Contents

Message from the Minister ..............................................................................................................1
1 Executive summary ..........................................................................................................................2
2 Purpose of this review .....................................................................................................................6
3 Background .......................................................................................................................................7
4 Waste policy development .............................................................................................................9
5 Administering the WARR Account ...............................................................................................13
6 Provision of services to the Waste Authority .............................................................................16
7 Waste services ................................................................................................................................17
8 CDS: Prohibited disposal of containers by material recovery facilities .................................20
9 CDS: Constitution of the board of the Scheme Coordinator ....................................................21
10 Product stewardship and extended producer responsibility schemes ..................................22
11 Referencing in regulations made under the WARR Act ...........................................................24
12 Penalties for offences under regulations .....................................................................................25
13 Additional issues raised by stakeholders .....................................................................................26
Appendix A ........................................................................................................................................29
References ..........................................................................................................................................30
Message from the Minister

While Western Australia’s waste performance has improved since the introduction of the Waste Avoidance and Resource Recovery Act 2007 (WARR Act), we still have significant work to do.

The Waste Avoidance and Resource Recovery Strategy 2030 sets objectives and targets to achieve its vision for Western Australia to become a sustainable, low-waste, circular economy in which human health and the environment are protected from the impacts of waste.

Recent events including the COVID-19 pandemic, waste market disruptions and export bans have highlighted the importance of a responsive, resilient and effective waste sector.

This review of the WARR Act provides an opportunity to ensure our principal legislation for waste avoidance and resource recovery in Western Australia makes adequate provision to achieve its objectives and support WA’s move towards a circular economy.

This review also considers the recommendations from the WA Auditor General and Public Accounts Committee to ensure legislative clarity around the roles and responsibilities assigned to the Waste Authority and the Department of Water and Environmental Regulation.

I thank those stakeholders who have provided input to this review. Your feedback has helped to inform this report’s recommendations to improve the operation and effectiveness of the WARR Act.

In progressing these recommendations, stakeholders will be provided further opportunity to input into legislative proposals. I encourage your continued involvement so that together we can achieve the best waste outcomes for the state.

Hon Amber-Jade Sanderson MLA
Minister for Environment; Climate Action
1 Executive summary

This is the second review of the WARR Act since its commencement, and it comes at a time of significant global interest in waste and sustainability.

The first review was completed in 2015, and did not propose legislative amendments. Following the review, the State Government committed to continuing to implement mechanisms to support better alignment of waste management planning, waste services and waste contracts across government and industry.

A number of significant developments since the last review of the WARR Act have highlighted areas where improvements could be made to the operation and effectiveness of the Act, and its alignment with the state’s waste strategy.

In 2016 and 2018 respectively, the Auditor General of Western Australia (WA) and the Public Accounts Committee made recommendations to address governance arrangements between the Waste Authority and the former Department of Environment Regulation, and now the Department of Water and Environmental Regulation (the department).

The *Waste Avoidance and Resource Recovery Strategy 2030* (waste strategy) was released in February 2019. This strategy includes a vision for WA to become a sustainable, low-waste, circular economy in which human health and the environment are protected from the impacts of waste. This reflects a broader focus since the introduction of the WARR Act in 2007 when the emphasis was on the diversion of waste from landfill.

The waste sector has also been affected by a number of recent challenges, including the tightening of international markets for recyclables, waste export bans, damage to material recovery facilities (MRFs) and the impacts of the COVID-19 pandemic.

Lower tolerance for contamination in waste exports to traditional reprocessing countries\(^1\) has impacted the viability of waste services and highlighted the need for improved local processing and recycling activity.

In response to the reduced tolerance for waste imports overseas, the former Council of Australian Governments agreed to a phased ban on the export of waste plastic, paper, glass and tyres. The waste export ban for glass started on 1 January 2021. Bans for glass, plastics, tyres and paper and cardboard will be fully phased in by 1 July 2024 under the Commonwealth *Recycling and Waste Reduction Act 2020* (Recycling and Waste Reduction Act), which commenced in December 2020.

WA’s container deposit scheme (CDS), Containers for Change, allows consumers to return eligible empty beverage containers to a refund point for a 10 cent deposit. The scheme commenced in October 2020.

---

\(^1\) Under China’s 2018 National Sword policy, the tolerance for contamination in waste imports was reduced. A number of other traditional reprocessing countries such as Malaysia and Indonesia have followed suit.
In its first six months of operation, over 283 million containers were returned, with more than 11,000 tonnes of glass, 970 tonnes of aluminium and 258 tonnes of plastic sold to recyclers.

Almost 700 jobs have been created across the state, including hundreds of jobs for people living with disability, the long-term unemployed, and Aboriginal and Torres Strait Islander peoples, as well as opportunities for apprentices and trainees.

A number of matters were identified as requiring further clarification in light of experience since the last review of the WARR Act. Proposed reform options to address these matters were outlined in the department’s discussion paper Review of the Waste Avoidance and Resource Recovery Act 2007, which was available for a 12-week comment period from 2 September to 25 November 2020.

Seventeen submissions were received in response to the discussion paper. In general, respondents supported the proposals in the discussion paper, and requested further information and consultation on the detail of some proposals. Some stakeholder feedback was outside the scope of the review. The department will consider this feedback in other reforms it is progressing.

This review has identified and recommended a number of changes to modernise the WARR Act to address current and emerging challenges and ensure WA can achieve its vision of becoming a sustainable, low-waste, circular economy in which human health and the environment are protected from the impacts of waste.

