



Closing the loop: Waste reforms for a circular economy

Consultation Paper – February 2020

Submission to Department of Water and Environmental Regulation

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About CME

The Chamber of Minerals and Energy of Western Australia (CME) is the peak resources sector representative body in Western Australia. CME is funded by member companies responsible for more than 85 per cent of the State's mineral and energy production and workforce employment.

In 2018-19, the Western Australia's (WA) mineral and petroleum industry reported a record value of \$145 billion.¹ Iron ore is currently the State's most valuable commodity at \$78 billion. Petroleum products (including crude oil, condensate, liquefied natural gas, liquefied petroleum gas and natural gas) followed at \$38 billion, with gold third at \$12 billion.

The value of royalties received from the sector totalled \$6.8 billion in 2018-19, accounting for 21 per cent of general government revenue.^{2,3,4} In addition to contributing 40 per cent of the State's total industry Gross Value Added,⁵ the sector is a significant contributor to growth of the local, State and Australian economies.

Context

CME welcomes the opportunity to provide a submission on the Department of Water and Environmental Regulation (DWER) on the 'Closing the loop: Waste reforms for a circular economy' Consultation Paper (the Consultation Paper) released 20 February 2020.

The Consultation Paper outlines new waste reform proposals in addition to legislative proposals previously raised in the 'Waste Reform Project: Proposed approaches for legislative reform' Discussion Paper released by DWER in July 2017. CME notes that the majority of the proposals within the Consultation Paper are largely unchanged from the 2017 Discussion Paper and encourages DWER to review CME's previous submission.⁶

It is important to acknowledge the high level of interconnectedness of the various proposals for waste reform outlined in this Consultation Paper and the 'Review of the waste levy' Consultation Paper,⁷ concurrently released by DWER on 20 February 2020. CME strongly encourages the concurrent consideration of submissions lodged for each consultation.

Summary Position

In principle, CME support a policy framework for WA that promotes practical diversion of materials from landfill to reuse, recycling and energy recovery, and thereby the establishment of a 'circular economy'. Fundamental to the discussion on circular economies is a clear definition of waste, clarifying the distinction between waste and material of value.

This clarification is currently captured under a government factsheet, 'Assessing material as waste',⁸ published by DWER in response to the recent Eclipse case. This document provides guidance only, with no legal standing, and therefore fails to resolve the lack of clarity and confidence in the current legal definition of waste.

The long-term stockpiling of recyclable, reusable and recoverable material is necessary to support a circular economy for numerous reasons. Consequently, the differentiation between waste and material of value is especially important when exploring the rationale for long-term stockpiling and determining appropriate

¹ Government of Western Australia, *Latest statistics release: Mineral sector highlights*, Department of Mines, Industry Regulation and Safety, September 2019: <http://dmp.wa.gov.au/About-Us-Careers/Latest-Statistics-Release-4081.aspx>

² References hereafter to government refer to the Government of Western Australia, unless otherwise indicated.

³ Government of Western Australia, *Annual report 2018-19*, Department of Mines, Industry Regulation and Safety, November 2019, p. 77.

⁴ Government of Western Australia, *2018-19 Annual report on State finances*, Department of Treasury, September 2019, p. 8.

⁵ Duncan, A. and Kiely, D., *BCEC Briefing note: WA Economic update*, Bankwest Curtin Economics Centre, November 2019, p. 4.

⁶ CME's submission to the 'Waste Reform Project' Discussion Paper is available at <https://cmewa.com.au/wp-content/uploads/2020/06/171030-ENV-Waste-Reform-Discussion-Paper-Submission-sent-to-DWER-v1.pdf>

⁷ Refer <https://consult.dwer.wa.gov.au/waste-policy/review-of-the-waste-levy/>

⁸ DWER Factsheet – Assessing whether material is waste is available at <https://www.der.wa.gov.au/images/documents/your-environment/waste/Factsheet-Assessing-waste.pdf>

environmental management measures which do not unreasonably constrain the establishment of, and participation in, a circular economy in WA.

In acknowledgement of the *Environmental Protection Amendment Bill 2020*, currently in passage through WA Parliament, CME notes that the tabled amendments to the *Environmental Protection Act 1986* (EP Act) and resultant expected amendments to the *Environmental Protection Regulations 1987* (EP Regulations) will need to be duly considered and may necessitate revision of proposals presented in the Consultation Paper.

CME has consulted extensively with its members to inform its submission in response to the Consultation Paper. The structure of the remainder of this submission is aligned with the chapters presented in the Consultation Paper.

Summary of Recommendations

The following comments and recommendations address specific key concerns and priorities for waste reform in WA.

Aligning the Environmental Protection Act 1986 with waste avoidance and resource recovery objectives

- CME notes the EP Act already provides broad powers to incorporate waste avoidance and resource recovery objectives into environmental assessments and approvals.
- Amendments are not supported to sections 4A, Part IV Division 3, section 62 or 62A of the EP Act.

