresholds
  - record-keeping and reporting requirements
5. definitions of relevant terms.

Producers of waste-derived materials would be required to provide users of the waste-derived material with a written statement of compliance stating that all the requirements set out in the WDM product specification have been met. In circumstances where the producer is also the user, the producer would still be required to fill out and sign a statement of compliance and meet the record-keeping requirements outlined in the WDM declaration.

In setting the conditions in a WDM product specification, the department would ensure consistency and avoid duplication with the requirements in licenses for prescribed premises that produce waste-derived materials.

## Transitional arrangements

The department acknowledges that a number of waste-derived materials may have been determined not to be waste with reference to the factsheet [Assessing whether material is waste](#) before the proposed waste-derived materials framework would come into effect. In developing a relevant WDM determination, the department may need to consider transitional arrangements for materials already produced and would consult with relevant producers as required.

## 2.8 Content of WDM declarations (general or case-by-case)

The WDM declaration would provide the conditions user(s) of waste-derived material(s) must meet for the material to cease to be waste. It may cover a specific material and use, or may be for a broader application and apply to more than one material and/or use.

The WDM declaration would only apply if all the conditions of both the WDM declaration and WDM product specification have been met.

The WDM declaration would clearly articulate:

1. the waste-derived material(s) and uses to which the declaration applies
2. the user(s) of the waste-derived material(s) to whom the declaration applies (if not for general application)
3. the duration of the declaration (generally valid until revoked)
4. conditions, all of which the user(s) of the waste-derived material(s) must meet for the material to not be 'waste', such as:
  - holding a statement of compliance from the producer that all the conditions of the WDM product specification have been met at the time of receipt of the waste-derived material on site
  - acceptable or unacceptable use(s), such as receiving environment and application rates
  - information that must be provided by the supplier and stored by the user(s) (such as a statement of compliance from the producer and any other evidence of compliance)
  - record-keeping and reporting requirements, including registration with the department, depending on the level of risk.
5. time limits on stockpiles (i.e. in instances where the waste-derived material is to be stored on site)
6. definitions of relevant terms.

WDM declarations would be developed to ensure the waste-derived materials are suitable for the intended uses and receiving environments. For example, a waste-derived fill material may be suitable for use on industrial land but not on residential

land. The WDM declaration for this type of material would require that the material only be used on industrial land.

## 2.9 Contaminated sites legislation

In assessing a proposed use of a waste-derived material, the department would consider the receiving environment in assessing the risks to human health and the environment.

While the legislative framework for waste-derived materials would not alter the contaminated sites regime, consideration of the *Contaminated Sites Act 2003* (CS Act) requirements would be given when developing WDM determinations.

## 2.10 Storage of waste-derived materials

As waste-derived materials would only cease to be waste when used in accordance with a WDM declaration, the storage of a waste-derived material could trigger the requirement to hold a category 61A or 62 licence. WDM declarations would include a time limit under which the storage of a waste-derived material would not trigger the requirement to hold a category 61A or 62 licence.

This would encourage the timely reuse of stockpiles and the shift towards a circular economy in Western Australia.

Chapter 11 in the recent *Closing the loop* consultation paper contained a proposal relating to the application of the waste levy to long-term stockpiles. Outcomes from the consultation process for the *Closing the loop* reform process and this discussion paper would be considered in preparing a final legislative approach for waste-derived materials.

## 2.11 Disposal to landfill

The intention of the waste-derived materials framework is to facilitate the greater use of waste for beneficial reuse and support the objectives of the Waste Strategy 2030, and Western Australia's shift to a circular economy.

This requires additional controls to make sure waste-derived material is not disposed to landfill, and that the waste levy would apply if it were to be disposed to landfill.

WDM determinations would generally not address the use of waste-derived materials by landfills (e.g. for final cover material) as the use for waste for a specific purpose is already addressed by r.5 of the WARR Levy Regulations. This regulation provides for a range of exemptions from the payment of the levy by licensees of category 63, 64 and 65 prescribed premises.

## 2.12 Review of WDM determinations

Amendment, revocation or suspension of a WDM determination may be necessary, for example in light of new scientific information that necessitates reconsideration of the WDM determinations and their conditions.

Amendments to WDM determinations would not apply retrospectively, but consideration may be given to transitional arrangements for waste-derived materials already produced in accordance with the WDM product specification, but not yet used.

The legislative amendments would provide the CEO of the department with the ability to amend, revoke and suspend case-by-case WDM:

- following a review commenced on the CEO's own initiative
- upon request by the Minister for Environment, or
- on acceptance by the CEO of an application by the holder of the case-by-case WDM determination.