In particular, it is recommended that amendments to the WARR Act:

- clarify roles and responsibilities, including in relation to governance arrangements
- provide for cost-effective, safe and reliable waste services that align with the waste strategy and can adapt to and withstand market disruptions
- correct minor drafting issues in the provisions for the CDS in relation to governance and recycling of returned beverage containers
- improve the framework for future potential product stewardship schemes
- promote compliance with the waste strategy and regulations made under the WARR Act, and align with recent changes to the Environmental Protection Act 1986 (EP Act)
- modernise the objects of the WARR Act to better differentiate the options in the waste hierarchy.
1.1 Recommendations

The report recommends the following changes to the WARR Act to improve its operational effectiveness and alignment with the state’s waste strategy. To ensure policy and legislative alignment, these recommendations will be developed with other waste legislative reforms being progressed by the department.

1. Clarify the role of the Waste Authority as an advisory body to provide policy advice and recommendations to the Minister on the waste strategy and its implementation, and advice to the Minister or the Chief Executive Officer (CEO)\(^2\) on other matters relating to the WARR Act itself.

2. Clarify and streamline the key functions of the Waste Authority as being the provision of advice and recommendations to the Minister and CEO, stakeholder engagement, community awareness, and any other functions conferred by the Act or Minister.

3. Clarify roles and responsibilities in the WARR Act relating to the administration of the Waste Avoidance and Resource Recovery Account (WARR Account), including that:
   - the CEO is responsible for the administration of the WARR Account
   - the Waste Authority remains responsible for drafting the business plan setting out proposed WARR Account expenditure for the Minister’s approval
   - moneys in the WARR Account will continue to be applied in a manner that is consistent with the current approved business plan or as approved by the Minister
   - the terms and conditions attached to the provision of funding from the WARR Account are to be determined and imposed by the CEO.

4. Include a new Ministerial consideration in the WARR Act for the application of moneys in the WARR Account to include for purposes of achieving the waste strategy objectives.

5. Retain the current arrangements for the provision of services to the Waste Authority by the department.

6. Include provisions in the WARR Act for the development and adoption of better-practice approaches to waste services under the WARR Act. This should also include appropriate enforcement provisions.

7. Following consultation with local government, define essential waste services and clarify local government’s role in relation to essential waste services in their district. In addition, this should include a CEO exemption process for exceptional circumstances such as natural disasters.

8. Amend the provisions for waste plans to improve their operation and alignment to the outcomes of the waste strategy, including powers that ensure their implementation.

\(^2\) The CEO is the Director General of the Department of Water and Environmental Regulation – the department principally assisting with the administration of the WARR Act (see section 3(1) of the WARR Act).
9. Streamline the making of waste local laws by removing provisions duplicated in the Local Government Act 1995 and by removing the requirement in the WARR Act that the CEO must consent to waste local laws.

10. Amend the WARR Act to ensure MRFs may dispose of containers in respect of which the MRF has neither made a claim, nor received a refund amount, for those containers.

11. Clarify that the CDS Coordinator must have nine directors at all times, and allow 60 business days to appoint a suitably qualified person to the board as a replacement should a director resign, be removed or otherwise become unable to act.

12. The provisions in the WARR Act for product stewardship should be reviewed and improved. This could include head powers and enforcement provisions for the creation and regulation of co-regulatory and mandatory product stewardship schemes.

13. Consider amending section 98 of the WARR Act to expand the types of documents that regulations, local laws and the waste strategy may adopt to include rules, standards, regulations, local laws, by-laws, codes, instructions, specifications or administrative procedures prescribed or published by any person or public authority.

14. Increase the maximum penalty under regulations from $10,000 to $20,000, with or without a daily penalty of not more than $2,000.

15. Update the actions to be taken to achieve the WARR Act objects to clearly differentiate and list waste management options in order of preference (from most to least preferred), being:
   (i) avoidance of waste
   (ii) reuse
   (iii) reprocessing
   (iv) material recovery – recycling
   (v) energy recovery
   (vi) treatment
   (vii) disposal.

16. Provide that the date for the Waste Authority to submit the draft business plan be one month before commencement of the next financial year, unless the Minister sets an alternative date.

17. Require the financial projections in the business plan to be for four years, consistent with the forward projections in the State Budget papers.

18. Reduce the number of members required to make an out-of-session resolution of the Waste Authority from five to three.

19. Update the terminology in the WARR Act to be gender-neutral, consistent with modern drafting practice.
2 Purpose of this review

Section 99 of the WARR Act requires the Minister for Environment to review the operation and effectiveness of the Act every five years. The department has completed the review and prepared this report on behalf of the Minister.

The terms of reference of this review of the WARR Act are:

To carry out a review of the operation and effectiveness of the Waste Avoidance and Resource Recovery Act 2007 with particular regard to its:

- effectiveness in meeting its objects; and
- alignment with Government waste management policy, including the waste strategy).


The discussion paper identified a number of matters requiring clarification and sought stakeholder views on proposed reform options with a focus on:

- addressing recommendations made by the WA Auditor General and Public Accounts Committee
- legislative changes to support the CDS and extended producer responsibility schemes
- legislative powers relating to the making of subsidiary legislation, and changes to improve waste management, compliance and enforcement.

Seventeen submissions were received on the discussion paper. These submissions have contributed to the discussions and findings in this report. The groups and individuals that made submissions are listed at the end of this report.