Clarifying the application of the waste levy

- Amend the definition of 'disposal premises', under section 3 of the *Waste Avoidance and Resource Recovery Levy Act 2007* (WARR Levy Act), to refer only to waste management premises.
- Amendments are not supported to section 5 of the *Waste Avoidance and Resource Recovery Act 2007* (WARR Act) to apply to waste levy to onsite generated and disposed wastes.
- A focus on compliance and enforcement for effective mitigation of levy avoidance by non-compliant material stockpiling is supported.
- Implement and enforce licence conditions (under Part V Division 3 of the EP Act) for the management of environmental risks of stockpiled material, the monitoring and reporting of stockpile volumes, and the reprocessing / disposal of stockpiled material within an agreed timeframe. Conditions must be reasonable, practicable, risk-based and consistent across facilities.
- Implement timeframes for the removal / processing of material stockpiles which are risk-based, relative and reasonable to facilitate the diversion of materials from landfill and support a circular economy. Short timeframes could result in increased landfill of recoverable materials, unable to be diverted.
- Implement a process for seeking approval to stockpile materials in planned and unplanned circumstances (e.g. facility maintenance / upgrade, failure / emergency shutdown).
- Do not apply the waste levy to stockpiled recyclable, reusable and recoverable materials.

Modernising landfill licensing and levy liability for waste disposal

- Amalgamation is not supported of landfill categories under Schedule 1 of the *Environmental Protection Regulation 1987* (EP Regulations).
- Implement waste licensing exclusions and waste levy exemptions for:
 - Mining and minerals processing wastes (e.g. tailings, metallic and non-metallic ore residue, slimes, ash, sand, scale and muds);
 - Remediation and rehabilitation of a contaminated site; and
 - Premises that have only ever accepted clean or uncontaminated fill.
- Application of the waste levy to the disposal of hazardous is not supported.

Simplifying the solid waste licensing categories

- Review and update relevant procedures, guidelines and training to ensure DWER internal systems adequately support consistent interpretation and application of the solid waste licensing framework.
- Develop risk-based and practicable guidance for minor used tyre storage, in consultation with industry.
- Amalgamation is not supported of used tyre storage licensing categories 56 and 57, under Schedule 1 of the EP Regulations.
- Implementation of a weighted threshold for tyres is not supported.
- Revision of the used tyre storage licensing categories, under Schedule 1 of the EP Regulations, to include shredded, broken or pieces of used tyres is unnecessary and not supported.

Minimising stockpiling at waste storage premises

- Application is not supported of the waste levy to waste storage, recycling, reuse or recovery facilities.

Waste levy exemptions

- Amend regulation 5(1) of the *Waste Avoidance and Resource Recovery Levy Regulations 2008* (WARR Levy Regulations) to exempt waste used for cell construction and maintenance at waste disposal premises.
- Amend regulation 5(1)(g) of the WARR Levy Regulations to exempt waste used for roads and construction works at waste disposal premises, and clarification of “construction works” to include the construction of foundational support for infrastructure at the premises.
- Publish supporting guidance defining materials approved for roads and construction works under the abovementioned exemption. Guidance must be reasonable, practicable, reflect industry standard environmental risk management and engineering standards, and where appropriate, include the use of waste-derived materials.
- Delete regulation 5(1)(b) of the WARR Levy Regulations, in keeping with existing waste levy exemptions maintained under regulations 8 and 9.
- Implement a time limit for retrospective waste levy exemption applications which is practicable and reasonable, and does not disincentivise the entry of materials into a circular economy by prematurely levying stockpiled recyclable, reusable and recoverable materials.
- Removal is not supported of the CEO’s requirement under the WARR Levy Regulations to estimate the amount of exempt waste received at licensed landfills.

Improving solid waste reporting from waste facilities

- CME supports DWER focusing efforts on waste data collection and reporting on those priority wastes based on their risk, volume and potential for diversion.
- Mandatory installation of weighbridges at all facilities is not supported.
- Develop a single, online waste reporting portal, linked to or part of Environment Online, which is effective, efficient and user-friendly.

Compliance and enforcement measures for waste

- Any framework in which the waste generator remains responsible for the waste until it is accepted at the waste facility (that is lawfully allowed to accept it) is not supported.
- The following proposals are supported:
 - Introduction of an offence for waste transporters to dispose waste at a place not licensed to accept the waste, or at a facility licensed to accept the waste without the consent of the occupier / owner.
 - Introduction of an offence for waste facilities to accept waste they are not appropriately licensed to receive.
- The following proposals are not supported:

- Introduction of a new power for the CEO to issue a notice to require the maintenance of records of waste movements by waste transporters.
- The remaining proposals under this section are not opposed.

Improving the administration and collection of the waste levy

- DWER to conduct detailed analysis of the process gaps and inefficiencies in the administration and collection of the waste levy, and present for consultation those solutions which address identified root causes.

