

Submission on the Waste Avoidance and Resource Recovery (E-waste) Regulations 2023 Consultation Draft

November 2023

About WALGA

The Western Australian Local Government Association (WALGA) is the united voice of Local Government in Western Australia. The Association is an independent, membership-based organisation representing and supporting the work and interests of 139 Local Governments in Western Australia, comprising 1,215 Elected Members and approximately 22,600 Local Government employees, as well as over 2.5 million constituents of Local Governments in Western Australia.

Western Australian Local Governments vary greatly in:

- size, ranging from less than 1.5 to over 370,000 square kilometres,
- population, just over 100 to more than 224, 000 people,
- the number of staff employed, from less than 10 to over 1000,
- in revenue received, which in 2019-20 ranged from just over \$2 million to just over \$226 million.

Acknowledgement of Country

WALGA acknowledges the continuing connection of Aboriginal people to Country, culture and community. We embrace the vast Aboriginal cultural diversity throughout Western Australia, including Boorloo (Perth) on the land of the Whadjuk Noongar People where WALGA is located, and we acknowledge and pay respect to Elders past and present.

WALGA is committed to supporting the efforts of WA Local Governments to foster respectful partnerships and strengthen relationships with local Aboriginal communities.

Introduction

WALGA appreciates the opportunity to comment on the [Consultation Draft of the Waste Avoidance and Resource Recovery \(E-Waste\) Regulations 2023](#) (the Draft Regulations).

The Western Australian Government has committed to deliver a statewide ban on e-waste disposal to landfill by 2024, with the aim of improving management and recycling of e-waste produced by households and businesses across the State.

WALGA acknowledges the objectives of the ban and its alignment to global, national and local environmental and recovery targets, in particular the [Waste Avoidance and Resource Recovery Strategy 2030](#). However, as stated in previous [submissions](#), the implementation of an e-waste to landfill ban by 2024, in its proposed form, will have significant financial implications for Local Governments, and the communities they service.

WALGA's Advocacy Position on landfill bans is clear - *Landfill bans are only supported in the presence of effective product stewardship schemes, or other funding mechanisms, for products which would be subject to the ban.*

WALGA reiterates its position that comprehensive and effective product stewardship must be implemented for products subject to the e-waste landfill ban prior to the ban taking effect.

WALGA acknowledges the provision of grant funding to assist in increasing the capacity of recyclers in WA to accept increasing amounts of e-waste and to assist with collection and reuse. However, this does not address the key concern of Local Government regarding ongoing funding to cover all costs associated with e-waste recycling.

While the Draft Regulations outline the responsibilities of designated entities within the e-waste collection and recycling process. However, clarification of the roles and responsibilities of Local Governments, in collecting and managing e-waste, is needed in order for the Regulations to be effective and practicable.

Definitions and responsibilities

The Draft Regulations outline responsibilities for designated entities under the ban, which have been classified into three categories:

- An e-waste service provider: a person who conducts a business or undertaking that involves or includes the collection or receipt of regulated e-waste for storage, management, aggregation, treatment, processing, sorting, recycling, transfer or disposal.
- A landfill operator: a person who occupies premises which constitute or include a landfill site.
- A significant business: an entity involved in business, industry, trade or commerce that, together with any related entity (if the entity is a body corporate), in relation to any financial year —
 - a) has 200 or more employees at the beginning of the financial year; or
 - b) created, during the immediately preceding financial year, 5 or more tonnes of regulated e-waste.

A number of WA Local Governments will fit into all three categories; as they would be considered an e-waste service provider (for example by collecting e-waste at a transfer station), could operate a landfill and may also be a significant business.

To relieve administrative burden on Local Governments, it is recommended the Department streamline reporting requirements. The Department of Water and Environmental Regulation (DWER) has acknowledged Local Government has existing mandatory reporting requirements for waste and recycling data, including e-waste, under Regulation 18C of the *Waste Avoidance and Resource Recovery Regulations 2008* (WARR Regulations), and is investigating how additional requirements may be integrated into the reporting system.

Recommendation: That Local Governments are not subject to the Reporting requirements in the Draft Regulations, and instead continue to report through the existing mandatory reporting requirements under the *Waste Avoidance and Resource Recovery Regulations 2008*.