Submissions and the discussion paper are published on the DWER website.

2.1 Out of scope

As this is a review of the WARR Act, it has not considered the operation and effectiveness of the Waste Avoidance and Resource Recovery Levy Act 2007, Waste Avoidance and Resource Recovery Regulations 2008 (WARR Regulations) or Waste Avoidance and Resource Recovery Levy Regulations 2008.

The department is progressing other significant waste legislative reform projects relating to these legislative instruments (see section 3.4).
3 Background

3.1 Overview of the WARR Act

The WARR Act was introduced to provide a waste policy framework to complement environmental protection and health legislation.

The WARR Act provides a focus on strategic objectives for waste and establishes the Waste Authority.

The discussion paper provided a detailed overview of the WARR Act.

3.2 The waste strategy

The waste strategy was released in February 2019 and sets out a vision and establishes objectives and targets to contribute to Western Australia’s sustainability objectives.

This strategy includes a vision for WA to become a sustainable, low-waste, circular economy in which human health and the environment are protected from the impacts of waste.

The Waste Avoidance and Resource Recovery Action Plan is prepared annually and sets out actions to deliver the outcomes of the waste strategy. This includes specific actions, timelines and responsibilities.

3.3 Performance audits

In 2016, the WA Auditor General conducted a performance audit which assessed the success of strategies to reduce the state’s reliance on landfill for dealing with household, construction, demolition, commercial and industrial waste.

The Auditor General’s Report 23 2016, Western Australian Waste Strategy: Rethinking Waste, made a number of recommendations regarding the waste strategy.

In 2018, the Public Accounts Committee reported in Report 6 2018, No (More) Time to Waste. The Committee made seven recommendations to improve implementation of the waste strategy. This included recommendations to clarify the ambiguity in roles between the Waste Authority and the department.

In 2020, the WA Auditor General completed a performance audit which assessed whether local government entities plan and deliver effective waste services to their communities. The audit also assessed whether the State Government provided adequate support to local government entities for local waste planning and service delivery.

3.4 Legislative reform to improve waste outcomes

The department has recently consulted on a number of reform proposals relating to waste management legislation, including:

- legislative proposals to improve waste management and the waste levy (*Closing the loop: Waste reforms for a circular economy*)

- the review of the scope and application of the levy to ensure it meets the objectives of the strategy, and to establish a schedule of future levy rates

- a proposed legislative framework to encourage the use of fit-for-purpose waste-derived materials and WA’s move to a circular economy (*Waste not, want not; valuing waste as a resource*)

- proposed regulatory amendments for the *Mandatory use of weighbridges by landfill premises to calculate leviable waste* to improve the accuracy of waste measurement.

These waste reform projects, together with the outcomes of this review, will be considered collectively to ensure policy alignment.
4 Waste policy development

4.1 Key issues to be addressed

The Auditor General’s 2016 report identified waste policy development as an area for clarification between the Waste Authority and the department.

The Waste Authority and the department have clarified their respective roles and responsibilities through annual service level agreements, the Waste Authority Governance Charter, the waste strategy and annual action plans. These positive changes were acknowledged in Appendix 2 of the Auditor General’s 2020 report.

4.2 Stakeholder views

Chapter 4 of the discussion paper sought stakeholder feedback on the roles and functions of the Waste Authority, the CEO and the department under the WARR Act. The paper also invited stakeholders to identify potential areas for improvement and benefits or impacts that may result from clarifying the department’s role and responsibilities.

Feedback indicated:

• improvements in the overall working interactions between the department and the Waste Authority have been observed

• support for further clarification and communication of responsibilities for waste policy development to assist in the effective use of WARR Account funds and improve confidence in the work of the department and Waste Authority

• the list of Waste Authority functions in Schedule 2 of the WARR Act can be repetitive and confusing, and could be streamlined to focus on key functions

• support for clearer separation of the Waste Authority’s waste policy and program delivery from the department.

4.3 Recommendations

The Waste Authority and the department have complementary roles in the development and implementation of policy related to the operation of the WARR Act.

The Waste Authority has an advisory role under the WARR Act where it can develop, for example, position statements setting out its views on issues such as the waste hierarchy, source separation and waste to energy. It also provides input into the development of policy being prepared by the department.

The Waste Authority may also provide advice to the Minister or the CEO on other matters relating to the WARR Act. It also has the key role of drafting the waste strategy and the annual business plan.
The department is allocated policy roles as part of its role in assisting the Minister for Environment with administration of the WARR Act and the EP Act. This complementary responsibility for policy formulation reinforces the cooperation between the Waste Authority and the department.

**Recommendation 1:** Clarify the role of the Waste Authority as an advisory body to provide policy advice and recommendations to the Minister on the waste strategy and its implementation, and advice to the Minister or the CEO on other matters relating to the WARR Act itself.

Recommendation 1 responds to the Auditor General and Public Accounts Committee’s 2016 and 2018 recommendations on the need to clarify the role of each entity for waste policy and strategic planning.

In addition, consideration\(^3\) has been given as to how the functions of the Waste Authority in Schedule 2 of the WARR Act could be streamlined and clarified to minimise duplication. The proposed changes are illustrated in Figure 1 below, which distils the current 17 functions into six key functions.

**Recommendation 2:** Clarify and streamline the key functions of the Waste Authority as being the provision of advice and recommendations to the Minister and CEO, stakeholder engagement, community awareness, and any other functions conferred by the Act or Minister.