Chapter 7: Aligning the EP Act with waste avoidance and resource recovery objectives

CME notes the EP Act already provides broad powers to incorporate waste avoidance and resource recovery objectives into environmental assessments and approvals, including:

- Under section 4A, Principle 5 addresses waste avoidance objectives, stating “[a]ll reasonable and practicable measures should be taken to minimise the generation of waste and its discharge into the environment.” The objects and principles defined under section 4A are matters to which the Environmental Protection Authority (EPA) is to have regard when undertaking environmental impact assessments under Part IV (as stipulated within the ‘Statement of Environmental Principles, Factors and Objectives’).⁹
- Under section 62, the Chief Executive Officer (CEO) of DWER has authority to grant works approvals and licences subject to any conditions considered “[...] necessary or convenient for the purposes of this Act relating to prevention, control, abatement or mitigation of pollution or environmental harm.”
- Under section 62A, the kinds of conditions which may be attached to a works approval or licence include:
 - Undertaking monitoring;
 - Conducting analysis of monitoring data;
 - Providing information on the nature and quantity of wastes and on materials leading to the generation of those waste;
 - Disposing of waste in a specified manner;
 - Reusing waste wholly or in part; or make waste available for reuse by another person;
 - Providing reports on monitoring data and analysis;
 - Providing reports on audits and studies; and
 - Supplying the CEO with information relating to the characteristics and volume of any waste held or stored.

It remains unclear the extent to which these powers have failed to achieve an intended outcome or if the CEO has previously sought to use these extensive powers and found them to be lacking. Consequently, the Consultation Paper appears to recommend amendments to the EP Act to provide powers already conveyed.

CME do not support amendments to sections 4A, Part IV Division 3, section 62 or 62A of the EP Act.

Changes to the EP Act and associated Regulations will affect several hundred licences across WA. This will create a significant impost on DWER’s internal resources as well as to affected licensees.

The extensive reach of the EP Act also heightens the potential for unintended consequences from changes to the Act. Changing the object and principles in section 4A in effect alters the interpretation and application of the entire EP Act. CME considers any change to the foundation of the EP Act should not be taken lightly.

⁹ Environmental Protection Authority, *Statement of Environmental Principles, Factors and Objectives*, EPA, 2020, p. 4.

Chapter 8: Clarifying the application of the waste levy

Disposal premises

The intent of the waste levy is to act as “an economic instrument for influencing waste management practices, including reducing waste to landfill, by increasing the price of landfill disposal.”¹⁰

Under section 3 of the WARR Levy Act, disposal premises are defined as premises “(a) which are used for the purpose of receiving waste; and (b) in respect of which the occupier is required to hold a licence, whether or not such a licence is in force”.

This definition is sufficiently ambiguous such that non-waste disposal premises (e.g. development sites) may be inadvertently captured, presenting an unintentional levy liability. The capture of non-waste disposal premises is inconsistent with the intent of waste levy.

CME support amendments to the definition of ‘disposal premises’, under section 3 of the WARR Levy Act, to refer only to waste management premises.

Receiving waste at disposal premises – onsite generated waste

The costs of landfill construction (including land clearing), licensing, management and maintenance inherently incentivise companies with onsite licensed landfills to reduce waste disposed to landfill. With these substantial financial incentives, the application of the waste levy to waste generated and disposed onsite serves no purpose in reducing waste to landfill. Furthermore, it has the potential to promote diversion of waste to community landfill, thereby increasing community risk from waste transportation via public roads.

The waste levy should only be applicable to third-party wastes received for disposal to landfills.

CME strongly oppose the application of the waste levy to onsite generated waste disposed to landfill at the same premises, and therefore do not support amendments to section 5 of the WARR Act.

Waste received for disposal to landfill

Under the WARR Levy Act, all waste received at licensed landfills is levy liable. Under the WARR Levy Regulations, waste which is received and is “not disposed of to landfill but is collected and stored at the licensed landfill for reuse, reprocessing, recycling or use in energy recovery”, is eligible for levy refund by approved exemption.

It remains unclear how this existing regulatory framework is ineffective in mitigating material stockpiling for the purpose of levy avoidance. Fundamentally, the stockpiling of material is by approval of the CEO and subject to conditions requiring the measurement and storage of the material in accordance with set requirements and not exceeding specified limits, and the removal of the stockpile within a specified time period.

Effective compliance monitoring and enforcement is crucial to the sustainable mitigation of stockpiling of material for the purpose of levy avoidance, without unwarranted financial impacts to waste generators, waste management facilities and a fledgling circular economy.

CME recommend a focus on compliance and enforcement for effective mitigation of levy avoidance by non-compliant material stockpiling.

Stockpiling of recyclable, reusable and recoverable material is necessary to support the circular economy for several valid reasons:

- To enable responsiveness to materials recycling market fluctuations.
- To build reusable materials inventories to support large construction projects (e.g. construction and demolition waste for large-scale road construction projects).
- To develop materials inventories to support trade in a waste-derived materials market.
- To achieve cost-effective waste transport.