General WDM determinations would also be subject to periodic review on initiation by the CEO to ensure the determinations continue to be appropriate.

The legislative amendments would require the CEO to conduct a full inquiry, in consultation with relevant industry and technical experts, before making any significant amendments or suspending or revoking a general WDM determination. If significant or material environmental harm could result from the continued production and use of the waste-derived material, then suspension during an inquiry may be appropriate.

It is anticipated new waste-derived material regulations (WDM Regulations) would be developed to support the framework and establish the information requirements for submissions for amendment, suspension or revocation of a WDM determination.

To promote transparency of decision-making, the CEO would be required to provide the opportunity for the public to comment on the review of a WDM determination and provide a public notice on the outcome of the review. Where the review relates to a case-by-case WDM determination, the CEO would advise the relevant person to whom the WDM determination was issued in writing.

## 2.13 Publication and rights to appeal

Amendments would be made to the EP Act to include appropriate transparency and accountability requirements in relation to WDM determinations as described below.

### **Decisions in relation to applications for a WDM determination**

The department would publish all general and case-by-case WDM determinations on its website, in a manner consistent with the broader publishing requirements under the EP Act.

Where industry has demonstrated that information is commercial-in-confidence, the department will redact this information before publishing the WDM determination.

Consistent with rights to appeal in the EP Act, there would be a 28-day opportunity to lodge an appeal with the Minister for Environment (through the Appeals Convenor) in relation to the conditions of a WDM determination.

### **Decisions to amend, suspend or revoke a WDM determination**

The CEO's decision to significantly amend, suspend or revoke a general or case-by-case WDM determination would also be published on the department's website for an appeal period of 28 days, during which an interested person may lodge an appeal with the Minister for Environment (through the Appeals Convenor).

The EP Act would be amended to include a provision that enables a person to lodge an appeal in writing with the Minister for Environment, setting out the grounds of the appeal against the CEO's decision to significantly amend, suspend or revoke a general or case-by-case WDM determination.

## **2.14 Compliance and enforcement**

In undertaking its compliance and enforcement functions the department will apply its [Compliance and Enforcement Policy \(2017\)](#) and [Enforcement and Prosecution Policy \(2013\)](#).

When proposing penalties in the drafting instructions for the legislative amendments, the department will also consider introducing infringement notices to support the effective implementation of the proposed waste-derived materials framework.

The offences outlined below detail the proposed maximum penalties. The department will employ prosecution where it is the appropriate response to a particular circumstance.

### **Non-compliance with the conditions in a WDM product specification (producers)**

Amendments would be made to the EP Act to make it an offence to produce and supply a waste-derived material, other than in accordance with all the conditions in the relevant WDM product specification.

The maximum penalty for breaching conditions of a WDM product specification would be \$50,000 upon conviction for an individual and \$100,000 upon conviction for a body corporate.

### **Providing a false statement of compliance**

WDM product specifications would require that the producer of a waste-derived material provide a statement of compliance to users of waste-derived materials, stating that the conditions of the WDM product specification have been met. This statement would provide assurance that, at the time of delivery of material to the users, all the conditions of the WDM product specification had been met.

In implementing the framework, the department would make a template for statements of compliance available.

Amendments would be made to the EP Act to make it an offence to provide a false statement of compliance. The maximum penalty for providing a false statement of compliance would be \$100,000 for an individual and \$200,000 for a body corporate.

### **Non-compliance with the conditions of a WDM declaration (users of the product)**

In instances where a user does not comply with the conditions of a WDM declaration, the department will identify the appropriate enforcement action in accordance with its *Compliance and Enforcement Policy (2017)* and *Enforcement and Prosecution Policy (2013)*.

The intent behind requiring users to comply with conditions of a WDM declaration is not only to protect human health and the environment, but to also ensure the use is genuine reuse, rather than a means of waste disposal and levy evasion.

Where a user does not comply with a WDM declaration, reliance on the WDM declaration becomes null and void and the licensing and levy frameworks would apply. The user may then be committing an offence if they did not hold the requisite licence (under s.52 and s.56 of the EP Act), the maximum penalty for which would be:

- a \$50,000 fine and/or a daily penalty of \$10,000 for an individual
- a \$100,000 fine and/or a daily penalty of \$20,000 for a body corporate.

In addition, consideration may need to be given to levy evasion under s.78 of the WARR Act.