---

\(^3\) This included consideration of the functions of similar bodies in other jurisdictions, for example Green Industries SA in the *Green Industries SA Act 2004.*
Current functions of the Waste Authority

1. To —
   (a) advise and make recommendations to the Minister on matters relating to this Act; and
   (b) inquire into and advise the Minister or the CEO on any matter relating to this Act on which the Minister or CEO requests advice; and
   (c) advise and make recommendations to the CEO on the regulation of waste services; and
   (d) advise and make recommendations to the CEO with respect to subsidiary legislation under this Act.

2A. To seek the advice of such other entities as the Waste Authority thinks fit for the purpose of providing advice to the Minister in relation to the setting and variation of a levy.

2. To act as an advocate for the objects of this Act.

3. To develop, promote and review the waste strategy and coordinate its implementation.

4. To monitor and assess the adequacy of, and report to the Minister on the operation of, the waste strategy, product stewardship plans and extended producer responsibility schemes.

5. To promote community awareness and understanding of resource efficiency, waste avoidance and resource recovery.

6. To support State and Commonwealth policies which will enhance progress towards zero waste.

7. To promote resource efficiency, waste avoidance and resource recovery.

8. To promote coordination between organisations seeking to prevent and reduce waste.

9. To liaise with local governments to ensure that the provisions of this Act are enforced in the districts of those local governments.

10. To cooperate with local governments to coordinate local efforts to prevent waste.

11. To receive representations on waste management issues from members of the public.

12. To promote market development for recovered resources and recycled materials.

13. To promote the development of locally owned resource recovery infrastructure.

14A. From time to time to develop and publish a statement of the objectives to be achieved by programmes funded under section 80(1)(a).

14. To ensure that the appropriate investigations, audits and inspections in relation to the application of moneys under section 80(1)(a) are carried out.

15. To take appropriate measures to bring the provisions of this Act to the attention of the public.

16. To do such other acts and things as are conducive to the prevention and control of waste.

17. To perform such other functions as are conferred on it under this Act or are referred to it by the Minister.

Proposed functions of the Waste Authority (noting these will be subject to legislative drafting)

1. To contribute to the development, coordination and implementation of government policy and strategic planning on waste management by providing advice:

   a) to the Minister and CEO in relation to the development, promotion and review of the waste strategy and the coordination of and reporting on its implementation; and

   b) on matters referred to it by the Minister or any matter it seems fit to advise the Minister on in relation to this Act.

2. To provide advice and make recommendations to the CEO on matters relating to the regulation of waste services and with respect to subsidiary legislation made under this Act.

3. To seek and receive representations on waste management issues from other entities, as the Waste Authority thinks fit, for the purpose of providing advice in relation to the matters referred to in clause 1 and clause 2.

4. To act as an advocate in relation to government policy and the objects of this Act, including through promoting:

   a) public awareness and understanding of waste avoidance and resource recovery and efficiency and the provisions of the WARR Act;

   b) coordination between organisations seeking to prevent or recover waste;

   c) market development, including through supporting the establishment of resource recovery infrastructure in the State; and

   d) outcomes achieved through programs funded under section 80(1)(a) of the WARR Act.

5. To promote consistency of action by local governments and other entities with the objectives and targets in the waste strategy and requirements of the WARR Act more broadly.

6. To perform such other functions as are conferred on it under this Act or are referred to it by the Minister.

Figure 1: Proposed changes to clarify the key functions of the Waste Authority
5 Administering the WARR Account

5.1 Key issues to be addressed

The 2016 Public Accounts Committee's report recommended clarifying the roles and responsibilities of the department and Waste Authority regarding WARR Account expenditure.

Section 79 of the WARR Act establishes the WARR Account as a special-purpose account and provides that it is to be administered by the Waste Authority.

Section 81 of the WARR Act confirms the provisions of the Financial Management Act 2006 and the Auditor General Act 2006 apply to the WARR Account and for related purposes the department (i.e. the CEO) is to administer the account.

The Waste Authority is not established as a body corporate, therefore contracts must be executed by a person, with authority to contractually bind the state (i.e. the CEO).

Section 79 also provides that the Minister for Environment is to direct no less than 25 per cent of the levy collected in each financial year to the WARR Account.

5.2 Stakeholder views

Chapter 5 of the discussion paper sought feedback on the proposal to amend the WARR Act to clarify that the responsibility for applying WARR Account funds rests with the CEO.

Stakeholders generally supported the proposal given it would clarify what is already occurring consistent with the service level agreement.

Some stakeholders considered the proposal would not be appropriate if their suggestion the Waste Authority be established as an independent agency is progressed.

Stakeholders also provided the feedback that:

- CEO decisions regarding expenditure should not impact the autonomy of the Waste Authority
- more detail is requested on the level of expenditure against the Waste Authority's business plan in the Waste Authority's annual report to Parliament to improve confidence in the effectiveness of WARR Account expenditure
- consideration be given to mechanisms, such as advice from the Waste Authority, to ensure the percentage of waste levy to be directed by the Minister to the WARR Account each year is sufficient to deliver the actions required to implement the waste strategy.
5.3 Recommendations

Administration of, and application of moneys from, the WARR Account

As the CEO is already responsible for the financial administration of the WARR Account under the Financial Management Act 2006 and the Auditor General Act 2006, it is appropriate to remove any uncertainty over the extent of the CEO’s responsibility for the administration of the WARR Account.