The ability of Local Governments to establish e-waste collections for recycling is dependent on the licence condition of the site under the *Environmental Protection Act 1986* (EP Act), which may require licence application or amendment to the Department for Local Governments which are not currently aggregating e-waste for recycling.

In particular, the collection and storage of lithium-ion batteries as part of an e-waste collection presents a fire risk to Local Government sites and may require upgrades to on-site systems to meet safety requirements.

DWER has confirmed that:

- the requirement for a licence, or licence amendment, under the EP Act is dependent on the annual amount of waste accepted at a site, and smaller sites aggregating e-waste may not be required to apply for a licence if the received amounts are below the threshold; and
- designated entities and licence holders will be directly contacted regarding their responsibilities under the regulations, however the responsibility to identify if a change of licence conditions is required will be on the licence holder.

DWER recommended Local Governments refer to the [Guideline: Industry Regulation Guide to Licensing](#) or contacting its Waste Industries Licensing section for guidance on works approvals and licensing or registration of prescribed premises.

The definition of 'landfill site' in the Draft Regulations is as follows:

landfill site means premises —

- which are used for the purpose of receiving waste; and
- in respect of which the occupier is required to hold a licence within the meaning of the EP Act, whether or not such a licence is in force.

Recommendation: Clarification is required on whether the description of landfill site in the Draft Regulations applies to those landfills which are registered rather than licenced, including the 109 landfills managed under the Remote Essential and Municipal Services (REMS) program.

Prohibition of disposal to landfill and operator requirements

Recommendation: The wording on prohibition of e-waste to landfill, in Section 14, requires further clarification in relation to the responsibility of landfill operators.

Throughout the consultation process on the landfill ban to date, it has been made clear that unintentionally captured regulated e-waste, for example which has been placed in a kerbside bin, is not subject to the regulations. This is confirmed in the Draft Regulations, Section 6 – Exceptions.

Section 14 refers to 'regulated e-waste received by a landfill operator which is mixed with other waste' and specifies the landfill operator 'must separate the regulated e-waste from other waste'.

DWER has confirmed the intent of Section 14 is to identify and separate significant amounts of e-waste, for example, if a commercial truck arrived at a landfill with mixed waste containing multiple TVs or whitegoods which could be easily separated, then the regulation would apply.

It is not intended to apply to small amounts mixed with putrescible or other general waste, as this is covered by the exceptions in Section 6, which would be considered incidental capture.

Recommendation: That the wording of Section 14 on what constitutes 'regulated e-waste which is mixed with other waste' be revised and clarified if this is not intended

to refer to e-waste incidentally captured through the kerbside or other collection systems.

Defences to a breach under Section 14 are as follows:

- *It is a defence to a charge for an offence under subregulation (2) to prove that the landfill operator —*
 - (a) took reasonable steps to avoid the commission of the offence; or*
 - (b) did not know, and could not reasonably have known, that regulated e-waste was mixed with other waste.*

Further guidance will be required to ensure that the “reasonable steps” identified in the regulation are clearly defined, otherwise it is likely that this will generate significant administrative burden for landfill sites, for example if requiring a signed declaration from each individual depositing waste. This is further complicated for small regional landfills which may not be staffed.

Recommendation: That the Department develop guidance on what the ‘reasonable steps’ identified in the Regulations would include.

Regional considerations

Consultation with regional Local Governments has shown costs to establish and maintain e-waste recycling activities are significantly higher due to transport distances and limited economies of scale. Consumers, Local Governments and retailers operating in regional and remote areas of WA are subject to higher than average costs of living and operation, which places added pressure on meeting any additional costs outside of scheme operations.

Several regional Local Governments have expressed concern over their ability to resource additional requirements in the management and recording of e-waste, particularly in areas with unstaffed landfills where monitoring of the loads will require significant resourcing changes.

DWER has acknowledged the concerns of regional Local Governments about the additional resourcing that would be required to monitor e-waste at landfills and confirmed that staff at small regional landfills would not be expected to separate waste, noting that where there are clearly significant amounts that are able to be separated and it is not unintended capture, the intent of the regulations supports that those amounts are separated and sent to recovery.

WALGA notes the draft Regulations provide for exemptions in extraordinary circumstances where compliance with the regulations may not be feasible, such as geographical remoteness affecting the availability of facilities or resources.

As a number of regional Local Governments are not currently collecting e-waste for recycling due to feasibility, clarification is required on what would be considered eligible for an exemption under the criteria.