¹⁰ Parliament of Western Australia, *Waste Avoidance and Resource Recovery Levy Bill 2007: Second Reading Speech*, Legislative Council, 2007, p. 7346b.

- To safely prepare for the establishment or re-establishment of a fit-for-purpose recycling facility (e.g. waste mercury stockpiling in expectation of an environmentally safe disposal, recycling or reuse facility).
- To safely await Government approval / endorsement of an economically viable recycling or reuse option (e.g. waste-derived materials).

This legitimate stockpiling should not be penalised, it should be managed from an environmental risk perspective while viable diversion options, with end product market, are established.

Under Part V of the EP Act, DWER have existing powers to effectively manage the environmental risks of stockpiled material through licence conditions. The lack of sufficient resourcing for compliance monitoring and enforcement is not reasonable justification for the imposition of an additional levy.

CME support the implementation and enforcement of licence conditions (under Part V Division 3 of the EP Act) for the management of environmental risks of stockpiled material, the monitoring and reporting of stockpile volumes, and the reprocessing / disposal of stockpiled material within an agreed timeframe. Conditions must be reasonable, practicable, risk-based and consistent across facilities.

Recycling markets for some materials are linked to commodity cycles and prices (e.g. copper). Consequently, the economic viability of recycling certain materials can change significantly over time and it may take longer than 12 months for certain recycling markets to experience an upswing. If material storage is to be captured by the waste levy there must be a process for exemptions so those materials that can be safely stored in an easily recoverable manner are not required or incentivised to be landfilled. Proposed amendments will need to carefully consider the balance between mitigating waste levy avoidance through stockpiling and sterilising resources with potential future value.

CME support timeframes for the removal / processing of material stockpiles which are risk-based, relative and reasonable to facilitate the diversion of materials from landfill and support a circular economy. Short timeframes could result in increased landfill of recoverable materials, unable to be diverted.

Application of the waste levy to stockpiled recyclable, reusable and recoverable materials would work contrary to the intent of the waste levy, diverting waste to landfill and undermining the circular economy.

CME strongly oppose the application of the waste levy to stockpiled recyclable, reusable and recoverable materials.

Chapter 9: Modernising landfill licensing and levy liability for waste disposal

Schedule 1 landfill categories and Landfill Waste Classification and Waste Definitions 1996

It is unclear from the Consultation Paper what specific problem the proposed amalgamation of landfill licensing categories under Schedule 1 of the *Environmental Protection Regulations 1987* (EP Regulations) is attempting to solve, nor what other options have been assessed. It is important to clearly define the issue seeking to be solved with category amalgamations, assess impacts (positive and negative) from category amalgamation, and review alternative solutions.

Reducing the number of landfill categories affects other aspects of the regulatory regime, which have not been fully assessed in the Consultation Paper.

The move towards a single landfill category regardless of waste type appears to be counter to DWER's focus on risk-based regulation. The environmental risks of a landfill in part depend on the type of waste for which the landfill is licensed.

A single category would not allow for differentiation of licensing fees and would remove DWER's ability to risk assess and prioritise based on category. DWER would need to adopt new (additional) measures to control the type of waste licensed for each landfill in the absence of separate categories as not all wastes will be appropriate for disposal at all landfills. This approach also appears inconsistent with the approach for other categories within Schedule 1 of the EP Regulations where activities that are similar (at a high-level) but different in terms of level of environmental risk and controls still have different categories.

This recommendation would require licence amendments to greater than 500 existing licences and would likely affect (increase) licence fees for some existing licensees.

In the absence of robust rationale for the proposed regulatory amendments, **CME do not support the amalgamation of landfill categories under Schedule 1 of the EP Regulations.**

As previously stated, CME do not support the application of the waste levy to stockpiled recyclable, reusable and recoverable materials. Such an extension of the waste levy would act contrary to the intent of the levy and undermine the circular economy.

Landfill licensing exclusions and waste levy exemptions

Landfill categories under Schedule 1 of the EP Regulations refer to premises where waste is “accepted for burial”. The Consultation Paper proposes to expand this definition to include premises on which waste is disposed to land by other means such as spreading, ploughing, filling and reclaiming land. This expanded definition will include, whether intentional or not, mining and minerals processing premises, rehabilitation areas, contaminated sites, and premises that have only ever accepted clean or uncontaminated fill.

Due to the nature of mineral resources, their extraction involves the movement of waste rock, overburden or other materials (additional to ore) with refining, smelting and other processing activities also resulting in materials such as slimes, ash, sand, scale, muds and tailings. This material is typically contained on premise and in many cases is a critical material for site rehabilitation. In other instances, it is stored in specifically engineered structures to ensure environmental impacts are minimised and appropriately managed.