This would include the CEO, rather than the Waste Authority, initiating and pursuing performance evaluation of entities to whom money has been paid from the WARR Account.

The CEO’s role would be to apply moneys as provided for under the approved business plan, drafted by the Waste Authority and approved by the Minister, or for waste-related purposes as approved by the Minister.

Recommendation 3: Clarify roles and responsibilities in the WARR Act relating to the administration of the WARR Account, including that:

- the CEO is responsible for the administration of the WARR Account
- the Waste Authority remains responsible for drafting the business plan setting out proposed WARR Account expenditure for the Minister’s approval
- moneys in the WARR Account will continue to be applied in a manner that is consistent with the current approved business plan or as approved by the Minister
- the terms and conditions attached to the provision of funding from the WARR Account are to be determined and imposed by the CEO.

Reporting on expenditure from the WARR Account

The annual business plan outlines the projected expenditure against programs and initiatives funded from the WARR Account. The department is required to report on WARR Account expenditure in its annual report and it is included in the State Budget Estimates. The Waste Authority as a matter of practice has set out WARR Account expenditure for key programs in its annual report. This annual report is not prepared for the purposes of the Financial Management Act.

The Waste Authority will consider opportunities to provide additional detail on expenditure.

Percentage of waste levy directed to the WARR Account

The Minister must determine to allocate at least 25 per cent of the forecast levy amount for the financial year to be credited to the WARR Account. The Waste Authority has a role in advising the Minister on the effectiveness of the WARR Act, including the adequacy of funding.
The current powers for the Minister under section 80 do not include an express reference to the waste strategy and its objectives.

**Recommendation 4:** Include a new Ministerial consideration in the WARR Act for the application of moneys in the WARR Account to include for purposes of achieving the waste strategy objectives.
6 Provision of services to the Waste Authority

6.1 Key issues to be addressed

Sections 16(1) and 17(1) of the WARR Act provide that the Minister for Environment will ensure the Waste Authority is supplied with the services and facilities reasonably necessary to enable it to perform its functions.

Section 16(2) provides that the Minister may, by arrangement with the department, allow the Waste Authority to make use of the services of any officer in the department. The WARR Act does not provide for the employment of staff directly by the Waste Authority or for staff to work directly for the Waste Authority.

The Minister has arranged for the department to provide services to the Waste Authority. The terms and conditions of these services, including expectations and performance deliverables, are given effect annually through a service level agreement between the department and the Waste Authority – the Waste Authority service level agreement arrangement.

6.2 Stakeholder views

Chapter 6 in the discussion paper sought feedback on the arrangements for staff to support the Waste Authority.

Stakeholders agreed that for the Waste Authority to perform its functions in a cost-effective manner, it must be adequately resourced with staff who have appropriate skills and expertise. Views were mixed on direct staffing of the Waste Authority. The submissions acknowledged there are significant benefits to the Waste Authority from the shared purpose, related skills and experience of departmental staff.

6.3 Recommendations

The use of departmental staff by the Waste Authority has benefits including access to departmental services (such as information technology, human resources, finance and accommodation) and departmental knowledge relating to State Government policies and legislation.

Recommendation 5: Retain the current arrangements for the provision of services to the Waste Authority by the department.
7 Waste services

7.1 Key issues to be addressed

Local governments have identified roles under the WARR Act through the provision and coordination of waste services and planning for the management of waste.

The Auditor General's 2020 report identified a number of areas for improvement of local government waste services waste planning, alignment of waste plans and contracts to the waste strategy, and support for helping local government to achieve this.

7.2 Stakeholder views

Chapter 7 of the discussion paper sought feedback on improvements to waste services. Stakeholders generally agreed there is a need for improvements in waste services and increased viability in the municipal sector.

A range of suggested areas for improving waste services were received. These were to:

- specify better practice requirements for the provision of waste services in the WARR Act
- encourage innovation to achieve better sustainability outcomes
- consider all waste streams and providers of waste services, rather than focusing only on local governments and municipal waste
- provide further guidance on the government's expectations in relation to the services that must be maintained and the responsibility for providing these services
- include provisions to improve the continuity, efficiency and effectiveness of waste services
- recognise the importance of waste education and behaviour change in the provision of waste services
- require waste plans to be implemented consistently across local governments and support the operation of the waste strategy
- reduce administrative burden by aligning existing local law processes under the Local Government Act 1995.
7.3 Recommendations

Better practice requirements for waste management

The waste strategy defines better practice as:

'practices and approaches that are considered by the Waste Authority to be outcomes-focused, effective and high performing, which have been identified based on evidence and benchmarking against comparable jurisdictions'.

Better practice approaches can provide for flexibility in how outcomes are achieved, allowing for innovation and consideration of the relevant circumstances, as well as providing guidance on what can be implemented to demonstrate consistency with better practice.

The Waste Authority has published better practice reports – such as the Better practice FOGO kerbside collection guidelines. The waste strategy highlights development of better practice guidelines to manage key waste streams and problematic wastes, for example for household hazardous waste facilities.

The Auditor General’s 2020 report found wider uptake of existing better practice waste management methods could improve waste recovery.

Recommendation 6: Include provisions in the WARR Act for the development and adoption of better practice approaches to waste services under the WARR Act. This should also include appropriate enforcement provisions.

Essential nature of waste services

Delivery of waste services is crucial for the protection of human health and the environment and achievement of the State Government’s sustainability objectives, such as the waste strategy and other State Government commitments.