The conditions of the WDM declaration would require the user to:

- maintain evidence that demonstrates compliance with the conditions of the declaration (e.g. a statement of compliance from the producer of the material stating that all conditions of the WDM product specification were met)
- produce evidence and records relating to the declaration if requested by an inspector authorised under the EP Act (e.g. records of the quantity of material received and the name and address of the supplier).

### **General offences**

Where a breach of the conditions of a declaration results in pollution or harm to the environment, offences under the EP Act may apply and, if contamination results, regulation under the CS Act may also be triggered.

### 3 ‘Closing the loop’ reform proposals

The [Closing the loop: Waste reforms for a circular economy](#) consultation paper, released earlier this year, includes legislative options that would affect the current licensing and waste levy frameworks. Particularly in relation to:

- Chapter 9 in Closing the loop: updating ‘waste disposal to land’ to include disposing or spreading on the land, ploughing, injecting or mixing into the land, filling, raising, reclaiming or contouring the land and burial in or on the land – this acknowledges that waste disposal can extend beyond burial in landfill and would align WA with other jurisdictions
- Chapter 10 in Closing the loop: simplifying the solid waste licensing categories in Schedule 1 to the EP Regulations relating to waste storage, processing and management
- Chapter 11 in Closing the loop: minimising stockpiling at waste storage premises – to encourage the timely reuse and reprocessing of solid waste stockpiles.

These proposals are relevant to the storage and use of waste-derived materials. The department would ensure alignment between the proposed Closing the loop reforms and the proposed legislative framework outlined in this paper.

## 4 Implementation of the framework

### Implementation date

The legislative amendments giving effect to the proposed legislative framework would come into effect on a date fixed by proclamation. This would enable development of, and consultation for, supporting regulations, policies and guidelines to give full effect to the framework.

The WDM Regulations would set out how the provisions of the EP Act would be applied, including the processes around:

- applying for, assessing, approving, rejecting, and withdrawing applications for production and use of waste-derived materials
- appealing decisions in relation to general or case-by-case product specifications and declarations
- amending, suspending and revoking product specifications and declarations
- appealing decisions on amending, suspending or revoking WDM determinations.

In addition, the department would publish relevant policy, guidance and forms to support the implementation of the framework.

These regulations, policies, guidelines and forms would be subject to separate consultation and are out of the scope of this discussion paper.

Bringing the legislation into effect on a date fixed by proclamation would also allow for development of some general and case-by-case WDM determinations to come into effect, as discussed below.

### Prioritisation of general WDM determinations

The department acknowledges that a number of waste-derived materials are already being deposited to land above licensing thresholds in Western Australia.

The department would work with industry and relevant technical experts to help inform the development of priority general WDM determinations to come into effect upon enactment of the legislative framework so the requirements under the new framework could be met.

Feedback received through consultation on this discussion paper will help the department to determine which materials need to be addressed and their priority.

Once the framework is enacted, stakeholders may request the CEO considers making additional general WDM determinations.

### Case-by-case WDM determinations

New waste-derived materials regulations would establish the process by which applicants can apply for a case-by-case WDM determination. The department would endeavour to gazette the regulations concurrent with the date of proclamation of the Act amendments to allow proponents to apply for case-by-case WDM determinations.

## Supporting regulations

It is anticipated that new WDM Regulations would be developed to address various procedural matters, including:

- the process for making general and case-by-case WDM determinations
- an application process and CEO approved forms for general and case-by-case WDM determinations
- the process for appealing a decision in relation to a case-by-case WDM determination
- the process for amending, revoking or suspending general and case-by-case WDM determinations
- the review of general WDM determinations
- the types of conditions which can be attached to WDM product specifications and corresponding declarations
- the fees and charges for assessing applications for WDM determinations
- the registration requirements for producers
- various other matters necessary for effective implementation and operation of the waste-derived materials legislative framework.

## Supporting policies and guidelines

To support the framework, the department would develop policies and guidelines to address:

- further information on the matters the CEO would take into account in determining whether to issue general and case-by-case WDM determinations. This may include, for example, considering the demand for the waste-derived material and data availability in relation to the proposed use
- the information requirements for applications for case-by-case WDM determinations
- policy on the prioritisation of the development of general and case-by-case WDM determinations.

## Registration of producers

Producers of waste-derived materials would be required through the proposed WDM Regulations to register with the department through a simple online process.

The department would use the registration information to inform reviews and improvements to the framework, notify relevant stakeholders of important information about the framework, and inform the monitoring and compliance program.