Already heavily regulated under Part V of the EP Act, the capture of these activities under an expanded landfill licensing regime provides no additional value, does not support the Government’s regulatory streamlining agenda, and does not result in improved environmental outcomes.

CME strongly support waste licensing exclusions and waste levy exemptions for:

- **Mining and minerals processing wastes (e.g. tailings, metallic and non-metallic ore residue, slimes, ash, sand, scale and muds);**
- **Remediation and rehabilitation of a contaminated site; and**
- **Premises that have only ever accepted clean or uncontaminated fill.**

Any levy or wider waste reform should ensure there are no disincentives or barriers to future reuse or recycling of materials not captured by the waste levy. This would include materials such as waste rock, overburden, slimes, ash, sand, muds, and tailings. Treatment and processing technologies have improved over time and are likely to continue to do so. It is important that there are incentives, rather than barriers, to pursue technological advances in material reprocessing industrial materials.

As an economic instrument intended to disincentivise waste disposal to landfill, the application of the waste levy to hazardous waste disposal is entirely irreconcilable. In the absence of established and viable reuse, recycling and recovery options within the State, the levying of hazardous waste disposal would be a mere revenue-raising exercise.

The cost of intrastate transportation of waste already presents a barrier to waste recycling, reuse and recovery within WA. The concept that interstate waste transport could present a cost-effective solution to levy avoidance by eastern states hazardous waste generators is entirely unreasonable.

CME strongly oppose the application of the waste levy to the disposal of hazardous waste.

Chapter 10: Simplifying the solid waste licensing categories

Solid waste licensing categories

The proposed revision of solid waste licensing categories does not address the root cause of the inconsistent regulation of solid waste facilities by DWER assessing officers. Appropriate training, clear guidance and effective internal quality control measures are fundamental to the consistent implementation of any regulatory framework.

CME strongly recommend the review and update of relevant procedures, guidelines and training to ensure DWER internal systems adequately support consistent interpretation and application of the solid waste licensing framework.

Used tyre storage

It remains unclear what problem the amalgamation of licensing categories for used tyre storage (categories 56 and 57 under Schedule 1 of the EP Regulations) is attempting to resolve and what legislative advantage it would otherwise provide. As previously iterated, it is important to clearly define the issue seeking to be solved with category amalgamations, assess impacts (positive and negative) from category amalgamation, and review alternative solutions.

The amalgamation of these licensing categories and the implementation of a weighted threshold for used tyres is wholly inconsistent with a risk-based approach. Every minesite in WA would need to be licensed for the short-term storage of more than one heavy vehicle earthmover tyre, which can weigh an average 3 tonnes.¹¹ Heavy vehicle maintenance requires the regular rotation of tyres on vehicles for even wear and safe handling. This necessitates the establishment of a used tyre inventory, which can be 50 used tyres for a fleet of 50 heavy vehicles, weighing in excess of 100t.

There is no evidence to demonstrate the current used tyre licensing regime and the risk-based management of used tyres below the current threshold is ineffective or unsustainable. Where there is a perceived environmental, health or safety risk associated with used tyre storage practices, **CME supports the development of risk-based and practicable guidance for minor used tyre storage, in consultation with industry.**

CME do not support the amalgamation of used tyre storage licensing categories 56 and 57, under Schedule 1 of the EP Regulations.

CME do not support a weighted threshold for tyres.

Under regulation 11(2) of EP Regulations, shredded, broken or pieces of used tyres are considered waste and are incorporated into used tyre storage calculations. It is not necessary to duplicate this detail in the category description.

CME do not support the revision of the used tyre storage licensing categories, under Schedule 1 of the EP Regulations, to include shredded, broken or pieces of used tyres.

Further information and consultation with industry is required for proposed changes to Part 6 of EP Regulations in relation to the storage of used tyres of a quantity less than the prescribed threshold amount.

Chapter 11: Minimising stockpiling at waste storage premises

The Consultation Paper provides no verifiable information on the current state of waste stockpiling in WA – the waste streams being stockpiled, the quantity and age of stockpiles, the extent of waste stockpiling activity, or the specific regions which have a higher incidence of stockpiling. It is therefore not possible to accurately determine the root cause for these stockpiling activities nor the appropriate response.

CME do not support the stockpiling of waste for levy avoidance. However, as outlined previously, there are several valid and important reasons for stockpiling of recyclable, reusable and recoverable material, necessary to foster and maintain a sustainable circular economy. Refer to Chapter 8 (*Waste received for disposal to landfill*) above for further comments.

In the absence of viable waste treatment options, reuse and/or recycling markets, appropriate facilities and cost-effective transport across the State, application of the waste levy to waste storage, recycling, reuse or recovery facilities is merely a revenue-raising measure. It cannot meet the objective of providing an economic lever to divert waste from landfill to reuse, recycling and recovery options and hence it is inconsistent with the objectives of the EP Act and the WARR Act.

CME strongly oppose application of the waste levy to waste storage, recycling, reuse or energy recovery facilities.