Recent disruptions such as the COVID-19 pandemic, fires at processing facilities and tightening markets for the export of recyclables have highlighted the limitations for the provision of essential services such as waste disposal and recycling.

Guidance around community expectations for the provision of waste services could help clarify roles and responsibilities, and provide for improved suitability and certainty in how waste services are delivered in different circumstances, for example in regional and remote areas, or in response to emergency events.

Recommendation 7: Following consultation with local government, define essential waste services and clarify local government’s role in relation to essential waste services in their district. In addition, this should include a CEO exemption process for exceptional circumstances, such as emergency events.
Waste plans

The Auditor General's 2020 report noted having waste plans and contracts that clearly align to the waste strategy and address risks is an important step to help local government entities meet waste targets.

In 2019, the CEO required all local governments and regional councils in the Perth and Peel regions and major regional centres to prepare a waste plan outlining how waste services will be managed. The department published guidance to assist local governments in developing their waste plans.

As a result of the exercise of this power, it is apparent that improved alignment with the waste strategy and a requirement to ensure implementation would ensure a consistent approach is adopted by local governments.

**Recommendation 8:** Amend the provisions for waste plans to improve their operation and alignment to the outcomes of the waste strategy, including powers that ensure their implementation.

Waste local laws

Division 2, Part 3 of the *Local Government Act 1995* sets out the procedure a local government must follow in making a local law. Local laws are subject to disallowance by Parliament.

The WARR Act also requires a local government to receive CEO consent for a local law before publishing in the *Government Gazette*. There is no similar requirement for the making of other local laws.

State Government departments will continue to provide comment on local law development processes.

**Recommendation 9:** Streamline the making of waste local laws by removing provisions duplicated in the *Local Government Act 1995* and by removing the requirement in the WARR Act that the CEO must consent to waste local laws.
8 CDS: Prohibited disposal of containers by material recovery facilities

8.1 Key issues to be addressed

Section 47M of the WARR Act is intended to prevent MRF operators from fraudulently claiming a recovery amount for containers that have not been recycled.

The section creates offences and penalties for MRFs which dispose of, or allow the disposal of, a collected container or a returned container in a prohibited manner, even if no recovery amount has been claimed or received for the container.

This provision may impact on the viability of MRF operators who may collect, but not receive a refund for, containers that are not able to be recycled, for example because of contamination or damage.

8.2 Stakeholder views

Stakeholders supported the discussion paper’s proposal to amend section 47M to clarify that MRF operators must not dispose of containers in a prohibited manner if they have claimed or received a recovery amount in respect of the container, consistent with the intent of the section and approaches in other Australian jurisdictions.

8.3 Recommendations

**Recommendation 10:** Amend the WARR Act to ensure that MRFs may dispose of containers in respect of which the MRF has neither made a claim, nor received a refund amount, for those containers.
9 CDS: Constitution of the board of the Scheme Coordinator

9.1 Key issues to be addressed

Section 47V(2) provides the matters the constitution of the Coordinator must comply with in order to be an eligible company under section 47(1), including that the company must maintain a board of nine directors at all times. This is intended to ensure appropriate representation of key interests on the board of the Coordinator.

If a board member were to unexpectedly resign or become unable to continue in the role, the company appointed as Coordinator would cease to be compliant with its constitution.

9.2 Stakeholder views

Stakeholders were generally supportive of the discussion paper’s proposal to provide the Coordinator with 40 business days to appoint a new board member to the company to support the continuity of the CDS following an unexpected resignation.

One stakeholder suggested 60 business days is a more appropriate timeframe for recruiting a new director and considered this would be consistent with other legislation.

9.3 Recommendations

**Recommendation 11:** Clarify that the CDS Coordinator must have nine directors at all times, and allow 60 business days to appoint a suitably qualified person to the board as a replacement should a director resign, be removed or otherwise become unable to act.
10 Product stewardship and extended producer responsibility schemes

10.1 Key issues to be addressed

Effective product stewardship schemes can help drive a more circular economy by encouraging responsible production and management of products and materials.

The CDS, Containers for Change, is the first mandatory extended producer responsibility scheme to be created under the WARR Act. New provisions to establish the scheme, including refund amounts, export rebates, governance of the coordinator of the CDS (including appointment and removal) and the approval of containers.

The Recycling and Waste Reduction Act provides for three approaches to product stewardship:

1. Voluntary – whereby a person authorised by the Commonwealth can accredit voluntary product stewardship arrangements.

2. Co-regulatory – certain kinds of corporations are required to be members of Minister approved co-regulatory arrangements, with required outcomes in legislation. Administrators of the co-regulatory arrangements are required to take all reasonable steps to ensure the outcomes are achieved.

3. Mandatory – where laws may be made that require specified persons to take, or not to take, specified action in relation to products.

10.2 Stakeholder feedback

Chapter 8 of the discussion paper sought feedback on product stewardship plans and extended producer responsibility schemes, and whether the WARR Act required amendments to support these.

Stakeholders supported the use of product stewardship and extended producer responsibility schemes to drive WA’s move towards a circular economy.