**Cost recovery**

The legislative framework would provide the head of power for the CEO to recover the costs of assessing an application for a WDM determination. In the event implementation of cost recovery is considered appropriate, regulations to bring cost recovery into effect would be subject to separate consultation.

## 5 How to make a submission

Following the public consultation period for this discussion paper, 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 provides an opportunity for key waste stakeholders to raise issues, concerns and opportunities about the proposed legislative approach, 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.

### **Submitting comments**

The consultation period will be 12 weeks. Written submissions must be received by 5pm (WST) on Friday, 18 December 2020. No late submissions will be considered.

We would prefer you to make a submission through completion of a survey form, available [here](#). However, written submissions can be lodged by email (preferred) at [wastereform@dwer.wa.gov.au](mailto:wastereform@dwer.wa.gov.au)

Print copies can be mailed to:

Waste Reform  
Department of Water and Environmental Regulation  
Locked Bag 10  
Joondalup DC, WA 6919

For further information on this consultation:

Telephone: (08) 6364 7000

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

## 6 Stakeholder information sessions

The department will host information sessions on the proposed legislative framework for waste-derived materials in the second half of the consultation period.

If you wish to attend, please register your interest here by emailing [wastereform@dwer.wa.gov.au](mailto:wastereform@dwer.wa.gov.au) before 2 November 2020, using the subject heading, 'waste-derived materials – information session register' and including your name and preferred contact details in the email.

## Appendices

### Appendix 1 – Summary of proposed waste-derived materials legislative framework

	Subject of this discussion paper	Subject of separate (future) consultation		
	Primary legislation	Subsidiary legislation	DWER policy and guidance	Procedures and forms
	EP Act, WARR Act, WARR Levy Act	New WDM Regulations		
<b>Purpose</b>	<ul style="list-style-type: none"> <li>Set out the broad legal and policy principles underpinning the legislative framework for waste-derived materials.</li> <li>Authorise the exercise of powers by the CEO of the department in relation to the production and use of waste-derived materials and the issuing of WDM determinations (WDM product specifications and WDM declarations).</li> <li>Establish appropriate head powers for the creation of regulations.</li> </ul>	<ul style="list-style-type: none"> <li>Set out the implementation detail of how the provisions in the Act would be applied.</li> </ul>	<ul style="list-style-type: none"> <li>Establish the key principles, objectives, outcomes and/or measures that establish the parameters or approach to the regulation of waste-derived materials.</li> <li>Provide support to legislation, explaining the intent and how it is administered and providing clarity on decision-making.</li> <li>Provide direction and guidance on the administration of statutory functions and interpretation, application and/or implementation of legislation and policy.</li> <li>Provide detailed guidance in relation to the implementation of policy and its consideration in decision-making.</li> </ul>	<ul style="list-style-type: none"> <li>Outline the steps required of stakeholders to achieve a specific outcome or as part of a decision-making process such as information to be provided by applicants.</li> </ul>

			<ul style="list-style-type: none"> <li>• Provide more detailed, technical and legal information on specific matters.</li> </ul>	
<b>Details</b>	<ul style="list-style-type: none"> <li>• Amend definition of 'waste'.</li> <li>• Provide CEO with powers in relation to making WDM determinations.</li> <li>• Provide Minister for Environment with the power to make regulations to facilitate the implementation of the framework.</li> <li>• Consequential amendments.</li> </ul>	<ul style="list-style-type: none"> <li>• Consequential amendments to other subsidiary legislation (for example, EP Regulations, WARR Regulations and WARR Levy Regulations).</li> <li>• Types of conditions that may be set in WDM determinations.</li> </ul>		
<b>Application</b>	<ul style="list-style-type: none"> <li>• Power for CEO to consider applications for general and case-by-case WDM determinations.</li> <li>• Power for CEO to refuse to assess a case-by-case WDM determination on the grounds that a general WDM determination is more appropriate.</li> <li>• Requirement for producers to provide statement of compliance with WDM product specification to users.</li> <li>• Power to recover costs for applications for case-by-case WDM determinations.</li> </ul>	<ul style="list-style-type: none"> <li>• Process for making an application, including information to be provided by the applicant.</li> <li>• Process for recovering costs for case-by-case WDM determinations.</li> <li>• Registration of producers.</li> </ul>		<ul style="list-style-type: none"> <li>• CEO approved application forms (general and case-by-case).</li> </ul>
<b>Assessment</b>	<ul style="list-style-type: none"> <li>• Matters the CEO must have regard to in determining whether to issue a WDM determination.</li> </ul>	<ul style="list-style-type: none"> <li>• Process for assessing applications for WDM determinations.</li> </ul>	<ul style="list-style-type: none"> <li>• Further detail on how the CEO would determine whether these matters have been met, and what information applications must provide to the department.</li> </ul>	

