



Environmental  
Defender's  
Office

Western Australia (Inc)

Telephone (08) 9221 3030 Facsimile (08) 9221 3070  
Level 2 Kings Office Tower, 533 Hay St, Perth WA 6000  
email: edowa@edowa.org.au www.edowa.org.au  
Freecall for non-metropolitan callers: 1800 175 542

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The Department of Environment and Conservation  
Locked Bag 104  
BENTLEY DELIVERY CENTRE  
WA 6938

Attn: Dr John Ottaway  
Office of the Deputy Director General – Environment  
(File 509/97/8)

Dear Dr Ottaway,

**Waste Avoidance and Resource Recovery Bill**

Thank you for the opportunity to comment on the above Bill. The EDO recognises that a new approach to waste management is required in WA and believes that the Bill goes some way to addressing this. In particular, provisions aimed at improving waste minimisation, recycling, and establishing extended producer responsibility schemes are strongly supported.

**Part 1 - Preliminary**

The term 'resource recovery' is not defined in the Bill. The objects provision at section 5 describes some matters which could be included in the scope of resource recovery, however it is not a definitive list. There is some contention over exactly which activities fit within resource recovery. For example, some people may contend that incineration fits within this term, however there is strong opposition from many community members to incineration being considered a form of resource recovery, rather than disposal. It is important for the term resource recovery to be defined as it sets the scope of activities that can be put forward as waste management options in the waste strategy.

The fact that 'problematic wastes' are only problematic if they are specifically prescribed as such is a concern. Wastes are hazardous or problematic by their nature, not by their labelling as such by Government. There is strong scope for manipulation of this definition by

industries who do not want a particular product classified as problematic. The definition should be altered so that a waste is problematic if it fits within subsection (a) of the current definition or is proscribed to be so by regulations. If a safety net is needed a subsection could be added to remove a waste from this definition through regulations. This is the approach adopted in the definition of 'municipal solid waste'.

## **Parts 2 and 3 - Waste Authority**

The establishment of a permanent statutory authority is a valuable initiative and is supported. It is important that the Authority includes a broad cross section of experience, particularly in the areas of conservation and community, which can be overlooked. This should be enshrined in the Bill by changing the words "should" in section 11(2)(a – e) to "must".

Section 18 should specifically require the establishment of a permanent community committee to assist the Authority in the performance of its functions, to ensure community views are clearly heard.

Section 21 allows the Minister to give mandatory directions to the Authority and so the Authority is not totally independent. At present the Bill requires these directions to be included in the Waste Authority's annual report. Instead, these directions should be tabled in Parliament within 14 days of the direction to ensure full transparency and accountability.

In addition to its current functions listed in Schedule 2, the Waste Authority should also be able to monitor and report on waste management plans and codes of practice.

## **Part 4 - Management Documents**

### *Waste Strategy*

Sections 26 – 33 set out the process for drafting and reviewing the waste strategy. This process does not provide an equal opportunity for all sectors of the community to participate. It is also cumbersome and is likely to cause delays in the development of the strategy.

It is essential that the community have equal opportunity to express their views as this document will set the standard for many waste management decisions in WA. The process for formulating the draft waste strategy places more importance on industry than the community because the Authority must consult with industry, ("entities involved in waste management and resource recovery") however the Minister has to give permission for it to consult with community (sections 27 & 28). In addition, the draft must be referred back to industry after the community is consulted, and industry has the right to request the Authority to alter any parts it would like to vary.

Section 30 should be removed which would streamline the process and remove the imbalance towards industry. Section 28 should be modified to remove the requirement for the Minister's consent for public consultation – public consultation should be mandatory.