Stakeholders highlighted that:

- producers and suppliers of problematic materials should have greater responsibility for managing impacts resulting from the life cycle of the material
- there should be mandatory recyclable and recycled content targets for producers and suppliers with penalties for non-compliance under the WARR Act. Financial levers may also disincentivise the use of raw materials
- the State Government should be able to implement product stewardship and extended producer responsibility schemes for problematic waste materials in the absence of a satisfactory national approach
the definition of product stewardship in the WARR Act should reflect international better practice, including responsibility for the entire lifecycle as well as obligations in relation to design.

10.3 Recommendations

Stakeholders generally supported revision of the provisions relating to product stewardship to provide for more effective approaches. Based on its experience in the CDS, the department acknowledges the value of such a review.

While voluntary and national approaches to product stewardship are preferred, regulatory intervention by the state may be required where a material or product is posing a local impact. This could occur in circumstances where no national action has been taken to address the impacts of the product or material, or where the action taken has not adequately addressed the issue in Western Australia.

The current provisions in the WARR Act provide for the creation of regulations for the implementation, operation and enforcement of extended producer responsibility schemes.

As demonstrated through the creation of the CDS, there may be circumstances where it is not appropriate to implement a scheme through regulations, such as where the scheme involves significant financial implications.

**Recommendation 12:** The provisions in the WARR Act for product stewardship should be reviewed and improved. This could include head powers and enforcement provisions for the creation and regulation of co-regulatory and mandatory product stewardship schemes.
11 Referencing in regulations made under the WARR Act

11.1 Key issues to be addressed

Under section 98 of the WARR Act, regulations, local laws and the waste strategy may adopt codes and subsidiary legislation as in force from time to time. A code is defined as 'a code, standard, rule, specification or other document made in or outside Australia, that does not by itself have legislative effect in the State'.

This scope is limited in comparison with the broader approach under section 123(3)(a) of the EP Act which provides that regulations may:

'adopt, either wholly or in part or with modifications and either specifically or by reference, any rules, standards, regulations, local laws, by-laws, codes, instructions, specifications or administrative procedures prescribed or published by any person or public authority including the Authority and the CEO, either as in force at the time of prescription or publication or as amended from time to time thereafter'.

It is not clear whether regulations made under the WARR Act, local laws and the waste strategy can adopt things such as instructions, administrative procedures, codes and standards prepared by the CEO.

11.2 Stakeholder views

Chapter 8 of the discussion paper sought feedback on the proposal for additional scope to adopt key documents in regulations, local laws and the waste strategy under section 98 of the WARR Act to align with section 123(3) of the EP Act. Stakeholders supported the proposal and requested further detail on the rationale.

11.3 Recommendations

Recommendation 13: Consider amending section 98 of the WARR Act to expand the types of documents that regulations, local laws and the waste strategy may adopt to include rules, standards, regulations, local laws, by-laws, codes, instructions, specifications or administrative procedures prescribed or published by any person or public authority.

The State Government would consult as required to understand the impacts before a decision is progressed.
12 Penalties for offences under regulations

12.1 Key issues to be addressed

Under item 5 of Schedule 3, regulations may be made prescribing offences and penalties for the commission of these offences not exceeding $10,000 with or without a daily penalty of not more than $1,000.

The WARR Regulations include offences and penalties in relation to non-compliance with a waste collection permit, provision and maintenance of financial assurances, record-keeping requirements, and local government reporting on waste services.

Non-compliance with these requirements undermines the waste management framework.

12.2 Stakeholder views:

Chapter 8 of the discussion paper proposed the maximum penalty under regulations be increased from $10,000 to $20,000, with or without a daily penalty of not more than $2,000.

Stakeholders generally supported the proposal and made a number of other suggestions to encourage the effective implementation of the waste management framework, including:

- providing for increased penalties for repeat offenders
- considering whether increased penalties are the most effective way of encouraging the effective implementation of the framework
- investigating other complementary measures – for example, focus on departmental enforcement of penalties, increase the accountability of waste generators for waste disposal.

12.3 Recommendations

Increasing the penalties under the regulations will promote their effectiveness as an enforcement instrument by reducing the likelihood of any financial gain or benefit from non-compliance. Providing for a maximum penalty allows for the application of penalties that are proportionate to the offence.

The proposed penalties also align with recent changes made to the EP Act, which increased the maximum penalty for offences under the regulations to $20,000.

Recommendation 14: Increase the maximum penalty under regulations from $10,000 to $20,000, with or without a daily penalty of not more than $2,000.
13 Additional issues raised by stakeholders

13.1 Objects of the WARR Act

Stakeholder views

Some stakeholders considered the objects of the WARR Act could be updated to reflect the overarching framework of achieving a sustainable, circular economy.

In particular, it was considered that the waste hierarchy could explicitly differentiate the priority of various resource recovery options. This would be consistent with the Waste Authority’s Position statement on the waste hierarchy (2020).

Some stakeholders also recommended the waste framework should consider emission reduction and energy impacts.

Recommendations

The primary objects of the WARR Act are to contribute to sustainability and the protection of human health and the environment, and the move to a waste-free society. This supports the circular economy principle.

Section 5 of the WARR Act includes ways by which the primary objects are to be achieved, including through the consideration of resource management options against the following hierarchy –

(i) avoidance of unnecessary resource consumption;
(ii) resource recovery (including reuse, reprocessing, recycling and energy recovery);
(iii) disposal.

The recent Waste Authority position statement provided more detail on the waste hierarchy to rank waste management options in order of their general environmental desirability, with avoidance the preferred option, through various resource recovery options, to the least preferred option of disposal.