<b>Approval (rejection/ withdrawal)</b>	<ul style="list-style-type: none"> <li>• Power for CEO to approve or reject a WDM determination application.</li> <li>• Types of determinations the CEO may make.</li> <li>• Ability for applicants to withdraw an application.</li> <li>• Power for CEO to impose conditions on users through WDM declarations and conditions on producers through corresponding WDM product specifications.</li> </ul>	<ul style="list-style-type: none"> <li>• Process for approving or rejecting an application for a WDM determination.</li> <li>• Process for withdrawing an application.</li> <li>• Processes for review of WDM determinations.</li> <li>• Requirements and process for publishing decisions.</li> </ul>		<ul style="list-style-type: none"> <li>• Withdrawal form.</li> </ul>
<b>Appeals</b>	<ul style="list-style-type: none"> <li>• Public's rights, requirements and timeframes relating to appeals against the CEO's decisions etc in relation to a case-by-case WDM determination.</li> <li>• Public's rights, requirements and timeframes relating to appeals against the CEO's decisions etc in relation to a review of an established general or case-by-case WDM determination.</li> <li>• Minister for Environment's ability to consider appeals of CEO's decisions in relation to case-by-case determinations.</li> </ul>	<ul style="list-style-type: none"> <li>• Process for appealing decisions in relation to case-by-case applications.</li> </ul>		<ul style="list-style-type: none"> <li>• Appeal forms</li> </ul>
<b>Compliance</b>		WDM declaration (and corresponding WDM product specification) would place record-keeping and evidentiary requirements on producers and users.		<ul style="list-style-type: none"> <li>• Template for statement of compliance with WDM product specification.</li> </ul>

<b>Enforcement</b>	<ul style="list-style-type: none"> <li>• Offences for non-compliance with conditions of WDM product specification.</li> <li>• Penalties for non-compliance with conditions of WDM product specification.</li> </ul>			
<b>Amending, suspending, revoking</b>	<ul style="list-style-type: none"> <li>• Power for CEO to amend, suspend or revoke a WDM determination.</li> <li>• Right of holder of a case-by-case WDM determination to seek an amendment, suspension or revocation of a determination.</li> <li>• Minister's for Environment's ability to consider appeals against the CEO's decision to significantly amend, suspend or revoke a general or case-by-case WDM determination</li> <li>• Requirement for CEO to periodically review general WDM determination.</li> </ul>	<ul style="list-style-type: none"> <li>• Process and considerations the CEO must follow in reviewing an WDM determination.</li> <li>• Process the CEO must follow in amending, suspending or revoking a WDM determination.</li> <li>• Circumstances where the CEO may refuse to consider an application to amend, suspend or revoke a case-by-case WDM determination.</li> </ul>		

**Notes:**

Amendment to and further refinement of the above elements of the framework may occur following review of submissions made during consultation for this discussion paper.

Consequential amendments to some provisions in the EP Act, WARR Act, WARR Levy Act and supporting regulations may also be required to ensure the intent of the legislation is upheld. This will be identified during the process of drafting legislative amendments.

## Appendix 2 – Relevant prescribed premises categories

The proposed legislative framework would be most relevant to the following licence categories (prescribed in Schedule 1 to the EP Regulations) involving solid and liquid waste.

**NB:** The WARR Levy Act and *Waste Avoidance and Resource Recovery Levy Regulations 2008* (WARR Levy Regulations) provide for a waste levy for waste received at landfill premises in the metropolitan region and to waste collected in the metropolitan region and received at landfill premises outside the metropolitan region.