Application of the waste levy should instead be targeted at maximising diversion of those wastes that can be technically and economically reused, recycled or recovered where there are existing facilities and markets that enable this diversion, or where the application of the levy in the short-term will credibly enable this diversion. If applied prematurely or inappropriately to certain materials, the probable outcome will instead be

¹¹ Refer to DWER Controlled Waste Fact Sheet for 'Transporting use tyres' (Table 1).

undesirable including offshoring of certain industrial processes,¹² industry closure, reduced treatment and beneficial reuse of “wastes”,¹³ reduced expenditure in research and development, and illegal dumping.

Chapter 12: Waste levy exemptions

Waste used for landfill construction and maintenance works

Under regulation 5(1)(g) of the *Waste Avoidance and Resource Recovery Levy Regulations 2008* (WARR Levy Regulations), exemption from the waste levy may be sort for materials used in “construction or maintenance work carried out on the licensed landfill.” The lack of clarity regarding the scope of this exemption and what works are captured (e.g. cell construction, landfill infrastructure such as gas collection, leachate management, tyres, etc.) needs to be addressed.

CME support amendments to regulation 5(1) of the WARR Levy Regulations to exempt waste used for cell construction and maintenance at waste disposal premises.

The proposed assessment of cell construction and maintenance materials, conditional of exemption approval, must be supported by a standardised, risk-based assessment methodology, incorporating industry standard engineering specifications. Assessment methodology and approval requirements should be publicly available to facilitate proactive stakeholder engagement.

CME support amendments to regulation 5(1)(g) of the WARR Levy Regulations to exempt waste used for roads and construction works at waste disposal premises, and clarification of “construction works” to include the construction of foundational support for infrastructure at the premises.

CME strongly recommend the publication of supporting guidance defining materials approved for roads and construction works under the abovementioned exemption. Guidance must be reasonable, practicable, reflect industry standard environmental risk management and engineering standards, and where appropriate, include the use of waste-derived materials.

Waste collected or stored for reuse, reprocessing, recycling or energy recovery

As previously iterated, CME do not support the application of the waste levy to stockpiled recyclable, reusable or recoverable material intended for use in the circular economy.

Under the WARR Levy Regulations, the waste levy is payable for waste received for disposal to landfill (regulation 8) or waste received and disposed to landfill (regulation 9). Consequently, the waste levy exemption under regulation 5(1)(b) of WARR Levy Regulations, for “waste that is not disposed of but is collected and stored at a licensed landfill for reuse, reprocessing, recycling or use in energy recovery”, is redundant.

CME support the deletion of regulation 5(1)(b) of the WARR Levy Regulations, in keeping with existing waste levy exemptions maintained under regulations 8 and 9.

Collecting and storing waste at disposal premises

Refer to Chapter 8 (*Waste received for disposal to landfill*) above.

No retrospective time limit for waste levy exemptions

Time limits for retrospective waste levy exemption applications are not specified in the WARR Levy Regulations.

CME acknowledge the importance of up-to-date, representative waste data to inform effective strategic policy making, and support the timely consideration of applications for waste levy exemptions by the CEO.

CME support a time limit for retrospective waste levy exemption applications which is practicable and reasonable; and does not disincentivise the entry of materials into a circular economy by prematurely levying stockpiled recyclable, reusable and recoverable materials. Recyclable, reusable and recoverable materials

¹² For example, refining and down-stream processing will present diminished value-add in WA whilst offshoring these activities will reduce costs as the waste will be disposed in a different jurisdiction.

¹³ If the levy is expanded to all waste disposed to land, treatment of some mineral (e.g. sands) and organic material (e.g. biosolids), will generate byproduct materials deemed “wastes” that will incur a levy. If the value of beneficial use product does not adequately offset the cost of the levy, this discourages beneficial reuse.

must be able to be safely stockpiled for periods necessary to enable economical contribution to the circular economy, without being subject to the waste levy and otherwise diverted to landfill.

Licensee fails to estimate the weight or volume of exempt waste

It is not clear from the Consultation Paper what problem DWER are attempting to resolve with the removal of the CEO's requirement to estimate the amount of exempt waste received at a licensed landfill under the WARR Levy Regulations. No information has been provided on the extent to which the CEO's estimation of exempt waste volumes are presenting a "financial and regulatory burden for government". Furthermore, no investigation appears to have been conducted into barriers to licensees estimating their exempt waste.

Consequently, without an adequate understanding of the issue, root cause and barriers to resolution, it is not reasonable to expect that removal of the requirement for the CEO to estimate exempt waste is an effective or appropriate response.

CME do not support the removal of the CEO's requirement under the WARR Levy Regulations to estimate the amount of exempt waste received at licensed landfills.

Chapter 13: Improving solid waste reporting from waste facilities

In principle, CME support the collection of useful and consistent data, however, the effort and cost of acquiring that data must be proportionate to the value obtained from that data, by the State and / or the licensee.