Aligning this policy with the legislative intent of the WARR Act will ensure a consistent approach for government and industry stakeholders in terms of applying the waste hierarchy.
**Recommendation 15:** Update the actions to be taken to achieve WARR Act objects to clearly differentiate and list waste management options in order of preference (from most to least preferred), being:

(i) avoidance of waste  
(ii) reuse  
(iii) reprocessing  
(iv) material recovery – recycling  
(v) energy recovery  
(vi) treatment  
(vii) disposal.

### 13.2 Waste Authority administration

**Timing of the draft business plan**

Section 35 of the WARR Act provides that the Minister may determine a day by which the draft business plan must be submitted and, if no day is determined, the draft must be submitted three months before the start of the next financial year, being 1 April.

The Waste Authority process has streamlined the development of the business plan, including clearer alignment with the commitments in the waste strategy, and engagement with the Minister.

Changing the formal submission date to 1 June would provide for the preparation and finalisation of a draft business plan that:

- has been informed through a joint strategic planning session held annually in February with their Program Risk and Performance Committee⁴  
- has been considered by the Waste Authority  
- incorporates priority areas identified by the Minister for inclusion in the plan.

**Recommendation 16:** Provide that the date for the Waste Authority to submit the draft business plan be one month before commencement of the next financial year, unless the Minister sets an alternative date.

---

⁴ The Waste Authority’s Program Risk and Performance Committee provides oversight and guidance to the Waste Authority in relation to risk management, program evaluation and financial reporting. The Committee meets quarterly and is chaired by the CEO of Treasury Corporation, Kaylene Gulich.
Contents of the business plan

Section 36(1)(a) and (b) of the WARR Act provides that the business plan is to set out the Waste Authority's objectives and priorities for the next five financial years and financial projections for that period.

The State Budget Papers provide forward estimates for four years. The Waste Authority suggested that consideration be given to changing section 36(1)(b) of the WARR Act to require financial projections for four years instead of five so as to align with the state's forward budget estimates.

**Recommendation 17:** Require the financial projections in the business plan to be for four years, consistent with the forward projections in the State Budget papers.

Timing of the Waste Authority's annual report

It was suggested that consideration be given to aligning the processes for submission of the Waste Authority annual report with that of the department to streamline finalisation, approval and lodgement by the Minister.

Section 23 of the WARR Act provides that the Waste Authority must provide the Minister with its annual report between 1 July and 31 October each year, and that the Minister must lay the report before each House of Parliament within seven sitting days of the House after the Minister has received it.

There is already sufficient flexibility to align the development and submission of the Waste Authority's annual report with the department's annual report if this is desired without amendment to the WARR Act.

Out of session resolutions of the Waste Authority

It was suggested that the requirement for out-of-session resolutions of the Waste Authority be reduced from five to three members, consistent with the intent of resolutions at meetings with a quorum of three people. This recommendation was supported.

**Recommendation 18:** Reduce the number of members required to make an out-of-session resolution of the Waste Authority from five to three.

13.3 Terminology

It was recommended that the WARR Act be updated to use gender-neutral language rather than 'chairman', consistent with contemporary practice. This recommendation is supported.

**Recommendation 19:** Update the terminology in the WARR Act to be gender-neutral consistent with modern drafting practice.
## Appendix A

### List of submissions

<table>
<thead>
<tr>
<th>No.</th>
<th>Organisation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Alcoa of Australia Limited</td>
</tr>
<tr>
<td>2</td>
<td>Association of Mining and Exploration Companies</td>
</tr>
<tr>
<td>3</td>
<td>Cement, Concrete and Aggregates Australia</td>
</tr>
<tr>
<td>4</td>
<td>City of Canning</td>
</tr>
<tr>
<td>5</td>
<td>City of Joondalup</td>
</tr>
<tr>
<td>6</td>
<td>City of Kwinana</td>
</tr>
<tr>
<td>7</td>
<td>The Chamber of Minerals and Energy of Western Australia</td>
</tr>
<tr>
<td>8</td>
<td>John William Collins</td>
</tr>
<tr>
<td>9</td>
<td>LMS Energy</td>
</tr>
<tr>
<td>10</td>
<td>Peter Haas</td>
</tr>
<tr>
<td>11</td>
<td>Southern Metropolitan Regional Council</td>
</tr>
<tr>
<td>12</td>
<td>Western Australian Local Government Association</td>
</tr>
<tr>
<td>13</td>
<td>WA Return Recycle Renew Ltd</td>
</tr>
<tr>
<td>14</td>
<td>Waste Authority</td>
</tr>
<tr>
<td>15</td>
<td>Water Corporation</td>
</tr>
<tr>
<td>16</td>
<td>Western Metropolitan Regional Council</td>
</tr>
<tr>
<td>17</td>
<td>Waste Management and Resource Recovery Association of Australia</td>
</tr>
</tbody>
</table>
References

Department of Water and Environmental Regulation (2020), Consultation paper – Closing the loop Waste reforms for a circular economy; February 2020, Perth, Western Australia.


Department of Water and Environmental Regulation (2020), Consultation paper – Review of the waste levy; February 2020, Perth, Western Australia.

Department of Water and Environmental Regulation (2020), Consultation summary report - Mandatory use of weighbridges by landfill premises to calculate leviable waste; September 2020, Perth, Western Australia.

Hon Amber-Jade Sanderson BA MLA, Media Statement: Containers for Change off to a roaring start in WA!, 9 April 2021, Perth, Western Australia