No.	Description	Production or design capacity
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
17	Milk processing; premises on which — (a) milk is separated or evaporated (other than a farm), or (b) evaporated or condensed milk, butter, ice cream, cheese or any other dairy product is manufactured and from which liquid waste is or is to be discharged onto land or into waters.	100 tonnes or more per year
18	Food processing: premises (other than premises within category 24) — (a) on which vegetables are, or fruit or meat is, preserved, cooked, dried, canned, bottled or processed, and (b) from which liquid waste is or is to be discharged onto land or into waters.	200 tonnes or more per year
19	Edible oil or fat processing: premises on which vegetable oil or oil seed or animal fat is processed and from which liquid waste is or is to be discharged onto land or into waters	200 tonnes or more per year
20	Starch manufacturing: premises on which starch or gluten is manufactured and from which liquid waste is or is to be discharged onto land or into waters	200 tonnes or more per year

<b>22</b>	Seafood processing: premises (other than a fish wholesaler) on which fish or other seafood is processed and from which liquid waste is or is to be discharged onto land or into waters.	200 tonnes or more per year
<b>24</b>	Non-alcoholic beverage manufacturing: premises on which a non-alcoholic beverage is manufactured and from which liquid waste is or is to be discharged onto land or into waters.	200 kL or more per year
<b>25</b>	Alcoholic beverage manufacturing: premises on which an alcoholic beverage is manufactured and from which liquid waste is or is to be discharged onto land or into waters.	350 kL or more per year
<b>54</b>	Sewage facility: premises — (a) on which sewage is treated (excluding septic tanks), or (b) from which treated sewage is discharged onto land or into waters.	100 m <sup>3</sup> or more per day
<b>61</b>	Liquid waste facility: premises on which liquid waste produced on other premises (other than sewerage waste) is stored, reprocessed, treated or irrigated.	100 tonnes or more per year
<b>61A</b>	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
<b>62</b>	Solid waste depot: premises on which waste is stored, or sorted, pending final disposal or reuse.	500 tonnes or more per year
<b>63</b>	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 <i>Landfill Waste Classification and Waste Definitions 1996</i> , is accepted for burial.	500 tonnes or more per year
<b>64</b>	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 <i>Landfill Waste Classification and Waste Definitions 1996</i> , is accepted for burial.	20 tonnes or more per year

<b>65</b>	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 <i>Landfill Waste Classification and Waste Definitions 1996</i> , is accepted for burial.	Not applicable
<b>66</b>	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 <i>Landfill Waste Classification and Waste Definitions 1996</i> , is accepted for burial.	Not applicable
<b>67A</b>	Compost manufacturing and soil blending: premises on which organic material (excluding silage) or waste is stored pending processing, mixing, drying or composting to produce commercial quantities of compost or blended soils.	1,000 tonnes or more per year
<b>89</b>	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 <i>Landfill Waste Classification and Waste Definitions 1996</i> , is accepted for burial.	More than 20 but less than 5,000 tonnes per year

## Appendix 3 – Examples

The following examples are intended to show how the proposed legislative framework for waste-derived materials would work in practice.

Reference to waste-related licensing categories in Schedule 1 to the EP Regulations (summarised in Appendix 2 above) may assist in understanding the examples provided below.

Chapter 3 of this discussion paper provides an overview of the proposal options outlined in [Closing the loop](#) that are relevant to the waste-derived materials legislative framework. As preferred proposal options are yet to be determined, stakeholders are encouraged to read the following Closing the loop chapters for further information on key proposals:

- Chapter 9 – Modernising landfill licensing and levy liability for waste disposal.
- Chapter 10 – Simplifying the solid waste licensing categories.
- Chapter 11 – Minimising stockpiling at waste storage premises.

Ongoing work on the development of a waste-derived materials legislative framework will consider outcomes from the Closing the loop consultation process, to ensure there is legislative alignment.

### Example 1

*Hypothetical situation: Bagged compost for small-scale use (i.e. waste-derived materials only ever used in quantities below licensing thresholds)*

A producer uses waste inputs in manufacturing compost. This compost is then bagged and sold in the shops for use in home gardens.

#### *Current legislative requirements*

Producers:

- The producer may be required to hold a Category 67A licence (compost manufacturing and blending licence) if their production or design capacity is 1,000 or more tonnes per year.
- If the producer holds a Category 67A licence, this licence may set the standards the compost should meet. The producer may choose to include information on the compost packaging about suitable uses of the compost and relevant standards the compost meets.

Users:

- Users are only applying small quantities of compost to land (below licensing thresholds) and so licensing requirements are not triggered. A licence is not required and the waste levy does not apply.

### *Implications of the legislative framework for waste-derived materials*

The proposed legislative framework would only be relevant to waste-derived materials applied to land in quantities above licensing thresholds and is therefore not relevant in this circumstance.