The power of the CEO to request any entity to provide a report on compliance with the waste strategy under section 34 is supported, as many organisations outside the immediate scope of this Bill produce considerable waste and should be putting strategies in place to reduce their waste and dispose of it properly. This will assist WA to reach its state-wide goal of zero

waste by 2020. Although this provision will not require entities to comply with the strategy, it will encourage private companies and government agencies to consider waste management more carefully, and will encourage some entities to comply with the strategy to avoid being named in the annual report. A transition to require mandatory compliance with the waste strategy by all government agencies and private companies should be considered in the future.

The Minister can direct that the waste strategy be changed after all other parties have submitted comments. There should be a requirement in section 31 that he/she be required to publicly state which parts have been changed in the interests of transparency.

### *Waste Management Plans*

Waste management plans should not be part of a local council's 'plan for the future' under section 38, rather they should be separate documents with their own development and consultation process. Waste is a core business of local governments and a large revenue source and should be treated separately with focused consultation. Residents of the area should have the opportunity to input into the waste management options that are adopted for their local government area. The Government has stated that financial and other support will be provided, particularly to small councils, so lack of resources should not be a major issue.

It would be useful if the Waste Authority could direct the CEO to request waste management plans from local councils. The Waste Authority will be in an excellent position to advise which councils would benefit from development of a waste management plan. The Waste Authority already has a similar power under section 69(2) and this should be extended.

Rather than just local councils being required to develop a waste management plan there should be power for *any entity* to be directed to develop one. A large proportion of waste comes from industry and they should be required to align their waste management processes with the waste strategy.

The local council waste management plans should have a greater impact on decision making. In section 41, only the CEO of DEC must have regard to a plan when exercising a function under the Act. This should be altered so that any state or local government decision maker who is making a decision that affects a specific local government area must make decisions that are consistent with the plan, or at least be required to consider the plan in their decision making. This includes town planning decisions, water resource considerations, issuing of mining tenements, development proposals, industrial expansions etc. This will ensure that specific waste issues are considered earlier in the planning process and are integrated into the planning process, and that projects take account of local circumstances.

### *General*

The waste strategy and all plans and relevant documents should be available to the public free of charge in hardcopy and electronically as opposed to being available for a fee as indicated in section 32(5). This is the best way to ensure the whole community is aware of and thinking about waste management for the State and their LGA. There should also be a requirement for data on the amount and types of waste being collected to be publicly available.

## **Part 5 - Product Stewardship**

The introduction of a regime for voluntary and mandatory EPR schemes is strongly supported as a valuable initiative to increase the volume and quality of recycled materials in WA and address problem wastes.

The EDO's main concern with the provisions as they are currently worded is that there could be significant delays in introducing effective voluntary or mandatory schemes. While the EDO has no in-principle problem with voluntary producer-developed schemes, the concern is that there will not be enough incentive to bring in effective schemes that achieve best practice. Producers will need a strong incentive to develop such schemes voluntarily. Although the threat of a mandatory government scheme is an incentive, strong political will is required to keep the pressure on producers. The provisions as they are written could allow long delays in the implementation of effective schemes.

There is no requirement in the Bill that a product stewardship agreement contain best practice approaches and targets, or that it be robust. Provided that it meets the Bill requirements the CEO must accept it. A concern will be whether producers implement ineffective voluntary schemes that take a long time to develop and will delay imposition of an effective mandatory scheme. If this does happen, the Minister will have power to override them with a mandatory scheme as he could deem them ineffective, however in practice this may be controversial.

In a situation when there is a less effective voluntary scheme in place combined with heavy lobbying to prevent a much more effective mandatory scheme from being established it may be very difficult for the Minister to bring in a needed mandatory scheme.

It may be better to alter Part 5 of the Bill to simply require producers to develop their own scheme for any product that the waste authority identifies in their priority statement. In other words, the Waste Authority identifies priority products that would strongly benefit from an EPR scheme using the process in section 45, and once the list is finalised, producers of that product are required to develop a scheme that meets the targets that the Authority sets for that product. It would be left up to producers to decide what type of scheme they think would be most effective to meet the targets. Thus the schemes would be mandatory, however producers would have great flexibility in determining the most cost effective and efficient type of scheme.