In all circumstances where an exemption is applied for, ensuring the appropriate level of resourcing within DWER to assess and grant the exemption in a timely manner is essential, to mitigate the risks of stockpiling regulated e-waste or potentially breaching further sections of the regulations.

Recommendation: DWER develop guidelines for exemptions, similar to the [Waste Levy Exemption guidelines](#) and ensure sufficient resourcing to assess and grant exemptions in a timely manner.

Schedule 1 - Regulated e-waste

Schedule 1 of the Draft Regulations sets out the materials to be covered by the initial stage of the ban. Feedback from Local Governments highlighted that the implementation of an e-waste to landfill ban will require the development of a comprehensive communications and education campaign to ensure effective community participation and minimise administrative and resourcing burden on Local Governments. Local Government feedback shows community confusion currently exists around the definition of e-waste, and Local Governments are primarily the point of contact for residents with queries on disposal options.

A key concern of Local Governments is that unclear definitions of e-waste and lack of awareness around which materials are subject to the ban will lead to community members bringing unregulated e-waste to drop off sites expecting it to be recycled. E-waste not covered by a product stewardship scheme (known as 'by-catch') currently costs Local Governments \$650 per tonne to recycle, along with increased transport, resourcing and administrative costs.

Existing e-waste recycling messaging needs to be further developed and expanded to clarify which items are accepted under product stewardship schemes such as the NTCRS, as well as how the ban will affect disposal options for different items. Table 1 provides commentary on several of the materials.

Recommendation: That the Department actively engage with Local Government in the development and delivery of e-waste landfill ban messaging.

Table 1: Materials Subject to the Ban

Material	Comments
TVs and Computers	<p>As stated in WALGA's submission on the e-waste to landfill ban consultation, while it is acknowledged that there are Product Stewardship Schemes in place for some of the products subject to the ban, such as the National TV and Computer Recycling Scheme (NTCRS) and Flurocycle, a new National Product Stewardship Scheme, anticipated to cover a wider scope of e-waste, is not scheduled for introduction until mid-2025, with on ground implementation timeframes still to be determined.</p> <p>Local Governments are currently and will continue to incur significant costs for e-waste recycling, as the Product Stewardship Schemes in place cover only a percentage of the total cost of recycling. This is a significant barrier for Local Governments in establishing and maintaining e-waste collections for their communities, particularly in regional WA.</p> <p>A 2021 survey of 29 Local Governments offering e-waste collection services to the community showed that each Local Government provides staffing, infrastructure and sites which contribute to the in-kind costs of recycling</p>

	<p>e-waste. The amount of financial in-kind costs varied from \$1,000 - \$150,000 per year per Local Government, for both in and out-of-scope NTCRS products. WALGA understands that recycling of NTCRS material is a direct cost of \$350 per tonne to Local Government, and e-waste not included in the NTCRS \$650 per tonne.</p>
<p>Fluorescent lights</p>	<p>Flurocycle, the voluntary national product stewardship scheme, does not provide any funding for recycling of fluorescent lighting. 22,403kg of fluorescent lighting materials were collected through the Household Hazardous Waste (HHW) Program in 2021-22 and cost \$70,568 to recycle, excluding transport. This material comprised 5 per cent of the overall material collected through the HHW Program.</p>
<p>Batteries</p>	<p>The inclusion of batteries as a blanket category in the regulations requires further review, as there are a range of battery types not covered by an existing product stewardship scheme or large-scale recycling programs.</p> <p>The national battery product stewardship scheme, Bcycle, accepts household batteries of all sizes, button batteries, rechargeable batteries up to 5kg, and batteries that can be easily removed from devices such as power tools and cameras.</p> <p>Mobile phone and portable device batteries are covered under Mobile Muster and the NTCRS scheme, while lead acid batteries are accepted for recycling through a range of retailers.</p> <p>There are currently no product stewardship schemes or viable recycling options available for larger batteries such as those used to power electric vehicles, e-scooters and bikes, or residential energy storage.</p> <p>Recommendation: A staged approach be taken to including batteries in the ban:</p> <ul style="list-style-type: none"> • Phase 1: Batteries covered by the BCycle scheme and automotive batteries (with an existing recycling option and end market) • Phase 2: Batteries not included in the BCycle Scheme, once a Product Stewardship Scheme or other funding mechanism is in place.