#### Producers:

- Under the proposed legislative framework, producers of waste-derived materials would still be required to hold a Category 67A licence (compost manufacturing and blending) if their production or design capacity is 1,000 or more tonnes per year.
- Producers may choose to opt-in to the legislative framework, in which case they could manufacture their compost in accordance with a general WDM determination. This would mean if their compost was ever accepted for burial in quantities exceeding licensing thresholds, the need for a licence and payment of the levy would not be triggered.
- Alternatively, they could submit a case-by case WDM determination application for consideration by the CEO.
- However, it is likely that priority for assessing waste-derived materials would be given to waste-derived materials whose use would otherwise trigger licensing and levy requirements.

#### Users:

Users are only applying small quantities of compost to land (below licensing thresholds) and so licensing requirements are not triggered. A licence is not required and the waste levy does not apply (i.e. the legislative framework for waste-derived materials will not impact these users).

### **Example 2**

*Hypothetical situation: Commercial compost for large-scale use (i.e. waste-derived material used in quantities above licensing thresholds)*

A producer uses biosolids in manufacturing commercial quantities of compost. This compost is then sold to farmers for use in broad-scale agriculture (where it is applied to land in quantities above 1,000 tonnes per year).

#### *Current legislative requirements*

#### Producers:

- The producer is required to hold a Category 67A licence (compost manufacturing and blending licence) if their production or design capacity is 1,000 or more tonnes per year.
- There may be a requirement for other categories such as Category 62 for the associated storage of waste.

- Transport of liquid biosolids may also trigger requirements under the Environmental Protection (Controlled Waste) Regulations 2004, depending on the composition.

#### Users:

- The user should refer to the *Western Australian guidelines for biosolids management (2012)* for information and guidance on appropriate management practices but could still be prosecuted and subject to penalties for offences under environmental and health legislation.
- Where 1,000 or more wet tonnes of biosolids are proposed to be applied to a property via land application in any 12-month period, a category 61A licence is required.

#### *Implications of the legislative framework for waste-derived materials*

If, following an assessment against the matters the CEO must have regard to, the CEO made a WDM determination for commercial compost manufactured using biosolids, then:

#### Producers:

- Under the proposed legislative framework, producers of waste-derived materials would still be required to licence their production premises as a waste processing facility and/or waste storage facility.
- The producer would need to hold a Category 67A licence and any other relevant approvals to manufacture the compost.
- The producer would need to ensure the compost meets the requirements in the WDM product specification.
- The producer would need to provide the user with a statement of compliance with the conditions of the WDM product specification.
- A statement of compliance template would be made available by the department.
- If the producer was found to have produced and supplied the waste-derived material other than in accordance with the conditions of the WDM product specification, they would be committing an offence and, where possible, the department would work with the user to rectify the non-compliance. The type of sanction imposed would be guided by the *Enforcement and Prosecution Policy (2013)*.
- If the producer was found to have provided a false statement of compliance, they would be committing an offence.
- All enforcement action will be assessed and applied in accordance with the department's *Compliance and Enforcement Policy (2017)* and *Enforcement and Prosecution Policy (2013)*.

## Users:

- As waste-derived materials would cease to be waste only when applied to land in accordance with the requirements of the WDM declaration, on-site, long-term storage of waste-derived materials before their use may result in the need for a Category 61A or 62 licence.
- Conditions in the WDM declaration may include a time limit by which the waste-derived material must be used before it triggers the requirement for a Category 61A or 62 licence.
- If the user of the compost exceeds the storage time limit, they may need a Category 61A or 62 licence (as it would still be considered waste up until it has been used in accordance with the WDM declaration).
- The time allowed for storage of a waste-derived material before its use will depend on the circumstances and will be determined by the CEO when assessing the waste-derived material.
- Provided the user uses the compost in accordance with the WDM declaration, the compost would no longer be 'waste' and so the user would not need to hold a waste disposal licence or be liable for the waste levy (if applicable).
- If the user wanted to use the compost in a manner that was not provided for in the WDM declaration, they could request the CEO assess the proposed use under the legislative framework. If the CEO determined the use to be acceptable, they could either issue a case-by-case WDM determination or, if they considered it more appropriate, update the existing WDM declaration for commercial compost manufactured using biosolids.
- If the user used the compost other than in accordance with the conditions of the WDM declaration, the user would commit an offence, and where possible, the department would work with the user to rectify the non-compliance. The type of sanction imposed would be guided by the department's *Enforcement and Prosecution Policy (2013)*.
- All enforcement action will be assessed and applied in accordance with the department's *Compliance and Enforcement Policy (2017)* and *Enforcement and Prosecution Policy (2013)*.
- In addition to breaching the conditions of a WDM declaration, the general provisions under the EP Act may also be relevant and, if contamination results, regulation under the CS Act may also be triggered.