Waste data is already reported for the significant majority of waste disposal, recycling, reuse and energy recovery activities across the State. Even so, no information has been provided on the cost-benefit analysis which must fundamentally underpin the business case for additional regulation and reporting, and the substantial costs incurred to industry, government and communities as a result.

For greatest impact and alignment with the intent of the Waste Strategy 2030 targets, **CME recommend DWER focus efforts on waste data collection and reporting on those priority wastes based on their risk, volume and potential for diversion.**

As previously submitted, **CME do not support the mandatory installation of weighbridges at all facilities.** The installation of weighbridges and the level of effort and cost required to measure waste volumes at facilities should be proportionate to the volume and risk of that facility's waste.

Many waste generators produce small volumes of waste and make no material difference to the State's overall waste volumes. DWER should justify why it proposes mandatory monthly or quarterly reporting of waste data and how it intends to use this data to achieve its waste management objectives.

Any additional reporting requirements must be supported by efficient, user-friendly reporting systems and be focused on those priority wastes based on their risk, volume and potential for diversion. The many current waste reporting systems are disparate, disconnected, offline and / or administratively burdensome.

CME support the development of a single, online waste reporting portal, linked to or part of Environment Online, which is effective, efficient and user-friendly. In developing such a portal, DWER should look to best practice examples, both interstate and internationally, and consult with industry and current systems users to understand user needs and opportunities for improvement. Further, any guidance developed to support specific waste premises with waste measurement, record-keeping and reporting should be developed in consultation with industry to ensure it is relevant, practicable and useful.

In principle, CME do not oppose amendments to the WARR Levy Regulations to create an offence for non-compliance with reporting requirements or providing incorrect information. However, what is considered "incorrect information" must be clarified. A level of variance must be accepted to account for estimations and reasonable error. Data reporters must be permitted to amend discrepancies in previously reported data within reasonable timeframes. Defences must also be included for reasonable cause (non-compliance in unforeseen or uncontrollable circumstances), or by written exemption of the CEO.

Chapter 14: Compliance and enforcement measures for waste

New offence – waste disposal at unlicensed waste facilities

As proposed in the Consultation Paper, under a new offence for waste disposal at unlicensed waste facilities, the waste generator would become liable for the actions of the waste transporter and the receiving waste facility.

Changing responsibility to remain with the waste generator whilst waste is being transported moves responsibility from the entity with direct control of the waste and the decisions directly affecting it during transport to an entity with very limited (if any) control of the waste during this stage. Further, the resources required to establish and maintain due diligence for all waste transporters and waste facilities (not just controlled waste transporters and facilities) is unsustainable for businesses, and disproportionate to the risk.

In CME's view, those with the most direct ability to influence and decide upon outcomes for the waste at the time should be those held responsible. As such, **CME do not support a framework in which the waste generator remains responsible for the waste until it is accepted at the waste facility that is lawfully allowed to accept it.**

CME support the introduction of an offence for waste transporters to dispose waste at a place not licensed to accept the waste, or at a facility licensed to accept the waste without the consent of the occupier / owner. CME also support the introduction of an offence for waste facilities to accept waste they are not appropriately licensed to receive.

With regards to the proposed strengthening of Part V Division 4 enforcement powers, under the EP Act, further information and consultation with industry is required.

Waste Restriction Notice

As proposed, new powers under the EP Act would allow authorised officers, through the issuance of Waste Restriction Notices, to temporarily prohibit access to, and the importation of waste at, a place that is not licensed under Part V Division 3 to accept that waste for a period of up to 21 days.

CME do not oppose the proposed introduction of Waste Restriction Notices as a compliance and enforcement tool for management of illegal waste disposal and storage activities at unlicensed premises.

Subject to review of drafting, **CME do not oppose amendments to section 73A(1) of the EP Act to clarify that an inspector / authorised person may issue a Prevention Notice if they reasonably suspect that waste is being unlawfully deposited or discharged at a place which is not licensed for that activity under Part V Division 3.**

CEO notice – Waste tracking – GPS

As elucidated by DWER staff, the GPS tracking of waste transport vehicles is intended as a preventative and proactive surveillance measure. It is understood that notices are to be issued to waste transport companies which DWER consider to be high risk for non-compliance.

CME do not oppose the introduction of a power for the CEO to issue a notice requiring GPS tracking of waste transport vehicles to waste transport companies with a demonstrated history of non-compliance, or which DWER have reasonable cause to suspect are undertaking non-compliant activities.

To ensure data is collected and analysed in a manner which can effectively produce useful and actionable information, appropriate systems and adequate resourcing must be incorporated by DWER into the implementation plan supporting this new power.

CEO notice – Waste tracking – Record-keeping requirements

As a result of the introduction of the proposed offence for waste transporters to unlawfully dispose of waste (outlined above), it can reasonably be expected that waste transporters will implement record-keeping practices for waste movements as means to provide evidence of a defence.