If the current approach is retained, it will be essential for the Waste Authority and Minister to establish EPR schemes as soon as possible, to demonstrate their strong commitment to producers to deal with priority wastes. In particular, a system to establish a container deposit scheme should be established immediately; within the first year of introduction of the Act. Container deposit schemes have strong support within the WA community and have been proven in South Australia and other countries to be an extremely effective way of dealing with disposable containers and improving recycling rates and the quality of recycled material.

It will be very important for a container deposit scheme to be constructed in a way that does not conflict with free trade, excise, competition, fair trading and mutual recognition laws. A carefully constructed scheme under the WARR Bill should not offend any of these laws. To this end, it may be beneficial to make a small amendment to the objects in section 5(a) by adding the words "including pollution through litter" after "...environmental harm". This will assist when interpreting the provisions under mutual recognition laws.

In addition, if the current approach is retained, the wording of section 44 that the Minister “must have regard to” certain issues should remain as it is. In NSW, this provision is worded slightly differently, and specifically prevents the Minister from implementing an EPR scheme unless it is found to be *necessary* after considering a number of items. There is too much potential for manipulation with that wording – the wording of the WA Act is far preferable.

### **Part 8 - Offences**

As it is presently worded, section 66 could capture schools or scout groups etc who are collecting recyclable containers under a container deposit scheme. It could be argued that a scout group who establishes a program to collect applicable containers (a type of municipal solid waste) is doing so for reward (the redemption fee) and therefore would be required to have a written contract or approval from the local council or an EP authorisation. It is too cumbersome for such organisations to obtain such approvals. It is presumed that this was not the intention of the provision. It should be reworded to make it clear that it does not catch schools, scout groups etc collecting recyclable containers under a CDL scheme.

It is noted that penalties for non-compliance with mandatory EPR schemes are not included in the Bill and will therefore be in the regulations, once drafted. The penalty limit for regulations of \$1000 or \$5000 for a body corporate will be of no deterrent value whatsoever to many producers. It is preferable that an offence for non-compliance with EPR schemes be included in the Bill so that a penalty can be set which has an effective deterrent value, preferably upwards of \$50,000 for bodies corporate. Alternatively, the Bill should include a specific provision allowing penalty levels in the regulations to be set at a much higher level, or specifically note under section 75 that daily penalties also apply to offences under the regulations.

Third party enforcement provisions should be included in the Bill specifically in relation to section 68 to allow members of the public to take action for offences where the Government will not act. The public has a right to expect that waste management services are being carried out appropriately and in accordance with the waste management plan. Third parties should be given the right to institute proceedings where a party is not in compliance with the Act.

### **Part 10 – Appeals**

Under section 78, local governments may appeal certain decisions of the CEO of DEC to the Minister. It is suggested that appeals should go to the State Administrative Tribunal rather than the Minister, as this is the appropriate forum for reviewing these types of government decisions, and was established specifically for this purpose.

### **Part 11 – General Provisions**

Section 82, which requires confidentiality, should be modified and the penalty reduced. This provision is worded too broadly and will have the effect of preventing anyone performing any functions under the Act from disclosing any information for fear of breaching this provision. The provision could be used as an excuse for not disclosing information about waste collection and disposal, which is important information for the community and should be publicly available. The provision should be limited to apply only to information that is

actually confidential. The penalty should also be reduced. It is disproportionate to the gravity of the offence, particularly as it is the highest of any penalty in the Bill.

**Schedule 1 – Constitution and Proceedings of the Waste Authority**

Item 17 should be deleted. Members of the Waste Authority who have a material personal interest in a matter considered by the Waste Authority should not be able to vote on the matter.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Nicola Rivers', written over a faint horizontal line.

Nicola Rivers  
Solicitor  
Environmental Defender's Office