## Example 3

*Hypothetical situation: Road base manufactured from construction and demolition waste (waste-derived materials requiring long-term storage)*

- A producer manufactures road base from construction and demolition (C&D) waste.
- The user will use 600 tonnes of road base manufactured from C&D waste.

- This road base will be stored in batches on the producer's premises so as to accumulate a sufficient quantity to provide to the user.
- The user will then store the road base on their site to use as required in constructing the road.

### *Current legislative requirements*

#### Producers:

- If producing more than 1,000 tonnes per year, the producer will require a Category 13 licence (crushing of building material).
- In addition, the producer may require a Category 61A (solid waste facility licence) or 62 licence (solid waste depot licence) for any screening and storage of the material.

#### Users:

- The user would need to determine that the material they are using (recycled road base) is not waste (refer to the [Factsheet: Assessing whether material is waste](#)).
- If the recycled road base was not considered to be waste, it could be stored and used without requiring a licence.
- As the quantity of road base being stored exceeds 500 tonnes, if it is considered waste the user will need a Category 62 licence for storing the road base in large volumes before its intended use.
- If the material is determined to be waste, a Category 61A (solid waste facility) licence may be required.

### *Implications of the legislative framework for waste-derived materials*

Under the proposed legislative framework, the department's existing [Factsheet: Assessing whether material is waste](#) would be revoked. The department would publish guidance on the matters the CEO would have regard to in making a WDM determination and the information applicants would be required to provide to inform the CEO's assessment of when a waste-derived material ceases to be waste.

If, following an assessment against the matters the CEO must have regard to, the CEO made a WDM determination for road base manufactured from construction and demolition waste, then:

#### Producers:

- Under the proposed legislative framework, producers of waste-derived materials would still be required to licence their production premises as a waste processing facility and/or waste storage facility.
- If producing more than 1,000 tonnes per year, the producer will require a Category 13 licence (crushing of building material).
- In addition, the producer may require a Category 61A (solid waste facility licence) or 62 licence (solid waste depot licence) for any screening and storage of the material.

- The producer would need to ensure the road base meets the requirements in the WDM product specification.
- As would be required by the WDM product specification, the producer would need to provide the user with a signed statement of compliance with the conditions of the specification.
- A statement of compliance template would be made available by the department.
- If the producer was found to have produced and supplied the waste-derived material other than in accordance with the conditions of the WDM product specification, the producer would commit an offence and the department would work with the user to rectify the non-compliance. The type of sanction imposed would be guided by the *Enforcement and Prosecution Policy (2017)*
- If the producer was found to have provided a false statement of compliance, they would be committing an offence.
- All enforcement action would be assessed and applied in accordance with the department's *Compliance and Enforcement Policy (2017)* and *Enforcement and Prosecution Policy (2013)*.
- Where a breach of the conditions of a product specification, or provision of a false statement of compliance results in pollution or harm to the environment, offences under the EP Act may apply and, if contamination results, regulation under the CS Act may also be triggered.

#### Users:

- The WDM declaration will place conditions on storage time limits for the material, by which point the material must be applied to land in order to not be considered waste, and therefore not require a storage licence.
- If the user of the road base exceeds the storage time limit, they may need a Category 61A or 62 licence (as it would still be considered waste up until it has been used in accordance with the WDM declaration).
- Providing the road base is then used in accordance with the WDM declaration, the user will not require a Category 61A licence.
- If the user wanted to use the road base in a manner that was not provided for in the WDM declaration, they could request the CEO assess the proposed use under the legislative framework. If the CEO determined the use to be acceptable, they could either issue a case-by-case WDM determination or, if they considered it more appropriate, update the existing WDM declaration.
- If the user used the road base other than in accordance with the conditions of the WDM declaration, they would be committing an offence and, where possible, the department would work with the user to rectify the non-compliance.
- The type of sanction imposed would be guided by the *Enforcement and Prosecution Policy (2017)*.

- If a user continued to contravene the conditions of the WDM declaration, the road base would be considered waste and the user could be prosecuted for not holding a licence and could be liable to pay the waste levy.
- All enforcement action will be assessed and applied in accordance with the department's *Compliance and Enforcement Policy (2017)* and *Enforcement and Prosecution Policy (2013)*.
- In addition to breaching the conditions of a WDM declaration, the general provisions under the EP Act may also be relevant and, if contamination results, regulation under the CS Act may also be triggered.