It is therefore unclear what purpose it would serve to amend the EP Act to introduce a new power for the CEO to issue a notice to waste transporters to require the maintenance of records of waste movements, and further, to introduce an associated offence for non-compliance with said record-keeping requirements.

CME do not support the introduction of a new power for the CEO to issue a notice to require the maintenance of records of waste movements by waste transporters, as this power and associated offence appear redundant.

CEO notice – Video monitoring at waste premises

As advised by DWER staff, the video monitoring of waste facilities is intended as a preventative and proactive surveillance measure. It is understood that notices are to be issued to waste facilities which DWER consider to be high risk for non-compliance.

Under the abovementioned proposals, waste facilities would continue to be responsible for wastes accepted and, as per current licensing requirements, be accountable for compliance of site operations. It should be at the discretion of the facility to determine if they want the convenience of video surveillance footage as evidence of their compliance. This should not be mandated by government unless in response to conviction of non-compliance.

Furthermore, the review and analysis of the enormous volume of data which would result from mandated video surveillance of facilities would require substantially more resources within DWER to make effective use of this information in a proactive compliance and enforcement program. This has not been considered in the Consultation Paper.

CME do not oppose the introduction of a new power for the CEO to issue a notice to an occupier of a licensed waste facility requiring them to install, operate and maintain a video monitoring system, in response to conviction of non-compliant waste management.

New penalties for repeat waste offenders

It is proposed, where a person has been convicted of a serious waste offence in the past five (5) years, a subsequent waste offence will attract the maximum monetary penalty, or two (2) years imprisonment, or both. These new penalties are intended to deter illegal waste disposal and target serial offenders.

CME do not oppose the introduction of new penalties for serious waste offences for repeat offenders.

New penalties for contravening licence conditions for waste stockpiles

In an effort to mitigate non-compliant waste stockpiling, it is proposed that where waste is stockpiled in exceedance of approved stockpile limits under a Part V licence, that an additional penalty shall apply. That penalty shall apply to the waste which exceeds the stockpile limit and shall be equivalent to the amount due under the waste levy.

Stockpiling of recyclable, reusable and recoverable material is crucial for supporting a circular economy and should be managed in compliance with the necessary approvals. Equally, approval conditions must be reasonable, practical, risk-based and outcomes-focussed. Licence conditions should not unnecessarily or unreasonably constrain material stockpiling where this can be done in an environmentally safe and sustainable manner, for the purpose of contribution to the circular economy. The ability to amend licence conditions in a timely manner is also important to enable safe stockpiling of material under reasonable circumstances (i.e. preparation for a large construction project, processing system failure, system short-term closure, etc).

CME do not oppose the introduction of new penalties for contravening licence conditions for waste stockpiles.

New infringement notices for unlawful waste disposal

CME do not oppose amendments to the EP Act to enable inspectors to issue on-the-spot infringement notices for unlawful waste disposal.

New powers to identify persons in charge of vehicles

CME do not oppose the introduction of new powers for persons authorised under the EP Act to identify person/s in charge of vehicles, as part of investigation of an offence.

Signage where there is unlawful waste disposal at a site

CME do not oppose the introduction of a new power for the CEO to require the installation of signage at the front of a site subject to a Prevention Notice or Waste Restriction Notice.

Chapter 15: Improving the administration and collection of the waste levy

From the Consultation Paper it is unclear what the key issue/s and root cause are which DWER are proposing to address with changes to the administration and collection of the waste levy. Aside from noting that no formal mechanism exists for the CEO to issue a notice outlining the levy to be paid by licensees, the

Consultation Paper does not outline any other process issues, gaps or inefficiencies, only stepping out process requirements.

Without a clear understanding of the key issues, their root causes and resultant impacts, it is not possible to identify and endorse appropriate solutions. **CME strongly recommend DWER conduct detailed analysis of the process gaps and inefficiencies in the administration and collection of the waste levy, and present for consultation those solutions which address identified root causes.**

Waste-Derived Materials

Throughout the Consultation Paper, waste-derived materials are repeatedly mentioned. Acknowledging that the legislative framework for waste-derived materials is out of scope, CME respectfully refer to previous comments and recommendations submitted in our response to DWER's 'Waste not, want not: valuing waste as a resource' Issues Paper.¹⁴ CME look forward to the opportunity to provide further comment in upcoming consultation on this important topic.

Conclusion

CME thanks DWER for the opportunity to comment on the Consultation Paper and for the briefing of CME members, and looks forward to continuing to work with DWER through this review process.

If you have any further queries regarding the above matters, please contact Kira Sorensen, Senior Policy Adviser – Environment.

Authorised by	Position	Date	Signed
Robert Carruthers	Director – Policy & Advocacy	14/07/2020	
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¹⁴ CME's submission to the 'Waste not, want not: valuing waste as a resource' Issues Paper is available at https://cmewa.com.au/wp-content/uploads/2020/07/CME-Submission_Waste-not-want-not.pdf