



Frequently asked questions

Waste not, want not: valuing waste as a resource discussion paper

1. Why is the department proposing to implement a legislative framework for waste-derived materials?

The establishment of a legislative framework for waste-derived materials is a priority in the State Government's agenda for waste. It helps to achieve the *Waste Avoidance and Resource Recovery Strategy 2030* ([Waste Strategy 2030](#)) objective to 'develop a legislative framework to encourage the use of waste-derived materials, including product specifications, to build confidence in recycled products, increase their demand and develop relevant markets while protecting the environment'.

The legislative amendments proposed in the discussion paper are aimed at providing certainty around when waste-derived materials are no longer waste and depositing them to land in quantities above licensing thresholds would not be considered 'waste disposal', meaning licensing and waste levy requirements would not be triggered.

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

2. How is this discussion paper related to the issues paper *Waste not, want not – valuing waste as a resource*?

In June 2019, the Department of Water and Environmental Regulation (the department) released the issues paper, [Waste not, want not: Valuing waste as a resource](#) (the issues paper) for a 12-week public comment period. The issues paper 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.

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. The proposed framework has been informed by stakeholder feedback, including submissions in response to the issues paper. 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](#).

3. Which stakeholders will have an interest in the discussion paper?

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 Environmental Protection Regulations 1987 (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 wishing to market waste-derived materials as being produced in accordance with a waste-derived materials (WDM) determination.

This may include producers and users of solid and liquid materials deposited to land, such as construction and demolition waste, compost, treated wastewater and treated sewage.

The proposals are most relevant to the following prescribed premises licence holders – categories 13, 17, 18, 19, 20, 22, 24, 25, 54, 61, 61A, 62, 63, 64, 65, 66, 67A, and 89. Refer to Schedule 1 of the EP Regulations for descriptions of these licence categories.

4. How does this discussion paper relate to the Closing the loop consultation paper?

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.

The [Closing the loop – waste reforms for a circular economy](#) consultation paper, released earlier this year, included legislative options that would affect the current licensing and waste levy frameworks. As there are reform proposals relevant to the storage and use of waste-derived materials, it is recommended stakeholders refer to the following chapters in the Closing the loop consultation paper:

- Chapter 9: 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: simplifying the solid waste licensing categories in Schedule 1 of the EP Regulations relating to waste storage, processing and management.
- Chapter 11: minimising stockpiling at waste storage premises – to encourage the timely reuse and reprocessing of solid waste stockpiles.

The department is currently reviewing submissions in response to the Closing the loop paper and will ensure alignment between Closing the loop reforms that are progressed, and the final legislative framework for waste-derived materials.

5. When will the legislative framework be operating?

Following consultation on the discussion paper, the department will review submissions and provide the Minister for Environment with a consultation summary report and recommendations. On approval of the recommendations by the Minister, the department will develop drafting instructions for introducing the legislative amendments into Parliament.

Introduction of the Bill to Parliament depends on a range of matters including the drafting priority attached to the Bill and other Bills on the Government's legislative program.

It is proposed the legislative amendments would come into effect on a date fixed by proclamation to allow development of supporting regulations, policies and guidelines, to give full effect to the framework. These will be subject to separate consultation.

6. Why does a waste-derived material cease to be waste when used (rather than when it is produced/supplied)?

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.

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 and ensures it will be fit-for-purpose and not present unacceptable risks to the environment or human health. Without the ability to place conditions on the use, the risk assessment would need to be conservative and only consider the most sensitive receiving environment.

7. How will the department ensure the legislative framework does not create unnecessary regulatory burden?

The conditions in WDM determinations would be 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 (*Waste Avoidance and Resource Recovery Act 2007*)

- to impose a levy in respect of certain waste (*Waste Avoidance and Resource Recovery Levy Act 2007*)
- 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.

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.

The framework allows for general determinations which 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 determination has been published by the CEO of the department.

All of the above would ensure that WDM determinations do not create unnecessary regulatory burden.

8. What will be done to ensure the enactment of the legislative framework does not have adverse effects on existing producers and users of waste-derived materials?

Transitional arrangements

The department acknowledges some waste-derived materials may already have been manufactured before the proposed waste-derived materials framework comes into effect. In developing a relevant WDM determination, the department may consider transitional arrangements for materials already produced and would consult with relevant producers as required.

Feedback received through this consultation process will help to identify existing producers and users of waste-derived materials already being deposited to land above licensing thresholds in Western Australia.

Prioritisation of WDM determinations

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

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

Producers and users wishing to have a case-by-case WDM determination granted would be encouraged to make early contact with the department so consideration can be given to granting these determinations upon enactment of the framework.

9. The assessment of waste-derived materials for WDM determinations would require significant resourcing. How will the department determine which waste-derived materials should be addressed first?

To maximise effectiveness of the framework and alignment with government objectives, the department would consider several 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.

Feedback received through this consultation process may identify other factors the department should consider in prioritising the development of WDM determinations.

10. Why are there penalties for using a waste-derived material other than in accordance with a WDM declaration?

As the proposed framework targets waste-derived materials deposited to land in significant quantities, regulating their use is important in protecting human health and the environment, as well as ensuring genuine reuse, rather than a means of waste disposal and levy evasion.

Imposing penalties for using a waste-derived material that does not comply with all of the conditions in a WDM declaration will ensure the waste-derived material is only used in ways that are beneficial, fit-for-purpose and does not pose adverse risks to human health or the environment. This would provide users with confidence that, when used according to a WDM declaration, the material is not waste and would not trigger licensing and potentially waste levy obligations. It would also provide the community with confidence that the use of waste-derived materials minimises risk to the environment and human health.

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)*.

11. Would the controlled waste requirements apply under the legislative framework?

The legislative framework for waste-derived materials would not alter the requirements for tracking of controlled waste under the Environmental Protection (Controlled Waste) Regulations 2004.

12. How will the framework encourage innovation and market development in relation to waste-derived materials?

By providing certainty around when a waste-derived material is no longer waste, the framework would provide comfort to users that they would not be subject to licensing and waste levy requirements when depositing the waste-derived material to land in quantities above licensing thresholds.

The setting of conditions on the production and use of waste-derived materials in WDM determinations will provide comfort to community and industry that the use of a waste-derived material is beneficial, fit-for-purpose and does not pose adverse risk to human health and the environment.

The framework will also assist the research and development phase for waste-derived materials through publication of the information requirements for applications for WDM determinations.

The above certainty will encourage market development and investigation of innovative uses for waste-derived materials.

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